THE DIGEST

OF

ENGLISH CASE LAW

CONTAINING THE

REPORTED DECISIONS

OF THE

SUPERIOR COURTS,

AND

A SELECTION FROM THOSE OF THE SCOTTISH AND IRISH COURTS

REPORTED DURING THE YEARS

1911 TO 1915

UNDER THE GENERAL EDITORSHIP OF

JOHN MEWS

BARRISTER-AT-LAW.

LONDON:

SWEET AND MAXWELL, LIMITED, 3 CHANCERY LANE. | STEVENS AND SONS, LIMITED, 119 & 120 CHANCERY LANE.

1916.

PUBLISHERS' PREFACE.

This work contains a Digest of the cases reported during the years 1911 to 1915, both inclusive, in all the current series of English Reports, a list of which is printed overleaf, and of such cases in the Law Reports, Ireland, the Court of Session Cases, and Law Reports (Indian Appeals) as affect English Law.

It continues Mews' Digest of English Case Law. This standard Digest was published in 1898, and contains in 16 volumes the whole body of living case law to the end of 1897.

In 1911 there was published a Supplement containing a Digest of the cases from 1897 to 1910. This Digest was so arranged that it could be bound up in the appropriate volumes of the main work, thus bringing the cases in each volume down to the end of 1910, or could be bound as a separate Digest in three volumes. At the same time a new index of cases, containing under one alphabet all the cases in the main work and the supplement, was published to take the place of the original index volume.

Mews' English Digest System therefore consists of:

(1) The Digest of English Case Law to 1910, in 16 volumes.

(2) This Quinquennial Digest covering 1911 to 1915.

It will, as previously, be continued by Annual Digests with Quarterly cumulative advance issues, and a separate "Noter-up" on gummed paper.

SWEET & MAXWELL, Ltd.
STEVENS & SONS, Ltd.

January 1916.

REPORTS COMPRISED IN THIS VOLUME.

Reports.	Abbreviations.	Courts.
Aspinall's Maritime Cases	Asp. M.C.	All.
British and Colonial Prize Cases	P. Cas.	All.
Commercial Cases	Com. Cas.	Commercial Cases.
Court of Justiciary Cases	[1910]—[1915] S.C. (J.)	Court of Justiciary.
Court of Session Cases	[1910]—[1915] S.C.	Court of Session.
Cox's Criminal Cases	Cox C.C.	Central Criminal and Crown.
Hansell's Bankruptcy Reports	[1915] H.B.R.	Bankruptcy and Company Cases.
Irish Reports	[1911]—[1915] 1 & 2 Ir. R.	All.
Justice of the Peace	J. P.	——
Law Journal	L. J.	——
Law Reports	[1915] A.C.; P.; Ch.; K.B.	——
—— ——	Ind. App.	Privy Council.
Law Times (N.S.)	L. T.	All.
Local Government Reports	L. G. R.	——
Manson	Manson	Bankruptcy and Company Cases.
Patent, Design, and Trade Mark Cases	R. P. C.	All.
Railway and Canal Traffic Cases	Ry. & Can. Traff. Cas.	Railway Commissioners.
Smith (in continuation of Fox and Smith)	Smith	Registration Cases.
Solicitors' Journal	S. J.	All.
Tax Cases	Tax Cas.	Revenue Cases.
Times Law Reports	T. L. R.	All.
Weekly Notes	W. N.	All.
Workmen's Compensation and Insurance Reports	[1912]—[1915] W.C. & I. Rep.	All.

ABBREVIATIONS

App. Cas. *or* A.C., *Appeal Cases* (*Law Reports*).
Bk., *Bankruptcy*.
C.A., *Court of Appeal*.
C.C.A., *Court of Criminal Appeal*.
C.C.R., *Crown Cases Reserved*.
Ch., *Chancery*.
Ch. D., *Chancery Division*.
D., *Divisional Court*.
E., *England*.
Ex. D., *Exchequer Division*.
H.L., *House of Lords*.
Ir., *Ireland*.
JJ. *and* J., *Justices*, *Justice*.
K.B., *King's Bench*.
K.B. D., *King's Bench Division*.
L.C., *Lord Chancellor*.
L.JJ. *and* L.J., *Lords Justices*, *Lord Justice*.
L. J. N.C. (*Law Journal*, *Notes of Cases*).
L. R., *Law Reports*.
L. T. J., *Law Times Journal*.
M.C., *Magistrates' Cases* (*Law Journal*).
M.R., *Master of the Rolls*.
P.C., *Privy Council*.
P. D., *Probate*, *Divorce and Admiralty Division*.
Prob. *or* P., *Probate*.
Q.B., *Queen's Bench*.
Q.B. D., *Queen's Bench Division*.
Sc., *Scotland*.
S.P., *Same Point or Principle*.
W. N., *Weekly Notes* (*Law Reports*).

TABLE OF CASES

A DIGEST

OF

ALL THE CASES REPORTED

DURING THE YEARS

1911 TO 1915

ACCIDENT.

See MASTER AND SERVANT; NEGLIGENCE; WORKMEN'S COMPENSATION.

ACCORD AND SATISFACTION.

See also Vol. I. 5, 1070.

Debt—Offer by Third Party to Creditor of Smaller Sum in Satisfaction—Acceptance by Creditor of Smaller Sum—Right of Creditor to Sue Debtor for Balance of Debt.]—The defendant, an officer of the British Army, when on service in India gave to the plaintiffs, who were a firm of money-lenders there, a promissory note for 1,500 rupees and interest, to secure repayment of a sum advanced by them to him. The father of the defendant, in response to an application by the plaintiffs, made them an offer of a less sum "in full settlement" of their claim against the defendant. The plaintiffs declined that sum, and again asked for what amount the defendant's father would "settle" his son's debt. The father replied offering 650 rupees, and inclosing a draft for that amount. The plaintiffs cashed the draft and retained the proceeds. The plaintiffs then brought an action against the defendant on the promissory note, claiming the amount thereof and interest, less the amount of the draft:—*Held*, that the plaintiffs having made a settlement with the father could not recover from the defendant, whose debt was thereupon extinguished. *Hirachand Punamchand* v. *Temple*, 80 L. J. K.B. 1155; [1911] 2 K.B. 330; 105 L. T. 277; 55 S. J. 519; 27 T. L. R. 430—C.A.

Observations in *Cook* v. *Lister* (32 L. J. C.P. 121; 13 C. B. (N.S.) 543) considered and adopted. *Day* v. *McLea* (58 L. J. Q.B. 293; 22 Q.B. D. 610) distinguished. *Goddard* v. *O'Brien* (9 Q.B. D. 37) questioned by Fletcher Moulton, L.J. *Ib.*

ACCUMULATIONS.

See also Vol. I. 144, 1074.

Accumulation Directed during Lives of Annuitants—Period Defined by Will not Extended by Codicil giving Further Annuity.]—By his will a testator directed his trustees to pay annuities to five persons named therein, and to accumulate the surplus income of his estate during their lives and the life of the survivor. By a codicil he directed a sixth annuity to be paid. The testator died in 1868, the last survivor of the will annuitants in 1882, and the codicil annuitant in 1911:—*Held*, that the codicil could not be read into the earlier part of the will so as to extend the period of accumulation beyond 1882, and that the accumulations of surplus income made since that date were not undisposed of, but fell into residue. *Cresswell, In re; Lineham* v. *Cresswell*, 58 S. J. 360—C.A.

—— **Death of Last Annuitant—Accumulations Beyond the Statutory Period—Residuary Gift.**]—A testator gave five annuities to be paid "out of the residuary estate and my bank shares" and "subject as aforesaid" directed the surplus income to be accumulated until the death of the last annuitant, and disposed of the residue. One annuitant lived beyond the period of accumulation allowed by the Thellusson Act:—*Held*, that there was an intestacy as to the income accumulated beyond the period. *Pope, In re; Sharp* v. *Marshall* (70 L. J. Ch. 26; [1901] 1 Ch. 64), not followed on the question of the bank shares. *Cababé, In re; Cababé* v. *Cababé*, 59 S. J. 129—Neville, J.

Accumulation Due to Trustees' Inability to Find Proper Objects of a Discretionary Trust.]—A testator, after providing for the disposal of the greater part of his estate among his children in the form of legacies, directed his trustees "from time to time, as they think proper, to make such special payments out of the free residue and remainder of my estate to such of my children or children's children as they may think most deserving, with special instructions to relieve any of them who may appear to be in want, provided always that they have not brought themselves into such circumstances by their own misconduct. My great desire is to assist merit and thrift, and not to acknowledge indolence or folly." The will contained no further directions as to the disposal of the residue. For a period of twenty-one years from the testator's death the income of the residue was accumulated, no distribution thereof being made by the trustees, owing to the fact that they were not satisfied that among the testator's children and grandchildren any cases existed which warranted payments out of the trust funds. In proceedings by the trustees, in which the children maintained that the direction as to the residue was void for uncertainty, or, otherwise, that further accumulation of the income was prohibited by the Thellusson Act,—*Held*, first, that the word "deserving" in the clause quoted meant deserving of pecuniary assistance, and accordingly that that clause committed an intelligible and workable discretion to the trustees, and was not void for uncertainty; and secondly, that as the accumulation of the income was due, not to the direction, express or implied, of the testator, but to the extraneous circumstance that no occasion for payment out of income had, in the opinion of the trustees, as yet arisen, the Thellusson Act did not apply. Whether the trust as to the residue was "charitable," *quære*. *Mitchell's Trustees* v. *Fraser*, [1915] S. C. 350—Ct. of Sess.

Savings out of Income—Thellusson Act.]—A testator conveyed the residue of his estate to trustees and directed them to apply the annual income in forming an "Institute" for the town of L., consisting of a library, reading room, &c. The trustees were "authorised and empowered to set apart and accumulate" the balance of income from such residue for the purpose of erecting a suitable building for the institute, but no power was given to them to employ the capital for this purpose. The trustees accordingly accumulated the income. More than twenty-one years after the testator's death the trustees applied for authority to uplift capital and apply it for the purpose of erecting such an institute:—*Held*, that as the Thellusson Act strikes at accumulations, the directions of the trust, so far as they necessitated accumulations, were gone after twenty-one years, but that the Thellusson Act does not prevent savings out of income, and accordingly that the trustees might still continue to make savings out of income. *Lindsay's Trustees, In re*, [1911] S. C. 584—Ct. of Sess.

Trust to Accumulate During Minority—Minor who, if of Full Age, would be Entitled to the Rents and Profits—Minor Born after Testator's Death.]—Section 1 of the Accumulations Act, 1800, renders void any direction by a settlor or testator for the accumulation of the income arising from a fund for a longer term than *(inter alia)* during the minority of any person who would for the time being, if of full age, be entitled to the income of the fund. Under this provision a testator may validly direct accumulation during the minority of a person not born until after his death. The *dictum* to the contrary in *Haley* v. *Bannister* (4 Madd. 275, 277) disapproved. The decision in *Haley* v. *Bannister* (*supra*) was on the special facts of that case, and is not an authority for the general principle laid down in the headnote. *Cattell, In re; Cattell* v. *Cattell* or *Dodd*, 83 L. J. Ch. 322; [1914] 1 Ch. 177; 110 L. T. 137; 58 S. J. 67—C.A.

In determining the validity of a direction to accumulate, the Court is not concerned to consider what might have happened under it, but only whether the direction has caused or is about to cause accumulation for a longer term than is allowed by the Accumulations Act, 1800. *Jagger* v. *Jagger* (53 L. J. Ch. 201; 25 Ch. D. 729) discussed and not followed. *Ib.*

Will—Leaseholds—Reserve Fund for Dilapidations—Validity.]—Where there is a direction in a will that a certain portion of the rents of leasehold property should be invested every year, so as to accumulate for the purpose of creating a fund to protect the trustees against uncertain claims for dilapidations under the leases, the trust to accumulate is valid and does not come within the Accumulations Act, 1800. *Varlo* v. *Faden* (29 L. J. Ch. 230; 27 Beav. 255) followed. *Hurlbatt, In re; Hurlbatt* v. *Hurlbatt*, 80 L. J. Ch. 29; [1910] 2 Ch. 553; 103 L. T. 585—Warrington, J.

—— **Settlement in Tail—Persons who "shall be entitled to possession and enjoyment"—"Under the trusts and limitations of this my will"—Estate Tail in Possession—Disentailing Assurance—Cesser of Accumulations.**]—Testator devised his real estate in strict settlement with an estate tail to the first and other sons of H. A. T., and directed the trustees to accumulate the rents and profits and the income of residuary personalty upon trust for the persons who at the end of the term during which accumulation was directed should "under the trusts and limitations of this my

will be entitled to the possession and enjoyment " of the real estate devised by the will. The first estate tail had vested in possession in the plaintiff, and he had barred the entail before the end of the period during which accumulation was directed :—*Held*, that the interest of the trustees was not an estate prior to the estate tail and that the plaintiff was still in possession under the will, although now owner in fee; that at the end of the period of accumulation the plaintiff, his heirs or assigns, could be the only persons entitled to possession of the realty, and that therefore the Court would not enforce the trust for accumulation, but that the plaintiff was entitled to be let into possession of the rents and profits at once. *Trevanion, In re; Trevanion* v. *Lennox*, 80 L. J. Ch. 93; [1910] 2 Ch. 538; 103 L. T. 212; 54 S. J. 749—Joyce, J.

ACQUIESCENCE.

Loss of Rights under Covenant.] —*See* COVENANT.

ACTION.

See also Vol. I. 178.

Cause of—Criminal Offence—Felony—Application to Dismiss Action—Stay of Proceedings until Defendant Prosecuted.]—Where a statement of claim is based on a felony alleged to have been committed by the defendant against the plaintiff, the Court will stay further proceedings in the action until either the defendant has been prosecuted for the felony or a reasonable excuse has been shewn for his not having been so prosecuted. *Smith* v. *Selwyn*, 83 L. J. K.B. 1339; [1914] 3 K.B. 98; 111 L. T. 195—C.A.

—— **Whether Retrospective—Crown Grant of Land — Waiver of Rights of Crown.**] — The respondent, who held land under a grant from the Crown by which all mines and minerals were expressly reserved to the Crown, brought an action against the appellants for the removal of minerals from under his land. After the commencement of the action he obtained a statement in writing from the Crown that no claim was made on the part of the Crown to the minerals in question :—*Held*, that this statement had no retrospective effect so as to vest in the respondent a title to the minerals at the commencement of the action, and that the action would not lie. *Fernando* v. *De Silva*, 82 L. J. P.C. 111; 107 L. T. 670—P.C.

No Title at Date of Issue of Writ—Subsequent Acquirement of Title — Amendment.] A, believing that X died intestate, took out administration to him, and commenced an action as administrator against C. C, who had been aware that X left a will appointing him executor, declared that fact for the first time in his defence, and thereupon A took out administration with the will annexed (C having renounced), and sought to amend the pleadings accordingly :—*Held*, that A's application must be refused, as at the date of the issue of the writ she had no title to sue. *Creed* v. *Creed*, [1913] 1 Ir. R. 48—Barton, J.

ADEMPTION.

See WILL.

ADMINISTRATION.

See EXECUTOR; TRUST AND TRUSTEE; WILL.

ADMINISTRATION BOND.

See WILL.

ADMIRALTY.

See SHIPPING.

ADULTERATION.

See LOCAL GOVERNMENT.

ADVANCEMENT.

See SETTLEMENT.

ADVOWSON.

See ECCLESIASTICAL LAW.

AFFIDAVIT.

See EVIDENCE.

AGRICULTURAL HOLDINGS.

See LANDLORD AND TENANT.

ALIEN.

I. REGISTRATION.

Omission to Give Full Name.]—The Aliens Restriction Order made under the Aliens Restriction Act, 1914, contains a provision requiring aliens to register their names, and non-compliance with this requirement is an offence:—*Held*, that, if in registering his name, an alien, for the purpose of concealing his identity, does not give his full name, he commits an offence, even if he gives the name by which he is generally known. *Silverman* v. *Hunt*, 31 T. L. R. 410—D.

Effect of Registration — Right to Sue in Courts of this Country.]—The effect of the registration of an alien enemy under the Aliens Restriction Act, 1914, and the Aliens Restriction Order, 1914, is that the registered alien not only has licence to remain in this country, but is forbidden to leave it without special permission. A registered alien enemy can therefore enforce a personal right in the Courts of this country, notwithstanding the existence of the state of war, as being allowed to remain in this country and exonerated from the disabilities of enemies, on the principle stated in *Hall's International Law* (6th ed.), p. 388. *Thurn and Taxis (Princess)* v. *Moffitt*, 84 L. J. Ch. 220; [1915] 1 Ch. 58; 112 L. T. 114; 59 S. J. 26; 31 T. L. R. 24—Sargant, J. *S. P. Volkl* v. *Rotunda Hospital*, [1914] 2 Ir. R. 543—K.B. D.

II. EXPULSION.

Expulsion Order—Pauper—Medical Assistance—Ordinary Relief—Magistrate's Certificate.]—Evidence that an alien, who arrived in England from Russia in July, 1913, became chargeable to the Guardians of the Mile End Union on November 19, and was admitted to the workhouse infirmary for treatment, and took his discharge uncured on December 15, 1913, and was, according to the medical certificate, suffering from diabetes, which would produce in him permanent disability, was held sufficient to support an expulsion order of a Secretary of State made under section 3 of the Aliens Act, 1905. *Rex* v. *Leycester; Greenbaum, Ex parte*, 79 J. P. 14; 13 L. G. R. 159—D.

Further, upon the above facts, it is open to the magistrate who grants the certificate upon which the expulsion order is made to hold that such poor relief had been given to the alien as would disqualify him from exercising the Parliamentary franchise and deprive him of the benefit of section 2 of the Medical Relief Disqualification Removal Act, 1885. The magistrate's certificate need not follow the precise form given by the Summary Jurisdiction (Aliens) Rules, 1906, provided the facts appear in the body of it. *Ib.*

Recommendation for Expulsion.]—*See post*, col. 459.

III. STATUS OF ALIEN ENEMIES.

German Company with Branch in England.]—At common law the question whether a man is to be treated as an alien enemy for the purpose of his contracts, rights of suit, and the like, does not depend upon his nationality, or even upon his true domicil, but upon whether he carries on business in this country or not. If he does, it is not illegal, even during war, to have business dealings with him in this country in respect of the business which he carries on here. The same thing is true of a company which has a head office in Germany, but a branch office here, in respect of business transactions with such branch office. *Ingle, Lim.* v. *Mannheim Continental Insurance Co.*, 84 L. J. K.B. 491; [1915] 1 K.B. 227; 112 L. T. 510; 59 S. J. 59; 31 T. L. R. 41—Bailhache, J.

Whether a person is an alien enemy depends on the place where he resides and carries on business, and not on his nationality; and a person who voluntarily resides in and carries on business in an enemy's country must be regarded as an alien enemy. *Porter* v. *Freudenberg. Kreglinger* v. *Samuel. Merten's Patents, In re*, 84 L. J. K.B. 1001; [1915] 1 K.B. 857; 112 L. T. 313; 20 Com. Cas. 189; 32 R. P. C. 109; 59 S. J. 216; 31 T. L. R. 162—C.A.

Alleged Alien Enemy — Habeas Corpus — Refusal of Writ.]—The appellant was born in Germany in 1883, and about the age of fifteen went to South America, and after living there two or three years came to England in 1901, where he alleged that he had since lived. Owing to the war between England and Germany he was interned as an alien enemy. On an application by the appellant to a Divisional Court for a writ of *habeas corpus* on the ground that he was not an alien enemy and had no nationality, evidence was given that by a German law of 1870 Germans who left the territory of the Confederation and resided abroad for ten years uninterruptedly *ipso facto* lost their nationality. There was also evidence that by a German statute of 1913 a person who had lost his nationality might recover it, and the Divisional Court refused the application:—*Held*, without deciding whether an appeal lay to the Court of Appeal, that as the statute of 1913 shewed that the appellant had not entirely lost his nationality of origin, he had failed to satisfy the Court that he had ceased to be of German nationality, and therefore he was not entitled to a writ of *habeas corpus*. *Weber, Ex parte*, 59 S. J. 692; 31 T. L. R. 602—C.A.

—— **Internment.**]—An alien enemy resident in the United Kingdom, who in the opinion of the Executive Government is a person hostile to the welfare of this country and is on that account interned, may properly be described as a prisoner of war, although neither a combatant nor a spy, and no writ of *habeas corpus* will be granted in the case of such a prisoner. A person who is by birth a German subject and who has obtained his discharge from German nationality under the German laws of 1870 and 1913, under which he is entitled to recover back his German nationality without returning to Germany, but who has taken no steps to naturalise himself in this country, is, during the war between Great Britain and Germany, an alien enemy, inasmuch as he has not become entirely divested of the rights of a natural-born German. *Rex* v. *Vine Street Police Superintendent*, 32 T. L. R. 3—D.

Nationality — Person Born Abroad whose Father had Previously Become a Naturalised British Subject—Internment as Alien Enemy — Habeas Corpus.]—A German subject became denationalised in Germany, and in 1869 became a naturalised British subject, and he was again naturalised as a British subject in 1877 under the Naturalisation Act, 1870. He was at that time a member of the London Stock Exchange, and remained a member until his death in 1908. Some time prior to 1884 he went to reside at Frankfort-on-Main in Germany, where his son, the present applicant for a writ of *habeas corpus*, was born in September, 1884, the birth being registered at the British consulate. The son resided there with his parents until he was sixteen and a half years of age, when he removed with his parents to Brussels. He lived there about seven years, when he left his parents and went to Berlin. In October, 1909, he came to England, where he had since resided. The applicant had never served in the German army, and had never been called upon to do military service in the German army. On the outbreak of war between Great Britain and Germany the applicant registered himself as an alien enemy. Subsequently, however, he unsuccessfully tried to get his name removed from the register. Having been interned as an alien enemy, he obtained a rule *nisi* for a writ of *habeas corpus* on the ground that, being the son of a British subject, he was himself a British subject:—*Held*, that the applicant, having been born out of the King's dominions and allegiance before the commencement of the British Nationality and Status of Aliens Act, 1914, had not obtained the status of a natural-born British subject merely by reason of the fact that his father was at the time of his birth a naturalised British subject. *Rex* v. *Albany Street Police Superintendent; Carlebach, Ex parte*, 84 L. J. K.B. 2121; [1915] 3 K.B. 716; 113 L. T. 777; 31 T. L. R. 634—D.

English Limited Company with Alien Enemy Shareholders.]—A limited liability company, incorporated under the Companies Acts, carrying on business and having its registered office in England, but practically the whole of whose shares are held by alien enemies, is not an alien enemy. *Continental Tyre and Rubber Co.* v. *Daimler Co.*; *Same* v. *Tilling, Lim.*, 84 L. J. K.B. 926; [1915] 1 K.B. 893; 112 L. T. 324; 20 Com. Cas. 208; 59 S. J. 232; 31 T. L. R. 159—C.A.

—— **Ownership of British Ship.**] — *Quære*, whether an English company, consisting entirely of aliens, can own a British ship. *The Tommi; The Rothersand*, 84 L. J. P. 35; [1914] P. 251; 1 P. Cas. 16; 112 L. T. 257; 59 S. J. 26; 31 T. L. R. 15—Evans, P.

—— **Right of Voting—Foreign Bank—Branch in England—Exercise of Right on Behalf of Branch.**]—An alien enemy who is a shareholder in an English company is not entitled, during the war, to exercise the right of voting by employing a British subject as proxy at a meeting of the shareholders of the company, and where the alien enemy is a banking company with a branch in England such right of voting is not within clause 6 of the Trading with the Enemy Proclamation No. 2, and cannot be exercised during the war on behalf of the branch. *Robson* v. *Premier Oil and Pipe Line Co.*, [1915] 2 Ch. 124; 59 S. J. 475; 31 T. L. R. 420—C.A.

Decision of Sargant, J. (31 T. L. R. 385), affirmed. *Ib.*

IV. CONTRACTS BY AND WITH ALIEN ENEMIES.

Effect of Outbreak of War on Contract.]—The plaintiff company contracted before the war to supply zinc concentrates to a firm, which on the outbreak of war became alien enemies. The contracts provided that in certain events, including acts of God, *force majeure*, and any cause beyond the control of sellers or buyers preventing or delaying the carrying out of the agreement, the agreement should be suspended:—*Held*, that the effect of the war was not to abrogate the contracts, but to suspend all obligations thereunder during its continuance. *Zinc Corporation* v. *Skipworth (No. 1)*, 31 T. L. R. 106—Sargant, J.

By an agreement made between the plaintiffs, who were an English company, and the defendants, who carried on business in Germany, the defendants agreed to buy from the plaintiffs a certain quantity of zinc concentrates in each year from 1910 to 1919, and it was agreed that so long as the agreement should be in force the plaintiffs should not sell any zinc concentrates to any persons other than the defendants and that "in the event of any cause beyond the control of either the sellers or the buyers preventing or delaying the carrying out of this agreement, then this agreement shall be suspended during the continuance of any and every such disability." War broke out between Great Britain and Germany on August 4, 1914, and the plaintiffs brought an action against the defendants for a declaration that the agreement was thereby dissolved:—*Held*, that the agreement only provided for the suspension of deliveries, and under it there still remained rights the exercise of which

would be illegal after the outbreak of the war, and therefore the contract was dissolved on August 4, 1914. *Zinc Corporation* v. *Hirsch*, 32 T. L. R. 7—Bray, J.

Alien Enemy Lessee—Residence Prohibited in District — Whether Lessee Relieved from Liability under Lease.]—The fact that an alien enemy has been prohibited under the Aliens Restriction (Consolidation) Order, 1914, from residing in a particular district, where a house of which he is lessee is situated, does not relieve him from liability under the lease. *London and Northern Estates* v. *Schlesinger*, 32 T. L. R. 78—D.

—— **Liability for Rent.**]—The liability of an alien enemy lessee for rent accruing due after the outbreak of war is not thereby extinguished or suspended. An alien enemy defendant is not entitled to claim an indemnity by the use of third party procedure. *Halsey* v. *Lowenfeld*, 32 T. L. R. 138—Ridley, J.

British Steamer—Cargo Sold by Neutrals—Alien Enemy — Stoppage in Transitu.] — *Semble*, the failure of an alien enemy firm to meet their acceptances given for the price of goods shipped to such alien enemy firm by a neutral in a British ship does not constitute insolvency, so as to give the neutral a right of stoppage *in transitu*. *The Feliciana*, 59 S. J. 546—Evans, P.

"Deemed to be insolvent"—Sale of Goods.] —It is very doubtful whether the act of declining to pay an acceptance through bankers because of the outbreak of war could be interpreted as ceasing to pay debts in the ordinary course of business, so as to give the right to say that the firm could be "deemed to be insolvent" within the meaning of section 62, sub-section 3 of the Sale of Goods Act, 1893. *Ib.*

Trading with Enemy.]—*See* WAR.

V. PROCEEDINGS BY AND AGAINST.

Right of Alien Enemy to Sue in Courts of this Country.]—The effect of the registration of an alien enemy under the Aliens Restriction Act, 1914, and the Aliens Restriction Order, 1914, is that the registered alien not only has licence to remain in this country, but is forbidden to leave it without special permission. A registered alien enemy can therefore enforce a personal right in the Courts of this country, notwithstanding the existence of the state of war, as being allowed to remain in this country and exonerated from the disabilities of enemies, on the principle stated in *Hall's International Law* (6th ed.), p. 388. *Thurn and Taxis (Princess)* v. *Moffitt*, 84 L. J. Ch. 220; [1915] 1 Ch. 58; 112 L. T. 114; 59 S. J. 26; 31 T. L. R. 24—Sargant, J. *S. P. Volkl* v. *Rotunda Hospital*, [1914] 2 Ir. R. 543—K.B. D.

Interned Alien.]—The fact that a subject of an enemy State who is resident in this country has been interned as a civilian prisoner of war does not preclude him from maintaining an action. *Schaffenius* v. *Goldberg*, 60 S. J. 105; 32 T. L. R. 133—C.A.

—— **Liability to be Sued—Right to Appear and Defend — Right to Appeal.**] — An alien enemy, who is not within the realm by the licence of the King, cannot sue, but may be sued, in the King's Courts. An alien enemy who is sued can appear and be heard in his defence, and may take all steps necessary for his defence; and if judgment proceed against him he has the right to appeal; but an alien enemy who is plaintiff in an action, which commenced before the outbreak of war, has no right of appeal during the war, his right of appeal being suspended till peace is concluded. *Porter* v. *Freudenberg*. *Kreglinger* v. *Samuel*. *Merten's Patents, In re*, 84 L. J. K.B. 1001; [1915] 1 K.B. 857; 112 L. T. 313; 20 Com. Cas. 189; 32 R. P. C. 109; 59 S. J. 216; 31 T. L. R. 162—C.A.

Action against Alien Enemy — Cause of Action Arising Prior to War.]—The rule that an alien enemy cannot sue or prosecute his action during hostilities is confined to cases in which the alien enemy is plaintiff, or to a case in which a defendant alien enemy is seeking to prosecute a counterclaim, and does not apply to a case where the alien enemy is defendant. There is no rule at common law which prevents an alien enemy who is a defendant from appearing and defending his case. *Robinson & Co.* v. *Mannheim Insurance Co.*, 84 L. J. K.B. 238; [1915] 1 K.B. 155; 112 L. T. 125; 20 Com. Cas. 125; 59 S. J. 7; 31 T. L. R. 20—Bailhache, J.

—— **Outbreak of War—Effect—Action for Declaration—Absence of Party to Contract.**]—An action by one party to a contract for a declaration as to its construction will not lie in the absence of the other party, where there is no third party whose interests make it necessary to determine its construction. *Zinc Corporation* v. *Skipworth* (*No.* 2), 31 T. L. R. 107—C.A.

Appeal from decision of Sargant, J. (31 T. L. R. 106), allowed. *Ib.*

Right of Company to Sue—Registration in England—Shares Held by Alien Enemies.]—A company registered under the Companies Acts is not precluded from suing by reason of the fact that some of its shareholders are alien enemies residing in any enemy State with which this country is at war. *Amorduct Manufacturing Co.* v. *Defries & Co.*, 84 L. J. K.B. 586; 112 L. T. 131; 59 S. J. 91; 31 T. L. R. 69—D.

An action was brought by a company to recover the price of goods sold and delivered. The company was registered in England under the Companies Acts about eight years ago, having its office in London and its factory in Birmingham. Of its shares 380 were held by a naturalised German living in this country, and 1,435, being practically the whole of the remaining shares, were held by Germans resident in Germany. It was not disputed at the trial that the sum claimed was owing by the defendants, but the Judge of the City of London Court decided that owing to the com-

position of the plaintiff company it was not entitled, during the continuance of a state of war between this country and Germany, to sue in respect of the debt:—*Held*, reversing his decision, that when once the company was registered according to English law it became resident in this country, and was consequently entitled to judgment for the sum claimed. *Ib.*

—— **English Company with German Shareholders — Debt Contracted with Company before Beginning of War—Right to Payment.**]—A limited liability company, incorporated under the Companies Acts, carrying on business and having its registered office in England, but practically the whole of whose shares are held by alien enemies, is not an alien enemy, and can claim immediate payment of a debt contracted with it by an English company (also carrying on business in England) before the beginning of the present war. Neither the Trading with the Enemy Act, 1914, nor the Trading with the Enemy Proclamation of September 9, 1914, contain any prohibition against such payment. *Continental Tyre and Rubber Co.* v. *Daimler Co.; Same* v. *Tilling, Lim.*, 84 L. J. K.B. 926; [1915] 1 K.B. 893; 112 L. T. 324; 20 Com. Cas. 208; 59 S. J. 232; 31 T. L. R. 159—C.A.

The plaintiffs, an English company, incorporated and carrying on business and having its registered office in England, in the second-named case sold and delivered certain goods to the defendants before the beginning of the war between England and Germany. The plaintiff company was one of many branches in different countries of a German company called the "parent company," and had a capital of 25,000 *l.* shares, the bulk of these shares being held by the German company. All the remaining shares, except one, were held by Germans resident in Germany, the managing director and other directors also residing there. The remaining one share was held by a naturalised German, the secretary of the company, who took part in the management of its business and resided in England. In an action for the price of the goods the defendants contended that payment to the company of the debt before the termination of the war would be aiding and benefiting alien enemies and was prohibited at common law and by the proclamation of September 9, 1914, and the Trading with the Enemy Act, 1914. In the first-named case the same plaintiffs were the holders of bills accepted by the defendants for goods supplied before the war. The bills matured and were presented for payment after the declaration of war. Scrutton, J., gave leave to sign final judgment under Order XIV.:—*Held* (Buckley, L.J., dissenting), that, first, payment to the plaintiff company was not payment to the enemy shareholders of the company or for their benefit; secondly, the payment "to or for the benefit of an enemy" forbidden by the proclamation did not include payment to a company incorporated and registered in this country under the Companies Acts; thirdly, the right of the company to recover payment did not depend on whether the majority of the shareholders were enemies or not; fourthly, that to allow the company to recover debts during the war was not contrary to public policy; fifthly, the defendants could not succeed on the ground that the secretary of the company could not in the circumstances have any authority from the directors to bring the action; and sixthly, the company were therefore entitled to payment. *Ib.*

Decision of Lush, J. (31 T. L. R. 77), affirmed. *Ib.*

—— **Creditor in Bankruptcy—Proof—German Subject Resident in Germany — Rejection of Proof—Right to be Heard.**]—An alien enemy, a German subject resident in Germany, cannot be heard during the war in support of a motion to revise or vary the decision of the trustee in bankruptcy rejecting his proof, and the motion must be dismissed. *Porter* v. *Freudenberg* (84 L. J. K.B., p. 1001; [1915] 1 K.B. 857) applied. *Wilson, In re; Marum, ex parte*, 84 L. J. K.B. 1893; [1915] H. B. R. 189—Horridge, J.

Alien Principal—Action by Agent against Principal—Claim for Receiver.]—An agent in this country of a principal, who is an alien enemy, is not entitled to bring an action against him for a declaration that the agent is entitled to collect debts due to the principal and to pay debts due from the principal, or for the appointment of a receiver of the assets of the principal's business in this country. *Maxwell* v. *Grunhut*, 59 S. J. 104; 31 T. L. R. 79—C.A.

—— **Service of Writ on Alien Enemy.**] — Where an action is brought against an enemy resident in the enemy's country, who carries on a branch business in this country by means of an agent, leave may be given to issue a concurrent writ and to make substituted service of the notice of the writ upon the agent, and such further terms as to advertisement or other means of communication and as to the period to be given to the defendant for appearance should be imposed in chambers on the plaintiff as may seem proper. *Porter* v. *Freudenberg. Kreglinger* v. *Samuel. Merten's Patents, In re*, 84 L. J. K.B. 1001; [1915] 1 K.B. 857; 112 L. T. 313; 20 Com. Cas. 189; 32 R. P. C. 109; 59 S. J. 216; 31 T. L. R. 162—C.A.

Joinder as Co-plaintiff—Application to Suspend.]—A patent was vested jointly in the plaintiffs, an English company and a German company, by a deed providing that the English company should have the sole right of bringing actions for infringement and might join the German company as co-plaintiffs. The English company brought an action for infringement and joined the German company as co-plaintiffs:—*Held*, that as the English company had the sole right of bringing the action, the fact that the German company was an alien enemy was not a ground for suspending the action. *Mercedes Daimler Motor Co.* v. *Maudslay Motor Co.*, 32 R. P. C. 149; 31 T. L. R. 178—Warrington, J.

Person Carrying on Business in Allied Country—Action by—Whether Maintainable.]—On an application by the defendants in an action for a stay on the ground that one of the

plaintiffs was an alien enemy, Warrington, J., held that the action could be maintained as the plaintiff in question, though a subject of an enemy State, was neither residing nor carrying on business in an enemy State, and he therefore dismissed the application (*vide* 31 T. L. R. 248). On appeal, further evidence as to the plaintiff's *status* having been produced, the Court held that it could be more conveniently given at the trial, and made no order except as to costs. *Sutherland (Duchess), In re; Bechoff, David & Co.* v. *Bubna*, 31 T. L. R. 394—C.A.

Two Co-plaintiffs—Appeal—One Plaintiff an Alien Enemy—Suspension of Appeal.]—Where two co-plaintiffs have given notice of appeal before the outbreak of war between Great Britain and another country, and one of them has on the outbreak of war become an alien enemy, the appeal must be suspended during the war. *Actien-Gesellschaft für Anilin-Fabrikation* v. *Levinstein, Lim.*, 84 L. J. Ch. 842; 112 L. T. 963; 32 R. P. C. 140; 31 T. L. R. 225—C.A.

Business of Alien Enemies—Application by Manager for Receiver—Jurisdiction.]—The plaintiff, who was the London manager of a business carried on in various parts of the world by alien enemies of this country, applied for the appointment of a receiver and manager to carry on the business of the London branch:—*Held*, that the Court had no jurisdiction to make such an appointment. *Maxwell* v. *Grunhut* (31 T. L. R. 79) followed and applied. *Gaudig and Blum, In re; Spalding* v. *Lodde*, 31 T. L. R. 153—Warrington, J.

London Branch—British Workmen—English Assistant Manager Appointed Receiver and Manager.]—Where a large firm of alien enemies had a London branch employing a hundred British workmen the Court appointed the English assistant manager of that branch to be receiver and manager on his undertaking (1) not to remit goods or money forming assets of the defendants' business to any hostile country; (2) to endeavour to obtain a licence from the Crown to trade. *Bechstein, In re; Berridge* v. *Bechstein* (*No.* 1), 58 S. J. 863—Shearman, J.

Partnership—Articles—Partner Recalled to Serve in German Army—Deed of Accession—Licence to Trade Granted by Crown—Appointment of Receiver and Manager.]—A deed constituting a partnership, which consisted of English and German partners, contained a clause making provision for the event of the two German partners, or either of them, being called out to serve in the German Army. On the German partners being so called out before the outbreak of war between England and Germany, all the partners executed a deed of accession purporting to carry out the clause and to substitute other partners for the German partners:—*Held*, that a receiver and manager of the business should be appointed for the purpose of carrying on the business for a limited time. *Armitage* v. *Borgmann*, 84 L. J. Ch. 784; 112 L. T. 819; 59 S. J. 219; —Sargant, J.

—— English and German Partners—Business in Germany — Dissolution before War — English Assets Made Over to English Partner —Action on Contracts Made before War.]—The plaintiff, who was a British subject and before the war between Great Britain and Germany was in partnership with a German in business in Germany, made, on the eve of the war, an agreement with his partner, by which the assets and liabilities of the business were made over to the plaintiff, the intention being that the German partner should take over the German and Austrian assets and liabilities and that the plaintiff should take all the rest and carry on the business in London, the partnership being dissolved. The transaction diverted a balance of 6,000*l.*, together with the business, from Germany to England. In an action by the plaintiff on a bill of exchange given to the firm for goods supplied before the war and to recover a further sum, for goods supplied by the firm before the war, —*Held*, that in the circumstances the plaintiff was not precluded by sections 6 and 7 of the Trading with the Enemy Amendment Act, 1914, from recovering on the bill and for the goods supplied. *Wilson* v. *Ragosine & Co.*, 84 L. J. K.B. 2185; 113 L. T. 47; 31 T. L. R. 264—Scrutton, J.

Partnership Business—One of the Partners an Alien Enemy — Collecting Outstanding Moneys—Receiver.]—The Court will appoint a receiver of a partnership business, of which one of the owners is an alien enemy, if the business is an ordinary commercial enterprise, and not within section 3 of the Trading with the Enemy Act, 1914. *Rombach* v. *Rombach*, 59 S. J. 90—Eve, J.

Partnership Firm Carrying on Business in England—Member of Firm Alien Enemy—Dissolution of Partnership Proceedings—Appointment of Receiver—Recovery of Partnership Debts—Partnership Claim by Receiver.]—The plaintiffs, a father and his two sons, carrying on business in partnership in England, claimed 53*l.* 19*s.* 9*d.* for goods sold and delivered. The father, who was a German subject resident in Germany, had, prior to May, 1914, carried on the business as sole proprietor, the sons managing the business for him. On May 9, 1914, he took his sons into partnership. One of the sons was a naturalised Englishman, denationalised in Germany, and the other was a German subject, but registered under the Aliens Restriction Act, 1914; both being resident in England. After the outbreak of war between Great Britain and Germany the naturalised Englishman commenced proceedings for the dissolution of the partnership, and was appointed receiver of the partnership assets, with liberty to sue for the debts owing to the partnership. In an action by him and his two partners for the foregoing claim the defendants admitted liability, but contended they were prohibited from paying the claim under the Trading with the Enemy Acts. Part of the claim was for goods supplied prior to the partnership:—*Held*, that the plaintiffs could not succeed as to that portion of the claim, but that they were entitled to judgment

for the price of goods supplied by the partnership. *Boussmaker, Ex parte* (13 Ves. 71), and *Mercedes Daimler Motor Co.* v. *Maudslay Motor Co.* (31 T. L. R. 178) followed. *Rombach Baden Clock Co.* v. *Gent*, 84 L. J. K.B. 1558; 31 T. L. R. 492—Lush, J.

German Bank — Head Office at Berlin — Branch in London Trading under Licence of Home Secretary — Refusal of Head Office to Honour Cheque of English Customer — Action against Bank — Service of Writ on London Branch — Judgment — Right to Execution against Branch.]—The plaintiffs, an English firm with a branch office at Berlin, had an account at Berlin with a German bank whose head office was in that town, and who also had a branch in London. Shortly before the declaration of war between Great Britain and Germany on August 4, 1914, a sum of money was standing to the plaintiffs' credit at Berlin. On July 30, 1914, the plaintiffs drew a cheque for the sum in question, and payment was refused by the defendants' head office at Berlin. After the declaration of war the Secretary of State in England, acting under powers conferred upon him by the Aliens Restriction Act, 1914, and an Order in Council made pursuant thereto, granted a licence to the defendants' branch in London to carry on business in this country, subject to certain conditions. By the terms of the licence the permission granted by it was expressed to extend only to the completion of the transactions of a banking character entered into before August 5, 1914, so far as those transactions would in ordinary course have been carried out with the London establishment, and not to extend to any operations for the purpose of making available assets which would ordinarily be collected by, or of discharging liabilities which would ordinarily be discharged by, an establishment of the bank other than its London establishment. It was further provided that the business to be transacted under the permission should be limited to such operations as might be necessary for making the realisable assets of the bank available for meeting its liabilities, and for discharging those liabilities as far as might be practicable. All transactions carried out under the permission were to be subject to the supervision and control of a person to be appointed for the purpose by the Treasury, and any assets of the bank which might remain undisturbed after its liabilities had so far as possible in the circumstances been discharged, were to be deposited with the Bank of England to the order of the Treasury. The plaintiffs issued a writ against the defendants to recover the sum standing to their credit at Berlin, and served it upon the manager of the London branch of the bank, in accordance with the provisions of section 274 of the Companies (Consolidation) Act, 1908. At the trial the plaintiffs recovered judgment for the sum claimed and costs, and levied execution under a writ of *fi. fa.* upon the goods and chattels of the defendants at their London branch. The defendants thereupon took out a summons before Ridley, J., at chambers for an order staying proceedings under the writ of *fi. fa.* upon the ground that the effect of the licence granted to the defendants was to deprive the plaintiffs of their right to levy execution. Ridley, J., refused to stay proceedings under the writ of *fi. fa.* :—*Held*, that the effect of the statute, the Order in Council, and the licence was to direct that such assets of the bank in London as were subject to the control of the controller appointed by the Treasury should be applied in a particular manner, which was inconsistent with the exercise by the plaintiffs of their common law right to levy execution upon them, and that all proceedings under the writ of *fi. fa.* so far as regarded such assets should be stayed. *Leader* v. *Disconto Gesellschaft*, 84 L. J. K.B. 1806; [1915] 3 K.B. 154; 113 L. T. 596; 59 S. J. 544; 31 T. L. R. 464—C.A.

Alien Banking Company—Action on Bill—Licence to Trade.] — A bill payable to the order of the B. Bank of Rio de Janeiro ninety days after sight was drawn there on July 11, 1914, upon the defendants, who were merchants in London, and was bought by the B. Bank. The plaintiffs were a banking company incorporated in Germany and having a head office in Berlin and a branch in London, and the B. Bank, in order to provide funds to meet certain bills drawn by them and accepted by the plaintiffs' London branch under arrangement with the plaintiffs' Berlin office, sent to the plaintiffs in London on July 13 the first of exchange unindorsed, and asked them to obtain acceptance. The first of exchange was marked "for acceptance only." On the same day the B. Bank sent to the plaintiffs in Berlin the second of exchange indorsed, and on July 16 the B. Bank sent to the plaintiffs in London the third of exchange indorsed. On July 31 the defendants accepted the first of exchange payable in London. On August 4 war broke out between Great Britain and Germany. A few days later the plaintiffs in London received the third of exchange. On August 8 the plaintiffs in Berlin received the second of exchange. On September 19 the Home Secretary, acting under the Aliens Restriction (No. 2) Order, 1914, which was made in pursuance of the Aliens Restriction Act, 1914, granted to the plaintiffs and two other German banks a licence to carry on banking business in the United Kingdom, subject as follows: "(1) The permission shall extend only to the completion of the transactions of a banking character entered into before the 5th day of August, 1914, so far as those transactions would, in ordinary course, have been carried out through or with the London establishments. The permission does not extend to any operations for the purposes of making available assets which would ordinarily be collected by, or of discharging liabilities which would ordinarily be discharged by, establishments of the banks other than the London establishments. No new transactions of any kind save such as may be necessary or desirable for the purpose of the completion of the first-mentioned transactions shall be entered into by or on behalf of the London establishments of the banks. (2) The business to be transacted under this permission shall be limited to such operations as may be necessary for making the realisable assets of the banks available for

meeting their liabilities, and for discharging their liabilities as far as may be practicable." The defendants dishonoured the first and third of exchange at maturity—namely, on October 31. On January 8, 1915, the plaintiffs in Berlin sent the second of exchange to the plaintiffs in London and asked them to credit the proceeds of collection to the Berlin office. The plaintiffs had with the Bank of England arrangements which bound the plaintiffs to pay to the Bank of England the amount of the bills when paid. The plaintiffs having brought an action against the defendants on the bill, the latter pleaded that the plaintiffs were alien enemies, and that the licence did not authorise the plaintiffs' London branch to present and receive payment of the bill:—*Held*, that the transactions permitted by the licence were not limited to transactions with the plaintiffs' London branch, that the transaction would in the ordinary course have been carried out in London, that the presentment or collection was not a new transaction, and that in the circumstances the plaintiffs were entitled to recover on the bill. *Disconto Gesellschaft* v. *Brandt & Co.*, 31 T. L. R. 586—Bray, J.

Payment of Money "to or for the benefit of an enemy"—"Branch" Situated in British Territory—"Transaction."]—A German company, having its head office in Berlin and having manufacturing works in different parts of Germany, had also an office in London, in charge of a manager who had authority to enter into contracts and to sue and be sued on behalf of the company. In respect of this office the company was registered under the Companies Act, 1908, as a foreign company having a place of business in the United Kingdom. The company having entered into a contract, through their London manager, with a Glasgow firm, brought an action against that firm in the Sheriff Court at Glasgow for payment of certain sums alleged to be due under the contract. The Sheriff having granted decree in favour of the defenders, the company appealed to the Court of Sessions. Before the hearing of the appeal war was declared against the German Empire, and the proclamation of September 9, 1914, was issued which prohibited the payment of money to or for the benefit of an enemy, but contained the following exception: "Provided always that where an enemy has a branch locally situated in British . . . territory . . . transactions by or with such branch shall not be treated as transactions by or with an enemy." Thereafter the company presented a note to the Court in which they averred that the matter in dispute fell within the above-quoted exception in respect that it was a "transaction" entered into with a "branch" in British territory, and craved a hearing in ordinary course:—*Held*, first, that the company's office in the United Kingdom was not a "branch" in the sense of the exception in the proclamation; secondly (*per* the Lord President and Lord Johnston), that the payment of money after the date of the proclamation in fulfilment of a previous contract was not a "transaction" within the exception; and thirdly, in respect that no effective decree in favour of the company could be pronounced, the proceedings were stayed. *Orenstein & Koppel* v. *Egyptian Phosphate Co.*, [1915] S. C. 55—Ct. of Sess.

Appointment of Controller—Mode of Application—Requisite Evidence—Form of Order—Trading with the Enemy.]—An application by the Board of Trade to the Chancery Division for the appointment of a controller of a firm or company under section 3 of the Trading with the Enemy Act, 1914, need not be made by petition, but may be made by originating motion. On such an application all the evidence that the Court ought to require is some evidence that the information of the Board of Trade in reference to the state of things laid down by the section as a condition precedent to the application has some reasonable foundation. A controller so appointed ought to be ordered to give the usual security given by a receiver, and to keep and vouch the accounts of the company in such manner as the Judge in chambers may from time to time direct and such other accounts as the Judge in chambers may from time to time order, and he ought to make periodical reports as to the position of the business and the result of carrying it on. *Meister Lucius and Brüning, Lim., In re*, 59 S. J. 25; 31 T. L. R. 28—Warrington, J.

Vesting of Enemy Property—Service on Alien Enemy — Motion — Originating Summons.]—Where notice of motion had been served before the rules under the Trading with the Enemy (Amendment) Act. 1914, were promulgated in the *London Gazette*,—*Held*, that an originating summons must now be issued, in pursuance of the rules, and the matter must come on first in chambers, leave being given to use the affidavit evidence filed on the motion. *Company, In re*, 59 S. J. 217—Sargant, J.

Where the alien enemy is interned in an internment camp a letter should be sent to him inclosing a copy of the originating summons. *Ib.*

Vesting Order—German Bank's Running Account with English Bank—Disputed Credit Balance—Application by Creditor of German Bank for Order Vesting Bank Balance in Custodian.]—Where a German bank had a running account with an English bank and the English bank disputed that they had in their hands a balance belonging to the German bank, the Court refused an application under section 4 of the Trading with the Enemy Amendment Act, 1914, by a creditor of the German bank, for an order vesting the credit balance of the German bank in the custodian. Such an order would place the custodian in the position of an assignee of a disputed debt, and that result was not intended by the Act. *Bank für Handel und Industrie, In re*, 84 L. J. Ch. 435; [1915] 1 Ch. 848; 31 T. L. R. 311—Warrington, J.

—— Parties to Summons—Debtor to Enemy Respondent.]—A debtor to an enemy is not a person holding or managing property alleged to belong to the enemy within rule 2 (4) of the Trading with the Enemy (Vesting and

Application of Property) Rules, 1915, and therefore is not a proper respondent to a summons taken out by a creditor of an enemy under section 4 of the Act. *Ib.*

ANIMALS.

I. MISCHIEVOUS ANIMALS.

See also Vol. I. 199, 1085.

Injury to Trespasser—Acquiescence in Trespass—Liability of Owner.]—The owner of land who, knowing that persons are in the habit of crossing it, and acquiescing in the practice, puts a dangerous beast on his ground without warning of the danger is guilty of negligence and liable in damages to a person traversing the field who is injured by the beast. *Lowery* v. *Walker*, 80 L. J. K.B. 138; [1911] A.C. 10; 103 L. T. 674; 58 S. J. 62; 27 T. L. R. 83—H.L. (E.)

Vicious Dog — Contributory Negligence — Patting Unknown Dog.] — In an action of damages brought against the owner of a dog for personal injuries caused by its biting the pursuer, the defender maintained that the pursuer had been guilty of contributory negligence in that he, although the dog was unknown to him, had patted it:—*Held*, that this did not amount to contributory negligence. *Gordon* v. *Mackenzie*, [1913] S. C. 109—Ct. of Sess.

—— Proof of Dog's Conduct Subsequent to Commencement of Action.] — *Per* the Lord Justice-Clerk: Evidence of attacks made by the dog on other persons after the date of the raising of the action for damages for personal injury caused by the dog is admissible for the purpose of shewing that the dog was of a vicious disposition. *Ib.*

—— Dog Kept by Daughter in Father's House — Daughter's Custody and Control — Scienter—Injuries Inflicted by Dog—Liability of Daughter.] — The defendant's daughter, aged seventeen, was the owner of a dog for which she took out a licence in her own name and the food for which she paid for out of her own earnings, the defendant consenting to the dog living in his house. The dog, which had previously attacked other dogs to the knowledge of the defendant and his daughter, whilst so kept killed a valuable dog belonging to the plaintiff. The County Court Judge found as a fact that the daughter had control of the dog:—*Held*, that, as the daughter was of a sufficient age to exercise control over the dog, and did in fact exercise such control, the defendant was not liable for the loss of the plaintiff's dog. *M'Kone* v. *Wood* (5 Car. & P. 1) distinguished. *North* v. *Wood*, 83 L. J. K.B. 587; [1914] 1 K.B. 629; 110 L. T. 703; 30 T. L. R. 258—D.

—— Dog Running into Bicycle.] — A lady cycling on a public road was about to pass a waggonette which was coming towards her when a dog belonging to the owner of the waggonette ran out from behind it in front of her bicycle, causing her to fall and sustain injuries. In an action against the owner of the dog,—*Held* (Lord Johnston *diss.*), that as the dog had never shewn, and as the defender accordingly could not have any knowledge of any vicious or dangerous propensities, he was not liable in damages for the result of its behaviour on the occasion of the accident. *Milligan* v. *Henderson*, [1915] S. C. 1030. —Ct. of Sess.

Cat Rearing Kittens—Vicious towards Dogs—Attacks Owner of Dog—Duty of Owner of Cat to take Reasonable Care to Provide for Safety of Customers.]—The plaintiff and her husband went into a teashop belonging to the defendants accompanied by a dog with (as the jury found) the defendants' permission or acquiescence. A cat belonging to the shop, which was rearing kittens, came out of a cupboard and attacked the dog. The plaintiff picked up the dog and handed it to her husband. The cat then sprang upon the plaintiff and bit her. The plaintiff brought an action claiming damages for the injury done to her and also for the injury done to the dog. The jury found that the cat had, to the knowledge of the defendant, whilst rearing kittens a disposition to attack a dog and a person holding a dog; that the cat attacked the dog unprovoked; and that the defendants had not taken reasonable precautions for the safety of their customers. On an appeal by the defendants,—*Held*, that a cat did not cease to be a domestic animal and become dangerous to mankind merely because, when it had kittens, it attacked a dog and, by accident, a person who happened to be there; and secondly, that, though the defendants were under a duty to take reasonable care to provide for the safety of their customers, they were not liable for what happened, because it was not the ordinary consequence of their act in keeping a cat on the premises, and was not such as would have been foreseen by a person of ordinary sense and prudence. *Clinton* v. *Lyons*, 81 L. J. K.B. 923; [1912] 3 K.B. 198; 106 L. T. 988; 28 T. L. R. 462—D.

Owner's Liability — Kick of Horse — Scienter.]—In the case of a horse not known to be vicious it is not the natural consequence of leaving it unattended in a yard that it should kick a workman employed there: the owner is therefore not liable therefor, as the damage is too remote. *Cox* v. *Burbidge*, (32 L. J. C.P. 89; 13 C. B. (N.S.) 430) followed. *Bradley* v. *Wallaces*, 82 L. J. K.B. 1074; [1913] 3 K.B. 629; 109 L. T. 281; 29 T. L. R. 705—C.A.

—— Dangerous Horse Let out by Owner—Injury to Person Hiring Horse and to another—Liability of Owner to Person other than

Hirer.]—The duty of a person who lets out a horse of known vicious propensity is the same as that which any person is under who allows others to use, or come in contact with, an animal or chattel that is dangerous in itself; he is under a duty to warn not only the person who hires it, but any person who he knows or contemplates or ought to contemplate will use it. The duty is not dependent on, and is not created by, the contract; it exists independently of the contract. *White* v. *Steadman*, 82 L. J. K.B. 846: [1913] 3 K.B. 340; 109 L. T. 249; 29 T. L. R. 563—Lush, J.

The male plaintiff hired a horse and landau from the defendant, a livery-stable keeper, for the purpose of a drive. The defendant provided the driver as well as the horse and landau. The female plaintiff, the wife of the male plaintiff, was one of the party who went in the landau. During the drive the horse shied at a traction engine and the landau was upset and the plaintiffs were injured. In an action claiming damages in respect of their injuries, the jury found that the defendant ought to have known, if he had used proper care, that the horse was not safe at the time the landau was let out to the male plaintiff:—*Held*, that the defendant was liable in damages, not only to the male plaintiff, but also to the female plaintiff, first, inasmuch as he was, in view of his means of knowledge as to the character of the horse, under a duty to warn not only the person who hired it, but any person he knew or contemplated or ought to have contemplated would use it; and secondly, inasmuch as the defendant, who kept control of the landau, accepted the female plaintiff as a traveller or passenger, and was therefore bound to use due care to see that she was safely carried. *Ib.*

II. ANIMALS ON HIGHWAYS.

Cattle on Highway—Open Gate—No Evidence as to by Whom Opened—Burden of Proof.]—The plaintiff was riding on a bicycle at 10.30 P.M. along a highway adjoining a field in which the defendant kept a hundred cows. The field in question communicated by a gate with the highway, and at the time when the plaintiff was passing the gate was open, and she saw some cows coming through it. A little further along were other cows which had come from the field, some of which threw the plaintiff down and injured her. At the trial no evidence was given as to by whom the gate had been opened. The learned Judge held that, in the circumstances, the fact that the defendant's gate was open and that his cows had strayed on to the road through the open gate and had caused the accident to the plaintiff afforded evidence of negligence, and that it was for the defendant to displace this evidence by shewing that the gate was not left open by reason of any negligence on his part or on that of his servants. Upon the evidence he held that the defendant had not displaced this *prima facie* case, and gave judgment for the plaintiff for 75*l*.:—*Held*, that there was no evidence upon which the County Court Judge could find that the defendant, either by an act of his own or by the neglect of a duty which he owed to the public, produced an obstruction of the highway by his cattle, and that judgment therefore should be entered for the defendant. *Ellis* v. *Banyard*, 106 L. T. 51; 56 S. J. 139; 28 T. L. R. 122—C.A.

Horse Straying on Highway—Damage to Cyclists—Obligation of Owner or Occupier of Land Adjoining Highway.]—A young horse which had been placed by the defendant in a field adjoining a highway escaped owing to a defective hedge and strayed upon the highway. The plaintiffs were riding a tandem bicycle along the highway, and on seeing the horse they slowed down, but the horse turned round suddenly and ran across the road, coming in contact with the bicycle. The horse fell down, and then, jumping up, lashed out and injured one of the plaintiffs and damaged the bicycle. In an action for damages by the plaintiffs the learned County Court Judge found that there was no evidence that the horse was vicious or in the habit of trespassing or attacking bicycles or any one upon the high road. He also found that the defendant was guilty of negligence in turning the horse into a field of which the hedges were defective, but that, as the act of the horse was not one which it was in the ordinary nature of a horse to commit, the defendant was not liable:—*Held*, that the injury to the plaintiffs not being the natural consequence of the defendant's negligence, if any, the plaintiffs were not entitled to recover. *Jones* v. *Lee*, 106 L. T. 123; 76 J. P. 137; 28 T. L. R. 92—D.

Per Bankes, J.: The County Court Judge was wrong in law in holding that there had been negligence on the part of the defendant in turning the horse into a field with defective hedges, inasmuch as at common law there is no duty on the owner or occupier of land adjoining the highway to keep his animals off the highway. *Ib.*

Sheep.]—There is no rule of law that to drive sheep along the highway at night without a light is a negligent act. *Catchpole* v. *Minster*, 109 L. T. 953; 11 L. G. R. 280; 30 T. L. R. 111—D.

III. ANIMALS CAUSING INFECTION.

See also Vol. I. 206, 1086.

Diseases — Imported Sheep — Meaning of "brought from a port."]—Article 2 of the Foreign Animals Order, 1910, made under section 30, sub-section 1 of the Diseases of Animals Act, 1894, makes it unlawful unless by licence from the Board of Agriculture and Fisheries to bring into a port in Great Britain any cattle, sheep, goats, or swine brought from a port in a scheduled country. The First Schedule to the order provides that France shall be a country to which the order shall apply. The respondent, the master of a ship homeward bound, who had put on board in the East certain live sheep for food for the crew, had put into the port of Marseilles with one sheep still alive, and subsequently arrived in the Port of London, where the sheep was slaughtered on board for food. The respondent had obtained no licence in respect of the sheep:—*Held*, that no offence had been com-

mitted against the above article, for the sheep had not been "brought from" the port of Marseilles within the meaning of the article, but had been imported from the East. *Glover* v. *Robertson*, 106 L. T. 118; 76 J. P. 135; 10 L. G. R. 230; 22 Cox C.C. 692—D.

IV. CRUELTY TO ANIMALS.

See also Vol. I. 210, 1088.

Carrying Cows by Rail — Infirmity — Unnecessary Suffering—Permitting to be Carried —Person in Charge.]—A railway company to which cows are delivered for transit, and which conveys them by rail, does not "permit them to be carried," and is not "the person in charge" of them, within the meaning of clause 12 of the Animals (Transit and General) Order, 1912, made under the Diseases of Animals Act, 1894, and is not liable to be convicted of "carrying" them when owing to infirmity and fatigue they cannot be carried without unnecessary suffering. *North Staffordshire Railway* v. *Waters*, 110 L. T. 237; 78 J. P. 116; 12 L. G. R. 289; 24 Cox C.C. 27; 30 T. L. R. 121—D.

Overstocking—Cow—Custom.]—Where unnecessary suffering is caused to an animal by the owner an offence is committed against section 1, sub-section 1 of the Protection of Animals Act, 1911, even if the act is done in pursuance of a custom and for commercial reasons. The respondent held liable for allowing a cow to be overstocked with milk before offering her for sale. *Waters* v. *Braithwaite*, 110 L. T. 266; 78 J. P. 124; 24 Cox C.C. 34; 30 T. L. R. 107—D.

Sheep — Wounds not Attended to — Sufficiency of Evidence.] — The respondent was summoned for causing a sheep to be ill-treated. Evidence was given for the prosecution that a sheep belonging to the respondent, which had been attacked by flies, was seen in one of his fields, that two days later it was found dead with a large wound on the back, that it must have died from exhaustion owing to its being eaten by maggots, that it must have suffered great pain, and that there was no sign that the wound had been treated or dressed. Evidence was also given that the respondent when spoken to about it said that he knew some of his sheep were affected with fly, and that he had sent a man to dress the wounds. The Justices without calling on the respondent dismissed the summons, being of opinion that there was not sufficient evidence that he had unlawfully and cruelly caused the sheep to be ill-treated.—*Held*, that it could not be said that the Justices had taken a wrong view or that they had misdirected themselves. *Potter* v. *Challans*, 102 L. T. 325; 74 J. P. 114; 22 Cox C.C. 302—D.

Stranded Whale—Animal in Captivity.]—The respondent caused unnecessary pain and suffering to a whale which had been stranded and so was unable to escape for a time, but which would have floated off with the incoming tide :—*Held*, that the whale was not in captivity or close confinement within section 2 of the Wild Animals in Captivity Protection Act, 1900, and therefore that the respondent had not committed an offence under that Act. *Steele* v. *Rogers*, 106 L. T. 79; 76 J. P. 150; 28 T. L. R. 198; 22 Cox C.C. 656—D.

Ill-treatment of Horse—Proceedings against Owner — Evidence of Permitting.] — The respondent was charged with permitting his horse to be cruelly ill-treated. Evidence was given on behalf of the prosecution that the respondent said to the appellant, an inspector of the Society for the Prevention of Cruelty to Animals: "I am the boss, but I have nothing whatever to do with the horses. In fact, I know no more about them than an infant. My man Floyd, the driver of the horse in question, is wholly responsible for the horses. I pay him a good wage in order that he should be responsible. My proper horsekeeper has enlisted, and I have had my best horses commandeered by the military. Floyd bought this horse on October 15 last for 15*l.* I saw the horse and made a remark to my man that it was in a poor condition, but Floyd told me that it was a good horse and a good worker, and so I left it to him" :—*Held*, that upon this evidence there was a case for the respondent to answer on the charge made against him. *Whiting* v. *Ivens*, 84 L. J. K.B. 1878; 79 J. P. 457; 13 L. G. R. 965; 31 T. L. R. 492—D.

Causing Unnecessary Suffering.]—The respondent, who was the director of a research laboratory and was licensed by the Home Secretary under the Cruelty to Animals Act, 1876, to perform experiments on living animals, in the course of experiments to find a cure for sleeping sickness administered to an ass a drug which had the effect of bringing on gradual paralysis without pain. He then had the ass put in a field, where after some days it was found lying down and unable to rise and protect itself from flies. As soon as the experiment was completed the ass was painlessly destroyed. On a summons against the respondent for causing unnecessary suffering to the ass by omitting to give it proper care and attention when in a suffering state, the Justices found that the ass did not suffer unnecessary pain when lying in the field, and they dismissed the summons :—*Held*, that the question was a question of fact for the Justices, and therefore their decision must be affirmed. *Dee* v. *Yorke*, 78 J. P. 359; 12 L. G. R. 1314; 30 T. L. R. 552—D.

V. OTHER POINTS.

See also Vol. I. 216, 1093.

Distress—Damage Feasant—Right to Impound—Cattle Driven to Pound more than Three Miles.]—The statute 1 & 2 Ph. & M. c. 12, s. 1, provides that ". . . no distress of cattle shall be driven out of the hundred, rape, wapentake, or lathe where such distress is or shall be taken, except that it be to a pound overt within the same shire, not above three miles distant from the place where the said distress is taken . . ." :—*Held*, that on the true construction of this section the word

"not" should not be read as "nor"; and that the section means that the distress may be driven to any pound within the hundred or similar area where the distress was taken, even though more than three miles from the place where the distress was taken, but may not be driven outside that area except to a pound within the same shire and not more than three miles from the place where the distress was taken. *Berdsley* v. *Pilkington* (Gouldsb. 100) followed. *Coaker* v. *Willcocks*, 80 L. J. K.B. 1026; [1911] 2 K.B. 124; 104 L. T. 769; 27 T. L. R. 357—C.A.

Prohibition against Selling Alive or Permitting Sale of Animals Delivered to Knackers — Sale by Knacker's Assistant — "Permission" of Knacker—"Delivery" of Animal.]—A knacker's assistant, in the absence and without the knowledge of the knacker, purchased a horse at a market three miles from the knackery for the sum of 1*l.*, and tied it to the knackery cart. While the horse was standing there he sold it for 1*l.* 10*s.* to a person who subsequently despatched it for exportation to Antwerp. There was no evidence as to the purpose for which the knacker's assistant purchased the horse. The knacker's assistant and the knacker having been convicted of a contravention of section 5, sub-section 2 of the Protection of Animals (Scotland) Act, 1912 [corresponding to section 5, sub-section 1 of the Protection of Animals Act, 1911], by respectively selling and permitting the sale of the horse alive:—*Held*, first (Lord Salvesen dissenting), that the conviction of the assistant was right, inasmuch as Regulation 9 of Schedule I. applied not only to knackers, but also to their assistants, and although it would not be a contravention of the section to sell a horse that was proved to have been delivered for other than knackery purposes, yet in the absence of such proof the horse must be presumed to have been delivered for knackery purposes; and secondly, that the conviction of the knacker must be quashed, as in the absence of proof that he knew of or authorised the sale, or had failed to exercise a reasonable supervision over his assistant, he could not be said to have "permitted" the sale. *Dundas* v. *Phyn*, [1914] S. C. (J.) 114—Ct. of Just.

ANNUITY.

I. CONSTRUCTION AND NATURE.

1. Persons Entitled.

See also Vol. I. 219, 1094.

Pur autre Vie — Duration — Death of the Annuitant before Cestui que Vie.]—Payment "during the widowhood of my said wife . . . out of the income of my trust fund" of "the following yearly sums of money; . . . to my said daughter, Ellen Alice Francis, 100*l.*" gives an annuity to Ellen Alice Francis, which continues to be payable after her death to her legal personal representative during the widowhood of the testator's widow. *Drayton, In re; Francis* v. *Drayton*, 56 S. J. 253—Neville, J.

See also Cannon, In re; Cannon v. *Cannon*, *post*, 4. Duration.

2. On what Property Chargeable.

See also Vol. I. 227, 1094.

Trust to Pay out of Income—Gift of Corpus "subject nevertheless to the said annuities" —Charge upon Corpus.]—A testator devised and bequeathed all his real and personal estate to trustees upon trust for sale and conversion, and after payment of debts, &c., for investment of the residue of the proceeds of sale (hereinafter called "the residuary trust funds") upon trust out of the income thereof to pay an annuity of 150*l.* to G. and an annuity of 52*l.* to L. during their respective lives, and upon further trust to accumulate the residue of the income of the residuary trust funds until the youngest child of J. should attain twenty-one or until the expiration of twenty-one years from the testator's death, whichever event should first happen, and from and after the attainment of that age or the expiration of that term, whichever should first happen, to stand possessed of the residuary trust funds and accumulations, "subject nevertheless to the said annuities," in trust for the child or children of the said J. then living and the children of any deceased children *per stirpes*. The will also gave the trustees a discretionary power to apply the income of the share of a child or grandchild of the said J. in the residuary trust funds "subject to and after payment of the annuities" for the maintenance of such a child or grandchild, and, "subject to providing for the said annuities," to raise any part or parts not exceeding one moiety of such a share for the advancement of such a child or grandchild:—*Held*, following *Howarth, In re; Howarth* v. *Makinson* (78 L. J. Ch. 687; [1909] 2 Ch. 19), that the annuities were charged upon *corpus*. *Held*, further, that *Taylor* v. *Taylor* (43 L. J. Ch. 314; L. R. 17 Eq. 324) must be treated as having been overruled by *Howarth, In re; Howarth* v. *Makinson* (*supra*). *Young, In re; Brown* v. *Hodgson*, 81 L. J. Ch. 817; [1912] 2 Ch. 479; 107 L. T. 380—Parker, J.

Quære, whether there is any difference between a charge on *corpus* and a continuing charge on income. *Ib.*

—— Subsequent Trusts "subject thereto"—Power of Sale — Proceeds Charged with Annuity—Charge on Corpus.]—By a marriage settlement the husband conveyed certain real and personal property to trustees upon trust, after his death, out of the rents and profits and income of the trust premises to pay the clear annual sum of 400*l.* per annum to his

widow for her life, and "subject thereto" upon the trusts therein mentioned. The settlement empowered the trustees to sell, exchange, or partition the real property free and discharged from "the said annual sum of 400*l.*, which shall thereupon become charged upon the proceeds thereof as aforesaid": —*Held*, that the words "subject thereto" meant subject to the annuity of 400*l.*, and therefore subject to the full and complete payment of the annuity, and that consequently the annuity was a charge upon the *corpus*. *Birch* v. *Sherratt* (36 L. J. Ch. 925; L. R. 2 Ch. 644) followed. *Bigge, In re; Granville* v. *Moore* (76 L. J. Ch. 413, 415; [1907] 1 Ch. 714), overruled. *Watkins' Settlement, In re; Wills* v. *Spence*, 80 L. J. Ch. 102; [1911] 1 Ch. 1; 103 L. T. 749; 55 S. J. 63—C.A.

Direction to Pay out of Income—Charge on Corpus.]—The trustees of a settlement were directed to pay an annuity out of income, or such of it as should exist, and subject thereto to stand possessed of the trust funds in trust for the persons therein named absolutely. The income was insufficient to pay the annuity:—*Held* (following *Boden, In re; Boden* v. *Boden*, 76 L. J. Ch. 100; [1907] 1 Ch. 132), that the annuity could not be charged on *corpus*, nor was it a continuing charge on the income. *Boulcott's Settlement, In re; Wood* v. *Boulcott*, 104 L. T. 205; 55 S. J. 313—Parker, J.

A testator by his will devised and bequeathed to trustees certain houses upon trust to receive the rents and profits thereof, and to pay thereout the head rent and other outgoings, and as to the residue of the rents and profits, after payment of the above, upon trust to pay a number of annuities to certain persons for their lives, and after their deaths to hold the annuities on trust for testator's son R., and after payment of such annuities to pay out of the residue of such rents and profits as the same should come to their hands a certain debt due by the testator. All the residue of his real and personal estate he devised and bequeathed to his son R. The rents and profits were insufficient to pay the annuities in full: —*Held*, that the annuities were a charge on the *corpus*. *Phillips* v. *Gutteridge* (32 L. J. Ch. 1; 3 De G. J. & S. 332) applied and followed. *Buchanan, In re; Stephens* v. *Draper*, [1915] 1 Ir. R. 95—C.A.

Gift over—Arrears of Annuity Payable out of Corpus—Continuing Charge on Income or Charge on Income for Particular Year.] — By a will there were gifts of small annuities and then a trust for sale of residue and a gift "upon trust in the first place with and out of the annual income thereof, including the profits which shall accrue to my estate from any partnership business in which I shall be engaged at the time of my decease and which my trustees or trustee shall continue to carry on under the discretionary power in that behalf hereinafter contained and which profits are hereinafter directed to be considered annual income for the purposes of this my will, to pay to my said wife during such time as she shall continue my widow a clear annual sum of 1,500*l.*, or in case the clear rentals derived from my said freehold warehouses and leasehold wharf shall, together with interest calculated at the rate of 2*l.* per cent. per annum on the cash value of the *corpus* or capital of the remainder of my general residuary estate, including the capital in my partnership business or businesses, amount to more than 1,500*l.*, then upon trust to pay to my said wife during such time as she shall continue my widow a clear annual sum equal to the amount of the said rentals, together with interest calculated as aforesaid, but not exceeding an annual sum of 2,000*l.*, and subject thereto upon trust out of the surplus annual income of my general residuary estate, but so far only as such surplus annual income will from time to time extend or permit, to pay to her my said wife during her widowhood (in addition to the annual sum for the time being payable to her as aforesaid) a further annual sum of 100*l.* in respect of each of my children who shall for the time being be under the age of twenty-three years." And after this payment had been satisfied there was a further provision as to the surplus, and in the language of the ultimate gift of capital there was nothing to indicate a fresh start or to create any trusts which were in any way inconsistent with the continuance of any arrears of the annuities as a charge on the future income. The words were: "My said general residuary estate and all moneys and property directed to fall into and form part thereof and the said surplus income and the accumulations thereof shall be divided or considered as divided into so many equal shares as the number of my sons and daughters who either shall be living at my death and shall, whether within my lifetime or after my decease, attain the age of twenty-three or marry under that age." The will contained, among other provisions, a declaration by the testator that the widow was to be paid in full; a provision that accumulations were only to be made "subject to such payments hereout as aforesaid"; and a declaration that no portion of *corpus* or capital was to be made over to the testator's children or issue so as to prejudice or affect the due payment of the annual sums bequeathed by the will:—*Held*, that the widow's annuity formed a continuing charge on income. *Boden, In re; Boden* v. *Boden* (76 L. J. Ch. 100; [1907] 1 Ch. 132), discussed. *Rose, In re; Rose* v. *Rose*, 85 L. J. Ch. 22; 113 L. T. 142—Sargant, J.

Tenant for Life and Remainderman—Charge on Settled Real and Personal Estate — Deficiency of Income — Deficiency Paid out of Corpus—Recoupment out of Income.]—A testator gave and devised his real and personal estate to trustees upon trust to pay certain annuities, and subject to such annuities the real estate was to be held upon trust for the testator's son for life, with remainder to his sons successively in tail male, with remainders over. The income of the estate was insufficient to pay the annuities, and the deficiency was made up out of capital. On the death of one of the annuitants, the income was more than sufficient to satisfy the remaining annuities: —*Held*, that, the annuities being charged on

capital as well as income, there was no right to have moneys expended out of capital in making up the annuities recouped to capital out of income. *Playfair* v. *Cooper* (23 L. J. Ch. 343; 17 Beav. 187) followed. *Croxon, In re; Ferrers* v. *Croxon*, 84 L. J. Ch. 845; [1915] 2 Ch. 290; 59 S. J. 693—Eve, J.

Pecuniary Legacies — Insufficiency of Assets to Set Aside Sum by its Income to Meet Annuities — Purchase of Annuities. — The testatrix, after giving certain pecuniary legacies and two annuities to servants, directed that her trustees should provide for the annuities by setting aside and appropriating a portion of her estate sufficient to answer them by the income thereof, and that upon the cesser of an annuity a proportion of the capital so set aside and appropriated should sink into, and form part of, her residuary estate, which she gave in trust for other persons. The estate was not sufficient to make the provision contemplated by the will, but was sufficient to pay all the pecuniary legacies in full, and to provide sums enough to purchase annuities of the amounts given by the will:—*Held*, that sums sufficient to buy the annuities mentioned in the will should be invested by the trustees in the purchase of such annuities, to be paid to the annuitants for their lives or until they should assign, charge, or incumber them. *Cottrell, In re; Buckland* v. *Bedingfield* (79 L. J. Ch. 189; [1910] 1 Ch. 402), applied. *Sinclair, In re; Allen* v. *Sinclair* (66 L. J. Ch. 514; [1897] 1 Ch. 921), distinguished. *Dempster, In re; Borthwick* v. *Lovell*, 84 L. J. Ch. 597; [1915] 1 Ch. 795; 112 L. T. 1124—Sargant, J.

3. Real or Personal Estate.

See also Vol. I. 238, 1098.

Annual Payment Charged on Easements and Chattels—Realty or Personalty.—The tenant for life of one eighth share in certain realty and personalty constituting the C. Waterworks joined with the owners of the other seven shares in conveying such waterworks to a company incorporated by Act of Parliament, in consideration of an annual sum to be payable for ever to the grantors, their respective executors, administrators, and assigns, and there was a covenant by the company to pay such annual sum. The property granted consisted mainly of easements or rights in the nature of easements, and of personal chattels:—*Held*, that such annual payment was personalty and not realty. *Baxter, In re; Malling* v. *Addison*, 104 L. T. 710; 27 T. L. R. 425—C.A.

4. Duration.

See also Vol. I. 245, 1100.

Married Woman—Forfeiture on Assigning, Disposing of, or Charging, whether under Disability or not.—By the terms of a will, by which an annuity was given to a married woman, it was provided that the annuitant should be restrained from anticipating any property coming to her thereunder, and, further, that "if she should assign, dispose of, or charge the annuity, whether under disability or not," the annuity should cease. The married woman (the annuitant) purported to charge the annuity:—*Held*, that as she could not create a valid charge there was no forfeiture of the annuity. *Adamson, In re; Public Trustee* v. *Billing*, 109 L. T. 25; 57 S. J. 610; 29 T. L. R. 594—C.A.

Pur autre Vie—Death of Annuitant before Cestui que Vie. — Payment "during the widowhood of my said wife . . . out of the income of my trust fund" of "the following yearly sums of money; . . . to my said daughter, Ellen Alice Francis, 100*l.*," gives an annuity to Ellen Alice Francis, which continues to be payable after her death to her legal personal representative during the widowhood of the testator's widow. *Drayton, In re: Francis* v. *Drayton*, 56 S. J. 253—Neville, J.

A testator left his estate to trustees upon trust during his wife's widowhood to pay out of the income certain annuities from his death, including annuities to his wife during widowhood, and to certain of his children (among them James Arthur Cannon). He directed that the rest of the income should be applied in paying off certain mortgages, and that when they had been redeemed the trustees should divide during the widowhood of his wife the remainder of the income among his said children equally; and that after the death or re-marriage of the testator's wife the trustees should hold the residue and the income thereof upon trust (subject to a special provision for one of the sons) for all his other sons and daughters equally. James Arthur Cannon survived the testator, but died intestate during the widowhood of the testator's wife. *Held*, that James Arthur Cannon's annuity continued to be payable to his administratrix during the remainder of the widowhood of the testator's wife. *Cannon, In re; Cannon* v. *Cannon*, 60 J. P. 43; 32 T. L. R. 51—Sargant, J.

II. RIGHTS AND REMEDIES IN RESPECT OF.

See also Vol. I. 283, 1101.

Arrears—Interest—Administration of Estate of Grantor.—In a foreclosure or redemption action as between incumbrancers and as against the property charged, no interest will as a rule be allowed on arrears of an annuity. But in the administration of the estate of the grantor, and as against his general assets, an annuitant is, in respect of arrears, in the same position as other creditors and is entitled to interest on his debt. *Mansfield (Earl)* v. *Ogle* (28 L. J. Ch. 422; 4 De G. & J. 38) explained. *Salvin, In re; Worsley* v. *Marshall*, 81 L. J. Ch. 248; [1912] 1 Ch. 332; 106 L. T. 35; 56 S. J. 241; 28 T. L. R. 190—Eve, J.

Annuity for Wife to Arise on Certain Events during Life of Husband and Jointure

after his Death—Statute of Limitations.]—By marriage settlement, lands held under freehold and chattel leases were conveyed to trustees on trust to permit the wife to receive and take out of the rents, issues, and profits thereof a yearly rentcharge or annuity of 100*l.* sterling during her life, in case she should survive the husband, or in case the husband should during her life become bankrupt, or assign, charge, or incumber the said premises or suffer something whereby the said premises or some part thereof would through his act or default, or by operation or process of law, become vested in some other person or persons, and subject thereto in trust for the husband. The husband, without the knowledge of the trustees or the wife, deposited the leases by way of equitable mortgage, and died more than twelve years afterwards. One of the leases contained a strict covenant against alienation:—*Held* (*a*) that the annuity, which arose when the husband incumbered the premises by depositing these leases with the bank, was barred; (*b*) that, at the husband's death, the widow became entitled to an annuity "in case she should survive her husband," which was in effect an independent annuity; and (*c*) that no estate passed by the settlement in the premises comprised in the lease which contained a covenant against alienation. *Field* v. *Grady*, [1913] 1 Ir. R. 121—Barton, J.

Annuity Determinable on Re-Marriage—Deficiency of Assets—Valuation.]—A testator by his will bequeathed two annuities, one of which was payable to the testator's widow during her life while she remained a widow, and the other payable to the annuitant for life. The estate was solvent *qua* creditors, but was insufficient to pay the two annuities in full. In administration proceedings one of the enquiries directed was what was the value of the widow's annuity:—*Held*, that the value should be ascertained as if the annuity was a life annuity, and that after the amount representing such value had been rateably abated it should be invested in the purchase of a life annuity to be paid to the widow until her re-marriage. *Carr* v. *Ingleby* (1 De G. & S. 362) followed; *Sinclair, In re* (66 L. J. Ch. 514; [1897] 1 Ch. 921) distinguished. *Richardson, In re; Mahony* v. *Treacy*, [1915] 1 Ir. R. 39—Barton, J.

Practice—Administration Action—Enquiry in Chambers—Presumption of Death—Form of Certificate.]—It is not for a Master, on an enquiry before him whether an annuitant is living or dead, either to presume the death or to state that there is no evidence before him to shew whether the annuitant is living or dead. His certificate should take the form of finding that the only evidence on the point before him is the evidence mentioned in the certificate, and submitting to the Court the question whether the annuitant ought to be presumed to be living or dead, and, if dead, on what date the death ought to be presumed to have taken place. *Long, In re; Medlicott* v. *Long*, 60 S. J. 59—Sargant, J.

APPEAL.

I. GENERAL PRINCIPLES.

See also Vol. I. 326, 1104.

Concurrent Findings in Courts Below — Jurisdiction on Appeal to Review Conclusions Resting upon Probabilities.] — The rule that concurrent findings should not be disturbed on appeal does not apply where on appeal there is tolerably clear evidence which satisfies the Court that the findings are erroneous, and the principle is especially applicable to a case in which the conclusion sought to be set aside rests upon the consideration of probability. "*Hatfield*" (*Owners*) v. "*Glasgow*" (*Owners*), 84 L. J. P. 161; 112 L. T. 703—H.L. (E.)

A vessel, the *H.*, while rendering assistance to another vessel, the *G.*, was rammed by the latter, and all her hands with one exception were lost. In the Court of first instance both vessels were held to blame—the *H.* owing to want of skilful navigation and the *G.* owing to the fact that she did not reverse her engines in time to avoid the collision; but the Court of Appeal reversed that decision, and held that the *H.* was alone to blame. The owners of the *H.* appealed:—*Held*, that this case was not a true example of concurrent findings in the Courts below; that there was jurisdiction to review the concurrent findings in the Courts below; and that on the facts judgment would be entered for the *H.* and the *G.* pronounced alone to blame. *Ib.*

Rule laid down by Lord Herschell and Lord Watson in "*The P. Caland*" (*Owners*) v. *Glamorgan Steamship Co.* (62 L. J. P. 41; [1893] A.C. 207), as to concurrent findings, considered. *Ib.*

Oral Evidence — Conflict of Evidence — Credibility of Witnesses — Opinion of Trial Judge.]—A Court of Appeal, in forming an opinion on the credibility of conflicting witnesses, where there has been plain perjury on one side or the other, must be greatly influenced by the opinion of the trial Judge, who has seen and heard the witnesses. *Khoo Sit Hoh* v. *Lim Thean Tong*, 81 L. J. P.C. 176; [1912] A.C. 323; 106 L. T. 470—P.C.

The Court of Appeal of the Supreme Court of the Straits Settlements, reversing the judgment of the trial Judge, had held that the respondent's mother was the natural daughter, born in wedlock, of the testator, and that the respondent, as one of the testator's next-of-kin, was entitled to share in the testator's undisposed-of property. The Judge of first instance had held that she was only an adopted daughter, and therefore that the respondent was not so entitled. Decision of the Court of Appeal reversed and that of the trial Judge restored. *Ib.*

Generally speaking it is undesirable for an Appellate Court to interfere with the findings of fact of the trial Judge, who sees and hears the witnesses and has an opportunity of noting their demeanour, especially in cases where the issue is simple and depends on the credit which attaches to one or other of conflicting witnesses. The view of the trial Judge as to the credibility of the witnesses should not be put aside on a mere calculation of probabilities by the Appellate Court. *Bombay Cotton Manufacturing Co.* v. *Motilal Shivlal*, L. R. 42 Ind. App. 110—P.C.

Leave to Appeal in Forma Pauperis — "Reasonable grounds for proceeding" with Appeal—Necessity for Counsel's Opinion.]—A defendant to an action, who is appealing from a judgment against him, and is desirous of proceeding *in forma pauperis*, must, in addition to proving that he is not worth 25*l.*, his wearing apparel and the subject-matter of the cause or matter only excepted, obtain the opinion of counsel that he has "reasonable grounds for proceeding" with the appeal. *Merriman* v. *Geach*, 82 L. J. K.B. 87; [1913] 1 K.B. 37; 107 L. T. 703; 57 S. J. 146—D.

II. TO HOUSE OF LORDS.

See also Vol. I. 327, 1105.

Findings of Fact in Courts Below not Concurrent.] — In an action arising out of a collision between the steamships *H.* and *G.*, the Judge at the trial found both vessels to blame. On appeal, the Court of Appeal found the *H.* alone to blame:—*Held*, on appeal to the House of Lords, that there were not concurrent findings of fact in the Courts below, and that the House of Lords was not debarred from finding the *G.* alone to blame on the evidence before it. "*Hatfield*" (*Owners*) v. "*Glasgow*" (*Owners*). *The Glasgow*, 84 L. J. P. 161; 112 L. T. 703—H.L. (E.)

Ireland—Sale under Land Purchase Acts.]—No appeal lies to the House of Lords from an order of the Court of Appeal in Ireland with respect to the distribution of the purchase moneys of lands sold under the Land Purchase Acts. *Scottish Widows' Fund Life Assurance Society* v. *Blennerhassett*, 81 L. J. P.C. 160; [1912] A.C. 281; 106 L. T. 4; 28 T. L. R. 187—H.L. (Ir.)

Decision of the Court of Appeal in Ireland ([1911] 1 Ir. R. 16, *sub nom. Blennerhassett's Estate, In re*) affirmed. *Ib.*

Order of Court of Appeal Fixing Time—Time not of Essence of Order—Appeal to House of Lords—Jurisdiction of Court of First Instance to Extend Time Pending Appeal.]—Where a time has been fixed by an order of the Court of Appeal for the doing of some act, but the time is not an essential part of the order, but is fixed merely for the purpose of working out complicated details, the Court of first instance has jurisdiction under Order LXIV. rule 7 to modify by extending the time the order of the Court of Appeal, pending an appeal to the House of Lords. *Manks* v. *Whiteley*, 82 L. J. Ch. 267; [1913] 1 Ch. 581; 108 L. T. 450; 57 S. J. 391—Sargant, J.

Arbitration — Special Case — Consultative Opinion of High Court—Award Incorporating Opinion of Court—Error on Face of Award—Refusal of Application to Set Aside Award—Competency of Court of Appeal and House of Lords to Review Opinion of High Court.]—An arbitrator having stated a Special Case for the opinion of the King's Bench Division—which Court expressed their opinion, answering the question in the affirmative—subsequently made his award incorporating the opinion so expressed by the Court, and adjudicating in favour of the respondents in accordance with that opinion. An application by the appellants to the King's Bench Division for an order to set aside the award on the ground that the opinion was wrong and constituted error on the face of the award having been dismissed, the Court of Appeal (Buckley, L.J., and Kennedy, L.J.; Vaughan Williams, L.J., dissenting) held that, though the decision of the King's Bench Division expressing their consultative opinion on the Special Case could not have been appealed against, yet their decision refusing to set aside the award which incorporated that opinion was open to review in the Court of Appeal:—*Held*, by the House of Lords, that the decision of the Court of Appeal was right, and that both the Court of Appeal and also the House of Lords were, in the circumstances, competent to review the consultative opinion which the arbitrator, as he was bound to do, had adopted, and had set out in his award. *British Westinghouse Electric and Manufacturing Co.* v. *Underground Electric Railways*, 81 L. J. K.B. 1132; [1912] A.C. 673; 107 L. T. 325; 56 S. J. 734—H.L. (E.)

Costs—Interest.]—A decision in favour of a plaintiff was reversed by the Court of Appeal and restored by the House of Lords. No order was made as to the plaintiff's costs of the appeal to the Court of Appeal prior to the judgment in the House of Lords:—*Held*, that the plaintiff was entitled to interest at the rate of 4 per cent. per annum on his costs of the appeal to the Court of Appeal as from the

date of the judgment of that Court. *Stickney* v. *Keeble* (*No.* 2), 84 L. J. Ch. 927; 112 L. T. 1107; 31 T. L. R. 221—Joyce, J.

Obligations of Counsel in Appeals to House of Lords.]—Observations by the Lord Chancellor as to the obligation of counsel engaged in appeal to House of Lords to attend the House in priority to other Courts. *Vacher* v. *London Society of Compositors*, 29 T. L. R. 73—H.L. (E.)

III. TO COURT OF APPEAL.

1. Jurisdiction.

See also Vol. I. 373, 1107.

Right of Appeal — Statute — Reference to Railway and Canal Commission.] — Where by statute any matter is referred to the determination of a Court of record with no further provision, the necessary implication is that the Court is to determine the matter as a Court, with the ordinary incidents of the procedure of that Court, including any general right of appeal from its decisions. Therefore, when by the Telegraph (Arbitration) Act, 1909, any difference between the Postmaster-General and any body or person was referred to the Railway and Canal Commission, such reference must be taken to be to the Commission as a Court and not as arbitrators, and an appeal lies from their decision to the Court of Appeal, as provided by section 17 of the Railway and Canal Traffic Act, 1888. *National Telephone Co.* v. *Postmaster-General* (*No.* 2), 82 L. J. K.B. 1197; [1913] A.C. 546; 109 L. T. 562; 57 S. J. 661; 29 T. L. R. 637; 15 Ry. & Can. Traff. Cas. 109—H.L. (E.)

Injunction—Power to Direct Reference.]—Where an injunction was rightly granted by a Court of first instance under the circumstances of the case then before the Court, the Court of Appeal has power to direct a reference to an expert to enquire and report as to whether the circumstances have changed, and, on his reporting that the circumstances existing at the time when the injunction was granted have changed, to dissolve the injunction. *Att.-Gen.* v. *Birmingham, Tame, and Rea District Drainage Board*, 82 L. J. Ch. 45; [1912] A.C. 788; 107 L. T. 353; 11 L. G. R. 194; 76 J. P. 481—H.L. (E.)

Arbitration — Special Case — Consultative Opinion of High Court—Award Incorporating Opinion of Court—Error on Face of Award—Refusal of Application to Set Aside Award—Competency of Court of Appeal and House of Lords to Review Opinion of High Court.]—An arbitrator having stated a Special Case for the opinion of the King's Bench Division—which Court expressed their opinion, answering the question in the affirmative—subsequently made his award incorporating the opinion so expressed by the Court, and adjudicating in favour of the respondents in accordance with that opinion. An application by the appellants to the King's Bench Division for an order to set aside the award on the ground that the opinion was wrong and constituted error on the face of the award having been dismissed, the Court of Appeal (Buckley, L.J., and Kennedy, L.J.; Vaughan Williams, L.J., dissenting) held that, though the decision of the King's Bench Division expressing their consultative opinion on the Special Case could not have been appealed against, yet their decision refusing to set aside the award which incorporated that opinion was open to review in the Court of Appeal:—*Held*, by the House of Lords, that the decision of the Court of Appeal was right, and that both the Court of Appeal and also the House of Lords were, in the circumstances, competent to review the consultative opinion which the arbitrator, as he was bound to do, had adopted, and had set out in his award. *British Westinghouse Electric and Manufacturing Co.* v. *Underground Electric Railways*, 81 L. J. K.B. 1132; [1912] A.C. 673; 107 L. T. 325; 56 S. J. 734—H.L. (E.)

2. In what Cases Appeal Lies.

See also Vol. I. 376, 1107.

Discretion of Judge — Courts (Emergency Powers) Act, 1914.]—Though there may in some cases be an appeal from an order made under the Courts (Emergency Powers) Act, 1914, yet the Court of Appeal will be very slow to interfere with the Judge's exercise of the wide discretion conferred upon him by section 1, sub-section 2 of the Act. *Lyric Theatre* v. *L. T. Lim.*, 31 T. L. R. 88—C.A.

"Criminal cause or matter" — Committal under Fugitive Offenders Act, 1881 — Order Nisi for Habeas Corpus.]—A decision of the King's Bench Division discharging an order *nisi* for a writ of *habeas corpus* to bring up the body of a person committed to prison by a magistrate under the Fugitive Offenders Act, 1881, is a decision in a "criminal cause or matter" within the meaning of section 47 of the Supreme Court of Judicature Act, 1873, and therefore no appeal lies from it to the Court of Appeal. *Rex* v. *Brixton Prison (Governor); Savarkar, Ex parte*, 80 L. J. K.B. 57; [1910] 2 K.B. 1056; 103 L. T. 473; 54 S. J. 635; 26 T. L. R. 561—C.A.

"Criminal cause or matter" — Appeal to Quarter Sessions from Conviction—Appellant not Appearing Ordered to Pay Costs.] — The applicant was convicted at petty sessions for wilfully damaging certain property and for trespassing on a railway. Against these convictions he gave notices of appeal to quarter sessions, but these notices were in various respects defective. At quarter sessions the respondents to the appeals were represented, but the appellant neither appeared nor was represented; and the quarter sessions thereupon made an order on the applicant to pay the costs of the appeals. Thereafter the applicant applied *ex parte* for a rule *nisi* for a writ of *certiorari* to bring up for the purpose of being quashed the order of quarter sessions ordering the applicant to pay the costs. A rule was refused by the King's Bench Division, but was afterwards granted by the Court of Appeal. On the rule coming

on, objection was taken that, being a "criminal cause or matter" within section 47 of the Judicature Act, 1873, the Court of Appeal had no jurisdiction to entertain the case:—*Held*, that the objection must prevail. *Rex* v. *Wiltshire Justices; Jay, Ex parte*, 81 L. J. K.B. 518; [1912] 1 K.B. 566; 106 L. T. 364; 76 J. P. 169; 10 L. G. R. 353; 56 S. J. 343; 28 T. L. R. 255; 22 Cox C.C. 737—C.A.

"Criminal cause or matter"—Contempt of Court—Hearing in Camera—Subsequent Publication of Evidence—Nullity Suit.]—In a suit for nullity of marriage an order was made that the cause should be heard *in camera*. One of the parties afterwards obtained a transcript of the shorthand notes of the evidence, and sent copies to certain persons in good faith:—*Held*, that such conduct did not amount to a contempt of Court, and further that such a contempt, if any, was not a "criminal cause or matter" within section 47 of the Judicature Act, 1873, but that an appeal lay to the Court of Appeal against a finding of a Judge that there had been a contempt of Court. *Scott* v. *Scott* (*No.* 1), 82 L. J. P. 74; [1913] A.C. 417; 109 L. T. 1; 57 S. J. 498; 29 T. L. R. 520—H.L. (E.)

Reference to Master to Ascertain Damages in Action — Decision of Master — Appeal, whether to Court of Appeal or Divisional Court.]—An appeal from the decision of a Master on a reference to him by a Judge to assess the amount of the damages in an action pursuant to Order XXXVI. rule 57 lies to the Court of Appeal and not to the Divisional Court. *Dunlop Pneumatic Tyre Co.* v. *New Garage and Motor Co.*, 82 L. J. K.B. 605; [1913] 2 K.B. 207; 108 L. T. 361; 57 S. J. 357; 29 T. L. R. 344—C.A.

3. Parties to Appeal.

See also Vol. I. 400, 1111.

County Court—Appeal to Court of Appeal from Divisional Court—Death of Respondent Pending Appeal—Jurisdiction.]—Where an appeal against a decision of a Divisional Court has been set down, but before the hearing of the appeal the respondent dies, application for leave to add the legal representative of the deceased party can properly be made to the Court of Appeal. *Blakeway* v. *Patteshall* ([1894] 1 Q.B. 247) followed. *Haywood* v. *Farabee*, 59 S. J. 234—C.A.

4. Time Within which Appeal must be Brought.

See also Vol. I. 404, 1112.

Date from which Running—Date of Sealing Judgment.]—The time for bringing an appeal to the Court of Appeal from a judgment in an action is six weeks from the date when it is perfected by being sealed, and not six weeks from the date when it is pronounced. *Thames Conservators* v. *Kent*, 59 S. J. 612—C.A.

Extension—Winding-up of Company—Misfeasance Summons Dismissed.]—A misfeasance summons taken out against directors by the liquidator of a company was dismissed on November 29, 1910. The liquidator received the opinion of counsel as to the chance of the success of an appeal on December 16, and on December 21 sent a circular to the shareholders and creditors acquainting them with the opinion and asking for funds to prosecute the appeal. In response to this circular an insufficient sum was promised, and on January 5, 1911, he sent a second circular and applied to the Court to extend the time for appealing to January 31, the time for appealing having expired on December 13, 1910:—*Held*, that the liquidator had taken a proper course in consulting the creditors and shareholders, and under the circumstances the time for appealing ought to be extended. *Brazilian Rubber Plantations and Estates, In re* (*No.* 2), 103 L. T. 882—C.A.

Final Order—Time for Appealing—Action—Appeal from County Court—Decision of Divisional Court.]—An order of the Divisional Court dismissing an appeal from a judgment of a County Court in a County Court action commenced by plaint is a final order in an action, and not in a "matter not being an action," and the time, therefore, for appealing therefrom to the Court of Appeal is under Order LVIII. rule 15, three months and not fourteen days only. *Johnson* v. *Refuge Assurance Co.*, 82 L. J. K.B. 411; [1913] 1 K.B. 259; 108 L. T. 242; 57 S. J. 128; 29 T. L. R. 127—C.A.

Per Buckley, L.J.: The word "action" in section 100 of the Judicature Act, 1873, includes a County Court action, it being a civil proceeding commenced in manner "prescribed by Rules of Court." *Ib.*

5. Staying Proceedings.

See also Vol. I. 431, 1116.

Refusal of Respondents' Solicitors to Give Personal Undertaking.]—The plaintiff succeeded in an action in which nominal damages and an injunction were claimed on the ground of an alleged nuisance by noise. At the trial the defendants did not ask for a stay, but subsequently objected to pay the taxed costs except on the personal undertaking of the plaintiff's solicitors. This undertaking the solicitors declined to give. Application for a stay was then made to the Judge, but he refused to make an order:—*Held*, dismissing the application, that the matter was one in the absolute discretion of the Court, and that no special circumstances were shewn which would *prima facie* entitle the respondents to the order they sought. *Att.-Gen.* v. *Emerson* (59 L. J. Q.B. 192; 24 Q.B. D. 56) considered. *Becker* v. *Earls Court, Lim.*, 56 S. J. 206—C.A.

Discretion of Judge—Verdict for Farthing—Application to Disallow Costs—Refusal—Opinion of Jury.]—By Order LVIII. rule 16, "An appeal shall not operate as a stay of execution or of proceedings under the decision

appealed from, except so far as the Court appealed from, or any Judge thereof or of the Court of Appeal, may order; and no intermediate act or proceedings shall be invalidated, except so far as the Court appealed from may direct" :—*Held*, that where in a libel action the jury find a verdict for the plaintiff for a farthing, and at the conclusion of the trial the Judge refuses to deprive the plaintiff of costs, and on a subsequent day it appears from communications which have taken place with the jurymen since the trial that it was the opinion of the majority of the jury that the plaintiff should not be deprived of costs, the Judge is not entitled, in deciding whether he will grant a stay of execution pending an appeal, to take into consideration the opinion of the jury on the question of costs. *Wootton* v. *Sievier* (*No.* 3), 30 T. L. R. 165—C.A.

6. Evidence on Appeal.

See also Vol. I. 442, 1116.

Further Evidence after Trial—Evidence de Bene Esse.]—Circumstances in which after a trial the Court of Appeal gave leave for certain fresh evidence to be taken *de bene esse* before an examiner in view of the hearing of an appeal from the judgment after the trial. *The Hawke*, 28 T. L. R. 319—C.A.

7. Application to Single Judge of Court of Appeal.

Vacation Court—Notice of Original Motion to One Judge of the Court of Appeal.] — Where an application is made under section 52 of the Judicature Act, 1873, a notice of motion stating the nature of the application should be sent, together with the notice of appeal, to the Lord Justice to whom the application is made, and such notice of motion should also be served on the other side, together with the notice of appeal. *X. L. Electric Co., In re; Wiener* v. *The Company*, 57 S. J. 792—Swinfen Eady, L.J.

8. Hearing of Appeal.

See also Vol. I. 448, 1117.

Hearing before Two Judges — Absence of Parties—Filed Consent of Counsel.]—Under section 1 of the Supreme Court of Judicature Act, 1899, an appeal must be heard and determined by two Judges of the Court of Appeal upon the filed consent of the respective counsel for the parties, notwithstanding that the parties themselves are not present. *Haworth* v. *Pilbrow*, 28 T. L. R. 143—C.A.

Disagreement of Jury—Entering Judgment for Either Party on the Evidence—Slight Evidence—No Evidence—Possibility of Adducing Additional Evidence at a Re-trial.]—At the conclusion of a plaintiff's case the defendants applied for judgment on the ground that there was no evidence to go to the jury. The Judge refused to enter judgment, saying that there was some evidence, though very weak. The case was left to the jury and they disagreed. The defendants again applied for judgment, but the Judge again refused to enter judgment, saying that he could not alter his previous opinion that there was some evidence, though it was very weak :—*Held*, that the Judge had power to alter his opinion and enter judgment for the defendants if he would have been justified in directing the jury to find a verdict for the defendants. *Skeate* v. *Slaters, Lim.*, 83 L. J. K.B. 676; [1914] 2 K.B. 429; 110 L. T. 604; 30 T. L. R. 290—C.A.

Semble, under Order LVIII. rule 4 the Court of Appeal has power to enter judgment for the defendant where a verdict has been found for the plaintiff, if the evidence on which that verdict was found was so weak and insufficient that the Court of Appeal would not have allowed the verdict to stand. But this power should only be exercised where the Court of Appeal is satisfied that it has all the necessary materials before it and that no evidence could be given at a re-trial which would in the Court of Appeal support a verdict for the plaintiff. *Ib.*

Per Buckley, L.J. : Where a case has been tried and the jury have disagreed, if upon the whole of the evidence of the case the Court of Appeal are of opinion that no twelve reasonable men could give a verdict for the plaintiff, the Court of Appeal has power and is bound to enter judgment for the defendant. *Ib.*

Millar v. *Toulmin* (55 L. J. Q.B. 445; 17 Q.B. D. 603), *Allcock* v. *Hall* (60 L. J. Q.B. 416; [1891] 1 Q.B. 444), and *Paquin, Lim.* v. *Beauclerk* (75 L. J. K.B. 395; [1906] A.C. 148) approved. *Peters* v. *Perry & Co.* (10 T. L. R. 366) explained. *Ib.*

9. Costs of the Appeal.

See also Vol. I. 454, 1118.

Payment on Solicitors' Undertaking to Repay if Appeal Successful.] — The Court of Appeal will not, unless in most exceptional circumstances, order that the costs payable to the successful litigant should only be paid on his solicitor's undertaking to repay same in the event of an appeal to the House of Lords being successful. *Griffiths* v. *Benn*, 27 T. L. R. 346—C.A.

Shorthand Note—Joint Note—Transcript—Agreement to Use in Court of Appeal—Costs in Cause.]—At the trial of an action the solicitors for both parties agreed that a joint shorthand note of the proceedings should be taken. No arrangement was made as to taking a transcript, but it was agreed that if the case went to the Court of Appeal the transcript of the shorthand note of the evidence should be used as a substitute for the Judge's note. Both sides took transcripts, and they were printed and used by the Judge. The plaintiff obtained judgment in the action, with costs. Upon a motion by the plaintiff that the costs of the shorthand note and of the transcript should be paid by the defendants as costs in the cause,—*Held*, that as the case was one where there was no great technical difficulty, and one where in the absence of an arrangement to the contrary the Judge would have refused to allow the costs upon taxation, the motion must be refused. *Jones* v. *Llanrwst Urban Council* (*No.* 2), 80 L. J.

Ch. 338; [1911] 1 Ch. 393; 104 L. T. 53; 75 J. P. 98—Parker, J.

—— **Note Taken by Agreement of Parties to the Knowledge of Judge at Trial.**] — Where the parties agree at the trial that a shorthand note shall be taken, and thereupon intimate that agreement to the presiding Judge, so that he is thereby relieved from taking a note, as the shorthand, by consent, is to be the record of what took place for the guidance of the Court of Appeal, the cost of such note to the successful party will be allowed on taxation. *Hebert* v. *Royal Society of Medicine*, 56 S. J. 107—C.A.

10. Power to Re-hear.

See also Vol. I. 462, 1120.

Duty on Re-hearing.]—The Court of Appeal is entitled and ought to re-hear a case as at the time of re-hearing, and on a re-hearing such a judgment may be given as ought to be given if the case came at that time before the Court of first instance. *Att.-Gen.* v. *Birmingham, Tame, and Rea Drainage Board*, 82 L. J. Ch. 45; [1912] A.C. 788; 107 L. T. 353; 76 J. P. 481; 11 L. G. R. 194—H.L. (E.)

Power to Refer Question to Expert.]—The Court of Appeal has jurisdiction, without the consent of parties, to refer questions to an expert to enquire and report thereon. The parties may waive formalities of procedure and conduct the enquiry in a practical way, and the Court is at liberty, but not bound, to adopt wholly or partially the report of the referee. *Ib.*

Injunction — Discharge — Evidence.] — The Court of Appeal may discharge an injunction originally granted on good grounds, and may receive further evidence even as to matters which have occurred after the decision appealed from. *Ib.*

IV. TO DIVISIONAL COURT.

See also Vol. I. 464, 1121.

"Practice and procedure"—Order made by Judge at Chambers Directing Solicitor to Pay Money—Non-payment—Attachment.]—A writ was issued by a firm of solicitors, H. and C., purporting to act for the plaintiff. The plaintiff got this writ set aside and the action stayed on the ground that he had not authorised the issue of the writ, and the solicitors, H. and C., were ordered to pay the plaintiff's costs. An appeal against this order was dismissed with costs against H. and C. The costs not having been paid, the plaintiff applied for a writ of attachment against H., who alleged that he was not a partner with C. A Judge at chambers made an order that the plaintiff should be at liberty to issue a writ of attachment against H. on the ground that he, being a solicitor, had not complied with the orders for the payment of the costs by the firm. Against this order H. appealed to the Divisional Court:—*Held* (on the authority of *Marchant, In re* (77 L. J. K.B. 695; [1908] 1 K.B. 998)), that the appeal was not a matter of practice and procedure, and that it was rightly brought to the Divisional Court. *Haxby* v. *Wood Advertising Agency*, 109 L. T. 946—D.

Matter of Practice and Procedure—Solicitor — Agreement in Writing — Summons to Set Aside — Appeal from Chambers.] — Where a summons is taken out at chambers, under section 8 of the Attorneys and Solicitors Act, 1870, to set aside two agreements with regard to payment for a solicitor's services, and for delivery of a bill of costs, the matter is not one of "practice and procedure" within the meaning of section 1, sub-section 4 of the Supreme Court of Judicature (Procedure) Act, 1894, and an appeal from the order of a Judge at chambers lies to the Divisional Court, and not direct to the Court of Appeal. *Jackson, In re*, 84 L. J. K.B. 548; [1915] 1 K.B. 371; 112 L. T. 395; 59 S. J. 272; 31 T. L. R. 109—D.

Appeal in Forma Pauperis—Defendant in Court Below—Conditions Precedent.]—A defendant in the Court below, to appeal to the Divisional Court *in forma pauperis*, must first obtain a certificate of counsel that he has reasonable grounds for so proceeding in addition to his affidavit as to lack of means. *Merriman* v. *Geach*, 82 L. J. K.B. 87; [1913] 1 K.B. 37; 107 L. T. 703; 57 S. J. 146—D.

Court Divided in Opinion — Discretion of Junior Judge to Withdraw Judgment.] — Where, on an appeal to the Divisional Court from a County Court, the Judges differ in opinion, it is within the discretion of the junior Judge, in accordance with the old common law practice, to withdraw his judgment. *Per* Lush, J.: Apart from the question of practice, when once a litigant has obtained a judgment in any Court, that judgment ought to stand, unless a Court of Appeal unanimously or by a majority decides that the judgment of the Court below was wrong. *Poulton* v. *Moore*, 83 L. J. K.B. 875; 109 L. T. 976; 58 S. J. 156; 30 T. L. R. 155—D. *See* S. C. in C.A. 31 T. L. R. 43.

Absence of Respondent—Judgment—Application to Re-enter—Jurisdiction.]—Where a Divisional Court has allowed an appeal in the absence of the respondent, a Divisional Court has no power, on a subsequent application by the respondent, to order the appeal to be re-entered and re-argued. *Hession* v. *Jones*, 83 L. J. K.B. 810; [1914] 2 K.B. 421; 110 L. T. 773; 30 T. L. R. 320—D.

Misdirection.]—By Order LIX. rule 7, no motion by way of appeal from an inferior Court "shall succeed on the ground merely of misdirection . . . unless, in the opinion of the Court, substantial wrong or miscarriage has been thereby occasioned in the Court below":—*Held*, that in the above rule "misdirection" does not only mean misdirection to a jury, but covers a case where a Judge sitting without a jury has misdirected himself. *Tullis & Son, Lim.* v. *North Pole Ice Co.*, 32 T. L. R. 114—D.

V. FROM JUDGE IN CHAMBERS.

See also Vol. I. 466, 1122.

Writ of Attachment — Refusal by Witness to Produce Documents.]—A witness refused to produce certain documents at an examination under the Foreign Tribunals Evidence Act, 1856, whereupon an application was made in chambers for leave to issue a writ of attachment against him. The Judge refused to make the order :—*Held*, that the Judge's order was not made in a criminal matter, inasmuch as what was sought to be done by the writ of attachment was to compel the witness to produce the documents, and not merely to punish him, and therefore that an appeal lay from the Judge's decision. *Eccles* v. *Louisville and Nashville Railroad Co.*, 56 S. J. 74; 28 T. L. R. 36—D.

APPOINTMENT.

See POWER.

APPORTIONMENT.

See also Vol. I. 477, 1123.

Provision against Alienation—Life Interest — Income Accruing but not Received by Trustees at Date of Alienation — Apportionment Act, 1870.]—A testator gave a share in his estate to trustees upon trust to pay the income thereof to his son for life, but directed that any income for the time being payable to him "shall only be paid to him so long as he shall not attempt to assign or charge the same." The son by deed purported to assign his life interest by way of mortgage to secure money lent. At the date of the mortgage the trustees had in their hands a sum of 356*l.* representing income of the son's share received by them before that date, and they subsequently received a sum of 393*l.* representing income of the share received by them after the date of the mortgage, of which sum 254*l.* represented the apportioned part up to that date :—*Held*, that the Apportionment Act, 1870, did not apply; that the effect of the clause was to prevent the destination of the income being finally determined until it had actually accrued—that is, become payable to the tenant for life; and that, although the son or his mortgagee was entitled to the 356*l.*, neither of them was entitled to the 254*l.* *Sampson, In re; Sampson* v. *Sampson* (65 L. J. Ch. 406; [1896] 1 Ch. 630), applied. *Jenkins, In re; Williams* v. *Jenkins*, 84 L. J. Ch. 349; [1915] 1 Ch. 46—Sargant, J.

Bequest of "Arrears of rent"—Apportionment—Gross or Net Rents.]—Bequest of all arrears of rents due to testatrix at the time of her death held to include the proportion of rents for the current quarter, as apportioned under the Apportionment Act, 1870, up to March 4, the date of death, and to mean gross rents without any deduction for outgoings or otherwise. *Dictum* of Jessel, M.R., in *Hasluck* v. *Pedley* (44 L. J. Ch. 143, 144; L. R. 19 Eq. 271, 273), followed on the first point. *Ford, In re; Myers* v. *Molesworth*, 80 L. J. Ch. 355; [1911] 1 Ch. 455; 104 L. T. 245—Swinfen Eady, J.

Restriction upon Bequest of Company's Articles—Private Company—Apportionment of Dividends—"Public company."]—Notwithstanding that section 5 of the Apportionment Act, 1870, applies the Act to the dividends of "public companies" only, the provisions of the Act apply to companies which restrict the right to hold and transfer their shares, and, under section 121 of the Companies (Consolidation) Act, 1908, are classed as "private companies," the expression "private companies" in the later Act being only a convenient way of referring to a particular class of public companies. *White, In re; Theobald* v. *White*, 82 L. J. Ch. 149; [1913] 1 Ch. 231; 108 L. T. 319; 57 S. J. 212—Neville, J.

APPRENTICE.

See also Vol. I. 493, 1125.

Auctioneer—Absence of Licence—Avoidance of Deed.]—An auctioneer who takes an apprentice under a deed, in which he describes himself as an auctioneer, thereby impliedly represents that he is licensed as an auctioneer, and his failure to take out a licence avoids the deed. *Creaser* v. *Hurley*, 32 T. L. R. 149—D.

See also INFANT; MASTER AND SERVANT.

APPROPRIATION.

Of Payments.] — *See* BANKER AND BANKING CO.; PAYMENT.

ARBITRATION, REFERENCE & AWARD.

I. THE SUBMISSION.

1. In General.

See also Vol. I. 519, 1126.

Bill of Lading—Disputes Concerning Interpretation to be Decided Abroad.]—A clause in a bill of lading provided that any disputes concerning the interpretation of the bill of lading were to be decided in Hamburg according to German law:—*Held*, that this clause must be treated as a submission to arbitration within the meaning of section 4 of the Arbitration Act, 1889, and that, although a tribunal at Hamburg was not specified, the contract meant that disputes as to its interpretation were to be tried by the competent Court in Hamburg and in accordance with German law. *The Cap Blanco*, 83 L. J. P. 23; [1913] P. 130; 109 L. T. 672; 29 T. L. R. 557—Evans, P. Appeal withdrawn; *see* 83 L. J. P. 23—C.A.

Charterparty—Bills of Lading—Assignment—Cesser of Shipowner's Liability—Submission to Arbitration.]—The plaintiffs, who were the owners of the steamship *Den of Mains*, chartered her by charterparty dated April 26, 1911, to the defendants M. & Co., to load a cargo of beans at Vladivostock, and to proceed to a port in the United Kingdom and there deliver the cargo "agreeably to bills of lading." On June 10 a cargo of about 6,000 tons was loaded, and bills of lading made out to the order of M. & Co. or their assigns were signed by the master and handed to M. & Co.'s representative. M. & Co. had, by a contract dated April 27, 1911, sold the cargo to the defendants the B. Co. on the terms of a "basis delivered" contract, by clause 10 of which the contract was to be void as regarded any portion shipped which might not arrive. On June 12 the defendants M. & Co., under the contract of April 27, declared to the B. Co. that the beans had been shipped by steamship *Den of Mains*. On arrival of the vessel at Liverpool, the port of discharge, M. & Co. handed to the B. Co. the bills of lading indorsed against a payment. When the discharge had been completed it was alleged that there was a shortage of 171 bags, and, the B. Co. having paid only in respect of the quantity actually delivered, M. & Co. instructed them to make a corresponding deduction from the freight, but the plaintiffs refused to acknowledge the claim for short delivery. A dispute having thus arisen, M. & Co. gave notice that they demanded an arbitration under a clause in the charterparty which provided for arbitration "by arbitrators, one to be appointed by each of the parties to this agreement, if necessary the arbitrators to appoint a third," and formally required the plaintiffs within seven clear days to appoint their arbitrator. The plaintiffs did not appoint an arbitrator, and the defendants after the expiry of the seven days gave notice of the appointment of a gentleman to act as sole arbitrator. On a summons for directions taken out by the plaintiffs,—*Held*, first, that there was nothing in the contract or the circumstances of the case to satisfy the Court that it was the intention of the shipowners and charterers that the responsibility of the former under the charterparty had ceased; and secondly, that the submission to arbitration came within section 6 of the Arbitration Act, 1889. "*Den of Airlie*" *Steamship Co.* v. *Mitsui*, 106 L. T. 451; 17 Com. Cas. 116; 12 Asp. M.C. 169—C.A.

Arbitration or Valuation—Construction of Agreement.]—By an agreement the value of certain shares was to be determined by two valuers appointed by the parties or an umpire appointed by the valuers in accordance with the Arbitration Act, 1899:—*Held*, that this constituted an agreement to arbitrate as to value, and not a mere agreement to have a valuation. *Taylor* v. *Yielding*, 56 S. J. 253—Neville, J.

Construction of Arbitration Clause.] — A contract for the supply of certain machinery to a company by the manufacturers contained a clause referring disputes and differences to arbitration, with a proviso that no dispute or difference should be deemed to have arisen or to be referred to arbitration "unless one party has given notice in writing to the other of the existence of such dispute or difference within seven days after it arises." By a letter to the manufacturers the company's engineer gave notice of rejection of part of the machinery supplied. After more than seven days' interval the manufacturers wrote that they could not accept the rejection. No formal notice was given by either party of the existence of a dispute. Objection having been taken to the application of the arbitration clause, in respect that no notice of the existence of a dispute had been timeously given:—*Held*, that the proviso with regard to notice had been duly complied with and that the arbitration clause was applicable, in respect that no dispute had arisen until the manufacturers wrote refusing to accept the rejection, and that their letter of refusal itself constituted notice of the existence of a dispute. *Howden* v. *Powell Duffryn Steam Coal Co.*, [1912] S. C. 920—Ct. of Sess.

Arbitration Clause in Articles of Association — Action Commenced by Member] — Where the articles of association of a company provide for differences to be referred to arbitration, this is to be treated as a statutory agreement between the company and its members, and constitutes a submission to arbitration within the Arbitration Act, 1889. *Baker* v. *Yorkshire Fire and Life Assurance Co.* (61 L. J. Q.B. 838; [1892] 1 Q.B. 144) applied. *Hickman* v. *Kent* or *Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478—Astbury, J.

The contract contained in the plaintiff's application for membership of the company also constituted a submission to arbitration, and accordingly a stay of the action was granted. *Willesford* v. *Watson* (42 L. J. Ch. 447; L. R. 8 Ch. 473) applied. *Ib.*

Condition Referring Disputes to Arbitration—Reasonable Notice of Condition—Sale.]—A member of the Glasgow Flour Trade Associa-

tion sold flour to a purchaser (who was not a member of the association), the terms of the contract being contained in sale notes delivered to and accepted by the purchaser. Each sale note contained on the margin these words: "Any dispute under this contract to be settled according to the rules of the Glasgow Flour Trade Association." One of the rules of the association provided that all disputes should be referred to arbitration. No copy of the rules was sent to the purchaser, and it did not appear that he was aware of their terms: —*Held*, that the purchaser had not received reasonable notice of the condition referring disputes to arbitration, and accordingly that he was not bound by that condition. *M'Connell & Reid* v. *Smith*, [1911] S. C. 635—Ct. of Sess.

Arbitration Clause in Contract—Failure of Arbitration—Duty of Court.]—Where an arbitration has become abortive it is the duty of a Court of law, in working out a contract of which such arbitration was part of the machinery, to supply the defect. *Cameron* v. *Cuddy*, 83 L. J. P.C. 70; [1914] A.C. 651; 110 L. T. 89—P.C.

Therefore, where in a contract for the sale of goods it was agreed that the purchaser should be entitled to deduct from the price the value of any goods not delivered, such value to be determined by arbitration, and the arbitrators appointed were unable to agree, the purchaser was entitled in an action brought by the vendor to recover the contract price, to apply to the Court to fix the value of the goods not delivered and to deduct it from the price due, without bringing a cross-action. *Ib.*

2. Stay of Action as to Matters Referred.

See also Vol. I. 571, 1128.

Contract with Local Authority—Reference to Engineer Carrying out Work—Action by Contractor.]—A local authority entered into a contract with contractors for the execution of certain sewage works which provided for the works being completed to the satisfaction of a named engineer and maintained for six months afterwards, and which contained a wide arbitration clause referring all disputes to the same engineer. Disputes arose, and the contractors alleged that the engineer had in effect admitted that the works had long since been completed to his satisfaction (which the engineer denied), and that the maintenance period had expired, and brought this action for the balance of the contract price against the local authority. On the summons by the local authority to stay proceedings under section 4 of the Arbitration Act, 1889, —*Held*, that the action ought to be allowed to proceed—*per* Cozens-Hardy, M.R., on the ground that the cross-examination of the engineer was essential to the determination of the questions between the parties; *per* Buckley, L.J., on the ground that section 4 is permissive only, and that the fact that the other member of the Court was of opinion that the matter should not be referred was sufficient reason to enable him to concur, though if it had rested with himself alone he should have directed a stay. *Freeman* v. *Chester Rural Council*, 80 L. J. K.B. 695; [1911] 1 K.B. 783; 104 L. T. 368; 75 J. P. 132—C.A.

—— **Claim for Extras—Whether within Arbitration Clause.**]—*Held*, on the construction of a sewerage contract that a claim in respect of extras did not fall within the scope of the arbitration clause, and that consequently an action brought to recover the amount of such extras should not be stayed. *Taylor* v. *Western Valleys* (*Monmouthshire*) *Sewerage Board*, 75 J. P. 409—C.A.

—— **Reference of Dispute to Building Owners' Engineer—Dispute Arising on Settlement of Final Account—Probable Conflict of Evidence —Referee in Position of Judge and Witness — Disqualification of Referee — Action to Recover Amount Due.**]—The respondents executed certain dock works for the appellants, the owners of the dock, under a contract which provided that disputes between the parties to the contract were to be referred to the appellants' engineer. After the completion of the works, negotiations ensued between the respondents and the engineer with reference to the settlement of the final account, and a *bona fide* dispute of a substantial character arose between the respondents and the engineer which involved a probable conflict of evidence between them. The respondents having broken off the negotiations commenced an action against the appellants to recover the amount due to them under the contract. An application by the appellants to stay the action having been refused, on appeal, by the Court of Appeal,—*Held*, that the fact that the engineer, although by no fault of his own, must necessarily be placed in the position of judge and witness, was a sufficient ground why the dispute should not be referred to him under the contract; and that the Court could, under the circumstances and in the exercise of the discretion vested in it by section 4 of the Arbitration Act, 1889, refuse to stay the action. *Bristol Corporation* v. *Aird*, 82 L. J. K.B. 684; [1913] A.C. 241; 108 L. T. 434; 77 J. P. 209; 29 T. L .R. 360—H.L. (E.)

Questions of Law — Life Insurance Policy.]—A life insurance policy provided that it should not cover death by war, and the policy contained an arbitration clause. The assured lost his life by the explosion which caused the loss of H.M.S. *Bulwark*, and his executrix brought an action on the policy against the insurance company. The defendants applied to have the action stayed. The plaintiff contended that as serious questions of law were involved the case ought not to be sent to arbitration:—*Held*, that the Court was not justified in refusing the application merely because there were important questions of law to be considered, and that as no sufficient reason had been shewn why the contract to submit to arbitration should not be observed the action must be stayed. *Lock* v. *Army, Navy, and General Assurance Association*, 31 T. L. R. 297—Astbury, J.

Questions of Law Unsuited for Arbitration — Discretion of Court.] — Where a contract contains an agreement to refer disputes to arbitration, the Court will, as a rule, stay proceedings in an action on the contract, even though difficult questions of law are involved, provided such questions cannot be dealt with until the facts have been ascertained. The action may be allowed to proceed so far as regards matters which are outside the scope of the arbitration clause, and do not involve substantially the same facts and rights as fall to be determined by the arbitrator. *Rowe* v. *Crossley*, 108 L. T. 11; 57 S. J. 144—C.A.

Arbitrator Acting Unreasonably—Engineer of Works. — Where in a contract for the execution of works there is a clause referring disputes to an officer—for example, the engineer—of the local authority, and where facts subsequent to the contract have given rise to a substantial dispute in which there are allegations of continued unreasonableness on the part of the engineer, and that is the real dispute between the parties, the Court will not order an action on the contract by the contractor to be stayed under the arbitration clause. *Blackwell* v. *Derby Corporation*, 75 J. P. 129—C.A.

Submission to Arbitration — Contract for Construction of Works—Action for Fraudulent Misrepresentation Inducing Contract.]—A contract for the construction of sewerage works for an urban district council contained a clause referring to arbitration any dispute which might arise between the contractor and the council upon or in relation to or in connection with the contract. The contractor brought an action against the council, alleging that he had been induced to enter into the contract by a fraudulent misrepresentation on the part of the defendants as to the nature of the soil on the site of the works, and he claimed damages for such fraudulent misrepresentation, and also claimed for work and labour done :—*Held*, that the action was not one which could be stayed and referred to arbitration under the arbitration clause. *Monro* v. *Bognor Urban Council*, 84 L. J. K.B. 1091; [1915] 3 K.B. 167; 112 L. T. 969; 79 J. P. 286; 13 L. G. R. 431; 59 S. J. 348—C.A.

Lease Containing Arbitration Clause — Action by Lessors Claiming Rectification.]—A lease contained a clause providing that "any dispute, difference, or question which may at any time arise . . . touching the construction, meaning, or effect of these presents, or any clause or thing herein contained, or the rights or liabilities of the said parties respectively, or any of them under these presents or otherwise howsoever in relation to these presents" should be referred to arbitration. An action was commenced by the lessors against the lessees claiming *(inter alia)* rectification of the lease. The lessees moved, pursuant to section 4 of the Arbitration Act, 1889, that all proceedings in the action should be stayed and that the matters in difference should be referred to arbitration under the terms of the lease :—*Held*, that a claim for rectification did not fall within the arbitration clause, and therefore that the Court would not stay the action and refer the question to arbitration. *Printing Machinery Co.* v. *Linotype and Machinery, Lim.*, 81 L. J. Ch. 422; [1912] 1 Ch. 566; 106 L. T. 743; 56 S. J. 271; 28 T. L. R. 224—Warrington, J.

Berth Note—Stevedoring Rate—"Dispute"—"Arising at loading ports."]—The plaintiffs' steamer loaded grain at a foreign port under a berth note which provided that the defendants, the freighters, should be in effect the ship's agents, and should do the stevedoring at a certain rate, and that "in case of any dispute arising at loading ports" it should be submitted to arbitration in the foreign country. The account for the stevedoring was submitted to the master of the steamer, who signed it without objection, and it was sent by the defendants to the plaintiffs, and the amount was deducted from the advance freight due to the plaintiffs. The plaintiffs complained to the defendants in London that the stevedoring rate as shewn in the account was not reckoned in the customary way, and brought an action to recover the amount which they alleged to be overcharged :—*Held*, that "dispute" meant not "disputation," but "matter in dispute," and therefore that the dispute was one "arising" at the loading port, and should be submitted to arbitration, and the proceedings must be stayed under section 4 of the Arbitration Act, 1889. *The Dawlish*, 79 L. J. P. 111; [1910] P. 339; 103 L. T. 315; 11 Asp. M.C. 496—D.

Bill of Lading—Arbitration Clause.]—A case of gold coin belonging to the plaintiffs was shipped on board the defendants' German steamship at Hamburg for delivery at a port in South America. The bill of lading, by clause 14, provided that disputes "concerning the interpretation" of the document were to be decided in Hamburg according to German law. The vessel called at Southampton on the outward voyage, failed to deliver the case on arrival in South America, and called again at Southampton on her return voyage, when the plaintiffs arrested her and brought their action *in rem* in the Admiralty Division. The defendants alleged that the claim was covered by the exceptions in the bill of lading :—*Held*, that the action involved a dispute "concerning the interpretation" of the bill of lading under clause 14, and must therefore be stayed under section 4 of the Arbitration Act, 1889. *The Cap Blanco*, 83 L. J. P. 23; [1913] 109 L. T. 672; 12 Asp. M.C. 399; 29 T. L. R. 557—Evans, P. Appeal withdrawn; *see* 83 L. J. P. 23—C.A.

Charterparty — Arbitration Clause — Bill of Lading—Conditions as per Charterparty—Incorporation of Arbitration Clause — Action for Demurrage.]—A charterparty for the carriage of a cargo of timber stipulated for the discharge of the cargo with customary dispatch and for payment of demurrage in the event of the ship being longer detained, and provided that any dispute or claim arising out of any of the conditions of the charterparty should be settled by arbitration. The bill of lading given for the cargo contained the words

"all other terms and conditions and exceptions of charter to be as per charterparty." The shipowners having brought an action for demurrage against the holders of the bill of lading to whom the cargo had been consigned, —*Held*, that the arbitration clause of the charterparty was not incorporated into the bill of lading so as to entitle the defendants to have the action stayed. *Hamilton* v. *Mackie* (5 T. L. R. 677) followed. *The Portsmouth*, 81 L. J. P. 17; [1912] A.C. 1; 105 L. T. 257; 12 Asp. M.C. 23; 55 S. J. 615 —H.L. (E.)

Contract—Outbreak of War—Impossibility of Performance—Avoidance of Contract.]—A contract was entered into on August 1, 1914, for the purchase of beetroot sugar to be delivered in the month of August at Hamburg. The contract provided for the reference of all disputes thereunder to arbitration, and it was also provided that in the event of Germany being involved in war with England the contract should be deemed to be closed at the average quotation of the sugar and the accounts made up, and that all differences should be due immediately from one party to the other. On July 31 the German Government had placed an embargo on the exportation of beetroot sugar, and on August 4 war was declared between England and Germany. The sellers contended that the contract had become illegal and void and could not be enforced by either party, and that the arbitration clause therefore could not be applied:—*Held* (affirming Warrington, J.), that as the outbreak of war had been expressly provided for by the contract, and as in that event there was no obligation to deliver the sugar, but instead of that an obligation to pay an ascertainable sum of cash, the contract had not been avoided by the outbreak of war, and any dispute under it must be referred to arbitration. *Held*, also, that the embargo on the export of sugar did not render the contract illegal or release the parties to it from the obligation of performance, as it was not necessary for its performance that the sugar should be delivered on board, and it might have been warehoused under the contract. *Smith, Coney & Barrett* v. *Becker, Gray & Co.*, 84 L. J. Ch. 865; 112 L. T. 914; 31 T. L. R. 151—C.A.

Contract—Outbreak of War—Impossibility of Delivery — Arbitration Clause — Action.]—Before the outbreak of war between England and Germany the plaintiffs contracted to buy from the defendants a quantity of sugar which was in Hamburg and which was to be shipped by the defendants. The contracts provided that in the event of Germany being involved in war with England they should be deemed to be closed, and that if war should prevent shipment any party should be entitled to go to arbitration. Owing to the outbreak of war the defendants were unable to ship the sugar, and the plaintiffs brought an action against the defendants, claiming a declaration that the contracts were suspended or dissolved and an injunction restraining the defendants from proceeding with arbitration. On an application by the defendants for an order that the action be stayed under section 4 of the Arbitration Act, 1889, the Judge refused to make the order:—*Held*, that as the question between the parties was whether the contracts were alive or dead, it was in the Judge's discretion to say that it was not a proper question to be submitted to arbitration. *Grey & Co.* v. *Tolme* (*No.* 1), 59 S. J. 218; 31 T. L. R. 137—C.A.

"Step in the proceedings"—County Court —Notice of Intention to Defend.]—The plaintiffs had supplied the defendants with certain goods under a contract which contained a term that disputes between the parties should be submitted to arbitration. A sum of money being alleged to be due to the plaintiffs for goods so supplied, proceedings were taken in the County Court for its recovery, and a default summons was served upon the defendants, who filled up the slip attached to the summons giving notice of their intention to defend the action. The defendants subsequently applied to the learned Judge for a stay of the action under section 4 of the Arbitration Act, 1889. The section provides that: "If any party to a submission . . . commences any legal proceedings in any court against any other party to the submission . . . in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court . . . may make an order staying the proceedings." It was contended on behalf of the plaintiffs that the statement by the defendants on the slip attached to the default summons of their intention to defend was a step in the proceedings, since it entitled them to raise any defence other than a special defence, of which notice must be given, and that, consequently, they were not entitled to apply for a stay of the proceedings. The learned Judge gave effect to this contention, and refused to stay the action:—*Held*, that the giving notice of an intention to defend by filling up the slip attached to the default summons was merely the equivalent of entering appearance in the High Court, and that the defendants had not taken any step in the proceedings after appearance which disentitled them to apply for a stay. *Austin and Whiteley* v. *Bowley*, 108 L. T. 921—D.

—— **Application for Stay.**] — Attendance before the Master and acquiescence without protest in an order which is made subject to the production of a certain document to the Master which is ultimately produced is taking a step in the proceedings within the meaning of section 4 of the Arbitration Act, 1889, and the defendant is thereby precluded from moving to stay proceedings under that section. *Cohen* v. *Arthur*, 56 S. J. 344—Neville, J.

II. THE ARBITRATOR.

See also Vol. I. 587, 1132.

Jurisdiction—Award—Condition Precedent— "Dispute arising during tenancy"—Finding of Fact.]—An arbitrator cannot give himself jurisdiction by a wrong decision, collateral to

the merits, as to facts on which the limits to his jurisdiction depends. In a case where it was a condition precedent to the arbitrator's jurisdiction that the dispute should have arisen during a tenancy between the plaintiff and the defendant, and where the arbitrator was not authorised by the submission to decide this preliminary question :—*Held*, that the arbitrator could not clothe himself with jurisdiction by finding this preliminary fact in favour of the plaintiff, so as to bind the defendant. *May* v. *Mills*, 30 T. L. R. 287—Lord Coleridge, J.

Powers of Arbitrator — Submission of all Matters in Difference—New Ground of Defence — Amending Points of Defence.] — Where points of claim and points of defence have been delivered by the parties to an arbitration, the arbitrator is not bound to allow an amendment by the defendant setting up a defence not disclosed by the points of defence. It is within the discretion of the arbitrator to admit or refuse to allow such an amendment, but he must exercise his discretion on judicial principles. *Crighton* v. *Law Car and General Insurance Corporation*, 80 L. J. K.B. 49; [1910] 2 K.B. 738; 103 L. T. 62—D.

Admission by Arbitrator of Inadmissible Evidence — Legal Misconduct — Inconclusive Award.]—A contract for the sale of sugar contained no provision for the suspension of deliveries "if the production by the sellers was prevented or lessened by causes beyond their control," nor any similar clause. Owing to a cause beyond their control, the production by the sellers was "prevented or lessened," and they suspended delivery. Disputes having arisen, recourse was had to arbitration. A former contract between the parties containing such a suspension clause as the above was produced to the arbitrator by the sellers. The arbitrator made an award simply that "the sellers are entitled to suspend delivery under this contract." The Court were satisfied that, in making this award, the arbitrator was influenced by the terms of the earlier contract : —*Held*, the award must be set aside, the arbitrator having been guilty of legal misconduct, inasmuch as he had, in making the award, looked to a document other than the contract, which was the only matter before him, or, in other words, had allowed to be given, and had acted upon, evidence which was wholly inadmissible, and which went to the root of the question submitted to him for decision. *Held*, further, that the award was inconclusive, and on that ground could not stand. *Walford, Baker & Co.* v. *Macfie*, 84 L. J. K.B. 2221; 113 L. T. 180—D.

Refusal of Arbitrators to Appoint Umpire—Parties—Service on Arbitrators.]—A dispute arose upon a contract of sale which the parties submitted to arbitration. Arbitrators were appointed who were to appoint an umpire under section 5 of the Arbitration Act, 1889. The purchasers under the contract served a notice on the arbitrators to appoint an umpire, but the arbitrators failed to do so. The purchasers then applied to the Court to appoint an umpire. The arbitrators were made respondents, but the vendors under the contract were not respondents as they were resident outside the jurisdiction. The vendors' arbitrator contended that he was not a proper party to the summons, and that the vendors ought to be made parties. The Master and the Judge in chambers made orders appointing an umpire, with liberty to the vendors to apply to discharge the order, costs to be costs in the arbitration :—*Held*, that the objection as to the form of the summons was not a valid objection and that the arbitrators were properly brought before the Court. *Taylor* v. *Denny, Mott & Dickson*, 82 L. J. K.B. 203; [1912] A.C. 666; 107 L. T. 69; 76 J. P. 417 —H.L. (E.)

Decision of Court of Appeal, *sub nom. Denny, Mott & Dickson, Lim.* v. *Standard Export Lumber Co.* (81 L. J. K.B. 811; [1912] 2 K.B. 542), affirmed. *Ib.*

Proceedings Subsequent to Arbitration—Oral Evidence by Arbitrator Amplifying Award—Liability to Cross-examination—Admittance of Evidence in Rebuttal.]—In June, 1913, the claimants, R. & Co., effected an insurance with the respondents, an insurance company, whereby the insurance company agreed that, if at any time during the period covered by the policy the premises of the claimants should be destroyed by fire and their business should be thereby interfered with or interrupted, they would pay to the claimants monthly until such time as the reduction in turnover in consequence of the fire should have ceased (but not exceeding in all nine months), on account of annual net profit and charges as therein set forth, the same percentage on the amount by which the turnover in each month should in consequence of the fire be less than the turnover for the corresponding month of the year preceding the fire as the sum or sums thereby insured should bear to the total of the turnover for the last financial year. It was provided that the amount of the losses under the policy should be assessed by the claimants' auditors, Messrs. L. & G. A condition on the back of the policy provided for reference to arbitration of all differences arising out of the policy. The premises of the claimants were destroyed by fire on July 22, 1913, a date within the period covered by the policy. G., a member of the firm of L. & G., duly assessed the amount of the loss suffered by the claimants in respect of profits for the period of nine months succeeding the fire. Differences having arisen in regard to the payments under the policy, the parties went to arbitration. G. was called as a witness by the claimants at the arbitration proceedings, and stated that although it did not appear on the face of the assessments he was at the time of signing the same satisfied that the losses of the turnover respectively therein stated were in fact sustained in consequence of the fire. There was no suggestion of any fraud on the part of the assessor :—*Held*, that as G., whether regarded as an arbitrator or an assessor, had been called to give oral testimony he could be cross-examined on all relevant issues, and consequently could be cross-examined here to shew that he had failed to take into account certain considerations necessary for arriving at the

reduction in the turnover of the claimants due solely to the fire. *Held*, also, that the insurance company were entitled to give evidence for the purpose of establishing the same contention. *Held*, also, that upon the construction of the policy the assessors, if they had properly directed themselves in law, were empowered to determine the amount payable to the assured under the policy, and that such determination would be conclusively binding on the insurance company. *Recher* v. *North British and Mercantile Insurance Co.*, 84 L. J. K.B. 1813; [1915] 3 K.B. 277—D.

Buccleuch (Duke) v. *Metropolitan Board of Works* (41 L. J. Ex. 137; L. R. 5 H.L. 418) considered and distinguished. *Ib.*

Professional Man Acting as Arbitrator — Right to Remuneration.]—A professional man undertaking the duties of an arbitrator without any stipulation as to payment cannot be presumed to be giving his services gratuitously, and is therefore entitled to remuneration. *Macintyre* v. *Smith*, [1913] S. C. 129—Ct. of Sess.

III. THE UMPIRE.

See also Vol. I. 629, 1137.

Refusal of Arbitrators to Appoint.] — *See Taylor* v. *Denny, Mott & Dickson, supra.*

IV. THE AWARD.

See also Vol. I. 687, 1137.

Power to Set Aside Award—Submission—Specific Question of Law — Erroneous Decision.]—Where a specific question of law has been submitted to an arbitrator and he has answered it, his award cannot be set aside on the ground that his decision is wrong in point of law. *King and Duveen, In re*, 82 L. J. K.B. 733; [1913] 2 K.B. 32; 108 L. T. 844—D.

Clause that all Disputes Arising out of Contract be Referred to Arbitration — Jurisdiction of Arbitrators to Find that Custom Exists and Applies to Contract.]—By a contract made in May, 1912, the P. Company sold to the O. Company a specified quantity of Soya beans to be shipped from an Oriental port to Hull, and it was provided that "in case of re-sales copy of original appropriation shall be accepted by buyers," and, further, that all disputes arising out of the contract should be referred to arbitration. By a similar contract made in September, 1912, the P. Company contracted to purchase from the E. Company a like quantity of the same commodity with a view to the fulfilment of the earlier contract. In February, 1913, the E. Company made a tender or appropriation to the P. Company of a shipment by a specified ship, and shortly thereafter the P. Company made a tender of the same shipment to the O. Company. At the time of the tender by the E. Company it was not known, but at the time of the tender by the P. Company it was known as a fact that the ship and cargo were lost. A question arose between the P. Company and the O. Company whether the tender or appropriation by the P. Company was valid, seeing that at the time it was made it was known that the cargo was lost. The question was referred to arbitration, and came before an arbitration committee of the particular trade, which stated a Case raising the question. The Divisional Court, expressing a consultative opinion only, answered the question in the negative, and held that the tender was not valid (see 84 L. J. K.B. 281; [1915] 1 K.B. 233). The matter then went back to the committee, which, notwithstanding the opinion of the Divisional Court, made an award finding that, by the custom of the trade in case of re-sales, buyers impliedly agreed with their sellers to accept the original appropriation, and determining that the tender was valid. The O. Company moved to set aside the award on the ground that it was bad on the face of it. The Divisional Court took the view that it was not competent for the arbitration committee to find conclusively whether or not the custom existed and formed part of the contract, and that if on enquiry it appeared that the custom did not exist, the award ought to be set aside as having been made without jurisdiction, and that Court accordingly made an order adjourning the motion with a view to hearing evidence as to the existence of the custom:—*Held*, with reluctance and as being bound by authority, that the order of the Divisional Court was right. *Hutcheson* v. *Eaton* (13 Q.B. D. 861) and *North-Western Rubber Co. and Huttenbach & Co., In re* (78 L. J. K.B. 51; [1908] 2 K.B. 907), discussed and followed. *Olympia Oil and Cake Co. and Produce Brokers Co., In re* (*No. 2*), 84 L. J. K.B. 1153; 112 L. T. 744—C.A. Reversed in H.L., 85 L. J. K.B. 160; 60 S. J. 74; 32 T. L. R. 115.

Arbitration Clause in Contract—Dispute—Reference to Arbitrator—Subsequent Action—Award after Action Brought — Plea of Award in Bar of Action—Ouster of Jurisdiction.]—The award of an arbitrator purporting to determine a dispute is no bar to an action pending at the date of the award in respect of the same dispute, where the agreement for arbitration has been entered into before the action was brought and the award has been made without notice to the plaintiff and without his knowledge or consent, and where an order to stay the action has not been obtained under section 4 of the Arbitration Act, 1889:—So *held* by Fletcher Moulton, L.J., and Farwell, L.J. *Doleman* v. *Ossett Corporation*, 81 L. J. K.B. 1092; [1912] 3 K.B. 257; 107 L. T. 581; 76 J. P. 457; 10 L. G. R. 915—C.A.

A contract between the plaintiffs and the defendants contained a clause providing that any dispute thereunder should be referred to and decided by the defendants' engineer, who should be competent to act without formal reference or notice to the parties or either of them, and whose awards should be final and binding upon the parties. Disputes within the scope of that clause arose between the parties. The plaintiffs brought an action against the defendants in respect of these disputes, and no order to stay the action was

obtained under section 4 of the Arbitration Act, 1889. Subsequently, during the pendency of the action, without previous notice to the plaintiffs, and without their knowledge or consent, an award was made by the engineer determining the disputes. The action proceeded, and the pleadings raised questions of fact which were substantially the same as those that had been decided by the engineer, and also the question of law whether in the circumstances the award was conclusive and binding on the plaintiffs and prevented them from maintaining the action. An order was made that the question of law should be tried before the other questions in the action, and the Judge who tried it decided that the award of the engineer was binding on the parties, though made after writ:—*Held*, by the Court of Appeal, that this decision was wrong and should be reversed, and that the action should proceed to trial. *Ib.*

V. COSTS.

See also Vol. I. 753, 1142.

Costs of and Incident to Arbitration—Case Remitted to Arbitrator to Deal with such Costs—Death of Arbitrator.]—An arbitrator stated a Special Case, and directed that if any of his alternative awards in favour of the claimants were upheld by the Court, the parties to the arbitration were to pay the costs of and incidental to the arbitration in certain proportions. The Court of Appeal decided that the claimants had no right to the return of any money, and, allowing the appeal of the corporation with costs, remitted the Case to the arbitrator for him to deal with the costs of and incidental to the arbitration. The arbitrator having died, a summons was taken out by the corporation to tax these costs according to the award:—*Held*, that either intentionally or *per incuriam*, no costs were given in the award in the events which had happened, and therefore there could be no order to tax under the award. *Stanley and Nuneaton Corporation, In re*, 59 S. J. 104—C.A.

VI. STATUTORY REFERENCES.

Under Lands Clauses Act. — *See* LANDS CLAUSES ACT.

ARCHITECT.

See WORK AND LABOUR.

ARMY AND NAVY.

See also Vol. I. 794, 1147.

Incitement to Mutiny—Indictment.]—It is not necessary in an indictment under section 1 of the Incitement to Mutiny Act, 1797, to designate any particular person in His Majesty's forces who is sought to have been seduced from his duty and allegiance by the accused. *Rex* v. *Bowman*, 76 J. P. 271; 22 Cox C.C. 729—Horridge, J.

It is for the jury to say whether a publication by the accused was an inducement to soldiers to disobey their officers in the event of a strike, or whether it was merely a comment upon armed military force being used by the State for the suppression of industrial riots. *Ib.*

Summons Charging that Defendant did "buy, detain, or receive military property"—One Offence.]—A summons under the Army Act, 1881, s. 156, sub-s. (*a*), which charges that the defendant did unlawfully "buy, detain, or receive from soldiers, or other persons acting on their behalf," military property, does not charge several offences, but one offence, under the statute, and a general conviction on such summons is not bad for uncertainty. *Rex* v. *Tyrone Justices*, [1915] 2 Ir. R. 162—K.B. D.

Bribery of Army Officer to Shew Favour in Matter of Canteen Contracts.] — It is a common law misdemeanour for an officer who has a duty to do something in which the public are interested to receive a bribe either to act in a manner contrary to his duty or to shew favour in the discharge of his functions. It is therefore a misdemeanour at common law for the colonel of a regiment to receive a bribe to shew favour in the matter of a canteen contract for the regiment. *Rex* v. *Whitaker*, 84 L. J. K.B. 225; [1914] 3 K.B. 1283; 112 L. T. 41; 79 J. P. 28; 58 S. J. 707; 24 Cox C.C. 472; 30 T. L. R. 627—C.C.A.

Prohibition of Importation of Arms—Proclamation—Seizure—Forfeiture.]—Section 43 of the Customs Consolidation Act, 1876, provides that "The importation of arms, ammunition, gunpowder, or any other goods may be prohibited by proclamation or Order in Council":—*Held* (by Cherry, L.C.J., and Dodd, J.; Kenny, J., *diss.*), that in a proclamation under the section the area into which importation is prohibited may be limited, and that a Royal proclamation prohibiting the importation of arms, ammunition, and the component parts of arms, empty cartridge cases, explosives and combustibles for warlike purposes into Ireland, was valid under the authority of the section. *Held*, also (by Cherry, L.C.J., and Dodd, J.), that where goods are imported in violation of such a proclamation, the fact that a Customs officer who seizes the goods causes or permits them to be destroyed before proceedings are taken to have them condemned, does not give the owner of the goods any right of action against him. *Hunter* v. *Coleman*, [1914] 2 Ir. R. 372—K.B. D.

Liability of Commanding Officer of Volunteer Forces for Bank Overdraft.]—In October, 1906, on the instructions of the commanding officer of a Volunteer regiment, an account was opened with a bank, headed "R.S.F. 2nd Volunteer Battalion Finance Committee.

Cheques to be signed by any two members of the Committee." The sums paid to the credit of the account consisted mainly of sums paid directly to the bank by the War Office, while the drafts upon the account were made by cheques stamped "On his Majesty's Service," and signed by two members of the finance committee, one of whom was, as a rule, though not in every instance, the commanding officer. On the transference of the corps to the Territorial Force in 1908 there was a large debit balance on the account, for which the War Office and the county association refused to accept liability. The bank sued the commanding officer for the amount of the overdraft :—*Held*, that the defender was not liable as, first, neither section 25 of the Volunteer Act, 1863, nor the Volunteer Regulations of 1901 (which vested the property of the regiment in the commanding officer) imposed any liability upon him for such a debt; and secondly, it was not proved that he had as an individual entered into any contract with the bank which could infer personal liability against himself. *National Bank of Scotland* v. *Shaw*, [1913] S. C. 133—Ct. of Sess.

Territorial Forces—Occupation of Premises —Rateability.]—*See* POOR LAW.

ARRANGEMENT, DEEDS OF.

See BANKRUPTCY.

ARREST IN CIVIL CASES.

See ATTACHMENT; CONTEMPT OF COURT.

ARREST IN CRIMINAL CASES.

See CRIMINAL LAW.

ARTICLES.

Of Association.]—*See* COMPANY.

For Settlement.]—*See* SETTLEMENT.

Of Partnership.]—*See* PARTNERSHIP.

Of Peace.]—*See* CRIMINAL LAW.

ASSAULT.

Tramway Authority—Liability for.]—*See* MASTER AND SERVANT.

ASSESSED TAXES.

See REVENUE.

ASSETS.

See COMPANY; EXECUTOR AND ADMINISTRATOR.

ASSIGNMENT.

1. *Property Assignable*, 62.
2. *What Amounts to an Assignment*, 64.
3. *Construction and Validity*, 64.
4. *Rights and Liabilities of Assignee*, 65.

1. PROPERTY ASSIGNABLE.

See also Vol. I. 825, 1155.

Of Part of a Debt.]—Part of a debt is not assignable within the provisions of the Judicature Act. Opinion of Bray, J., in *Forster* v. *Baker* (79 L. J. K.B. 664; [1910] 2 K.B. 636) concurred in. Decision of Darling, J., in *Skipper & Tucker* v. *Holloway* (79 L. J. K.B. 91; [1910] 2 K.B. 630) dissented from. But the assignee of part of a debt may maintain a common law action in respect of such part, where all persons interested in the debt or in resisting it are parties to the action. *Conlan* v. *Carlow County Council*, [1912] 2 Ir. R. 535—K.B. D.

Assignability of Right to Damages for Waste.]—An assignment of the right to recover damages for voluntary waste is void both at law and in equity. *Defries* v. *Milne*, 82 L. J. Ch. 1; [1913] 1 Ch. 98; 107 L. T. 593; 57 S. J. 27—C.A.

By deed dated November 9, 1906, the plaintiff obtained a lease of premises for a term of some 41½ years. One of the lessee's covenants was substantially to repair and maintain the premises. The plaintiff took the lease as trustee for a company, and the company at once went into occupation of the premises. In 1909 the company went into voluntary liquidation, and on May 2, 1911, the liquidator agreed to sell the tenant's fixtures on the premises to the defendant, and by clause 14 of the agreement the company granted him a licence to go into occupation of the premises until September, 1911, upon certain conditions, which included provisions that the defendant

was not to do anything which if done by the lessee would be a breach of any of the covenants and conditions in the lease, and that he was to make good to the satisfaction of the lessor all damages done in removing the tenant's fixtures. On November 6, 1911, the company released its interest in the premises to the plaintiff, and assigned to him the benefit and advantage of clause 14 of the agreement of May 2, 1911, and the full power and authority to enforce the obligations of the defendant under that clause. In an action by the plaintiff claiming damages from the defendant for breaches of clause 14 and for wilful waste, Warrington, J., dismissed so much of the action as related to the claim for wilful waste :—*Held*, by the Court of Appeal—first, that the plaintiff had no direct claim against the defendant because he had not himself sustained any damage through the alleged acts of wilful waste; and secondly, that he had no indirect claim in respect of damages sustained by the company because the deed of November 6, 1911, did not contain an assignment of the company's right to such damages, and because such an assignment would in any case be void as being an assignment of a right to recover damages in respect of a tort. *Ib.*

Damages when Recovered in Pending Action of Tort.]—An assignment for valuable consideration by the plaintiff in a pending action of tort to one of his creditors of the sum of money to which he may become entitled by virtue of the action, inasmuch as it is not an assignment of a mere right of action, but of property to come into existence in the future, is not invalid as savouring of champerty or maintenance. *Glegg* v. *Bromley*, 81 L. J. K.B. 1081; 106 L. T. 825—C.A.

Contract to Supply Goods—Rights of Seller and Assignee.]—By a contract in writing the defendants agreed to supply B. H. with 10,000 tons of coal for delivery between July, 1911, and June 30, 1912, in about equal monthly quantities. The defendants had had business dealings with B. H. for some years, knew the class of business he was carrying on, and for personal reasons had fixed a specially low price for the coal in question. On February 13, 1912, B. H. assigned to the plaintiff this contract, together with his business of a coal merchant, but the defendants refused to recognise the assignment or make further deliveries under the contract :—*Held*, that the contract was not one which was assignable at law. *Cooper* v. *Micklefield Coal and Lime Co.*, 107 L. T. 457; 56 S. J. 706—Hamilton, J.

Covenant—Mortgage—Transfer by Executors of Deceased Mortgagor — Covenant of Indemnity by Transferee — Assignment of Benefit of Covenant—Action against Transferee by Assignee of Benefit of Covenant—Liability.]—The executors of a mortgagor who died insolvent assured the mortgaged property to a transferee, who covenanted to pay to the mortgagees the principal moneys secured to them, and to indemnify the executors and the estate and effects of the deceased mortgagor against all proceedings in respect of the non-payment of the mortgage debts :—*Held*, that a deed by which the executors purported without consideration to assign the benefit of the covenant of indemnity to an assignee was inoperative, and that the covenant was not capable of assignment. *Rendall* v. *Morphew*, 84 L. J. Ch. 517; 112 L. T. 285—Eve, J.

2. What Amounts to an Assignment.

See also Vol. I. 830, 1157.

Equitable Assignment — Loan to Building Society—Charge on Property—Action for Receiver—Secured Creditor.]—The plaintiff advanced money to a building society for the repayment of which the funds and property of the society were made liable, and brought an action for a receiver and declaration of charge. The society alleged that the plaintiff had no cause of action as a secured creditor, and moved to stay proceedings :—*Held*, that the funds of the society being appropriated for the repayment of the loan, there was a good equitable assignment, and therefore a good cause of action. *Baker* v. *Landport and Mid-Somerset Benefit Building Society*, 56 S. J. 224—Eve, J.

Assignment—Equitable Assignment—Existing Rights—Whether Consideration Required.]—The plaintiff's wife, having lent S. 100*l.* and taken from her an I O U, afterwards asked S. to pay M. the 100*l.* when due. S. agreed and the plaintiff's wife tore up the I O U, and S. gave M. a new I O U for 100*l.* payable to M. The plaintiff's wife then died, and the plaintiff, as the administrator of her estate, brought an action against S. and M. to recover the amount :—*Held*, that there was a good equitable assignment of the 100*l.* as there was sufficient consideration to support it, and therefore the action failed. *Semble*, the rule that for every equitable assignment there must be consideration applies only to rights of property which are not yet in existence, and though such an assignment of existing rights, if it is made without consideration, is revocable by the assignor, yet, if he dies without revoking it, it is binding on his executor. *German* v. *Yates*, 32 T. L. R. 52—Lush, J.

3. Construction and Validity.

See also Vol. I. 844, 1159.

Validity—Consideration—Antecedent Debt—Forbearance to Sue.]—Though the mere existence of an antecedent debt is not of itself valuable consideration for an assignment by a debtor to his creditor, yet such a debt, coupled with a promise, express or implied, by the assignee of some benefit to the assignor, such as forbearance to sue or a fresh advance, connected with the assignment, will constitute such valuable consideration. In the absence of evidence to the contrary, the law will presume from the fact of such an assignment a promise by the assignee of forbearance to sue for his debt. *Glegg* v. *Bromley*, 81 L. J. K.B. 1081; 106 L. T. 825—C.A.

—— Intention to Defeat and Delay Creditors —13 Eliz. c. 5.]—A deed of assignment made

in good faith by a debtor in favour of his creditor is not rendered invalid under the statute 13 Eliz. c. 5, by reason of its being made with the express intention of defeating some other particular creditor or creditors of the assignor. *Ib.*

A wife who was in debt to her husband for a large advance executed a deed of assignment by which she assigned to him the sum of money to which she might become entitled by virtue of a pending action of slander in which she was plaintiff. Her husband then made a further advance to enable her to prosecute the action. The wife subsequently recovered a verdict in the action for damages. A judgment creditor of the wife thereupon served a garnishee order *nisi* attaching the damages which she had recovered :—*Held*, that the deed of assignment was not invalid either for want of consideration or as savouring of champerty, or under the statute 13 Eliz. c. 5, and that the husband, as assignee under the deed, was entitled to the damages recovered by the wife as against the execution creditor. *Ib.*

4. Rights and Liabilities of Assignees.

See also Vol. I. 851, 1161.

Contract Debt — Action by Assignee — Defence — Claim to Unliquidated Damages against Assignor.] — The plaintiff was the assignee of the unpaid balance of the price of a newspaper sold by one P. to the defendants. The sale had been induced by misrepresentations of P. as to the value of the newspaper by which the defendants had sustained damage equal to the sum sued for :—*Held*, that the defendants were not entitled to avail themselves of such damage by way of defence to the plaintiff's claim. *Young* v. *Kitchin* (47 L. J. Ex. 579; 3 Ex. D. 127) and *Newfoundland Government* v. *Newfoundland Railway* (57 L. J. P.C. 35; 13 App. Cas. 199) distinguished. *Stoddart* v. *Union Trust, Lim.*, 81 L. J. K.B. 140; [1912] 1 K.B. 181; 105 L. T. 806—C.A.

Set-off—Mortgagee of Reversion and Tenant — Action by Mortgagee for Rent — Counterclaim by Lessee for Damages against Lessor —Damages for Breach of Covenant in Building Agreement.]—The rule that an assignee of a *chose in action* can set off a claim for damages against the assignor arising out of the same transaction has no application as between a lessee and a mortgagee of the reversion. The rule that a purchaser or mortgagee is bound by the equities of a tenant in possession does not apply to the right of a tenant to damages for breach of a covenant in a building agreement. *Reeves* v. *Pope*, 83 L. J. K.B. 771; [1914] 2 K.B. 284; 110 L. T. 503; 58 S. J. 248—C.A.

Assignment by One Party—Right of Other Party to Set off against Assignee.]—The defendants, who were tenants of an exhibition ground, entered into a contract with C. by which C. undertook to equip part of the ground and was to receive half of certain takings. C. was also to pay part of the cost of advertising, and if the defendants had to pay any part of C.'s share thereof they were to have a lien on his share of the receipts for admission, but this lien was not to operate until payment of a mortgage by which C. mortgaged to the plaintiffs his share in the profits. The defendants were also to supply C. with electricity, for which he was to pay, the accounts to be rendered weekly. On a motion by the plaintiffs to restrain the defendants from parting with moneys received for admission the defendants claimed to set off from the share of receipts due to the plaintiffs as C.'s mortgagees money due from C. to the defendants for electricity :—*Held*, that, although as a general principle a claim arising under the same contract might be set off against an assignee of a party thereto, yet as the defendants recognised the mortgage as part of the venture, and as the lien was not to operate till after the discharge of the mortgage, the defendants had no right of set-off against the plaintiffs until after its discharge. *Phœnix Assurance Co.* v. *Earl's Court, Lim.*, 30 T. L. R. 50—C.A.

Notice of Assignment of Debt—Validity of Notice — Chose in Action.] — The defendant owed money to one D. in respect of money lent. D. in December, 1907, entered into a deed of arrangement by which he made an absolute assignment of all his property both real and personal to trustees for the benefit of his creditors. In April, 1908, the solicitors for the trustees of the deed of arrangement wrote the following letter to the defendant : "Re Yourself and Walter Derham. The trustees of the deed of arrangement dated the 5th December, 1907, and executed by Mr. Walter Derham, have instructed us to apply to you for an account showing all dealings between yourself and Mr. Walter Derham. The reason of this application is that there appears from Mr. Derham's books to be a considerable debt due from you to him for money advanced " :—*Held*, that the letter gave to the defendant express notice in writing of the deed of arrangement under which the debt was absolutely assigned to the trustees, within the meaning of section 25, sub-section 6 of the Judicature Act, 1873, so as to entitle the trustees to sue the defendant for the debt due from him to D. *Denney* v. *Conklin*, 82 L. J. K.B. 953; [1913] 3 K.B. 177; 109 L. T. 444; 29 T. L. R. 598—Atkin, J.

ASSURANCE.

See INSURANCE.

ATTACHMENT.

I. ATTACHMENT OF DEBT.

1. What can be Attached and what not.

See also Vol. I. 873, 1167.

Barrister's Fees—Whether a Debt.]—Fees received by a solicitor for payment to a barrister for professional services are not a debt, and therefore garnishee proceedings cannot be used to attach them in the hands of the solicitor. Where a garnishee order *nisi* has been obtained by a judgment creditor from a Registrar of the Probate, Divorce, and Admiralty Division, attaching debts alleged to be owing to the judgment debtor from the garnishees, there is a right of appeal to a Judge not only on the part of the garnishee, but also on the part of the judgment debtor and of an assignee to whom the alleged debts have been assigned by the judgment debtor. *Wells* v. *Wells*, 83 L. J. P. 81; [1914] P. 157; 111 L. T. 399; 58 S. J. 555; 30 T. L. R. 545—C.A.

Yearly Income or Salary Voted to M.P. out of the Public Funds — Irish Member a Bankrupt when Elected.]—The respondent, a bankrupt on his own petition, was elected M.P. for an Irish constituency, and received the 400*l.* a year voted to be paid to Members of Parliament by resolution of the House of Commons. The appellant, as the official assignee in his bankruptcy, obtained an order in the King's Bench (Bankruptcy) Ireland, that the respondent should, out of his Parliamentary salary, pay 200*l.* a year to the appellant for the benefit of his creditors:—*Held*, that the payment to members was not in the nature of a dole, and was attachable for the benefit of creditors. Difference between Irish and English bankruptcy law on this point considered and explained. *Hollinshead* v. *Hazleton*, 60 S. J. 139—H.L. (Ir.)

National Insurance—Panel Doctor's Fees—Public Policy.]—Where an insurance committee under the National Insurance Act, 1911, has received from the National Insurance Commissioners funds for distribution among the doctors on the panel, there is a debt due and accruing to each of the doctors who have done the work, and such debt may be attached by garnishee proceedings inasmuch as it is not against public policy that it should be attachable. *O'Driscoll* v. *Manchester Insurance Committee*, 84 L. J. K.B. 734; [1915] 1 K.B. 811; [1915] W.C. & I. Rep. 263; 112 L. T. 594; 59 S. J. 235; 31 T. L. R. 103—Rowlatt, J. Affirmed, 85 L. J. K.B. 83; [1915] 3 K.B. 499; 113 L. T. 683; 79 J. P. 553; 13 L. G. R. 1156; 59 S. J. 597; 31 T. L. R. 532—C.A.

2. Practice.

See also Vol. I. 889, 1172.

Debenture-holder — Judgment Creditor — No Appointment of Receiver—Garnishee Order—Priority.]—The plaintiff, a creditor of the defendant company, having recovered judgment against them, obtained on April 24, 1909, a garnishee order *nisi* against the company's bankers attaching the sum of 61*l.* On May 14 following, the claimant, who was a debenture-holder of the defendant company, and who had given them notice to pay off the debenture, gave notice to the plaintiff, the company, and the bank, claiming to be entitled to the sum which the plaintiff had garnished. The claimant did not, however, obtain the appointment of a receiver or take any other step to enforce his security:—*Held*, that the plaintiff was entitled to have the garnishee order *nisi* made absolute. *Evans* v. *Rival Granite Quarries Co.*, 79 L. J. K.B. 970; [1910] 2 K.B. 979; 18 Manson, 64; 54 S. J. 580; 26 T. L. R. 509—C.A.

Garnishee Order—No Cause Shewn by Garnishee Owing to Mistake—Order Absolute—Jurisdiction to Set Aside Order.]—The plaintiff had obtained a garnishee order attaching a debt alleged to be due to the defendant by a county council and calling on the county council to shew cause why it should not be paid to the plaintiff. This order was served on the county council. Prior to the date of the order the debt had been assigned for value by the defendant to third parties, and notice of the assignment given to the county council. Owing to a mistake on the part of the secretary of the county council, no cause was shewn against the conditional order and it was made absolute:—*Held*, that the Court had jurisdiction to set aside the absolute order, and that in the special circumstances it should be set aside. *O'Brien* v. *Killeen*, [1914] 2 Ir. R. 63—K.B. D.

Judgment Debt Payable on a Certain Date—Issue of Garnishee Proceedings before that Date — Judgment "Unsatisfied."] — A judgment in the ordinary County Court form adjudging that the plaintiff recover from the defendant a certain sum, and ordering that the defendant pay that sum to the Registrar of the Court on a specified future date, cannot, before that date has arrived, be properly described as "still unsatisfied" within the meaning of Order XXVI. rule 1 of the County Court Rules, 1903-1909, and therefore the plaintiff is not, before that date, entitled under that rule to take garnishee proceedings for the purpose of obtaining payment to him of a debt due from another person to the defendant. *White* v. *Stenning*, 80 L. J. K.B. 1124; [1911] 2 K.B. 418; 104 L. T. 876; 55 S. J. 441; 27 T. L. R. 395—C.A.

II. ATTACHMENT OF PERSONS.

See also Vol. I. 892, 1174.

Wilful Disobedience to Restraining Order—No Limit of Time in Judgment.]—The Court granted an injunction restraining the defendant in the action from residing in the house of the plaintiff. No time was limited by the judgment within which the terms of the injunction were to be complied with, nor was there any memorandum of indorsement on the copy of the judgment served on the defendant, as provided by the Irish Order XLI. rule 4 [corresponding to the English Order XLI. rule 5]. The defendant, in disobedience to the injunction, continued to reside in the

house of the plaintiff :—*Held*, that Order XLI. rule 4 [Order XLI. rule 5] did not apply to a prohibitive order of the kind, and that the defendant should be attached for his disobedience. *Murphy* v. *Willcocks*, [1911] 1 Ir. R. 402—Barton, J.

Grounds of Application—Service.]—Upon motion for attachment against two directors of a company, for disobedience to an order appointing a receiver of certain profits of the company, the grounds of the application must be stated in accordance with Order LII. rule 4; it is not sufficient compliance with the rule merely to serve a copy of the order of Court with the notice of motion. The order might be disobeyed in several ways, and the particular breach alleged must be specified. *Brammall* v. *Mutual Industrial Corporation*, 84 L. J. Ch. 474; 112 L. T. 1071; 59 S. J. 382—Astbury, J.

Limited Company—Rule Nisi—Infliction of Fine.]—Where a rule *nisi* has been granted calling upon a limited company to shew cause why a writ of attachment should not issue against it for contempt of Court, the company, though incapable of being imprisoned, may in a proper case be punished by the infliction of a fine. *Rex* v. *Hammond & Co.; Robinson, Ex parte*, 83 L. J. K.B. 1221; [1914] 2 K.B. 866; 111 L. T. 206; 58 S. J. 563; 30 T. L. R. 491—D.

Committal—Necessity for Service of Copy of Affidavit with Notice of Motion.] — Order LII. rule 4 does not apply to a motion to commit. Under the rule, therefore, a copy of the affidavit on which a motion to commit is founded need not be served with the notice of motion. *Taylor, Plinston & Co.* v. *Plinston*, [1911] 2 Ch. 605; 105 L. T. 615; 56 S. J. 33; 28 T. L. R. 11—C.A.

ATTORNEY-GENERAL.

See CROWN.

AUCTION AND AUCTIONEER.

See also Vol. I. 909, 1179.

Sufficiency of Memorandum.]—The plaintiff instructed an auctioneer to put up for sale by public auction the grazing of a portion of her lands for a period of six months. The auctioneer duly offered the grazing for sale, and accepted the bid of the defendant, making at the same time the following entry in his book: "Miss Crane's meadows—Bernard Naughten, 13*l.* 10*s.*":—*Held*, that if the Statute of Frauds applied to such a contract, the above note or memorandum was insufficient to satisfy the statute. *Crane* v. *Naughten*, [1912] 2 Ir. R. 318—K.B. D.

—— Sale of Land—Auction—Entry by Auctioneer of Name of Purchaser on Margin of Particulars of Sale.]—An auctioneer at a sale of land entered on the margin of his copy of the particulars and conditions of sale, against the lot, the name of the highest bidder for the lot and the amount of the bid, but there was nothing to indicate that he was the purchaser of the lot. The bidder did not sign the memorandum of agreement contained in the particulars or pay any deposit :—*Held*, that the entry by the auctioneer was not a sufficient note or memorandum in writing to satisfy the requirements of section 4 of the Statute of Frauds. *Dewar* v. *Mintoft*, 81 L. J. K.B. 885; [1912] 2 K.B. 373; 106 L. T. 763; 28 T. L. R. 324—Horridge, J.

Sale by Auction — Prior Agreement with Auctioneer as to Disposal of Proceeds of Sale—Subsequent Agreement by Seller with Purchaser to Set off Price of Goods Purchased against Debt—Refusal of Purchaser to Pay Price to Auctioneer—Action by Auctioneer to Recover Whole of Purchase Price—Equitable Defence of Set-off—Right of Purchaser to Surplus only of Total Amount Realised by Sale.] —The plaintiffs, who were auctioneers, were employed by F. to sell certain cattle for him by auction. Prior to the sale F. had given orders to certain of his creditors directing the plaintiffs to pay these creditors out of the proceeds of the intended sale, and the plaintiffs agreed to act upon these orders. Pending the sale F. had also become indebted to the plaintiffs for money lent and paid and for services rendered upon the terms that they should repay themselves out of the proceeds of the sale. The sale was held upon the condition (*inter alia*) that the price of any cattle bought was to be paid to the plaintiffs. Whilst the sale was proceeding an arrangement was entered into between F. and the defendant, to whom F. was indebted to a considerable extent, that the price of any cattle bought by the defendant might be set off against F.'s debt to the defendant, but this arrangement was not communicated to the plaintiffs either during, or directly after, the sale. The defendant bought a number of cattle at the sale, the purchase price of which exceeded the amount of F.'s debt to him, and being known to the plaintiffs was allowed to remove the cattle without having paid for them. Excluding the amount of the defendant's purchases, the plaintiffs received sufficient money to satisfy their lien for commission and charges in respect of the sale, but not sufficient to pay F.'s creditors or their own debt; but, including the amount of the defendant's purchases, the sale realised sufficient to satisfy all claims, leaving a small surplus. The defendant having refused to pay the plaintiffs the price of the cattle which he had bought, upon the ground that he was entitled to rely on the arrangement with F. as to set-off, the plaintiff brought an action to recover the whole of the price of the cattle bought by the defendant. Before action the defendant ten-

dered and subsequently paid to the plaintiffs the difference between the amount of F.'s debt to him and the price of the cattle which he had bought:—*Held*, that the defendant was not entitled, under the circumstances, to set up as an equitable defence to the plaintiffs' claim the arrangement as to set-off made between him and F., inasmuch as such arrangement could not defeat the previous agreement between F. and the plaintiffs as to the disposition of the proceeds of the sale, on the faith of which agreement the plaintiffs had acted, and that the defendant was only entitled to be paid by the plaintiffs the surplus remaining after deducting from the total amount realised by the sale the debts owing to the other creditors, as well as what was owing to the plaintiffs in respect of F.'s debt to them and their commission and charges for conducting the sale, this surplus being the only amount which the plaintiffs would have been bound to pay over to F. *Manley* v. *Berkett*, 81 L. J. K.B. 1232; [1912] 2 K.B. 329—Bankes, J.

Sale by Auction—Auctioneer Intending to Sell one Commodity—Purchaser Intending to Bid for a Different Commodity — Parties to Sale not ad Idem—Validity of Contract.]—The plaintiffs employed an auctioneer to sell a quantity of Russian hemp and tow, samples of which were on view at certain show rooms. The catalogue prepared by the auctioneer contained the shipping mark "S.L." and the numbers of the bales in two lots, one being hemp and the other tow, but the catalogue did not disclose this difference in the nature of the commodity. At the show rooms bales from each lot were on view, and on the floor in front of the bales was written in chalk "S.L. 63 to 67" opposite the samples of hemp, and "S.L. 68 to 79" opposite the samples of tow. The defendants' manager inspected the samples of hemp, but not the samples of tow. The defendants' buyer bid for the first lot, which was knocked down to him. He then bid for the second lot, the tow, under the belief that it was hemp, and it was knocked down to him. In an action brought by the plaintiffs to recover the price of the tow, the jury found that the auctioneer intended to sell tow; that the defendants' buyer intended to bid for hemp; that the auctioneer believed that the bid was made under a mistake, but that the mistake was merely as to value; that the form of the catalogue and the negligence of the defendants' manager in not more closely examining and identifying the goods contributed to the mistake:—*Held*, that the parties were never *ad idem* as to the subject-matter of the alleged sale; that there was therefore no valid contract, and that the plaintiffs were not entitled to recover. *Scriven* v. *Hindley*, 83 L. J. K.B. 40; [1913] 3 K.B. 564; 109 L. T. 526—A. T. Lawrence, J.

Apprentice of Auctioneer.]—*See* APPRENTICE.

AUDITOR.

See COMPANY.

AUSTRALIA.

See COLONY.

AUTHOR.

See COPYRIGHT.

AUTREFOIS ACQUIT AND CONVICT.

See CRIMINAL LAW.

AVERAGE.

See SHIPPING.

AWARD.

See ARBITRATION.

BAILMENT.

See also Vol. I. 940, 1185.

Wharfinger—Lighterman—Loss of Goods while in Custody of Bailee—Proof of Negligence on Part of Bailee—Causal Connection between Negligence and Loss — Burden of Proof — Terms of Contract of Lighterage — Exemption from Liability — "Loss of or damage to goods however caused which can be covered by insurance."] — The defendant, who was a wharfinger, contracted to lighter goods of the plaintiffs from a vessel lying in the Thames to a wharf. By the terms of the contract the defendant was not to be responsible "for any loss of or damage to goods however caused which can be covered by insurance." The defendant's barge with the goods on board was lying at the wharf, when, in the absence of the man whose duty it was to look after the barge, from some unexplained cause the barge was submerged and part of the goods was washed away and part damaged. The plaintiffs having brought an action to recover damages for negligence, Pickford, J., at the trial found that there had been negligence on the part of the defendant's servant, but he gave judgment for the defendant on the ground that the plaintiffs had failed to shew that that

negligence was the cause of the loss :—*Held*, by the Court of Appeal, that, the defendant being bailee of goods, and the goods having been lost while in the custody of the defendant, and the plaintiffs having proved negligence on the part of the defendant which might have contributed to the loss, the burden was on the defendant to shew that the negligence was not the cause of the loss. But *held* (Buckley, L.J., dissenting), that the defendant was entitled to retain the judgment in his favour on the ground that by the terms of the contract he was relieved from liability for negligence. *Price & Co.* v. *Union Lighterage Co.* (73 L. J. K.B. 222; [1904] 1 K.B. 412) distinguished. *Travers & Sons, Lim.* v. *Cooper*, 83 L. J. K.B. 1787; [1915] 1 K.B. 73; 111 L. T. 1088; 20 Com. Cas. 44; 30 T. L. R. 703—C.A. Affirming, 12 Asp. M.C. 444—Pickford, J.

Warrants for Cargo — Owners' Request to Warehousemen to Issue Warrants—Lighterage by Owners — Sale — Damage to Cargo — Liability of Warehousemen to Purchasers — Indemnity from Owners.] — The plaintiffs agreed with the defendants to store a cargo of wheat which belonged to the defendants and was on board a steamer in dock. The defendants employed the lightermen, and after a small portion had been delivered to the plaintiffs the defendants requested the plaintiffs to issue three warrants for the wheat on the steamer and to make them deliverable to the defendants or their indorsees, in order that the defendants might sell the wheat. The plaintiffs made out the warrants and the defendants sold the wheat, but when it was delivered to the purchasers it was found to be unsound, owing to the leakiness of a barge and exposure to weather, and consequently the plaintiffs became liable to the purchasers for damages for failure to satisfy their warrants to deliver sound wheat. In an action by the plaintiffs against the defendants for an indemnity :—*Held*, that as the plaintiffs had issued the warrants at the request of the defendants, there was an implied contract by the defendants to indemnify the plaintiffs for loss to which the plaintiffs were subjected in consequence of their having issued the warrants, and that the plaintiffs were entitled to the indemnity claimed. *Groves* v. *Webb*, 31 T. L. R. 548—Scrutton, J.

Pony Left in Custody of Vendor — Injury Caused to Pony—Vendor Unable to Explain how Injuries Occurred—Liability of Vendor.] —An agreement was made for the purchase of a pony by the plaintiff from the defendants, and it was arranged that the pony should be left in the custody of the defendants for some days. While the pony remained in the custody of the defendants it was injured, and the plaintiff claimed to recover damages in respect thereof. The defendants did not shew how the injuries were caused or establish that they had taken reasonable care of the pony :—*Held*, that the defendants were liable, inasmuch as they were, as gratuitous bailees, under an obligation to take such care of the pony as a reasonably prudent owner would take of his own property, and they had failed to shew that they had taken such care of the pony. *Wiehe* v. *Dennis*, 29 T. L. R. 250—Scrutton, J.

Shares—Right to Delivery to Owner—Position of Bailee.]—The plaintiff, a British subject, instructed his London bankers to transfer certain shares to the defendants "to the order of" a German bank, which had arranged to transfer them to New York. The shares were accordingly handed over to the defendants "to the order of" the German bank, but the latter failed to give directions for their transfer to New York, and when war broke out between England and Germany the shares were still in the defendants' hands. The plaintiff claimed them back from the defendants and brought an action for their delivery to him. The German bank had no lien upon the shares :—*Held*, that as the plaintiff had a right, as against the German bank, to the delivery of the shares, the defendants were bound to hand them over to the plaintiff. *Wetherman* v. *London and Liverpool Bank of Commerce*, 31 T. L. R. 20—Scrutton, J.

Goods Claimed by Person other than Bailor —Order of Magistrate to Deliver up Goods—Duty of Bailee to Give Notice of Claim to Bailor — Negligence of Bailee.] — A married woman, who had been deserted by her husband, deposited some goods and chattels, which were her own property, with the defendant to warehouse for her for reward. A short time afterwards the husband claimed the goods from the defendant, who refused to give them up without the consent of the wife or a magistrate's order. A representative of the defendant accompanied the husband to a police Court, and, when the husband applied to the magistrate for a summons, the representative informed the magistrate that the goods had been deposited with the defendant by the wife. The magistrate granted a summons, and at the hearing four days afterwards made an order under section 40 of the Metropolitan Police Courts Act, 1839, for delivery up of the goods by the defendant to the husband, who thereupon removed the goods. The defendant, although he knew the wife's address, did not inform her of the claim made by her husband to the goods, or of the summons, until after the order had been made. The wife sued the defendant to recover possession of the goods or their value. The County Court Judge directed the jury that the defendant would be responsible to the plaintiff for the loss if he by his negligence allowed the order to be made without giving any notice to the plaintiff. The jury found that the magistrate's order was obtained through the negligence of the defendant, and the County Court Judge gave judgment for the plaintiff :—*Held*, that judgment had been rightly given for the plaintiff. *Ranson* v. *Platt*, 80 L. J. K.B. 1138; [1911] 2 K.B. 291; 104 L. T. 881—C.A.

Money Wrongfully Appropriated—Ratification of Wrongful Act by True Owner — Liability to Refund.]—A volunteer receiving money, belonging to another, from a person who has obtained such money by a wrongful

act, made rightful by imputed consent, resulting retrospectively from such ratification, cannot hold the money as against the true owner. Such volunteer is liable, like the person from whom he obtained the money, and cannot be in a better position than he would have been in had the person, through whom the money was obtained, been the agent of the true owner to apply the money to a specific purpose other than that of giving it to such volunteer. *Lyons* v. *O'Brien*, [1911] 2 Ir. R. 539—K.B. D.

Warehousemen—Lien—General Lien.] — A company imported frozen meat from Australia to England. The plaintiffs procured a credit for the company with a bank by putting their names as drawers on bills of exchange drawn on the company, which the bank discounted. With the money thus raised the plaintiffs paid for frozen meat shipped from Australia to England under bills of lading which made the meat deliverable to the order of the company. These bills of lading were pledged with the bank as security for the bills of exchange being met. The meat when landed in this country was, by arrangement with the bank, stored by the company with the defendants, whose landing receipts contained the following condition: "Goods are only received subject to a general lien for all charges accrued and accruing against the storer or for any other moneys due from the owners of the goods. . . ." The company having failed to meet certain of the bills of exchange, the plaintiffs, as drawers of the bills, had to pay them. The plaintiffs then received the bills of lading from the bank and claimed delivery of the meat from the defendants:—*Held*, that as the bank consented to the storage of the meat with the defendants upon terms which included a general lien, the defendants were entitled to enforce as against the plaintiffs, as succeeding to the rights and obligations of the bank, their general lien on the meat in their store for the whole of the charges due to the defendants from the company. *Jowitt* v. *Union Cold Storage Co.*, 82 L. J. K.B. 890; [1913] 3 K.B. 1; 108 L. T. 724; 18 Com. Cas. 185; 57 S. J. 560; 29 T. L. R. 477—Scrutton, J.

BAKER.

See also Vol. I. 972, 1190.

Sale of Bread Otherwise than by Weight—Sale of Loaf of Common Shape—Loaf Put in Bag — Notice on Bag that Loaf Weighed 1¾ lb.—Notice not Brought to Attention of Purchaser.] — By section 4 of the London Bread Act, 1822, all bread sold within the limits of the Act must be sold by weight, and any baker or seller of bread selling or causing to be sold bread "in any other manner than by weight" is subject to a penalty. The appellants' servant, who was in charge of a baker's cart, was asked for a loaf of bread, for which the purchaser paid 2¾*d.* The servant put a loaf of bread into a bag on which was printed a notice that the appellants sold the loaves as weighing 1¾ lb. He did not weigh the loaf, nor was he asked by the purchaser to do so. The purchaser was not told the exact weight of the loaf, nor was his attention called to the notice on the bag, and the purchaser, who had not previously bought bread of the appellants, never read it. The purchaser, however, expected to receive a 2 lb. loaf, the current price of which in that neighbourhood was 2¾*d.* The loaf which he received was of a common shape sold by every baker. The loaf when weighed by the respondent was found to weigh nearly three ounces short of two pounds. The practice at the appellants' bakery was for the dough to be weighed at 2 lb. 3 oz. before baking, and after baking each loaf was weighed at a weight well over 1¾ lb. The loaf that was sold had been weighed that morning before leaving the bakery:—*Held* (Lush, J., dissenting), that, as the bread was not weighed at the time of sale nor the notice on the bag brought to the attention of the purchaser, the bread was not sold by weight, in accordance with the London Bread Act, 1822, notwithstanding that the loaf had been weighed before it left the appellants' bakery. *Held* further, that the Justices were entitled, on the evidence, to hold that an offence had been committed, as selling by weight within the Act of 1822 means selling by the true weight of the bread sold. *Lyons & Co.* v. *Houghton*, 84 L. J. K.B. 979; [1915] 1 K.B. 489; 112 L. T. 771; 79 J. P. 233; 13 L. G. R. 605; 31 T. L. R. 135—D.

Sale of Bread—Delivery by Bicycle—Duty to Carry Beam and Scales—"Carriage."] — By the Bread Act, 1836, s. 7, "Every baker or seller of bread . . . and every journeyman, servant, or other person employed by such baker or seller of bread, who shall convey or carry out bread for sale in and from any cart or other carriage, shall be provided with and shall constantly carry in such cart or other carriage a correct beam and scales with proper weights . . . in order that all bread sold by every such baker or seller of bread, or by his or her journeyman, servant, or other person, may from time to time be weighed in the presence of the purchaser or purchasers thereof . . .; and in case any such baker or seller of bread, or his or her journeyman, servant, or other person, shall at any time carry out or deliver any bread without being provided with such beam and scales with proper weights . . . then and in every such case every such baker or seller of bread shall for every such offence" be liable to a penalty. The appellant, a baker, sent out one of his servants to deliver bread on a bicycle to which was attached by means of a strap a basket containing loaves. The appellant's servant sold one of the loaves to a purchaser, but not having been provided with scales and weights was unable to weigh it. Upon an information under the above enactment, the Justices convicted the appellant:—*Held*, that there was evidence on which the Justices were entitled to find that the bicycle and basket, as used by the appellant's servant, was a "carriage" within the meaning of section 7, and that the conviction

must therefore be affirmed. *Pollard* v. *Turner*, 82 L. J. K.B. 30; [1912] 3 K.B. 625; 107 L. T. 792; 77 J. P. 53; 11 L. G. R. 42; 23 Cox C.C. 233; 29 T. L. R. 34—D.

Obligation to Carry Weights Suited to Weigh the Bread Purported to be Sold.] — The respondent carried out for sale in his cart loaves each of which was reputed to weigh 2 lb. To enable him to weigh the bread he was provided with a beam-scale and a 2 lb. weight only, and if a customer asked for a loaf to be weighed and it was found to be under 2 lb. his custom was to cut off and supply a piece from another loaf sufficient to make up the weight to 2 lb. :—*Held*, that the respondent had contravened section 7 of the Bread Act, 1836, in failing to carry with him proper weights which would shew the exact weight of the bread he purported to sell. *Turner* v. *Holder*, 80 L. J. K.B. 895; [1911] 2 K.B. 562; 105 L. T. 34; 9 L. G. R. 979; 75 J. P. 445; 22 Cox C.C. 484; 27 T. L. R. 472—D.

Sale from Van on Road.]—Section 4 of the Bread (Ireland) Act, 1838, which requires that all bread (with certain exceptions) sold in Ireland shall be sold by weight only, and not by measure, applies to sales from a van on the public road as well as to sales in a shop. A prosecution for an offence under the section may be brought by a common informer. *Rigney* v. *Peters*, [1915] 2 Ir. R. 342—K.B. D.

BANK OF ENGLAND.

See BANKER.

BANKER AND BANKING COMPANY.

I. BANK OF ENGLAND.

See also Vol. I. 979, 1193.

Poor Rate — General Rate — Local Acts — Special Provisions—Whether Still Applicable.] —Under the local Acts by virtue of which the Bank of England acquired its property in the late parish of St. Christopher-le-Stock, in the City of London, the Bank is no longer entitled to a partial exemption from either the poor rate or the general rate, but is liable to be charged to these rates in the same way as an ordinary ratepayer. *Bank of England* v. *London Corporation*, 85 L. J. K.B. 47; 112 L. T. 1088; 13 L. G. R. 1369; 31 T. L. R. 197—D.

II. OTHER BANKERS.

See also Vol. I. 989, 1195.

Power of Building Society to Carry on Banking Business.]—*See* Building Society.

III. CUSTOMERS' ACCOUNTS.

1. Relation to Customer.

See also Vol. I. 1007, 1195.

Account at Branch of a Bank Abroad — Demand for Payment at Branch in this Country — Refusal to Pay — Claim by Customer against Bank.]—The plaintiffs had a current account with the Berlin branch of the defendant bank, the head office of which was in Germany, and which also had a branch in London. Without having applied to the Berlin branch of the bank for payment of the amount standing to their credit, the plaintiffs demanded payment of the sum in question from the branch in London, and upon payment being refused brought an action to recover the sum due :—*Held*, that the plaintiffs, having made no demand for payment from the Berlin branch, were not entitled to demand payment of the sum standing to their credit there from the London branch. *Clare & Co.* v. *Dresdner Bank*, 84 L. J. K.B. 1443; [1915] 2 K.B. 576; 113 L. T. 93; 21 Com. Cas. 62; 31 T. L. R. 278—Rowlatt, J.

Foreign Bank—English Customer—Request for Remittances — Procurability of Drafts on London — Obligations of Bank.] — The plaintiffs, an English company, had before the war an account in Berlin with the defendants, a German banking company, which had its head office in Berlin and a branch in London. The plaintiffs were in the habit of requesting the defendants to send a named sum to London by cheque, and the defendants then sent a cheque in sterling usually on their London branch, charging brokerage and the cost of the cheque stamp and debiting the plaintiffs' account with marks calculated at the exchange of the day. On July 29, 1914, the plaintiffs had nearly 5,000*l.* to their credit, and wrote to the defendants a letter asking for 4,000*l.* by a cheque on London. On July 31 the defendants telegraphed to the plaintiffs that they could not send the remittance as no rate of exchange had been fixed that day. In an action by the plaintiffs to recover from the defendants the 4,000*l.*, the evidence was that it was the invariable course of business for banks requested to remit money from one country to another to cover their remittances by purchasing exchange, drafts, or cheques

payable in the foreign country, so as to provide funds to meet their drafts. After the outbreak of war on August 4, 1914, the defendants' London branch was not allowed by the British Government to pay any draft on them by the head office if it were sent :—*Held*, that no inference could be drawn from the course of business that the defendants were under an absolute obligation to remit on request by the plaintiffs a cheque in English sterling currency, if when the request arrived no exchange was procurable in Berlin and no drafts on London could be purchased, but that the defendants were merely under an obligation to use reasonable care to purchase and forward remittances to London at the plaintiffs' risk and expense, and that the case should be adjourned to give the defendants an opportunity of proving that drafts on London could not be purchased on July 31, 1914. *Leete & Sons, Lim. v. Disconto Gesellschaft*, 32 T. L. R. 158—Scrutton, J.

Money Paid under Mistake of Fact — Liability of Banker to Refund.]—The position of a banker does not differ from that of any other recipient of money acting as factor or agent; and money paid to a banker under a mistake of fact can be successfully redemanded from the banker by the person who so paid it. *Kerrison* v. *Glyn, Mills, Currie & Co.*, 81 L. J. K.B. 465; 105 L. T. 721; 17 Com. Cas. 41; 56 S. J. 139; 28 T. L. R. 106—H.L. (E.)

The appellant, who lived in England, was the English manager of a mine in Mexico. By a system of revolving credit, he agreed to pay to the respondents moneys paid to the New York bankers of the mine. For this purpose he had paid 500*l.* to the respondents. The New York bank stopped payment, and the appellant immediately demanded repayment of the 500*l.* The New York bank was largely indebted to the respondents, who claimed to retain the 500*l.* :—*Held*, that the appellant was entitled to be repaid the 500*l.* *Ib.*

Decision of the Court of Appeal (15 Com. Cas. 241) reversed. *Ib.*

Deposit Receipt—Transfer of Beneficial Interest.] — In order to transfer the beneficial interest in a deposit receipt, a written assignment is unnecessary. It is sufficient if the deposit receipt is surrendered to the bank, and a new deposit receipt taken out, with intent to pass the beneficial interest, in the names of the persons to whom the depositor intends to pass the beneficial interest. *McEneaney* v. *Sherlin*, [1912] 1 Ir. R. 32—Ross, J. Affirmed, [1912] 1 Ir. R. 278—C.A.

S., the owner of a deposit receipt for 900*l.*, surrendered the same to the bank, and directed a new deposit receipt to be made out in the names of himself, and his two nephews, with the intention that the interest in the same should at his own death pass to his nephews. S. subsequently died :—*Held*, that there had been an effectual transfer of the beneficial interest, and that at the death of S. the same passed to the two nephews. *Ib.*

—— **Payment to Wrong Person Induced by Fraud — Liability to make Repayment to Depositor.**] — A, who had placed 100*l.* on deposit receipt with a Scottish bank wrote from abroad to the bank requesting them to pay 60*l.* out of the 100*l.* to his brother (who was unknown to the bank) on presentation of the indorsed receipt. At the same time A wrote to his brother, inclosing the indorsed receipt, and also inclosing a letter addressed to the bank in similar terms to the letter sent direct to them. The letter sent to the bank was duly delivered, but the letter to the brother was stolen in the course of post. Thereafter a person, pretending to be the brother, presented the indorsed receipt and letter to the bank, and after having been required to indorse the receipt himself, which he did in the brother's name, received payment of the money. A having brought an action against the bank for payment of the amount to himself, the defenders pleaded that, having paid the sum to the person having A's authority to receive it, they were not liable :—*Held*, that the bank, being authorised to pay the money only to A's brother and having in fact paid it to some one else, were liable to A. *Wood* v. *Clydesdale Bank*, [1914] S. C. 397—Ct. of Sess.

—— **Deposit in Joint Names of Father and Daughter—Presumption of Resulting Trust Rebutted.**] — Where money is placed on deposit by a father in the joint names of himself and his daughter, and to be paid out to the survivor, the relationship of father and child, in the absence of special circumstances, rebuts the ordinary presumption of a resulting trust for the owner, and raises the presumption that the child was meant to take beneficially if she survived her father. *Warwick, In re; Warwick* v. *Chrisp*, 56 S. J. 253—Parker, J.

Bankers and Brokers Holding Property of Foreign Lunatic — Refusal to Transfer Property to Provisional Administrator Appointed by Foreign Court without Order of English Court—Right to Costs.]—The defendants held securities and moneys on behalf of a domiciled Frenchman who had had business relations with them as bankers and stockbrokers respectively. He became of unsound mind, and P. was appointed provisional administrator of his property by the French Court. P. requested the defendants to transfer the property to him, offering to prove the orders of the French Court appointing him administrator in any manner satisfactory to the defendants; but they declined to transfer the property without an order of an English Court :—*Held*, that the case was governed by *Didisheim* v. *London and Westminster Bank* (69 L. J. Ch. 443; [1900] 2 Ch. 15), and that in view of that decision the defendants had shewn an undue and unreasonable excess of caution in the attitude which they had assumed, and were not entitled to costs in proceedings by P. and the lunatic for an order for the delivery of the property to P. *Pélégrin* v. *Coutts & Co.*; *Pélégrin* v. *Messel & Co.*, 84 L. J. Ch. 576; [1915] 1 Ch. 696; 113 L. T. 140—Sargant, J.

Money Placed with Bank for Agent's Use—Determination of Agency—Right of Principal to Claim Balance.]—Principals placed money in a bank to be used by their agent for the purposes of the business. The bank paid the money into an account which they opened in the name of the agent, and on the revocation of the agency refused to transfer the balance to the principals:—*Held*, that the instructions given by the principals to the bank, as appearing from the correspondence between them, were not to open an account in the name of the agent, but to hold the money for the principals with leave to the agent to draw upon it, and that the principals were entitled to recover the balance from the bank. *Société Coloniale Anversoise* v. *London and Brazilian Bank*, 80 L. J. K.B. 1361; [1911] 2 K.B. 1024; 105 L. T. 658; 17 Com. Cas. 1; 28 T. L. R. 44—C.A.

Creditor's Suspicion that Debtor Guilty of Forgery — Obligation to Inform Surety.]—In security for advances to be made by a bank to a customer, the customer's father-in-law in 1899 guaranteed payment of the premiums on certain policies of insurance assigned to the bank, and payment of interest on an account for advances to the customer. In December, 1906, circumstances came to the knowledge of the manager of the bank which afforded ground for the strongest suspicion, short of actual proof, that the customer had forged a bill for 3,000*l*. That information was not communicated to the surety, and the bank continued to deal with the customer (though without making any further advances to him) until November, 1907, when his estates were sequestrated. He was shortly afterwards convicted on his own confession of several acts of forgery, but it was never ascertained whether or not he had forged the bill for 3,000*l*. The liability of the surety under the guarantee was no greater in November, 1907, than it had been in December, 1906. The surety having repudiated liability under the guarantee, on the ground that the bank should have communicated their suspicions to him in December, 1906,—*Held*, that in the circumstances, there was no duty on the bank to communicate their suspicions, and that the surety was not freed from his liability. *Bank of Scotland* v. *Morrison*, [1911] S. C. 593—Ct. of Sess.

Guarantee of Bank Overdraft to Agent of Guarantor — Alleged Misappropriation of Money by Agent—Suspicions of Bank—Non-communication to Guarantor — Release of Guarantor.]—The defendant guaranteed the payment of all sums due on any account from C. to a bank up to 5,000*l*. C. was at that time the agent of the defendant's estate and the guarantee was given in order to raise money to be expended for the benefit of the estate. C., however, without the knowledge of the defendant, opened another account with the bank by means of the guarantee, the money so advanced by the bank on the security of the guarantee being used by C. for other purposes than those of the defendant's estates. The defendant alleged that the bank knew or ought to have known that C. was misappropriating the money, and that as they did not communicate their suspicions to him he was discharged from his guarantee:—*Held*, that the defendant had not proved that the bank had suspicions that C. was defrauding him, and that therefore he was not discharged from his guarantee. *Held*, further, that even if the bank were suspicious that C. was defrauding the defendant they were under no duty to communicate their suspicions to the defendant. *National Provincial Bank of England* v. *Glanusk (Baron)*, 82 L. J. K.B. 1033; [1913] 3 K.B. 335; 109 L. T. 103; 29 T. L. R. 593—Horridge, J.

Bank of Scotland v. *Morrison* ([1911] S. C. 593) followed. *Ib.*

Letter of Guarantee—Payment by Surety to Creditor before Bankruptcy of Debtor — Amount for which Creditor Entitled to Rank on Bankrupt's Estate.]—A. granted to a bank a letter of guarantee whereby he guaranteed due payment of all sums for which M. was or might become liable to the bank, the amount, however, for which A. could be called upon to pay not to exceed 2,500*l*. and interest. After the guarantee had been in existence for over four years, A., wishing to terminate his liability, paid to the bank the whole sum for which he was liable at that date—namely, the principal sum of 2,500*l*., together with 300*l*. of interest. The bank thereupon delivered up to A. the letter of guarantee with a receipt for the payment indorsed on it containing a reservation of the bank's right to claim on the estate of M. for the full amount of his indebtedness to it. A. had obtained the whole sum which he paid to the bank, with the exception of 400*l*., by realising property belonging to M. which had been assigned to him in security for the sums due under his guarantee; and on receiving back from the bank the letter of guarantee he destroyed it. The bank placed the money received from A. in a special account in name of its agent, and treated the interest on it as extinguishing *pro tanto* the interest falling due to the bank on the principal debt. A year and a half afterwards M. became bankrupt, and the bank claimed on his estate for the full amount of his indebtedness to it without deducting the sums paid by A.:—*Held*, that the payment by A. having been made before the bankruptcy of M., the bank was only entitled to rank on M.'s estate for the balance of the principal debt after deduction of that payment. *Commercial Bank of Australia* v. *Wilson* (62 L. J. P.C. 61; [1893] A.C. 181) considered and distinguished. *Mackinnon's Trustee* v. *Bank of Scotland*, [1915] S. C. 411—Ct. of Sess.

2. Pledge and Mortgage of Securities.

See also Vol. I. 1018, 1200.

Pledge of Certificates—Blank Transfer—Estoppel.]—The plaintiff employed a firm of stockbrokers to buy for him shares in a Colonial railway, and the brokers did so. The shares were registered in the name of one H., the certificates were in his name, and the transfers on the back had been signed by him in blank. On the brokers' suggestion the

plaintiff left the certificates with them and subsequently consented to the shares being put into other names. The brokers deposited the shares with the defendant bank as security for loans, and at the broker's request the shares were put in the names of the bank's nominees. The defendant bank took the shares in good faith. In an action by the plaintiff against the defendant bank to recover the share certificates :—*Held*, that the bank was not put upon enquiry by the mere fact of the brokers depositing the shares as security for their own account, that the transfer from H.'s name was not an intimation to the bank that the shares did not belong to the brokers and did not put the bank upon enquiry, that the principle of *Colonial Bank* v. *Cady* (60 L. J. Ch. 131; 15 App. Cas. 267), that any one who signs a transfer on a certificate in blank and hands it to another person knows that third persons would think that that person had authority to deal with it, extends to a person who without having had such a certificate in his possession leaves it in the hands of his broker, and that therefore the plaintiff was estopped from recovering the certificates from the defendants. *Fuller* v. *Glyn, Mills, Currie & Co.*, 83 L. J. K.B. 764; [1914] 2 K.B. 168; 110 L. T. 318; 19 Com. Cas. 186; 58 S. J. 235; 30 T. L. R. 162—Pickford, J.

Bearer Bonds Deposited by Bill Broker as Security for Loan—Re-delivery of Bonds by Banker in Exchange for Cheque — Whether Bonds Impressed with Trust in Favour of Banker until Cheque Honoured.]—The plaintiff bankers lent money on bearer bonds to a firm of bill brokers. They called in these loans, and, in accordance with the general practice in such cases, the bill brokers on the morning that the loans were repayable went to the plaintiffs, gave each of them a cheque for the amount of the call, and received in exchange the bonds that had been deposited as security. The cheques having been dishonoured, the plaintiffs sued the defendants, who had received in the course of the same day the bonds in question from the bill brokers, the plaintiffs alleging that the bonds were impressed with a trust in their favour until the cheques were honoured :—*Held*, that it was repugnant to the nature of negotiable instruments to impress them with a vendor's lien or an implied trust, and that therefore the plaintiffs' claim could not be sustained. *Burra* v. *Ricardo* (1 Cab. & E. 478) questioned. *Lloyds Bank* v. *Swiss Bankverein; Union of London and Smiths Bank* v. *Same*, 108 L. T. 143; 18 Com. Cas. 79; 57 S. J. 243; 29 T. L. R. 219—C.A.

Decision of Hamilton, J. (28 T. L. R. 501; 17 Com. Cas. 280), affirmed. *Ib.*

Deposit by Solicitor of his Client's Securities — Fiduciary Relationship — Notice — Enquiry.]—On September 29, 1904, the plaintiff was a customer of the Union Bank of London, where she had a current account and a loan account. On the loan account 1,900*l.* was advanced, and there were certain securities deposited to secure that amount. The plaintiff, being anxious to change her account for family reasons, consulted her solicitor, C., who had acted for her for many years. As a result, C. informed the plaintiff that he had arranged with the defendant bank to grant the loan on the same terms as she had had with the Union Bank of London, and asked her to sign certain documents in connection with the transaction. The material document was on the common printed form of the defendant bank, and was as follows : "At the request of Messrs. Rose Innes, Son, and Crick I have transferred or caused to be transferred . . ."—then the shares were mentioned and the names of the manager and sub-manager of the defendant bank—"or their nominees as trustees for you to be held as collateral security for your advance to Rose Innes, Son, and Crick." With this document C. went to the defendant bank after the securities were transferred, obtained an addition to the loan of 1,900*l.*, and effected the transfer of the securities in such a way as to make them available to secure his general indebtedness to the defendant bank, which amounted to some 16,000*l.* which he had from time to time obtained upon other securities. In the year 1911 the plaintiff required the return of her securities from C., which he promised to do, but they were never in fact returned, as C. absconded. In these circumstances the plaintiff brought this action to have her securities delivered to her by the defendant bank subject to her paying the 1,900*l.* which she admitted having received. It appeared that the general nature of the transactions between C. and the defendant bank were that advances were made by the defendant bank to C. upon securities which belonged to third parties who were clients of C. in the ordinary sense, and that this was known to the defendant bank, though in a number of cases it might be that the clients were clients in respect of a mere financial business carried on by C. independent of his solicitor's business. It was contended for the plaintiff (*inter alia*) that the defendant bank had such notice of the fiduciary relationship of C. to the plaintiff as to prevent their acting on the document :—*Held*, that there was here sufficient notice of the relationship existing or that probably existed between the plaintiff and C. to have put the defendant bank upon enquiry, and that accordingly they could not claim to be in a better position than they would have been if they had made enquiries, and that therefore the plaintiff was entitled to redeem the securities upon payment of 1,900*l.* *Jameson* v. *Union Bank of Scotland*, 109 L. T. 850—Sargant, J.

3. Appropriation and Set-off.

See also Vol. I. 1024, 1202.

Appropriation of Payments—Rule in Clayton's Case — Mortgage to Secure Current Account — Subsequent Mortgage with Notice to the Bank.]—After notice to a bank holding a security from its customer of a subsequent mortgage by the customer, the debit of the customer is struck at the date of notice; and where a current account is merely continued and no specific appropriation of fresh payments

is made, such payments are credited to the earliest items on the debit side of the account, and continue to be so credited until the first mortgage is extinguished. *Deeley* v. *Lloyds Bank* (*No.* 1), 81 L. J. Ch. 697; [1912] A.C. 756; 107 L. T. 465; 56 S. J. 734; 29 T. L. R. 1—H.L. (E.)

A customer of the respondent bank mortgaged his property to the bank to secure an overdraft limited to 2,500*l.* He then mortgaged the same property to the appellant for 3,500*l.* subject to the bank's mortgage. The bank on receiving notice of this further mortgage did not open a new account, but continued the old current account. The customer thereafter paid in moneys which at a particular date, if they had been appropriated in accordance with the rule in *Clayton's Case* (1 Mer. 572), would have extinguished the bank's mortgage. The customer's property was sold by the bank for a sum sufficient to satisfy the bank's debt, but not that of the appellant:—*Held*, that the evidence did not exclude the operation of the rule in *Clayton's Case* (1 Mer. 572), which must be applied. *Ib.*

Decision of the Court of Appeal (79 L. J. Ch. 561; [1910] 1 Ch. 648) reversed. *Ib.*

Right of Set-off.]—In 1905 a company was indebted to the appellant bank to the extent of $4,985 on current account. In that year they opened another current account with the bank on a written agreement that the bank would not appropriate any of the funds which might at any time be lying at the credit of the new account in reduction of the debt then due to the bank without the company's knowledge and consent. In 1909 the company was wound up. There was then owing to the bank $2,991 on the original account. On the second account the bank held $2,769 belonging to the company:—*Held*, that the agreement of 1905 was an ordinary business agreement intended to be operative as long as the accounts were alive, but no longer, and that there was nothing in it to exclude the right of the bank to set off the one sum against the other. *British Guiana Bank* v. *British Guiana Ice Co.*, 104 L. T. 754; 27 T. L. R. 454—P.C.

4. Pass Book.

See also Vol. I. 1045, 1206.

Cheque — Forgery by Customer's Clerk — Non-examination of Pass Book by Customer — Right of Customer to Recover.]—The clerk of a customer of a bank forged the customer's signature to three cheques and obtained payment of same from the bank. The customer claimed to recover from the bank the amounts so paid:—*Held*, that the fact that the customer did not examine his pass book when it was periodically returned to him by the bank did not preclude him from recovering. *Kepitigalla Rubber Estates* v. *National Bank of India* (78 L. J. K.B. 964; [1909] 2 K.B. 1010) followed. *Walker* v. *Manchester and Liverpool District Banking Co.*, 108 L. T. 728; 57 S. J. 478; 29 T. L. R. 492—Channell, J.

BANKRUPTCY.

A.—Act of Bankruptcy to Discharge.

B.—Property and Administration.

G.—Practice and Procedure.

A. ACT OF BANKRUPTCY TO DISCHARGE.

I. PERSONS LIABLE TO BANKRUPTCY.

See also Vol. II. 21, 1945.

Married Woman — Unsatisfied Judgment — Action on Judgment.] — Where a judgment has been given before 1913 against a married woman, execution being limited to her separate property, and no stay has been granted, and the judgment remains unsatisfied, it is open to the plaintiff to bring a fresh action on the judgment and to recover judgment thereon for the purpose of founding bankruptcy proceedings against the married woman under section 12 of the Bankruptcy and Deeds of Arrangement Act, 1913. *Semble*, however, that section 12 of that Act is retrospective so as to make such fresh action unnecessary. *Shaw* v. *Allen*, 30 T. L. R. 631 —Lush, J.

Married Woman Carrying on "a trade or business"—Negligence of Servant in Course of Trade—Liability in Tort—Business Debt.] —A married woman continues to carry on a business so long as any business debt remains unpaid, and a judgment against her in tort for a liability incurred in carrying on the business is a business debt, and is therefore available for bankruptcy proceedings against her under the Bankruptcy and Deeds of Arrangement Act, 1913, s. 12. *Allen, In re; Shaw, ex parte*, 84 L. J. K.B. 271; [1915] 1 K.B. 285; 112 L. T. 194; [1915] H. B. R. 39; 59 S. J. 130—C.A.

—— Debts Incurred before April 1, 1914—Judgment after April 1, 1914—Validity.]—A married woman carrying on a trade or business is amenable to bankruptcy proceedings under section 12 of the Bankruptcy and Deeds of Arrangement Act, 1913, in respect of a judgment obtained against her after the date on which the Act came into operation on a debt incurred by her before that date. For the purposes of the Bankruptcy and Deeds of Arrangement Act, 1913, a married woman does not cease to carry on a trade or business until all the debts incurred by her in carrying on the trade or business have been paid. *Dagnall, In re; Sloan & Morley, ex parte* (65 L. J. Q.B. 666; [1896] 2 Q.B. 407), and *Worsley, In re; Lambert, ex parte* (70 L. J. K.B. 93; [1901] 1 K.B. 309), applied. *Clark, In re; Pope, ex parte*, 84 L. J. K.B. 89; [1914] 3 K.B. 1095; 112 L. T. 873; [1915] H. B. R. 1; 59 S. J. 44—C.A.

On May 7, 1914, judgment was obtained against the debtor, who was a married woman, in respect of debts incurred by her in 1911 and 1912, and on June 4, 1914, a bankruptcy notice was issued in respect of the judgment debt. It appeared that prior to 1906 the debtor had carried on an hotel, and that she then sold it to a limited company of which she became the managing director. Soon afterwards she started a new hotel, and transferred it to the same company in 1910. In the same year she had to do with the formation of a second hotel company of which she was the managing director and the holder of the bulk of the preference shares. In June, 1912, a third hotel company was formed to acquire property, in which the debtor had acquired interests during the preceding two years, and erect an hotel thereon. It was in connection with this venture that the debtor had obtained the above-mentioned loans. It appeared from a prospectus issued by this company that the debtor had sold her interests in the property to the company for 289,000*l.*, payable in cash and shares, and that she had guaranteed the interest on an issue of preference shares during the period of construction of the proposed hotel, and had become the managing director of the company. This venture proved a failure, and the hotel had not been built. In connection with all these transactions the debtor had used a name which she had taken in 1906, and had continued to use for this purpose after her second marriage in 1910 :—*Held*, that the debtor was liable to bankruptcy proceedings under section 12 of the Bankruptcy and Deeds of Arrangement Act, 1913, as being a married woman carrying on the "business" of a company promoter; and that the bankruptcy notice was a valid notice. *Ib.*

—— Receiving Order—Judgment after April 1, 1914 — Goods Supplied Previously.] — By section 12, sub-section 2 of the Bankruptcy and Deeds of Arrangement Act, 1913, which came into operation on April 1, 1914, "Where a married woman carries on a trade or business and a final judgment or order has been obtained against her, whether or not expressed to be payable out of her separate property, for any amount, that judgment or order shall be available for bankruptcy proceedings against her by a bankruptcy notice as though she were personally bound to pay the judgment debt or sum ordered to be paid" :—*Held*, that where a married woman is carrying on business after April 1, 1914, a receiving order can be made against her upon a judgment obtained against her after that date for goods supplied to the business, although the goods were supplied before that date and the writ was issued before that date. *Hollis, In re; Lawrence, ex parte*, 112 L. T. 135; 58 S. J. 784; 30 T. L. R. 680—D.

Business Commenced before Marriage.]—A woman continued to carry on the business of a hay and corn merchant carried on by her father, who died in 1912, as his administratrix. On July 1, 1914, she sold the business and the greater part of the assets, but not including certain hay and outstanding trade debts. She married on July 25, 1914, and after the marriage the hay was sold and the outstanding debts were got in. A petition was presented by a creditor on October 27, 1914, whose debt

had been incurred before the marriage, on an act of bankruptcy which took place after the marriage :—*Held*, that, as the debtor had continued to trade after the marriage, under section 12, sub-section 1 of the Bankruptcy and Deeds of Arrangement Act, 1913, she could be made bankrupt on the debt contracted before the marriage. *Reynolds, In re; White, Lim., ex parte*, 84 L. J. K.B. 1346; [1915] 2 K.B. 186; 112 L. T. 1049; [1915] H. B. R. 174; 59 S. J. 270; 31 T. L. R. 216—C.A.

Decision of Divisional Court (31 T. L. R. 150) reversed. *Ib.*

II. ACTS OF BANKRUPTCY.

1. Assignment for Benefit of Creditors.

See also Vol. II. 27, 1947.

What Conduct Precludes Creditor from Relying on Deed as Available.]—On July 22, 1913, B. executed a deed of assignment for the benefit of his creditors, and on August 12 called a meeting of his creditors to approve the deed. At this meeting J. H., the secretary of J. S., Limited, one of the creditors, and N., solicitor for J. S., Limited, were present, but they did not vote upon the resolutions, and expressed themselves dissatisfied with the deed. Subsequently J. S., Limited, on being requested to assent to the deed, notified the trustee on September 2 that they declined to assent; and on October 18 they presented a petition against B., alleging as the act of bankruptcy the deed of July 22 :—*Held*, that there had been no assent, express or implied, on the part of the petitioning creditors, such as to disentitle them to set up the deed as an available act of bankruptcy, upon which a petition could be founded. *Held*, further, by Rowlatt, J., that, in view of the decision in *Day, In re; Hammond, ex parte* (86 L. T. 238), the case of *Carr, In re; Jacobs, ex parte* (85 L. T. 552), could no longer be relied upon as an authority for the proposition that an unexplained delay in presenting a petition might amount to acquiescence in a deed. *Beesley, In re*, 109 L. T. 910—D.

2. Execution Levied.

See also Vol. II. 83, 1951.

Seizure of Goods—Interpleader Summons—Final Order on Summons—No Interpleader Issue Ordered—Goods in Hands of Sheriff for Twenty-one Days—Allowance for Interpleader Summons—"Time elapsing."]—The words "any interpleader issue ordered thereon is finally disposed of" in the proviso to section 1 of the Bankruptcy Act, 1890, are technical, and must be construed strictly. Where, accordingly, goods were seized under a writ of *fieri facias*, and were in the hands of the sheriff, and, an interpleader summons having been taken out by him, the Master made an order by consent by which the interpleader proceedings were finally disposed of, but by which no interpleader issue was ordered,—*Held*, that this order was not equivalent to an order by which "any interpleader issue ordered thereon is finally disposed of" within the meaning of the proviso; and that accordingly the interval between the issue of the interpleader summons and the making of the order in question could not be deducted in calculating the period of twenty-one days during which the goods should be in the hands of the sheriff that was necessary in order to constitute an act of bankruptcy by virtue of section 1 on the part of the bankrupt. *Chetwynd's Trustee* v. *Boltons Library*, 82 L. J. K.B. 217; [1913] 1 K.B. 83; 107 L. T. 673; 20 Manson, 1; 57 S. J. 96—C.A.

Decision of Phillimore, J. (81 L. J. K.B. 821; [1912] 2 K.B. 520), reversed. *Ib.*

Garnishee Order Absolute Obtained by Judgment Creditor.]—The obtaining by a judgment creditor of a garnishee order absolute on a debt due to the debtor does not preclude the creditor from issuing execution, or from issuing a bankruptcy notice against the debtor; nor ought the amount of the judgment debt to be reduced by the value of the garnishee order, since a judgment creditor's right to issue a bankruptcy notice is not affected by his holding a security for the debt. *Renison, In re; Greaves, ex parte*, 82 L. J. K.B. 710; [1913] 2 K.B. 300; 108 L. T. 811; 20 Manson, 115; 57 S. J. 445—D.

Sedgwick, In re; Sedgwick, ex parte (5 Morrell, 262), and *Bond, In re; Capital and Counties Bank, Lim., ex parte* (81 L. J. K.B. 112; [1911] 2 K.B. 988), applied. *Raymond, In re; Raymond, ex parte* (9 Morrell, 108*n.*; 66 L. T. 400), distinguished. *Ib.*

3. Non-Compliance with Bankruptcy Notice.

a. Who may Issue Notice.

See also Vol. II. 84, 1952.

Bankruptcy Notice by Creditor — Creditor Himself Guilty of Act of Bankruptcy — Validity of Notice.]—A creditor who had himself committed an act of bankruptcy served a bankruptcy notice upon his debtor :—*Held* (Buckley, L.J., dissenting), that the bankruptcy notice was invalid, inasmuch as such a notice must be given by a person competent to receive and give a good discharge for the debt in respect of which the notice is given, and inasmuch as the creditor, in view of his own act of bankruptcy, was not such a person. *Debtor* (*No.* 211 *of* 1912), *In re; Debtor, ex parte*, 81 L. J. K.B. 1169; [1912] 2 K.B. 533; 107 L. T. 3; 19 Manson, 309; 56 S. J. 689—C.A.

Judgment Creditor — Stay of Execution — Receiver by Way of Equitable Execution.]—Where a judgment creditor has obtained the appointment of a receiver by way of equitable execution, but the debtor is not thereby prevented from paying the judgment debt, the existence of the receiver is not a "stay" of execution within the meaning of section 4, sub-section 1 (*g*) of the Bankruptcy Act, 1883, and the judgment creditor may serve a bankruptcy notice upon the debtor in respect of his judgment. *Bond, In re; Capital and Counties Bank, ex parte*, 81 L. J. K.B. 112; [1911] 2 K.B. 988; 19 Manson, 22—D.

A creditor who has obtained a receivership order by way of equitable execution against the debtor is not thereby precluded from issuing a bankruptcy notice during the receivership, as he would be in the case of a pending execution by *fi. fa.* *Lupton, In re; Lupton, ex parte*, 55 S. J. 717—D.

Balance of Debt Unpaid — Fresh Agreement — Dismissal of Petition — Appeal.] — A company obtained a judgment against V. for 440*l.* and 8*l.* costs on November 25, 1910, and on May 25, 1911, the debtor paid 200*l.* under the judgment. The balance remaining unpaid, the company instituted bankruptcy proceedings, and thereupon the debtor's solicitor wrote to the company on December 9, 1911, inclosing a cheque for 136*l.*: "It is understood that this payment includes your agreed costs of 20 guineas, and that the balance of debt, amounting to 149*l.* 5*s.* 6*d.*, is to be paid with interest at 10 per cent., on the 1st April next. It is further understood that the petition against Mr. V. shall be dismissed." The balance of debt was not paid on April 1, and further time was given by the company. On May 18, 1912, a further sum of 46*l.* 17*s.* was paid on account of the balance of debt and interest, and in consideration thereof the time for payment was further extended to August 6. The balance remained unpaid, and on January 1, 1913, the company issued a fresh bankruptcy notice for 105*l.* 9*s.* 8*d.*, being the amount of the balance of debt together with interest at 4 per cent. The petition was heard on March 18, 1913, and was dismissed by the Registrar on the ground that the agreement of December 9, 1911, and the payment of May 18, 1912, constituted a fresh agreement, and that a bankruptcy notice could not be issued in respect of the unpaid balance of the old judgment debt. The petitioning creditors appealed:—*Held*, that the creditors by the agreement of December 9, 1911, had not waived their judgment, but had merely postponed their recourse to it, and that, on the debtor's default in payment of the balance due on April 1, 1912, the creditors' rights revived and they were entitled to issue a bankruptcy notice for the balance of the judgment debt, and that therefore the appeal succeeded and a receiving order ought to be made against the debtor. *Vogel, In re; Anglo-Eastern Contract Co., ex parte*, 109 L. T. 325—D.

Person Entitled to Enforce Final Judgment—Charge of Interest—Leave to Issue Execution without Formal Addition of Party — Garnishee Order.]—The trustee in bankruptcy of the judgment creditor who has obtained leave under Order XLII. rule 23, to issue execution against the judgment debtor, though without having been added as a party to the action under Order XVII. rule 4, is a person entitled to enforce a final judgment within section 1 of the Bankruptcy Act, 1890. *Dicta* of Wright, J., in *Clements, In re; Davis, ex parte* (70 L. J. K.B. 58; *sub nom. Clements, In re; Clements, ex parte*, [1901] 1 K.B. 260), disapproved. *Dicta* of Court of Appeal in *Woodall, Ex parte; Woodall, in re* (53 L. J. Ch. 966; 13 Q.B. D. 479), followed. *Bagley, In re*, 80 L. J. K.B. 168; [1911] 1 K.B. 317; 103 L. T. 470; 18 Manson, 1; 55 S. J. 48—C.A.

The trustee in bankruptcy of the judgment creditor who has obtained leave as aforesaid can serve a valid bankruptcy notice on the judgment debtor in respect of the judgment debt without taking any steps to discharge a previous garnishee order absolute, the effect of the receiving order being by section 45 of the Bankruptcy Act, 1883, to put an end to a garnishee order not completed by actual receipt of the debt. *Ib.*

County Court — Judgment Debt for more than 50*l.*—Payment of Instalment—Reduction below 50*l.*—Bankruptcy Notice for Whole Original Debt. — A creditor recovered judgment in the County Court for more than 50*l.*, and the debtor thereupon paid such a sum to the Registrar as reduced the debt below 50*l.* Subsequently the creditor served a bankruptcy notice on the debtor for the whole original sum:—*Held*, that, whether the Registrar was or was not justified in accepting the instalment, yet, inasmuch as the instalment had *de facto* been paid to the Registrar, and inasmuch as the Court of Appeal, sitting as a Court of Appeal in Bankruptcy, had no jurisdiction to review the validity of the payment, it was not competent to serve a bankruptcy notice for the whole original sum, but only for that unpaid balance in respect of which alone the creditor was now in a position to issue execution. *Miller, In re; Furniture and Fine Arts Depositories, ex parte*, 81 L. J. K.B. 1180; [1912] 3 K.B. 1; 107 L. T. 417; 19 Manson, 354; 56 S. J. 634—C.A.

Semble (*per* Cozens-Hardy, M.R., and Kennedy, L.J.), that the Registrar was justified, under County Court procedure, in accepting the instalment. *Ib.*

b. Conditions of Issue.

i. *Final Judgment.*

See also Vol. II. 87, 1952.

Bankruptcy Notice—Final Judgment—Stay of Execution—Action for Specific Performance —"Final judgment or order."]—An order by consent in the Chancery Division, in an action for specific performance, directed that a certain sum of money should be paid on a date to be ascertained in the future subject to the performance of certain conditions precedent. The conditions were performed, and the date was ascertained, but the money was not paid at the time in question. The judgment creditor thereupon served a bankruptcy notice on the judgment debtor in respect of the debt. The notice spoke of the consent order as a "final judgment or order," and added, "whereon execution has not been stayed":—*Held*, that the order by consent was a final judgment within the meaning of section 4, subsection 1 (*g*) of the Bankruptcy Act, 1883; that the phrase "whereon execution has not been stayed" was not, under the circumstances, inaccurate; and that the description of the consent order as a "final judgment or order," whether or not technically correct, was not of a nature to invalidate the notice. *Held*, accordingly, that the bankruptcy notice was

good. *Debtor* (*No.* 837 *of* 1912), *In re*, 81 L. J. K.B. 1225; [1912] 3 K.B. 242; 107 L. T. 506; 19 Manson, 317; 56 S. J. 651—C.A.

ii. *Form and Contents of Notice.*

See also Vol. II. 93, 1955.

Judgment Debt—Claim of Interest without any Deduction of Income Tax—Validity.]—A bankruptcy notice requiring payment of a judgment debt with interest thereon under the Judgments Act, 1838, s. 17, at 4 per cent., is not invalid because it claims payment of the interest in full without deducting the income tax payable thereon under the Income Tax Acts of 1842 and 1853. *Cooper, In re; Debtor, ex parte*, 80 L. J. K.B. 990; [1911] 2 K.B. 550; 105 L. T. 273; 18 Manson, 211; 55 S. J. 554—C.A.

Part Payment of Judgment Debt — Bankruptcy Notice for Balance — Sum Claimed Correct — Notice not Invalidated by Marginal Note.]—Where part of a judgment debt has been extinguished and a bankruptcy notice has been issued for the balance, the notice is not invalidated by reason of a variation from the terms of the judgment to be found in a marginal note thereto, provided that the sum claimed in the notice is the correct amount owing. *Debtor* (*No.* 2 *of* 1912), *In re; Debtor, ex parte*, 106 L. T. 895—D.

Final Judgment Obtained by Firm against Debtor—Direction to Pay Judgment Creditors or their Solicitors.]—A firm of stockjobbers recovered a final judgment against a stockbroker. Thereupon their solicitors obtained the issue of a bankruptcy notice which directed the judgment debtor to pay the judgment debt to the judgment creditors "or to their solicitors," and contained a statement by the solicitors suing out the notice that they had full authority to receive payment of the debt and to act for such creditors in respect of all matters specified in the notice :—*Held*, that the bankruptcy notice was not a good foundation for a receiving order, inasmuch as it did not require the debtor to pay the judgment debt "in accordance with the terms of the judgment," as provided by section 4, subsection 1 (*g*) of the Bankruptcy Act, 1883. *Debtor* (*No.* 305 *of* 1911), *In re; Debtor, ex parte*, 80 L. J. K.B. 1264; [1911] 2 K.B. 718; 105 L. T. 125; 18 Manson, 318; 55 S. J. 553—C.A.

Address of Judgment Creditor—Absence from House.] — A judgment creditor, having two houses in different parts of England, inserted in a bankruptcy notice the address of the house from which he was absent during the currency of the bankruptcy notice. His butler was at the address given in the notice, and was authorised to receive payments on behalf of his master, or could have sent for him at any time during the currency of the notice :—*Held*, that the address given was sufficient, and that the bankruptcy notice was good. *Persse, In re*, 55 S. J. 314—C.A.

Foreign Creditor — Notice to Pay Outside the Realm — Right of Authorised Agent to Receive Payment—Invalid Notice.]—A bankruptcy notice requiring a debtor to pay a judgment debt at a place outside the realm is invalid; but a bankruptcy notice may properly require the debtor to make payment to the creditor at an address within the jurisdiction where not the creditor, but his properly authorised agent, is in attendance to receive payment. *Debtor* (*No.* 305 *of* 1911), *In re; Debtor, ex parte* (80 L. J. K.B. 1264; [1911] 2 K.B. 718), explained. *Persse, In re* (55 S. J. 314), followed. *Debtor* (*No.* 1,838 *of* 1911), *In re*, 81 L. J. K.B. 107; [1912] 1 K.B. 53; 105 L. T. 610; 19 Manson, 12; 56 S. J. 36; 28 T. L. R. 9—C.A.

c. Practice.

See also Vol. II. 97, 1959.

Counterclaim for Amount Exceeding Debt—Not Available in Action — Assignment to Debtor after Action of then Existing Debt.]—The counterclaim equalling or exceeding the amount of the judgment debt which, under section 4, sub-section 1 (*g*) of the Bankruptcy Act, 1883, a debtor can set up in answer to a bankruptcy notice is one which, as matters stood at the time of the action in which judgment was obtained, he could not in law have set up in that action, even though he might have taken steps which would have rendered it available to him in the action. Where, therefore, after the service on him of a bankruptcy notice, a judgment debtor obtained the assignment to himself of a debt due from the judgment creditors to his firm, which debt was in existence at the time of the action :—*Held*, that he was entitled to set up the debt in answer to the bankruptcy notice, although it was not shewn that, as a matter of fact, he could not have obtained an assignment of it in time to set it up by way of counterclaim in the action. *Debtor* (*No.* 37 *of* 1914), *In re*, 84 L. J. K.B. 133; [1914] 3 K.B. 726; 111 L. T. 412; [1915] H. B. R. 16; 58 S. J. 784—D.

4. Notice of Suspension of Payment.

See also Vol. II. 107, 1959.

Circular to Trade Creditors—Proposals for Carrying on the Debtor's Business — Statement at Creditors' Meeting.] — A circular issued by a trader to his creditors, in which they are invited to attend a meeting to be held for the purpose of discussing the position of affairs and of deciding upon methods for continuing the business, may be a sufficient notice of suspension of payment of debts to be a good act of bankruptcy within section 4, subsection 1 (*h*). And a proposal, laid before the creditors' meeting, by which creditors are to be paid in full by instalments, partly in cash and partly in shares, may also be a good act of bankruptcy within the meaning of the section. *Midgley, In re*, 108 L. T. 45; 57 S. J. 247—D.

Non-trader—Doctor.]—The debtor, a doctor, sent through his solicitor a circular letter to all his creditors in the following form : "Dr. C. . . . physician and surgeon, has

consulted me with reference to his financial position, and I shall be glad if you will attend a meeting of his creditors to be held here on Friday next. . . ." The meeting was held and a proposal was made thereat to, but was not accepted by, the creditors. The debtor was then asked if he would file his own petition in bankruptcy, but he refused to do so, and stated that he should go on. A creditor then presented a bankruptcy petition against the debtor, alleging that the above circular was equivalent to a notice that the debtor had suspended, or was about to suspend, payment of his debts, within the meaning of section 4, sub-section 1 (*h*) of the Bankruptcy Act, 1883:—*Held*, that the circular did not constitute an act of bankruptcy within the sub-section. *Debtor, In re*, 106 L. T. 812; 56 S. J. 482; 28 T. L. R. 386—D.

Debt Payable at a Certain Future Time—Moratorium.]—A debtor gave notice that he had suspended payment on September 9, 1914, and a petition was presented against him on September 12. At that time the Moratorium Proclamation of September 1, 1914, was in force extending the time for payment of debts to October 4:—*Held*, that a receiving order ought to be made upon the petition, for the debt was payable at a certain future time—namely, October 4—and that there was nothing in the Moratorium Proclamations to prevent a debtor from committing an act of bankruptcy by giving notice of suspension of payment. *Sahler, In re*, 84 L. J. K.B. 1275; 112 L. T. 133; [1915] H. B. R. 119; 59 S. J. 106—D.

III. PETITIONING CREDITOR.

See also Vol. II. 114, 1960.

Petition Presented by Secretary of a Company.]—*Semble*, in the case of a company presenting a petition by an officer authorised in that behalf it is unnecessary that the resolution of the board to delegate its authority should be under seal, provided that the seal of the company is affixed to the authority. *Midgley, In re*, 108 L. T. 45; 57 S. J. 247—D.

Authority of Company to Present.]—An authority given by a company, under section 148 of the Bankruptcy Act, 1883, to its secretary to present a bankruptcy petition against a debtor only extends to a petition on an act of bankruptcy available at the date of the authority, and does not include an option to present a petition on an act of bankruptcy committed subsequently to the date of the authority. *Debtor (No. 30 of 1914), In re; Petitioning Creditors, ex parte*, 84 L. J. K.B. 254; [1915] 1 K.B. 287; 112 L. T. 310; [1915] H. B. R. 18; 59 S. J. 130—D.

Proposed Deed of Assignment — Assent of Creditor—Revocation of Assent before Execution of Deed.] — A creditor may revoke his assent to a proposed deed of assignment for the benefit of creditors at any time before the deed is actually executed. His having so assented will not preclude him from founding a petition on the acts of bankruptcy which led to the proposed deed of assignment. *Jones, In re; Newnes and Associated Newspapers, ex parte*, 81 L. J. K.B. 1178; [1912] 3 K.B. 234; 107 L. T. 236; 19 Manson, 349; 56 S. J. 751—D.

Joint Petitioning Creditors — Estoppel.] — Where one of joint petitioning creditors is estopped from relying on the alleged acts of bankruptcy, the petition of the other creditor or creditors may succeed, provided that the debt of those not estopped is sufficient for the grounding of the petition. *Hawley, In re; Ridgway, ex parte* (4 Manson, 41), and *Woodroff, In re; Woodroff, ex parte* (4 Manson, 46), distinguished. *Ib.*

IV. PETITIONING CREDITORS' DEBT.

See also Vol. II. 129, 1962.

Petition on Judgment Debt Founded on Award—Going Behind Judgment.]—Where a petition is based on a judgment debt, founded on an award, and there is no allegation of fraud or improper conduct made against the arbitrator, the Court of Bankruptcy will not go behind the judgment and re-open the award for the purpose of re-trying what has already been adjudicated upon by the arbitrator. *Newey, In re; Whiteman, ex parte*, 107 L. T. 832; 57 S. J. 174—D.

Judgment not by Consent or Default—Discretion of Registrar.]—There is no power in the Bankruptcy Court on the hearing of a petition to go behind a judgment obtained in open Court against a person represented there—no fraud being suggested. The Registrar should only go behind a judgment obtained by default or compromise, or where fraud or collusion is alleged. The Registrar having refused in the exercise of his discretion to re-open a judgment obtained after trial in the presence of the defendant, the Court declined to interfere. *Flatau, In re; Scotch Whiskey Distillers, ex parte* (22 Q.B. D. 83), applied. *Howell, In re*, 84 L. J. K.B. 1399; 113 L. T. 704; [1915] H. B. R. 173—D.

V. PETITION.

See also Vol. II. 148, 1965.

Staying Proceedings—Jurisdiction.]—The Court of Bankruptcy has exclusive jurisdiction under section 1, sub-section 3 of the Courts (Emergency Powers) Act, 1914, as to staying proceedings on a bankruptcy petition which is not within the purview of section 1, sub-section 1 (*a*) of the Act. *Silber, In re* (*No. 1*), 84 L. J. K.B. 971; [1915] 2 K.B. 317; [1915] H. B. R. 95; 113 L. T. 763; 59 S. J. 271—C.A.

Bankruptcy — Petition — Receiving Order — Debtor Subject of State at War with His Majesty — Discretion to Stay Proceedings — "Remedy."] — The Court has no power to exercise, in favour of a debtor who is a "subject of a Sovereign or State at war with His Majesty" within sub-section 7 of section 1 of the Courts (Emergency Powers) Act, 1914, the discretion to stay proceedings under a bankruptcy petition conferred by sub-section 3 of section 1. A bankruptcy petition is a

" remedy " within sub-section 7. *Radeke, In re; Jacobs, ex parte*, 84 L. J. K.B. 2111; [1915] H. B. R. 185; 31 T. L. R. 584—D.

VI. RECEIVING ORDER AND ITS CONSEQUENCES.

See also Vol. II. 176, 1967.

Receivership Order in Lunacy against Debtor.]—An order was made by a master in Lunacy appointing a person receiver of the dividends and income of the debtor's property :—*Held*, that this did not prevent the Court from making a receiving order in bankruptcy against the debtor. *Belton, In re*, 108 L. T. 344; 57 S. J. 343; 29 T. L. R. 313—D.

" Sufficient cause " for Making no Order—Deed of Assignment—Subsequent Act of Bankruptcy — Conduct of Petitioning Creditor.] — The petitioning creditors, at a time when the debtor was to his own knowledge, insolvent, had delivered goods to him on credit, and at a preliminary meeting of creditors they refused to assent to a deed of assignment by the debtor for the benefit of his creditors unless these goods or their value were returned to them. The other creditors would not agree to this, and a resolution was passed by a majority that the debtor should be requested to execute a deed of assignment and for the appointment of a committee of inspection. The petitioning creditors did not vote on this resolution, but they did suggest the name of a person to act on the committee. They refused, however, to execute the deed, and repeated their request to the debtor for the return of the goods or their value, stating that otherwise they would issue a writ. This they did, and recovered judgment against the debtor, on which they served a bankruptcy notice, which was not complied with. They then presented a bankruptcy petition, alleging the non-compliance with the bankruptcy notice as the act of bankruptcy :—*Held*, that no " sufficient cause " within the meaning of section 7, sub-section 3 of the Bankruptcy Act, 1883, had been shewn why no receiving order should be made. *Shaw, In re; Gill, ex parte* (83 L. T. 487, 754), and *Debtor, In re; Debtor, ex parte* (91 L. T. 664; affirmed, *sub nom. Goldberg, In re*, 21 Times L. R. 139), distinguished. *Sunderland, In re; Leech & Simpkinson, ex parte*, 80 L. J. K.B. 825; [1911] 2 K.B. 658; 105 L. T. 233; 18 Manson, 123; 55 S. J. 568; 27 T. L. R. 454—C.A.

—— Existence of Valid Deed of Assignment—No Assets.]—Even in a case where the debtor has assigned all his assets to a trustee for the benefit of creditors by a deed which has become unimpeachable by lapse of time, the Court will not refuse to make a receiving order unless clearly convinced, not only that there are, but also that there will be, no assets in the bankruptcy. *Scott, In re; Paris-Orleans Railway, ex parte*, 58 S. J. 11—C.A.

Extortion—Possible Appointment of Sequestration of Benefice — Futility of Bankruptcy Proceedings.]—A creditor who was a mortgagee presented a bankruptcy petition against the incumbent of a benefice, and having withdrawn it on a payment by the debtor's relatives, presented another petition for the balance, and it was also withdrawn on their making another payment. The creditor then presented another petition for the remaining balance and the debtor gave evidence that he believed there would be a surplus. A receiving order was made against the debtor :—*Held*, first, that the circumstances did not shew that there was any extortion ; and secondly, that the possibility of the bishop appointing a sequestrator of the benefice did not prove that the bankruptcy proceedings would be futile; and that therefore the receiving order must be affirmed. *Hay, In re*, 110 L. T. 47; 30 T. L. R. 131—D.

Form of Receiving Order.] — A receiving order recited an act of bankruptcy as having been committed " on or about " August 31 :—*Held*, that a receiving order should state with certainty the date of the act of the bankruptcy committed. The introduction of such words as " on or about " introduces an undesirable vagueness. *Herman, In re; Pharaoh & Co., ex parte*, [1915] H. B. R. 41—C.A.

Meeting of Creditors—Adjournment.]—*See Silber, In re* (*No.* 2), *infra*, *sub tit.* ADJUDICATION.

VII. COMPOSITION AND SCHEME OF ARRANGEMENT.

See also Vol. II. 194, 1971.

Scheme of Arrangement—Approval by Court —" Reasonable security " for Payment of 7s. 6d. in the Pound.]—In a case coming within section 3, sub-section 9 of the Bankruptcy Act, 1890, the Court has no discretion to approve a scheme of arrangement proposed by a debtor unless satisfied that the scheme provides reasonable security for payment of not less than 7*s.* 6*d.* in the pound on all the unsecured debts. It makes no difference that the creditors are themselves in favour of the scheme and have approved it. *Paine, In re; Paine, ex parte* ([1891] W. N. 208), followed. *Webb, In re; Board of Trade, ex parte*, 83 L. J. K.B. 1386; [1914] 3 K.B. 387; 111 L. T. 175; 21 Manson, 169; 58 S. J. 581—C.A.

VIII. ADJUDICATION.

See also Vol. II. 227, 1974.

Meeting of Creditors — Creditors Desiring Adjournment — Discretion of Registrar.] — At the first adjournment of the first meeting of the creditors of the debtor, the official receiver declined further to adjourn the meeting, and did not put a resolution that the debtor should be adjudged bankrupt, but stated his intention to apply. The application for adjudication was subsequently made and supported by creditors for 146,000*l.* Certain creditors and the debtor opposed the application, and desired an adjournment thereof in order to call a new meeting of creditors and formulate a scheme. The Registrar declined to adjourn the application, and made the order

for adjudication :—*Held*, that he had exercised his discretion rightly. *Silber, In re (No. 2)*, [1915] H. B. R. 97—C.A.

IX. DISCHARGE.

See also Vol. II. 246, 1976.

Jurisdiction—Allegations that Bankrupt has Committed Criminal Offences.]—On a bankrupt's application for his discharge, the Court has not jurisdiction to try whether he has been guilty of criminal offences. The proviso in section 8, sub-section 2 of the Bankruptcy Act, 1890, that the Court shall refuse the discharge in all cases where the bankrupt has committed any misdemeanour under the Debtors Act or the principal Act, or any misdemeanour of felony connected with his bankruptcy, applies only to cases where the bankrupt has been tried and found guilty by a competent tribunal of any of the offences referred to. *Wood, In re; Leslie, Lim., ex parte*, [1915] H. B. R. 53; 59 S. J. 334—C.A.

Lapse of Time may be a New Fact—Discretion.]—Where a bankrupt applies for his discharge the Judge may take into consideration other offences and other facts than those disclosed in the official receiver's report, and his discretion is unlimited. *Shields, In re*, 106 L. T. 345—D.

Semble, lapse of time and good conduct on the part of the bankrupt may be such new facts as will justify a Judge in reviewing his decision on a subsequent application. *Ib.*

Unconditional Refusal — Appeal — Order Varied—Suspension Dating from Application for Discharge.]—A bankrupt's application for discharge will only be unconditionally refused in very exceptional circumstances. Delay in applying for a discharge, in the absence of fraud, will not justify such refusal. If an order made on an application for discharge is varied on appeal, the order so varied shall be dated of the day on which the application was made, and shall take effect from the day on which such order was drawn up. *Pearse, In re; Bankrupt, ex parte*, 107 L. T. 859—D.

Undischarged Bankrupt — Contract — Consideration—Policy of Bankruptcy Law—Debt Provable in Bankruptcy—Agreement by Bankrupt to Pay in Full—Validity.]—An agreement by an undischarged bankrupt that he will pay in full a debt provable in the bankruptcy, in consideration of an advance then made to him by the creditor, is not an agreement which is contrary to the policy of the bankruptcy law, but may be enforced by the creditor against the bankrupt. *Wild* v. *Tucker*, 83 L. J. K.B. 1410; [1914] 3 K.B. 36; 111 L. T. 250; 21 Manson, 181; 30 T. L. R. 507—Atkin, J.

Discharge of Debt — Subsequent Acknowledgment of Debt by Foreign Document — Absence of Consideration — Valid Agreement according to Italian Law—Conflict of Laws—Valid Claim.]—A debtor, who was an Italian subject carrying on business in London, became bankrupt in 1897 and obtained his discharge in 1901. Prior to the bankruptcy he had borrowed money from a creditor, who was an Italian subject, residing in Italy, and owed him 1,350*l.* at the date of the bankruptcy. The debtor did not disclose this debt in the bankruptcy, and the creditor became aware of the bankruptcy for the first time in 1908, after the debtor's death. In 1906 the debtor, while in Italy, signed a document called a *privata scrittura*, in which he acknowledged his indebtedness, and undertook to pay the debt off within five years, with interest. The estate of the debtor was being administered by the Court, and the creditor's claim against the estate for some 1,758*l.* was disallowed by the Master. Eve, J., dismissed a summons to vary the Master's certificate. On an appeal from that decision.—*Held*, that the *privata scrittura* was a valid agreement according to Italian law, although not entered into for valuable consideration, and that the creditor was entitled to enforce his claim under it notwithstanding the provisions of section 30, sub-section 3 of the Bankruptcy Act, 1883. *Bonacina, In re; Le Brasseur* v. *Bonacina*, 81 L. J. Ch. 674; [1912] 2 Ch. 394; 107 L. T. 498; 19 Manson, 224; 56 S. J. 667; 28 T. L. R. 508—C.A.

Jakeman v. *Cook* (48 L. J. Ex. 165; 4 Ex. D. 26) and *Aylmer, In re; Aylmer, ex parte* (70 L. T. 244; *sub nom. Aylmer, In re; Crane, ex parte*, 1 Manson, 391), applied. *Ib.*

B. PROPERTY AND ADMINISTRATION.

I. PROPERTY PASSING TO TRUSTEE.

1. Generally.

See also Vol. II. 292, 1979.

Insolvent Trader — Secured Creditor — Fraudulent Transfer—Exchange of Mortgage on Business for Debentures in Company.]—A trader who fraudulently transferred his business to a company induced a mortgagee of the business to accept debentures in the company in exchange for the mortgages he held prior to the formation of the company. On the transfer to the company being set aside,—*Held*, that the mortgagee was not entitled to be put back into his original position, but that he could prove against the debtor's estate for damages he had sustained by reason of the debtor's fraud. *Slobodinsky, In re; Moore, ex parte* (72 L. J. K.B. 883; [1903] 2 K.B. 517), considered. *Goldburg, In re; Silverstone, ex parte*, 81 L. J. K.B. 382; [1912] 1 K.B. 384; 105 L. T. 959; 19 Manson, 44—Phillimore, J.

Fraudulent Conveyance—Part of Property.]—A debtor who was hopelessly insolvent carried on business till August, 1914, when he gave his manager P. notice to leave. P. conceived the idea of forming a private company, and consulted one G., who was invited to come in, while the debtor agreed to lend his name. Discussion took place, and the result was that on August 31, 1914, a private company was formed, of which the signatories and first

directors were the debtor, P., and G., the debtor being managing director at a salary of 300*l.* per annum. The company had its offices at the debtor's business premises. At a board meeting on September 7, 1914, G. stated that the debtor (who was absent) was willing to sell to the company the whole of the machinery on his premises, which was worth about 1,000*l.*, for 400*l.* in fully paid shares of the company, and the greater part of his stock for 600*l.* in cash, and resolutions were passed accordingly accepting these terms :—*Held*, that the sale of the machinery by the debtor to the company on September 7 was a fraudulent conveyance of part of his property within section 4, sub-section 1 (*b*) of the Bankruptcy Act, 1883. *Herman, In re; Pharaoh & Co., ex parte*, [1915] H. B. R. 41—C.A.

Assignment of Beneficial Interest in Lease —Trustee and Cestui que Trust—Damages for Breach of Covenant—Bankruptcy of Lessee— Recovery of Judgment Debt from Beneficial Owner under Indemnity—Rights of Trustee in Bankruptcy and Landlord.]—A lessee became trustee of the leasehold premises for his wife by reason of the purchase by her of the beneficial interest therein, and the wife as such beneficial owner was liable to indemnify her husband against any claim by the landlord under the covenants in the lease. On the expiration of the lease the landlord obtained judgment against the lessee for 711*l.* for rent and damages for breach of covenant, but before the amount of the lessee's liability was ascertained the lessee was adjudicated a bankrupt. The landlord obtained leave in the bankruptcy to commence an action in the joint names of the trustee in bankruptcy and himself to recover the 711*l.* from the wife under the lessee's right of indemnity, but without prejudice to the question whether the money so recovered should be treated as assets in the bankruptcy or be retained by the landlord. The action was brought and was compromised by the payment by the wife of 520*l.* :—*Held*, that the trustee in bankruptcy could only avail himself of the right of indemnity for the purpose of passing on the money to the principal creditor, and that consequently the landlord was entitled to retain the money on account of his debt. *Richardson, In re; St. Thomas's Hospital, ex parte*, 80 L. J. K.B. 1232; [1911] 2 K.B. 705; 105 L. T. 226; 18 Manson, 327—C.A.

Assignment of Debtor's Business to Company — Bankruptcy of Debtor — Business Carried on by Receiver of Debenture-holders — Assignment Set Aside as Fraudulent — Liability of Receiver to Trustee in Bankruptcy.]—Where the transfer of a debtor's business to a company is subsequently set aside as an act of bankruptcy to which the title of the trustee in bankruptcy relates back, and the business of the company has in the meantime been carried on by a receiver appointed by the debenture-holders of the company, the receiver is liable as a trespasser to account to the trustee for the assets (if any) of the debtor which may have come to his hands or for the value of them. *Goldburg, In re; Page, ex parte*, 81 L. J. K.B. 663; [1912] 1 K.B. 606; 106 L. T. 431; 19 Manson, 138—Phillimore, J.

Equitable Execution — Priority as between Judgment Creditor and Trustee in Scottish Bankruptcy.]—The plaintiffs in 1911 recovered judgment against a Mrs. W., who had a furnished flat, which was let to the defendant. The plaintiffs obtained the appointment of a receiver of Mrs. W.'s interest in the flat, and notice of the receivership order was served upon the defendant with a request to pay the rent to the plaintiffs, but nothing further was done to enforce the order. In 1913 Mrs. W. became bankrupt in Scotland, and the trustee appointed in such bankruptcy claimed the rent due from the defendant to Mrs. W. in respect of the flat. The receiver appointed on behalf of the plaintiffs also claimed the rent. In an interpleader issue as to whether the receiver or the trustee was entitled to the money,—*Held*, that the rights of the parties had to be determined under the Bankruptcy (Scotland) Act, 1856, and not under the Bankruptcy (Scotland) Act, 1913, and that under the Act of 1856 it was not necessary, in order for a judgment creditor to succeed in his claim against the trustee in the Scottish bankruptcy, to shew that he was a secured creditor; it was sufficient for him to shew that he had obtained a receivership order, which prevented the assets which were being claimed being assigned by the judgment debtor, and that therefore the title of the plaintiffs under the receivership order was preferable to that of the trustee in bankruptcy. *Galbraith* v. *Grimshaw* (79 L. J. K.B. 1011; [1910] A.C. 508) and *Anglesey* (*Marquis*). *In re: De Galve* (*Countess*) v. *Gardner* (72 L. J. Ch. 782; [1903] 2 Ch. 727), applied. *Singer & Co.* v. *Fry*, 84 L. J. K.B. 2025; 113 L. T. 552; [1915] H. B. R. 115—Bailhache, J.

2. Real and Personal Property.

See also Vol. II. 294, 1983.

Undischarged Bankrupt — Appointment by Will of Bankrupt under General Power — Assets for Payment of Bankrupt's Debts — Claim by Creditors in Bankruptcy in Administration of Bankrupt's Estate.] — A debtor, under a will, took a life interest in 15,000*l.* subject to a trust over for accumulation in case of his bankruptcy, and was given a general power of appointment over the accumulated fund by will. The debtor was adjudicated bankrupt in 1890 and 1892. A dividend of 5*s.* 2*d.* was paid in the first bankruptcy and nothing in the second. The debtor never obtained his discharge in either bankruptcy. The debtor exercised his power of appointment by his will, and died on July 20, 1911. In an action in the Chancery Division an order was made for the administration of the debtor's estate, which consisted practically only of the appointed fund. Creditors in the two bankruptcies claimed to prove in the administration for the balance of their claims in the bankruptcies. Warrington, J., following *Guedalla, In re; Lee* v. *Guedalla's Trustee* (75 L. J. Ch. 52; [1905] 2 Ch. 331), held that the fund, though assets for the pay-

ment of the debtor's debts, did not pass to the trustees in bankruptcy, and that the creditors were precluded by section 9 of the Bankruptcy Act, 1883, from claiming on the fund. On appeal,—*Held*, that the fund did not pass to the trustees in bankruptcy, and that the claims were barred by the Statute of Limitations. *Benzon, In re; Bower* v. *Chetwynd*, 83 L. J. Ch. 658; [1914] 2 Ch. 68; 110 L. T. 926; 21 Manson, 8; 58 S. J. 430; 30 T. L. R. 435—C.A.

After-acquired Property—Chose in Action—Settlement on Marriage—Bona Fides—Valuable Consideration—Notice—Non-intervention of Trustee in Bankruptcy.]—The rule laid down in *Cohen* v. *Mitchell* (59 L. J. Q.B. 409, 411; 25 Q.B. D. 262, 267), that until the trustee intervenes all transactions by a bankrupt after his bankruptcy, with any person dealing with him *bona fide* and for value, in respect of his after-acquired property, whether with or without knowledge of the bankruptcy, are valid against the trustee, applies to a *chose in action* the title to which accrued to the bankrupt after his bankruptcy and before his discharge. *Behrend's Trust, In re; Surman* v. *Biddell*, 80 L. J. Ch. 394; [1911] 1 Ch. 687; 104 L. T. 626; 18 Manson, 111; 55 S. J. 459—Swinfen Eady, J.

A settlement by the bankrupt upon his second marriage of a *chose in action* of this description consisting of his right to a fund in the hands of the trustees of a settlement executed upon his first marriage, if a *bona fide* transaction, is such a transaction as is contemplated by the rule, notwithstanding that the trustees holding the fund have notice of the bankruptcy prior to the assignment to the trustees of the settlement made on the second marriage, provided that there has been no active intervention on the part of the trustee in bankruptcy. *Ib.*

3. Various Kinds of Property.

See also Vol. II. 366, 1986.

Client's Securities Pledged to Bank by Brokers — Sale of Securities by Pledgee — Secured Creditor—Marshalling Securities.]—A firm of stockbrokers purchased various shares for a client and lent him part of the purchase money on the security of the shares so purchased, and for that purpose deposited the shares with a bank, who held the securities not merely against the loans made to the client through the brokers, but against the brokers' general loan account with the bank. The brokers became bankrupt, and the bank realised as much of the security in its hands as was necessary to satisfy its claim against them. The client's securities pledged to the bank and realised by it exceeded the amount of the client's liability to the brokers. On application being made by the client for the trustee in bankruptcy to hand over the surplus securities remaining after the bank had paid itself in full,—*Held*, that the brokers could not pass to the bank a greater interest in the client's securities than that which they themselves possessed, and that, on the analogy of the equitable doctrine of "marshalling," the client, his own securities having been realised, was entitled to such others as remained in the hands of the trustee in part satisfaction of his claim. *Burge, Woodall & Co., In re; Skyrme, ex parte*, 81 L. J. K.B. 721; [1912] 1 K.B. 393; 106 L. T. 47; 20 Manson, 11—Phillimore, J.

Deed of Assignment—Possession of Property in Deed by Trustee—Bankruptcy of Debtor—Liability of Trustee of Deed to Account to Trustee in Bankruptcy.]—A debtor executed a deed of assignment and, in order to avoid a threatened distress, handed the key of his business premises to the trustee of the deed. The trustee executed the deed of assignment, accepted the key, valued the stock-in-trade on the premises, and subsequently, on the authority of the creditors, handed back the key to the debtor, who disposed of the stock-in-trade and became bankrupt within three months:—*Held*, that the trustee had taken possession of the property and was accountable for its value to the trustee in the bankruptcy. *Prigoshen, In re; Official Receiver, ex parte*, 81 L. J. K.B. 1199; [1912] 2 K.B. 494; 106 L. T. 814; 19 Manson, 323; 56 S. J. 554—Phillimore, J.

4. Property Included in Voidable Settlements.

See also Vol. II. 418, 1991.

Voluntary Settlement—Subsequent Bankruptcy of Settlor — Transfer by Voluntary Donee after Act of Bankruptcy for Valuable Consideration and without Notice.]—A transfer, for valuable consideration and without notice, from a donee under a voluntary settlement is valid as against the trustee in the subsequent bankruptcy of the voluntary settlor, even although the act of bankruptcy on the part of the voluntary settlor has been committed within two years of his making the settlement, and even although the transfer from the voluntary donee has taken place after the act of bankruptcy. *Hart, In re; Green, ex parte*, 81 L. J. K.B. 1213; [1912] 3 K.B. 6; 107 L. T. 368; 19 Manson, 334; 56 S. J. 615; 28 T. L. R. 482—C.A.

—— Assignment of Life Insurance Policy — Bankruptcy of Assured — Subsequent Payments by Insurance Company to Bankrupt — Conversion of Lapsed Policy into Paid-up Policy—Notice—Title of Trustee.]—J. S. effected a policy of insurance on his own life with the N. B. & M. I. Co. for 60,000 rupees in June, 1903. This policy he subsequently assigned to his wife in April, 1905, but such assignment was to be revoked in the event of his wife predeceasing him. Within seven months of such assignment the assured was adjudicated bankrupt, and in June, 1906, the policy lapsed. In December, 1906, certain sums, in respect of bonus and refund of premiums, on the lapsed policy, were paid by the insurance company to the bankrupt. In June, 1910, at the request of the bankrupt and his wife, the old policy was converted into a paid-up non-participating policy for 12,000 rupees, and against this policy the insurance

company advanced two sums of 4,000 rupees and 3,500 rupees to the bankrupt's wife. Upon application by the trustee in bankruptcy to set aside the assignment to the bankrupt's wife, and to have the policy handed over to him free from incumbrances, and for the payment to him of the sum paid to the bankrupt by the insurance company, it was agreed that the question whether the insurance company had notice of the English bankruptcy in December, 1906, or at any material time should stand over until after further discovery :—*Held*, that, whether or not the insurance company had notice of the English bankruptcy, the trustee was entitled to the various sums paid by the insurance company to the bankrupt. *Held* also, that, if the insurance company had notice, the trustee was entitled to have the converted policy handed over to him free from incumbrances; but that, if the company had no notice, the trustee, following the decision in *Hart, In re; Green, ex parte* (81 L. J. K.B. 1213; [1912] 3 K.B. 6), must take the policy subject to such incumbrances. *Shrager, In re*, 108 L. T. 346—Phillimore, J.

—— **Gift for Special Purpose—No "transfer of property" to Donee — Purchaser for Value.**]—A bankrupt within two years of his bankruptcy, in order to assist his nephew to obtain a lease of a public house, purchased a clock and had it fixed on to the public house. The lessors of the public house, in consideration of the clock being affixed to the premises as landlord's fixtures, granted a lease of the premises to the nephew at a reduced rent. The trustee in bankruptcy claimed the clock or its value as a gift to the nephew constituting a voluntary settlement within section 47 of the Bankruptcy Act, 1883 :—*Held*, that the clock having been transferred to the lessors for value could not be claimed by the trustee; that there was no gift of the clock as a chattel to the nephew; that the reduction of rent did not amount to a retention of any property in the clock by the nephew, and that its value could not therefore be claimed by the trustee. *Branson, In re; Moore, ex parte; Trustee* v. *Branson*, 83 L. J. K.B. 1673; [1914] 3 K.B. 1086; 111 L. T. 741; 21 Manson, 229; 30 T. L. R. 604—C.A.

—— **Valuable Consideration.**]—The release of a right to sue for a breach of trust is valuable consideration within the meaning of section 47. *Pope, In re; Dicksee, ex parte* (77 L. J. K.B. 767; [1908] 2 K.B. 169), approved. *Parry, In re; Trustee, ex parte* (73 L. J. K.B. 83; [1904] 1 K.B. 129), distinguished. *Collins, In re*, 112 L. T. 87—Horridge, J.

Marriage Settlement—Furniture—Covenant by Husband to Settle After-acquired Furniture—Subsequent Purchase of Furniture—Use of Same at Family Residence—No Formal Transfer to Trustees of Settlement—Bankruptcy of Husband—Claim by Trustee in Bankruptcy—"Actually transferred."] — By a marriage settlement in 1899 the husband settled the furniture and household effects in his private residence upon trust for the separate use and enjoyment of his wife for her life, and after her death upon trusts for the benefit of himself and the children of the marriage, and covenanted that any household effects purchased by him during the life of his wife should form part of the trust property and should be transferred to the trustees of the settlement. The husband and wife frequently changed their residence, and in 1908 moved into a large house, where they lived until the husband became a bankrupt. On that occasion he purchased a large quantity of furniture, which was used in the house. No part of the furniture was formally transferred to the trustees of the settlement and no inventory was taken of the same, but the sole acting trustee was in the habit of visiting at the house, and saw the furniture there. In December, 1909, a receiving order was made against the husband, and he was adjudicated a bankrupt in March, 1910. In January, 1910, he sent all the furniture from his house to a warehouse. The trustee in his bankruptcy claimed the purchased furniture on the ground that it had not been "actually transferred" to the trustee of the settlement pursuant to the covenant within the meaning of the Bankruptcy Act, 1883, s. 47, sub-s. 2. :—*Held*, that the words "actually transferred" in section 47, subsection 2, must be read with reference to the nature of the property; that, inasmuch as the furniture in question passed by delivery, in the view of the law there had been under the circumstances an actual transfer of such furniture by the husband to the trustee of the settlement and a handing back of the same by the trustee to the wife to be used by her in accordance with the trusts of the settlement, and that consequently the claim of the trustee in bankruptcy failed. *Dictum* of WRIGHT, J., in *Reis, In re; Clough, ex parte* (73 L. J. K.B. 929, 932; [1904] 1 K.B. 451, 456), overruled. *Magnus, In re; Salaman, ex parte*, 80 L. J. K.B. 71; [1910] 2 K.B. 1049; 103 L. T. 406; 17 Manson, 282—C.A.

5. Property in the Order and Disposition of the Bankrupt.

See also Vol. II. 434, 1995.

Bill of Sale—Grantor.]—Where the grantor of a bill of sale remains in possession of the goods comprised in such bill of sale under the provisions of section 7 of the Bills of Sale (Ireland) Act, 1879, Amendment Act, 1883, and becomes bankrupt before any instalment has become due under the bill of sale, the goods are in his possession, order, or disposition with the consent of the true owner within the meaning of the "reputed ownership" section 313 of the Irish Bankrupt and Insolvent Act, 1857, and the assignee in the bankruptcy is entitled to retain the goods as against the grantee under the bill of sale. *Hollinshead* v. *Egan, Lim.*, 83 L. J. P.C. 74; [1913] A.C. 564; 109 L. T. 681; 20 Manson, 323; 57 S. J. 661; 29 T. L. R. 640—H.L. (Ir.)

Ginger, In re; London and Universal Bank, ex parte (66 L. J. Q.B. 777; [1897] 2 Q.B. 461), approved and followed. *Stanley, In re* (17 L. R. Ir. 487), disapproved. *Ib.*

Decision of Court of Appeal in Ireland, *sub nom. Harvey, In re* ([1912] 2 Ir. R. 170), reversed. *Ib.*

Mortgage of Book Debts — Bankruptcy of Mortgagor.]—The appointment of a receiver by mortgagees of a bankrupt's book debts, unless followed by notice to the debtors within reasonable time, is not sufficient to take the goods out of the bankrupt's order and disposition. *Rutter* v. *Everett* (64 L. J. Ch. 845; [1895] 2 Ch. 872) discussed. *Neal, In re; Trustee, ex parte*, 83 L. J. K.B. 1118; [1914] 2 K.B. 910: 110 L. T. 988; 21 Manson, 164; 58 S. J. 536—Horridge, J.

Goods Lying in Warehouse.]—Goods which would not pass to the trustee as being in the order or disposition of the bankrupt, if they were upon the bankrupt's premises, will not pass to the trustee if they are lying in the warehouse of a third party in the name of the bankrupt. *Keller, In re; Rose, ex parte*, 109 L. T. 880; 58 S. J. 155—Horridge, J.

Deposit of Shares between Act of Bankruptcy and Adjudication.]—By section 313 of the Irish Bankrupt and Insolvent Act, 1857, if a bankrupt, at the time he becomes bankrupt, shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition, any goods or chattels whereof he was reputed owner, the Court has power to order the same to be sold for the benefit of the creditors under the bankruptcy. M. was adjudicated bankrupt on August 21, 1914, upon an act of bankruptcy committed on June 21, 1914. Between these dates he had deposited certain share certificates and a policy of insurance with a bank as security for his account :—*Held*, that M. had become bankrupt within the meaning of section 313 at the date of the act of bankruptcy, and that, as at that date he himself was the true owner of the shares, the section did not apply. *Lyon* v. *Weldon* (2 Bing. 334) and *The Ruby* (83 L. T. 438) followed. *Mackay, In re*, [1915] 2 Ir. R. 347—C.A.

Deposit of Policy of Insurance—Notice to Insurance Company after Adjudication, but before Order of Sale.]—In April, 1914, M. deposited two policies of insurance with a bank as security for his account. On August 15 he executed a legal mortgage of them to the bank. On August 21 he was adjudicated bankrupt, and on the same day notice of the mortgage was sent by the bank to the insurance company. In November, 1914, an order was made *ex parte* under section 313 of the Irish Bankrupt and Insolvent Act, 1857, for the sale of the policies for the benefit of the creditors under the bankruptcy :—*Held*, that the policies were, by the consent of the true owner, in the order and disposition of the bankrupt, and that the bank should be ordered to deliver them to the assignees in bankruptcy. *Malet's Trusts, In re* (17 L. R. Ir. 424), and *Bradley* v. *James* (Ir. R. 10 C. L. 441) considered. *Mackay, In re*, [1915] 2 Ir. R. 347—C.A.

Chattels Personal — Fixtures Separately Assigned by Bill of Sale—Shop Furniture—Attachment to Premises—Action by Grantee of Bill of Sale against Trustee in Bankruptcy of Grantor.]—The tenant of a chemist's shop placed certain articles of shop furniture on the premises for the purposes of his business, and, except so far as was to be inferred from the degree of annexation, without any intention of permanently making them part of the freehold. In consideration of money lent he gave a bill of sale to the plaintiff, by which bill of sale the articles in question were separately assigned, and on his making default under the bill of sale the plaintiff took possession of the scheduled goods. The tenant having become bankrupt, the defendant, as trustee in bankruptcy, claimed the articles under the reputed ownership clause of the Bankruptcy Act, 1883 (section 44), contending that they were chattels, and disposed of them in the bankruptcy. The plaintiff brought an action against the defendant for conversion, contending that the articles were fixtures. At the trial the Judge found that the articles were annexed to the premises, but only in the slightest possible degree, and that that degree of annexation was only adopted for the more efficient use of the articles as chattels, and he held that, inasmuch as they remained chattels, the defendant was entitled to them :—*Held*, that there was no ground for interfering with the Judge's decision. *Horwich* v. *Symond*, 84 L. J. K.B. 1083; 112 L. T. 1011; [1915] H. B. R. 107; 31 T. L. R. 212—C.A.

6. Exceptions.

a. Trust Property.

See also Vol. II. 539, 2000.

Property Held by Bankrupt on Trust for any other Person.] — Where an auctioneer makes himself personally liable to pay those whose goods he sells, irrespective of whether he has been paid or not by the buyers, the money which he receives from the buyers is not impressed with any trust in favour of the sellers, but is divisible upon his bankruptcy among the general body of creditors. *Cotton, In re; Cooke, ex parte*, 57 S. J. 174—D. Reversed on further evidence, 108 L. T. 310; 57 S. J. 343—C.A.

b. Pensions and Allowances.

See also Vol. II. 549, 2002.

Seizure by Sheriff under Writ of Fi. Fa.—Ransom of Goods by Third Party — Money Advanced for Specific Purpose.] — Under a writ of *fi. fa.* the sheriff seized scenery and theatrical costumes lying at a railway station in the name of a judgment debtor, but not being in fact his property. The debtor had a few days previously been adjudicated bankrupt, although the sheriff had no notice of the fact at the time. To release this property for a performance which the bankrupt was under a contract to present, a sum of money was paid over to the sheriff by a third party, who took a receipt from the bankrupt and deducted the amount so paid from a share of the takings at the theatre to which the bankrupt became entitled under the contract at the end of the week :—*Held* (Farwell, L.J., dissenting), that the money was paid for the specific purpose of releasing goods which were not the

property of the bankrupt, and the official receiver was not entitled to the goods seized or the money. *Watson, In re; Schipper, ex parte*, 107 L. T. 783—C.A.

Decision of the Divisional Court (107 L. T. 96) affirmed. *Ib.*

"Property" of Bankrupt—Civil Servant of Crown—Pension—Commuted Pension—"Compensation granted by Treasury"—Gratuity.] —A Civil servant of the Crown, who was an undischarged bankrupt, was, on his retirement in 1911, granted a pension of 105*l.* and a lump sum of 312*l.* 4*s.* as an "additional allowance" under the Superannuation Act, 1909, s. 1:—*Held*, that the lump sum did not vest in the trustee in the bankruptcy under section 44 of the Bankruptcy Act, 1883, but was "compensation granted by the Treasury" within the meaning of section 53, sub-section 2 of that Act, and belonged to the bankrupt subject to the provisions of this sub-section. *Lupton, In re; Official Receiver, ex parte*, 81 L. J. K.B. 177; [1912] 1 K.B. 107; 105 L. T. 726; 19 Manson, 26; 56 S. J. 205; 28 T. L. R. 45—C.A.

Assignment in Fraud of Creditors — Good Consideration for Part of Property Assigned — Apportionment of Benefit of Contract — 13 Eliz. c. 5.]—A debtor, in receipt of a conditional life pension, assigned the same to his sister, in consideration of her taking over, in the first place, the liability for the payment of an annuity of 50*l.* to a third party; and secondly, in consideration of her covenanting to maintain the debtor and provide him with a home. The debtor subsequently became bankrupt, and the assignment was impeached by the trustee as a fraud on the creditors:—*Held*, that the taking over of the liability for payment of the annuity of 50*l.* was good consideration, and to that extent the deed must stand; but that after discharging the liability for the annuity, the assignee must pay over the remainder of the pension to the trustee. *Sturmey's Trustee* v. *Sturmey*, 107 L. T. 718—Phillimore, J.

7. Rights to Property of Trustees in Successive Bankruptcies.

See also Vol. II. 551, 2003.

New Zealand Bankruptcy—Reversionary Interest in England—Subsequent English Bankruptcy—Domicil—Title of Official Assignee in Bankruptcy of New Zealand — Statutory Assignees—Notice.]—In September, 1898, a debtor was adjudicated bankrupt in New Zealand and obtained his discharge in New Zealand in December, 1900. In January, 1904, he was adjudicated a bankrupt in England, and the official receiver became the trustee in bankruptcy. The debtor at the date of his New Zealand adjudication and also of his English adjudication was entitled to a reversionary interest in personalty comprised in the marriage settlement of his parents. The debtor did not disclose this reversionary interest in either bankruptcy, but in August, 1909, it was discovered by the official receiver in the English bankruptcy, and he immediately gave notice to the persons in possession of the trust funds claiming any interest which was vested in the debtor:—*Held*, that, notwithstanding the fact that the official receiver in England was the first to give notice of his title to the trustees of the fund, the official assignee in New Zealand was entitled as against the official receiver in bankruptcy in England to the reversionary interest. *Davidson's Settlement, In re* (42 L. J. Ch. 347; L. R. 15 Eq. 383), and *Lawson's Trusts, In re* (65 L. J. Ch. 95; [1896] 1 Ch. 175), followed. *Anderson, In re; New Zealand Official Assignee, ex parte*, 80 L. J. K.B. 919; [1911] 1 K.B. 896; 104 L. T. 221; 18 Manson, 216—Phillimore, J.

Life Policy Effected by Bankrupt before Discharge—Premium Paid by Bankrupt without Knowledge of Trustee—Discharge—Second Bankruptcy—Death of Bankrupt—Claim by Trustee in Second Bankruptcy to Amount Paid in Premiums.] — An undischarged bankrupt, unknown to the trustee in bankruptcy, effected a policy on his own life and paid the first premium thereunder. Subsequently he was discharged and continued to pay the premiums until his death, which occurred in a motor-car accident. Less than a month before his death he had again been adjudicated bankrupt:—*Held*, that the trustee of the first bankruptcy, although an officer of the Court, was under no legal, equitable, or moral obligation to allow the trustee in the second bankruptcy out of the policy moneys a sum equal to the amount of the premiums paid in respect of the policy. *Tyler, In re; Official Receiver, ex parte* (76 L. J. K.B. 541; [1907] 1 K.B. 865), distinguished. *Tapster* v. *Ward* (101 L. T. 503) followed. *Phillips, In re*, 83 L. J. K.B. 1364; [1914] 2 K.B. 689; 110 L. T. 939; 21 Manson, 144; 58 S. J. 364—Horridge, J.

II. Relation of Trustee's Title.

See also Vol. II. 554, 2004.

Advance to Pay off Petitioning Creditor—"Money impressed with a trust."]—A sum of money was advanced by a debtor's stockbroker to him in order to pay off a pressing petitioning creditor, the understanding being that the money was to be used for that purpose. The petitioning creditor's solicitors had already refused a cheque, and had notice of an available act of bankruptcy, but accepted payment of the money advanced by the stockbroker, which was brought by the debtor's secretary later on the same day on which the cheque had been refused:—*Held*, that the money had never been under the debtor's control, and was so impressed with a trust as to prevent the trustee in bankruptcy from recovering the amount by virtue of the relation back of his title. *Drucker, In re; Basden, ex parte* (*No.* 1) (71 L. J. K.B. 686; [1902] 2 K.B. 237; 9 Manson, 237), followed. *Hooley, In re; Trustee, ex parte*, 84 L. J. K.B. 1415; [1915] H. B. R. 181—Horridge, J.

Partnership Action—Judgment Creditors—Order by Consent During Period of Relation—Subsequent Adjudication—Secured Creditors

—Notice of Act of Bankruptcy.]—An order in a partnership action was made by consent after petitions in bankruptcy had been presented against the debtors, but before adjudication. The debtors (who were the plaintiff and defendant in the action), a receiver of the partnership assets, and two firms of solicitors who had acted respectively for the defendant and the receiver in the action, were among the parties to the order, and all had notice of available acts of bankruptcy against the debtors. The order directed the taxed costs of the two firms of solicitors to be paid out of the partnership assets by the receiver. The debtors were subsequently adjudicated bankrupts, and the two firms of solicitors respectively moved the Court for payment of the taxed costs under the order to them, as secured creditors, by the trustee in bankruptcy:—*Held*, that, although the consent order had the effect of creating equitable charges in favour of the applicants, the trustee, not having been a party to the order, could not be bound thereby, and that the effect of the relation back of the trustee's title to a date anterior to the date of the order was to make the applicants merely unsecured creditors, and that they, having notice of available acts of bankruptcy against the debtors, could not claim the protection of section 45 of the Bankruptcy Act, 1914. *Potts, In re; Taylor, ex parte* (62 L. J. Q.B. 392; [1893] 1 Q.B. 648; 10 Morrell, 52), distinguished. *Gershon & Levy, In re; Coote & Richards, ex parte*, 84 L. J. K.B. 1668; [1915] 2 K.B. 527; [1915] H. B. R. 146; 59 S. J. 440—Horridge, J.

III. PROOF OF DEBTS.

See also Vol. II. 584, 2008.

Separation Deed—Covenant to Pay Annuity—Provable Debt—Discharge from Obligation.]—The contractual obligation of a husband under a separation deed to pay an annuity to his wife is a liability provable in his bankruptcy, and if not proved for by the wife no action can afterwards be maintained against the husband in respect thereof. *Pannell, In re; Bates, ex parte* (48 L. J. Bk. 113; 11 Ch. D. 914), and *Neal, Ex parte; Batey, in re* (14 Ch. D. 579), followed. *Linton* v. *Linton* (54 L. J. Q.B. 529; 15 Q.B. D. 239) distinguished. *Victor* v. *Victor*, 81 L. J. K.B. 354; [1912] 1 K.B. 247; 105 L. T. 887; 19 Manson, 53; 56 S. J. 204; 28 T. L. R. 131—C.A.

By Company—Company Dissolved—Substitution of Proof by Sole Debenture-holder—Equitable Assignment—Bona Vacantia.]—An equitable assignee of a debt may substitute a proof in bankruptcy for that of the assignor in the same way as a legal assignee was allowed to substitute a proof in *Iliff, In re* (51 W. R. 86). As the Crown may be a claimant of the debt as *bona vacantia*, notice of such an order must be given to the Crown. *Hills, In re; Lang, ex parte*, 107 L. T. 95—D.

By Alien Enemy.]—*See* ALIEN.

Contingent Liability—Provable Debt—Unsuccessful Action by Debtor—Order for New Trial—Costs of First Trial to Abide Event of New Trial.]—An action for wrongful dismissal tried before a Judge and a special jury was dismissed with costs. On the application of the unsuccessful plaintiff the Court of Appeal made an order for a new trial and that the costs of the first trial should abide the event of the new trial. The plaintiff became bankrupt, but a composition scheme having been approved by the Court the bankruptcy was annulled. The defendants in the action were not the petitioning creditors, nor were they parties to the scheme. After the annulment the new trial took place, when judgment was ordered to be entered for the defendants with costs, and that they should recover against the plaintiff the taxed costs of the first trial and the costs of the second trial to be taxed. The defendants served on the plaintiff a bankruptcy notice to pay them the taxed costs of the first trial, the other costs not having been taxed. The plaintiff applied to set aside the notice on the ground that the amount of the taxed costs was a provable debt in the bankruptcy that had been annulled:—*Held*, that at the date of the annulled bankruptcy there was only a possibility of having to pay costs; that the order of the Court of Appeal did not create any contingent liability which gave rise to a provable debt in that bankruptcy within the meaning of section 37, sub-sections 3 and 8 of the Bankruptcy Act, 1883, and that therefore the bankruptcy notice was valid. Observations of Lindley, M.R., in *Vint* v. *Hudspeth* (54 L. J. Ch. 844; 30 Ch. D. 24) and in *British Gold Fields of West Africa, In re* (68 L. J. Ch. 412; [1899] 2 Ch. 7), applied. *Debtor (No. 68 of 1911), In re; Judgment Creditors, ex parte* (80 L. J. K.B. 1224; [1911] 2 K.B. 652; 104 L. T. 905; 18 Manson, 311—C.A.

Fraudulent Company Promoter—Issue of Debentures—Real Promoter not Disclosed—Secret Profits—Bankruptcy of Promoter.]—A corporation, consisting only of the seven signatories to its memorandum of association, was formed by D. and G., two of the signatories, to conceal their identity of promoting companies. D. and G., who were then undischarged bankrupts, had a controlling interest in the shares of the corporation, were its only directors, and divided its profits between themselves in an agreed proportion. In 1904 the corporation contracted to buy a Welsh quarrying interest for a small sum, and promoted a company to purchase the same from it at a greatly enhanced price in cash and shares. The seven signatories to the memorandum of association of this company and its directors were found by D. and G. and were their creatures. These signatories and the corporation were the only shareholders, and no issue of shares was made to the public, but, immediately after the incorporation of the company, D. and G. prepared prospectuses, which were issued by the company to the public, inviting subscriptions for an issue of debentures. Out of sums subscribed on the faith of these prospectuses, the company paid the corporation some 9,000*l.* on account of the

purchase price of the quarrying interest, and D. and G. divided this sum between themselves. The prospectuses disclosed that the corporation was the promoter of and vendor to the company and was making a large profit, but did not disclose the fact that D. and G. were the real promoters and vendors and were receiving the profit through the corporation. Early in 1906 the company was ordered to be wound up compulsorily, and in 1908 D. and G. were again adjudicated bankrupt and also prosecuted and convicted for fraudulent misrepresentations in the prospectuses :—*Held*, that the corporation was a mere *alias* of D. and G., and that the liquidator of the company could prove in D.'s bankruptcy for the secret profit received by D. and G. through the corporation. *Darby, In re; Brougham, ex parte*, 80 L. J. K.B. 180; [1911] 1 K.B. 95; 18 Manson, 10—Phillimore, J.

Loan to Trading Firm—Share of Profits of a Trading Venture — "Business" within Meaning of Partnership Act—Failure of Proposed Company — Subsequent Alteration of Terms.]—A. in December, 1910, lent to a firm sums amounting to 13,325*l.* for the purposes of a commercial adventure in Mexico, upon the terms that the loan was repayable with interest at 5 per cent. or, at the option of the lender, together with a share in the profits of the venture. A. decided in lieu of interest to receive shares in the proposed company. The company was never formed, and in April, 1911, the terms of the agreement were varied, A. continuing to lend the money in consideration of 5 per cent. interest and a proportion of any profits realised out of the Mexican venture. No profits were ever realised therefrom, and in August, 1911, the firm became financially embarrassed. Thereupon A. undertook to release the firm from their liability in consideration of the individual members of the firm accepting bills for the amount of the loan, and an ultimate guarantee being given by the firm for their due payment. In the ensuing bankruptcy A. claimed to prove for the full amount of his debt against the joint estate of the firm :—*Held*, that the release of the firm's liability in August, 1911, and the substitution therefor of the liability of the several partners, constituted a new agreement, and that A. under the guarantee of August, 1911, could prove for his debt against the joint estate of the bankrupt firm in competition with the other creditors.—*Abenheim, In re; Abenheim, ex parte*, 109 L. T. 219—Phillimore, J.

Semble, the transaction, although originally within the mischief of sections 2 and 3 of the Partnership Act, ceased to be so when in April, 1911, the source of any intended profits failed and the advance became a mere loan at interest. The term "business" in the Partnership Act, 1890, s. 2, sub-s. 3 (*d*), applies not merely to a lifelong or universal business, but to any separate commercial venture in which a trader or firm of traders embarks. *Ib.*

Double Proof—Partnership—Misfeasance—Breach of Trust—Joint and Several Liability—Proof against Individual Partner's Estate—Claim to Set off Debt Due to Joint Estate—Right of Election—"Distinct contracts."]—Where a firm, while in fiduciary relation to a company, has secretly profited to the extent of 14,000*l.* of the company's funds, and afterwards become bankrupt, the partners are jointly and severally liable for that sum. But where the liquidator of a company had elected to prove in the separate estate of one of the partners, it was held that he could not afterwards, by the provisions of rule 18, Schedule II. of the Bankruptcy Act, 1883, set off a debt due to the estate of the firm by the company against the balance of his claim, as neither of the partners had been an express trustee, and the fiduciary relationship did not constitute a "distinct contract" under the rule. *Parkers, In re: Sheppard, ex parte* (56 L. J. Q.B. 338; 19 Q.B. D. 84), distinguished, and *dictum* of Cave, J., not followed. *Kent County Gas Light and Coke Co., In re*, 82 L. J. Ch. 28; [1913] 1 Ch. 92; 107 L. T. 641; 19 Manson, 358; 57 S. J. 112—Neville, J.

Debt Contracted after Act of Bankruptcy—Notice of Act of Bankruptcy—Onus of Proof.]—When a trustee in bankruptcy rejects a proof of debt on the ground that the debt was contracted with notice of an available act of bankruptcy, the onus is upon him to prove that the creditor had notice of such act of bankruptcy—*Revell, Ex parte: Tollemache, in re* (*No. 2*) (13 Q.B. D. 727), distinguished. *Peel, In re; Honour, ex parte*, 109 L. T. 223; 57 S. J. 730—Phillimore, J.

First Meeting of Creditors—Quorum—Persons Entitled to Vote at Meeting.]—In calculating a quorum of creditors present at a first meeting of creditors only those who have lodged proofs can be calculated; consequently, if there is only one creditor present who has lodged a proof he forms a quorum, and can carry a resolution for the appointment of the trustee. *Thomas, In re; Warner, ex parte*, 55 S. J. 482—Phillimore, J.

IV. MUTUAL CREDITS, DEBTS, AND DEALINGS.

See also Vol. II. 851, 2023.

Set-off — Mortgage of Company's Plant — Insurance in Name of Secured Creditor—Insurance Money Paid to Creditor Prior to Winding-up — Surplus over Secured Debt — Set-off against Unsecured Debt.]—A company borrowed money from the respondents, with whom they had business dealings, giving them as a security for the loan bills of sale on their machinery, which in accordance with the provisions of the bills of sale was insured; but at the request of the company the respondents insured and paid the premiums, which were repaid to them by the company. In July, 1910, a fire occurred on the premises of the company, and the machinery was destroyed. In September, 1910, a resolution having been passed and duly confirmed to wind up the company, the company went into liquidation and was insolvent. Two weeks prior to the commencement of the winding-up the insurance moneys were paid over to the respondents, who, having paid themselves the loan made by them to the company, had in their hands a

surplus, which they claimed they were entitled to retain and set off in the liquidation against certain unsecured book debts due to them from the company :—*Held*, that there had clearly been mutual dealings and no contract to apply the money for a specific purpose so as to prevent the operation of section 38 of the Bankruptcy Act, 1883, as applied to insolvent companies by section 207 of the Companies (Consolidation) Act, 1908, and that the mutual dealings having resulted in a money claim some time before the date of the winding-up section 38 was applicable and a set-off must be allowed. *Thorne & Son, Lim., In re*, 84 L. J. Ch. 161; [1914] 2 Ch. 438; 112 L. T. 30; [1915] H. B. R. 19; 58 S. J. 755—Astbury, J.

Eberles Hotels and Restaurant Co. v. *Jonas* (56 L. J. Q.B. 278; 18 Q.B. D. 459) applied. *Pollitt, In re; Minor, ex parte* (62 L. J. Q.B. 236; [1893] 1 Q.B. 455), and *Mid-Kent Fruit Factory, In re* (65 L. J. Ch. 250; [1896] 1 Ch. 567), distinguished. *Talbot* v. *Frere* (9 Ch. D. 568), *Gregson, In re; Christison* v. *Bolam* (57 L. J. Ch. 221; 36 Ch. D. 223), and *Gedney, In re; Smith* v. *Grummitt* (77 L. J. Ch. 428; [1908] 1 Ch. 804), commented on. *Ib.*

V. SECURED CREDITORS.

See also Vol. II. 885, 2026.

Creditor's Right to a Security—Obligation to Assign Debenture as Security for Debt—Assignment not Completed at Date of Liquidation.]—A company which was indebted to the appellant bank entered into an arrangement whereby it was agreed that upon the bank surrendering certain goods, the property of the company, which the bank held as security, the company should obtain from one J., who was indebted to them, a debenture or floating charge over his assets, and should assign it to the bank in lieu of the security so surrendered. The property was surrendered to the company, and the debenture was obtained from J., but before it had been assigned to the bank the company went into liquidation. The bank claimed the debenture on the ground that the company held it as trustees for them :—*Held*, that as the assignment was not completed at the date of the liquidation the bank had no title to the debenture as against the liquidators of the company. *Heritable Reversionary Co.* v. *Millar* ([1892] A.C. 598) distinguished. *Dictum* of Lord Westbury in *Fleeming* v. *Howden* (6 Macph. (H.L.) 113, 121) explained. *Bank of Scotland* v. *Macleod*, 83 L. J. P.C. 250; [1914] A.C. 311; 110 L. T. 946—H.L. (Sc.)

VI. EFFECT OF BANKRUPTCY UPON EXECUTIONS.

See also Vol. II. 938, 2027.

Judgment Creditor—Execution—Payment to Judgment Creditor of Debt and Costs—Withdrawal of Sheriff—Receiving Order against Debtor—Execution, whether "completed"—Claim by Trustee to Money Paid.]—Execution being levied upon the goods of a judgment debtor, he paid the debts and costs direct to the execution creditors, who thereupon withdrew the sheriff. Within less than fourteen days from this date the debtor had a receiving order made against him :—*Held*, that the execution had not been completed within the meaning either of section 45 of the Bankruptcy Act, 1883, or of section 11 of the Bankruptcy Act, 1890, and that the execution creditors must hand over to the trustee in the bankruptcy the money so paid to them. *Jenkins, In re; Trustee, ex parte* (90 L. T. 65; 20 Times L. R. 187), distinguished. *Pollock and Pendle, In re; Wilson & Mathieson, Lim., ex parte* (87 L. T. 238), discussed. *Godding, In re; Partridge, ex parte*, 83 L. J. K.B. 1222; [1914] 2 K.B. 70; 110 L. T. 207; 21 Manson, 137; 58 S. J. 221—Horridge, J.

VII. PROTECTED TRANSACTIONS.

See also Vol. II. 974, 2031.

Assignment by Debtor to his Solicitor of Sum Due to Him from Commissioners of Inland Revenue for the Purpose of Opposing Bankruptcy Proceedings—Notice to Assignee of Available Act of Bankruptcy—Adjudication—Title of Trustee.]—On February 14, 1912, J., against whom a bankruptcy petition had been presented by W. and various judgments had been obtained, requested T., his solicitor, who had acted for him since September, 1911, to oppose this petition and to act for him in the other proceedings then pending. T., who was owed a considerable sum for professional services, declined to act unless the debtor provided funds for the purpose. Thereupon J. gave T. a letter authorising the Commissioners of Inland Revenue to pay T. a sum of 42*l.* 15*s.* 5*d.* then due from them to J. This letter T. immediately took to Somerset House, but the money was not paid over to him till March 20. T. acted for J. from February 14 till May 29, when the retainer was withdrawn, and, by making payments amounting to 38*l.* 17*s.* 2*d.*, succeeded in getting two adjournments of W.'s petition and of a subsequent petition by K. After May 29 J. employed another solicitor, and, although W.'s petition was dismissed, a receiving order was made against J. on K.'s petition, and he was subsequently adjudicated bankrupt. E., the trustee in J.'s bankruptcy, now applied for an order that T. should pay over to him the sum of 42*l.* 15*s.* 5*d.* as being money received by him with notice of an available act of bankruptcy. It was admitted that T. had notice of an available act of bankruptcy when he received the letter of authority from J. on February 14 :—*Held*, that the money was paid by the debtor to his solicitor for the purpose of opposing bankruptcy proceedings and protecting the debtor's estate, and that what the solicitor did was for the benefit of the debtor's estate, and that he was entitled to retain out of the sum of 42*l.* 15*s.* 5*d.* the sum of 38*l.* 17*s.* 2*d.* actually expended, and that the trustee was only entitled to the balance of 3*l.* 18*s.* 3*d.* *Sinclair, In re; Payne, ex parte* (15 Q.B. D. 616; 53 L. T. 767), followed. *Johnson, In re; Ellis, ex parte*, 111 L. T. 165—Horridge, J.

Petition Dismissed—Receiving Order made on Appeal—Relation Back of Order—Dealings with Bankrupt in Interval—Interests of Third

Parties Protected — Time between Receiving Order and Adjudication.]—After the dismissal of a bankruptcy petition against him a debtor continued to carry on business, paid in sums to his banking account, and drew cheques against them. On appeal, three months later, a receiving order was made and dated as of the date when the petition was wrongly dismissed. The sums paid into the bank during this period were claimed by the trustee for the benefit of the creditors :—*Held*, that the receiving order was rightly antedated, but that the rights of innocent third parties were not affected thereby in regard to dealings with the debtor between the date when the receiving order ought to have been made and the date when it was in fact made. *Teale, In re; Blackburn, ex parte*, 81 L. J. K.B. 1243; [1912] 2 K.B. 367; 106 L. T. 893; 19 Manson, 327; 56 S. J. 553; 28 T. L. R. 415—D.

Semble, the doctrine of *Cohen* v. *Mitchell* (59 L. J. Q.B. 409; 25 Q.B. D. 262) does not apply to transactions between receiving order and adjudication. *Montague, In re; Ward, ex parte* (76 L. T. 203; 4 Manson, 1), discussed and explained. *Ib.*

Mortgage — Trustees of Settlement — Bankruptcy of Settlor — Bona Fide Transaction without Notice—Covenant by Trustees, "as such trustees but not otherwise," to Repay Principal—Effect of Covenant.]—By a settlement made in 1903 on the marriage of R., a sum of 200,000*l.*, charged on his share in his father's residuary estate, was settled on trusts for R. and his wife and the issue of the marriage, with an ultimate trust for R. The settlement contained a power to the trustees to apply any part of the trust fund on R.'s request in writing in paying debts incurred by him, for which purpose they were to have full power of sale or mortgage. On November 18, 1906, R. committed an act of bankruptcy, and on December 18 R. made a request in writing to the trustees, in pursuance of which they applied to the plaintiff for a loan to pay off R.'s debts. The plaintiff advanced 800*l.*, to secure which a mortgage dated February 19, 1907, was executed, and by it the trustees, "as such trustees but not otherwise," covenanted to pay the 800*l.* with interest, and they assigned to the plaintiff the property subject to the settlement of 1903 in exercise of the power contained in it. On January 16, 1907, a receiving order was made against R., and in April, 1907, he was adjudicated bankrupt. In an action by the plaintiff to enforce the mortgage,—*Held*, first, that the request by R. to the trustees in December, 1906, before the date of the receiving order, was a *bona fide* transaction without notice within section 49 of the Bankruptcy Act, 1883, and that the mortgage made in pursuance of it was valid and effectual, though made after the date of the receiving order; secondly, that the words in the covenant, "as such trustees but not otherwise," did not protect the trustees from liability; and thirdly, that the plaintiff was entitled to judgment. *Robinson, In re; Gant* v. *Hobbs*, 28 T. L. R. 121—Warrington, J.

Gift for Special Purpose—No "transfer of property" to Donee—Purchaser for Value.]—A bankrupt within two years of his bankruptcy, in order to assist his nephew to obtain a lease of a public house, purchased a clock and had it fixed on to the public house. The lessors of the public house, in consideration of the clock being affixed to the premises as landlord's fixtures, granted a lease of the premises to the nephew at a reduced rent. The trustee in bankruptcy claimed the clock or its value as a gift to the nephew constituting a voluntary settlement within section 47 of the Bankruptcy Act, 1883 :—*Held*, that the clock having been transferred to the lessors for value could not be claimed by the trustee; that there was no gift of the clock as a chattel to the nephew; that the reduction of rent did not amount to a retention of any property in the clock by the nephew, and that its value could not therefore be claimed by the trustee. *Branson, In re; Moore, ex parte; Trustee* v. *Branson*, 83 L. J. K.B. 1673; [1914] 3 K.B. 1086; 111 L. T. 741; 21 Manson, 229; 30 T. L. R. 604—C.A.

VIII. DISCLAIMER.

See also Vol. II. 1009, 2037.

Leasehold Properties in Belgium and Berlin—Service of Notices in Country in Occupation of Enemy.]—Where a trustee in bankruptcy was desirous of disclaiming leasehold properties in places in Belgium in the occupation of alien enemies and in Berlin in the enemy's country, and applied for directions as to service therein of notices of intention to disclaim.—*Held*, that the notices might be served by sending them by ordinary post to the last known addresses of the respective landlords and giving them twenty-eight days' notice within which to require the matter to be brought before the Court. *Curzon, In re: Trustee, ex parte*, 84 L. J. K.B. 1000; [1915] H. B. R. 77; 59 S. J. 430; 31 T. L. R. 374—Horridge, J.

C. OFFICIAL RECEIVER.

See also Vol. II. 1038, 2040.

Costs—Official Receiver—Receiving Order against Firm—Partner—Unsuccessful Application for Adjudication.]—The official receiver is under no statutory obligation to apply for an adjudication in bankruptcy, and the Court has jurisdiction therefore to order him to pay the costs of an unsuccessful application, although in making the application he was not guilty of any misconduct and did not exceed his powers. *Williams & Co., In re; Official Receiver, ex parte*, 82 L. J. K.B. 459; [1913] 2 K.B. 88; 108 L. T. 585; 20 Manson, 21; 57 S. J. 285; 29 T. L. R. 243—C.A.

A receiving order was made against a firm in the firm name, and, believing M. to be a partner, the official receiver applied for his adjudication. There was a serious conflict of evidence, but ultimately M. was held not to be a partner, and the application was dismissed : —*Held*, that it was within the jurisdiction of the Court to order the official receiver to pay the costs personally in the first instance, and

that the Registrar had rightly exercised his discretion in ordering him to do so. *Tweddle & Co., In re* (80 L. J. K.B. 20; [1910] 2 K.B. 697), applied. *Ib.*

Motion — Consent of Official Receiver in Writing.]—Although not so prescribed by the Rules, it is desirable that the consent of the official receiver to the use of his name by a third party in launching a bankruptcy motion should be in writing. *Fitzgerald, In re* (*No.* 1), 112 L. T. 86—Horridge, J.

D. THE TRUSTEE.

See also Vol. II. 1041, 2041.

Resolution for Appointment of.]—In calculating a quorum of creditors present at a first meeting of creditors only those who have lodged proofs can be calculated; consequently, if there is only one creditor present who has lodged a proof he forms a quorum, and can carry a resolution for the appointment of the trustee. *Thomas, In re; Warner, ex parte*, 55 S. J. 482—Phillimore, J.

Sale of Bankrupt's Business to a Private Company—Company Promoted by the Trustee and Committee of Inspection—Sanction of the Court.]—The trustee in bankruptcy may, with the leave of the Court, sell the bankrupt's business to a private company, notwithstanding that such company has been promoted by the trustee and the committee of inspection, and that such persons are interested in such company as shareholders or directors or officers of the company. *Spink, In re; Slater, ex parte* (*No.* 1), 108 L. T. 572; 57 S. J. 445; 29 T. L. R. 420—Phillimore, J.

Trustee Carrying on Bankrupt's Business—Goods Supplied to the Business by Firms in which a Member of the Committee of Inspection was a Partner — Payments out of the Estate — Sanction of Court.] — Where the trustee in bankruptcy is carrying on the business of the bankrupt and orders goods from firms with which a member of the committee of inspection is connected, although this fact was not known to the trustee at the time when such orders were given and executed, the Court will sanction the payment by the trustee out of the bankrupt's estate of the cost price of goods so supplied. *Spink, In re; Slater, ex parte* (*No.* 2), 108 L. T. 811—Phillimore, J.

Proceedings by Trustee in Bankruptcy—No Sanction of Committee of Inspection — No Defence to Action.]—The obtaining of the consent of the committee of inspection to the taking of proceedings by a trustee in bankruptcy which is required by section 22, subsection 9, and section 57 of the Bankruptcy Act, 1883, and section 15, sub-section 3 of the Bankruptcy Act, 1890, is merely a provision for the protection of the estate, and is not one which the respondent or defendant in any proceedings by the trustee is entitled to avail himself of in answer to those proceedings. *Lee* v. *Sangster* (26 L. J. C.P. 151; 2 C. B. (N.S.) 1) and *Angerstein, Ex parte; Angerstein, in re* (43 L. J. Bk. 131; L. R. 9 Ch. 479), applied. *Branson, In re; Trustee, ex parte*, 83 L. J. K.B. 1316; [1914] 2 K.B. 701; 110 L. T. 940; 21 Manson, 160; 58 S. J. 416—Horridge, J.

Default of Trustee—Improper Retention of Money—Statutory Interest—Non-payment of Interest—Fidelity Bond—"Loss or damage" to Estate—Loss by "Default" of Trustee—Liability of Surety.] — Non-payment by a trustee in bankruptcy of the interest at 20 per cent. per annum imposed by section 74, subsection 6 of the Bankruptcy Act, 1883, upon a trustee who improperly retains for more than ten days a sum exceeding 50*l.*, is not a loss or damage to the estate of the bankrupt by the default of the trustee within the meaning of a bond given by the trustee and his surety for the due performance of his duties by the trustee, conditioned to be avoided if the surety should make good any such loss or damage occasioned by any such default. *Board of Trade* v. *Employers' Liability Assurance Corporation*, 79 L. J. K.B. 1001; [1910] 2 K.B. 649; 102 L. T. 850; 17 Manson, 273; 54 S. J. 581; 26 T. L. R. 511—C.A.

Right to Costs Incurred with Sanction of Committee — Proofs of Majority of Creditors and Committee Expunged — Annulment of Adjudication.]—A trustee who has been appointed by creditors and permitted to incur costs by a committee of inspection, whose proofs have subsequently been expunged, with the result that the adjudication has been annulled and a new trustee appointed, is, in the absence of fraud on his part, entitled to have such costs out of the estate. *Jones, In re; Goatly, ex parte*, 56 S. J. 17—Phillimore, J.

Committee of Inspection.] — A creditor is qualified for appointment to the committee of inspection by section 5 of the Bankruptcy Act, 1890, even before he has tendered a proof. *Ib.*

Leave to Use Trustee's Name—Indemnity.] —Where a secured creditor, who relies on his security, wishes to exercise his power of sale and to enforce a contract made by the bankrupt, and applies to the trustee in bankruptcy for the use of his name, he must give a full and proper indemnity, and an indemnity limited to assets received by the creditor as receiver and manager is not wide enough. *Grenfell, In re; Plender, ex parte*, [1915] H. B. R. 74—Horridge, J.

Taxation — New Trustee — Taxation of Trustee's Solicitor's Bill of Costs without Notice to New Trustee—Allocatur Signed—Re-taxation.] — "The trustee," who under rule 120 of the Bankruptcy Rules, 1886 and 1890, is entitled to not less than seven days' notice of the appointment to tax, is the person who is trustee at the time when the taxation takes place; so that where a new trustee in bankruptcy had been appointed and the solicitor to the original trustee did not give him notice of the appointment to tax the solicitor's bill of costs, and the taxation proceeded in his absence and the *allocatur* was signed, a re-

taxation was ordered, and in the meantime the *allocatur* was suspended. *Smith, In re; Wilson, ex parte*, 80 L. J. K.B. 16; [1910] 2 K.B. 346; 102 L. T. 861; 17 Manson, 290; 26 T. L. R. 492—Phillimore, J.

E. THE BANKRUPT.

See also Vol. II. 1095, 2046.

Insolvent Traders — Proposal to Transfer Business to Private Company—Debentures in Satisfaction of Debts—Restriction on Debentures—Approval of Creditors—Valuable Consideration—Bona Fides—Defeating or Delaying Creditors—Fraudulent Conveyance—Act of Bankruptcy.]—An assignment of their business assets to a private company by insolvent traders is not void under the statute 13 Eliz. c. 5, if the assignment is for valuable consideration, and is not in any way tainted by fraud. Where, however, the object and effect of the transaction is to enable the insolvent traders to carry on their business without interruption by creditors, and where the principal consideration for the assignment consists of debentures, which are not available as assets for creditors generally, but are handed to specific creditors, with a restriction against their being enforced during a term of years; then the assignment is void, as calculated to "defeat or delay creditors," and is an act of bankruptcy within the meaning of the Bankruptcy Act, 1883, s. 4, sub-s. 1 (*b*). *David & Johnson, In re; Whinney, ex parte*, 83 L. J. K.B. 1173; [1914] 2 K.B. 694; 110 L. T. 942; 21 Manson, 148; 58 S. J. 340; 30 T. L. R. 366—Horridge, J.

Payment by Cheque on Eve of Bankruptcy—Cheque Given in Substitution for Former Uncashed Cheque.]—O. acted as agent for W. in the selling of cattle. On January 30 O. sent to W. in England a cheque for the proceeds of certain sales, which cheque W. omitted to cash, and he came to Ireland leaving the uncashed cheque in England. On February 4 W. met O., who informed him of his insolvency, and at W.'s request O. gave him a cheque for the same amount and bearing the same date as the former, and in substitution therefor. This cheque W. immediately cashed. Earlier that day O. had instructed his solicitor to file a petition in arrangement on his behalf, and the petition was filed later in the same day and protection granted:—*Held*, that the giving of the second cheque did not amount to a fraudulent preference of W. under section 53 of the Bankruptcy (Ireland) Amendment Act, 1872. *Oliver, In re*, [1914] 2 Ir. R. 356—C.A.

Innocent Receipt—Misleading Representation — Estoppel.] — Owing to the doctrine of relation back that is formulated in section 43 of the Bankruptcy Act, 1883, by which the property of a bankrupt becomes the property of the trustee in his bankruptcy as from the date of committal of the act of bankruptcy on which the receiving order is founded, it is impossible for the trustee to be prejudiced in any way whatever in dealing with the bankrupt's property by any representation concerning the property made by the bankrupt himself after the act of bankruptcy, even though such representation might have estopped the bankrupt himself from dealing with the property in any particular fashion. Where, accordingly, a bankrupt makes a preferential payment to one of his creditors on the representation that the payment is really being made by some third person, and where the creditor believes in and acts on the representation, the trustee in bankruptcy will not be estopped from recovering the money thus paid on behalf of the bankrupt's estate. *Ashwell, In re; Salaman, ex parte*, 81 L. J. K.B. 360; [1912] 1 K.B. 390; 106 L. T. 190; 19 Manson, 49; 56 S. J. 189; 28 T. L. R. 166—Phillimore, J.

Return of Goods to Creditor—Evidence of other Acts of Fraudulent Preference—Admissibility.]—A debtor returned goods to the value of 1,808*l.* to a creditor on March 22, 1912, the debtor being to his own knowledge insolvent at that date. No threats of legal proceedings were made by the creditor. On May 29 a receiving order was made against the debtor on a creditor's petition, based on an act of bankruptcy committed on May 2. The trustee in bankruptcy claimed the return of these goods or the payment of 1,808*l.* on the ground that the transaction was a fraudulent preference. In support of the application evidence was tendered of other acts of fraudulent preference by the debtor shortly before and shortly after the transaction in question, to shew the intent of the debtor:—*Held*, that the transaction was fraudulent, and further, that the evidence of other acts of fraudulent preference was admissible. *Ramsay, In re; Deacon, ex parte*, 82 L. J. K.B. 526; [1913] 2 K.B. 80; 108 L. T. 495; 20 Manson, 15; 29 T. L. R. 225—Phillimore, J.

Post-nuptial Settlement — Recital of Ante-nuptial Agreement — Intention to Defeat or Delay Creditors.]—A recital in a post-nuptial deed of settlement that the settlement is made in pursuance of a parol ante-nuptial agreement is a memorandum in writing sufficient to satisfy the Statute of Frauds; but it does not dispense with the necessity of proving that the recited ante-nuptial agreement was actually made. Validity of a post-nuptial settlement under 13 Eliz. c. 5, and section 47 of the Bankruptcy Act, 1883, considered. *Gillespie, In re; Knapman* v. *Gillespie*, 20 Manson, 311—Horridge, J.

Agreement by Undischarged Bankrupt to Pay Debt Incurred Prior to Bankruptcy — Validity.]—The plaintiff recovered judgment against the defendant for 913*l.* 11*s.*, and subsequently a receiving order was made against the defendant, and he was adjudicated bankrupt. No part of the 913*l.* 11*s.* had been paid, but the plaintiff lodged no proof in the bankruptcy. While the defendant was still undischarged, the plaintiff lent 15*l.* to the defendant in consideration of a promise by the defendant to pay what he owed prior to the receiving order just as if such receiving order had not been made. In an action by the plaintiff against the defendant to recover the 913*l.* 11*s.*

it was admitted that no dividend could be paid by the defendant's state :—*Held*, that the contract was valid, and that therefore the plaintiff was entitled to recover. *Wild* v. *Tucker*, 83 L. J. K.B. 1410; [1914] 3 K.B. 36; 111 L. T. 250; 21 Manson, 181; 30 T. L. R. 507—Atkin, J.

Undischarged Bankrupt — Proceeding against Trustee—Maintenance.]—An undischarged bankrupt is not entitled to bring an action for damages for maintenance in respect of proceedings brought against his trustee in bankruptcy. *Bottomley* v. *Bell*, 59 S. J. 703; 31 T. L. R. 591—C.A.

Arrest of Debtor—High Bailiff's Man's Fee —Mileage—Scale of Fees.]—Under Table C of the Scale of Fees and Percentages under the Bankruptcy Acts, which prescribes 5*d*. per mile for the high bailiff's man travelling "to execute a warrant of or order of commitment," he is entitled to mileage for the whole journey up to delivery of the debtor to prison. *Cropley, In re; Fox, ex parte*, 80 L. J. K.B. 822; [1911] 2 K.B. 309; 104 L. T. 720; 18 Manson, 119; 27 T. L. R. 391—Phillimore, J.

F. JURISDICTION AND COURTS.

See also Vol. II. 1169, 2052.

Hearing of Matter not Arising out of the Bankruptcy.]—Where a dispute has arisen in respect of a title on a contract for the sale of a lease, the matter would, as a general rule, be decided in the Chancery Division on a vendor and purchaser summons, but where the estate of the vendor has subsequently become vested in a trustee in bankruptcy a Judge of the King's Bench Division sitting in Bankruptcy may, for the convenience of the parties and with their consent, hear the application. *Martin, In re: Dixon, ex parte*, 106 L. T. 381—Phillimore, J.

Administration — Probable Insolvency of Estate — Application to Transfer Proceedings from the Chancery Division to the Court of Bankruptcy.]—Where an administration order had been made in the Chancery Division on the application of a creditor of a testator, and the advertisements had been issued stating that creditors' claims must be sent in by a certain day, and a date had been fixed for adjudicating on them, and where the solicitors for the executrix had written stating that so many claims had reached them that they did not know whether there would be sufficient to pay all the creditors in full, on an application made for the proceedings to be transferred to the Bankruptcy Court, under section 130, sub-section 3 of the Bankruptcy Act, 1914,—*Held*, that there was not sufficient evidence to satisfy the Court that the estate was insufficient to pay its debts, and that, however that might be, there were no such considerations of convenience, delay, or expense as would justify the Court in making the order for transfer. *York, In re; Atkinson* v. *Powell* (56 L. J. Ch. 552; 36 Ch. D. 233), and *Kenward, In re; Hammond* v. *Eade* (94 L. T. 277), distinguished. *Hay, In re; Stanley Gibbons, Lim.* v. *Hay*, 84 L. J. Ch. 821; [1915] 2 Ch. 198; [1915] H. B. R. 165; 59 S. J. 680—Sargant, J.

Quære, whether an order for transfer under section 130, sub-section 3 of the Bankruptcy Act, 1914, can be made after judgment in an administration action. *Ib.*

Bankruptcy Order of County Court Judge for Payment of Money—Action in High Court of Order.]—A married woman executed a deed of assignment of her property for the benefit of her creditors, and appointed the defendant trustee. A bankruptcy petition founded on that act of bankruptcy was presented against her in the County Court, and she was adjudicated a bankrupt, and the official receiver appointed trustee in the bankruptcy. An order was obtained in the County Court that (the official receiver having elected to treat the defendant as a trespasser) the defendant should pay to the official receiver the amount which might be found due from him in respect of the bankrupt's property and book debts. The Registrar found that a sum of 178*l*. 12*s*. 1*d*. was due from the defendant to the official receiver, who thereupon instituted an action in the High Court to recover that amount from the defendant :—*Held* (Bray, J., dissenting), that the action was maintainable. *Savill* v. *Dalton*, 84 L. J. K.B. 1583; [1915] 3 K.B. 174; 113 L. T. 477; [1915] H. B. R. 154; 59 S. J. 562—C.A.

County Court Order for Payment of Salary —Default in Payment—Committal—Attachment—Personal Service.]—The County Court sitting in bankruptcy has the power to commit for contempt, and it is therefore not necessary, when proceeding against a bankrupt who has disobeyed an order made in pursuance of section 53 of the Bankruptcy Act, 1883, for the payment to his trustee of a portion of his salary, that the requirements of Order XXV. rule 58 of the County Court Rules, 1903 and 1904, which regulate the practice as to attachment, shall have been complied with. *Pickard, In re; Official Receiver, ex parte*, 81 L. J. K.B. 330; [1912] 1 K.B. 397; 105 L. T. 832; 19 Manson, 58; 56 S. J. 144—D.

G. PRACTICE AND PROCEDURE.

I. PRACTICE.

1. Affidavits.

See also Vol. II. 1200, 2056.

The affidavit in form 12 in the Appendix to the Bankruptcy Rules, 1886 to 1890, verifying the truth of the statements in a bankruptcy petition must be confined to the facts which are true to the knowledge of the petitioner. *Debtor (No. 7 of 1910), In re; Petitioning Creditors, ex parte*, 79 L. J. K.B. 1065; [1910] 2 K.B. 59; 102 L. T. 691; 17 Manson, 263; 54 S. J. 459; 26 T. L. R. 429—C.A.

2. Amendment.

See also Vol. II. 1200, 2056.

Receiving Order Varied by Striking out Finding Complained of without Prejudice to any Question.]—A receiving order was made against a debtor on a petition alleging two acts of bankruptcy, one of which was the giving of a bill of sale. The grantee of the bill of sale was not a party to the bankruptcy proceedings in the County Court, and had no opportunity of disputing the allegation of fraud. The grantee appealed to the Divisional Court to annul the adjudication order and rescind the receiving order and, if necessary, to dismiss the petition, or, alternatively, to amend the orders by striking out all reference to the particular act of bankruptcy complained of :—*Held*, that the receiving order ought to be amended by striking out all reference to the finding complained of, and that the trustee should within fourteen days give notice of motion in the County Court to set aside the bill of sale. *Debtor, In re; Powell, ex parte*, 106 L. T. 344—D.

3. Appeal.

See also Vol. II. 1206, 2057.

Order of Court of Appeal Supporting Receiving Order — No Leave to Appeal — Appeal to House of Lords — "Bankruptcy matters."]—Matters coming within the jurisdiction of the Bankruptcy Court are "bankruptcy matters" within the meaning of section 104, sub-section 2 (*c.*) of the Bankruptcy Act, 1883, and therefore an appeal will not lie to the House of Lords from an order of the Court of Appeal, supporting a receiving order, without the leave of the Court of Appeal. *Chatterton* v. *City of London Brewery Co.*, 84 L. J. K.B. 667; [1915] A.C. 631; 112 L. T. 1005; [1915] H. B. R. 112; 59 S. J. 301—H.L. (E.)

From County Court — Money or Money's Worth Involved not Exceeding 50*l.*—Leave to Appeal—Appeal from Part of Order—Property Involved in Proceedings as a Whole—Costs.]—Rule 129 (1) [rule 1 of 1905] of the Bankruptcy Rules, 1886 to 1914, which provides that no appeal shall be brought, without the leave of the Court, or of the Court of Appeal, from any order relating to property when it is apparent from the proceedings that the money or money's worth involved does not exceed 50*l.*, means, first, to exclude costs, which do not come into consideration in the amount involved; and secondly, that the money or money's worth involved in the appeal does not exceed 50*l.*; and not that the same did not exceed 50*l.* when the proceedings were originally taken in the County Court. In order to ascertain the amount involved in the appeal the Court is entitled to look at all the proceedings. *Arnold, In re; Hext, ex parte*, 84 L. J. K.B. 110; [1914] 3 K.B. 1078; [1915] H. B. R. 11; 21 Manson, 319; 59 S. J. 9; 30 T. L. R. 691—C.A.

The occupier of a farm was adjudicated a bankrupt. He had sold the stock and effects. The official receiver, as trustee in the bankruptcy, applied in the County Court for a declaration that the effects, which on a sale by the purchaser had realised upwards of 126*l.*, were in the order and disposition of the bankrupt, and that 13*l.* odd, part of that sum which had been paid to the purchaser, was a fraudulent preference. The County Court Judge refused the motion so far as it related to the question of order and disposition, but he declared that the payment of the 13*l.* was a fraudulent preference, and ordered the purchaser to pay the costs, which with the 13*l.* exceeded 50*l.* The purchaser, without obtaining leave, appealed from the part of the order directing payment of the 13*l.*, and the Divisional Court (Horridge, J., and Atkin, J.) overruled a preliminary objection by the official receiver that, under rule 129 (1) of the Bankruptcy Rules, 1886 to 1914, leave to appeal was necessary, and allowed the appeal :—*Held*, reversing the Divisional Court, that, as the value of the property involved in the only part of the order under appeal did not exceed 50*l.* there could be no appeal without leave, and that in dealing with that question the Court could not take the costs into consideration. *Everson, In re; Official Receiver, ex parte* (74 L. J. K.B. 38; [1904] 2 K.B. 619), distinguished. *Ib.*

Order of Divisional Court Granting Extension of Time for Appealing—Not Subject to Appeal.]—Section 1, sub-section 1 (*a*) of the Judicature (Procedure) Act, 1894, which enacts that no appeal shall lie from an order allowing an extension of time for appealing from a judgment or order, is perfectly general in its terms, and applies to an appeal against an order of the Divisional Court, of which the Judge to whom bankruptcy matters are assigned is a member, granting an extension of time for appealing against an order in Bankruptcy of a County Court, notwithstanding section 104, sub-section 2 (*b*) of the Bankruptcy Act, 1883, and section 2 of the Bankruptcy Appeals (County Courts) Act, 1884. *Debtor* (*No.* 20 *of* 1910), *In re*, 80 L. J. K.B. 508; [1911] 1 K.B. 841; 104 L. T. 233; 18 Manson, 107—C.A.

Right to Appeal—Administration—"Person aggrieved" — Debt Incurred since Death of Debtor.]—A creditor who has taken out a summons for administration of the estate of a deceased person in the Chancery Division is "aggrieved" by an order for the administration of such estate in bankruptcy, and has therefore a right to appeal against such order under section 104 of the Bankruptcy Act, 1883. *Kitson, In re; Sugden & Son, Lim., ex parte*, 80 L. J. K.B. 1147; [1911] 2 K.B. 109; 18 Manson, 224; 55 S. J. 443—D.

A petition for the administration of the estate of a deceased debtor in bankruptcy under section 125 can only be presented by a creditor whose debt was incurred during the life of the debtor. *Ib.*

Appeal against Making of Receiving Order—Stay of Proceedings—Official Receiver not Served with Notice of Appeal—Appeal Heard de Bene Esse.]—Notice of appeal to the Court of Appeal or to the Divisional Court in Bank-

ruptcy against the making of a receiving order must in every case, whether proceedings under the order have been stayed or not, be served upon the official receiver within the time limited by the Rules for service on the petitioning creditor. But in special circumstances the Court may extend the time for appealing in order that the official receiver may be served, or may hear the appeal *de bene esse*, and if necessary then adjourn the matter for a like purpose. *Sleath, In re; Lotus Shoe Co., ex parte*, 109 L. T. 222—D.

Order for Administration in Bankruptcy—"Person aggrieved."] — An administratrix who will be put to expense in complying with an order for administration in bankruptcy under section 125, rule 278 of the Act is a "person aggrieved" within the meaning of section 104 of the Act. The apparent absence of any available assets is not of necessity a ground for refusing administration in bankruptcy under section 125. *Hosking, In re; Hosking, ex parte*, 106 L. T. 640—D.

4. Costs.

See also Vol. II. 1232, 2059.

Execution—Seizure under Fi. Fa.—Interpleader — Sheriff's Costs — Sale by Leave of Official Receiver—"Costs of the execution."] The sheriff's costs of interpleader are not "costs of the execution" within section 11 of the Bankruptcy Act, 1890. *Rogers, In re; Sussex (Sheriff), ex parte*, 80 L. J. K.B. 418; [1911] 1 K.B. 641; 103 L. T. 883; 18 Manson, 22; 55 S. J. 219; 27 T. L. R. 199—C.A.

Security for Costs — Nominal Plaintiff — Action by Undischarged Bankrupt for Commission — Personal Earnings of Bankrupt — Earnings Necessary for Maintenance of Bankrupt—Intervention of Trustee.]—The plaintiff, an undischarged bankrupt, brought an action against the defendants claiming a sum of 60*l.* alleged to be due to him on a commission note given by them to him during the bankruptcy, by which, in consideration of his obtaining for them a certain loan, they agreed to pay him that sum as commission. The trustee in bankruptcy of the plaintiff wrote to the defendants claiming any moneys that might become payable to him. The defendants made an application for an order that the plaintiff should give security for the costs of the action on the ground that he was a mere nominal plaintiff suing for the benefit of his trustee in bankruptcy. The evidence shewed that for the year preceding the bringing of the action the plaintiff's total earnings, including the sum sued for, had not exceeded 100*l.* :—*Held*, that the sum sued for was personal earnings of the plaintiff necessary for his maintenance within the exception which excludes such earnings of a bankrupt from the general rule that the property of the bankrupt vests in the trustee in bankruptcy; and, consequently, that the plaintiff was not a mere nominal plaintiff, and should not be ordered to give the security asked for. *Affleck* v. *Hammond*, 81 L. J. K.B. 565; [1912] 3 K.B. 162; 106 L. T. 8; 19 Manson, 111—C.A.

Whether a trustee in bankruptcy who has given notice of intervention can afterwards withdraw it, *quære*. *Ib.*

Taxation of Costs of Trustee's Solicitors—Right of Bankrupt to Attend—Authorisation of Trustee to Employ Solicitor — Solicitor's Retainer.]—A man was adjudicated bankrupt. There was only one creditor. This creditor's general proxy purported to appoint himself committee of inspection, and as such committee authorised the trustee to employ solicitors. Under the Bankruptcy Act, 1883, s. 22, sub-s. 1, a committee must not consist of less than three persons; under section 22, sub-section 9, if there is no committee the Board of Trade have their powers; under section 57, sub-section 3, the trustee may, with the permission of the committee, employ solicitors; under section 73, sub-section 3, the taxing officer is to satisfy himself that the employment of solicitors has been duly sanctioned. The debt was paid in full, and the bankruptcy annulled. The trustee under the above authority, and not under the authority of the Board of Trade, employed solicitors, whose costs were taxed and paid. The solicitors, although applied to by the late bankrupt, gave him no information as to costs until they had been taxed. The late bankrupt thereupon applied to re-open the taxation and for leave to attend. The taxing officer refused the application. The Divisional Court sent the matter back to him to be re-opened :—*Held*, that the taxing officer had jurisdiction in a proper case to allow a bankrupt to attend taxation, and that this was such a case; and that the trustee had not been duly authorised under the Bankruptcy Acts to retain solicitors, and that the sums paid for costs must be disallowed. *Geiger, In re; Geiger, ex parte*. *Williams* v. *Biddle*, 84 L. J. K.B. 589; [1915] 1 K.B. 439; 112 L. T. 562; [1915] H. B. R. 44; 59 S. J. 250—C.A.

5. Service of Petitions, Orders, and Other Process.

See also Vol. II. 1260, 2063.

Petition — "Person carrying on business under a partnership name."]—When a petition has been presented against a debtor who, to the knowledge of the creditor, carries on business alone under a partnership or trade name, it must be served personally against the debtor, and it is not sufficient to serve it upon a person having at the time of service the control or management of the business. *Patrick, In re; Hall & Co., ex parte*, 107 L. T. 624; 57 S. J. 9—D.

Committal for Disobedience to Order of Court—Mode of Service of Order Disobeyed.] —Where it is sought to commit a bankrupt for disobedience to an order made under section 53 of the Bankruptcy Act, 1883, it is not necessary that such order shall have been personally served upon the bankrupt or indorsed with a warning of the consequences of non-compliance therewith. *Pickard, In re; Official Receiver, ex parte*, 56 S. J. 144—D.

6. Various Matters.

See also Vol. II. 1274, 2064.

Joint and Separate Estates—Intermixture of Partnership—Consolidation.]—The Court will not sanction a consolidation of the joint and separate estates of bankrupt partners merely because the estates are so intermixed that the investigation of proofs and distinguishing claims against the joint and separate estates may be attended with difficulty and expense. *Kriegel, In re; Trotman, ex parte* (68 L. T. 588; 10 Morrell, 99), followed. *Barker & Co., In re*, 21 Manson, 238—Horridge, J.

II. EVIDENCE.

See also Vol. II. 1275, 2065.

Private Examination of Witness — Summons.]—The Court will not refuse to issue a summons for the attendance of a witness for examination by the trustee under section 27 of the Bankruptcy Act, 1883, either upon the ground that the bankrupt knows as much about the matters to be enquired into as the witness, or upon the ground that the witness is the arbitrator under a contract entered into by the bankrupt as to which the trustee wishes to make enquiries. *Macdonald, Deakin & Jones, In re; Trustee, ex parte*, 58 S. J. 798—D.

—— **Service of Notice of Motion on Person to be Examined—Special Circumstances.**]—The trustee claimed that certain money in the banking account of a stranger formed part of the property of the bankrupt. In order to prevent the stranger from dealing with the money, he served notice of motion upon her, and obtained an interim injunction before examining her under section 27 :—*Held*, that the above facts constituted such special circumstances as to entitle the trustee to proceed with the examination of the respondent under section 27, although he had already commenced proceedings against her. *Aarons, In re; Trustee, ex parte*, 111 L. T. 411; 58 S. J. 581—Horridge, J.

Notice of Intention to Read Private Examination of Party to Motion — Copy to be Supplied to Other Side.]—Where on a notice of motion notice is given of intention to read against a party his deposition taken under section 25 of the Bankruptcy Act, 1914, the solicitor giving such notice ought to supply the party against whom the deposition is to be read with a copy thereof, on being paid for it. It will then be for the taxing officer to say whether such a copy was necessary. *Carill-Worsley, In re; Trustee, ex parte*, 84 L. J. K.B. 1414; [1915] 2 K.B. 534; [1915] H. B. R. 190; 59 S. J. 428—Horridge, J.

Public Examination — Evidence against Third Parties.]—The public examination of a bankrupt is not evidence against his trustee in bankruptcy, at all events so far as it consists of statements as to what the bankrupt says or does after the commencement of the bankruptcy. *Bottomley, In re; Brougham, ex parte*, 84 L. J. K.B. 1020; [1915] H. B. R. 75; 59 S. J. 366—Horridge, J.

—— **Affidavit — Cross-examination.**] — Where notice is given of intention to cross-examine on an affidavit, that affidavit cannot be read in the absence of the deponent. The exhibits to an affidavit ought to be served with it. *Ib.*

—— **Questions Tending to Incriminate — Debtor Charged with Offence Abroad.**] — Where a debtor prior to the filing of his own petition has been arrested in London on a charge of robbery in Canada, and at his public examination under section 17 of the Bankruptcy Act, 1883, the official receiver put questions to him to which he objected as tending to incriminate him in reference to the offence with which he was charged, the debtor was ordered to answer the questions. *Atherton, In re*, 81 L. J. K.B. 791; [1912] 2 K.B. 251; 106 L. T. 641; 19 Manson, 126; 56 S. J. 446; 28 T. L. R. 339—Phillimore, J.

Discovery of Debtor's Property—Order to Produce for Inspection — Jurisdiction of Registrar.]—The procedure of section 27 of the Bankruptcy Act, 1883, is primarily intended to apply to the case of a recalcitrant witness, and is only one of the methods by which the official receiver or trustee is enabled to obtain discovery of the debtor's property. *Geiger, In re*, 109 L. T. 224—D.

The Registrar has jurisdiction to order a person to produce for the inspection of the trustee all documents and papers relating to the estate of the debtor. *Ib.*

Discovery and Interrogatories—Application before Receiving Order.]—A petitioning creditor, upon an application by him under rule 72 of the Bankruptcy Rules before a receiving order has been made, cannot obtain an order for discovery and interrogatories against the debtor to enable the petitioner to prove the allegations in the petition. *X. Y., In re; Haes, ex parte* (71 L. J. K.B. 102; [1902] 1 K.B. 98), distinguished. *Debtor* (*No. 7 of* 1910), *In re; Petitioning Creditors, ex parte*, 79 L. J. K.B. 1065; [1910] 2 K.B. 59; 102 L. T. 691; 17 Manson, 263; 54 S. J. 459; 26 T. L. R. 429—C.A.

Production of Documents — Custody.] — Where a witness is summoned before the Court for examination under section 27 of the Bankruptcy Act, 1883, and required to produce documents in his custody relating to the debtor, his dealings or property, the Court has no jurisdiction to order the witness to give up such documents to the official receiver or trustee for the purpose of removing them out of the custody of the Court in order to take copies of them. *Ash, In re; Hatt, ex parte*, 110 L. T. 48; 21 Manson, 15; 58 S. J. 174; 30 T. L. R. 194—D.

H. DEEDS OF ARRANGEMENT.

See also Vol. II. 1406, 2027.

Resolution at Creditors' Meeting — Deed Executed in Pursuance thereof—Absence of

Communication to Creditors—Revocability.]—A deed of assignment executed by a debtor for the benefit of his creditors is revocable until the fact of its execution has been communicated to them. Until such communication the trustee under the deed has no title to the property comprised in it, as against an execution creditor of the assignor. *Garrard* v. *Lauderdale* (*Lord*) (2 Russ. & M. 451) applied. *Ellis & Co.* v. *Cross*, 84 L. J. K.B. 1622; [1915] 2 K.B. 654; 113 L. T. 503—D.

Alleged Verbal Assent to Deed by Landlord — Subsequent Distress for Rent — Action by Trustee for Illegal Distress.]—A debtor made a deed of assignment for the benefit of his creditors generally. At the time he owed his landlord, the defendant, two years' rent. The defendant attended a meeting of creditors, and was there informed by the plaintiff, the trustee of the deed, that if he assented to the deed he would receive six months' rent in full, and that he could claim with the other creditors for the balance. The deed, however, contained no provision to this effect, and the other creditors did not assent to this payment. The defendant used certain words at the meeting which the plaintiff alleged amounted to a verbal assent to the deed. The defendant subsequently distrained for the two years' rent owing to him, and the plaintiff thereupon brought an action against him claiming damages for illegal distress. At the close of the plaintiff's case the County Court Judge found that the remark made by the defendant did not amount to an assent to the deed, and that it gave no cause of legal action. On appeal by the plaintiff,—*Held*, first (Atkin, J., *dubitante*), that there was some evidence to support that finding; and secondly, that in any event a new trial would be bound to end in favour of the defendant, on the ground that his assent to the deed, if any, was conditional on his right to receive six months' rent in full, and that he acquired no such right, and that therefore a new trial ought not to be ordered. *Sier* v. *Bullen*, 84 L. J. K.B. 1288; [1915] H. B. R. 132; 113 L. T. 278—D.

Previous Bankruptcy and Receiving Order—Composition and Discharge of Receiving Order—Debts not Proved in Previous Bankruptcy—Creditors Scheduled in Deed—Estoppel.]—In 1910 a debtor had a receiving order in bankruptcy made against him. He subsequently paid a composition, and the receiving order was discharged. A and B, who were creditors, did not prove under the receiving order, and did not receive the composition. In 1912 the debtor, being again in difficulties, executed a deed assigning property to a trustee on trust to pay the creditors scheduled thereto their debts, including A and B. The trustee declined to pay A and B with the other scheduled creditors on the ground that their debts were barred by the discharge of the receiving order and the payment of the composition, and that they were in law not creditors at all:—*Held*, that the trustee was bound to investigate the claims and to pay only the real creditors under the deed; that there was no new consideration which could be enforced against the debtor to pay A and B; and that the trustee was not estopped by the deed from denying that A and B were in fact creditors entitled to the benefit of the deed. *Lancaster* v. *Elce* (31 L. J. Ch. 789; 31 Beav. 325) distinguished. *Pilet's Deed, In re; Toursier & Co., ex parte; Berkeley's Executors, ex parte*, 84 L. J. K.B. 2133; [1915] 3 K.B. 519; [1915] H. B. R. 149; 31 T. L. R. 558—D.

Execution by Attorney — Registration — Affidavit by Attorney—Assent of Majority of Creditors—Declaration of Invalidity of Deed—Jurisdiction.]—By section 23 of the Deeds of Arrangement Act, 1914, "Any application by the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, or by the debtor or by any creditor entitled to the benefit of such a deed of arrangement, for the enforcement of the trusts or the determination of questions under it, shall be made to the Court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed." A debtor gave his sister a power of attorney to execute a deed of arrangement for the benefit of his creditors generally and she executed it and swore the affidavit in support. Afterwards the debtor applied under section 23 of the Deeds of Arrangement Act, 1914, to a County Court having jurisdiction in bankruptcy for a declaration that the deed was void on the grounds, first, that under sections 1 to 5 of the Act the deed should have been executed and the affidavit sworn by the debtor personally; secondly, that the power of attorney was a deed of arrangement under section 1, subsection 2 (*e*) and not being registered was void; and thirdly, that the assent of the majority of the creditors had not been obtained as required by section 3. The Judge decided against the debtor's contentions:—*Held*, that as the application was neither for the enforcement of the trusts of the deed nor for the determination of questions under it, but was for a declaration that there was no valid deed under which an application could be made, the above section gave the Court of Bankruptcy no jurisdiction to entertain the application. Decision of Divisional Court (32 T. L. R. 75) affirmed on a different ground. *Wilson, In re*, 32 T. L. R. 86—C.A.

Non-registration of Deed—Scheduled Creditors—Void Deed.]—By a deed of arrangement expressed to be made between the debtor, certain sureties, a trustee, and "the several persons whose names and seals are hereunto subscribed and affixed . . . being respectively creditors of the debtor (who are hereinafter called the creditors)," the debtor assigned certain future property upon trust to pay the debts of the creditors, in consideration of a covenant not to sue the debtor during the life of his mother. There was evidence shewing that the deed was intended to benefit eighteen only out of twenty-two creditors, and that, of these eighteen, only thirteen executed the deed, their names being scheduled to the deed:—*Held*, that a deed in which the creditors are described as in this case must be construed as a deed for the benefit of creditors generally,

and is therefore void if not registered. *Allix, In re; Trustee, ex parte*, 83 L. J. K.B. 665; [1914] 2 K.B. 77; 110 L. T. 592; 21 Manson, 1; 58 S. J. 250—Horridge, J.

Construction of Deed—Admissibility of Evidence.]—*Semble*, If a deed is in form a deed for the benefit of creditors generally, evidence is not admissible to shew that it is in fact intended for the benefit of particular creditors only. *Ib.*

General Furnishing and Upholstery Co. v. *Venn* (32 L. J. Ex. 220; 2 H. & C. 153) followed. *Saumarez, In re; Salaman, ex parte* (76 L. J. K.B. 828; [1907] 2 K.B. 170), explained and distinguished. *Ib.*

BARRISTER-AT-LAW.

See also Vol. II. 1409, 2072.

Obligations of Counsel in Appeals to House of Lords.] — Observations by the Lord Chancellor as to the obligation of counsel engaged in appeal to House of Lords to attend the House in priority to other Courts. *Vacher* v. *London Society of Compositors*, 29 T. L. R. 73—H.L. (E.)

Counsel's Fees—Money Received by Solicitors from Lay Client—Attachment of Debt—Garnishee Order—Fees not a Debt.]—Fees owing to counsel are not debts and cannot be sued for; neither can money received by solicitors on account of such fees be sued for as money had and received. Such fees cannot therefore be attached or garnisheed even when the money on account of them has been received by the solicitors. The Court has power to order its officers to make payments which are honest and just, although such payments may not be recoverable either at law or in equity as between litigant parties. The decisions of the Court in *Colquhoun, Ex parte; Clift, in re* (38 W. R. 688), *James, Ex parte; Condon, in re* (43 L. J. Bk. 107; L. R. 9 Ch. 609), *Rivett-Carnac, In re; Simmonds, ex parte* (55 L. J. Q.B. 74; 16 Q.B. D. 308), *Brown, In re; Dixon* v. *Brown* (55 L. J. Ch. 556; 32 Ch. D. 597), and *Tyler, In re; Official Receiver, ex parte* (76 L. J. K.B. 541; [1907] 1 K.B. 865), are based on this principle, on which alone *Hall, In re* (2 Jur. N.S. 1076), can be supported. *Wells* v. *Wells*, 83 L. J. P. 81; [1914] P. 157; 111 L. T. 399; 58 S. J. 555; 30 T. L. R. 545—C.A.

BASTARDY.

See also Vol. II. 1430, 2073.

Application for Summons—Woman Married at Date of Application—Order for Maintenance of Child.]—A bastardy summons issued under section 3 of the Bastardy Laws Amendment Act, 1872, upon an application by the respondent (then a single woman) against the appellant could not be served owing to the appellant having left the neighbourhood. He subsequently returned, and the respondent thereupon applied to the clerk to the Justices to amend the date of hearing and to serve the summons. At the date of this application the respondent was a married woman living with her husband. The summons, having been altered and served on the appellant, came on for hearing before the Justices, who made an order against the appellant to contribute to the maintenance of the respondent's bastard child: —*Held*, that the alteration of the summons by the clerk to the Justices was equivalent to the issuing of a fresh summons, and that as the respondent was a married woman at the date of such alteration the Justices had no power to make the order. *Tozer* v. *Lake* (4 C.P. D. 322) followed. *Healey* v. *Wright*, 81 L. J. K.B. 961; [1912] 3 K.B. 249; 107 L. T. 413; 76 J. P. 367; 23 Cox C.C. 173; 28 T. L. R. 439—D.

Child Born in New South Wales—Jurisdiction of Justices to make Affiliation Order.]—An English woman went to Australia, and was there delivered of a bastard child. She returned to England, and applied within twelve months from the birth of the child for an affiliation order against the putative father:—*Held* (Avory, J., dissenting), that under the Poor Law Amendment Act, 1844, and the Bastardy Laws Amendment Act, 1872, the Justices had jurisdiction to make the order upon the putative father notwithstanding that the child was born out of England or Wales. *Reg.* v. *Blane* (18 L. J. M.C. 216; 13 Q.B. 769) discussed and distinguished. *Rex* v. *Humphreys; Ward, Ex parte*, 84 L. J. K.B. 187; [1914] 3 K.B. 1237; 111 L. T. 1110; 79 J. P. 66; 30 T. L. R. 698—D.

Right of Applicant to Re-hearing—Effect of Applicant's Right of Appeal to Quarter Sessions.]—Where a Court of summary jurisdiction has heard an application for an order of affiliation, and refused to make any order on the ground that the evidence of the mother was not corroborated in some material particular, the mother is not barred from making a second application within the period limited by the Bastardy Acts by any of the provisions of section 37, sub-section 2 of the Criminal Justice Administration Act, 1914. *Reg.* v. *Machen* (18 L. J. M.C. 213; 14 Q.B. 74) explained. *McGregor* v. *Telford*, 84 L. J. K.B. 1902; [1915] 3 K.B. 237; 113 L. T. 84; 79 J. P. 485; 31 T. L. R. 512—D.

Corroboration of Evidence of Mother — Evidence of Conduct — Conviction of having had Unlawful Carnal Knowledge — Mode of Proof of Conviction.]—On the hearing of a complaint preferred by the respondent against the appellant under section 4 of the Bastardy Laws Amendment Act, 1872, the only evidence given before the Justices as corroborative of the evidence of the respondent was that of a witness who deposed as follows: that he was present in the police Court when the appellant

was committed for trial on a charge of having had unlawful carnal connection with the respondent, she being under the age of sixteen years; that the appellant then gave evidence which suggested that the respondent was a fast girl; that he (the witness) was also present at the assizes when the appellant was tried for the said offence; that no suggestion was then made by the defence that the respondent was a fast girl, nor did the appellant repeat the evidence on this point which he had given in the police Court; and that the appellant was convicted of the said offence. No certified copy of the conviction under section 13 of the Evidence Act, 1851, was produced:—*Held*, that the evidence as to the conduct of the appellant was evidence which the Justices were entitled to treat as corroborating the evidence of the respondent in some material particular within the meaning of section 4. *Mash* v. *Darley*, 83 L. J. K.B. 1740; [1914] 3 K.B. 1226; 111 L. T. 744; 79 J. P. 33; 24 Cox C.C. 414; 58 S. J. 652; 30 T. L. R. 585—C.A.

Quære, whether the evidence of the conviction itself was admissible. *Quære*, whether the conviction was sufficiently proved. *Ib.*

Judgment of Divisional Court (83 L. J. K.B. 78; [1914] 1 K.B. 1) affirmed on different grounds. *Ib.*

Enforcement of Affiliation Order by Guardians when Mother is Living Abroad.]—The mother of an illegitimate child, having obtained an affiliation order upon the putative father, allowed the child to become chargeable to a union and went to reside permanently in America. The putative father objected that since the mother was alive, and of sound mind, and not in any gaol or prison, nor under sentence of transportation, she was the only person who could enforce the order against him, and that the guardians could not enforce it in her absence:—*Held*, that section 7 of the Bastardy Laws Amendment Act, 1872, empowered the guardians to enforce the order against the putative father and recover the weekly payments and arrears under it when the mother was living abroad. *Jones* v. *Merthyr Tydfil Union*, 105 L. T. 203; 9 L. G. R. 767; 75 J. P. 390; 22 Cox C.C. 551—D.

BEER HOUSE.

See INTOXICATING LIQUORS.

BENEFICE.

See ECCLESIASTICAL LAW.

BENEFIT SOCIETY.

Building.]—*See* BUILDING SOCIETY.

Friendly.]—*See* FRIENDLY SOCIETY.

Industrial.]—*See* INDUSTRIAL SOCIETY.

BETTING.

See GAMING.

BILL OF COSTS.

See SOLICITOR.

BILL OF EXCHANGE.

A. FORM AND OPERATION, 136.
B. LIABILITIES OF PARTIES, 137.
C. ACTIONS ON, 138.
D. CHEQUES, 140.

A. FORM AND OPERATION.

See also Vol. II. 1462, 2077.

Unaccepted Bill—Purchase—Subsequent Acceptance — Action by Purchaser against Acceptor—Holder in Due Course.]—The P. Co. sold some turpentine to the defendants and in respect of the purchase price drew upon them a bill payable to the order of the P. Co.'s bankers, to whom the P. Co. then handed the bill. Subsequently the plaintiffs bought the bill from agents of the P. Co.'s bankers. It had not then been accepted by the defendants, but it was eventually accepted by them unconditionally in the usual way. A dispute then arose between the defendants and the P. Co., and the defendants refused to meet the bill. The P. Co. thereupon requested the plaintiffs to sue the defendants in their (the plaintiff's) own name, and guaranteed the expenses and agreed to pay the bill if the plaintiffs failed to recover the amount from the defendants:—*Held*, in an action brought by the plaintiffs against the defendants on the bill, first, that the bill was a complete bill when purchased by the plaintiffs, though it had not then been accepted, and that therefore the plaintiffs were holders in due course; and secondly, that the plaintiffs were not suing as trustees for the P. Co., and that therefore the defendants were not entitled to set up the same defences as they would have been entitled to set up against the P. Co., and consequently the plaintiffs were entitled to recover. *National Park Bank*

v. *Berggren & Co.*, 110 L. T. 907; 19 Com. Cas. 234; 30 T. L. R. 387—Pickford, J.

Acceptance on Behalf of Limited Company —Name of Company Repressed in Address of Bill—"Ltd." for "Limited."]—It is a sufficient compliance with the requirements of section 63 of the Companies (Consolidation) Act, 1908, that in a bill of exchange addressed to a limited company the company's name is correctly stated in the address without being also stated in the acceptance; and the company's name is correctly stated although the abbreviation "Ltd." is used instead of the complete word "Limited." *Stacey & Co.* v. *Wallis*, 106 L. T. 544; 28 T. L. R. 209—Scrutton, J.

B. LIABILITIES OF PARTIES.

See also Vol. II. 1595, 2085.

Husband and Wife Joint Makers of Note—Wife Signing Note for Accommodation of Husband — Accommodation Indorser — No Knowledge by Indorser that Wife Signed to Accommodate Husband—Liability of Wife.]—A husband and wife were parties to a promissory note as makers, and the husband's brother was the payee who indorsed the note for the accommodation, as he believed, of both husband and wife. In fact, the wife only signed the note for the accommodation of her husband. The note having been dishonoured,—*Held*, that the wife and the payee were co-sureties, and that as between them the wife was only liable for half the amount of the note. *Godsell* v. *Lloyd*, 27 T. L. R. 383—Scrutton, J.

Joint and Several Promissory Note by Infant and Father—Liability of Father.]—The plaintiff sued the defendants, father and son, on a promissory note given in respect of a loan to the son, who was under age when the money was advanced to him. The father joined in the note in order to facilitate the transaction, understanding that the debt would be paid when the son came of age. It appeared that in all probability the plaintiff knew that the son was under age:—*Held*, that the true meaning of the transaction was that the father acted as principal borrower, and therefore, although by the Infants' Relief Act the son was not liable, the father was liable as principal. *Wauthier* v. *Wilson*, 28 T. L. R. 239—C.A.

Indorser—Waiver of Statutory Requirement as to Presentment and Notice of Dishonour—Onus of Proof.]—A bill which had been indorsed was not presented for payment at maturity, nor was notice of dishonour given to the indorser, as required by statute, to avoid discharge of the indorser's liability. After the bill was due a payment on account was made by the indorser, under the erroneous belief, as she alleged, that she was not an indorser, but a joint acceptor, and so liable in payment. In an action for payment of the balance due under the bill,—*Held*, that the presumption, arising from the payment on account, that the indorser had waived the statutory requirements, had been rebutted by proof that that payment had been made in error, and that in consequence of the failure of the holder to observe these requirements the indorser was freed from liability. *Mactavish's Judicial Factor* v. *Michael's Trustees*, [1912] S. C. 425—Ct. of Sess.

Observations as to the presumptions and the onus of proof with regard to waiver of the statutory requirements. *Ib.*

—— Bill Payable to Drawer's Order—Indorsement by Way of Guarantee — Subsequent Indorsement by Drawer — Irregular Bill — Guarantee—Memorandum in Writing Signed by Party to be Charged.] — The plaintiffs agreed to supply goods to a company against drafts accepted by the company and indorsed personally by the two defendants, who were directors of the company, by way of guarantee. The plaintiffs accordingly drew a bill and sent it to the company, who signed as acceptors. The two defendants having thereupon signed their names at the back, the bill was sent back to the plaintiffs, who indorsed it by putting their signature below that of the defendants. The bill not having been met at maturity, the plaintiffs sued the defendants as indorsers or alternatively as guarantors:—*Held*, that, as the plaintiffs had failed to make the bill a complete and regular bill, they could not maintain their action against the defendants as indorsers of the bill of exchange under section 56 of the Bills of Exchange Act, 1882, nor on the contract of guarantee, as there was no note or memorandum in writing, signed by the parties to be charged, sufficient to satisfy the Statute of Frauds. *Jenkins* v. *Comber* (67 L. J. Q.B. 780; [1898] 2 Q.B. 168) approved and followed. *Shaw* v. *Holland*, 82 L. J. K.B. 592; [1913] 2 K.B. 15; 108 L. T. 543; 18 Com. Cas. 153; 29 T. L. R. 341—C.A.

C. ACTIONS ON.

See also Vol. II. 1651, 2088.

Promissory Note — Signature Obtained by Duress—Action by Original Party to Instrument — Burden of Proof.] — Section 30, subsection 2 of the Bills of Exchange Act, 1882, provides that "if in an action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill":—*Held*, that the sub-section does not apply where the holder of the negotiable instrument who brings the action is the person to whom it was originally delivered and in whose hands it still remains; the burden of proof in such a case not being shifted from, but remaining on, the defendant. *Talbot* v. *Von Boris*, 80 L. J. K.B. 661; [1911] 1 K.B. 854; 104 L. T. 524; 55 S. J. 290; 27 T. L. R. 266—C.A.

In an action on a joint and several promissory note the defendant pleaded that her signature to the note had been obtained by duress on the part of her husband. At the trial the defendant gave evidence in support of duress, and in cross-examination stated that she did

not think that the plaintiff himself had any knowledge of it; but the plaintiff did not go into the witness box, and there was no evidence to negative knowledge on his part of the duress :—*Held*, that the burden of proof lay on the defendant, and was not under section 30, sub-section 2 of the Bills of Exchange Act, 1882, shifted from her to the plaintiff, and that the defendant was not entitled to succeed in her defence. *Ib.*

—— Note given by Makers in Payment for Goods—Signed by Indorser as Surety—Admissibility of Oral Agreement that Surety was not to be Liable if Goods not up to Sample—Liability of Surety.] — The defendant company bought certain leather goods from the plaintiffs and gave the plaintiffs in payment therefor a promissory note of which they were the makers, and which the defendant D. at the request of the plaintiffs indorsed as surety. The plaintiffs delivered the goods to the defendant company, who kept them. The plaintiffs subsequently sued the defendant company as the makers, and the defendant D. as indorser of the promissory note. The defendant company did not appear at the trial, but the defendant D. pleaded that he signed the note as surety, and proved an oral agreement with the plaintiffs, contemporaneous with the promissory note, that if the goods when received by the defendant company should not be equal to sample, he was not to be called upon to pay the promissory note. He also proved that the goods were in fact not equal to sample :—*Held*, that evidence of the oral agreement relied upon by D. was not admissible, as it was not an agreement suspending the coming into force of the contract contained in the promissory note, but was an agreement in defeasance of that contract, and that therefore the defendant D. was liable on the promissory note. *Hitchings and Coulthurst Co.* v. *Northern Leather Co. of America*, 83 L. J. K.B. 1819; [1914] 3 K.B. 907; 111 L. T. 1078; 20 Com. Cas. 25; 30 T. L. R. 688—Bailhache, J.

—— Date when Cause of Action Arises—Calculation of the Six Years—Limit Expiring on Sunday—Order LXIV. rule 3.]—The time for payment of a promissory note, including the days of grace, expired on Saturday, September 22, 1906. The writ in the action to recover the amount due on the note was issued on Monday, September 23, 1912 :—*Held*, that the action on the note was barred by the Statute of Limitations, as the cause of action was complete on the expiration of September 22, 1906, the day on which payment was due, and the six years next after the cause of such action, within which the action must be brought in order to comply with the Limitation Act, 1623, expired on Sunday, September 22, 1912. *Held*, further, that Order LXIV. rule 3 of the Rules of the Supreme Court, which provides that, "Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceedings cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open," has no effect on the operation of the Statute of Limitations, and that therefore the writ, which was issued on Monday, September 23, 1912, could not be considered as having been issued on Sunday, September 22, 1912. *Gelmini* v. *Moriggia*, 82 L. J. K.B. 949; [1913] 2 K.B. 549; 109 L. T. 77; 29 T. L. R. 486—Channell, J.

D. CHEQUES.

See also Vol. II. 1674, 2090.

Consideration.] — In December, 1912, the plaintiff lent to the defendant 1,500*l.* on the security of a promissory note payable three months after demand. In March, 1914, the plaintiff became uneasy about his money and saw the defendant, who promised to repay in April. In the latter month the defendant gave the plaintiff a post-dated cheque for 1,500*l.*, the plaintiff agreeing that during the currency of the cheque he would not claim payment under the note. When this cheque was presented it was dishonoured :—*Held*, in an action on the cheque, that the cheque was only a collateral security and did not discharge the liability under the note, that the plaintiff's agreement was a consideration for the cheque, and that, therefore, the plaintiff was entitled to recover. *Elkington* v. *Cooke-Hill*, 30 T. L. R. 670—Darling, J.

Signature in Blank—Clerk's Authority to Fill in Name of Payee—Wrong Name Filled in—Holder—No Value Given—Estoppel—Action by Drawer against Holder.]—A person who signs a blank cheque and then hands it to a confidential clerk to fill in the name of the payee is not estopped as against a holder of the cheque who has not given value for it from saying that it was wrongly filled up as regards the name of the payee. In such circumstances, if the holder has obtained payment of the cheque from the bank on which it was drawn, the drawer can recover back from the holder the amount of the cheque. *Paine* v. *Bevan*, 110 L. T. 933; 30 T. L. R. 395—Bailhache, J.

Addition of Words "To be retained"—Whether an "unconditional" Order.]—The defendant gave to the plaintiffs a cheque for 100*l.*, drawn by him upon his bankers and payable to the plaintiffs. The cheque was made out upon a sheet of blank paper, and the defendant had written on the face of it the words "To be retained." In an action on the cheque the defendant gave evidence to the effect that these words implied that the cheque was not to be presented, and that, in the event of a certain agreement between the parties being approved by the defendant's solicitors, the defendant was to exchange the cheque for another of equal value in his bankers' ordinary printed form :—*Held*, that the words upon the cheque did not prevent it from being an "unconditional" order in writing within the meaning of section 3 of the Bills of Exchange Act, 1882, inasmuch as they did not render it conditional as regards the bankers upon whom it was drawn. *Robert &*

Co. v. *Marsh*, 84 L. J. K.B. 388; [1915] 1 K.B. 42; 111 L. T. 1060; 30 T. L. R. 609—C.A.

"Account payee only"—Customer—Negligence.]—A person becomes a customer of a bank when he goes to the bank with money or a cheque and asks to have an account opened in his name and the bank accepts the money or cheque and is prepared to open an account in the name of that person. When the drawer of a cheque crosses it "Account payee only" a bank is guilty of negligence towards the drawer if without making any enquiries it allows a person who is unknown to them to open an account with it and collects the money for it. *Ladbroke & Co.* v. *Todd*, 111 L. T. 43; 19 Com. Cas. 256; 30 T. L. R. 433—Bailhache, J.

Crossed Cheque—"A/c Payee"—Collection by Bank for Customer — Negligence.] — A cheque drawn in favour of "F. S. Hanson, Esq., and others or Bearer," crossed with the words "a/c payee," was collected by a bank and credited to a customer, the bearer of the cheque :—*Held*, that the bearer was not the payee, and that the bank was negligent in not making enquiry as to the circumstances in which the customer was the bearer of the cheque. *House Property Co.* v. *London County and Westminster Bank*, 84 L. J. K.B. 1846; 31 T. L. R. 479—Rowlatt, J.

Procuration Signature — Effect of.] — A, a manager in the service of the plaintiffs, who were insurance brokers, gave cheques drawn *per pro* the plaintiffs to the defendant in payment of his (A's) racing debts. A had authority to sign cheques *per pro* the plaintiffs for the purposes of the latter's business :—*Held*, that the plaintiffs were entitled to recover the amount of the cheques from the defendant inasmuch as the defendant must be taken to have had notice that the cheques were signed for purposes outside the plaintiffs' business and that A had only power to draw cheques confined to that business, and inasmuch as there was no evidence that the plaintiffs had held out A as having authority to draw the cheques in question. *Morison* v. *Kemp*, 29 T. L. R. 70—Darling, J.

—— Addition of Words "Not negotiable"—Notice of Limited Authority—Bank in Good Faith Receiving Payment for Customer—Conversion — Liability of Bank — Negligence — Forgery—Ratification.]—A banker who collects for a customer cheques which are the property of another is *prima facie* liable to the true owner for the conversion. The effect of section 25 of the Bills of Exchange Act, 1882, which says that a signature *per pro* is notice that the authority of the agent so signed is limited, is that if the agent has exceeded his authority the principal may refuse payment of the bill, and persons taking it do so subject to this risk. Where, however, the bill has once been paid, the transaction is complete, and the section does not confer a right to recover the proceeds. By section 82 of the Bills of Exchange Act, 1882, a banker who has collected a crossed cheque for a customer whose title was defective is relieved from liability provided that he acted in good faith and without negligence. Therefore in the case of a cheque signed *per pro* issued without authority, but duly honoured by the bank upon which it is drawn, section 25 does not operate to deprive the collecting banker of the protection given by section 82. Neither is that protection affected by the addition of the words "not negotiable," or "not negotiable, a/c payee." *Morison* v. *London County and Westminster Bank*, 83 L. J. K.B. 1202; [1914] 3 K.B. 356; 111 L. T. 114; 19 Com. Cas. 273; 58 S. J. 453; 30 T. L. R. 481—C.A.

A document cannot be a forgery in the hands of one person and valid in those of another. If it be genuine for one purpose it is genuine for all. *Ib.*

—— "Not negotiable"—Payment into Customer's Account — Customer not Payee — Forged Indorsement—Liability of Bank.]—A series of cheques crossed "Not negotiable" and drawn in favour of a person other than the customer were paid by the customer into his banking account with the defendants, the indorsements being forged :—*Held*, that the fact that the cheques were crossed "Not negotiable" and drawn in favour of a person other than the customer did not impose an obligation on the defendants to make enquiry so as to make them negligent in receiving the cheques and crediting their customer's account therewith. *Held*, also, that the fact that some of the cheques were signed "*per pro*" the plaintiff merely operated as a notice that the drawer of the cheques had a limited right to sign them. *Crumplin* v. *London Joint Stock Bank*, 109 L. T. 856; 19 Com. Cas. 69; 30 T. L. R. 99—Pickford, J.

Payment of Crossed Cheque by Banker not through Bank—Fraud of Agent.]—By section 79 of the Bills of Exchange Act, 1882 (which is reproduced in a Singapore Ordinance), "where the banker on whom a cheque is drawn . . . pays a cheque crossed generally otherwise than to a banker . . . he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid." The appellants' cashier had for some time made a practice, instead of receiving cash for cheques drawn on the respondents, of obtaining cheques of corresponding amounts drawn by them on another bank in favour of the appellants or bearer and crossed generally. The cashier misappropriated some of these cheques, and paid the amounts to his own account. The appellants sued the respondents for the amount of these cheques :—*Held*, that the handing over of fresh cheques drawn by the respondents on another bank amounted to payment of the cheques drawn on them, but that the loss sustained was not owing to the action of the respondents, but to the misconduct of the appellants' cashier, and that the respondents were not liable. *Meyer* v. *Sze Hai Tong Banking and Insurance Co.*, 83 L. J. P.C. 103; [1913] A.C. 847; 109 L. T. 691; 57 S. J. 700—P.C.

Post-dated Cheque—Issue of Cheque Affected with Illegality—Value Given in Good Faith.]

—To an action by the plaintiff to recover the amount of two cheques drawn to self or order and indorsed by the defendant the defendant pleaded, first, that the cheques were originally given for gaming and wagering transactions, and so the burden of shewing that he was a holder in due course was on the plaintiff; and secondly, that as the cheques were post-dated they were not payable on demand and ought to have been stamped as bills of exchange. The plaintiff cashed the two cheques for one H., who, the plaintiff knew, had been bankrupt about twelve months previously, and for whom he had cashed several other cheques within the previous few months, which cheques had all been met. It was admitted that the issue of the cheques in question was affected with illegality :—*Held*, that the plaintiff was entitled to recover, inasmuch as on the evidence he had discharged the onus of proving that subsequent to the illegality he had given value in good faith for the cheques, and inasmuch as the two post-dated cheques became cheques payable on demand when the due date arrived and were therefore sufficiently stamped as cheques. *Robinson* v. *Benkel*, 29 T. L. R. 475—Horridge, J.

Infant — Holder for Value — Action on Cheque.]—The defendant, who was an infant at the time, drew a cheque on a date prior to July 29, 1913, making it payable to one Bell, and post-dating it August 14. The cheque was not given for necessaries. On July 29 the defendant came of age. On August 11 the plaintiff cashed the cheque for Bell, and on August 14 presented it, but it was returned marked "Account closed" :—*Held*, in an action on the cheque, that the plaintiff could not recover. *Hutley* v. *Peacock*, 30 T. L. R. 42—Scrutton, J.

Cheque Obtained by Duress in France — Liability of Drawer.] —The plaintiffs, hotel keepers in France, obtained from the defendant, a young Englishman of twenty-two years of age, who had been staying at the plaintiffs' hotel, an English cheque payable in England, by a threat of criminal proceedings in France if it was not given, and a suggestion that no such proceedings would be taken if the cheque were given :—*Held*, that payment of the cheque could not in these circumstances be enforced in an English Court. *Kaufman* v. *Gerson* (73 L. J. K.B. 320; [1904] 1 K.B. 591) applied. *Société des Hôtels Réunis* v. *Hawker*, 29 T. L. R. 578—Scrutton, J. *See* S. C. in C.A. on question of costs, 30 T. L. R. 423—C.A.

BILL OF SALE.

See also Vol. II. 1715, 2096.

Registration — Occupation of Grantor — Description — Baptist Minister — Director of Public Companies.]—The grantor of a bill of sale given in 1913 was described therein as a Baptist minister, living at an address in Essex. Until 1909 he had held a pastorate as a Baptist minister near his residence, relinquishing it in that year. Since then he had preached for fees and visited the poor, but not in connection with any particular church. His name was still on a register of Baptist ministers. He also carried on a business in London as promoter and director of public companies :—*Held*, that the grantor's occupation was not sufficiently described within the Bills of Sale Act, 1878, s. 10, sub-s. 2, and that the bill of sale was therefore void. The definitions of "occupation" by Kelly, C.B., and Martin, B., in *Luckin* v. *Hamlyn* (21 L. T. 366) explained. *Barron* v. *Potter; Potter* v. *Berry*, 84 L. J. K.B. 2008; [1915] 3 K.B. 593; 59 S. J. 650—C.A.

Decision of the Divisional Court (84 L. J. K.B. 751) reversed. *Ib.*

Misdescription of Grantor's Occupation — Gentleman of no Occupation — Partner in Business — Bankruptcy of Grantor.] — The grantor of a bill of sale was described therein and in the affidavit filed on registration thereof as a gentleman of no occupation. In fact at the date of the bill of sale, November 3, 1913, he was in partnership with another in a business of soap manufacturers and agents :—*Held*, that this description in the bill of sale and affidavit was erroneous and misleading, and that the bill of sale was void as against the grantor's trustee in bankruptcy. Decision of Atkin, J., in *Barron* v. *Potter* (84 L. J. K.B. 751), and of the Court of Appeal (84 L. J. K.B. 2008) applied and followed. *Feast* v. *Robinson* (63 L. J. Ch. 321) not followed. *Boddington, In re; Salaman, ex parte*, 84 L. J. K.B. 2119; [1915] H. B. R. 183—Horridge, J.

—— Hire-purchase Agreement — Colourable Transaction — Inference from Facts.] — S. wished to buy some goods which were to be offered for sale by auction. He approached B., a money-lender, and asked for a loan to enable him to do so. B. refused. Subsequently B. attended the sale and bought the goods. A hire-purchase agreement, containing a licence to seize, was then entered into between B. and S. in respect of the goods, and the goods were delivered to S. An execution being levied against S., the goods were seized by the execution creditors. B. put in a claim. In interpleader proceedings in the County Court the Judge held that the true inference from the facts was that the transaction between B. and S. was merely a loan upon the security of the hire-purchase agreement, and that the hire-purchase agreement was a bill of sale and void for want of registration, and therefore barred the claim. B. appealed :—*Held* (*per* Lush, J.), that the transaction between B. and S. was a *bona fide* hire-purchase, and that the claim should have been allowed. *Per* Atkin, J., that there was evidence upon which the County Court Judge could hold that the transaction was really a loan by B. to S. upon the security of the hire-purchase agreement and in barring the claim. Decision of the County Court Judge affirmed. *Mellor's Trustees* v. *Maas & Co.* (71 L. J. K.B. 26; [1902] 1 K.B. 137; in the Court of Appeal, 72 L. J. K.B. 82; [1903] 1 K.B. 226; in the House of Lords, *sub nom. Maas* v. *Pepper*, 74 L. J. K.B. 452; [1905] A.C. 102), discussed and applied. *Johnson* v. *Rees*, 84 L. J. K.B. 1276; 113 L. T. 275—D.

—— **Assignment—Varying Original Bill of Sale—Defeasance.**]—By a bill of sale made on August 15, 1913, the defendant M. assigned her household furniture to a firm of money-lenders for securing the repayment of 700*l.* and interest at the rate of 60 per cent. per annum. On March 7, 1914, the money-lenders, by indenture, declared to be supplemental to the bill of sale, assigned to the claimant P. the principal sum of 700*l.* secured on the bill of sale, and the chattels and things included therein. By an indenture of the same date which recited the above-mentioned deeds, and that the parties M. and P. had agreed on the interest for the future being at the rate of 27½ per cent. per annum, and not as mentioned in the bill of sale of August 15, 1913, and that the repayment of the mortgage debt should be made by instalments at regular periods, M. agreed to pay off the principal and interest as thereinbefore mentioned. The original bill of sale was filed at the Central Office in 1913, but the assignment and the contemporaneous deed were refused registration, on the ground that the original bill of sale was still in existence. The plaintiff in the above action levied execution on the goods comprised in the bill of sale, and in the interpleader proceedings in the County Court judgment was given against P., the claimant, and in favour of the plaintiff, the execution creditor. On appeal,—*Held*, that whether or not the second deed, varying the terms of the original bill of sale, was a defeasance within section 10, sub-section 3 of the Bills of Sale Act, 1878, the true terms were not in the form required by section 9 of the Bills of Sale Act, 1882, as the original bill of sale no longer expressed the true intent and meaning of the parties thereto. *Cornell* v. *May*, 112 L. T. 1085—D.

—— **Mortgage—Heirlooms Settled in Trust—Equitable Chose in Action.**]—Personal chattels were given to trustees upon trust for a certain tenant for life, and, after his death, upon trust for his sons successively in tail male: —*Held*, that the interest in the chattels of the first tenant in tail male in remainder during the lifetime of the tenant for life was an equitable *chose in action*; and, accordingly, that a mortgage of his interest in the chattels by this tenant in tail did not require registration under section 8 of the Bills of Sale Act (1878) Amendment Act, 1882, inasmuch as the operation of that statute was limited to mortgages of "personal chattels" by section 3 of the Bills of Sale Act, 1878, and inasmuch as "personal chattels" were expressly defined by section 4 of the same statute so as to exclude *choses in action*. *Tritton, In re; Singleton, ex parte* (61 L. T. 301), applied. *Thynne, In re; Thynne* v. *Grey*, 80 L. J. Ch. 205; [1911] 1 Ch. 282; 104 L. T. 19; 18 Manson, 34—Neville, J.

—— **Pledge of Goods—Warrant.**]—A distillery company gave, as security for advances, warrants making the whiskey therein mentioned deliverable to the holder of such warrant. The name of the holder was entered in the books of the company opposite the numbers and particulars of the casks of whiskey, which still remained in the possession of the company, and were dealt with by them. When they sold the whiskey they cancelled the warrant and erased the holder's name from their books, and substituted another warrant over other whiskey as security to the creditor: —*Held*, that this transaction did not create a valid pledge at common law, and, if it did, the warrants were void as not being registered under the Bills of Sale (Ireland) Act, 1879, s. 4. *Dublin City Distillery* v. *Doherty*, 83 L. J. P.C. 265; [1914] A.C. 823; 111 L. T. 81; 58 S. J. 413—H.L. (Ir.)

"**Consideration**" — **Sum Received by Grantor under 30*l.*—Deduction of Costs of Preparation of Deed—Validity.**]—A bill of sale was granted in consideration of the sum of 30*l.* less the sum of 2*l.* 2*s.* retained thereout by the mortgagees with the consent of the mortgagor and paid to the mortgagees' solicitor towards the costs of the preparation of the deed:—*Held*, that the bill of sale was not void under section 12 of the Bills of Sale Act, 1882, inasmuch as the total consideration for the bill was a sum not under 30*l.* *London and Provinces Discount Co.* v. *Jones*, 83 L. J. K.B. 403; [1914] 1 K.B. 147; 109 L. T. 742; 21 Manson, 18; 58 S. J. 33; 30 T. L. R. 60—D.

Contract — Goods Obtained by Fraud — Necessaries—Liability of Infant.]—An action was brought by the plaintiff to recover from the defendant the price of certain furniture and effects. The goods were transferred to the defendant by an agreement containing a licence to the plaintiff to resume possession of the goods if the price was not paid on a certain date. The defendant sold some of the goods for a sum of 30*l.*, and, with the plaintiff's assent, transferred the remainder by bill of sale as security for an advance of 100*l.* by the grantee:—*Held*, that the agreement by which the goods were transferred by the plaintiff to the defendant was a bill of sale which was governed by the Bills of Sale Act, 1878, and not by the Bills of Sale Act, 1882, and was not therefore void for not complying with the requirements of the later Act. *Stocks* v. *Wilson*, 82 L. J. K.B. 598; [1913] 2 K.B. 235; 108 L. T. 834; 20 Manson, 129; 29 T. L. R. 352—Lush, J.

Payment by Equal Instalments—Bargain that Instalments should Include Interest—Covenant for Payment of Interest on Unpaid Instalment—Ambiguity.]—By a bill of sale the grantor, in consideration of the sum of 30*l.* paid to the grantor by the grantee, assigned unto the grantee the chattels comprised therein by way of security for the payment of the sum of 30*l.* and interest thereon at the rate of 10*d.* in the pound per month. And the grantor agreed that he would duly pay to the grantee the principal sum aforesaid, together with the interest then due, by monthly payments of 2*l.*, and that in default of payment of any instalment of the said principal sum he would pay interest on such instalment at the rate aforesaid from the date when the same should become due until payment thereof. By the bargain made between the parties

immediately before the giving of the bill of sale the grantor was to pay instalments of 2*l.* per month, including interest. In an action brought by the grantor for a declaration that the bill of sale was void on the grounds that it did not set out the real bargain between the parties, and that it was so ambiguous as not to be in accordance with the statutory form,—*Held* (Fletcher Moulton, L.J., dissenting), that there was no ground for avoiding the bill of sale. *Rosefield* v. *Provincial Union Bank*, 79 L. J. K.B. 1150; [1910] 2 K.B. 781; 103 L. T. 378; 17 Manson, 318—C.A.

Per Vaughan Williams, L.J., and Buckley, L.J. : On the true construction of the bill of sale the instalments were to consist partly of principal and partly of interest, each instalment of 2*l.* going in the first place to pay the interest due and the balance going towards repayment of the principal. There was nothing in *Goldstrom* v. *Tallerman* (56 L. J. Q.B. 22: 18 Q.B. D. 1) to prevent the Court from so construing the bill of sale. The bill of sale therefore was in accordance with the real bargain between the parties, and it was not void on the ground of being unintelligible. *Ib.*

Per Vaughan Williams, L.J. : The fact that the bill of sale did not expressly state how much of each instalment was to be appropriated to principal and how much to interest did not amount to an ambiguity such as would entitle the grantor to have the bill of sale declared void. *Ib.*

Per Fletcher Moulton, L.J. : The bill of sale was not in accordance with the real bargain between the parties. For *Goldstrom* v. *Tallerman* (*supra*) was a binding decision that in a bill of sale in the statutory form, as this bill of sale was, the instalments were instalments of principal only. The existence of the statutory form, however, did not prevent parties from making provision for repayment in other ways. *Ib.*

Defeasance or Condition — Separate Document.]—Prior to and as a condition of making the advance, the grantee under a bill of sale given as a security for money obtained a letter from the grantor stating that the grantor had obtained the advance on the faith of his representation that the chattels comprised therein were his own property free from any charge, and undertaking not to mortgage the same nor borrow from any other loan office until the whole of the advance had been repaid. The bill of sale was in the usual form, but contained no reference to the above letter :—*Held*, that the letter and the bill of sale were one transaction, and that, as the contract ought to have been inserted in the bill of sale, and if so inserted would have operated as a defeasance, the bill of sale was absolutely void under section 9 of the Bills of Sale Act (1878) Amendment Act, 1882. *Smith* v. *Whiteman* (78 L. J. K.B. 1073; [1909] 2 K.B. 437) followed. *Hall* v. *Whiteman*, 81 L. J. K.B. 660; [1912] 1 K.B. 683; 105 L. T. 854; 19 Manson, 143; 28 T. L. R. 161—C.A.

Deviation from Statutory Form—Joinder of Wife of Grantor — Recitals — Estoppel.] — A husband and wife were parties to a bill of sale and joined in executing it, but the wife did not purport to grant the chattels, the subject of the bill of sale, the husband alone actually assigning those chattels. The bill of sale also contained recitals stating how the liability, in respect of which the security was given, arose :—*Held*, that the bill of sale was valid, as the joining of the wife was mere surplusage, and did not give the bill of sale a legal consequence other than that which would attach to it if drawn in the form required by the Bills of Sale Act (1878) Amendment Act, 1882, s. 9, and schedule, and that it would not prevent a borrower understanding the nature of the security, nor a creditor, searching the register, understanding the position of the borrower; and further, that the recitals could not operate against the wife by way of estoppel, as she had not entered into any contract. *Brandon Hill, Lim.* v. *Lane*, 84 L. J. K.B. 347; [1915] 1 K.B. 250; 112 L. T. 346; 59 S. J. 75—D.

BILLS OF LADING.

See SHIPPING.

BIRDS.

See WILD BIRDS.

BOARDING HOUSE.

See LANDLORD AND TENANT.

BOND.

Administration.]—*See* WILL.

BOROUGH.

See CORPORATION.

BOUNDARIES.

See also Vol. II. 1850, 2112.

Low-water Mark — Artificial Structures Erected below Low-water Mark.] — In an action regarding liability for assessments, *held*

that the boundary of a burgh, fixed by statute as "low-water mark" of the sea, followed that mark as it varied from time to time through natural fluctuation or was altered by artificial operations; and that, accordingly, piers which had been erected so as to extend below the natural low-water mark were situated wholly within the burgh. *Leith Docks Commissioners* v. *Leith Magistrates*, [1911] S. C. 1139—Ct. of Sess.

Sea Boundary — High-water Mark.] — The boundary of the administrative area of a burgh fixed as "the line of high-water mark" is a fluctuating boundary, and accordingly land from which the sea has receded is within the administrative area. *Leith Dock Commissioners* v. *Leith Magistrates* ([1911] S. C. 1139) followed. *Christie* v. *Leven* (*Magistrates*), [1912] S. C. 678—Ct. of Sess.

Action to Recover Possession—Strip of Land by Side of Highway — Waste of Manor — Evidence of Acts of Ownership over Contiguous Land—Reputation.]—The plaintiffs, as lords of a manor, claimed a strip of land by the side of a highway as part of the waste of the manor. They did not prove acts of ownership over the land in dispute, but tendered evidence of acts of ownership over the contiguous land:—*Held*, that the plaintiffs, having failed to prove that the disputed land was within the manor, could not adduce as evidence of their title acts of ownership over the contiguous land, and therefore the action failed. *Leeke* v. *Portsmouth Corporation* (*No.* 2), 107 L. T. 260; 56 S. J. 705—Eve, J.

BREACH OF PROMISE.

See HUSBAND AND WIFE.

BRIDGE.

See WAY.

BRITISH COLUMBIA.

See COLONY.

BROKER.

See PRINCIPAL AND AGENT; STOCK EXCHANGE.

BUILDING.

Contracts.]—*See* WORK AND LABOUR.

In Metropolis.]—*See* METROPOLIS.

Under Public Health Acts.] — *See* LOCAL GOVERNMENT.

BUILDING SOCIETY.

See also Vol. II. 1866, 2116.

Rules—Borrowing Powers—Banking Business—Ultra Vires—Action for Money Had and Received—Tracing Money.]—A building society, formed under the Building Societies Act, 1836, with powers of borrowing, in addition to the legitimate business of a building society, established and developed a banking business on a large scale, which was admitted to be *ultra vires*. A winding-up order was made, and the assets of the society, after payment of the outside creditors and the costs, were more than sufficient to pay the members in full, but were not sufficient to pay them and also the depositors in the bank in full:—*Held*, that the depositors could not maintain an action for money had and received in respect of the money borrowed by the society *ultra vires*, but that they could recover money which they could trace into the hands of the society as actually existing assets, and that on this footing the members of the society and the depositors were entitled to rank *pari passu* in the distribution of the assets, in proportion to the amounts properly credited to them in respect of their advances. *Sinclair* v. *Brougham*, 83 L. J. Ch. 465; [1914] A.C. 398; 111 L. T. 1; 58 S. J. 302; 30 T. L. R. 315—H.L. (E.)

Blackburn and District Benefit Building Society v. *Cunliffe, Brooks & Co.* (54 L. J. Ch. 1091; 29 Ch. D. 902) disapproved. *Hallett's Estate, In re; Knatchbull* v. *Hallett* (49 L. J. Ch. 415; 13 Ch. D. 696), explained. *Guardian Permanent Benefit Building Society, In re; Crace-Calvert's Case* (52 L. J. Ch. 857; 23 Ch. D. 440), distinguished. *Ib.*

Judgment of the Court of Appeal, *sub nom. Birkbeck Permanent Benefit Building Society, In re* (81 L. J. Ch. 769; [1912] 2 Ch. 183), varied. *Ib.*

Banking Business—Ultra Vires—Premises Occupied by Customer of Society—Set-off of Balance on Current Account against Claim for Rent.]—The defendant occupied offices belonging to the plaintiff society, and he was also a customer of the plaintiffs in the banking business carried on by them. The plaintiff society went into liquidation in June, 1911, and at that time there was rent for two quarters due by the defendant for the offices occupied by him. An arrangement was made in September, 1911, by the liquidator of the plaintiff society and the defendant for a set-off, against the amount of rent due, of 38*l.* 3*s.* 3*d.* the amount of the dividends in the liquidation to

which the defendant was entitled on his current account. In November, 1911, it was decided by the High Court that the banking business carried on by the plaintiff society was *ultra vires*, and that consequently none of their customers could rely on any legal liability on the part of the society towards them. After this decision the official receiver refused to allow any set-off against the rent due from the defendant and sued for the full amount. The defendant set up the arrangement of September, 1911, as a defence. The County Court Judge held that there was no consideration for an agreement by way of set-off, since by the decision of November, 1911, there was no debt due from the plaintiff society to the defendant at the time the arrangement was made :—*Held*, that the decision of the County Court Judge was right. *Birkbeck Building Society* v. *Birkbeck*, 29 T. L. R. 218—D.

—— **Ultra Vires—Right to Recover Overdraft from Customer.**]—The liquidator of the Birkbeck Building Society sued the defendant in the County Court to recover the amount of an overdraft due to the society in the banking business it had carried on. It having been decided by the Court of Appeal in *Birkbeck Permanent Building Society, In re* (81 L. J. Ch. 769; [1912] 2 Ch. 183), that the banking business carried on by the society was *ultra vires*, the County Court Judge, treating that as a decision that the banking business was illegal, held that the action by the liquidator was not maintainable :—*Held*, that, although the banking business carried on by the society was *ultra vires*, it was not illegal, and therefore that the liquidator was entitled to maintain the action as for money had and received by the defendant to the use of the society. *Brougham* v. *Dwyer*, 108 L. T. 504; 29 T. L. R. 234—D.

Winding-up.]—Per Kenny, J.: The enactments and practice in force at any time in the Chancery Division for the winding up of companies apply to the winding up of building societies in the County Court, even though such provisions may be the result of enactments passed since 1874. *Rex* v. *Londonderry (Recorder)*, [1911] 2 Ir. R. 553—K.B. D.

—— **Pensioners—Claim against Assets—Employment Ultra Vires.**]—Where the servant of a company was employed in matters *ultra vires* the company, and therefore illegal, he cannot, on a winding-up, make any claim against the assets of the company in respect of a pension which he was granted upon his retirement. *Birkbeck Permanent Benefit Building Society, In re*, 82 L. J. Ch. 232; [1913] 1 Ch. 400; 108 L. T. 211; 20 Manson, 159; 29 T. L. R. 256—Neville, J.

Class of Shareholders Paid in Full in Liquidation under Judgment of Court of Appeal—Decision of Court of Appeal Reversed—Money Paid by Mistake—Right of Liquidator to Recover Money Overpaid.]—A building society went into liquidation. The "A" and "B" shareholders of the society and the depositors in an unauthorised banking business carried on by the society had conflicting claims on the assets of the society. Neville, J., decided that the shareholders had priority over the depositors, and this decision was affirmed by the Court of Appeal. In the meantime a scheme of arrangement had been entered into between the "A" shareholders and the depositors, and the scheme was sanctioned by Neville, J., and the Court of Appeal, in spite of the opposition of the "B" shareholders, who were not parties to the scheme. The depositors appealed, as against the "B" shareholders, to the House of Lords from the decision of the Court of Appeal which gave the shareholders priority over the depositors. The House of Lords reversed the Court of Appeal, and held that the depositors were entitled to be paid *pari passu* with the shareholders. After the judgment of the Court of Appeal, but before the appeal in the House of Lords, the liquidator of the society paid the "B" shareholders in full. The liquidator now sought to recover the money overpaid :—*Held*, that the liquidator was entitled to have the money which had been overpaid returned. *Birkbeck Permanent Benefit Building Society, In re (No. 2)*, 84 L. J. Ch. 189; [1915] 1 Ch. 91; 112 L. T. 213; [1915] H. B. R. 31; 59 S. J. 89; 31 T. L. R. 51—Neville, J.

BURGLARY INSURANCE.

See INSURANCE.

BURIAL GROUND.

See CHARITY; ECCLESIASTICAL LAW.

BURMA.

See INDIA.

BY-LAW.

See COMMONS; CORPORATION; LOCAL GOVERNMENT.

CAMPBELL'S (LORD) ACT.

See NEGLIGENCE.

CANADA.

See COLONY.

CANAL.

See WATER.

CAPE COLONY.

See COLONY.

CAPITAL AND INCOME.

See TENANT FOR LIFE AND REMAINDERMAN.

CARGO.

See SHIPPING.

CARRIER.

See also Vol. III. 1, 2171.

By Railway.]—*See* RAILWAY.

By Tramway.]—*See* TRAMWAY.

Removal of Furniture—Liability of Remover—Whether that of a Common Carrier.]—The defendant, who was a furniture remover and was not a common carrier, having inspected certain furniture belonging to the plaintiff, agreed with him to remove it from one place to another for a named sum, no other special terms being fixed. On the way a fire broke out in the van, and the furniture was damaged. The fire was not caused by any negligence of the defendant or by the plaintiff's putting any improper articles in the van. The plaintiff sued the defendant for the loss, and the Judge held that the defendant, though not a common carrier, did business on the terms of receiving an order from anybody and therefore had contracted on the footing of a common carrier and was accordingly liable :—*Held*, on appeal, that there was no evidence of the defendant's doing business on the terms of receiving an order from anybody and consequently no evidence of his having contracted on the footing of a common carrier, and that therefore he was not liable. *Watkins* v. *Cottell*, 32 T. L. R. 91—D.

Passenger—Motor Omnibus—Riding on Top—Order Prohibiting—Refusal to go Inside—Delay of Omnibus—Wilful Obstruction.]—A borough corporation, which owned motor omnibuses, made an order owing to the camber of a certain road that passengers should not travel on the top between a point L. and the terminus. The appellant, who had paid his fare and was a passenger on the top of an omnibus, on the top of which notice of the order was exhibited, was asked by the conductor, on reaching the point L. to stand inside. The appellant refused, the result being that the omnibus was delayed for twenty minutes, at the end of which time he left the omnibus. The appellant was convicted under a by-law of wilfully obstructing the servants of the corporation in the execution of their duty :—*Held*, that the conviction was right. *Baker* v. *Ellison*, 83 L. J. K.B. 1335; [1914] 2 K.B. 762; 111 L. T. 66; 78 J. P. 244; 12 L. G. R. 992; 24 Cox C.C. 208; 30 T. L. R. 426—D.

—— Carriage by Sea—Notice of Conditions.]—The plaintiff applied to the defendants for a passage by their line of steamers from Hull to Archangel, and was given a ticket which had on its face a condition that the defendants would not be responsible for any loss or damage of luggage or for personal injuries arising from any neglect of the master. Through the negligence of the master the vessel failed to keep to the route prescribed by the Admiralty for vessels crossing the North Sea, and in consequence she struck a mine and foundered. As a result the plaintiff lost her luggage, and she suffered from nervous shock. In an action by the plaintiff against the defendants for damages, the jury found (1) that though the plaintiff was aware generally that there were conditions relating to contracts of travel, there was no evidence that she was aware that they were printed on her ticket, and (2) that the defendants did not do what was reasonably sufficient to give the plaintiff notice of the conditions, and they awarded the plaintiff damages :—*Held*, that the defendants had done all that was reasonably necessary on their part to give the plaintiff reasonable notice of the conditions and therefore were entitled to judgment. *Cooke* v. *Wilson*, 60 S. J. 121; 32 T. L. R. 160—C.A.

Goods—General Lien—Stoppage of Goods in Transitu by Unpaid Vendor—Whether Lien Exercisable by Unpaid Vendor.]—Goods were consigned by the plaintiffs from the United States to T. & Co., in England. The goods were shipped upon a through bill of lading which provided that they were to be carried to Manchester and from there to be forwarded to T. & Co. *via* the defendant railway, "and the carrier is authorised by the owner to forward by a connecting carrier and upon such conditions as the latter may exact." The defendants had the following condition on their consignment note : "All goods delivered to the company will be received and held by them subject to a lien for money due to them for the carriage of and other charges upon such goods, and also to a general lien for other moneys due to them from the owners of such goods upon any account." Before the goods in question were delivered to T. & Co. that firm became insolvent, whereupon the plaintiffs claimed to stop the goods *in transitu*. The defendants were paid the charges for the

conveyance of the goods in question, but as T. & Co. owed them in respect of the conveyance of other goods the defendants claimed to exercise their general lien as against the plaintiffs on the goods in question:—*Held*, that they were not entitled to do so. *United States Steel Products Co.* v. *Great Western Railway*, 85 L. J. K.B. 1; 59 S. J. 648; 21 T. L. R. 561—H.L. (E.)

Decision of the Court of Appeal (83 L. J. K.B. 1650; [1914] 3 K.B. 567) reversed. *Ib.*

—— **Lighterman—Contract—Damage Coverable by Insurance—Exemption from Responsibility — Liability for Negligence.**] — The defendant contracted with the plaintiffs that he would lighter certain goods from the import ship to a wharf on the Thames. The goods, when on the defendant's barge, were damaged, and the plaintiffs brought an action against the defendant alleging negligence of the defendant's servants. The defendant denied negligence, and relied on the following notice: "The rates charged by me for lighterage are for conveyance only. I will not be responsible for any damage to goods, however caused, which can be covered by insurance. Merchants are advised to see that their policies cover risk of craft and are made without recourse to lighterman":—*Held* (Buckley, L.J., dissenting), that the notice protected the defendant from liability for loss by negligence. *Travers & Sons, Lim.* v. *Cooper*, 83 L. J. K.B. 1787; [1915] 1 K.B. 73; 111 L. T. 1088; 20 Com. Cas. 44; 30 T. L. R. 703—C.A. Affirming, 12 Asp. M.C. 444—Pickford, J.

CERTIORARI.

Application for Writ on Fiat of Attorney-General—Limit of Time.]—Rule 21 of the Crown Office Rules, 1906 (which provides that "No writ of *certiorari* shall be granted, issued or allowed to remove any judgment, order, conviction, or other proceeding had or made by or before any justice or justices of the peace . . . unless such writ of *certiorari* be applied for within six calendar months next after such judgment, order, conviction, or other proceeding shall be so had or made, . . ."), does not apply to the application for a writ of *certiorari* on the *fiat* of the Attorney-General acting on behalf of the Crown. *Rex* v. *Amendt*, 84 L. J. K.B. 1259; [1915] 2 K.B. 276; 113 L. T. 35; 79 J. P. 324; 59 S. J. 363; 31 T. L. R. 287—C.A.

Decision of Divisional Court (83 L. J. K.B. 1398; [1914] 3 K.B. 222) reversed. *Ib.*

Removal of Action from County Court to High Court—Consent of Parties—Obligation of Plaintiff to Proceed with Action.]—Where in a County Court action an order has been made by consent of the parties for the removal of the action into the High Court by a writ of *certiorari*, and subsequently, on the application of the defendants, a writ of *certiorari* has been granted removing the action into the High Court, the plaintiff is under no obligation to proceed with the action in the High Court. *Garton* v. *Great Western Railway* (28 L. J. Q.B. 103; 1 E. & E. 258) followed. *Harrison* v. *Bull*, 81 L. J. K.B. 656; [1912] 1 K.B. 612; 106 L. T. 396; 56 S. J. 292; 28 T. L. R. 223—C.A

CEYLON.

See COLONY.

CHAMPERTY.

See also Vol. III. 201, 2215.

Charity—Maintenance.]—If a person makes a bargain with another to assist him in bringing an action, upon the terms that he is to receive part of the proceeds, that bargain amounts in law to champerty, although the person rendering the assistance would not have done so to a stranger or to any one other than a friend in needy circumstances. Charity may be indiscreet, but must not be mercenary. The plaintiff out of charity lent a sum of 326*l.* 10*s.* to the defendant to enable him to bring an action for malicious prosecution. The defendant agreed that if he succeeded in the action he would repay this loan, and also pay 60*l.* out of any damages he might recover. The defendant, having succeeded in his action for malicious prosecution, repaid to the plaintiff 272*l.*, but he refused to repay the balance of 54*l.* 10*s.* or to pay the 60*l.*, whereupon the plaintiff sued him to recover these sums:—*Held*, that the plaintiff was entitled to recover the 54*l.* 10*s.*, but not the 60*l.* *Cole* v. *Booker*, 29 T. L. R. 295—Bailhache, J.

Damages when Recovered in Pending Action of Tort.]—An assignment for valuable consideration by the plaintiff in a pending action of tort to one of his creditors of the sum of money to which he may become entitled by virtue of the action, inasmuch as it is not an assignment of a mere right of action, but of property to come into existence in the future, is not invalid as savouring of champerty or maintenance. *Glegg* v. *Bromley*, 81 L. J. K.B. 1081; 106 L. T. 825—C.A.

CHARITY.

I. JURISDICTION AND POWERS.

See also Vol. III. 220, 2218.

Charity Commissioners—Hospital—Endowment—Foundation Deed—One Original Contribution.]—A founder by deed of gift gave real and personal property to trustees for the purpose of founding a hospital. The deed of gift provided for the sale of the property, and that 10,000*l.* of the capital and income thereof should be applied for or towards the erection and equipment of the hospital, and the residue of the capital and income towards the general purposes of the charity. The hospital had been erected, and had been partly equipped out of the sums realised by the sale of part of the property. No other donations or subscriptions had been received by the trustees of the charity. The Charity Commissioners claimed the right to have the accounts of the charity submitted to them :—*Held*, that, as at present the charity derived its support entirely from the property which it received from the original donation, it was not a charity "wholly maintained by voluntary contributions," and therefore it was not exempt, under section 62 of the Charitable Trusts Act, 1853, from the jurisdiction of the Charity Commissioners. *Richard Murray Hospital, In re*, 84 L. J. Ch. 184; [1914] 2 Ch. 713; 111 L. T. 710; 79 J. P. 2; 58 S. J. 670; 30 T. L. R. 600—Joyce, J.

—— Endowment—Voluntary Subscriptions—Vendor and Purchaser—Sale of Charity Land—Trust Deed—Implied Authority to Declare Trusts for General Purposes.] — In 1771 a charity purchased certain freehold land and erected thereon a school building. The funds for the purchase and the building were provided partly out of the general funds and subscriptions of the charity and partly by special subscriptions given for the purpose. Subsequently the land thus purchased and the building were conveyed to trustees to be held upon trust for the use, benefit, and service of the charity, and to be conveyed and disposed of from time to time in such manner as should be ordered and directed for that purpose at any general court or meeting of the subscribers of the said charity for the time being, and to or for no other use, trust, intent, or purpose whatsoever. In 1848 the charity was incorporated by Act of Parliament, and that Act was amended and superseded by an Act of 1905. The charity was one deriving its funds partly from voluntary subscriptions and partly from income arising from property held on trust for it, and had power by one section of the Act of 1905 to sell its land; a later section of the same Act, however, provided that this power of sale should be exercisable as regards property forming an endowment for charitable or educational purposes and not exempted from the jurisdiction or control of the Charity Commissioners or the Board of Education, with the consent of the Charity Commissioners or of the Board of Education, as the case might be. On a sale of a portion of the land bought in 1771,—*Held*, first, that the provision in the Act of 1905 meant that where but for that Act the consent of the Charity Commissioners or of the Board of Education would have to be obtained, it must be obtained notwithstanding the power of sale given in the earlier section. *Held*, secondly, that under the trusts declared the land was conveyed for the general purposes of the charity; that the subscriptions to the building fund were not, within the meaning of section 62 of the Charitable Trusts Act, 1853, appropriated by the donors upon any special trust; that they were applicable for income as well as capital purposes of the charity, and that the land was therefore exempt from the jurisdiction and control of the Charity Commissioners or the Board of Education, and could be sold without their consent. *Held*, further, applying the principle of *Att.-Gen.* v. *Mathieson* (76 L. J. Ch. 682; [1907] 2 Ch. 383) and following *Church Army, In re* (75 L. J. Ch. 467), that, in the absence of evidence to the contrary, the trusts declared in respect of the subscriptions to the building fund must in the circumstances be taken to carry out the true intent and meaning of the subscribers who gave money in the first instance to that fund. *Orphan Working School and Alexandra Orphanage, In re*, 81 L. J. Ch. 627; [1912] 2 Ch. 167; 107 L. T. 254—Parker, J.

Board of Education—Land Transfer—Voluntary Subscriptions — Investment in Land — Gift of Land—Mixed Charity—Endowment—Power of Sale.]—The Foundling Hospital was a charity incorporated by Royal charter in 1739, with power to buy, hold, and sell land. Prior to 1750 certain land in Bloomsbury was conveyed to the governors of the charity in fee-simple and paid for out of voluntary contributions liable to be expended as income, although some of the contributions were made with the idea of purchasing property to produce income for the maintenance of the charity. On part of this land, among other buildings, a chapel was built, which was partly paid for out of money specially contributed for the purpose. Under a private Act of Parliament of 1885 certain sales and leases of the charity land were enacted to be valid notwithstanding certain Acts of Elizabeth, which had been suggested to have the effect of invalidating them, but not so as to make valid any act not authorised by the charter. In 1744 certain property in the City of London was conveyed by two donors to the charity without any express trust. The income of the charity consisted partly, though only to a small extent, of annual subscriptions, "annual benefactions," and of legacies and donations received from time to time, in addition to the income from lands. The income from land at the present time exceeded the whole annual expenditure of the charity. In an action for a declaration that the lands of the charity could not be disposed of except in accordance with the provisions of section 29 of the Charitable Trusts Amendment Act, 1855—that is, not without the consent of the Board of Education,—*Held*, that the charity was at the time of the passing of the Charitable Trusts Act, 1853, and had ever since been, maintained partly by voluntary subscriptions and partly by income arising from endowment, and that the exemption in the latter part of section 62 of that Act (with

reference to donations, bequests, and subscriptions legally liable to be applied as income and to investments thereof) applied both to the Bloomsbury estate and to the City property: that the charity was therefore by virtue of section 48 of the Charitable Trusts Amendment Act, 1855, exempted from the operation of section 29 of that Act, and could dispose of its property without the consent of the Board of Education. *Charity for Poor Widows &c. and Skinner, In re* (62 L. J. Ch. 148; [1893] 1 Ch. 178), and *Church Army, In re* (75 L. J. Ch. 467), followed and applied. *Att.-Gen.* v. *Foundling Hospital*, 83 L. J. Ch. 673; [1914] 2 Ch. 154; 110 L. T. 894; 78 J. P. 233; 12 L. G. R. 500; 58 S. J. 398; 30 T. L. R. 372 —Joyce, J.

II. CHARITABLE GIFTS.

1. Construction in General.

See also Vol. III. 292, 2223.

Provision in Will that Doubts as to Identity of Legatees be Decided by Trustees—Jurisdiction of Court.]—It is not competent for a testator to confer legal rights by the gift of legacies, and at the same time to provide that questions whether or not those legal rights are to be enjoyed are to be determined by a tribunal indicated by the testator, and not by the Courts. Such a provision is an attempt to deprive the legatees of one of the incidents of their rights; and it is, further, unlawful and inoperative on grounds of public policy, as being an attempt to deprive persons of resort to the ordinary tribunals to determine their legal rights. *Massy* v. *Rogers* (11 L. R. Ir. 409) followed. *Raven, In re; Spencer* v. *National Association for Prevention of Consumption*, 84 L. J. Ch. 489; [1915] 1 Ch. 673; 113 L. T. 131—Warrington, J.

Legacy to Charitable Institution already Dissolved—Institution in Existence of Similar Name and Identical Purpose.]—By her will made in 1910 a testatrix gave a legacy of 3,000*l.* to Queen's College, Belfast, to found a scholarship bearing her name. Her husband had been educated at the college. The college had, however, been dissolved in 1909 under the provisions of the Irish Universities Act, 1908, whereby its property had been transferred to the Queen's University of Belfast, founded in pursuance of the Act. There was no evidence whether the testatrix knew of the dissolution of Queen's College:—*Held*, that it could not be assumed that she was ignorant of what had taken place, and that the Queen's University of Belfast, being an existing society of similar name and identical purpose, and sufficiently described, was entitled to the legacy. *Coldwell* v. *Holme* (23 L. J. Ch. 594; 2 Sm. & G. 31) followed. *Magrath, In re; Histed* v. *Belfast University*, 82 L. J. Ch. 532; [1913] 3 Ch. 331; 108 L. T. 1015; 29 T. L. R. 622 —Warrington, J.

Legacy to Society — Amalgamation — New Society.] — A legacy to a charitable society which, subsequent to the date of the will, amalgamated with another society to form a new society with similar objects, held to be payable to the new society. *Pritt, In re; Morton* v. *National Church League*, 113 L. T. 136; 31 T. L. R. 299—Eve, J.

Institution — Local Branches — Receipt of Legacies by Branch — Whether Institution Entitled to Payment Over.]—A Royal Charter governing an institution empowered the governors to make by-laws for the management of its affairs, and they make a by-law providing that "in the event of a legacy being received by a branch it must at once be transferred, with the necessary particulars, to the institution." Various testators left legacies to or for the purposes of the Blackpool branch, which was not a separate charitable body:—*Held*, that in the case of legacies which were within the by-law the institution was entitled, on their receipt by the branch, to have them paid over and the central committee was entitled to control the expenditure of the money, subject to its being restricted to the area of the branch, but that where a legacy had been left to the local committee, to be applied in their discretion in connection with the branch, or had been left to be applied by the local committee for the relief of sailors, the legacy not being within the by-law should not be sent to the institution, but should be administered by the local committee. *Royal National Life-boat Institution* v. *Turver*, 31 T. L. R. 340—Sargant, J.

Charitable Legacy—Misdescription—Change in Address — Change of Management — Confirmation by Codicil — Validity — Gift for Particular Charitable Object.]—By her will, dated in 1908, a testatrix gave a legacy of 1,000*l.* to "Saint Mary's Home for Women and Children of 15 Wellington Street, Chelsea." By her codicil, dated March 20, 1911, she revoked so much of the legacy as exceeded 500*l.* and in other respects confirmed the bequest. At the date of the will the P. Association conducted St. Mary's Home at 15 Wellington Square, Chelsea, with separate management. In 1909 the home was handed over to the C. Association, but under the same separate management. Later in 1909 the home was moved to another house in the neighbourhood. The legacy was claimed by the C. Association:—*Held*, that, having regard to the confirmation of the bequest by the codicil, the inaccuracy of the local description did not invalidate the bequest and that it was a good charitable legacy, not to the C. Association, but for the charitable objects of St. Mary's Home. *Wedgwood, In re; Sweet* v. *Cotton*, 83 L. J. Ch. 731; [1914] 2 Ch. 245; 111 L. T. 436; 58 S. J. 595; 30 T. L. R. 527—Joyce, J.

Legacy to Society—Two Societies of Similar Names — Accurate Use of Name — Presumption.]—A domiciled Scotsman made in Scots form a will, prepared in Scotland by a Scottish solicitor, and in the midst of a series of legacies to Scottish charities he left a legacy to the "National Society for the Prevention of Cruelty to Children." The society of this name had its head office in England and did not operate in Scotland, but there was in Scotland a society called the "Scottish

National Society for the Prevention of Cruelty to Children " :—*Held*, that though there was no rigid rule that where a legatee was accurately named there could be no enquiry with regard to the person to take the legacy, yet the accurate use of a name in a bequest afforded a strong presumption against the claim of any one who was not the possessor of the name mentioned in the will and that as it had not been proved that the testator meant something different from what he said, the English society was entitled to the legacy. *National Society for Prevention of Cruelty to Children* v. *Scottish National Society for Prevention of Cruelty to Children*, 84 L. J. P.C. 29; 58 S. J. 720; 30 T. L. R. 657—H.L. (Sc.)

Gift to Charity Incompletely Named — Ambiguity — Evidence of Intention.] — A testator gave, among other charitable legacies, one to "The National Association for the Prevention of Consumption." He directed that if any doubt should arise in any case as to the identity of the association intended to benefit, the question should be decided by his trustees, whose decision should be final and binding on all parties. There was no institution entitled "The National Association for the Prevention of Consumption," but there was one, having its office in London, entitled "The National Association for the Prevention of Consumption and other Forms of Tuberculosis." There was also an independent branch of this association in the locality where the testator lived :—*Held*, that the question which institution was entitled to the legacy must be decided by the Court and not by the trustees of the will. *Held*, also, that the description in the will applied to the National Association only; that evidence of intention could not be admitted; and that the National Association and not the branch was therefore entitled to the legacy. *Raven, In re; Spencer* v. *National Association for Prevention of Consumption*, 84 L. J. Ch. 489; [1915] 1 Ch. 673; 113 L. T. 131—Warrington, J.

Charitable Trust—Perpetuity—Gift for Contribution to Workpeople's Holiday—Gift to Club—To be Used as Committee should Think Best.]—A testator gave a legacy for the purposes of contribution to the holiday expenses of workpeople employed in a business in such manner as the directors should think fit; and he gave the residue of his estate to a club, and by a codicil declared that he desired the money to be utilised by the club for such purposes as the committee might determine :—*Held*, that the gift to the workpeople was not a good charitable gift either as being for poor persons or for general public purposes, and was therefore void as infringing the rule against perpetuities. *Held*, also, that the gift to the club was a good gift for such purposes as the committee might determine. *Drummond, In re; Ashworth* v. *Drummond*, 83 L. J. Ch. 817; [1914] 2 Ch. 90; 111 L. T. 156; 58 S. J. 472; 30 T. L. R. 429—Eve, J.

Gift to Found Homes for Aged Poor—Site to be in Western Suburb of London or in Adjacent Country — "Western suburb" — "Adjacent."]—A testator gave a large sum of money to found homes for aged poor, and directed his trustees to lay out a sufficient part thereof in the purchase of a site "in some or one of the western suburbs of London or in the adjacent country." The trustees proposed to purchase a very eligible site for the purpose near Croydon :—*Held*, that the site was not in a western suburb or in the adjacent country. *Whiteley, In re; London (Bishop)* v. *Whiteley*, 55 S. J. 291—Eve, J.

Residue of Rents—Meaning of "employed and bestowed."]—A testator gave land to a City Company subject to a direction to distribute 40*l*. a year in charity and with a provision that the residue of the rents should be "employed and bestowed" according to their discretion, and in the event of his will not being carried out for the space of a year there was a gift over :—*Held*, that there was no direction in the will to hold the surplus rents above 40*l*. for any purposes which would in law be charitable. *Rowe, In re; Merchant Taylors' Co.* v. *London Corporation*, 30 T. L. R. 528—Astbury, J.

Invitation of Subscriptions — Excess over Expenditure—Proper Destination of Balance.]—A Red Cross Society, believing that they had no power to expend their funds in a war in which British troops were not engaged, invited and received subscriptions to a special fund to be expended in aiding the sick and wounded in the war which broke out in 1912 between the Balkan Allies and the Turks. At the end of the war a large balance of the special fund was still unexpended, and in reply to a circular from the society stating that the war was concluded a large majority of the subscribers consented that the balance of their subscriptions should be used for the general purposes of the society, a very few refused their consent, and a considerable number did not reply. Shortly after this a war broke out between the Balkan Allies, and the society expended a further sum in this war :—*Held*, that on the construction of the invitation and circular the subscriptions for the war against Turkey could not be used for the war between the Allies, and that those who subscribed after the date at which the society had received subscriptions sufficient to cover all the expenditure incurred in the war against Turkey and who desired the return of their subscriptions were not entitled to the return of their subscriptions in full, but only to the return of such proportion as the amount unexpended on the war against Turkey bore to the total sum subscribed. *British Red Cross Balkan Fund, In re; British Red Cross Society* v. *Johnson*, 84 L. J. Ch. 79; [1914] 2 Ch. 419; 58 S. J. 755; 30 T. L. R. 662—Astbury, J.

Validity of Bequest—Common Law Condition Subsequent — Gift Over.] — A testator devised all his land in Australia, subject to certain life interests, to the council of the Church of England Collegiate School of St. Peter, at Adelaide, for the general purposes of that institution, but on the express condition that the council should publish annually a statement of payments and receipts, and in case default should be made for six months in the

publication of such statement of accounts the gift should cease and determine and should go over and enure for the sole benefit of such persons and for such public purposes as the Governor for the time being of South Australia should in writing direct:—*Held*, first, that the gift over was not a good charitable gift; secondly, that the condition was a common law condition subsequent and was void as being obnoxious to the rule against perpetuities; and thirdly, that the council of the collegiate school were therefore entitled to a conveyance of the land freed from the condition. *Da Costa, In re; Clarke* v. *St. Peter's Collegiate School*, 81 L. J. Ch. 293; [1912] 1 Ch. 337; 106 L. T. 458; 56 S. J. 240; 28 T. L. R. 189—Eve, J.

Hospital — Ecclesiastical Law — Consecrated Chapel — Rebuilding — New Chapel — Consecration of New Chapel—Effect of Consecration.]—An unincorporated society consisting of a large number of governors was in possession of an infirmary, held by them on charitable trusts. The infirmary contained a consecrated chapel with an endowed chaplaincy attached and with statutes and rules providing for services of the Church of England only therein. It becoming expedient to build a new and enlarged infirmary upon a new site the governors accepted a gift of a large sum, given on condition that the subscriptions to the new infirmary building fund became available for the general purposes of the institution. The new buildings included a chapel, the cost of which came out of the subscribed funds generally, but the organ, altar, pulpit, and general fittings were provided by special donations made by members of the Church of England. The general administration and management of the infirmary was carried on by a house committee appointed by the governors. Shortly before the opening of the new infirmary, the house committee invited the bishop of the diocese to consecrate the new chapel, which he shortly afterwards did upon the formal petition of the trustees, to whom the new site and building had been conveyed. The petition stated that the new infirmary buildings included a chapel which had been erected "in substitution for the present Royal infirmary and the consecrated chapel thereof, which is intended to be pulled down." In an action by certain of the governors for a declaration that the new infirmary and the site thereof were vested in the trustees upon trust notwithstanding the dedication service above-mentioned to permit the chapel to be used for the general purposes of the charity, including the holding therein of religious services other than those of the Church of England for the benefit of the objects of the charity,—*Held*, first, that, inasmuch as the trustees had a bare legal estate with no powers at all, and the house committee's functions were confined to the administration and management of the infirmary, their action in inviting the bishop to consecrate would have been *ultra vires* but for the fact that the old infirmary was consecrated, and that it must be presumed to have been the *prima facie* intention of all parties to reproduce as nearly as might be the state of things existing in the old infirmary. *Held*, secondly, that inasmuch as the consecration had been duly performed, there would in any event have been no jurisdiction in a secular Court to interfere or to make the declaration asked for. *Sutton* v. *Bowden*, 82 L. J. Ch. 322; [1913] 1 Ch. 518; 108 L. T. 637; 29 T. L. R. 262—Farwell, L.J.

2. Indefinite or Uncertain Objects.

See also Vol. III. 302, 2229.

Residue Given to Archbishop and Successors —To be Used Wholly or in Part as Archbishop may Judge most Conducive to the Good of Religion.]—The gift by will of a residue to the Catholic Archbishop of Brisbane and his successors "to be used and expended wholly or in part as such Archbishop may judge most conducive to the good of religion in this diocese,"—*Held*, not to be a good charitable bequest and to be void for lack of certainty in the words "wholly or in part," the wideness of the discretion in the legatee, and the vagueness of the words "most conducive to the good of religion in this diocese." *Dunne* v. *Byrne*, 81 L. J. P.C. 202; [1912] A.C. 407; 106 L. T. 394; 56 S. J. 324; 28 T. L. R. 257—P.C.

"Charitable institutions, persons, or objects."]—A testatrix left the residue of her estate to her trustees "with power to them to distribute the same amongst such charitable institutions, persons or objects, as they may think desirable":—*Held* (Lord Skerrington *dubitante*), that the bequest was not void for uncertainty, the words "charitable persons" falling to be construed as meaning persons in need of charity. *Cameron's Trustees* v. *Mackenzie*, [1915] S. C. 313—Ct. of Sess.

Police Superannuation Fund—Uncertainty —Perpetuity.]—The testator gave the residue of his property to "the superannuation fund of the Cardiganshire constabulary." The only fund of this kind in the district was the "police pension fund" created by the Police Act, 1890, which is administered in the case of a county by the county council. No person is authorised by that statute to receive augmentations to the fund; but by section 18, sub-section 3, surplus income may be invested, and (section 22, sub-section 1) where there is an excess of income over expenditure the police authority may apply to the Secretary of State for a provisional order authorising payment out of the fund for such purposes as may seem expedient:—*Held*, that even if the "police pension fund" were intended by the testator, the destination of that fund was uncertain, and the gift was invalid as not being to a proper charitable object. *Davies, In re; Lloyd* v. *Cardigan County Council*, 84 L. J. Ch. 493; [1915] 1 Ch. 543; 13 L. G. R. 437; 59 S. J. 413—Neville, J.

3. To Particular Objects.

See also Vol. III. 309, 2234.

"Charitable or religious purposes."] — By his will a testator devised and bequeathed the residue of his property real and personal to

W., the Bishop of Ossory, or other the bishop of that diocese for the time being, and F., the incumbent of the parish of Carlow, or other the incumbent of that parish for the time being, upon trust to pay the interest, dividends, or annual proceeds of his residuary estate to his three sisters, and the survivors and survivor of them for life, "and from and after the decease of such survivor in trust to apply and dispose of such interest, dividends, or annual proceeds from time to time for the use of the Protestant Orphan Society of the county of Carlow, or for or towards the relief and benefit of such poor and necessitous Protestant widows and widowers resident in the county of Carlow, or to both of such objects or purposes, or to such other merely and purely charitable or religious purpose or purposes for the benefit of or advantage of members of the Church of Ireland, or other Protestant denomination within the said county of Carlow, in such shares and proportions, and in such manner as my said trustees shall in their uncontrollable discretion think fit":—*Held*, that the testator, in the words "charitable or religious" had not shewn an intention to enable the trustees to apply the gift to purposes religious, but not charitable, and that the gift was a valid charitable gift. *Davidson, In re; Minty* v. *Bourne* (78 L. J. Ch. 437; [1909] 1 Ch. 567), distinguished. *Salter, In re; Rea* v. *Crozier*, [1911] 1 Ir. R. 289—Barton, J.

A gift to be applied "for such religious or charitable purposes" as the donor shall think fit is not void for uncertainty. *Rickerby* v. *Nicholson*, [1912] 1 Ir. R. 343—Ross, J.

"Religious and charitable institutions in Glasgow and neighbourhood."]—A testator directed his trustees to "pay and divide" a sum of 250*l.* "among such religious and charitable institutions in Glasgow and neighbourhood as they may select, and in such proportions as they may think proper":—*Held*, that the bequest was to be construed as a bequest to institutions in the locality of which it could be predicated that they were both religious and charitable, and that it was not void for uncertainty. *M'Phee's Trustees* v. *M'Phee*, [1912] S. C. 75—Ct. of Sess.

Religious Purposes—Provision for Annual Sermon in Parish Church—Revenues in Excess of Requirements — Application of Surplus Cy-près — Scheme — Payment of Stipends of Assistant Curates—Applying Income to Religious Purposes only — Subdivision of Old Ecclesiastical Parish — Confining Benefit to Ancient Parish Church.]—In 1580 A. conveyed lands in West Ham in trust to employ part of the rents and profits for or towards the charges of a sermon to be made annually in the parish church. The rents and profits subject to this trust had now increased to upwards of 300*l.* per annum. The ancient parish had been divided into nineteen ecclesiastical parishes, of one of which the ancient parish church was the parish church; and the borough of West Ham, which was coterminous with the ancient parish, had now a population of about 300,000. A scheme having been directed for the application *cy-près* of the income, so far as it was not required for the annual sermon,—*Held*, that A.'s object was a distinctly religious one, and that no part of the income ought to be applied to the delivery of lectures or to any non-religious purpose. *Held*, also, that the object nearest to that expressed in the deed was the payment of the stipends of assistant curates; that the application of the income ought to be confined to the ecclesiastical parish now attached to the ancient parish church; and that any money not required for the payment of curates' stipends ought to be applied by the trustees in or towards the expenses incurred by the vicar in providing for the due conduct of the services of the church, the visitation of the poor, or the religious instruction of the parishioners, with power to the trustees to pay any particular part of the income to the vicar, to be applied by him to one or more of those objects and accounted for accordingly. *Avenon's Charity, In re; Att.-Gen.* v. *Pelly*, 82 L. J. Ch. 398; [1913] 2 Ch. 261; 109 L. T. 98; 57 S. J. 626—Warrington, J.

Dissenting Protestants—Unitarians—"Congregation."]—An annuity charged on land was granted by deed made in 1761 to trustees on trust to pay it to the Rev. J. P. or such other persons as for the time being should have the pastoral care of the congregation of dissenting Protestants of the town of C., for or towards the support of such pastor. The congregation of which the Rev. J. P. was then pastor were Presbyterians, and had a church in Nelson Street, C. A subsequent minister adopted Unitarian doctrines, and in 1827 the majority of the congregation seceded and built a church of their own in C., which was carried on in connection with the General Assembly of the Presbyterian Church in Ireland. The rest of the congregation continued to attend the church in Nelson Street, in which, thenceforth, Unitarian doctrines were preached. The Unitarian congregation of C. was one of the three congregations—namely, Dublin, Cork, and Clonmel—forming the Synod of Munster. The annuity was paid to the Unitarian minister for the time being of the church, without question. There was a resident minister down to 1882, after which date the services were conducted by visiting ministers. In 1911 the land on which the annuity was charged was sold under the Purchase of Land (Ireland) Acts, the annuity was redeemed, and the redemption price paid into Court. A claim was then made to the redemption price on behalf of the Presbyterian congregation in C. The only persons then attending service in the Nelson Street church were three members of the family of the late resident minister, and one other person:—*Held*, that, inasmuch as no particular religious doctrines were required by the trust deed to be taught, the provisions of the Dissenters' Chapels Act, 1844, applied, and that the usage for twenty-five years and upwards preceding the claim was conclusive evidence that Unitarian doctrines and mode of worship might properly be taught and observed in the church, and that the right of the minister to the annuity could not be called in question; that there still was a congregation of Unitarians attending the church;

and that the income of the trust fund should be paid to the minister for the time being of the Unitarian congregation in C. *Hutchinson's Trusts, In re*, [1914] 1 Ir. R. 271—M.R.

Chapel Building Fund — Reversionary Bequest to Same — Immediate Bequest Held Invalid in 1876 under then Existing Statute of Mortmain—Claim to Reversionary Bequest —Res Judicata.]—A will proved in 1874 gave an immediate legacy of 200*l.* to a chapel building fund, and also a reversionary bequest, payable after the death or re-marriage of the testator's widow. The executors believed that these legacies transgressed the then operative Statutes of Mortmain, and an order was made in chambers, dated May 8, 1876, directing that the 200*l.* should fall into the residue. The testator's widow died in 1909 :—*Held*, that the representatives of the building fund were entitled to the reversionary bequest, inasmuch as the fund had other objects than those involving the purchase of land to which the money might be applied. *Held*, further, that the order of 1876 did not constitute an estoppel by *res judicata*, as such order had been in respect of another bequest, and had been based on a belief which was erroneous. *Surfleet's Estate, In re; Rawlings* v. *Smith*, 105 L. T. 582; 56 S. J. 15—Parker, J.

Augmentation Fund for Benefice—Condition — "Never be held in plurality" — Defeasance.]—A clergyman who had for many years down to shortly before his death been rector of K., by his will bequeathed 1,000*l.* "as an augmentation fund" for that benefice "upon condition that the benefice or rectory never be held in plurality by any neighbouring clergyman." Steps towards the union of the rectory of K. with a neighbouring rectory and vicarage were commenced by the bishop of the diocese in the year preceding the testator's death, and subsequently, in the year of his decease, the rectory of M. with the vicarage of S. and the rectory of K. were united into one benefice for ecclesiastical purposes, the defendant, incumbent of M.-cum-S., being presented to the rectory of K. :—*Held*, that the testator having used "plurality," which was a technical expression involving the holding of a benefice by some clergyman who at the same time holds one or more other benefices, the rector of the one united parish or benefice was not holding in plurality, and the event contemplated by the condition of defeasance had not arisen. *Macnamara, In re; Hewitt* v. *Jeans*, 104 L. T. 771; 55 S. J. 499—Eve, J.

Legacy to Pay off Debt on Church and Schools — Legacy Exceeding Debt — General Charitable Purposes.]—J. C. bequeathed to Father W. of St. A., for his own use, 100*l.*, and to the same Father W. or to the priest in charge for the time being of the said church, to pay off the debt on the church and boys' schools" of St. A., 500*l.* payable in one sum or five annual instalments. At the date of the testator's will there was a mortgage debt of 200*l.* on the church, but at the date of his death there was a debt of 63*l.* on the schools only :—*Held*, that the bequest of 500*l.* was for a general charitable purpose of maintaining the church and schools and valid in respect of the amount not required for the particular purpose of paying off the debt. *Connolly, In re; Walton* v. *Connolly*, 110 L. T. 688—Eve, J.

Historic Interest.] — The National Trust for places of historic interest or natural beauty is a charity. Tests in *Income Tax Commissioners* v. *Pemsel* (61 L. J. Q.B. 265; [1891] A.C. 53) and *Foveaux, In re; Cross* v. *London Anti-Vivisection Society* (64 L. J. Ch. 856; [1895] 2 Ch. 501) satisfied. *Verrall, In re*, 60 S. J. 141—Astbury, J.

Bequest to "General" of Salvation Army — Corps Purposes — Religious Branch of Army.]—A testatrix by her will directed her trustee to stand possessed of the residue of her estate in trust for the "General" of the Salvation Army for the time being, to be used for corps purposes in Liverpool :—*Held*, that the gift of residue was a good charitable bequest, as the evidence shewed that "corps purposes" meant the purposes of the religious branch of the Army. *Fowler, In re; Fowler* v. *Booth*. 31 T. L. R. 102—C.A.

Community of Friars—Absolute Bequest—Validity—Gift to Individuals—Public Policy.] —Bequest of residue of proceeds of conversion of realty and personalty "in trust for the society or institution known as the Franciscan Friars of Clevedon in the county of Somerset absolutely" :—*Held*, first, an immediate absolute bequest to the several members of the community of Franciscans at Clevedon at the date of the testator's death; and secondly, that the policy of the Roman Catholic Relief Act, 1829, ss. 28 to 37, which is aimed at the suppression of religious orders of the Church of Rome in this country, has no operation upon such a bequest. *Cocks* v. *Manners* (40 L. J. Ch. 640; L. R. 12 Eq. 574) followed. *Sims* v. *Quinlan* (16 Ir. Ch. Rep. 191; 17 Ir. Ch. Rep. 43), and other Irish cases, considered. *Smith, In re; Johnson* v. *Bright-Smith*, 83 L. J. Ch. 687; [1914] 1 Ch. 937; 110 L. T. 898; 58 S. J. 494; 30 T. L. R. 411—Joyce, J.

"City Mission cause in London" — Whether Valid.] — A legacy to "The City Mission cause in London" was a legacy for the cause of Christian missions in London, and was valid as a charitable gift, and, there being no objection by the Attorney-General, that the legacy should be paid to the London City Mission. *Hall, In re; Hall* v. *Hall*, 31 T. L. R. 396—Eve, J.

Gift to Secular Society.] — A testator bequeathed the residue of his estate to a society called the Secular Society, which was registered as a limited company, the memorandum of association stating that one of its objects was to promote the principle that human conduct should be based upon natural knowledge and not upon supernatural belief, and that human welfare in this world was the proper end of all thought and action. There

was nothing to shew that the rule against perpetuities was infringed :—*Held*, that as there was nothing subversive of morality or contrary to law in the memorandum or articles, the gift was valid. *Bowman, In re; Secular Society* v. *Bowman*, 85 L. J. Ch. 1; [1915] 2 Ch. 447; 59 S. J. 703; 31 T. L. R. 618—C.A.

To Found Scholarship—According to Scheme "or as near as may be"—Undesirable Condition — Discretion of Legatees.] — A testator gave a legacy to two institutions to be applied according to, "or as near as may be," in the discretion of the legatees to a scheme for the founding of a scholarship. The legatees refused to accept the legacy unless certain modifications were made in the scheme :—*Held*, that the legacy should be applied as nearly in accordance with the scheme in the will as the legatees might think desirable. *Harrison, In re; Harrison* v. *Att.-Gen.*, 85 L. J. Ch. 77; 113 L. T. 308; 31 T. L. R. 398—Eve, J.

Maintenance of House of Residence for Ladies of Limited Means — Poverty.] — A testatrix by her will, made in 1900, bequeathed her residuary estate upon trust to sell such portions thereof as the trustees in their discretion should think necessary or desirable "for the maintenance of a temporary house of residence for ladies of limited means" :—*Held*, that there was a good charitable bequest of so much of the estate as should be necessary and such further portion as in the discretion of the trustees might be desirable for the maintenance of a home for ladies of limited means. *Gardom, In re; Le Page* v. *Att.-Gen.*, 83 L. J. Ch. 681; [1914] 1 Ch. 662; 108 L. T. 955—Eve, J.

Charitable Institutions for Benefit of Women and Children—No Express Power of Selection—Uncertainty.]—A testator directed his trustees "to pay over the balance or residue of my estates to and for behalf of such charitable purposes as I may think proper to name in any writing, however informal, which I may leave; but failing my leaving such writings, then to such charitable institutions or societies which exist for the benefit of women and children requiring aid or assistance of whatever nature, but said institutions and societies to be under the management of Protestants." The testator died without leaving any such writing :—*Held*, that the bequest of residue was not void for uncertainty, in respect that its object was charitable, and that the description of the beneficiaries was sufficiently definite to enable the trustees to exercise a power of selection which must be held to have been impliedly conferred upon them. *Wordie's Trustees* v. *Wordie*, [1915] S. C. 310—Ct. of Sess.

Bequest to "Ormond Home for Nurses"—Maternity Nurses for Poor People — Home Carried on by Testatrix—Fees Received from Patients and Pupils — Charitable Intent — Validity.]—By her will the testatrix gave a bequest to the "Ormond Home for Nurses," and directed that, if necessary, a committee of management should be formed to carry on the home. The Ormond Home for Nurses was a private residence which the testatrix used as a home for midwives and for training midwives. The testatrix and the nurses under her charge attended maternity cases among the working classes for a small fee. The testatrix also received pupils, who paid her a fee, and for whom she provided lectures. The testatrix maintained the home out of her own income of 30*l*. per annum, together with the sums she received from patients and pupils :—*Held*, that the bequest was a good charitable bequest. *Webster, In re; Pearson* v. *Webster*, 81 L. J. Ch. 79; [1912] 1 Ch. 106; 105 L. T. 815; 56 S. J. 90—Joyce, J.

Education of Testator's Relations.] — A testator bequeathed to St. J. College, Tuam, the sum of 600*l*., the interest on which was to go for ever towards the education of his relations in that college, preference to be given to the most eligible and best conducted, the selection to be given to the archbishop for the time being, to a conscientious layman, and to the parish priest of the boys to be considered. There were no trustees of St. J. College, nor any deed of foundation. The affairs of the college were managed by a council :—*Held*, that the bequest was a valid charitable bequest. *Att.-Gen.* v. *Sidney Sussex College* (38 L. J. Ch. 656; L. R. 4 Ch. 722) followed. *Lavelle, In re; Concannon* v. *Att.-Gen.*, [1914] 1 Ir. R. 194—M.R.

Tomb, Trust to Repair — Gift Over.] — A bequest of income to the vicar of a parish and his successors, with a direction that the testator's grave should be kept in repair, and a gift over upon failure to comply with this direction, is a valid gift as an accretion to the endowment of the living. *Tyler, In re; Tyler* v. *Tyler* (60 L. J. Ch. 686; [1891] 3 Ch. 252), followed. *Davies, In re; Lloyd* v. *Cardigan County Council*, 84 L. J. Ch. 493; [1915] 1 Ch. 543; 112 L. T. 1110; 79 J. P. 291; 13 L. G. R. 437; 59 S. J. 413—Neville, J.

Trust "for the protection and benefit of animals."]—A bequest of a fund upon trust "for the protection and benefit of animals," to be applied for their use as the trustee should think fit, two particular methods of doing so being indicated by the donor—namely, the humane slaughtering of animals and the provision of municipal abattoirs :—*Held*, a good charitable trust. *Wedgwood, In re; Allen* v. *Wedgwood*, 84 L. J. Ch. 107; [1915] 1 Ch. 113; 112 L. T. 66; 59 S. J. 73; 31 T. L. R. 43—C.A.

Society for Benefit of Animals — Cats' Home.]—A testatrix bequeathed to the Commissioners of Charitable Donations and Bequests 4,000*l*. New Consols "upon trust to apply the income for the exclusive maintenance of the D. home for starving and forsaken cats . . . including the maintenance of the chloroform chamber now existing, or any other painless method of putting an end to cases of hopeless suffering, and the maintenance of the boarding department, but for no other purpose, as the D. Society for the Prevention of

Cruelty to Animals are bound, under deed . . . to provide for rent, taxes, repairs, caretaker's wages, and all other expenditure " :—*Held*, that the bequest in favour of the home for starving and forsaken cats was a valid charitable gift. *Swifte* v. *Att.-Gen. for Ireland* (*No.* 2), [1912] 1 Ir. R. 133—Barton, J.

Angling and Preservation Society.]—A gift to a society having for its immediate object the preservation and improvement of angling in certain parts of the river Thames for the benefit of its members,—*Held*, not to be a good charitable bequest, although some benefit might enure from its operations to the public generally. *Clifford, In re; Mallam* v. *McFie*, 81 L. J. Ch. 220; 106 L. T. 14; 56 S. J. 91; 28 T. L. R. 57—Swinfen Eady, J.

" Purposes of healthy recreation."] — A testator directed that the balance of the income of his estate should be applied by his trustees " for the purpose of fostering, encouraging and providing the means of healthy recreation, including the teaching of singing in classes or choruses for the residents of the town of P. and the surrounding districts, and for the purpose of providing music and instruments (in so far as my trustees think advisable) for the town band, in such manner and form as my trustees in their absolute discretion consider best, but in no case shall my trustees pay away any moneys derived out of my estate for prizes for football or rowing for speed " :—*Held*, that this was a valid charitable bequest. *Shillington* v. *Portadown Urban Council*, [1911] 1 Ir. R. 247—Barton, J.

Charitable Bequest — Validity — Gift to School for the Erection of Fives Courts.]—A gift to the governing body of a school, which is admittedly a charity, " for the purpose of building Eton fives courts or squash racket courts or for some similar purpose," is a good charitable bequest. *Mariette, In re: Mariette* v. *Aldenham School*, 84 L. J. Ch. 825; [1915] 2 Ch. 284; 59 S. J. 630; 31 T. L. R. 536—Eve, J.

—— Gift to Provide a Prize for School Sports.] —A gift to the head master of a school for the time being to provide a prize for some event in the school athletic sports is also a good charitable bequest. *Ib.*

—— Considerations Affecting.]—In considering whether a gift to a charity is charitable one must have regard not only to the character of the gift, but also to the character and objects of the charity which is the recipient of the gift. *Ib.*

III. ADMINISTRATION OF CHARITIES.

See also Vol. III. 287, 2249.

Scheme — Practice — Parties — Metropolis—Burial Ground — Land Purchased out of Ecclesiastical Funds — Leases of Unconsecrated Portion — Application by Rector and Churchwardens for Scheme—Ecclesiastical or Secular Purposes—City Council—Leave to Intervene before Order for Scheme — Proper Person to Represent Secular View.]—Where trustees of a charity apply to the Court by originating summons for a scheme and make the Attorney-General a party, that is a properly constituted proceeding, and no application to be added as a party ought to be listened to before an order has been made for the scheme. *Hyde Park Place Charity, In re*, 80 L. J. Ch. 593; [1911] 1 Ch. 678; 104 L. T. 701; 75 J. P. 361; 9 L. G. R. 887—C.A.

In 1757 land was purchased by the vestry of St. George, Hanover Square, out of ecclesiastical funds, for a burial ground, and was by a private Act vested in the rector and churchwardens of the parish for the use and benefit of the inhabitants thereof. Part of the land was used as a burial ground and the same was closed in 1854 by an Order in Council. The unconsecrated portion was let on long building leases, on the expiration of which fresh leases were granted and new buildings were erected. Under the Burial Act, 1857, the surplus income was to be applied for the benefit of the parish as the vestry should direct. The Council of the City of Westminster, as the successors of the vestry under the London Government Act, 1899, brought an action against the rector and churchwardens of the parish, in which it was ultimately decided by the House of Lords (*St. George, Hanover Square (Rector)* v. *Westminster Corporation*, 79 L. J. Ch. 310; [1910] A.C. 225) that the land was Church property and that no rights or interest in respect of the property passed to the city council under the Act of 1899. The House, however, deliberately refrained from deciding for which purposes the income of the property was applicable. An originating summons was thereupon taken out by the rector and churchwardens, to which the Attorney-General alone was a respondent, for the establishment of a scheme for the administration of the charity trusts. Before any order was made the city council applied by summons for liberty to intervene in the proceedings to contend that the purposes for which the charity was applicable were secular and not ecclesiastical purposes :—*Held*, that the application of the city council was premature and must be dismissed. Warrington, J., expressed the opinion that when the time arrived for the determination of the question raised the city council would not be the proper person to represent the secular view; but the Court of Appeal decided that that point must be left entirely open. *Ib.*

—— School—Grant of Land for Purposes of School to be Conducted According to Principles of Church of England—Use as Sunday School—Discontinuance as Weekday School—Power of Trustees to Let School.]—Land was conveyed in 1867, under the authority of the School Sites Act, 1841, to the minister and chapelwardens of C., upon trust to permit the land and buildings to be erected thereon to be for ever appropriated and used as and for a school for the education of children and adults of the poorer classes of the district, and for no other purpose. School buildings were erected and a school was carried on as a public elemen-

tary school till 1905, when it was closed by reason of the inability of the trustees to satisfy the requirements as to repairs and improvements. In an action for the administration of the trusts affecting the school and for a scheme for the regulation and management of the charity, a scheme was prepared by the Attorney-General which provided that the buildings should be used in the first instance for Church of England educational purposes, and that so far as they were not used for such purposes they should be used for educational purposes of a secular and strictly undenominational character. On objection by the trustees, Swinfen Eady, J., modified the scheme by giving the trustees power to let the buildings and apply the net receipts for church educational purposes. The Attorney-General appealed:—*Held* (Buckley, L.J., dissenting), that the order appealed against should be discharged, and that subject to certain modifications in form the scheme should be approved. *Att.-Gen.* v. *Price*, 81 L. J. Ch. 317; [1912] 1 Ch. 667; 106 L. T. 694; 76 J. P. 209; 10 L. G. R. 416; 28 T. L. R. 283—C.A.

Appeal settled by agreement, and form of scheme for administration of educational charity in connection with the Church of England approved. *Price* v. *Att.-Gen.*, 83 L. J. Ch. 415; [1914] A.C. 20; 109 L. T. 757; 78 J. P. 153; 12 L. G. R. 85—H.L. (E.)

——**Alteration of Objects of Charity—Lapse—Continued Existence of Charity.**]—A testatrix by will made in 1908 bequeathed a legacy "to Mrs. Bailey's Charity, Rotherhithe." There formerly existed a charity in Rotherhithe, known as Hannah Bayly's Charity, founded in 1756, the income of which was applicable in providing pensions for widows in Rotherhithe. In 1905, under a scheme of the Charity Commissioners, the endowments of Hannah Bayly's Charity and thirteen other charities in Rotherhithe were consolidated, and it was provided that they should be administered by trustees under the title of "the Consolidated Charities." The income was to be applied for various charitable purposes, including pensions for poor persons in Rotherhithe, without mentioning widows as special objects of the trust:—*Held*, that, notwithstanding the scheme of 1905, Hannah Bayly's Charity was not extinct and the legacy had not lapsed, but took effect although widows were no longer a special object of this charity. *Faraker, In re; Faraker* v. *Durell*, 81 L. J. Ch. 635; [1912] 2 Ch. 488; 107 L. T. 36; 56 S. J. 668—C.A.

Semble, no scheme of the Charity Commissioners can destroy an existing endowed charity. *Ib.*

—— **Attorney-General—Right to Appeal.**]—The Court gave leave to the Attorney-General to appeal from the decision of Neville, J., although he was not a party to the proceedings in the Court below. *Ib.*

Action against Unincorporated Charity — Defendants.] — Where an unincorporated charity is sued, the proper practice is to sue a responsible official of the charity on its behalf. *Royal National Lifeboat Institution* v. *Turver*, 31 T. L. R. 340—Sargant, J.

Cy-près — Legacy for Charitable Object — Failure of Object — Lapse.] — A testator directed his trustees in a certain event to apply the residue of his estate "in founding, erecting, and endowing in Paisley an industrial school for females." At the date of the testator's death it was open to a private individual to found or to contribute to an industrial school, but when the residue became available the effect of supervening legislation had been to make individual foundation or contribution impossible. The trustees asked for an order that they might administer the fund under a *cy-près* scheme:—*Held*, that, as the terms of the bequest did not disclose any general charitable intention, but only the favouring of the particular object that had failed, there was no room for the application of the doctrine of *cy-près*, and that the bequest had accordingly lapsed. *Burgess's Trustees* v. *Crawford*, [1912] S. C. 387—Ct. of Sess.

—— **Gift to Named Institution—Institution Ceasing at Death of Testatrix — General Charitable Intention.**]—A testatrix bequeathed her property to the Ormond Home for Nurses, an institution founded and controlled solely by herself for nursing the working classes. The institution charged small fees, payable by instalments, and was entirely self-supporting. On the death of the testatrix the work ceased to be carried on, and the premises were disposed of:—*Held*, that the bequest was for the continuance of the work carried on by the home, which was a charitable work, and was therefore a good charitable gift, for the purposes of which there must be a scheme *cy-près*. *Webster, In re; Pearson* v. *Webster*, 81 L. J. Ch. 79; [1912] 1 Ch. 106; 105 L. T. 815; 56 S. J. 90—Joyce, J.

—— **Annuity—Express Purpose—Lapse.**]—A testatrix bequeathed a leasehold house to trustees to be used for the widows and orphan daughters of the clergy. She then gave her real and personal estate to trustees upon trust (*inter alia*) to pay three annuities, one being to the treasurer of a named charitable society "for the maintenance and expenses of maintaining" the above house for the purpose named; then followed a gift over to other charities "after the final expiration of the aforesaid trusts." At the testatrix's death the house was used as a home for the widows and orphans of the clergy, but within a year of her death the house was sold by the trustees in accordance with the Mortmain and Charitable Uses Act, 1891, and the home was subsequently discontinued:—*Held*, that the annuity was still subsisting, that there was a general charitable intention, and the annuity was applicable to general charitable purposes according to the doctrine of *cy-près*. *Slevin, In re; Slevin* v. *Hepburn* (60 L. J. Ch. 439; [1891] 2 Ch. 236), and *Mann, In re; Hardy* v. *Att.-Gen.* (72 L. J. Ch. 150; [1903] 1 Ch. 232), applied. *Cunningham, In re; Dulcken* v. *Cunningham*, 83 L. J. Ch. 342; [1914] 1 Ch. 427; 110 L. T. 371—Astbury, J.

—— **Impracticability of Particular Object — No General Charitable Intention—Lapse.**]—On the construction in a will of a charitable

gift for a particular purpose, which purpose it was impracticable to carry out,—*Held*, that there was no paramount intention shewn in the will to benefit any particular class of charitable objects, and that, inasmuch as the particular directions given in connection with the gift failed, the gift itself failed, and no scheme should be directed. *Biscoe* v. *Jackson* (56 L. J. Ch. 93, 540; 35 Ch. D. 460) discussed and distinguished. *Wilson, In re; Twentyman* v. *Simpson*, 82 L. J. Ch. 161; [1913] 1 Ch. 314; 108 L. T. 321; 57 S. J. 245—Parker, J.

Principles applying to the construction of bequests for charitable purposes which fail stated. *Ib.*

—— **Preference of Scottish Charity.**] — A Scottish testatrix left a legacy to a Scottish society for the prevention of cruelty to animals "to be devoted by them specially towards the total and absolute prohibition of vivisection." The society, finding it impossible, owing to differences of opinion within their body on the subject of vivisection, to administer the legacy themselves, petitioned the Court for approval of a scheme whereby it was proposed that the trust funds should be paid over in equal shares to two anti-vivisection societies, one Scottish and the other English. The Court amended the scheme by excluding the English society, and approved a scheme for the paying over of the whole funds to the Scottish society. *Mirrlees' Charity, In re* (79 L. J. Ch. 73; [1910] 1 Ch. 163), commented on. *Glasgow Society for Prevention of Cruelty to Animals* v. *National Anti-Virisection Society*, [1915] S. C. 757—Ct. of Sess.

—— **Charitable Purposes in Existence at Testator's Death—Specific Purposes Ceasing to Exist before Distribution of Estate.**] — Where a gift is left by will to trustees to apply the income for charitable purposes which are in existence at the death of the testator, but the specific purposes cease to exist before it is paid over, the gift is applicable to charitable purposes, *cy-près*. *Geikie, In re; Robson* v. *Paterson*, 27 T. L. R. 484—Neville, J.

—— **Voluntary Charitable Society—Application of Surplus Income — Discretion of Governors.**]—On a petition for the approval of the Court, under the Imprisoned Debtors Discharge Society's Act, 1856, to the application of a certain part of the society's income by way of donation to ninety charitable institutions, Parker, J., declined to sanction the proposed application on the ground that it frittered away the fund among too many objects, and expressed the view that the Court had to be satisfied on each occasion that a proper *cy-près* application of the fund was being made. On appeal, *held*, allowing the appeal, that under the Act of 1856 it was not for the Court to say in the first instance what institutions should be assisted by the governors of the society, unless the Court found that the application was in some way corrupt or that assistance was being given to an institution of such a nature that it could not have been intended by Parliament to be aided; that the practice which had been adopted during many years, for the Judge to whom the petition was presented to adopt the institutions approved by his predecessors and to enquire only as to the propriety of new institutions proposed to be assisted, should be followed; and that the doctrine of *cy-près* had no application. *Imprisoned Debtors Discharge Society, In re*, 56 S. J. 596; 28 T. L. R. 477—C.A.

—— **Scheme—Distributive Charities—Eleemosynary Gift — Increased Profits — Apportionment.**]—A gift to distribute a fixed sum weekly in loaves to the poor, and "the residue of the profits thereof, if any shall arise or grow out of the said premises over and above the said sum of two shillings weekly, the same to be employed for or towards the charges of a sermon once in every year to be made," must be applied, first, in paying the fixed sum for the purpose stated, and the residue, regardless of its great increase, must be applied *cy-près* to the preaching of a sermon, and cannot be apportioned between the two objects. *Att.-Gen.* v. *Pelly; Avenon's Charity, In re*, 106 L. T. 295; 56 S. J. 241—Parker, J.

IV. MORTMAIN ACTS.

See also Vol. III. 386, 2260.

Testator Domiciled in England—Mortgages on Freeholds in Ontario — Movables or Immovables—Impure Personality—Lex Rei Sitæ—Invalidity of Bequest.]—A testator who died in 1888, domiciled in England, bequeathed property, which included mortgages on freeholds in Ontario, for charitable purposes. The mortgages contained covenants to pay the moneys thereby secured. At the date of the testator's death the Charitable Uses Act, 1735, then in force, extended to Ontario, and would admittedly have invalidated the bequest of the mortgages had the testator been domiciled there:—*Held* (Fletcher Moulton, L.J., doubting), that mortgages on land are deemed to be immovables and not movables, and governed by the *lex rei sitæ*, and that therefore the bequest of the mortgages was a gift of impure personalty and was invalid. *Jerningham* v. *Herbert* (6 L. J. (o.s.) Ch. 134; 4 Russ. 388) and *Fitzgerald, In re; Surman* v. *Fitzgerald* (73 L. J. Ch. 436; [1904] 1 Ch. 573), applied. *Hoyles, In re; Row* v. *Jagg*, 80 L. J. Ch. 274; [1911] 1 Ch. 179; 103 L. T. 817; 55 S. J. 169; 27 T. L. R. 131—C.A.

The terms "movable" and "immovable" are not technical terms in English law, though they are often used, and conveniently used, in considering questions between English law and foreign systems which differ from that law. But where the two systems are identical, *quære* whether the terms are appropriate—*per* Cozens-Hardy, M.R. The division into movable and immovable property is no part of the law either of England or of Canada, and is only called into operation in England when the English Courts have to determine rights between domiciled Englishmen and persons domiciled in countries which do not adopt the English division into real and personal property—*per* Farwell, L.J. *Ib.*

Debentures Charged on Real and Personal Property — Company's Leasehold Offices — Apportionment—Quantum.]—A testator, who died before the coming into operation of the Mortmain and Charitable Uses Act, 1891, gave so much of his residuary estate as might by law be applicable to charitable legacies to two charities. Part of his residuary estate consisted of debentures in two Australian land companies. In the case of one company the debentures were charged on all the real and personal property of the company at maturity, and in the case of the other by way of floating security on all its undertaking and all its real and personal property. By Australian law money charged on land can be validly given to charities. At the testator's death the only interests in land in England which the companies possessed were leasehold offices of no appreciable value:—*Held*, that the debentures could not be given to charity as, being charged upon the English leaseholds, they were "an interest in land" within the Mortmain and Charitable Uses Act, 1888; that the doctrine of "*de minimis non curat lex*" was not applicable, and that there could be no apportionment. *Brook* v. *Badley* (37 L. J. Ch. 884; L. R. 3 Ch. 672) followed. *Hill's Trusts, In re* (50 L. J. Ch. 134; 16 Ch. D. 173), overruled. *Dawson, In re; Pattisson* v. *Bathurst*, 84 L. J. Ch. 476; [1915] 1 Ch. 626; 113 L. T. 19; 59 S. J. 363; 31 T. L. R. 277—C.A.

Decision of Neville, J. (84 L. J. Ch. 187; [1915] 1 Ch. 168), affirmed. *Ib.*

Private Act — Statutory Trust.] — A private Act will not set aside the provisions of the Mortmain and Charitable Uses Acts, 1888 and 1891, unless language is used in the private Act which makes the application of those Acts impossible. *Webster* v. *Southey* (56 L. J. Ch. 785; 36 Ch. D. 9) followed. *Verrall, In re*, 60 S. J. 141—Astbury, J.

The National Trust Act, 1907, s. 21, sub-s. 2, was inconsistent with and overrode the provisions of the Mortmain and Charitable Uses Act, 1891, by which land acquired by will by a charity must be sold in twelve months, but that did not exonerate the trustees from complying with the terms of the Mortmain and Charitable Uses Act, 1888, relating to conveyances *inter vivos*. *Robinson* v. *London Hospital* (22 L. J. Ch. 751; 10 Hare, 19) applied. *Ib.*

CHARTERPARTY.

See SHIPPING.

CHEQUE.

See BILL OF EXCHANGE.

CHILDREN.

See CRIMINAL LAW; INFANT; INSURANCE (LIFE); INTOXICATING LIQUORS.

CHURCH.

See ECCLESIASTICAL LAW.

CINEMATOGRAPH.

Licence—Renewal—Application by Company — Enemy Nationality — Licensing Authority—Discretion to Refuse Renewal.]—Where an application is made by a limited company for the renewal of a music licence under the Disorderly Houses Act, 1751, or for the renewal of a cinematograph licence under the Cinematograph Act, 1909, the licensing authority have a discretion to refuse the renewal on the ground that some of the directors and the majority of the shareholders are alien enemies. *Rex* v. *London County Council; London and Provincial Electric Theatres, Ex parte*, 84 L. J. K.B. 1787; [1915] 2 K.B. 466; 113 L. T. 118; 79 J. P. 417; 13 L. G. R. 847; 59 S. J. 382; 31 T. L. R. 329—C.A.

Decision of the Divisional Court (31 T. L. R. 249) affirmed. *Ib.*

—— Company Owners of Theatre—Licence to manager — Appointment of New Manager — No Transfer of Licence — "Occupier" of Premises.]—The manager of a cinematograph theatre, owned by a limited liability company, is not, by virtue of his position as their manager, the "occupier" of the premises within the meaning of section 3 of the Cinematograph Act, 1909. *Bruce* v. *McManus*, 84 L. J. K.B. 1860; [1915] 3 K.B. 1; 113 L. T. 332; 79 J. P. 294; 13 L. G. R. 727; 31 T. L. R. 387—D.

A licence under the Cinematograph Act, 1909, to use a picture theatre for the purpose of giving cinematograph exhibitions was granted to the manager of the theatre in the employment of a limited company, the owners of the theatre. Their name appeared in the poor rate book as occupiers of the theatre. Afterwards the appellant was appointed by the company as their manager of the theatre in lieu of the licensee, and he for a certain period superintended the cinematograph exhibition without having the licence transferred to him. An information was preferred against him for that, being the occupier of the premises (the theatre) he during the aforesaid period unlawfully allowed them to be used, in contravention of the Act, for an exhibition of pictures by means of a cinematograph without having first obtained a licence for some person so to use the said premises, and he was

convicted and fined :—*Held*, on appeal, that he was not the "occupier" of the premises within the meaning of section 3 of the Act, and that the conviction must be quashed. *Ib.*

—— **Condition in Licence Prohibiting Opening on Sundays — Power of Licensing Authority to Impose Conditions.**]—A county council in issuing a licence under section 2 of the Cinematograph Act, 1909, authorising the user of premises for the purpose of exhibiting pictures by means of a cinematograph, is entitled to insist that the licence shall contain a condition prohibiting the opening of the premises on Sundays, Good Friday, and Christmas Day. *London County Council* v. *Bermondsey Bioscope Co.*, 80 L. J. K.B. 141; [1911] 1 K.B. 445; 103 L. T. 760; 75 J. P. 53; 9 L. G. R. 79; 27 T. L. R. 141—D.

—— **Restrictive Condition—Power of Licensing Authority.**]—A licensing authority under the Cinematograph Act, 1909, has no power, in granting a licence, to impose on the licensee a condition that no child under fourteen years of age shall be allowed to enter into or be on the licensed premises after nine o'clock in the evening unaccompanied by a parent or guardian, and that no child under ten years of age shall be allowed on the licensed premises under any circumstances after that hour—*per* Lush, J., and Rowlatt, J. (Atkin, J., dissenting). *Halifax Theatre de Luxe* v. *Gledhill*, 84 L. J. K.B. 649; [1915] 2 K.B. 49; 112 L. T. 519; 79 J. P. 238; 13 L. G. R. 541; 31 T. L. R. 138—D.

By section 1 of the Cinematograph Act, 1909, the exhibition of pictures by means of a cinematograph for the purposes of which inflammable films are used is prohibited unless (*inter alia*) it is given in premises licensed under the Act. By section 2, sub-section 1, a county council may grant licences to such persons as they think fit to use the premises specified in the licence for the purposes aforesaid, on such terms and conditions as the council may determine. A licence was granted to the respondents to use certain premises "for public cinematograph or other similar exhibitions to which the Cinematograph Act, 1909, applies" upon each weekday (with certain specified days excepted). Attached to the licence was a condition that the premises should not be opened for cinematograph or other exhibitions on Sunday. The respondents gave an exhibition on Sunday at which non-inflammable films were used, the audience present on that occasion having paid for admission. In proceedings against the respondents for breach of the condition subject to which the licence was granted,—*Held*, that, although no licence was required under the Cinematograph Act, 1909, for an exhibition at which non-inflammable films were used, a condition attached to a licence granted under section 2 was not *ultra vires* by reason of the fact that it prohibited the use of the licensed premises on a particular day, irrespective of the character of the films used; nor because in the case of a six-day licence it prohibited the use of the premises upon Sunday, to which day the licence did not extend. *Ellis* v. *North Metropolitan Theatres*, 84 L. J. K.B. 1077; [1915] 2 K.B. 61; 112 L. T. 1018; 79 J. P. 297; 13 L. G. R. 735; 31 T. L. R. 201—D.

Regulations — Obstructions to Gangways Leading to Exits—Persons Standing in Gangways—Persons Present not Exceeding Number for which Theatre was Licensed.]—Under section 1 of the Cinematograph Act, 1909, "An exhibition of pictures . . . by means of a cinematograph . . . shall not be given unless the regulations made by the Secretary of State for securing safety are complied with." The regulations made by the Secretary of State provided that "the gangways and the staircases, and the passages leading to the exits, shall, during the presence of the public in the building, be kept clear of obstruction." All the seats for which the respondent's cinematograph theatre was licensed had not been installed. At a certain performance a number of persons were standing in the gangways and passages, so that persons going to or from seats had to pass through them, but the number of persons present did not exceed the number for which the theatre was licensed :—*Held*, that the persons standing in the gangways and passages leading to the exits constituted an obstruction within the meaning of the regulations, and the fact that if the theatre had contained all the seats for which it was licensed all the people present could have been seated was no answer to the charge. *Potter* v. *Watt*, 84 L. J. K.B. 394; 112 L. T. 508; 79 J. P. 212; 13 L. G. R. 488; 31 T. L. R. 84—D.

"Inflammable" Films.]—*Semble*, the word "inflammable" in reference to films as used in the Cinematograph Act, 1909, is not limited to films which are inflammable only while being used in a cinematograph. *Victoria Pier Syndicate* v. *Reeve*, 76 J. P. 374; 10 L. G. R. 967; 28 T. L. R. 443—D.

Unlicensed Premises—Dealer or Manufacturer — Display to Prospective Customers only.]—The Cinematograph Act, 1909, s. 1, provides that an exhibition of pictures by means of a cinematograph for the purposes of which inflammable films are used, shall not be given unless the regulations made by the Secretary of State for securing safety are complied with, or, save as expressly provided for by the Act, elsewhere than in premises licensed for the purpose in accordance with the provisions of the Act :—*Held*, that the statute does not apply to cases where a dealer or manufacturer in the exercise of his trade runs films through a cinematograph machine in the presence of prospective customers. *Att.-Gen.* v. *Vitagraph Co.*, 84 L. J. Ch. 142; [1915] 1 Ch. 206; 112 L. T. 245; 79 J. P. 150; 13 L. G. R. 148; 59 S. J. 160; 31 T. L. R. 70—Astbury, J.

Constable or any other Officer Appointed by a County Council—Right of Entering Building —"Reason to believe" that the Act was being Infringed—Alleged Trespass.]—Section 4 of the Cinematograph Act, 1909, provides that "a constable or any officer appointed for the purpose by a county council, may at all

reasonable times enter any premises whether licensed or not, in which he has reason to believe that such an exhibition as aforesaid " (that is, one in contravention of the provisions of the Act or regulations made thereunder) " is being, or is about to be, given, with a view to seeing whether the provisions of this Act, or any regulations made thereunder and the conditions of any licence granted under this Act have been complied with, and if any person prevents or obstructs the entry of a constable or any officer appointed as aforesaid, he shall be liable, on summary conviction, to a penalty not exceeding 20*l.*" The plaintiff was the proprietor of premises which were not licensed for cinematograph exhibitions, and, therefore, inflammable films could not lawfully be exhibited. He alleged that the police resorted to the building not with the *bona fide* object of seeing whether the provisions of the Cinematograph Act were being infringed, but for the purpose of getting him convicted for not having a music licence. In an action against the police for trespass he was awarded 100*l.* damages :—*Held* (while ordering a new trial on the grounds that the verdict of the jury was against the weight of evidence and that there was misdirection), that the word " constable " in the above section meant any police constable, and not merely a constable or other officer appointed by the local authority, and that where a constable enters the premises with a view of seeing whether the provisions of the Cinematograph Act, or regulations made under it, are being contravened the requirements of the Act are complied with, and the fact that he may have entered for other purposes also does not make the entry a trespass. *McVittie* v. *Turner*, 85 L. J. K.B. 23; 13 L. G. R. 1181 —C.A.

Exhibition of Film — Condition — Justices' Right to Prohibit—Interest of Party other than Licensee—Refusal of Certiorari.]—A cinematograph licence was granted by Justices and accepted by the licensee, subject to a condition that no film should be exhibited at the theatre if notice had been given to the licensee that the Justices objected to it. The applicants, who had the sole right of exhibiting a certain film in the district, agreed to let the film be exhibited at the theatre for a week, and the cinematograph committee of the Justices having viewed the film gave notice to the theatre manager that they objected to it and it must not be produced. The applicants thereupon applied for a rule *nisi* for a *certiorari* to quash the Justices' order prohibiting the exhibition of the film :—*Held*, that as the applicants had no interest entitling them to make the application, and as the evidence did not establish that the film was of so innocent a nature that no Justices exercising an honest jurisdiction could object to it, the application must be refused. *Stott, Ex parte*, 32 T. L. R. 84—D.

Whether Licensing Authority have Power to State Case — Power of County Council Delegated to "Justices sitting in petty sessions."] — County Councils and, in the case of county boroughs, borough councils are empowered by section 2 of the Cinematograph Act, 1909, to license premises for the purpose of cinematograph exhibitions. By section 5 of that Act county councils or borough councils are empowered to delegate the powers conferred upon them by the Act to Justices sitting in petty sessions :—*Held*, that Justices sitting in petty sessions for the purpose of exercising the powers delegated to them under section 5 of the Cinematograph Act, 1909, are not a Court of summary jurisdiction, and therefore have no power to state a Case for the opinion of the High Court *Boulter* v. *Kent Justices* (66 L. J. Q.B. 787; [1897] A.C. 446) followed. *Huish* v. *Liverpool Justices*, 83 L. J. K.B. 133; [1914] 1 K.B. 109; 110 L. T. 38; 78 J. P. 45; 12 L. G. R. 15; 58 S. J. 83; 30 T. L. R. 25 —D.

Copyright in Films—Infringement.]—*See* COPYRIGHT.

CLUB.

See also Vol. III. 445, 2265.

Expulsion of Member—Quasi-judicial Functions of Committee—Proper Application of Rules—Right of Member to be Heard.]—The committee of a club, having power to expel a member whose conduct should be injurious to the character and interests of the club, purported to expel a member on the ground that he had failed to pay certain fines with punctuality. It was proved at the trial that the real reason of the expulsion was the alleged failure on the part of the member to comply with a rule requiring that no debts should be incurred at the club. The member was not invited to be present when the committee considered his case :—*Held*, that the committee of a club is bound to exercise its powers in a judicial manner, and that the ostensible reason for the expulsion of a member must be the real reason. *Held*, further, that a member has a right to have his case heard by the committee of a club before they come to a decision against him. *D'Arcy* v. *Adamson*, 57 S. J. 391; 29 T. L. R. 367—Warrington, J.

Registration of.] — *See* INTOXICATING LIQUORS.

COALS.

See also Vol. III. 453.

Sale — Non-provision of Perfect Weighing Machine in, on, or under Waggon—Whether Provisions of Coal Duties Acts as to Vending of Coal still in Force — Abolition of Coal Duties.]—Section 52 of 1 & 2 Will. 4. c. lxxvi. (as amended by section 5 of 1 & 2 Vict. c. ci.), which requires every waggon used for the delivery of coal to a purchaser in the Cities of London and Westminster and within twenty-

five miles of the General Post-Office to be provided with a perfect weighing machine, is still in force, inasmuch as, being a permanent provision of the Act, it is not affected by the erroneous recital and enactment in section 1 of 1 & 2 Vict. c. ci., and in the subsequent Acts recited in the London Coal Duties Abolition Act, 1889. *Houghton* v. *Fear*, 82 L. J. K.B. 650; [1913] 2 K.B. 343; 109 L. T. 177; 77 J. P. 376; 11 L. G. R. 731; 23 Cox C.C. 494; 29 T. L. R. 410—D.

By-law—Not Carrying Scales and Weights — "Carrying coal for sale" — Coals for Delivery.] — A by-law made by a local authority under the Weights and Measures Act, 1889, provided that "the person in charge of every vehicle carrying coal for sale shall carry therewith a weighing instrument of a form approved by the local authority, together with correct weights," and a penalty was fixed for contravention of the by-law:—*Held*, that a person did not carry coal for sale within the meaning of the by-law if he carried it for the sole purpose of fulfilling specific orders previously given, even though there had been no unconditional appropriation of specific coal to the customers. *Hunting* v. *Matthews*, 108 L. T. 1019; 77 J. P. 331; 11 L. G. R. 723; 23 Cox C.C. 444; 29 T. L. R. 487—D.

CODICIL.

See WILL.

COLLIERY.

See MINES AND MINERALS.

COLLISION.

See SHIPPING.

COLONY.

I. GENERALLY.

See also Vol. III. 461, 2271.

Rights of Executive Government.]—Where the right to money is *sub judice*, and the money is held *in medio* by the Court, the Executive Government has no discretion to dispose of such money without the order of the Court, and the fact that no procedure analogous to a petition of right exists in a colony does not authorise the interference by the Crown with private rights; but where a question of legal right is in doubt, the Executive Government should apply to the Court to determine the question. *Eastern Trust Co.* v. *McKenzie, Mann & Co.*, 84 L. J. P.C. 152; [1915] A.C. 750; 113 L. T. 346—P.C.

II. PARTICULAR COLONIES.

1. Australia.

a. Commonwealth of Australia.

See also Vol. III. 2271.

Powers of Australian Legislature—Commonwealth Parliament—States Legislatures.]—The Royal Commissions Act, 1902-1912, is *ultra vires* the Commonwealth Parliament of Australia so far as it purports to enable a Royal Commission to compel answers to questions, or to order the production of documents, or otherwise to enforce compliance with its requisitions. *Att.-Gen. for Australia* v. *Colonial Sugar Refining Co.*, 83 L. J. P.C. 154; [1914] A.C. 237; 110 L. T. 707; 30 T. L. R. 203—P.C.

Before federation such powers were vested in the Legislatures of the individual States, and they have not been transferred to the Commonwealth Parliament. *Ib.*

Contract in Restraint of Trade—Illegality—Injury to Public—Enhancing of Prices—Evidence of Intention.] — A contract is not an offence at common law, even if unenforce-

able, merely because it is in restraint of trade; to make any such contract or combination unlawful it must amount to a criminal conspiracy. *Att.-Gen. for Australia* v. *Adelaide Steamship Co.*, 83 L. J. P.C. 84; [1913] A.C. 781; 109 L. T. 258; 12 Asp. M.C. 361; 29 T. L. R. 743—P.C.

A contract in restraint of trade which is unenforceable at common law is not necessarily detrimental to the public within the meaning of the Australian Industries Preservation Acts, and the parties to such contract will not be taken to have intended a detriment, either because they intended to limit competition, or to raise prices. *Ib.*

An intention to charge excessive or unreasonable prices must be proved, and the onus of shewing that any contract is calculated to raise prices to an unreasonable extent lies on the party alleging it. *Ib.*

b. New South Wales.

See also Vol. III. 480, 2272.

Civil Servant — Retirement — Superannuation Allowance.] — Under the Civil Service Act, 1884, and the Public Service Act, 1895, of New South Wales, members of the Civil Service have an absolute right to retire upon the statutory superannuation allowance provided by the Acts at any time after attaining the age of sixty. Therefore, where a member of the Civil Service was appointed shortly after attaining the age of sixty to a salaried office under the Crown which was incompatible with his remaining in the service,—*Held*, that on ceasing to be a member of the service he became entitled as of right to a superannuation allowance under the Acts, and that this allowance was not in abeyance while he held the other office to which he was appointed, and that his position was not affected by section 2, sub-section (*d*) of the Public Service (Superannuation) Act, 1903. *Williams* v. *Delohery*, 82 L. J. P.C. 73; [1913] A.C. 172; 107 L. T. 775; 29 T. L. R. 161—P.C.

Crown Lands—"Homestead grant"—Conversion into "original conditional purchase"—Residence by Applicant.]—For the purpose of the provision for the reduction of residence contained in section 3, sub-section 3 of the Crown Lands Amendment Act, 1908, of New South Wales, the term "applicant" does not include the predecessors in title by successive transfers of the person who actually applies for the conversion of a "homestead grant" into an "original conditional purchase" under the Act. *Walsh* v. *Alexander* (16 Commonwealth L. R. 293) not followed. *Minister for Lands* v. *Coote*, 84 L. J. P.C. 112; [1915] A.C. 583; 112 L. T. 1098—P.C.

—— Rating — Land without Buildings — Exemption from Rate — Betterment Charge Imposed on Ratepayers — Sale by Crown — Whether Purchasers Liable for Charge.]—By the Sydney Corporation Act, 1879, the Crown is rateable in respect of buildings in the city of Sydney, but not in respect of lands on which there are no buildings. By the Moore Street Improvement Act, 1890, the corporation was authorised to make certain improvements, and part of the cost, in a proportion to be determined, was to be defrayed out of a betterment charge, payable by such owners of property within the improvement area as were liable to the city rate. When the assessment was made in 1891, certain lands in the improvement area were the property of the Crown, and there were no buildings upon them. Afterwards the Crown sold portions of these lands, and buildings were subsequently erected thereon:—*Held*, that under the Act of 1890 the assessment to the betterment charge was to be made once for all in accordance with the then existing facts, and as the Crown was not then liable to the charge the subsequent purchasers were not liable to it either. *Bank of Australasia* v. *Sydney Municipal Council*, 32 T. L. R. 147—P.C.

Duties on Estates of Deceased Persons—Rate of Duty—Aggregations of Estates not Allowed.]—The Stamp Duties (Amendment) Act, 1904, of New South Wales does not provide for any aggregation of estates of persons deceased for the purpose of determining the rate of duty. Therefore where a testator dies leaving free estate, and also estate subject to a special testamentary power of appointment, such estates ought not to be aggregated for the purpose of the assessment of duty as on the death. Where a schedule provides for duties the rate of which varies with "the total value of the estate," these words must be taken to mean the total value of each estate chargeable, not the total value of all the estates chargeable. *Brunton* v. *Commissioner of Stamp Duties for New South Wales*, 82 L. J. P.C. 139; [1913] A.C. 747; 108 L. T. 932; 29 T. L. R. 607—P.C.

Gift by Father to Sons—Presumptive Advancement — Trust — "Intent to evade payment of duty."] — A father made gifts of property to his sons. There was no arrangement or implied agreement between the father and either of the sons. The father received the rents and paid the rates and repairs:—*Held*, on the evidence, that the transactions were not colourable or made with intent to evade duty; but that they were out-and-out gifts to the sons to the exclusion of any interest to the father, and that the duty was not payable. *Grey* v. *Grey* (2 Swanst. 594) followed. *Commissioner of Stamp Duties* v. *Byrnes*, 80 L. J. P.C. 114; [1911] A.C. 386; 104 L. T. 515; 27 T. L. R. 408—P.C.

Government House — Crown Property — Waste Lands—Dedication to Public Purpose — Right of Colonial Government to Vary Purpose—Information by Attorney-General.] —A house and grounds in New South Wales, the property of the Crown, had for many years been used as a personal residence for the Governor of the Colony. The Colonial Government provided another residence for the Governor, and proposed to throw open the grounds of the former residence to the public, and to use some of its buildings for public purposes:—*Held*, that whether or not the

house and grounds were "waste lands of the Crown" within the Constitution Act, 1855, s. 2, the Government had power to deal with them without any legislative act, and that an information by the Attorney-General asking for a declaration and an injunction to restrain them was incompetent. *Att.-Gen. for New South Wales* v. *Williams*, 84 L. J. P.C. 92; [1915] A.C. 573; 112 L. T. 785; 31 T. L. R. 171—P.C.

Income Tax — Assessment — "Taxable income."]—In the assessment of income tax in cases where there was no taxable income for the year preceding the year of assessment, the rule laid down in section 27 (VI.) of the Land and Income Tax Assessment Act, 1895 (No. 15), is to be observed, and the taxable amount is to be the total amount of "taxable income" arising or accruing from all sources during the year of assessment, except to the extent of the exemptions provided by section 17 of the Act of 1895. *Commissioners of Taxation of New South Wales* v. *Adams*, 81 L. J. P.C. 185; [1912] A.C. 384; 106 L. T. 307; 28 T. L. R. 263—P.C.

In order to ascertain the amount of taxable income, section 27 of the Act of 1895 (No. 15) is to be read as if section 3, sub-section 2 of the Amendment Act of 1904 (No. 17) were substituted for sub-section 1 of section 27 of the Act of 1895. *Ib.*

Land Compulsorily Taken by Crown—Compensation — Value of Land — Elements to be Considered.] — When land is taken compulsorily for public purposes the compensation payable to the owner is to be calculated on the value of the land to him, taking into account the suitability of the land for any special business for which he proposes to use it, though he has not actually begun to do so, not only on the market value of the land; but the capitalised amount of the additional business profits and savings which he expects to make from the use of the land should not be taken into account in arriving at such value. *Pastoral Finance Association* v. *The Minister*, 84 L. J. P.C. 26; [1914] A.C. 1083; 111 L. T. 1047—P.C.

—— **Arbitration—Costs.**]—Section 118 of the Public Works Act, 1912, of New South Wales, dealing with the costs of an arbitration to settle the compensation payable for lands compulsorily acquired for public purposes, provides by sub-section 1 that all the costs shall be borne by the constructing authority, unless the sum awarded by the arbitrators is the same or a less sum than was offered by the constructing authority, in which case each party shall bear his own costs; and by sub-section 2, if the sum awarded is one-third less than the amount claimed, the whole costs shall be borne by the claimant. In a case in which the arbitrators awarded a sum which was larger than that offered by the constructing authority, but more than one-third less than the amount claimed by the claimant,—*Held*, that the whole costs of the arbitration should be borne by the constructing authority. *New South Wales Railways (Chief Commissioner)* v. *Hutchinson*, 83 L. J. P.C. 181; [1914] A.C. 581; 110 L. T. 915—P.C.

Public Service—Gratuity on Retirement—Discretion of Government—Illusory Exercise of Discretion.] — The appellant was in the public service of New South Wales from December 9, 1875, to September 16, 1905. On his retirement the Public Service Board awarded him a gratuity based on his service up to December 23, 1895. By section 4 of the Public Service Superannuation Act, 1903, the appellant became "entitled to a gratuity not exceeding one month's pay for each year of service from the date of his permanent employment." He claimed this statutory gratuity from December 23, 1895, to the commencement of the Public Service Act, 1902. The Public Service Board, in exercise of their discretion, awarded him one penny a year for the seven years:—*Held*, that this was an illusory award and was tantamount to a refusal by the Board to exercise its discretion, and that the appellant was entitled to the full amount prescribed by the statute for the further seven years. *Williams* v. *Giddy*, 80 L. J. P.C. 102; [1911] A.C. 381; 104 L. T. 513; 27 T. L. R. 443—P.C.

Stamp Duty—Sale of Old Company to New Company — Consideration in Shares of Old Company Partly or Wholly Paid up—Date of Assessment.] — When a company purchases the undertaking of another company in consideration of partly and wholly paid-up shares of the former, the stamp duty on transfer must be assessed on the value of the shares not at the date of the provisional agreement, before the new company had come into existence, but at the date of the adoption of that agreement, and evidence is admissible to shew that the real value was not identical with the face value or the value attributed to the share consideration by the purchasing company. *Commissioner of Stamp Duties* v. *Broken Hill South Extended, Lim.*, 80 L. J. P.C. 130; [1911] A.C. 439; 104 L. T. 755—P.C.

Street — Effect of Assessment on Owners within the Improvement Area—Liability of Owner for Time Being.] — The New South Wales Moore Street Improvement Act, 1890, authorised the appellants to make street improvements, the cost thereof (see sections 4 and 6) to be divided between the whole body of ratepayers under a special street improvement rate and the owners of property within the improvement area. In a suit by the appellants to enforce liability for the unpaid amounts assessed in respect of three properties within the improvement area the Judge ordered its dismissal on the ground that with regard to two of the houses they ought to have been separately assessed, and in regard to the third that the defendants were not the successors in title of the person originally assessed:—*Held*, that the appellants were not required to assess each house separately, but only the properties of owners, and that, the improvement having been duly commenced, and the assessment on owners duly completed according to the requirements of sections 4 and 6, the owner for the time being was liable for the amount assessed upon his property and for arrears not

exceeding three years before suit. *Sydney Municipal Council* v. *Fleay*, 81 L. J. P.C. 1; [1911] A.C. 371—P.C.

c. South Australia.

See also Vol. III. 496, 2283.

Boundary of—Determination—Re-opening.]—By an Act of Parliament passed in 1834 (4 & 5 Will. 4. c. 95) and letters patent issued under the powers given by the Act, the Colony of South Australia was erected into a British province and its eastern boundary was fixed at "the 141st degree of east longitude." A survey was carried out at the joint expense of the Colony of South Australia and the colony lying to the east of it by which the 141st meridian of east longitude was fixed as accurately as was possible with the scientific knowledge and appliances then available, and the result of such survey was adopted and proclaimed as the boundary by both colonies. It was afterwards discovered that the boundary so laid down was about two miles and a quarter to the west of the true meridian of 141 degrees of east longitude, whereby a strip of land of about 340,000 acres, which should have been included in South Australia, was excluded from it:—*Held*, that the letters patent implicitly gave to the executives of the two colonies power to do such acts as were necessary for fixing the boundary between them, and such acts having been done with all due care, the boundary must be taken to have been finally and permanently fixed and could not be re-opened. *South Australia* (*State*) v. *Victoria* (*State*), 83 L. J. P.C. 137; [1914] A.C. 283; 110 L. T. 720; 30 T. L. R. 262—P.C.

d. Victoria.

See also Vol. III. 498, 2284.

Income Tax—Rate—Whether Income Produce of Property or Derived from Personal Exertion.]—Income derived by a beneficiary under a will from a business carried on by the trustees of the testator under the provisions of the will is taxable at the rate prescribed for "income from personal exertion," and not as "income from the produce of property," under the Income Tax Acts of the State of Victoria. *Webb* v. *Syme* (10 Commonwealth L. R. 482) disapproved. *Syme* v. *Victoria Commissioner of Taxes*, 84 L. J. P.C. 39; [1914] A.C. 1013; 111 L. T. 1043; 30 T. L. R. 689—P.C.

e. Western Australia.

See also Vol. III. 508, 2288.

Company — New Shares — Dividend — "Profit, advantage, or gain."] — The Dividend Duties Act, 1902, of Western Australia imposes duties on the dividends or profits of incorporated companies, and by section 2 "dividend" includes every dividend, profit, advantage, or gain intended to be paid or credited to or distributed among any members of any company. A company increased its capital by creating new fully paid shares which were allotted to the existing shareholders in proportion to their holdings of old shares. No money passed, but a sum was taken from the reserve fund and transferred to the share capital account:—*Held*, that this was a "dividend" within the meaning of the Act and liable to duty. *Swan Brewery Co.* v. *Regem*, 83 L. J. P.C. 134; [1914] A.C. 231; 110 L. T. 211; 30 T. L. R. 199—P.C.

—— Duties on Dividends — "Deducted and paid" Construed as "deducted or paid."]—By sections 5 and 6 of the Dividend Duties Act, a duty is imposed on dividends declared by a company carrying on business in Western Australia and not elsewhere. The company under section 13 "may deduct and retain" for their own use the sums payable in discharging these duties from the dividends. By section 15, "when a dividend is distributed before the duty payable in respect thereof is deducted and paid, the duty shall be a debt due by the person receiving the dividend to his Majesty":—*Held*, that the words "deducted and paid" in section 15 must be read as meaning "deducted or paid," and that where the duty has been paid by the company on dividends declared, but no deduction made from the amounts paid to the shareholder, no further duty is payable to the Crown. *Golden Horseshoe Estates Co.* v. *Regem*, 80 L. J. P.C. 135; [1911] A.C. 480; 105 L. T. 148—P.C.

2. British North America.

a. Dominion of Canada.

See also Vol. III. 513, 2290.

Appeal—Action for Specific Performance—Enquiry as to Damages—Judgment whether Interlocutory or Final.]—The Supreme Court Act of Canada by section 38 (*c*) gives an appeal to that Court from any judgment, whether final or not, "in any action, suit, cause, matter or judicial proceeding, in the nature of a suit or proceeding in equity." Where, therefore, in an action for specific performance of a contract with an alternative claim for damages, an appeal has not been brought against the judgment within the time limited by the Supreme Court Act, and the Court has refused to extend the time for appealing, the judgment cannot be questioned in subsequent proceedings. Before the passing of the statute 3 & 4 Geo. 5. c. 51 a judgment in a common law action in Canada finding liability and directing an enquiry into damages was held to be interlocutory, and therefore no appeal as of right lay against it. *Windsor, Essex, and Lake Shore Rapid Railway* v. *Nelles*, 84 L. J. P.C. 54; [1915] A.C. 355; 112 L. T. 180—P.C.

Bank Act—Vagueness in Description of Property Included in Mortgage — Validity of Mortgage.]—Section 88, sub-section 1 of the Bank Act of Canada, allowing a bank to "lend money to any . . . dealer in products of . . . the forest," and sub-section 3, allowing it to lend to "any person engaged in business as a wholesale manufacturer of any goods . . . upon the security of the goods," enable a bank to make advances to a company

upon the security of timber cut by it, and a difficulty in ascertaining all the things included in a general assignment will not affect the assignee's right to those things which can be ascertained and identified. *Imperial Paper Mills of Canada* v. *Quebec Bank*, 83 L. J. P.C. 67; 110 L. T. 91—P.C.

—— **Interest—Legal Rate.**]—The Canadian Bank Act, 1906, s. 91, provides that a bank shall not be able to recover interest at a higher rate than 7 per cent., and the Interest Act, 1906, provides by section 3 that where no rate of interest is fixed the rate of interest shall be 5 per cent.:—*Held*, that where a bank in a mortgage deed had stipulated for interest at the rate of 8 per cent., accounts should be taken on the basis of interest at 5 per cent. only. *McHugh* v. *Union Bank of Canada*, 82 L. J. P.C. 65; [1913] A.C. 299; 108 L. T. 273; 29 T. L. R. 305—P.C.

Company — Registration — Ultra Vires.] — The exclusive power conferred by section 91, sub-section 2 of the British North America Act, 1867, on the Dominion Parliament, of making laws for "The Regulation of Trade and Commerce," enables that Parliament to prescribe to what extent the powers of companies, the objects of which extend to the entire Dominion, shall be exercisable, and what limitations shall be placed on those powers; and therefore a provincial Legislature has no power under section 92, sub-section 11 of the Act, which gives power to make laws for "The Incorporation of Companies with Provincial Objects," to pass an Act requiring a Dominion company to be licensed or registered under the Act before it can carry on business in the province. *Citizens Insurance Co.* v. *Parsons* (51 L. J. P.C. 11; 7 App. Cas. 96) followed. *John Deere Plow Co.* v. *Wharton; Same* v. *Duck*, 84 L. J. P.C. 64; [1915] A.C. 330; 112 L. T. 183; 31 T. L. R. 35—P.C.

Constitutional Powers — Questions of Law Submitted to the Supreme Court—Ultra Vires.] —An Act of the Dominion Parliament authorising questions either of law or of fact to be put to the Supreme Court, and requiring the Judges of that Court to answer them on the request of the Governor in Council, is a valid enactment within the powers of that Parliament. *Att.-Gen. for Province of Ontario* v. *Att.-Gen. for Dominion of Canada*, 81 L. J. P.C. 210; [1912] A.C. 571; 106 L. T. 916; 28 T. L. R. 446—P.C.

Extradition — Preliminary Requisition not Obligatory.] — A preliminary requisition on behalf of the power requiring extraditions is not obligatory on the authorities before issuing a warrant under section 10 of the Extradition (Canada) Act, 1906, for the arrest of a fugitive criminal. *Att.-Gen. for Dominion of Canada* v. *Fedorenko*, 81 L. J. P.C. 74; [1911] A.C. 735; 105 L. T. 343; 27 T. L. R. 541—P.C.

Fishery — Right of Fishing in Tidal and Non-tidal Waters—Rights of Dominion and Province.] — By the British North America Act, 1867, s. 91, sea coast and inland fisheries are among the matters to which the exclusive authority of the Dominion Parliament extends; and therefore a provincial Legislature has no power to grant exclusive rights of fishing in the open sea within three miles of the coast of the province or in any arm of the sea, or estuary of a river, or other tidal waters, the right of fishing in such waters being a public right which can be dealt with only by the Dominion Parliament. *Att.-Gen. for British Columbia* v. *Att.-Gen. for Canada*, 83 L. J. P.C. 169; [1914] A.C. 153; 110 L. T. 484; 30 T. L. R. 144—P.C.

Where land has been granted absolutely by a province to the Dominion such grant includes the right of fishing in non-tidal waters within such land, and the provincial Legislature has no power to deal with fishing rights in such waters. *Ib.*

Land Compulsorily Acquired — Compensation—Value of Land—Advantages.]—The law of Canada as regards the principles upon which compensation for land taken compulsorily is to be awarded is the same as the law of England; that is to say, the value to be paid for is the value to the owner as it exists at the date of taking, not the value to the taker; and this value consists in the present value of all such advantages as the land possesses, present or future. *Cedar Rapids Manufacturing Co.* v. *Lacoste*, 83 L. J. P.C. 162; [1914] A.C. 569; 110 L. T. 873; 30 T. L. R. 293—P.C.

Where, therefore, there is a value above the bare agricultural value of the land, consisting in a possibility of use for a certain undertaking, the price is not to be calculated as a proportional part of the whole value of such undertaking, but is such price above the bare agricultural value as possible intending undertakers would give. *Ib.*

Light, Heat, and Power Companies — Powers of Restriction on Importation of Electric Energy — Implied Powers — Relations between City and Supply Company.] — A statutory power to do certain things is not to be read as not extending to other things ancillary thereto, such as in an electric system the erection of poles whereon to hang the wires. Where a number of companies are amalgamated by statute, a restriction of the powers of one of the companies—for example, in the importation of energy from outside the city—is not to be held as applying to the amalgamated concern. It is not open to a municipality to object to the details of a system, established at great expense, in which it has for many years co-operated and from which it has derived advantage. *Winnipeg Electric Railway* v. *Winnipeg City*, 81 L. J. P.C. 193; [1912] A.C. 355; 106 L. T. 388—P.C.

Master and Servant — Common Employment—Breach of Statutory Duty by Employer —Accident Caused by Breach.]—The breach of a statutory duty by an employer is not one of the risks which a servant must be assumed to have undertaken to run when he entered the employers' service, and therefore, where an employer has employed an unqualified person in breach of his statutory duty he

cannot rely on the defence of "common employment" in the case of an accident to a servant caused, or contributed to, by the conduct of such unqualified person. *Jones* v. *Canadian Pacific Railway*, 83 L. J. P.C. 13; 110 L. T. 83; 29 T. L. R. 773—P.C.

A railway company employed a person who had not passed the tests required by an order of the Railway Commissioners, which had the force of a statute, to work a train. He allowed the train to run past danger signals, and an accident resulted:—*Held*, that there was evidence that the breach of the statutory duty caused, or contributed to, the accident. *Ib.*

Minerals under Railway Line—Compensation to Owner for not Working.] — By the common law both of England and Ontario, except so far as altered by legislation, when land is sold with a reservation of the minerals to the vendor, he cannot, in the absence of a special bargain, so work them as to let down the surface. But under the Canadian Railway Act a railway company which has acquired the surface is not, as by the English Railways Clauses Consolidation Act, 1845, deprived of the natural right of support from subjacent and adjacent minerals, but is put on terms to compensate the mineral owner at once for the loss of value caused by the liability to support which rests on him after the titles to the minerals and the surface have been severed, and, in the absence of agreement, the entire amount of compensation is to be ascertained by arbitrators once for all, as at the date of the deposit of the plans; and upon payment of the compensation the mineral owner is restrained from working his minerals excepting under such conditions as may be imposed by the Railway Board. *Davies* v. *James Bay Railway*, 83 L. J. P.C. 339; [1914] A.C. 1043; 111 L. T. 946; 30 T. L. R. 633—P.C.

Parliament — Provincial Legislatures — Legislative Powers — Marriage Law.] — By section 91 of the British North America Act, 1867, the exclusive legislative authority of the Parliament of Canada includes marriage and divorce; and by section 92 the Legislature in each province may exclusively make laws with relation to the solemnisation of marriage in the provinces. Upon the true construction of these sections, the jurisdiction of the Dominion Parliament does not cover the whole field of validity of marriage, for section 92 operates by way of exception to the powers conferred as regards marriage by section 91, and enables provincial Legislatures to enact conditions as to solemnisation of marriage which may affect the validity of the contract. *Reference by Governor-General of Canada to Supreme Court, In re, or Marriage Legislation in Canada, In re*, 81 L. J. P.C. 237; [1912] A.C. 880; 107 L. T. 330; 28 T. L. R. 580—P.C.

A bill by which it was proposed that every ceremony or form of marriage heretofore or hereafter performed by any person authorised thereto by the laws of the place where it is performed shall be valid everywhere in Canada notwithstanding any differences in the religious faith of the persons married, and without regard to the religion of the celebrant, is *ultra vires* of the Dominion Parliament, and the Parliament of Canada has not authority to enact that marriages not contracted before a Roman Catholic priest of persons both or only one of whom is a Roman Catholic shall be legal and binding. *Ib.*

—— **Powers of Dominion and Provincial Legislatures — Provincial Act Affecting Dominion Railways—Ultra Vires.**]—A provision in an Act of a provincial Legislature empowering a provincial railway company to "take possession of, use or occupy any lands belonging to" a Dominion railway company, "in so far as the taking of such lands does not unreasonably interfere with the construction and operation of" such railway, is *ultra vires* of the provincial Legislature; and the omission of the word "unreasonably" will not make such legislation *intra vires*. *Att.-Gen. for Alberta* v. *Att.-Gen. for Canada*, 84 L. J. P.C. 58; [1915] A.C. 363; 112 L. T. 177; 31 T. L. R. 32—P.C.

—— **"Property and civil rights in the province" — Ultra Vires.**] — Under the British North America Act, 1867, s. 92, a provincial Legislature has the exclusive power of legislating as to "property and civil rights in the province." A sum of money was subscribed by bondholders resident outside the province for the construction of a railway in a province of Canada, under a scheme which afterwards proved abortive. The money was lying at a bank in the province. The provincial Legislature passed an Act providing that the money should form part of the general revenue fund of the province free from all claims of the railway company or their assigns, and should be paid over to the treasurer of the province: —*Held*, that as the bondholders had a right to recover back their money as having been paid for a consideration which had failed, the legislation was not restricted to dealing with property and civil rights in the province, and was *ultra vires*. *Royal Bank of Canada* v. *Regem*, 82 L. J. P.C. 33; [1913] A.C. 283; 108 L. T. 129; 29 T. L. R. 239—P.C.

Railway — Statute — Construction — Special Act—General Act—Inconsistency.]—By section 3 of the General Railway Act, 1906 (R. S. C. 1906, c. 37), the general Act is to be construed as incorporated with any special Act, and where the provisions of the general Act and "of any special Act passed by the Parliament of Canada, relate to the same subject-matter, the provisions of the special Act shall . . . be taken to override the provisions of" the general Act:—*Held*, that the power given by the General Railway Act, 1906, with the consent of the local authority, to enter upon any public place or highway and break up the ground did not curtail the larger powers without such consent to enter upon property required for their undertaking which were given by the appellant's Act of incorporation, 1902 (2 Edw. 7. c. 107). *Toronto and Niagara Power Co.* v. *North Toronto Corporation*, 82 L. J. P.C. 14; [1912] A.C. 834; 107 L. T. 182; 28 T. L. R. 563—P.C.

Section 247 of the General Railway Act, 1906, applies only to companies within the

definition clause—that is, to railway companies. *Ib.*

—— **Deprivation of Facilities — Finding of Fact by Railway Board—Limitation of Time for Bringing Actions.**]—The appellant railway in 1888, at the request of the respondents, constructed a spur track or siding into the respondents' yard. In 1904 the appellants gave notice to the respondents to discontinue this facility, which was afforded under section 253 of the Railway Act of Canada, 1903; and in November, 1904, cut it off. The Railway Board, whose order was affirmed by the Supreme Court of Canada, in 1906 ordered the restoration of the facility. In an action of damages for the deprivation of the facility brought in 1908,—*Held*, that the facility of the siding was a facility to which the respondents were entitled, as it had so been found by the Railway Board and the Supreme Court, whose decision on a question of fact is under section 42 of the Railway Act, 1903, conclusive. *Held*, also, that the special provisions for limiting the time of bringing actions of certain classes to a period of a year do not apply to a refusal or discontinuance of facilities such as were involved. *Canadian Northern Railway* v. *Robinson*, 81 L. J. P.C. 87; [1911] A.C. 739; 105 L. T. 389—P.C.

—— **Agreement with Corporation—Powers of Railway Commissioners—Damages for Location of Railway.**]—It is beyond the powers of the Board of Railway Commissioners for Canada, in expressing approval of the location of a railway along a street, to impose the condition that "the Company shall do as little damage as possible and make full compensation to all persons interested for all damage by them sustained by reason of the location of the said railway," inasmuch as such a condition is not authorised either by section 47 or by section 237, sub-section 3 of the Dominion Railway Act, 1906. *Grand Trunk Pacific Railway* v. *Fort William Land Investment Co.*, 81 L. J. P.C. 137; [1912] A.C. 224; 105 L. T. 649; 28 T. L. R. 37—P.C.

—— **Federal and Provincial Railways — Through Traffic — Jurisdiction of Railway Commissioners.**]—The effect of sub-section 10 of section 92 ("Exclusive Powers of Provincial Legislature") of the British North America Act, 1867, is to transfer the excepted works mentioned in subheads (*a*), (*b*), and (*c*) into section 91, and thus to place them under the exclusive jurisdiction of the Dominion Parliament. The Board of Railway Commissioners for Canada have no jurisdiction over a provincial railway in respect of its through traffic. *Montreal City* v. *Montreal Street Railway*, 81 L. J. P.C. 145; [1912] A.C. 333; 105 L. T. 970; 28 T. L. R. 220—P.C.

—— **Bond Issue — Guarantee.**]—By a contract of July, 1903, confirmed by Act of Parliament, the Government guaranteed an issue of bonds to be made by the appellant company for an amount equal to 75 per cent. of the cost of construction of a portion of the appellant railway. The Grand Trunk Railway of Canada guaranteed a second series of bonds as a second charge on the appellants' undertaking, to rank next after the Government bonds. In a supplemental contract dated February, 1904, and confirmed by statute, the Government agreed to implement its guarantee of the bonds of the appellants, which had fallen in value, "in such manner as may be agreed upon, so as to make the proceeds of the said bonds so to be guaranteed a sum equal to 75 per cent. of the cost of construction" of the above-mentioned portions of the railway:—*Held*, that it was not competent for the Government to guarantee other bonds than those authorised by the contract of July, 1903, as to do so would be a breach of faith with the Grand Trunk Railway of Canada by letting in a further charge in priority to the bonds guaranteed by that company, and that the Government might implement their guarantee either in cash or in any manner not imposing further liability on the appellants. *Grand Trunk Pacific Railway* v. *Regem*, 81 L. J. P.C. 134; [1912] A.C. 204; 105 L. T. 645—P.C.

—— **Contract Restricting Liability to Passenger.**]—In Canada no contract restricting a railway company's liability is valid unless it has been approved by the Board of Railway Commissioners under section 340 of the Railway Act (Rev. Stat. 1906, c. 37). *Grand Trunk Railway* v. *Robinson*, 84 L. J. P.C. 194; [1915] A.C. 740; 113 L. T. 350; 31 T. L. R. 395—P.C.

—— **Freight Classification — Supplement — Powers of Railway Company.**]—A railway company in Canada has no power by introducing a supplementary tariff to use a freight classification for through traffic with the United States which is not a classification in use in the United States, nor a classification authorised by the Railway Board. *Canadian Pacific Railway* v. *Canadian Oil Companies; Canadian Pacific Railway* v. *British American Oil Co.*, 83 L. J. P.C. 347; [1914] A.C. 1022; 111 L. T. 950—P.C.

—— **Land Subsidy — Railway — Exemption from Taxation—Period of Exemption.**]—By clause 16 of the construction contract of the Canadian Pacific Railway, lands of the company were to be exempt from taxation "until they are either sold or occupied," or "for twenty years after the grant thereof from the Crown":—*Held*, that there must have been a completed sale under which the property passed out of the company and vested in the purchaser before property became liable to taxation. *Minister of Public Works of Alberta* v. *Canadian Pacific Railway; Rex* v. *Canadian and Pacific Railway*, 80 L. J. P.C. 125; [1911] A.C. 328; 104 L. T. 3; 27 T. L. R. 234—P.C.

The period of exemption from taxation should be reckoned from the date of the conveyance of the lands to the company by letters patent under the Great Seal, not from the date of the survey by which the lands were identified as those to which the company was entitled under their contract. *North Cypress* v. *Canadian Pacific Railway* (35 Can. S. C. R. 550) approved and followed. *Ib.*

—— **Breach of Statutory Duty—Level Crossing — Accident — Proximate Cause — Negligence.**] — By section 274 of the Canadian Railway Act, when any train is approaching a level crossing "the engine whistle shall be sounded at least eighty rods before reaching such crossing" :—*Held*, that this section did not apply to an engine engaged in shunting, which did not in the course of its work ever get eighty rods away from a level crossing. *Grand Trunk Railway of Canada* v. *McAlpine*, 83 L. J. P.C. 44; [1913] A.C. 838; 109 L. T. 693; 29 T. L. R. 679—P.C.

By section 276, whenever in any city, town, or village a train moving reversely is passing over a level crossing "the company shall station on that part of the train, or of the tender" of the engine "which is then foremost a person who shall warn persons standing on, or crossing, or about to cross the track of such railway" :—*Held*, that if a warning was given in proper time, such as would be apprehended by a person possessed of ordinary faculties, the company would not be liable for an accident occurring to a person who did not hear, or did not act upon, such warning. *Ib.*

In the case of an accident a company is not liable for a negligent breach of a statutory duty unless it is proved that the accident was caused by such negligence, and not by the folly and recklessness of the person injured. *Ib.*

—— **Special Act — Same Subject-matter — Ratifying Agreement.**]—Section 3 of the Canadian Railway Act, 1906, provides that where its provisions and those of any special Act passed by the Parliament of Canada relate to the same subject-matter, the provisions of the special Act are to override the provisions of the Act of 1906 :—*Held*, that an Act ratifying an agreement between the two railway companies was a special Act within the meaning of the words of section 3 of the Railway Act, 1906. The subject-matter of this special Act and that of section 238 of the Railway Act, 1906, are not the same, and there is no conflict between them. *Canadian Pacific Railway* v. *Toronto City*, 81 L. J. P.C. 5; [1911] A.C. 461; 104 L. T. 724; 27 T. L. R. 448—P.C.

Railway Board—Jurisdiction of—Declaratory Order.]—The Board of Railway Commissioners for Canada has jurisdiction, under section 26 of the Railway Act, to make a declaratory order. *Canadian Pacific Railway* v. *Canadian Oil Companies; Canadian Pacific Railway* v. *British American Oil Co.*, 83 L. J. P.C. 347; [1914] A.C. 1022; 111 L. T. 950—P.C.

The Railway Board constituted by the Railway Act, 1903, ordered the appellant and the respondent railway companies to construct a bridge and an elevated viaduct for the purpose of carrying their railways through the city of Toronto :—*Held*, that under the Canadian Railway Act, 1906, s. 238, and the Amending Act, 1909, ss. 237, 238, the Railway Board had jurisdiction to make these orders. *Canadian Pacific Railway* v. *Toronto City*, 81 L. J. P.C. 5; [1911] A.C. 461; 104 L. T. 724; 27 T. L. R. 448—P.C.

Railway Board—Powers of—Viaduct over Railway—Cost of Construction.]—The Railway Board have no power under the Canadian Railway Act to order that a local tramway company, whose lines run along streets which cross a railway track by level crossings, shall contribute to the cost of the construction of viaducts to carry the streets over the railway, in place of the level crossings. *British Columbia Electric Railway* v. *Vancouver, Victoria, and Eastern Railway*, 83 L. J. P.C. 374; [1914] A.C. 1067; 111 L. T. 686—P.C.

Rivers Navigable and Floatable — Loose Logs—Crown Domain—Private Property.]—A river down which only loose logs can be floated is not a "navigable and floatable" river within the meaning of article 400 of the Civil Code of Lower Canada. *Tanguay* v. *Canadian Electric Light Co.* (40 Can. Sup. Ct. Rep. 1) approved. *Maclaren* v. *Att.-Gen. for Quebec*, 83 L. J. P.C. 201; [1914] A.C. 258; 110 L. T. 712; 30 T. L. R. 278—P.C.

Riparian Proprietor — Presumption of Ownership ad Medium Filum Aquæ.]—The English rule of law that a conveyance of land expressed to be bounded by a river must be presumed to confer the ownership *ad medium filum aquæ*, in the absence of words of exclusion, holds good in Canada. *Ib.*

Succession Duty—"Direct taxation within the Province"—Ultra Vires.]—A direct tax within the meaning of section 92 of the British North America Act, 1867, is a tax which is demanded from the very persons who it is intended or desired should pay it, and therefore it is *ultra vires* a provincial Legislature to impose a succession duty, such duty not being "direct taxation within the Province," but being payable in the first instance by a person entitled to recover the amount paid from the assets of the estate. *Cotton* v. *Regem*, 83 L. J. P.C. 105; [1914] A.C. 176; 110 L. T. 276; 30 T. L. R. 71—P.C.

Trade Mark — Registration — Distinctive Word—Passing off.]—Distinctiveness is of the essence of a trade mark, and the word "Standard," though registered, is not a valid trade mark within the Canadian Trade Mark and Design Act, 1879 :—*Standard Ideal Co.* v. *Standard Sanitary Manufacturing Co.*, 80 L. J. P.C. 87; [1911] A.C. 78; 103 L. T. 140; 27 R. P. C. 789; 27 T. L. R. 63—P.C.

—— **Extra-provincial Corporation.**] — Where an extra-provincial corporation which has obtained a licence carries on its business only by means of travellers who send the goods direct to the purchasers, and the name of the goods has not acquired a secondary meaning, in the absence of evidence of deception no action for passing off will lie, and an injunction will not be granted to restrain such sale. *Ib.*

Water Rights—Land Conveyed by Province to Dominion—Power of Province to Legislate.]—Under the British North America Act, 1867, and the Articles of Union incorporating British Columbia in the Dominion, lands

known as the "Railway Belt" became the property of the Dominion. By the Water Clauses Consolidation Act, 1897, of British Columbia, all unrecorded water in any river, lake, or stream in the province was declared to be vested in the Crown in right of the province :—*Held*, that the lands in the Railway Belt, and consequently the waters therein, which before the Articles of Union were the property of the Crown in right of the province, had become the property of the Crown in right of the Dominion, that no Act of the provincial Legislature could affect such waters, and that in fact the Water Clauses Act, 1897, did not purport to affect them. *Burrard Power Co.* v. *Regem*, 80 L. J. P.C. 69; [1911] A.C. 87; 103 L. T. 404; 27 T. L. R. 57—P.C.

b. Alberta.

Road Allowances — Statutory Authority to Company to Cross Road Allowances—Canals Intersecting Road Allowances — Duty of Company to Build Bridges at Points of Intersection.]—The respondents obtained authority under the North-West Irrigation Act, 1898, to cross the road allowances, which were strips of Crown lands reserved from public sale and settlement for the purpose of making roads where required :—*Held*, that the respondents and not the provincial Government were bound to construct the necessary bridges with proper and sufficient approaches thereto at the points where the respondents' canals intersected the road allowances reserved throughout the province of Alberta under the Dominion Lands Act, R. S. C. 1886. *Rex* v. *Alberta Railway and Irrigation Co.*, 82 L. J. P.C. 40; [1912] A.C. 827; 107 L. T. 185; 28 T. L. R. 574—P.C.

c. British Columbia.

See also Vol. III. 513, 2299.

Company—Requirement of Licence to carry on Business.]—The provision in Part VI. of the British Columbia Companies Act, that a company incorporated under the laws of the Dominion of Canada and duly authorised to carry out any of the purposes to which the authority of the British Columbia Legislature extends must obtain a licence from the British Columbia Registrar of Companies authorising it to carry on business within the province, is *ultra vires* the provincial Legislature. *John Deere Plow Co.* v. *Wharton*, 31 T. L. R. 35—P.C.

Ejectment—Dominion Possessory Lease—Title—Inconsistent Grants—Deceit Notice—Practised upon the Crown.]—The respondents brought an action against the appellants to recover possession of an island in Burrard Inlet near the city of Vancouver. The appellants claimed to have been in possession since June, 1887, under a grant from the Dominion Government, subsequently cancelled, of land contiguous thereto as a park, and under a lease from the Dominion, for ninety-nine years, dated November, 1908, which did not express the island in suit, and was made "subject until their determination to any existing lease of portions of the said land." The respondents based their title on a Dominion lease dated February, 1899 :—*Held*, that the appellants as defendants in possession could not object that the respondents' lease was not granted under the Great Seal as that objection was not raised in the Courts below, or that deceit had been practised on the Crown by the respondents as the latter had had no notice, actual or constructive, of any previous inconsistent grant. *Vancouver City* v. *Vancouver Lumber Co.*, 81 L. J. P.C. 69; [1911] A.C. 711; 105 L. T. 464—P.C.

Land—Title to—Registration of Title—Unregistered Deed—Admissibility in Evidence—Action for Specific Performance.] — By section 75 of the British Columbia Land Registry Act, 1906, an unregistered instrument affecting land shall not be receivable as evidence or proof of the title of any person to such land, as against the registered title of any person to the same land, except in an action questioning the registered title to such land on the ground of fraud. S. applied for a certificate of title to certain land. At the time of her application she took to the Land Registry Office a deed the effect of which was to shew that she was the owner of a part of the land only, and that the other part belonged to the appellant's predecessor in title. This deed was deposited in the office, but was not registered, and S. obtained a certificate of title to the whole of the land in her own name. Afterwards she contracted to sell the land to the respondents. In an action by the purchasers against S. and the appellant to obtain specific performance of the contract, S. admitted the appellant's title to part of the land :—*Held*, that the appellant was improperly joined as a defendant in the action, and that the unregistered deed was admissible in evidence, not as disproving the respondents' title, but as a material circumstance which the Court must take into account in deciding the extent to which specific performance ought to be granted. The only operation of section 75 of the Act is to impose a penalty on the non-registration of an instrument by making such instrument inadmissible in evidence in certain cases. *Howard* v. *Miller*, 84 L. J. P.C. 49; [1915] A.C. 318; 112 L. T. 403—P.C.

Limitations, Statute of—Possession of Land—Possession for More than Twenty Years by Grantee as Mortgagee — Payment of Taxes only Act of Possession.]—In 1889 the appellant lent money to the respondent, who, by way of security for the loan, conveyed to the appellant certain wild land which was then of no value. For more than twenty years before the respondent brought a suit to redeem the appellant paid the taxation upon the land, and so performed the only act of possession of which it appeared to be capable. The respondent, who was aware that these payments were being made by the appellant, made no payments whatever in the way of interest on, or repayment of, the loan, and left the property severely alone :—*Held*, that his right to redeem was barred by the British Columbia Statute of Limitations (Rev. S. 1897, c. 123), s. 40.

Kirby v. *Cowderoy*, 81 L. J. P.C. 222; [1912] A.C. 599; 107 L. T. 74—P.C.

The words of Lord O'Hagan on possession in *Lord Advocate* v. *Lovat* (*Lord*) (5 App. Cas. 273, 288), cited by Lord Macnaghten in *Johnston* v. *O'Neill* (81 L. J. P.C. 35; [1911] A.C. 583), adopted. *Ib.*

Master and Servant—Workmen's Compensation—Extra-territoriality of Statute—Death by Accident of Alien Workman—Non-resident Alien Dependant.]—The legal personal representative of an alien workman who was killed by accident arising out of and in the course of his employment,—*Held*, under the British Columbia Workmen's Compensation Act, 1902, Schedule II. s. 8, to be entitled to compensation, to be held for the benefit of the deceased man's widow, who was herself an alien residing in Austria. *Baird & Co.* v. *Birsztan* (8 Fraser, 438) approved. *Krzus* v. *Crow's Nest Pass Coal Co.*, 81 L. J. P.C. 227; [1912] A.C. 590; 107 L. T. 77; 56 S. J. 632; 28 T. L. R. 488—P.C.

Municipality — Validity of By-law.] — The Municipal Act, 1892, of British Columbia, s. 146, provides that "When debentures have been issued by a municipal council under a statute or under a by-law, and the interest on such debentures . . . has been paid for the period of one year or more by the municipality, the statute and the by-law, and the debentures issued thereunder . . . shall be valid and binding on the corporation, and shall not be quashed or set aside on any ground whatever":—*Held*, that the effect of the enactment was not confined to making valid the debentures so issued, but that the by-law under which they were issued could not, after the lapse of a year, be quashed or set aside on the ground of any irregularity in the procedure by which it was obtained. *Wilson* v. *Delta Corporation*, 82 L. J. P.C. 52; [1913] A.C. 181; 107 L. T. 778—P.C.

—— **Limitation of Actions against Municipality.**]—By section 243 of the Municipal Clauses Act, 1897, "all actions against any municipality . . . for the unlawful doing of anything purporting to have been done . . . under powers conferred by any Act of the Legislature . . . shall be commenced within six months after the cause of such action shall have first arisen"; and by section 244 all other actions against a municipality shall be commenced within one year after the cause of action has arisen:—*Held*, that the sections applied to an action brought in respect of continuing damage alleged to have been caused to land of the plaintiff by works constructed and maintained by a municipality, and for an injunction. *Ib.*

—— **Stopping up Lane — Lease of Disused Highway—"Giving a bonus."**]—A municipal corporation professing to act under the powers as to public health conferred on them by statute, passed a by-law to divert a lane in the city, and leased the disused part of it at a nominal rent. Their Act of incorporation gave them power, under the head of "Public Health," to pass by-laws for (*inter alia*) "stopping up lanes":—*Held*, that they had power to divert the lane, though it was not shewn to be necessary on grounds of health, and that it was not outside their powers because steps taken in the public interest were accompanied by a benefit specifically accruing to private persons; and that enacting a by-law which benefited some persons more than others was not "giving a bonus" within section 194 of the Municipal Act, 1906. *United Buildings Corporation* v. *Vancouver City*, 83 L. J. P.C. 363; [1915] A.C. 345; 111 L. T. 663—P.C.

Negligence — Damages for Injury Causing Death—Action by Administrator—Nature of Action.]—An action by the administrator of a deceased person under the Families Compensation Act of British Columbia, which is practically identical with Lord Campbell's Act, to recover, on behalf of the father and mother, damages for negligence causing the death of the deceased, is not a suit "for indemnity for damage or injury suffered by the plaintiff," inasmuch as the Families Compensation Act, like Lord Campbell's Act, gives a new cause of action and does not merely remove the operation of the maxim *Actio personalis moritur cum persona;* and therefore such an action is not barred by section 60 of the Consolidated Railway Act of British Columbia at the end of six months from the death of the deceased. *British Columbia Electric Railway* v. *Gentile*, 83 L. J. P.C. 353; [1914] A.C. 1034; 111 L. T. 682; 30 T. L. R. 594—P.C.

Street Railway—Statutory Powers—Agreement with Corporation — "Right, franchise, or privilege"—Ultra Vires.]—Where a street railway company had by statute power to construct lines of railway along such of the streets, roads, and highways within the limits of a municipality as the corporation should direct, and the corporation made an agreement with the company consenting to the exercise by the company of their powers over certain streets, and covenanting that in certain events they would consent to the company exercising their powers over other streets, such agreement does not confer "a right, franchise, or privilege" on the company within the meaning of section 64 of the Municipal Clauses Act, 1896, of British Columbia, and does not require the assent of the electors in accordance with that section to render it valid. *British Columbia Electric Railway* v. *Stewart; Point Grey Corporation* v. *Stewart*, 83 L. J. P.C. 53; [1913] A.C. 816; 109 L. T. 771—P.C.

Water Rights — Riparian Proprietor — Recorded Water.]—A riparian proprietor holding land under a Crown grant made after the passing of the Water Privileges Act, 1892, of British Columbia (c. 47 of 1892), can only acquire water rights by obtaining a record under the Acts which provide for such grants by the Crown, or by a special statutory title, all water unrecorded and unappropriated at the date when the Act came into force being vested in the Crown in right of the province. *Cook* v. *Vancourer City*, 83 L. J. P.C. 383; [1914] A.C. 1077; 111 L. T. 684—P.C.

d. New Brunswick.

Succession Duty — Domicil of Testator — Local Administration.] — Succession duty is payable in respect of property locally situate in a St. John's, New Brunswick, bank, and belonging to a testator who was domiciled in Nova Scotia, under the New Brunswick Succession Duty Act, 1896 (Consolidated Statutes, 1908), s. 5, sub-s. 1, which enacts that "All property, whether situate in this province or elsewhere, . . . shall be subject to a succession duty, to be paid to the use of the province over and above the fees provided by the chapter of these Consolidated Statutes relating to Probate Courts." *Rex* v. *Lovitt*, 81 L. J. P.C. 140; [1912] A.C. 212; 105 L. T. 650; 28 T. L. R. 41—P.C.

e. Nova Scotia.

Taxation—Exemption—Cost of Construction of Sewers.]—By an agreement made between the appellant and the respondent, in consideration that the respondent company would establish a manufactory in the city of Halifax, it was agreed that "the City will grant to the company a total exemption from taxation for ten years on its buildings, plant and stock, and on the land on which its buildings used for manufacturing purposes are situated . . . the foregoing exemption not to apply to the ordinary water rate" :—*Held*, that under the agreement the company were exempt from contributing to the cost of the construction of public sewers, constructed before the expiration of the period of ten years from the date of the agreement, in the streets in which its buildings were situated. *Halifax City* v. *Nova Scotia Car Works*, 84 L. J. P.C. 17; [1914] A.C. 992; 111 L. T. 1049—P.C.

f. North-West Territories.

Chattel Mortgage — Costs and Charges in Respect of Seizure—Statutory Scale—Penalty for Excess—Discretion of Court.]—Section 2 of the North-West Territories Consolidated Ordinances, 1898, c. 34, provides that in respect of seizures under chattel mortgages and bills of sale, the costs and charges shall be such as are fixed in the schedule to the Ordinance; and section 3 provides that if greater or other costs be taken by the person making the distress, the Court may order him to pay treble the amount taken in excess to the party aggrieved. The Interpretation Ordinance (c. 1 of 1898) by section 8, subsection 2, provides that the expression "may" shall be construed as permissive :—*Held*, that the schedule was not inclusive and dealt only with the costs of what were the ordinary and universal features of realisation by seizure and sale, but did not refer to the costs of other acts which might be agreed upon as necessary and proper in the particular case, as between mortgagor and mortgagee, for the proper realisation of the property seized, and that in any case the Court had a discretion as to the infliction of the penalty. *McHugh* v. *Union Bank of Canada*, 82 L. J. P.C. 65; [1913] A.C. 299; 108 L. T. 273; 29 T. L. R. 305—P.C.

g. Ontario.

See also Vol. III. 513, 2301.

Assignment of Chose in Action.] — The Ontario statute dealing with the assignment of *choses in action* is substantially in the same terms as section 25 of the Judicature Act, 1873, and only enables such assignment to be made subject to existing equities. *Parsons* v. *Sovereign Bank of Canada*, 82 L. J. P.C. 60; [1913] A.C. 160; 107 L. T. 572; 20 Manson, 94; 29 T. L. R. 38—P.C.

Bank — Agreement between Two Banks — Construction — Purchase or Assignment for Limited Purposes.]—By a deed made in conformity with a resolution passed by the directors of the Ontario Bank, now in liquidation, that the Bank of Montreal should be asked to re-discount the loans of the Ontario Bank and to undertake to meet the demands of its depositors, in consideration whereof the Ontario Bank should transfer such loans and all documents relating thereto and should transfer to the Bank of Montreal all the right, title, and interest in all its debts and *choses in action*, the Bank of Montreal agreed to purchase by way of discount and re-discount, at the rate mentioned, all the call and current loans and overdue debts of the Ontario Bank, the Bank of Montreal to be entitled to the benefit of such transfer, and on the final adjustment of accounts to pay the sum mentioned in the deed :—*Held*, that the deed did not constitute an out-and-out sale of the goodwill and assets of the Ontario Bank, but a transfer of assets for the limited purposes specified in the deed. *McFarland* v. *Bank of Montreal*, 80 L. J. P.C. 83; [1911] A.C. 96; 103 L. T. 436; 27 T. L. R. 55—P.C.

Common School Lands Fund—Liability to Account for Money Constructively Received—Jurisdiction of Arbitrators.]—An award was made in an arbitration constituted in pursuance of Dominion and Provincial Acts of Parliament for the distribution of the revenues derived from lands set apart by Parliament for common school purposes among the several provinces :—*Held*, that the arbitrators had only jurisdiction to deal with the sums actually received in respect of each province, and were not competent to deal with any question of constructive receipt of moneys which were not, but might or ought to have been received but for the negligence or omission of any province. *Att.-Gen. for Ontario* v. *Att.-Gen. for Quebec* (72 L. J. P.C. 9; [1903] A.C. 39) followed. *Att.-Gen. for Quebec* v. *Att.-Gen. for Ontario*, 80 L. J. P.C. 35; [1910] A.C. 627; 103 L. T. 328; 26 T. L. R. 679—P.C.

Electric Power Company — Power to Erect Poles to Carry Power Lines without Leave of Municipality.] — The powers given to the appellants by their Act of incorporation passed in 1902 to enter upon streets for the purpose of erecting poles to carry power lines for the conveyance of electricity, without first obtaining the leave and licence of the municipality are not restricted by the provisions of the Railway Acts. *Toronto and Niagara Power*

Co. v. *North Toronto Corporation*, 82 L. J. P.C. 14; [1912] A.C. 834; 107 L. T. 182; 28 T. L. R. 563—P.C.

Mining Claim Recorded but not Patented—Tenant at Will—Execution.]—By section 68 of the Ontario Mining Act a licensee "until he obtains a patent shall be a tenant at will of the Crown in respect of the mining claim":—*Held*, that this referred only to the relations of the claimant to the Crown before the Crown had parted with its rights by patent, and did not affect the position of the claimant as against other subjects of the Crown; and therefore the interest in a mining claim duly recorded, but not yet patented, is exigible for a judgment debt due from the claimant. *McPherson* v. *Temiskaming Lumber Co.* (82 L. J. P.C. 113; [1913] A.C. 145) followed. *Clarkson* v. *Wishart*, 83 L. J. P.C. 59; [1913] A.C. 828; 109 L. T. 775; 29 T. L. R. 778—P.C.

Section 123 of the Ontario Mining Act, 1908, gives the Mining Commissioner power to dispense with a transfer in writing executed by the claimant. *Ib.*

Natural Gas—Conveyance of Land in Fee — Exception of Reservation — Mines and Minerals—Springs of Oil.]—A reservation or exception in a conveyance of land to the respondent in 1867 of "all mines and quarries of metals and minerals, and all springs of oil in or under the said land, whether already discovered or not."—*Held*, not to include natural gas. *Barnard-Argue-Roth Stearns Oil and Gas Co.* v. *Farquharson*. [1912] A.C. 864; 107 L. T. 332; 57 S. J. 10; 28 T. L. R. 590—P.C.

Railway—Minerals under Line—Compensation to Owner for not Working.]—By the common law both of England and Ontario, except so far as altered by legislation, when land is sold with a reservation of the minerals to the vendor, he cannot, in the absence of a special bargain, so work them as to let down the surface. But under the Canadian Railway Act a railway company which has acquired the surface is not, as by the English Railways Clauses Consolidation Act, 1845, deprived of the natural right of support from subjacent and adjacent minerals, but is put on terms to compensate the mineral owner at once for the loss of value caused by the liability to support which rests on him after the titles to the minerals and the surface have been severed, and, in the absence of agreement, the entire amount of compensation is to be ascertained by arbitrators once for all, as at the date of the deposit of the plans; and upon payment of the compensation the mineral owner is restrained from working his minerals excepting under such conditions as may be imposed by the Railway Board. *Davies* v. *James Bay Railway*, 83 L. J. P.C. 339; [1914] A.C. 1043; 111 L. T. 946; 30 T. L. R. 633—P.C.

——Railway and Municipal Board—Powers—"Tracks"—Agreement to Keep Road in Proper Repair—Reconstruction.]—A street railway company, by an agreement confirmed by Act of Parliament, were bound where their rails were "laid upon the travelled portion of the road" to "keep clean and in proper repair that portion of the travelled road between the rails, and for eighteen inches on each side of the rails":—*Held*, that there was no obligation on them to reconstruct this space so as to make it a roadway of an improved character such as the road authority proposed to make of the rest of the road; and that the Ontario Railway and Municipal Board Amendment Act, 1910, s. 3, which gives the Board power to order repairs or improvements or changes in any "tracks," did not give the Board jurisdiction to make an order directing the company to carry out such reconstruction of the roadway. *Toronto Suburban Railway* v. *Toronto Corporation*, 84 L. J. P.C. 108; [1915] A.C. 590; 112 L. T. 788—P.C.

Salteaux Indians—Treaty with—Extinction of Indian Interest in Lands—Repayment by Ontario to the Dominion of Outlay in Respect of Lands in Ontario.]—In 1873 the interest in an extensive tract of land of an Indian tribe was extinguished in return for certain payments and the grant of certain rights by the Crown. It was subsequently discovered that the greater part of the land was in Ontario. The Dominion claimed contribution from Ontario in relief of the burden undertaken by the Dominion in respect of the Indians:—*Held*, that the Dominion Government was not entitled to such contribution, as in concluding the treaty the Dominion was not acting on behalf of or as trustee for Ontario, but for the benefit of the whole Canadian nation. *Dictum* of Lord Watson in *St. Catherine's Milling and Lumber Co.* v. *Reg.* (58 L. J. P.C. 54; 14 App. Cas. 46) disapproved. *Dominion of Canada* v. *Province of Ontario*, 80 L. J. P.C. 32; [1910] A.C. 637; 103 L. T. 331; 26 T. L. R. 681—P.C.

Timber — Right to Timber Growing on Mining Locations—Trespass—Subsequent Permission to Trespasser to Retain Timber—Rights of Mining Owner.]—By section 39 of the Mines Act of Ontario all pine trees on Crown lands sold or granted as mining lands are reserved to the Crown, subject to the right of the lessees to cut such trees as are necessary for building, fencing, and fuel, or working the mines, and licensees under the Crown may enter on such lands to cut and remove the timber; and the rights of the Crown in such timber are not affected by the provisions of section 2 of the Crown Timber Act (Rev. Stat. Ont. 1897, c. 32). The Crown granted permission to the appellant company to cut timber upon certain lands. M. and D., subcontractors under the appellants, trespassed upon certain other Crown lands held by the respondents under mining leases, and cut timber thereon. The Crown timber agent, upon being informed of the trespass, stopped M. and D. from cutting any more timber on the respondents' lands, but allowed them to remove the timber already cut by them, and received payment for it:—*Held*, that the property in the timber so unlawfully cut

remained in the Crown, and though the respondents might have had a title to it as against a trespasser they could not recover the value from the appellants after the Crown had allowed them to remove it. *Eastern Construction Co.* v. *National Trust Co.*, 83 L. J. P.C. 122; [1914] A.C. 197; 110 L. T. 321—P.C.

——Timber Licence — Interest in Land — Execution — Seizure.] — A licence under the Crown Timber Act of Ontario, 1897, to occupy land and fell timber thereon and remove it confers upon the licensee an interest in land liable to seizure and sale under a writ of execution. *Glenwood Lumber Co.* v. *Phillips* (73 L. J. P.C. 62; [1904] A.C. 405) approved. *Canadian Pacific Railway* v. *Rat Portage Lumber Co.* (10 Ont. L. R. 273) disapproved. *McPherson* v. *Temiskaming Lumber Co.*, 82 L. J. P.C. 113; [1913] A.C. 145; 107 L. T. 664; 29 T. L. R. 80—P.C.

h. Quebec.

See also Vol. III. 513, 2306.

Accident—Contributory Negligence.]—By the law of Quebec contributory negligence on the part of a plaintiff is no defence in an action for damages for injury caused by the negligence of the defendant, but is only a ground for the reduction of damages; but in Quebec, as in England, a plaintiff cannot recover damages if his own negligence is the sole effective cause of the injury complained of. *Canadian Pacific Railway* v. *Fréchette*, 84 L. J. P.C. 161; [1915] A.C. 871; 31 T. L. R. 529—P.C.

—— Limitation of Amount Recoverable.] — Article 7322 of the Revised Statutes of Quebec (1909) provides for the payment of "rents" or annuities to workmen injured in the course of their employment calculated with reference to the wages which they were earning at the time of the injury; and by sub-section 2, "The capital of the rents shall not, however, in any case except in the case mentioned in article 7325" (which relates to accidents caused by "the inexcusable fault" of the employer) "exceed two thousand dollars":—*Held*, that this sub-section applies only to the case in which the workman has exercised the option, given to him by article 7329, of having the capital of the rent due to him paid to an insurance company. Decision of the Court of King's Bench for the Province of Quebec (22 Quebec L. R. K.B. 207) affirmed. *Canadian Pacific Railway* v. *MacDonald*, 84 L. J. P.C. 243; [1915] A.C. 1124; 31 T. L. R. 600—P.C.

Action against a Minor.]—By the law of the Province of Quebec minority is an absolute bar to an action, and a minor is incapable of suing or being sued, and if he is sued and served as a defendant he is not thereby made a party to the action at all, and there is no properly constituted action against him. *Levine* v. *Serling* (*No.* 1), 83 L. J. P.C. 295; [1914] A.C. 659; 111 L. T. 355—P.C.

Montreal City Charter — Authorised Expenditure.] — Expenditure authorised by the city council of Montreal, or expenditure under the instructions of the council and carried into effect through the finance committee of the council, is not invalidated by a departure from ordinary routine or infraction of a by-law; nor is a person who takes part in such expenditure liable to the penalties attached by section 14, article 338 of the Montreal City Charter, to acts and defaults of a very different description. *Lapointe* v. *Larin*, 81 L. J. P.C. 66; [1911] A.C. 520; 105 L. T. 263—P.C.

Seigniory—Title—Trust—Aboriginal Title or Prescription.]—By an Act of 1840 of Lower Canada—now contained in the Consolidated Statutes of Lower Canada, 1861—the respondents were declared to be a corporation, and the corporation's title to the seigniory of the Lake of Two Mountains was confirmed, and it was enacted that the corporation should hold it as fully as their predecessors for the purposes therein specified and for the support of such other religious, charitable, and educational institutions as might from time to time be approved by the governor of the province:—*Held*, that the Act placed beyond question the title of the respondents to the seigniory, and that the appellants could not establish an independent title to possession or control in the administration. *Corinthe* v. *St. Sulpice, Montreal, Seminary*, 82 L. J. P.C. 8; [1912] A.C. 872; 107 L. T. 104; 28 T. L. R. 549—P.C.

3. Ceylon.

See also Vol. III. 567, 2315.

Partnership—Dissolution—Suit for Partnership Accounts—Parol Evidence of Partnership.] —The Ceylon Ordinance No. 7 of 1840, s. 21, provides that "No . . . agreement, unless it be in writing and signed by the party making the same, . . . shall be of force or avail in law for any of the following purposes: . . . (4) For establishing a partnership where the capital exceeds one hundred pounds. Provided that this shall not be construed to prevent third parties from suing partners, or persons acting as such, and offering in evidence circumstances to prove a partnership existing between such persons, or to exclude parol testimony concerning transactions by or the settlement of any account between partners": —*Held*, that the Ordinance applied to cases where the parties had acted as if they were partners in fact, and some dispute had arisen as to their partnership rights or property; and therefore a suit for partnership accounts after the dissolution of a *de facto* partnership could not be maintained in the absence of any agreement in writing between the partners, and that this Ordinance was not affected by Ordinance 22 of 1866, which enacted that the English law of partnership was the law of Ceylon. *Anonymous Case* (Vander Straaten's Rep. 195) overruled. Judgment of the Supreme Court of Ceylon (11 Ceylon New L. R. 254) reversed. *Pate* v. *Pate*, 84 L. J. P.C. 234; [1915] A.C. 1100; 31 T. L. R. 590—P.C.

Possessory Action—Trustee and Manager of Mosque—Forcible Possession.]—The trustee or manager of a mosque who has been in possession for more than the requisite period of a year and a day is entitled under the Ceylon Ordinance 22 of 1871 to bring a possessory action, and to an injunction against persons who have forcibly dispossessed him. *Idroos Lebbe Azeez* v. *Mohamed Ismail Mudliyar*, 81 L. J. P.C. 123; [1911] A.C. 746; 105 L. T. 417; 27 T. L. R. 580—P.C.

Title—Grant of Land with Restraint on Alienation — Conveyance by Grantor and Grantee.]—By a deed of gift made in 1882 the donor gave to the respondent a certain property as a gift "absolute and irrevocable," subject to the condition that the donor should have possession and enjoy the income thereof until the donee should reach the age of twenty-five. Then, after the donee should have attained twenty-five, if the donor should be living, the donee was not to be at liberty to alienate the property. The donee attained twenty-five in 1891 and died unmarried and without issue in 1896. By a deed dated December 5, 1893, and registered on December 7, which recited that the donee had attained twenty-five and had been in possession and enjoyment of the property since 1891, the donor granted "liberty power and licence" to the donee to sell and convey the property to the respondent, and a conveyance was executed accordingly. In October, 1893, the respondent bound himself within twelve calendar months to sell to W. "free from all incumbrances whatsoever," the aforesaid premises:—*Held*, that as the donee under the deed of 1882 was precluded from alienating the property, the deed of October, 1893, was in excess of his rights, and could not stand in the way of the rights effectively given by the deed of December, 1893. *Gunatilleke* v. *Fernando*, 81 L. J. P.C. 191; 106 L. T. 306—P.C.

Possession by Co-parceners of Intestate—Presumption of Ouster — Adverse Possession —Prescription of Actions.]—The law of Ceylon by the Limitations Ordinance No. 22 of 1871 is the same as that which prevailed before the Statute of Limitations, 3 & 4 Will. 4. c. 27, by which the possession of any one co-parcener is the possession of the others, and cannot be put an end to by anything short of ouster or its equivalent; and such possession must be adverse to or independent of the title of the other co-owners. *Corea* v. *Appuhamy*, 81 L. J. P.C. 151; [1912] A.C. 230; 105 L. T. 836—P.C.

The brother of an intestate who died in 1878 took sole possession of the intestate's property, which he settled upon himself and his son. The co-heirs, his sisters, sold their rights and interest to the appellant, who brought an action claiming to be co-owner:—*Held*, that the brother's possession was by descent, and enured for the benefit of himself and the co-parceners. *Ib.*

Joint Will of Husband and Wife — Community of Property — Life Usufruct — Fideicommissum.] — Under a joint will made in 1878 by a husband and wife, who were married in community of property, after bequests to children on marriage or the attainment of twenty-five, it was directed that certain properties, including a synagogue and cottage therein described, were not to be alienated or incumbered, but should devolve on "the lawful heirs of the above-named devisees: in the absence of any such lawful heirs, on the persons whom we institute heirs, or his or her lawful heirs." Upon the death of both of the testators it was stated "The synagogue and Barandeniya Cottage, in Colpetty, to vest in Edwin." The testator died in 1878, the testatrix in 1907. The son Edwin died in 1882 intestate. He was one of the instituted heirs. The testatrix adiated the inheritance and accepted benefits under the will. In an action by Edwin's widow and her second husband,—*Held*, that the testatrix took a usufruct, and not the *dominium* in synagogue and cottage, and that Edwin took a vested interest transmissible to his heirs. *Held*, also, that under the Ceylon Ordinance 15 of 1876 Edwin's widow took by inheritance half of Edwin's property. *Samaradiwakara* v. *De Saram*, 81 L. J. P.C. 75; [1911] A.C. 753; 105 L. T. 345—P.C.

Minerals — Action by Surface Owner to Restrain Removal of—Waiver of Rights of Crown after Commencement of Action—Effect of Waiver.]—The respondent was the owner of land under a grant from the Crown which expressly reserved to the Crown all mines and minerals in or upon the said lands, and he brought an action against the owner of adjacent land to restrain him from trespassing on his land and taking minerals from under it, and for the value of the minerals so taken. After the commencement of the action he obtained a written statement from the Crown that no claim was made on the part of the Crown to the minerals in question, "anything in the wording of the Crown grant notwithstanding":—*Held*, that this waiver of the rights of the Crown had no restrospective effect so as to vest the title to the minerals in the respondent, and that the action would not lie. *Fernando* v. *De Silva*, 82 L. J. P.C. 111; 107 L. T. 670—P.C.

Evidence — True Copy — Whether Use of Word "Certify" Necessary.]—The provisions of the Ceylon Evidence Ordinance, 1905, relating to the admissibility in evidence of certified copies of public documents ought to be read as applicable to certificates given before the date of the Ordinance, but in such cases the use of the word "certify" is not essential, provided that it appears that the officer intended to attest the accuracy of the copy. *Muniandy Chetty* v. *Muttu Caruppen Chetty*, 30 T. L. R. 41—P.C.

District Court—Jurisdiction.]—The District Court of Kandy has power to award damages for a continuous breach of agreement in respect of the time both before and after action

brought. *De Soysa (Lady)* v. *De Pless Pol*, 81 L. J. P.C. 12; [1912] A.C. 194 105 L. T. 642—P.C.

Practice — Inclusion in Claim of Different Causes of Action.]—Section 34 of the Civil Procedure Code, 1889, of Ceylon makes it incumbent on a plaintiff to include the whole of his claim in his action, and to ask for the whole of his remedies, but its object is not to compel the inclusion in one action of different claims arising from the same transaction. Therefore where an action was settled upon the terms that the defendant should give to the plaintiff two promissory notes for the amount which an arbitrator found to be due to him, and the plaintiff afterwards sued upon the notes, but failed upon a point of form,—*Held*, that it was open to him to bring a new action on his original claim. *Saminathan* v. *Palaniappa*, 83 L. J. P.C. 131; [1914] A.C. 618; L. R. 41 Ind. App. 142; 110 L. T. 913—P.C.

4. Gold Coast.

Concessions Court—Certification of Validity of Concession—Priority of Certificate—Exclusive Demise.]—By section 8 of the Gold Coast Concessions Ordinance No. 14 of 1900, "No proceedings shall . . . be taken to give effect to any concession" by a native chief "unless such concession has been certified as valid by the Court"; and by section 23, "a certificate of validity shall be good and valid from the date of such certificate as against any person claiming adversely thereto." The respondent company obtained a concession of land with all surface rights, with full and exclusive powers to collect rubber, make clearings, construct farms, and grow rubber and other produce, with liberty to cut and carry away trees and timber; the concession also included all mines, &c. The appellant company obtained a concession of land, which included a part of the land the subject of the respondents' concession, with all mines and minerals, with full and exclusive liberty to sink pits, take and carry away minerals, and cut timber and trees for the use of the mines and the erection of buildings. The respondents' concession was earlier in date than the appellants' concession, but the certificate of the Court validating their concession was later in date than the appellants' certificate:—*Held*, that the Court below was wrong in dismissing the opposition of the appellants to the grant of a certificate to the respondents, but that, notwithstanding the use of the word "exclusive," the appellants' rights were confined to those of mining lessees with a right to such timber as they required for purposes ancillary to such mining; and that, subject to such rights, they had no power to prevent the respondents from developing the overlapping part of the land as an agricultural and arboricultural property, and that the concessions should be modified by the Court accordingly. *Wassaw Exploring Syndicate* v. *African Rubber Co.*, 83 L. J. P.C. 316; [1914] A.C. 626; 111 L. T. 54—P.C.

An actual demise of land is not a "concession" within the meaning of the Concessions Ordinances. *Ib.*

5. Guernsey.

See also Vol. III. 576, 2317.

Easement—Grant—Obligation of Owner of Lower Ground to Receive Water Flowing Naturally from Higher Ground.]—The law of Guernsey does not allow of the constitution of a servitude or easement except by express grant, and a contract must be registered in order to affect land in the hands of a successor. But this rule does not apply to the natural right of the proprietor of higher land to have the water which naturally falls on his land discharged on to the contiguous lower land of another proprietor. *Gibbons* v. *Lenfestey*, 84 L. J. P.C. 158; 113 L. T. 55—P.C.

6. Hong-Kong.

See also Vol. III. 575, 2317.

Supreme Court—Jurisdiction—China and Corea Order in Council, 1904—British Subject—British Protected Person—Soldier in Indian Regiment—Criminal Charge—Evidence—Confession—Admissibility.]—An alien who has enlisted in a British Indian regiment stationed in China is a person who "enjoys his Majesty's protection" by virtue of the Foreign Jurisdiction Act, 1890, and is therefore subject to the jurisdiction of the Supreme Court of China and Corea. *Ibrahim* v. *Regem*, 83 L. J. P.C. 185; [1914] A.C. 599; 111 L. T. 20; 24 Cox C.C. 174; 30 T. L. R. 383—P.C.

A private in an Indian regiment murdered one of the officers. Shortly afterwards, while he was in custody, the commanding officer asked him, "Why have you done such a senseless act?" and he replied, "Some three or four days he has been abusing me, and without doubt I killed him." At the trial the Judge admitted this statement, which was objected to by counsel for the defence. The prisoner was convicted:—*Held*, that even if the evidence was inadmissible—which *semble* that it was not—there being ample undisputed evidence *aliunde* of the guilt of the prisoner, and it being very improbable that the statement influenced the verdict of the jury, there was no such miscarriage of justice as would justify the Judicial Committee in advising an interference in the matter. *Ib.*

7. Malay States.

Registration of Title—Effect—Rectification of Register—Trustee.]—By section 4 of the Registration of Titles Regulation, 1891, of the Malay States, no instrument is effective to convey any estate in land unless it is registered; and by section 7 a certificate of title issued by the Registrar to any purchaser of land is made conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, and the title shall not be subject to challenge except on the ground of fraud or of adverse possession. By the Specific Relief Enactment, 1903, a "trustee" includes every person holding expressly, by implication, or constructively, a fiduciary character. The appellant was in possession of land under a grant which had never been registered. The respondent com-

pany bought from the grantor land which included the land so granted to the appellant, with notice of his title, and informed the vendor that they would make a separate arrangement with him. They made no such arrangement, and had all the land registered in their own name :—*Held*, that they were in the position of trustees for the appellant, that their registered title having been obtained by fraud was not conclusive as against his equitable title, and that he was entitled to a rectification of the register. *Loke Yew* v. *Port Swettenham Rubber Co.*, 82 L. J. P.C. 89; [1913] A.C. 491; 108 L. T. 467—P.C.

8. Newfoundland.

See also Vol. III. 591, 2320.

Contract — Construction — Telegraph — Exclusive Right to Enter on Lands and Work Telegraph.]—By an agreement between the appellants and the respondents, the appellants granted to the respondents the exclusive right to enter on the lands of the railway and to construct, maintain, and operate telegraphs for the respondents' purposes. The respondents further agreed to erect and maintain a wire for the use of the railway for railway purposes only :—*Held*, that the appellant company was not precluded from the establishment and working of a telegraph system on their own land and for the purposes only of their own business. *Reid Newfoundland Co.* v. *Anglo-American Telegraph Co.*, 80 L. J. P.C. 20; [1910] A.C. 560; 103 L. T. 145; 26 T. L. R. 614—P.C.

—— Unauthorised User of Special Wire—Account—Lapse of Time—Statute of Limitations.] — The appellants, who were incorporated by an Act of the Newfoundland Legislature, were assignees of a contract under which they were entitled to use a special wire erected and maintained by the respondents, over which they were " not to pass or transmit any commercial messages . . . except for the benefit and account " of the respondents. In fact they used the special wire for all the purposes of their business, including the new and extended lines of railway, their shipping business, and other commercial undertakings :—*Held*, that in respect of the unauthorised user of the special wire the appellants were accountable as trustees to the respondents for the profits made by such unauthorised user, and were not entitled to the protection of the Limitation Acts, as the Newfoundland Trustee Act, 1898, withholds such protection from a trustee when proceedings are taken to recover property retained by the trustee. *Reid-Newfoundland Co.* v. *Anglo-American Telegraph Co.*, 81 L. J. P.C. 224; [1912] A.C. 555; 106 L. T. 691; 28 T. L. R. 385—P.C.

Telegraph Cables—Company Carrying on Telegraph Business in or from the Colony—Taxation.]—By an Act passed in 1905 to increase the revenue by imposing taxes upon business transacted by telegraph companies within and in transit through the colony the Newfoundland Legislature imposed upon every company " carrying on any telegraph business in or from the colony " a certain annual tax in respect of every telegraphic cable between the colony and any place outside the colony for the time being belonging to or worked by or on behalf of the company, landed on, extended to, or established in the colony. The appellants were a telegraph company to which by a Newfoundland Act a right of landing cables was given, but which was prohibited from competing with the Government or transporting or receiving business from or to the colony without the permission of the Government unless and until the privilege was granted to some other cable company. No such permission had been given to the appellants or privilege granted to any other cable company :—*Held*, that the appellants were not liable to taxation under the Act as a company carrying on any telegraph business in or from the colony. *Commercial Cable Co.* v. *Att.-Gen. of Newfoundland*, 82 L. J. P.C. 5; [1912] A.C. 820; 107 L. T. 101; 28 T. L. R. 537—P.C.

9. New Zealand.

See also Vol. III. 592, 2321.

Steamship Carrying Mails under Contract with Postmaster-General — Exemption from Harbour Dues.] — By section 116, subsection 1 of the Harbours Act, 1908, " Nothing in this Act shall charge with any dues— . . . (*d.*) Any steamship carrying mails under any contract made with the Postmaster-General, in cases where it is provided by the terms of such contract that such steamships shall be exempt therefrom." By a contract made between the appellant company and the Postmaster-General of New Zealand the company was bound to carry mails between New Zealand and San Francisco, and the contract provided that no charge was to be made or levied under the Act of 1908 at New Zealand ports " for any of the steamships employed in the services under this contract." Under a clause of the contract the company obtained leave to extend their service from New Zealand to Australia, but they were not paid by the Postmaster-General for this extended service :—*Held*, that a steamship employed on the extended service between Australia and New Zealand was not employed under the contract, and was not entitled to exemption from harbour dues; but that a ship was " carrying mails " under the contract, so as to be entitled to exemption, as soon as she was ready and willing to receive the outgoing mails on board, subject only to coaling and necessary repairs. *Union Steamship Co. of New Zealand* v. *Wellington Harbour Board*, 84 L. J. P.C. 169; [1915] A.C. 622; 113 L. T. 203; 31 T. L. R. 292—P.C.

Income Tax—Deductions—Value of Standing Timber Cut during Year.]—A company occupying land, and carrying on the business of saw millers and timber merchants, is not entitled in its assessment for income tax to deduct from the gross proceeds of its business the value of the standing timber cut during the year of assessment. *Kauri Timber Co.* v. *Commissioner of Taxes*, 83 L. J. P.C. 6; [1913] A.C. 771; 109 L. T. 22; 29 T. L. R. 671—P.C.

Life Assurance—Paid-up Endowment.]—By section 64 of the New Zealand Insurance Act, 1908, "No policy shall become void for non-payment of premium so long as the premiums and interest in arrear are not in excess of the surrender value as declared by the company issuing the same:—*Held*, that neither assured nor assurer can contract himself out of this section, or waive its effect, but that it has no application to a policy by which the assurer does not contract to pay any cash surrender value, but to give a fully paid-up endowment. Judgment of the Court below affirmed. *Equitable Life Assurance Society of United States* v. *Reed*, 83 L. J. P.C. 195; [1914] A.C. 587; 111 L. T. 50; 30 T. L. R. 415—P.C.

Railway — Level Crossing over Highway — Rights of Public.]—By section 191, subsection 2 of the New Zealand Public Works Act, "Where a road or street crosses a railway on a level the public right of way at such crossing shall cease whenever any engine or carriage on the railway is approaching and within a distance of half a mile from such crossing":—*Held*, that on the specified approach of a train the public absolute right to pass was suspended, leaving unaffected the question of other rights if persons do in fact pass: that a person attempting to pass was not in the position of a trespasser or a bare licensee, and that the section was no answer to a finding by a jury that a person killed while crossing a level crossing was killed by the negligence of the railway authority. A by-law which requires that "No person shall drive or attempt to drive any vehicle or animal on any part of a public road where the same crosses over or upon a railway on the same level otherwise than at a walking pace, and every person shall before crossing the lines of rail comply with the directions upon the notice boards, 'Stop! Look out for the Engine,'" is unreasonable and cannot be sustained. Decision of the Court of Appeal of New Zealand affirmed. *Rex* v. *Broad*, 84 L. J. P.C. 247; [1915] A.C. 1110; 31 T. L. R. 599—P.C.

Settlements—Colonisation—Order in Council — Effect — Native Title to Land — Crown Grant.] — By an Order in Council dated September 2, 1865, and made under the New Zealand Settlements Act, 1863, the Governor of New Zealand declared that certain lands were "a district" within the meaning of the Act, and further declared that such lands were required for the purposes of the Act, and ordered that such lands should be "set apart and reserved as sites for settlements for colonisation agreeably to the provisions of the Act" and further provided that "no land of any loyal inhabitant within the said district, whether held by native custom or under Crown grant, will be taken, except so much as may be absolutely necessary for the security of the country, compensation being given for all land so taken." On October 24, 1874, a Crown grant of a portion of the lands was made to certain loyal natives whose claims had been approved by a Compensation Court:—*Held*, that the Order in Council did not operate to extinguish the native or any other title of any loyal inhabitant, and that the effect of the Crown grant was only to convey the legal estate out of the Crown, and to transform the native customary title into a freehold title. *Te Teira* v. *Te Roera Tareha* (71 L. J. P.C. 11; [1902] A.C. 56) distinguished. *Manu Kapua* v. *Para Haimona*, 83 L. J. P.C. 1; [1913] A.C. 761; 108 L. T. 977—P.C.

Will — Insufficient Provision for Wife, Husband, or Children—Discretion of the Court in Ordering such Provision.]—In a case where a man worth from 20,000*l.* to 30,000*l.*, whose first wife had obtained a divorce, had left his whole property for the benefit of his second wife and her children, and the Court in the exercise of its discretion under the New Zealand Family Protection Act, 1908, awarded, with regard to the children by the first wife, 60*l.* a year to one of the married daughters and 40*l.* a year to each of the other two, the sons being able to maintain themselves and having maintained themselves for some years before their father died, their Lordships declined to interfere with the discretion so exercised. *Allardice* v. *Allardice*, 81 L. J. P.C. 80; [1911] A.C. 730; 106 L. T. 225—P.C.

10. South African Colonies.

a. Cape of Good Hope.

See also Vol. III. 561, 2328.

Will—Construction—Codicil to Mutual Will —Fideicommissum.]—A codicil to a mutual will executed by a husband and a wife in the Cape of Good Hope bequeathed property to their two sons, with a provision against alienation, on the understanding that the property "shall remain in the first place for both of them; in the second place the eldest son of our grandchildren shall always have the same right thereto, and after the decease of their parents remain in possession thereof, with this understanding, however, that the other heirs who may still be born shall enjoy equal share and right thereto . . . so that always the eldest son of our grandchildren has the privilege":—*Held*, that after the death of the two sons of the testators each of the two eldest grandsons was entitled to his father's share absolutely, and not subject to a *fideicommissum* or restraint on alienation. *De Jager* v. *De Jager* (55 L. J. P.C. 22; 11 App. Cas. 411) followed. *De Jager* v. *Foster*, 80 L. J. P.C. 138; [1911] A.C. 450; 104 L. T. 721—P.C.

b. Natal.

See also Vol. III. 589, 2330.

Lessor and Lessee—Ultra Vires—Consent of the Governor—Claim for Rescission of Contract—Acquiescence in Action of Lessee.]—It is not open to a lessee who has known for years of operations which he alleges constitute a trespass to make such operations subsequently the ground for an action for rescission of the contract of lease. *South African Breweries* v. *Durban Corporation*, 81 L. J. P.C. 217; [1912] A.C. 412; 106 L. T. 385—P.C.

The respondents brought an action to recover certain rents and rates in respect of lands

leased or contracted to be leased by them to the appellants. The lease was advertised for sale by auction subject to certain conditions, and by section 77 of the Natal Municipal Corporations Act, 1872, the consent of the Lieutenant-Governor of the colony was required to the conditions on which such a lease was put up for sale. One of the conditions of sale made provision as to the erection and non-erection of buildings, and certain penal consequences were attached if the main provisions as to buildings were not complied with. The conditions as a whole were presented to the Lieutenant-Governor, who, by letter, gave his general consent thereto. The appellants set up as a defence (*inter alia*) to the action that the agreement itself was *ultra vires* of the respondents by reason of the lease which was tendered having been granted without the consent of the Lieutenant-Governor, and claimed rescission of the lease :—*Held*, that the provisions of section 77 of the Act of 1872 had been sufficiently complied with even if in the letter of consent the above condition was not specifically mentioned, and that the appellants were not entitled to rescission of the lease. *Ib.*

The Government of the colony by agreement with the respondents, the city of Durban, executed certain works "for the public good and benefit" on the land leased to the appellants, such works following on arrangements made upon public grounds with the colonial Government, and upon colonial legislation, but the appellants took no objection to the execution of the works :—*Held*, that the action of the respondents did not amount to a breach of their agreement with the appellants so as to entitle the latter to rescission of the lease. *Ib.*

Mining Lease—Equitable Mortgage—Registration — Priority.] — A mining lease, which contains power to enter upon the land and work and dispose of the minerals under the land is a lease within the meaning of Act No. 19, 1884, of Natal, and requires registration. In the absence of registration there can be no valid equitable mortgage by deposit of title deeds, and the holder of such mortgage acquires no priority over the unsecured creditors of the mortgagor. *Munro* v. *Didcott*, 80 L. J. P.C. 65; [1911] A.C. 140; 103 L. T. 682; 27 T. L. R. 176—P.C.

c. Transvaal.

See also Vol. III. 2333.

Mutual Will — Construction — Surviving Spouse Executor of Joint Estate—Rights of Children.] — By the principle established in *Denyssen* v. *Mostert* (41 L. J. P.C. 41; L. R. 4 P.C. 236) mutual wills, "notwithstanding their form, are to be read as separate wills, the dispositions of each spouse being treated as applicable to his or her half of the joint property." *Natal Bank* v. *Rood*, 80 L. J. P.C. 22; [1910] A.C. 570; 103 L. T. 229; 26 T. L. R. 622—P.C.

Under such a will there is in the surviving spouse, who is also appointed executor and administrator, no community of property between such spouse and the children after the dissolution of the marriage by death. The children are not liable for losses suffered or incumbrances effected by the surviving spouse. The administrator is not entitled to make a profit out of the deceased spouse's estate. Any profit is held on trust for the beneficiaries. *Ib.*

By the Roman-Dutch law the children's share is not limited to the *legitima portio*. Under the law and settled practice of the Transvaal the surviving spouse is entitled to half the estate of the spouse first dying, plus a child's portion. *Ib.*

11. Seychelles.

Criminal Procedure—Embezzlement—Miscarriage of Justice.] — Section 216 of the Seychelles Penal Code, which makes it a criminal offence in any person entrusted for any purpose with the property of another to "embezzle, squander away, or destroy" any such property to the prejudice of the true owner, is not to be restricted to cases of failure to restore the property in specific form, but extends to ordinary cases of breach of trust and wilful appropriation of the property of another, but should not be extended to a mere case of the mixture of the funds of another with the funds of the bailee without any criminal intention. To extend it to such a case amounts to a grave miscarriage of justice. *Lanier* v. *Regem*, 83 L. J. P.C. 116 [1914] A.C. 221; 110 L. T. 326; 24 Cox C.C. 53; 30 T. L. R. 53—P.C.

12. Straits Settlements.

See also Vol. III. 595, 2333.

False Imprisonment—Want of Reasonable and Probable Cause—Onus of Proof.]—The appellant, who was born in Malacca and was a British subject, went to a Chinese temple and took part in a ceremony in connection with a charm against sickness. The police, thinking that the temple was the headquarters of a secret society, on that day made a raid upon it. One of the respondents laid an information against the appellant under the provisions of the Banishment Enactment, 1900, in force in the Federated Malay States, and the other respondent arrested him on a warrant in connection with the disturbance in the temple. The appellant was confined in prison for a fortnight, but ultimately no charge was made against him. The appellant thereupon brought an action for false imprisonment against the two respondents. He gave evidence describing his arrest, denying the existence of any evidence against him, and his ignorance of the reasons for his arrest :—*Held*, that the appellant had not satisfied the burden of proof imposed upon him by section 18 of the Banishment Enactment, 1900, inasmuch as mere innocence was not even *prima facie* proof of want of reasonable and probable cause, the burden of which proof lay on the appellant in accordance with the terms of the enactment. *Yap Hon Chin* v. *Jones-Parry*, 28 T. L. R. 89—P.C.

III. APPEALS TO PRIVY COUNCIL.

See also Vol. III. 604, 2335.

Prerogative Right to Appeal to the Crown —Final Order.]—An appeal lies to the Crown by its special prerogative from orders either of a provincial Court of Appeal or of the Supreme Court of Canada, even although they are by statute declared to be final, and although they are expressed in the form of an opinion upon which the Courts appealed from are to make the proper orders. *Canadian Pacific Railway* v. *Toronto City*, 81 L. J. P.C. 5; [1911] A.C. 461; 104 L. T. 724; 27 T. L. R. 448—P.C.

Misdirection—New Trial—Objection Taken for the First Time on Final Appeal—Negligence—Contributory Negligence.]—It is not open to a party who has not used his opportunity in the Court of Appeal to state for the first time before the Judicial Committee an objection to the verdict of a jury on the ground of misdirection. *White* v. *Victoria Lumber and Manufacturing Co.*, 80 L. J. P.C. 38; [1910] A.C. 606; 103 L. T. 323—P.C.

In an action for damages for the death of the appellant's son, the jury awarded damages. The majority of the Supreme Court ordered a new trial—one Judge on the ground of contributory negligence on the part of the dead man, the others being of opinion that the damages were excessive. Before the Judicial Committee the further ground was taken of misdirection:—*Held*, that it was too late to put forward a plea of misdirection, not previously suggested, on the final appeal. *Ib.*

Re-opening Case — Concurrent Findings of Fact — Fraud — Evidence — Depositions — Death of Persons whose Conduct is Impeached.] — In the case of transactions which have stood unchallenged for many years, there is a general presumption in favour of good faith and validity, and the Court will not draw inferences against the integrity of deceased persons if the known facts and existing documents are capable of a reasonable explanation. Where there have been concurrent findings of fact in the Courts below, but all the evidence before those Courts was taken on depositions, not orally, the Judicial Committee will allow the facts to be re-opened on appeal. *Vatcher* v. *Paull*, 84 L. J. P.C. 86; [1915] A.C. 372; 112 L. T. 737—P.C.

Criminal Appeal.] — The Crown has authority by virtue of the prerogative to review the decisions of all colonial Courts, whether the proceedings are of a civil or a criminal character, unless such authority has been expressly parted with; but the Judicial Committee will not interfere with the course of criminal justice in a colony unless it is clearly established that there has been a violation of the natural principles of justice in its very foundations. *Arnold* v. *King-Emperor*, 83 L. J. P.C. 299; [1914] A.C. 644; L. R. 41 Ind. App. 149; 111 L. T. 324; 24 Cox C.C. 297; 30 T. L. R. 462—P.C.

A charge to a jury must be read as a whole, and the Judicial Committee will not interfere in the region of fact, unless something gross, amounting to a misdescription of the whole bearing of the evidence, has occurred, though some portions of it may be the subject of difference of opinion. *Falkland Islands Co.* v. *Reg.* (1 Moore P.C. (N.S.) 299) approved. *Ib.*

The Judicial Committee of the Privy Council is not in the position of a Court of Criminal Appeal and does not advise the Crown to interfere in a criminal case unless there has been a violation of the principles of natural justice or a gross violation of the rules of procedure. Special leave to appeal from a conviction for murder refused on the above ground, where it was alleged that the jury had been in communication during the trial with persons who were not their custodians. *Armstrong* v. *Regem*, 30 T. L. R. 215—P.C.

The Judicial Committee of the Privy Council have no power to sit as a Court of Criminal Appeal. They can only interfere in a criminal case if what has been done in the Court below is grossly contrary to the forms of justice, or violates fundamental principles. Where there is evidence to go to the jury in a criminal case they will not express any opinion as to the propriety of the verdict, or of the summing-up of the Judge who tried the case. *Clifford* v. *King-Emperor*, 83 L. J. P.C. 152; L. R. 40 Ind. App. 241—P.C.

—— **Stay of Execution — Prerogative of Pardon.**]—The Judicial Committee is not a Court of Criminal Appeal, and has no power to stay the execution of a sentence. The tendering of advice to His Majesty as to the exercise of his prerogative of pardon is not within the province of the Judicial Committee, but is a matter for the Executive Government. *Balmukand* v. *King-Emperor*, 84 L. J. P.C. 136; [1915] A.C. 629; L. R. 42 Ind. App. 133; 113 L. T. 55—P.C.

—— **Admission of Evidence—Miscarriage of Justice.**]—The Privy Council will not interfere with a conviction on the ground of the admission of evidence of a statement made by the prisoner, when in custody, in reply to a question by his superior officer, if the admission of such evidence has not caused any miscarriage of justice. *Ibrahim* v. *Regem*, 83 L. J. P.C. 185; [1914] A.C. 599; 111 L. T. 20; 24 Cox C.C. 174; 30 T. L. R. 383—P.C.

—— **Costs—Crown.**]—The rule laid down in *Johnson* v. *Regem* (73 L. J. P.C. 113; [1904] A.C. 817), that the Crown neither pays nor receives costs unless the case is governed by some local statute or there are exceptional circumstances justifying a departure from the ordinary rule, applies to criminal as well as to civil cases. *Vaithinatha Pillai* v. *Regem*, 29 T. L. R. 709—P.C.

Leave to Appeal in Forma Pauperis—Costs.] — An order for leave to appeal *in forma pauperis* takes effect only from the date at which it is made; costs therefore incurred before that date are not affected thereby. *Levine* v. *Serling* (*No.* 2), 83 L. J. P.C. 295; [1914] A.C. 665; 111 L. T. 355—P.C.

COMMISSION.

Of Agents.]—*See* PRINCIPAL AND AGENT.

COMMISSIONERS.

Charity.]—*See* CHARITY.

COMMITMENT.

Under Debtors Act.]—*See* DEBTORS ACT.

For Contempt of Court.]—*See* CONTEMPT OF COURT.

By Magistrates.] — *See* JUSTICE OF THE PEACE.

COMMON EMPLOYMENT.

See MASTER AND SERVANT.

COMMONS.

I. RIGHTS.

See also Vol. III. 651, 2344.

Claim of Right by Prescription — Enjoyment in Pursuance of Claim of Right to Soil.] —The claim to a right of common or profit referred to in section 1 of the Prescription Act, 1832, means a claim to such right, and not a claim to the soil upon which the right is to be exercised. Consequently no right by prescription to a right of common or profit can be established by proof of enjoyment thereof for the period specified in section 1, under a claim of right to the soil. *Lyell* v. *Hothfield (Lord)*, 84 L. J. K.B. 251; [1914] 3 K.B. 911; 30 T. L. R. 630—Shearman, J.

Turbary—Estovers—Destruction of House to which Rights were Appurtenant—Re-erection of House not on Old Foundations — Intention to Preserve Rights — Continuation of Rights.] — Where an ancient house, to which rights of common of turbary and estovers are appurtenant, is pulled down, and another house is erected in substitution for and in continuance of the old house with the intention of preserving the rights of common, those rights will continue as appurtenant to the new house, even although it is not erected on the foundations of the old house but on a site adjacent thereto, provided that no greater burden is imposed by the new house upon the lands over which the right is enjoyed than was imposed by the old house. *Att.-Gen.* v. *Reynolds*, 80 L. J. K.B. 1073; [1911] 2 K.B. 888; 104 L. T. 852—Hamilton, J.

Waste of Manor — Turbary — Estovers — Nuisance — Right of Commoners to Abate — Injunction—Damages.]—The plaintiff, who was lord of the manor of H., had a right to the soil of two heaths, each of which was two hundred acres in extent, subject to the rights of commoners, including rights of turbary and estovers. Trees had grown up on the heaths, and the defendants, who were commoners, believing that they were acting within their rights, felled the trees :—*Held*, that the plaintiff was entitled to an injunction and damages for trespass, even if it was assumed that the trees constituted a nuisance. *Hope* v. *Osborne*, 82 L. J. Ch. 457; [1913] 2 Ch. 349; 109 L. T. 41; 77 J. P. 317; 11 L. G. R. 825; 57 S. J. 702; 29 T. L. R. 606—Neville, J.

Commoners are not entitled to exercise the right of abatement unless, owing to the nuisance, they are completely excluded from the enjoyment of their rights. Unless this is the case, they ought to resort to the Courts for the purpose of ascertaining their rights and enforcing them. *Ib.*

Interference with Rights of Fellow Commoner — Right of Action by Fellow Commoner.] — Anything by which a commoner's right of common is disturbed, any unlawful consumption or destruction of the herbage, is actionable, even when done by one of the other persons having a right of common. *King* v. *Brown, Durant & Co.*, 82 L. J. Ch. 548; [1913] 2 Ch. 416; 109 L. T. 69; 57 S. J. 754; 29 T. L. R. 691—Joyce, J.

Certain owners of an enfranchised copyhold, entitled to common of pasture for their cattle levant and couchant over the waste of the manor, damaged the herbage on the waste by conveying goods to and from their premises over the waste :—*Held*, that the plaintiff, a fellow commoner, was entitled to an injunction to restrain such interference with his rights of common and to damages. *Ib.*

Obligation to Fence against Animals of Peculiar Disposition — Exceptional Animals.] —The plaintiff was a farmer having commonable rights on the forest of Dartmoor, and the defendant was the occupier of a new take inclosed from the forest which he was admittedly under an obligation to fence against commonable animals. Certain Scotch sheep belonging to the plaintiff escaped from the forest into the defendant's new take by leaping over or breaking through the defendant's fences, and were distrained by the defendant as cattle *damage feasant*. The

plaintiff brought an action against the defendant for illegal distress, alleging that the sheep had escaped into the new take owing to the defendant's fences being of an insufficient character. A referee to whom questions of fact were referred by consent found, expressly or in effect, that Scotch sheep possessed greater activity and jumping power than the ordinary moorland sheep of Dartmoor; that the defendant's fences were sufficient in height and strength to keep out ordinary moorland sheep, but not to keep out Scotch sheep; and that in this respect the defendant's fences resembled the fences on Dartmoor generally, which were all of one and the same character :—*Held*, that the defendant's obligation to fence was not an absolute obligation to provide fences which would keep out all kinds of sheep including those which, like Scotch sheep, possessed exceptional powers of jumping, but was only a limited obligation to provide such fences as were usual on Dartmoor; and that the defendant was not liable. *Coaker* v. *Willcocks*, 80 L. J. K.B. 1026; [1911] 2 K.B. 124; 104 L. T. 769; 27 T. L. R. 357—C.A.

Damage by Cattle of Owner of Soil to Turf of Owner of Turbary Rights.]—An action for trespass will lie for damage caused by the cattle of the owner of the soil and freehold of a bog to turf, cut, and spread on a plot of such bog (not fenced or divided from the residue) by the owner of other lands who enjoys the right to cut and save turf on such plot, where such cattle are depastured by the owner of the soil upon the bog without provision by him for the prevention of such injury by his cattle to the turf. The depasturage of cattle by the owner of the soil of the servient tenement, without such provision against injury to the turf of the dominant tenant so situated is under such circumstances a user by such owner of the soil of his natural rights which is unreasonable in relation to the dominant tenant as prejudicing the value of the incorporeal hereditament in the nature of a *profit à prendre* enjoyed by the dominant tenant, by endangering the saving of the turf. *Cronin* v. *Connor*, [1913] 2 Ir. R. 119—K.B. D.

Town Moor—Rights of Freemen to Herbage—Holding of Fairs—Temperance Festival.]—Interlocutory injunction granted at the instance of the plaintiffs restraining the defendants from bringing roundabouts and shows on to the Newcastle town moor during a temperance festival, such festival not being a "fair" within the meaning of the Newcastle Town Moor Acts, 1774 and 1870. *Walker* v. *Murphy*, 77 J. P. 365—Neville, J.

—— "Fair" — "Stint tickets" — Sale of Stint Tickets to Inhabitants not Freemen—Injury to Herbage—Measure of Damages.]—The Corporation of Newcastle-upon-Tyne were the owners in fee of the soil of the Town Moor. By special Acts of 1774 and 1870 the resident freemen and widows of freemen were granted the right of depasturing two milch cows per annum on the moor, for which purpose they were entitled to "stint tickets" in April of each year. These tickets were transferable to any resident inhabitant. The Act of 1774 authorised the corporation at the request of the stewards and wardens of the companies of the town to grant leases for the improvement of the moor, but section 7 provided that no lease should be granted of a part of the moor called the Cowhill where fairs called the Cowhill Fairs were held, nor of another part of the moor called the racecourse, but that they should be preserved for fairs and races as before. The Act of 1870, by section 6, authorised a committee of the stewards and wardens to act for the freemen and widows of freemen "for all purposes relating to the Town Moor," and by section 8 authorised the corporation and the committee to let parts of the moor for agricultural shows or other public purposes. Before 1882 race meetings with accompanying shows were held on the racecourse. In that year they ceased to be held on the racecourse, and instead a temperance festival was annually held thereon, parts of it being let to showmen by the corporation with the assent of the committee. In 1912 the committee, while assenting to the holding of the festival for 1913 on the racecourse, refused to agree to let any part of it to showmen. The corporation nevertheless granted a licence to the defendants, who were showmen, to bring their show on to the racecourse at the festival for that year by which the herbage was damaged. Many of the holders of stint tickets for the year 1912 to 1913 were transferees of freemen. In an action by the committee against the defendants for an injunction and damages,—*Held*, upon the construction of the Acts, that the show was not a "fair" within section 7 of the Act of 1774, that the corporation had no power by itself to grant the licence; that the committee were entitled to guard the interests of all the stint-ticket holders, whether freemen or not; and that the measure of damages was the amount of injury done to the herbage of the moor. *Walker* v. *Murphy*, 83 L. J. Ch. 917; [1915] 1 Ch. 71; 112 L. T. 189; 79 J. P. 137; 13 L. G. R. 109; 59 S. J. 88—C.A.

II. INCLOSURE.

See also Vol. III. 682, 2345.

Inclosure Act—Recitals—Manorial Right to Mines and Minerals — Allocation of Inclosed Lands—Allotments—Ownership of "Soil" in Allotments—Mines and Minerals Reserved.]—The preamble to an Inclosure Act recited that the lords of the manor were owners of the soil of the commons and waste within that manor and of the mines and minerals therein. The Act then provided that the lords of the manor should be allotted one eighteenth part of the inclosed lands "as a full and sufficient recompense for their right to the soil of the said commons," and, in subsequent clauses, enacted that certain encroachments upon the land should thereafter be held by the encroachers "as freehold in fee simple," and that the Commissioners might hold certain lands and defray the expenses of carrying out their award "by sale of the fee simple thereof." The Commissioners in their award declared that all the allotments were "of the nature or tenure of freehold" :—*Held*, that the words of the

preamble drew a distinction between the ownership of the soil and the ownership of the mines and minerals; that the word "soil" was used in the Act in the restricted sense of the surface of the soil; that the allottees took a fee-simple only in the surface of the lands allotted to them, and that the lords of the manor were entitled to the mines and minerals underlying the allotments. *St. Catherine's College, Cambridge* v. *Greensmith*, 81 L. J. Ch. 555; [1912] 2 Ch. 280; 106 L. T. 1009; 56 S. J. 551—Neville, J.

Award—"Ancient inclosure"—Jurisdiction of Valuer to Determine.]—Although section 49 of the Inclosure Act, 1845, provides that nothing in the Act shall extend to enable the valuer or the Inclosure Commissioners to determine the title of any lands, the effect of the exception of encroachments in that section is to vest solely in the valuer and the commissioners the decision of the question whether a particular encroachment is or is not an "ancient inclosure" within the meaning of section 52, and whether therefore it is to be "deemed parcel of the land subject to be inclosed" within the meaning of section 50; and as by section 105 every allotment specified and set forth in an inclosure award made by the valuer and confirmed by the commissioners is "binding and conclusive on all persons whomsoever," the defence that the allotment at the time it was dealt with by the valuer was an "ancient inclosure" within section 52 affords no answer to an action by the allottee to recover possession of it. *Blackett* v. *Ridout*, 84 L. J. K.B. 1535; [1915] 2 K.B. 415; 113 L. T. 267—C.A.

—— Allotment of Land to Ecclesiastical Corporation Sole—Sixty Years' Possession Partly Before and Partly After Award—Title against Allottee.]—Where, therefore, by an inclosure award made in 1866 a piece of land was allotted to the rector of the parish in compensation for rights of turbary possessed by him as such rector, and the land was then in the occupation of a person who had encroached upon it some years before,—*Held*, in an action in 1913 by the rector of the parish to recover possession of the land from the successor of the person who had originally encroached upon it, that the defendant could not set up the defence that the encroachment in question was an "ancient inclosure" at the date of the award; that the plaintiff had made out a good *prima facie* title by production of the award of 1866; and that, as the plaintiff was an ecclesiastical corporation sole, and as the defendant and his predecessor had not been in possession for sixty years since the award, the plaintiffs' right to recover possession was not barred by section 29 of the Real Property Limitation Act, 1833. *Chilcote* v. *Youldon* (29 L. J. M.C. 197; 3 E. & E. 7) and *Jaeomb* v. *Turner* ([1892] 1 Q.B. 47) discussed. *Ib.*

III. METROPOLITAN COMMONS.

See also Vol. III. 733, 2348.

Conservators—Statutory Authority—Right of Inhabitants to Turn out Beasts—User—Prescription—Manorial Rights—Uninterrupted Enjoyment.]—A fluctuating and uncertain body, such as the inhabitants of a manor, cannot prescribe for *profits à prendre* through immemorial user. An inhabitant and ratepayer of a parish cannot claim that he is entitled to rights of common without stint, or alternatively for all beasts levant and couchant, by reason of immemorial user on the part of the inhabitants, unless he can shew that such rights had a legal origin. *Mitcham Common Conservators* v. *Banks*, 10 L. G. R. 183; 76 J. P. 413—Swinfen Eady, J.

A claim to rights of common of pasture for cattle levant and couchant on the claimant's lands by prescription in respect of the occupation of lands in the manor, can only be substantiated by shewing that there was uninterrupted enjoyment during thirty years, and that the enjoyment was in respect of commonable beasts, levant and couchant, on the lands in respect of which the claim is made. *Ib.*

By-laws—Regulations—Breach—Right of Conservators to Grant Preferential Treatment.]—A by-law made by the Conservators of Mitcham Common provided that "no person shall play at cricket or any other game . . . except at such times and under such regulations as the conservators may from time to time prescribe." In virtue of this by-law the conservators made a regulation that "for the safety of the public and the preservation of the turf no one shall play golf . . . unless accompanied by a caddie duly authorised and licensed by the conservators or Prince's Golf Club." The respondents played golf on the common without being accompanied by a caddie:—*Held*, that the regulation requiring players to be accompanied by a caddie was valid, and that the respondents were liable to a penalty for a breach of the by-law. *Mitcham Common Conservators* v. *Cox; Same* v. *Cole*, 80 L. J. K.B. 1188; [1911] 2 K.B. 854; 104 L. T. 824; 75 J. P. 471; 9 L. G. R. 843; 27 T. L. R. 492—D.

Per Phillimore, J., and Hamilton, J.: If the conservators of a common have not funds to lay out a golf course, or to make, roll, and water proper cricket pitches or bowling greens, and clubs are willing to go to the initial and continuous expense necessary to make and maintain them, there may be circumstances in which the conservators may for the sake of all players give some preference to those who will make and keep the playgrounds. But the preference must be so temporary or so discontinuous as to leave substantial and ample opportunities to the non-preferred and not unduly to interfere with the non-playing public. Further, conservators cannot by requiring licences or permits to be taken out create a preference indirectly which could not be justified directly. Licences or permits are unobjectionable so far as they are part of the machinery of legitimate regulation; as soon as they become mere means of discrimination or hindrances in the way of one class from which other classes are free they cease to be justifiable and cannot be required. Lawful preferential treatment is the exception and is a question of degree. *Per* Scrutton, J.: The conservators of a common have power to

grant preferential treatment to clubs who make and maintain playgrounds on the common. *Ib.*

—— **Requirement of Caddie — Refusal of Caddie Master to Supply.**]—By section 19 of the Metropolitan Commons (Mitcham) Supplemental Act, 1891, the conservators were empowered to frame by-laws and regulations for the preservation of order upon the commons. The conservators made a by-law that "no persons shall obstruct or interfere with or annoy any persons who are playing or have made preparation for playing at cricket or any other lawful game," and they made regulations for playing golf, providing that no person who was not a member of the Prince's Golf Club and was not playing with a member should start playing between certain times, that no one should play without a caddie, and that caddies must be obtained through the caddie master. The appellant was caddie master of the club, and the respondent, who was not a member, applied to him, during the time referred to in the first regulation, for a caddie, but the appellant refused to supply a caddie because of the regulation:—*Held*, that the appellant was not liable to be convicted under the by-law for obstructing the respondent—*per* Ridley, J., and Darling, J., on the ground that the regulation was valid: *per* Rowlatt, J., on the ground that there was no duty on the appellant to supply caddies to the public. *Harris* v. *Harrison*, 111 L. T. 534; 78 J. P. 398; 12 L. G. R. 1304; 30 T. L. R. 532—D.

COMPANY.

I. FORMATION AND CONSTITUTION.

1. Registration.

Discretion of Registrar to Register—"The United Dental Service, Limited."]—Application was made to the Registrar of Joint-Stock Companies to register the memorandum and articles of association of a company called "The United Dental Service, Limited," which proposed to carry on the business of practitioners in dentistry. The signatories to the memorandum and articles were all unregistered practitioners in dentistry. The Registrar refused to register, on the ground that the object

of the company was not lawful :—*Held*, that the words " United Dental Service " were not a description implying that the persons using it were qualified by diploma, &c., to be or were registered under the Dentists Act, 1878, and that, consequently, the object of the company was not unlawful. *Held*, further, that the registrar had no discretion to refuse to register on the ground that, even though not unlawful, the title of the company was calculated to mislead the public into the belief that the persons using the title were so qualified. *Bellerby* v. *Heyworth* (79 L. J. Ch. 402; [1910] A.C. 377) and *Minter* v. *Snow* (74 J. P. 257) applied. *Panhaus* v. *Brown* (68 J. P. 435) commented on. *Rex* v. *Registrar of Joint-Stock Companies; Bowen, ex parte*, 84 L. J. K.B. 229; [1914] 3 K.B. 1161; 112 L. T. 38; 30 T. L. R. 707—D.

Refusal to Register Name as being Calculated to Deceive—Discretion of Registrar.]—The Registrar of Companies having refused to register a company under the name of the Water Softening Materials Company (Sofnol), Limited, on the ground that the name so nearly resembled that of a company already on the register—Water Softeners, Limited—as to be calculated to deceive, the subscribers to the memorandum of the Water Softening Materials Co. (Sofnol), Lim., applied for and obtained a rule *nisi* for a *mandamus* calling upon the Registrar to shew cause why he should not register the company under that name :—*Held*, that the rule should be discharged, as the Court would not interfere by *mandamus* with the Registrar's decision. *Rex* v. *Registrar of Companies; Paul, Ex parte*, 81 L. J. K.B. 914; [1912] 3 K.B. 23; 107 L. T. 62; 19 Manson, 280; 28 T. L. R. 457—D.

Foreign Company—Obligation to File Documents with Registrar — Company Establishing a "place of business" within the United Kingdom.]—A land investment company, incorporated and having its head office in Canada, employed as agents in the United Kingdom certain Scottish legal firms who issued advertisements inviting applications for investment in the company's debentures to be lodged with them, the agents, and instructing that money invested should be paid into a Scottish bank. The debentures were executed in Ontario and issued to investors in this country through the agents. Attorneys of the company in Scotland exercised on its behalf certain powers with regard to transfers of debentures, confirmation, and probate. The company did not own or pay rent for any office, or pay salary to any official, in the United Kingdom, the remuneration of its representatives here being derived solely from commissions and fees of transference :—*Held*, that the company had not established a place of business in the United Kingdom within the meaning of section 274 of the Companies (Consolidation) Act, 1908. *Lord Advocate* v. *Huron and Erie Loan and Savings Co.*, [1911] S. C. 612—Ct. of Sess.

Conclusiveness of Certificate — Power to Enter into Arrangement to Regulate Output and Prices—Trade Union.]—Section 1 of the Companies Act, 1900, does not make the certificate of the Registrar of Companies conclusive that the company in respect of which he has granted a certificate is validly registered and is not in reality a trade union. The section only deals with ministerial acts. The mere fact that in its memorandum and articles of association a company has power to enter into an arrangement for the regulation of the output of, and the price to be obtained for, goods—this not being one of the main objects of the company—does not constitute the company a trade union, and as such incapable of registration under the Companies Act. *Edinburgh and District Aerated Water Manufacturers' Defence Association* v. *Jenkinson* (5 Fraser, 1159) distinguished. *British Association of Glass-Bottle Manufacturers* v. *Nettlefold*, 27 T. L. R. 527—Hamilton, J.

Restoration to Register.]—*See Langlaagte Proprietary Co., In re, post*, col. 290.

2. Memorandum of Association.

See also Vol. III. 760, 2355.

Life Assurance — Policies in Relation to Life Ultra Vires.]—A limited company, which, by its memorandum of association was prohibited from carrying on the business of life insurance, issued policies in two different forms. By one of these policies it undertook in consideration of a certain weekly premium to pay the policy-holder the respective sums of 6*l.*, 7*l.* 10*s.*, and 9*l.* at the end of five, ten, and fifteen years respectively; but, in the event of his death before the end of the fifteen years, all premiums paid since the last payment made by the company were to be returned to his personal representatives. By a second policy it undertook, in consideration of a certain premium, to pay the policy-holder a certain sum at the termination of a certain number of years; but, in the event of his death before the end of the term, a certain percentage of the premiums already actually paid was to be returned to his personal representatives :—*Held*, that policies made in either of these two forms were policies of life assurance, and therefore, as such, *ultra vires* the company. *Joseph* v. *Law Integrity Insurance Co.*, 82 L. J. Ch. 187; [1912] 2 Ch. 581; [1913] W.C. & I. Rep. 337; 107 L. T. 538; 20 Manson, 85—C.A.

Friendly Society—Conversion into Limited Company — Members — Validity of Special Resolution.]—It was decided to convert a friendly society registered under the Friendly Societies Act, 1896, into a limited company under section 71 of the Act, and this was effected in 1913 by special resolution. No names were subscribed to the memorandum of association, and no shares had been allotted to any persons. In 1914 the company purported to pass and confirm a special resolution by which the objects clause of the memorandum was altered and extended :—*Held*, that upon the conversion of a friendly society, under section 71 of the Friendly Societies Act, 1896, into a limited company, the members of the society are not simultaneously converted into members of the company; that at the date of the resolution of 1914 no persons had so far agreed to become members of the company, and that the resolution was not effectively

passed. *Blackburn Philanthropic Assurance Co., In re*, 84 L. J. Ch. 145; [1914] 2 Ch. 430; 21 Manson, 342; 58 S. J. 798—Eve, J.

Conversion of Unlimited Company into Limited Company.] — A company registered as an unlimited company, passed a special resolution resolving that the company should be registered as a limited company, and approving of a memorandum of association altering its existing constitution. The memorandum was headed "Company Limited by Shares"; it set forth the name of the company as concluding with the word "Limited"; and it expressly provided that "The liability of the shareholder is limited." In a petition for confirmation of this memorandum,—*Held*, that the petition was premature in respect that the company must be re-registered as a limited company under section 57 of the Companies (Consolidation) Act, 1908, before the Court could confirm a memorandum embodying the limitation of liability. *Royal Exchange Buildings, Glasgow, In re*, [1911] S. C. 1337—Ct. of Sess.

Alteration of—Sanction of Court—Power to Purchase other Undertakings — Power of Amalgamation—Power of Sale.]—The Court under section 9 of the Companies (Consolidation) Act, 1908, may in its discretion sanction very wide alterations of the objects of a company, including a power to purchase other undertakings, a power of amalgamation with other concerns, and a power of sale of the whole of the company's undertaking. *New Westminster Brewery Co., In re*, 105 L. T. 946; 56 S. J. 141—Joyce, J.

A limited company, which by its memorandum of association had power to amalgamate with any other company carrying on business within the objects of the company, presented a petition for confirmation of a special resolution by which it was proposed to alter its memorandum by adding certain powers, including a power to carry out such an amalgamation by sale of the undertaking of the company. The Court *granted* the prayer of the petition. *Macfarlane, Strang & Co., In re*, [1915] S. C. 196—Ct. of Sess.

—— Power to Acquire Similar Businesses.]—A limited company presented a petition for confirmation of a special resolution by which it was proposed to alter its memorandum of association by adding powers to acquire similar businesses; to sell the undertaking of the company; or to amalgamate with any other firm, person, or company. The Court, while confirming the power to acquire similar businesses, refused to confirm the other alterations on the ground that they were not within the alterations which a company was authorised to make by section 9, sub-section 1 of the Companies (Consolidation) Act, 1908. *Walker & Sons, Lim., In re*, [1914] S. C. 280—Ct. of Sess.

—— Power to Sell Branch Business to another Company for Debentures or Shares—Power to Pay for Debentures or Shares.] — Among the objects of a company as defined by its memorandum of association were the selling of all or any part of its property in such manner and on such terms and for such purposes as the company should think proper; the making and carrying into effect of arrangements with respect to the union of interests or amalgamation, in whole or in part, with any other company having objects similar to those of the company; and the doing of all such other things as were incidental or conducive to the attainment of the company's objects :—*Held*, that these provisions empowered the company to sell a branch business to a new company formed for the purpose of purchasing it and the business of another company of the same character, in consideration of debentures or shares of the new company; and also to apply its assets in order to provide working capital for the new company, and for that purpose to pay for debentures or shares. *Thomas & Co., In re; The Company v. Sully*, 84 L. J. Ch. 232; [1915] 1 Ch. 325; 112 L. T. 408—Warrington, J.

—— Extension of Principal Objects—Addition of Objects Incidental to Principal Objects—Company Desiring at Future Time to Carry on New Business—Principles upon which Court will Sanction Alterations in Memorandum—Advertisement of New Objects.]—J. B. & Co., Lim., carried on an extensive business in shipbuilding and the manufacture of armaments, and the T. Co., Lim., carried on an extensive colliery business. Both companies desired to extend greatly the objects of the company as stated in their respective memorandums, and presented petitions under section 9 of the Companies (Consolidation) Act, 1908, for the approval by the Court of certain proposed alterations in the memorandum :—*Held*, that if a company is considering the present expansion of its principal business by the adoption of other businesses, the Court will consider the desirability of altering its memorandum, but the Court will not meet the possibility of the company some day or other desiring to carry on another principal business, because the company can always come again to the Court when they have a reasonable intention of so doing. *Held* also, that, as regards subsidiary businesses, every facility would be given, but that it must not be within the discretion of the directors to treat subsidiary objects as principal objects. *Brown & Co., In re; Tredegar Iron and Coal Co., In re*, 84 L. J. Ch. 245; 112 L. T. 232; 59 S. J. 146—Neville, J.

Proposed alterations in memorandum sanctioned when reduced in number and simplified, and with a clause inserted to the effect that none of the additional objects should be undertaken except as subsidiary objects unless by sanction of a special resolution of the company. *Ib.*

—— Power to Lease Undertaking.] — The Court under section 9 of the Companies (Consolidation) Act, 1908, may in its discretion sanction alterations of the objects of a company, including a power to lease the whole undertaking of the company. *Anglo-American Telegraph Co., In re*, 105 L. T. 947; 56 S. J. 141—Joyce, J.

—— **Statement of Objects of Company.**]—In a petition for confirmation of a memorandum embodying alterations in the constitution of an unlimited company which was about to become a company limited by shares,—*Held*, that the proposed memorandum must state the objects of the company *ad longum*, and not by a mere reference to the document which set forth the original constitution of the company. *Royal Exchange Buildings, Glasgow, In re*, [1911] S. C. 1337—Ct. of Sess.

3. Articles of Association.

See also Vol. III. 786, 2363.

Power in Articles to Sell Member's Shares — Fixed Price — Less than Market Value — Injunction.] — The defendant company's articles empowered the company to determine that the shares of any member should be offered for sale to the other members at not less than 1*s.* a share. The plaintiff was a director and shareholder, and in August, 1914, the company resolved, in spite of the plaintiff's protest, to increase the price of certain articles to the Admiralty and the hospitals. The resolution was afterwards modified, but the plaintiff resigned his membership, and was removed from the directorate, and the company resolved to sell at 1*s.* a share the plaintiff's 1*l.* shares, although their market value was 1*l.* each :—*Held*, that the plaintiff was entitled to an injunction to restrain the defendant company from acting in pursuance of the resolution. *Phillips* v. *Manufacturers' Securities, Lim.*, 31 T. L. R. 451—Eve, J.

Arbitration Clause — Action by Member — Application to Stay—Contract between Company and Members — Submission to Arbitration.]—The plaintiff, in 1905, signed a form of application for membership to the defendant company by which he agreed to conform to the rules and regulations of the association, and was informed by a letter from the secretary that he had been elected a member. Article 49 of the articles of association provided that differences between the association and any of the members relating to any of the affairs of the association should be referred to the decision of an arbitrator. In 1914 the plaintiff issued a writ against the association and its secretary, claiming injunctions and declarations in respect of matters which related solely to the affairs of the association, and seeking to enforce his rights under the articles of association of the defendant company. The defendants issued a summons to have the proceedings in the action stayed, pursuant to section 4 of the Arbitration Act, 1889, and to refer the matters in dispute to arbitration in accordance with the terms of article 49 :—*Held*, that general articles dealing with the rights of members as such should be treated as a statutory agreement between the members and the company, as well as between themselves *inter se*, and article 49 constituted a submission to arbitration within the meaning of the Arbitration Act, 1889; and that being so, there was a *prima facie* duty on the Court to act upon such an agreement, and therefore the proceedings in the action must be stayed pursuant to section 4 of that Act. *Hickman* v. *Kent* or *Romney Marsh Sheep-Breeders' Association*, 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478 —Astbury, J.

Tavarone Mining Co., In re; Pritchard's Case (42 L. J. Ch. 768; L. R. 8 Ch. 956), *Melhado* v. *Porto Alegre and New Hamburg and Brazilian Railway* (43 L. J. C.P. 253; L. R. 9 C.P. 503), *Eley* v. *Positive Government Security Life Assurance Co.* (45 L. J. Ex. 451; 1 Ex. D. 88), and *Browne* v. *La Trinidad* (57 L. J. Ch. 292; 37 Ch. D. 1) distinguished. *Ib.*

In construing section 14, sub-section 1 of the Companies (Consolidation) Act, 1908, the company should be treated as a party to its own articles, and the covenants by the members as covenants with the company; and if a submission is in writing, and is binding on both parties as their agreement or as the equivalent in law to an agreement between them, sections 4 and 27 of the Arbitration Act, 1889, are satisfied. *Baker* v. *Yorkshire Fire and Life Assurance Co.* (61 L. J. Q.B. 838; [1892] 1 Q.B. 144) applied. *Ib.*

Held, further, that the application form for membership, signed by the plaintiff and accepted by the company, constituted a contract between the plaintiff and the company, and was a submission in writing within the meaning of the Arbitration Act, 1889. *Ib.*

Altering so as to Commit Breach of Contract.]—A company cannot alter its articles so as to commit a breach of contract; and therefore if a contract between the company and another party involves as one of its terms that a particular article is not to be altered, the company is not at liberty to alter that article, and will be restrained by injunction from doing so. *Allen* v. *Gold Reefs of West Africa* (69 L. J. Ch. 266; [1900] 1 Ch. 656) followed. *British Murac Syndicate* v. *Alperton Rubber Co.*, 84 L. J. Ch. 665; [1915] 2 Ch. 186; 113 L. T. 373; 59 S. J. 494; 31 T. L. R. 391—Sargant, J.

Punt v. *Symons & Co.* (72 L. J. Ch. 768; [1903] 2 Ch. 506) was overruled by the Court of Appeal in *Baily* v. *British Equitable Assurance Co.* (73 L. J. Ch. 240; [1904] 1 Ch. 374); and the reversal of the latter decision by the House of Lords (75 L. J. Ch. 73; [1906] A.C. 35) was not due to any dissent from the principle enunciated by the Court of Appeal, which indeed was recognised by the House of Lords. *Ib.*

4. Promoters.

See also Vol. III. 791, 2366.

Purchase by Promoter to Re-sell to Company—Sale by Promoters of "benefit of lease" to Company — Promoters having no Binding Agreement for Lease—Promoters not Trustees of Lease for Company.] — On January 10, 1912, the defendants commenced negotiations for the acquisition of a lease of certain premises with a view to selling them to a company which they intended to promote. By January 31, 1912, the main terms of the lease had been arranged, but the settling of plans,

&c., delayed completion, so that the lease was not granted to the defendants until May 13, 1912. At no time prior to this date was there any enforceable agreement for the grant of the lease to the defendants. On March 28, 1912, the company, which had been incorporated on March 25, 1912, by a board of directors who were not independent, affirmed a contract whereby the defendants agreed to sell to the company "the benefit of the lease agreed to be granted" to them with the benefit of certain plans and arrangements, and to pay the preliminary expenses of the formation of the company in consideration of 1,500*l.* in cash and shares. The memorandum and articles of the company stated that the company was to enter into this contract. The company paid the consideration, took possession of the premises, and had the lease assigned to them on June 4, 1912. The company claimed that the defendants were liable as promoters to make good to the company such part of the consideration as was attributable to "the benefit of the lease agreed to be granted" to them, on the ground that at the date of the contract the defendants had no beneficial interest in the lease and had subsequently acquired it as trustees for the company:—*Held*, that the defendants had not obtained the lease as trustees for the company and had made no secret profit, and that, the company having obtained what it bargained for, the action failed. *Omnium Electric Palaces, Lim.* v. *Baines*, 83 L. J. Ch. 372; [1914] 1 Ch. 332; 109 L. T. 964; 21 Manson, 94; 58 S. J. 218; 30 T. L. R. 213—C.A.

Decision of Sargant, J. (82 L. J. Ch. 519), affirmed. *Ib.*

5. Prospectus.

See also Vol. III. 807, 2370.

Untrue Statements—Directors' Liability—"Reasonable ground" for Believing Statements to be True—Uncorroborated Statements of Vendor and Promoter.] — The uncorroborated statements of a vendor-promoter of a company afford by themselves no "reasonable ground" to the directors for believing such statements in a prospectus issued by them to be true, so as to relieve the directors from liability to persons subscribing for shares on the faith of the prospectus for the loss or damage sustained by reason of such statements if untrue. *Adams* v. *Thrift*, 84 L. J. Ch. 729; [1915] 2 Ch. 21; 113 L. T. 569—C.A.

What may be "reasonable ground" for believing an untrue statement in a prospectus within the meaning of section 84 of the Companies (Consolidation) Act, 1908, considered. *Ib.*

Misrepresentation — Non-disclosure — Repudiation of Shares — Motion to Rectify Register—Laches and Acquiescence—Explanation of Delay.] — In February, 1910, the applicant was allotted shares in a company. In the middle of May, or at latest by the end of July, the applicant became fully aware of misrepresentations in the prospectus. In December he moved to have his name removed from the register:—*Held*, that the unexplained delay of five months precluded him from obtaining relief. *Christineville Rubber Estates, In re*, 81 L. J. Ch. 63; 106 L. T. 260; 19 Manson, 78; 56 S. J. 53; 28 T. L. R. 38—Eve, J.

When a shareholder comes to the Court to be relieved of his shares on the ground of misrepresentation arising from non-disclosure, it is not enough for him to say that had he known the fact he would not have applied for shares; he must be prepared to put his finger on the statements which he relies upon as contradictory of or inconsistent with the facts not disclosed. *Brookes* v. *Hansen* (75 L. J. Ch. 450; [1906] 2 Ch. 129) followed. *Ib.*

——Agreement to Take Shares—Rectification of Register — Fraud.] — Any person who authorises another to act for him in the making of any contract undertakes that the authority so given should not be executed fraudulently, as much as if he had made the contract himself. Therefore, where a shareholder was induced to take shares in a company on the faith of a report made by one of the directors to the company, and published by them in a prospectus, which was not true in fact, and was alleged to have been made fraudulently, he was held entitled to bring an action to have his name removed from the list of shareholders on the ground of fraud, every director being the agent of the company to make the representations contained in the prospectus. *Mair* v. *Rio Grande Rubber Estates*, 83 L. J. P.C. 35; [1913] A.C. 853; 20 Manson, 342; 57 S. J. 728; 29 T. L. R. 692—H.L. (Sc.)

—— Statements Founded on Report of Expert—Share Contract—Removal from List of Contributories.]—The prospectus of a rubber and produce company contained—First, extracts from an expert's report as to the nature of the company's property; secondly, statements by directors purporting to be based on the report; and thirdly, estimates of profits by the directors based upon the report. The prospectus was in many respects inaccurate, and was as a whole calculated to mislead:—*Held*, that the case was not within the exception laid down by Turner, L.J., and Cairns, L.J., in their judgments in *Reese River Silver Mining Co., In re; Smith, ex parte* (36 L. J. Ch. 618, 620, 622; L. R. 2 Ch. 604, 611, 615), and affirmed in *British Burma Lead Co., In re; Vickers, ex parte* (56 L. T. 815); for the directors had asked for subscriptions on the faith of their own statements, had given credit to the report, and had represented as facts what was stated therein:—*Held*, consequently, that the holder of partly paid shares in the company who had subscribed for them in reliance on the prospectus was entitled to have his name removed from the list of contributories in the winding-up of the company. *Pacaya Rubber and Produce Co., In re; Burns' Case*, 83 L. J. Ch. 432; [1914] 1 Ch. 542; 110 L. T. 578; 21 Manson, 186; 58 S. J. 269; 30 T. L. R. 260—Astbury, J.

Bentley & Co. v. *Black* (9 T. L. R. 580) distinguished. *Metropolitan Coal Consumers'*

Association, In re; Karberg's Case (61 L. J. Ch. 741; [1892] 3 Ch. 1), *Lynde* v. *Anglo-Italian Hemp-Spinning Co.* (65 L. J. Ch. 96; [1896] 1 Ch. 178), and *Mair* v. *Rio Grande Rubber Estates, Lim.* (83 L. J. P.C. 35; [1913] A.C. 853), followed. *Ib.*

Repudiation of Contract to Take Shares — Rescission.]—Contract by the plaintiff to take shares in the defendant company rescinded on his application on the ground of serious misstatements in the prospectus, upon the faith of the accuracy of which he had agreed to take the shares. *Taylor* v. *Oil and Ozokerite Co.*, 29 T. L. R. 515—Joyce, J.

Second or Subsequent Prospectus—Omission to Refer to Previous Offer of Shares—Remedy for Non-compliance with Statute—Rescission.]—Rescission is not a remedy available to a person who has applied for and obtained shares in a company upon the footing of a prospectus which failed to comply with the requirements, in the case of a second or subsequent offer of shares, of clause (*d*) of section 81, sub-section 1 of the Companies (Consolidation) Act, 1908. The applicant's remedy (if any) is an action for damages against the directors or other persons responsible for the prospectus. *Wimbledon Olympia, Lim., In re* (79 L. J. Ch. 481; [1910] 1 Ch. 630), followed. *South of England Natural Gas and Petroleum Co., In re*, 80 L. J. Ch. 358; [1911] 1 Ch. 573; 104 L. T. 378; 18 Manson, 241; 55 S. J. 442—Swinfen Eady, J.

Statement in Lieu of Prospectus—Inaccurate Statement of Required Particulars—Issue of Shares not Void.]—Where a company which does not issue a prospectus on its formation files with the Registrar of Companies a statement in lieu of prospectus as required by section 82, sub-section 1 of the Companies (Consolidation) Act, 1908, in the form set out in the Second Schedule to the Act, and which in form is reasonably complete, the subsequent issue of shares and debentures of the company will not be void, notwithstanding that the particulars contained in the statement are in fact inaccurate and incomplete, unless the statement is so insufficient as to be illusory and amount to no statement at all. *Blair Open Hearth Furnace Co., In re*, 83 L. J. Ch. 313; [1914] 1 Ch. 390; 109 L. T. 839; 21 Manson, 49—C.A.

Decision of Warrington, J. (109 L. T. 149), affirmed. *Ib.*

II. CAPITAL.

1. Generally.

See also Vol. III. 869, 2378.

"Paid-up share Capital." —The promoters of the N. Railway Co. obtained an Act which incorporated the Companies Clauses Consolidation (Scotland) Act, 1845, the Companies Clauses Act, 1863, and Acts amending the same. A schedule to the Act contained an agreement between the company and the N. B. Co., whereby the latter company guaranteed a fixed dividend upon "the paid-up share capital" of the N. Co. The N. Co., having failed to obtain sufficient subscriptions to their shares, entered into an agreement with a syndicate whereby the company undertook to issue to the syndicate their whole unissued capital, and the syndicate undertook to construct the railway. It was established by proof that the cost of construction was about 60 per cent. of the face value of the capital issued to the syndicate, and that the syndicate disposed of the shares so issued at less than par:—*Held* (*diss.* the Lord President, Lord Kinnear, and Lord Dundas), that the capital so issued to the syndicate was not "paid-up share capital" of the N. Co. in the sense of the agreement with the N. B. Co., and that the N. B. Co. were only bound to contribute to the dividend on so much of the capital of the N. Co. as was issued in consideration of cash or the equivalent of cash. *Held*, further (*diss.* Lord Johnston), that it was competent for the Railway and Canal Commissioners, sitting as arbiters, to determine what amount of the capital was issued in consideration of cash or the equivalent of cash. *Newburgh and North Fife Railway* v. *North British Railway*, [1913] S. C. 1166—Ct. of Sess.

Semble (*per* Lord Johnston, Lord Salvesen, and Lord Skerrington), a company incorporated under the Companies Clauses Acts is not entitled to issue its original shares at a discount. Whether such a company is entitled to issue shares for a consideration other than cash or the equivalent of cash, *quære*. *Ib.*

Statham v. *Brighton Marine Palace and Pier Co.* (68 L. J. Ch. 172; [1899] 1 Ch. 199) and *Webb* v. *Shropshire Railways* (63 L. J. Ch. 80; [1893] 3 Ch. 307) doubted. *Ib.*

Sale Contract — New Issue — Refusal of Sanction of Treasury—Contract for Sale at an End—Motion by Purchaser.]—Where a contract between two companies shewed that it was to be performed in a short time, and provided for sale, so much to be paid in cash on or before April 15, 1915, "or at a date not being later than one calendar month after the sanction of the Treasury has been obtained to the issue" of certain capital, and there had been an unconditional refusal by the Treasury to sanction the new issue:—*Held*, that the purchasing company were not entitled to have their contract performed. *East Indies Commercial Co.* v. *Nilambur Rubber Estates*, 59 S. J. 613; 31 T. L. R. 500—Sargant, J.

2. Increase of.

See also Vol. III. 872, 2379.

Power to Increase Given to Directors—Power to Issue to Company in General Meeting.]—*Held*, on the construction of the articles of association of the appellant company, that, although the directors had power by their own resolution alone to create new shares, such new shares could not be issued without a resolution of the company in general meeting. *Koffyfontein Mines, Lim.* v. *Mosely*, 80 L. J. Ch. 668; [1911] A.C. 409; 105 L. T. 115; 18 Manson, 365; 55 S. J. 551; 27 T. L. R. 501—H.L. (E.)

Table A—Additional Capital Authorised by Provisional Order—No Special Resolution for Increase—Right of Holders to Share in Distribution of Surplus Assets.]—Where the articles provided that the capital of a certain gas and water company might be increased by special resolution, and Provisional Orders were made under the Gas and Waterworks Facilities Act, 1870, purporting to effect such increase of capital:—*Held*, that the issue of such additional capital was valid, and that the holders thereof were entitled to be treated as members in the distribution of the surplus assets, although no special resolution had in fact been passed authorising such issue. *New Tredegar Gas and Water Co., In re*, 59 S. J. 161—Neville, J.

3. Re-organisation of.

Petition—Advertisement.]—It is not necessary to advertise a petition for re-organisation of share capital. *Ashanti Development, Lim., In re*, 27 T. L. R. 498—Eve, J.

Resolution for Effecting Modification of Memorandum.]—Section 45, sub-section 1 of the Companies (Consolidation) Act, 1908, provides that "a company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to reorganise its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes: "Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class, and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class":—*Held*, that to comply with the above proviso a majority of three-fourths in value of the shareholders of the particular class must be present or represented when the resolution is passed; that the resolution must be passed at a meeting; and that voting by proxy is allowable when voting by proxy at general meetings is allowed by the articles of association. *Fouear & Co., In re*, 29 T. L. R. 350—Sargant, J.

Partly Paid Shares—Subdivision—Division of Unissued Preference Shares.]—In a re-organisation of share capital, in accordance with the provisions of section 45 of the Companies (Consolidation) Act, 1908, a company may divide each of its 1*l.* preference shares, on which 15*s.* is paid, into two different shares of 10*s.*, called respectively the A preference shares and the B preference shares, and may treat the A preference shares as being fully paid and the B preference shares as being 5*s.* paid and 5*s.* uncalled. *Vine and General Rubber Trust, In re*, 108 L. T. 709; 57 S. J. 610—Neville, J.

Scheme of Arrangement — Alteration of Memorandum—Interference with Preferential Rights.]—The Companies (Consolidation) Act, 1908, s. 45, gives power inferentially to modify preferential rights created by the memorandum of association, so that a preference given to any class of shareholders by the memorandum cannot be interfered with except upon the conditions laid down in that section. Section 120 does not give express authority to alter capital or interfere with preferential rights, and compliance with its conditions in such cases is insufficient. *Palace Hotel, Lim., In re* (81 L. J. Ch. 695; [1912] 2 Ch. 438), not followed. *Doecham Gloves, Lim., In re*, 82 L. J. Ch. 165; [1913] 1 Ch. 226; 107 L. T. 817; 20 Manson, 79—Neville, J.

Interference with Privileges Attached to a Class of Shares.]—By a company's memorandum of association the ordinary shares were limited to 300,000*l.*, with certain preferences and privileges attached thereto by the articles, and the memorandum of association forbade any increase of capital which would prejudice such preferential rights. It was proposed by a scheme of arrangement between the company and its ordinary shareholders to issue 100,000 new ordinary shares to the existing ordinary shareholders, such shares to have similar rights and priorities to those of the ordinary shares of the initial capital and to rank *pari passu* therewith:—*Held*, that the new issue of shares would in no way prejudice the preferential rights of the existing ordinary shareholders, and therefore that the proposals in the scheme were consistent with the memorandum of association; and *held*, that the scheme could in any case be sanctioned under section 120 of the Companies (Consolidation) Act, 1908, without compliance with the requirements of section 45, which only applied when it was desired to modify the conditions of the memorandum so as to reorganise the share capital, either (*a*) by the consolidation of shares of different classes, or (*b*) by the division of shares into shares of different classes. *Palace Hotel, Lim., In re* (81 L. J. Ch. 695; [1912] 2 Ch. 438), followed. *Doecham Gloves, Lim., In re* (82 L. J. Ch. 165; [1913] 1 Ch. 226), overruled. *Schweppes, Lim., In re*, 83 L. J. Ch. 296; [1914] 1 Ch. 322; 110 L. T. 246; 21 Manson, 82; 58 S. J. 185; 30 T. L. R. 201—C.A.

Decision of Astbury, J. (58 S. J. 139; 30 T. L. R. 96), reversed. *Ib.*

Meetings of Shareholders.]—A company, whose capital was divided by its memorandum into ordinary and preference shares, proposed to convert certain unissued preference shares into ordinary shares, and to attach to the preference shares a right to participate *pari passu* with the ordinary shareholders in the surplus profits. A resolution to that effect was passed and confirmed at a general meeting, and also at meetings of the preference shareholders, but there were no separate meetings of the ordinary shareholders. The Court confirmed the special resolution, holding that it was unnecessary that there should have been separate meetings of the ordinary shareholders. *Stewart Precision Carburettor Co., In re*, 56 S. J. 413; 28 T. L. R. 335—Eve, J.

4. Return of.

Accumulated Profits—Prosperous Company—Resolution for Return on Fully Paid Shares only.]—The issued capital of a limited company consisted of 40,000 preference and 60,000 ordinary shares, all of 5*l.* each. The former and 6,047 of the latter were fully paid, but only 1*l.* per share was paid on the remainder. The company had paid 10 per cent. dividends on its ordinary shares, and had accumulated a large reserve out of undivided profits; and a special resolution was passed and confirmed to return thereout 4*l.* per share on the 6,047 shares. Two of the holders of those shares having moved to restrain the company from acting on the resolution:—*Held*, that the proposed return was authorised by section 40 of the Companies (Consolidation) Act, 1908. *Neale* v. *Birmingham Tramways Co.*, 79 L. J. Ch. 683; [1910] 2 Ch. 464; 103 L. T. 59; 18 Manson, 100; 54 S. J. 651; 26 T. L. R. 588—Swinfen Eady, J.

5. Reduction of.

See also Vol. III. 876, 2380.

Scheme—Payment off of Part of Class of Shares—Payment by Debentures.]—A scheme for reduction of capital which involves the payment off of some only and not all of one class of shares, and imposes on the shareholders whose shares are to be extinguished the obligation to accept debenture stock in lieu of cash, may, if equitable, be a scheme for the reduction of a company's share capital within section 46 of the Companies (Consolidation) Act, 1908, which may be confirmed by the Court. *Nixon's Navigation Co., In re*, (66 L. J. Ch. 406; [1897] 1 Ch. 872), followed. *De la Rue & Co., In re*, 81 L. J. Ch. 59; [1911] 2 Ch. 361; 105 L. T. 542; 19 Manson, 71; 55 S. J. 715—Eve, J.

——**Costs of Dissentient Shareholder.**]—It may be made a term of confirmation of the scheme that the company should pay the costs of a dissentient shareholder who has assisted the Court by his criticism. *Ib.*

——**Debentures to Bearer — Extraordinary Resolution—Trust Deed—Power to Modify Rights in General Meeting — Consent of Creditors—Sanction of Court.**]—A scheme for reduction of capital provided for the transfer of the undertaking from the old company to a new, and (*inter alia*) that the holders of bearer debentures in the old company should give up half their holding and accept debentures of the new company in satisfaction. The scheme was duly approved, and the usual advertisements published as to creditors. The debenture trust deed provided that the holders in general meeting should have power to modify their rights against the company, and that a resolution passed by a three-fourths majority at a meeting duly summoned should bind all the debenture-holders. A resolution with the requisite majority was accordingly passed approving the scheme. The names of the holders, however, were not included in the list of creditors settled under section 49, subsection 2 of the Companies (Consolidation) Acts, 1908, and some of the holders were not known. The debenture-holders had surrendered half their holding in accordance with the scheme and the new debentures had been issued:—*Held*, that the resolutions passed at the debenture-holders' meeting, and the surrender of their holding in accordance with the scheme, were together sufficient evidence of consent within the meaning of the Companies (Consolidation) Act, 1908, s. 50, and of rule 17 of the General Order (Reduction of Capital), 1909. *Hydraulic Power and Smelting Co., In re*, 83 L. J. Ch. 753; [1914] 2 Ch. 187; 111 L. T. 451; 21 Manson, 288—Astbury, J.

Objecting Creditor—Security for Creditor's Debt—Debt Due for Future Rent—Whether Debt Contingent.]—A company occupying premises under a lease of which four years had still to run presented a petition for confirmation of a resolution to reduce its capital. The landlords of the premises objected to the reduction of capital unless provision was made to secure the payment of their rent during the remainder of the lease. The company offered to appropriate in security a sum less than the full amount of the rents to become due, and maintained that, the landlords' debt being contingent, the Court should approve of the offer as sufficient:—*Held*, that, as the company admitted the full amount of the debt, and as that amount was neither contingent nor unascertained, the case fell under section 49, sub-section 3 (i) of the Companies (Consolidation) Act, 1908, and the company was bound to provide security for the full amount of the debt; and on the company stating that they were not prepared to do so, the Court dismissed the petition. *Palace Billiard Rooms, Lim.* v. *City Property Investment Trust Corporation*, [1912] S. C. 5—Ct. of Sess.

Capital Consisting of Stock only.]—When the capital of a company consists only of stock, a reduction of the capital of the company can be effected by cancelling a part of the stock. *House Property and Investment Co., In re*, 106 L. T. 949; 56 S. J. 505—Neville, J.

Minute — Shares Paid up in Different Amounts—Numerous Groups of Shares.]—The minute for reduction of capital, drawn up in accordance with section 51 of the Companies (Consolidation) Act, 1908, must contain, among other particulars, the denoting numbers of the shares referred to in it, but the notice of the registration of such minute need not contain such denoting numbers; but may be in such shortened form as the Court may direct. *Oceana Development Co., In re*, 56 S. J. 537—Swinfen Eady, J.

Minute—Number of Forfeited Shares.]—A company had power under its articles to reissue forfeited shares as paid up to the amount which had been paid or as wholly unpaid. The company resolved to reduce its capital by writing off lost capital, including five shares on each of which 2*s.* 6*d.* had been paid, but which had been forfeited for non-payment of calls:—*Held*, that the numbers of these five shares must be set out in the minute confirm-

ing the reduction of capital. *Oceana Development Co., In re* (56 S. J. 537), followed. *Wolf & Son, Lim., In re*, 57 S. J. 146—Neville, J.

Preference and Ordinary Shares—Alteration of Preferential Rights Defined by Memorandum.]—Where a company, acting under the provisions of section 120 of the Companies (Consolidation) Act, 1908, reduces its capital by a compromise between different classes of shareholders, whereby each class of share is written down in value and the dividend due to the preference shareholders is reduced, such compromise is not a consolidation of shares of different classes, or division of shares into shares of different classes, within the meaning of section 45 of the same Act, and the formalities required by the latter section need not be observed. *Palace Hotel, Lim., In re*, 81 L. J. Ch. 695; [1912] 2 Ch. 438; 107 L. T. 521; 19 Manson, 295; 56 S. J. 649—Swinfen Eady, J.

Section 45 of the Companies (Consolidation) Act, 1908, is not an enabling section, but a section limiting the general power to make arrangements under section 120 of that Act. Its application is confined to the two cases mentioned in the section—namely, where it is proposed to alter the memorandum of association either (*a*) by the consolidation of shares of different classes, or (*b*) by the division of shares into shares of different classes. In other cases where a scheme of arrangement interferes with rights conferred by the memorandum compliance with section 120 of the Act is sufficient. *Palace Hotel, Lim., In re* (81 L. J. Ch. 695; [1912] 2 Ch. 438), and *dictum* of Cozens-Hardy, M.R., in *Schweppes, Lim., In re* (83 L. J. Ch. 296, 301; [1914] 1 Ch. 322, 330), followed. *Nordberg, Lim., In re*, 84 L. J. Ch. 830; [1915] 2 Ch. 439; 59 S. J. 717—Neville, J.

Discretion of Court to Enquire into Reasons of Reduction.]—The Court confirmed a resolution for reduction of the capital of a company which proceeded on the statement that capital had been lost, although from the report of an accountant, to whom the Court had remitted the matter, it appeared that no capital had in fact been lost. *Caldwell & Co.* v. *Caldwell*, [1915] S. C. 527—Ct. of Sess.

Per Lord Skerrington: Although under the Companies (Consolidation) Act, 1908, the Court has an absolute discretion to confirm or refuse to confirm a reduction of capital, yet the question whether capital has been lost is regarded by the statute as one which is to be disposed of by the company. There may possibly be cases where it would be the duty of the Court to enter into an enquiry on the subject, but they would be very exceptional. *Ib.*

Shares Forfeited after Part Payment—Power to Treat as Unissued.]—It was provided by one of the articles of association of a company that every share which should be forfeited should thereupon become the property of the company, and the directors might sell, re-allot, or otherwise dispose of the same upon such terms and in such manner as they should think fit. On a petition for reduction of capital,—*Held*, that the forfeited shares could be treated as unissued and with nothing paid thereon, although the sum of 82*l.* 7*s.* 6*d.* had in fact been paid in respect of them. The principle of *Oceana Development Co., In re* (56 S. J. 537), applied. *Victoria (Malay) Rubber Estates, In re*, 58 S. J. 706—Astbury, J.

Assent of Shareholders—Jurisdiction of Court.]—Circumstances in which the Court has jurisdiction to sanction a scheme for the reduction of the capital of a company with the assent of the majority of the shareholders. *Showell's Brewery Co., In re*, 30 T. L. R. 428—Astbury, J.

Dispensing with Words "and reduced"—Company Carrying on Business Abroad.]—It is not the general practice to allow the use of the words "and reduced" to be dispensed with in the case of companies carrying on business abroad. *Lindner & Co.*, [1911] W. N. 66—Joyce, J.

——**Common Seal.**]—On a petition to confirm a reduction of the capital of a company, the Court dispensed with the use of the words "and reduced" on the common seal of the company. *Knowles & Sons, Lim., In re*, 57 S. J. 212—Neville, J.

Failure to Insert Words "and reduced."]—Petition for confirmation of reduction of capital refused in respect of the omission, on and from the presentation of the petition, to add the words "and reduced" as part of the name of the company, in accordance with section 48 of the Companies (Consolidation) Act, 1908. *Clark & Co., In re*, [1911] S. C. 243—Ct. of Sess.

III. DIRECTORS.

1. Appointment and Removal.

a. Appointment.

See also Vol. III. 893, 2390.

Agreement that Particular Body may Nominate Directors—Specific Performance—Contract of Service—Injunction.]—An agreement that a shareholder, so long as he continues to hold shares, shall have the right of appointing or nominating a director of the company is not unenforceable specifically as a contract of service, but is capable of being enforced by injunction; though the Court will not by injunction force the company to accept on its board persons who are unfit or thoroughly unacceptable as directors. *Bainbridge* v. *Smith* (41 Ch. D. 462) distinguished. *British Murac Syndicate* v. *Alperton Rubber Co.*, 84 L. J. Ch. 665; [1915] 2 Ch. 186; 113 L. T. 373; 59 S. J. 494; 31 T. L. R. 391—Sargant, J.

Whether Appointment by Board or at Meeting of Company.] — The articles of association of a company provided that "the directors may from time to time appoint additional directors, but so that the total number

of directors shall not exceed the prescribed maximum" :—*Held*, that the company had delegated to the board of directors the power of appointing additional directors, and therefore that the purported appointment by the company at an extraordinary general meeting of the defendants as additional directors was invalid. *Blair Open Hearth Furnace Co.* v. *Reigart*, 108 L. T. 665; 57 S. J. 500; 29 T. L. R. 449—Eve, J.

Named First Directors — Provision for "Continuing" Directors to Act—Acts by Less than Minimum Number of Directors—Validity.]—The articles of association of a company provided that the number of directors should not be less than four; that two named persons should be the first directors; that these two named directors should have power to appoint further directors; and that "continuing" directors should be empowered to act, notwithstanding any vacancy in their body, provided that they constituted a certain fixed quorum :—*Held*, that all these provisions must be read together; but that the provision that the directors should not be less than four was imperative; that the two named first directors were accordingly not capable of acting by themselves (except to appoint the necessary two additional directors); and that these two named first directors, and a third whom they had appointed, were not "continuing" directors within the meaning of the articles, so as to be capable, in the absence of the appointment of a fourth director, of acting on behalf of the company. *Sly, Spink & Co., In re; Hertslet's Case; Macdonald's Case*, 81 L. J. Ch. 55; [1911] 2 Ch. 430; 105 L. T. 364; 19 Manson, 65—Neville, J.

Occasional Vacancy—Less than Prescribed Number of Directors Remaining—Power of Election by Sole Remaining Director—Allotment of Shares—Irregularity.]—A light railway company was incorporated by an Order which was confirmed by the Board of Trade under the Light Railways Act, 1896. The Order incorporated the Companies Clauses Consolidation Act, 1845, and provided that the number of directors should be five, but that it might be varied so as not to be less than three, and that there should be a share qualification of directors, and that the quorum of a meeting of the directors should be three, but that if the number of directors was reduced to three the quorum should be two. Three persons were named in the Order as the first directors, together with two other persons to be nominated by them. These latter were never nominated, but the number of the directors was properly reduced to three, and the three named directors were continued in office. Two of them subsequently ceased to be directors. The sole remaining director thereupon purported to appoint two other persons to be directors who had not the necessary qualification as shareholders at the time of their appointment. At the same meeting or subsequently on the same day the necessary qualification shares were duly allotted to the newly appointed directors, all the parties honestly believing that it was sufficient that, if contemporaneously with, although in point of time immediately after, the appointment the qualifying shares were obtained :—*Held*, that, having regard to the interpretation clause, section 3 of the Companies Clauses Consolidation Act, 1845, which provides that "words importing the plural number only shall include the singular number," the only remaining director could exercise the powers conferred on "the remaining directors" by section 89 of the Act, and could validly elect new directors to fill up the vacancy caused by the retirement of his two colleagues; but that, as he could only appoint persons who had the requisite qualification as shareholders at the time of their appointment, the subsequent obtaining of the qualification shares did not validate the purported appointment of the two new directors. *Held*, however, that, as all the parties in the transaction were acting in good faith, their acts as directors or *de facto* directors were protected by section 99 of the Act, and that therefore, notwithstanding the subsequent discovery of the defect in the appointment of the new directors, the allotment of the shares to them was valid. *Channell Collieries Trust* v. *St. Margaret's, Dover, and Martin Mill Light Railway*, 84 L. J. Ch. 28; [1914] 2 Ch. 506; 111 L. T. 1051; 21 Manson, 328; 30 T. L. R. 647—C.A.

Decision of Sargant, J. (83 L. J. Ch. 417; [1914] 1 Ch. 568), affirmed. *Ib.*

Dawson v. *African Consolidated Land and Trading Co.* (67 L. J. Ch. 47; [1898] 1 Ch. 6) and *British Asbestos Co.* v. *Boyd* (73 L. J. Ch. 31; [1903] 2 Ch. 439) applied. *Staffordshire Gas and Coke Co., In re; Nicholson, ex parte* (66 L. T. 413), overruled. *Ib.*

b. Disqualification.

See also Vol. III. 914, 2392.

Vacating Office — "If concerned in or participates in profits of any contract with company."]—By the articles of association of a company it was provided that the office of director should be vacated in certain events, one of which was : "If he is concerned in or participates in the profits of any contract with the company" :—*Held*, that under this provision a director vacated his office if he was concerned in any contract with the company, although he might not have participated in any profits therefrom; and further, that the provision was not confined to cases where the director was personally concerned in contracts with the company. *Star Steam Laundry Co.* v. *Dukas*, 108 L. T. 367; 57 S. J. 390; 29 T. L. R. 269—Farwell, L.J.

——Acceptance of any other Office in Company—Solicitor of Company Appointed Director.]—The articles of association of a company provided that the directors were to be not more than five or less than three in number, and that a director should *ipso facto* vacate his office if he accepted or held any other office of the company except that of managing director or manager. A resolution having been passed that a firm of solicitors, two of whom were directors of the company, should be solicitors to the company :—*Held*, that the resolution to appoint two of the directors to act as solicitors to the company did not disqualify those direc-

tors, and therefore that a debenture issued to the plaintiff by the directors was not void as being issued without authority. *Harper's Ticket Issuing and Recording Machine, In re*, 57 S. J. 78; 29 T. L. R. 63—Eve, J.

——**If Holder becomes Bankrupt, Lunatic, or "Insolvent."**]—By one of the articles of association of the defendant company it was provided that "the office of a director shall *ipso facto* be vacated if he become bankrupt, lunatic, or insolvent. . . ." In June, 1910, the plaintiff, who was at that time a director of the defendant company, was financially involved. He had three principal creditors to whom he owed considerable sums, and he wrote to them asking them to accept a composition, holding out as an inducement to them to do so the statement that his other creditors had agreed to accept a composition of about one-seventh of their claims. The claims of these three creditors were settled in August, 1910, upon the terms suggested:—*Held*, that the plaintiff had in June, 1910, become insolvent within the meaning of the article of association, and therefore that he had ceased to be a director of the defendant company. *James* v. *Rockwood Colliery Co.*, 106 L. T. 128; 56 S. J. 292; 28 T. L. R. 215—D.

——**Insolvency—Notorious and Avowed Insolvency.**]—By the articles of association of the defendant company, which was incorporated in February, 1912, the office of a director was to be vacated if he (*inter alia*) became bankrupt or insolvent or compounded with his creditors or became of unsound mind. C. was one of the first directors, and was appointed chairman, and was entitled to a salary at the rate of 150*l*. a year as director and chairman. C. assigned to the plaintiffs his salary as director and chairman for the quarter ending February 1, 1913. The plaintiffs having sued as assignees of the debt, the defendants alleged that C. had become insolvent before the beginning of the quarter, and had thereby ceased to be a director. It was proved that between 1908 and 1912 seventeen bankruptcy petitions were presented against C. in the London Bankruptcy Court, and between 1909 and 1913 twelve bankruptcy petitions were presented against him in the County Court, all of which were dismissed by consent, though C. paid nothing in respect of any of them. C. was called as a witness, and admitted that in the summer of 1912 he did not meet his liabilities immediately as and when they became due, but he said that he never instructed his solicitor to settle with his creditors, nor did he ever have a meeting of his creditors. He was cross-examined on a letter written by his solicitor to a creditor in December, 1912, stating that C.'s affairs were very embarrassed, and that it was intended to ask his creditors to give him time, and also on an affidavit made by himself in the same month stating that he intended to make an offer to his creditors. The Judge of the City of London Court found that C. was in fact and within the meaning of the articles of association insolvent during the whole of 1912 and the early part of 1913, and he gave judgment for the defendants:—*Held*, that, assuming the word "insolvent" in the articles of association to refer to such a notorious or avowed insolvency as was spoken of in *Reg.* v. *Saddlers' Co.* (32 L. J. Q.B. 337; 10 H.L. C. 404), there was evidence on which the Judge of the City of London Court could find that C. was at the relevant time insolvent within the meaning of the articles of association. *London and Counties Assets Co.* v. *Brighton Grand Concert Hall and Picture Palace* (84 L. J. K.B. 991; [1915] 2 K.B. 493; 112 L. T. 380; [1915] H. B. R. 83—C.A.

2. Authority and Powers.

See also Vol. III. 917, 2394.

Appointment of Managing Director.]—The directors of a company were empowered by the 99th article of association to appoint a managing director, and by the 113th article to carry on the management of the business of the company, subject to such regulations as might be prescribed by the company in general meeting. The directors appointed one of their number as managing director, contrary to the wishes of a majority of the shareholders, who at a general meeting carried a resolution that another should be appointed:—*Held*, that the appointment of a managing director was vested in the directors, and was outside the provisions of article 113. *Logan* v. *Davis*, 104 L. T. 914; 55 S. J. 498—Warrington, J. Appeal dismissed, 105 L. T. 419—C.A.

——**Power to Revoke Appointment—Appointment without Reservation of Power to Revoke—Ultra Vires—Dismissal of Managing Director.**]—By the articles of association of the defendant company the directors might appoint one or more of their number to be managing director or managing directors on such terms as to remuneration and for such period as they might deem fit, and might revoke such appointment. In 1908 the directors entered into an agreement with the plaintiff by which they appointed him a managing director of the company. The agreement provided that the plaintiff should hold the office so long as he should remain a director of the company and retain his due qualification and should efficiently perform the duties of the said office. The plaintiff was to have the right of resigning his office at any time on giving six calendar months' notice in writing, but no corresponding right was given to the company. In 1912 the directors revoked the appointment of the plaintiff as managing director, notwithstanding that he was still director of the company and retained his due qualification and had efficiently performed the duties of his office. The plaintiff claimed damages from the company for breach of the agreement and for wrongful dismissal:—*Held*, that the plaintiff was entitled to recover; for the directors were not empowered by the articles of association to revoke the appointment at will or otherwise than in accordance with the terms of the agreement. *Nelson* v. *Nelson & Sons, Lim.*, 83 L. J. K.B. 823; [1914] 2 K.B. 770; 110 L. T. 888; 30 T. L. R. 368—C.A.

Judgment of Scrutton, J. (82 L. J. K.B. 827; [1913] 2 K.B. 471), affirmed. *Ib.*

Board Meeting—Converting Casual Meeting of Directors into Board Meeting.]—If directors of a company are willing to hold a meeting of the board they may hold one under any circumstances; but a casual meeting of the two directors, even at the company's office, cannot be converted into a board meeting if one of them denies that it is a board meeting, and has not received a notice sent by the other as chairman of the board calling a board meeting. *Barron* v. *Potter; Potter* v. *Berry (No. 1)*, 83 L. J. Ch. 646; [1914] 1 Ch. 895; 110 L. T. 929; 21 Manson, 260; 58 S. J. 516; 30 T. L. R. 401—Warrington, J.

Directors Unable or Unwilling to Exercise Powers — Deadlock — Right of Company to Exercise Powers.]—Although in cases where there is a board of directors ready and willing to act a limited company cannot, except by an alteration of the articles of association, override powers conferred on the directors by the articles, the company can itself exercise those powers if a deadlock exists owing to the fact that the directors are unable or unwilling to exercise them, and are for practical purposes a non-existing body. Observations of Cotton, L.J., and Fry, L.J., in *Isle of Wight Railway* v. *Tahourdin* (53 L. J. Ch. 353; 25 Ch. D. 320) applied. *Ib.*

Contract with Another Company in which Director Holds Shares — Shares Held as Trustee—Conflict of Duties and Interests—Notice—Rescission.]—Where a director of a company is a shareholder in another company, whether beneficially or as a trustee, he is precluded, without regard to the *quantum* of his holding, from dealing on behalf of the company of which he is a director with the other company, unless and so far as he is authorised so to do by the articles. If the other company has notice of the irregularity, a contract so entered into may be rescinded if rescission be possible. *Transvaal Lands Co.* v. *New Belgium (Transvaal) Land and Development Co.*, 84 L. J. Ch. 94; [1914] 2 Ch. 488; 112 L. T. 965; 21 Manson, 364; 59 S. J. 27; 31 T. L. R. 1—C.A.

Preventing Director from Performance of Duties — Interlocutory Injunction.]—Circumstances in which the Court will grant an interlocutory injunction restraining interference with the director of a limited company in the performance of his duties as such director. *Grimwade* v. *B.P.S. Syndicate*, 31 T. L. R. 531—Eve, J.

Management — Balance Sheet Containing Under-valuation of Assets—Creation of Secret Reserve Fund—Ultra Vires.]—A shareholder in a limited company brought an action against the company and the directors for a declaration that the defenders were not entitled to issue balance sheets in which the stock on hand was entered at less than its true value with the object and result of concealing that profits had been earned in excess of those shewn in the balance sheets; and for interdict against the issuing of such balance sheets. The pursuer did not charge the directors with fraud, and he admitted that the balance sheets had been passed by the auditors and approved by general meetings of the company, but he averred that the actings complained of were *ultra vires*:—*Held*, that the action must be dismissed on the ground that the valuation of the stock was a matter within the discretion of the directors subject to the approval of the shareholders, and that there was no relevant averment that the company or the directors had acted *ultra vires*. *Newton* v. *Birmingham Small Arms Co.* (75 L. J. Ch. 627; [1906] 2 Ch. 378) distinguished. *Young* v. *Brownlee & Co.*, [1911] S. C. 677—Ct. of Sess.

Per Lord Kinnear: The purpose of the balance sheet is primarily to shew that the financial position of the company is at least as good as there stated, not to say that it is not, or may not be, better. *Ib.*

Semble (per Lord Dundas): It is not illegal for directors to make a low valuation of stock or other assets, in order to create a reserve in view of future and contingent liabilities. *Ib.*

3. Contracts by Directors with Company.

See also Vol. III. 937, 2401.

Contract of Service for Term — Fixed Salary — Negative Covenant Restraining Trading — Breach — Interdependent Obligations—Winding-up Order—Specific Performance—Injunction.]—A director of a company in July, 1903, entered into a contract of service with the company. By clause 1 he became bound and entitled to hold office as director for seven years at a fixed salary, and by clause 5 he covenanted that he would not at any time thereafter, while he should hold the office of director or within seven years after ceasing to hold such office, either solely or jointly with, or as manager or agent for, any other person or persons or company, directly or indirectly carry on the businesses of engineers or ironfounders that would compete with or be detrimental to the business carried on by the company. In April, 1909, a receiver and manager was appointed in a debenture-holders' action against the company, and in November, 1909, a compulsory winding-up order was made. The receiver gave notice to the director that the company no longer required his services. The director thereupon set up business as an engineer and ironfounder close to the company's premises, and sent out circulars asking for orders from the customers of the company. Prior to the winding-up he had had copies made of the lists of such customers for his own purposes, and he had made use of them in issuing the circulars. The receiver in the name of the company brought an action against him for an injunction to restrain him from carrying on business in breach of clause 5 of the contract and for an order for the delivery up by him of all copies of lists of customers in his possession or under his control:—Joyce, J., *held* that the obtaining of the lists of customers by the defendant for his own private purposes was a gross breach of his duty towards the plaintiff company, and he made the order asked for by them. *Held*, also, by Joyce, J., and the Court of Appeal (Buckley, L.J., dis-

senting), that the contract on the part of the plaintiff company had been broken by the winding-up order; that they were not entitled against the defendant to specific performance of clause 5 without performing clause 1 in his favour, which they could not do; and that consequently the restrictive covenant was not binding upon him, and the plaintiff company could not obtain against him the equitable relief by injunction which they claimed. Principle of *General Bill-posting Co.* v. *Atkinson* (78 L. J. Ch. 77; [1909] A.C. 118) applied. *Measures Brothers, Lim.* v. *Measures*, 79 L. J. Ch. 707; [1910] 2 Ch. 248; 102 L. T. 794; 18 Manson, 40; 54 S. J. 521; 26 T. L. R. 488—C.A.

Buckley, L.J., was of opinion that clauses 1 and 5 were not interdependent contracts: that the performance of clause 1 was not a condition precedent to the continuance of the restriction in clause 5; and that therefore in the events which had happened that clause remained binding upon the defendant, and the plaintiff company were entitled to an injunction. *Ib.*

4. Liability.

See also Vol. III. 946, 2402.

Fiduciary Position — Land Company — Property Held to Manage and Realise for Client—Costs of Keeping Accounts—Directors Employed as Solicitor, Auctioneer, &c.]—A limited company agreed with the plaintiff to manage, develop, and realise the plaintiff's property, on terms under which the company was to become entitled to one-third of the ultimate profit. In the course of such management the company paid a special salary to their secretary for keeping the books of account of the property. The company also (as the articles of association allowed), first, employed a firm of solicitors, of which one of the directors was a member, to act professionally in connection with the property, and paid their bills of costs, including profit items; secondly, employed another director, who was an estate agent, to manage at a salary the working of some sand and gravel pits; and thirdly, employed another director, who was an auctioneer, to conduct the sales of the property at usual commission. In an action for account brought by the plaintiff impeaching these disbursements,—*Held*, that on the true construction of the agreement the company were bound to keep the accounts at their own expense as part of the consideration moving from the company, and that the secretary's salary must be accordingly disallowed. *Held* also (*dissentiente* Fletcher Moulton, L.J.), that if the employment and remuneration were in other respects proper, the payments made by the company to the three directors ought not to be disallowed on the mere ground that the company employed their own directors, who stood in no fiduciary relation to the plaintiff and were entitled to be paid remuneration for these services as between themselves and the company. *Bath* v. *Standard Land Co.*, 80 L. J. Ch. 426; [1911] 1 Ch. 618; 104 L. T. 867; 18 Manson, 258; 55 S. J. 482; 27 T. L. R. 393—C.A.

Kavanagh v. *Workingman's Benefit Building Society* ([1896] 1 Ir. R. 56) disapproved by Cozens-Hardy, M.R., and Buckley, L.J., but approved by Fletcher Moulton, L.J. *Ib.*

Purchase of Shares — Amalgamation — Rights of Shareholders.]—The appellants, the directors of a company, represented to the respondents, who were shareholders in the company, that it was necessary for the directors to secure the consent of the majority of the shareholders in order to effect an amalgamation with another company and induced the respondents to give them options to purchase their shares. The appellants exercised these options, and the amalgamation took place and the appellants made a profit:—*Held*, that the appellants were trustees of this profit for the benefit of the respondents. *Allen* v. *Hyatt*, 30 T. L. R. 444—P.C.

Personal Liability—Breach of Trust—Sums Paid to Company for Specified Purpose Applied to Another Purpose.]—A limited company, which consisted of two shareholders only who were also its sole directors, received from their foreign correspondents a sum of 1,000*l.* for the purpose, expressed in a covering letter, of meeting three named bills drawn by them upon the company which were shortly to become due. The company did not meet the bills at maturity, but the 1,000*l.* was applied, to the extent of 600*l.*, in repaying to one of the directors outlays averred to have been incurred by him on behalf of the company. In an action by the foreign correspondents against the two directors personally, to which the company were not called as defenders,—*Held*, that the directors' actings constituted not merely breach of contract, but breach of trust, for which they were personally liable, and decree pronounced against them, jointly and severally, for payment of the 600*l.* claimed. *Brenes & Co.* v. *Downie*, [1914] S. C. 97—Ct. of Sess.

Observations (*per* Lord Johnston) on the difference in the matter of responsibility between directors of merely nominal companies consisting of two members and directors of ordinary companies consisting of a large number of members. *Ib.*

——Action against Director and Company—Contract made by Director for Work to be done by the Company—Retention of Money Received—Agreement with Co-directors not to Account — Internal Management.]—The managing director of a limited company carrying on a laundry business entered into contracts for laundry work in his own name, on behalf of the company, with a customer. The work was done by the company, and the director received the amounts due under the contracts, and paid over a portion to the company, but did not account for the amounts received by him. This was in consequence of an alleged arrangement with his co-directors that he was not to account for profits. The company declined to call upon the director for an account, whereupon two shareholders brought an action against the company and the director, claiming that the director was a trustee for the company of all moneys received under the contracts, and asking for an account.

The company pleaded that the complaint was conversant with a matter of internal management, over which the Court had no jurisdiction. The defence of the director was that if there was any cause of complaint against him, which he did not admit, it was only enforceable at the suit of the company:—*Held*, that the transaction was illegal and *ultra vires*, and that the action was maintainable and the plaintiffs entitled to the relief sought. *Cockburn* v. *Newbridge Sanitary Steam Laundry Co.*, [1915] 1 Ir. R. 237—C.A.

Penalty—Failure to Hold General Meeting During Year—Failure to Forward to Registrar List of Members—Default of Directors.]—The direction in section 26, sub-section 1 of the Companies (Consolidation) Act, 1908, to every company to make out and forward to the Registrar of Companies "a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company," and also a summary as to the capital and shares of the company, is mandatory; and the obligation to forward the list every year is independent of whether or not the ordinary general meeting of the company is held in the year. Therefore, where the directors of a company are summoned under section 26, sub-section 5 of the Act of 1908, for knowingly and wilfully permitting default to be made by the company in complying with the requirements of section 26, it is no defence for them to set up that the holding of the ordinary general meeting of the company is a condition precedent to the obligation to send in the list arising, and that as the meeting had not been held the list of members could not be sent in, when they were themselves parties to the meeting not being held. *Park* v. *Lawton*, 80 L. J. K.B. 396; [1911] 1 K.B. 588; 104 L. T. 184; 75 J. P. 163; 18 Manson, 151; 27 T. L. R. 192—D.

Misfeasance—Qualification Shares—Shares Received to Hold in Trust for Promoter—Blank Transfers.]—Articles of association of a company provided that the qualification of a director should be "the holding of at least 100 shares in the company." Some of the directors accepted their qualifying shares from the promoter of the company on the terms that they should hold them in trust for him and should execute (as they in fact did) blank transfers so that he might deal with the shares as he might require:—*Held*, that they were guilty of misfeasance, and that each must contribute to the assets of the company (which had gone into liquidation) a sum equal to the par value of his shares, shares having been allotted to other parties at par. *London and South-Western Canal Co., In re*, 80 L. J. Ch. 234; [1911] 1 Ch. 346; 104 L. T. 95; 18 Manson, 171—Swinfen Eady, J.

—— Breach of Trust—Liability for Negligence—Independent Enquiries—Adopting an Agreement to Carry out which the Company was Formed—Discretion.]—When a company is formed to carry out a particular contract, a director who has a discretion given to him by the articles is bound to exercise his discretion before adopting the contract. *Brazilian Rubber Plantations and Estates, In re (No. 1)*, 80 L. J. Ch. 221; [1911] 1 Ch. 425; 103 L. T. 697; 18 Manson, 177; 27 T. L. R. 109—Neville, J.

In estimating whether directors have given a proper price for property, a great distinction may be drawn between a cash price and a price to be paid in shares, for in the latter case the value of the consideration paid to the vendors depends upon the success of the company. *Ib.*

A director is not bound to bring any special qualifications to his office. He may undertake the management of a rubber company in complete ignorance of everything connected with rubber, without incurring responsibility for the mistakes which may result from such ignorance. He is not bound to take any definite part in the conduct of the company's business, but so far as he does undertake it he must use reasonable care in its dispatch. *Ib.*

Where a prospectus discloses all the facts, which are proved to have been before the directors, and the directors accept a position on the basis of which, with notice of the facts, all its shareholders join the company, there is a difficulty in saying that the position was one which no reasonable man would accept. *Ib.*

——Articles of Association—"Directors not to be liable for loss, unless occasioned by own dishonesty."]—An article of association provided that: "No director shall be liable . . . for any loss, damage, or misfortune whatever, which shall happen in the execution of the duties of his office or in relation thereto, unless the same happens through his own dishonesty":—*Held*, that an action by the company against its directors for negligence, where no dishonesty was alleged, could not, in view of the article, have succeeded. *Ib.*

——Liability of Director by Summary Procedure.]—The misfeasance section (215) of the Companies (Consolidation) Act, 1908, creates no new right, and only provides, as did section 165 of the Companies Act, 1862, a summary procedure for enforcing against directors or other officers of a company liability for breach of trust or other misconduct which, prior to the Act, might have been enforced by action; and to bring a case within the section it is essential to shew that pecuniary loss resulted to the company from the acts or defaults constituting the alleged misfeasance. *Canadian Land Reclaiming and Colonizing Co.; Corentry and Dixon's Case* (14 Ch. D. 660, 668), followed; *Carendish Bentinck* v. *Fenn* (57 L. J. Ch. 552; 12 App. Cas. 652) applied. *Irish Provident Assurance Co., In re*, [1913] 1 Ir. R. 352—C.A.

5. Remuneration.

See also Vol. III. 1000, 2408.

Winding-up—Provision for Retirement of Directors at Ordinary General Meeting—Failure to Hold such Meeting—Proof for Fees.]—Where a company sold all its undertaking and assets in consideration of receiving

shares in another company, and charged the shares so received as security for certain money advanced :—*Held*, that, although after the sale the duties of the directors were diminished, they did not altogether cease, and that the directors were entitled to continue to receive the remuneration fixed by the articles of association. *Consolidated Nickel Mines, Lim., In re*, 83 L. J. Ch. 760; [1914] 1 Ch. 883; 111 L. T. 243; 21 Manson, 273; 58 S. J. 556; 30 T. L. R. 447—Sargant, J.

Articles of association of a company provided that general meetings should be held once in every year, and that at the ordinary general meeting in 1906 all the directors should retire from office. Section 49 of the Companies Act, 1862 (which was at the time in force), also provided that a general meeting should be held once at the least in every year. No general meeting of the company was held or called in the years 1906 and 1907, but the directors of the company continued to act as such :—*Held*, that the directors vacated office on December 31, 1906, that being the last day on which a meeting of the company for that year could have been held, and that they were not entitled to remuneration from thence onward until they were duly re-elected. *Ib.*

IV. AUDITORS.

See also Vol. III. 1010, 2414.

Conclusiveness of Certificate.] — Where a certificate of auditors is based on a wrong principle it is not conclusive and binding on the parties. *Johnston* v. *Chestergate Hat Manufacturing Co.*, 84 L. J. Ch. 914; [1915] 2 Ch. 338; 59 S. J. 692—Sargant, J.

Alleged Negligence — Right of Access to Company's Books by Auditors—Refusal of Directors to Allow Access—Action by Auditors —Application by Auditors for Interim Injunction against Directors.]—Where the directors of a registered company allege that a loss sustained by the company might have been avoided but for negligence on the part of the auditors of the company, and refuse to allow the auditors to see any of the company's books, and the auditors bring an action against the company and the directors claiming access to the books, the Court will not on an interlocutory application in the action by the auditors make an order requiring the defendants to give the auditors access to the books, at all events before a general meeting of the company has been held at which the shareholders have had an opportunity of stating whether or not they desire that the auditors should continue to act as such. *Cuff* v. *London and County Land and Building Co.*, 81 L. J. Ch. 426; [1912] 1 Ch. 440; 106 L. T. 285; 19 Manson, 166; 28 T. L. R. 218—C.A.

Examination of Books—Extent of Obligation.]—An auditor who is appointed to investigate the condition of a business is bound to make a reasonable and proper investigation of the accounts and stock sheets, and if, as a reasonably prudent man, he ought to conclude on that investigation that something is wrong, it is his duty to call his employer's attention to the fact. In making his investigation he is entitled to rely on documents vouched by servants of the business, unless he has reason for believing those servants to be dishonest. *Squire Cash Chemist, Lim.*, or *Mead* v. *Ball*, 27 T. L. R. 269—Lord Alverstone, C.J. *See* s.c. in C.A., *infra*.

An action was brought by the plaintiff against the defendants claiming to recover damages in respect of their alleged negligence in the performance of their duties as accountants in the examination of the accounts of a business in which he was then proposing to invest money, and in which he subsequently did so invest :—*Held*, that the plaintiff had failed to shew that the alleged negligence of the defendants had induced him to invest his money in the business, and had thus caused the loss that he had sustained. *Squire Cash Chemist, Lim.* v. *Ball, Baker & Co.*, 106 L. T. 197; 28 T. L. R. 81—C.A.

Per Cozens-Hardy, M.R. : Although it is not the duty of accountants to take stock in auditing the accounts of a business, they may well call for explanations of particular items in the stock sheets. *Ib.*

Balance Sheet — Responsibility — Commission for Obtaining Subscriptions — Unauthorised Payment — Solicitor-Director — Profit Costs.]—Auditors of a company are bound to make themselves acquainted with their duties under the Companies Acts and under the articles of the company whose accounts they are auditing. If the balance sheet which they have audited does not shew the true financial condition of the company and the company thereby suffers damage, the onus is upon the auditors of shewing that such damage is not the result of any breach of duty on their part. *Republic of Bolivia Exploration Syndicate, Lim., In re* (*No.* 2), 83 L. J. Ch. 235; [1914] 1 Ch. 139; 110 L. T. 141; 21 Manson, 67; 58 S. J. 321; 30 T. L. R. 146 —Astbury, J.

Semble, adequate warning or identification in the audited accounts as to wrongful payments appearing in the accounts, bringing such wrongful payments to the notice of the company, will free the auditors from further liability. *Ib.*

A company was incorporated in March, 1907, and V. was appointed the solicitor to the company. One of the objects of the company, mentioned in the memorandum of association, was to pay commissions for procuring the subscription of its shares, but Table A applied to the company, which contains no power to pay commission as required by section 89 of the Companies (Consolidation) Act, 1908; and no power was given to the directors to contract with the company. In June, 1907, V. was appointed a director. In November, 1907, auditors of the company were appointed. Payments between March and December, 1907, were made by the company to V. as agreed costs for incorporation, of which 150*l.* represented profit costs. At a meeting of the directors on March 16, 1908, it was resolved that a commission of 10 per cent. should be paid to X. for introducing subscribers, and 338*l.* was subsequently so paid by the company. Between December, 1907,

and September, 1911, further sums were paid by the company to V. for costs, of which 50*l.* represented profit costs. The first balance sheet was produced at a general meeting, and contained the item of 338*l.* paid by way of commission. The auditors had passed this balance sheet with the usual note at the foot stating that the balance sheet represented a true and correct view of the company's accounts. The balance sheet was, after discussion, passed by the shareholders. A subsequent balance sheet containing further sums paid to V. for costs, and approved by the auditors, was passed by the shareholders. In the winding-up of the company the liquidator claimed to recover the sums of 150*l.*, 338*l.*, and 50*l.* from the auditors :—*Held*, as to the sum of 338*l.* paid for commission, that the auditors had not failed in their duty, especially as the balance sheet clearly stated for what purpose the sum had been paid and the shareholders approved the balance sheet after discussion; and as to the sums representing profit costs paid to V., that in the special circumstances the auditors had not failed in their duty in this case either. *Ib.*

Semble, as to the sums paid for commission and profit costs, since it did not appear that, if their attention had been called to the illegality of those payments, the shareholders would have taken proceedings against the directors to recover them, therefore no damage had resulted to the company. *Ib.*

Auditor's Report — Publication.] — *See* COPYRIGHT.

V. MANAGER.

See also Vol. III. 1009, 2413.

Remuneration—Commission—Percentage on Annual "Net" Profits—Deduction of Income Tax.] — Income tax is part of the "net" profits available for dividend, and where a manager was to have a percentage of "the net profits (if any) of the company for the whole year" and "net" profits were defined in the agreement to mean "the net sum available for dividends as certified by the auditors of the company after payment of all salaries, rent, interest at the rate of 5 per cent. per annum upon capital, and after making such allowances for depreciation as the auditors of the company may advise,"—*Held*, that the manager was entitled to be paid his percentage on the net profits before deduction of the tax. The principle of *Ashton Gas Co.* v. *Att.-Gen.* (75 L. J. Ch. 1; [1906] A.C. 10) applied. *Johnston* v. *Chestergate Hat Manufacturing Co.*, 84 L. J. Ch. 914; [1915] 2 Ch. 338; 59 S. J. 692—Sargant, J.

VI. CONTRACTS BY COMPANIES.

See also Vol. III. 1011, 2414.

Agreement of Service—Cumulative Salary—Payment only out of "Profits (if any) arising from the business"—Debentures in another Company—Value not Estimated in Balance Sheet—Realisation by Liquidator—Proceeds—Undrawn Profits.]—Two persons entered into an agreement of service with a company as its technical advisers at a fixed salary, which they were not to be entitled to draw "except only out of profits (if any) arising from the business of the company which may from time to time be available for such purpose, but such salary shall nevertheless be cumulative, and accordingly any arrears thereof shall be payable out of any succeeding profits available as aforesaid." The agreement was to determine *ipso facto* on the winding-up of the company. The business of the company included the buying and selling of debentures, and in the course of such business it acquired debentures in another company, which were included in the yearly balance sheets, but their value was not therein estimated. The company was wound up voluntarily and the liquidator realised all its assets, including the debentures. There was no goodwill and no fixed capital. All the creditors, other than the two technical advisers, whose salary was in arrear, were paid in full, and after repayment to the shareholders of their subscribed capital there remained a surplus in the hands of the liquidator :—*Held*, that the debentures were profits arising from the business of the company, that the entire proceeds realised by the liquidator ought to be treated as undrawn profits arising from such business, and that consequently the surplus in his hands was available for the payment of the arrears of salary. *Bridgewater Navigation Co., In re* (60 L. J. Ch. 415; [1891] 2 Ch. 317), applied. *Frames* v. *Bultfontein Mining Co.* (60 L. J. Ch. 99; [1891] 1 Ch. 140) and *Rishton* v. *Grissell* (L. R. 5 Eq. 326) explained. *Spanish Prospecting Co., In re*, 80 L. J. Ch. 210; [1911] 1 Ch. 92; 103 L. T. 609; 18 Manson, 191; 55 S. J. 63; 27 T. L. R. 76—C.A.

The meaning of "profits" discussed by Fletcher Moulton, L.J. *Ib.*

Bill of Exchange—Acceptance on Behalf of Limited Company—Name of Company Repressed in Address of Bill—"Ltd." for "Limited."]—It is a sufficient compliance with the requirements of section 63 of the Companies (Consolidation) Act, 1908, that in a bill of exchange addressed to a limited company the company's name is correctly stated in the address without being also stated in the acceptance; and the company's name is correctly stated although the abbreviation "Ltd." is used instead of the complete word "Limited." *Stacey & Co.* v. *Wallis*, 106 L. T. 544; 28 T. L. R. 209—Scrutton, J.

Compromise of Managing Director's Claims.]—A *bona fide* compromise of reasonable claims made by a managing director against the company, by payment of a sum of money out of capital of the company, is not illegal. *Irish Provident Assurance Co., In re*, [1913] 1 Ir. R. 352—C.A.

A *bona fide* transaction with a company impeachable only on the ground of being *ultra vires* will be set aside only on the terms that both parties be restored to their original rights. *Ib.*

Company Purchasing its Own Shares.]—It is *ultra vires* for a company to purchase its own shares, or to advance capital of the company to a director to do so. *Trevor* v. *Whitworth* (57 L. J. Ch. 28; 12 App. Cas. 409) applied. *Irish Provident Assurance Co., In re*, [1913] 1 Ir. R. 352—C.A.

Sale of Assets to New Company for Shares —Distribution of Consideration — Memorandum of Association — Objects — Articles of Association—Resolution—Special Resolution—Dissentients.]—Where the memorandum of association of a company gives power to sell its business and property to another company in consideration of shares and power to distribute such shares among its members, a resolution to sell in consideration of shares is not a sufficient compliance with section 192, subsection 1 of the Companies (Consolidation) Act, 1908, unless passed as a special resolution, even where special resolutions have been passed for voluntary liquidation and to prescribe the mode of distribution among the members of the shares to be received as consideration. The rights given to dissentients by section 192, sub-section 3, necessitate the passing as a special resolution of some resolution authorising the liquidator to receive shares as consideration for a sale. *Etheridge* v. *Central Uruguay Northern Extension Railway*, 82 L. J. Ch. 333; [1913] 1 Ch. 425; 108 L. T. 362; 20 Manson, 172; 57 S. J. 341; 29 T. L. R. 328—Joyce, J.

Semble, where the Companies (Consolidation) Act, 1908, requires a resolution to be passed as a special resolution, so long as the course of procedure expressly indicated by section 69 is followed the resolution is not invalidated by the omission of any further formality required by the articles of the particular company in regard to special resolutions. *Ib.*

Bisgood v. *Henderson's Transvaal Estates, Lim.* (77 L. J. Ch. 486; [1908] 1 Ch. 743), applied. *Ib.*

Sale of Company by Promoters—Promotion of another Company by Same Promoters—Promoters only Persons Interested—Amalgamation—Sale of Amalgamated Companies —Promoters' Claim as Creditors — Ultra Vires.]—A syndicate of four persons purchased bonds of a railway company which had become bankrupt, and was not being worked. The syndicate spent a substantial sum in improving the railway and bought up a judgment against the company. They then procured the incorporation of another company with power to acquire and construct railways, in which all the shares really belonged to the members of the syndicate. The original company was transferred to the company thus incorporated and the amalgamated company was sold. The respondents, to whom the syndicate had assigned their rights, claimed to rank as creditors against the purchase money :—*Held*, that the members of the syndicate were entitled to rank above the unsecured creditors and were not in a fiduciary position, and that the claim must be allowed. *Att.-Gen. for Dominion of Canada* v. *Standard Trust Co. of New York*, 80 L. J. P.C. 189; [1911] A.C. 498; 105 L. T. 152—P.C.

Lease by Company of its Property—Approval of Lease by Majority of Shareholders — Power of Majority to Bind Minority.]—Where a dissentient minority of shareholders in a company seek redress against the action of the majority they must shew that such action is *ultra vires*, or that the majority have abused their powers or are depriving the minority of their rights. *Dominion Cotton Mills Co.* v. *Amyot*, 81 L. J. P.C. 233; [1912] A.C. 546; 106 L. T. 934; 19 Manson, 363; 28 T. L. R. 467—P.C.

Two shareholders in a cotton company brought an action to set aside a lease of the company's mills. The company was incorporated by letters patent, which were afterwards superseded by an Act of the Parliament of Canada, which in express terms authorised the company to dispose of its mills. The lease was approved by a resolution of the company in a general meeting :—*Held*, that the lease was not *ultra vires* of the company, being expressly authorised by the Act of Parliament, and that its terms were intended to be, and in fact were, fair, and based on a fair and liberal valuation. *Burland* v. *Earle* (71 L. J. P.C. 1; [1902] A.C. 83) followed. *Ib.*

VII. DEBENTURES AND MORTGAGES.

1. Priorities.

See also Vol. III. 1098, 2430.

Assets Insufficient — Floating Security — "Without any preference or priority"—Payment of Interest to Some Debentureholders to Later Date than to Others—Other Holders not Entitled to Preferential Payment of Arrears.]—Where debentures ranking *pari passu* without any preference or priority are secured by a floating charge on the undertaking and property of a company, and the assets are insufficient to pay in full the principal of the debentures and arrears of interest, the assets ought to be distributed rateably in accordance with the amounts due for principal and interest, although some of the debentureholders have been paid interest down to a later date than others. Those others are not entitled to any preferential payment of their arrears. *Midland Express, Lim., In re; Pearson* v. *Midland Express, Lim.*, 83 L. J. Ch. 153; [1914] 1 Ch. 41; 109 L. T. 697; 21 Manson, 34; 58 S. J. 47; 30 T. L. R. 38—C.A.

Decision of Sargant, J. (82 L. J. Ch. 291; [1913] 1 Ch. 499), affirmed. *Ib.*

Assignment of Book Debts—Rights of Mortgagee — Rents in Arrear — Floating Charge—Customs "Drawbacks"—Notice.]—A brewery company created debenture stock secured by a trust deed. By that trust deed the company specifically mortgaged to the trustees certain freehold and leasehold properties and created a general charge on the assets of the company. In the course of business they shipped through shipping agents beer for foreign ports and became entitled to

certain drawbacks provided for by the Inland Revenue Act, 1880. Those drawbacks became a debt due from the Crown to the firm of brewers, and they were assigned by them to the trustees for their bankers. No notice of this assignment was given to the Crown authorities by the assignees. A receiver for the debenture-holders took possession and gave notice to the Crown authorities having at that time knowledge of the previous assignment to the trustees for the bank:—*Held* (following *Ward* v. *Royal Exchange Shipping Co.*, 58 L. T. 174), that as the company had power by their contract with the debenture-holders to deal with the drawbacks, the debenture-holders could not with notice of the assignment obtain priority to the assignees by giving notice to the Crown authorities. *Ind, Coope & Co., In re; Fisher* v. *The Company*, 80 L. J. Ch. 661; [1911] 2 Ch. 223; 105 L. T. 356; 55 S. J. 600—Warrington, J.

Charge on Specific Articles—Usual "floating charge"—Condition—Fixed Charge not Altered thereby.]—Where a debenture gave a charge on specific articles, but one condition contained the words commonly used in reference to floating charges, "but so that the company is not to be at liberty to create any mortgage or charge in priority to or *pari passu* with the said debentures":—*Held*, that these words could not be constructed as implying the creation of a floating charge contrary to the specific charge already given by the debenture. *Gregson* v. *Taplin & Co.*, 112 L. T. 985; 59 S. J. 349—Sargant, J.

Charge on Present and Future Assets—Property Subsequently Acquired—Loan to Effect Purchase — Equitable Charge.]—In 1901 the defendant company issued a series of debentures secured by way of floating charge on its property both present and future. By a condition indorsed on the debentures the company was precluded from creating any other mortgage or charge to rank equally with or in priority to these debentures. In 1904 the company, being unable to find the purchase money to effect a purchase of some new works, obtained the promise of a loan of 1,000*l.* from R. on the condition that the loan was to be secured by a first charge on the works. Thereupon the company entered into an agreement to purchase the property for 1,100*l.* and paid a deposit of 150*l.* The same solicitor acted for all parties, and on the date fixed for completion R. gave a cheque for 1,000*l.* to the company, which paid it into its own account and drew 950*l.* in cash to complete the purchase. At the completion the solicitor took possession of the title deeds on R.'s behalf, and a few days later the company executed an equitable charge on the works in R.'s favour to secure the loan. The solicitor never knew of the debentures, and made no enquiry on R.'s behalf as to whether the company was precluded from granting a first charge:—*Held*, that R.'s equitable charge was entitled to priority over the debentures because in equity the company had only acquired the equity of redemption in the works subject to R.'s charge of 1,000*l.* *Connolly Brothers, Lim., In re; Wood* v. *Connolly Brothers, Lim.*, 81 L. J. Ch. 517; [1912] 2 Ch. 25; 106 L. T. 738; 19 Manson, 259—C.A.

Mortgage of Land of Company—Notice—Debenture Issued to Director having Notice of Prior Mortgage.]—The equitable doctrine of notice is not applicable to section 93 of the Companies (Consolidation) Act, 1908. Consequently a debenture which has been duly registered under section 93 of the Companies (Consolidation) Act, 1908, takes priority over a prior unregistered mortgage even in a case where the debenture-holder took his debenture with notice of the prior mortgage. *Edwards* v. *Edwards* (45 L. J. Ch. 391; 2 Ch. D. 291) applied. *Greaves* v. *Tofield* (50 L. J. Ch. 118; 14 Ch. D. 563) distinguished. *Monolithic Building Co., In re; Tacon* v. *The Company*, 84 L. J. Ch. 441; [1915] 1 Ch. 643; 112 L. T. 619; 59 S. J. 332—C.A.

Decision of Astbury, J. (84 L. J. Ch. 134), reversed. *Ib.*

Specific Mortgage by Debenture—Floating Charge—No Power to Create Further Charge in Priority to Debentures.]—By a debenture trust deed dated August 21, 1899, a company gave a specific charge on certain properties and a floating charge on all its assets present and future to secure an issue of debentures, but reserved power to dispose of its assets in the ordinary course of its business, but not "to create any further charge on or over its undertaking or property generally to rank *pari passu* with or in priority to or otherwise than subject to and in subordination to the security" thereby constituted. On September 7, 1903, the company gave a specific charge (*inter alia*) on property which it had acquired since the date of the deed of August 21, 1899, to secure another issue of debentures, and it also gave a floating charge on all its assets both present and future subject to the first issue of debentures:—*Held*, that once the floating charge created by the deed of August 21, 1899, had crystallised, the debenture-holders under that deed obtained a charge on all the property, including that acquired subsequently, ranking in priority to the security of the debenture-holders under the deed of September 7, 1903. *Stephenson & Co., In re; Poole* v. *The Company*, 83 L. J. Ch. 121; [1913] 2 Ch. 201; 107 L. T. 33; 20 Manson, 358; 56 S. J. 648—C.A.

Second Series of Debentures Purported to be Issued to Rank Pari Passu with First Series—Priority.]—In the absence of any special provision to the contrary, a limited company cannot create a second floating charge ranking in priority to or *pari passu* with a first floating charge. *Cope & Sons, Lim., In re; Marshall* v. *The Company*, 83 L. J. Ch. 699; [1914] 1 Ch. 800; 110 L. T. 905; 21 Manson, 254; 58 S. J. 432—Sargant, J.

Fixtures—Hire-purchase Agreement—Subsequent Issue of Debentures—Appointment of Receiver.] — By an agreement made between the applicants and the defendant company the applicants agreed to erect and complete a sprinkler installation for the protection of the defendants' premises from fire.

By the agreement the sprinkler was to be paid for by instalments; in default of payment of any one instalment the whole of the unpaid instalments were to become payable; and it was agreed that the sprinkler should remain the property of the vendors until the entire sum should have been paid. Subsequently to the date of this agreement the defendant company issued debentures, and thereafter a receiver was appointed on behalf of the debenture-holders. The applicants not having been paid the full amount of the sprinkler installation claimed to be entitled to enter upon the defendant company's premises and remove the installation :—*Held*, that the applicants were entitled to remove the installation, notwithstanding the appointment of the receiver. *Morrison, Jones & Taylor, Lim., In re; Cookes* v. *The Company*, 83 L. J. Ch. 129; [1914] 1 Ch. 50; 58 S. J. 80; 30 T. L. R. 59—C.A.

Trustees' Remuneration — First Charge therefor upon Sale by Trustees—Sale under Order of Court—Payment into Court—Lien.]—Trustees for first debenture stockholders were by their deed of trust empowered, upon their security becoming enforceable, to sell the mortgaged premises and to hold the moneys to arise from any such sale upon trust thereout, first to pay costs and expenses "including the remuneration of the trustees," and then to distribute among the stockholders; and the trustees were to be paid "in each and every year during the continuance of this security as and by way of remuneration for their services as trustees" 250 guineas per annum. The security became enforceable. A receiver was appointed. In an action by prior lien debenture-holders the mortgaged premises were sold and the proceeds of sale paid into Court. The trustees joined in the conveyance, but they did not themselves sell the property or receive the purchase money. After satisfying the prior lien debenture-holders a surplus remained in Court :—*Held*, that the rights of the trustees were not to be prejudiced by the order for payment into Court, and that they were entitled to a first charge on the funds in Court for their full remuneration in priority to the first debenture stockholders until the trusts of their deed should be finally wound up. *Piccadilly Hotel, Lim., In re; Paul* v. *Piccadilly Hotel, Lim.*, 81 L. J. Ch. 89; [1911] 2 Ch. 534; 105 L. T. 775; 19 Manson, 85; 56 S. J. 52—Swinfen Eady, J.

——**Debentures—Trust Deed—Payment into Court — "Continuance of security" — Remuneration only while Services Rendered—Work Done by Trustee's Solicitor.**]—By a trust deed securing the debenture stock of a company the trustees were to hold the proceeds of conversion of the property charged upon trust in the first place to pay or retain the costs and expenses incurred in the execution of the trust, "including therein their own remuneration." The deed provided that the company should "during the continuance of this security" pay to the trustees as and by way of remuneration for their services an annual sum. In an action by debenture stockholders a receiver was appointed and the property was sold in the action and the proceeds paid into Court :—*Held*, that the trustee was entitled to remuneration out of the proceeds of sale, but only down to the appointment of the receiver, after which date there were, in substance, no services rendered by the trustee other than work done by his solicitor and included in his costs of the action, for which no remuneration could be allowed to the trustee. *Locke & Smith, Lim., In re; Wigan* v. *The Company*, 83 L. J. Ch. 650; [1914] 1 Ch. 687; 110 L. T. 683; 21 Manson, 267; 58 S. J. 379—Eve, J.

2. Registration.

See also Vol. III. 1114, 2436.

Assignment of Debt.]—A limited company, in consideration of an advance from their bankers, executed an assignment which, after reciting that the company were entitled to 80*l.* 7*s.* from the defendant, that it had been agreed that that debt should be assigned to the bankers, and that by a letter of even date the defendant had been directed by the company to pay the debt in question to the bankers, assigned unto the bankers so much of the defendant's debt "as may be necessary to indemnify the assignees" for the amount advanced by them to the company. After executing that deed the company wrote to the defendant requesting him to pay the debt due to them to the bankers. A few days later the company went into voluntary liquidation. The assignment to the bankers was not registered. The liquidator claimed to recover the debt from the defendant on the ground that the assignment to the bankers, being unregistered, was void as against him, but the defendant insisted upon paying the debt to the bankers : —*Held*, that the liquidator was entitled to recover, inasmuch as by section 93 of the Companies (Consolidation) Act, 1908, the unregistered assignment was void as against him. *Saunderson & Co.* v. *Clark*, 29 T. L. R. 579—Lush, J.

It is impossible for the parties to a transaction by way of mortgage or charge to alter the effect of section 93 of the Companies (Consolidation) Act, 1908, by adopting a form which does not accord with the real transaction between them. *Ib.*

Charge on Book Debts—Re-insurance Contract.]—On May 5, 1909, a re-insurance contract was entered into between an insurance corporation (re-insurers), the applicants (re-insured), and a third party. The contract contained elaborate provisions for the payment of premiums and recoupment of losses and claims under which no premiums were payable direct to the re-insurers, but the aggregate premiums, less the aggregate losses and claims, were made payable to the third party, who was to pay them into a joint account. The current balances to the credit of the joint account were to be held on trust to recoup the re-insured losses and claims. No part of the balance was payable to the re-insurers until 1913, when the actual profit for the year 1910 was to be ascertained and paid to the re-insurers, less a sum held in reserve to provide

for unascertained liabilities, and not paid over until all risks had run off. The liquidator of the Law Car Corporation contended that the contract was a charge on book debts of the corporation within section 93, sub-section 1 (*c*), and, not having been registered, was void against him :—*Held*, that the contract on its true construction created no charge on the book debts, and therefore did not require registration. *Law Car and General Insurance Corporation, In re*, 55 S. J. 407—Swinfen Eady, J.

—— Letters of Hypothecation on Shipments or the Proceeds thereof—Shipment of Goods by Company on Bills of Lading to Customers' Order.]—The plaintiffs made advances to the defendant company by accepting their drafts. The company shipped goods to their customers abroad and gave the plaintiffs duplicates of the bills of lading, copies of the invoices, and in each case a letter hypothecating "the shipments or the proceeds thereof." The goods shipped were sold on six months' credit and on the terms of all charges from the warehouse in this country being paid by the customers. The bills of lading were made out to the customers' order, and the customers had no notice of the letters of hypothecation. The defendant company having gone into liquidation, the plaintiffs claimed to be secured creditors in respect of the drafts accepted by them, and to be entitled to the proceeds of the goods hypothecated to them by the defendant company :—*Held*, that each letter of hypothecation gave a mortgage or charge, not on the goods comprised in the shipment, but on the proceeds thereof, and that it constituted a charge on the book debts of the defendant company within section 93 of the Companies (Consolidation) Act, 1908, and as it was not registered it was void as against the liquidator within that section. *Ladenburg* v. *Goodwin, Ferreira & Co.*, 81 L. J. K.B. 1174; [1912] 3 K.B. 275; 107 L. T. 587; 18 Com. Cas. 16; 19 Manson, 383; 56 S. J. 722; 28 T. L. R. 541—Pickford, J.

Deed Securing Bonus to Allottees of Debentures Stock.]—In order to give additional benefits to the allottees of an issue of its debenture stock, a company also issued "bonus certificates" to them secured by a trust deed. The trust deed recited that the company was negotiating an arrangement for certain dealings in land, and by clause 1 the company covenanted to pay the trustees one-fourth of all profits therefrom not exceeding the nominal amount of debenture stock issued. Clause 2 provided that meanwhile one-fourth of all such profits in each year should be paid to the trustees before September 30 following, with interest thereon in default; and by clause 4 the company charged all its rights and interests both present and future under or by virtue of such arrangement, and all profits from time to time received or derived therefrom, with the payment of all moneys from time to time payable under clauses 1 and 2, and as a security for the due performance by the company of all the obligations imposed upon it by that deed. Clause 5 provided for the issue of bonus certificates to the allottees of stock and for transfers and dealings therewith :—*Held*, that the trust deed constituted a mortgage or charge for the purpose of securing an issue of debentures, and was also a floating charge on the undertaking or property of the company, and therefore required registration under the Companies Act, 1900, s. 14, sub-ss. 1 (*a*) (*d*). *Hoare* v. *British Columbia Development Association*, 107 L. T. 602—Neville, J.

Agreement for Pledge of Goods—Constructive Delivery.]—A distillery company, with power to create debentures and to borrow on mortgage, having issued a first series of debentures, proceeded to issue a second series of debentures which provided that, although nothing therein contained should be taken to authorise the creation of any mortgage or charge on the property of the company in priority to such debentures, the company might by delivery warrant or other means pledge to their bankers or others their manufactured whisky, to secure advances for the purposes of the company's business. The plaintiff advanced moneys to the company on the security of their manufactured whisky lying in the bonded warehouse of the company as follows: On the occasion of each advance the name of the plaintiff was entered in the company's stock book opposite the particulars of whisky intended to be pledged, and a delivery warrant and invoice, each containing particulars of such whisky, were delivered to the plaintiff. The assets of the company, including the whisky pledged to the plaintiff, were realised by the receiver appointed in an action brought on behalf of the first debenture-holders, and proved insufficient to pay the plaintiff's claim and those of the second debenture-holders in full. In an action by the plaintiff against the trustees for the second debenture-holders and the company,—*Held* (Cherry, L.J., dissenting), first, that the agreement to pledge, followed by the transfer of specific whisky into the plaintiff's name in the books of the company, effected a valid pledge of the whisky so transferred, independently of the warrants, and that the plaintiff was entitled to the security so obtained in priority to the second debenture-holders; and secondly, that the warrants delivered to the plaintiff did not require registration as bills of sale under section 14 (*c*) of the Companies Act, 1900, and section 4 of the Bills of Sale Act. *Doherty* v. *Kennedy*, [1912] 1 Ir. R. 349—C.A. *See* S. C. in H.L., *sub nom. Dublin City Distillery* v. *Doherty* (*infra*).

Lien for Advances.]—A company issued debentures which purported to create a floating charge on the general assets of the company, and were further secured by a trust deed; the debentures were not registered under section 14 of the Companies Act, 1900 :—*Held*, that the debentures were void for want of registration so far as they purported to create a general floating charge on the general assets of the company, but that the holders were entitled, as *cestuis que trust* under the trust deed, to a valid lien on the debentures, so far as they affected the freehold and leasehold properties comprised in that deed, for the amount of the advances made by them. *Dublin City Distillery* v. *Doherty*, 83 L. J. P.C. 265;

[1914] A.C. 823; 111 L. T. 81; 58 S. J. 413—H.L. (Ir.)

Time for Registration—Deposit to Secure Overdraft—Date of Creation of Charge.]—The period of twenty-one days within which under section 93 of the Companies (Consolidation) Act, 1908, every mortgage or charge created by a company must be registered, begins to run from the date of the execution of the instrument creating the mortgage or charge and not from the date of the first advance made under the instrument. *Esberger* v. *Capital and Counties Bank*, 82 L. J. Ch. 576; [1913] 2 Ch. 366; 109 L. T. 140; 20 Manson, 252—Sargant, J.

In September, 1910, a company obtained an overdraft from their bankers upon deposit of title deeds and execution of a memorandum of charge. The memorandum was executed in due form by the company, but was left undated. The overdraft continued, and subsequently the manager of the bank filled in the date in the memorandum as June 14, 1911. The memorandum was not registered with the registrar of companies until July 3, 1911. The company eventually went into voluntary liquidation:—*Held*, that the memorandum of charge was not registered in due time as provided by section 93 of the Companies (Consolidation) Act, 1908, and was consequently void as against the liquidator and creditors of the company. *Ib.*

Extension of Time for—Repeal of Act of 1900.]—Section 15 of the Companies Act, 1900, empowered the Court to extend the time for the registration of debentures in certain cases. Section 286 of the Companies (Consolidation) Act, 1908, repealed the Companies Act, 1900:—*Held*, that the right given by section 15 of the Act of 1900 to apply to the Court for an extension of time was preserved, notwithstanding the repeal of that Act by the operation of section 38, sub-section 2 of the Interpretation Act, 1889. *Lush & Co., In re*, 108 L. T. 450; 57 S. J. 341—Farwell, L.J.

3. Issue of.

See also Vol. III. 1119, 2442.

Insolvent Company — Floating Charge Created within Three Months of Winding-up—Validity.]—Section 212 of the Companies (Consolidation) Act, 1908, precludes an insolvent company from creating floating charges within three months of the commencement of its winding-up, except for money actually paid which comes into the assets of the company and is available for creditors. In 1904 directors of a company guaranteed its overdraft at the bank up to 2,000*l.* In February, 1910, the bank was pressing the company and directors in regard to the overdraft then existing and the guarantee; and at a meeting of directors it was resolved that the company should pay the bank 1,500*l.* in respect of the overdraft. It was further agreed, though the agreement did not appear in the minutes, that in consideration of the guaranteeing directors finding the 1,500*l.* they should receive debentures to cover them in respect of the payment, in addition to debentures already held by them; and three of them accordingly sent the company cheques for 500*l.* each, whereupon the company sent its cheque to the bank. In March, 1910, at a further directors' meeting, a resolution was passed for the issue of debentures for 500*l.* to each of the three directors; but the debentures were never actually issued, nor was there any entry in the register regarding them. In April, 1910, a resolution for the voluntary winding-up of the company was passed:—*Held*, without deciding whether the charge (if any) created by the agreement required registration, that it was invalid under section 212. *Orleans Motor Car, In re: Smyth* v. *The Company*, 80 L. J. Ch. 477; [1911] 2 Ch. 41; 104 L. T. 627; 18 Manson, 287—Parker, J.

Guarantee of Issue—Release of Guarantor—Majority Binding Minority — "Arrangement or compromise."]—An arrangement whereby the guarantors of an issue of debentures are released from their guarantee, the interest on the debenture debt is increased, new trustees of the trust deed securing the debentures are appointed, and the sinking fund discontinued, is an "arrangement or compromise" which the Court has jurisdiction to sanction under the Joint-Stock Companies Arrangement Act, 1870. *Shaw* v. *Royce, Lim.*, 80 L. J. Ch. 163; [1911] 1 Ch. 138; 103 L. T. 712; 18 Manson, 159; 55 S. J. 188—Warrington, J.

A resolution making such an arrangement and carried by the requisite majority at a meeting of the debenture-holders of a company is binding upon the minority. *Ib.*

Resolution to Issue Debentures — Effect of Interested Directors Voting.]—By a deed executed in 1895 property of a company was conveyed to trustees for the holders of second debentures to be thereafter issued. The articles of association of the company provided that no director should vote in respect of any matter in which he was individually interested. They fixed the quorum of directors at two. At a meeting of directors held on May 12, 1903, at which three directors (two of them being D. and K.) were present, it was resolved that certain second debentures should be issued in trust for D. and K. as security for advances made by them to the company, which debentures were subsequently issued:—*Held*, that as D. and K. were interested parties there was no quorum competent to vote on the resolution, and the resolution was invalid. *Greymouth Point Elizabeth Railway &c. Co., In re* (73 L. J. Ch. 92; [1904] 1 Ch. 32), followed. *Cox* v. *Dublin City Distillery (No. 2)*, [1915] 1 Ir. R. 345—C.A.

At a meeting of directors held on May 16, 1903, at which five directors (including C. and T.) were present, each of the directors present agreed to advance a certain sum to provide new plant, and it was resolved to issue certain second debentures in trust for those making such advances as security for the sums. At a meeting of directors held on June 25, 1903, at which C. and T. were not present, these debentures were issued:—*Held*, that the resolution of May 16 was invalid, and that

the debentures issued to C. and T., having been issued in pursuance of that resolution, were void, notwithstanding that C. and T. were not present at the meeting at which the debentures were issued. *Ib.*

At a meeting of directors held on January 20, 1904, at which K., D., and H. were the directors present, it was resolved to issue certain second debentures in trust for persons making advances to the company as security for such advances, and in pursuance of this resolution second debentures were issued in trust for C. and T. (directors). In pursuance of the same resolution second debentures were also issued to K. and D.:—*Held*, that the resolution of January 20, 1904, was invalid, and that the debentures issued to C. and T. in pursuance of it were void. *Held* also, that the holders of the void debentures could not claim the benefit of the trust deed of 1895. The effect of the decision in *Doherty* v. *Kennedy* or *Dublin Distillery* v. *Doherty* ([1912] 1 Ir. R. 349, 363; 83 L. J. P.C. 265; [1914] A.C. 823) as to the right of a holder of invalid debentures to rely on the trust deed securing them considered. *Ib.*

In pursuance of the resolutions of May 16, 1903, and January 20, 1904, certain second debentures were issued in trust for persons who were outsiders and had no notice of any irregularity in the resolutions:—*Held*, that such debentures were valid, and that their validity could not be questioned either by the company or the holders of other second debentures. *County of Gloucester Bank* v. *Rudry Merthyr Steam and House Coal Colliery Co.* (64 L. J. Ch. 451; [1895] 1 Ch. 629) followed. *Mowatt* v. *Castle Steel and Iron Works Co.* (34 Ch. D. 58) distinguished. *Ib.*

In the course of the present action, which was brought by a holder of first debentures, D. and K. applied to the Judge for liberty to institute a joint action to establish their rights in respect of *(inter alia)* the second debentures issued to them. An order was made on this application, giving D. liberty to proceed with an action against the trustees of the second debenture holders and the company for the purpose of establishing the rights of the applicants. The action was brought by D. in his own name alone, and dealt with his rights only. It resulted in a judgment in his favour as regarded his debentures. The validity of the debentures issued to K., C., and T. having been challenged in the present proceedings by the other second debenture holders and by the liquidator of the company:—*Held*, that K., C., or T. could not rely on this judgment by way of estoppel. What is necessary to constitute a test action considered. *Ib.*

4. Remedies of Debenture-Holders.

a. Generally.

See also Vol. III. 1122, 2446.

Covenant to Pay On or After Named Day —Debentures to be Paid to be Determined by Ballot—Right of Holder to Payment—Construction—Reference to Prospectus.]—In 1892 a company issued a series of debentures. The prospectus stated that the debentures would be redeemable at the option of the company on or after January 1, 1898, on the company giving six months' notice of its intention. The debentures to be repaid would be determined by ballot. The accompanying application form contained an agreement to accept the debentures allotted on the terms of the prospectus. Each debenture contained a covenant by the company to pay, on or after January 1, 1898, the amount secured to the party therein named or other the registered holder for the time being, and a provision that the debentures to be paid off would be determined by ballot, and six months' notice would be given by the company of the debentures drawn for payment. The company not having paid off any of the debentures, or held any ballot, the plaintiff, who was the transferee and registered holder of a debenture, in 1909 gave the company notice demanding payment of the sum thereby secured within six months, and on the company's failing to pay brought an action to enforce payment:—*Held* (following *Chicago and North-West Granaries Co., In re*, 67 L. J. Ch. 109; [1898] 1 Ch. 263), that the Court could not, in construing the debenture, refer to the prospectus; that on the true construction of the covenant the sum covenanted to be paid was presently due and payable; and that the provision respecting a ballot did not relieve the company from liability to pay unless it elected to hold a ballot, since a covenant to pay, with a proviso that it should be enforced only at the covenantor's option, would be void for repugnancy. *Watling* v. *Lewis* (80 L. J. Ch. 242; [1911] 1 Ch. 414) applied. *Tewkesbury Gas Co., In re; Tysoe* v. *The Company*, 80 L. J. Ch. 723; [1912] 1 Ch. 1; 105 L. T. 569; 18 Manson, 395; 56 S. J. 71; 28 T. L. R. 40—C.A.

Guarantee—Re-insurance by Guarantors—Winding-up—Security Enforceable—Guarantors Trustees for Debenture-holders—Right of Debenture-holders to Insurance Moneys.]—A guarantee society entered into a guarantee with the debenture-holders of a limited company for the payment of the principal and interest due to them. The society were also appointed trustees for the debenture-holders at an annual remuneration. The company went into liquidation, and the society went into possession of the security on behalf of the debenture-holders. Subsequently the society also went into liquidation, and a scheme of arrangement was agreed to by creditors and confirmed by the Court. The society had previously re-insured their liability upon the debentures, and were entitled to payment of the full amount due under this contract:—*Held*, that the debenture-holders had no claim to the money received by the society under the re-insurance contract, but that it must be applied as part of the general assets of the society. *Law Guarantee Trust and Accident Society, In re; Godson's Claim*, 84 L. J. Ch. 510; [1915] 1 Ch. 340; 112 L. T. 537; [1915] H. B. R. 103; 59 S. J. 234—Neville, J.

Floating Charge — Judgment Creditor — Garnishee Order Nisi — Garnished Debt

Claimed by Debenture-holder—No Appointment of Receiver — Interpleader — Right of Judgment Creditor to have Garnishee Order made Absolute.]—A limited company, to secure the repayment of money advanced to them, issued a debenture whereby they charged with such repayment all their undertaking and all their property and assets. A creditor of the company having commenced an action against the company in the County Court, the debenture-holder gave notice to the company to pay off the debenture, which notice was not complied with. Judgment having been given against the company in the County Court action, the judgment creditor obtained a garnishee order *nisi* attaching the balance standing to the credit of the company in their account with their bankers. The debenture-holder gave notice to the bankers, and also to the company and to the judgment creditor, claiming that he was entitled to have the bank balance paid to him; but he did not take any other step to enforce his security. The bankers interpleaded, and the County Court Judge gave judgment in the interpleader proceedings for the judgment creditor against the debenture-holder and directed that the garnishee order *nisi* should be made absolute:—*Held*, that, as nothing had happened to convert the debenture-holder's floating charge into a specific charge, the garnishee order *nisi* was rightly made absolute. *Evans* v. *Rival Granite Quarries Co.*, 79 L. J. K.B. 970; [1910] 2 K.B. 979; 18 Manson, 64; 54 S. J. 580; 26 T. L. R. 509—C.A.

Unpaid Calls—Specific Performance.]—The plaintiffs were a limited company, and the defendant an allottee of certain debentures created by them. The debentures were issued on the terms of a debenture prospectus, which contained provisions that the debentures should be payable "on application 1*l.*, on allotment 1*l.*, and the balance as required in calls not to exceed 4*l.* per debenture at intervals of not less than four months," and that non-payment of any instalment would render all previous payments liable to forfeiture "in the same manner as under articles 36 to 45 of the company's articles of association shares are forfeitable on which calls are in arrear." The debentures were allotted on May 26, 1913. On June 23, 1913, the plaintiffs made a first call payable on July 5, and on October 23, 1913, a second call payable on November 8. The defendant failed to pay these calls. Subsequently, the company forfeited the debentures standing in his name. Article 43 of the articles of association, one of the articles mentioned above dealing with the forfeiture of shares for non-payment of calls, provided that a shareholder whose shares had been forfeited should nevertheless be liable for all calls made and not paid at the time of the forfeiture. The plaintiffs under this article claimed the amount of the calls as being specific performance of the contract between them and the defendant. The defendant argued that no action could lie for an agreement to advance money such as this. *South African Territories, Lim.* v. *Wallington* (67 L. J. Q.B. 470; [1898] A.C. 309), and on the terms of the debenture prospectus the calls and forfeiture were bad, the first call having been made within four months after allotment:—*Held*: First, that the plaintiffs, having forfeited the debentures, were not in a position to ask for specific performance; secondly, that on the authority of *South African Territories, Lim.* v. *Wallington* (67 L. J. Q.B. 470; [1898] A.C. 309) they had here no right to recover with respect to the debentures apart from specific performance; thirdly, that in order to make article 43 apply to the debentures clearer language should have been used than the general words above quoted; and fourthly, that the first call was bad, as being at a less interval than four months after May 26, 1913; the second call was good. *Kuala Pahi Rubber Estates* v. *Mowbray*, 111 L. T. 1072—Horridge, J.

Distribution of Assets—Debenture Stock Partly Paid up—Right of Holders to Participate Rateably in Assets—Obligation First to Pay up in Full—No Legal Debt.]—A debenture stock trust deed made in 1902 provided that the trustees for the debenture-holders should hold the proceeds arising from any sale or conversion of the property comprised in or charged by the trust deed after payment of costs and expenses in payment of arrears of interest; and secondly, in paying back to the stockbrokers *pari passu* in proportion to the stock held by them respectively all the principal moneys owing in respect of the stock held by them respectively. The trustees in 1906 took possession of all the property comprised in the trust deed and realised it. Certificates were issued to the stockholders on payment by them of the amount payable on application, but some of the stockholders had not paid up the full amount on their stock, all instalments having become payable prior to 1904. On the distribution of the proceeds by the trustees the question arose whether those holders who had not paid up in full, against whom no proceedings had been taken, were entitled to participate rateably in the distribution without first paying all instalments due on the stock held by them:—*Held*, that the partly paid-up stockholders were entitled, without first making their stock fully paid-up stock, to participate in the assets rateably with the stockholders who had paid up in full, as the contract to take up and pay for debentures was made prior to the Companies Act, 1907, s. 16, and could not be enforced by an order for specific performance, the company being entitled to damages only. The principle, therefore, of *Cherry* v. *Boultbee* (9 L. J. Ch. 118; 4 Myl. & Cr. 442) was not applicable, that principle having been applied only where the obligation to contribute was a legal obligation in the sense of a debt. *Rhodesia Goldfields, In re; Partridge* v. *Rhodesia Goldfields* (79 L. J. Ch. 133; [1910] 1 Ch. 239), distinguished. *Abrahams' Estate, In re; Abrahams* v. *Abrahams* (77 L. J. Ch. 578; [1908] 2 Ch. 69), applied. *Smelting Corporation, In re; Seaver* v. *Smelting Corporation*, 84 L. J. Ch. 571; [1915] 1 Ch. 472; 113 L. T. 44; [1915] H. B. R. 126—Astbury, J.

Moneys Overpaid by Mistake to Certain Debenture-holders—Order to Bring Back into Court Moneys Overpaid.]—In a debenture-holder's action brought by trustees for debenture-holders against an insolvent company, the realised assets were insufficient to pay debenture-holders in full. The allocation schedule was, by mistake, framed on the basis that certain banking companies, who held debentures as security for advances made by them to the company, should receive dividends on the amounts of the debts due to them, instead of on the face value of their debentures. As a result the amount allocated to the banking companies was less than it should have been, and certain debenture-holders, directors of the company and parties to the action, were consequently overpaid. Upon motion by the plaintiff, who had carriage of the suit, the directors were ordered to bring back into Court the amounts by which they had been overpaid. *Platt* v. *Casey's Drogheda Brewery Co.*, [1912] 1 Ir. R. 279—Barton, J.

Scheme Affecting Rights of Holders — Making Special Provision for Special Interests —Right of Interested Debenture-holder to Vote on Scheme—Bribe.]—While the powers conferred by a trust deed on a majority of debenture-holders must be exercised *bona fide*, and the Court will interfere to prevent unfairness or oppression, each debenture-holder may vote with regard to his interests, though they be individual and peculiar to himself; and where there is a diversity of interest as between different debenture-holders the making of special provision for special interest may be necessary and fair. Such a provision, if made openly, is not a bribe; and a debenture-holder is not precluded from voting on a scheme containing it merely because he is interested thereunder. *Goodfellow* v. *Nelson Line*, 81 L. J. Ch. 564; [1912] 2 Ch. 324; 107 L. T. 344; 19 Manson, 265; 28 T. L. R. 461—Parker, J.

Remuneration of Trustee — Debentures – Trust Deed—Payment into Court—"Continuance of security"—Remuneration only while Services Rendered—Work Done by Trustee's Solicitor.] — By a trust deed securing the debenture stock of a company the trustees were to hold the proceeds of conversion of the property charged upon trust in the first place to pay or retain the costs and expenses incurred in the execution of the trust, "including therein their own remuneration." The deed provided that the company should "during the continuance of this security" pay to the trustees as and by way of remuneration for their services an annual sum. In an action by debenture stockholders a receiver was appointed and the property was sold in the action and the proceeds paid into Court :—*Held*, that the trustee was entitled to remuneration out of the proceeds of sale, but only down to the appointment of the receiver, after which date there were, in substance, no services rendered by the trustee, other than work done by his solicitor and included in his costs of the action, for which no remuneration could be allowed to the trustee. *Locke & Smith, Lim., In re; Wigan* v. *The Company*, 83 L. J. Ch. 650; [1914] 1 Ch. 687; 110 L. T. 683; 21 Manson, 267; 58 S. J. 379—Eve, J.

Foreclosure—Appointment of Receiver and Manager—No Previous Application to Court.]—Section 1, sub-section 1 (*b*) of the Courts (Emergency Powers) Act, 1914, which forbids any person to "foreclose" except after application to the Court, does not apply to the commencement of a foreclosure action or a debenture-holder's action; nor does the sub-section preclude the Court from appointing a receiver and manager if no such application has been made. *Farnot, Eades, Irvine & Co., In re; Carpenter* v. *The Company*, 84 L. J. Ch. 129; [1915] 1 Ch. 22; 112 L. T. 151; 21 Manson, 395—Warrington, J.

Realisation — Mortgagee in Possession — Consent of Mortgagor—Emergency Powers.]—By section 1, sub-section 1 (*b*) of the Courts (Emergency Powers) Act, 1914, "No person shall . . . realise any security (except by way of sale by a mortgagee in possession)" except after an application to the Court :—*Held*, that the words "mortgagee in possession" are not limited to mortgagees in possession of real estate, or to mortgagees who have obtained possession without the consent of the mortgagor. *Ziman* v. *Komata Reef Gold Mining Co.*, 84 L. J. K.B. 1162; [1915] 2 K.B. 163; 113 L. T. 17; 31 T. L. R. 274—C.A.

b. Right to Payment.

See also Vol. III. 1123, 2450.

Right of Company to Compel Payment—Interest to Date only.]—Where debentures become enforceable on the happening of certain events, the debenture-holders have a right to require payment on the happening of those events, but they do not put the debenture-holders in a position of being compelled to accept payment. Where the events are entirely within the control of the company to determine whether they shall happen or not, the company cannot by determining the event compel the debenture-holder to accept his money at a moment's notice. *General Motor Cab Co., In re* (*No.* 2), 56 S. J. 573—Eve, J.

Principal Payable "on presentation at Lloyds Bank" — Default — Condition Precedent—Pleading.]—A company had borrowing powers up to 3,000*l.*, and in July, 1913, its bank account was overdrawn by that amount. Thereupon the plaintiff and two others, in pursuance of a previous agreement and at the request of the directors, each handed to the chairman of the company a cheque for 1,000*l.* to be paid into the bank in reduction of the overdraft; each received in exchange a debenture for 1,000*l.*, subject to the following conditions indorsed thereon : "(3) The principal moneys hereby secured shall immediately become payable . . . if the registered holder shall serve notice upon the company requiring payment of the principal moneys and interest (if any) and the company has made default . . . for three days after such service :" "(12) the principal moneys . . . will be paid at Lloyds Bank Limited,

222 Strand, W.C., or other the company's bankers for the time being, on presentation of this debenture, which must be surrendered on payment." On July 22, 1913, the plaintiff gave notice to the company requiring payment of principal and interest within three days, but neither principal nor interest was paid, and the plaintiff in November, 1913, commenced a debenture-holder's action claiming the usual relief. The defence stated in general terms that the money was not due :—*Held*, that there had been default in payment of interest under condition 3, and that therefore compliance with condition 12 as to presentation for payment was not necessary in order to render the principal payable; but that if presentation had been requisite, it was a condition precedent and should have been pleaded in defence. *Held*, also, that the cheque was handed by the plaintiff to the company as a conditional payment for the purpose of reducing the overdraft at the bank, and that the borrowing had not been in excess of the powers of the company. *Wrexham, Mold, and Connah's Quay Railway, In re* (68 L. J. Ch. 270; [1899] 1 Ch. 440), followed. *Harris Calculating Machine Co., In re; Sumner* v. *Harris Calculating Machine Co.*, 83 L. J. Ch. 545; [1914] 1 Ch. 920; 110 L. T. 997; 58 S. J. 455—Astbury, J.

c. Receiver and Manager.

See also Vol. III. 1127, 2453.

When Assets are in Jeopardy.]—In a debenture-holders' action for the appointment of a receiver on the ground of jeopardy, where the security is not yet enforceable upon other grounds, it is not sufficient for the plaintiff to shew that the proceeds of the assets if realised will not be sufficient to pay off the debentures. The assets are not in jeopardy unless they are likely to be seized by creditors to pay claims not having priority to the debentures. *Victoria Steamboats, Lim., In re; Smith* v. *Wilkinson* (66 L. J. Ch. 21; [1897] 1 Ch. 158), distinguished. *New York Taxicab Co., In re; Seguin* v. *The Company*, 82 L. J. Ch. 41; [1913] 1 Ch. 1; 107 L. T. 813; 19 Manson, 389; 57 S. J. 98—Swinfen Eady, J.

The business of a company having come to an end, the directors proposed to distribute a reserve fund consisting of accumulated profits by way of dividend among the shareholders. The company's assets were of little value, and were quite insufficient to pay debenture-holders who had a floating charge on the assets :—*Held*, upon motion by the debenture-holders for a receiver, that the applicants had a lien on the fund in question, and that, although under the express terms of the debenture trust deed the security was not enforceable, they were entitled to the appointment of a receiver upon the ground of jeopardy. *New York Taxicab Co., In re; Seguin* v. *The Company* (82 L. J. Ch. 41; [1913] 1 Ch. 1), distinguished. *Tilt Cove Copper Co., In re; Trustees, Executors, and Securities Insurance Corporation* v. *The Company*, 82 L. J. Ch. 545; [1913] 2 Ch. 588; 109 L. T. 138; 20 Manson, 288; 57 S. J. 773—Neville, J.

Jeopardy—What is.]—There is jeopardy, entitling to the appointment of a receiver, where, at a directors' meeting, the auditor's unchallenged statement was that, if the amount of the principal secured by the debentures could be realised after clearing off the company's liabilities, that was as much as could be hoped for; and where the evidence also went to shew that, just prior to the meeting, the plaintiff in this debenture-holders' action had been informed by one of the directors that the company's funds and credit were exhausted, but that the creditors were being held off temporarily by the personal credit of that director, and that the employees at one of the branches of the business had been, or were about to be, dismissed, and had heard *aliunde* that the premises of that branch had been put into agents' hands for the purpose of letting them. *Tilt Cove Copper Co., In re: Trustees, Executors, and Securities Corporation* v. *The Company* (82 L. J. Ch. 545; [1913] 2 Ch. 588), and *Victoria Steamboats, In re; Smith* v. *Wilkinson* (66 L. J. Ch. 21; [1897] 1 Ch. 158) followed. *Braunstein & Marjolaine, Lim., In re; Philipson* v. *The Company*, 112 L. T. 25; 58 S. J. 755—Sargant, J.

Where judgments have been recovered against a company and execution is likely to issue, there is jeopardy within the meaning of *New York Taxicab Co., In re; Seguin* v. *The Company* (82 L. J. Ch. 41; [1913] 1 Ch. 1. *Grigson* v. *Taplin & Co.*, 85 L. J. Ch. 75; 112 L. T. 985; 59 S. J. 349—Sargant, J.

The amount of property contained in the specific charge being ample,—*Held*, that the fact of jeopardy did not of itself entitle the plaintiff to the appointment of a receiver and manager of the whole of the assets and business of the company, but only to have a receiver appointed of the assets specifically charged. *Ib.*

Condition in Debentures—Voluntary Winding-up — Reconstruction — Principal Moneys Due—Immediately Payable.]—Where one of the conditions indorsed on a series of debentures issued by a company was that the principal moneys thereby secured should become immediately payable if an order was made or an effective resolution was passed for winding up the company otherwise than for the purposes of reconstruction and the company passed a resolution for the voluntary winding-up of the company for the purposes of reconstruction :—*Held*, that, notwithstanding the condition, the principal moneys became due at the commencement of the winding-up and that the debenture-holders were entitled to the appointment of a receiver. *Hodson* v. *Tea Co.* (49 L. J. Ch. 234; 14 Ch. D. 859) and *Wallace* v. *Automatic Machines Co.* (63 L. J. Ch. 598; [1894] 2 Ch. 547) applied. *Crompton & Co., In re; Player* v. *Crompton & Co.*, 83 L. J. Ch. 666; [1914] 1 Ch. 954; 110 L. T. 759; 21 Manson, 200; 58 S. J. 433—Warrington, J.

Condition for Appointment — Consent of Majority in Value of Debenture-holders—Equitable Mortgagee—"Majority in value"—Power of Court.]—Debentures issued by a company contained a condition that at any time after the principal moneys had become

due any debenture-holder, with the consent in writing of the holders of a majority in value of the debentures, might appoint by writing a receiver and manager of the business of the defendant company. Two hundred debentures had been issued, of which the plaintiffs held sixty, C. held fifty-five, L. held sixty-five, and T. held twenty. L. had deposited sixty-four of his debentures with the plaintiffs as security for a loan. C. appointed a receiver and manager with the consent of T. and L. but without the consent of or notice to the plaintiffs:—*Held*, in a debenture-holder's action, that as the plaintiffs were registered holders of sixty debentures and equitable mortgagees of sixty-four debentures, the receiver and manager had not been properly appointed without their consent, and that a receiver and manager should be appointed by the Court. "*Slogger*" *Automatic Feeder Co., In re; Hoare* v. *The Company*, 84 L. J. Ch. 587; [1915] 1 Ch. 478; 112 L. T. 579; [1915] H. B. R. 138; 59 S. J. 272—Neville, J.

Applications to Court.]—Where a receiver is appointed by the Court in an action, and a difficulty arises in the execution of his duties, he ought, as a general rule, to submit the matter to the party having carriage, who is the proper person to bring it before the Court. The receiver should not himself bring the matter before the Court except under special circumstances. *Windschuegl* v. *Irish Polishes, Lim.*, [1914] 1 Ir. R. 33—Barton, J.

Defendant a Debenture-holder — Receiver for Debenture-holder Appointed by the Court —Leave to Carry on Proceedings—Discretion of Court—Rights of Mortgagees.]—The first mortgagees of a trading company's property purported in exercise of their power of sale to sell the mortgaged property to a rival company. The company and a debenture-holder (who was in the position of second mortgagee) then commenced an action against the purchasers and the first mortgagees to set aside the sale, on the ground that it was not *bona fide* and was at grossly inadequate price. Thereupon the purchasers bought up this debenture and instituted a debenture action in the name of the holder for the appointment of a receiver, so as to deprive the company, if possible, of the means of prosecuting the action. A receiver was duly appointed by the Court, and upon the application of the purchasers the Court then ordered the company to give security for the costs of the action which had been brought against them. It was further ordered in chambers that the receiver should be at liberty to carry on the action and to have his costs of proceedings out of the company's assets. The purchasers moved to discharge this order on the ground that the receiver would be using assets, upon which as debenture-holders they had a first charge, to pay for proceedings brought against themselves:—*Held*, that where a receiver has been appointed by the Court neither mortgagor nor mortgagee has any right to say whether proceedings shall be carried on by the receiver or not; the matter is in the discretion of the Court, and in sanctioning such proceedings by the receiver the Court will have regard to the interests of all parties: and that the order made in chambers was right. *Viola* v. *Anglo-American Cold Storage Co.*, 81 L. J. Ch. 581; [1912] 2 Ch. 305; 107 L. T. 118; 19 Manson, 287—Swinfen Eady, J.

Liability of Receiver and Manager to Account to Trustee in Bankruptcy.]—A debtor, having sold his business to a company, shortly afterwards became bankrupt, with the result that eventually the sale was set aside as fraudulent and void. Some months before the sale was set aside a receiver and manager had been appointed at the instance of the debenture-holders of the company, and he carried on the business until the date of the order setting aside the sale, when, by order of the Court, he transferred the business to the trustee in bankruptcy of the bankrupt vendor:—*Held*, upon the application of the trustee in bankruptcy, that the debenture-holders and their receiver and manager were jointly and severally liable as trespassers to pay to the trustee in bankruptcy the value of any property of the bankrupt of which they were in possession, or of which they had taken possession, and which they had converted, and that they must deliver to the applicant all such property of the bankrupt as remained in their possession unconverted. *Vaughan, Ex parte; Riddeough, in re* (14 Q.B. D. 25), followed. *Ely, In re; Ely & Co., ex parte* (82 L. T. 501), distinguished. *Goldburg, In re; Page, ex parte*, 81 L. J. K.B. 663; [1912] 1 K.B. 606; 106 L. T. 431; 19 Manson, 138—Phillimore, J.

Order for Goods — Personal Liability — Summons for Payment.]—In a debenture-holders' action against a company a receiver and manager was appointed, and he was empowered by an order made in the action to borrow not more than 300*l.* to carry on the business. The receiver and manager gave an order for goods on the understanding that he was not to be personally liable. In giving this order he was contracting in excess of the sum of 300*l.* During the proceedings in the action a summons was taken out by the creditor for an order that the receiver and manager should pay him out of the assets or out of his own moneys. The creditor knew that it was doubtful whether his and similar debts could be paid in full out of the assets:—*Held*, that the creditor was not entitled to an order for payment on the summons. *Hawkins & Co., In re; Brieba* v. *Hawkins & Co.*, 31 T. L. R. 247—Astbury, J.

Liability of Receiver for Rent.]—The receiver of a company's assets, who has been appointed in a debenture-holders' action, is not liable, where premises have been leased to the company and he has sold the assets, including the tenancy, to pay rent for the period subsequent to that during which he has been in beneficial occupation. *Abbott & Co., In re; Abbott* v. *The Company*, 58 S. J. 30; 30 T. L. R. 13—Sargant, J.

An under-lease was granted to E. as trustee for a company. The company issued debentures to B. to secure money advanced, and gave him an equitable mortgage of the pro-

perty. B. brought a debenture-holders' action, in which a receiver was appointed, who took possession. The lessor brought an action against the lessee for possession and rent, and obtained judgment. The judgment was stayed upon terms which were not complied with, and the receiver remained in possession for some time. The lessor applied in the debenture-holders' action for an order that the receiver should pay the rent for the period during which he was in possession, either out of assets in his hands or personally as a trespasser :—*Held*, that the effect of the judgment while subsisting was to prevent the lessor from asserting any rights against the persons in possession, and the receiver was not liable for the rent. *Westminster Motor Garage Co., In re; Boyers* v. *The Company*, 84 L. J. Ch. 753; 112 L. T. 393—Eve, J.

Position of Receiver—Officer of Court to Discharge Certain Duties.]—The receiver and manager of a company appointed by the Court in a debenture-holders' action is an officer of the Court put in to discharge certain duties, and is not the agent either of the debenture-holders or of the company, which still remains in existence. *Parsons* v. *Sovereign Bank of Canada*, 82 L. J. P.C. 60; [1913] A.C. 160; 107 L. T. 572; 20 Manson, 94; 29 T. L. R. 38—P.C.

Assignment of Debt by Receiver—Breach of Contract—Right of Set-off.]—A receiver, having delivered goods to a customer of the company under a contract made by the company before his appointment, assigned the amounts due for such goods to a bank, and afterwards cancelled the contract made by the company. Notice of the assignment to the bank was not given to the customer until after the contract had been cancelled :—*Held*, that in an action brought by the bank against the customer to recover the debt so assigned the customer was entitled to set off damages sustained by the cancellation of the contract. *Ib.*

Existing Contracts — Onerous Contracts—Duties of Receiver and Manager.]—A holder of debentures in a colliery company, having commenced an ordinary debenture-holders' action, obtained an interlocutory order for the appointment of a receiver and manager of the property and undertaking of the company. Before this date the company had entered into a number of forward contracts for the supply of coal during 1912 at prices below the existing market price, and the performance of these contracts would practically exhaust the whole output of the colliery. In these circumstances the plaintiff applied for leave for the receiver and manager to disregard these contracts :—*Held*, that the Court would not make a general order allowing its officers to abandon the whole of the company's contracts merely because the property of the company could then be sold to greater advantage. *Newdigate Colliery Co., In re; Newdegate* v. *The Company*, 81 L. J. Ch. 235; [1912] 1 Ch. 468; 106 L. T. 133; 19 Manson, 155; 28 T. L. R. 207—C.A.

It is the duty of the receiver and manager of a company's property and undertaking to protect both alike from injury, and he is not entitled to act so as to injure the goodwill of the undertaking simply because he will thus enhance the value of the property apart from the undertaking. *Ib.*

——**Completion of Contracts Entered into by Company.**]—The Court refused to sanction the borrowing of money by a receiver and manager in order to complete a contract entered into by the company, where no direct profit could result from its completion and where there was no evidence that any indirect profit could ensue. *Newdigate Colliery Co., In re* (*supra*), considered. *Thames Ironworks Co., In re; Farrer* v. *The Company*, 106 L. T. 674; 56 S. J. 413; 28 T. L. R. 273—Parker, J.

A holder of debentures in a mining company, having commenced an ordinary debenture-holders' action, obtained the usual order for the appointment of a receiver and manager of the property and undertaking of the company. Before the date of issue of the debentures the company had entered into an agreement with certain agents by which it was agreed that they should for a period of fifteen years be the sole agents of the company for the whole world for the sale of copper and silver from the company's mines which the company might desire to sell on certain terms as to commission. The debentures were in the form of a charge on the undertaking of the company, but were in no way subject to the performance of the agreement. The goodwill of the company was of no value, and the assets of the company were insufficient to satisfy the claims of the debenture-holders. In these circumstances the plaintiff applied for leave for the receiver and manager to disregard the agreement :—*Held*, that as the agreement in no way affected the value of the goodwill of the business there was no obligation on the receiver to carry it into effect, and that the application ought to be granted. *Newdigate Colliery Co., In re; Newdegate* v. *The Company* (81 L. J. Ch. 235; [1912] 1 Ch. 468), distinguished. *Great Cobar, Lim., In re; Beeson* v. *The Company*, 84 L. J. Ch. 468; [1915] 1 Ch. 682; 113 L. T. 226; [1915] H. B. R. 79—Warrington, J.

Receiver Appointed under Power in Debenture—Right to Remuneration—Liability of Debenture-holders.]—A condition indorsed on debentures of a company gave a power to the holders of the majority of the debentures to appoint a receiver who should have power to take possession of the property charged, to carry on the business of the company, to sell the property charged, and to make any arrangements in the interest of the debenture-holders. The condition also provided that all moneys received by such receiver should, after providing for the matters specified in the first three paragraphs in clause 8 of section 24 of the Conveyancing and Law of Property Act, 1881, and for the purposes aforesaid, be applied in or towards satisfaction *pari passu* of the debentures; and the foregoing provisions of the condition were to take effect as and by way of variation and extension of the provisions of sections 19 and 24 of that Act, which

provisions so varied and extended were to be regarded as incorporated in the condition :—*Held*, that a receiver appointed under the power was the agent of the debenture-holders and not of the company, and that he was entitled to maintain an action for reasonable remuneration against the debenture-holders who had appointed him. *Vimbos, Lim., In re* (69 L. J. Ch. 209; [1900] 1 Ch. 470), and *Robinson Printing Co.* v. *Chic, Lim.* (74 L. J. Ch. 399; [1905] 2 Ch. 123), followed. *Deyes* v. *Wood*, 80 L. J. K.B. 553; [1911] 1 K.B. 806; 104 L. T. 404; 18 Manson, 229—C.A.

d. Sale.

See also Vol. III. 1134, 2459.

Sale of Undertaking—Company in which Public have an Interest.]—The Crystal Palace Co. is not a company formed for public purposes within the principle of *Gardner* v. *London, Chatham, and Dover Railway* (L. R. 2 Ch. 201). Therefore, when the company issued debenture stock giving a charge on its undertaking and property,—*Held*, that the Court had power, on the application of holders of the debenture stock, to order a sale of the property and undertaking. *Saunders* v. *Bevan*, 107 L. T. 70; 56 S. J. 666; 28 T. L. R. 518—H.L. (E.) Affirming S. C. in C.A., *sub nom. Crystal Palace Co., In re; Fox* v. *The Company*.

5. Redemption.

See also Vol. III. 2460.

Principal Immediately Payable.]—Where the principal moneys secured by debentures have become immediately payable according to a condition indorsed on the debentures, on the ground that an order has been made for the winding-up of the company, the company or the guarantors of the loan are entitled to redeem the security, and the debenture-holders have no option to refuse payment unless the debenture itself so provides. *General Motor Cab Co., In re* (56 S. J. 573), explained. *Consolidated Goldfields of South Africa* v. *Simmer and Jack East, Lim.*, 82 L. J. Ch. 214; 108 L. T. 488; 20 Manson, 142; 57 S. J. 358—Swinfen Eady, J.

Contract by Advertisement — Breach of Trust.]—The appellants were trustees for the bondholders of a copper company under a mortgage deed by which a certain sum was set aside for the redemption or retirement of bonds of the company, for which they were trustees. The appellants having received $170,000 from the copper company for the redemption of bonds, advertised in accordance with the terms of the mortgage deed inviting tenders, stating amount offered, and price of bonds for sale to them. The respondent offered bonds for $10,000 at $82 per bond of $100. This offer was declined, and the appellants succeeded in obtaining bonds for $200,000—namely, $39,400 at rates less than $80 per cent., and $160,600 at a rate exceeding $86 per cent.—costing exactly $170,000. In an action by the respondent for breach of trust, or alternatively for breach of contract in refusing to purchase the bonds offered for sale in response to the advertisement inviting tenders of bonds under the terms of the mortgage deed,—*Held*, that the appellants, having acted in good faith and in the exercise of an honest judgment and in the interest of the bondholders as a whole, had not been guilty of a breach of trust, and were not bound to accept the lowest tender for a comparatively small number of bonds. *National Trust Co.* v. *Whicher*, 81 L. J. P.C. 182; [1912] A.C. 377; 106 L. T. 310—P.C.

Sale of Assets by Company—Redeeming Debentures at Lowest Tender—Dissentients' Rights.]—A company has no power to sell the assets charged by its debentures and with the proceeds to redeem such of the debentures as are offered at the lowest price, even though it is empowered to do so by a majority of the debenture-holders at a meeting held in accordance with the terms of the debenture trust deed. *New York Taxicab Co., In re; Seguin* v. *The Company*, 82 L. J. Ch. 41; [1913] 1 Ch. 1; 107 L. T. 813; 19 Manson, 389; 57 S. J. 98—Swinfen Eady, J.

6. Conversion and Exchange on Sale of Assets.

Conversion of Terminable Debentures into Perpetual Debenture Stock — Arrangement between Company and Creditors.]—On a petition under section 120 of the Companies (Consolidation) Act, 1908, at the instance of a company which was being wound up, the Court sanctioned an arrangement whereby debentures and debenture bonds, repayable at periods of from three to five years, were converted into debenture stock, repayable only on the occurrence of certain contingencies. *Shandon Hydropathic Co., In re*, [1911] S. C. 1153—Ct. of Sess.

Conversion of Redeemable into Irredeemable or Perpetual Debentures—Resolution by Majority of Debenture-holders — Power of Majority to Bind Minority.]—Where a debenture trust deed provides that the debenture-holders shall have power, exercisable by extraordinary resolution, to sanction any modification of the rights of the debenture-holders against the company or against its property whether such rights should arise under the debentures or under the trust deed, a majority of the debenture-holders may, by extraordinary resolution passed in accordance with the terms of the trust deed, convert redeemable debentures into irredeemable or perpetual debentures. *Northern Assurance Co.* v. *Farnham United Breweries*, 81 L. J. Ch. 358; [1912] 2 Ch. 125; 106 L. T. 527; 19 Manson, 178; 56 S. J. 360; 28 T. L. R. 305—Joyce, J.

Sale of Assets—Exchange for Debenture Stock in Purchasing Company.]—The debenture stock deed of a company contained a majority clause giving a general meeting of the stockholders "power to agree to accept any other property or securities instead of the stock, and in particular any debentures or

debenture stock of the company," and "power to sanction any scheme for the reconstruction of the company or for the amalgamation of the company with any other company." The company agreed to sell its assets to another company, the debenture stock of the vendor company to be exchanged for debenture stock of the purchasing company, and the agreement being conditional on its approval by the stockholders. A resolution of approval was passed by them:—*Held*, that the proposed scheme came within the majority clause and the trustees of the deed could properly act on it. *Hutchinson & Sons, Lim., In re: Thornton* v. *The Company*, 31 T. L. R. 324—Sargant, J.

VIII. MEETINGS OF SHAREHOLDERS.

See also Vol. III. 1190, 2469.

Proxy—Lodgment at Office—Poll not an Adjournment.]—Where the articles of association of a company require that proxies be lodged at the office forty-eight hours before the time fixed for holding the meeting or adjourned meeting at which they are to be used, and at the meeting a poll is demanded and fixed for a later date, then proxies obtained after the meeting cannot be used for voting on the poll. *Shaw* v. *Tati Concessions, Lim.*, 82 L. J. Ch. 159; [1913] 1 Ch. 292; 108 L. T. 487; 20 Manson, 104; 57 S. J. 322; 29 T. L. R. 261—Swinfen Eady, J.

A poll is not an adjournment, but a continuation of the meeting for voting purposes, but for nothing else. *Ib.*

——Objections to Votes to be Made at Meeting Only—Appointment of Proxy by Corporation to be under its Common Seal—Foreign Corporation having no Common Seal—Representative of a Company—Admitting Votes on Production of Copy of Resolution.]—The articles of association of a company provided that no one should be entitled to act as proxy for other shareholders unless he was himself a shareholder, but that no objection was to be made to the validity of any vote except at the meeting or poll at which it was tendered, and that every vote, whether given personally or by proxy, not disallowed at the meeting or poll was to be deemed valid for all purposes. The articles also provided that the instrument appointing a proxy should be in writing under the hand of the appointer or his attorney duly authorised, or, if such appointer were a corporation, under its common seal. At a general meeting of the company the chairman admitted votes rendered under a proxy to C., who was not a shareholder, and failing him to D., who was a shareholder. No objection was taken at the meeting to these votes. The chairman also admitted votes tendered by W. as the representative of another company, under a resolution passed pursuant to section 68 of the Companies (Consolidation) Act, 1908, on the production of a copy of the resolution signed by W. as chairman of the other company and by its secretary. The chairman of the meeting rejected, however, votes by proxy appointed under a power of attorney signed by two directors of a foreign company which had no common seal:—*Held*, that the votes tendered under the proxy to C. and D., and those tendered by W., were rightly admitted; but that the provision of the articles requiring the appointment of a proxy by a corporation to be under its common seal was limited to English corporations, and did not extend to foreign corporations which have no common seal, and that these votes therefore ought to have been admitted. *Colonial Gold Reefs, Lim.* v. *Free State Rand, Lim.*, 83 L. J. Ch. 303; [1914] 1 Ch. 382; 110 L. T. 63; 21 Manson, 42; 58 S. J. 173; 30 T. L. R. 88—Sargant, J.

——Alien Enemy Shareholder — Right of Voting—Foreign Bank—Branch in England—Exercise of Right on Behalf of Branch.]—An alien enemy who is a shareholder in an English company is not entitled, during the war, to exercise the right of voting by employing a British subject as proxy at a meeting of the shareholders of the company, and where the alien enemy is a banking company with a branch in England such right of voting is not within clause 6 of the Trading with the Enemy Proclamation No. 2, and cannot be exercised during the war on behalf of the branch. *Robson* v. *Premier Oil and Pipe Line Co.*, [1915] 2 Ch. 124; 59 S. J. 475; 31 T. L. R. 420—C.A.

Decision of Sargant, J. (31 T. L. R. 385), affirmed. *Ib.*

Extraordinary General Meeting — Requisitions for—Validity.]—The holders of 690 shares in a company, upon which shares all calls then due had been paid, sent in requisitions to the directors of the company requesting them, in accordance with section 66 of the Companies (Consolidation) Act, 1908, to call an extraordinary general meeting. The issued share capital of the company was 22,357 shares, but it was admitted that the number of shares upon which all calls or other sums then due had been paid did not exceed 5,094:—*Held*, that the words "upon which all calls or other sums then due have been paid" in section 66, sub-section 1, refer to the "issued share capital," and therefore that the requisitions had been sent in by "the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due" had been paid, and that the directors were bound to call a meeting. For the purpose of satisfying the requirements of sub-section 2 of section 66 it is not necessary that the requisitions should be in identical form. *Fruit and Vegetable Growers' Association* v. *Kekewich*, 81 L. J. Ch. 499; [1912] 2 Ch. 52; 106 L. T. 1007; 19 Manson, 206; 56 S. J. 502; 28 T. L. R. 411—Warrington, J.

Statutory Meeting—Notice—Shares—Allotment as Fully Paid—Consideration.]—The T. company, a private company incorporated under the Companies (Consolidation) Act, 1908, entered into a contract with the L. company, under which the L. company assigned to it an agreement for a lease of a building site and undertook to build and equip a theatre thereon in consideration of

9,000*l.*, which was to be satisfied by the allotment to the L. company of 36,000 fully paid five-shilling shares in the T. company. The L. company went into voluntary liquidation before completing the theatre, and did not complete it, and the landlord re-entered upon the land, and the agreement for a lease was thereby terminated. The liquidator of the L. company agreed to sell to the defendants some of these 36,000 shares, and the agreement provided that the defendants might avoid it if it should be found that the requirements of the Companies (Consolidation) Act, 1908, had in any way been infringed by the T. company. The articles of the T. company provided for the holding of the statutory meeting within the statutory limit; they also provided that the notices convening general meetings should state the nature of the business to be transacted thereat. The T. company held only one meeting which could in point of date have been the statutory meeting, but the notice convening it referred only to the business of confirming a special resolution passed at an earlier meeting. The defendants eventually avoided the agreement to purchase the shares. In an action brought by the liquidator for specific performance they contended (*inter alia*) that the T. company had infringed section 65 of the Companies (Consolidation) Act, 1908, by not holding a statutory meeting, and that the building agreement with the L. company was *ultra vires* the T. company, inasmuch as it provided for the issuing of fully paid shares *in præsenti* in consideration of a contract to be carried out *in futuro*, and thereby substituted for the statutory liability of the shareholder in respect of payment for the shares an action sounding in damages only :—*Held*, that if the only meeting which in point of date could have been the statutory meeting was intended to be such, it was not properly convened for the purpose, since the notice convening it did not state it was to be the statutory meeting, and that the T. company never in fact held its statutory meeting; and that, inasmuch as it thereby failed to comply with section 65 of the Companies (Consolidation) Act, 1908, the defendants were justified in avoiding the contract to purchase the shares. *Gardner* v. *Iredale*, 81 L. J. Ch. 531; [1912] 1 Ch. 700; 106 L. T. 860; 19 Manson, 245—Parker, J.

Form of Notice of Special Resolution—Extraordinary Resolution.]—It is not necessary that the notice convening a meeting at which a special resolution is to be passed should state that such resolution is to be proposed as an extraordinary resolution. Subsection 2 (*a*) of section 69 of the Companies (Consolidation) Act, 1908, only refers to the passing of the resolution, not to the calling together of the meeting for the purpose of passing it. *Penarth Pontoon Shipway and Ship Repairing Co., Lim., In re*, 56 S. J. 124—Swinfen Eady, J.

—— **Misleading Notice of.**] — The defendant company held nearly all the shares in a subsidiary company. Four of the five directors of the defendant company were also directors of the subsidiary company. In 1907 the subsidiary company increased their directors' remuneration from 2,500*l.* a year to 2,500*l.* a year and a sum equal to 20 per cent. of the net profits, after paying 10 per cent. to the ordinary shareholders. The directors of the defendant company exercised its voting powers to pass the article giving this increased remuneration without obtaining the sanction of the shareholders of the defendant company. In 1914 the defendant company issued notice of an extraordinary general meeting to pass resolutions—first, ratifying the payments which had been made to the directors of the subsidiary company; and thirdly, to insert an article authorising their directors, as directors of subsidiary companies, to receive remuneration without accounting for it, and to exercise the voting power of the defendant company as they should think fit. The notice stated the article of the subsidiary company giving the increased remuneration, but gave no information as to the amount which had been received thereunder. At the meeting, the chairman stated that the directors' fees from the two companies since 1881 and 1883 had averaged 320*l.* per annum for each director. This statement was untrue. The total amount for fees and percentages received by the directors of the subsidiary company for the previous seven years was 44,876*l.* The resolutions were duly passed and confirmed as special resolutions. The plaintiff, a shareholder of the defendant company, in an action on behalf of himself and all other shareholders for a declaration that these special resolutions were not binding upon the defendant company, moved for an injunction to restrain the directors of the subsidiary company from acting upon them :—*Held*, that the notice was misleading and was not such a satisfactory statement of the facts as the shareholders were entitled to, and that the plaintiff could maintain the action without joining the company as plaintiff, and that the injunction must be granted. *Baillie* v. *Oriental Telephone and Electric Co.*, 84 L. J. Ch. 409; [1915] 1 Ch. 503; 112 L. T. 569; 31 T. L. R. 140—C.A.

Issue of New Shares — One Person a "Meeting."] — Where the memorandum and articles of a company provided that no new shares should be issued so as to rank equally with 10,000 original preference shares unless such issue was sanctioned by an extraordinary resolution of the holders, and all the preference shares passed at a separate "meeting" of such holders, and that a modification or variation of the rights of any class of shares might be effected when sanctioned by an extraordinary resolution of the holders of the shares of such class passed as a separate "meeting" of such holders, and all the preference shares were held by one person,—*Held*, that on the true construction of the memorandum and articles the sole preference shareholder could constitute a "meeting" to consent to a modification of the rights of preference shareholders. *Sharpe* v. *Dawes* (46 L. J. Q.B. 104; 2 Q.B. 26) and *Sanitary Carbon Co., In re* (12 L. J. N.C. 183; [1877] W. N. 223), distinguished. *East* v. *Bennett Brothers, Lim.*, 80 L. J. Ch. 123; [1911]

1 Ch. 163; 103 L. T. 826; 18 Manson, 145; 55 S. J. 92; 27 T. L. R. 103—Warrington, J.

Voting—Special Resolution.]—At an extraordinary general meeting of a company, convened to consider a proposed special resolution to reduce capital, the resolution was passed by less than the requisite statutory majority, but the minute of meeting bore that the chairman declared the resolution carried:—*Held*, that the resolution could not receive effect notwithstanding the terms of section 69 of the Companies (Consolidation) Act, 1908, as it was plain on the face of the proceedings that the resolution had not been carried by the requisite majority. *Clark & Co., In re*, [1911] S. C. 243—Ct. of Sess.

Resolutions — Mode of Putting.] — The putting of two resolutions before an extraordinary general meeting *en bloc* and not separately is irregular. *Blair Open Hearth Furnace Co.* v. *Reigart*, 108 L. T. 665; 57 S. J. 500; 29 T. L. R. 449—Eve, J.

Resolutions Carried on Show of Hands — Opposition by Owners of Majority of Shares—Joint Holdings—Inability to Demand Poll—Interlocutory Injunction.] — A company's articles provided that at general meetings resolutions were to be decided by a numerical majority of votes unless a poll was demanded by three members, and that when two or more persons were entitled to a share the one whose name stood first on the register should be the only one entitled to vote. The plaintiffs, who numbered more than three, held a majority of shares, and they opposed certain resolutions, which were, however, carried on a show of hands. Owing to some of the plaintiffs' shares being jointly held, they only counted as two persons, and so did not amount to the three persons necessary for the demand of a poll. The plaintiffs brought an action to restrain the carrying out of the resolutions, and asked for an injunction until the trial:—*Held*, that without prejudice to the question whether the plaintiffs would be entitled to an injunction at the trial, they should have an interlocutory injunction. *Cory* v. *Reindeer Steamship, Lim.*, 59 S. J. 629; 31 T. L. R. 530—Sargant, J.

IX. RECONSTRUCTION.

See also Vol. III. 1238, 2478.

Classes of Shareholders—Sale to New Company for Shares — Provision for Dissentient Shareholders.] —A scheme for reconstruction and arrangement as between the company and the various classes of members, which makes due provision for the rights of dissentient shareholders, may be sanctioned by the Court as well under section 120 as under section 192 of the Companies (Consolidation) Act, 1908. *Canning Jarrah Timber Co., In re* (69 L. J. Ch. 416; [1900] 1 Ch. 708), and *Tea Corporation, In re; Sorsbie* v. *Tea Corporation* (73 L. J. Ch. 57; [1904] 1 Ch. 12), followed. *General Motor Cab Co., In re* (81 L. J. Ch. 505; [1913] 1 Ch. 377), distinguished. *Sandwell Park Colliery Co., In re*, 83 L. J. Ch. 549; [1914] 1 Ch. 589; 110 L. T. 766; 21 Manson, 212; 58 S. J. 432—Astbury, J.

"Compromise or arrangement" — Sale of Assets to New Company—Payment in Shares of New Company—Power to Impose Scheme on Dissentient Shareholders — Sanction of Court.]—A scheme which provides that a new company should be formed to which the whole undertaking of an existing company is to be sold in consideration of the discharge by the new company of the debentures of the existing company and the allotment to the holders of shares in the existing company of shares in the new company, but without making any provision for dissentient shareholders of the existing company, is not a "compromise or arrangement" that can be sanctioned by the Court under section 120 of the Companies (Consolidation) Act, 1908. *Canning Jarrah Timber Co., In re* (69 L. J. Ch. 416; [1900] 1 Ch. 708), explained. *General Motor Co., In re* (*No.* 1), 81 L. J. Ch. 505; [1913] 1 Ch. 377; 106 L. T. 709; 19 Manson, 272; 28 T. L. R. 352—C.A.

Receiver in Debenture-holder's Action—Conditional Contract for Sale—Petition by Liquidator to Sanction Scheme of Arrangement—Summons by Receiver to Approve Conditional Contract of Sale.]—Where a company is in liquidation and a receiver has also been appointed in a debenture-holder's action, and where there is before the Court both a petition by the liquidator to sanction a scheme of arrangement and also a summons by the receiver to approve a conditional contract of sale,—*Held*, that one order can be made on the two applications. *Durham Collieries Electric Power Co., In re; Power* v. *The Company*, 57 S. J. 558—Neville, J.

Rights of Majority against Minority—Sanction of Court.] — Where there was no *mala fides* or fraud in a proposed scheme of reconstruction of a company, nor was it a sham or device, although the result would be that the majority of the shareholders would obtain control of the undertaking of the company and compel the minority to accept a cash payment in lieu of shares in a new company to which that undertaking was to be sold, it was *held* that the scheme was one that ought not to be interfered with by the Court. *North-West Transportation Co.* v. *Beatty* (56 L. J. P.C. 102; 12 App. Cas. 589) considered and applied. *Castello* v. *London General Omnibus Co.*, 107 L. T. 575—C.A.

Arrangement — Voluntary Liquidation — Sanction of Court—Form of Order.]—When it is desired to obtain the sanction of the Court to a scheme of arrangement under section 120 of the Companies Consolidation Act, 1908, the practice is to obtain upon originating summons an order convening the requisite meeting or meetings to consider the scheme; if the necessary majority is obtained, the sanction of the Court may then be sought on petition. Form of order, in the case of a company in voluntary liquidation, sanctioning a composition with creditors. *Clarke & Co., In re*, [1912] 1 Ir. R. 24—M.R.

Deceased Shareholder—"Member"—Rights of Executors not Registered as Members.]—The term "member" in section 192 of the Companies (Consolidation) Act, 1908, includes the estate of a deceased member; and, where due notice of the death and probate is given to the company, the executors, though not registered as members, are entitled to execute the right of dissent from a proposed reconstruction scheme which is given to members under sub-section 3. *Llewellyn* v. *Kasintoe Rubber Estates*, 84 L. J. Ch. 70; [1914] 2 Ch. 670; 112 L. T. 676; 21 Manson, 349; 58 S. J. 808; 30 T. L. R. 683—C.A.

Articles of Association — Effect of.] — The articles of association of a company provided that a "person entitled to a share in consequence of the death or bankruptcy of a member shall not be entitled to . . . exercise the rights and privileges of a member, unless and until he shall have elected to be and shall have been registered as the holder of the share":—*Held*, that the article in question did not interfere with the rights of deceased shareholders as such, but only with the rights of executors and others in a representative capacity to exercise the privileges of members in their own behalf. *Ib.*

James v. *Buena Ventura Nitrate Grounds Syndicate* (65 L. J. Ch. 284; [1896] 1 Ch. 456) applied. *Bowling and Wilby, In re* (64 L. J. Ch. 427; [1895] 1 Ch. 663), distinguished by Astbury, J. *Ib.*

X. RETURNS TO REGISTRAR OF COMPANIES.

Annual Returns — Summary in Form of Balance Sheet—Liabilities and Assets—Values of "Fixed assets"—Goodwill, Trade Marks, Machinery, Furniture, and Fixtures Included in one Item.]—The statement in the form of a balance sheet forwarded by the respondents, a public company, to the Registrar of Companies, in purported compliance with section 26, sub-section 3 of the Companies (Consolidation) Act, 1908, contained under the heading "Assets" the following entry: "Goodwill, trade marks, machinery, furniture and fixtures 100,007*l.* 16*s.* 5*d.*—Goodwill and trade marks at the sum at which they were taken over by the company. Machinery, furniture and fixtures at cost, less depreciation":—*Held*, that the statement in this form was defective, and did not comply with the requirements of section 26, sub-section 3, as it did not state separately the value of the goodwill and trade marks and the value of the machinery, furniture, and fixtures. *Galloway* v. *Schill, Seebohm & Co.*, 81 L. J. K.B. 852; [1912] 2 K.B. 354; 106 L. T. 875; 76 J. P. 298; 19 Manson, 199; 28 T. L. R. 400—D.

Per Lord Alverstone, C.J.: It was not a compliance with the requirements of the section to include in one item assets part of which was valued on one principle, and the remainder was valued on a different principle. *Per* Pickford, J.: It was not a compliance with the requirements of the section to include in one item tangible and intangible assets. *Ib.*

"Private company"—Articles of Association—Provision for Limitation of Number of Members to Fifty—Number of Members in Fact Exceeding Fifty—Failure to Forward to Registrar Audited Balance Sheet.]—Under section 121 of the Companies (Consolidation) Act, 1908, a "private company" is a company "which by its articles" (*inter alia*) limits the number of its members (exclusive of persons who are in the employment of the company) to fifty. Such a company does not cease to be a "private company," merely because the number of its members in fact exceeds fifty, so as to render the company liable to a penalty for not forwarding to the Registrar of Companies a statement in the form of a balance sheet audited by the company's auditors, as is required by section 26, sub-section 3, to be done by all companies except private companies. *Park* v. *Royalties Syndicate, Lim.*, 81 L. J. K.B. 313; [1912] 1 K.B. 330; 106 L. T. 185; 76 J. P. 93; 19 Manson, 97—D.

Restoration of Name to Register.]—Circumstances in which the Court made an order restoring the name of a company to the register on the solicitors for the petitioner undertaking forthwith to cause a petition for its winding-up to be presented. *Langlaagte Proprietary Co., In re*, 28 T. L. R. 529—Swinfen Eady, J.

XI. STOCKS AND SHARES.

1. Rights of Shareholders.

See also Vol. III. 1256, 2488.

Stock—Issue by Municipal Corporation—"Redeemable."]—By the Edinburgh Corporation Stock Act, 1894, the Corporation of Edinburgh, where they had any unexhausted statutory borrowing power, were authorised to exercise such power by the creation of redeemable stock; and by the Edinburgh Improvement and Tramways Act, 1896, the corporation, in addition to the powers contained in the Act of 1894, were authorised to create and issue a new class of stock to be "redeemable at the option of the Corporation at one and the same period to be fixed by the Corporation but not exceeding sixty years from the first issue of such stock." In pursuance of this power the corporation issued stock to a period of thirty years from May 15, 1897:—*Held*, that the corporation were not bound, on the application of the holders, to redeem the stock immediately on the expiration of that period, but had merely an option to do so. *Edinburgh Corporation* v. *British Linen Bank*, 82 L. J. P.C. 25; [1913] A.C. 133; [1913] S. C. (H.L.) 4; 107 L. T. 567; 29 T. L. R. 25—H.L. (Sc.)

Decision of the Extra Division of the Court of Session ([1912] S. C. 139) reversed. *Ib.*

Sale of Shares—Warranty—Breach—Warranty or Representation.]—The respondent asked the local manager of the appellants, a firm of rubber merchants, who had underwritten a large number of shares in a rubber and produce company then in the course of formation, whether his firm were bringing out

a rubber company. He replied that they were. The respondent then asked him whether the company was all right. The manager replied that his firm were bringing it out, to which the respondent rejoined that that was good enough for him. In answer to further enquiries the manager told the respondent that he could let him have 5,000 shares at a certain premium. The respondent agreed to take the shares, which were subsequently allotted to him. The shares having fallen in value, the respondent brought an action against the firm for fraudulent misrepresentation and for breach of warranty, the alleged warranty being that the company was a rubber company. The jury found that the company could not be properly described as a rubber company; that there was no fraudulent misrepresentation; but that the manager had given a warranty as alleged :—*Held*, that there was no evidence upon which the jury could properly find that the appellants gave any such warranty as alleged. *Heilbut, Symons & Co.* v. *Buckleton*, 82 L. J. K.B. 245; [1913] A.C. 30; 107 L. T. 769; 20 Manson, 54—H.L. (E.)

The *dictum* of Bayley, J., in *Cave* v. *Coleman* (7 L. J. (o.s.) K.B. 25; 3 Man. & Ry. 2), that a representation made verbally during the sale of a horse, being made in the course of dealing, and before the bargain was complete, amounted to a warranty, and that of A. L. Smith, M.R., in *De Lassalle* v. *Guildford* (70 L. J. K.B. 533, at p. 536; [1901] 2 K.B. 215, at p. 221), that in determining whether or not a representation was intended to amount to a warranty "a decisive test is whether the vendor assumes to assert a fact of which the buyer is ignorant, or merely states an opinion or judgment upon a matter of which the vendor has no special knowledge, and on which the buyer may be expected also to have an opinion and to exercise his judgment," cannot be supported—*per* Lord Moulton; the Lord Chancellor (Viscount Haldane) concurring. *Ib.*

Agreement to Sell Shares—Construction—"Timber."]—The respondent agreed to sell to the appellants at an agreed price shares in a saw mills company which had extensive rights of cutting timber over a large area of ground for long periods of time. The agreement contained a provision to the effect that the vendor was to give a satisfactory guarantee to the purchasers "that the quantity of timber on the different tracts of land as shewn by the statement . . . attached hereto . . . is true and accurate"; and in the event of the quantity of timber on the said various tracts failing, on verification, to reach the quantity represented in the attached statement, the vendor was to repay to the purchasers the amount of shortage :—*Held*, that the word "timber" must be held to mean all timber trees growing on the land which were reasonably fit for use in such a business as that carried on by the company, and should not be restricted to such trees as were at the date of the agreement capable of being felled and sold at a profit at the then current prices. *Swift* v. *David*, 107 L. T. 71—P.C.

2. Agreement to Take.

a. Underwriting Agreements.

See also Vol. III. 1334, 2494.

Prohibition of Payment of Commission—Private Company.]—The prohibition in section 89, sub-section 2 of the Companies (Consolidation) Act, 1908, of payment of commission by a company to any person in consideration of his subscribing or procuring subscriptions for shares in the company (except in the cases enumerated in sub-section 1), applies to private as well as to public companies. *Dominion of Canada General Trading and Investment Syndicate* v. *Brigstocke*, 80 L. J. K.B. 1344; [1911] 2 K.B. 648; 105 L. T. 894; 18 Manson, 369; 55 S. J. 633; 27 T. L. R. 508—D.

Underwriting Letter — Clause Allowing Variation—Material Variations in Prospectus as Drafted and as Settled and Published—Alteration of Risk — Discharge of Underwriters.]—The defendants signed an underwriting letter undertaking to apply for five hundred shares in a company which was being promoted. By clause 8 of the letter the obligation thereunder was to hold good notwithstanding any variation between the draft prospectus submitted to the defendants and the prospectus as finally settled and published. The draft prospectus stated that the minimum subscription on which the directors might proceed to allotment was 15,000*l.*, which had been underwritten at a commission of 5 per cent. thereon, and an overriding commission of 2½ per cent., payable by the company. The prospectus as finally settled and published stated that the minimum subscription was fixed by the articles of association at the nominal sum of 100*l.*, and that as 5,000 shares had been underwritten the directors would proceed to allotment, and it was considerably varied or altered from the draft prospectus in other respects :—*Held*, that, notwithstanding the provisions of clause 8 of the underwriting letter, the defendants were not bound to take up and pay for the shares, as the alterations made in the prospectus as finally published had created an essentially different risk from that which the defendants had undertaken. *Warner International and Overseas Engineering Co.* v. *Kilburn, Brown & Co.*, 84 L. J. K.B. 365; 110 L. T. 456; 30 T. L. R. 284—C.A.

Decision of Pickford, J. (29 T. L. R. 322), reversed. *Ib.*

—— Allotment of Shares by way of Commission—Death of Promoter before Completion of Contract — Personal Services — Validity of Contract.]—By an agreement dated November 30, 1912, a promoter agreed to form an English company to acquire the English trading rights of a French company and to place the ordinary shares of the English company at par by three fixed dates, in consideration whereof the French company agreed to sell these rights to the English company in terms of an agreed draft, and that the promoter should be at liberty to stipulate for

the issue to him of 5 per cent. of the ordinary shares of the English company fully paid. The capital of the English company was to be 105,000*l.* divided into 100,000 ordinary shares of 1*l.* each and 100,000 participation shares of 1*s.* each. By an agreement of December 9, 1912, the promoter agreed with the English company to procure the French company to sell the said rights to the English company in the terms of the agreed draft, in consideration of his being allotted 5,000 ordinary shares in the English company fully paid. By a second agreement of December 9, 1912, the French company agreed to sell the said rights to the English company in the terms of the agreed draft in consideration of receiving the 100,000 participation shares fully paid and 10 per cent. of the ordinary shares as and when subscribed, and upon the express condition that the ordinary shares were subscribed by the dates specified in the agreement of November 30, 1912. The English company was incorporated on December 10, 1912, with the above-mentioned capital and with the object of carrying out the two agreements of December 9, 1912, and by its articles was empowered to pay a commission not exceeding 10 per cent. to any person procuring subscriptions for its ordinary shares. The prospectus of the same date stated, "No underwriting commission has been or will be paid." It also stated the consideration which the French company were to receive and that the promoter was to be allotted 5,000 ordinary shares fully paid. The promoter placed the first lot and part of the second lot, but died in February, 1913, without having placed the remainder. The French company claimed to prove against his estate in bankruptcy for damages for breach of the agreement of November 30, 1912:—*Held*, that the agreement was not for personal services by the promoter and was enforceable against his estate. *Held*, also, that the three agreements did not form one tripartite agreement. *Semble*, that if they did they did not contravene section 89 of the Companies (Consolidation) Act, 1908. *Worthington, In re; Pathé Frères, ex parte*, 83 L. J. K.B. 885; [1914] 2 K.B. 299; 110 L. T. 599; 21 Manson, 119—C.A. Affirming, 58 S. J. 252—Horridge, J.

—— Liability of Executor — Remoteness of Damage.]—The liability on a contract to apply for shares under an underwriting agreement passes to the executors of the person contracting, as the contract is not one involving personal skill, and if the person contracting had notice that the object of the other party to the contract was that he might be enabled to perform another underwriting agreement the damages are not too remote to be recoverable. *Warner Engineering Co.* v. *Brennan*, 30 T. L. R. 191—D.

b. Payment.

See also Vol. III. 1340, 2497.

Shares not Paid for in Cash—Contract in Writing—Leave to File Memorandum with Registrar.]—The Court gave leave to file with the Registrar of Joint-Stock Companies a memorandum in writing specifying the consideration for which the seven signatories' shares in a company were issued in 1889, and ordered that on such memorandum being filed it should, in relation to such shares, operate as if it were a sufficient contract in writing within the meaning of section 25 of the Companies Act, 1867, and had been duly filed before the issue of such shares. *Wilkinson Sword Co., In re*, 57 S. J. 340; 29 T. L. R. 242—Swinfen Eady, J.

Payment in Advance of Calls — Loans — No Power to Repay.]—A company was authorised by its articles of association to receive from any member willing to advance the same all or any part of the moneys due upon his shares beyond the sums called for, and to pay interest thereon. The company issued ordinary shares on several occasions, on each issue the shareholders being given the option of paying the balance due on their respective shares in anticipation of calls, such balance to bear interest at 4 per cent. Some of the shareholders exercised this option:—*Held*, that the moneys so paid in advance of calls were not to be regarded as a loan to the company, and could not be repaid to the shareholders by the company. *London and Northern Steamship Co.* v. *Farmer*, 111 L. T. 204; 58 S. J. 594—Joyce, J.

Allotment as Fully Paid—Consideration.]—There is no objection to an agreement by a limited company that a debt which it presently owes shall be satisfied by the allotment of fully paid shares of the same nominal amount. If a building agreement between two companies can be read as a contract to build a theatre in consideration of 9,000*l.* payable upon the sealing of the agreement, with a provision that the 9,000*l.* should be satisfied by the issue of fully paid shares to that amount, it will be valid. *Gardner* v. *Iredale*, 81 L. J. Ch. 531; [1912] 1 Ch. 700; 106 L. T. 860; 19 Manson, 245—Parker, J.

3. Rescission of Agreement.

Misrepresentation by Director—Liability of Company for Misrepresentation.] — In an action by the plaintiff company for a call on 5,000 shares, the defendant denied liability, and counterclaimed a rescission of her contract to take shares and a return of the sum she had paid on her application for shares and on their allotment to her. In answer to questions left to them the jury found—first, that the defendant was induced to apply for shares by representations fraudulently made by one L., a director of the plaintiff company; secondly, that the representations were made both before and after the company had been incorporated and L. had become a director; and thirdly, that they were made for the purposes of the company and in its supposed interests. It appeared that after the formation of the company all the interested parties —directors and signatories—well knew that L. was continuing what he had been doing previously—namely, endeavouring to raise money on behalf of the company:—*Held* (Kennedy, L.J., dissenting), that in these circumstances L. was the agent of the com-

pany, that the company was bound by his acts, and that the defendant was entitled to judgment on the claim and counterclaim. *Hilo Manufacturing Co.* v. *Williamson*, 28 T. L. R. 164—C.A.

Unpaid Calls — Notice to Forfeit Shares — Practice — Interim Injunction to Restrain Forfeiture.]—Where the plaintiff in an action to rescind a contract to take shares in a company receives notice from the company that his shares are liable to be forfeited if a call in respect of them is not paid, he is entitled to an interim injunction until the trial of the action to restrain the company from forfeiting the shares. *Ripley* v. *Paper Bottle Co.* (57 L. J. Ch. 327) overruled. *Jones* v. *Pacaya Rubber and Produce Co.*, 80 L. J. K.B. 155; [1911] 1 K.B. 455; 104 L. T. 446; 18 Manson, 139—C.A.

4. Issue.

See also Vol. III. 1390, 2507.

Sale of Concession to Company—Payment by Fully Paid-up Shares of Issued Capital and Agreement to Allot Proportion of Future Issue of Shares as Fully Paid up—Validity.]—A limited company cannot for a fixed present consideration validly contract that an indefinite amount of future share capital shall from time to time be issued upon the terms that all liability thereon for calls shall be at once extinguished without any contemporaneous payment by the allottees. *Hong Kong and China Gas Co.* v. *Glen*, 83 L. J. Ch. 561; [1914] 1 Ch. 527; 110 L. T. 859; 21 Manson, 242; 58 S. J. 380; 30 T. L. R. 339—Sargant, J.

A company, registered under the Joint-Stock Companies Act, 1856, in consideration of receiving a concession for supplying gas, contracted in 1862 to allot to the vendor 400 shares of 10*l.* each of the company's capital and to provide 4,000*l.* to be immediately applied in paying up the 400 shares in full. It further agreed that if and whenever the company should increase its capital the company would allot to the vendor, his executors, administrators, or assigns, such further number of shares as should be equal to one fifth part of the increased capital so from time to time actually paid up, and would pay to the vendor or his executors, administrators, or assigns, a sum equal to the nominal amount of the shares so from time to time allotted to him or them, which sum or sums so paid should be immediately applied in paying up in full the shares so allotted. In an action raising the question whether such part of the agreement as referred to increases of capital was binding upon the company,—*Held*, that the agreement was valid in so far as it created an obligation to allot to the vendor, his executors, administrators, or assigns, one-fifth of the increased capital from time to time of the company, but that it was void, as being contrary to the requirements of the Joint-Stock Companies Act, 1856, in so far as it purported to relieve the allottee or allottees from liability to pay up all or any part of the nominal amount of such share capital. *Wragg, Lim., In re* (66 L. J. Ch. 419; [1897] 1 Ch. 796), considered and distinguished. *Ib.*

Issue to "company or to its nominees"—Exercise of Option.]—A company sold its business, and all its assets, except uncalled capital, to another company, and the latter company agreed to issue to the former or to its nominees certain shares which were to be in a precisely corresponding position as the shares of the selling company in respect of being fully paid or of having an uncalled liability. The purchasing company purported to issue the shares, on most of which there was a large liability, to the selling company without giving it an opportunity of naming any nominees:—*Held*, that the allotment of the shares in these circumstances was not warranted. *National Standard Life Assurance Corporation, In re*, 27 T. L. R. 271—Swinfen Eady, J.

Power to Convert Shares into Stock—Direct Issue of Stock—Issue of Stock at a Discount—Reduction of Rate of Interest on Preference Shares—Issue of Bonus Stock to Compensate for Reduction—Validity of Issues.]—A company, which had power to convert its paid-up shares into stock, created new fully paid stock that had not thus been converted from shares, and issued it directly for equivalent valuable consideration to a certain class of its members. To another class of its members it issued stock directly, only 50 per cent. of which was paid up. It also, as part of a scheme for the re-adjustment of its capital, issued directly a certain amount of new fully paid-up stock as a bonus to certain of its preference shareholders in order to compensate them for the loss that they would otherwise have incurred by the reduction of the former rate of interest on their preference shares. A considerable period (amounting in the case of the 50 per cent. paid-up stock to at least twelve years) had elapsed since the commission of these irregularities, and dividends had been paid on all the various kinds of stock. The company was afterwards voluntarily wound up, and a sum of money remained for division among its members after the payment of all its creditors:—*Held*, that the direct issue for equivalent valuable consideration of new fully paid-up stock, though irregular in form, was substantially the same as a prior issue of fully paid-up shares and their subsequent conversion into stock; and that this irregularity had been waived by lapse of time, so that the stock was now entitled to rank in the distribution of assets exactly as though it had been first issued as shares and then converted. *Held*, however, that the issue of the 50 per cent. paid-up stock was *ultra vires* the company, and thus wholly invalid, and that its holders could now, accordingly, neither be called on to contribute the remaining 50 per cent., nor share in the distribution of the assets of the company. *Held* also, that its holders could not now claim as creditors in the winding-up for the return of the money that they had actually paid, inasmuch as any claim that they might otherwise have had was now barred by the Statute of Limitations. *Home and Foreign Invest-*

ment and Agency Corporation, In re, 81 L. J. Ch. 364; [1912] 1 Ch. 72; 106 L. T. 259; 19 Manson, 188; 56 S. J. 124—Swinfen Eady, J.

Semble, whether it would not anyhow be now too late for them to assert any such claim (whatever might otherwise be its validity), having reference to the fact that the claims of creditors had already been dealt with in the winding-up. *Ib.*

Held, further, that the issue of the bonus stock was wholly *ultra vires* the company, and that its holders were now neither liable to be called upon to pay for it, nor entitled to share in the distribution of assets, on the footing that they held a corresponding number of shares in the company. *Ib.*

Issue of Shares to Directors at a Price Below their True Value—Resolution of the Company—Right of Directors to Vote.]—By a resolution passed at an extraordinary general meeting of the company, it was resolved that certain unissued shares should be issued to the directors at par, though the true value of the shares was much greater. The directors held a majority of the shares in the company, and the resolution was carried by their votes:—*Held*, that, although the value of the portion of the assets of the minority was decreased and the value of the portion of the assets of the majority was increased by an amount greater than the sum paid for the new shares, the resolution was binding on the minority and could not be set aside. *Ving* v. *Robertson & Woodcock, Lim.*, 56 S. J. 412—Warrington, J.

Allotment of Shares at a Discount—Certificate Stating that Shares Fully Paid.]—The partners in a foundry, with the object of forming a syndicate to acquire the business, obtained deposits of sums of money from a number of persons. The project of forming the syndicate having failed, the partners floated a limited company, proposed to the depositors that their deposits should be applied in taking shares, and offered to each of them a number of shares in proportion to, but of greater face value than, the amount of his deposit. The company having gone into liquidation, one of the depositors who had been allotted shares and had received from the company share certificates which stated that the shares allotted to him were fully paid, though in fact they were not, was sued by the liquidators for the price of his shares:—*Held*, that as the defender had accepted the shares in *bona fide* reliance on the statements in the certificates that they were fully paid, the company was barred from maintaining that they were not fully paid. *Penang Foundry Co.* v. *Gardiner*, [1913] S. C. 1203—Ct. of Sess.

Irregular Issue.]—(1) The irregularity committed by a company in issuing fully paid stock without first issuing shares is an irregularity which does not affect the real substance of the transaction, and will not in equity be held to avoid the transaction, but can be ignored, and the stock will accordingly be deemed to have been properly issued. (2) A company in certain circumstances has power to convert its shares into stock. (3) The issue of bonus shares being wholly *ultra vires* in this case such shares were treated as non-existent, and the holders thereof were accordingly neither liable to pay calls thereon nor entitled to rank as creditors against the company. *Home and Foreign Investment and Agency Co., In re*, 56 S. J. 124—Swinfen Eady, J.

5. Calls.

See also Vol. III. 1398, 2510.

Making Calls on Certain Members Exclusively of Others — Validity — Difficulty of Recovering Previous Calls—Implied Equality between Members.]—There is *prima facie* an implied condition of equality between shareholders in a company, and it is *prima facie* entirely improper for directors to make a call on part of a class of shareholders without making a similar call on all the members of that class. *Preston* v. *Guyon* or *Grand Collier Dock Co.* (10 L. J. Ch. 73; 11 Sim. 327) followed. *Galloway* v. *Hallé Concerts Society*, 84 L. J. Ch. 723; [1915] 2 Ch. 233; 59 S. J. 613; 31 T. L. R. 469—Sargant, J.

Even if under the articles of association calls can be so made, the power is exercisable only in a proper case; and the fact that the members in question have been dilatory in paying previous calls, and have caused the company trouble and expense in enforcing them, is not a sufficient reason. *Ib.*

Unpaid Calls—Winding-up—Bank Overdraft of Company—Director's Personal Guarantee—Payments under Guarantee — Satisfaction of Future Calls — Set-off.]—The director of a company agreed to obtain an overdraft from a bank, in favour of the company, upon his personal security. The board passed a resolution that any payments made by the director under his guarantee might be treated by him as payments in advance of any future calls upon his shares. The company going into liquidation, the director paid the amount of the overdraft:—*Held*, that a claim by the director to deduct the payment made by him from calls against him made by the liquidator was indistinguishable from a claim to set off debts against calls, and was inadmissible. *Paraguassu Steam Tramroad Co., In re; Black & Co.'s Case* (42 L. J. Ch. 404; L. R. 8 Ch. 254), discussed and followed. *Law Car and General Insurance Corporation, In re* (*No.* 1), 81 L. J. Ch. 218; [1912] 1 Ch. 405; 106 L. T. 180; 19 Manson, 152; 56 S. J. 273—Neville, J.

6. Preference Shares.

See also Vol. III. 1432, 2515.

Right to Participate in Profits—Articles of Association—Construction.]—The articles of association of the respondent company provided that "subject to any priorities which may be given upon the issue of any new shares, the profits of the company available for distribution shall be distributed as dividend among the members in accordance with

the amounts paid on the shares held by them respectively." In accordance with a power given by the articles of association fully paid preference shares were issued entitled to a cumulative preference dividend at the rate of 10 per cent., to rank both as regards capital and dividend in priority to the other shares. In an action brought by a preference shareholder for a declaration that the preference shares were entitled to rank for dividend *pari passu* with the ordinary shares in the distribution of any profits of the company, after providing for a cumulative dividend of 10 per cent. on the ordinary shares,—*Held*, that upon the true construction of the articles of association the preference shareholders were not entitled to anything beyond a cumulative dividend of 10 per cent. *Will* v. *United Lankat Plantations Co.*, 83 L. J. Ch. 195; [1914] A.C. 11; 109 L. T. 754; 21 Manson, 24; 58 S. J. 29; 30 T. L. R. 37—H.L. (E.)

Judgment of the Court of Appeal (81 L. J. Ch. 718; [1912] 2 Ch. 571) affirmed. *Ib.*

Uncapitalised Surplus — Distribution as between Preference and Ordinary Shares after Return of Paid-up Capital.]—The express gift or attachment to preference shares, on their creation, of preferential rights, whether in respect of dividend or return of capital, is *prima facie* a definition of the whole of their rights in these respects, and negatives any further or other right to which, but for the specified rights, they would have been entitled. The canon of construction applied in *Will* v. *United Lankat Plantations Co.* (81 L. J. Ch. 718; [1912] 2 Ch. 571) to the rights of preference shares with regard to dividend applied to the rights of such shares in a winding-up. *Espuela Land and Cattle Co., In re* (78 L. J. Ch. 729; [1909] 2 Ch. 187), discussed and distinguished. *National Telephone Co., In re*, 83 L. J. Ch. 552; [1914] 1 Ch. 755; 109 L. T. 389; 21 Manson, 217; 58 S. J. 12; 29 T. L. R. 682—Sargant, J.

7. Certificate.

See also Vol. III. 1441, 2517.

Estoppel.] — A partnership applied to a limited company for the allotment to them of a thousand shares, and forwarded a cheque in satisfaction of all existing and future calls in respect of these shares. This cheque, however, was wrongly credited in the books of the company, without the knowledge and consent of the partnership, in part payment of four thousand shares allotted to a promoter of the company. Subsequently a member of the partnership was elected a director of the company; and after his election a certificate for a thousand fully paid-up shares was issued to the partnership. This certificate was signed by the director who was also a member of the partnership; and the numbers of the shares comprised in this certificate were identical with the numbers of one thousand out of the four thousand shares already allotted (as partly paid up) to the promoter of the company. Ultimately these last thousand shares were transferred by the promoter to the partnership. These particular thousand shares were entered on the register of the company as being only partly paid up. The company having been wound up, and the partnership having been placed on its list of contributories as the owners of one thousand shares only partly paid up,—*Held*, that the company was estopped by the certificate issued to the partnership (in which the shares were described as being fully paid up) from now setting up that the shares were not in fact fully paid up; and this in spite of the facts that one of the directors who signed the certificate was also a member of the partnership; that (had he investigated the books of the company) he might have discovered the actual facts of the case, and that the partnership had subsequently accepted from the promoter the transfer of the thousand shares in question. *Coasters, Lim., In re*, 80 L. J. Ch. 89; [1911] 1 Ch. 86; 103 L. T. 632; 18 Manson, 133—Neville, J.

"Default or unnecessary delay" in Registering Transfer—Company on Eve of Liquidation.] — A holder of shares in a limited company executed a transfer of his shares, and forwarded it to the company with a request that it should be registered. The transfer was received and acknowledged by the company two days afterwards. On the day on which the transfer was dispatched the company sent a notice to the transferor intimating that a general meeting of the company was to be held ten days later for the purpose of considering a resolution that the company should be wound up in respect that by reason of its liabilities it was unable to continue its business. At the general meeting it was resolved that the company should be wound up, and as the directors had not removed the shareholder's name from the register his name was included by the liquidator in the list of contributories. The shareholder having presented a petition under section 32 of the Companies Act, 1908, for rectification of the register by removal of his name therefrom, and also for removal of his name from the list of contributories, the Court *refused* the petition, holding that the directors had not been guilty of default or unnecessary delay in refraining from removing his name from the register. *Dodds* v. *Cosmopolitan Insurance Corporation*, [1915] S. C. 992—Ct. of Sess.

Opinions expressed that, in the circumstances, the directors would have committed a grave breach of duty if they had removed the petitioner's name from the register. *Ib.*

8. Dividends.

See also Vol. III. 1452, 2521.

Different Classes of Shareholders—Different Maximum Rates—Making up Deficiencies of Previous Dividends—Preserving Proportions of Rates.] — Section 75 of the Waterworks Clauses Act, 1847, and the other sections following it and relating to the payment of dividends, have reference to the maximum amount which a company may distribute in dividend, and have no reference to the rights of shareholders *inter se*. *Weymouth Waterworks Co.* v. *Coode*, 81 L. J. Ch. 11; [1911]

2 Ch. 520; 104 L. T. 587; 18 Manson, 385—Parker, J.

A waterworks company was incorporated by Acts of 1797 and 1855, the later Act incorporating the Waterworks Clauses Act, 1847, and authorising the issue of a capital of 40,000*l.* The Act did not prescribe any maximum rate of dividend. By an Act of 1897 the company was authorised to raise additional capital to the amount of 60,000*l.* The Act provided that, except as otherwise in it provided, the new capital and its holders were to be subject and entitled to the same liabilities, rights, and privileges as if it were part of the existing capital; but the Act contained a provision limiting the dividend on the new capital to 5 per cent. per annum unless a larger dividend should at any time be necessary to make up deficiencies of previous dividends. There were such deficiencies on both classes of capital, and an anticipated annual surplus available towards making them up:—*Held*, that in making up deficiencies the company must preserve between the total amounts paid by way of back dividends to the holders of the two classes of capital the proportion of 10 per cent. and 5 per cent. prescribed by section 75 of the Waterworks Clauses Act, 1847, and the Act of 1897, as the maximum dividends on the two classes respectively, until all the arrears were wiped off. *Ib.*

Bonus Dividend out of Reserve Fund—Issue of New Shares—Option to Take New Shares or Retain Dividend—Capital or Income—Intention of Company.]—A limited company distributed its reserve fund, consisting of undivided profits, amongst its shareholders by means of a bonus dividend. The shareholders had the option of retaining the dividend or applying it in the purchase of new shares of the company. The intention of the company was, however, that the dividend should be applied in taking up the new shares, and should not be retained. Trustees had trust moneys invested in the company. They had no power to invest in the new shares, but they applied their dividend in purchasing them pending a decision as to whether, as between tenant for life and remainderman, it was capital or income:—*Held*, that the bonus dividend was capital, the intention of the company being the deciding factor, notwithstanding the option given to the shareholders. *Held*, further, that, as between tenant for life and remainderman, trustee shareholders have no option, but must take the greatest benefit offered by the company. *Boueh* v. *Sproule* (56 L. J. Ch. 1037; 12 App. Cas. 385) followed. *Evans, In re; Jones* v. *Evans*, 82 L. J. Ch. 12; [1913] 1 Ch. 23; 107 L. T. 604; 19 Manson, 397; 57 S. J. 60—Neville, J.

9. Forfeiture.

See also Vol. III. 1469, 2526.

Non-payment of Calls — Forfeiture — Complaining Shareholder Himself Party to Forfeiture—Lapse of Time.]—A shareholder who is a director and present at and party to proceedings by which his shares were declared to be forfeited for non-payment of calls cannot after the lapse of several years dispute the validity of the forfeiture, or be heard to complain of the informality of notice or other irregularity connected with the forfeiture. *Jones* v. *North Vancouver Land and Improvement Co.*, 79 L. J. P.C. 89; [1910] A.C. 317; 102 L. T. 377; 17 Manson, 349—P.C.

Interim Injunction to Restrain Forfeiture.]—*See Jones* v. *Pacaya Rubber and Produce Co.*, *ante*, col. 295.

10. Lien of Company.

See also Vol. III. 1535.

"Holder" of Shares—Person Owning Right in Shares, but not on Register.]—The articles of association of a limited company stated that the company should have a lien on shares for debts due to it by "the holder" of the shares. A shareholder, in security for debts due by him to two banks, transferred to nominees of the banks certain shares of which he was the registered holder, and they were registered in the names of the banks' nominees; and he also purchased certain other shares and registered them in the names of the same nominees. After the shareholder's death his estates were sequestrated. The banks, having recovered payment of the debts due to them from other securities, were prepared to transfer the shares in question to the trustee in the sequestration, whereupon the company claimed a lien over the shares in respect of a debt due to it by the deceased:—*Held*, that "holder" in the articles of association meant "registered holder"; and, as the deceased was not the registered holder of the shares, that the company had no lien over them for his debt. *Paul's Trustee* v. *Justice*, [1912] S. C. 1303—Ct. of Sess.

11. Surrender.

See also Vol. III. 1484, 2528.

Surrender of Fully Paid Shares—Terms as to Re-issue — Issue of New Shares in Exchange.]—A company can accept, on terms which permit of their being re-issued, a surrender of fully paid shares, and can issue in exchange other shares credited as fully paid up. *County Palatine Loan and Discount Co., In re; Teasdale's Case* (43 L. J Ch. 578; L. R. 9 Ch. 54), and *Eichbaum* v. *City of Chicago Grain Elevators, Lim.* (61 L. J. Ch. 28; [1891] 3 Ch 459), followed. *Bellerby* v. *Rowland and Marwood's Steamship Co.* (71 L. J. Ch. 451; [1902] 2 Ch. 14) distinguished. *Rowell* v. *Rowell & Son, Lim.*, 81 L. J. Ch. 759; [1912] 2 Ch. 609; 107 L. T. 374; 19. Manson, 371; 56 S. J. 704—Warrington, J.

12. Mortgage of Shares.

See also Vol. III. 1498, 2530.

Pledge of Certificates — Blank Transfer — Estoppel.]—The plaintiff employed a firm of stockbrokers to buy for him shares in a Colonial railway, and the brokers did so. The shares were registered in the name of one H., the certificates were in his name, and the

transfers on the back had been signed by him in blank. On the brokers' suggestion the plaintiff left the certificates with them and subsequently consented to the shares being put into other names. The brokers deposited the shares with the defendant bank as security for loans, and at the broker's request the shares were put in the names of the bank's nominees. The defendant bank took the shares in good faith. In an action by the plaintiff against the defendant bank to recover the share certificates :—*Held*, that the bank was not put upon enquiry by the mere fact of the brokers depositing the shares as security for their own account; that the transfer from H.'s name was not an intimation to the bank that the shares did not belong to the brokers and did not put the bank upon enquiry; that the principle of *Colonial Bank* v. *Cady* (60 L. J. Ch. 131; 15 App. Cas. 267), that any one who signs a transfer on a certificate in blank and hands it to another person knows that third persons would think that that person had authority to deal with it, extends to a person who without having had such a certificate in his possession leaves it in the hands of his broker, and that therefore the plaintiff was estopped from recovering the certificates from the defendants. *Fuller* v. *Glyn, Mills, Currie & Co.*, 83 L. J. K.B. 764; [1914] 2 K.B. 168; 110 L. T. 318; 19 Com. Cas. 186; 58 S. J. 235; 30 T. L. R. 162—Pickford, J.

XII. PROCEEDINGS AGAINST.

See also Vol. III. 1633, 2540.

Sale of Goods—Limited Company—Order—Name of Company not Mentioned — Personal Liability—"Holder of order for goods."]—By section 63, sub-section 3 of the Companies (Consolidation) Act, 1908, if any person, on behalf of a limited company, signs on behalf of the company any bill of exchange or order for goods, wherein its name is not mentioned, he shall be personally liable to the "holder" of such bill of exchange or order for goods :—*Held*, that, though the word "holder" was not appropriate to orders for goods, as it was in the case of bills of exchange, it meant in the case of orders for goods the person to whom the orders had been given. *Civil Service Co-operative Society* v. *Chapman*, 30 T. L. R. 679—Bankes, J.

Action by Shareholder against Director and Company — Contract made by Director for Work to be done by the Company—Retention of Money Received — Agreement with Co-directors not to Account — Internal Management.]—The managing director of a limited company carrying on a laundry business entered into contracts for laundry work in his own name, on behalf of the company, with a customer. The work was done by the company, and the director received the amounts due under the contracts, and paid over a portion to the company, but did not account for the amounts received by him. This was in consequence of an alleged arrangement with his co-directors that he was not to account for profits. The company declined to call upon the director for an account, whereupon two shareholders brought an action against the company and the director, claiming that the director was a trustee for the company of all moneys received under the contracts, and asking for an account. The company pleaded that the complaint was conversant with a matter of internal management, over which the Court had no jurisdiction. The defence of the director was that if there was any cause of complaint against him, which he did not admit, it was only enforceable at the suit of the company :—*Held*, that the transaction was illegal and *ultra vires*, and that the action was maintainable and the plaintiffs entitled to the relief sought. *Cockburn* v. *Newbridge Sanitary Steam Laundry Co.*, [1915] 1 Ir. R. 237—C.A.

Sequestration against Company.] — *See* CONTEMPT OF COURT.

XIII. WINDING-UP BY COURT.

1. THE COURT.

See also Vol. III. 1667, 2543.

Jurisdiction to Transfer Action in King's Bench Division to Chancery Division—Discretion.] — Rule 42 (1) of the Companies (Winding-up) Rules, 1909, provides that "Where an order has been made in the High Court for the winding-up of a company the Judge shall have power, without further consent, to order the transfer to him of any action, cause or matter pending in any other Court or Division brought or continued by or against the company." Certain shareholders of a company brought an action in the King's Bench Division to set aside an agreement of compromise entered into between the plaintiffs and the defendant company and its directors, upon the ground that it had been obtained by fraud and misrepresentation, and for other relief. The company was subsequently ordered to be compulsorily wound up, and, the liquidator having applied that the action should be transferred to the winding-up Judge in the Chancery Division, the Judge, being of opinion that he had jurisdiction under rule 42 (1) to do so, although the directors were added as defendants, ordered the action to be transferred to him. On appeal by the plaintiffs from that order,—*Held*, that the object of rule 42 being to give to the winding-up Court control over the whole assets of a company, the Judge had jurisdiction to make the order in question, and that, as it was in the circumstances a proper one, the Court of Appeal would not interfere with the discretion exercised by the Judge. *Pacaya Rubber and Produce Co., In re*, 82 L. J. Ch. 134; [1913] 1 Ch. 218; 108 L. T. 21; 20 Manson, 37; 57 S. J. 143; 29 T. L. R. 129—C.A.

Leave to Commence Fresh Action in Scotland—Fruits of Previous Action.]—Leave was granted under section 142 of the Companies (Consolidation) Act, 1908, to the applicants to bring a fresh action in Scotland after the winding-up order had been made, when it was shewn that such fresh action was in reality only a method of obtaining the fruits of a previous action. *National Provincial Insurance Corporation, In re; Cooper* v. *The Corporation*, 56 S. J. 290—Swinfen Eady, J.

Jurisdiction of County Court — Proceedings in Wrong Court.]—At the date of the presentation of a petition in the Southsea County Court for the winding up of a company, and for the greater part of the six months preceding that date, the company's registered office was in London. All its assets were in Portsmouth, and the office of the company had been there for a considerable time during the six months preceding the petition for winding-up :—*Held*, that by virtue of sub-section 7 of section 131 of the Companies (Consolidation) Act, 1908, the Judge of the Southsea County Court had jurisdiction to hear the petition. *Southsea Garage, in re*, 55 S. J. 314; 27 T. L. R. 295—D.

2. Companies which may be Wound up.

See also Vol. III. 1668, 2544.

Unregistered Friendly Society — "Unregistered company."]—A friendly society which has not been registered under the Friendly Societies Acts or any other Acts may be compulsorily wound up by the Court as "an unregistered company" under the Companies Consolidation Act, 1908, ss. 267 and 268, and an order will be made, if a great majority of members desire it, although an action is pending in which the society could be wound up. *Victoria Society, Knottingley, In re*, 82 L. J. Ch. 176; [1913] 1 Ch. 167; 107 L. T. 755; 20 Manson, 76; 57 S. J. 129; 29 T. L. R. 94—Neville, J.

3. Petition.

See also Vol. III. 1680, 2546.

Company's Name, Slight Error.]—Although it is an old-standing rule that an error in the name of a company in the winding-up advertisement renders the advertisement absolutely void, and although it is desirable that in almost every case this old-standing rule should be adhered to, there are cases where the mistake is of such a very trifling character that no one could possibly be misled by it, and in such a case the Court can exercise the discretion of waiving the formal defect under rule 217. *L'Industrie Verrière, Lim., In re*, 58 S. J. 611—Astbury, J.

Discretion — Emergency Powers. — Where the only assets of a company are unrealisable owing to the war, and a judgment creditor presents a petition to wind up the company, no creditors opposing the petition, an order to wind up the company was made, the Court deciding that it had no discretion under the circumstances, and that the Courts (Emergency Powers) Act, 1914, was not applicable; therefore the petitioner was entitled to the order *ex debito justitiæ*. *Company* (0,022 *of* 1915), *In re*; *Company* (0,023 *of* 1915), *In re* (84 L. J. Ch. 382; [1915] 1 Ch. 520), applied. *Western of Canada Oil, Lands, and Works Co., In re* (43 L. J. Ch. 184; L. R. 17 Eq. 1, 7), followed. *Globe Trust Lim., In re*, 84 L. J. Ch. 903; 113 L. T. 80; 59 S. J. 529; 31 T. L. R. 280—Astbury, J.

Opposition of Minority of Creditors — Opponents Interested in Preservation of Company.]—A petition to wind up a company on the ground of its inability to pay its debts ought not to be refused or ordered to be stayed until after the war merely because it is opposed by creditors representing a minority in amount, and the less weight should be given to the wishes of such creditors where it appears that they are interested in preventing a forced realisation of the assets of the debtor company. *Oilfields Finance Corporation, In re*, 59 S. J. 475—C.A.

Majority of Unsecured Creditors Opposing—Business Carried on by Debenture-holder — "Just and equitable."] — The Court is not bound to exercise its discretion by refusing to make a winding-up order merely on the ground that a majority in number and value of creditors oppose the petition. *Clandown Colliery Co., In re*, 84 L. J. Ch. 420; [1915] 1 Ch. 369; 112 L. T. 1060; [1915] H. B. R. 93; 59 S. J. 350—Astbury, J.

A creditor's petition against a colliery company was supported by three trade creditors, their debts amounting to 485*l.*, but was opposed by the company, the chairman, and sixteen other trade creditors whose debts amounted to 1,169*l.* The evidence shewed that creditors had been induced by the company to part with goods without being aware of the company's insolvency. The business had been for some time carried on in the interests of the chairman, who held debentures covering all the assets. No reasons for their opposition were given by creditors opposing the petition. :—*Held*, following *Melson & Co., In re* (75 L. J. Ch. 509; [1906] 1 Ch. 841), that it was "just and equitable" under section 129, sub-section vi. of the Companies (Consolidation) Act, 1908, that a winding-up order should be made. *Ib.*

Dismissal of Petition—Creditors' Opposition —Proposed Scheme.]—A petition for the compulsory winding up of a company was dismissed by the Court on the ground that it was opposed by nearly all the creditors and that a reconstruction scheme was in course of preparation, and an order for the petition to stand over might interfere with the company's chances of obtaining the capital it required. *East Kent Colliery Co., In re*, 30 T. L. R. 659—Astbury, J.

4. Proceedings under Winding-up Order.

See also Vol. III. 1752, 2555.

"Execution" — Taxed Costs — Emergency Powers.]—An order for compulsory winding-up is not an execution within the meaning of section 1, sub-section (1) (*a*) of the Courts (Emergency Powers) Act, 1914, nor are taxed costs a sum of money within the meaning of the latter part of sub-section (*b*) of that section to which the Act applied. *World of Golf, Lim., In re*, 59 S. J. 7—Neville, J.

Director — Refusal to Answer Question at Examination before Registrar—Obligation to Answer.]—In winding-up proceedings against a company of which he had been a director, the respondent refused to answer a question

at his examination before the Registrar relating to a statement in the prospectus. The respondent objected to answer on the ground that there were certain actions pending against him alleging misrepresentation in the prospectus, and that he ought not to be called upon to answer any questions relating to the issues in those actions. On report by the Registrar, under rule 72 of the Winding-up Rules, of such refusal to answer,—*Held*, that the respondent was bound to answer, as in the circumstances there was no reasonable risk of any information obtained being improperly used, and the mere fact that proceedings were pending against the respondent by shareholders was no reason why he should refuse to answer. *Reliance Taxicab Co., In re*, 28 T. L. R. 529—Swinfen Eady, J.

5. Assets.

See also Vol. III. 1763, 2559.

Guarantee of Dividend — Winding-up — Security—Deposit of Part of Purchase Money —General Assets.]—Where on the sale of a business to a company a contract was entered into whereby the vendors guaranteed that the net profits of the purchasing company in respect of the business should amount to not less than 10 per cent. per annum upon the paid-up capital of the shares subscribed for by the public, and the purchasing company paid a sum equal to 10 per cent. upon the total amount of the shares subscribed as aforesaid into a bank to form a guarantee fund, such sum to be deemed as a payment on account of the purchase money,—*Held*, on the winding-up of the purchasing company, that the guarantee fund formed part of the general assets of the purchasing company. *South Llanharran Colliery Co., In re; Jegon, ex parte* (12 Ch. D. 503), distinguished. *Menell, Lim., In re; Regent Street Fur Co.* v. *Diamant*, 84 L. J. Ch. 593; [1915] 1 Ch. 759; 113 L. T. 77; [1915] H. B. R. 141; 31 T. L. R. 270—Warrington, J.

Surplus Assets — Division among Different Classes of Shareholders—Voluntary Winding-up.]—Where preference shares are given with a fixed preferential dividend at a specified rate, or with an express provision as to the right to a return of their paid-up capital, the right to take any further dividend or to a further share in surplus assets is in effect negatived. *National Telephone Co., In re*, 109 L. T. 389; 58 S. J. 12; 29 T. L. R. 682—Sargant, J.

The term "surplus assets" used in articles of association, in itself ambiguous, means, in the case of division in a winding-up between different classes of shares without reference to the nominal amounts or to the amounts paid on the shares, assets remaining after recouping capital as well as discharging debts and costs of liquidation, unless there be special words in the articles indicating that such is not the intention. *Ramel Syndicate, In re*, 80 L. J. Ch. 455; [1911] 1 Ch. 749; 104 L. T. 842; 18 Manson, 297—Neville, J.

6. Stay of Actions and Proceedings.

See also Vol. III. 1777, 2565.

A pursuer, without having obtained the leave of the Court, brought an action against a company in liquidation, and also against the liquidator and certain secured creditors. Decree in absence was granted against the company and the liquidator. The secured creditors were the only defenders who appeared, and they did not plead on record any objection to the competency of the action. In an appeal at the instance of the secured creditors:—*Held*, that as the company and the liquidator had waived any objection to the competency, it was not *pars judicis* for the Court to enforce the provisions of section 142 of the Companies (Consolidation) Act, 1908, which enacts that "when a winding-up order has been made, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose." *Hill* v. *Black*, [1914] S. C. 913—Ct. of Sess.

Distress Three Days before Commencement of Winding-up—Motion to Restrain Sale.]—A limited company held their business premises on lease for fourteen years, commencing June 25, 1914, which provided that the rent should be payable each year fifteen months in advance. The rent due March 25, 1915, for the period June 25, 1915, to June 25, 1916, was not paid, and on July 2, 1915, the landlord levied a distress on the premises. On July 5, 1915, the company went into voluntary liquidation. The liquidator brought an action to restrain the landlord from proceeding with the distress:—*Held* (affirming Neville, J.), that there were no special reasons rendering it inequitable to allow the landlord to enforce his legal right of distress. *Venner's Cooking and Heating Appliances, Lim.* v. *Thorpe*, 84 L. J. Ch. 925; [1915] 2 Ch. 404; 60 S. J. 27—C.A.

Costs.]—Where, under section 140 of the Companies (Consolidation) Act, 1908, an application is made by notice of motion to stay an action against a company on the ground that a petition has been presented for its winding-up, the plaintiff in the action is entitled to receive from the applicant his costs of appearing in the action. *Pierce* v. *Wexford Picture House Co.*, [1915] 2 Ir. R. 310—K.B. D.

7. Contributories.

See also Vol. III. 1812, 2566.

Company Limited by Guarantee and not having its Capital Divided into Shares — Mutual Insurance—Past Members—Liability of, to Contribute in Winding-up.]—Where a company limited by guarantee and not having its capital divided into shares is being wound up, section 123, sub-section 1 (iii.) of the Companies (Consolidation) Act, 1908 (which replaces section 38, sub-section 3 of the Companies Act, 1862), applies, and past members are not liable to contribute unless it appears

to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of the Act. Accordingly it is proper for the liquidator to prepare separate lists of past and present members, and not to include both in one list of contributories. *Premier Underwriting Association, In re; Great Britain Mutual Marine Insurance Association, ex parte*, 82 L. J. Ch. 383; [1913] 2 Ch. 29; 108 L. T. 824; 20 Manson, 189; 57 S. J. 594—Neville, J.

The memorandum and articles of association of a mutual insurance company defined the members as being those who had any ships insured in the company, and fixed their liabilities in the event of winding-up. It was also provided that the directors should be *ex officio* members. Certain directors who held no policies of the company having been placed on the list of contributories in their capacity as directors, an order was made that their names be removed therefrom, but without prejudice to the right of the liquidator to put them on the list in any other capacity. *Premier Underwriting Association, In re; Cory, ex parte*, 82 L. J. Ch. 378; [1913] 2 Ch. 81; 108 L. T. 826; 20 Manson, 183; 57 S. J. 594—Neville, J.

Unregistered Company—Association Constituted by Deed.] — An unregistered allotment society, which did not contemplate making any profit, had a balance of 500*l.* in hand. By the rules, when the money borrowed by the trustee of the land had been paid off, and each member had had his piece conveyed to him, the association was to terminate. When an allotment was conveyed to a member, all his liabilities (except as to completing, maintaining, and dedicating roads and sewers, if any) were to cease, and he would cease to be a member of the association. Three of the members who had had their allotments conveyed to them presented a petition to wind up the association :—*Held*, on the analogy of the case of the holders of fully paid shares being treated as contributories within the meaning of that word in section 137 of the Companies (Consolidation) Act, 1908, that these three persons were contributories, and that there was jurisdiction in the Court to make the order. Without an express declaration in the rules it would be inequitable for the Court to hold that this was an arrangement by way of tontine in which those who paid their instalments last took all the profits. *Anglesea Colliery Co., In re* (35 L. J. Ch. 546, 809; L. R. 1 Ch. 555), applied. *Osmondthorpe Hall Freehold Garden and Building Allotment Society, In re*, 58 S. J. 13—Neville, J.

8. Creditors.

See also Vol. III. 1886, 2571.

Preferential Claims in Winding-up—"Clerk or servant" — Director and Editor of Periodical.]—The director of a publishing company who has a separate contract of service to act as editor of a periodical published by the company is, on a winding-up, entitled to preferential payment of his salary as editor within the provisions of the Companies (Consolidation) Act, 1908, s. 209, sub-s. 1 (*b*). *Beeton & Co., In re*, 82 L. J. Ch. 464; [1913] 2 Ch. 279; 108 L. T. 918; 20 Manson, 222; 57 S. J. 626—Neville, J.

—— **Contributors to Periodical—Fixed Salary.**] —Persons who receive a fixed salary for contributing articles or sketches to a periodical, but have no seat in the company's office, no supervision, and no fixed hours of employment, are not "clerks or servants" within the meaning of the section and enjoy no such preference. *Ib.*

—— **Duty and Liability of Receiver and Manager—Claim under Workmen's Compensation Acts—Statutory Duty of Receiver to Pay Preferential Debts "forthwith."**] — Where debenture-holders of a company, whose security is a floating charge on the assets of the company, appoint a receiver and manager, he must satisfy the preferential claims (such as claims by workmen under the Workmen's Compensation Acts) "forthwith"—that is, he must pay them out of any assets in his hands before paying the general creditors or any principal or interest on the debentures. If the receiver and manager proceeds to carry on the business of the company before satisfying these preferential claims and incurs a loss he will be liable in damages for a breach of his statutory duty under section 107 of the Companies (Consolidation) Act, 1908. *Woods* v. *Winskill*, 82 L. J. Ch. 447; [1913] 2 Ch. 303; 109 L. T. 399; 20 Manson, 261; 57 S. J. 740—Astbury, J.

—— **Analytical Chemist—"Clerk or servant."**] —B. was a chemist, and in July, 1910, was engaged by M. & Co. for nine months at a weekly wage to produce a specified series of formulæ for the manufacture of soaps and perfumes. The contract was to be considered as completed the moment B. had produced all the formulæ, and if completed before the end of nine months B. was still to be paid all his wages for the remainder of the nine months. B. had to attend on only three specified days of each week, but for regular hours, the remainder of the week being at his disposal, and he had in fact another regular engagement with another firm; and there were other special terms in the contract. B.'s wages fell into arrear, and in March, 1911, a winding-up order was made against M. & Co., and at that date there was due to B. 93*l.* for arrears of wages. B. claimed 50*l.* from the liquidator as a preferential creditor under section 209, subsection 1 of the Companies (Consolidation) Act, 1908 :—*Held*, that under the terms of this contract B. was a clerk or servant within section 209, sub-section 1 of the Act, and was a preferential creditor for 50*l.* *Morison & Co., In re*, 106 L. T. 731—Neville, J.

Insurance Company—Insolvent Company—Employers' Liability Policy—Policy Current at Date of Winding-up Order — Liability which Emerges after Date of Winding-up Order — Valuation of Policy.] — Holders of an employers' liability policy of an insurance company which became insolvent and had been ordered to be wound up, in a proof making claims in respect of accidents to their work-

men which had occurred after the date of the winding-up order, but while the policy was still current,—*Held* (Buckley, L.J., dissenting), that the mode of valuation of a policy prescribed by the Assurance Companies Act, 1909, s. 17, and Schedule 6 (D), excluded claims in respect of liabilities under a policy which emerge subsequently to the date of the winding-up order. *Law Car and General Insurance Corporation, In re; King & Sons', Lim., Claim* (*No.* 2), 82 L. J. Ch. 467; [1913] 2 Ch. 103; 108 L. T. 862; 20 Manson, 227; 57 S. J. 556; 29 T. L. R. 532—C.A.

The principle of valuation adopted in *Northern Counties of England Fire Insurance Co., In re* (50 L. J. Ch. 273; 17 Ch. D. 337), is negatived in the case of companies within the Assurance Companies Act, 1909. *Ib.*

Per Buckley, L.J.: The value as at the date of the winding-up order of liabilities under a current policy which emerge after the date of the winding-up order and before proof may be included in the value of the policy under the Assurance Companies Act, 1909, Schedule 6 (D). *Ib.*

Scheme of Arrangement—Claim for Breach of Contract not Put Forward.]—The plaintiff had a contract of employment for seven years with the respondent company, commencing in 1910. In May, 1911, the plaintiff was given a week's notice to leave, but he refused to leave, and was then told he would have to leave in three months. At the expiration of that time he was sent away. In May, 1911, a petition to wind up the company was presented, and a scheme being proposed the plaintiff attended a meeting of creditors and approved a deed of arrangement under which he and other creditors were to receive 10*s.* in the pound. At the date of the meeting there was a sum due to the plaintiff for commission, and he approved and voted for the scheme with reference to that sum only, and not with reference to his claim under the agreement of employment for seven years. The scheme of arrangement was subsequently approved by the Court under section 120 of the Companies (Consolidation) Act, 1908. In an action claiming damages for breach of the agreement of employment the jury found a verdict in favour of the plaintiff for 225*l.*:—*Held*, that, although the plaintiff did not put forward a claim for the breach of the agreement under the deed of arrangement, he was not barred from claiming damages in respect of the breach and that he was entitled to judgment for 112*l.* 10*s.*, being 10*s.* in the pound on the amount found by the jury. *Curtis* v. *B.U.R.T. Co.*, 28 T. L. R. 585—C.A.

9. Liquidator.

See also Vol. III. 1945, 2578.

Powers of—Appointment of Solicitor.]—In a winding-up by the Court, a liquidator who proposes to employ a solicitor in matters connected with the winding up of the company should have regard to the wishes of the committee of inspection. If he disagrees with them his proper course is to call a meeting of contributories and creditors in accordance with the Companies (Consolidation) Act, 1908, s. 158, sub-s. 1. He should not under such circumstances make an application *ex parte* for the sanction of the Court to the employment of the firm in question, and an order obtained upon such an application will be discharged. *Consolidated Diesel Engine Manufacturers, In re*, 84 L. J. Ch. 325; [1915] 1 Ch. 192; 112 L. T. 535; [1915] H. B. R. 55; 59 S. J. 234; 31 T. L. R. 91—Neville, J.

Powers in Ireland.]—The provision in section 151 of the Companies Consolidation Act, 1908, giving a liquidator in a winding-up in Ireland power, with the sanction of the Court, to bring or defend any action or other legal proceeding in the name and on behalf of the company, does not confer on third parties any right to object to proceedings brought by a liquidator in the name of the company, on the ground that no such sanction has been obtained. *Dublin City Distillery* v. *Doherty*, 83 L. J. P.C. 265; [1914] A.C. 823; 111 L. T. 81; 58 S. J. 413—H.L. (Ir.)

Report — Public Examination of Officers — Registrar's Order—Jurisdiction—Discretion.]—It is only in exceptional circumstances, if at all, that an order should be made in the winding up of a company for a public examination of its officers to be held in open Court under section 174 of the Companies (Consolidation) Act, 1908. *Property Insurance Co., In re*, 83 L. J. Ch. 525; [1914] 1 Ch. 775; 110 L. T. 973; 58 S. J. 472—Astbury, J.

A company was in voluntary liquidation and a report was made by the liquidator alleging grave irregularities in the conduct of the company's business, and suggesting the examination of certain of the directors as necessary to an investigation, but making no charge of fraud against them. An order was made on the application of the liquidator directing a public examination of these directors in open Court:—*Held*, that the part of the order which directed the examination to be held in open Court must be discharged. *Ib.*

Semble, that under proper circumstances there is power to order an examination in open Court under section 174, having regard to the Companies (Winding-up) Rules, 1909, rule 5. *Ib.*

Call—Refusal of Committee of Inspection—Leave by Court.]—Where in the winding-up of a company the committee of inspection, of which the majority was composed of contributories, refused to sanction a call on the shares, the Court, on the ground that the creditors' claims must have first consideration, granted to the liquidator leave to make the call. *North-Eastern Insurance Co., In re*, 59 S. J. 510; 31 T. L. R. 428—Sargant, J.

Death of Insolvent Shareholder—Debt due to Company — Deceased's Share in Surplus Assets—Claim for Retention by Liquidator.]—A shareholder in a limited company died insolvent and indebted to the company, and in an administration action the company were found to be creditors for 2,633*l.* The company subsequently went into liquidation, and the liquidator obtained an order in the action

striking out his name as a creditor in order that he might claim to deduct the ascertained debt from the amount payable to the deceased's estate in respect of his shares, which were fully paid. The articles gave the company no lien on the shares for the debt :—*Held*, that the liquidator was not entitled to retain the deceased's share in surplus assets against more than the proper dividend on the ascertained debt. *Peruvian Railway Construction Co., In re*, [1915] 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464—Sargant, J. Affirmed, [1915] 2 Ch. 442; 60 S. J. 25; 32 T. L. R. 46 —C.A.

Public Examination—County Court—Official Receiver and Liquidator — Report Charging Fraud—Director—Subsequent Exculpation—Costs of Proceeding—Official Receiver Ordered to Pay Costs Personally — Jurisdiction.] — A company having been ordered to be wound up in the County Court, the official receiver, acting as liquidator, made a preliminary report under section 8, sub-section 1 of the Companies (Winding-up) Act, 1890, and subsequently made a further report under sub-section 2, in which he stated that he was of opinion that the facts set out in the report constituted a fraud committed in the promotion or formation of the company, and that the persons named in the schedule (of whom a director of the company was one) were parties to such fraud. The County Court Judge, under sub-section 3, ordered a public examination of the persons named, and after it had been held the director in question applied for an order exculpating him from the charge of fraud made in the report. Notice of the application was served on the official receiver, and he appeared at the hearing and opposed the application. The Judge, however, made the order, and further ordered the official receiver to pay to the director the costs of his public examination and of the application for exculpation. The company having no available assets, the order in effect was that the official receiver should personally pay the costs. The Divisional Court discharged the order on the ground that the County Court Judge had no jurisdiction to make it :—*Held*, that in regard to the examination the official receiver was merely discharging a duty of a judicial character cast upon him by section 8 of the Act; and that the proviso in sub-section 7 of that section enabling the Court in its discretion to "allow" the exculpated person costs meant that the Court might allow such costs out of the assets of the company and did not impose any personal liability upon the official receiver, and that therefore there was no jurisdiction to order him to pay the costs of the public examination. But *held*, that in regard to the application for exculpation the official receiver had accepted the position of litigant, and had by his action become a party to a proceeding in the County Court, and that consequently the Judge had jurisdiction to order him to pay the costs of the application; and that as the Judge had exercised his discretion, that was not a matter for appeal. *Raynes Park Golf Club, In re* (68 L. J. Q.B. 529; [1899] 1 Q.B. 961), doubted by Farwell, L.J. *Tweddle & Co., In re*, 80 L. J. K.B. 20; [1910] 2 K.B. 697; 103 L. T. 257; 26 T. L. R. 583—C.A.

Removal of Liquidator.] —On an application by a shareholder in a limited company under section 186 (ix.) of the Companies (Consolidation) Act, 1908, for the removal of the liquidator on the alleged ground that he was not in an independent position so as to be able to make the strict investigation which the affairs of the company were said to require, the Court refused the application on the ground that the directors impeached were no longer directors and that the applicant had no support from the other shareholders. *Amalgamated Properties of Rhodesia, Lim., In re*, 30 T. L. R. 405—Astbury, J.

On a petition presented by a shareholder alleging acts of misfeasance against the directors, a compulsory winding-up order was made by the Court on the ground that there were grave circumstances requiring investigation; and a liquidator and committee of inspection, consisting of contributories, were appointed, the assets at that date being more than sufficient to pay the creditors of the company. Subsequently, however, a creditor for a large amount was admitted, and the assets then were not more than enough to pay the creditors. The liquidator, against whom no personal allegations were made, admitted he was administering the assets on behalf of the contributories. Disputes arose as to the conduct of the liquidation, the liquidator intending to prosecute actions against the directors with a view to increase the assets, as he contended he ought to do under the order appointing him liquidator, the creditors objecting on the ground that nothing could be recovered from them as they had no means, and a summons was taken out on behalf of the creditors to remove the liquidator and have a liquidator appointed on behalf of the creditors, and also for the removal of the committee of inspection on the ground that the liquidation had become a creditors' liquidation, and that the liquidator was administering the assets on behalf of the contributories only :—*Held*, that the liquidation having become a creditors' liquidation since the order to compulsorily wind up the company, the creditors were the sole persons interested, and were entitled to decide whether the small remaining assets should be used in misfeasance proceedings against the directors, and "due cause" had been shewn for the removal of the liquidator within the meaning of section 149, sub-section 6 of the Companies (Consolidation) Act, 1908, and there should be a reference to chambers to appoint some one in his place. *Sir John Moore Gold Mining Co., In re* (12 Ch. D. 325), and *Eyton & Co., In re* (57 L. J. Ch. 127; 36 Ch. D. 299), applied. *Rubber and Produce Investment Trust, In re*, 84 L. J. Ch. 534; [1915] 1 Ch. 382; 112 L. T. 1129; [1915] H. B. R. 120; 31 T. L. R. 253—Astbury, J.

Though there was no direct power under the Act for the Court to remove the committee of inspection, the Court could act on the suggestion in *Radford & Bright, Lim., In re* (70 L. J. Ch. 78, 352; [1901] 1 Ch. 272, 735), and order the first meetings of creditors and contribu-

tories to be re-summoned, and if then the creditors appointed members from their own body and the contributories re-appointed their members to the committee, could decide in favour of the creditors' nominees in the best interests of the liquidation. *Ib.*

—— **Where Liquidator the Nominee of Creditors—Neutral Liquidator.**]—A motor manufacturing company, having resolved to go into voluntary liquidation and having appointed its chairman, who was also its managing director, to be liquidator, petitioned the Court for an order that the liquidation should be continued under the supervision of the Court and that the liquidator should be allowed to carry on the business of the company for a certain period. At a meeting of creditors of the company subsequently held it was decided by a majority that application should be made to the Court for the appointment of the auditor of the company to act jointly with the liquidator already appointed, and the petitioners made an application to this effect. The appointment of the auditor as joint liquidator was opposed by certain of the creditors on the ground (*inter alia*) that, as both liquidators proposed were connected with the company there would be no independent officer to investigate its affairs in the interests of the creditors. The Court directed the liquidation to proceed under the supervision of the Court and appointed the auditor to be liquidator, but conjoined with him a chartered accountant who had no connection with the company, and superseded the appointment of the managing director, holding that, while it was desirable that effect should be given to the wishes of the creditors and that one of the liquidators should be versed in the affairs of the company, it was not desirable that both liquidators should be men who had been closely associated with the company. *Argylls Lim.* v. *Ritchie & Whiteman*, [1914] S. C. 915—Ct. of Sess.

Appointment of New Liquidator.]—Circumstances in which the Court, being satisfied that it would be in the best interests of all concerned, directed the appointment of a new liquidator of the company. *Baron Cigarette Machine Co., In re*, 28 T. L. R. 394—Swinfen Eady, J.

10. Costs.

See also Vol. III. 1994, 2584.

Action Brought against the Company before Winding-up—Judgment under Appeal.]—The mere fact of the judgment obtained against a liquidator being under appeal does not affect the application of the rule laid down in *Wenborn, In re* (74 L. J. Ch. 283; [1905] 1 Ch. 413), that the successful defendant is entitled to have his costs in full out of the assets of the company of an action brought or defended by the company and continued after winding-up by the liquidator. *Free & Sons, Lim., In re*, 56 S. J. 175—Swinfen Eady, J.

Unsuccessful Action by Company in Liquidation — Priority of Payment out of Assets.] — Where a company in liquidation is ordered to pay costs as an unsuccessful litigant, such costs rank in priority before the liquidator's costs; and this is so whether the liquidation is voluntary or compulsory, and whether the order made is that the other party recover his costs, or that the liquidator pay them out of the assets or pay them and retain them out of the assets. *Pacific Coast Syndicate, In re; British Columbian Fisheries, ex parte*, 82 L. J. Ch. 404; [1913] 2 Ch. 26; 108 L. T. 823; 20 Manson, 219; 57 S. J. 518—Neville, J.

Set-off—Respondent to Winding-up Petition Subsequently Added as Contributory—Application to Remove Name from List.]—Where a limited partner was joined as a respondent to a petition to wind up and did not oppose, and his costs were ordered to be paid out of the assets of the limited partnership, and he was subsequently placed on the list of contributories and incurred costs payable to the liquidator on an application to have his name removed from such list,—*Held*, that the liquidator could not set off such two sets of costs one against the other, because the costs of the winding-up stand on a different footing from other costs in being incurred for the benefit of everybody concerned. Principle enunciated by Lord Romilly, M.R., in *General Exchange Bank, In re* (L. R. 4 Eq. 138), applied. *Beer, In re; Brewer* v. *Bowman*, 59 S. J. 510; 31 T. L. R. 428—Sargant, J.

Guarantee Policy—Contract to Pay Amount of Principal and Interest Due on Mortgage on Default of Mortgagor — Mortgagee's Costs Added to His Principal.]—Where a guarantee society contracted to pay the principal and interest due on a mortgage on the mortgagor making default in payment thereof, it was held that the guarantee society did not contract to indemnify the policy-holder against any loss under her security, and, accordingly, that in the winding-up of the guarantee society the costs of valuing her security and proving her claim came under the heading of mortgagee's costs or costs of proof, and must be disallowed because under the winding-up rules creditors are not entitled to the costs of proving their claim. *Law Guarantee Trust and Accident Society, In re* (*No.* 1), 108 L. T. 830; 57 S. J. 628—Neville, J.

Taxation—Costs Incurred before Winding-up—Assets of the Company in the Hands of the Solicitors—Taxation in the Winding-up or under the Solicitors Act, 1843.] — Where solicitors to a company in compulsory liquidation submit, on a summons intituled in the matter of the winding-up, to an order for delivery of their bill of costs, the bill when delivered may be ordered to be taxed in the winding-up proceedings. This is so although the bill is in respect of costs incurred before the liquidation and the solicitors are not making a claim against the assets of the company, because they have money of the company in their hands more than enough to satisfy their costs. *Palace Restaurants, Lim., In re*, 83 L. J. Ch. 427; [1914] 1 Ch. 492; 110 L. T. 534; 21 Manson, 109; 58 S. J. 268; 30 T. L. R. 248—C.A.

Semble, if the summons were intituled in the matter of the Solicitors Act, 1843, and in

the matter of the winding-up, the Judge making the order for the delivery of the bill, though sitting in winding-up, would have power to order the taxation under the Solicitors Act. *Ib.*

XIV. VOLUNTARY WINDING-UP.

See also Vol. III. 2004, 2586.

Order for Compulsory Winding-up.] — Circumstances in which the Court made an order for the compulsory winding up of a company where by reason of the way in which the business had been carried on and the position of the vendor (who had been appointed liquidator in the voluntary winding-up) the fullest investigation was necessary by a liquidator other than the vendor. *Peruvian Amazon Co., In re*, 29 T. L. R. 384—Swinfen Eady, J.

Reconstruction—Dissentient Shareholder—Notice — Validity.] — Where in a voluntary winding up of a company a shareholder gives notice to the liquidator of his dissent from the resolution for winding-up and reconstruction under section 192, sub-section 3 of the Companies (Consolidation) Act, 1908, such notice is not valid if it merely calls upon the liquidator to purchase the dissentient's holding. By the terms of the section, the notice must give the liquidator the option of either purchasing the holding of the dissentient shareholder, or of abstaining from proceeding with the winding-up. *Demerara Rubber Co., In re*, 82 L. J. Ch. 220; [1913] 1 Ch. 331; 108 L. T. 318; 20 Manson, 148—Swinfen Eady, J.

Summons by Liquidator for Rescission of Contract—Jurisdiction of Court.]—In accordance with a clause in its articles a company entered into a contract with two of its directors to purchase their option of the lease of a butter factory in France, and 6,000 shares were allotted to them as part of the purchase consideration. The option was declared void by the local French Court, and, its main object having failed, the company went into voluntary liquidation. The liquidators issued a summons asking that the contract might be rescinded and the allotment of 6,000 shares cancelled :—*Held*, that the proper remedy of the liquidators was by action for rescission and not by summons, and that, even if the Court had jurisdiction to decide the question upon a summons, this was not a matter in which its discretion should be so exercised. *Centrifugal Butter Co., In re*, 82 L. J. Ch. 87; [1913] 1 Ch. 188; 108 L. T. 24; 20 Manson, 34; 57 S. J. 211—Neville, J.

Judgment Creditor—Execution Postponed by Trickery—Leave to Proceed with Execution.] —Where a judgment creditor of a company has been induced by conduct of officers of the company amounting to trickery to refrain from issuing execution on his judgment until after a resolution has been passed for the voluntary winding up of the company, the Court will, in the exercise of its discretion, allow him to proceed with his execution. *Vron Colliery Co., In re* (51 L. J. Ch. 389; 20 Ch. D. 442), distinguished. *Amorduet Manufacturing Co.* v. *General Incandescent Co.*, 80 L. J. K.B. 1005; [1911] 2 K.B. 143; 104 L. T. 805; 18 Manson, 292—C.A.

Preferential Claim for Salary — Voluntary Winding-up—Subsequent Compulsory Winding-up—"Commencement of winding-up."] — Section 208 of the Companies (Consolidation) Act, 1908, provides : "(1) In a winding-up there shall be paid in priority to all other debts . . . (*b*) salary of any clerk . . . in respect of services rendered to the company during four months before the said date not exceeding 50*l*. . . . (5) The date hereinbefore in this section referred to is (*a*), in the case of a company ordered to be wound up compulsorily, which had not previously commenced to be wound up voluntarily, the date of the winding-up order; and (*b*) in any other case the date of the commencement of the winding-up." In this case, in the voluntary winding-up, which commenced on June 23, 1913, a claim for preferential payment under this section was admitted by the voluntary liquidator; but on July 9 there was a petition for compulsory winding-up, on which an order for compulsory winding-up was made on July 21, and in this winding-up the official receiver, who was the liquidator under the compulsory order, disallowed the claim on his interpretation of what the words "commencement of the winding up" meant in the section :—*Held*, that the commencement of the winding-up meant the time of the presentation of the petition for compulsory winding-up, and not the resolution to wind up voluntarily, and that, accordingly, the preferential claim must be disallowed. *Havana Exploration Co., In re*, [1915] H. B. R. 187; 59 S. J. 666—Neville, J.

Order for Application of Assets "in a due course of administration"—Propriety of Payment to Statute-barred Creditors.] — Shareholders opposing the payment of statute-barred creditors in the voluntary winding-up of a company, an order was made that the liquidator should apply the assets "in a due course of administration," and subsequently statute-barred creditors were paid by the liquidator. The company was not insolvent unless statute-barred debts were admitted as liabilities :—*Held*, that under these circumstances such payment was an improper payment. *General Rolling Stock Co., In re; Joint Stock Discount Co.'s Claim, ex parte* (41 L. J. Ch. 732; L. R. 7 Ch. 646), and *River Steamer Co., In re; Mitchell's Claim* (L. R. 6 Ch. 822), applied. *Fleetwood and District Electric Light and Power Syndicate, In re*, 84 L. J. Ch. 374; [1915] 1 Ch. 486; 112 L. T. 1127; [1915] H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221—Astbury, J.

Liquidator—Failure to Pay Creditor—Dissolution of Company—Costs of Action against Company Thrown Away — Liability.] — The plaintiffs sued a limited company called Coxeter & Sons, Lim., for the price of goods sold and delivered. During the progress of that action Coxeter & Sons, Lim., went into voluntary liquidation, the present defendants

being appointed liquidators, and later that company was dissolved. The plaintiffs were not aware of the liquidation and dissolution till a later date, and when they became aware thereof they sued the defendants to recover from them as damages the price of the goods which had been supplied to the company, the plaintiffs alleging that the defendants as liquidators had committed a breach of their statutory duty in allowing the company to be dissolved before the company's debts had been paid. The plaintiffs also claimed to recover from the defendants the amount of the costs that had been thrown away in the action against Coxeter & Sons, Lim., that action having abated on the dissolution of the company:—*Held*, first, that the defendants had committed a breach of their statutory duty in allowing the company to be dissolved before its debts had been paid and that they were liable in damages to the plaintiffs in respect of the claim for goods sold to the company; but secondly, that the defendants were not in the circumstances liable for the costs thrown away in the action against Coxeter & Sons, Lim., as the incurring of those costs was not the natural consequence of the defendants' breach of statutory duty. *Argylls, Lim.* v. *Coxeter*, 29 T. L. R. 355—Pickford, J.

XV. DISSOLUTION.

See also Vol. III. 2004.

Reconstruction — Agreement of New Company to Take over Assets and Liabilities of Old Company—Omission to Take over Liabilities—Dissolution Declared Void.]—A limited company was reconstructed, it being agreed between the new company and the liquidator of the old company that the former should take over all the assets and liabilities of the old company. The new company, however, ultimately agreed with the liquidator not to take over certain shares in a third company that belonged to the old company, and were liable to certain calls. The old company was then dissolved under section 195 of the Companies (Consolidation) Act, 1908. The third company (having vainly called upon the new company to take over the shares in question) moved the Court that the dissolution of the old company might under the circumstances be declared void under section 223, sub-section 1 of the Act:—*Held*, that this was a proper case for the Court to exercise its discretion under section 223, and to declare the dissolution of the old company to be void. *Spottiswoode, Dixon & Hunting, Lim., In re*, 81 L. J. Ch. 446; [1912] 1 Ch. 410; 106 L. T. 23; 19 Manson, 240; 56 S. J. 272; 28 T. L. R. 214—Neville, J.

Assets Recovered after Dissolution—Motion to Revive Company—Rights of Crown—Bona Vacantia.]—After the automatic dissolution of a company in accordance with section 195 of the Companies (Consolidation) Act, 1908, certain assets were realised by the liquidator. Upon motion by the liquidator to declare the dissolution void, the Court ordered that the Attorney-General be served with notice of the motion in order that the rights of the Crown to the money as *bona vacantia* might be considered. At the adjourned hearing the Crown waived its claim, and leave was given to the liquidator, after payment of the costs to all parties, to distribute the residue of the money in the usual way, submitting his accounts to the Board of Trade for approval. *Henderson's Nigel Co., In re*, 105 L. T. 370—Neville, J.

COMPENSATION.

See INTOXICATING LIQUORS; LANDS CLAUSES ACT; LOCAL GOVERNMENT; NEGLIGENCE; WORKMEN'S COMPENSATION.

COMPROMISE.

Agreement—Construction.]—Deeds of compromise of ascertained specific questions will not be construed so as to deprive any party thereto of any right not then in dispute and not in contemplation by any of the parties to the deed. *Cloutte* v. *Storey*, 80 L. J. Ch. 193; [1911] 1 Ch. 18; 103 L. T. 617—C.A.

COMPULSORY PILOTAGE.

See SHIPPING.

COMPULSORY PURCHASE.

See LANDS CLAUSES ACT.

COMPULSORY REFERENCE.

See ARBITRATION.

CONDITION.

See also Vol. III. 2050, 2596.

Bequest for Augmentation of Benefice—Not to be Held in Plurality—Union of Benefices.]—Where there is a bequest to a benefice on condition that it shall never be held in plurality, the condition is not broken by the

union of the benefice with another benefice under an Order in Council. *Macnamara, In re; Hewitt* v. *Jeans*, 104 L. T. 771; 55 S. J. 499—Eve, J.

Gift by Will to Married Woman while Living Apart from Husband—Public Policy.]—A gift to a married woman, during such time as her husband should be living apart from her, with a limitation over away from her in the event of their living together again, is not necessarily invalid, as being against public policy, if she was at the date of the testator's will already deserted by her husband. *Moore, In re; Trafford* v. *Maconochie* (57 L. J. Ch. 936; 39 Ch. D. 116), distinguished. *Charleton, In re; Bracey* v. *Sherwin*, 55 S. J. 330—Joyce, J.

Annuities Forfeitable—Gift Over.]—A testatrix provided that certain annuitants should not be allowed to have the value of their annuities in lieu thereof, and if they should do or suffer any act or thing whereby the annuity should be assigned, charged, or incumbered, the annuity should thenceforth cease to be payable:—*Held*, that the provision for cesser was not repugnant to the previous gift of the annuities, but there was a good gift over, on such an event happening to the residuary legatees. *Dempster, In re; Borthwick* v. *Lovell*, 84 L. J. Ch. 597; [1915] 1 Ch. 795; 112 L. T. 1124—Sargant, J.

Legacy — Conditions — Discretion of Trustees.]—A testator directed his trustees to pay to two institutions for instruction in music a legacy, subject to certain conditions, for the foundation of a scholarship to enable the holder to continue his studies at a Continental conservatoire, and directed that the regulations for the scholarship should be in the discretion of the governors of the institutions. The governors intimated to the trustees of the will that they declined to accept the bequest if it was essential that it should be administered strictly in accordance with the terms of the will:—*Held*, that the particular method in which a student might enjoy the scholarship was left to the governors of the institutions, and that the application of the gift should be as nearly in accordance with the scheme in the will as they thought desirable. *Harrison, In re; Harrison* v. *Att.-Gen.*, 85 L. J. Ch. 77; 113 L. T. 308; 31 T. L. R. 398—Eve, J.

Impossible Condition—Condition Subsequent—Effect of Disentailing Assurance on Subsequent Limitations.]—A testator devised his real estate to A. (a German subject) and the heirs of his body on the express condition that he should within two years from the date of the testator's death become a British subject, and take upon himself the testator's name, and should not afterwards divest himself of his *status* as a British subject, or of such name. The testator further provided that if A. refused or neglected to comply with the said condition his said real estate should go (subject and upon the same conditions) to A.'s sister (who was also a German subject) and the heirs of her body, with similar remainders over. On the testator's death A. executed a disentailing assurance of the lands:—*Held*, first, that, notwithstanding the provisions of the Naturalisation Act, 1870, requiring five years' residence as a condition of naturalisation, the condition as to naturalisation was not an impossible condition, as it was not impossible to obtain a private Naturalisation Act within two years of the testator's death; but secondly, that the conditions as to naturalisation and taking the testator's name were conditions subsequent, and that the effect of the disentailing assurance executed by A. was to defeat subsequent estates which would otherwise have taken effect after the determination of, or in defeasance of, the estate tail devised to A.; and thirdly, that A. was accordingly entitled to an estate in fee-simple in the lands freed from the conditions. *Knox, In re; Von Schefflер* v. *Shuldham*, [1912] 1 Ir. R. 288—Barton, J.

Validity — Public Policy.]—A clause in a *mortis causa* disposition of heritage provided that each of the heirs who should succeed to the lands should be obliged in all time to use the disponer's name and arms, and that "in case any of the said heirs shall succeed to a peerage, then, when the person so succeeding, or having right to succeed, to my said lands shall also succeed to a peerage, they shall be bound and obliged to denude themselves of all right" in the lands, and the same should devolve on the next heir:—*Held*, that this clause was not void as against public policy, and that it applied to, and excluded, an heir who, prior to the opening of the succession to the lands, had succeeded to a peerage. *Egerton* v. *Brownlow* (*Earl*) (4 H.L. C. 1) distinguished. *Caithness* (*Earl*) v. *Sinclair*, [1912] S. C. 79—Ct. of Sess.

—— Vested Interest—Condition Subsequent—Not to Live with or be under Control of Father—Public Policy—Uncertainty.]—A testatrix gave three-fourths of her residuary estate upon trust to pay the income thereof to her two grandchildren up to December 31, 1927, and immediately after that date to divide the capital thereof between them. After providing for the event of the death of the said grandchildren or either of them before that date, the testatrix declared as follows: "I declare that if at any time on or before December 31, 1927, either one or both of my grandchildren shall live with or be or continue under the custody guardianship or control of their father or be in any way directly under his control all benefits profits and income provided to be given under this my will to both or either one of them as the case may be shall thereby cease and determine and it shall be at all times and under all circumstances an absolute condition of either one or both of them receiving any income benefit or legacy under this my will that he or she or both of them shall separately and individually continue to live free from his direct influence and control." The will then provided that in case either one or both of them should forfeit any interest under this condition their shares or his or her share were to go over as if they or either of them had died before December 31, 1927:—*Held*, first, that the condition was in defeasance of an

interest previously given; secondly, that it was bad as against public policy (*a*) by operating to restrain a father from doing his duty and exercising his parental authority, and (*b*) by tending to limit the Court's discretion with regard to the custody and maintenance of its wards; and thirdly, that, upon the principles stated in *Clavering* v. *Ellison* (29 L. J. Ch. 761; 7 H.L. C. 707), it was void also for uncertainty. *Sandbrook, In re; Noel* v. *Sandbrook*, 81 L. J. Ch. 800; [1912] 2 Ch. 471; 107 L. T. 148; 56 S. J. 721—Parker, J.

Forfeiture Clause—After-acquired Property not Settled—"Possessed of or entitled to"—Alternative, not Cumulative Clause — Reversionary Interest — Vesting in Possession — Property Subject to Clause.]—Where there was a clause of forfeiture of benefits under her father's will if the daughter did not settle after-acquired property which she should become "possessed of or entitled to" over the value of 1,000*l*., the words "possessed of or entitled to" were held to be not cumulative, but alternative, and separate meanings must accordingly be found for them, and accordingly property of over the value of 1,000*l*. in respect of which the daughter had before her father's death a vested reversionary interest was held to be subject to the clause of forfeiture. *Bland's Settlement, In re; Bland* v. *Perkin* (74 L. J. Ch. 28; [1905] 1 Ch. 4), distinguished. *Brook, In re; Brook* v. *Hirst*, 111 L. T. 36; 58 S. J. 399—Sargant, J.

—— **Conditional Gift of Annuity—"To cease on return to England."**]—A testator bequeathed an annuity to his nephew C. subject to the condition that "should the said C. return to Ireland, England, or Scotland," the annuity was to cease. C., who resided in New Zealand, took a passage to and landed in England, alleging that he was on his way to Jersey. The facts proved were consistent with his statement, and it was in evidence that the usual way of travelling to Jersey from New Zealand was through England. Shortly after landing in England he committed murder and was convicted in England, but was found to be insane, and was detained in a criminal lunatic asylum:—*Held*, that C. had forfeited the legacy. *Crumpe, In re; Orpen* v. *Moriarty*, [1912] 1 Ir. R. 485—Barton, J.

—— **Settlement—Bankruptcy—Life Interest until Event whereby if Income Payable Absolutely Beneficiary would be Deprived "of the right to receive the same or any part thereof"—Order of Probate Division Setting Apart Whole Income for Tenant for Life's Children.**]—In 1887 F. C., on his marriage, settled the proceeds of property as to the income upon himself for life, determinable on his bankruptcy or until he suffered any act or thing or any event happened whereby, if payable to him absolutely, he would be deprived of the right to receive the income or any part thereof. By an order in 1895 after the dissolution of F. C.'s marriage, the President of the Probate Division ordered that the trustees should set apart the whole of the income of the settled funds which was then payable to him, and apply it for the children of the marriage until majority. F. C. became bankrupt in 1904, and his youngest child attained twenty-one in 1910:—*Held*, that the order of the Probate Division was an act or event antecedent to his bankruptcy by which F. C.'s interest in the whole income was determined for a substantial period, and that therefore a forfeiture took place at the time the order was made and nothing passed to the trustee in his bankruptcy. *Carew's Trusts, In re; Gellibrand* v. *Carew*, 103 L. T. 658—Eve, J.

—— **Gift of Life Interest—Apportionment—Income Accrued Due at Date of Alienation, but not Actually Received.**]—A testator gave one-fifth of his residuary estate on trust to pay the income to his son W. during his life, but with a direction that the same should only be paid to him so long as he should not attempt to assign or charge the same or do or suffer any act whereby the same might become vested in or payable to any other person. W. executed an assignment of the income by way of mortgage. At that date the trustees had in hand income already received by them, and they subsequently received further moneys, some of which represented the apportioned part of the income up to the date of the mortgage:—*Held*, that W. or his mortgagee was entitled to the income received before the mortgage, but that they were not entitled to the moneys representing the apportioned part of the income up to the date of the mortgage, since, although the moneys would have been ultimately payable to W. if the Apportionment Act, 1870, had applied, the provision in the will prevented income becoming payable to W. after he had attempted to assign or charge it. *Sampson, In re; Sampson* v. *Sampson* (65 L. J. Ch. 406; [1896] 1 Ch. 630), followed. *Jenkins, In re; Williams* v. *Jenkins*, 84 L. J. Ch. 349; [1915] 1 Ch. 46—Sargant, J.

—— **Settlor's Own Property Settled on Himself.**]—A settlor made a settlement of his property by which certain income was to be paid to himself for life or until he should attempt to alienate it. Subsequently he executed a mortgage upon the income payable to him under the settlement:—*Held*, that the settlor's life interest in the fund was forfeited by operation of the charge. *Perkins' Settlement, In re; Warren* v. *Perkins*, 56 S. J. 412—Warrington, J.

—— **Receiving Order — Liquidation by Arrangement—Discharge of Receiving Order—"Become payable to some other person."**]—A testator who died in September, 1883, gave the income of a fund to his son until he should have his affairs liquidated by arrangement or should do something whereby the income became payable to some other person. In 1910 a receiving order was made against the son, but shortly afterwards a scheme of arrangement was approved by the Court and the receiving order was discharged. While the receiving order was in operation income came to the hands of the trustees:—*Held*, that the scheme of arrangement was not a "liquidation by arrangement" within the meaning of the clause. *Held*, also, that the receiving order operated to make the income payable to some

other person, and therefore determined the life interest. *Sartoris, In re; Sartoris* v. *Sartoris* (61 L. J. Ch. 1; [1892] 1 Ch. 11), applied. *Laye, In re; Turnbull* v. *Laye*, 82 L. J. Ch. 218; [1913] 1 Ch. 298; 108 L. T. 324; 20 Manson, 124; 57 S. J. 284—Eve, J.

Quære, whether the same result would follow if no income had come to hand while the receiving order was operative. *Ib.*

—— **Married Woman.**]—By the terms of a will, by which an annuity was given to a married woman, it was provided that the annuitant should be restrained from anticipating any property coming to her thereunder, and, further, that "if she should assign, dispose of, or charge the annuity, whether under disability or not," the annuity should cease. The married woman (the annuitant) purported to charge the annuity:—*Held*, that as she could not create a valid charge there was no forfeiture of the annuity. *Adamson, In re; Public Trustee* v. *Billing*, 109 L. T. 25; 57 S. J. 610; 29 T. L. R. 594—C.A.

CONDITIONS.

In Contracts.]—*See* CONTRACT.

Of Sale.]—*See* VENDOR AND PURCHASER.

CONFESSIONS.

See CRIMINAL LAW.

CONFLICT OF LAWS.

See INTERNATIONAL LAW.

CONSIDERATION.

Bills of Exchange, &c.]—*See* BILL OF EXCHANGE.

Bills of Sale.]—*See* BILL OF SALE.

CONSIGNEE.

Under Bill of Lading.]—*See* SHIPPING.

Under Contracts of Sale.]—*See* SALE OF GOODS.

In Carriage of Goods and Animals.]—*See* CARRIER; RAILWAY.

CONSPIRACY.

See CRIMINAL LAW.

CONTAGIOUS DISEASES.

See ANIMALS.

CONTEMPT OF COURT.

See also Vol. III. 2136, 2615.

Comments Pending Trial — Comments not Referring to Subject-matter of Action.]—It is not a sufficient answer to a motion to commit a defendant for commenting adversely on the character of the plaintiff during the pendency of an action for the defendant to shew that the comments had no reference to the subject-matter of the action if it is clear that the trial of the action will be prejudiced by the publication of those comments. *Higgins* v. *Richards*, 28 T. L. R. 202—D.

—— **Libel Action—Plea of Justification.**]—Where the defendant in a libel action swears that he is going to justify the words of the alleged libel the Court will not issue a writ of attachment against him in respect of comments made by him after the issue of the writ unless it is satisfied that the plea of justification is not genuine, or unless the comments are made near the time of trial or made at a place near where the trial is to take place and are calculated to deter witnesses from coming forward and speaking their minds freely, or are calculated to warp the minds of jurymen. *Per* Lush, J.: Where the plaintiff in a libel action seeks to stop the defendant from making comments while continuing to make comments himself, the Court ought not to interfere. *Rex* v. *Blumenfeld; Tupper, Ex parte*, 28 T. L. R. 308—D.

It is a contempt of Court for a newspaper to refer to an action pending in the King's Court in any manner that may tend in any degree to interfere with the course of justice, and it cannot be pleaded in excuse either that the reference was only made for political purposes, or that the names of the parties in the action were not mentioned. *Thornhill* v. *Steel-Morris*, 56 S. J. 34—Swinfen Eady, J.

The publication together of two items of news, the first relating to private proceedings in a pending action in connection with a share transaction, and the second giving a report of criminal proceedings (not yet finished) relating to the same transaction, *held* to tend to prejudice the jury trying the criminal case. *Semble*, *per* Scrutton, J., a newspaper ought not, before a case comes on for trial, to publish in full the private proceedings, such as the statement of claim or an affidavit charging fraud or a writ containing similar charges.

Rex v. *Astor; Isaacs, Ex parte; Rex* v. *Madge; Isaacs, ex parte*, 30 T. L. R. 10—D.

Injunction against Receiving Money.]—A receipt from the Government of money which the recipient has been restrained from receiving is a contempt of Court. *Eastern Trust Co.* v. *McKenzie, Mann & Co.*, 84 L. J. P.C. 152; [1915] A.C. 750; 113 L. T. 346—P.C.

Hearing in Camera—Publication of Details.]—An order for a hearing *in camera* extends only to the hearing, and does not prohibit the subsequent publication of what passed at such hearing, provided that such publication be made in good faith and without malice. *Scott* v. *Scott* (*No.* 1), 82 L. J. P. 74; [1913] A.C. 417; 109 L. T. 1; 57 S. J. 498; 29 T. L. R. 520—H.L. (E.)

Application—Motion or Order Nisi.]—Where a person against whom an attachment for contempt of Court is sought is a party to an action in connection with which the alleged contempt is committed, the case falls within Order LII. rule 2, whatever the nature of the contempt, and the motion should be upon notice to the other side and not for an order *nisi*. *Squire* v. *Hammond*, [1912] W. N. 200—D.

—— **Application in Person.**]—The Court will not hear an application by an applicant in person for a rule *nisi* for a writ of attachment for contempt of Court against the proprietors, editor, and manager of a newspaper. An application for a writ of attachment can only be made by counsel. *Fenn, Ex parte* (2 Dowl. P.C. 527) followed. *Liebrand, Ex parte*, [1914] W. N. 310—Lawrence, J.

Rule Nisi for Writ of Attachment—Limited Company.] — Although a limited company cannot be committed to prison, the Court has jurisdiction, on the return to a rule *nisi* calling upon a limited company to shew cause why a writ of attachment should not issue against it for contempt of Court, to inflict an appropriate penalty other than imprisonment. *Rex* v. *Hammond & Co.; Robinson, Ex parte*, 83 L. J. K.B. 1221; [1914] 2 K.B. 866; 111 L. T. 206; 58 S. J. 563; 30 T. L. R. 491—D.

Order of Court of First Instance Reversed by Court of Appeal—Jurisdiction of Court of First Instance to Enforce by Attachment Order of Court of Appeal.] — By an order of the Master of the Rolls the defendants were restrained from proceeding further with the erection and completion of a building which the plaintiff alleged obstructed the light coming through his ancient windows. The plaintiff appealed from this order on the ground that it did not include a mandatory injunction commanding the defendants to pull down the building complained of. The Court of Appeal discharged the order of the Master of the Rolls, and ordered the defendants to have the building pulled down forthwith. The defendants disobeyed this order, and the plaintiff thereupon applied to the Master of the Rolls for a writ of attachment for contempt of Court to issue against them. The Master of the Rolls refused the application, being of opinion that the contempt of which the defendants had been guilty was a contempt of the Court of Appeal, and that he accordingly had no jurisdiction to punish it. On appeal from this decision to the Court of Appeal,—*Held*, that the Master of the Rolls had jurisdiction to make the order sought for, and that, as the plaintiff was entitled to the order, the issue of a writ of attachment should be directed by the Court of Appeal, not in the exercise of an exclusive jurisdiction, but by way of reversal of the order of the Master of the Rolls. *Fortescue* v. *McKeown*, [1914] 1 Ir. R. 30—C.A.

Interference with Receiver and Manager of Business — Competing Business.] — When a receiver and manager of a partnership business has been appointed, a partner who starts a competing business in such a manner as to be likely to injure the original business (for example, by issuing circulars that the original business is no longer carried on) may be punished by committal for contempt of Court. *King* v. *Dopson*, 56 S. J. 51—Joyce, J.

—— **Receiver of Business of Alien Enemy—Licence to Trade Obtained on Petition.**]—The English assistant manager of alien enemies' business of manufacturing pianos, having been appointed receiver and manager of such business on his undertaking (1) not to remit goods or money forming assets of the business to any hostile country, and (2) to endeavour to obtain a licence from the Crown for the continuance of the defendants' business, moved to commit the president of the Piano Manufacturers' Association for writing a letter describing it as an unpatriotic act to do business with such firm, before such receiver had in fact obtained such licence—which he subsequently obtained—but after he had petitioned to obtain it:—*Held*, that the president must give an undertaking not to circulate in future any such letters during the continuance of the licence. *Bechstein, In re; Berridge* v. *Bechstein* (*No.* 2), 58 S. J. 864—Sankey, J.

Motion to Issue Writ of Sequestration — Company—Order Disobeyed—Personal Service.]—A motion to sequestrate, which is the only remedy against a company which disobeys a prohibitive order of the Court, will not be invalidated by reason of the order disobeyed not having been personally served upon the company, although duly served upon the solicitors of the company. In the case of an individual, committal would have been the proper remedy for breach of a prohibitive order, and such committal could be had without personal service of the order disobeyed. *Tuck, In re; Murch* v. *Loosemore* (75 L. J. Ch. 497; [1906] 1 Ch. 696), not applicable to such a case as this. The principle of *D.* v. *A. & Co.* (69 L. J. Ch. 382; [1900] 1 Ch. 484) applied. *Aberdonia Cars, Lim.* v. *Brown, Hughes & Strachan, Lim.*, 59 S. J. 598—Neville, J.

Breach of Injunction—Committal—Affidavit—Service with Notice of Motion.]—Order LII. rule 4, requiring a copy of any affidavit intended to be used on the motion to be served with a notice of motion for attachment, does not apply to a motion for committal. *Litchfield* v. *Jones* (25 Ch. D. 64; 32 W. R. 288) explained. *Taylor, Plinston Brothers & Co.* v.

Plinston, 81 L. J. Ch. 34; [1911] 2 Ch. 605; 56 S. J. 33; 28 T. L. R. 11—C.A.

Legal Practitioner—Application for Warrant—Civil and Criminal Courts—Striking off the Rolls.]—Where a legal practitioner applied for a warrant in a civil Court for the detention of a man alleged to be on the point of leaving the colony, and the warrant was refused, and then appeared in a criminal Court in respect of the same matter and, on evidence to which the civil Court attached no credence, obtained a warrant,—*Held*, that no punishable contempt of the civil Court had been committed, as the client was not by law confined to a simple form of remedy, but was entitled to all the remedies available. *Taylor, In re*, 81 L. J. P.C. 169; [1912] A.C. 347; 105 L. T. 973; 28 T. L. R. 206—P.C.

Charge against Solicitor of Professional Misconduct — Destruction of Material Documents.]—After an application had been made to the committee of the Incorporated Law Society to hear a charge of misconduct against a solicitor, and before the report of the committee had been presented to the Lord Chancellor, the solicitor destroyed the documents on which the charge of misconduct was founded. *Semble*, that this amounted to contempt of Court. *Solicitor, In re*, [1915] 1 Ir. R. 152—L.C.

See also ATTACHMENT.

CONTINGENT REMAINDER.

See WILL.

CONTRACT.

A. FORMATION OF CONTRACT.

1. Agreement.

See also Vol. IV. 3, 1953.

Verbal or Implied Agreement to Treat Acceptance out of Time as Valid or to Extend Time—Agent for Acceptance—Ratification of Acceptance by Subsequent Conduct — Parol Variation of a Written Contract.]—B. wrote to A. accepting A.'s offer, "subject to the purchase money being secured to my satisfaction." This acceptance was dated October 18, the last day of the lunar month in question, and was sent by B. to S., a house agent, and received by S. on October 19. S. sent a copy of the letter to A. the same day. S. had no previous authority from A. to receive the acceptance; but *held*, that the subsequent conduct of A. ratified S.'s acceptance and constituted S. A.'s agent for that purpose, so that the acceptance was in time. *Morrell* v. *Studd*, 83 L. J. Ch. 114; [1913] 2 Ch. 648; 109 L. T. 628; 58 S. J. 12—Astbury, J.

Semble, even if the acceptance had not been in time the subsequent conduct of A. in continuing to negotiate with B. for three months after B.'s acceptance with reference to the details of the contract, such as the securing of the purchase money, without having suggested that the acceptance was out of time, was sufficient to shew an implied agreement either to enlarge the time for acceptance or to treat the actual acceptance as a proper acceptance. Such an implied agreement need not be in writing to satisfy the Statute of Frauds; because it is not a verbal alteration of an agreement required to be in writing, since the agreement required to be in writing is not complete, and therefore not an agreement till a proper acceptance is given, and before an acceptance out of date can be treated as proper the implied or verbal agreement must of necessity be come to. *Bruner* v. *Moore* (73 L. J. Ch. 377; [1904] 1 Ch. 305) applied. *Goss* v. *Nugent (Lord)* (2 L. J. K.B. 127; 5 B. & Ad. 58) distinguished. *Ib.*

Term of Contract Left Open.]—Although a term, such as the securing of the purchase money, was left open in the contract, that

did not prevent the contract from being complete and sufficient if the parties intended it should be and so treated it. *Hussey* v. *Payne* (48 L. J. Ch. 846; 4 App. Cas. 311) applied. *Ib.*

Waiver of Term Solely in his Favour by Vendor.]—The provision in the contract as to securing the purchase money, being a term solely for the benefit of B., the vendor, might be waived by B. at the Bar. *Hawksley* v. *Outram* (61 L. J. Ch. 429; [1892] 3 Ch. 359) applied. *Ib.*

Ticket — Conditions — Whether Conditions Brought to Purchaser's Notice—Negligence.—The plaintiff purchased a ticket and went to a football ground where a match was being played. On the ticket purchased by him there was a note to the effect that it was agreed between him and the defendants, who were the members of the committee of a football union, that the defendants should not be liable for any injury caused to him through the overcrowding of the stand or the conduct of the spectators: and a large number of red posters exhibiting a notice to that effect were placed in conspicuous positions inside the entrances to the ground. While the match was in progress there was a considerable amount of swaying to and fro of the people crowded on the stand, and the plaintiff was thereby carried over the place where a post forming part of the barrier had been snapped off, leaving a hole, and his foot was caught in the hole and his leg injured. In an action claiming damages in respect of that injury, the jury found—first, that the plaintiff knew that there was printed matter on the ticket purchased by him; secondly, that the plaintiff did not know that the printing contained conditions upon which he was allowed to enter the ground; thirdly, that the defendants did not do what was reasonably sufficient to give the plaintiff notice of the conditions; and fourthly, that the accident happened owing to the negligence of the defendants:—*Held*, that the questions whether the defendants had taken reasonable care to give the plaintiff notice of the conditions of the contract, and whether there had been negligence on the part of the defendants, were entirely for the jury, and that the Court could not interfere with the verdict. *Skrine* v. *Gould*, 29 T. L. R. 19—C.A.

2. Statute of Frauds.

See also Vol. IV. 32, 1956.

Not to be Performed within Space of One Year—Required by Law to be in Writing—Variation by Parol Agreement—Rescission.]—A contract required by law to be in writing may be varied by a parol agreement, provided that the whole of the terms of the new parol agreement, including those incorporated from the original agreement, are such that it is not necessary that they should be in writing, the variation in effect amounting to a rescission of the original agreement. If, however, the new parol agreement is, by reason of its terms, required by law to be in writing, it is of no effect, and the original agreement is still binding. *Williams* v. *Moss's Empires, Lim.*, 84 L. J. K.B. 1767; [1915] 3 K.B. 242; 113 L. T. 560; 31 T. L. R. 463—D.

Agreement for Service — Time for Commencement—Part Performance.]—The defendant engaged the plaintiff as medical assistant, at the rate of 200*l.* a year for the first year, and afterwards at a rate to be agreed upon, with the use, rent free, of a house. The defendant wrote a letter to the plaintiff in which these terms were embodied, but the letter did not state the date when the services to be rendered by the plaintiff were to commence, although it was clear from the letter that they were not to commence until a future date:—*Held*, first, that as the letter did not shew the date at which the services were to commence, it was not a sufficient memorandum in writing to satisfy the Statute of Frauds; and secondly, that as the contract was in substance for personal service, the occupation of the house by the plaintiff being merely to be enjoyed by him with a view to his rendering those services, it was a contract to which the doctrine of part performance did not apply to take the case out of the Statute of Frauds. *Elliott* v. *Roberts*, 107 L. T. 18; 28 T. L. R. 436—Lush, J.

——The plaintiff, who was in the service of the defendants in one capacity, received a letter from them offering him a new engagement in another capacity for seven years, the letter concluding with the words "acceptance of the above will oblige." The plaintiff wrote in reply accepting the offered terms in their entirety, and saying he would start "as from now" in his new employment. In an action by the plaintiff to recover damages for breach of this agreement the defendants contended that as no date was mentioned in writing at which the engagement was to begin or end there was no sufficient written contract to satisfy section 4 of the Statute of Frauds:—*Held*, that section 4 of the Statute of Frauds was sufficiently complied with, as there was a continuing offer of immediate employment, which offer was accepted from the date of the plaintiff's letter of acceptance. *Curtis* v. *B.U.R.T. Co.*, 28 T. L. R. 585—C.A.

Interest in Land—Contract not to be Performed Within a Year.]—A verbal agreement by a wife to keep her husband indemnified in respect of the rent of a house is not an agreement or contract to which section 4 of the Statute of Frauds applies. *Banks, In re; Weldon* v. *Banks*, 56 S. J. 362—Neville, J.

—— **Sufficiency of Memorandum.**]—The plaintiff instructed an auctioneer to put up for sale by public auction the grazing of a portion of her lands for a period of six months. The auctioneer duly offered the grazing for sale and accepted the bid of the defendant, making at the same time the following entry in his book: "Miss Crane's meadows—Bernard Naughten, 13*l.* 10*s.*":—*Held*, that if the Statute of Frauds applied to such a contract, the above note or memorandum was insufficient to satisfy the statute. *Crane* v. *Naughten*, [1912] 2 Ir. R. 318—K.B. D.

—— **Auction—Entry by Auctioneer of Name of Purchaser on Margin of Particulars of Sale.**]—An auctioneer at a sale of land entered on the margin of his copy of the particulars and conditions of sale, against the lot, the name of the highest bidder for the lot and the amount of the bid, but there was nothing to indicate that he was the purchaser of the lot. The bidder did not sign the memorandum of agreement contained in the particulars or pay any deposit:—*Held*, that the entry by the auctioneer was not a sufficient note or memorandum in writing to satisfy the requirements of section 4 of the Statute of Frauds. *Dewar* v. *Mintoft*, 81 L. J. K.B. 885; [1912] 2 K.B. 373; 106 L. T. 763; 28 T. L. R. 324—Horridge, J.

—— **Letter by Purchaser Repudiating Contract, but Containing Terms of Contract.**]—The bidder subsequently wrote letters to the vendor and his agent in which he repudiated his liability under the contract, but in which he, at the same time, set out all the terms of the bargain and referred to the particulars of sale:—*Held*, that the letters contained a sufficient memorandum in writing to satisfy the statute. *Ib.*

—— **Purchaser's Name Written by a Third Person at the Instance of the Purchaser.**]—A memorandum of a transaction of purchase, written at the time when and the place where such transaction took place, and at the purchaser's dictation, by a relative of the vendor, who was present when the transaction was entered into, is a sufficient memorandum or note of the agreement in writing signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised, to satisfy the 4th section of the Statute of Frauds. *Brooks* v. *Billingham*, 56 S. J. 503—Neville, J.

—— **Signature by Agent—Sufficiency.**]—On February 11, 1911, the defendant verbally agreed with G. for the purchase of certain property for 700*l.*, and paid 50*l.* by way of deposit. G. was then acting on behalf of the plaintiff as an undisclosed principal, but he subsequently set up that he had agreed to buy the property from the plaintiff for 600*l.*, and that in the transaction with the defendant he was acting on his own account. In this state of things much correspondence and negotiation took place between the plaintiff's solicitors and the defendant's solicitors, in the course of which it was arranged that the plaintiff should defend the action brought by G. for the specific performance of the alleged contract between them, and that the defendant should help the plaintiff by giving evidence in that action for him. G.'s action against the plaintiff was heard on November 28, 1911, and in the result it was dismissed with costs. The defendant having declined to complete the purchase, the plaintiff brought this action for specific performance. To this action the defendant pleaded that there was no sufficient memorandum or note signed by him or any one authorised by him to satisfy the Statute of Frauds. It appeared that during the correspondence over the action of G. against the plaintiff the plaintiff's solicitors had approached the defendant, through his solicitors, for a statement, with a view to his giving evidence for the plaintiff in his action against G. The defendant had accordingly prepared a statement and also some answers to questions asked by the plaintiff's solicitors, and had sent them to his solicitors, who had forwarded them on to the plaintiff's solicitors. These were now relied upon by the plaintiff as a sufficient note or memorandum to satisfy the Statute of Frauds. Further, the plaintiff was allowed at the trial to amend his claim and to allege part performance. It was contended for the defendant that, first, his solicitors were not acting as his agents, but as agents for the plaintiff in obtaining a proof from him; and secondly, that in any case the authority to his solicitors did not extend to signing a note or memorandum of the contract on his behalf:—*Held*, that the first contention was untenable. That as to the second contention, the authority given by the defendant to his solicitors was an authority to forward to the plaintiff's solicitors certain particular documents, and although the defendant might not have been contemplating that those documents would form a note or memorandum sufficient to satisfy the Statute of Frauds, that did not invalidate the authority to forward the documents or prevent all the legal consequences flowing from the forwarding of them which would undoubtedly have flowed from it had the defendant forwarded the statements himself and signed the letters inclosing the statements himself. *Held*, further, that there was sufficient evidence of part performance. *Daniels* v. *Trefusis*, 83 L. J. Ch. 579; [1914] 1 Ch. 788; 109 L. T. 922; 58 S. J. 271—Sargant, J.

Letter Inclosed in Envelope Addressed to a Party.]—Where it is proved or admitted that a letter has been sent to and received by a party inclosed in an envelope addressed to that party, the letter and envelope together constitute one document or memorandum in writing sufficient to satisfy the Statute of Frauds. *Pearce* v. *Gardner* (66 L. J. Q.B. 457; [1897] 1 Q.B. 688) applied. *Last* v. *Hucklesby*, 58 S. J. 431—C.A.

Agreement not to be Performed Within a Year.]—A contract of service for a period of more than a year terminable at any time by six months' notice on either side is within section 4 of the Statute of Frauds, and cannot be enforced unless there be a memorandum thereof in writing. *Hanau* v. *Ehrlich*, 81 L. J. K.B. 397; [1912] A.C. 39; 106 L. T. 1; 56 S. J. 186; 28 T. L. R. 113—H.L. (E.)

Decision of the Court of Appeal (81 L. J. K.B. 162; [1911] 2 K.B. 1056) affirmed. *Ib.*

Dobson v. *Collis* (25 L. J. Ex. 267; 1 H. & N. 81) and *Icraman, Ex parte; Pentrequinea Fuel Co., in re* (31 L. J. Ch. 741; 4 De G. F. & J. 541), followed. *Peter* v. *Compton* (Skinner, 353) distinguished. *McGregor* v. *McGregor* (57 L. J. Q.B. 591; 21 Q.B. D. 424) considered and explained. Observations in *Fenton* v. *Emblers* (3 Burr. 1278) and *Wells* v. *Horton* (5 L. J. (o.s.) C.P. 41; 4 Bing. 40) disapproved. *Ib.*

—— **Sale of Goods—Acceptance of Part of the Goods by Purchaser.**]—A contract for the sale of goods which is not in writing signed by the party to be charged therewith, and which is not to be performed within the space of one year from the making thereof, is unenforceable under section 4 of the Statute of Frauds, notwithstanding that it comes within section 4 of the Sale of Goods Act, 1893, by reason of the acceptance by the buyer of part of the goods so sold. *Prested Miners Gas Indicating Electric Lamp Co.* v. *Garner*, 80 L. J. K.B. 819; [1911] 1 K.B. 425; 103 L. T. 750; 27 T. L. R. 139—C.A.

B. PARTIES TO CONTRACT.

See also Vol. IV. 79, 1965.

Persons Entitled to Sue—Sale of Goods—Conditions as to Sale at Minimum Price.]—The plaintiffs agreed with D. as a middleman to sell Dunlop tyres. D. was to get certain discounts, and bound himself not to sell below certain prices, and not to sell to purchasers who would not give a similar undertaking maintaining prices. By an agreement, the parties to which were D. and the defendants, the latter agreed not to alter, remove, or tamper with the marks or numbers on Dunlop motor tyre covers or tubes, and not to sell such covers or tubes below list prices. This agreement also contained the following clause: "We [the defendants] agree to pay to the Dunlop Company the sum of 5*l.* as liquidated damages" for every tyre sold below list price; "without prejudice to any other remedies which you or the Dunlop Company may have." The defendants having sold two tyres below list prices, the plaintiffs claimed an injunction and damages:—*Held*, that there was no consideration given by the plaintiffs to the defendants, or at the defendants' request, and consequently there was no enforceable contract between the plaintiffs and the defendants, and that therefore the plaintiffs were not entitled to the relief claimed. *Dunlop Pneumatic Tyre Co.* v. *Selfridge & Co.*, 84 L. J. K.B. 1680; [1915] A.C. 847; 113 L. T. 386; 59 S. J. 439; 31 T. L. R. 399—H.L. (E.)

Decision of the Court of Appeal (83 L. J. K.B. 923; 30 T. L. R. 250) affirmed. *Ib.*

Contract for Personal Service—Agreement to Devote Whole Time — Breach of Contract — Negative Stipulation—Injunction.]—A skipper contracted to devote the whole of his time, attention, ability, and energies to the performance of his duties as skipper in a trawler, the property of his employers, and not to give his time to any other business or occupation:—*Held*, that an injunction could not be granted to restrain him from obtaining other employment, as that would practically amount to enforcing a specific performance of the contract. *Chapman* v. *Westerby*, 58 S. J. 50—Warrington, J.

C. THE MATTER OF CONTRACT.

1. Consideration.

See also Vol. IV. 90, 1967.

Agreement between Directors of Company to Forego Fees—Liquidator of Company Party to Agreement—Subsequent Claim by Director for Fees—Right of Company to Set up Agreement.]—By a verbal agreement between the liquidator, on behalf of the plaintiff company, and the directors of the company, including the defendant, and by the directors mutually with each and all the others, it was agreed that each of the directors, including the defendant, should forego any claim to any unpaid balance of directors' fees. Subsequently, on being sued by the plaintiff company for goods sold and delivered and for work done, the defendant counterclaimed for director's fees earned previously to the above-mentioned agreement:—*Held*, that the agreement was binding, and was a good answer to the counterclaim. *Slater* v. *Jones* (42 L. J. Ex. 122; L. R. 8 Ex. 186) applied. *West Yorkshire Darracq Agency, Lim.* v. *Coleridge*, 80 L. J. K.B. 1122; [1911] 2 K.B. 326; 105 L. T. 215; 18 Manson, 307—Horridge, J.

Sale of Goods — Price Maintenance Agreement—Re-sale—Similar Agreement—Re-sale by Original Purchaser—Principal or Agent for Undisclosed Principal.]—By a contract made between D. & Co. and the appellants, in consideration of the appellants allowing them certain discounts off their list prices for their goods, D. & Co. agreed to purchase goods to a certain amount from the appellants, and undertook not to re-sell such goods to private customers at less than the list prices of the appellants, and to pay a penalty for any breach of such undertaking; but they were at liberty to sell such goods to persons in the trade at less than the list prices on obtaining from them a similar undertaking as to re-sales. D. & Co. sold some of the goods to the respondents, who were in the trade, at discounts less than they had themselves obtained from the appellants, and obtained a similar undertaking from them as to re-sales. The respondents afterwards, in breach of their undertaking, sold some of the goods to a private customer at less than the appellants' list prices, and the appellants brought an action against them for penalties:—*Held*, that, assuming that the undertaking of the respondents as to re-sales was given to D. & Co., not as principals, but on behalf of the appellants as undisclosed principals, there was no consideration moving from the appellants to the respondents to support that undertaking, and that the action could not be maintained. *Dunlop Pneumatic Tyre Co.* v. *Selfridge & Co.*, 84 L. J. K.B. 1680; [1915] A.C. 847; 113 L. T. 386; 59 S. J. 439; 31 T. L. R. 399—H.L. (E.)

Decision of the Court of Appeal (83 L. J. K.B. 923) affirmed. *Ib.*

Employment at Certain Salary for Fixed Period — New Agreement During Period for Less Salary.]—By an agreement in writing the plaintiff entered the defendants' employment for a period of two years at a certain salary, and it was provided that if the defendants' business was discontinued during that period the agreement should cease to be of any effect. When war broke out the defendants' business diminished, and they had to consider whether they would close it altogether. Consequently the parties made a new written agreement, by which the plaintiff agreed to

accept a less salary during the war provided that after the war the old agreement should be revived. For some time the plaintiff accepted the reduced salary, and then brought an action for salary at the old rate:—*Held*, that there was consideration for the new agreement, and the action failed. *Raggow* v. *Scougall & Co.*, 31 T. L. R. 564—D.

Sale of Estate—Shares in New Company—Issue—Sanction of Treasury—Condition as to Time of Payment.]—The defendant company contracted to sell certain estates to the plaintiff company, in return for a sum in cash and shares in a company agreed to be formed, the consideration to be paid by a fixed date or not less than a month after the sanction of the Treasury should have been obtained for the issue of the capital of the new company. The terms of the contract shewed that it was to be performed in a short time. The Treasury refused to sanction the issue:—*Held*, that the plaintiff company was not entitled to have the contract performed, as the contract did not contemplate an ultimate sanction by the Treasury after refusals extending over an unlimited time. *East Indies Commercial Co.* v. *Nilambur Rubber Estates*, 59 S. J. 613; 31 T. L. R. 500—Sargant, J.

2. Impossible Contracts.

See also Vol. IV. 141, 1969.

Impossibility of Performance.]—In 1907 a tradesman agreed with an advertising contractor to take six advertisement slides on the cars "running at Dumbarton," for a period of five years at a weekly rent. At the date of the contract the tramways in Dumbarton belonged to the X company, and there were only six cars, and these ran at frequent intervals backwards and forwards in the town of Dumbarton. The tramways were afterwards taken over by the Y company, which, in June, 1908, extended the tramway routes into the country beyond the burgh of Dumbarton, and increased the number of the cars to thirty, and thereafter the six cars on which the tradesman's advertisement appeared were only used at infrequent intervals, and ran not only in Dumbarton, but over the whole extended routes. The tradesman having refused to pay the rent under the contract after June, 1908, the advertising contractor sued him to recover payment:—*Held*, that after the date on which the tramway system was taken over and extended by the Y company the contractor was not in a position to implement the contract, as the cars on which the tradesman's advertisements appeared were no longer "running at Dumbarton" within the meaning of the contract; that the contract accordingly came to an end at that date; and that the contractor could not recover rent from the tradesman after that date. *Abrahams* v. *Campbell*, [1911] S. C. 353—Ct. of Sess.

As to Effect of War.]—*See* War.

3. Illegal Contracts.

a. Generally.

See also Vol. IV. 150, 1975.

Duty of Court.]—Where the person invoking the aid of the Court is himself implicated in the illegality, the Court will not allow itself to be made an instrument to enforce an illegal agreement, whether the defendant has pleaded the illegality or not. *Robinson's Settlement, In re; Gant v. Hobbs*, 81 L. J. Ch. 393; [1912] 1 Ch. 717; 106 L. T. 443; 28 T. L. R. 298—C.A.

If a contract and the surrounding circumstances are fully before the Court it must pronounce on the legality of the transaction, but if all the circumstances are not before the Court it may not do so unless the contract is unlawful upon the face of it. *North-Western Salt Co.* v. *Electrolytic Alkali Co.*, 83 L. J. K.B. 530; [1914] A.C. 461; 110 L. T. 852; 58 S. J. 338; 30 T. L. R. 313—H.L. (E.)

Contract Void at Common Law—Trustee in Bankruptcy—Agreement to Share Fees with Creditor.]—The test whether a claim connected with an illegal agreement can be enforced is whether the plaintiff requires any aid from the illegal agreement to establish his case. *Farmers' Mart* v. *Milne*, 84 L. J. P.C. 33; [1915] A.C. 106; [1914] S. C. (H.L.) 84; 111 L. T. 871; [1915] H. B. R. 33—H.L. (Sc.)

The respondent was manager for the appellants, who carried on business as auctioneers, valuers, livestock salesmen, and land surveyors. By an agreement made between the appellants and the respondent it was agreed that the respondent should be entitled, with the consent of the appellants, to undertake any trusteeship or office involving the management of any estate, the fees receivable, after the deduction of out-of-pocket expenses, to be pooled with all fees and commissions derived by the appellants from any sales or valuations in connection with such estate, and to be divided as therein agreed, "provided always that before any such division shall take place there shall out of the said proceeds be paid to the" appellants "the balance of any debt remaining due to them from such estate after giving credit for all sums received or falling to be received on account of such debt." In an action brought by the appellants against the respondent under the agreement for an account of fees received, —*Held*, that the agreement was void as being a fraud upon the Bankruptcy Acts, and that the action could not be maintained. *Ib.*

Decision of the Court of Session in Scotland ([1914] S. C. 129) affirmed. *Ib.*

As to Effect of War.]—*See* War.

b. Contrary to Public Policy.

See also Vol. IV. 154, 1975.

Newspaper Advising Canadian Investors—Covenant not to Comment on Particular Canadian Company.]—Where a newspaper purports to give advice to persons desirous of dealing in Canadian land and other Canadian investments, and comments for this purpose upon Canadian companies, a covenant by its proprietors with a person interested in and a director of a Canadian land company not to comment upon that company, its directors, business, or land, or any company with which the proprietors have notice that that company is connected or concerned, is void as being unreasonably in restraint of trade. Such a covenant is in those circumstances also void as being contrary to public policy. So *held* by

Pickford, L.J., and Warrington, L.J. Decision of Atkin, J. (31 T. L. R. 84), affirmed. *Neville* v. *Dominion of Canada News Co.*, 84 L. J. K.B. 2105; [1915] 3 K.B. 556; 31 T. L. R. 542—C.A.

Agreement for Advertisement of Theatre—Fictitious Legal Proceeding.]—The plaintiffs, a husband and wife, entered into agreements for reward with the defendant, who was the lessee of a theatre, to carry out a scheme for the purpose of advertising the theatre. The scheme was as follows: The female plaintiff and another lady were to occupy stalls at a *matinée* performance at the theatre attired in ultra-fashionable hats calculated to interrupt the view of other members of the audience. A seat immediately behind them was to be occupied by a gentleman who was to request the ladies to remove their hats, and, upon their refusing to do so, the defendant was to be summoned and to invite the parties into the corridor. He was then to request the ladies either to remove their hats or to leave the theatre, and, upon their refusing to accede to either request, he was to eject them by committing the technical assault of laying his hand upon the shoulder of one of them. The ladies were then to summon the defendant for an assault, and he was to defend himself upon the ground that he was justified in acting as he had for the purpose of protecting the convenience of his audience. The scheme was duly carried out, and the summons was dismissed by the magistrate. Actions were brought by the plaintiffs to recover the amounts due from the defendant for their services in connection with the carrying out of the scheme:—*Held*, that the agreements were illegal and unenforceable as being against public policy. *Dann* v. *Curzon*, 104 L. T. 66; 55 S. J. 189; 27 T. L. R. 163—D.

Agreement to Refrain from Prosecution.]—In an action brought by a firm against a former employee to recover a sum which he was alleged to have embezzled, the pursuers founded on a promissory note granted by him to them for this sum, and on a letter from him admitting that he had used the firm's money and acknowledging their kindness in not prosecuting him. The defender averred that the pursuers had induced him to sign these documents by threatening that otherwise they would prosecute him; and pleaded that this was a *pactum illicitum*, and, accordingly, that the documents could not be founded on against him:—*Held*, that even if an agreement to refrain from prosecuting the defender would have been unlawful, no such agreement had been relevantly averred. Opinion reserved as to whether such an agreement would be a *pactum illicitum*. *Lamson Paragon Supply Co.* v. *MacPhail*, [1914] S. C. 73—Ct. of Sess.

Covenant by Co-respondent in Divorce Suit not to Come within a Radius of Ten Miles of Petitioner's Residence—Breach—Injunction.]—The plaintiff presented a petition for divorce from his wife on the ground of adultery, and the defendant was made a co-respondent. Subsequently an arrangement was come to by which the petition was to be dismissed on the defendant's covenanting not to go within ten miles of the plaintiff's residence. Accordingly a deed of May 1, 1911, was executed by which the defendant covenanted that he would not during fifteen years go within a radius of ten miles of the plaintiff's residence upon any pretext whatever without the plaintiff's consent. The sum of 3,000*l.* was paid by the defendant to the trustees of the deed to be held by them in trust for the plaintiff in case of a breach of the covenant, and the petition was dismissed. The defendant having committed a breach of the covenant by going within the area, the plaintiff claimed an injunction to restrain the breach of the covenant, and also payment of the 3,000*l.*:—*Held*, that the covenant was not void as being against public policy, or as infringing the liberty of the subject, and that the plaintiff was entitled to an injunction and also to an order on the trustees of the deed to pay to him the 3,000*l.* *Upton* v. *Henderson*, 106 L. T. 839; 56 S. J. 481; 28 T. L. R. 398—Eve, J.

Payment to Director to Promote Interests of Particular Shareholder.]—A company, having spent all its money, applied to the defendant to supply additional capital by taking shares. The defendant agreed to do so on terms, one of which was that he should have representatives on the board. The company having approved this agreement in general meeting, the defendant appointed the plaintiff to act as his representative to look after his (the defendant's) interests, for which services the defendant was to pay the plaintiff 200*l.* a year out of his own pocket so long as the plaintiff remained a director. In an action brought by the plaintiff to recover remuneration calculated at the rate of 200*l.* a year, the jury found that the defendant had agreed to pay the plaintiff 200*l.* a year so long as he remained a director, and they further found that the agreement did not contemplate that the plaintiff should promote the interests of the defendant, even though such interests were not identical with those of the whole body of shareholders:—*Held* (Vaughan Williams, L.J., dissenting), upon those findings, that the bargain was not corrupt, the company's assent to and approval of the agreement between the plaintiff and the defendant being sufficient to divest the transaction between the parties of any character of illegality, and that the plaintiff was therefore entitled to recover his remuneration. *Kregor* v. *Hollins*, 109 L. T. 225—C.A.

Undischarged Bankrupt—Agreement to Pay Debt Incurred Prior to Bankruptcy—Validity.]—The plaintiff recovered judgment against the defendant for 913*l.* 11*s.*, and subsequently a receiving order was made against the defendant and he was adjudicated bankrupt. No part of the 913*l.* 11*s.* had been paid, but the plaintiff lodged no proof in the bankruptcy. While the defendant was still undischarged, the plaintiff lent 15*l.* to the defendant in consideration of a promise by the defendant to pay what he owed prior to the receiving order just as if such receiving order had not been made. In an

action by the plaintiff against the defendant to recover the 913*l.* 11*s.* it was admitted that no dividend could be paid by the defendant's estate :—*Held*, that the contract was valid and that therefore the plaintiff was entitled to recover. *Wild* v. *Tucker*, 83 L. J. K.B. 1410; [1914] 3 K.B. 36; 111 L. T. 250; 21 Manson, 181; 30 T. L. R. 507—Atkin, J.

Effect of War on Contracts.]—*See* WAR.

c. Contrary to Statute.

See also Vol. IV. 159, 1976.

The plaintiffs were confectionery manufacturers, and the defendants ordered from them confectionery to be delivered during August and September, 1914, for export. No time was specified in the contracts, and the usual course of business between the parties was that goods should be delivered within six or eight weeks. It was an implied term of the contracts that the goods should be exported, so that the plaintiffs would get the benefit of a drawback to which the goods were subject. On August 10 a proclamation prohibited the export of sugar, and on August 14 the plaintiffs cancelled the contract. On August 20 the embargo on the export of sugar was removed by a further proclamation :—*Held*, that the plaintiffs ought to have waited a reasonable time after August 10 to see whether they could carry out the contracts and that as they had not done so the defendants were entitled to recover against them damages for failure to perform them. *Miller & Co.* v. *Taylor & Co.*, 60 S. J. 140; 32 T. L. R. 161—C.A. Reversing, 112 L. T. 995—Rowlatt, J.

d. Contrary to Morality.

See also Vol. IV. 173, 1977.

Agreement for Letting Premises to Kept Mistress—Right of Landlord to Recover Rent.]—The plaintiff let a flat to the defendant, a spinster. At the time of letting the plaintiff's agent knew that the defendant was the mistress of a certain man who visited her at the flat; that the rent of the flat would come through the defendant being a kept woman; and that the man whose mistress she was would find the money for the rent. Certain rent not having been paid by the defendant, the plaintiff sued her to recover it :—*Held*, that, the flat being let for an immoral purpose, the plaintiff was not entitled to recover. *Upfill* v. *Wright*, 80 L. J. K.B. 254; [1911] 1 K.B. 506; 103 L. T. 834; 55 S. J. 189; 27 T. L. R. 160—D.

e. In Restraint of Trade.

i. *General Principles.*

See also Vol. IV. 189, 1978.

In construing a covenant in restraint of trade the true object of the prohibition must be discovered by looking at the whole contract, and the particular clause in question. *Hadsley* v. *Dayer-Smith*, 83 L. J. Ch. 770; [1914] A.C. 979; 111 L. T. 479; 58 S. J. 554; 30 T. L. R. 524—H.L. (E.)

Trading Corporation—Action to Enforce Contract—No Plea of Illegality—Right to Raise Question of Illegality.]—If a contract and the surrounding circumstances are fully before the Court it must pronounce on the legality of the transaction, but if all the circumstances are not before the Court it may not do so unless the contract is unlawful upon the face of it. *North-Western Salt Co.* v. *Electrolytic Alkali Co.*, 83 L. J. K.B. 530; [1914] A.C. 461; 110 L. T. 852; 58 S. J. 338; 30 T. L. R. 313—H.L. (E.)

Therefore in an action on a contract, where the defendant had deliberately abstained from raising the question of the legality of the contract on the pleadings, the Court is not justified in holding the contract bad, simply as being in restraint of trade, in the absence of evidence that the restrictions imposed were unreasonable, or that it was contrary to public policy as being injurious to the interests of the community. *Ib.*

ii. *Reasonableness.*

See also Vol. IV. 191, 1982.

Advertising Agent—Manager—Covenant not to Engage in Similar Business in United Kingdom—Restraint too Wide.]—A covenant by an employee of an advertising agent that he would not carry on, or be engaged directly or indirectly in, any similar business in any part of the United Kingdom is too wide, and therefore void. *Stuart* v. *Halstead*, 55 S. J. 598—Eve, J.

Agreement not to be Engaged for Three Years after Termination of Employment in Similar Business within Twenty-five Miles of London.]—The test of the validity of a covenant in restraint of trade is whether it is reasonable in reference to the interests both of the parties concerned and of the public. *Mason* v. *Provident Clothing and Supply Co., Lim.*, 82 L. J. K.B. 1153; [1913] A.C. 724; 109 L. T. 449; 57 S. J. 739; 29 T. L. R. 727—H.L. (E.)

A covenant in an agreement between a master and servant, in a case in which the servant was employed in a limited district as a canvasser and collector, and had not any special training or knowledge of trade secrets, that the servant should not within three years after the termination of his employment be engaged in any similar business within twenty-five miles of London, or within twenty-five miles of any place where he had been employed by the master, was held to be invalid as imposing restrictions greater than were reasonably necessary for the protection of the master in his business. *Ib.*

Consultant Physicians—Lifelong Restraint—Special Area—Prohibited Area.]—The plaintiff carried on a pathological laboratory as a consultant physician in the Harley Street area of London, the principal quarter of the consultant branch of the medical profession. In 1906 the defendant, also a physician,

entered the plaintiff's employment as pathologist and microscopist under an agreement by which the defendant was "not to engage in similar work within a distance of ten miles" from the plaintiff's laboratory under a penalty. In 1912 the defendant left the plaintiff's employment and commenced practising as a pathologist on his own account within the prohibited radius :—*Held*, upon the construction of the agreement, that the restriction was for the life of the defendant. *Held*, further (Swinfen Eady, L.J., dissenting), that it was not necessary or reasonable that the defendant should be restrained for his whole life from carrying on his business in the quarter where it could most profitably be carried on, and that the restriction was therefore invalid. *Eastes* v. *Russ*, 83 L. J. Ch. 329; [1914] 1 Ch. 468; 110 L. T. 296; 58 S. J. 234; 30 T. L. R. 237—C.A.

Dealing in Indiarubber Goods.]—The defendant was employed by the plaintiffs as a traveller in their solid tyre department under an agreement which contained the following clause : "On the termination by any means of this agreement the [defendant] shall not for a period of one year from the date of such termination either alone or jointly or in partnership, or in the service of any other person or persons, firm, or company whatsoever, directly or indirectly, either by himself or as agent, or otherwise, carry on or manage, or be concerned, employed, or interested in the sale, purchase, manufacture or other dealings in indiarubber goods, whether wholesale or retail, in any part of the United Kingdom, Germany, or France." The defendant within one year after leaving the plaintiffs' employment entered the service of another company which was engaged in the sale of indiarubber goods in the United Kingdom, whereupon the plaintiffs claimed an injunction :—*Held*, that the covenant, considering the duration of the restriction, was not too wide or unreasonable for the protection of the plaintiffs' business, except that part of it which related to Germany and France, in which countries the plaintiffs sold no indiarubber goods, but that that part of the covenant could be severed from the other part; and therefore that the plaintiffs were entitled to an injunction on that footing. The decision in *Baines* v. *Geary* (56 L. J. Ch. 935; 35 Ch. D. 154) is not reconcilable with the decision in *Baker* v. *Hedgecock* (57 L. J. Ch. 889; 39 Ch. D. 520); the view expressed in the latter case is the correct one. *Continental Tyre and Rubber Co.* v. *Heath*, 29 T. L. R. 308—Scrutton, J.

Contract of Service — Manufacturers of Specialised Form of Machinery—Restriction in United Kingdom — Skill and Experience Acquired.]—The defendant was from 1901 to 1913 in the employment of the plaintiffs, who were engaged in the manufacture of a highly specialised form of machinery. Their business was the leading one in the United Kingdom in this class of machinery, and was spread over a large part of the kingdom. In 1911 the plaintiffs and the defendant entered into an agreement by which the defendant covenanted that he would not at any time during a period of seven years from the date of his ceasing to be employed by the plaintiffs within the United Kingdom carry on or be concerned in the sale or manufacture of the class of machinery made by the plaintiffs, or any business connected with it :—*Held* (Phillimore, L.J., dissenting), that to enforce this restriction against the defendant would be to deprive him and the public of much of the benefit of his skill and experience which he had gained in the plaintiffs' employ, and that the restriction was greater than was reasonably necessary for the protection of the plaintiffs in their business and could not be enforced. *Morris, Lim.* v. *Saxelby*, 84 L. J. Ch. 521; [1915] 2 Ch. 57; 112 L. T. 354; 59 S. J. 412; 31 T. L. R. 370—C.A.

Interest of Covenantor — Public Policy — Reasonableness.]—In considering whether contracts in restraint of trade are enforceable regard must be had to the interest of the covenantor and not solely to the interest of the covenantee. Different considerations will arise in regard to the enforceability of such contracts in cases between vendors and purchasers of a business and cases between employers and employees. *Ib.*

Trading in West Africa—Acquisition of Trade Secrets—Reasonableness of Restriction.]—The defendant entered into an agreement with the plaintiffs to serve them for five years as supervising agent at certain of their stations in West Africa. The plaintiffs were export and import merchants engaged in the West African trade, bankers, and agents. The agreement contained the following restrictive clause : "(8) The agent agrees that he will not, either in Africa or in Europe or elsewhere, at any time during the five years next following the termination for any reason of his employment under this agreement, directly or indirectly, either alone or in partnership with or as agent, manager, clerk, servant, or director, of any person or persons or company or companies or otherwise howsoever, and whether for his own benefit or for the benefit of any other person or persons, or company or companies (*a*) assist or engage in the business of a trade or merchant competing in any way with any business at any time during his employment carried on by the company within a radius of fifty miles from a trading station in West Africa now or during his employment established, owned, or managed by the company, or (*b*) trade or deal in relation to or in connection with any such competing business with any person or persons, company or companies now or at any time hereafter during his employment a customer or customers of the company or otherwise dealing with the company, or solicit or endeavour to obtain the custom or connection of any such person or persons, company or companies so far as concerns goods, merchandise, or produce supplied, bought, or dealt with in the course of the business of the company. Provided that this clause shall only be enforceable so long as the company or its assigns enforcing the same shall continue to carry on or be carrying on such business or part thereof" :—*Held*, that the restriction imposed by the clause was necessary for the

protection of the plaintiffs' business, and was not void as being in restraint of trade. *Millers, Lim.* v. *Steedman*, 84 L. J. K.B. 2057; 113 L. T. 538; 31 T. L. R. 413—C.A.

Shop Assistant.]—The defendant was employed by the plaintiff company as shop assistant in their branch shop at Southend under an agreement by which the defendant agreed that he would not, for a period of two years subsequent to his leaving the employment, "establish, carry on, or be engaged in, or interested in . . . a business of a similar character to the business of the company within the distance of two miles of any shop for the time being belonging to the company at which he has been employed within the twelve months prior to his leaving their employ, nor solicit any of the customers of the company." The defendant's duty was to serve at the grocery counter in the plaintiffs' shop, although for a short time he canvassed for orders at the houses of the plaintiffs' regular customers. Shortly after leaving the plaintiffs' service, the defendant entered the employment in the like capacity of another company, whose business was of a similar character to that carried on by the plaintiffs, and whose shop was within two miles of the plaintiffs' shop. In an action by the plaintiffs to restrain the defendant from continuing in the service of this other firm in breach of the restrictive covenant entered into by him,—*Held*, that the defendant was "engaged" with the other firm within the meaning of that expression in the agreement, but that, having regard to the nature of the defendant's employment, the restrictive covenant was not reasonably necessary for the protection of the plaintiffs' business, and therefore could not be enforced. *Pearks* v. *Cullen*, 28 T. L. R. 371—Hamilton, J.

Monopoly.]—By a contract in writing the plaintiffs agreed to buy from the defendants 72,000 tons of salt to be manufactured by the defendants and delivered by them in about equal monthly quantities over a period of four years from January 1, 1908, to December 31, 1911. It was a term of the contract that defendants should not manufacture salt beyond the amount agreed to be delivered to the plaintiffs, and a certain yearly quantity which had to be delivered under an existing contract to a third party and such further quantity as the defendants might require for their own use, but not for sale. The defendants had the option of re-purchasing from the plaintiffs up to 3,000 tons per annum of their own make of table sale at the plaintiffs' then current selling price for table salt, and, if they did so re-purchase, they were to be elected distributors of such quantity on certain terms which prescribed limitations and restrictions, both as to the class of buyers and as to price, packing, and delivery charges. The defendants also bound themselves during the four years not to sell or dispose of land which they possessed for salt-making purposes:—*Held*, that the contract had not been shewn to be in unreasonable restraint of trade, and that it was therefore enforceable by the plaintiffs. *North-Western Salt Co.* v. *Electrolytic Alkali Co.*, 83 L. J. K.B. 530; [1914] A.C. 461; 110 L. T. 852; 58 S. J. 338; 30 T. L. R. 313—H.L. (E.)

Decision of the Court of Appeal ([1913] 3 K.B. 422) reversed. *Ib.*

Part of Covenant Admittedly too Wide—Severing Covenant.]—In 1908 the plaintiffs and the defendant F. entered into an agreement of employment and service, under which F. was to be employed for a term of five years as manager at Liverpool of the plaintiffs, who were importers of and dealers in meat. Their importing business was concerned with Australian and New Zealand meat only, though they also did a considerable general wholesale meat business, which was not confined to Australasian meat, but included American meat. The area of the business was limited almost entirely to Liverpool, Manchester, Nottingham, and other towns in the Midlands and North of England. There was practically no business at all in the South of England, Wales, or Ireland, and very little in Scotland. By the agreement of 1908 the defendant F. covenanted that he would not, for a period of one year from the determination of the agreement, directly or indirectly carry on or be concerned in carrying on within the United Kingdom the trade or business of an importer of meat or agent for importers of meat, or any other trade or business similar to any trade or business carried on during his employment by the plaintiffs:—*Held*, that the fact that the latter part of the covenant was admittedly too wide did not invalidate the former part, but that the covenant was severable. Observations of Lord Moulton in *Mason* v. *Provident Clothing and Supply Co.* (82 L. J. K.B. 1153; [1913] A.C. 724) distinguished. *Neranas & Co.* v. *Walker*, 83 L. J. Ch. 380; [1914] 1 Ch. 413; 110 L. T. 416; 58 S. J. 235; 30 T. L. R. 184—Sargant, J.

But *held*, that the limitation of the period of restraint to one year was not sufficient to validate the covenant if the area of restraint was unreasonable. *Ward* v. *Byrne* (9 L. J. Ex. 14; 5 M. & W. 548) followed. *Ib.*

Held, also, that the covenant was unambiguous, and would not be construed so as to limit it to the importation of Australian or Australasian meat; that both in this respect and as to the area of restraint it was wider than was required for the reasonable protection of the plaintiffs; and that it could not therefore be enforced. *Ib.*

A covenant not to carry on or be interested in the business of vendor of or dealer in real or imitation jewellery for the period of two years in the County of London, England, Scotland, Ireland, Wales, or any part of the United Kingdom of Great Britain and Ireland and the Isle of Man, or in France, the United States of America, Russia, or Spain, or within twenty-five miles of Potsdamerstrasse, Berlin, or St. Stefan's Kirche, Vienna, is severable both in respect of the nature of the business and the area covered by it. Where therefore the Court was of opinion that it was reasonably necessary for the protection of the covenantee's business it granted an injunction against the covenantor's carrying on during the period mentioned the business of a vendor of or dealer in imitation jewellery in the County of London,

England, Scotland, Ireland, Wales, or any part of the United Kingdom of Great Britain and Ireland and the Isle of Man. *Goldsoll* v. *Goldman*, 84 L. J. Ch. 228; [1915] 1 Ch. 292; 112 L. T. 494; 59 S. J. 188—C.A.

Order of Neville, J. (84 L. J. Ch. 63; [1914] 2 Ch. 603), varied. *Ib.*

Qualified Covenant — Severable Contract — Onus of Proof.]—The defendant entered the employment of the plaintiffs, who employed secret processes, under an agreement by which he was to acquire knowledge of their manufactures in accordance with their secret processes and to hold as confidential their secrets or secret processes, and not at any time to communicate any of the plaintiffs' formulæ, processes, or machinery to any person, and not "within the British Empire or the Continent of Europe for five years" after leaving their employment, directly or indirectly enter into or be engaged in the business of manufacturing or selling carbon papers and ribbons or in any business which for the time being might be carried on by the plaintiffs. After leaving the plaintiffs' employment the defendant, who had obtained particulars of a secret machine of the plaintiffs' and formulæ and of materials used by them, became manager to a company which manufactured goods similar to those of the plaintiffs: —*Held*, on a motion for an interlocutory injunction in an action to enforce the agreement, that the defendant had made an improper use of the plaintiffs' secret formulæ or processes of manufacture within the first branch of the agreement, which did not extend to processes in common use and to which considerations of time and space did not apply, and his breach of that part of the covenant ought to be restrained. *Caribonum Co.* v. *Le Couch*, 109 L. T. 587—C.A.

The covenant restraining the defendant from engaging for five years in any business which the plaintiffs might carry on would be too wide, but was severable from the rest of the second part of the agreement. The covenant in that part being qualified both as to time and space, the onus of proving that it was unreasonable lay upon the defendant, and, the evidence shewing that the covenant was necessary for the proper protection of trade, this part of the covenant was held not to be unreasonable, and an interlocutory injunction granted in the terms of the covenant down to the words "carbon papers and ribbons." *Ib.*

Covenant too Wide to be Reasonable—Repudiation of Contract Disentitling Master to Sue on Covenant Contained in Contract.] — A saleswoman covenanted with her employer "not at any time during or after the determination of the employment . . . directly or indirectly either on her own account or for any other person or firm or company" to solicit or entice away from the master "any customer of, or any person or persons in the habit of dealing with the master." There were alleged breaches of this covenant, and the master sued for an injunction. There was a weekly agreement between the saleswoman and employer, and the employer had dismissed her with a week's wages in lieu of notice, refusing to allow her to work out the week's notice, which the saleswoman alleged to be a repudiation of the contract disentitling him to sue on the covenant forming part of it:—*Held*, that the employer had fulfilled all his obligation under the contract by paying a week's wages, and had not therefore repudiated his contract so as to disentitle him to sue. *General Bill-posting Co.* v. *Atkinson* (78 L. J. Ch. 77; [1909] A.C. 118) discussed. *Konski* v. *Peet*, 84 L. J. Ch. 513; [1915] 1 Ch. 530; 112 L. T. 1107; 59 S. J. 383—Neville, J.

Held, also, that the covenant referred to any customer—future or past—and was too wide to be reasonable, and therefore not enforceable. *Ib.*

iii. *Dealings with Particular Persons.*

See also Vol. IV. 198, 1989.

Covenant not to Interfere with Trade or Customers Served from Particular Dairy — Removal of Dairy to other Premises.] — The defendant was engaged as a servant by B., a dairyman, of Evelyn's Dairy, 160 Edward Street, New Cross, and the defendant agreed with B., his assigns and successors that after quitting the service he would not "interfere with the trade and the customers served by and from the dairy aforesaid." The plaintiffs purchased B.'s business, it being part of the agreement that B. should introduce the plaintiffs to his customers. The premises at 160 Edward Street being found unsuitable, the plaintiffs moved the business to 95 High Street, Deptford, which was about the same distance from B.'s customers' houses as was 160 Edward Street. After being in the plaintiff's service for some time, the defendant left them and thereafter served customers of the plaintiffs who had been introduced by B. The plaintiffs claimed to restrain the defendant from committing a breach of his covenant by interfering with the plaintiffs' trade or the customers served by and from the plaintiffs' dairy at 95 High Street, Deptford:—*Held*, that the action failed, as the covenant by the defendant only related to customers served by and from the premises at 160 Edward Street, and none of those who had been served by the defendant after leaving the plaintiffs' service could be so described. *Marshall & Murray* v. *Jones*, 29 T. L. R. 351—Pickford, J.

iv. *What Constitutes a Breach.*

See also Vol. IV. 212, 1989.

Carrying on "the profession of a solicitor" within Prohibited Radius.]—On April 4, 1902, the plaintiffs, a firm of solicitors, wrote engaging the services of the defendant as solicitor's clerk for advocacy and conveyancing. By an undertaking signed April 16 the defendant agreed not at any time during his employment by the plaintiffs, or after the determination thereof, to carry on within a radius of five miles of B. the "profession of a solicitor." In 1909 the defendant left the service of the plaintiffs and took an office outside the prohibited radius. Thence he wrote on behalf of a former client of the plaintiffs living within the radius to a person also living

within the radius demanding payment of a debt, and he subsequently drew an assignment of the debt:—*Held*, by Eve, J., that the undertaking formed part of the original contract of service or was a condition of the continuation of the service so that there was consideration for it; that to restrain the defendant from carrying on "the profession of a solicitor" was not too wide a restriction, although he had been engaged specifically for advocacy and conveyancing; that the defendant's acts were a "carrying on" of his profession within the prohibited radius in breach of the undertaking, and that the injunction must be granted:—*Held*, by the Court of Appeal, that the defendant had not carried on the profession of a solicitor within the prohibited radius. *Edmundson* v. *Render* (74 L. J. Ch. 585; [1905] 2 Ch. 320) distinguished. *Woodbridge* v. *Bellamy*, 80 L. J. Ch. 265; [1911] 1 Ch. 326; 103 L. T. 852; 55 S. J. 204—C.A.

Covenant not to Carry on Business of "Provision merchant"—Manufacture and Sale of Margarine.]—A covenant not to carry on or to be interested in the business of a provision merchant within a certain area is not broken by the manufacture and sale of margarine in the prohibited area. *Lovell & Christmas* v. *Wall*, 104 L. T. 85; 27 T. L. R. 236—C.A.

Improper Use of former Employer's Secret Process.]—See *Caribonum Co.* v. *Le Couch*, *ante*, *ii. Reasonableness.*

Outgoing Partner—Covenant not to Carry on Business within a Radius of One Mile from the Premises of the Partnership—Breach.]—In articles of partnership between the appellant and the respondent, who carried on the business of house agents in London, there was a clause that, on the dissolution of the partnership for any cause, the outgoing partner should not for a period of ten years carry on, directly or indirectly, a similar business "within a radius of one mile from the premises of the said partnership." The partnership was dissolved, and the appellant, the outgoing partner, opened an office at a distance of more than one mile from the office of the partnership, and acted as agent for the selling and letting of houses within the radius:—*Held*, that the respondent was entitled to an injunction to restrain him from so acting. *Turner* v. *Evans* (22 L. J. Q.B. 412; 2 E. & B. 512) approved and followed. *Hadsley* v. *Dayer-Smith*, 83 L. J. Ch. 770; [1914] A.C. 979; 111 L. T. 479; 58 S. J. 554; 30 T. L. R. 524—H.L. (E.)

Sweep — Servant.]—B., a chimney sweep, entered into an agreement for his employment by a company engaged in the business of chimney sweeping which contained the following undertaking: "That he will give the whole of his time and services to the company, will not undertake any work or orders of any kind except for the company and in their name and on their behalf, nor carry on or be concerned in carrying on the business of a chimney sweep, either by himself or in conjunction with any other person or persons now or at any time within a radius of three miles of the above-mentioned station." After leaving the employment of the company B. was employed as a servant by a chimney sweep, competing with the company within the district specified in the clause:—*Held*, that the clause did not apply to the engagement of B. as a servant. *Semble*, *Hill & Co.* v. *Hill* (55 L. T. 769) differed from. *Ramoneur* v. *Brixey*, 104 L. T. 809; 55 S. J. 480—D.

Apprenticeship Deed—Covenant by Apprentice to take Effect after Termination of Apprenticeship—Breach—Right of Master to Injunction.]—A covenant in an apprenticeship deed, made while the apprentice is an infant, to do or abstain from doing something after the apprenticeship shall have terminated, which covenant is reasonable and for the benefit of the apprentice, is enforceable against him. *Gadd* v. *Thompson*, 80 L. J. K.B. 272; [1911] 1 K.B. 304; 103 L. T. 836; 55 S. J. 156; 27 T. L. R. 113—D.

An apprentice, an infant, covenanted that he would not, after the apprenticeship should have terminated, carry on the same trade as his master within a specified area during a specified time. After the termination of the apprenticeship he committed a breach of this covenant. There was evidence that he could not have been apprenticed except on the terms of the covenant:—*Held*, that as the covenant was a reasonable one, and for the benefit of the apprentice, an injunction restraining him from committing further breaches of it should be granted. *Ib.*

D. INTERPRETATION OF CONTRACTS.

See also Vol. IV. 230, 1997.

Letter Putting Certain Construction on Contract not Answered.] — Persons are not estopped from denying the true construction of a contract by failing to answer a letter in which the other party states that the contract bears a certain meaning. *Leslie & Co.* v. *Works Commissioners*, 78 J. P. 462—Shearman, J.

"Month."]—A. wrote to B. offering to buy land of B. at a certain price, specifying the date for completion, and that the purchase money should be paid as to a part down and as to the residue within two years, "and to be secured to your satisfaction." The offer further stated that for the space of a month B. was to be at liberty to accept the offer, and if not accepted conditionally or otherwise within that time the offer was to be considered as withdrawn. The offer was dated September, but omitted the day:—*Held*, in an action for specific performance, that "month" meant "lunar month," and that the offer ran from the day on which the offer was in fact made. *Morrell* v. *Studd*, 83 L. J. Ch. 114; [1913] 2 Ch. 648; 109 L. T. 628; 58 S. J. 12—Astbury, J.

"About four years."]—The appellant agreed to sell his interest in certain leasehold premises to the respondent, the premium to be paid by the latter to the former being at the rate of 15*l.* a year for "each and every year of the

existing term " of a certain under-lease held by the appellant of other business premises, which term the appellant, by a mistake, but in perfect good faith, told the respondent was " about four years." The appellant, the mistake being discovered, claimed that the premium should be 105*l.*, as the lease of the other premises was not " about four years," but seven years unexpired :—*Held*, that the words " about four years " were dominant words, and were not inserted in the agreement merely as a statement of belief which the respondent was not entitled to rely on. *Watkinson* v. *Wilson*, 55 S. J. 617—H.L. (E.)

Agreement to Give " First option " of Purchasing Premises.]—The plaintiffs, the freeholders of certain property, entered into an agreement with the defendants to give them the " first option " of purchasing any premises that might be designated for dairy purposes on the said property :—*Held*, that this agreement was void through uncertainty as to the intention of the parties as to the meaning of the words " first option." *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.* (70 L. J. Ch. 468; [1901] 2 Ch. 37) distinguished. *Ryan* v. *Thomas*, 55 S. J. 364—Warrington, J.

Music-hall Artist—Engagement for Week—Whether Salary Due before Completion of Week.]—A music-hall artist was engaged to perform for one week at 180*l.* per week. Clause 8 of the agreement provided that " in case the artiste shall, except through illness . . . or accident . . . fail to perform at any performance the artiste shall pay to the management as and for liquidated damages a sum equal to the sum which the artiste would have received for such performance . . ." Clause 12 provided that " the artiste shall not assign, mortgage, or charge the artiste's salary nor permit the same to be taken in execution. No salary shall be paid for days upon which the theatre is closed by reason of national mourning. . . . No salary shall be payable for any performance at which the artiste may not appear through illness or his own default. . . ." Clause 16 provided (*inter alia*) that " if the artiste shall commit any breach of any of the terms and conditions of this contract or of the rules, the management . . . may forthwith determine this contract, and the artiste shall have no claim upon them for salary other than a proportion for performances played, expenses, costs, or otherwise " :—*Held*, that the agreement provided for a salary for the week, and that unless some of the events, mentioned in the foregoing clauses, happened, no portion of the salary became due to the artist until the end of the week and until he had fully completed all the performances contemplated. *Mapleson* v. *Sears*, 105 L. T. 639; 56 S. J. 54; 28 T. L. R. 30—D.

" I agree to give 150*l.* a year, and I hope a bit more "—Annuity or Allowance—Expression of Intention.]—On the day before his daughter's wedding the father wrote to his future son-in-law and said, " My dear Bert,—When you marry my daughter Lydia I agree to give 150*l.* a year, and I hope a bit more." The marriage took place, and the 150*l.* was paid each year till the death of the testator, whose executors now applied to have the document construed by the Court :—*Held*, that the document was only an expression to his prospective son-in-law of an intention on the part of the father that he would make his daughter an allowance of 150*l.* a year, to be payable during the joint lives of the father and daughter. *Annandale, Ex parte; Curtis, in re* (4 Deac. & C. 511), followed. *Llanelly Railway* v. *London and North-Western Railway* (45 L. J. Ch. 539; L. R. 7 H. L. 550) distinguished. *Lindrea, In re; Lindrea* v. *Fletcher*, 109 L. T. 623; 58 S. J. 47—Sargant, J.

Contract Subject to Conditions — Strike Clause in Small Print — Party Ignorant of Strike Clause.]—A contract for fitting up a shop was expressed to be subject to the conditions set out in the specification, which was typewritten and which contained a strike clause in very small print as part of the heading. The shop owners did not see the strike clause and their attention was never drawn to it until a dispute arose as to the contract. In an action on the contract by the contractors against the shop owners,—*Held*, that in the circumstances the shop-owners ought to have noticed the strike clause and therefore they were bound by it. *Sage & Co.* v. *Spiers & Pond, Lim.*, 31 T. L. R. 204—Rowlatt, J.

Grant of Right to Place Seats for Hire—Derogation from Grant — Free Seats Placed near Bandstand by Corporation.]—The plaintiff agreed with the defendants to supply a band to perform on the sea front. It was a term of the contract that the defendants should hire out to the plaintiff, for a certain period at a fixed rental, five hundred chairs, which the plaintiff could let out to the public and was bound to keep in repair and deliver up in good order at the end of the term. The plaintiff alleged that many of the chairs as delivered to him were unfit for use, and further that the defendants had been guilty of a breach of an implied term in the contract in providing free seats near the bandstand. He brought an action for damages and the defendants counterclaimed for damages for non-repair of the chairs. The jury found that some of the chairs supplied by the defendants were unfit for use; that the plaintiff had suffered damage from the proximity of the free seats; and that the plaintiff had failed to repair some of the chairs. And they assessed the damages under these three heads at 75*l.*, 60*l.*, and 3*l.* 4*s.* respectively :—*Held*, by Avory, J., that the plaintiff was entitled to judgment for the 75*l.* and for the 60*l.*, and that the defendants were entitled to judgment on the counterclaim for the 3*l.* 4*s.* But *held*, by the Court of Appeal, that as to that part of the judgment which awarded the plaintiff the 75*l.* the appeal must be dismissed; but that as to that part which awarded him the 60*l.* the appeal must be allowed, as it could not be laid down as a universal rule that whenever something was done by the grantor which had the effect of preventing or reducing the profits which the grantee might reasonably

have expected to get out of the contract, there was a good cause of action, for in each case the contract itself must be looked at and considered. *Dare* v. *Bognor Urban Council*, 76 J. P. 425; 10 L. G. R. 797; 28 T. L. R. 489—C.A.

Termination—Notice.]—An agreement provided that it should continue until December 31, 1911, and should continue thereafter subject to determination by twelve months' previous notice. A notice was given in 1910 to determine the agreement on December 31, 1911:—*Held*, that the notice was invalid and of no effect. *Marshall* v. *Brinsmead & Sons; Brinsmead & Sons, In re*, 106 L. T. 460; 56 S. J. 253—Eve, J.

—— Death — Agreement to Re-purchase Shares "at such times as suit my convenience and at no other times."]—W. agreed to repurchase from the plaintiff certain shares for 150*l*. The agreement contained a provision that W. should re-purchase them "at such times as suit my convenience and at no other times," and a further provision that he should at the date of the agreement hand to the plaintiff a sum of 20*l*., and subsequently a further sum of an unspecified amount, the 20*l*. to be the first of the payments towards the 150*l*. W. paid the plaintiff 20*l*. and a further sum of 15*l*., but died before paying anything more. In an action on the contract by the plaintiff against W.'s administratrix,—*Held*, that the contract was not put an end to by the death of W., and that the plaintiff was entitled to recover out of his assets 115*l*., the balance of the 150*l*. *Barnes* v. *Wilson*, 29 T. L. R. 639—Pickford, J.

Course of Tuition—Inclusive Fee for Course—Fee Payable by Instalments—Refusal of Pupil to Receive Instruction or Pay Instalments.]—The defendant entered into a contract with the plaintiffs, who carried on a system of education by correspondence, for a course of tuition. The contract provided—first, that the fee to be paid by the defendant was to cover all instruction until he was qualified for a diploma, provided he completed the course of instruction in five years, and, secondly, that the defendant should pay 14*l*. 10*s*. for the course, 10*s*. at the time of signing the application, and 10*s*. every month thereafter until the fee was paid in full. The defendant paid the deposit of 10*s*. on signing the application, and one further instalment of 10*s*. Thereafter he informed the plaintiffs that he would not go on with the course, and in fact he did not go on with it. The plaintiffs brought an action to recover 5*l*. 10*s*., being the balance, after deducting the 1*l*. actually paid, of the instalments in arrear at the time the action was brought:—*Held*, that the plaintiffs were entitled to sue for the instalments as they became due, notwithstanding that the defendant refused to receive the instruction, and that they were not merely entitled to damages for breach of the contract. *International Correspondence Schools* v. *Ayres*, 106 L. T. 845; 28 T. L. R. 408—D.

Implied Term—Agency—Appointment of Sole Agent on Commission for a Fixed Period—Ceasing to Carry on Business.]—In determining whether under a contract by which a person is appointed sole agent on commission for a fixed period, there is to be implied a term that the principal will continue to carry on business for that period, the first thing to be considered is the language the parties themselves have used in the contract. A term which is not expressed will not be implied because the Court thinks it is a reasonable term, but only if the Court thinks it is necessarily implied in the nature of the contract the parties have made. Where there is a principal subject-matter in the power of one of the parties, and an accessory or subordinate benefit arising by contract out of its existence to the other party, the Court will not, in the absence of express words, imply a term that the subject-matter shall be kept in existence merely in order to provide the subordinate or accessory benefit to the other party; but where there is an express term requiring the continuance of the principal subject-matter, or giving the plaintiff a right to a continuing benefit, the Court will not imply a condition that the plaintiff's right in this respect shall cease on certain events not expressly provided for. By an agreement in writing the plaintiff was appointed sole agent for the defendants in a particular district for a period of three years:—*Held*, on the construction of the contract, that a term could not be implied that the defendants would carry on the business for the period of three years. *Lazarus* v. *Cairn Line*, 106 L. T. 378; 17 Com. Cas. 107; 56 S. J. 345; 28 T. L. R. 244—Scrutton, J.

—— Warranty of Secrecy—Private Enquiry Agent.]—A private enquiry agent in being employed to watch a particular person does not impliedly warrant the secrecy of those who have been in, but have afterwards left, his service. *Easton* v. *Hitchcock*, 81 L. J. K.B. 305; [1912] 1 K.B. 535; 106 L. T. 126; 56 S. J. 254; 28 T. L. R. 208—D.

—— Sale of Estate—Consideration—Shares in New Company—Issue—Sanction of Treasury—Condition as to Time of Payment.] — The defendant company contracted to sell certain estates to the plaintiff company, in return for a sum in cash and shares in a company agreed to be formed, the consideration to be paid by a fixed date or not less than a month after the sanction of the Treasury should have been obtained for the issue of the capital of the new company. The terms of the contract shewed that it was to be performed in a short time. The Treasury refused to sanction the issue:—*Held*, that the plaintiff company was not entitled to have the contract performed, as the contract did not contemplate an ultimate sanction by the Treasury after refusals extending over an unlimited time. *East Indies Commercial Co.* v. *Nilambur Rubber Estates*, 59 S. J. 613; 31 T. L. R. 500—Sargant, J.

—— Building Contract—Interference by Trespasser—Delay.]—In a building contract the building owner does not insure that prompt possession and use of the site shall be given to the builder: he merely undertakes that so

far as his own acts are concerned it shall be given, and he is not liable for damages in respect of delay caused by the interference of a mere trespasser. *Porter* v. *Tottenham Urban Council*, 84 L. J. K.B. 1041; [1915] 1 K.B. 776; 112 L. T. 711; 79 J. P. 169; 13 L. G. R. 216; 31 T. L. R. 97—C.A.

Decision of Divisional Court (83 L. J. K.B. 566; [1914] 1 K.B. 663) affirmed. *Ib.*

—— **Performances by Military Band — Exigencies of Military Service.**]—*Semble*, in a contract by which a military band is engaged to play at civilian entertainments there is an implied term that the engagement is subject to any claims upon the band as to their military duties. *Wood* v. *Victoria Pier and Pavilion*, 29 T. L. R. 317—Scrutton, J.

—— **Termination — Reasonable Notice — Mental Specialist — Quarterly Payments — Yearly Rate.**]—By an agreement dated May 15, 1899, the defendant agreed to pay to the plaintiff, who was a mental specialist, 500*l.* a year for the care and maintenance of her daughter, payment to be made once a quarter. On April 7, 1913, the plaintiff gave the defendant three months' notice terminating the agreement. In an action by the plaintiff for damages for breach of contract, it was contended that the agreement could only be terminated on May 14 of any year by reasonable notice previously given or that it was terminable of itself at the end of any year. The jury found that the defendant had given reasonable notice :—*Held*, that a right to give a reasonable notice was implied in the agreement, and that therefore the plaintiff was not entitled to damages. *Hamilton* v. *Bryant*, 30 T. L. R. 408—Atkin, J.

—— **Termination—Notice—Page for Advertisements.**]—The defendants' agent offered to one W. at a certain rate a full page in a weekly publication, to be used exclusively for publishers' advertisements, no publishers' advertisements to be inserted except on this page. The first order was to be for twelve weeks. After the offer had been acted on by W. for about two years, he assigned the contract to the plaintiff, and the defendants terminated it by three months' notice. The plaintiff sued the defendants for damages for terminating the contract :—*Held*, that there was no binding contract between the parties for an unlimited time, and the plaintiff was not entitled to recover. *Pocock* v. *Thacker & Co.*, 31 T. L. R. 388—C.A.

E. DISCHARGE AND BREACH OF CONTRACT.

See also Vol. IV. 259, 2007.

Lump Sum—Variations—Right to Recover —Quantum Meruit.]—Where a plaintiff has contracted to do work for a lump sum, and substantially, though not completely, executes the work, he is entitled to recover the lump sum for his services, subject to a deduction of the sum necessary to make the work correspond with that contracted to be done. But he is not entitled to recover anything if—first, the work is of no benefit to the defendant; secondly, the work done is entirely different from the work contracted for; or thirdly, the plaintiff has abandoned the work and left it unfinished. *Dakin & Co.* v. *Lee*, 84 L. J. K.B. 894; 112 L. T. 645; 59 S. J. 365—D. Affirmed, 84 L. J. K.B. 2031; 59 S. J. 650—C.A.

Mutual Obligations—Breach by One Party.]—Two persons agreed for the lease of an hotel and stipulated that the tenant should take over the furniture and stock at a valuation, and should deposit 200*l.* in a bank in their joint names to account of the valuation price. After the money had been deposited, but before the furniture and stock had been taken over, the tenant intimated that he did not intend to carry out the contract, and brought an action against the landlord for delivery of the deposit receipt. The defender counterclaimed damages for breach of agreement :—*Held*, that the pursuer, having declined to perform his part of the contract, could not call upon the defender to fulfil his obligations until the latter had had an opportunity of constituting his claim of damages, and accordingly that the pursuer was not entitled, *hoc statu*, to delivery of the deposit receipt. *Dingwall* v. *Burnett*, [1912] S. C. 1097—Ct. of Sess.

F. RESCISSION.

Misrepresentation without Fraud—Restitutio in Integrum.]—Contractors brought an action against a railway company for the rescission of a contract for the construction of a branch line, on the ground that the contract had been entered into under essential error, induced by the innocent misrepresentation of the engineer of the company as to the nature of the *strata* through which the line had to pass :—*Held*, that as *restitutio in integrum* had become impossible, by reason of the completion of the line by the contractors after full knowledge of the facts, the action for rescission of the contract could not be maintained. *Glasgow and South-Western Railway* v. *Boyd & Forrest*, 84 L. J. P.C. 157; [1915] A.C. 526—H.L. (Sc.)

Decision of the Court of Session in Scotland ([1914] S. C. 472) reversed. *Ib.*

CONTRIBUTION.

Trustees under Two Different Wills—Discretionary Power to Provide Maintenance for the Same Legatee—Separate and Independent Obligation—No Right of Contribution.]—Discretionary power was given to the appellants as trustees under a will to pay to the testator's daughter 800*l.* a year, the unpaid portion thereof to fall into the residue of his estate. A like power was given to one of the appellants and a respondent as trustees under the will of her sister to pay such sums as they might think fit in and toward her maintenance, the residue of the income of the testatrix's estate to be paid to her nephew, the *corpus* to go in equal shares to his children on his death. The trustees under the first will paid 400*l.* a year to the daughter, but on the death of the testa-

trix they reduced the allowance to 100*l.* a year, while the trustees of the second will paid from 700*l.* to 800*l.* a year. In a suit by the said nephew and the trustee of his insolvent estate for an order that the said daughter's maintenance should be provided for by a proportionate contribution from the two estates,—*Held*, that there was no common obligation and no right to contribution. The trusts were different in their terms to be exercised at the discretion of different trustees, and the resulting obligations were separate and independent. *Smith* v. *Cock*, 80 L. J. P.C. 98; [1911] A.C. 317; 104 L. T. 1—P.C.

Between Partners.]—*See* PARTNERSHIP.

Between Sureties.] — *See* PRINCIPAL AND SURETY.

CONVERSION.

Of Chattels.]—*See* TROVER.

CONVERSION AND RECONVERSION.

See also Vol. IV. 274, 2011.

Will—Real Estate—Power of Sale to Satisfy Mortgages — Administration Suit — Absolute Order for Sale of Real Estate—Part not Sold—Conversion from Date of Order.]—An absolute order for the sale of an estate rightfully made in an administration suit operates as an immediate conversion from the date of the order. *Fauntleroy* v. *Beebe*. 80 L. J. Ch. 654; [1911] 2 Ch. 257; 104 L. T. 704; 55 S. J. 497—C.A.

A testator who died in 1872 specifically devised certain real estate which was subject to mortgages to trustees with a power of sale thereof to satisfy such mortgages, and subject thereto upon trust for his four children in equal shares. In a suit for the administration of the testator's real and personal estate an order was made in 1883 for the sale of the specifically devised real estate with the approbation of the Judge free from the incumbrances of such of the incumbrancers as should consent to a sale, and subject to the incumbrances of such of them as should not consent. One of the testator's children, a daughter, died in 1887, when part only of the estate had been sold under the order:—*Held*, that the part remaining unsold, although not converted in fact, had been converted notionally by the order for sale and was to be enjoyed in its notional state as personalty, and that consequently the share of the daughter therein vested in her legal personal representative and not in her heir-at-law. *Ib.*

Arnold v. *Dixon* (L. R. 19 Eq. 113), *Hyett* v. *Mekin* (53 L. J. Ch. 241; 25 Ch. D. 735), and *Dodson, In re; Yates* v. *Morton* (77 L. J. Ch. 830; [1908] 2 Ch. 638), approved and followed. *Stinson's Estate, In re* ([1910] 1 Ir. R. 13), considered. *Ib.*

Gift of Real and Personal Estate upon Trust to Sell Real Estate—Directions—Real Estate to be Sold as and when Trustees Think Proper—Trustees Sole Beneficiaries—Real Estate in Fact Unsold.] — A testator by his will appointed his wife and daughter trustees and executrices and gave his real and personal estate to his trustees upon trust to sell the real estate as and when they thought proper, and to pay the net income of his real and personal estate to his wife for her life, and after her death he gave his real and personal estate and the proceeds of sale of such of his real estate as should have been sold to his daughter absolutely. The daughter survived the testator, but predeceased the widow,—*Held*, that the will did not create an imperative trust for sale, but gave to the trustees a discretionary power of sale, and, inasmuch as they had not exercised that power, the real estate was not converted and passed to the heir-at-law of the daughter. *Newbould, In re; Carter* v. *Newbould*, 110 L. T. 6—C.A.

Devise of Real Estate in Ireland—Contracts for Sale under Irish Land Acts—Conditional on Sanction of Land Commission—Contracts Entered into by Testator before Date of Will or Codicil — Sanction not Obtained before Testator's Death—Incidence of Estate Duty.]—By his will dated September 18, 1911, and a codicil thereto dated May 29, 1912, which in all material respects confirmed his will, a testator devised and bequeathed certain of his estates in Ireland to B. absolutely, and then went on to provide that if after the date of his will and prior to his death he should receive any capital moneys in respect of the sales of any parts of these estates, or if any money should be owing at his death in respect thereof which did not pass under the previous devise and bequest, then he bequeathed to B. a legacy equal in amount to the aggregate of the net capital moneys so received by or owing to him. Prior in some instances to the date of the will, and in any case to the date of the codicil, the testator had entered into contracts with tenants of these estates for the sale to them of their holdings under the Irish Land Acts. These contracts were all conditional upon the sanction of the Land Commission, and at the testator's death this sanction had not yet been given:—*Held*, that at the death of the testator the estates vested in B. as realty for an estate in fee-simple defeasible on the sanction of the Land Commission being given, and did not pass under the gift of capital moneys owing to the testator, and that, if the sanction was given, it would only operate to convert the realty into personalty as from that date. *Held*, therefore, that the estate duty was not payable out of the residuary personal estate, but was a charge on the land itself under section 9 of the Finance Act, 1894, and that under section 16 of the Irish Land Act, 1903, this charge would be shifted from the land on to the proceeds of

sale in the event of the sales being completed. *Lawes* v. *Bennett* (1 Cox 167) explained. *Marlay, In re; Rutland (Duke)* v. *Bury*, 84 L. J. Ch. 706; [1915] 2 Ch. 264; 113 L. T. 433; 59 S. J. 494; 31 T. L. R. 422—C.A.

Deed of Family Arrangement—Real Estate Conveyed to Trustees — Trust for Sale upon Request in Writing of Parties to Deed—No Request for Sale of Properties Remaining Unsold.]—A trust for sale, with a direction that it shall not be exercised unless a particular person shall in writing consent to or request a sale, is not an absolute and imperative trust to sell, but gives to the person required to consent a right to have the property retained unsold. *Goswell's Trusts, In re*, 84 L. J. Ch. 719; [1915] 2 Ch. 106; 113 L. T. 319; 59 S. J. 579—Younger, J.

Where by a deed of family arrangement certain freehold messuages, lands, and hereditaments were conveyed to trustees to be held by them in fee-simple upon the trusts in the deed declared, and the deed provided that the trustees should "upon the request in writing of the said parties hereto of the first second and third parts respectively," sell the freehold hereditaments thereby conveyed, and hold the proceeds of sale upon certain trusts, and where no request had been made to the trustees to sell the properties,—*Held*, that the real estate comprised in the deed remaining unsold had not been converted in equity into money, but still retained its character of real estate. *Thornton* v. *Hawley* (10 Ves. 129) and *Taylor's Settlement, In re* (22 L. J. Ch. 142; 9 Hare, 596), considered. *Ib.*

Partition Action—Sale—Payment into Court of Infant's Share—Request for Sale—Sale for Benefit of Infant — Death of Infant — Heir-at-Law—Next-of-Kin.]—A fund in Court representing an infant's share of proceeds of a sale ordered in a partition action is subject to the equity to reconvert into realty, is impressed with the character of real estate, and at the infant's death under age will go to his heir-at-law. This rule holds good notwithstanding the facts that the infant, by his next friend, requested a sale, and that the sale was certified to be for the infant's benefit. *Hopkinson* v. *Richardson*, 82 L. J. Ch. 211; [1913] 1 Ch. 284; 108 L. T. 501; 57 S. J. 265—Swinfen Eady, J.

Personalty to be Held upon same Trusts as Proceeds of Sale — Power to Jointure — Election.]—A testator, after devising his land in strict settlement, gave his trustees a power of sale, and declared that the moneys arising from any such sale should, subject to a power of interim investment, be re-invested in land. He then bequeathed all his residuary personal estate to his trustees upon the trusts and with and subject to the powers and provisions applicable to moneys to arise from a sale under the power of sale thereinbefore contained:—*Held*, that the residuary personal estate must be treated as realty, though not actually laid out in the purchase of land. *Cleveland (Duke), In re: Barnard* v. *Wolmer* (62 L. J. Ch. 955; [1893] 3 Ch. 244), followed. *Held* also, that the devisees being put to election in respect of the devised real estate, such election, on the true construction of the will, extended so as to include the residuary personal estate. *Upon-Cottrell-Dormer, In re; Upton* v. *Upton*, 84 L. J. Ch. 861; 112 L. T. 974; 31 T. L. R. 260—Eve, J.

Trust to Convert.]—*See Gresham Life Assurance Society* v. *Crowther*, *post*, LAND.

CONVICTION.

Evidence of.]—*See* CRIMINAL LAW.

Validity.]—*See* CRIMINAL LAW; JUSTICE OF THE PEACE.

COPYHOLDS.

See also Vol. IV. 357, 2015.

Alleged Right of Fishing—Copyhold Tenants —Immemorial Usage—Custom—Reasonableness.]—The tenants on certain ancient copyhold messuages within a manor had since 1599 asserted a custom for them to fish in certain waters within the manor, but there were continual protests by the lord of the manor. As far back as living memory went the tenants had habitually fished without interruption by the lord of the manor, and some of them had let the fishing and did not regard their rights as limited to catching fish for their own consumption. In an action by the owner of two of the messuages, which had been turned into fee-simple, against the lords of the manor and their fishing tenant, for a declaration that the plaintiff had a right of fishing for consumption of the occupants of the messuages,—*Held*, that on the evidence the plaintiff had to prove the existence of an immemorial usage amounting to a legal custom, and that as the alleged usage had been without reference to the needs of the occupants of the messuages the plaintiff had failed to prove a reasonable usage, and therefore he was not entitled to the declaration asked for. *Payne* v. *Ecclesiastical Commissioners*, 30 T. L. R. 167—Warrington, J.

Trustees Selling under their Power of Sale — Right to have Purchaser Admitted.] — A testator who died in 1883 by his will declared limitations of his freehold and copyhold estates, and gave an overriding power of sale to his trustees. The will vested a term of 1,000 years in the trustees, but contained no express power to revoke uses. The trustees were now selling under their power of sale, and proposed to nominate the purchaser for admittance. The lord claimed that the trustees must be admitted:—*Held*, that the lord was bound to admit the purchaser on payment of a single fine. *Beal* v. *Sheppard* (Cro. Jac. 109) followed. *Quære*, whether the lord and steward of the manor could properly appear and be heard on a vendor and purchaser summons. *Heathcote and Rawson's Contract, In re*, 108 L. T. 185; 57 S. J. 374—Farwell, L.J.

COPYRIGHT.

A. BOOKS.

See also Vol. IV. 459, 2021.

Effect of Act of 1911 on that of 1842.]—No one is entitled to sue under the Copyright Act, 1911, except for infringements of copyright under that Act; and although the plaintiffs' remedies for the infringement of copyright under the Copyright Act, 1842, were preserved by the Interpretation Act, 1889, they were so preserved with the disadvantage that registration must be proved before action brought. *Evans* v. *Morris*, [1913] W. N. 58—D.

Auditor's Report—Preparation for and Publication in Newspaper—Right to Republish.]—The plaintiffs, a firm of accountants, acting on the instructions of the proprietor of a newspaper, examined the securities possessed by the defendant, and made a report thereon, which was to be, and was in fact, published in the next issue of the newspaper. The plaintiffs were paid for their services in the matter by the proprietor of the newspaper. The defendant having republished the report was sued by the plaintiffs, who claimed an injunction:—*Held*, that the sole and exclusive rights of publishing and multiplying the report had passed to the proprietor of the newspaper, and therefore that the plaintiffs' action failed. *Chantrey* v. *Dey*, 28 T. L. R. 499—Warrington, J.

Translation made under Contract—Translation Published as Advertisement in Newspaper—Publication of Advertisement in another Newspaper—Right of Translator to Copyright—Knowledge of Infringer as to the Existence of the Copyright.]—The manager of a financial newspaper arranged with the Governor of the State of Bahia that his message to the Legislative Assembly of the State should be printed and paid for as an advertisement in that paper. The plaintiff, who was permanently employed on the staff of that paper, was employed to translate the speech from the Portuguese language. The translation was not made by him in the course of his employment as one of the staff of the paper; it was done entirely in his own time and under an independent engagement outside his ordinary duties. The plaintiff, in making the translation, cut down the speech, omitted the less material parts, divided it into suitable paragraphs, and supplied appropriate headlines. The translation made by the plaintiff appeared as an advertisement in the paper together with the following words: "Translated from the Portuguese by F. D. Byrne." The defendants, on seeing the advertisement, following the ordinary practice of managers of newspapers, obtained permission from the Bahia Government to reproduce it as an advertisement in their paper for a certain sum. The defendants accordingly published in their paper an advertisement which was in every way a copy of the advertisement in the other paper. The plaintiff brought an action in respect of the infringement of his copyright:—*Held*, that the translation made by the plaintiff was an "original literary . . . work" within the meaning of section 1 of the Copyright Act, 1911, and that as it was first published in England, and the plaintiff was the author of it, and it was not made in the course of his employment, he was the owner of the copyright therein; that the defendants could not rely upon section 8 of the Act of 1911, as there was reasonable ground for them to suspect that there was copyright in the translation, having regard to the intimation contained on the face of the advertisement that it was translated by the plaintiff, and section 8 afforded no protection to a person who, knowing or suspecting that copyright subsists, makes a mistake as to the owner of the copyright and obtains permission to publish from a person who is in fact not the owner of the copyright. *Byrne* v. "*Statist*" *Co.*, 83 L. J. K.B. 625; [1914] 1 K.B. 622; 110 L. T. 510; 58 S. J. 340; 30 T. L. R. 254—Bailhache, J.

Stock Incidents — Combination — Reproduction — No Similar Sentence.] — Under section 1 of the Copyright Act, 1911, the person who is the author and the owner of the copyright in a novel is entitled to an injunction to restrain the performance of a dramatic sketch containing a series of stock incidents in combination which have been taken from the plaintiff's book, even though no sentence used in the sketch is similar to any sentence used in the book. *Corelli* v. *Gray*, 30 T. L. R. 116—C.A.

Index to Railway Guide—List of Names of Stations Used for Guessing Competition—Names Taken from Index.] — A book which consists of a specification of the conditions at the present moment of a constantly changing subject-matter is a new work, even though some of the particulars may, and have not altered from what they were, and were stated to be at some prior date; and to publish and sell a portion of such work, even though for an entirely different purpose, is an infringement of the copyright in such work. It is therefore an infringement of copyright to publish an extract from the index of stations in *Bradshaw's Railway Guide* published in 1914, although the names of stations taken may have appeared in an edition of the guide published in 1902, such list of names having been issued and sold in connection with a railway-station guessing competition carried on by the infringing party. *Blacklock & Co.* v. *Pearson, Lim.*, 84 L. J. Ch. 785; [1915] 2 Ch. 376; 113 L. T. 775; 31 T. L. R. 526—Joyce, J.

Card-Index System.] — The plaintiffs invented an outfit consisting of a box in which cards of different colours and with different headings were inserted, the object being to enable an employer to get readily at the insurance card of a particular servant. The cards merely had on them the words "name"

and "address" and other words that might be used by anybody :—*Held*, that the cards were not an original "literary work" within section 35 of the Copyright Act, 1911, and therefore were not the subject of copyright within section 1. *Libraco, Lim.* v. *Shaw Walker, Lim.*, 58 S. J. 48; 30 T. L. R. 22—Warrington, J.

Publication of Story under Plaintiff's Name.] —*See* DEFAMATION.

B. MUSICAL AND DRAMATIC COPYRIGHT.

See also Vol. IV. 512, 2028.

Musical Composition—Common Law Right of Property — Reproduction by Gramophone Records.]—After the publication of the music of a song the composer has no remedy at common law against a person who, without the composer's consent, makes and sells gramophone records by which the music is reproduced. *Monckton* v. *Gramophone Co.*, 106 L. T. 84; 56 S. J. 270; 28 T. L. R. 205—C.A.

—— **Copyright Song with Pianoforte Accompaniment—Record for Mechanical Performance — Manuscript Orchestral Arrangement for Graphophone.**]—The making of a single manuscript orchestral arrangement of a copyright song with pianoforte accompaniment is an infringement of copyright and cannot be justified, even though it is made for the purpose only of producing graphophone records by a person who has given the notice and paid the royalties requisite under the Copyright Act, 1911, s. 19, to entitle him to make mechanical records of the copyright song. *Chappell & Co.* v. *Columbia Graphophone Co.*, 84 L. J. Ch. 173; [1914] 2 Ch. 745; 112 L. T. 63; 59 S. J. 6; 31 T. L. R. 18—C.A.

Decision of Neville, J. (83 L. J. Ch. 727; [1914] 2 Ch. 124), affirmed. *Ib.*

—— **Payment of Royalties — Gramophone Records—Records Made and Sold before Copyright Act came into Operation.**]—The plaintiff in the early part of the year 1911 composed and published an original musical work called the "Mousmé Waltz." At some date before the Copyright Act, 1911, came into operation —namely, July 1, 1912—the defendants, who were manufacturers and sellers of gramophone records, manufactured abroad and imported into England gramophone records of the waltz, and since July 1, 1912, sold such records in England without the plaintiff's consent and without paying him any royalty :—*Held*, that the defendants had infringed the plaintiffs' copyright in the waltz within the meaning of section 1, sub-section 2 *(d)* of the Copyright Act, 1911, under which "copyright" for the purposes of the Act includes for the first time the sole right "in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered." *Monckton* v. *Pathé Frères Pathephone, Lim.*, 83 L. J. K.B. 1234; [1914] 1 K.B. 395; 109 L. T. 881; 58 S. J. 172; 30 T. L. R. 123—C.A.

The Board of Trade under the provisions of section 19, sub-section 6 of the Copyright Act, 1911—which empowers the Board to make regulations prescribing "the mode, time, and frequency of the payment of royalties, and any such regulations may, if the Board think fit, include regulations requiring payment in advance or otherwise securing the payment of royalties"—made a regulation that "Unless otherwise agreed, royalties shall be payable by means of adhesive labels purchased from the owner of the copyright and affixed in the manner provided by these regulations," and the regulations further provided that no contrivance should be delivered to a purchaser until such label or labels denoting the amount of royalty had been affixed thereto :—*Held*, that the regulation was not *ultra vires*, but was one for "securing the payment of royalties" within the meaning of the sub-section. *Ib.*

—— **Popular Song—Reply Song—Publication Abroad — Simultaneous Publication in this Country—"First publication"—"Colourable publication."**]—A popular song was published in America on May 5, 1913, and prior to that date twelve copies of the song were sent to a firm in this country. On May 5, 1913, this firm deposited five copies officially, filed one copy for reference, and placed the remaining copies on sale. No further attempt was made to bring the song to the notice of the public in this country until it was publicly performed in July, 1913. No copy of the song was sold until after the public performance. The subsequent popular demand was first supplied by copies of the song obtained from America, but afterwards the English firm obtained an assignment of the copyright and published their own copies :—*Held*, that there had been a sufficient first publication in this country on May 5, 1913, within the meaning of section 1, sub-section 3, and section 35, sub-section 3 of the Copyright Act, 1911. *Held*, also, on the facts, that a reply song published by the defendants was not an infringement of the plaintiffs' copyright. *Francis, Day & Hunter* v. *Feldman & Co.*, 83 L. J. Ch. 906; [1914] 2 Ch. 728; 111 L. T. 521; 59 S. J. 41—C.A.

Stage Play—Title.]—The plaintiff was the owner of the copyright of a play entitled *Where there's a Will there's a Way*. The defendant produced a play entitled *Where there's a Will* ——. There was no allegation of an infringement of copyright with regard to the substance of the plays, but in each the progress of the plot gave to the word "will" in the title the peculiar meaning of testament :—*Held*, that the peculiar significance of the words did not render a common phrase a subject of copyright. *Broad or Broemel* v. *Meyer*, 57 S. J. 145; 29 T. L. R. 148—Warrington, J.

Similarity between Two Pieces merely a Coincidence.] — The representation of a dramatic piece in which the similarities to a piece previously produced are due to mere coincidence—both plays being derived inde-

pendently from the common stock of dramatic ideas—is not an infringement of the rights given by the Dramatic Copyright Act, 1833, to the author of the play first produced. *Robl* v. *Palace Theatre*, 28 T. L. R. 69—Hamilton, J.

Cinematograph—"Place of dramatic entertainment"—Show Room.]—The defendants, who were producers of cinematograph films, had a room at their place of business fitted up with a cinematograph apparatus, and they issued advertisements inviting the public to see films shewing certain scenes of a play which the plaintiffs alleged to be an infringement of their rights:—*Held*, without deciding whether the exhibition of the films constituted an infringement of the plaintiffs' rights, that the room where the films were shewn on the cinematograph was not a place "of dramatic entertainment" within the meaning of section 2 of the Dramatic Copyright Act, 1833, inasmuch as the public were merely invited with the object of getting them to purchase the films. *Glenville* v. *Selig Polyscope Co.*, 27 T. L. R. 554—Channell, J.

—— Exhibition of Films—Contract to Exhibit at Certain Places on Certain Days — Advertising Intention to Exhibit Film at Place not within Contract.] — The defendants entered into an agreement with the plaintiffs by which they hired a certain cinematograph film, the copyright of which belonged to the plaintiffs, for exhibition in certain specified theatres on certain days, and the defendants agreed that they would not exhibit the film in any other theatre than those specified in the agreement. The defendants in fact exhibited the film in two other theatres and advertised their intention of exhibiting the film at a place at which they were not authorised by the agreement to exhibit it:—*Held*, that the defendants had, besides committing a breach of contract, also infringed the Copyright Act, 1911, by advertising their intention to exhibit the film at a place at which they were not authorised to exhibit the film, and that for that tort they must pay damages. *Fenning Film Service, Lim.* v. *Wolverhampton, Walsall, and District Cinemas, Lim.*, 83 L. J. K.B. 1860; [1914] 3 K.B. 1171; 111 L. T. 1071—Horridge, J.

C. ENGRAVINGS, PICTURES, PHOTOGRAPHS, &c.

See also Vol. IV. 534, 2032.

Drawing — Infringement — Copy on Wood Block—Registration.]—The plaintiff was the owner of the copyright of a drawing, the principal features of which the defendant had copied on to a wood block, so that in the reproductions printed therefrom the said features were transposed, and faced in the opposite direction:—*Held*, that the block and reproductions printed therefrom were copies or colourable imitations and infringements of the copyright. The plaintiff registered himself as co-owner of a copyright with V., who, in fact, had no interest in the copyright. Subsequently he registered himself as sole owner, but entered on the register an assignment to himself of all V.'s interest in the said copyright, whereas V. had in fact no interest:—*Held*, that the first registration was bad, but that the second was valid, and could sustain an action for infringement. *Whitehead* v. *Wellington*, 55 S. J. 272—Warrington, J.

—— Sale by Author—Alteration and Publication by Purchaser without Author's Consent as and for Unaltered Work of Author—"Alteration"—Action to Recover Penalties—Injunction.]—The object of section 7, clause 4 of the Fine Arts Copyright Act, 1862, is to protect the character and reputation of the author or maker of a painting, drawing, photograph, or negative of a photograph who has parted with the possession of it, by forbidding the making, sale, or publication by another person, without the consent of the author or maker, of an altered copy thereof as and for the latter's unaltered work. An alteration, therefore, to be within clause 4, must be such an alteration as might affect such character or reputation. Such making, sale, or publication need not be fraudulent; it is sufficient if it is done knowingly. *Carlton Illustrators* v. *Coleman*, 80 L. J. K.B. 510; [1911] 1 K.B. 771; 104 L. T. 413—Channell, J.

The maker or author is entitled under section 8 of the Act to bring an action for the recovery of the penalty imposed by section 7 for a breach of clause 4 of section 7. He is also entitled to an injunction to restrain future breaches of the clause. *Ib.*

Cooper v. *Whittingham* (49 L. J. Ch. 752; 15 Ch. D. 501) followed. *Ib.*

—— Assignment before 1911—No Registration—Substituted Copyright.]—A person entitled to copyright at the date of the passing of the Copyright Act, 1911, is entitled to the substituted copyright mentioned in the First Schedule to that Act and can sue for an injunction, damages, and consequential relief, although the copyright was not registered as acquired by the Copyright Act, 1862. *Savory, Lim. v. "World of Golf." Lim.*, 83 L. J. Ch. 824; [1914] 2 Ch. 566; 111 L. T. 269; 58 S. J. 707—Neville, J.

—— Sufficiency of Memorandum.]—The plaintiffs claimed to be assignees of the copyright in a picture of a golfer entitled "Thirteen Down—Great Scott." The assignment was in the form of a receipt bearing date March 28, 1910, and in the following terms: "Received of Messrs. Savory, Lim., Bristol, the sum of 2*l.* 6*s.* 6*d.* for five original card designs inclusive of all copyrights: subjects—four golfing subjects; one Teddy Bear painting. (Signed) W. Fletcher Thomas." The copyright was not registered. The defendants on December 4, 1913, reproduced this picture in their magazine *The World of Golf*. Upon this infringement being brought to their notice by the plaintiffs they offered all that the plaintiffs could have obtained by action. This offer was refused and the action proceeded. At the trial the plaintiffs proved the sale of one copy subsequently to the offer in question:—*Held*, that there was a sufficient written memorandum "signed at or before sale" to pass the copy-

right in the drawing, and that parol evidence was admissible to identify the drawing in question as one of those referred to in the memorandum. *Shardlow* v. *Cotterill* (50 L. J. Ch. 613; 20 Ch. D. 90) and *Plant* v. *Bourne* (66 L. J. Ch. 643; [1897] 2 Ch. 281) followed. *Ib.*

Picture—Infringement—Copies made before Registration—Subsequent Registration—Sale after Registration.]—A certain photograph was taken by the agent of the plaintiffs of an incident at the Delhi durbar, and the plaintiff subsequently saw a similar photograph appear in an illustrated paper. He thereupon registered his photograph under the Copyright Act, and proceeded to the office of the paper which contained the photograph, and sued the publishers and proprietors of the paper, and purchased two copies of the paper, claiming an injunction and damages for infringement of his copyright :—*Held*, that he was entitled to an injunction and an enquiry as to damages. *Baker Motion Photographic Co.* v. *Hulton*, 56 S. J. 632; 28 T. L. R. 496—Neville, J.

Photographs—Supplying for Reproduction in Newspapers—Termination of Arrangement—Subsequent Publication of Photographs, Copyright in which Registered — Right to Publish others, Copyright in which not Registered — Common Law Rights of Proprietor.] — The plaintiffs supplied photographs for reproduction in newspapers belonging to the defendants, at agreed charges for each occasion on which a photograph was used. After the plaintiffs had terminated the arrangement the defendants published in the newspapers photographs in which the plaintiffs had registered their copyright, and claimed the right to publish others the copyright in which had not been registered :—*Held*, that the termination of the arrangement by the plaintiffs amounted to a withdrawal of all open offers, and that thereafter the defendants could not, without the plaintiffs' licence, use or re-use any of the photographs theretofore supplied by the plaintiffs; and that the plaintiffs, notwithstanding the non-registration of their statutory copyright in the unpublished photographs, were entitled to an injunction to protect their common law rights, as well as to relief in respect of the infringement of their statutory copyright. *Mansell* v. *Valley Printing Co.* (77 L. J. Ch. 742; [1908] 2 Ch. 441) applied. *Bowden* v. *Amalgamated Pictorials, Lim.*, 80 L. J. Ch. 291; [1911] 1 Ch. 386; 103 L. T. 829—Parker, J.

CORONER.

See also Vol. IV. 560, 2038.

Order for Second Inquest.] — Order made directing second inquest to be held on the body of a person where the facts shewed that further investigation as to the circumstances attending the death of that person was necessary. *Att.-Gen., Ex parte*, 29 T. L. R. 199—D.

Concurrent Inquests—Fees to Jurors.] — An explosion occurred in a colliery pit which caused the death of 166 persons, and several days elapsed before all the bodies were brought to the surface. The coroner of the district instructed the local inspector of county constabulary to act as coroner's officer and summon a jury of twenty inhabitants of the district. This jury was sworn 166 times, and the coroner paid them fees as for a corresponding number of inquests. He also paid the constable acting as his officer fees as for 166 inquests :—*Held*, that the inquests were concurrent and not separate or consecutive, and that by the schedule of the fees, allowances, and disbursements to be paid by coroners on the holding of inquests, made by the county council of the county in which the colliery was situate, under section 25 of the Coroners Act, 1887, the jurors were only entitled to fees as for one inquest. *Rex* v. *Durham County Council; Graham, Ex parte*, 106 L. T. 949; 10 L. G. R. 384; 76 J. P. 219; 28 T. L. R. 360—D.

Fees to Police Constable Acting as Coroner's Officer.]—Further, that by the operation of section 23 of the Police Act, 1890, the county schedule is applicable only to a person acting as coroner's officer who is not a police constable, and that police constables acting as coroners' officers are not entitled to fees under that schedule, but only to such fees as may have been approved under the last-mentioned section. *Ib.*

CORPORATION.

See also Vol. IV. 568, 2039.

Election as Mayor and as Alderman—Qualification—"Councillor"—Disqualification of Councillor having Interest in Contract — "Being."]—A person elected a member of a borough council, although disqualified under the provisions of section 12, sub-section 1 (*c*) of the Municipal Corporations Act, 1882, for being elected or for being a councillor by reason of his having an interest in a contract with the council, is nevertheless a councillor within the meaning of section 14, sub-section 3, and section 15, sub-section 1, and qualified to be elected alderman and mayor of the borough where, under the provisions of section 73, his election is to be deemed to all intents good and valid because it has not been questioned within twelve months thereof. And within the meaning of the above sub-sections he is "qualified to be a councillor." *Forrester* v. *Norton*, 80 L. J. K.B. 1288; [1911] 2 K.B. 953; 105 L. T. 375; 75 J. P. 510; 9 L. G. R. 991; 55 S. J. 668; 27 T. L. R. 542—D.

"Being" in section 12, sub-section 1 (*c*), means "holding the office of." *Ib.*

Mayor—Interest in Employment of Officer of Corporation—Receipt of Sums Paid out of Salary of Officer — Right of Corporation to Recover.]—S. L. owned a private business as accountant, and also held certain appointments

under the corporation of a borough. As he was disqualified while he held these appointments from being elected mayor of the borough, he made an arrangement wth those who had control of the appointments, in pursuance of which he resigned them in favour of his son and another as joint holders thereof, and he became a candidate for the office of mayor. He was shortly afterwards elected mayor and held that office for a year, continuing thereafter to be a councillor for upwards of five years. He had taken no part in the appointment of his successors to, or their continuance in, the aforesaid appointments. Subsequently by deed S. L., whilst mayor, sold to the joint holders of these appointments his private business as accountant in consideration of their paying him (*inter alia*) an annual sum for five years out of their official salaries. They accordingly paid him that annual sum for the stipulated period. The corporation of the borough brought an action against the executors of S. L. to recover the sums so paid to him as money had and received by him to the use of the corporation :—*Held*, that there was no foundation for the claim. *Pontefract Corporation* v. *Lowden*, 84 L. J. K.B. 1800; 113 L. T. 272; 79 J. P. 392; 13 L. G. R. 721; 59 S. J. 398—C.A.

By the Court : Under the deed S. L. had an interest in an employment with the corporation, and was therefore disqualified for being mayor or councillor by section 12, subsection 1 (*c*) of the Municipal Corporations Act, 1882. *Ib.*

Member of Committee—Power to Resign.]—A member of a borough council appointed member of a committee of the council under the powers of section 22, sub-section 2 of the Municipal Corporations Act, 1882, does not hold a public office within the operation of the common law rule that a person qualified and duly elected to serve in a public office cannot refuse to serve, and consequently such member of a committee may resign. *Rex* v. *Sunderland Corporation*, 80 L. J. K.B. 1337; [1911] 2 K.B. 458; 105 L. T. 27; 75 J. P. 365; 9 L. G. R. 928; 27 T. L. R. 385—D.

Person Entitled to be Enrolled as Burgess.]—*See Lloyd* v. *Shrewsbury (Town Clerk)*, *ante*, col. 545.

By-laws—Prohibition of Touting for Hackney Carriages in Public Thoroughfare—Ground Open to Street.]—In the borough of B. a small triangular piece of garden ground at a street corner had been thrown into the footpath for the purpose of rounding off the corner, and had been made up by the corporation, who afterwards declared the street a highway. The soil belonged to the owners of a hotel, and the Justices were of opinion that it was private property, although open to the street. Upon this piece of ground a livery-stable keeper, whose premises were close by, took up his stand, either by himself or his employees, and touted for passengers to hire his vehicles : —*Held*, that in so doing he had committed a breach of a by-law of the B. Corporation "that a person shall not in any public thoroughfare in the district tout for hackney carriages"; and that the Justices were wrong in dismissing a summons against him for such breach. *Derham* v. *Strickland*, 104 L. T. 820; 9 L. G. R. 528; 75 J. P. 300—D.

Power to Supply Electric Fittings.] — *See* ELECTRIC LIGHTING.

CORPORATION DUTY.

See REVENUE.

COSTS.

A. GENERALLY.

See also Vol. IV. 677, 2054.

Conduct of Defendant—Extraneous Matter—Discretion.]—The plaintiffs, hotel keepers in France, obtained from the defendant, a young Englishman, of twenty-two years of age, who had been staying at the plaintiffs' hotel, an English cheque payable in England, by a threat of criminal proceedings in France if it was not given, and a suggestion that no such proceedings would be taken if the cheque were given. The Judge held that payment of the cheque could not in these circumstances be enforced in an English Court and gave judgment for the defendant, but deprived him of costs on the ground that he had been very foolish throughout and that he had applied for two substantial amendments at the trial :—*Held*, on an appeal as to costs, that though the foolishness of the defendant was an extraneous matter which the Judge was not entitled to take into account in exercising his discretion as to costs, yet there were, apart from this, ample materials on which he was entitled to exercise his discretion by depriving the defendant of costs. *Société des Hôtels Réunis* v. *Hawker*, 58 S. J. 515; 30 T. L. R. 423—C.A.

Appeal from decision of Scrutton, J. (29 T. L. R. 578), dismissed. *Ib.*

Depriving Successful Defendant of Costs—Plea of Gaming Act.]—In an action for a sum due on a bet the defendant pleaded the Gaming Act. On the case coming on for trial, the plaintiff admitted that, in view of the plea of the Gaming Act, he could not succeed, and he therefore consented to judgment for the defendant. The defendant applied for judgment

with costs :—*Held*, that the Court had a discretion as to awarding costs, and in the circumstances would refuse to award them in favour of the defendant. *Levy* v. *Johnson*, 29 T. L. R. 507—A. T. Lawrence, J.

Joinder of Additional Defendant under Misapprehension of Law.] — The plaintiff obstructed the user of a right of way, and the defendants having removed the obstruction the plaintiff brought an action of trespass against them, and joined R. as a party, claiming as against him damages for breach of covenant for title or for quiet enjoyment if it should be held that the other defendants were entitled to the right of way. The County Court Judge held that the plaintiff was entitled to damages against the first defendants for trespass on the ground that they had no right of way, but that the plaintiff was not entitled to damages against R. for breach of covenant. He ordered the plaintiff to pay R.'s costs, and on the authority of *Bullock* v. *London General Omnibus Co.* (76 L. J. K.B. 127; [1907] 1 K.B. 264) further ordered that the plaintiff should be at liberty to add R.'s costs to his own and recover both sets of costs from the unsuccessful defendants :—*Held*, that the order made by the learned Judge as to costs was wrong, the principle of *Bullock* v. *London General Omnibus Co.* (*supra*) not applying to a case in which a second defendant is joined by the plaintiff under a misapprehension of his legal rights. *Poulton* v. *Moore*, 83 L. J. K.B. 875; 109 L. T. 976—D.

Copyright — Design — Infringement — Consent to Order in Chambers—Motion in Court.] —Cases of infringement of patent or copyright should be in open Court, and therefore, even where the defendant's solicitor has consented to an injunction being granted in chambers, the plaintiff, if he moves in Court, is entitled to the costs of the motion and is not limited to the costs of a summons. *Smith & Jones, Lim.* v. *Service, Reeve & Co.*, 83 L. J. Ch. 876; [1914] 2 Ch. 576; 111 L. T. 669; 31 R. P. C. 319; 58 S. J. 687; 30 T. L. R. 599—Sargant, J.

—— Innocent Infringement — Offer before Action — Right to Sue—Costs.] — An offer made by a defendant before action in an action for infringement of copyright is not sufficient to deprive a plaintiff of his legal remedy by action; but, *semble*, if the offer includes all that the plaintiff is entitled to, and it is repeated after action brought, then the plaintiff, if he persists with his action, must pay all costs incurred in the action subsequently to the offer. *Savory, Lim. v. World of Golf, Lim.*, 83 L. J. Ch. 824; [1914] 2 Ch. 566; 111 L. T. 269; 58 S. J. 707—Neville, J.

Offer in Defence Delivered—Plaintiff's Right to Subsequent Costs.]—The plaintiff, a member of the defendant trade union, having brought the action against the union and its trustees for relief in the form of the judgment in *Osborne* v. *Amalgamated Society of Railway Servants* (79 L. J. Ch. 87; [1910] A.C. 87), the defendants, by their defence, offered a perpetual undertaking not to spend the funds of the union on the collection of voluntary subscriptions for purposes outside the union's powers, to make it clear that all such subscriptions were voluntary, and to charge as arrears against any member any sum in respect of them, and to pay the plaintiff's costs up to the defence :—*Held*, that, notwithstanding this offer, the plaintiff was entitled to his other costs of the action. *Wilson* v. *Amalgamated Society of Engineers*, 80 L. J. Ch. 469; 104 L. T. 715; 55 S. J. 498; 27 T. L. R. 418—Parker, J.

Payment into Court with Denial of Liability —Mandatory Injunction—Costs.]—The defendant had erected on his land a pilaster which, at a height of some twelve feet above the private road, projected about twenty inches over. The plaintiff asked for a mandatory injunction for the removal of the pilaster, but the defendant, while denying liability, paid *5l.* into Court, and pleaded that that was enough to satisfy the plaintiff's claim in respect of the projection :—*Held*, that damages should be awarded in lieu of a mandatory injunction, and that, as damages to the amount of more than *5l.* had not been shewn, and the Judge was not satisfied that there were reasonable grounds for not accepting the sum paid in, the plaintiff must, under Rules of the Supreme Court, 1883, Order XXII. rule 6, pay the costs of the issue as to liability in respect of the pilaster. *Pettey* v. *Parsons*, 84 L. J. Ch. 81; [1914] 1 Ch. 704; 30 T. L. R. 328—Sargant, J.

Third Party and Fourth Party Notices—Third Party's Right to Indemnity against Fourth Party Admitted — Action Dismissed with Costs—Whether Third Party's Costs to Include Costs Paid to Fourth Party.]—In an action against defendants who claim indemnity against a third party who obtains an order in the presence of the plaintiffs against a fourth party, directing delivery of pleadings and that the fourth party be at liberty to appear at the trial and be bound by the result, the Court has jurisdiction under the third-party procedure in part 6 of Order XVI. to decide all questions of costs as between the parties to the action and the third and fourth parties, the rules applying not only to third parties, but further parties :—*Held*, therefore, that the plaintiffs in the circumstance of having endeavoured to perpetrate a fraud on the fourth party must pay his costs. No order against the plaintiffs as to third party's costs, the claim against them being one of indemnity. Also, that in the circumstances there ought to be no order as to costs as between the third and fourth parties in the fourth-party proceedings. *Klawanski* v. *Premier Petroleum Co.*, 104 L. T. 567; 55 S. J. 408—Eve, J.

Notice of Act of Bankruptcy—Refusal to Pay Debt on Ground of Notice — Action to Recover Debt—Application by Defendant for Direction to Pay into Court—Right of Defendant to Costs.]—The plaintiff, having a sum standing to his credit on his banking account with the defendants, demanded payment thereof after he had given them notice that he had committed an act of bankruptcy. The defendants refused to pay, and, the plaintiff having commenced an action to recover the

sum, the defendants immediately obtained an order directing them to pay the money into Court. A summons by the plaintiff for judgment under Order XIV. was adjourned until the expiration of three months from the date of the acts of bankruptcy, and then, no bankruptcy proceedings having been instituted, an order was made that the plaintiff should be at liberty to sign final judgment, and that the amount paid into Court should be paid out to the plaintiff:—*Held*, that the defendants were entitled to be allowed their costs of the action. *McCarthy* v. *Capital and Counties Bank*, 81 L. J. K.B. 14; [1911] 2 K.B. 1088; 105 L. T. 327; 18 Manson, 343—C.A.

Several Issues—Finding for Plaintiff on One Issue, but for Defendant on Overriding Issue—Judgment for Defendant with Costs—Judgment Silent as to Costs of Issue on which Plaintiff Succeeded — Right of Plaintiff to Costs of that Issue—"Issue"—"Event"—"Unless the Judge . . . shall, for good cause, otherwise order."]—The plaintiff, a builder, brought an action against the defendant on a building contract claiming 427*l.* 9*s.* 3*d.* as the balance due to him thereunder. The defendant pleaded that the work done by the plaintiff under the contract was unsatisfactory and of inferior quality, so that no balance was due thereunder, and that the claim was barred by the Statute of Limitations. The action having been referred, the official referee found that 247*l.* 7*s.* was due from the defendant to the plaintiff, but that the plaintiff's right to recover the amount was barred by the Statute of Limitations; and, pursuant to his direction, judgment was entered for the defendant, with his costs of the action except so far as these had been increased by the defence other than the Statute of Limitations:—*Held*, that the question as to the existence and amount of the debt due under the contract was an "issue," and that the finding of the official referee was an "event," within the meaning of Order LXV. rule 1; that the mere fact that the judgment did not state that the plaintiff was entitled to the costs of that issue on which he succeeded did not imply that it did "for good cause, otherwise order," within the meaning of that rule; and consequently that the plaintiff was entitled to his costs of that issue. *Slatford* v. *Erlebach*, 81 L. J. K.B. 372; [1912] 3 K.B. 155; 106 L. T. 61—C.A.

Separate Issues—Absence of Direction by Judge as to Costs — Jurisdiction of Taxing Master.]—In every case, whether tried by a jury or not, the judgment should contain a direction as to the costs to which each party is entitled. It is for the Judge who tries a case to say whether there is any separate issue upon which the unsuccessful party is entitled to costs. In the absence of any direction a Taxing Master has no jurisdiction to allow such costs. *Bush* v. *Rogers*, 84 L. J. K.B. 686; [1915] 1 K.B. 707; 112 L. T. 945—Bankes, J.

Petition—Funds in Court in an Action—Payment Out—Plaintiff in the Action made Respondent to the Petition—Such Respondent Entitled to Separate Set of Costs out of the Fund.]—Where five of the plaintiffs in an old action commenced by bill of complaint in equity petitioned the Court for payment out of funds to the credit of that action, and made the sixth plaintiff and certain defendants to the bill and certain incumbrancers of the sixth plaintiff respondents to the petition,—*Held*, that the plaintiff respondent was entitled to have a separate set of costs of the petition. *Edwards* v. *Perry*, 112 L. T. 1119; 59 S. J. 302—Sargant, J.

B. AFTER TRIAL BY JURY.

See also Vol. IV. 690, 2057.

Verdict for One Farthing Damages — Opinion of Jury.]—A Judge in determining whether he should deprive a plaintiff, who has obtained a verdict of one farthing damages, of his costs, ought to consider what was the view of the jury in arriving at their verdict. *Wootton* v. *Sievier* (*No.* 2), 29 T. L. R. 724—Darling, J.

—— **Slander.**]—In an action for slander the jury found the main issue in favour of the plaintiff, but returned a verdict for one farthing damages only:—*Held*, that the plaintiff was entitled to the costs of the action. *Macalister* v. *Steedman*, 27 T. L. R. 217—Bucknill, J.

"Issue" — "Event."] — The plaintiff brought an action against the defendants claiming damages for loss sustained by him in consequence of his having subscribed for shares in a company in reliance on the faith of a prospectus, of which, as he alleged, the defendants had authorised the issue and which to their knowledge contained material misstatements and omissions of fact. The defendants denied these allegations. The jury found that the defendants did not authorise the issue of the prospectus, and that they believed that it was true; but they also found, in answer to two other questions, that the prospectus contained untrue statements and omissions of fact, and that the plaintiff relied on its truth. The Judge directed judgment to be entered for the defendants with costs. The judgment as drawn up purported to adjudge that the plaintiff should recover nothing against the defendants, and that, except as therein otherwise adjudged, the defendants should recover their costs against the plaintiff; but further, that, the jury having found that the prospectus contained untrue statements or omissions of fact, and that the plaintiff relied on its truth, and the Judge having made no order as to the costs of these issues, the plaintiff should have his costs of these issues against the defendants:—*Held*, that neither of the two abovementioned questions was a separate "issue," and that the finding of the jury on neither of them was an "event" within the meaning of Order LXV. rules 1 and 2, and therefore that the plaintiff was not entitled to his costs of either of these questions against the defendants, and that so much of the judgment, as drawn up, as purported to adjudge that the

plaintiff should have the costs of these issues should be set aside. *Howell* v. *Dering*, 84 L. J. K.B. 198; [1915] 1 K.B. 54; 111 L. T. 790; 58 S. J. 669—C.A. *See* also *Quirk* v. *Thomas*, [1915] W. N. 147—Lush, J.

Separate Issues — Absence of Direction by Judge as to Costs — Jurisdiction of Taxing Master.]—In every case, whether tried by a jury or not, the judgment should contain a direction as to the costs to which each party is entitled. It is for the Judge who tries a case to say whether there is any separate issue upon which the unsuccessful party is entitled to costs. In the absence of any direction a Taxing Master has no jurisdiction to allow such costs. *Bush* v. *Rogers*, 84 L. J. K.B. 686; [1915] 1 K.B. 707; 112 L. T. 945—Bankes, J.

Two Defendants — Plaintiff Successful against One Defendant — Costs Payable to Successful Defendant Recoverable from Unsuccessful Defendant.]—The plaintiff sued the two defendant companies to recover damages for personal injuries sustained by him owing to the negligence of the defendants' servants or the servants of one of them. At the trial the jury found that the accident was solely due to the negligence of the servants of the first defendants, and they exonerated the servants of the second defendant company from all blame:—*Held*, that the plaintiff with his limited knowledge of the facts was entitled to bring his action against both defendants, that the first defendants when they were applied to by the plaintiff ought to have said whether they alleged negligence against the second defendants, or not, and that, as they had not done so, the plaintiff, although he was liable to the second defendants for costs, was entitled to recover those costs from the first defendants. *Vine* v. *National Motor Cab Co.*, 29 T. L. R. 311—Bucknill, J.

The plaintiff sued a cab company and an omnibus company for damages in respect of a collision, alleging negligence on the part of the defendant companies or of one or other of them. The cab company did not before the issue of the writ suggest to the plaintiff that the omnibus company were to blame for the collision, nor did they so allege in their defence. But as between themselves each of the companies threw the blame on the other, and at the trial each of them contended that the collision was due to negligence on the part of the other. The jury found that the collision was due to the negligence of the cab company alone:—*Held*, that, as it was reasonable in the circumstances of the case for the plaintiff to join both companies as defendants, the plaintiff was entitled to an order allowing him to add to the costs payable to him from the cab company the costs payable by him to the omnibus company. *Bestermann* v. *British Motor Cab Co.*, 83 L. J. K.B. 1014; [1914] 3 K.B. 181; 110 L. T. 754; 58 S. J. 319; 30 T. L. R. 319—C.A.

Decision of Lord Coleridge, J. (29 T. L. R. 324), affirmed. *Ib.*

The plaintiff sued a motor-cab company and an omnibus company for damages for personal injuries. Before action the plaintiff first applied to the omnibus company for compensation, but they denied liability and said that the accident was caused solely by the negligence of the motor-cab company's servant. On the refusal of the omnibus company to admit liability, the plaintiff applied to the motor-cab company, and they, while denying any liability on their part, did not throw the responsibility on to the omnibus company. At the trial the jury found that the accident causing the plaintiff's injuries was entirely due to the negligence of the motor-cab company's servant, and judgment was accordingly entered against that company and in favour of the omnibus company:—*Held*, that the plaintiff was entitled to add to the costs which he could recover from the motor-cab company the costs which he had to pay to the omnibus company. *Mulhern* v. *National Motor Cab Co.*, 29 T. L. R. 677—Bankes, J.

Libel—Newspaper—Wholesale Newspaper Agents—No Joint Publication—Acting Innocently.]—A firm of wholesale newspaper agents which has distributed copies of a journal containing defamatory matter is not liable to pay damages in respect thereof if they did not know that the copies distributed by them contained the defamatory matter, and if their ignorance was not due to negligence, and if they neither knew nor were likely to know that the journal was likely to contain defamatory matter. In a libel action against the editor and the printers of a journal, and against a firm of wholesale newspaper agents which had distributed the journal, the Judge directed the jury to the above effect, and ruled that there was no joint publication by the agents with the other defendants, and the jury found that the newspaper agents had not acted innocently, and awarded 1*s.* damages as against them. The Court thereupon deprived the plaintiff of costs as against the newspaper agents on the ground that the amount of damages shewed that the jury considered that there was no moral obliquity on their part. *Haynes* v. *De Beck*, 31 T. L. R. 115—Darling, J.

Slander—Payment into Court—Verdict for Smaller Sum.]—The plaintiff sued the defendant for slander in respect of a statement that the plaintiff had at a Parliamentary election voted twice in one division. The defendant admitted publication, and paid 10*l.* 10*s.* into Court in respect of the words complained of without the meanings alleged in the innuendo, which he denied, and pleaded in mitigation of damages certain letters of apology which he had written. At the trial the jury found a verdict for the plaintiff with one farthing damages, and Darling, J., held that the plaintiff was entitled to the costs of the action. On appeal, held that there was no reason shewn for interfering with the exercise of the Judge's discretion in making the order that he did. *Kinnell* v. *Walker*, 27 T. L. R. 257—C.A.

Claim for Damages for Fraudulent Misrepresentation on Sale of Business — Credit Given for Price of Stock-in-Trade — Counterclaim by Defendant for Stock-in-trade.]—The

plaintiff claimed damages for fraudulent misrepresentation whereby she was induced to purchase a business. The stock-in-trade taken over was valued at 90*l.* 15*s.* 9*d.*, for which sum the plaintiff in her statement of claim stated that she was willing to give credit in account against the damages she claimed. The defendant denied the alleged fraud and counterclaimed for the 90*l.* 15*s.* 9*d.* The jury awarded the plaintiff 50*l.* on her claim, and found for the defendant on the counterclaim: —*Held*, that, notwithstanding the form of the pleadings, the claim and counterclaim must be treated as separate actions, and that the plaintiff was entitled to the costs of her claim and the defendant to the costs of his counterclaim. *Sharpe* v. *Haggith*, 106 L. T. 13; 28 T. L. R. 194—C.A.

C. TAXATION OF COSTS.

See also Vol. IV. 739, 2067.

Double or Treble Costs—"Full and reasonable indemnity" instead thereof—Costs "in and about" Action—Duty of Taxing Officer.]—By section 2 of the Limitation of Actions and Costs Act, 1842, a successful plaintiff who, previously to that Act, would have been entitled to double or treble costs or costs other than the ordinary costs between party and party, is, in lieu thereof, to be entitled to a "full and reasonable indemnity" as to all costs incurred "in and about" the action:—*Held*, that in taxing the costs the taxing officer must apply the appropriate scale of the Court in which they were incurred to the costs "in" the action, and, in addition, may allow such costs as he thinks were reasonably incurred otherwise than "in" the action—that is, "about" the action. *House Property Co. of London* v. *Whiteman*, 82 L. J. K.B. 887; [1913] 2 K.B. 382; 109 L. T. 43; 77 J. P. 319—D.

Costs Payable out of a "fund or estate" or the Assets of a Company in Liquidation—One-Sixth of Bill Taxed off—Trustee Declared Entitled to Indemnity for Costs out of Property.]—Order LXV. rule 27, sub-rule 38B, which provides that if, on the taxation of a bills of costs payable out of a fund or estate (real or personal) or out of the assets of a company in liquidation, the amount of the bill is reduced by one-sixth, no costs shall be allowed to the solicitor leaving the bill for taxation for drawing and copying it, nor for attending the taxation, refers to something in the nature of administration for the benefit of a class of persons. The reference to the assets of a company in liquidation does not apply to orders made in hostile litigation, but has come down from the period when companies were wound up in the Chancery Courts; and the reference to a fund or estate does not apply to a case where, as the result of an individual contract, a party has become entitled to be paid, if necessary, by means of the realisation of or enforcement of a charge against particular property. Where, therefore, a trustee of certain leases obtained a declaration that he was entitled to be indemnified out of the property in respect of his personal liability and his costs, charges, and expenses, with liberty to apply for the purpose of giving effect to the indemnity:—*Held*, that the sub-rule had no application to the case, the costs not being payable out of a "fund or estate" within its meaning. *Buchan* v. *Ayre*, 85 L. J. Ch. 72; [1915] 2 Ch. 474; 60 S. J. 45—Sargant, J.

Action of Tort against Two Defendants—Several Defences—Severance of Costs.]—In an action of libel against two defendants one pleaded justification and the other did not. The jury found a verdict against both defendants for 750*l.*, and judgment was entered for the plaintiff against the defendants for 750*l.* and costs to be taxed:—*Held*, that the plaintiff was entitled to be allowed his costs of the issue of justification only against the defendant who had pleaded that issue and not against the defendant who had not. *Hobson* v. *Leng & Co.*, 83 L. J. K.B. 1624; [1914] 3 K.B. 1245; 111 L. T. 954; 59 S. J. 28; 30 T. L. R. 682—C.A.

Separate Issues—Issue of Fact and Question of Law Decided in Favour of Plaintiffs—Appeal on Question of Law—No Appeal on Issue of Fact—Judgment for Defendants with Costs—Taxation—Costs of Proving Issue of Fact.]—When one of the parties to an action has obtained a judgment of the Court in his favour with general costs of the action, it is not open to the Taxing Master upon taxation to consider the fact that the unsuccessful party has succeeded upon one or more particular issues, and to allow him the costs of proving those issues. *Slatford* v. *Erlebach* (81 L. J. K.B. 372; [1912] 3 K.B. 155) distinguished. *Ingram & Royle, Lim.* v. *Services Maritimes du Tréport* (*No.* 2), 83 L. J. K.B. 1128; [1914] 3 K.B. 28; 110 L. T. 967; 12 Asp. M.C. 493—C.A.

—— Absence of Direction by Judge as to Costs—Jurisdiction of Taxing Master.]—In every case, whether tried by a jury or not, the judgment should contain a direction as to the costs to which each party is entitled. It is for the Judge who tries a case to say whether there is any separate issue upon which the unsuccessful party is entitled to costs. In the absence of any direction a Taxing Master has no jurisdiction to allow such costs. *Bush* v. *Rogers*, 84 L. J. K.B. 686; [1915] 1 K.B. 707; 112 L. T. 945—Bankes, J.

Separate Defences and Appearances—Allowance or Disallowance by Taxing Master of Costs—Jurisdiction of Court to Review Decision—Final Order as to Costs.]—The allowing or disallowing, under sub-rule 8 of rule 27 of Order LXV., of the costs of separate defences and appearances is not a matter purely in the discretion of the Taxing Master. The Court has jurisdiction, under sub-rule 41 of rule 27, to review his decision upon the question. *Ager* v. *Blacklock & Co.* (56 L. T. 890) followed. *Beattie* v. *Ebury* (*Lord*) (43 L. J. Ch. 80; [1873] W. N. 194) not followed. *Boswell* v. *Coaks* (36 Ch. D. 444) distinguished. *Spalding* v. *Gamage, Lim.* (*No.* 1), 83 L. J. Ch. 855; [1914] 2 Ch. 405;

111 L. T. 829; 31 R. P. C. 421; 58 S. J. 722—Sargant, J.

Sub-rule 8 is not confined to interlocutory proceedings, but applies to final orders as to costs also. *Ib.*

Costs as between Solicitor and Client—Payable by Third Party—Basis of Taxation.]—The second part of Order LXV. rule 27, sub-rule 29, provides that: "save as against the party who incurred the same no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence or mistake, or by payment of special fees to counsel or special charges or expenses to witnesses or other persons, or by other unusual expenses":—*Held*, that this provision applies not only to costs as between party and party, but also to each of the several cases of costs as between solicitor and client, which are distinguished in practice, except only the case where the costs are payable to the solicitor by the client himself, that case being excluded from the provision by the saving words at its commencement: and, consequently, that where a judgment directed that the plaintiff should recover against the defendant a sum as damages and also costs as between solicitor and client, the case came within the above provision, and the Taxing Master on taxation had rightly disallowed special fees to counsel and other special expenses. *Cavendish* v. *Strutt* (73 L. J. Ch. 247; [1904] 1 Ch. 524) judgment corrected. *Giles* v. *Randall*, 84 L. J. K.B. 786; [1915] 1 K.B. 290; 112 L. T. 271; 59 S. J. 131—C.A.

Counsel's Fees—Two Counsel—Short Cause List.]—The fact that an action is ordered to be put in the short cause list has no effect upon the taxation of costs, and is not a ground for saying that the costs of two counsel ought not to be allowed. Although the Court has jurisdiction to interfere with the discretion of the Taxing Master, it is the rarest thing for the Court to interfere except where the Taxing Master has gone wrong on a matter of principle. The question whether the fees of two counsel should be allowed is not purely a question of *quantum*, but is a question which the Taxing Master must decide, and *prima facie* the Court will not interfere in such a case. *Ginn* v. *Robey*, [1911] W. N. 28—C.A.

Three Counsel — Special Circumstances — Country Solicitor — Attendance at Trial in London.]—In a passing-off action the plaintiffs alleged fraud against the defendants. There was a large amount of evidence, including a great number of exhibits, and the action lasted ten days. On taxation the Taxing Master disallowed the costs of three counsel and of the attendance of the country solicitor at the trial in London. On a summons to review the taxation,—*Held*, that the Court ought not to overrule the discretion of the Taxing Master, and that the summons must be dismissed on both points. *Perry & Co.* v. *Hessin & Co.*, 108 L. T. 332; 30 R. P. C. 193; 57 S. J. 302—Eve, J.

Shorthand Notes Agreed to be Used as Record of Evidence—Transcript—Costs in the Action.]—Where at the trial of an action it is agreed by both sides that a joint shorthand note shall be taken of the evidence, to be used if need be on appeal, but there is no arrangement made as to making the costs costs in the action or as to taking transcripts, the successful party is not to be entitled to include the expenses of the shorthand notes in his bill of costs. *Osmond* v. *Mutual Cycle and Manufacturing Co., Lim.* (68 L. J. Q.B. 1027; [1899] 2 Q.B. 88), distinguished. *Jones* v. *Llanrwst Urban Council* (*No. 2*), 80 L. J. Ch. 338; [1911] 1 Ch. 393; 104 L. T. 53; 75 J. P. 98—Parker, J.

In an action in which allegations of fraud were made, and which lasted over seven days, judgment was given for the defendant with costs. On taxation of the defendant's costs the Master allowed the costs of taking and of transcribing a shorthand note of the proceedings, and of copies for the Judge and for the defendant's counsel. At the trial the parties had agreed that a shorthand note of the proceedings should be taken and transcribed, and a copy thereof supplied to the Judge. There was no further agreement between the parties, and nothing was said about the costs of the shorthand note being costs in the cause. The Judge gave no direction that they should be costs in the cause:—*Held*, that these costs were not costs in the cause, and could not be allowed as such on taxation; but that upon the agreement arrived at each party must pay one-half of the cost of taking and transcribing the note and of the Judge's copy. *Herbert* v. *Royal Society of Medicine* (56 S. J. 107) explained and distinguished. *Seal* v. *Turner*, 84 L. J. K.B. 1658; [1915] 3 K.B. 194; 113 L. T. 769; 59 S. J. 649—C.A.

Charge for Preparing Brief.]—A charge for instructions for brief is in the discretion of the Taxing Master and cannot be reviewed by the Court unless the Taxing Master has proceeded on a wrong principle. *Carter* v. *Apfel*, 57 S. J. 97—Eve, J.

Copies of Documents for Use of Court.]—The costs of copies of all relevant parts of wills and other original documents for the use of the Judge are to be allowed on taxation. The Court ought not to be expected to use the original documents. *Parratt, In re; Parratt* v. *Parratt*, 58 S. J. 580—Astbury, J.

Witnesses — Conduct Money.] — Witnesses served with *subpœnas* to attend the trial of an action are entitled to be paid conduct money unless served prematurely, and it is the practice to allow these payments on taxation. *Carter* v. *Apfel*, 57 S. J. 97—Eve, J.

Disallowance of Costs of Third Expert Witness Called by Successful Party.]—Where a successful party to an action has called three expert witnesses without protest from the other side, and the Court has listened to their evidence, the costs of the third expert witness ought not to be disallowed by the Taxing Master unless there is some very special reason. *Maxim* v. *Godson*, 85 L. J. Ch. 66; 60 S. J. 77—Neville, J.

Successful Plaintiff Attending Trial as Witness—Plaintiff's Expenses as Witness.]—Where the successful party to an action has attended the trial as a witness in support of his own case, thereby sacrificing time and incurring hotel and travelling expenses, the Taxing Master, on taxation, as between party and party, of that party's bill of costs, is entitled to require as a condition of the inclusion in his *allocatur* of an allowance to that party of an amount in respect of these items, production by the solicitor of that party either of a voucher signed by the party acknowledging that the amount has been paid to him by the solicitor (though such a voucher could only be required where the amount had in fact been paid to him by the solicitor), or of a letter from the party intimating that he has knowledge that the amount is being allowed to him:—So *held* by Buckley, L.J., and Kennedy, L.J.; Vaughan Williams, L.J., dissenting. *Harben* v. *Gordon*, 83 L. J. K.B. 322; [1914] 2 K.B. 577; 109 L. T. 794; 58 S. J. 140—C.A.

Until the Taxing Master has issued his *allocatur* there is no concluded taxation which can properly be made the subject of an application to review taxation, and the Court ought not to entertain such an application. *Ib.*

Observations in *Sellman* v. *Boorn* (10 L. J. Ex. 433; 8 M. & W. 552) and *Le Brasseur and Oakley, In re; Turrell, ex parte* (65 L. J. Ch. 763; [1896] 2 Ch. 487), adopted. *Ib.*

Between Solicitor and Client.] — *See* SOLICITOR.

D. EFFECT OF COUNTY COURTS ACT.

See also Vol. IV. 814, 2079.

Remitted Action—Payment by Defendant to Plaintiff after Action Brought — Defendant Ignorant of Writ when Payment Made—Sum "recovered in the action."]—The day after a writ had been issued in an action of contract for 77*l.* 5*s.* 2*d.*, the defendant, who was ignorant of the issue of the writ, paid the plaintiffs 72*l.* 10*s.*, the amount for which he considered he was liable. Subsequently the writ was served and the action was remitted to the City of London Court, where the plaintiffs obtained judgment for 4*l.* 15*s.* 2*d.*, the balance of their claim. The costs were taxed on scale C:—*Held*, following *Pearce* v. *Bolton* (71 L. J. K.B. 558; [1902] 2 K.B. 111), that the taxation was right, as the sum recovered in the action within the meaning of section 116 of the County Court Act, 1888, was 77*l.* 5*s.* 2*d.* *Lamb* v. *Keeping*, 111 L. T. 527; 58 S. J. 596—D.

E. SET-OFF OF COSTS.

See also Vol. IV. 836, 2084.

Discretionary Power of Court.] — The Court, when exercising common law jurisdiction, has, apart from any Rules of the Supreme Court, a discretionary power, which was formerly possessed by the superior Courts of common law, to set off against one another judgments for costs in separate independent actions. *Reid* v. *Cupper*, 84 L. J. K.B. 573; [1915] 2 K.B. 147; 112 L. T. 573; 59 S. J. 144; 31 T. L. R. 103—C.A.

At the trial of an action for assault the plaintiff obtained a verdict against the defendant. In a previous action brought by the same plaintiff against the same defendant and his wife for slander, judgment had been entered for the defendants with costs. Judgment was directed to be entered in the assault action in accordance with the verdict, with costs, and on the application of the defendants the Judge ordered that the defendants' costs in the slander action should be set off against the plaintiff's costs in the assault action:—*Held*, that the Judge had a discretion to order the set-off of costs, notwithstanding the plaintiff's solicitor's lien, and that he had rightly exercised his discretion. *David* v. *Rees* (73 L. J. K.B. 729; [1904] 2 K.B. 435) considered. *Ib.*

Appeal to House of Lords—Issues Decided against Appellant — Appeal as to One Issue only—Costs Ordered to be Paid at Trial.]—On a motion to make a decree of the House of Lords an order of the High Court when the decree appears on its face to deal with all the costs of the action, the Court has jurisdiction to set off from the costs payable to the successful appellant under the decree the costs of issues upon which he failed at the trial, and which he did not raise upon the appeal. *Deeley* v. *Lloyds Bank* (*No.* 2), 57 S. J. 58—C.A.

Costs against Damages—Discretion.]—It is in the discretion of the Court to allow a set-off of damages against costs, and such set-off will be allowed where it works no injustice between the parties. *Meynell* v. *Morris*, 104 L. T. 667; 55 S. J. 480—Eve, J.

F. INTEREST ON COSTS.

See also Vol. IV. 852, 2086.

Costs Charged by Order of Court on Estate.]—Costs directed by a judgment or order to be charged on land bear interest from the date on which they become a charge. *Drax, In re; Savile* v. *Drax* (72 L. J. Ch. 505; [1903] 1 Ch. 781), followed. *MacDermott's Estate, In re*, [1912] 1 Ir. R. 166—C.A.

Interlocutory Order Directing Payment of Costs—Interest as from Date of Order.]—An interlocutory order directing the payment of costs by one person to another carries interest on the costs thereby awarded as from the date of such order. *Taylor* v. *Roe* (63 L. J. Ch. 282; [1894] 1 Ch. 413) followed and applied. *Alexander* v. *Curragh*, [1915] 1 Ir. R. 273—Barton, J.

See also Stickney v. *Keeble* (*No.* 2), *ante*, col. 37.

G. APPEAL FOR COSTS.

See also Vol. IV. 853, 2087.

Appeal — Discretion of Judge.] — Where costs are in the discretion of the Judge, the Court of Appeal, if satisfied that he has not applied some rule which in fact has excluded the exercise of his discretion, will not entertain an appeal from his order as to costs

unless it is shewn that there was no proper exercise of his discretion. *Lever* v. *Masbro' Equitable Pioneers Society* (*No.* 2), 29 R. P. C. 225; 28 T. L. R. 294—C.A.

H. SECURITY FOR COSTS.

See APPEAL; COUNTY COURT; PRACTICE.

COUNSEL.

See BARRISTER.

COUNTERCLAIM.

See PRACTICE.

COUNTY COURT.

A. RIGHT OF AUDIENCE.

Managing Clerk.]—A solicitor's managing clerk, even though he is himself an admitted solicitor, cannot appear for a party in a workmen's compensation case in the County Court without the special leave of the Judge. The only solicitor with an unqualified right of audience is the solicitor on the record, and for this purpose there is no distinction between an arbitration and interlocutory proceedings. *Rogers* v. *Holborn Borough Council*, 58 S. J. 656—C.A.

B. JURISDICTION.

1. GENERALLY.

See also Vol. IV. 883, 2091.

To Cancel Lease—"Value of the property."]—In an action brought on the Equity side of a County Court for rescission of a lease of certain premises, objection was raised that the Court had no jurisdiction, on the ground that the value of the premises exceeded 500*l.* :—*Held*, that the words "value of the property" in section 67, sub-section 4 of the County Courts Act, 1888, mean the value of the freehold of the land the lease of which has been granted, and not the value of the leasehold interest which is the subject-matter of the transaction to be dealt with by the County Court, and therefore that the Court had no jurisdiction to rescind the lease. *Angel* v. *Jay*, 80 L. J. K.B. 458; [1911] 1 K.B. 666; 103 L. T. 809; 55 S. J. 140—D.

Suit for Specific Performance of Agreement to Grant Right of Way.]—The jurisdiction conferred on the County Court by section 33 (*d*) of the County Officers and Courts (Ireland) Act, 1877 [cf. section 67, sub-section 4 of the County Courts Act, 1888], in suits for specific performance includes a suit for the specific performance of an agreement in writing for good consideration to grant a right of way as appurtenant to a holding. *Reg.* v. *Westmoreland County Court Judge* (36 W. R. 477) distinguished. *McArdle* v. *Kane*, [1915] 1 Ir. R. 259—M.R.

Equity Jurisdiction—Administration Action—Value of Subject-matter—Evidence—Transfer of Action to Chancery Division.]—Where an administration action is brought in the County Court, and there is nothing on the face of the proceedings to shew that the value of the estate is above 500*l.*, and its value can only be ascertained by determining the question in dispute between the parties, it is the duty of the Judge to try that question, and, if in so doing it transpires that the value of the estate is above 500*l.*, to transfer the action to the Chancery Division of the High Court, under section 68 of the County Courts Act, 1888. *Sunderland* v. *Glover*, 84 L. J. K.B. 266; [1915] 1 K.B. 393; 112 L. T. 128; 59 S. J. 91—D.

Licence Duty—Proportion Recoverable by Lessee from Lessor—County Court—Extent of Jurisdiction.]—The jurisdiction of a County Court to determine, under section 2 of the Finance Act, 1912, how much of the increase of the duty payable in respect of a licence by virtue of the Finance (1909-10) Act, 1910, is recoverable by the lessee from the grantor of the lease, only arises where the conditions imposed by the section are fulfilled—namely, that the lease was granted before the Act of 1910 and that it does not contain a covenant that the lessee shall obtain his intoxicating liquor from the grantor only. If the grantor of the lease disputes that those conditions have been fulfilled, the County Court has no jurisdiction. *Tratt* v. *Good*, 84 L. J. K.B. 1550;

[1915] 3 K.B. 59; 113 L. T. 556; 79 J. P. 413; 31 T. L. R. 441—D.

Siding and Shunting Charges — Private Waggons.]—The respondent, who was a coal merchant, owned railway waggons which ran over the appellants' railway, and when they fell out of repair they were shunted on to a siding of the appellants and the respondent sent a man to repair them. The appellants brought a County Court action against the respondent for siding and shunting charges in respect of the waggons shunted on to their sidings for repair. The respondent had had notice of the company's charges for these services. The Judge held that he had no jurisdiction and that the matter should go before an arbitrator:—*Held*, on appeal, that the Judge had jurisdiction. *London and North-Western Railway* v. *Duerden*, 85 L. J. K.B. 176; 113 L. T. 285; 31 T. L. R. 367—D.

C. TRANSFER OF ACTIONS AND MATTERS FROM HIGH COURT.

See also Vol. IV. 922, 2094.

Refusal of Judge to Try Remitted Action—Question of Jurisdiction — Duty of Judge — Costs.]—Section 65 of the County Courts Act, 1888, provides: "Where in any action of contract brought in the High Court the claim indorsed on the writ does not exceed 100*l*. . . . it shall be lawful for either party to the action . . . to apply to a Judge of the High Court at chambers to order such action to be tried in any Court in which the action might have been commenced, or in any Court convenient thereto; and on the hearing of the application the Judge shall, unless there is good cause to the contrary, order such action to be tried accordingly":—*Held*, that the words "in any Court convenient thereto" meant any County Court which the Judge at chambers might deem to be convenient to the parties, and that the Judge had a discretion to exercise upon the question of convenience which must vary according to the circumstances of each case. *Rex* v. *Mellor*, 83 L. J. K.B. 996; [1914] 2 K.B. 588; 110 L. T. 802; 58 S. J. 361; 30 T. L. R. 355—C.A.

An order having been made under the above section by a Master at chambers remitting an action to a County Court, and the Judge having refused to try the action, the Divisional Court made absolute a rule *nisi* to the Judge to hear the action and ordered him to pay the costs (including the costs thrown away in the County Court):—*Held*, that the County Court Judge had no jurisdiction to enquire into what circumstances were taken into account when the order was made or into the question whether his Court was a convenient Court or was convenient to the parties, or whether any other Court would be more convenient, or the like. His duty was to obey the order and try the action in due course in its proper turn, as if it had been an action originally commenced in his Court. Having regard to the above interpretation of section 65, it could only occur in some exceptional case that an order might possibly be made without jurisdiction: and if the County Court Judge was of opinion that the order was invalid for want of jurisdiction it was his duty to give a judgment on the points with reasons stating fully the grounds upon which he had come to the conclusion that the order was made without jurisdiction. He should then adjourn the hearing to enable either party to raise the question of jurisdiction in the High Court if he should desire to do so. *Held*, further, that the Divisional Court had no jurisdiction to order the Judge to pay the costs thrown away in the County Court. *Churchward* v. *Coleman* (36 L. J. Q.B. 57; L. R. 2 Q.B. 18) followed. *Ib.*

Order of Master Remitting Action—Expiration of Time for Appealing against Order of Master—Action Set Down in County Court—Jurisdiction of High Court to Entertain Application for Leave to Appeal against Order of Master.]—An action of contract having been brought in the High Court, the Master made an order under section 65 of the County Courts Act, 1888, remitting the action for trial to the County Court. After the time for appealing against that order had expired the plaintiffs under that section lodged the writ and the order with the Registrar of the County Court. The defendants subsequently appealed against that order, and the High Court Judge made an order extending the time for appealing and setting aside the order of the Master remitting the action:—*Held*, that, as the order of the Master remitting the action to the County Court had not been appealed against within the proper time, and the documents in the action had been lodged in the County Court, the action had been effectually transferred to the County Court and had become a County Court action; that the High Court Judge had no longer jurisdiction to make any order in respect of it; and that the order of the High Court Judge should be set aside and the order of the Master restored. *Buckley* v. *National Electric Theatres, Lim.*, 82 L. J. K.B. 739; [1913] 2 K.B. 277; 108 L. T. 871—C.A.

Contract—Amendment of Particulars—Claim in Respect of Tort—Power of County Court Judge to Try Action.]—In an action of contract commenced in the High Court and remitted to the County Court under section 65 of the County Courts Act, 1888, the plaintiff filed amended particulars of claim containing a claim in respect of a tort:—*Held*, that the County Court Judge had jurisdiction to try the action upon the particulars as amended, but that it was open to him, in the exercise of his discretion under Order XIV. rule 12 of the County Court Rules, 1903, for any sufficient cause to disallow the amendment. *Spring* v. *Fernandez*, 81 L. J. K.B. 201; [1912] 1 K.B. 294; 105 L. T. 792; 56 S. J. 110—D.

Security for Costs.]—Where an action for tort has been remitted to the County Court under section 66 of the County Court Act, 1888, on the plaintiffs, a limited liability company, failing to give full security for the defendants' costs or to satisfy a Judge of the High Court that their cause of action is fit to be prosecuted in the High Court, the

County Court Judge is not deprived of his jurisdiction to make an order for the security of the defendants' costs under section 278 of the Companies (Consolidation) Act, 1908, as by section 66 the remitted action and all the proceedings therein are to be tried and taken in the County Court as if the action had originally been commenced therein. *Plasycoed Collieries Co.* v. *Partridge*, 104 L. T. 807; 55 S. J. 481—D.

D. TRANSFER OF ACTIONS AND MATTERS FROM COUNTY COURT TO HIGH COURT.

See also Vol. IV. 940, 2097.

Remittal from Chancery Division to County Court—Power to Order Re-transfer to High Court—Action for Infringement of Franchise.]—The Court has power under section 126 of the County Courts Act, 1888, to order the re-transfer from the County Court to the High Court of an action which has been originally commenced in the Chancery Division and has been remitted to the County Court under section 69 of the County Courts Act, 1888. *General Estates Co.* v. *Beaver*, 81 L. J. K.B. 761; [1912] 2 K.B. 398; 106 L. T. 793—D.

Discretion of Judge — "Shall deem it desirable."]—Section 126 of the County Courts Act, 1888, provides that an action commenced in the County Court may be removed into the High Court "if the High Court or a Judge thereof shall deem it desirable that the action or matter shall be tried in the High Court": —*Held*, that the question whether an action should be removed into the High Court depends upon whether the action is one which in the opinion of the Judge is more fit to be tried in the High Court than in the County Court. The rule in *Banks* v. *Hollingsworth* (62 L. J. Q.B. 239; [1893] 1 Q.B. 442) followed. *Donkin* v. *Pearson*, 80 L. J. K.B. 1069; [1911] 2 K.B. 412; 104 L. T. 643—D.

Under section 126 of the County Courts Act, 1888, which authorises the High Court, if it "shall deem it desirable" that the action or matter shall be tried in the High Court, to order the removal into the High Court of an action commenced in the County Court, the jurisdiction of the Court to make the order is not confined to cases in which it considers that the case is in itself more fit to be tried in the High Court than in the County Court, but extends to cases where it thinks that for any reason it is better that it should be tried in the High Court. *Challis* v. *Watson*, 82 L. J. K.B. 529; [1913] 1 K.B. 547; 108 L. T. 505; 57 S. J. 285; 29 T. L. R. 271—D.

Action Removed to High Court by Certiorari — Obligation on Plaintiff to Proceed.] — An action in a County Court was by agreement between the parties removed into the High Court by *certiorari* on the application of the defendants under section 126 of the County Courts Act, 1888. As the plaintiff did not proceed with the action, the defendants applied that he might be ordered to proceed or that the action should be dismissed for want of prosecution:—*Held*, that the application must be refused, as the plaintiff was not, in view of the procedure that had been followed, bound to proceed with the action. *Garton* v. *Great Western Railway* (28 L. J. Q.B. 103; 1 E. & E. 258) followed. *Harrison* v. *Bull*, 81 L. J. K.B. 656; [1912] 1 K.B. 612; 106 L. T. 396; 56 S. J. 292; 28 T. L. R. 233—C.A.

E. PRACTICE.

1. Parties.

See also Vol. IV. 933.

Joinder of Third Party as Defendant to Counterclaim—Claim for Alternative Relief.]—A third person cannot be joined as a defendant to a counterclaim under Order X. rule 22 of the County Court Rules, 1903, 1904, against whom an alternative cause of action is alleged in the counterclaim by the defendant in the action; he can only be joined when the counterclaim raises questions between the defendant in the action and the plaintiff along with such third person. *Times Cold Storage Co.* v. *Lowther; Lowther* v. *Times Cold Storage Co.*, 80 L. J. K.B. 901; [1911] 2 K.B. 100; 104 L. T. 637; 55 S. J. 442—D.

2. Defences.

See also Vol. IV. 938, 2096.

Statute of Limitations — Public Authorities Protection Act.]—The Public Authorities Protection Act, 1893, is a statute of limitations within the meaning of Order X. rule 14 of the County Court Rules. Therefore, where a public body are sued in the County Court and give notice that they intend to rely on the special defence that the plaintiff's claim "is barred by a statute of limitations," they are entitled under that notice to rely upon the Public Authorities Protection Act, 1893. *Gregory* v. *Torquay Corporation*, 81 L. J. K.B. 385; [1912] 1 K.B. 442; 105 L. T. 886; 76 J. P. 73; 10 L. G. R. 179—C.A.

Decision of Divisional Court (80 L. J. K.B. 981; [1911] 2 K.B. 556) affirmed. *Ib.*

Promissory Note Payable at a Particular Place — Presentment.] — In an action on a promissory note in the County Court the defendant wished to take the point that the note was payable at a particular place and that it had not been duly presented for payment. The County Court Judge held that this was a statutory defence, and that, as no notice had been given of it, the defendant could not take the point:—*Held*, that by virtue of section 87 of the Bills of Exchange Act, 1882, due presentment for payment was of the essence of the plaintiff's cause of action, and so was not a statutory defence of which the defendant need give notice. *Pritchard* v. *Couch*, 57 S. J. 342—D.

3. Payment into Court.

See also Vol. IV. 938, 2096.

Action for Negligence—Admission of Negligence — Denial of Damage — Payment into

Court—Costs—County Court Rules—Order IX. rule 12.] — The plaintiffs brought a County Court action against the defendants for injuries caused to a horse by the negligence of the defendants' servants in driving a tramway car. The defendants paid a sum into Court with a notice that they admitted the accident had occurred through the negligence of their driver, but that they denied the alleged damage. At the trial the Judge found that the sum paid in was sufficient to satisfy the plaintiffs' claim :—*Held*, that as the plaintiffs were not entitled to recover without proof of actual damage the defendants' notice complied with Order IX. rule 12 of the County Court Rules, and the defendants were entitled to judgment with costs as from the date of payment in. *Munday, Lim.* v. *London County Council*, 32 T. L. R. 128—D.

4. Trial and Judgment.

See also Vol. IV. 944, 2098.

Adjournment of Trial — High Court Action Involving Similar Issue — "Good cause."] — By Order XII. rule 16 of the County Court Rules, 1903 and 1904, "the Court may, in its discretion, on the application of any party . . . make an order postponing or adjourning for good cause the trial of any action or matter upon such terms, as to costs or otherwise, as may be just . . ." :—*Held*, that the pendency of an action in the High Court involving an issue similar to that raised in an action in the County Court may be "good cause" for the making of an order by the County Court Judge under the above Rules adjourning the trial of the County Court action until after the trial of the action in the High Court. But the County Court Judge should exercise a judicial discretion in regard to the making of such an order. *Hammond* v. *Jackson*, 83 L. J. K.B. 380; [1914] 1 K.B. 241; 110 L. T. 110—D.

Amendment—Salvage Action—No Salvage Proved—Award for Towage.]—In an action brought by the owners, master, and crew of a steamer against the owners of a ketch, her cargo and freight for salvage, the Judge found that no salvage services were in fact rendered, but on the application of the plaintiffs he directed the pleadings to be amended by substituting the word "towage" for "salvage," and awarded to the plaintiffs a sum in respect of towage services :—*Held*, that in the absence of consent to an amendment the Judge ought to have given judgment for the defendants. *The Anne*, 30 T. L. R. 544—D.

Nonsuit after Opening of Case and before Evidence Called.]—In an action in the County Court, the Judge nonsuited the plaintiff at the close of the opening of his case, without his consent, and without giving him an opportunity of calling evidence :—*Held*, that the County Court Judge had, in those circumstances, no power to nonsuit the plaintiff. *Cross* v. *Rix*, 77 J. P. 84; 11 L. G. R. 151; 29 T. L. R. 85—D.

Power of Judge to Enter Judgment for Less than Verdict.]—Where a verdict in the County Court is wrong only by being in excess of the amount recoverable in the County Court, the Judge has jurisdiction to reduce it to such an amount as the jury could properly give. *Cresswell* v. *Jones*, 106 L. T. 797; 28 T. L. R. 395—D.

Power of Judge to Alter Note of Judgment after Delivery.]—A County Court Judge is entitled to make an alteration in his note of a judgment subsequently to the delivery thereof for the purpose of explanation or the clearing away of a possible misunderstanding. *Lowery* v. *Walker*, 80 L. J. K.B. 138; [1911] A.C. 10; 103 L. T. 674; 55 S. J. 62; 27 T. L. R. 83—H.L. (E.)

Verbal Expression of Judicial Opinion — Different Form Subsequently in Writing.] — Consideration of the question what constitutes the judgment of a County Court Judge where, after having tried a case, he expresses his judicial opinion upon it at first verbally and afterwards in a different form in writing. *Higginson* v. *Blackwell Colliery Co.; Pitchford* v. *Same*, 84 L. J. K.B. 1189; 112 L. T. 442; 31 T. L. R. 95—C.A.

5. Enforcing Judgment.

See also Vol. IV. 951, 2098.

Order of County Court Judge — Action on such Order.]—An action is maintainable upon an order of a County Court Judge made in the exercise of his bankruptcy jurisdiction (Bray, J., *dissentiente*). *Savill* v. *Dalton*, 84 L. J. K.B. 1583; [1915] 3 K.B. 174; 113 L. T. 477; [1915] H. B. R. 154; 59 S. J. 562—C.A.

Attachment of Debts—Judgment Debt Payable on a Certain Date—Issue of Garnishee Proceedings before that Date — Judgment "Unsatisfied."]—A judgment in the ordinary County Court form adjudging that the plaintiff recover from the defendant a certain sum, and ordering that the defendant pay that sum to the Registrar of the Court on a specified future date, cannot, before that date has arrived, be properly prescribed as "still unsatisfied" within the meaning of Order XXVI. rule 1 of the County Court Rules, 1903-1909, and therefore the plaintiff is not, before that date, entitled under that rule to take garnishee proceedings for the purpose of obtaining payment to him of a debt due from another person to the defendant. *White* v. *Stenning*, 80 L. J. K.B. 1124; [1911] 2 K.B. 418; 104 L. T. 876; 55 S. J. 441; 27 T. L. R. 395—C.A.

6. Interpleader.

See also Vol. IV. 958, 2103.

Claim to Proceeds of Goods Taken in Execution and Sold—Claim by Assignee of Execution Creditor—Assignment of Debts Owing or to Become Owing — Absence of Title to Goods themselves.]—A claimant in an interpleader summons issued under section 157 of the County Courts Act, 1888, to the proceeds of goods taken in execution and sold under the provisions of section 156 of the Act, must, in order to succeed, shew that he had a good title

to the goods themselves. Therefore, where the claimant is the assignee of all the book and other debts of the execution creditor, and his real object is to enforce under the assignment his right to the particular judgment debt, a summons under section 157 is not his appropriate remedy. *Plant* v. *Collins*, 82 L. J. K.B. 467; [1913] 1 K.B. 242; 108 L. T. 177; 29 T. L. R. 129—C.A.

Judgment of Divisional Court (Ridley, J., and Lush, J.) (81 L. J. K.B. 868; [1912] 2 K.B. 459) affirmed. *Ib.*

Remitted Interpleader Issue — Jurisdiction to Try therewith Claim for Damages.] — Order XXXIII. rule 11 of the County Court Rules, 1914, which prohibits a claim for damages in a remitted interpleader issue, is not *ultra vires*, having regard to the County Courts Act, 1888, ss. 157 and 164. *Salbstein* v. *Isaacs & Sons, Lim.*, 85 L. J. K.B. 109; 60 S. J. 106—D.

Quære, *per* Lush, J.—Whether Order XXVII. rule 8, under which a claim for damages by the claimant against the execution creditor or the high bailiff in interpleader proceedings in the County Court must be made in those proceedings, applies to a claim against a stranger to the proceedings: for example, the solicitor of the execution creditor who gives instructions for the seizure of the goods, and whether a claim for damages against the latter can therefore be brought by the claimant independently of the interpleader proceedings. *Ib.*

Scale of Costs.]—By Order LIII. rule 15 of the County Court Rules, 1903 and 1914, "The 'subject matter' in an interpleader proceeding shall mean (1) in the case of a claimant the amount of the value of the goods his claim to which is allowed, plus the amount of the damage (if any) adjudged, . . ." :—*Held*, that the above rule applies to all interpleader proceedings in the County Court, and that therefore the value of the goods seized, and not the amount paid into Court, determines the scale on which the costs of a successful claimant must be taxed. *Brown* v. *Lilley* (7 T. L. R. 427) discussed and held not to be good law now. *Tarry* v. *Witt*, 84 L. J. K.B. 950; 112 L. T. 1034; 31 T. L. R. 207—D.

7. New Trial.

See also Vol. IV. 962, 2104.

Action under 2*l.* Heard by Registrar — Jurisdiction.] — A County Court Judge has jurisdiction under section 93 of the County Courts Act, 1888, to entertain an application for a new trial in a matter heard before the Registrar of the County Court sitting by virtue of the powers conferred by section 92 of the Act. *Rosin* v. *Rank*, 81 L. J. K.B. 854; [1912] 2 K.B. 228; 106 L. T. 986; 56 S. J. 597; 28 T. L. R. 449—D.

Verdict for Plaintiff—Power of County Court Judge to Grant New Trial on Ground of No Evidence.]—A County Court Judge who has entered judgment for the plaintiff on a verdict of the jury in his favour, has no power to grant a new trial on the ground that there was no evidence to go to the jury. *Clarke* v. *West Ham Corporation*, 83 L. J. K.B. 1306; [1914] 2 K.B. 448; 110 L. T. 1007; 78 J. P. 309; 12 L. G. R. 744; 58 S. J. 496; 30 T. L. R. 389—D.

Trial by Jury—Intimation by Jury During Defendant's Case that they had Heard Enough Evidence—Verdict for Plaintiff—Misconduct of Jury.]—An action was brought by the plaintiff, who was the tenant to the defendants of certain premises, for interfering with his water supply. The defence was that the shortage of water was not due to any defect in the supply, but to the waste of the water by the plaintiff. The plaintiff's case having been closed, three witnesses were called for the defendants to prove the defence alleged. The jury then interposed and said that they had heard enough evidence of that class, and asked that the defendants' expert might be called. Thereupon the defendants' counsel, thinking that the jury were in his favour, although he had six other witnesses to the facts in dispute in Court, called his expert and closed his case. The jury returned a verdict for the plaintiff. The learned Judge, upon the application of the defendants, granted a new trial upon the ground of misconduct on the part of the jury :—*Held*, that the intimation of the jury having misled the defendants' counsel and also the learned Judge as to the view which they took of the case, there were materials upon which he was entitled to order a new trial upon the ground that the jury had misconducted themselves and had procured a miscarriage of justice; and that, as the exercise of his discretion in ordering a new trial was based upon proper materials, no appeal lay from his decision. *Biggs* v. *Evans*, 106 L. T. 796—D.

8. Costs.

See also Vol. IV. 964, 2104.

Discretion.]—A County Court Judge has a discretion to deprive a successful defendant of costs where he has been party to a transaction that is held to be contrary to public policy. *Dann* v. *Curzon*, 104 L. T. 66; 27 T. L. R. 163—D.

Scale.]—The plaintiffs commenced an action in the High Court claiming to recover 130*l.* 10*s.* 10*d.* After the writ was issued the defendant paid into Court the sum of 98*l.* 7*s.* 6*d.*, and the action was then remitted to the County Court. In that Court the plaintiffs claimed 32*l.* 3*s.* 4*d.*, but the defendant denied all liability. The County Court Judge gave judgment for the plaintiffs for 16*l.*, which amount, added to the amount recovered in the High Court, would have entitled the plaintiffs to costs upon scale in the County Court; but the Judge only allowed the plaintiffs costs on Scale A, on the ground that the evidence given by the plaintiffs' managing director was not satisfactory :—*Held*, that the County Court Judge was not entitled upon this ground to deprive the plaintiffs of their costs on the proper scale. *Hudsons. Lim.* v. *De Halfort*, 108 L. T. 416; 29 T. L. R. 257—D.

Judgment for Part of Claim under Order XIV. — Judgment for Defendant in County Court — Costs of Proceedings under Order XIV. — Discretion of County Court Judge.]—In an action founded on contract, brought in the High Court, the plaintiffs took out a summons for judgment under Order XIV. An order was made on the summons that if the defendant did not pay to the plaintiffs within two days the sum of 3*l.* they should be at liberty to sign final judgment for that amount; that the defendant should have liberty to defend the action as to the residue of the claim; and that the action should be tried in the County Court. The defendant paid the sum of 3*l.* in conformity with the order, and at the trial the County Court Judge gave judgment for him with costs on Scale B. Upon taxation of the defendant's costs, the Registrar allowed him certain items relating to the proceedings in the High Court under Order XIV., and the Judge upheld the taxation :—*Held*, that the costs in question were in the discretion of the County Court Judge, and that he had jurisdiction to allow them to the defendant. *Mentors, Lim.* v. *Evans*, 81 L. J. K.B. 1111; [1912] 3 K.B. 174; 107 L. T. 82; 56 S. J. 502—C.A.

Taxation—Limitations of Actions and Costs Act, 1842—Indemnity as to Costs Incurred "in and about any action."]—Where an action is brought in the County Court for a matter in respect of which the plaintiff, if successful, is entitled under the Limitations of Actions and Costs, Act, 1842, to receive a "full and reasonable indemnity as to all costs, charges, and expenses incurred in and about any action," the plaintiff's costs, so far as they are incurred "in the action," ought to be taxed according to the County Court scale; but the plaintiff is further entitled, under the indemnity against costs incurred "about the action," to recover all costs reasonably incurred by him as preliminary to the action, including the costs of taking counsel's opinion as to whether the action would lie. *House Property Co. of London* v. *Whiteman*, 82 L. J. K.B. 887; [1913] 2 K.B. 382; 109 L. T. 43; 77 J. P. 319—D.

Claim and Counterclaim—Both Parties Successful — Taxation.] — In an action in the County Court, where the plaintiff succeeds on the claim and the defendant on the counter-claim, each claim, for the purpose of taxation of costs, must be treated as a separate action, and each item of costs allowed in each action, according to the scale applicable to the amount therein recovered, must be divided into the part referable to the prosecution of the claim and counterclaim respectively and the part referable to the resisting of the counterclaim and claim respectively, each party paying to the other that part as to which he is unsuccessful. *Fox* v. *Central Silkstone Collieries*, 81 L. J. K.B. 989; [1912] 2 K.B. 597; 107 L. T. 85; 56 S. J. 634—D.

Payment into Court Admitting Liability but Denying Damage.]—*See Munday, Lim.* v. *London County Council*, *supra*, 3. PAYMENT INTO COURT.

Taxation Between Party and Party—Fees to Two Counsel.]—On a taxation between party and party in the County Court fees to two counsel cannot be allowed except in proceedings under the Rivers Pollution Prevention Acts, which are specially dealt with by Order LIII. rule 45 (2) (*b*). *Bates v. Gordon Hotels, Lim.*, 82 L. J. K.B. 441; [1913] 1 K.B. 631; 108 L. T. 510; 57 S. J. 303; 29 T. L. R. 298—D.

On a party and party taxation in the County Court in a case not under the Rivers Pollution Prevention Acts, the Registrar allowed fees to two counsel, and the County Court Judge refused to review his taxation in this respect. The plaintiffs, who were unsuccessful in the County Court, appealed and specifically objected to two items only—namely, the brief fee allowed to senior counsel for the defendants and the fee to him for a conference. The Divisional Court having held that there was no jurisdiction to allow fees to two counsel, the defendants applied to have the case remitted to the County Court to allow the Registrar to exercise his discretion as to the proper fee to allow to one counsel only :—*Held*, that as the plaintiffs had only objected to the specific items, and the defendants had not carried in cross-objections, the Court could not send the case back to the County Court, but could only allow the appeal *simpliciter*. *Ib.*

Costs of Taxation — Registrar of County Court—Practising Solicitor—Successful Defendant in Action in his own Court—Appearance in Person—Taxation by Himself of his Bill of Costs—Right to Costs as Solicitor.]—A Registrar of a County Court, a practising solicitor, was sued by a company in his own Court for negligence in his capacity as Registrar and high bailiff. He defended in person, but was represented by counsel at the hearing, and judgment was given in his favour with costs. He brought in his bill of costs for taxation, and gave notice of a taxation before himself. On the taxation, which was attended by the plaintiffs' solicitor under protest, the defendant disallowed certain items. The County Court Judge, on the plaintiffs' application, reviewed the taxation and struck off certain other items. The Divisional Court, in dismissing an appeal by the plaintiffs, decided (80 L. J. K.B. 232; [1911] 1 K.B. 87) that section 41 of the County Courts Act, 1888, which provides that no Registrar of any Court shall be engaged as solicitor for any party in any proceeding in his Court, did not debar the defendant from appearing in person to defend himself; that he was entitled to the same costs as if he had employed a solicitor, except in respect to items which the fact of his acting directly rendered unnecessary; that as the plaintiffs, although by section 43 of the Act they had a choice of Courts, had elected to sue the defendant in his own Court, and as section 118 requires all costs to be taxed by the Registrar of the Court in which they were incurred, the defendant was of necessity the officer to tax his own bill of

costs; and that the County Court Judge had not taxed on a wrong principle :—*Held*, by the Court of Appeal, approving of the judgment of the Divisional Court, that the only person who could tax the defendant's costs was of necessity the defendant himself; that his costs as solicitor defendant had been rightly taxed in accordance with the County Court Rules, 1903-1908, Order LIII. rule 25; and, further, that after what had taken place in the County Court and in the Divisional Court it was not open to the plaintiffs to object to the jurisdiction of the Registrar to tax the costs. *Tolputt* v. *Mole*, 80 L. J. K.B. 686; [1911] 1 K.B. 836; 104 L. T. 148; 55 S. J. 293—C.A.

Order for Costs—"Judgment."]—An order for costs is a "judgment" within the meaning of Order XXXII. rule 2 of the County Court Rules. *Cowern* v. *Nield* [1914] W. N. 349—D.

F. APPEAL.

See also Vol. IV. 968, 2109.

No Request to Judge to take Note—No Note taken — Point of Law taken by Judge.] — A County Court Judge raised a point of law himself at a trial, heard some discussion and some authorities cited on the matter, and came to a conclusion contrary to the opinion he had first expressed :—*Held*, that, for the purposes of an appeal, the point of law had been raised at the trial. *Abrahams* v. *Dimmock*, 84 L. J. K.B. 802; [1915] 1 K.B. 662; 112 L. T. 386; 59 S. J. 188; 31 T. L. R. 87—C.A.

It is not a condition precedent to an appeal under section 120 of the County Courts Act, 1888, that the Judge should have taken a note of the point of law raised, or that he should have been requested to take the note, or, if he has not taken a note, that he should certify to that effect. The Court, where the Judge has not taken a note, has, under Order LIX. rule 8, power to determine the appeal on the materials that it deems sufficient. *Cook* v. *Gordon* (61 L. J. Q.B. 445) considered. *Ib.*

Special Defence to Jurisdiction — Point of Law not taken at Hearing.]—Every question of law upon which it is desired to appeal from a County Court must be raised at the trial, and this rule applies when the ground of appeal is that the jurisdiction of the County Court has been ousted by statute. *Taylor* v. *National Amalgamated Approved Society*, 83 L. J. K.B. 1020; [1914] 2 K.B. 352; 110 L. T. 696; 78 J. P. 254; 12 L. G. R. 525—D.

Section 67, sub-section 1 of the National Insurance Act, 1911, provides that every dispute between an approved society and an insured person who is a member of such society relating to anything done or omitted to be done by such person or society shall be decided in accordance with the rules of the society subject to appeal to the Insurance Commissioners. Section 27 of the National Insurance Act, 1913, provides that any dispute between an approved society and any person as to whether that person is or was at any date a member of that society shall be decided in like manner as a dispute between an approved society and an insured person who is a member thereof, and section 67 of the Act of 1911 is to apply accordingly. By rule 43 of the defendant society disputes between insured members and the society were to be decided by arbitration. The plaintiff claimed to be a member of the defendant society and entitled as such member to a sum of money under a contract of insurance with them, but they denied that he was a member. He accordingly brought an action in the County Court. The defendants gave notice of a special defence under section 67, sub-section 1 of the National Insurance Act, 1911, to the effect that the Court had no jurisdiction to try the case, and asking that the claim should be referred to arbitration in accordance with the rules of their society. The objection to jurisdiction under section 27 of the Act of 1913 was not, however, taken at the hearing. The County Court Judge decided in favour of the plaintiff, holding that section 67 of the Act of 1911 applied only to disputes between the society and persons who were admittedly members, and did not apply to a case where the real dispute was whether the claimant was a member of the society or not. The defendants appealed on the ground (*inter alia*) that the jurisdiction of the County Court was ousted by section 27 of the Act of 1913 :—*Held*, that, although the matter was one touching the jurisdiction of the County Court, as the objection was not taken at the hearing it could not be raised by way of appeal. *Smith* v. *Baker* (60 L. J. Q.B. 683; [1891] A.C. 325) followed. *Ib.*

Claim Exceeding Two Pounds Heard by Registrar by Consent of Parties.]—The Registrar of a County Court purported to sit as deputy for the County Court Judge, at the request of the Judge and with the consent of the parties, in order to hear and determine a claim for the sum of three guineas :—*Held*, that no appeal lay from his decision. *McInally* v. *Blackledge*, 80 L. J. K.B 882; [1911] 2 K.B. 432; 104 L. T. 642—D.

Compensation for Injuries by Accident — Order for Detention of Ship.]—No appeal lies directly to the Court of Appeal from an order for the detention of a ship made by a County Court Judge under section 11 of the Workmen's Compensation Act, 1906 :—So *held* by Cozens-Hardy, M.R., and Fletcher Moulton, L.J.; Farwell, L.J., dissenting. *Panagotis* v. "*Pontiac*" (*Owners*), 56 S. J. 71; 28 T. L. R. 63—C.A.

Right to Appeal Without Leave—Action for Damages for Trespass not Exceeding 20*l.* and an Injunction — Claim for Injunction Withdrawn.] — The plaintiff claimed 20*l.* damages for trespass to a party wall, and a mandatory injunction to remove the building erected by the defendant upon the party wall. At the hearing before the County Court Judge the plaintiff withdrew the claim for an injunction after the Judge had intimated that he never granted mandatory injunctions, and judgment

was entered for the plaintiff for 15*l.* damages. The defendant appealed without having obtained the leave of the County Court Judge :—*Held*, that the proviso to section 120 of the County Courts Act, 1888, prohibiting an appeal without the leave of the County Court Judge in an action where the debt or damage claimed does not exceed 20*l.*, except where the title to a corporeal or incorporeal hereditament has come into question, only applies where the claim is solely one for debt or damage which does not exceed 20*l.*, and that it does not apply where an injunction is claimed in the particulars of claim, even though such claim is subsequently withdrawn. *Dixon* v. *Brown*, 84 L. J. K.B. 1248; [1915] 2 K.B. 294; 112 L. T. 1033—D.

Refusal to Nonsuit—Evidence Subsequently Given for Defendant—Appeal by Defendant—Right of Court to Consider Appeal on all the Evidence.]—A County Court Judge refused, at the close of the plaintiff's case, the defendant's application for a nonsuit on the ground of no evidence. The defendants then called evidence, judgment being eventually given for the plaintiff. The defendants appealed, and contended that the Court could not consider the appeal on the whole of the evidence, but only the question whether the nonsuit had been rightly refused :—*Held*, that the Court could decide the case on the whole of the evidence, and that on the evidence given by both parties in the present case the appeal should be allowed. *Great Western Railway* v. *Rimell* (27 L. J. C.P. 201; *sub nom. Great Northern Railway* v. *Rimell*, 18 C.B. 575), considered. *Groves* v. *Cheltenham and East Gloucestershire Building Society*, 82 L. J. K.B. 664; [1913] 2 K.B. 100; 108 L. T. 846—D.

Judges Differing in Opinion.]—Where on an appeal to the Divisional Court from a County Court the Judges differ in opinion, it is in the discretion of the junior Judge to withdraw his judgment. *Poulton* v. *Moore*, 83 L. J. K.B. 875; 109 L. T. 976; 58 S. J. 156; 30 T. L. R. 155—D. *See* s.c. in C.A., 84 L. J. K.B. 462; [1915] 1 K.B. 400; 112 L. T. 202; 31 T. L. R. 43—C.A.

Hearing in Absence of Respondent—Judgment — Jurisdiction to Re-hear Appeal.] — Where a Divisional Court has heard an appeal from a County Court in the absence of the respondent and has given judgment for the appellant, the Court has no jurisdiction, after the judgment has been drawn up and perfected, to reinstate and re-hear the appeal. *Hession* v. *Jones*, 83 L. J. K.B. 810; [1914] 2 K.B. 421; 110 L. T. 773; 30 T. L. R. 320—D.

Appeal by Next Friend of Infant—Security for Costs.]—An infant plaintiff by her next friend brought an action in the County Court under the Employers' Liability Act, 1880, when judgment was given for the defendants. The plaintiff by her next friend gave notice of appeal, and the defendants applied to the Divisional Court for an order for security for costs, giving evidence on affidavit that the next friend would be unable, if unsuccessful, to pay the defendants' costs. Counsel for the plaintiff contended that the Court should look into the merits, and, if they thought there were reasonable grounds for the appeal, should not order security. The Court, following *Swain* v. *Follows & Bate, Lim.* (56 L. J. Q.B. 310; 18 Q.B. D. 585), without examining into the merits, made an order for security for costs. *Wilcox* v. *Wallis Crown Cork and Syphon Co.*, 58 S. J. 381—D.

COUNTY RATE.

See POOR LAW.

COVENANT.

See also Vol. IV. 1019, 2119.

Repugnancy — Words Negativing Personal Liability of Covenantors—Rejection of Repugnant Words — Limitation of Personal Liability.]—A., holding as executor of P. an undivided share of certain houses which had been mortgaged to secure 2,000*l.* and interest, conveyed and released the share to B., C., D., and E. (who held the other undivided share as trustees of H.), subject to the mortgage. By the deed of conveyance B., C., D., and E., "as such trustees, but not so as to create any personal liability on the part of them or either of them," covenanted with A. to pay the 2,000*l.* and interest and to keep him indemnified from all claims on account thereof. The mortgagees subsequently sold the houses for less than the sums due to them, and they demanded the deficiency from A., who paid it to them after notice to B., C., D., and E., and then claimed repayment of it from B., C., D., and E. :—*Held*, that as the words in the covenant with reference to the personal liability of the covenantors would, if given effect to, destroy and not merely qualify any personal liability under the covenant, they were repugnant to the covenant, and must be rejected, and that therefore B., C., D., and E. were personally liable under the covenant to repay to A. the moneys he had paid to the mortgagees. *Watling* v. *Lewis*, 80 L. J. Ch. 242; [1911] 1 Ch. 414; 104 L. T. 132—Warrington, J.

Joint and Several Covenants—Lessee Covenanting with Himself and Others—Invalidity of Covenants—Covenants Running with Land—Assignees not Bound.]—A covenant by one with himself and others jointly is void. Therefore, if a lessee purports to covenant with himself and other lessors jointly, although the covenant if valid is of such a kind as to run with the land, yet an assignee of the term is not bound in law or in equity. *Ellis* v. *Kerr* (79 L. J. Ch. 291; [1910] 1 Ch. 529) followed. *Napier* v. *Williams*, 80 L. J. Ch.

298; [1911] 1 Ch. 361; 104 L. T. 380; 55 S. J. 235—Warrington, J.

Performance Rendered Impossible by Acts of Covenantees — Lapse of Time.] — By an agreement, made in 1788, the defendants covenanted to maintain and keep in good repair a drain or culvert, used for draining a meadow belonging to the plaintiffs. In 1843 the plaintiffs had a new culvert made for draining the meadow, since when, until the commencement of this action, they had not called on the defendants to perform the covenant. As the result of work done in 1901 by the local authority, at the request and expense of the plaintiffs, the original culvert was entirely blocked up, and could not be reinstated:—*Held*, that the plaintiffs were not entitled to a declaration that the defendants were liable under the agreement. *Worcester College, Oxford*, v. *Oxford Canal Navigation*, 81 L. J. Ch. 1; 105 L. T. 501; 55 S. J. 704—Joyce, J. Appeal compromised, 81 L. J. Ch. 405—C.A.

In Leases.]—*See* LANDLORD AND TENANT.

Restrictive Covenant—User of Premises.]—*See* VENDOR AND PURCHASER.

In Restraint of Trade.]—*See* CONTRACT.

CRIMINAL INFORMATION.

Assault.]—The Court declined to grant a rule for a criminal information against a superintendent of police, being of opinion—first, that the affidavits did not establish any personal connection of the superintendent with assaults alleged to have been committed by police officers under his control; and secondly, that, as there was nothing to shew that ordinary proceedings for assault would be an insufficient remedy, there was no *prima facie* case made out for the granting of a criminal information. *Bowen, Ex parte*, 27 T. L. R. 179—D.

Application by Private Person.]—The Court will not grant a rule *nisi* for a criminal information for libel on the application of a private person who does not hold a public office or position. *Freeman-Mitford, Ex parte*, 30 T. L. R. 693—D.

CRIMINAL LAW.

A. Persons, Liability of.

B. Offences Generally, 404.

C. Particular Offences.

D. Procedure and Practice.

A. PERSONS, LIABILITY OF.

I. PERSONS CAPABLE OF COMMITTING OFFENCES.

1. Persons under Coercion and Compulsion.

See also Vol. IV. 1105, 2125.

Marital Compulsion — Larceny — Misdirection.]—Conviction of married woman, who was indicted jointly with her husband for larceny quashed on the ground that her defence, that she acted under the coercion of her husband, was not left to the jury with such a direction as would enable them to apply their minds to the true legal position. *Rex* v. *Caroubi*, 107 L. T. 415; 76 J. P. 262; 23 Cox C.C. 177; 28 T. L. R. 248—C.C.A.

—— Acts done by Wife in Presence of Husband — No Evidence of Relationship — Conviction — Subsequent Ascertainment of Relationship—Appeal—Benefit of Presumption of Coercion.]—Where a husband and wife are indicted jointly, and it appears at the trial that the wife's acts were all done in the presence of her husband, but there is no evidence of the prisoners' relationship and the prisoners are convicted, the wife is entitled, on its being subsequently established that she was the wife of the other prisoner, to have the benefit of the presumption that she was acting under the coercion of her husband, if her acts were in fact done in his presence, and to have the conviction quashed. *Rex* v. *Green*, 110 L. T. 240; 78 J. P. 224; 24 Cox C.C. 41; 30 T. L. R. 170—C.C.A.

2. Insane Persons.

See also Vol. IV. 1111, 2126.

Insanity — Uncontrollable Homicidal Impulse.]—Where the prisoner knew the nature and quality of his act, and knew that it was wrong, but through disease of the mind was unable to control a homicidal impulse, he was found to be insane, so as not to be responsible, according to law, for his actions at the time when the act was done. *Rex* v. *Hay*, 75 J. P. 480; 22 Cox C.C. 268—Darling, J.

—— Murder—Defence of Insanity—Direction to Jury.]—On a trial for murder, where the defence is insanity, the prisoner must be presumed to be sane and possessed of sufficient reason to be conscious of his crime unless he establishes the contrary and proves that he was suffering from such a disease of the mind as to be unconscious of the nature and quality of his act, or if so conscious, not to be conscious of the difference between right and wrong. *Rex* v. *Coelho*, 30 T. L. R. 535—C.C.A.

It is not sufficient in all cases where the defence is "insanity" to direct the jury that they should consider merely whether the prisoner at the time of the commission of the act charged knew the nature and quality of his act, and whether or not he was doing wrong. *Rex* v. *Fryer*, 24 Cox C.C. 403—Bray, J.

They may be directed to consider further whether he was in such a state of mental disease or natural mental infirmity as to deprive him of the capacity to control his actions. *Ib.*

—— Medical Evidence as to Sanity of Prisoner —Time when such Evidence may be Given.]—On the trial of the appellant it was indicated by his counsel in cross-examination that the defence of insanity was to be set up, but while the case for the Crown was still proceeding it was ascertained that no evidence would be called for the defence. At the end of the case for the Crown a medical witness was called to say that the prisoner was sane:—*Held*, that such evidence was properly given at the time it was. *Rex* v. *Abramovitch*, 76 J. P. 287; 23 Cox C.C. 179—C.C.A.

—— Mental Deficiency—Recommendation to Mercy.] — Evidence of mental deficiency accepted by a jury does not necessarily entitle them to return a special verdict on the ground of insanity. *Rex* v. *Alexander*, 109 L. T. 745; 23 Cox C.C. 604—C.C.A.

II. DEGREES OF CRIMINALITY.

See also Vol. IV. 1116, 2126.

Common Purpose—Shooting with Intent to Murder—Two Night Poachers—Shot Fired by One of the Poachers.] — The appellant and another man were engaged in night poaching,

one of them having a gun and the other a stick. Finding that they were followed by three keepers, the two men turned round, one of them saying "Stand back, stand back," and the other, putting the stick that he was carrying on his shoulder, continued to retire facing the keepers. One of the keepers then ran forward to the poacher who carried the gun; the other two ran towards the poacher with the stick. The poacher with the gun fired at one of the keepers, injuring him seriously. On the trial of the two poachers for shooting with intent to murder, the jury found both prisoners guilty; they said they were unable to say which of the two fired the shot, but that they were agreed that the intention was to prevent arrest at all costs, even to the extent of murder, and that the prisoners were acting with a common purpose. No evidence was offered by the prosecution of any actual arrangement made between the prisoners to act with a common purpose other than their actions and conduct when they became aware of the keepers approaching them: —*Held*, that the jury could infer the common purpose from the actions and gestures of the prisoners. *Rex* v. *Pridmore*, 77 J. P. 339; 29 T. L. R. 330—C.C.A.

Accessory before the Fact — Burglarious Entering—Special Verdict.]—The appellant and one King were convicted of burglariously entering a dwelling house, the jury having found in the case of the appellant that he had handed a jemmy to King with the knowledge that it was wanted for a burglary, though he did not know that it was wanted for this particular burglary:—*Held*, that on this finding the appellant was not an accessory before the fact to the burglary, and therefore his conviction must be quashed. *Rex* v. *Lomas*, 110 L. T. 239; 78 J. P. 152; 23 Cox C.C. 765; 58 S. J. 220; 30 T. L. R. 125—C.C.A.

Accessory after the Fact — "Receive, harbour, and maintain" Principal Felon — Evidence.]—The appellant was charged, as an accessory after the fact, in an indictment which alleged that she did feloniously "receive, harbour, and maintain" one G., who was charged with the felonious possession of a mould for coining counterfeit money. There was evidence that the appellant, a day or two after G.'s arrest, for the purpose of preventing his conviction, removed from G.'s workshop a number of fragments of other coining moulds, which were adducible, and were in fact produced, in evidence against G. The jury were directed that if they were satisfied that the appellant removed the things from G.'s workshop knowing that he was guilty of committing the felony charged against him, and did so for the purpose of assisting him to escape conviction, they should find her guilty. The jury having convicted the appellant.—*Held*, that the indictment properly charged the appellant as an accessory after the fact, and that the conviction was right. *Rex* v. *Lery*, 81 L. J. K.B. 264; [1912] 1 K.B. 158; 106 L. T. 192; 76 J. P. 123; 22 Cox C.C. 702; 28 T. L. R. 93—C.C.A.

Aiding and Abetting.]—*See Chivers* v. *Hand*, *post*, SUNDAY.

B. OFFENCES GENERALLY.

See also Vol. IV. 1133.

Felony—Cause of Action—Stay of Proceedings until Defendant Prosecuted.]—An action for damages based upon a felonious act on the part of the defendant committed against the plaintiff is not maintainable so long as the defendant has not been prosecuted or a reasonable excuse shewn for his not having been prosecuted, and the proper course for the Court to adopt in such a case is to stay further proceedings in the action until the defendant has been prosecuted. *Smith* v. *Selwyn*, 83 L. J. K.B. 1339; [1914] 3 K.B. 98; 111 L. T. 195—C.A.

C. PARTICULAR OFFENCES.

I. AGAINST PROPERTY OF INDIVIDUALS.

A. BURGLARY AND HOUSEBREAKING.

See also Vol. IV. 1158, 2128.

Entering Premises by Opening Door with False Key — Knowledge of Occupier — "Breaking."]—The appellant induced a pawnbroker's assistant to let him have the key of his employer's shop. Having obtained the key, the appellant took an impression of it, and from it had a false key made with which he opened the outer door of and entered the shop, intending to steal therein. The pawnbroker's assistant, in allowing the appellant to have the key, was acting with the knowledge of the police and of the pawnbroker in order to secure the arrest of the appellant. The appellant having been convicted of breaking and entering the shop with intent to steal therein,—*Held*, that the conviction was right, inasmuch as there was a breaking into the shop against the will of the pawnbroker, notwithstanding that the latter, though his assistant, had, with the object of securing the appellant's arrest, furnished the means whereby the appellant had obtained admittance to the premises. *Reg.* v. *Johnson* (Car. & M. 218) distinguished. *Rex* v. *Chandler*, 82 L. J. K.B. 106; [1913] 1 K.B. 125; 108 L. T. 352; 77 J. P. 80; 23 Cox C.C. 330; 57 S. J. 160; 29 T. L. R. 83—C.C.A.

Breaking into Dwelling House—Intent.]—The appellant was indicted under section 57 of the Larceny Act, 1851, for having broken into a house with intent to commit a felony therein. There was ample evidence that the appellant broke and entered the house. In summing up to the jury the Recorder said, "When a man is found in another man's house the duty is cast upon him of giving an account of how he came there; and it is for you to say whether his statement sounds like an honest statement, or whether it is a dishonest statement made up on the spur of the moment when he is caught." The appellant was convicted:—*Held*, that the statement by the Recorder in his summing-up was to be taken, not as a direction of law and a statement as to the onus of proof, but as merely a state-

ment of common sense as to what would be expected of a man found in such circumstances; and therefore that there had been no misdirection. *Rex* v. *Wood*, 76 J. P. 103—C.C.A.

Possession of Housebreaking Implements by Night—Tools of Prisoner's Trade—Lawful Excuse — Onus of Proof.]—It is a lawful excuse within the meaning of section 58 of the Larceny Act, 1861, on a charge of being in possession of housebreaking implements by night, that the implements in question were the tools of the trade followed by the prisoner, and his own property. If, however, other circumstances are proved in evidence from which it is open to the jury to infer that he intended to use the tools for a felonious purpose, they may properly convict him. *Rex* v. *Ward*, [1915] 3 K.B. 696; 60 S. J. 27—C.C.A.

B. False Pretences.

See also Vol. IV. 1211, 2130.

Attempt to Obtain Money by False Pretences—Insurance against Burglary—Intention to Defraud—Pretended Burglary—No Application for Insurance Moneys — Preparation to Commit Offence not an Attempt.]—A jeweller, with the intention of defrauding underwriters with whom he was insured against burglary, represented to a police sergeant that a burglary had taken place upon his premises, and that he had been robbed of 1,500*l.* worth of jewellery. For the purpose of carrying out his scheme he had secreted the jewellery on his premises, and was found by the police sergeant tied up in his shop as if by burglars. He had made no application for the insurance moneys, but was convicted of the offence of attempting to obtain them by false pretences :—*Held*, that there was no attempt to commit the offence, but only a preparation for the commission thereof, and that the conviction must be quashed. *Dictum* of Parke, B., in *Reg.* v. *Eagleton* (24 L. J. M.C. 158, 166; Dear C.C. 515, 538) approved and followed. *Rex* v. *Robinson*, 84 L. J. K.B. 1149; [1915] 2 K.B. 342; 113 L. T. 379; 79 J. P. 303; 59 S. J. 366; 31 T. L. R. 313—C.C.A.

Effect of False Pretences on Mind of Prosecutor.]—It is not an essential element in the offence of attempting to obtain goods by false pretences that the mind of the prosecutor shall have been affected by the false pretences. *Rex* v. *Light*, 84 L. J. K.B. 865; 112 L. T. 1144; 59 S. J. 351; 31 T. L. R. 257—C.C.A.

Persons Acting Together—Money Obtained.]—If money is obtained as the result of a false pretence made by two persons acting together, both are liable to be convicted of obtaining money by false pretences. *Rex* v. *Grosvenor*, 111 L. T. 1116; 24 Cox C.C. 468—C.C.A.

By Conduct — False Representation — Assent.]—If a person tacitly assents to a false representation made by another, in consequence of which money is obtained, he may be guilty of false pretences by conduct. *Rex* v. *Grosvenor*, 111 L. T. 1116; 24 Cox C.C. 468—C.C.A.

Credit—Fraud other than False Pretences—Intent to Defraud.]—If a man makes statements of fact which he knows to be untrue, and makes them for the purpose of inducing persons to deposit with him money which he knows they would not deposit but for their belief in the truth of his statements, and if he intends to use the money so obtained for purposes different from those for which he knows the depositors understand from his statements that he intends to use it—then, although he may intend to repay the money if he can, and although he may honestly believe, and may even have good reason to believe, that he will be able to repay it, he has an intent to defraud. *Rex* v. *Carpenter*, 76 J. P. 158; 22 Cox C.C. 618—Channell, J.

Continuing False Pretence—Question as to False Pretences or Obtaining Credit.]—Though goods are obtained under a contract, if the contract is induced by a false pretence, and the false pretence is a continuing one and operates on the mind of the prosecutor, the goods so obtained are obtained by false pretences. The question of how long the false pretences continue to operate is for the jury. *Reg.* v. *Martin* (36 L. J. M.C. 20; L. R. 1 C.C.R. 56) followed. *Reg.* v. *Moreton*, 109 L. T. 417; 23 Cox C.C. 560—C.C.A.

Representations as to Price of Property Sold —Materiality of Evidence as to Value.]—On a charge of obtaining money by false pretences, the question whether evidence as to the value of the property, in respect of which false pretences are made, is or is not material to the charge must be decided according to the circumstances of each case; the general test to be applied is whether the prosecutor was induced by deceit to act to his injury. *Dictum* of Buckley, J., in *London and Globe Finance Corporation, In re* (72 L. J. Ch. 368; [1903] 1 Ch. 728), cited with approval. *Rex* v. *Newton*, 109 L. T. 747; 23 Cox C.C. 609—C.C.A.

Evidence—Proof of other Fraudulent Transactions—Admissibility.]—Upon the trial of an indictment charging the prisoner with having obtained goods and credit by false pretences, and also with having obtained credit by fraud other than false pretences, evidence was admitted that, on two previous occasions, the prisoner had obtained goods from other persons on credit by false pretences. The jury having convicted the prisoner,—*Held*, that evidence of the previous frauds by the prisoner was inadmissible as it did not tend to shew that he was guilty of the offences charged in the indictment, and that the conviction must therefore be quashed. *Rex* v. *Fisher*, 79 L. J. K.B. 187; [1910] 1 K.B. 149; 102 L. T. 111; 74 J. P. 101; 22 Cox C.C. 270; 26 T. L. R. 122—C.C.A.

False Pretence that Defendant was Carrying on a Genuine Business—Evidence—Receipts for Payments made by Defendant—Banker's Pass Books—Admissibility.]—Upon an indictment charging the defendant with obtaining goods by false pretences, the issue at the trial was whether he was, at the time of the alleged

offence, carrying on a genuine and *bona fide* business :—*Held*, that receipts given to him by firms who had sold him goods were relevant to the issue and admissible in evidence on his behalf. *Held*, further, that entries in the defendant's banker's pass books shewing payments made by him were also relevant, and were properly receivable in evidence. *Rex* v. *Sagar*, 84 L. J. K.B. 303; [1914] 3 K.B. 1112; 112 L. T. 135; 79 J. P. 32—C.C.A.

Advertisement for Sale of Pigs—Leave Given to Call Further Evidence.]—An indictment for false pretences in connection with the sale of pigs alleged (in effect) that the appellant falsely pretended that he was carrying on a *bona fide* business as a pig dealer; that he had a certain class of pigs for sale; and that he was then able to supply the prosecutor with pigs of a specified age and description. On the hearing of the appeal, leave was given to call additional evidence (which was accepted by the Court) that, in accordance with custom, pigs sold by the appellant were delivered direct by the farmers to his customers :—*Held*, that the fact of the appellant not having then in his possession the pigs advertised by him for sale was not in itself sufficient to establish the false pretences alleged in the indictment. *Rex* v. *Jakeman*, 110 L. T. 832; 24 Cox C.C. 153—C.C.A.

C. Falsification of Accounts.

See also Vol. IV. 1251, 2135.

Falsifying Motor-Cab Taximeter—Taximeter not in Operation during Journey.] — The prisoner was the driver of a motor cab belonging to a motor cab company. According to the ordinary practice of the company, upon a driver's applying at the office a cab was allotted to him, and he received a taximeter sheet. When he returned to the yard the taximeter clerk took the readings of the taximeter which were entered upon the driver's sheet, and after the clerk had made up the account the driver signed the sheet. The driver was required to hand over 75 per cent. of his takings to the company and was allowed to retain 25 per cent. On four different days the prisoner drove two persons in the motor cab and was paid a fare. During these journeys he kept the flag up and the taximeter was not therefore in operation. Upon an indictment under section 1 of the Falsification of Accounts Act, 1875, charging that the prisoner, being a servant to the company, unlawfully made a false entry in a certain account, to wit, a taximeter attached to a motor cab, the prisoner was convicted :—*Held*, that the section applied to the falsification of a mechanical contrivance for recording the amount of money received, such as a taximeter, and that the prisoner was therefore properly convicted. *Rex* v. *Solomons*, 79 L. J. K.B. 8; [1909] 2 K.B. 980; 101 L. T. 496; 73 J. P. 467; 22 Cox C.C. 178; 25 T. L. R. 747—C.C.A.

D. Forgery.

See also Vol. IV. 1252, 2136.

Bill of Exchange—Acceptance by Member of Firm—Acceptance in Name of Firm—Absence of Authority — Acceptance by Procuration — "Person."]—Upon an indictment under section 24 of the Forgery Act, 1861, charging the prisoner with having, with intent to defraud, written an acceptance to a bill of exchange in the name of a firm of which he was a member, the jury found that he had no authority to accept the bill in the firm's name, that he had no honest belief that he had such authority, and that he had an intent to defraud :—*Held*, that there had been an acceptance of the bill by the prisoner in the name of another person in a manner similar to an acceptance by procuration, and that he was properly convicted of the offence charged in the indictment. *Rex* v. *Holden*, 81 L. J. K.B. 327; [1912] 1 K.B. 483; 106 L. T. 305; 76 J. P. 143; 22 Cox C.C. 727; 56 S. J. 188; 28 T. L. R. 173—C.C.A.

Obtaining Money by "Forged instrument" —Letter by Servant Asking for Advance of Money for Benefit of Master — Business Letter.]—The prisoner pleaded guilty to an indictment under section 7 of the Forgery Act, 1913, charging him with obtaining certain money by means of "a certain forged instrument, to wit, a forged request for the payment of one pound." The document containing the request was a letter purporting to come from, and to be signed by, a man in the employment of the prosecutor, to whom the letter was addressed. This letter requested the prosecutor to hand to the bearer the sum of 1*l.*, stating that it was required for the purpose of hiring a drain machine to clear out a drain on premises belonging to the prosecutor. On a Case being stated,—*Held*, that the letter was an "instrument" within the meaning of section 7. *Reg.* v. *Riley* (65 L. J. M.C. 74; [1896] 1 Q.B. 309) followed. *Rex* v. *Cade*, 83 L. J. K.B. 796; [1914] 2 K.B. 209; 110 L. T. 624; 78 J. P. 240; 24 Cox C.C. 131; 58 S. J. 288; 30 T. L. R. 289—C.C.A.

—— Letter with False Postmark.] — An envelope bearing a false postmark and containing a betting slip which purports to have been made out before the race to which it relates has been run, whereas in fact it has been made out after the race,—*Held* to be a "forged instrument" within section 38 of the Forgery Act, 1861. *Rex* v. *Howse*, 107 L. T. 239; 76 J. P. 151; 23 Cox C.C. 135; 56 S. J. 225; 28 T. L. R. 186—C.C.A.

Alteration of Names in Subpœna.]—Where a practitioner obtained *subpœnas* for the attendance of witnesses, and, finding that the witnesses could give no evidence, substituted other names in the *subpœnas*,—*Held*, that, though he had committed an irregularity, he had not been guilty of forgery. *Taylor, In re*, 81 L. J. P.C. 169; [1912] A.C. 347; 105 L. T. 973; 28 T. L. R. 206—P.C.

Selling Forged Stamps — Obliterated Stamps. —By section 13 of the Stamp Duties Management Act, 1891, "Every person who does, or causes or procures to be done . . . any of the acts following; that is to say . . (8) Knowingly sells or exposes for sale or utters or uses any forged stamp, or any stamp

which has been fraudulently printed or impressed from a genuine die . . . shall be guilty of felony . . .": —*Held*, that the word "stamp" in the above section is used in its ordinary meaning, and includes a stamp which, at the time of the sale, has been obliterated. *Rex* v. *Lowden*, 83 L. J. K.B. 114; [1914] 1 K.B. 144; 109 L. T. 832; 78 J. P. 111; 23 Cox C.C. 643; 58 S. J. 157; 30 T. L. R. 70—C.C.A.

E. Larceny and Receivers.

A. Larceny.

1. *The Offence.*

a. The Taking.

See also Vol. IV. 1318, 2137.

Larceny from the Person—Simple Larceny—Asportation.]—The prosecutor was on the platform of a railway station, when the prisoner came behind him, put his hand into his trousers pocket, took hold of his purse and pulled it up to the edge of the pocket, when the purse caught in a belt worn by the prosecutor, who then grasped the purse and put it back in his pocket. Upon an indictment charging the prisoner with larceny from the person and also with simple larceny,—*Held*, that there had been no sufficient asportation of the purse to constitute larceny from the person, but that the prisoner could be properly convicted of simple larceny. *Rex* v. *Taylor*, 80 L. J. K.B. 311; [1911] 1 K.B. 674; 75 J. P. 126; 27 T. L. R. 108—C.C.A.

Passing of Property.]—The appellant took two bicycles to an auctioneer and put them in for sale by auction at a reserve price of 2*l.* 3*s.* By a fraudulent arrangement between the appellant and one S., the latter was to bid the reserve price at the auction. S. did so bid, and the bicycles were knocked down to him, but he did not pay the price to the auctioneer. The appellant, taking advantage of the auctioneer's practice to pay over the money for which an article was sold at the auction before he received the money from the bidder, went to the auctioneer and obtained payment of the 2*l.* 3*s.* The appellant having been indicted for and convicted of larceny of the 2*l.* 3*s.*,—*Held*, that the conviction must be quashed, inasmuch as the auctioneer having intended to part not only with the possession of, but with the property in, the 2*l.* 3*s.*, the offence was not larceny. *Semble*, the offence committed was obtaining the money by false pretences. *Rex* v. *Fisher*, 103 L. T. 320; 74 J. P. 427; 22 Cox C.C. 340; 26 T. L. R. 589—C.C.A.

b. Demanding Money with Menaces.

See also Vol. IV. 1380.

Threat to Publish Attacks upon Commercial Company—Demand of Money to Avoid Publication.]—Section 45 of the Larceny Act, 1861, enacts that whosoever shall with menaces demand any money of any person, with intent to steal the same, shall be guilty of felony. The appellants, by their agent, threatened the chairman of a company that attacks upon the company would be published in a paper which would have the effect of reducing the market price of the shares of the company, and the agent demanded 600*l.* in gold as the price of refraining from publishing those attacks:—*Held*, that the appellants could properly be convicted of the offence of demanding money with menaces, with intent to steal the same. *Rex* v. *Boyle*, 83 L. J. K.B. 1801; [1914] 3 K.B. 339; 111 L. T. 638; 78 J. P. 390; 58 S. J. 673; 24 Cox C.C. 406; 30 T. L. R. 521—C.C.A.

2. *What are the Subjects of Larceny.*

See also Vol. IV. 1350, 2138.

Cheques—Evidence of Misappropriation of Proceeds—Direction to Jury.]—The appellant was indicted for the larceny as a servant of three cheques, drawn by his employers and made payable to him or order for the purpose of their being used in the discharge of their debts. For reasons of convenience the appellant had opened a private account, out of which he paid his employers' liabilities, recouping himself by paying into this private account moneys received on their behalf. He alleged that this practice was known to his employers, and that it was in pursuance thereof that he paid in the above-mentioned cheques. The employers proved facts shewing that the proceeds of these cheques had been misappropriated to the appellant's own use. In summing-up, the Recorder directed the jury that they must be satisfied that the appellant intended to and did deprive his employers of "these three sums":—*Held*, a misdirection, as the jury ought to have been told that they must be satisfied that the appellant had misappropriated the cheques themselves, and not the proceeds. *Rex* v. *Hampton*, 84 L. J. K.B. 1137; 113 L. T. 378—C.C.A.

Fixtures—Tenancy Agreement Entered into with Intention to Steal Fixtures.]—Where a person enters into an agreement for the lease of a house with the fraudulent intention of stealing the fixtures on getting into possession, and where in fact he steals the fixtures on entering into possession, he is guilty of larceny under section 31 of the Larceny Act, 1861. *Rex* v. *Munday* (2 Leach C.C. 991) followed. *Rex* v. *Richards*, 80 L. J. K.B. 174; [1911] 1 K.B. 260; 104 L. T. 48; 75 J. P. 144; 22 Cox C.C. 372—C.C.A.

—— Lead Fixed in or to a Building.]—Conviction of the appellant for the simple larceny of lead piping quashed on the ground that the facts given in evidence did not prove that offence, though they might prove an offence under section 31 of the Larceny Act, 1861, of stealing lead fixed in or to a building. *Rex* v. *Molloy*, 111 L. T. 166; 78 J. P. 216; 24 Cox C.C. 226—C.C.A.

Winkles—"Fish."]—Section 24 of the Larceny Act, 1861, enacts that "Whosoever shall unlawfully and wilfully take . . . any fish in any water . . . in which there shall be

any private right of fishery " shall, on summary conviction, be liable to certain penalties : " Provided, that nothing hereinbefore contained shall extend to any person angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset; . . ." A corporation had a right of several fishery in a part of a tidal river. The appellant, at a time of low water, collected winkles from small pools of water left by the ebbing tide on mud banks of the river within the limits of the fishery :—*Held*, first, that the proviso in the section did not restrict the general words thereof to the offence of taking fish by angling, and that winkles were " fish " within the meaning of the section; and secondly, that there was evidence upon which the Justices could find that the pools from which the winkles were taken were " water " within the meaning of the section. *Caygill* v. *Thwaite* (49 J. P. 614; 33 W. R. 581) considered and followed. *Learett* v. *Clark*, 84 L. J. K.B. 2157; [1915] 3 K.B. 9; 113 L. T. 424; 79 J. P. 396; 13 L. G. R. 894; 31 T. L. R. 424—D.

3. *Persons who may Commit.*

See also Vol. IV. 1361, 2140.

Larceny of Wife's Property by Husband—" About to leave or desert his wife."]—If a man steals his wife's property, intending to leave or desert her when the theft is discovered, or at some other time convenient to himself, he steals the property when " about to leave or desert " his wife, although a considerable time may have elapsed between the act of larceny and actual desertion. *Rex* v. *King* (*No.* 1), 110 L. T. 783; 24 Cox C.C. 146—C.C.A.

Person " Entrusted " — Person Having " Received " Property for or on Account of Another—Company.]—The appellant was convicted upon an indictment under section 1 of the Larceny Act, 1901, charging him with having fraudulently converted to his own use or benefit property entrusted to him for certain specified purposes, and property received by him for or on account of another person. The appellant alleged that the property had been " entrusted " to or " received " by a company of which he was a director :—*Held*, affirming the conviction, that a person may be " entrusted " with property, or may " receive " it " for or on account of " another person within the meaning of the section, notwithstanding that the property is not delivered to him directly by the owner, and that the owner does not know of his existence and has no intention of entrusting the property to him. If the accused has obtained or assumed the control of the property of another person under circumstances whereby he becomes entrusted, or whereby his receipt becomes a receipt for or on account of another person, and fraudulently converts it or the proceeds, he commits an offence within the section. *Rex* v. *Grubb*, 84 L. J. K.B. 1744; [1915] 2 K.B. 683; 113 L. T. 510; 79 J. P. 430; 59 S. J. 547; 31 T. L. R. 429—C.C.A.

Taxi-cab Driver — Agreement with Owner Respecting Hire of Cab — Failure to Pay to Owner Proportion of Cab Fares.]—The appellant, who was the driver of a taxi-cab, hired a taxi-cab upon the terms that he should pay 75 per cent. of the receipts to the owner of the cab and retain 25 per cent. on his own account. There was, however, no written contract between him and the owner of the cab, although the sheet which the appellant signed when he took the cab out shewed that the driver's proportion of the receipts was 25 per cent. and that the balance of the receipts was due from the driver to the owner. The appellant kept the taxi-cab out for seven days, and when it was returned to the owner's yard the meter registered the total receipts during that period as 8*l.* 4*s.* 8*d.*, of which sum the proportion due from him to the owner amounted to 6*l.* 3*s.* 6*d.* The appellant, having failed to pay that amount to the owner of the cab after a demand had been made upon him for payment, was arrested and charged under section 1 of the Larceny Act, 1901, with fraudulently misappropriating that sum :—*Held*, that there was evidence upon which the jury could find that the appellant had received the 6*l.* 3*s.* 6*d.* for and on behalf of the owner of the cab, and that he had unlawfully and fraudulently converted the same to his own use. *Rex* v. *Messer*, 82 L. J. K.B. 913; [1913] 2 K.B. 421; 107 L. T. 31; 76 J. P. 124; 23 Cox C.C. 59; 28 T. L. R. 69—C.C.A.

4. *Taking in Particular Methods.*

See also Vol. IV. 1372, 2140.

Larceny by a Trick — Goods on Sale or Return — Power Given to Pass Property in Goods.]—*Semble* that, where the owner of an article is induced, by a false representation made by another with fraudulent intent that he has a customer who desires to purchase such an article, to deliver the article to that other on sale or return for the purpose of his endeavouring to get the supposed customer to buy it from him, the case is one not of larceny by a trick, but of obtaining goods by fraud. *Whitehorn* v. *Davison*, 80 L. J. K.B. 425; [1911] 1 K.B. 463; 104 L. T. 234—C.A.

—— Card Playing—Drugging of Prosecutor—Payment of Losses under Influence of Drug—Omission to Direct Jury—Misdirection.]—At the trial of an offence of larceny by a trick the jury should be fully directed as to the legal requisites of the offence. *Rex* v. *Hilliard*, 83 L. J. K.B. 439; 109 L. T. 750; 23 Cox C.C. 617—C.C.A.

The prosecutor and the appellant were fellow passengers in a compartment of a corridor carriage on a journey from Paddington Station. After getting into conversation with the appellant, the prosecutor, at the invitation of the appellant, drank some whisky (which he alleged was drugged) out of a bottle. Shortly afterwards a third man appeared and produced a pack of cards, and the prosecutor testified that at the suggestion of the appellant, and under the influence of

the drug, he played cards with the third man and lost 10*l.* :—*Held*, that on the facts the jury could draw the inference that the appellant was guilty of the offence of larceny by a trick, but that as the summing-up did not contain a sufficient direction as to the legal requisites of the offence, there must be an acquittal. *Reg.* v. *Buckmaster* (57 L. J. M.C. 25, 27; 20 Q.B. D. 182, 187) approved and followed. *Ib.*

Taxi-cab Driver not Paying over Percentage of Takings.]—Conviction of the appellant, a taxi-cab driver, for misappropriating 6*l.* 3*s.* 6*d.* "had and received for and on account of" the taxi-cab owner, by failing to pay over 75 per cent. of his takings, according to the arrangement under which he took out the cab, affirmed. *Rex* v. *Messer*, 82 L. J. K.B. 913; [1913] 2 K.B. 421; 107 L. T. 31; 76 J. P. 124; 23 Cox C.C. 59; 28 T. L. R. 69—C.C.A.

5. Indictment.

See also Vol. IV. 1392, 2140.

Treasurer of Friendly Society—Fraudulent Conversion of Funds—Prosecution—Sanction of Attorney-General.]—Before commencing a prosecution against a person for fraudulent conversion of property entrusted to him for a specific purpose, it is not necessary to obtain the sanction of the Attorney-General unless he is a trustee, technically so-called, appointed under a deed or will. *Rex* v. *Davies (No. 1)*, 82 L. J. K.B. 471; [1913] 1 K.B. 573; 108 L. T. 576; 77 J. P. 279; 23 Cox C.C. 351; 57 S. J. 376; 29 T. L. R. 300—C.C.A.

Quære, whether the sanction is necessary in the case of a trustee, technically so-called, appointed by an instrument in writing other than a deed or will. *Ib.*

Two Distinct Acts of Larceny—Joinder of Two Accused Persons in Second Count.] — Section 5 of the Larceny Act, 1861, which provides that "It shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, which may have been committed by him against the same person within the space of six months from the first to the last of such acts," does not authorise the joinder of a count against one person with a second count against him and another person. If such a joinder has been made, and objection has been duly taken thereto at the trial, the Court cannot treat the case as coming within the proviso to section 4 of the Criminal Appeal Act, 1907, and therefore will quash the conviction on such an indictment. *Rex* v. *Edwards* (or *Gilbert*), 82 L. J. K.B. 347; [1913] 1 K.B. 287; 108 L. T. 815; 77 J. P. 135; 23 Cox C.C. 380; 57 S. J. 187; 29 T. L. R. 181—C.C.A.

6. Trial.

i. Evidence.

See also Vol. IV. 1406, 2142.

Fraudulent Misappropriation of Property—Act First Disclosed by Voluntary Witness in Court of Law—"Compulsory process"—Protection from Prosecution.]—Section 85 of the Larceny Act, 1861, provides that no person shall be entitled to refuse to answer any question in any civil proceeding in any Court concerning certain misdemeanours, and that he shall not be liable to be convicted of any of those offences by any evidence whatever in respect of any act done by him, if he shall at any time previously to his being charged with such offence have first disclosed such act on oath, in consequence of any compulsory process of any Court of law or equity, in any action, suit, or proceeding which shall have been *bona fide* instituted by any party aggrieved :—*Held*, that the disclosure of such act by a voluntary witness in a civil action on cross-examination and without objection to answer the questions being taken is not a disclosure "in consequence of any compulsory process" of any Court of law or equity within the meaning of the section, and that he is liable to be convicted of an offence under the Larceny Act, 1901, in respect of the act so disclosed. *Rex* v. *Noel*, 84 L. J. K.B. 142; [1914] 3 K.B. 848; 112 L. T. 47—C.C.A.

ii. Sentence.

Child—Power of Court to Order Whipping.]—The power of the Court under section 4 of the Larceny Act, 1861, to order a male person under sixteen years of age convicted under that section to be whipped as well as imprisoned is not taken away in the case where such person is a child within the meaning of the Children Act, 1908, and has been committed to custody in a place of detention under section 106 of the Act in lieu of being sentenced to imprisonment. *Rex* v. *Lydford*, 83 L. J. K.B. 589; [1914] 2 K.B. 378; 110 L. T. 781; 78 J. P. 213; 24 Cox C.C. 142; 58 S. J. 363; 30 T. L. R. 349—C.C.A.

—— Person to Execute Sentence.] — The proper person to execute the sentence is the sheriff or the deputy he appoints for that purpose. *Ib.*

B. Receivers of Stolen Property.

See also Vol. IV. 1417, 2146.

No Guilty Knowledge at Time of Receipt—Subsequent Knowledge.]—The appellant was charged with having on April 24, 1911, received a horse knowing it to have been stolen. It appeared that at the time he received it he did not know that it had been stolen, but that subsequently on being told the fact he refused to give it up unless he was repaid the amount he had paid to the person from whom he got it. The appellant was convicted :—*Held*, that the conviction must be quashed. *Rex* v. *Johnson*, 75 J. P. 464; 27 T. L. R. 489—C.C.A.

Goods Picked up on Prosecutor's Land.]—The appellant was convicted of receiving pig iron which had been picked up from the bed or bank of a canal. The property was laid in the canal proprietors, but there was no evidence as to how the pig iron came to be where it was or to whom it in fact had belonged :—*Held*, that the conviction must be quashed on the

ground that there was no direction to the jury to consider the case on the basis that the picking up of the iron was not necessarily larceny. *Rex* v. *White*, 107 L. T. 528; 76 J. P. 384; 23 Cox C.C. 190—C.C.A.

Recent Possession of Stolen Property—Onus of Proof.]—In the absence of any reasonable explanation by the appellant as to his recent possession of the stolen goods, the conviction upheld on appeal. *Reg.* v. *Langmead* (10 L. T. 350) followed. *Rex* v. *Curnock*, 111 L. T. 816; 24 Cox C.C. 440—C.A.

Indictment of Husband and Wife—Receipt of Goods by Wife while Husband Absent—Misdirection.]—Stolen goods were received by a wife in her husband's absence. There was evidence shewing knowledge on the part of the husband when he returned home that the goods were stolen, but no evidence of any dealing by him with the goods. In the summing-up at the trial no distinction was drawn between the respective positions of the husband and wife with regard to the stolen property:—*Held*, that, in the absence of evidence shewing a preconcerted arrangement between husband and wife, the receipt by the wife did not constitute her husband a receiver: and that, as in the summing-up to the jury at the trial no distinction was drawn between the case of the husband and that of the wife, the jury were insufficiently directed, and the appeal of the husband against his conviction must be allowed. *Rex* v. *Pritchard*, 109 L. T. 911; 23 Cox C.C. 682—C.C.A.

Direction to Jury.]—Upon the trial of an indictment for receiving stolen goods well knowing the same to have been stolen, the onus always remains upon the prosecution. The Judge, in directing the jury, should tell them that, upon the prosecution establishing that the person charged was in possession of goods recently stolen, they might, in the absence of any explanation by the accused of the way in which the goods came into his possession, which might reasonably be true, convict the prisoner; but that, if an explanation were given which the jury thought might reasonably be true, although they were not convinced of its truth, the prisoner was entitled to be acquitted, inasmuch as the Crown would have failed to discharge the duty cast upon it of satisfying the jury beyond reasonable doubt of the guilt of the accused. *Rex* v. *Schama*; *Rex* v. *Abramovitch*, 84 L. J. K.B. 396; 112 L. T. 480; 79 J. P. 184; 59 S. J. 288; 31 T. L. R. 88—C.C.A.

Where a prisoner is charged with receiving stolen goods, the jury should be directed that, to justify a verdict of "Guilty," they must be satisfied that the goods have been in the possession and under the control of the prisoner. *Dictum* of Patteson, J., in *Reg* v. *Wiley* (20 L. J. M.C. 4, 9; 4 Cox C.C. 414, 421) approved. *Rex* v. *Berger*, 84 L. J. K.B. 541; 31 T. L. R. 159—C.C.A.

Indictment — Facts Shewing Felonious Receiving — Omission of "feloniously" in Indictment — Common Law Misdemeanour — Validity of Conviction.] — An indictment charged a receiving of goods "unlawfully" (omitting the words "and feloniously") well knowing them to have been feloniously stolen. The facts shewed that the stealing was felonious at common law:—*Held*, that, although the facts shewed a felonious receiving under section 91 of the Larceny Act, 1861, the indictment was good as for the common law misdemeanour of receiving goods well knowing them to have been feloniously stolen, which still subsisted, and that by reason of section 12 of the Criminal Procedure Act, 1851, the appellant was not entitled to be acquitted on the ground that the evidence shewed that he was guilty of the felonious receiving under section 91. *Rex* v. *Garland*, 79 L. J. K.B. 239; [1910] 1 K.B. 154; 102 L. T. 254; 74 J. P. 135; 22 Cox C.C. 292; 26 T. L. R. 130—C.C.A.

F. Malicious Injury and Damage to Property.

See also Vol. IV. 1427, 2150.

Two Persons Acting under Direction of Others.] — The appellant and another were jointly indicted for committing wilful damage to plate-glass windows to an amount exceeding *5l.* The appellant broke a small window of a less value than *5l.*, but a few yards away the other defendant broke other windows, the value of which, added to the value of that broken by the appellant, exceeded *5l.* Both defendants belonged to the same organisation. The appellant in cross-examination refused to say whether she was acting under the direction of the organisation. She denied that she and the other defendant were acting in concert:—*Held*, that it was a question for the jury whether on the whole evidence the defendants were acting in concert, and that it was unnecessary that each should know of the existence of the other if they were both acting under the direction of the organisation. *Rex* v. *Joachim*, 28 T. L. R. 380—C.C.A.

Damage over 5*l.*—Salvage.]—The appellant was convicted under section 51 of the Malicious Damage Act, 1861, of having committed wilful damage to plate-glass windows to an amount exceeding *5l.* On appeal it was contended that if the undamaged portions of the glass were taken into account the loss would be reduced to less than *5l.*:—*Held*, that if to put the damage right it was proper to replace the windows at a cost of more than *5l.*, it was no answer to say that the owner would still have on his hands a quantity of broken glass which he might be able to utilise for other purposes. *Rex* v. *Hewitt*, 76 J. P. 360; 28 T. L. R. 378—C.C.A.

Breaking of Windows on Successive Days—Continuous Act—Damage over 5*l.*.]—C., on being refused drink in O.'s public house on a certain evening, went outside, and, after maliciously throwing a weight through one plate-glass window of the house, was about to break a second window with a hatchet when he was stopped by O.'s assistant, whereupon he ran away. C. returned at twelve o'clock on the following day and maliciously broke the

second window. The value of each window was under, but the aggregate value of the two windows exceeded, 5*l*. :—*Held* (Holmes, L.J., dissenting), that the wrongful acts of C. constituted one continuous transaction, for which he could be indicted under section 51 of the Malicious Damage Act, 1861. *O'Neill* v. *Belfast County Council*, [1912] 2 Ir. R. 310—C.A.

Value of Property Damaged — Evidence — Hearsay.]—The appellant was charged with maliciously committing damage to a plate-glass window in a post office to an amount exceeding 5*l*. At the trial a witness was called who stated that the damage was 8*l*. In cross-examination the witness said he was not a glass expert, and that he had been told by the clerk of works who examined the window that 8*l*. was the amount of the damage. On appeal it was contended for the appellant that there was nothing but hearsay evidence as to the amount of the damage done :—*Held*, dismissing the appeal, that there was evidence of a witness who gave it as his own opinion that the value was considerably more than 5*l*. *Rex* v. *Beckett*, 29 T. L. R. 332—C.C.A.

II. AGAINST THE PERSONS OF INDIVIDUALS.

A. Assault, Battery, Wounding, &c.

See also Vol. IV. 1450, 2153.

Process Server Putting Document Inside Coat of Person Served.]—The respondent, who was the defendant in a County Court action, was met in the street by the appellant, who, acting on behalf of the solicitor to the plaintiff in the action, tendered to the respondent an order for discovery which had been made in the action. The respondent declined to accept the document, whereupon the appellant thrust it into the inner fold of the respondent's coat, which was unbuttoned at the time, and as the respondent opened his coat the document fell on to the street, where he left it. On an information preferred by the respondent against the appellant for assault in so touching him, the Justices were of opinion that the order of the County Court would have been effectually served by the appellant drawing the respondent's attention to the document and by dropping it on to the street in his presence upon his declining to accept it, and that the appellant was not justified in laying hands upon him. They accordingly convicted the appellant :—*Held*, that the appellant was entitled to serve the document on the respondent personally, and that as there was no evidence that the appellant touched the respondent further than was necessary to bring the document home to him, the Justices were wrong in convicting the appellant. *Rose* v. *Kempthorne*, 103 L. T. 730; 75 J. P. 71; 22 Cox C.C. 356; 55 S. J. 126; 27 T. L. R. 132—D.

Grievous Bodily Harm — Injuries Caused in Attempting to Escape from Accused.] — The appellant was indicted for causing grievous bodily harm to the prosecutrix. He went to her house late at night when she was in bed, and not getting in in the ordinary way broke and entered by a window and went to the door of her room, which he threatened to burst in. He nearly burst the door open, whereupon the prosecutrix jumped from her window and was injured. In his direction to the jury the Judge said : "Will you say whether the conduct of the prisoner amounted to a threat of causing injury to this young woman; was the act of jumping the natural consequence of the conduct of the prisoner and was the grievous bodily harm the result of the conduct of the prisoner? If you answer these three questions in the affirmative, your verdict will be one of Guilty. If you answer them or any one of them in the negative, your verdict will be one of Not Guilty" :—*Held*, a proper direction. *Rex* v. *Beech*, 107 L. T. 461; 76 J. P. 287; 23 Cox C.C. 181—C.C.A.

Shooting with Intent to Resist Lawful Apprehension — Defence of Accident.] — The prisoner was indicted for shooting with intent to resist his lawful apprehension. The defence was that the prisoner's gun went off accidentally. In his summing-up the Judge directed the jury that a man must be taken to intend the natural consequences of his acts, and that it was for the prisoner and not for the prosecution, to satisfy them that the gun went off accidentally. The prisoner was convicted :—*Held*, that the conviction must be quashed, as the Judge's direction might have been understood by the jury as laying down a proposition of law which was not correct—namely, that a person must be taken to intend the consequences, not only of his intentional, but also of his accidental, acts. *Rex* v. *Davies* (No. 2), 29 T. L. R. 350—C.C.A.

B. Murder and Manslaughter.

See also Vol. IV. 1487, 2158.

Murder or Manslaughter—Intending to Kill One Person but Accidentally Killing Another.]—If a person feloniously fires at another in such circumstances as would make the killing of that other person manslaughter, but by accident he hits and kills a third person whom he never intended to hit at all, he is guilty of manslaughter. *Rex* v. *Gross*, 77 J. P. 352; 23 Cox C.C. 455—Darling, J.

—— **Provocation by Words — Wife's Confession of Adultery.**] — Words alone, unless in very exceptional circumstances, are not sufficient provocation to reduce homicide from murder to manslaughter, the only exceptional circumstances to have that effect being cases relating to adultery. Thus, where a man, on suddenly discovering, by his wife's confession, that she has been guilty of adultery, kills her, the crime may be reduced from murder to manslaughter. *Rex* v. *Palmer*, 82 L. J. K.B. 531; [1913] 2 K. B. 29; 108 L. T. 814; 77 J. P. 340; 23 Cox C.C. 377; 29 T. L. R. 349—C.C.A.

The prisoner, while walking with the young woman to whom he was engaged to be married, told her that as he could not obtain work in this country he intended going abroad to make a home for her. The woman thereupon said that if he did she would go on the town as she

had done before. The prisoner then asked if she meant that, and when she said she did he killed her :—*Held*, that the words used by the woman were not sufficient provocation to reduce the crime from murder to manslaughter. *Ib.*

—— **Unmarried Persons Living Together — Woman Found Visiting House of Ill Fame— Provocation.**] —The prisoner who was living with a woman as his wife found her visiting a house of ill fame, and thereupon fired at her with a revolver and killed her :—*Held*, that the mere fact of a man discovering a woman with whom he is living as his wife visiting a disorderly house is not such a provocation as will reduce the crime of killing her from murder to manslaughter, and that the prisoner was properly convicted of murder. *Rex* v. *Palmer* (82 L. J. K.B. 531; [1913] 2 K.B. 29) discussed. *Rex* v. *Greening*, 83 L. J. K.B. 195; [1913] 3 K.B. 846; 109 L. T. 720; 23 Cox C.C. 601; 29 T. L. R. 732—C.C.A.

—— **Suspicion by Prisoner of his Wife's Adultery with Deceased.**] —The prisoner, while under the influence of drink, and under an unfounded impression that his wife had committed adultery with his brother, accused his brother of the adultery suspected, and receiving an answer which he considered evasive, he stabbed the brother and killed him. The prisoner was convicted of murder :—*Held*, that the circumstances under which the prisoner committed the crime did not reduce it from murder to manslaughter. *Reg.* v. *Rothwell* (12 Cox C.C. 145) was an extreme case, and should not be extended. *Rex* v. *Birchall*, 109 L. T. 478; 23 Cox C.C. 579; 29 T. L. R. 711—C.C.A.

—— **Provocation Necessary to Reduce to Manslaughter—Degree of Mental Ability Short of Insanity.**] —In considering the amount of provocation which is necessary to reduce the crime of murder to that of manslaughter, no regard should be paid, in the absence of insanity on the part of the accused, to the fact that by reason of deficient mental balance and self-control he might be affected by a slight degree of provocation, the test being whether the provocation alleged would be such as to deprive a reasonable man of his self-control. *Reg.* v. *Welsh* (11 Cox C.C. 336) and *Rex* v. *Alexander* (109 L. T. 745) followed. *Rex* v. *Leshini*, 84 L. J. K.B. 1102; [1914] 3 K.B. 1116; 112 L. T. 175—C.C.A.

—— **Provocation by Wife's Neglect of Sick Child—Killing of Child—Direction of Judge.**] —The prisoner, a soldier home on a few days' leave, in great distress of mind owing to the neglect by his wife of one of his children who was at the point of death, and having been informed of his wife's infidelity, cut the child's throat "because he could not see it suffer and have to leave it." At the trial the Judge directed the jury that if they found the prisoner intended to kill the child the offence was murder, and that they were not at liberty to find a verdict of manslaughter. They found the prisoner guilty of murder :—*Held*, that the direction of the Judge was right, that provocation of this indirect kind did not reduce the crime to manslaughter, and that he had properly refused to leave this as a question for the jury. *Rex* v. *Simpson*, 84 L. J. K.B. 1893; 31 T. L. R. 560—C.C.A.

—— **Abortion — Death of Woman — Direction to Jury.**] —Where a person feloniously uses an instrument, or other means, with intent to procure the miscarriage of a woman, and the woman dies in consequence of his felonious act—then, if, when he did the act, he must as a responsible man have contemplated that death or grievous bodily harm was likely to result, he is guilty of murder; but if, when he did the act, he had not at the time in contemplation, and could not as a reasonable man have contemplated either of those consequences, he is guilty only of manslaughter. *Rex* v. *Lumley*, 76 J. P. 208; 22 Cox C.C. 635—Avory, J.

Conviction for Attempted Murder—Common Law Attempt—Statutory Attempt—Sentence of Penal Servitude.] — The completion or attempted completion of one of a series of acts intended to result in killing is an attempt to murder, even although the completed act would not, unless followed by the other acts, result in killing. *Rex* v. *White*, 79 L. J. K.B. 854; [1910] 2 K.B. 124; 102 L. T. 784; 74 J. P. 318; 22 Cox C.C. 325; 54 S. J. 523; 26 T. L. R. 466—C.C.A.

A conviction of attempted murder, under the provisions of section 9 of the Criminal Procedure Act, 1851, on an indictment for murder, is punishable as an attempt under sections 11 to 15 inclusive of the Offences Against the Person Act, 1861. *Ib.*

Reg. v. *Connell* (6 Cox C.C. 178) distinguished. Observations of Kennedy, J., in *Rex* v. *Linneker* (75 L. J. K.B. 385; [1906] 2 K.B. 99) questioned. *Ib.*

Theories by Trial Judge as to Cause of Death.]—At the trial of a prisoner for wilful murder the question for decision by the jury is whether or not, upon the whole of the evidence before them, the death of the deceased person was caused by the designed act of the prisoner. Where, therefore, only circumstantial evidence has been adduced by the prosecution, and the prosecution and the defence have both advanced theories as to the way in which the deceased person met his death, it is not improper, although it is inadvisable, for the Judge in his summing-up to make further suggestions and advance further theories of the way in which the prisoner could have committed the offence alleged against him, with which suggestions and theories counsel for the defence has no opportunity of dealing. *Rex* v. *Smith*, 84 L. J. K.B. 2153; 59 S. J. 704; 31 T. L. R. 617—C.C.A.

Conviction for Murder — Substitution of Verdict of Manslaughter.]—The appellant had been convicted of murder, the defence having been that the affair was an accident or at most manslaughter, and the Judge at the trial having ruled that the defence of manslaughter was not open to the appellant :—*Held*, on the

facts, that the verdict of murder should be quashed and a verdict of manslaughter substituted. *Rex* v. *Hopper*, 84 L. J. K.B. 1371; [1915] 2 K.B. 431; 113 L. T. 381; 79 J. P. 335; 59 S. J. 478; 31 T. L. R. 360—C.C.A.

—— Murder—Question of Insanity—Sentence of Death—Substituted Verdict.]—The Court of Criminal Appeal, if satisfied that the appellant was guilty of the offence charged, but insane when the offence was committed, will quash the sentence and order the appellant to be kept in custody as a criminal lunatic. *Rex* v. *Jefferson* (24 T. L. R. 877) followed. *Rex* v. *Gilbert*, 84 L. J. K.B. 1424; 112 L. T. 479—C.C.A.

C. Rape and Indecent Assaults on Women and Children.

See also Vol. IV. 1547, 2164.

Attempted Rape — Conviction of Statutory Offence.]—The power conferred by section 9 of the Criminal Law Amendment Act, 1885, to convict of an offence under sections 3, 4, or 5 of that Act, or of an indecent assault, applies only where the accused is charged on an indictment for rape or an offence made felony by section 4, and does not apply where he is merely charged with an attempt to commit any of those offences. *Townsend* v. *Lord Advocate*, [1914] S. C. (J.) 85—Ct. of Just.

Indecent Assault — Consent — Defence of Consent not Raised by Defendant in His Evidence — Misdirection — No Direction to Jury.]—In cases of indecent assault and cases of the same kind where consent is a defence, if the facts of the case are such that the jury may reasonably infer that the prosecutrix consented to the acts alleged, there ought to be a direction to the jury by the Judge both as to the onus which is on the prosecution to prove non-consent, and also as to the evidence given on the question of consent. But if the facts are not such as that the jury may reasonably infer consent, and particularly if the case has been conducted by counsel so as to make the question of consent an entirely secondary issue, there is no necessity for such a direction. *Rex* v. *May*, 82 L. J. K.B. 1; [1912] 3 K.B. 572; 108 L. T. 351; 77 J. P. 31; 23 Cox C.C. 327; 29 T. L. R. 24—C.C.A.

The appellant was charged with indecent assault. In his evidence he did not say that the prosecutrix consented, but that her story was untrue. His counsel set up the defence of consent before the jury, but his main defence was that the story of the prosecutrix was untrue. The chairman, in his summing-up, gave no direction on the question of consent or non-consent :—*Held*, that as, in the opinion of the Court on the evidence, the jury, even if they had received a direction on the question, would not have found that the prosecutrix consented, no such direction was necessary. *Ib.*

Girl Assaulted under Thirteen—Necessity of Averment of Age in Indictment.]—The appellant was indicted for indecently assaulting a girl. The girl was in fact under the age of thirteen years. The age of the girl was not averred in the indictment :—*Held*, that the indictment was not bad on the ground that the age of the girl was not averred. *Rex* v. *Stephenson*, 82 L. J. K.B. 287; [1912] 3 K.B. 341; 107 L. T. 656; 76 J. P. 408; 23 Cox C.C. 214; 56 S. J. 765—C.C.A.

The Court pointed out that, having regard to the provisions of section 123, sub-section 2, and Schedule I. of the Children Act, 1908, the prosecution would gain an advantage by averring the age of the girl in the indictment, and that as a matter of good drafting this might be done. *Ib.*

Carnal Knowledge of Girl under Thirteen—Certificate of Birth—No Evidence of Identity.]—On a charge of having unlawful carnal knowledge of a girl under the age of thirteen years the age of the girl must be strictly proved, and if her certificate of birth is produced evidence must be given positively identifying her with the child whose birth is registered in such certificate. *Rex* v. *Rogers*, 111 L. T. 1115; 79 J. P. 16; 24 Cox C.C. 465—C.C.A.

—— Accused under Sixteen when Offence Committed, but over Sixteen when Convicted —"Offender whose age does not exceed sixteen years" — Whether Liable to Punishment of Whipping.]—A person who at the time of committing the offence of carnally knowing a girl under the age of thirteen is under the age of sixteen, but who at the time he appears in Court to answer the indictment charging him with the offence is over the age of sixteen, is not a person "whose age does not exceed sixteen years" within the meaning of the proviso to section 4 of the Criminal Law Amendment Act, 1885. In such a case, therefore, the Court has no power under that proviso to order the offender to be whipped. *Rex* v. *Cawthron*, 82 L. J. K.B. 981; [1913] 3 K.B. 168; 109 L. T. 412; 77 J. P. 460; 23 Cox C.C. 548; 29 T. L. R. 600—C.C.A.

Procuration.] — *See* Offences against Public Morals and Police, *post*, col. 433.

D. Suicides.

See also Vol. IV. 1564, 2167.

Attempted Suicide — Sentence — Power to Inflict Hard Labour — "Attempt to commit felony."]—*Felo de se* is a felony, and an attempt to commit suicide is therefore an attempt to commit felony, and under the provisions of the Hard Labour Act, 1822, punishable by imprisonment with hard labour. *Rex* v. *Mann*, 83 L. J. K.B. 648; [1914] 2 K.B. 107; 110 L. T. 781; 78 J. P. 200; 24 Cox C.C. 140; 58 S. J. 303; 30 T. L. R. 310—C.C.A.

III. CONSPIRACY.

See also Vol. IV. 1565, 2167.

Nature of Acts Necessary to Support.]—To establish a charge of conspiracy it is sufficient to prove that the act to be done by the conspirators was in some way fraudulent or corrupt. *Rex* v. *Whitaker*, 84 L. J. K.B. 225;

[1914] 3 K.B. 1283; 112 L. T. 41; 79 J. P. 28; 24 Cox C.C. 472; 58 S. J. 707; 30 T. L. R. 627—C.C.A.

To Defraud.]—If two persons conspire a criminal offence is committed, although in fact no false pretence is made and no money is obtained. *Rex* v. *Grosvenor*, 111 L. T. 1116; 24 Cox C.C. 468—C.C.A.

Act Tending to Public Mischief—Agreement to Indemnify Bail.]—An agreement between a person against whom a criminal charge is pending and another, that if the latter will go bail for him he will indemnify him against the consequences of his recognisance being estreated in consequence of such person not surrendering in accordance with the conditions thereof, is an indictable offence as tending to produce a public mischief. *Reg.* v. *Broome* (18 L. T. (o.s.) 19) disapproved. *Rex* v. *Porter*, 79 L. J. K.B. 241; [1910] 1 K.B. 369; 102 L. T. 255; 74 J. P. 159; 22 Cox C.C. 295; 26 T. L. R. 200—C.C.A.

IV. AGAINST KING AND GOVERNMENT.

See also Vol. IV. 1600, 2173.

Treason—Outbreak of War—Alien Enemies of Military Age—Assistance to Return Home—Intent.]—The appellant, who was born in Germany but had become naturalised in this country and was German Consul at Sunderland, took steps on August 5, the day after the outbreak of war between England and Germany, to assist German subjects to return to Germany, in order that they might perform military duties when they arrived in their own country. On the same day, in pursuance of an Order in Council made under the Aliens Restriction Act, 1914, a notice was issued by order of the Home Secretary limiting the time of departure of alien enemies from this country to the period between that date and August 11. The appellant was indicted for high treason, and there was evidence at the trial that at some time on August 5 he knew that war had begun. The appellant knew nothing of the Aliens Restriction Act, 1914, or of the Order in Council, but he stated in evidence that he believed that there was a rule of international law which gave a margin of time for alien enemies to leave, even if they were going to perform military service. The appellant was convicted:—*Held*, that the conviction must be quashed, as the jury had not been directed that in order to convict they must be satisfied that the appellant was guided by an evil intention of aiding and comforting the King's enemies, and that his object was not merely to carry out his duty by assisting German subjects to return to their own country without injuring this country's interests. *Rex* v. *Ahlers*, 84 L. J. K.B. 901; [1915] 1 K.B. 616; 112 L. T. 558; 79 J. P. 255; 31 T. L. R. 141—C.C.A.

Obtaining Information Useful to Enemy—Attempt.]—The appellant, who had been convicted under section 1, sub-section 1, and section 4 of the Official Secrets Act, 1911, of attempting, for a purpose prejudicial to the safety or interests of the State, to obtain information calculated to be useful to an enemy, appealed against his conviction on the grounds, first, that evidence of a conversation which he had had after the date of the offence had been wrongly admitted; secondly, that the trial was prejudiced by a suggestion as to the contents of a document which was not put in evidence; and thirdly, that the Judge had unfairly questioned the prisoner and misunderstood his answers. The Court dismissed the appeal on all three grounds. *Rex* v. *Olsson*, 31 T. L. R. 559—C.C.A.

Defence of the Realm.]—*See* WAR.

Mutiny.]—*See* ARMY AND NAVY.

V. AGAINST PUBLIC JUSTICE.

See also Vol. IV. 1610, 2174.

Perjury — Judicial Proceeding — Action against Non-existent Person.]—The defendant P. was charged with perjury for swearing in an affidavit that he had personally served a certain defendant in a civil action with the writ in that action. The defendant C. was charged with aiding and abetting and suborning P. to commit perjury. The affidavit in question was sworn in an action commenced by C. against a non-existent person. It was contended that by reason of the fact that the defendant in the civil action was not a real person the affidavit had been sworn in a matter which was not a judicial proceeding. The defendants P. and C. having been convicted, appealed:—*Held*, first, that an offence had been committed within the terms of section 7 of the Commissioners for Oaths Act, 1889; and secondly, that the affidavit had been sworn in a judicial proceeding; and therefore that the conviction was right. *Rex* v. *Castiglione*, 106 L. T. 1023; 76 J. P. 351; 23 Cox C.C. 46; 28 T. L. R. 403—C.C.A.

—— **False Death Certificate—Intention with which Given.**]—By section 4, sub-section 1 (*b*) of the Perjury Act, 1911, if any person "wilfully makes any false certificate or declaration under or for the purposes of any Act relating to the registration of births or deaths, or, knowing any such certificate or declaration to be false, uses the same as true or gives or sends the same as true to any person," he commits a misdemeanour:—*Held*, that it is an offence under the above provision for a person to give a certificate which purports to be a certificate under an Act relating to the registration of births and deaths and which can be used under such an Act, and it is not necessary for the prosecution to prove that the defendant gave the certificate with the intention that it should be used under such an Act. *Rex* v. *Ryan* (*No.* 1), 110 L. T. 779; 78 J. P. 192; 24 Cox C.C. 135; 58 S. J. 251; 30 T. L. R. 242—C.C.A.

—— **Competency of Justices to Administer Oath.**]—The defendant was indicted for the common law misdemeanour of taking a false

oath in connection with the proposed transfer of a licence, before Justices, on April 12, 1910, on which date there was an informal meeting of the Justices for the purpose of expediting licensing business when the special sessions, which had been fixed for May 18, 1910, came on. The defendant was convicted :—*Held*, that the conviction must be quashed, inasmuch as at the meeting on April 12 the Justices had no authority to administer an oath. *Rex* v. *Shaw*, 104 L. T. 112; 75 J. P. 191; 22 Cox C.C. 376; 27 T. L. R. 181—C.C.A.

—— **Subornation—Question as to Corroboration Necessary.**]—On a charge of subornation of perjury the corroboration necessary to sustain a conviction may be afforded by the facts and circumstances of the case. Under section 13 of the Perjury Act, 1911, one witness is sufficient to prove that the accused made certain statements on oath, but additional evidence is required to establish the falsity of the oath. *Rex* v. *Threlfall*, 111 L. T. 168; 24 Cox C.C. 230—C.C.A.

VI. AGAINST PUBLIC PEACE.

A. Libel.

See also Vol. IV. 1655, 2174.

Sentence — Imprisonment and Direction to Find Surety and in Default Further Term of Imprisonment.] — A person convicted under section 5 of the Libel Act, 1843, may, in addition to being sentenced to the maximum term of imprisonment mentioned in the section —namely, one year—be ordered, at the expiration of that imprisonment, to find sureties to keep the peace for a specified period, and, in default of so doing, be further imprisoned for the period during which he is so ordered to find sureties. *Rex* v. *Trueman*, 82 L. J. K.B. 916; [1913] 3 K.B. 164; 109 L. T. 413; 77 J. P. 428; 23 Cox C.C. 550; 29 T. L. R. 599—C.C.A.

Plea of Justification — Replication Filed during Trial — Effect upon Verdict.] — The prisoner, who was charged with publishing a defamatory libel, pleaded (*inter alia*) justification. A replication to the plea was filed during the course of the trial :—*Held*, that the prisoner was not entitled to be acquitted on the ground that the plea of justification had not been traversed, and must therefore be taken to be a good plea. *Rex* v. *Seham Yousry*, 84 L. J. K.B. 1272; 112 L. T. 311; 31 T. L. R. 27—C.C.A.

B. Riding or Going Armed.

Indictment.]—An indictment for riding or going armed against the form of the Statute of Northampton (3 Edw. 3. c. 3), which omits to negative lawful occasion, is bad, as omitting an essential ingredient of the offence, and will not be cured by verdict. *Rex* v. *Smith*, [1914] 2 Ir. R. 190—C.C.R.

Counts in an indictment charging that the accused went about on a public road without lawful occasion, in such a manner as to be a nuisance to, and to alarm the public lawfully using the road, and charging that the accused on the public road unlawfully discharged a revolver to the great danger of the public, even assuming that the omission of the words "lawfully using the highway" does not make the latter count bad, cannot be sustained where it appears that none of the public were present or capable of being alarmed or endangered. *Ib.*

Where the omission of the averment that the acts were done *in terrorem populi* would be aided or cured by verdict, *quære*. *Ib.*

VII. AGAINST PUBLIC MORALS AND POLICE.

A. Bigamy.

See also Vol. IV. 1681, 2176.

Evidence—Identification.]—On the trial of the appellant for bigamy the evidence by the prosecution to prove the first marriage consisted of the marriage certificate, the fact that he cohabited as her husband with the woman he was alleged to have married, and the fact that he spoke of her as his wife :—*Held*, that there was sufficient identification of the appellant with the man who was married to the woman named in the certificate. *Rex* v. *Birtles*, 75 J. P. 288; 27 T. L. R. 402—C.C.A.

B. Bribery.

Public Officer.]—A person who discharges any duty in which the public are interested, and who receives payment from public moneys, is a "public officer." The colonel of a regiment in the army is both a public and a ministerial officer. *Rex* v. *Whitaker*, 84 L. J. K.B. 225; [1914] 3 K.B. 1283; 112 L. T. 41; 79 J. P. 28; 24 Cox C.C. 472; 58 S. J. 707; 30 T. L. R. 627—C.C.A.

Bribe to Induce Defendant to Shew Favour in Regard to Catering Contracts.] — It is a common law misdemeanour for the colonel of a regiment in the army to conspire with other persons for the payment to him of bribes to induce him to shew favour to such persons in respect of catering contract for his regiment. *Ib.*

C. Habitual Criminals.

See also Vol. IV. 2177.

Indictment—No Averment that Prisoner is Habitual Criminal.]—It is not necessary that an indictment under which a prisoner is charged with being a habitual criminal should contain an averment that he is a habitual criminal, but as a matter of pleading it is better that it should do so. *Rex* v. *Smith*; *Rex* v. *Weston*, 79 L. J. K.B. 1; [1910] 1 K.B. 17; 101 L. T. 816; 74 J. P. 13; 22 Cox C.C. 219; 54 S. J. 137; 26 T. L. R. 23—C.C.A.

—— **Proof of Consent of Director of Public Prosecutions.**] — On the trial of a person charged with being a habitual criminal, the consent of the Director of Public Prosecutions

to the insertion in the indictment of such a charge must be proved. It is not, however, necessary that some one should be called to prove the handwriting of the Director; it is sufficient if a witness is called who can depose to having been in correspondence with the Director on the subject and having received in the ordinary course the document purporting to be his consent. *Rex* v. *Turner*, 79 L. J. K.B. 176; [1910] 1 K.B. 346; 102 L. T. 367; 74 J. P. 81; 22 Cox C.C. 310; 54 S. J. 164; 26 T. L. R. 162—C.C.A.

Where a charge under the Prevention of Crime Act, 1908, of being a habitual criminal is inserted in the indictment against an accused person the prosecution need not prove as part of their case that the consent of the Director of Public Prosecutions has been given to the insertion of such charge, unless the fact is challenged by the accused, in which case the fact may be proved as determined by the Court in *Rex* v. *Turner* (79 L. J. K.B. 176). The clerk of assize or the clerk of the peace—or, if any question arises, the Judge—should satisfy himself that such consent has been given before the indictment goes before the grand jury. *Rex* v. *Waller*, 79 L. J. K.B. 184; [1910] 1 K.B. 364; 102 L. T. 400; 74 J. P. 81; 22 Cox C.C. 319; 54 S. J. 164; 26 T. L. R. 142—C.C.A.

Proof of Receipt of Notice—"Not less than seven days' notice"—Clear Days.]—It is not necessary that the proper officer of the Court—for example, the clerk of the peace—should himself be called to testify to the receipt of the notice mentioned in section 10, sub-section 4 (*b*) of the Prevention of Crime Act, 1908, but there must be proof of the receipt of such notice, and that may be given by the officer or clerk of the clerk of the Court, or by the person who gave the notice. Such notice, and also the notice served on the accused, must be a seven clear days' notice. *Rex* v. *Turner*, 79 L. J. K.B. 176; [1910] 1 K.B. 346; 102 L. T. 367; 74 J. P. 81; 22 Cox C.C. 310; 54 S. J. 164; 26 T. L. R. 162—C.C.A.

Contents of Notice—Grounds—Evidence.]—The notice served on the accused, although it need not state the evidence upon which the prosecution intend to rely as establishing that he is a habitual criminal, must state the grounds upon which it is intended to found the charge: it is not enough to state in the notice that the accused is leading persistently a dishonest or criminal life. Evidence of the three previous convictions of the accused relied upon by the prosecution is inadmissible unless it is proved that those convictions were specified in the notice served upon the accused. If such notice is not produced by the accused secondary evidence may be given of its contents. *Ib.*

The notice served upon an accused person under section 10, sub-section 4 of the Prevention of Crime Act, 1908, need not, in addition to specifying the previous convictions of the accused, also state other grounds for founding the charge that he is leading persistently a dishonest or criminal life, unless the prosecution intend to rely upon other grounds than the previous convictions. *Rex* v. *Turner* (79 L. J. K.B. 176) explained. *Rex* v. *Waller*, 79 L. J. K.B. 184; [1910] 1 K.B. 364; 102 L. T. 400; 74 J. P. 81; 22 Cox C.C. 319; 54 S. J. 164; 26 T. L. R. 142.

Grounds upon which Charge is Founded—Sufficiency of Notice.]—A notice given to a prisoner in pursuance of section 10, sub-section 4 of the Prevention of Crime Act, 1908, stated that it was intended to insert in the bill of indictment to be preferred against him a charge under that Act, "that you are a habitual criminal and are leading persistently a dishonest and criminal life." One of the grounds upon which the charge was founded was "that when you were asked to give some account of yourself, in order that you might have an opportunity of shewing that you had since the date of your last release from prison been following some honest employment, you declined to give any information which could be verified on the subject":—*Held*, that, although the ground was not one on which a person could be convicted of being a habitual criminal, its insertion in the notice did not make the notice bad, inasmuch as it was merely notice of the evidence that would be used against the prisoner on his trial, and there was no obligation on the prosecution under the statute to state the evidence that would be produced. *Rex* v. *Webber*, 82 L. J. K.B. 108; [1913] 1 K.B. 33; 108 L. T. 349; 76 J. P. 471; 23 Cox C.C. 323—C.C.A.

—— **Specific Notice.**]—By section 10, sub-section 4 of the Prevention of Crime Act, 1908, a charge of being a habitual criminal shall not be inserted in an indictment unless seven days' notice has been given to the offender, "and the notice to the offender shall specify the previous convictions and the other grounds upon which it is intended to found the charge." On an indictment for being a habitual criminal, evidence was given that the prisoner since his last release had associated with a well-known thief. No specific notice of this ground for the charge had been given to the prisoner:—*Held*, that in the absence of specific notice the conviction must be quashed. *Rex* v. *Neilson*, 109 L. T. 912; 78 J. P. 158; 23 Cox C.C. 685; 30 T. L. R. 125—C.C.A.

Proof of Prisoner's Age.]—There must be evidence before the Court that the accused had attained the age of sixteen at the date of the first conviction alleged against him. If the jury cannot act upon their view as to the accused's age, the fact may be proved by a prison official deposing that the age of the accused as stated in the calendar was so stated from information given by the accused himself. *Rex* v. *Turner*, 79 L. J. K.B. 176; [1910] 1 K.B. 346; 102 L. T. 367; 74 J. P. 81; 22 Cox C.C. 310; 54 S. J. 164; 26 T. L. R. 162—C.C.A.

Trial—Sentence.]—It is not necessary that sentence on the main charge in an indictment should have been pronounced before the

accused is placed upon his trial as a habitual criminal. *Ib.*

Trial—Swearing Jury.]—Where an indictment charges a person with having committed an offence, and also, under section 10 of the Prevention of Crime Act, 1908, with being a habitual criminal, and the accused pleads guilty to the main charge, but pleads not guilty to the charge of being a habitual criminal, it is sufficient that the jury should be sworn to try the latter question as if on a trial for a misdemeanour, although the main charge to which the prisoner has pleaded guilty is a felony. It is no objection, however, to the trial that the jury has been sworn as on a trial for felony. *Rex* v. *Turner*, 79 L. J. K.B. 176; [1910] 1 K.B. 346; 102 L. T. 367; 74 J. P. 81; 22 Cox C.C. 310; 54 S. J. 164; 26 T. L. R. 162—C.C.A.

Evidence — Leading Dishonest or Criminal Life.]—In order to establish that the prisoner is leading persistently a dishonest or criminal life, the evidence is not necessarily to be confined to the period since the accused's last conviction. It must depend upon the circumstances of each case whether evidence as to the period prior to such conviction is admissible or not; but in all cases the evidence must be brought down to the date when the accused is charged. *Rex* v. *Turner*, 79 L. J. K.B. 176; [1910] 1 K.B. 346; 102 L. T. 367; 74 J. P. 81; 22 Cox C.C. 310; 54 S. J. 164; 26 T. L. R. 162—C.C.A.

Observations on the evidence required to prove that an accused "is leading persistently a dishonest or criminal life." *Stirling* v. *Lord Advocate*, [1911] S. C. (J.) 84—Ct. of Just. *See also Heron* v. *Lord Advocate*, [1914] S. C. (J.) 7—Ct. of Just.

Sentence of preventive detention quashed on the ground that evidence that the prisoner had been leading persistently a dishonest life was given by shewing that since his last conviction he had associated with a man who had been convicted of coining offences, without notice of intention to give such evidence having been served on the prisoner. *Rex* v. *Maxfield*, 28 T. L. R. 404—C.C.A.

Two prisoners were jointly indicted for housebreaking and pleaded guilty; they were then separately tried on charges of being habitual criminals:—*Held*, that though in some cases so long an interval as six months between a prisoner's last release from prison and the commission of the offence with which he is charged, coupled with the fact of his doing some honest work in that interval, may be sufficient to negative his persistently leading a dishonest or criminal life, yet the nature of the particular offence with which he is charged must be taken into consideration. If it is one which does not involve any premeditation, but is such as may be the result of sudden temptation, it is not necessarily inconsistent with a desire to amend his mode of life. But where it is obvious that he intends to return to his criminal courses, the existence of a six months' interval between the release from prison and the commission of the crime cannot affect the question. *Rex* v. *Keane*; *Rex* v. *Watson*, [1912] W. N. 205—C.C.A.

No hard-and-fast rule can be laid down as to what length the interval of time must be between the last release of an accused from prison and his next subsequent arrest in order to require evidence that he has been leading persistently a dishonest or criminal life within the meaning of section 10 of the Prevention of Crime Act, 1908. Where the interval is considerable it is desirable, and probably necessary, that the attention of the jury should not only be drawn to it, but some evidence should be given that the accused was relapsing into crime because it was his natural disposition to do so. Conviction of the appellant for being a habitual criminal affirmed, although the interval between his last release and subsequent arrest was nine months. *Rex* v. *Heard*, 106 L. T. 304; 76 J. P. 232; 22 Cox C.C. 725; 28 T. L. R. 154—C.C.A.

—— **Foreign Conviction—Admissibility.**]—A conviction in a foreign country for an offence which is a crime in all civilised countries is admissible on the question as to whether an accused has been leading persistently a dishonest or criminal life. *Ib.*

—— **Failure by Convict on Licence to Report Himself to Police.**]—The mere fact that a convict on licence has not reported himself to the police is not sufficient to establish that he is leading persistently a dishonest or criminal life. Conviction of the appellant for being a habitual criminal quashed where the sole evidence against him on the question of leading persistently a dishonest or criminal life consisted in the fact that during the period intervening between his last release from prison on licence and the commission of a new offence—a period of five and a half months—he had failed to report himself to the police. *Rex* v. *Mitchell*, 108 L. T. 224; 76 J. P. 423; 23 Cox C.C. 284; 28 T. L. R. 484—C.C.A.

—— **Onus of Proof.**]—The onus of proving that the prisoner "is leading persistently a dishonest or criminal life" rests upon the prosecution, and the jury ought to be directed that it is for the Crown to establish that the prisoner is still leading a dishonest or criminal life. *Rex* v. *Young*, 109 L. T. 753; 78 J. P. 80; 23 Cox C.C. 624; 58 S. J. 100; 30 T. L. R. 69—C.C.A.

—— **Evidence Given of Facts not Stated in Notice to Accused.**]—Conviction of the accused as a habitual criminal quashed on the ground that evidence was given at the trial that the accused had lived by thieving and had done no honest work for ten years, whereas the notice served upon him under section 10 of the Prevention of Crime Act, 1908, merely specified the three statutory and certain other convictions, and did not mention any other ground upon which it was intended to base the charge of being a habitual criminal. *Rex* v. *Moran*, 75 J. P. 110—C.C.A.

Conviction of the appellant as a habitual criminal quashed where evidence was given against him of facts not included in the notice

served upon him. It is not the case that evidence as to the mode of life of a prisoner, on the question whether he is leading persistently a dishonest and criminal life, must be confined to the period between his last release from prison and the commission of the new offence. *Rex* v. *Wilson*, 28 T. L. R. 561—C.C.A.

Conviction of the appellant as a habitual criminal quashed where evidence was given against him of certain offences alleged to have been committed by him, which were not included in the notice served upon him. *Rex* v. *Fowler*, 77 J. P. 379; 29 T. L. R. 422—C.C.A.

Conviction of the appellant as a habitual criminal affirmed where, although evidence was given against him of matters not included in the notice served upon him under the Prevention of Crime Act, 1908, no substantial miscarriage of justice had occurred. *Rex* v. *Westwood*, 77 J. P. 379; 29 T. L. R. 492—C.C.A.

Fugitive from Justice—Employment while in Hiding.]—Where a criminal succeeded in evading arrest for some considerable period, and meanwhile obtained honest employment, the jury were told that they could convict the prisoner of being a habitual criminal because he was a fugitive from justice:—*Held*, that this amounted to a misdirection. *Rex* v. *Brown*, 109 L. T. 749; 78 J. P. 79; 23 Cox C.C. 615; 58 S. J. 69; 30 T. L. R. 40—C.C.A.

Only Three Statutory Convictions Proved.]—It is no objection in law to the conviction of a person for being a habitual criminal that only the three statutory convictions stated in the notice served on the accused under section 10 of the Prevention of Crime Act, 1908, are alleged against him. A great deal depends upon the nature of the offences for which the accused has been convicted. If the three convictions alleged were not in respect of offences shewing deliberation or system, it may not be right to take them as being of themselves sufficient to establish the charge of being a habitual criminal; if, on the other hand, the three convictions are in respect of offences requiring system, planning, and deliberation, and if they have been repeated almost at the first opportunity after the accused's release from a previous sentence, they may well be sufficient for the jury arriving at the conclusion that the accused intended to live by crime. *Rex* v. *Everitt*, 27 T. L. R. 570—C.C.A.

Mention in Summing-up of Convictions which had not been Proved.]—Conviction as a habitual criminal quashed on the ground that in his summing-up the Judge mentioned other convictions than those proved against the appellant. *Rex* v. *Culliford*, 75 J. P. 232—C.C.A.

Preventive Detention—"Not exceeding ten nor less than five years"—Discretion of Judge.]—Section 10, sub-section 1 of the Prevention of Crime Act, 1908, provides that "the Court, if of opinion that by reason of his criminal habits and mode of life it is expedient for the protection of the public that the offender should be kept in detention for a lengthened period of years, may pass a further sentence ordering that on the determination of the sentence of penal servitude he be detained for such period not exceeding ten nor less than five years, as the Court may determine":—*Held*, that the period of preventive detention, within the statutory limits, is a matter for the discretion of the Judge in passing sentence, having regard to the evidence adduced before him in the case. *Rex* v. *Hamilton* (9 Cr. App. Rep. 89) considered. *Rex* v. *Crowley*, or *Sullivan*, 83 L. J. K.B. 298; 110 L. T. 127; 24 Cox C.C. 13; 30 T. L. R. 94—C.C.A.

Sentence of Preventive Detention—Increase of Sentence to Enable Court to Pass.]—By section 10, sub-section 1 of the Prevention of Crime Act, 1908, where a person is convicted on indictment and is found by the jury to be a habitual criminal and the Court passes a sentence of penal servitude, the Court may pass a further sentence of preventive detention:—*Held*, that the Court ought not, in order to obtain power to pass a further sentence of preventive detention, to pass a sentence of penal servitude, if they consider that a sentence of imprisonment only, quite apart from any question of preventive detention, is adequate to the offence of which the prisoner has been convicted. *Rex* v. *Bell*, 30 T. L. R. 645—C.C.A.

D. Incest.

Offence by Woman—What must be Proved.]—*Per* Hamilton, J.: To constitute the offence of incest on the part of a woman under section 2 of the Incest Act, 1908, there must be something in the nature of permission by her, and not merely submission to the act of the man. *Rex* v. *Dimes*, 76 J. P. 47—C.C.A.

Evidence of the Existence of a Guilty Passion and of Previous Acts.]—On an indictment for incest under the Punishment of Incest Act, 1908, evidence is admissible to prove the existence of a guilty passion between the accused persons and of carnal intercourse before the Act was passed. *Director of Public Prosecutions* v. *Ball* (*No.* 2), 80 L. J. K.B. 691; [1911] A.C. 47; 103 L. T. 738; 75 J. P. 180; 22 Cox C.C. 366; 55 S. J. 139; 27 T. L. R. 162—H.L. (E.)

E. Keeping Brothel.

One Woman Using Premises for Purposes of Prostitution.]—The respondent was charged under section 13, sub-section 1 of the Criminal Law Amendment Act, 1885, with managing a brothel. The respondent was the wife of the occupier of the premises and she allowed her sister, a prostitute, to use the premises on various dates for the purpose of prostitution with different men. No other woman used the premises for the purpose of prostitution. The stipendiary magistrate dismissed the charge, being of opinion that premises could not be held in law to be a brothel unless at least two

women used the premises for the purpose of prostitution :—*Held* (Ridley, J., dissenting), that the magistrate was right in so holding. *Singleton* v. *Ellison* (64 L. J. M.C. 123; [1895] 1 Q.B. 607) followed. *Caldwell* v. *Leech*, 109 L. T. 188; 77 J. P. 254; 23 Cox C.C. 510; 29 T. L. R. 457—D.

F. Offences under Prevention of Crimes, Act, 1871.

Being Found in Public Place about to Commit Felony.] — *Per* Lord Coleridge, J.: The provisions of section 7 of the Prevention of Crimes Act, 1871, being very stringent, must not be invoked on mere suspicion. There must be positive testimony to enable the police to bring a prosecution. *Rex* v. *Pavitt*, 75 J. P. 432—C.C.A.

G. Offences under Vagrancy Act.

See Vagrant.

H. Procuration.

Girl Brought from Scotland — Continuing Offence—Trial in England.]—The offence of procuration under section 2 of the Criminal Law Amendment Act, 1885, is a continuing offence, and if any part of it takes place within the jurisdiction of the English Courts, those Courts have jurisdiction to try it. *Rex* v. *Mackenzie*, 75 J. P. 159; 27 T. L. R. 152—C.C.A.

"Girl or woman under twenty-one years of age"—Indictment.]—By section 2, sub-section 1 of the Criminal Law Amendment Act, 1885, "Any person who procures or attempts to procure any girl or woman under twenty-one years of age, not being a common prostitute or of known immoral character, to have unlawful carnal connexion either within or without the Queen's Dominions with any other person or persons" shall be guilty of a misdemeanour. An indictment under this sub-section charged the defendant with the procuration of a "girl" without stating her age or stating that she was "under twenty-one years of age":—*Held*, that the indictment was good, and that the words in the sub-section, "under twenty-one years of age," qualify the word "woman" only and not the word "girl." *Rex* v. *Jones*, 106 L. T. 1024; 76 J. P. 8; 23 Cox C.C. 48; 55 S. J. 754—C.C.A.

Attempt to Procure — Insufficient Direction as to what would Constitute Attempt.]—Conviction of the appellant for attempting to procure his wife to leave her usual place of abode with intent that she should become an inmate of a brothel outside the King's Dominions quashed on the ground that the jury were not properly directed as to the difference between an attempt and an intention or a mere idle threat. *Rex* v. *Landow*, 109 L. T. 48; 77 J. P. 364; 23 Cox C.C. 457; 29 T. L. R. 375—C.C.A.

Girl under Age of Sixteen—"Causing or encouraging seduction" — "Allowing girl to consort with persons of known immoral character"—Evidence—Verdict of Negligence.]—The appellant was charged under section 17, sub-sections 1 and 2 of the Children Act, 1908, as amended by section 1 of the Children Act (1908) Amendment Act, 1910, with causing and encouraging the seduction of his daughter by knowingly allowing her to consort with persons of known immoral character. His wife was also charged with the offence. The jury found that the appellant was guilty of negligence and that his wife was guilty of criminal negligence. The wife did not appeal from her conviction :—*Held*, on the facts, that there was not sufficient evidence on which the jury ought to have been asked to say whether the appellant was guilty of the offence with which he was charged; and further that the jury, by their verdict, never intended to find him guilty of such offence. *Rex* v. *Chainey*, 83 L. J. K.B. 306; [1914] 1 K.B. 137; 109 L. T. 752; 78 J. P. 127; 23 Cox C.C. 620; 30 T. L. R. 51—C.C.A.

Procuring Woman to Become a Common Prostitute — Punishment of Whipping — Applicability of Statute Authorising Whipping—Not Applicable to "proceedings pending at the commencement of this Act"—Arrest Previous to Commencement.] — By section 8 of the Criminal Law Amendment Act, 1912, the Act is not to apply to "proceedings pending at the commencement of this Act." The appellant was arrested on December 7, 1912, and the Act came into force on December 13 following :—*Held*, that the proceedings against the appellant were "proceedings pending" at such commencement, and that the Act did not apply, so that on the trial and conviction of the appellant on indictment after the commencement of the Act the Court had no power to pass the sentence of whipping authorised by section 3. *Rex* v. *O'Connor*, 82 L. J. K.B. 335; [1913] 1 K.B. 557; 108 L. T. 384; 77 J. P. 272; 23 Cox C.C. 334; 57 S. J. 287; 29 T. L. R. 245—C.C.A.

D. PROCEDURE AND PRACTICE.

I. JURISDICTION.

See also Vol. IV. 1717, 2185.

Procuration—Girl Brought from Scotland—Continuing Offence—Trial in England.]—The offence of procuration under section 2 of the Criminal Law Amendment Act, 1885, is a continuing offence, and if any part of it takes place within the jurisdiction of the English Courts, those Courts have jurisdiction to try it. *Rex* v. *Mackenzie*, 75 J. P. 159; 27 T. L. R. 152—C.C.A.

Vexatious Actions—Prohibition of Institution of Legal Proceedings—Criminal Proceedings.]—The Vexatious Actions Act, 1896, which empowers the Court to make an order prohibiting a person from instituting "legal proceedings" without the leave of the Court or a Judge, is confined to civil proceedings, and has no application to the institution of criminal proceedings :—So *held* by Kennedy, L.J., and Scrutton, J. (Buckley, L.J., dissenting). *Boaler, In re*, 83 L. J. K.B. 1629; [1915]

1 K.B. 21: 111 L. T. 497: 24 Cox C.C. 335: 58 S. J. 634: 30 T. L. R. 580—C.A.

Decision of Divisional Court (83 L. J. K.B. 139: [1914] 1 K.B. 122) affirmed. *Ib.*

Absence of Consent of Attorney-General to Proceedings.]—The appellant was convicted under section 2 of the Explosive Substances Act, 1883, for causing an explosion of a nature likely to endanger life or to cause serious injury to property. The consent of the Attorney-General, which is required by section 7 to proceedings under the Act, had not been obtained:—*Held*, first, that the conviction must be quashed, as the absence of such consent invalidated the proceedings: and secondly, that the proviso to section 4, subsection 1 of the Criminal Appeal Act, 1907, has no application where the Court by which a prisoner is tried has no jurisdiction to entertain the proceedings. *Rex* v. *Bates*, 80 L. J. K.B. 507: [1911] 1 K.B. 964: 104 L. T. 688: 75 J. P. 271: 22 Cox C.C. 459: 55 S. J. 410: 27 T. L. R. 314—C.C.A.

Removal of Indictment into High Court—Charge against Limited Company.]—The Court, without deciding that a limited company could not plead to an indictment at the Central Criminal Court, made absolute a rule for the removal from that Court to the High Court of the indictment against the company. *Rex* v. *Puck & Co.* (No. 1), 28 T. L. R. 197—D.

Jurisdiction of Quarter Sessions—Indictment for Living on Earnings of Prostitution.]—An indictment under sub-section 5 of section 7 of the Criminal Law Amendment Act, 1912, for the offence of knowingly living on the earnings of prostitution, can be tried by a Court of quarter sessions. *Rex* v. *Hill: Rex* v. *Churchman*, 83 L. J. K.B. 820: [1914] 2 K.B. 386: 110 L. T. 831: 78 J. P. 303: 24 Cox C.C. 150—C.C.A.

—— **Validity of Indictment.**]—In an indictment for this offence a person can properly be charged with having committed the offence on one specified day only. *Ib.*

II. INDICTMENT.

See also Vol. IV. 1731, 2186.

"Riding or going armed"—Indictment.]—An indictment for riding or going armed against the form of the Statute of Northampton (3 Edw. 3, c. 3), which omits to negative lawful occasion, is bad, as omitting an essential ingredient of the offence, and will not be cured by verdict. *Rex* v. *Smith*, [1914] 2 Ir. R. 190—C.C.R.

Counts in an indictment charging that the accused went about on a public road, without lawful occasion, in such a manner as to be a nuisance to and to alarm the public lawfully using the road, and charging that the accused on the public road unlawfully discharged a revolver to the great danger of the public, even assuming that the omission of the words "lawfully using the highway" does not make the latter count bad, cannot be sustained where it appears that none of the public were present or capable of being alarmed or endangered. *Ib.*

Whether the omission of the averment that the acts were done *in terrorem populi* would be aided or cured by verdict, *quære*. *Ib.*

Several Counts—Obtaining Chattels—Obtaining Credit.]—Where a prisoner is charged on an indictment containing several counts, some charging him with obtaining chattels, and some charging him with obtaining credit, on false pretences, the prosecution should be called on to proceed on one count at a time, and the prisoner should not be tried upon all the counts at the same time. *Rex* v. *Norman*, 84 L. J. K.B. 440: [1915] 1 K.B. 341: 112 L. T. 784: 79 J. P. 221: 31 T. L. R. 173—C.C.A.

Joinder of Offences in One Count—Time for Taking Objection—No Miscarriage of Justice.]—The appellant was indicted in two counts for incest. Each count charged the offence as having been committed "on divers days" between certain dates. Objection to the indictment on the ground of duplicity was taken after the appellant had pleaded:—*Held*, that the indictment was bad: but that in the circumstances no miscarriage of justice had taken place, and that under the proviso in section 4, sub-section 1 of the Criminal Appeal Act, 1907, the appeal should be dismissed. *Rex* v. *Thompson*, 83 L. J. K.B. 643: [1914] 2 K.B. 99: 110 L. T. 272: 78 J. P. 212: 24 Cox C.C. 43: 30 T. L. R. 223—C.C.A.

Quære as to whether the objection should have been taken before plea. *Ib.*

Joinder of Counts for Separate Felonies—Quashing Indictment—Putting Prosecution to Election—Discretion of Judge.]—There is no rule of law that various distinct felonies cannot be charged in separate counts in one indictment. But if the Judge thinks that the prisoner will be embarrassed by being put upon his trial on an indictment in which there are several counts for distinct felonies, he may either quash the indictment, if he thinks fit, if the application is made before plea, or he may make the prosecution elect upon which of the counts they will proceed. It is, however, solely in the discretion of the Court whether or not either one or other of those courses should be pursued. In determining whether or not he should exercise his discretion, the Judge ought to consider whether the overt acts relied upon in support of the offences charged in the various counts of the indictment are in substance the same for each offence. *Rex* v. *Lockett, Grizzard, Gutwirth, and Silverman*, 83 L. J. K.B. 1193: [1914] 2 K.B. 720: 110 L. T. 398: 78 J. P. 196: 24 Cox C.C. 114: 30 T. L. R. 233—C.C.A.

Two Counts—Libel—Discretion of Judge.]—Where an indictment contains two counts, one charging libel and the other charging publication of the libel for the purpose of extorting money, it is for the Judge at the trial in his discretion to decide whether the prosecution must proceed on one count of the indictment. *Rex* v. *Seham Yousry*, 84 L. J.

K.B. 1272; 112 L. T. 311; 31 T. L. R. 27—C.C.A.

III. TRIAL.

See also Vol. IV. 1763, 2188.

1. Arraignment.

Prisoner Standing Mute — Incapacity to Understand Proceedings—Insanity—Order for Prisoner's Detention — Jurisdiction.] — A prisoner who was totally deaf and unable to read or write, on being arraigned upon a charge of felony, stood mute, and a jury impanelled in that behalf found that he was mute by the visitation of God, and, further, that he was incapable of pleading to and taking his trial upon the indictment, and of understanding and following the proceedings, by reason of his inability to communicate with and be communicated with by others. The Judge thereupon made an order under section 2 of the Criminal Lunatics Act, 1800, that the prisoner should be treated as non-sane and kept in custody during his Majesty's pleasure :—*Held*, that the finding of the jury, although not an express finding that the prisoner was insane, amounted in substance to such a finding, and was sufficient to entitle the Judge to make the order. *Rex* v. *Stafford Prison (Governor)*, 78 L. J. K.B. 629; [1909] 2 K.B. 81; 100 L. T. 993; 73 J. P. 284; 22 Cox C.C. 143; 25 T. L. R. 440—D.

2. Pleas.

Plea of "Guilty" Wrongly Entered—New Trial—Discretion of the Court.]—A prisoner is not to be taken to admit an offence with which he is charged unless he pleads guilty to the charge in unmistakable and unambiguous terms. *Rex* v. *Golathan*, 84 L. J. K.B. 758; 112 L. T. 1048; 79 J. P. 270; 31 T. L. R. 177—C.C.A.

Where the Court holds that the proceedings which have culminated in the conviction appealed against are abortive and void the Court may at its discretion direct that the appellant shall be tried for the offence with which he was charged, and may order that he shall be kept in custody until such trial. *Ib.*

Plea of "Guilty" to Feloniously Receiving—Written Statement Disclaiming Felonious Intention—Entry of Plea of "Guilty"—Duty of Court to Enter Plea of "Not guilty."]—Where a prisoner formally pleads guilty to a felony, but accompanies the plea by a statement disclaiming any felonious intention, it is the duty of the Court to enter a plea of "Not guilty." The appellant pleaded guilty to a charge of receiving certain horses knowing them to have been feloniously stolen, and handed to the Court a written statement which concluded with these words : "I am guilty of taking the horses not knowing them to have been stolen." A plea of "Guilty" was thereupon entered on the record, and sentence was passed :—*Held*, that the appellant had not pleaded guilty, and that no legal sentence had been passed; that the case must go back, and the appellant be called upon to plead afresh to the indictment. *Rex* v. *Ingleson*, 84 L. J. K.B. 280; [1915] 1 K.B. 512; 112 L. T. 313—C.C.A.

Coinage Offence—Possession of Mould without Lawful Excuse—Plea by Prisoner that he had Possession of Mould—Effect of Plea.]—The appellant was charged with being unlawfully in possession of a coining mould without lawful excuse. When called upon to plead, he said that he was guilty of having the mould in his possession. This was entered as a plea of "Guilty." Later, when sentence was about to be passed, the appellant set up what he regarded as a lawful excuse for the possession of the mould. No effect was, however, given to this statement of the appellant, who was then sentenced :—*Held*, that the appellant had not pleaded "Guilty"; that no legal sentence had been passed; and that the case must go back and the appellant called upon to plead to the indictment. *Rex* v. *Baker*, 28 T. L. R. 363—C.C.A.

Autrefois Acquit.]—The plea of *autrefois acquit* is not proved unless it is shewn that the verdict of acquittal on the previous charge necessarily involved an acquittal of the charge to which the plea of *autrefois acquit* is pleaded, or that the accused could have been convicted of the latter charge on the trial of the previous charge. *Rex* v. *Barron* (*No.* 2), 83 L. J. K.B. 786; [1914] 2 K.B. 570; 78 J. P. 311; 58 S. J. 557; 30 T. L. R. 422—C.C.A.

The appellant was acquitted on a charge of sodomy. He was then indicted for committing an act of gross indecency with the same male person, to which he pleaded *autrefois acquit* :—*Held*, that as the verdict of acquittal on the charge of sodomy did not involve an acquittal on the charge of gross indecency, because neither the act of penetration, which is an essential element of the charge of sodomy, nor the intention to penetrate, which is an essential element of an attempt to commit that offence, is an essential element of the offence of gross indecency, and that as it was conceded that the appellant could not in law have been convicted of gross indecency on the more serious charge, the plea of *autrefois acquit* was not proved. *Ib.*

—— **Admissibility after Plea of "Not guilty."**]—The appellant was charged with murder on a coroner's inquisition, and on indictment with the manslaughter of the same person, to both of which charges he pleaded "Not guilty." No evidence was offered by the prosecution on the inquisition, and the jury found a verdict of "Not guilty" upon it. Before the trial of the indictment the appellant's counsel handed in a written plea of *autrefois acquit*, additional to the above plea of "Not guilty," which was accepted by the Judge. The Judge then directed the jury that there was no evidence in support of the plea, and the jury consequently found that the appellant had not been *autrefois acquit*. He was then tried on this plea of "Not guilty" and convicted :—*Held*, that, whether the Judge was right or not in directing the jury that there was no evidence in support of the plea of *autrefois acquit*, the appellant, having

pleaded "Not guilty," was not entitled to plead *autrefois acquit* in addition as long as the plea of "Not guilty" stood on the record, and that therefore he could not rely on that plea as a ground for quashing the conviction. *Rex* v. *Banks*, 81 L. J. K.B. 120; [1911] 2 K.B. 1095; 106 L. T. 48; 75 J. P. 567; 22 Cox C.C. 653; 55 S. J. 727; 27 T. L. R. 575—C.C.A.

Plea of Autrefois Convict—Manslaughter of Child — Previous Conviction for Wilful Neglect.]—By section 12, sub-section 4 of the Children Act, 1908, "Upon the trial of any person over the age of sixteen indicted for the manslaughter of a child or young person of whom he had the custody, charge or care, it shall be lawful for the jury, if they are satisfied that the accused is guilty of an offence under this section in respect of such child or young person, to find the accused guilty of such offence." The appellant was convicted before Justices, under section 12 of the above Act, of neglecting her children. After this conviction one of the children died, and the appellant was then indicted for manslaughter and was convicted:—*Held*, that on the indictment for manslaughter the plea of *autrefois convict* was not available to the appellant, as the child did not die until after the first conviction and as the above enactment did not enable the jury to find a verdict of wilful neglect in a case where on the facts they came to the conclusion that the accused was guilty of manslaughter. *Rex* v. *Tonks*, 60 S. J. 122; 32 T. L. R. 137—C.C.A.

Conviction Quashed on Certiorari—Accused again Charged with Same Offence — Res Judicata.]—Where a conviction by Justices is quashed on *certiorari* on the ground that it is bad on its face by reason of the sentence pronounced being one which the Justices had no justification to award, the case is to be treated as if the conviction had not been made. The accused may be put on trial again on the same charge, and he cannot successfully avail himself of the objection of *autrefois convict* or *autrefois acquit*, either of which must have for its basis an adjudication in fact within jurisdiction. *Conlin* v. *Patterson*, [1915] 2 Ir. R. 169—K.B. D.

3. Summing-up.

Whatever line of defence is taken by counsel at a trial, it is for the Judge to leave to the jury all the questions which appear to him to arise upon the evidence, whether they have been raised by counsel or not. *Rex* v. *Hopper*, 84 L. J. K.B. 1371; [1915] 2 K.B. 431; 113 L. T. 381; 79 J. P. 335; 59 S. J. 478; 31 T. L. R. 360—C.C.A.

The Court must not exclude from consideration any view of the facts of a case other than that presented by the prisoner in giving evidence. *Ib.*

4. Recognisances.

Defendant not Bound Over for Definite Period.]—The defendant was convicted of publishing a libel, and was bound over to be of good behaviour, but the recognisance contained no time limit:—*Held*, without deciding whether there was power to order a person to enter into a recognisance to be of good behaviour for an indefinite time, that the old-established practice should be followed and a definite time should be fixed. The Court accordingly fixed a period of five years. *Rex* v. *Edgar*, 109 L. T. 416; 77 J. P. 356; 23 Cox C.C. 558; 57 S. J. 519; 29 T. L. R. 512—C.C.A.

IV. JURIES.

See also Vol. IV. 1791, 2190.

Application to Quash Jury Panel.]—Where the record of a criminal trial has been moved into the King's Bench, the Divisional Court will not entertain an application made to its inherent jurisdiction to quash the panel on the ground that the jurors' book is irregular. *Rex* v. *Ryan* (*No.* 2), [1914] 2 Ir. R. 283—K.B. D.

Illness of Juryman—Separation from Rest of Jury—Sworn Jury Bailiff.]—Upon a trial for murder one of the jurymen was taken ill. He left the jury box and was taken out of Court, accompanied by two medical men and a jury bailiff, who, however, was not sworn for that purpose. After an absence of three-quarters of an hour, during which time no one but the doctors spoke to him, the juryman rejoined the rest of the jury and the trial proceeded. The prisoner having been convicted,—*Held*, that as the evidence shewed that there had been no opportunity of tampering with the juryman, the fact that he had left the Court in charge of an unsworn bailiff did not establish that there had been a mistrial. *Rex* v. *Crippen*, 80 L. J. K.B. 290; [1911] 1 K.B. 149; 103 L. T. 705; 75 J. P. 141; 22 Cox C.C. 289; 27 T. L. R. 69—C.C.A.

Separation of Juror from Colleagues after Summing-up — Abortive Trial — Admissibility of Juror's Explanation.]—If a juror, after the Judge has summed up in any criminal trial, separates himself from his colleagues, and, not being under the control of the Court, converses or is in a position to converse with other persons, it is an irregularity which renders the whole proceedings abortive. Hence, where a juror, when the jury retired to consider their verdict, separated himself from them and left the precincts of the Court for a short time, and then rejoined them, the conviction was quashed. But the prosecution were at liberty to recommence the proceedings. An explanatory letter of the juror was not admissible in evidence in the Court of Criminal Appeal. *Rex* v. *Ketteridge*, 84 L. J. K.B. 352; [1915] 1 K.B. 467; 112 L. T. 783; 79 J. P. 216; 59 S. J. 163; 31 T. L. R. 115—C.C.A.

Evidence as to Bias — Appeal.]—On an appeal where suggestions were made as to the probability of bias on the part of two of the jurymen who tried the case, the Court allowed evidence to be called in reference to those suggestions, but intimated that the granting

of such leave must not be taken as a precedent. *Rex* v. *Hancox*, 29 T. L. R. 331—C.C.A.

Juryman — Alleged Misconduct.] — On an appeal against a conviction the appellant applied for leave to call evidence that one of the jury had stated on the evening of the first day of the trial that all the jury were friendly with the police, and it made no difference what the appellant said. In the grounds of appeal there was nothing as to the misconduct of a juryman :—*Held*, that the Court ought not to accede to the application. *Rex* v. *Syme*, 112 L. T. 136; 79 J. P. 40; 30 T. L. R. 691—C.C.A.

Discharge of Jury—Effect of Subsequent Trial before Another Jury.]—Where a prisoner has been put upon his trial, given in charge to the jury, and, after the case has been opened, some of the witnesses are found not to be present owing to some unforeseen accident, it may be proper to adjourn the trial generally, but where the witnesses are absent owing to some mistake—for example, as to the date of trial—the proper practice is to adjourn the case for a reasonable time for the prisoner to be tried by the same jury, and, if that cannot be done, a verdict should be taken on the evidence as it stands. The jury should not be discharged and the case adjourned merely to enable the prosecution to establish a stronger case against the prisoner. *Rex* v. *Lewis*, 78 L. J. K.B. 722; 100 L. T. 976; 73 J. P. 346; 22 Cox C.C. 141; 25 T. L. R. 582—C.C.A.

Prisoners Tried in one Court—Discharge of Jury when Unable to Agree by Chairman of other Court—Discretion of "presiding Judge" —Presence of Prisoners when Jury Discharged.]—At quarter sessions, where two Courts had been formed, the appellants were tried in the second Court. The jury retired to consider their verdict, and the second Court then adjourned. During the adjournment, and in the absence of the chairman of the second Court, the chairman of the first Court, ascertaining that the jury, who were considering their verdict in the appellants' case, were unable to agree, sent for them and discharged them, and then tried the appellants with another jury. It did not appear whether the appellants were present in Court when the first jury were discharged :—*Held*, that as the whole body of Justices constituted the Court of quarter sessions, and that as it must be assumed that the first Court was properly constituted of two or more Justices, the chairman of the first Court could competently discharge the jury; and query, whether it was necessary, in order to constitute a valid discharge of the jury, that the appellants should then have been present in Court. *Rex* v. *Richardson*, 82 L. J. K.B. 333; [1913] 1 K.B. 395; 108 L. T. 384; 77 J. P. 248; 23 Cox C.C. 332; 57 S. J. 247; 29 T. L. R. 228—C.C.A.

Discussion of Clerk of Assize with Jury.]—On the trial of a prisoner at assizes, some time after the jury had retired to consider their verdict, the clerk of assize went to their room and asked if they had agreed or were likely to agree. The jury then put some questions to him, and he answered them and a discussion took place. Later he visited the jury again, and a further discussion took place. Eventually the jury found the prisoner guilty : —*Held*, that evidence from the jurymen to prove the above facts was inadmissible, but that the Court could act upon a report made by the clerk of assize, and that as it was impossible to say that but for the discussions and the advice given by him the jury would have come to a unanimous conclusion, the conviction must be quashed. *Rex* v. *Willmont*, 78 J. P. 352; 30 T. L. R. 499—C.C.A.

V. EVIDENCE.

1. Confessions and Admissions.

See also Vol. IV. 1811, 2192.

Confession—Admissibility.]—A private in an Indian regiment murdered one of the officers. Shortly afterwards, while he was in custody, the commanding officer asked him, "Why have you done such a senseless act?" and he replied, "Some three or four days he has been abusing me, and without doubt I killed him." At the trial the Judge admitted this statement, which was objected to by counsel for the defence. The prisoner was convicted :—*Held*, that even if the evidence was inadmissible—which *semble* that it was not—there being ample undisputed evidence *aliunde* of the guilt of the prisoner, and it being very improbable that the statement influenced the verdict of the jury, there was no such miscarriage of justice as would justify the Judicial Committee in advising an interference in the matter. *Ibrahim* v. *Regem*, 83 L. J. P.C. 185; [1914] A.C. 599; 111 L. T. 20; 30 T. L. R. 383—P.C.

Statement by Prisoner in Nature of Confession.]—A statement in the nature of a confession was made by a prisoner to a police officer. The police officer had not introduced the subject or held out any hope of pardon to the prisoner :—*Held*, that such statement was properly admitted in evidence against the prisoner. *Rex* v. *Godinho*, 76 J. P. 16; 55 S. J. 807; 28 T. L. R. 3—C.C.A.

Prisoners in Adjoining Cells—Conversation — Prisoners Charged Jointly — Statement by One—Implication of Other—Admissibility.]— Where two persons are charged with being concerned in the same offence and are put in adjoining cells and the police overhear a conversation between them, evidence of the conversation is admissible at the trial. *Rex* v. *Gardner*, 85 L. J. K.B. 206; 32 T. L. R. 97 —C.C.A.

Where two persons have been separately arrested and separately charged with an offence and have subsequently been put in the dock together and charged jointly, a statement made previously by one of them behind the back of the other and implicating him ought not to be read in the presence of that other. Nevertheless, any material statement or confession by the other in answer to such statement is admissible in evidence, but the Judge

ought to reject it if he is satisfied that it was read over to the prisoner for the mere purpose of getting an admission from him. *Rex* v. *Hancox*, 85 L. J. K.B. 206; 60 S. J. 76; 32 T. L. R. 97—C.C.A.

Accused Questioned by Police Officer.]—No police officer has a right to put any question to an accused person when he is once in custody. To say to him "It is alleged so and so" is only a subtle form of cross-examination. *Rex* v. *Winkel*, 76 J. P. 191—Avory, J.

The fact that a prisoner is in custody does not necessarily make a statement made by him in reply to a question by a police constable inadmissible in evidence. *Reg* v. *Gavin* (15 Cox C.C. 656) disapproved. *Rex* v. *Best*, 78 L. J. K.B. 658; [1909] 1 K.B. 692; 100 L. T. 622; 22 Cox C.C. 97; 25 T. L. R. 280—C.C.A.

Statements made by an accused person to a constable in reply to an enquiry are not inadmissible on the ground that the constable did not previously caution him, provided that the constable did not, before making the enquiry, make up his mind to take the person into custody or to take proceedings against him. *Lewis* v. *Harris*, 110 L. T. 337; 78 J. P. 68; 24 Cox C.C. 66; 58 S. J. 156; 30 T. L. R. 109—D.

Two Persons Jointly Charged—Written Statement by One Prisoner—Admissibility against the Other.]—A written statement made by one of two persons jointly charged with a criminal offence may be admissible in evidence against the other, notwithstanding that the latter, when the statement was read over to him, said that it was false. *Reg* v. *Smith* (18 Cox C.C. 470; 61 J. P. 120) dissented from. *Rex* v. *Thompson*, 79 L. J. K.B. 321; [1910] 1 K.B. 640; 102 L. T. 257; 74 J. P. 176; 22 Cox C.C. 299; 26 T. L. R. 252—C.C.A.

Statement by One Prisoner Implicating Another—Denial of Truth of Statement—Direction to Jury.]—The jury should be directed that a statement made by one prisoner implicating another and immediately denied, although strictly admissible as evidence, must not be accepted as evidence of the facts contained in such statement. Notwithstanding the lack of such a direction to the jury by the presiding Judge at the trial, the Court will act under the proviso to section 4 of the Criminal Appeal Act, 1907, if they are satisfied that no substantial miscarriage of justice has taken place. *Rex* v. *Curnock*, 111 L. T. 816; 24 Cox C.C. 440—C.C.A.

Evidence of Previous Convictions—Statements in Calendar.]—The appellant was convicted of larceny. He had been previously convicted, but the convictions were not formally proved. The Recorder, addressing him, said, "You have a long list against you," and the appellant replied, "Yes, sir":—*Held*, that the way in which the appellant was treated with regard to his previous convictions was irregular, and that the sentence imposed upon him should be reduced. *Per* Avory, J.: The admission that there was a long list against the appellant was not an admission by him that the list was true. The habit of acting on statements appearing in the calendar is irregular. *Rex* v. *Metcalfe*, 29 T. L. R. 512—C.C.A.

2. Depositions.

See also Vol. IV. 1835, 2195.

Person Charged with Indictable Offence—Material Witness Dangerously Ill—Duty of Magistrate to take Depositions at Residence of Witness.]—A magistrate before whom a person charged with an indictable offence is brought is bound under section 17 of the Indictable Offences Act, 1848, to go to the residence of a witness who is so dangerously ill that he is unable to appear in Court, in order to take the deposition of the witness in the presence of the accused person, provided that it is practicable for him to do so. The question whether or not it is practicable for the magistrate to take the deposition must be decided by the magistrate in his discretion, which he must exercise in a judicial manner. This obligation exists whenever a person is charged with any indictable offence, and not merely in cases of murder or manslaughter, and does not depend on whether the magistrate is asked by a superior officer of the police to take the deposition. If it is not practicable for that magistrate to take the deposition application may be made under section 6 of the Criminal Law Amendment Act, 1867, to another Justice to take the deposition. *Rex* v. *Bros; Hardy, Ex parte*, 80 L. J. K.B. 147; [1911] 1 K.B. 159; 103 L. T. 728; 74 J. P. 483; 22 Cox C.C. 352; 55 S. J. 47; 27 T. L. R. 41—D.

Deposition of Accused before Justices on Charge of Misdemeanour—Admissibility of Deposition at Trial for Felony.]—The prisoner was indicted under section 4 of the Criminal Law Amendment Act, 1885, for the felony of carnally knowing, in March, 1911, a girl under the age of thirteen years. He was also indicted under section 5 of the same Act for the misdemeanour of carnally knowing the same girl in April, 1912, she then being above the age of thirteen years and under the age of sixteen years. When before the Justices the prisoner, who was then only charged with the misdemeanour under section 5, gave evidence, in the course of which he admitted having had intercourse with the girl in March, 1911, and at Christmas, 1911, but not at any later date. At the trial the prosecution proceeded with the indictment for the felony under section 4 of the Act and tendered in evidence the prisoner's deposition before the Justices when before them on the misdemeanour charge under section 5:—*Held*, that the deposition was admissible in evidence. *Rex* v. *Chapman*, 29 T. L. R. 117—Channell, J.

Deposition of Accused before Coroner—Admissibility of Deposition at Trial of Accused.]—At the trial of M. for manslaughter

the prosecution proposed to put in as evidence against him his deposition at the inquest before the coroner :—*Held*, that the deposition was admissible under the Coroners Act, 1887, and that it could be proved by any person present at the inquest who could prove the coroner's handwriting and that the deposition was read over to and was signed by M. *Rex* v. *Marriott*, 75 J. P. 288; 22 Cox C.C. 211—Avory, J.

Contradiction by Witness at Trial of Deposition at Police Court—Hostile Witness.] —*See Rex* v. *Williams*, *post*, col. 451.

3. Statements by Deceased Persons.

Statements by Deceased Woman as to her Intention to Perform Operation on Herself.] —The appellant was indicted for having used an instrument on a woman with intent to procure her miscarriage. The woman upon whom the operation was alleged to have been performed had died although not as the result of the operation. At the trial counsel for the appellant proposed to ask in cross-examination a witness (*a*) whether the deceased had said to her some time previously to the date of the alleged illegal operation by the appellant that she intended to perform an illegal operation upon herself; and (*b*) whether the deceased had said about a week after the date of the alleged illegal operation by the appellant that she had in fact performed, or had attempted to perform, upon herself an illegal operation. The Judge refused to allow this evidence to be given. The appellant was convicted :—*Held*, that the evidence was rightly rejected. *Reg.* v. *Gloster* (16 Cox. C.C. 471) approved. *Rex* v. *Thomson*, 81 L. J. K.B. 892; [1912] 3 K.B. 19; 107 L. T. 464; 76 J. P. 431; 23 Cox C.C. 187; 28 T. L. R. 478—C.C.A.

Admissibility as Dying Declaration.]—In order that a statement of a deceased person should be admissible as a dying declaration it must be proved that at the time the statement was made death was imminent and that the person making the statement was under a settled hopeless expectation of death. The real test is not that the person making the statement should believe that he was at the immediate point of death, but that he should have given up every hope of life. *Rex* v. *Perry*, 78 L. J. K.B. 1034; [1909] 2 K.B. 697; 101 L. T. 127; 73 J. P. 456; 53 S. J. 810; 22 Cox C.C. 154; 25 T. L. R. 676—C.C.A.

4. Accomplices.

See also Vol. IV. 1852, 2197.

Corroboration.]—The kind of corroboration necessary to corroborate the evidence of an accomplice must depend upon the nature of the particular charge which is being enquired into. *Rex* v. *Winkel*, 76 J. P. 191—Avory, J.

It is the practice of the Court of Criminal Appeal to require corroboration of the evidence of an accomplice in cases where it is not necessary by statute. *Rex* v. *Everest* (2 Cr. App. Rep. 130) and *Rex* v. *Wilson* (6 Cr. App. Rep. 125) followed. *Rex* v. *Cohen*, 111 L. T. 77; 24 Cox C.C. 216—C.C.A.

Whether Corroboration Necessary—Living on Earnings of Prostitution — Evidence of Woman.]—There is no rule of law that on a charge against a man of living on the earnings of prostitution the evidence of the woman must be corroborated, but in such a case the Judge is justified in warning the jury not to accept the woman's evidence without most careful scrutiny. *Rex* v. *King* (*No.* 2), 111 L. T. 80; 24 Cox C.C. 223; 30 T. L. R. 476—C.C.A.

Child — Statement Made in Presence of Accused.]—The respondent was charged with an indecent assault on a child of tender years. At the trial the child was called as a witness and gave evidence not on oath, under the provisions of the Children Act, 1908, s. 30. Evidence of witnesses as to statements made by the child shortly after the commission of the offence, identifying the accused, and giving particulars of the offence charged, was admitted, and the prisoner was convicted :—*Held*, that such statements were not admissible as part of the *res gestæ*, and if they were admissible either as part of the act of identification or as statements made in the presence of the accused, which *semble* that they were, they did not amount to corroboration of the testimony of the child given in Court, as required by the statute, and that the conviction must be quashed. *Rex* v. *Norton* (79 L. J. K.B. 756; [1910] 2 K.B. 496) discussed and explained. *Director of Public Prosecutions* v. *Christie*, 83 L. J. K.B. 1097; [1914] A.C. 545; 111 L. T. 220; 78 J. P. 321; 24 Cox C.C. 249; 58 S. J. 515; 30 T. L. R. 471—H.L. (E.)

Judgment of the Court of Criminal Appeal (30 T. L. R. 41; 9 Cr. App. Rep. 169) affirmed. *Ib.*

Wife of Accomplice.] — Whether the testimony of the wife of an accomplice can be corroboration of his statements, *quære*. *Rex* v. *Payne*, 29 T. L. R. 250—C.C.A.

Misdirection as to Corroboration.] — Conviction for murder quashed on the ground of misdirection by the Judge as to the extent of corroboration of a witness whose character and whose part in the transaction were such that his evidence required corroboration. *Rex* v. *Ellson*, 76 J. P. 88; 28 T. L. R. 1 — C.C.A.

5. Competency of Witnesses.

See also Vol. IV. 1855, 2198.

a. Prisoners.

Prisoner Giving Evidence on Behalf of Co-prisoner—Cross-examination as to his own Guilt.]—A prisoner who refuses to give evidence on his own behalf, but who gives evidence on behalf of a fellow-prisoner, is liable under section 1, sub-section (*e*) of the Criminal Evidence Act, 1898, to be cross-

examined in order to shew that he himself is guilty of the offence charged. *Rex* v. *Rowland*, 79 L. J. K.B. 327; [1910] 1 K.B. 458; 102 L. T. 112; 74 J. P. 144; 22 Cox C.C. 273; 26 T. L. R. 202—C.C.A.

Questions Tending to Shew Commission of Another Offence—Admissibility—"Proof."]—The appellant was charged with having had carnal knowledge of a girl under sixteen years of age. The prosecutrix stated that at the time of the commission of the offence charged he had told her of his immoral relations with another girl, also alleged to be under sixteen years of age, and had said that he hoped that the prosecutrix would be as loving to him as this other girl had been. The appellant gave evidence on his own behalf, and in cross-examination was asked whether he had had such immoral relations, and letters alleged to have been written by him to the other girl were put to him:—*Held*, that, although they tended to shew that he had committed an offence other than that with which he was then charged, the questions were admissible on the ground that they were relevant to the charge then being tried as tending to establish a fact consistent only with his guilt, and that they came within the exception contained in section 1 (*f*) (i) of the Criminal Evidence Act, 1898. *Rex* v. *Chitson*, 79 L. J. K.B. 10; [1909] 2 K.B. 945; 102 L. T. 224; 73 J. P. 491; 22 Cox C.C. 286; 53 S. J. 746; 25 T. L. R. 818—C.C.A.

Semble, "proof" in the above sub-section is equivalent to "evidence." *Ib.*

In considering whether, within section 1 (*f*) of the Criminal Evidence Act, 1898, a question put to a prisoner in cross-examination tends to shew that he has committed an offence other than that charged in the particular indictment, it must be judged by the light of the other questions put to him. Any question or series of questions which would reasonably lead the jury to believe that it is being imputed to the prisoner that he has committed another offence tends to shew that he has committed that other offence. The object of the enactment is that, except in the specified cases, it should not be suggested to the minds of the jury by means of any questions put to the prisoner that he has committed another offence. Where a question of this nature is improperly put, it is the duty of the Judge not to wait for any objection from the prisoner's counsel, but to stop such question himself; and if, by mischance, the question is put, it is the duty of the Judge to direct the jury to disregard it, and not to let it influence their minds. *Rex* v. *Ellis*, 79 L. J. K.B. 841; [1910] 2 K.B. 746; 102 L. T. 922; 74 J. P. 388; 22 Cox C.C. 330; 26 T. L. R. 535—C.C.A.

Clause 2 of section 1 (*f*) of the Criminal Evidence Act, 1898, is intended to apply to cases where witnesses to character are called, or where evidence of the good character of the prisoner is sought to be elicited from the witnesses for the prosecution. It does not apply to mere assertions of innocence, or repudiation of guilt, on the part of the prisoner, nor to reasons given by him for such assertions or repudiation. *Ib.*

The appellant was convicted of obtaining money from D. by false pretences. It was alleged by the prosecution that various articles of china referred to in the indictment were sold by the appellant to D. under an agreement that he was to charge D. the cost price plus 10 per cent. profit or commission; that the appellant represented to D. that the cost was much in excess of the real cost; and that by this means he had obtained from D. much larger sums than he was entitled to. The appellant gave evidence on his own behalf, and in cross-examination questions were put to him suggesting that in other transactions he had obtained money from D. by alleging that certain china figures were genuine pieces of old Dresden china, whereas he must have known that they were not:—*Held*, that, as evidence that the appellant had committed frauds in connection with those other transactions was not admissible to shew that he was guilty of the frauds charged, the questions put in cross-examination were improperly allowed, inasmuch as they tended to shew that the appellant had committed an offence other than that with which he was charged, and that the conviction must be quashed, as the jury must have been influenced by such evidence. *Ib.*

Question Tending to Shew Bad Character—Relevant Matter.]—A question put in cross-examination to a person charged with an offence is admissible if it is relevant to the issue which is being tried, notwithstanding that it tends to shew that such person is of bad character, and notwithstanding the provisions of section 1 (*f*) of the Criminal Evidence Act, 1898. *Rex* v. *Kurasch*, 84 L. J. K.B. 1497; [1915] 2 K.B. 749; 113 L. T. 431; 79 J. P. 399—C.C.A.

The appellant and four other men were tried and convicted for conspiring by means of false pretences to defraud the prosecutor, the false pretences alleged being the holding of a mock auction. The defendants denied the false pretences, and also alleged that they were all merely the servants of a woman who was the proprietress of the auction business. Evidence was given for the prosecution that the appellant had said at the time of his arrest that one of the other defendants was employed by him. The appellant gave evidence, and was asked in cross-examination whether it was not the fact that he and the proprietress of the business were at the date of the offence living together as man and wife. The appellant answered the question in the affirmative. The appellant appealed against his conviction on the ground that this question was a contravention of the Criminal Evidence Act, 1898, s. 1 (*f*), in that it tended to shew that he was a person of bad character:—*Held*, that, the defence having raised the issue that the defendants were only the servants of the proprietress of the business, it was material to shew what were the real relations existing between her and the appellant, and that the question was therefore admissible. Principle of law laid down in *Rex* v. *Fisher* (79 L. J. K.B. 187; [1910] 1 K.B. 149) and *Rex* v. *Rodney* (82 L. J. K.B. 1070; [1913] 3 K.B. 468) approved and applied. *Ib.*

Conduct of Defence — Imputations on Character of Witness for Prosecution—Cross-examination of Prisoner.]—Circumstances in which the Court held that the cross-examination of the appellant as to character was justified in view of the questions put by him in cross-examination to one of the witnesses for the prosecution. *Rex* v. *Watson*, 109 L. T. 335; 23 Cox C.C. 543; 29 T. L. R. 450—C.C.A.

A prisoner on his trial for robbery with violence, in giving evidence on his own behalf, stated that a detective had coached the prosecutor as to the amount he was to say he was robbed of, and that a police inspector had struck him in the face when he protested against the coaching of the prosecutor. Neither of these police officers was a witness in the case. The prisoner also said in his evidence that the prosecutor was a habitual drunkard, and further that the police constable who arrested him had used improper violence in doing so:—*Held*, that those statements did not involve imputations upon the character of the prosecutor or the witnesses for the prosecution within section 1 (*f*) of the Criminal Evidence Act, 1898, so as to justify the cross-examination of the prisoner as to his previous convictions. *Rex* v. *Westfall*, 107 L. T. 463; 76 J. P. 335; 23 Cox C.C. 185; 28 T. L. R. 297—C.C.A.

The excepting words of section 1 (*f*) (ii) of the Criminal Evidence Act, 1898, which section enacts that a person charged and called as a witness in pursuance of the Act shall not be required to answer any question tending to shew that he has committed or been convicted of or been charged with any offence other than the one then charged against him, "unless . . . (ii) . . . the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution," must receive their ordinary and natural interpretation, and must not be qualified by adding or inserting the words "unnecessarily" or "unjustifiably" or "for purposes other than that of developing the defence," or other similar words. Hence, where the prisoner's counsel cross-examined witnesses for the prosecution to shew that it was they who had committed the offence with which the prisoner was charged, it was held that the conduct or nature of the defence involved imputations on their character within the meaning of the above section, and that he could be cross-examined as to a previous conviction. *Rex* v. *Bridgwater* (74 L. J. K.B. 35; [1905] 1 K.B. 131) and *Rex* v. *Preston* (78 L. J. K.B. 335; [1909] 1 K.B. 568) distinguished. *Rex* v. *Hudson*, 81 L. J. K.B. 861; [1912] 2 K.B. 464; 107 L. T. 31; 76 J. P. 421; 23 Cox C.C. 61; 56 S. J. 574; 28 T. L. R. 459—C.C.A.

On the hearing of a charge of subornation of perjury a witness for the prosecution was put forward as an accomplice and a man of bad character. He was cross-examined on behalf of the accused as to a suggested charge of fraud to which no reference had been made:—*Held*, that this amounted to an imputation on the character of the witness which entitled the prosecution to cross-examine the accused as to a previous conviction. *Rex* v. *Cohen*, 111 L. T. 77; 24 Cox C.C. 216—C.C.A.

Comment by Judge on Fact of Person not Giving Evidence.]—If a prisoner elects not to take advantage of the provisions of section 1 of the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), and does not offer himself as a witness on his own behalf, it is entirely in the discretion of the Judge to comment on that fact in whatever way and to whatever extent he thinks fit. *Rex* v. *Smith*, 84 L. J. K.B. 2153; 59 S. J. 704; 31 T. L. R. 617—C.C.A.

b. Other Witnesses.

Identification.]—Observations as to methods of identification of accused persons. *Rex* v. *Chapman*, 28 T. L. R. 81—C.C.A.

Opinion of Medical Witnesses — Admissibility.]—The opinion of medical witnesses on any matter is admissible in evidence, if the giving of such opinion entails the exercise of their professional skill and knowledge. *Rex* v. *Smith*, 84 L. J. K.B. 2153; 59 S. J. 704; 31 T. L. R. 617—C.C.A.

Murder—Expert Giving Evidence as to whether Wound Self-inflicted or not—Expert not having seen Body of Deceased—Admissibility.]—In a trial for murder an expert who has not seen and examined the body of the deceased, but who has heard a description given by a doctor or other witness who has seen the body and the wounds thereon, may be called as a witness and may competently be asked whether in his opinion, assuming the facts described by the witness who has seen the body to be true, the wounds could have been self-inflicted or not. *Rex* v. *Mason*, 76 J. P. 184; 28 T. L. R. 120—C.C.A.

Confidential Communication between Prisoner and Solicitor.] — Evidence of a confidential communication between a prisoner and his solicitor is admissible if the consultation with the solicitor, in the course of which such communication was made, was sought by the prisoner for the purpose of ascertaining how to commit the offence charged against him, or whether it was necessary or expedient to commit it in order to obtain a desired end. *Reg.* v. *Cox* (54 L. J. M.C. 41; 14 Q.B. D. 153) followed. *Rex* v. *Smith*, 84 L. J. K.B. 2153; 59 S. J. 704; 31 T. L. R. 617—C.C.A.

Husband or Wife—Competent or Compellable Witness.]—By section 4, sub-section 1 of the Criminal Evidence Act, 1898, the wife or husband of a person charged with an offence under any enactment mentioned in the schedule to that Act is a competent but not compellable witness against the person charged. *Leach* v. *Director of Public Prosecutions*, 81 L. J. K.B. 616; [1912] A.C. 305; 106 L. T. 281; 22 Cox C.C. 721; 76 J. P. 201; 56 S. J. 342; 28 T. L. R. 289—H.L. (E.)

——**Living on Earnings of Wife's Prostitution—Admissibility of Wife's Evidence.**]—Upon an information against the prisoner

under section 1 of the Vagrancy Act, 1898, for knowingly living on the earnings of the prostitution of his wife, the prosecution tendered the prisoner's wife as a witness against him, but the magistrate refused to receive her evidence :—*Held* (Lush, J., dissenting), that that evidence was inadmissible, and that the magistrate was right in excluding it. *Director of Public Prosecutions* v. *Blady*, 81 L. J. K.B. 613; [1912] 2 K.B. 89; 106 L. T. 302; 76 J. P. 141; 22 Cox C.C. 715; 28 T. L. R. 193—D.

—— **Whether Objection to Give Evidence Taken by Wife.**]—On a prosecution of the appellant for an offence under the Criminal Law Amendment Act, 1885, his wife was called as a witness by the prosecution before the Justices, and she gave evidence. She had not been warned that she was not bound to give evidence unless she wished, but in the course of giving her evidence she said, "I wish to shield my husband." The appellant was committed for trial, and at the assizes, his wife being then ill, her deposition was read to the jury. The appellant was convicted :—*Held*, that, although the appellant's wife was not a compellable witness, her statement in the course of her evidence, "I wish to shield my husband," could not be regarded as equivalent to a statement that she did not wish to give evidence; and therefore that her deposition was properly admitted at the trial. *Rex* v. *Acaster*, 106 L. T. 384; 76 J. P. 263; 22 Cox C.C. 743; 28 T. L. R. 321—C.C.A.

Semble, in a case where a wife, although a competent, is not a compellable, witness against her husband, it may be proper, in view of observations by the House of Lords in *Leach* v. *Director of Public Prosecutions* (*supra*), that she should be warned by the Judge that she is not bound to give evidence. *Ib.*

Children—Unsworn Evidence—Requirement of Corroboration—Direction to Jury. —Where on a criminal prosecution the prosecutrix is a child of tender years and evidence is given by her under section 30 of the Children Act, 1908, without being sworn, the Judge ought to point out to the jury that they must not act on the evidence of the child unless it is corroborated. *Rex* v. *Murray*, 30 T. L. R. 196—C.C.A.

Deposition at Police Court—Contradiction by Witness at Trial—Hostile Witness.]—On appeal from a conviction for murder,—*Held*, on the facts, that there had been no misdirection by the Judge at the trial in reference to the evidence of a witness for the prosecution who withdrew on one material point the evidence she gave at the police Court and was allowed to be treated by the counsel for the prosecution as a hostile witness. *Rex* v. *Williams*, 77 J. P. 240; 29 T. L. R. 188—C.C.A.

6. Evidence to Credit.

Evidence of Good Character of Prosecutrix—Evidence in Contradiction—Admissibility.]—The appellant was charged with an offence against the Criminal Law Amendment Act, 1885. In opening the case counsel for the Crown told the jury that the prosecutrix had been seduced by the appellant, and she swore the same thing in evidence. Evidence tendered by the defence to shew that previous to the alleged offence she had been a girl of bad character was rejected :—*Held*, that it was rightly rejected. *Rex* v. *Cargill*, 82 L. J. K.B. 655; [1913] 2 K.B. 271; 108 L. T. 816; 77 J. P. 347; 23 Cox C.C. 382; 29 T. L. R. 382—C.C.A.

7. Practice at Trial.

See also Vol. IV. 1860, 2204.

Submission at Close of Case for Prosecution that no Case to go to Jury.]—*Semble*, the Court of Criminal Appeal will not follow the decision in *Rex* v. *Joiner* (74 J. P. 200) in view of the decisions in *Rex* v. *Pearson* (72 J. P. 449) and *Rex* v. *George* (73 J. P. 11), as to evidence called for the defence after an unsuccessful submission being made at the close of the case for the prosecution that no evidence to go to the jury. *Rex* v. *Fraser*, 76 J. P. 168—C.C.A.

Prisoner Unable to Understand English—Evidence at Trial not Interpreted—Prisoner Defended by Counsel—No Application to Have Evidence Interpreted.] — Where a prisoner who understands little or no English is tried for a criminal offence, and is undefended by counsel, all the evidence at the trial should be interpreted to him. If he is defended by counsel, the safe course is that the evidence should be interpreted unless the prisoner or his counsel are willing to dispense with the interpretation and the Judge assents to such a course. He should not assent unless he is satisfied that the prisoner knows the nature of the case which is made against him, and in any case any substantial departure from, or addition to, the evidence appearing on the depositions should be interpreted to the prisoner, even if his counsel does not apply for it to be done. *Rex* v. *Lee Kun*, 60 S. J. 158—C.C.A.

The appellant, a Chinaman, who understood hardly any English, was convicted of murder. He was defended by counsel at the trial, who did not apply that the evidence should be interpreted, nor was this done :—*Held*, that, as the evidence at the trial did not differ from that given at the police court, which had been interpreted, no substantial miscarriage of justice had occurred. The appeal was therefore dismissed under section 4, sub-section 1 of the Criminal Appeal Act, 1907. *Ib.*

Calling Fresh Evidence during Final Speech.]—The Court granted leave to the accused to call fresh evidence after counsel for the Crown had commenced his final speech to the jury. *Rex* v. *Morrison*, 75 J. P. 272; 22 Cox C.C. 214—Darling, J.

Rebutting Evidence—Admissibility.]—The question whether upon a criminal trial the prosecution shall be allowed to call rebutting evidence, after the close of the case for the

defence, is a question for the discretion of the Judge presiding at the trial. *Rex* v. *Crippen*, 80 L. J. K.B. 290; [1911] 1 K.B. 149; 103 L. T. 705; 75 J. P. 141; 22 Cox C.C. 289; 27 T. L. R. 69—C.C.A.

Statements by Police Officer after Conviction of Prisoner.]—Where, after a prisoner has been convicted, a police officer makes a statement to the Judge as to the prisoner's antecedents, and the prisoner does not challenge the accuracy of that statement, the Judge is entitled to take it into consideration on the question of sentence, notwithstanding that some parts of the statement may be hearsay. If, however, the prisoner challenges any part of the statement, the Judge should then enquire into it, and if he thinks it of sufficient importance that it ought to be proved by legal evidence he can, if necessary, adjourn the case for such proof to be forthcoming; or, instead of doing this, he can disregard the disputed part of the statement altogether. *Rex* v. *Campbell*, 75 J. P. 216; 55 S. J. 273; 27 T. L. R. 256—C.C.A.

8. Evidence of other Acts and Offences.

See also Vol. IV. 1874, 2204.

Previous Charge — Admissibility.]—On a criminal prosecution evidence as to a previous charge on which the prisoner has not yet been tried is inadmissible. *Rex* v. *Barron* (*No. 1*), 110 L. T. 350; 78 J. P. 184; 24 Cox C.C. 83; 30 T. L. R. 187—C.C.A.

Previous Similar Offence—Admissibility.]—On a charge against the appellants of demanding money with menaces at the trial evidence was admitted to prove that a few months previously a similar transaction had been carried out by the same agent on behalf of the appellants and a sum of money paid to him in gold :—*Held*, that the evidence was properly admitted. *Rex* v. *Boyle*, 83 L. J. K.B. 1801; [1914] 3 K.B. 339; 111 L. T. 638; 78 J. P. 390; 58 S. J. 673; 30 T. L. R. 521—C.C.A.

J. was charged with having exposed his person in a place of public resort with intent to insult the complainant, a female, on July 16, 1914. He gave evidence on his own behalf, and in cross-examination was asked if he had not exposed himself to the complainant at the same place in May, 1914. He denied that he had done so. The Justices ruled that this question should not have been put as being not relevant to the issue before them and contrary to the provisions of the Criminal Evidence Act, 1898. Subsequently the solicitor for the prosecution asked leave to recall the complainant in order to rebut this denial by the respondent, and also to call other witnesses to shew that the respondent had been guilty of a systematic course of conduct by indecently exposing himself with intent to insult females on other occasions at the same place and about the same hour. This application was refused :—*Held*, that the question put to the respondent in cross-examination and the evidence of the complainant in rebuttal of his denial were admissible for the purpose of shewing that the complainant was not mistaken in her identification of the respondent, and that the act of the respondent was done not accidentally, but wilfully, and with intent to insult the complainant. *Held*, further, that the evidence of other witnesses to prove a systematic course of conduct on the part of the respondent was not admissible unless it appeared clearly and definitely that the defence of accident, mistake, or absence of intention to insult was going to be relied upon, and that the other occasions which would be referred to therein were sufficiently proximate to the alleged offence to shew a systematic course of conduct. *Perkins* v. *Jeffery*, 84 L. J. K.B. 1554; [1915] 2 K.B. 702; 113 L. T. 456; 79 J. P. 425; 31 T. L. R. 444—D.

Observations in *Rex* v. *Bond* (75 L. J. K.B. 693; [1906] 2 K.B. 389) considered. *Ib.*

—— **Obtaining Credit by Fraud — Admissibility.**]—The appellant was charged with obtaining credit by fraud. Evidence was given of two previous occasions upon which he had obtained credit and had not paid :—*Held*, that, as the Court thought that those transactions could not properly have been the subject of a criminal charge, they were not transactions of a similar nature with the transaction in question, and therefore could not be given in evidence to shew fraud on the latter occasion. *Rex* v. *Baird*, 84 L. J. K.B. 1785; 113 L. T. 608—C.C.A.

See also Rex v. *Fisher*, *ante*, col. 406.

Subsequent Act—Breaking into House with Intent to Commit Rape—Evidence of Accused having Connection with Another Woman shortly Afterwards — Admissibility.]—The appellant was charged with having burglariously broken and entered a dwelling house with intent to commit rape on a certain woman therein. At the trial the defences really in issue were—first, that the appellant did not break into the house at all; secondly, that he did not break into the house with any intention to commit rape; and thirdly, that the prosecutrix's story as to what occurred in the house was untrue. Evidence was tendered by the prosecution, and, although objected to by counsel for the appellant, was admitted, to shew that after leaving the prosecutrix's house the appellant went to another house about three miles distant, gained access to a woman's bedroom by getting down the chimney, and had connection with that woman with her consent. The appellant was convicted :—*Held*, that the evidence which had been objected to was improperly admitted, and as the Court was unable to say that the jury might not have been influenced by that evidence, the conviction must be quashed. *Rex* v. *Rodley*, 82 L. J. K.B. 1070; [1913] 3 K.B. 468; 109 L. T. 476; 77 J. P. 465; 23 Cox C.C. 574; 58 S. J. 51; 29 T. L. R. 700—C.C.A.

—— **Other Criminal Acts.**]—At the trial on indictment of a prisoner the prosecution may, in order to prove the quality of the act charged in the indictment, give evidence of subsequent criminal acts by the prisoner, and the facts and circumstances surrounding the same,

other than that covered by the indictment, when a *prima facie* case in law has been established against the prisoner of the act charged in the indictment. *Rex* v. *Smith*, 84 L. J. K.B. 2153; 59 S. J. 704; 31 T. L. R. 617—C.C.A.

Forging and Uttering Deed—Evidence of other Forged Deeds at a Later Date.]—On the trial of a charge for forging and uttering a forged deed, evidence was admitted as to other deeds forged by the appellant which were dealt with by him at a date subsequent to the charge preferred :—*Held*, that evidence as to the other forged deeds was connected with the principal charge: and that the evidence was admissible to prove guilty knowledge on the part of the appellant, whether relating to previous or subsequent transactions. *Rex* v. *Mason*, 111 L. T. 336; 78 J. P. 389; 24 Cox C.C. 305—C.C.A.

Evidence of Offence other than that Charged —Corroborative Evidence.]—In a prosecution commenced on May 7, 1913, the appellant was indicted, under the Criminal Law Amendment Act, 1885, for having unlawful carnal knowledge of a girl, over the age of thirteen and under the age of sixteen years, in the months of November and December, 1912. By the conjoint effect of section 5, sub-section 1 of the Act and section 27 of the Prevention of Cruelty to Children Act, 1904, no prosecution for the offence can be commenced more than six months after the commission thereof. Evidence was given by the girl that the appellant had sexual intercourse with her in December, 1912, and that in the previous November she was two months gone with child. Further evidence, consisting of her testimony that in April, 1913, when the appellant discovered that she was pregnant, he and his wife persuaded her to throw all the blame on a farm labourer who had been in the appellant's employment prior to November 5, 1912, was admitted, and also the testimony of other persons to the effect that the appellant about the same time bribed this man to leave the country. This further evidence was objected to, first, on the ground that it was irrelevant to the issue and tended to shew that the appellant was guilty of offences other than that charged in the indictment; and secondly, because by the statutes a prosecution could not be commenced more than six months after the commission of the offence, and such evidence would shew that other offences under the Act of 1885 had been committed prior to the period of limitation. Very slight evidence, other than the above, corroborating the girl's story, was given at the trial :—*Held*, on appeal, that the further evidence was properly admitted. First, it was relevant to the issue as being corroborative of the girl's account of what took place in December, 1912, according to the general principle that the relationship between the appellant and the girl prior to the period of limitation would be likely to continue. Such evidence was admissible not because it tended to shew that other offences had been committed, but notwithstanding that in the particular case it might happen to do so. Secondly, the provision in the statutes as to time did not affect the admissibility of evidence; it merely limited the time for launching a prosecution. *Rex* v. *Shellaker*, 83 L. J. K.B. 413; [1914] 1 K.B. 414; 110 L. T. 351; 78 J. P. 159; 24 Cox C.C. 86; 30 T. L. R. 194—C.C.A.

Reg. v. *Ollis* (69 L. J. Q.B. 918; [1900] 2 Q.B. 758) and *Director of Public Prosecutions* or *Rex* v. *Ball* (*No.* 2) (80 L. J. K.B. 691; [1911] A.C. 47) followed. *Reg.* v. *Beighton* (18 Cox C.C. 535) overruled. *Ib.*

9. Previous Convictions.

Evidence of Previous Conviction Involving Fraud—Receiving Stolen Goods—Guilty Knowledge—"Stolen property has been found in his possession."]—Upon the trial of a prisoner for receiving stolen property, evidence having been given that the stolen property was found in the possession of pawnbrokers with whom the prisoner had pawned them, evidence was admitted, with a view of shewing guilty knowledge, that the prisoner had been convicted within the preceding five years of an offence involving fraud or dishonesty :—*Held*, that the evidence of such previous conviction was admissible under section 19 of the Prevention of Crimes Act, 1871. *Rex* v. *Rowland*, 79 L. J. K.B. 327; [1910] 1 K.B. 458; 102 L. T. 112; 74 J. P. 144; 22 Cox C.C. 273; 26 T. L. R. 202—C.C.A.

—— **Police Court Proceedings — Reports in Newspapers.**]—Where evidence of previous convictions is given at a police Court in a case which is committed for trial, such evidence ought not to be referred to by a newspaper in its report of the proceedings. *Rex* v. *Sanderson*, 31 T. L. R. 447—C.C.A.

10. Proof and Effect of Convictions.

No Certified Copy of Conviction.] — A superintendent of police deposed that he was present at assizes and that the appellant had been convicted on a certain charge. No certified copy of the conviction under section 13 of the Evidence Act, 1851, was produced :—*Held*, that the conviction was sufficiently proved. *Mash* v. *Darley*, 83 L. J. K.B. 78; [1914] 1 K.B. 1; 109 L. T. 873; 78 J. P. 4; 23 Cox C.C. 661—D. Affirmed on other grounds *ante*, Bastardy.

Effect of Conviction as Evidence—Res inter Alios Acta.]—A certified copy of the conviction is admissible evidence not merely as proving the conviction itself, but also as presumptive proof of the commission of the crime in question. *Leyman* v. *Latimer* (47 L. J. Q.B. 470; 3 Ex. D. 352), as followed in *Yates* v. *Kyffin-Taylor* ([1899] W. N. 141), doubted. *Crippen, In the goods of*, 80 L. J. P. 47; [1911] P. 108; 104 L. T. 224; 55 S. J. 273; 27 T. L. R. 258—Evans, P.

11. Documents.

See also Vol. IV. 1881, 2206.

Inadmissible Document—Suggestion as to Contents.]—Counsel for the prosecution has no

right, directly or indirectly, to suggest in the hearing of the jury what the contents of an inadmissible document are, but the Court will not, on the ground of such a suggestion, interfere with a verdict of "Guilty," unless the jury have been thereby influenced to give a verdict which otherwise they would not have given. *Rex* v. *Seham Yousry*, 84 L. J. K.B. 1272; 112 L. T. 311; 31 T. L. R. 27—C.C.A.

VI. VERDICT.

See also Vol. IV. 1891, 2206.

Conviction as Accessory before Fact to a Burglary and of Receiving—Inconsistency.]—The appellant was convicted of being accessory before the fact to a burglary and of receiving the stolen goods:—*Held*, following *Reg.* v. *Hughes* (Bell C.C. 242), that there was no inconsistency in the verdict. *Rex* v. *Goodspeed*, 75 J. P. 232; 55 S. J. 273; 27 T. L. R. 255—C.C.A.

Riot—Conviction for Assault.]—The appellant and ten others were indicted for that they "unlawfully, riotously, and routously did assemble and gather together to disturb the peace of . . . the King, and being so assembled . . . in and upon (A. B.) . . . then and there being, unlawfully, riotously, and routously did make and assault," &c.:—*Held*, that on this indictment the jury could convict the appellant of an assault. Statement of the law in *Archbold's Criminal Pleading* (24th ed.), at p. 228, that "at common law a defendant may be convicted of a less aggravated felony or misdemeanour on an indictment charging a felony or misdemeanour of greater aggravation, provided that the indictment contains words apt to include both offences," approved. *Rex* v. *O'Brien*, 104 L. T. 113; 75 J. P. 192; 22 Cox C.C. 374; 55 S. J. 219; 27 T. L. R. 204—C.C.A.

Special Verdict—Effect of—Sending Letter Threatening to Murder.]—The appellant was indicted under section 16 of the Offences Against the Person Act, 1861, for sending a letter to Mr. Ramsay MacDonald, M.P., threatening to murder one Alfred Reed. At the trial the Judge left the following questions to the jury: "(1) Is defendant guilty or not guilty of maliciously sending the letter threatening to murder Alfred Reed? (2) Did he intend to murder Reed, or was the threat 'bluff' and made in order to call attention to his grievances? (3) Did the defendant send the letter of June 15 with the intention of so alarming Mr. Ramsay MacDonald as to the safety of Reed's life that Mr. MacDonald and his friends would support defendant's claims against the Home Secretary and the police authorities?" The jury did not reply directly to the questions, but returned the following verdict: "We are of opinion that defendant wrote the letter of June 15 with the object of pressing Mr. Ramsay MacDonald and his friends to support his claims against the Home Secretary and the police authorities. We are further of opinion that he did not intend to murder Reed, and that the threat was 'bluff' and made in order to call attention to his grievances." The Judge considered this finding equivalent to a verdict of guilty, and ordered a verdict of guilty to be entered:—*Held*, that the Judge was right in treating the verdict as one of guilty. *Rex* v. *Syme*, 75 J. P. 535; 55 S. J. 704; 27 T. L. R. 562—C.C.A.

Reconsideration.]—The appellant was indicted for attempting to commit suicide. At the trial the jury returned the following verdict: "Guilty, but of unconscious mind." The Judge thereupon asked them to reconsider their verdict, and then brought to their attention certain evidence which had been given and which shewed that the appellant knew what he was doing. The jury having reconsidered the matter, found the appellant guilty:—*Held*, that the jury not having insisted upon their first verdict being received, the Judge was entitled to ask them to reconsider it, and that the verdict of Guilty was rightly recorded. *Rex* v. *Crisp*, 76 J. P. 304; 28 T. L. R. 296—C.C.A.

VII. JUDGMENT AND PUNISHMENT.

See also Vol. IV. 1901, 2206.

1. Sentence of Hard Labour.

Common Law Misdemeanour.]—Where a prisoner is convicted of a comman law misdemeanour, he cannot be sentenced to a term of imprisonment with hard labour. *Rex* v. *Davidson*, 100 L. T. 623; 22 Cox C.C. 99; 25 T. L. R. 352—C.C.A.

2. Sentence of Whipping.

Child—Power of Court to Order Whipping.]—The power of the Court under section 4 of the Larceny Act, 1861, to order a male person under sixteen years of age convicted under that section to be whipped as well as imprisoned is not taken away in the case where such person is a child within the meaning of the Children Act, 1908, and has been committed to custody in a place of detention under section 106 of the Act in lieu of being sentenced to imprisonment. *Rex* v. *Lydford*, 83 L. J. K.B. 589; [1914] 2 K.B. 378; 110 L. T. 781; 78 J. P. 213; 24 Cox C.C. 142; 58 S. J. 363; 30 T. L. R. 349—C.C.A.

Person to Execute Sentence.]—The proper person to execute the sentence is the sheriff or the deputy he appoints for that purpose. *Ib.*

Carnal Knowledge of Girl under Thirteen—"Offender whose age does not exceed sixteen years."]—A person who at the time of committing the offence of carnally knowing a girl under the age of thirteen is under the age of sixteen, but who at the time he appears in Court to answer the indictment charging him with the offence is over the age of sixteen, is not a person "whose age does not exceed sixteen years" within the meaning of the proviso to section 4 of the Criminal Law Amendment Act, 1885. In such a case, therefore, the Court has no power under that proviso to order the offender to be whipped.

Rex v. *Cawthron*, 82 L. J. K.B. 981; [1913] 3 K.B. 168; 109 L. T. 412; 77 J. P. 460; 23 Cox C.C. 548; 29 T. L. R. 600—C.A.

3. Recommendation for Expulsion.

Alien—Discretion of Judge.]—In 1893 the appellant, who was an alien, was convicted of administering a drug with intent to rob, and in 1905 he was convicted of conspiracy. In 1913, on a charge of indecent assault, the appellant pleaded guilty to a common assault, and the Judge accept this plea and passed a sentence of imprisonment and recommended the appellant for expulsion under the Aliens Act, 1905:—*Held*, that the question of recommendation for expulsion was a matter for the Judge's discretion, and that on the facts his decision to make such recommendation ought not to be reversed. *Rex* v. *Josephson*, 110 L. T. 512; 24 Cox C.C. 128; 30 T. L. R. 243—C.C.A.

Circumstances in which the Court quashed so much of the sentence on the appellant as recommended her expulsion from this country. *Rex* v. *Fine*, 77 J. P. 79; 29 T. L. R. 61—C.C.A.

4. Length of Sentence.

Conviction for one offence—Admission by Prisoner of Different Offence for which he is not being Tried—Sentence for Offence on which Convicted—Consideration in Passing Sentence of Admission of other Offence.]—Where a prisoner on being found guilty for one offence admits that he has committed another offence for which he has not yet been tried, and asks the Court to consider that other offence in fixing his sentence, the Court may properly take that other offence into consideration, if it is of the same nature as that for which the prisoner has been found guilty, whether there has been a committal in respect of that other offence or not. If there has been a committal the Court should ascertain whether the authorities prosecuting for the other offence are willing that it should be taken into consideration. If they are unwilling, the Court should not take the other offence into consideration as a matter of course. If the other offence is of a different nature, and has been committed in another county, the Court should not take the other offence into consideration without the consent of the authorities prosecuting the prisoner in respect of it, and without considering whether the public interest does not require a separate investigation. *Rex* v. *McLean*, 80 L. J. K.B. 309; [1911] 1 K.B. 332; 103 L. T. 911; 75 J. P. 127; 22 Cox C.C. 362; 27 T. L. R. 138—C.C.A.

Remanet of Previous Penal Servitude—Licence Forfeited by Conviction for Fresh Offence—Sentence to Commence after Remanet of Previous Sentence—Sentence to Run Concurrently with Unexpired Term of Previous Sentence—Jurisdiction.]—Where a person has been convicted and sentenced to a term of penal servitude, but has been liberated during the currency of such sentence on licence under the Penal Servitude Acts, and the licence is forfeited or revoked through the licence holder being subsequently convicted for a new offence, the Court before which the licence holder is tried for the new offence has no power to order that the sentence for the new offence shall commence after or run concurrently with the unexpired term of the previous sentence; it has no power to interfere at all with the remanet of the previous sentence, and can only impose a sentence in respect of such new offence, inasmuch as under section 9 of the Penal Servitude Act, 1864, the person whose licence is forfeited or revoked must, after undergoing the punishment to which he may be sentenced for the new offence, further undergo a term of penal servitude equal to the unexpired term of penal servitude at the time the licence was granted. *Rex* v. *Smith*; *Rex* v. *Wilson*, 79 L. J. K.B. 4; [1909] 2 K.B. 756; 101 L. T. 126; 73 J. P. 407; 22 Cox C.C. 151—C.C.A.

—— Prisoner Bound over in Respect of New Offence—"Conviction"—Effect on Unexpired Term of Previous Sentence—Validity of Circular Issued by Prison Commissioners.]—A convict on licence who, in respect of a new offence committed by him, is found guilty by a jury or pleads guilty and is bound over to come up for judgment if called upon, has been "convicted" of that offence within sections 4 and 9 of the Penal Servitude Act, 1864, and his licence is thereby forfeited and he is bound to serve the unexpired term of his previous sentence. *Rex* v. *Rabjohns*, 82 L. J. K.B. 994; [1913] 3 K.B. 171; 109 L. T. 414; 77 J. P. 435; 23 Cox C.C. 553; 57 S. J. 665; 29 T. L. R. 614—C.C.A.

The circular L. P. 15, 1712, dated November 8, 1912, issued by the Prison Commissioners to governors of prisons, to the contrary effect, is not justified by the provisions of the statutes regulating licences to convicts. *Ib.*

Considerations as to.]—While the offence of larceny for which a prisoner is indicted may be a very bad one notwithstanding that the sum stolen is small—as, for instance, where the prisoner has obtained small amounts from a number of different persons—nevertheless, in dealing with one particular case of larceny, the small amount stolen may properly be taken into consideration on the question of sentence. Where there is evidence that a prisoner has shewn willingness to work and persons have been willing to employ him, it may not be advisable to inflict a severe sentence upon him merely because he has had many previous convictions. *Rex* v. *Myland*, 27 T. L. R. 256—C.C.A.

The prevalence of a particular crime in a particular neighbourhood, and the necessity for severe measures for its repression, are matters which may properly be taken into consideration in passing sentence. *Rex* v. *Green*, 76 J. P. 351; 28 T. L. R. 380—C.C.A.

Commencement of Sentence.]—Whether a sentence can be made to antedate the first day of sessions or assizes, *quære*. *Rex* v. *Davies*, 28 T. L. R. 431—C.C.A.

The Court of Criminal Appeal, on dismissing an application for leave to appeal, may, notwithstanding that the prosecution is not repre-

sented, order that the sentence imposed on the applicant shall run from the date of conviction. *Rex* v. *Brownhill*, 29 T. L. R. 156—C.C.A.

Date from which Sentence should Run.]—Where an application for leave to appeal is deferred to suit the convenience of counsel and is afterwards heard and dismissed, the Court will not order the sentence to date from the conviction. *Rex* v. *Park; Rex* v. *Hill*, 32 T. L. R. 157—C.C.A.

Preventive Detention.]—A sentence of the maximum term of preventive detention is not desirable except in very bad cases. *Rex* v. *Moran*, 75 J. P. 110—C.C.A.

—— Jurisdiction—Crime Committed between Passing and Coming into Operation of Act—"Committed after the passing of this Act."]—The Prevention of Crime Act, 1908, applies to crimes committed after the date of its passing but before the date fixed for its coming into operation, so far as regards the power of the Court of trial to pass a sentence of preventive detention. *Rex* v. *Smith; Rex* v. *Weston*, 79 L. J. K.B. 1; [1910] 1 K.B. 17; 101 L. T. 816; 74 J. P. 13; 22 Cox C.C. 219; 54 S. J. 137; 26 T. L. R. 23—C.C.A.

Power of Court to Impose more Severe Sentence in Order to Give Sentence of Preventive Detention.]—The length of sentence imposed upon a prisoner should depend upon the nature of the offence of which he has been convicted or to which he has pleaded guilty, and the Court cannot impose a more severe sentence than the offence merits in order to give itself the power to pass a sentence of preventive detention. *Rex* v. *Jones*, 75 J. P. 125; 27 T. L. R. 108—C.C.A.

Excessive Sentence—Accused under Sixteen Years of Age—Sentence of Four Months' Imprisonment.]—Sentence of four months' imprisonment imposed upon the appellant, a lad under sixteen years of age, quashed on the ground that under the Children Act, 1908, detention could not exceed one month. *Rex* v. *Bradford*, 105 L. T. 752; 76 J. P. 46; 28 T. L. R. 26; 22 Cox C.C. 627—C.C.A.

Incorrigible Rogue.]—Where a person is convicted as an incorrigible rogue for begging and there are no aggravating circumstances, the maximum sentence of twelve months' imprisonment should not be imposed. *Rex* v. *Cooper*, 75 J. P. 125—C.C.A.

5. Alteration of Sentence.

Reduction—Application for Leave to Appeal against Sentence—Absence of Prosecution.]—If on an application for leave to appeal against a sentence the Court of Criminal Appeal is of opinion that the sentence ought to be varied to a slight extent, and the alteration is one against which nothing could be urged by the prosecution if present, the Court will deal with the question of such alteration on the application for leave to appeal, notwithstanding that the prosecution are not represented at such application. *Rex* v. *Jowsey*, 84 L. J. K.B. 2118; 31 T. L. R. 632—C.C.A.

Reduction.]—Sentence of three years' penal servitude passed upon the appellant for manslaughter caused by the negligent driving of a motor car reduced to one of twelve months' imprisonment with hard labour. *Rex* v. *Stubbs*, 29 T. L. R. 421—C.C.A.

Sentence of five years' penal servitude passed upon the appellant for warehouse breaking reduced to one of eighteen months' imprisonment with hard labour, on the ground that the case was an isolated one and was the first conviction of the appellant. *Rex* v. *Trewholm*, 77 J. P. 344; 29 T. L. R. 530—C.C.A.

Sentence of two years' imprisonment under the modified Borstal system reduced to one of four months' imprisonment, on the ground that the chairman of quarter sessions, in imposing the sentence of two years, was under the erroneous impression that if the authorities saw fit the prisoner could be released on licence in the same way as under the Borstal system. *Rex* v. *Lee*, 30 T. L. R. 1—C.C.A.

Where a person sentenced as an incorrigible rogue had not been guilty of any dishonesty or violence, but had been guilty only of constantly begging, the Court reduced his sentence from one of eight to one of three months' imprisonment. *Rex* v. *Harrison*, 30 T. L. R. 1—C.C.A.

Sentence of ten years' penal servitude reduced to six years' penal servitude on the ground that a statement by the police as to the prisoner's antecedents was taken into consideration, and there was nothing to shew that the prisoner admitted the accuracy of such statement. *Rex* v. *Brooks*, 29 T. L. R. 152—C.C.A.

Sentence of five years' penal servitude imposed upon the appellant for receiving reduced to one of three years' penal servitude, on the ground that it did not appear that the appellant was habitually a receiver or that he kept any place for the deposit of stolen property. *Rex* v. *Knight*, 28 T. L. R. 481 C.C.A.

Held, that on the form of the verdict the conviction of the appellant on the counts of the indictment charging him with shooting with intent to murder should be quashed, but that his conviction on the count charging wounding with intent to do grievous bodily harm should stand. *Held*, further, that the sentence on the appellant should be reduced to one of three years' penal servitude. *Rex* v. *Connor*, 77 J. P. 247; 29 T. L. R. 212—C.C.A.

The appellant was sentenced to three years' penal servitude for an offence committed by him. When charged with that offence he desired that certain other offences which he had committed should all be taken into consideration. This was done except as to one charge, which, at the request of the police, was not then dealt with. In respect of this latter charge the appellant was at the subsequent sessions sentenced to four years' penal servitude to run concurrently with and to date from the commencement of the sentence of three years' penal servitude imposed at the previous sessions. The Court reduced the

sentence of four years' penal servitude to one of one day's imprisonment, and expressed disapproval of the practice adopted by the police in holding over the one charge against the appellant. Whether a sentence can be made to antedate the first day of sessions or assizes, *quære*. *Rex* v. *Davies*, 28 T. L. R. 431—C.C.A.

—— **Concurrent Sentences.**]—The appellant was convicted of forgery and false pretences, and was sentenced to seven years' penal servitude and twelve months' hard labour, the two sentences to run concurrently:—*Held*, that the sentence of twelve months' hard labour should be reduced to a nominal sentence of one day, as it was doubtful whether it was present to the mind of the Judge that the effect of the sentences imposed would be that the appellant would have to spend a longer period in hard labour at the commencement of his sentence than would otherwise be the case, and would not be able to earn as many remission marks. *Rex* v. *Bruce*, 75 J. P. 111; 27 T. L. R. 51—C.C.A.

Preventive Detention Commuted by Home Secretary to Imprisonment with Hard Labour.]—Under section 4, sub-section 3 of the Criminal Appeal Act, 1907, the Court of Appeal can only deal with the sentence passed upon a prisoner at his trial; it has no power to deal with the commutation by the Home Secretary, under section 7 of the Prevention of Crime Act, 1908, of the unexpired residue of a term of preventive detention into a term of imprisonment. *Rex* v. *Keating*, 103 L. T. 322; 74 J. P. 452; 22 Cox C.C. 343; 26 T. L. R. 686—C.C.A.

Power of Court to Pass Sentence in Substitution—"Warranted in law by the verdict."]—On an appeal against a sentence passed as the result of a plea of guilty, the Court of Criminal Appeal have power, under section 4, sub-section 3 of the Criminal Appeal Act, 1907, if they quash such sentence, to pass such other sentence, appropriate to the offence charged, and in substitution therefor, as they think ought to have been passed. *Rex* v. *Davidson* (*infra*) not followed. *Rex* v. *Ettridge*, 78 L. J. K.B. 479; [1909] 2 K.B. 24; 100 L. T. 624; 73 J. P. 253; 53 S. J. 401; 22 Cox C.C. 101; 25 T. L. R. 391—C.C.A.

Where a prisoner appeals against a sentence passed upon him at the trial in respect of an offence to which he has pleaded guilty, the Court of Criminal Appeal has no power, if it is necessary to set that sentence aside, to substitute another in its place under section 4, sub-section 3 of the Criminal Appeal Act, 1907. *Rex* v. *Davidson*, 100 L. T. 623; 22 Cox C.C. 99; 25 T. L. R. 352—C.C.A.

Sentence of three years' penal servitude reduced to twenty-one months' imprisonment with hard labour on the ground that it was undesirable that the sentence of penal servitude should run concurrently with a sentence of imprisonment which was being served by the appellant at the time the sentence of penal servitude was imposed. *Rex* v. *Hemming*, 28 T. L. R. 402—C.C.A.

Murder — Conviction — Appeal — Insanity —Order for Detention of Appellant as a Criminal Lunatic.]—The appellant was convicted of murder and sentenced to death. He appealed against the conviction. The Court of Criminal Appeal, being of opinion that the evidence shewed that at the time of committing the act charged against him he was insane,—*Held*, that the proper course for the Court to pursue was that provided by section 5, sub-section 4 of the Criminal Appeal Act, 1907—namely, to quash the sentence passed at the trial, and to order the appellant to be kept in custody as a criminal lunatic under the Trial of Lunatics Act, 1883. *Rex* v. *Gilbert*, 84 L. J. K.B. 1424; 112 L. T. 479—C.C.A.

—— **Alternative Defences—Direction to Jury —Evidence of the Prisoner—Substitution by the Court of Verdict of Manslaughter.**]—The appellant was tried and convicted on a charge of wilful murder. At the trial the defence mainly relied upon was that of accident, but the appellant's counsel did not relinquish the defence of manslaughter in the event of his not being able, by his main defence, to secure an acquittal. The Judge directed the jury that they must either acquit the appellant on the ground of accident or convict him of murder:—*Held*, on appeal, that, there being evidence on which the jury might have found the appellant guilty of manslaughter, and the defence of manslaughter not having been left to them, the conviction must be quashed. In these circumstances the Court, in exercise of the powers conferred on it under section 5, sub-section 2 of the Criminal Appeal Act, 1907, ordered a verdict of manslaughter to be entered, and sentenced the appellant to four years' penal servitude. *Rex* v. *Hopper*, 84 L. J. K.B. 1371; [1915] 2 K.B. 431; 113 L. T. 381; 79 J. P. 335; 59 S. J. 478; 31 T. L. R. 360—C.C.A.

Whatever line of defence is taken by counsel at a trial, it is for the Judge to leave to the jury all the questions which appear to him to arise upon the evidence, whether they have been raised by counsel or not. *Ib.*

The Court must not exclude from consideration any view of the facts of a case other than that presented by the prisoner in giving evidence. *Ib.*

Increase.]—The Court increased the sentence of twelve years' penal servitude passed upon the appellant at the trial for attempted murder, to fifteen years' penal servitude. *Rex* v. *Simpson*, 75 J. P. 56—C.C.A.

VIII. APPEAL.

1. When Appeal Lies.

See also Vol. IV. 2212.

Special Verdict of Jury—"Guilty, but insane"—"Conviction."]—Where a jury have returned a special verdict under section 2 of the Trial of Lunatics Act, 1883, that the accused was guilty of the act or omission charged against him in the indictment, but was insane at the time when he did the act

or made the omission, and the Court has ordered the accused to be kept in custody as a criminal lunatic, such person has been "convicted" within the meaning of section 3 of the Criminal Appeal Act, 1907, and may therefore appeal against his conviction upon the grounds set out in that section. *Rex* v. *Ireland*, 79 L. J. K.B. 338; [1910] 1 K.B. 654; 102 L. T. 608; 74 J. P. 206; 22 Cox C.C. 322; 54 S. J. 543; 26 T. L. R. 267—C.C.A.

Where the jury, under section 2, subsection 1 of the Trial of Lunatics Act, 1883, have returned a verdict that the prisoner is guilty of the act charged, but was insane at the time he committed it, an appeal lies to the Court of Criminal Appeal under section 3 of the Criminal Appeal Act, 1907. *Rex* v. *Ireland* (79 L. J. K.B. 338; [1910] 1 K.B. 654) approved. *Rex* v. *Machardy*, 80 L. J. K.B. 1215; [1911] 2 K.B. 1144; 105 L. T. 556; 76 J. P. 6; 55 S. J. 754; 28 T. L. R. 2; 22 Cox C.C. 614—C.C.A.

But the appeal lies only against that part of the verdict which finds the prisoner guilty of the act charged, and not against that part which finds that he was insane. The order for the prisoner's detention as a criminal lunatic until His Majesty's pleasure shall be known is no part of the conviction. *Ib.*

A person charged with a criminal offence against whom a special verdict of "Guilty, but insane," has been found under the Trial of Lunatics Act, 1883, has no right of appeal to the Court of Criminal Appeal against that part of the verdict which finds him to have been insane at the time of doing the act. *Felstead* v. *Director of Public Prosecutions*, 83 L. J. K.B. 1132; [1914] A.C. 534; 111 L. T. 218; 78 J. P. 313; 24 Cox C.C. 243; 58 S. J. 534; 30 T. L. R. 469—H.L. (E.)

Judgment of the Court of Criminal Appeal (30 T. L. R. 143; 9 Cr. App. Rep. 227) affirmed. *Ib.*

—— **Case Stated.**]—A person charged with a criminal offence against whom a special verdict of "Guilty, but insane," has been found under the Trial of Lunatics Act, 1883, has no right of appeal to the Court of Criminal Appeal against that part of the verdict which finds him to have been insane at the time of doing the act, whether he proceeds on a Case stated under the Crown Cases Act, 1848, or under the procedure set up by the Criminal Appeal Act, 1907. *Felstead* v. *Director of Public Prosecutions* or *Regem* (83 L. J. K.B. 1132; [1914] A.C. 534) applied. *Rex* v. *Taylor*, 84 L. J. K.B. 1671; [1915] 2 K.B. 709; 113 L. T. 513; 79 J. P. 439; 59 S. J. 530; 31 T. L. R. 449—C.C.A.

Person Found Insane and Unfit to Plead—"Convicted on indictment."]—A person who is indicted, but who is found by the jury to be insane and unfit to plead, has not been "convicted on indictment" within section 3 of the Criminal Appeal Act, 1907. Therefore no appeal to the Court of Criminal Appeal lies in such a case. *Rex* v. *Larkins*, 105 L. T. 384; 75 J. P. 320; 22 Cox C.C. 598; 55 S. J. 501; 27 T. L. R. 438—C.C.A.

Judge's Ruling.]—*Semble*, no appeal lies to the Court of Criminal Appeal from the ruling of the Judge at the trial allowing a witness to be treated as a hostile witness. *Rex* v. *Williams*, 77 J. P. 240; 29 T. L. R. 188—C.C.A.

Discharge of Jury by Judge.]—The Court of Criminal Appeal has no power to review the decision of the Judge at the trial of a prisoner that a necessity has arisen for discharging the jury without giving a verdict and adjourning the case to be heard before another jury. Such a decision is entirely within the discretion of the Judge, and even if the discretion has been wrongly exercised, no objection can be taken in respect thereof at the second trial. *Reg.* v. *Charlesworth* (31 L. J. M.C. 25; 1 B. & S. 460) and *Winsor* v. *Reg.* (35 L. J. M.C. 121, 161; L. R. 1 Q.B. 289, 390) followed. *Rex* v. *Lewis*, 78 L. J. K.B. 722; 100 L. T. 976; 73 J. P. 346; 22 Cox C.C. 141; 25 T. L. R. 582—C.C.A.

Reference by Home Secretary to Court—Extent of Appeal.]—Prisoners who have petitioned the Home Secretary against their sentence, and whose petitions are referred to the Court of Criminal Appeal under section 19 of the Criminal Appeal Act, 1907, must be deemed to be appellants in respect of their sentence only. *Rex* v. *Smith*; *Rex* v. *Wilson*, 79 L. J. K.B. 4; [1909] 2 K.B. 756; 101 L. T. 126; 73 J. P. 407; 22 Cox C.C. 151—C.C.A.

Sentence of Penal Servitude and Preventive Detention—Appeal against Both Sentences—Leave to Appeal against Sentence of Penal Servitude—"Sentence"—Sentence of Preventive Detention.]—Where a prisoner appeals against a sentence of preventive detention and also appeals against the preceding sentence of penal servitude, the latter appeal will be treated as if the leave to appeal required by section 3 (*c*) of the Criminal Appeal Act, 1907, had been granted. *Rex* v. *Smith*; *Rex* v. *Weston*, 79 L. J. K.B. 1; [1910] 1 K.B. 17; 101 L. T. 816; 74 J. P. 13; 22 Cox C.C. 219; 54 S. J. 137; 26 T. L. R. 23—C.C.A.

2. Legal Aid.

See also Vol. IV. 2213.

On Appeal to House of Lords.]—The Court of Criminal Appeal, sitting as a single Judge, has power to grant an appellant legal aid under section 10 of the Criminal Appeal Act, 1907, on an appeal from a decision of the Court of Criminal Appeal to the House of Lords, where the Attorney-General has granted his certificate under section 1, subsection 6 of that Act. *Rex* v. *Leach*, 76 J. P. 246; 56 S. J. 311—C.C.A.

3. Hearing.

See also Vol. IV. 2213.

Shorthand Notes — Transcript — Application for, by Appellant whose Appeal has been Dismissed.]—Having regard to rule 39*c* of the Criminal Appeal Rules, 1908, the Court of Criminal Appeal has no power subsequently to

grant to a person who had appealed to the Court, and whose appeal was dismissed, a copy of the transcript of the shorthand notes of the proceedings at the trial to enable such person to petition the Home Secretary. *Weir, Ex parte*, 108 L. T. 350; 77 J. P. 56; 23 Cox C.C. 326—C.C.A.

Comparison of Admitted Handwriting with the Notice of Appeal.]—On a question of disputed handwriting the Court will compare a document alleged to be written by the appellant with the notice of appeal written and signed by him. *Rex* v. *Totty*, 111 L. T. 167; 24 Cox C.C. 227—C.C.A.

Habitual Criminal—Review.]—In an appeal to the Court of Criminal Appeal against a conviction for being an habitual criminal, it is the duty of the Court to consider the case on its merits, and not merely to consider whether there was evidence upon which the jury could reasonably return the verdict appealed against. *Heron* v. *Lord Advocate*, [1914] S. C. (J.) 7—Ct. of Just.

Observations as to the evidence which may legitimately be taken into consideration by a jury in dealing with such a charge, and by the Court of Criminal Appeal in disposing of such an appeal. *Ib.*

Per Lord Mackenzie : The Judge who presided at the trial should not sit as a member of the Court of Criminal Appeal. *Ib.*

4. Fresh Evidence.

See also Vol. IV. 2213.

Juryman—Alleged Misconduct—Application to Call Evidence.]—On an appeal against a conviction the appellant applied for leave to call evidence that one of the jury had stated on the evening of the first day of the trial that all the jury were friendly with the police, and it made no difference what the appellant said. In the grounds of appeal there was nothing as to the misconduct of a juryman :—*Held*, that the Court ought not to accede to the application. *Rex* v. *Syme*, 30 T. L. R. 691—C.C.A.

5. Grounds of Appeal.

See also Vol. IV. 2214.

Improper Admission of Evidence.]—Where evidence has been improperly admitted, an appeal will not be dismissed under section 4, sub-section 1 of the Criminal Appeal Act, 1907, on the ground "that no substantial miscarriage of justice has actually occurred," unless the Court feels certain that the jury would have come to the same conclusion if the evidence had been rejected. *Rex* v. *Christie*, 109 L. T. 746; 78 J. P. 141; 30 T. L. R. 41—C.C.A.

Hearsay Evidence Wrongfully Admitted.]—Conviction for burglary quashed on the ground that the chairman of quarter sessions had admitted hearsay evidence which refuted an *alibi* set up by the prisoner. *Rex* v. *Campbell*, 77 J. P. 95—C.C.A.

The Court quashed the conviction of the appellant for larceny on the ground of the improper admission of hearsay evidence, and also on the ground that the Judge in dealing with the defence of an *alibi* set up, said, "I do not wish to bias you in any way whatever, but here is a man who has set up an *alibi*, which is no shadow of an *alibi* from any possible point of view." *Rex* v. *Ruffino*, 76 J. P. 49—C.C.A.

Irregularity — Reference to Inadmissible Documents.]—The fact that, in the course of the trial, counsel for the prosecution referred to the contents of certain documents which were not admissible in evidence afforded no ground for quashing the conviction, as the irregularity could not, in the circumstances of the case, have influenced the verdict of the jury. *Rex* v. *Seham Yousry*, 84 L. J. K.B. 1272; 112 L. T. 311; 31 T. L. R. 27—C.C.A.

Jury Inadvertently Informed of Previous Conviction.]—Conviction of the appellant for burglary quashed where the Judge had inadvertently caused him to admit that he had been previously convicted. *Rex* v. *Hemingway*, 77 J. P. 15; 29 T. L. R. 13—C.C.A.

Previous Conviction Wrongly Admitted—Misdirection.]—Conviction of the appellant quashed where evidence of a previous conviction was wrongly admitted. *Rex* v. *Curtis*, 29 T. L. R. 512—C.C.A.

Insufficient Evidence.]—The appellant was an engine driver and was obliged to be much away from home, and his wife was addicted to drink. Their daughter took to going about with women of bad character and the appellant reproved her, but eventually she was seduced. The appellant and his wife were both charged under section 17 of the Children Act, 1908, as amended by section 1 of the Children Act (1908) Amendment Act, 1910. The jury found that the appellant was guilty of negligence and that his wife was guilty of criminal negligence :—*Held*, that the conviction of the appellant must be quashed, as there was not enough evidence to support it and as the jury did not by their verdict intend to find him guilty of the offence charged. *Rex* v. *Chainey*, 30 T. L. R. 51—C.C.A.

Conviction of the appellant for receiving quashed where the only evidence suggested to connect him with the crime was that the stolen property had been found in a house which had been in his occupation up to a week previous to the property being taken there, and that he had some months before taken the tenancy of this house in his wife's name. *Rex* v. *Batty*, 76 J. P. 388; 28 T. L. R. 485—C.C.A.

Conviction quashed, on the grounds—first, of the insufficient nature of the evidence of identification, and, secondly, because the case had not been properly left to the jury. *Rex* v. *Bundy*, 75 J. P. 111—C.C.A.

Statement Incriminating Prisoner made by Fellow-prisoner.]—Conviction of the appellant

quashed where substantially the whole of the evidence against him was a statement by the police that a fellow-prisoner on his arrest made a statement incriminating the appellant, and where the appellant denied the truth of such statement and that he was present at the time it was made—*Rex* v. *Hickey*, 27 T. L. R. 441—C.C.A.

Verdict Arrived at upon Consideration of Matters not in Evidence.]—The Court quashed a conviction where it appeared that the jury had arrived at their verdict, not upon a strict consideration of the evidence, but upon a consideration of other matters. *Rex* v. *Newton*, 28 T. L. R. 362—C.C.A.

Misstatement of Law.]—Conviction of the appellant for the abduction of a girl under the age of sixteen quashed on the ground that the appellant had pleaded guilty upon the faith of an erroneous statement of the law from the presiding Judge. *Rex* v. *Alexander*, 107 L. T. 240; 76 J. P. 215; 23 Cox C.C. 138; 28 T. L. R. 200—C.C.A.

A mere omission or misstatement in a summing-up is not in itself a misdirection where the case has been fully heard by the jury; but there is a miscarriage of justice within section 4 of the Criminal Appeal Act, 1907, where the omission or misstatement is such that the jury may probably have been misled by it. *Rex* v. *Wann*, 107 L. T. 462; 76 J. P. 269; 23 Cox C.C. 183; 28 T. L. R. 240—C.C.A.

No Proper Direction to Jury—Perjury—Several Assignments—Evidence Consisting of Oath against Oath—Certificate by Judge.]—The appellant was indicted for perjury. The indictment contained several assignments of perjury, one of them being that in a certain conversation between the appellant and the prosecutrix the latter had said she had had a miscarriage and that she was afraid it was by her lodger. The jury were not directed that before they could convict they must be satisfied that there was something more than oath against oath upon each assignment. The jury returned a general verdict of "Guilty":—*Held*, that, having regard to the fact that the several assignments were before the jury and within their general verdict, and that it was impossible to say whether they would have found the verdict they did if they had had a proper appreciation of the necessity of proof being given other than the mere oath of the prosecutrix as against that of the appellant, the conviction must be quashed. Where a case is one proper for the consideration of the jury and the jury are properly directed, the mere opinion of the Judge who tries the case that he would have found the other way or that the verdict is unsatisfactory will not of itself justify the Court of Criminal Appeal interfering with the verdict of "Guilty." *Rex* v. *Gaskell*, 77 J. P. 112; 29 T. L. R. 108—C.C.A.

—— **Receiving—No Direction to Jury as to Possession.**]—A sack of meal was stolen by one S. from his employer, and taken by him to a table in the appellant's yard, where the appellant was standing. Before a few seconds had passed a police officer followed and took the sack away. The appellant was convicted of receiving the sack:—*Held*, that the conviction must be quashed, as there was no direction to the jury as to what constituted receipt by the appellant of the sack. *Rex* v. *Crane*, 76 J. P. 261—C.C.A.

—— **Indecent Assault—Misdirection on Question of Consent.**]—Conviction of the appellant for indecent assault quashed on the ground that the summing-up might have misled the jury into believing that because the appellant had not raised the question of consent on the part of the woman alleged to have been assaulted they must convict although there was consent. *Rex* v. *Horn*, 76 J. P. 270; 28 T. L. R. 336—C.C.A.

Defence not Put to Jury—Wounding—Self-Defence.]—The appellant was convicted of felonious wounding. At the trial he did not deny the wounding, but said that he acted in self-defence. This defence was not put to the jury, the only question left to them being whether or not the appellant was insane:—*Held*, that as the appellant's defence had not been left to the jury, the conviction must be quashed. *Rex* v. *Hill*, 105 L. T. 751; 76 J. P. 49; 28 T. L. R. 15; 22 Cox C.C. 625—C.C.A.

Misdirection—Conspiracy—Defrauding Creditors.]—The appellants—husband and wife and two sons—were convicted of a conspiracy to cheat and defraud the creditors of the wife. Substantially the case for the prosecution was that the mother sold to the sons a number of bicycles under value. The evidence shewed that the bicycles were sold to the sons for less than similar bicycles were sold to other agents:—*Held*, that the conviction must be quashed, inasmuch as there might, from the language of the summing-up, be the misapprehension in the minds of the jury that they were entitled to convict the appellants if the bicycles were sold to the sons at less than was paid by other agentts, although the sales were at sums over cost price. *Rex* v. *Crane*, 75 J. P. 415—C.C.A.

—— **Statements not in Evidence Put before Jury—Shorthand Notes of Evidence—Judge's Notes.**]—Where in his summing-up to the jury the deputy-chairman of quarter sessions laid stress on certain evidence which had been given at the police Court against the appellant, but as to which it was doubtful whether it was given before the jury, as it did not appear either on the shorthand notes of the proceedings at the trial or on the deputy-chairman's own note, the Court quashed the conviction. Where it is uncertain whether certain evidence has been given before the jury, the Court will be guided by the shorthand notes, especially when combined with the Judge's own notes, unless there are grave reasons for departing from this practice. *Rex* v. *Rimes*, 28 T. L. R. 409—C.C.A.

—— **Mistake as to Witnesses who had Given Evidence.**]—Conviction of the appellant for

manslaughter quashed on the ground that the Judge at the trial had erroneously told the jury that none of the witnesses for the defence at the trial except the appellant himself had given evidence before the coroner or the police magistrate, and therefore that there had been no opportunity of testing their evidence, the fact being that some of the witnesses had been called before the coroner, the Court not being satisfied that the jury would have returned the verdict they did if this erroneous statement had not been made. *Rex* v. *Savidge*, 76 J. P. 32—C.C.A.

—— **Conviction for Murder—Substitution of Verdict of Manslaughter.**]—The appellant had been convicted of murder, the defence having been that the affair was an accident or at most manslaughter, and the Judge at the trial having ruled that the defence of manslaughter was not open to the appellant :—*Held*, on the facts, that the verdict of murder should be quashed and a verdict of manslaughter substituted. *Rex* v. *Hopper*, 84 L. J. K.B. 1371; [1915] 2 K.B. 431; 113 L. T. 381; 79 J. P. 335; 59 S. J. 478; 31 T. L. R. 360—C.C.A.

Sentence—Principles on which Court Acts.]—Principles upon which the Court of Criminal Appeal acts, when asked to review sentences, stated. *Rex* v. *Shershewsky*, 28 T. L. R. 364—C.C.A.

6. Effect of Quashing of Conviction.

The quashing of a conviction by the Court of Criminal Appeal puts the accused in the same position for all purposes as if he had been acquitted by the jury. *Rex* v. *Barron*, (*No.* 2), 83 L. J. K.B. 786; [1914] 2 K.B. 570; 78 J. P. 311; 58 S. J. 557; 30 T. L. R. 422—C.C.A.

Conviction Quashed—Appeal to House of Lords—Detention or Bail of Appellant.]—Where the Court of Criminal Appeal quashes a conviction it has no power to order that the appellant be detained in custody or admitted to bail pending the decision of the Attorney-General whether he will give a certificate under section 1, sub-section 6 of the Criminal Appeal Act, 1907, that it is desirable that a further appeal should be brought to the House of Lords, or, after such certificate has been granted, pending the hearing of the appeal; the appellant, on the conviction being quashed, is entitled to be released at once. *Director of Public Prosecutions* v. *Ball* (*No.* 1), 80 L. J. K.B. 689; [1911] A.C. 47; 104 L. T. 47; 22 Cox C.C. 364; 55 S. J. 190—C.C.A.

Order Reversed in House of Lords—Procedure.]—Where an order of the Court of Criminal Appeal quashing a conviction had been reversed in the House of Lords, on an application subsequently made to the Court of Criminal Appeal,—*Held*, that the proper procedure in applying the decision of the House of Lords was by application to the Court of Criminal Appeal to amend its record by expunging the order setting aside the verdict, and to make an order for the arrest of the accused persons. *Director of Public Prosecutions* v. *Ball* (*No.* 2), 80 L. J. K.B. 691; [1911] A.C. 47; 104 L. T. 48; 75 J. P. 180; 22 Cox C.C. 370; 27 T. L. R. 162—C.C.A.

IX. BAIL.

See also Vol. IV. 1933, 2222.

Notice of Application to Prosecution.]—While the Court of Criminal Appeal cannot on its own initiative lay down a general rule that notice must be given to the prosecution when an application for bail is intended to be made, it is very desirable that a Judge or the Court in the exercise of his or its discretion should direct such notice to be given. In cases where the Director of Public Prosecutions is concerned the application for bail should be refused where no notice has been given of the intended application. *Rex* v. *Ridley*, 100 L. T. 944; 22 Cox C.C. 127; 25 T. L. R. 508—C.C.A.

Agreement to Indemnify Bail.]—An agreement between a person against whom a criminal charge is pending and another, that if the latter will go bail for him he will indemnify him against the consequences of his recognisance being estreated in consequence of such person not surrendering in accordance with the conditions thereof, is an indictable offence as tending to produce a public mischief. *Reg.* v. *Broome* (18 L. T. (o.s.) 19) disapproved. *Rex* v. *Porter*, 79 L. J. K.B. 241; [1910] 1 K.B. 369; 102 L. T. 255; 74 J. P. 159; 22 Cox C.C. 295; 26 T. L. R. 200—C.C.A.

X. COSTS.

See also Vol. IV. 1938, 2223.

Offence of Bigamy—Committed in one County, Tried in another County—Costs of Prosecution Payable by County where Offence Committed.]—Where a person is apprehended and tried in one county for the offence of bigamy which has been committed in another county, the costs of the prosecution are payable under the Costs in Criminal Cases Act, 1908, out of the county fund of the administrative county in which the offence is committed, or is supposed to have been committed, and not out of the county fund of the county where the offender is tried. *Rex* v. *London County Council; Keys, Ex parte*, 83 L. J. K.B. 1381; [1914] 3 K.B. 310; 111 L. T. 254; 78 J. P. 302; 12 L. G. R. 1210; 24 Cox C.C. 263; 30 T. L. R. 504—D.

CROWN.

Commissioners of Works and Public Buildings—Liability to Action for Breach of Contract.]—An action will lie against His Majesty's Commissioners of Public Works and

Buildings for damages for breach of contract. *Graham* v. *Works and Public Buildings Commissioners* (70 L. J. K.B. 860; [1901] 2 K.B. 781) applied. *Roper* v. *Works and Public Buildings Commissioners*, 84 L. J. K.B. 219; [1915] 1 K.B. 45; 111 L. T. 630—Shearman, J.

—— **Liability to be Sued in Tort.**]—The Commissioners being servants of the Crown, an action is not maintainable against them, in their official capacity, for damages in respect of wrongful acts committed by their agents or servants. The fact that the Commissioners are incorporated by statute makes no difference in this respect. *Raleigh* v. *Goschen* (67 L. J. Ch. 59; [1898] 1 Ch. 73) and *Bainbridge* v. *Postmaster-General* (75 L. J. K.B. 366; [1906] 1 K.B. 178) applied. *Ib.*

Construction of Contract—Duty of Executive to Ascertain Law.]—Where the Crown cannot be sued, either by petition of right or through an appointed officer, it is the duty of the Executive, in cases of doubt, to ascertain the law by application to the Court in order to act in accordance with it. *Eastern Trust Co.* v. *McKenzie, Mann & Co.*, 84 L. J. P.C. 152; [1915] A.C. 750; 113 L. T. 346—P.C.

The respondents agreed to pay 195,000 dollars as part of the purchase price for all the stock and bonds of a company owning a partly constructed railway in Nova Scotia. The contract provided that the Government of Nova Scotia had the right to be satisfied that all claims for labour and supplies furnished in connection with the construction of the railway had been paid, and that the amount of those claims might be paid out of the subsidies payable by the Government, and that all sums paid in liquidation of such claims should be considered as payments on account of the 195,000 dollars:—*Held*, that the contract did not oust the jurisdiction of the Court to determine whether a payment by the Government out of the subsidies was in respect of "labour and supplies" within the meaning of the contract. *Ib.*

Injunction against Receiving Money—Payment by Executive—Contempt of Court.]—*Held*, further, that a receipt from the Government of money which the recipient has been restrained from receiving is a contempt of Court. *Ib.*

Petition of Right.]—The view expressed by the Lord Chief Baron in *Kildare County Council* v. *Regem* ([1909] 2 Ir. R. 199) as to the cases in which a petition of right is the proper remedy approved and followed. *Dublin Corporation* v. *Regem*, [1911] 1 Ir. R. 83—C.A.

Civil Servant—Pension—Basis of Calculation.]—A petition of right by a retired Civil servant with respect to a claim for a pension or to the basis on which his pension should be calculated cannot be entertained by the Courts, but is a matter for decision by the Treasury. *Yorke* v. *Regem*, 84 L. J. K.B. 947; [1915] 1 K.B. 852; 112 L. T. 1135; 31 T. L. R. 220—Lush, J.

Grant by Crown—Inconsistency with Previous Grant — Validity — Knowledge of Grantee.]—A grant by the Crown which is wholly or in part inconsistent with a previous grant is void, unless the previous grant is recited in it; but if the grantee had no notice, actual or constructive, of the previous grant, the second grant will be good to the extent to which it may be consistent with the first grant, though void as to the rest. *Alcock* v. *Cooke* (7 L. J. (o.s.) C.P. 126; 5 Bing. 340) explained. *Vancouver City* v. *Vancouver Lumber Co.*, 81 L. J. P.C. 69; [1911] A.C. 711; 105 L. T. 464—P.C.

Restrictions in Local Acts.]—Observations *per* the Lord President and Lord Kinnear on the extent to which the Crown is bound by restrictions contained in local Acts. *Edinburgh Magistrates* v. *Lord Advocate*, [1912] S. C. 1085—Ct. of Sess.

Writ of Extent—Seizure under Writ—Writ Set Aside—Liability of Treasury Solicitor in Trespass.]—The plaintiff's goods were seized under a writ of extent, which was subsequently set aside on the ground that the affidavit upon which the *fiat* of the Judge was obtained for the issue of the writ was defective in not alleging that the plaintiff was insolvent. In an action against the defendants—the Treasury Solicitor and his assistants—for the trespass to the plaintiff's goods by their seizure under the writ,—*Held*, that as there was a judicial determination interposed between the filing of the affidavit upon which the writ was obtained and the issue of the writ, and as such issue was in consequence of that interposition, the defendants were protected from liability. *Pridgeon* v. *Mellor*, 28 T. L. R. 261—Pickford, J.

Attorney-General — Liability to Penal Action.]—The Court has jurisdiction to entertain an action by a subject against the Attorney-General as representing the Crown, although the immediate and sole object of the action is to affect the rights of the Crown in favour of the plaintiff. *Hodges* v. *Att.-Gen.* (8 L. J. Ex. Eq. 28; 3 Y. & C. 342) followed. *Dyson* v. *Att.-Gen.*, 80 L. J. K.B. 531; [1911] 1 K.B. 410; 103 L. T. 707; 55 S. J. 168; 27 T. L. R. 143—C.A.

—— **Declaratory Judgment.**]—A declaratory judgment may, under Order XXV. rule 5, be sought against the Attorney-General as representing the Crown. *Ib.*

The plaintiff claimed a declaration against the Attorney-General that he was not bound to comply with certain notices served upon him as an owner and occupier of land under section 26, sub-section 2 of the Finance (1909-10) Act, 1910:—*Held*, that the action was one which was maintainable by the plaintiff, and should be allowed to go to trial. *Ib.*

—— **Costs—Proceedings to Determine Construction of Charitable Legacies—Right of Attorney-General to Costs.**]—The rule that

inasmuch as the Attorney-General cannot be ordered to pay costs he ought not to receive them does not apply, at all events in a Court of first instance, to proceedings instituted by the Attorney-General, pursuant to a certificate of the Charity Commissioners under section 20 of the Charitable Trusts Act, 1853, to determine the construction of charitable gifts in a will. In such a case the Attorney-General represents all the objects of the charity, who are plaintiffs through him; and he is entitled to be put in the same position as to costs as any other plaintiff. *Cardwell, In re; Att.-Gen.* v. *Day*, 81 L. J. Ch. 443; [1912] 1 Ch. 779; 106 L. T. 753; 56 S. J. 361; 28 T. L. R. 307—Warrington, J.

Semble, that if the executors have distributed the estate and paid the charitable legacies in question they ought not to be made parties to the proceedings. *Ib.*

—— **Charitable Bequest—Crown Representing Charities—No Party Below—Right to Appeal.**] In a case relating to a charitable bequest the Court gave leave to the Attorney-General, as representing the Crown, to appeal to the Court of Appeal although he was not a party to the proceedings in the Court below. *Faraker, In re; Faraker* v. *Durell*, 81 L. J. Ch. 635; [1912] 2 Ch. 488; 107 L. T. 36; 56 S. J. 668—C.A.

—— **Injunction on Behalf of Crown—Claim to Foreshore—Right to Production of Conveyances Constituting Defendant's Title.**]—*See Att.-Gen.* v. *Storey*, *post*, col. 509.

Prerogative—Taking Land.]—*See* WAR.

CRUELTY.

To Animals.]—*See* ANIMALS.

In Divorce Cases.]—*See* HUSBAND AND WIFE.

CUSTOMS.

See REVENUE.

CY-PRÈS APPLICATION.

See CHARITY.

DAMAGES.

1. *Measure of Value and Loss.*
   - *a.* Where no Market, 476.
   - *b.* Market Value, 476.
   - *c.* Nature of Right, 477.
   - *d.* Mitigation and Reduction, 481.
   - *e.* Prospective, 482.
2. *Costs of Action, when Recoverable*, 482.
3. *Practice*, 483.
4. *In Particular Cases.*
   - *a.* Work and Labour—*See* WORK AND LABOUR.
   - *b.* Penalty or Liquidated Damages—*See* PENALTY.
   - *c.* On Sale of Goods—*See* SALE OF GOODS.
   - *d.* On Collisions at Sea—*See* SHIPPING.

1. MEASURE OF VALUE AND LOSS.

See also Vol. V. 274, 1628.

a. Where no Market.

Refusal to Accept Goods — Prospective Profits.]—A company entered into a contract with a firm of engineers for the supply of certain machines for the company's use. Before the machines were delivered the company went into voluntary liquidation and the liquidator refused to accept delivery. The firm claimed to prove as creditors in the winding-up for their full loss of profit. At the commencement of the winding-up the articles which the company was still under contract to buy consisted of (*a*) machines which the creditors had manufactured but not delivered; (*b*) machines which the creditors had not commenced to manufacture. The former were altered and then sold elsewhere for a price less than that which the company had contracted to pay. It was not proved that the creditors' works were not sufficiently ample to have enabled them to perform their contract with the company in addition to other contracts which they actually performed for other customers:—*Held*, as to items (*a*), that, there being no available market for the goods as originally made, the measure of damage was the whole loss of profit which the creditors had suffered, and not merely the loss on re-sale plus the costs of alterations; as to items (*b*), that the measure of damages was the full amount of prospective profits which the creditors had lost by non-fulfilment of their contract. *Vic Mill Co., Lim., In re*, 82 L. J. Ch. 251; [1913] 1 Ch. 465; 108 L. T. 444; 57 S. J. 404—C.A.

b. Market Value.

Breach of Contract.]—In a contract, where the seller reserves to himself so much of the produce of the land as he may need for his own purposes, and the purchaser breaks his contract, the measure of damages for the breach is the cost to the seller of procuring the substituted article and not the price at which such article could be sold by the person who has procured it. *Erie County Natural Gas and Fuel Co.* v. *Carroll*, 80 L. J. P.C. 59; [1911] A.C. 105; 103 L. T. 678—P.C.

In cases of breach of contract, in the assessment of damages the party complaining should, so far as it can be done by money,

be placed in the same position as he would have been in if the contract had been performed. *Wertheim* v. *Chicoutimi Pulp Co.*, 80 L. J. P.C. 91; [1911] A.C. 301; 104 L. T. 226; 16 Com. Cas. 297—P.C.

Where the delivery of goods has been delayed, the proper damages are the difference between the full market price at the time and place at which they ought to have reached the purchaser and the rate at which they were sold when they actually reached him—that is, the loss actually sustained. *Ib.*

Where a contract provided for the delivery of goods at a place where there was no market for them, damages for non-delivery should be calculated with reference to the market at which the purchaser, as the vendor knew, intended to sell them, with allowance for the cost of carriage. *Ib.*

In a contract for the sale of negotiable securities the measure of damages for a breach is the difference between the contract price and the market price at the date of the breach, with an obligation on the part of the seller to mitigate the damages by getting the best price he can at the date of the breach, and the seller is not bound to reduce the damages, if he can, by subsequent sales at better prices. *Jamal* v. *Moolla Dawood Sons & Co.*, 85 L. J. K.B. 29; 60 S. J. 139; 32 T. L. R. 79—P.C.

Sale of Goods — Non-delivery — Re-sale by Purchaser.]—The rule that the damages to which a purchaser is entitled for non-delivery of goods is the difference between the contract price and the market price at the time when they ought to have been delivered is not affected by the fact that before the date of delivery the purchaser had re-sold the goods for less than the market value. *Rodocanachi, Sons & Co.* v. *Milburn* (56 L. J. Q.B. 202; 18 Q.B. D. 67) approved and followed. *Williams* v. *Agius, Lim.*, 83 L. J. K.B. 715; [1914] A.C. 510; 110 L. T. 865; 19 Com. Cas. 200; 58 S. J. 377; 30 T. L. R. 351—H.L. (E.)

The law as laid down in *Rodocanachi, Sons & Co.* v. *Milburn* (*supra*) is not affected by section 51, sub-section 2 of the Sale of Goods Act, 1893. *Ib.*

c. Nature of Right.

Ship Steward Supplied with Articles to be Smuggled—Fine Imposed on Ship—Liability of Person Supplying Goods to Steward to Repay Fine.]—A British ship, trading between Grangemouth and South America, was fined on arriving at Buenos Ayres by the Customs authorities in respect that certain dutiable articles on board had not, as required by Argentine law, been declared in the ship's manifest and had been found concealed in the steward's cabin. These articles had, unknown to the shipowners but with the connivance of the captain, been supplied to the steward by a firm of merchants at Grangemouth in the knowledge that they were to be carried on board the ship and traded with by him, and that for the purpose of successful trading they would have to be smuggled into the port of destination. They were supplied on credit, and were to be paid for by the steward out of the proceeds of the trading. The shipowners having brought an action against the merchants to recover in name of damages the amount of the fine levied on the ship,—*Held*, that the merchants, having been accessory to the wrongful and illegal use of the vessel for carrying goods on a smuggling adventure, were liable for the loss and damage thereby occasioned to the owners. *Cairns* v. *Walker, Lim.*, [1914] S. C. 51—Ct. of Sess.

Inducing Breach of Contract—Damages.]—Where a stranger to a contract has induced a party thereto to break a covenant in the contract in such a way that the breach must in the ordinary course inflict damage upon the covenantee, no proof of special damage is necessary to enable the covenantee to succeed in an action against the stranger. *Exchange Telegraph Co.* v. *Gregory & Co.* (65 L. J. Q.B. 262; [1896] 1 Q.B. 147) followed on this point. *Goldsoll* v. *Goldman*, 84 L. J. Ch. 63; [1914] 2 Ch. 603; 112 L. T. 21; 59 S. J. 43—Neville, J. *See* s.c. in C.A., *ante*, CONTRACT: *e. In Restraint of Trade;* ii. Reasonableness.

Negligence of Advertising Agency in Addressing Circular to Minor—Sending by Money-lender of Addressed Circular to Minor—Conviction of Criminal Offence—Claim for Indemnity against Advertising Agency.]—Where a person, relying on the performance of a contract not illegal in itself, but ignorant of the breach thereof by the other contracting party, commits a criminal offence, he cannot claim from that contracting party, by way of indemnity for damage caused by the breach, the penalty or costs of prosecution or defence incurred by him by reason of the criminal prosecution and conviction. *Leslie, Lim.* v. *Reliable Advertising and Addressing Agency*, 84 L. J. K.B. 719; [1915] 1 K.B. 652; 112 L. T. 947; 31 T. L. R. 182—Rowlatt, J.

A firm of money-lenders contracted with a firm of advertising agents that the latter should address a number of circulars inviting applications for loans with the names and addresses of a large section of the public given in a certain handbook, but omitting therefrom all the names of minors appearing in the handbook. By an oversight the advertising agency addressed one of the circulars to a minor, with the result that the money-lenders sent the same to the addressee. They and their manager were prosecuted under the Betting and Loans (Infants) Act, 1892, and the Money-lenders Act, 1900, for having "knowingly" circularised an infant. They were convicted and fined, and claimed in a civil action against the advertising agency, as damages for breach of the contract or the negligence in wrongly addressing the circular, the penalties and costs of prosecution and defence incurred by them and their manager:—*Held*, first, that the whole of the claim must fail, as the money-lenders could not rely on their contract with the advertising agency for the purpose of shewing that they had reasonable grounds to believe the addressee to be of full age; and secondly, that, if the claim could be maintained, the damages were not too remote. *Colburn* v.

Patmore (3 L. J. Ex. 317; 1 Cr. M. & R. 73) and *Burrows* v. *Rhodes* (68 L. J. Q.B. 545; [1899] 1 Q.B. 816) considered. *Ib.*

Volenti non fit Injuria.] — A merchant, whose store was burnt as the result of the negligence of a firm of carriers, received injuries through falling from a roof on which he had climbed with a hose for the purpose of extinguishing the fire. In an action at his instance against the carriers,—*Held*, that these injuries were too remote to found a claim for damages. *Macdonald* v. *Macbrayne, Lim.*, [1915] S. C. 716—Ct. of Sess.

Sale of Article of Food for Purpose of Re-sale —Implied Warranty that Article Fit for Human Food—Breach of Warranty—Conviction of Buyer—Loss of Business.]—The plaintiff, a butcher, purchased the carcass of a pig from the defendants, who were meat salesmen; and, in ignorance of the fact that it was tuberculous and unfit for food, he exposed it for sale, but on the same day it was seized by a sanitary inspector, was adjudged by a Metropolitan police magistrate to be unfit for human food, and was ordered to be, and it was, destroyed. Thereupon the plaintiff was charged under section 47, sub-section 2 of the Public Health (London) Act, 1891, with having the carcass exposed for sale on his premises, and was fined 20*l.* In an action for breach of an implied warranty that the carcass was merchantable and reasonably fit for food, the plaintiff claimed as damages from the defendants the amount of the fine which had been imposed upon him and the costs of the proceedings before the magistrate, and also for loss of custom in his business. The jury found that the carcass was unfit for human food, that the plaintiff had impliedly made known to the defendants the purpose for which the carcass was required, and that he did so in such a way as to shew that he relied on their skill and judgment. The jury assessed the damages in respect of the fine and costs at 36*l.* 16*s.* 2*d.*, and the damages in respect of loss of custom at 200*l.* :—*Held*, that these damages were not too remote, and that the plaintiff was entitled to recover them from the defendants. *Fitzgerald* v. *Leonard* (32 L. R. Ir. 675) not followed. *Cointat* v. *Myham*, 82 L. J. K.B. 551; [1913] 2 K.B. 220; 108 L. T. 556; 77 J. P. 217; 11 L. G. R. 770; 29 T. L. R. 387—Lord Coleridge, J.

New trial ordered, 84 L. J. K.B. 2253; 110 L. T. 749; 78 J. P. 193; 12 L. G. R. 274; 30 T. L. R. 282—C.A.

Possibility of Assessment—Selection for Theatrical Engagement—Contingency.]—The defendant, an actor and theatrical manager, published in a newspaper an offer which was substantially as follows: That any lady in the United Kingdom who wished to become an actress might send in to the newspaper an application, together with her photograph and the sum of one shilling; that the United Kingdom had been divided into ten districts; that the photographs of the applicants living in each district would be given on request to readers of the newspaper, who were invited to vote for those whom they considered to be the most beautiful in each district; that from the five ladies in each district (fifty in all) for whom were received the greatest number of votes the defendant would himself personally select twelve, and that to four of these twelve he would give a three years' engagement each at five pounds a week, to other four a three years' engagement each at four pounds a week, and to the remaining four a three years' engagement each at three pounds a week. The plaintiff accepted the offer by sending in an application, together with her photograph and the sum of a shilling, and by the votes of the readers of the newspaper she was given the first place in the district in which she resided. The defendant failed to give the plaintiff a reasonable opportunity of appearing before him as one of the fifty candidates from whom he was to select the twelve to whom the engagements were to be given. The plaintiff brought an action against the defendant for damages for breach of contract in depriving her of the chance of being selected by him for one of the engagements, and the jury awarded her substantial damages :—*Held*, that, though the plaintiff's chance of obtaining one of the appointments depended upon the contingency of the defendant selecting her, the damage sustained by her through being deprived of that chance was neither too remote nor incapable of assessment, and that the verdict should stand. *Chaplin* v. *Hicks*, 80 L. J. K.B. 1292; [1911] 2 K.B. 786; 105 L. T. 285; 55 S. J. 580; 27 T. L. R. 458—C.A.

Course of Tuition—Payment by Instalments —Breach.]—A student entered into a contract with a correspondence school, by which it was agreed that he should receive a certain course of instruction by correspondence and should pay therefor a fixed sum, payment to be made by monthly instalments until the whole sum was paid up. After pursuing the course for some time and paying the instalments as they fell due during that period, the student declined to continue the course, and refused to make any further payments. In an action brought against him by the school for payment of the balance of the fixed sum the student maintained that the school could only recover such damages as they could prove that they had suffered through his breach, if any, of the contract :—*Held*, on the construction of the contract that the agreement was for a definite course of instruction on one side and for a lump sum payment on the other, and accordingly that the pursuers, who were willing to complete the instruction they had contracted to supply, were entitled to recover the unpaid balance of that sum. *International Correspondence School* v. *Irving*, [1915] S. C. 28—Ct. of Sess.

Remoteness—Towage Contract—Collision—Sinking of Tow by Collision—Loss of Towage Remuneration by Tug Owner—Right of Tug Owner to Recover Loss from Colliding Vessel.]—The plaintiffs' tug was engaged in towing a ship from Antwerp to Port Talbot, under a contract which contained the clause "Sea towage interrupted by accident to be paid *pro rata* of distance towed." During the

towage the defendant's vessel, by the negligence of those on board, collided with and sank the tow. The tug was uninjured. The plaintiffs sued the defendant to recover the amount of towage remuneration so lost:—*Held*, that the damage sustained by the plaintiffs by reason of the towage contract being no longer performable, in consequence of the sinking of the tow, gave the plaintiffs no cause of action against the defendant. *Cattle* v. *Stockton Waterworks Co.* (44 L. J. Q.B. 139; L. R. 10 Q.B. 453) followed. *Remorquage à Hélice (Société Anonyme)* v. *Bennetts*, 80 L. J. K.B. 228; [1911] 1 K.B. 243; 16 Com. Cas. 24; 27 T. L. R. 77—Hamilton, J.

—— Ploughing up Pasture Land—Injunction—Damage to Tenant Caused thereby.]—The tenants of a pasture farm upon which they maintained a flock of sheep proposed to plough up part of the pasture land and plant corn. The landlord obtained an interim injunction restraining them from doing so, with the result that the tenants were compelled to maintain the farm as a pasture farm. They kept their sheep on the land, and in consequence of a drought the sheep became depreciated in value. The interim injunction obtained by the landlord was dissolved at the hearing of the action, and in arbitration proceedings the tenants claimed as damages the net profit they would have made if they had ploughed the land and planted corn, and also the amount by which the sheep had deteriorated in value. It was contended for the landlord that the damages arising under the second head were too remote and could not be allowed:—*Held*, that the tenants were entitled to damages under both heads of their claim. *Pemberton and Cooper, In re*, 107 L. T. 716—Bankes, J.

For Breach of Promise.]—*See* HUSBAND AND WIFE.

d. Mitigation and Reduction.

Profit Accruing by Acts Done in Mitigation of Damages — Relevancy.] — In assessing damages for breach of contract the fundamental basis is compensation for pecuniary loss naturally flowing from the breach; but this is qualified by the plaintiff's duty to take all reasonable steps to mitigate the loss consequent on the breach, and he cannot claim any part of the damage which is due to his neglect to take such steps; and if the action which he has taken has actually diminished his loss, such diminution may be taken into account, even though there was no duty on him to act. A jury or arbitrator may properly look at the whole of the facts, and, by balancing loss and gain, estimate the *quantum* of damage. *British Westinghouse Electric and Manufacturing Co.* v. *Underground Electric Railways*, 81 L. J. K.B. 1132; [1912] A.C. 673; 107 L. T. 325; 56 S. J. 734—H.L. (E.).

The appellants contracted to provide the respondents with a number of machines. The machines failed to satisfy the provisions of the contract, and the respondents claimed damages for breach of contract. They also replaced the defective machines by improved machines. The question was submitted to an arbitrator, who in the Special Case stated that the appellants' claim was in substance for the balance of the price of the machines supplied by them, and that the respondents counterclaimed for the loss and damage arising out of the defects of the appellants' machines. The arbitrator found as a fact that the purchase by the respondents of the substituted machines was to their pecuniary advantage, and would have been so even if the original machines had complied with the contract:—*Held*, that the appellants were entitled to have the pecuniary advantages to the respondents arising from the use of the improved machines brought into account in ascertaining the damages sustained by the respondents by reason of the appellants' breach of their contract. *Ib.*

Erie County Natural Gas and Fuel Co. v. *Carroll* (80 L. J. P.C. 59; [1911] A.C. 105) and *Wertheim* v. *Chicoutimi Pulp Co.* (80 L. J. P.C. 91; [1911] A.C. 301) approved. *Ib.*

Alteration of Contract—Subsequent Arrangement—Music-hall Contract.]—Before the war the defendant agreed to perform twice every evening as a comedian at the plaintiffs' music hall for one week beginning on October 12, 1914, at a salary of 150*l*. The contract provided that "in case the artist shall, except through illness . . . or accident . . . fail to perform at any performance, he should pay to the management as and for liquidated damages a sum equal to the sum which the artist would have received for such performance, in addition to costs and expenses incurred by the management through the default of the artist." After the outbreak of war an arrangement was come to between the managements of the various music halls and the artistes, including the defendant, that the gross receipts of the halls during the war should be divided into two equal parts, of which the management should take one part and the performers at the hall the other part, sharing that part in the proportion of their respective salaries. The defendant having failed to perform at the plaintiff's hall, they brought an action for damages against him:—*Held*, that in order to ascertain the measure of damages the sum fixed in the contract had to be altered in view of the subsequent arrangement, and that the plaintiffs were entitled to recover such proportion of the artistes' share in the receipts which would probably have been received if the defendant had performed his agreement, as the defendant would have been entitled to. *Golder's Green Amusement and Development Co.* v. *Relph*, 31 T. L. R. 343—Bailhache, J.

e. Prospective.

See Vic Mill, Lim., In re, supra, sub tit. (*a*) *Where no Market* and *Chaplin* v. *Hicks, supra*, sub tit. *Nature of Right.*

2. Costs of Action when Recoverable.

See Leslie Lim. v. *Reliance Advertising and Addressing Agency* and *Cointat* v. *Myham, supra*, sub tit. *Nature of Right.*

3. Practice.

Enquiry as to—Interest—Referee—Report—Date from which Interest Payable.]—An action for damages for trespass to mines was compromised on July 18, 1910, by an order referring it to a special referee to ascertain damages on an agreed basis, the defendants to pay the sum so found. On June 1, 1911, the referee reported that 1,515*l.* was payable. On motion that the report be adopted, the plaintiff company claimed interest from July 18, 1910:—*Held*, that the order of July 18, 1910, was not an order within the Judgments Act, 1838, s. 18, since a further order was necessary to enforce it, and that interest was not payable from that date. *Borthwick* v. *Elderslie Steamship Co.* (*No.* 2) (74 L. J. K.B. 772; [1905] 2 K.B. 516) distinguished. But *held*, that the order constituted an agreement to pay the damages when found, and that 4 per cent. interest was payable from June 1, 1911, the date of the referee's report. *Ashover Fluorspar Mines, Lim.* v. *Jackson*, 80 L. J. Ch. 687; [1911] 2 Ch. 355; 105 L. T. 334; 55 S. J. 649; 27 T. L. R. 530—Eve, J.

"Order"—Judgments Act, 1838.]—Where an order directs an enquiry as to damages in an action of trespass and gives liberty to apply after the result is certified, it is not an order within the provisions of section 18 of the Judgments Act, 1838. Where an order, after directing such an enquiry, orders payment of the amount so to be certified it is an order within that section. *Ib.*

Action for Recovery of Land—Interest.]—The appellant, who alleged that he was entitled to certain land in fee-simple under the trusts of a settlement, brought an action against the respondent for wrongfully issuing a certificate of title to the land to another person. In this action he established his title to the land, and it was held that the measure of damages was the value of the land with the buildings thereon at the date when his title fell into possession on the death of the previous tenant for life:—*Held*, that the appellant was not entitled to interest on the value of the land and buildings from the date when his title fell into possession. *Spencer* v. *Registrar of Titles*, 103 L. T. 647—P.C.

Set-off against Costs.]—*See* Costs.

DEATH.

Caused by Negligence — Damages.] —*See* Negligence.

Presumption of.]—*See* Will.

Of Annuitant.]—*See* Annuity.

DEATH DUTIES.

See Revenue.

DEBENTURES.

See Company.

DEBTORS ACT.

Attachment—Fiduciary Capacity of Executor to Creditors Terminated when a Personal Judgment Recovered.]—Sole creditors of a testator on evidence that the executor had received assets, took an order on him to pay personally, and afterwards on an admission that he had had a sum in his hands representing part of the testator's estate, obtained a four-day order to pay the sum into Court, followed by attachment for non-compliance:—*Held*, that by taking a personal order the plaintiffs had terminated the fiduciary relationship which had until then existed between them and the executor, and therefore could not rely on such relationship to bring the defendant within the third exception in section 4 of the Debtors Act, 1869, and entitle them to an order attaching him for non-payment. *Thomas, In re; Sutton, Carden & Co.* v. *Thomas*, 81 L. J. Ch. 603; [1912] 2 Ch. 348; 106 L. T. 996; 56 S. J. 571—C.A.

Judgment Summons—Order for Payment of Money—Default—Summons for Order of Commitment—Necessity for Service of Order for Payment.] — The defendant having made default in payment of a sum of money in compliance with an order made against him on a judgment summons, the plaintiff took out a further judgment summons calling upon the defendant to shew cause why he should not be committed to prison for such default. This summons was personally and duly served upon the defendant, but the order made on the first summons was not personally served upon him, though he was present when that order was made:—*Held*, that it was not necessary, in order to found jurisdiction to make an order of commitment, that the defendant should have been personally served with the order made on the first judgment summons. *Haydon* v. *Haydon*, 80 L. J. K.B. 672; [1911] 2 K.B. 191; 104 L. T. 477; 27 T. L. R. 321—C.A.

DEBTS.

Assignment of.]—*See* Assignment.

Attachment of.]—*See* Attachment.

DECEIT.

See FRAUD.

DECISIONS.

Court of Session.]—In a case arising on the construction of a statute equally applicable to England and Scotland, it is the duty of an English Court of first instance to follow a unanimous decision of the Court of Session. *Dixon Hartland, In re; Banks* v. *Hartland*, 80 L. J. Ch. 305; [1911] 1 Ch. 459; 104 L. T. 490; 55 S. J. 312—Swinfen Eady, J.

DEDICATION.

Of Highway.]—*See* WAY.

Of Public Park.]—*See* LOCAL GOVERNMENT.

DEED.

See also Vol. V. 341, 1639.

Assignment—Delivery Necessary to Constitute Delivery as Deed or Escrow—Delivery to Grantor's Solicitor—Deed to be Completed on Further Instructions from Grantor—Document to take Effect on Death of Grantor—Non-execution of Document as Will.] — In September, 1905, H., the assignee of the lease of certain premises, having signed and sealed an assignment of the residue of the term to one Mrs. B., handed the assignment to his solicitor. The assignment was not attested in the way provided by the Wills Act. On the same day as that on which the assignment, which was not dated, was handed by H. to his solicitor, the latter's firm wrote the following letter to H.: "We acknowledge that you have to-day executed the assignment of your lease to Mrs. B. as an escrow, and that we are to retain it on your behalf until you send us instructions to complete the deed. In the event of your dying before the deed is completed, we understand that we are to consider the deed as having been completed before your death and to take what steps are necessary to vest the lease in Mrs. B. should she wish it. In the event of Mrs. B. dying before the assignment is completed you will, of course, send us further instructions as to what is to be done with the premises. . . ." The assignment in question—which was also, but at some date unknown, executed by Mrs. B.—remained in the possession of H.'s solicitor up to H.'s death on September 22, 1909, and subsequently the blank was filled in by dating the assignment September 20, 1909; but the title deeds were retained by H., who continued to pay the rent, rates, and taxes. Mrs. B. survived H. In an action by the lessors against H.'s executors to recover possession of the premises and other relief, on the ground that the residue of the term was vested in H. at his death, in which action the defendants set up as a defence the above-mentioned assignment,—*Held*, that the plaintiffs were entitled to succeed, inasmuch as in the event which happened there was no such delivery by H. as made the assignment capable of taking effect either as an escrow or as a deed; and *held* further, that even if the deed had been delivered on condition that it should take effect on the death of H., it would operate as a will, and not having been attested in accordance with the Wills Act was a nullity. *Foundling Hospital (Governors)* v. *Crane*, 80 L. J. K.B. 853; [1911] 2 K.B. 367; 105 L. T. 187—C.A.

Execution by Attorney—Invalid Power of Attorney — Deed Void — Acknowledgment by Donor—Redelivery.]—On February 26, 1896, a lady by her attorney executed a voluntary deed of gift of chattels in favour of her daughter. The attorney's power did not authorise him to execute such a deed. On June 9, 1898, the lady's solicitor at her request produced and read to her the deed of gift, when she desired him to retain it on her daughter's behalf. A month later the lady sent to her solicitor an inventory of the chattels with a note on it in her handwriting stating that they were "now the property" of her daughter:—*Held*, that there had been such an acknowledgment of the deed by the lady in 1898 as amounted then to a delivery or re-delivery of the deed. *Seymour, In re: Fielding* v. *Seymour*, 82 L. J. Ch. 233; [1913] 1 Ch. 475; 108 L. T. 392; 57 S. J. 321—C.A.

To establish re-delivery of a deed by acknowledgment it is not necessary to shew that the party making the acknowledgment is aware that without the acknowledgment the deed would be invalid. *Ib.*

Construction—Joinder of Party for Limited Purpose—No Inference of Joinder for other Purposes—Erroneous Recital—Erroneous Inclusion of Parcels in Schedule.]—A party who joins in a deed for a specific purpose cannot be treated as having joined for a totally different purpose, or as having thereby dealt with any property, unless a clear intention to do so appears. *Horsfall, In re; Hudleston* v. *Crofton*, 80 L. J. Ch. 480; [1911] 2 Ch. 63; 104 L. T. 590—Parker, J.

E., under the will of her father, T., who died in 1861, was tenant for life, with a power of appointment among her issue, of lands specifically devised, and of part of his residuary estate. She had married in his lifetime, and he had then settled on her and her children part of the lands specifically devised by his will. Some of those lands, not included in the settlement, were in 1871 sold by the trustees of the will, and the proceeds invested. In 1891 E. became a trustee of the will. In 1896, on the marriage of her daughter, S., E. appointed to her a share in T.'s residuary estate, the deed of appointment reciting

erroneously that all the specifically devised lands had been comprised in E.'s marriage settlement. S., by her own marriage settlement, settled her share of T.'s residuary estate and of the investments representing the same, those investments being stated to be specified in the schedule. The schedule, however, included investments representing the proceeds of the specifically devised lands which had been sold. E. was a party to S.'s marriage settlement, whereby she covenanted to pay an annuity:—*Held*, that, notwithstanding the erroneous recital in the appointment to S., E. exercised her power thereby only over T.'s residuary estate, and not over the proceeds of sale; and that E.'s joinder in S.'s marriage settlement did not amount to an appointment or settlement by her of any of those proceeds. *Minchin* v. *Minchin* (5 Ir. R. Eq. 178, 258) and *Griffith-Boscawen* v. *Scott* (53 L. J. Ch. 571; 26 Ch. D. 358) followed. *Ib.*

—— **Charge on Real Estate—"Die seised"—Seisin — Copyhold — Unadmitted Owner.**]—A. covenanted to pay certain annuities, with power of distress, or entry for the recovery of the same, upon the real estate of which he might die seised. At the time of his death A. was in receipt of the rents and profits of certain copyholds of which he had never been admitted tenant, but as to which the admitted tenant had declared that he stood possessed of the same in trust for A. and his heirs and assigns:—*Held*, that A. had not died "seised" of the copyhold premises. *Norman, In re; Thackray* v. *Norman*, 111 L. T. 903; 58 S. J. 706—Joyce, J.

—— **Licence—Reservation to Licensors, "their assigns and nominees"—Reading-in Words—Derogation from Grant.**]—In certain cases the word "assigns," when not expressed, may be read into a document, but whether it is proper to do so depends on the context in each case. In a case of a licence where the extension of a reservation by the licensors to their "assigns and nominees" would destroy the only effective limitation on the scope of the reservation, and make it possible for the licensors to derogate very seriously from their grant, the Court will not supply such words where they are not expressed in the licence in question. *Anglo-Newfoundland Development Co.* v. *Newfoundland Pine and Pulp Co.*, 83 L. J. P.C. 50; 110 L. T. 82—P.C.

—— **Covenant—"As trustees but not so as to create any personal liability"—Effect — Repugnancy.**]—A covenant (by the trustees of a deceased mortgagor) "as such trustees but not so as to create any personal liability" (to pay the mortgage debt and indemnify the estate of a deceased co-mortgagor) involves the personal liability of the covenantors. *Furnivall* v. *Coombes* (12 L. J. C.P. 265; 5 Man. & G. 736) followed. *Williams* v. *Hathaway* (6 Ch. D. 544) distinguished. *Watling* v. *Lewis*, 80 L. J. Ch. 242; [1911] 1 Ch. 414; 104 L. T. 132—Warrington, J.

The words "but not so as to create any personal liability" are, in effect, a proviso destroying, and not qualifying, the covenant entered into by the covenantors "as trustees"; that covenant is an absolute one and imports personal liability; the subsequent words are repugnant to it and must be rejected; and the personal liability therefore remains. *Ib.*

—— **Grant of Fee-simple — Reservation of "mines, quarries of metals and minerals and springs of oil" by Grantor—Natural Gas not within Reservation.**]—In an exception in a conveyance of land of "all mines and quarries of metals and minerals and all springs of oil in or under the said land, whether already discovered or not,"—*Held*, that natural gas, which at the date of the conveyance possessed no commercial value, was not included, but passed to the grantee. *Barnard-Argue-Roth-Stearns Oil and Gas Co.* v. *Farquharson*, 82 L. J. P.C. 30; [1912] A.C. 864; 107 L. T. 332; 57 S. J. 10; 28 T. L. R. 590—P.C.

Mining Lease—Parcels—Area Stated within Specified Boundaries — Alleged Deficiency — Abatement of Rent.]—The appellant was lessor and the respondents lessees under a mining lease, the terms of which were contained in a kabuliyat, granting the rights of cutting, raising, and selling coal beneath "400 bighas of land, described in the schedule below, in mauza Dobari"; the schedule specified boundaries and added "right in the coal underneath the 400 bighas of land within these boundaries." In a suit to recover arrears of rent the respondents alleged that they were in possession of less than 400 bighas and claimed to be entitled to an abatement of rent:—*Held*, first, that the construction of the kabuliyat as to the land included in the lease could not be varied by evidence of the negotiations which led to the contract or by evidence that there were not 400 bighas within the specified boundaries; and secondly, further, that the respondents had failed to prove what was the area in fact contained within the boundaries or that of which they had been given possession. *Durga Prasad Singh* v. *Rajendra Narayan Bagchi*, L. R. 40 Ind. App. 223—P.C.

Alteration of Date—Parcels—Plan—Implied Right of Way.]—A lessor granted a lease of certain plots of land on which had been erected certain then nearly finished houses. The grant was defined by reference to a plan in the margin, which shewed a narrow strip of ground, coloured brown, at the rear of the plots, and running along other land that belonged to the lessor, but was not included in the lease. The lease contained no express grant of any right of way along this strip, nor indeed further reference to it; but the evidence shewed that the use of the strip was essential to the tenants of the new houses for the convenient ingress of coal and manure, and for the egress of garden rubbish. At the time of the original granting of the lease the dates of the day and month were left in blank, but subsequently there was an alteration of the year (with the consent of all parties), and the blanks were also filled in. At the date of the original granting of the lease the plots were not yet fenced on the side towards the strip; but at the time of the alteration they were so fenced, and the position was indicated for gates

communicating between the plots and the strip :—*Held*, that the alteration of the lease did not avoid it, and that the lessor was estopped from shewing that the date inserted by himself was not the date from which the demise operated, so as to prevent any one claiming under the lease from relying upon the circumstances existing at the date that the lease finally bore. *Held*, further, that, under those circumstances, an implied right of way over the strip in question had passed under the lease from the lessor to the lessee. *Rudd* v. *Bowles*, 81 L. J. Ch. 277; [1912] 2 Ch. 60; 105 L. T. 864—Neville, J.

Release—Effect of—Proceedings not Contemplated by the Release.]—It is not competent for a respondent on a summons against him for misfeasance to set up as a bar to the proceedings that a release had been given him by the company which included a general clause of release, unless such relief is shewn to have contemplated the matters actually in question on the summons. *Joint-Stock Trust and Finance Corporation, In re*, 56 S. J. 272—Swinfen Eady, J.

Lease—Innocent Misrepresentation by Lessor Inducing Contract—Right of Tenant to Cancellation of Lease.]—A lease by deed which has been executed by the lessee on the faith of an innocent misrepresentation on the part of the lessor, and under which the lessee has gone into possession, will not be rescinded by the Court upon the ground that the execution of the deed was induced by such misrepresentation. *Angel* v. *Jay*, 80 L. J. K.B. 458; [1911] 1 K.B. 666; 103 L. T. 809; 55 S. J. 140—D.

DEED OF ARRANGEMENT.

See BANKRUPTCY.

DEFAMATION.

A. WHAT IS AND WHAT IS NOT ACTIONABLE.

See also Vol. V. 532, 1649.

1. In General.

Publication—Letter in Unsealed Halfpenny Envelope — Unlawful Opening by Third Person.]—The respondent sent a letter to his wife containing words alleged to be a libel on their children, the plaintiffs. This was inclosed in an open envelope, bearing a halfpenny stamp, addressed to her in her maiden name, and sent through the post. It was opened by the wife's butler out of curiosity, and he read the letter :—*Held*, that there was no evidence of publication to him by the respondent, as his act was unauthorised and could not reasonably be anticipated by the respondent. *Huth* v. *Huth*, 84 L. J. K.B. 1307; [1915] 3 K.B. 32; 113 L. T. 145; 31 T. L. R. 350—C.A.

—— Right of Postal Authorities to Open such Letters—Presumption of Opening by Them.]—Although the postal authorities had the right to examine the contents of envelopes under a halfpenny stamp, a presumption that they had in fact done so did not arise, and evidence to shew that they had done so in fact would be necessary to shew publication to them. *Ib.*

Publication — Liability of Circulating Library.]—The defendants, who were book distributors, sold two books which were published in the French language in Paris, and which the plaintiff alleged contained libellous statements regarding her. In an action by the plaintiff claiming damages from the defendants in respect of the publication of these statements, the jury found that the defendants did not know of anything libellous contained in the books, that it was not through their negligence that they did not know, and that the books were not of such a character as to put them on enquiry :—*Held*, that the defendants were not liable. *Per* Cozens-Hardy, M.R. : While as to some books there may be a duty on distributing agents to examine them carefully, because of their titles or because of the recognised propensity of their authors to scatter libels abroad, there is no general obligation on distributing agents to read every book they sell in order to ascertain whether or not it contains any libellous statements. *Weldon* v. *Times Book Co.*, 28 T. L. R. 143—C.A.

Publication of Story in Magazine under Plaintiff's Name—Plaintiff not the Writer of the Story—Passing off.]—The plaintiff, a writer of reputation, sued the defendants for damages for publishing in their magazine a story under the plaintiff's name of which he was not the writer. The plaintiff alleged that the story was of inferior quality, and, being published as by him, was damaging to his reputation. In summing up the Judge directed the jury that if they came to the conclusion that any one reading the story would think the plaintiff a mere commonplace scribbler they could give him damages for libel, and, further, that on the claim for passing off, if they thought the facts proved and that damage

must certainly ensue, though it was not capable of present proof, they could find for the plaintiff with damages. *Ridge* v. *English Illustrated Magazine*, 29 T. L. R. 592—Darling, J.

Innuendo—Necessary Inference from Language Used.]—In order to support an action for libel the innuendo must represent the reasonable, natural, or necessary inference from the words complained of, regard being had to the occasion and circumstances of their publication. It is not enough that the words may be made to bear a defamatory meaning by putting upon them a strained and improbable construction. *Crabbe & Robertson* v. *Stubbs* (22 Rettie, 860) discussed and explained. *Stubbs, Lim.* v. *Russell*, 82 L. J. P.C. 98; [1913] A.C. 386; [1913] S. C. (H.L.) 14; 108 L. T. 529; 29 T. L. R. 409—H.L. (Sc.)

Publication of Translation of Papal Bull.]—The translation of a Papal bull and its publication in a newspaper simply for the information of readers is not a contravention of 13 Eliz. c. 2. The words of the statute, "publish or . . . put in use" mean publishing so as to make the bull operative in this country. *Mathew* v. *Times Publishing Co.*, 29 T. L. R. 471—Darling, J.

Libel on a Class.]—A newspaper published an article on Ireland, stating that in Queenstown instructions were issued by the Roman Catholic religious authorities that all Protestant shop assistants should be discharged, and that a shopkeeper who had refused so to act had had his shop proclaimed and had been forced to close it. The Roman Catholic Bishop of Queenstown and six of his clergy (who averred that they were the Roman Catholic religious authorities referred to) sued as individuals to recover separate sums of damages on account of the accusations in the article. The article was innuendoed as charging the pursuers with abusing their religious influence to procure the indiscriminate dismissal of Protestant shop assistants, and with ruining a shopkeeper's business:—*Held*, first, that the pursuers were entitled to sue for damages as individuals; secondly, that it was for the jury to determine whether they or any of them were the Roman Catholic religious authorities referred to: and thirdly, that the article could bear the defamatory meaning put upon it. *Browne* v. *Thomson & Co.*, [1912] S. C. 359—Ct. of Sess.

2. In Respect of Trade or Profession.

Slander—Words Spoken in Relation to a Person's Office, Trade, or Profession.]—An action for a slander upon a person in the way of his office, trade, or profession will lie without proof of special damage when, from the nature of the office held by the person slandered, the words uttered will in the ordinary course caused him damage, although the person uttering the slander did not in terms connect the misconduct imputed to the plaintiff with the office held by him. Authorities on the subject discussed. *Jones* v. *Jones*, 84 L. J. K.B. 1140; 113 L. T. 336; 31 T. L. R. 245—Lush, J. Reversed, 60 S. J. 140; 32 T. L. R. 171—C.A.

—— **Certificated Teacher and Head Master of a County Council School—Imputation of Adultery—No Special Damage Alleged or Proved—Words Actionable per se.**]—A certificated teacher and head master of a county council school brought an action against a man and his wife to recover damages for a slander uttered concerning the plaintiff in the way of his business by the female defendant. The words spoken imputed that the plaintiff had been guilty of moral misconduct with a certain woman, but when they were spoken no reference was made by the female defendant to the plaintiff's position as a head master, and it did not appear that she knew that he held that office. No special damage was alleged or proved. The jury found that the words spoken were calculated to imperil the plaintiff's retention of his office, and awarded him damages:—*Held*, that the words were actionable *per se*, and that consequently the plaintiff was entitled to judgment. *Ib.*

Disparagement of System Worked under a Patent—Imputation on Patentee.]—To disparage a trader's goods does not give ground for an action of libel, although, if special damage is proved, the plaintiff may recover in an action on the case. If, however, the words used, though directly disparaging goods, also impute carelessness, misconduct, or want of skill in the conduct of his business by the trader, they may give grounds for an action of libel. An attack upon the system worked under a patent does not necessarily involve an imputation upon the person who supplies the parts and licenses the use of the system. *Griffiths* v. *Benn*, 27 T. L. R. 346—C.A.

Allegation of Professional Incapacity—"Quack."]—In an action for slander at the instance of C., the superintendent of a district lunatic asylum (who was admittedly not a qualified medical practitioner), complaining that the defender had said of him, "What does that mannie C. know about treating lunatics? He is just a quack. We will sack him yet":—*Held*, that the words were capable of meaning that the pursuer was unfit for his duties as superintendent, that he did not know his work, was not properly qualified for the work in which he was engaged, and ought to be dismissed from his post, and therefore that the question must be left to the jury. *Chisholm* v. *Grant*, [1914] S. C. 239—Ct. of Sess.

Justification—Failure to Prove—Defamatory Meaning.]—The plaintiffs were the proprietors of a wine, known as "Bendle's Meat-Port Nutrient," and the defendants published a statement which in substance was that the wine, though it was advertised as a really genuine nutritive meat wine, did not contain highly nutritive properties. In an action by the plaintiffs against the defendants for libel the defendants pleaded justification. The Judge found that the plaintiffs' advertisement,

if fairly read, was substantially true, and he awarded the plaintiffs damages :—*Held*, on the evidence (Phillimore, L.J., dissenting), that the words would be understood by reasonable men as imputing to the plaintiffs dishonesty or fraudulent incapacity in the way of conducting their business, and the Judge's decision must be affirmed. *Bendle* v. *United Kingdom Alliance*, 31 T. L. R. 403—C.A.

3. Comments on Matters of Public Interest.

Innuendo.]—A ratepayer having made certain charges against the matron of a hospital, an enquiry was held in which evidence was given by the matron and by other members of the hospital staff. The commissioner who conducted the enquiry reported adversely on the credibility of certain members of the staff, but stated his belief in the truthfulness of the matron, and exonerated her from the charges made against her. On this report being sent to the ratepayer, he acknowledged receipt of it in a letter, in which he said "I have but a languid interest in the question of which member of the staff lied the most." In an action of damages for defamation brought by the matron against the ratepayer the pursuer sought to innuendo these words as representing that she had lied in giving evidence at the enquiry :—*Held*, that the words would not bear this innuendo. *Couper* v. *Balfour of Burleigh* (*Lord*), [1914] S. C. 139—Ct. of Sess.

B. PRIVILEGE.

See also Vol. V. 571, 1659.

1. Absolute.

Annual Meeting of Licensing Justices—"Court in law or recognised by law"—Application for Renewal of Licence—Notice of Objection—Defamatory Statement.]—The rule of law that defamatory statements made in the course of proceedings before a Court of justice or a Court having similar attributes are absolutely privileged does not apply in the case of licensing Justices when dealing with an objection to the renewal of an old on-licence. They are not in such case a "Court in law or a Court recognised by law" within the meaning of the rule. *Attwood* v. *Chapman*, 83 L. J. K.B. 1666; [1914] 3 K.B. 275; 111 L. T. 726; 79 J. P. 65; 30 T. L. R. 596—Avory, J.

The plaintiff was the holder of an old on-licence of an inn, and applied for the renewal thereof at the general annual meeting of the licensing Justices. The defendant, a bookmaker, gave written notice of his intention to oppose the application, and alleged various grounds of objection to the effect that the plaintiff was not a fit and proper person to hold the licence. He served copies of this notice on the plaintiff, on the clerk to the licensing Justices, on the superintendent of police, and on a firm of brewers, owners of the inn. The plaintiff brought an action claiming damages for libel in respect of the statements contained in the notice, and the defendant pleaded that he was taking a necessary and proper step in a judicial proceeding in serving the notices, and that the publication thereof was absolutely privileged :—*Held*, first, that the licensing Justices were not a Court of law to which the privilege attached; secondly, that, assuming they were, the defendant, as objector, being neither a party nor a witness in the proceedings, was not a person on whose behalf the privilege could be claimed; and thirdly, that, assuming the defendant was such a person, the privilege did not extend to the notices served on the superintendent of police and on the brewers. *Ib.*

Dictum of Lord Halsbury, L.C., in *Boulter* v. *Kent Justices* (66 L. J. Q.B. 787, 789; [1897] A.C. 556, 561), and adopted by the Court of Appeal in *Rex* v. *Howard* (71 L. J. K.B. 754; [1902] 2 K.B. 363), followed. *Ib.*

2. Qualified.

Privileged Occasion—Communication Made in Discharge of Duty—Public Interest—Trade Protection Association—Confidential Report to Subscriber in Answer to Enquiry.]—An alleged defamatory communication made by a trade protection association to one of its subscribers, in answer to an enquiry by the latter,—*Held* by the Court of Appeal (Vaughan Williams, L.J., and Hamilton, L.J.; Bray, J., dissenting), having regard to the constitution and method of business of the association, not to have been made on a privileged occasion. *Greenlands, Lim.* v. *Wilmshurst*, 83 L. J. K.B. 1; [1913] 3 K.B. 507; 109 L. T. 487; 57 S. J. 740; 29 T. L. R. 685—C.A.

Action for Joint Tort—Separate Defences—Improper Severance of Damages—Unity of Verdict and Judgment.]—Where an action has been brought against several defendants for an alleged joint tort for which all are found liable, then, notwithstanding that they have severed in their defences, only one joint verdict can be found and one joint judgment can be entered against them all. *Ib.*

A trade protection association existed for the purpose of providing for its subscribers, in answer to their enquiries, confidential information as to the credit and financial position of persons with whom they contemplated dealing, its work being carried on under the supervision of a committee of the subscribers, by a secretary, a solicitor, and various local correspondents, and its surplus income from subscriptions being accumulated in the hands of its trustees and not distributed among the subscribers. The plaintiffs brought an action for libel against the association and one of its correspondents in respect of a communication sent to a subscriber in answer to his enquiry. The defendants delivered separate defences, each pleading (*inter alia*) that the communication was published on a privileged occasion without malice. The jury found express malice against the correspondent, and they returned separate verdicts against the correspondent for 750*l.* damages and against the association for 1,000*l.* damages. The Judge held that the occasion was not privileged, and gave judgment against the defendants for the above amounts respectively. The association appealed :—*Held*, by Vaughan Williams, L.J., and Hamilton, L.J., that the occasion was not

privileged, but that the damages had been improperly severed, and further that they were excessive as against the association, and therefore that judgment should not be entered for the plaintiffs, but that there must be a new trial of the action. *Held*, by Bray, J., that the occasion was privileged, that the malice of the correspondent could not be attributed to the association, and that judgment should be entered for the association; but, if this view were wrong, that for the reasons given by the other members of the Court there should be a new trial. *Macintosh* v. *Dun* (77 L. J. P.C. 113; [1908] A.C. 390) followed by Vaughan Williams, L.J., and Hamilton, L.J., but distinguished by Bray, J. *Ib.*

Enquiries involving imputations on the solvency of persons contained in a paper issued only to its members by a voluntary society for the protection of trade are not published on a privileged occasion. *Elkington* v. *London Association for Protection of Trade*, 28 T. L. R. 117—Darling, J.

Representation that Person Unworthy of Commercial Credit — Privilege.] — A local association of traders issued to its members a list of the names and addresses of certain persons in the district. The list bore no title and contained no comment on the persons whose names were included; but it was admittedly compiled from the "black lists." A person whose name appeared in the list brought an action of damages for libel against the association, in which he averred that the list was known in the district as the "black list," and that the defenders by inserting his name in it had represented that he was unworthy of business credit :—*Held*, first, that the publication of the pursuer's name in the list was defamatory; but secondly, that the defenders were privileged in issuing the list, and as facts inferring malice were not averred the action must be dismissed. *Macintosh* v. *Dun* (77 L. J. P.C. 113); [1908] A.C. 390) considered. *Barr* v. *Musselburgh Merchants Association*, [1912] S. C. 174—Ct. of Sess.

Matter of Public Interest—Duty to Communicate.]—A publication is made on a privileged occasion if the matter published is of public interest and if the party who publishes it owes a moral, though not necessarily a legal, duty to communicate it to the public. The plaintiff publicly attacked an officer of the Army in his character as such, and the Army Council, having investigated the matter, found that the attack was wholly unjustifiable. Thereupon the defendant, who was at the time Permanent Under-Secretary for War, published, under the instructions of his superiors in the War Office, an official *communiqué*, including a letter to the officer who had been attacked by the plaintiff. This letter the plaintiff alleged to mean that he (the plaintiff) had been guilty of dishonourable conduct and had in consequence thereof been removed from his regiment :—*Held*, that the letter was published on a privileged occasion. *Adam* v. *Ward*, 31 T. L. R. 299—C.A.

Accusation of Dishonesty.]—A cashier, who had been dismissed from his employment, brought an action of damages for slander against the manager of the business. The pursuer averred that, having discovered shortages in the cash, he reported these to his employer; that the same afternoon, in the presence of his employer, the defender charged him with having taken the money, and the same evening dismissed him from the employment. Two days later the defender called on him at his house and, in the presence of his wife, said to him, "I have come to ask for explanations; you must have taken the money" :—*Held*, that, on the pursuer's averments, the occasion when the slander was uttered in the pursuer's house was not privileged. *Suzor* v. *Buckingham*, [1914] S. C. 299—Ct. of Sess.

Master's Liability for Servant's Slander.]—In an action of damages for slander, brought against a limited company owning a music hall, the pursuer averred that, while he was present at a performance in the hall he was falsely accused by an attendant of indecent conduct towards a member of the audience, and that he was taken to a private room where the slander was repeated by the attendant of the hall and by the manager. He averred that these slanderous statements "were made and persisted in most recklessly, pertinaciously, and maliciously" :—*Held*, that the occasion was privileged, and that as there was no sufficient averment of facts inferring malice, the action was irrelevant. *Finburgh* v. *Moss' Empires, Lim.* ([1908] S. C. 928), distinguished. *Gorman* v. *Moss' Empires, Lim.*, [1913] S. C. 1—Ct. of Sess.

3. Rebuttal of Privilege by Evidence of Malice.

Personal Malice of Servant.]—In an action of damages brought against a railway company on account of a slander uttered by the manager of one of their station bars, the pursuer, who had been employed as a barmaid at this bar, averred that, on the occasion of her dismissal from this post, the manager (who had the control of the servants employed at the bar) uttered the slander complained of—a charge of appropriating the company's funds—knowing it to be false and with the object of gratifying his private ill will towards her. The occasion was admittedly privileged :—*Held*, that the action was irrelevant, in respect that the pursuer's averments disclosed that the malice alleged as actuating the slander was personal to the manager and in no way connected with the business of the defenders, and accordingly that the defenders could not be held responsible. *Citizens' Life Assurance Co.* v. *Brown* (73 L. J. P.C. 102; [1904] A.C. 423) and *Finburgh* v. *Moss' Empires, Lim.* [1908] S. C. 928), distinguished. *Aiken* v. *Caledonian Railway*, [1913] S. C. 66—Ct. of Sess.

Sufficiency of Averments of Malice—Complaint by Ratepayer to Local Authority—Refusal to Withdraw Statement.]—The matron of a hospital belonging to certain local authorities brought an action of damages against a ratepayer within the hospital district for defamatory statements contained in two

letters. The first of these letters was sent by him to the clerk of one of the local authorities, reporting certain information received by him as to the pursuer's conduct as matron (which he stated, if true, pointed, in his opinion, to criminal conduct), and demanding an enquiry. An enquiry was accordingly held by the hospital authorities, and thereafter, on the instigation of the defender, a second enquiry was held by the Local Government Board. In both of these enquiries the pursuer was absolved of blame. The second letter was then sent by the defender to the Local Government Board, in which he expressed dissatisfaction with the result of these enquiries and made another charge, based on fresh information, against the pursuer and asked for a further enquiry. A third enquiry was held, in which the pursuer was again absolved. The defender, however, refused to apologise or withdraw the charges. The defender's letters were admittedly privileged, but the pursuer maintained that malice sufficiently appeared from—first, the violent terms in which the statements in the letters were couched; secondly, the fact that they were made without prior enquiry; thirdly, the reiteration of them; and fourthly, the defender's adherence to them and refusal to apologise:—*Held*, that these facts and circumstances were not sufficient to infer malice, and action dismissed as irrelevant. *Couper* v. *Balfour of Burleigh (Lord)*, [1913] S. C. 492—Ct. of Sess.

Observed, that the defender as a ratepayer was entitled to lay the facts reported to him before the proper authorities for investigation, and was under no duty to enquire into them before doing so; and that, although the facts were disproved, he was not bound to apologise or to withdraw the statements made to the authorities, although a duty of future reticence might be imposed on him. *Ib.*

Privilege of Author Destroyed by Malice—Printers of Libel not Actuated by Malice—Liability of Printers.]—The defendants jointly published a pamphlet containing libellous statements concerning the plaintiff. One of the defendants was the author and the other defendants were the printers of the pamphlet. It was admitted that, so far as the author was concerned, the pamphlet was published on a privileged occasion. The jury found that the author was actuated by malice, but that the printers were not actuated by malice:—*Held*, that the privilege of the author extended also to the printers, but that the printers were liable as well as the author, inasmuch as that privilege was defeated by the malice of the author, the publication being a joint publication, and the author and printers being joint tortfeasors each tortfeasor was liable for the malice of the other. *Smith* v. *Streatfeild*, 82 L. J. K.B. 1237; [1913] 3 K.B. 764; 109 L. T. 137; 29 T. L. R. 707—Bankes, J.

C. PROCEDURE AND PRACTICE.

See also Vol. V. 611, 1666.

Function of Judge and Jury—Libel—Fair Comment.]—In an action for libel in which the defendant pleads fair comment, the Judge, before leaving the question of fair comment to the jury, must be satisfied that the defamatory inference can reasonably be drawn from the stated facts; if it can, it is for the jury to say whether it ought to be drawn. *Homing Pigeon Publishing Co.* v. *Racing Pigeon Publishing Co.*, 29 T. L. R. 389—Scrutton, J.

Words not Actionable per se—Malicious Falsehoods—Special Damage—Loss of Business.]—In an action for damage to a business caused by malicious falsehoods, where the words are not defamatory nor actionable *per se*, the plaintiff must prove actual loss of customers to whom the words were spoken, and cannot as a rule give evidence of a general decline of business. *Ratcliffe* v. *Evans* (61 L. J. Q.B. 535; [1892] 2 Q.B. 524) applied. *Leetham* v. *Rank*, 57 S. J. 111—C.A.

Quære, whether on proof of actual loss the jury might award damages in excess of such actual loss, by way of punishment or example. *Ib.*

Plea of Justification—Particulars.]—In an action for libel in which the plaintiff by his statement of claim alleges that the libel means that he had acted dishonestly in a certain matter, and, further, that he was a person of dishonest character, and not fit to hold a position of trust, and the defendant pleads justification, he will be allowed to give particulars of other dishonest acts of the plaintiff besides those referred to in connection with the special matter mentioned. Decision of the Court of Appeal affirmed. *Maisel* v. *Financial Times, Lim.* (*No.* 1), 84 L. J. K.B. 2145; 112 L. T. 953; 59 S. J. 248; 31 T. L. R. 192—H.L. (E.)

—— Acts Subsequent to Publication of Libel.]—Particulars in support of a plea of justification of a libel upon character and reputation, which allege acts occurring after the publication of the libel, may be admissible, if the acts have occurred within a reasonable time after its publication. In an action for libel by innuendo that the plaintiff was of a character and reputation such that he was likely to have misappropriated the funds of companies with which he was connected, that he would have misappropriated the funds of a certain company if he had had the opportunity, and that he was an unfit person to be director of any company, the defendants pleaded justification, and in support of their plea delivered particulars of certain alleged acts of the plaintiff's of a financial nature which took place two or three months after the publication of the libel:—*Held*, that these acts having taken place within a reasonable time of the publication of the libel, the particulars were admissible. *Maisel* v. *Financial Times, Lim.* (*No.* 2), 84 L. J. K.B. 2148; [1915] 3 K.B. 336; 113 L. T. 772; 59 S. J. 596; 31 T. L. R. 510—C.A.

Falsity of Slanderous Statement Admitted in Letter of Apology—Subsequent Action for Repetition of same Statement—Plea of Veritas

—Bar.]—The defender in an action of damages for defamation, *held* (Lord Dundas dissenting) not barred from pleading *veritas* by having, on a former occasion, written a letter of apology, admitting that similar statements then made by her were false, and undertaking not to repeat them. *R.* v. *S.*, [1914] S. C. 193—Ct. of Sess.

Discovery.]—*See* DISCOVERY.

DEFENCE.

See COUNTY COURT; PRACTICE.

DEMURRAGE.

See RAILWAY; SHIPPING.

DENTIST.

See MEDICINE.

DEPOSITIONS.

See CRIMINAL LAW.

DESIGNS.

See PATENT.

DETINUE.

Re-entry by Lessors—Electric-light Filament Lamps Left on Premises by Lessees—Fixtures.] — The plaintiffs let electric-light filament lamps on hire to the lessees of a theatre. The lamps were affixed to their brackets by the bayonet attachment in common use for this purpose. The defendants, who were the owners of the theatre, re-entered for non-payment of rent, the lamps being then still on the premises and no demand being then made for them by the plaintiffs. Shortly afterwards the plaintiffs claimed them from the defendants, and as the latter did not give them up the plaintiffs sued them in detinue: —*Held*, that the plaintiffs were not entitled to recover. *British Economical Lamp Co.* v. *Mile End Empire*, 29 T. L. R. 386—D.

DIRECTOR.

See COMPANY.

DISCLAIMER.

In Bankruptcy.]—*See* BANKRUPTCY.

In Specification.]—*See* PATENT.

DISCOVERY.

A. DOCUMENTS.

See also Vol. V. 693, 1678.

1. DISCOVERY.

a. In what Matters.

Order for Account—Special Referee—Motion for Receiver after Judgment—Discovery in Aid of Motion—"Documents relating to any matters in question."]—The defendants and the plaintiff had business relations together and the plaintiff commenced an action alleging a partnership and claiming a receiver of the assets of the firm and an account. Upon a motion for a receiver, a consent order was made for the taking of the account between the parties by a special referee. The account was taken before the referee, who ordered discovery. The plaintiff then alleged that the defendants were acting improperly in getting in the debts owing to the firm, and gave notice of motion for the appointment of a receiver, which motion was ordered to be heard with witnesses. The plaintiff then applied to the

Court for an order for further discovery and inspection of documents for the purposes of the motion :—*Held*, that, if the order of the special referee for discovery were insufficient, application should have been made to the referee for a further order; that if the matters to which the discovery claimed related arose out of the judgment, a sufficient order could be made by the special referee; if such matters did not arise out of the judgment, they should be the subject of a new action. *Korkis* v. *Weir & Co.*, 110 L. T. 794—C.A.

b. Who Compelled to Make.

Guardian Ad Litem to Person of Unsound Mind—Order.]—The guardian *ad litem* of a person of unsound mind, but not so found by inquisition, can be ordered to give discovery of documents in a suit for nullity of marriage or for restitution of conjugal rights. *Paspati* v. *Paspati*, 83 L. J. P. 56; [1914] P. 110; 110 L. T. 751; 58 S. J. 400; 30 T. L. R. 390—Evans, P.

c. Affidavit of Documents.

Person of Unsound Mind not so Found—Next Friend.]—The High Court has no jurisdiction to order the next friend of a person of unsound mind not so found by inquisition to make an affidavit as to documents. *Dyke* v. *Stephens* (55 L. J. Ch. 41; 30 Ch. D. 189) followed. *Higginson* v. *Hall* (48 L. J. Ch. 250; 10 Ch. D. 235) dissented from. *Pink* v. *Sharwood* (*No.* 1), 82 L. J. Ch. 542; [1913] 2 Ch. 286; 108 L. T. 1017; 57 S. J. 663—Eve, J.

Further Affidavit.]—Although as a general rule it is not permissible to go behind the affidavit of documents in an application for discovery, in the absence of an admission either in the affidavit itself or in some other document shewing that there are other documents which ought to have been included, the rule is qualified where the basis on which the affidavit of documents has been made turns out to have been wrong. If the party making the affidavit has misconceived his case, so that the Court is practically certain that if he had conceived it properly and had acted upon a proper view of the law he would have disclosed further documents, then the Court can refuse to recognise an affidavit as conclusive and order a further affidavit. *British Association of Glass-Bottle Manufacturers, Lim.* v. *Nettlefold*, 81 L. J. K.B. 1125; [1912] A.C. 709; 107 L. T. 529; 56 S. J. 702—H.L. (E.)

In an action for calls, brought by the appellants against the respondent, the respondent alleged that the appellants were really a trade union, and their registration was void; and secondly, that they were an illegal combination in restraint of trade. The respondent obtained an order against the appellants for an affidavit of documents. An affidavit of documents was delivered. In the particulars the respondent alleged the existence of a certain contract between the appellants and a foreign company. The appellants alleged that no such contract was relevant. The Court of Appeal, reversing the order of Scrutton, J., ordered production of the contract. On the appellants declining to file a further affidavit, the Court of Appeal, reversing the order of Bucknill, J., ordered a further and better affidavit of discovery, and the House affirmed this decision. *Ib.*

Specific Document—Application made Ex parte.]—An application under the Irish Order XXXI. rule 20 (3) [corresponding to Order XXXI. rule 19*a* (3)] for an order requiring a party to state by affidavit whether a specific document is or has at any time been in his possession or power may be made *ex parte*. *Henty & Gardners, Lim.* v. *Beckett*, [1914] 2 Ir. R. 206—Molony, J.

d. What Documents.

Newspaper Competition—Failure to Obtain Prize — Action for Damages — Successful Coupons.]—The plaintiff was a competitor in a prize competition which was advertised in a newspaper belonging to the defendants and which consisted in constructing the most clever, apt, and original sentences in accordance with certain rules. The prizes were to be awarded after careful consideration by competent judges and the editor's decision was to be final. The plaintiff, not having been awarded a prize, brought an action against the defendants for breach of contract and applied for discovery of the coupons in respect of which prizes had been awarded :—*Held*, that as these documents were not relevant to any question in issue, the plaintiff was not entitled to discovery of them. *Angell* v. *John Bull, Lim.*, 59 S. J. 286; 31 T. L. R. 175—C.A.

Affidavit — Further Affidavit — "Specific documents."]—To justify an application for discovery of documents under rule 19A (3) of Order XXXI., the party making the application must in his affidavit name and specify, so that they can be identified, the particular documents of which he desires discovery; a general allegation that certain classes of documents—for example, telegrams from A to B between 1900 and 1906 containing instructions or requests or comments, as to enquiries upon specified subjects—are in the possession of the opposite party and ought to be produced is not sufficient. *Per* Fletcher Moulton, L.J. —Rule 19A (3) is not a process of discovery, but only a process in aid of discovery, and documents must be so specified that they can at once be identified. *Huntley* v. *Backworth Collieries*, [1911] W. N. 34—C.A.

2. Production.

As between Co-defendants—Rights to be Adjusted.] — The plaintiff claimed to be entitled to a fractional share of certain commissions alleged to be due to one defendant J. from his co-defendants, C. & Co., and asked for a declaration accordingly and for payment of his share. By their defence C. & Co. denied all liability and alleged that they had a claim against J. for damages for misrepresentation which could be set off against any claim for commission by J. or any persons claiming

under him. The plaintiff having obtained discovery from J., C. & Co. applied under Order XXXI. rule 14 for production to them of the documents stated in J.'s affidavit of documents to be in his possession or power :—*Held* (Swinfen Eady, L.J., dissenting), that there were not any rights to be adjusted between J. and C. & Co. in the action, in the sense that there was any matter in issue between J. and C. & Co. which the decision of the action would render *res judicata* as between them; and held therefore that C. & Co. were not entitled to an order for production. *Shaw* v. *Smith* (56 L. J. Q.B. 174; 18 Q.B. D. 193) explained and applied. *Birchal* v. *Crisp & Co.*, 82 L. J. Ch. 442; [1913] 2 Ch. 375; 109 L. T. 275—C.A.

Slander Action—Imputations of Insolvency and Mismanagement against Trading Company.]—In an action of slander brought by a limited company trading on a co-operative system and registered as a friendly society, the defendant pleaded (*inter alia*) the truth in their ordinary sense of the words spoken so far as they were allegations of fact, and fair comment as regards expression of opinion. The defamatory matter was contained in a speech delivered by the defendant, and the only allegation of fact in it were statements of the assets and liabilities of the society on the expiration of three several years. Under an order for discovery the society's secretary and manager made an affidavit, the schedule to which disclosed the balance sheets for these years, and also the society's ledgers, books of account, and bank books, claiming no privilege. In accordance with notice by the defendant the society produced the balance sheets for his inspection, but declined to produce the remaining scheduled documents. The balance sheets agreed with the figures quoted by the defendant in his speech. On the society admitting on the order the truth of the figures quoted by the defendant and of the balance sheets, the Court declined to order the production of the society's books. *Kent Coal Concessions* v. *Duquid* (79 L. J. K.B. 423, 872; [1910] 1 K.B. 904; [1910] A.C. 452) distinguished. *Irish Agricultural Wholesale Society* v. *McCowan*, [1913] 2 Ir. R. 313—C.A.

Owners' Books—Collision—Value of Sunken Lightship.]—The plaintiffs' lightship, while at her station in the Mersey, was run into and sunk by the defendants' steamship. The defendants admitted liability, agreed to a reference, and applied for an order to inspect the plaintiffs' books with a view to ascertain the figures upon which the plaintiffs based the value they set upon their vessel :—*Held*, that the defendants were entitled to an order for the production of the books forthwith, as the only material question was the value of the lightship at the date of the casualty, and it would assist the defendants if, before going to the reference, they were in possession of the figures relating to the original cost, and subsequent depreciation in value, of the lightship. *The Pacuare*, 81 L. J. P. 143; [1912] P. 179; 107 L. T. 252; 12 Asp. M.C. 222—C.A.

3. Inspection.

Action against Company—Effect of Articles of Association.]—Article 83 of the articles of association provided that the managers should from time to time determine whether, and to what extent, and at what time and place, and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of the members, and no member should have any right of inspecting any account or book or document of the company, except as conferred by statute or authorised by the managers. In an action against the company,—*Held*, that an order for discovery must be made. The above article, in such a case as the present, could not be utilised adversely, and to allow such an article to prevail over the Rules of Court might, in some cases, be allowing it to be an engine of dishonesty. *Cartland* v. *British and South American Steam Navigation Co.*, [1912] W. N. 110—Eve, J.

Transcript of Shorthand Note of Proceedings in Actions—Note Taken for Purpose of Future Action.]—The defendant to an action in the High Court had caused a shorthand note of the proceedings in two prior actions in the County Court, to which he had been a party, to be taken and a transcript made. The note related to matters in question in the High Court action, and had been made expressly for the purposes of such an action. Upon application by the plaintiff for inspection of the transcript,—*Held* (Channell, J., dissenting), that the transcript, being a mere reproduction of material which was *publici juris*, was not privileged, and must be produced for inspection. *Nordon* v. *Defries* (51 L. J. Q.B. 415; 8 Q.B. D. 508) overruled. *Lambert* v. *Home*, 83 L. J. K.B. 1091; [1914] 3 K.B. 86; 111 L. T. 179; 58 S. J. 471; 30 T. L. R. 474—C.A.

Owners' Books—Collision—Value of Sunken Lightship.]—The plaintiffs' lightship, while at her station in the Mersey, was run into and sunk by the defendants' steamship. The defendants admitted liability, agreed to a reference, and applied for an order to inspect the plaintiffs' books with a view to ascertain the figures upon which the plaintiffs based the value they set upon their vessel :—*Held*, that the defendants were entitled to an order for the production of the books forthwith, as the only material question was the value of the lightship at the date of the casualty, and it would assist the defendants if, before going to the reference, they were in possession of the figures relating to the original cost, and subsequent depreciation in value, of the lightship. *The Pacuare*, 81 L. J. P. 143; [1912] P. 179; 107 L. T. 252; 12 Asp. M.C. 222—C.A.

B. INTERROGATORIES.

See also Vol. V. 804, 1682.

Action to Enforce Charge to Secure Loan—Defence that Plaintiff was an Unregistered Money-lender—Facts Relevant to the Issue—

Disclosure of other Loan Transactions, but not of Borrowers' Names.]—A London tailor brought an action to enforce a charge to secure a loan with interest at 10 per cent. The charge, which was in 1906 given to the plaintiff by the borrower, was upon certain moneys belonging to the borrower in the hands of the trustees of a private Act of Parliament, passed in 1904, being the balance of a sum which they were by such Act authorised to raise for the payment of his then existing debts. The trustees, the defendants to the action, disputed the charge, and by their defence alleged that the plaintiff was, and at the date of the alleged charge was, a money-lender within the meaning of the Money-lenders Act, 1900, s. 6, and was not registered under the Act, and that by reason thereof his alleged charge was illegal and could not be enforced. Interrogatories administered by the defendants to the plaintiff in reference to his other loan transactions were held by Joyce, J., to be inadmissible:—*Held* (Fletcher Moulton, L.J., dissenting), that the defendants were entitled to interrogate the plaintiff as to any, and if so what, other loans he had made, and on what securities, during the period of twelve months before the date of the loan in question in the action, and as to the dates of such loans and the dates for repayment and the amount made payable on each security, and the actual amounts paid in cash in respect thereof and the rate of interest payable and commission (if any) charged or deducted, and also whether any of such loans were renewals of previous loans, and, if so, the dates of the renewals; but that the defendants were not entitled to require the plaintiff to disclose the names of the borrowers, all these enquiries being directed to facts substantially relevant to the existence or non-existence of the fact whether the plaintiff was carrying on at the critical period the business of a money-lender, which was the fact directly in issue. Observations of Lord Esher, M.R., in *Marriott* v. *Chamberlain* (55 L. J. Q.B. 448; 17 Q.B. D. 154) applied. *Nash* v. *Layton*, 80 L. J. Ch. 636; [1911] 2 Ch. 71; 104 L. T. 834—C.A.

Action for Defamation—Allegation of Publication to Unnamed Person—Right of Plaintiff to Interrogate Defendant in Support of Allegation.]—As a general rule the plaintiff in an action of defamation is not allowed to allege a specific publication to a named person and further publications to unnamed persons, and then to interrogate the defendant as to whether there have been any such further publications. *Russell* v. *Stubbs, Lim.* (52 S. J. 580), considered. *Barham* v. *Huntingfield* (*Lord*), 82 L. J. K.B. 752; [1913] 2 K.B. 193; 108 L. T. 703—C.A.

—— **Newspaper — Fair Comment — Fair and Accurate Report of Proceedings of a Public Meeting—Interrogatories to Prove Malice.**]—The plaintiff claimed damages for an alleged libel contained in the defendants' newspaper. The defendants pleaded, first, fair comment; and secondly, that the alleged libel formed part of a fair and accurate report of a public meeting within the meaning of section 4 of the Law of Libel Amendment Act, 1888; the matter published was of public concern and for the public benefit, and the newspaper was a newspaper within the above section. The plaintiff did not deliver a reply alleging express malice. He sought to interrogate the defendants as to whether they had been requested to attend the said meeting, and whether they had received remuneration for reporting the proceedings. The interrogatories were consistent with the plaintiff having in fact no information on which to found his interrogatories. The Judge, at chambers, affirming the Master, refused to allow the interrogatories:—*Held*, that, although the interrogatories were not necessarily inadmissible, the Court would not interfere with the discretion of the Judge at chambers. *Dawson* v. *Dover and County Chronicle*, 108 L. T. 481; 29 T. L. R. 373—C.A.

—— **Defence of Privilege — Allegation of Express Malice—Defendant's Sources of Information—Nature of Information.**]—It is a proper exercise of the discretion of the Judge in chambers for him to refuse to allow the defendant in a libel action to be interrogated as to the sources of his information if that information is of interest to a large number of persons and the defendant occupies a confidential and responsible position. *Adam* v. *Fisher*, 110 L. T. 537; 30 T. L. R. 288—C.A.

Malicious Prosecution — Information which Induced Defendant to Prosecute Plaintiff—Facts Shewing Reasonable or Probable Cause.]—In an action for malicious prosecution the plaintiff sought to administer to the defendants the following, among other, interrogatories: "4. What information (if any) had you that induced you to prosecute the plaintiff for stealing gas? What steps (if any) had you taken before commencing the said prosecution to ascertain whether the charge was true or not? What grounds (if any) had you for supposing that the plaintiff had committed the offence charged? Did you before you commenced the said prosecution take any and what precautions or make any or what enquiries as to the truth of the said charge, and what was the result of each such enquiry? 5. What are the facts and circumstances on which you rely as shewing that you had reasonable and proper cause for the said prosecution?"—*Held* (Kennedy, L.J., dissenting), that the interrogatories ought not to be allowed; interrogatory 4 being one of a kind which, as a general rule, and in the absence of special circumstances, should not be allowed in an action for malicious prosecution, as otherwise it would become very difficult to get persons having reason to suppose that a crime had been committed to give information with a view to its detection and punishment; and interrogatory 5 being clearly inadmissible. *Maass* v. *Gas Light and Coke Co.*, 80 L. J. K.B. 1313; [1911] 2 K.B. 543; 104 L. T. 767; 55 S. J. 566; 27 T. L. R. 473—C.A.

Facts not Directly in Issue, but Relevant to Facts in Issue—Action for Infringement of Patent—Names of Manufacturers.]—In an action to restrain the infringement of patents

relating to the manufacture of incandescent electric lamps the plaintiffs delivered interrogatories. The defendants in answer admitted selling certain alleged infringing lamps, but objected to say by whom the lamps were manufactured and supplied. The plaintiffs sought this information to enable them to identify the process of manufacture, of which the defendants were ignorant and which the plaintiffs alleged could not be ascertained by analysis :—*Held*, that the information sought was relevant to the existence or non-existence of the fact of infringement which was directly in issue, and that the interrogatories must therefore be answered. *Osram Lamp Works, Lim.* v. *Gabriel Lamp Co.*, 83 L. J. Ch. 624; [1914] 2 Ch. 129; 111 L. T. 99; 31 R. P. C. 230; 58 S. J. 535—C.A.

Object of Interrogatories to Obtain Names of Opposite Party's Witnesses.]—A party is not entitled to administer interrogatories to his opponent when the object of the interrogatories is to ascertain the names of the persons whom his opponent proposes to call as witnesses in support of his case. *Per* Vaughan Williams, L.J. : A party, in order to obtain by means of interrogatories the names of persons whom his opponent intends to call as his witnesses, must shew that it is necessary for him to have these names for the purpose of establishing some material fact, not necessarily essential to the issue in the case, but some fact that is necessary to the proof of his case. *Knapp* v. *Harvey*, 80 L. J. K.B. 1228; [1911] 2 K.B. 725; 105 L. T. 473—C.A.

Recovery of Possession of Land—Roadside Strips—Acts of Ownership.]—In an action to recover possession of two strips of land forming part of one continuous strip lying on one side of a road, and alleged to be waste within the plaintiffs' manor, the plaintiffs intimated that at the trial they intended to shew acts of ownership by them over parts of the strip contiguous to and at greater distance from the parts of the strip in dispute in the action. They proposed to interrogate the defendants as to facts concerning the defendants' acquisition of other parts of the strip not in dispute lying between inclosures of the defendants and the road :—*Held*, that the interrogatories ought to be allowed, the answers to be admissible when the plaintiffs had established that they were the owners of the manor, and that the whole strip lay within the manor, and was of one continuous character. *Leeke* v. *Portsmouth Corporation* (*No.* 1), 106 L. T. 627—Eve, J.

Documents in Possession of Secretary of Trade Union.]—The defendant in an action for libel being called upon to give discovery of documents, made an affidavit in which he gave in a schedule a list of documents which he said were in the possession and custody of the trade union of which he was general secretary, and as to which he stated that he had no power to produce them as they belonged to the trade union. The plaintiff applied for an order that he might be at liberty to interrogate the defendant as to the contents of the documents scheduled to his affidavit :—*Held*, that the application must be refused, inasmuch as a person in the position of a servant cannot be required to answer an interrogatory asking him to give the contents of documents in the possession of his master. *Balfour* v. *Tillett*, 57 S. J. 356; 29 T. L. R. 332—C.A.

No Personal Knowledge—Objection to Seek Information — Confidential Documents — Sufficiency of Answer.]—The plaintiff, who was a shareholder in a guarantee society, having brought an action against the chairman for false representations alleged to have been made by the defendant to the plaintiff at a general meeting, administered to the defendant an interrogatory as to whether at the date of the meeting the society had taken over certain properties. The defendant answered that certain of the properties had been taken over, and that certain others had been taken possession of owing to failure of the mortgagors, and he gave the names of these two sets of properties, but he said that he had no personal knowledge with regard to the remaining properties and submitted that he was not bound to seek information about them from confidential documents obtained for the purpose of his defence :—*Held*, that this was a sufficient answer. *Seal* v. *Turner*, 30 T. L. R. 227—C.A.

C. OBJECTIONS TO DISCLOSURE.

See also Vol. V. 882, 1687.

1. Legal Professional Confidence.

Action by Company against Shareholder—Counterclaim—Opinion of Counsel.]—The rule that where a company takes the opinion of counsel and pays for it out of the funds of the company a shareholder has a right to see it does not apply where the company has brought an action against the shareholder, even although the shareholder has set up a counterclaim alleging the invalidity of the resolution authorising the action. *Woodhouse & Co.* v. *Woodhouse*, 30 T. L. R. 559—C.A.

Briefs in Previous Proceedings—Probate.]—In a probate suit, the defendants, alleging that the deceased was not of sound memory and understanding, asked for production of the briefs which had been prepared by one of the plaintiffs as solicitor for the deceased in certain proceedings which had been taken against her, and which the defendants alleged contained matter material to the issue of the deceased's state of mind :—*Held*, that the defendants were not entitled to production of the briefs, which had been confidentially prepared by a solicitor for counsel to use or not as they might think fit. *Cooper, In re; Curtis* v. *Beaney*, 80 L. J. P. 87; [1911] P. 181; 105 L. T. 303; 27 T. L. R. 462—Bargrave Deane, J.

Affidavit of Documents brought into Existence for Purpose of Litigation.]—In an action on a policy of marine insurance to recover a constructive total loss the underwriters, in making discovery of documents, claimed

privilege from production in respect of certain cables and correspondence which passed between the Salvage Association and their agents abroad after notice of abandonment had been given and refused and before the commencement of the action, "such cables and correspondence being with regard to the subject-matter of this litigation and expressing or for the purpose of obtaining advice or evidence to be used in it or for the purpose of leading to the obtaining of evidence to enable the defendants' solicitors properly to conduct the action on their behalf":—*Held*, a good claim of privilege. *Birmingham and Midland Motor Omnibus Co.* v. *London and North-Western Railway* (83 L. J. K.B. 474; [1913] 3 K.B. 850) followed. *Adam Steamship Co.* v. *London Assurance Corporation*, 83 L. J. K.B. 1861; [1914] 3 K.B. 1256; 111 L. T. 1031; 12 Asp. M.C. 559; 20 Com Cas. 37; 59 S. J. 42—C.A.

—— **Sufficiency of Claim of Privilege—Extent of Privilege.**]—In an action against a railway company to recover damages for the loss by fire of goods stored with the company, an affidavit of documents filed on behalf of the defendants stated that the defendants objected to produce certain documents on the ground that they were "privileged and came into existence and were made after this litigation was in contemplation and in view of such litigation for the purpose of obtaining for and furnishing to the solicitor of the defendant company evidence and information as to the evidence which could be obtained and otherwise for the use of the said solicitor to enable him to conduct the defence in this action and to advise the defendants":—*Held*, that the language used in the affidavit brought the case within *Southwark and Vauxhall Water Co.* v. *Quick* (47 L. J. Q.B. 258; 3 Q.B. D. 315), and not within *Anderson* v. *British Bank of Columbia* (45 L. J. Ch. 449; 2 Ch. D. 644), and stated a good claim of privilege; and that the privilege was not limited to documents which came into existence after the plaintiffs first claimed compensation from the defendants. *Birmingham and Midland Motor Omnibus Co.* v. *London and North-Western Railway*, 83 L. J. K.B. 474; [1913] 3 K.B. 850; 109 L. T. 64; 57 S. J. 752—C.A.

2. Evidence of Party's Title.

Privity of Title—Attorney-General.]—The defendants to an injunction on behalf of the Crown claiming part of the foreshore alleged a title derived by various mesne conveyances from a grantee from the Crown. In their affidavit of documents the defendants claimed privilege for these conveyances as solely relating to their own title:—*Held*, that as the Crown was *prima facie* entitled to the foreshore, the Attorney-General could insist on the production, in order to see that the alleged grant was vested in the defendants. *Semble*, the same rule holds good as between two subjects where one claims by privity of title from the other. *Att.-Gen.* v. *Storey*, 107 L. T. 430; 56 S. J. 735—C.A

DISORDERLY HOUSE.

Music Licence — Cinematograph Licence — Application by Company — Nationality of Shareholders — Alien Enemies — Discretion of Licensing Authority.]—While a state of war existed between Great Britain and Germany and between Great Britain and Austria the London County Council, acting as the licensing authority under the Disorderly Houses Act, 1751, and the Cinematograph Act, 1909, refused applications for a renewal of music and cinematograph licences made by an English company, on the ground that at the outbreak of war the majority of the shares of the company were held by German or Austrian subjects resident abroad, and that three out of the six directors were German subjects resident abroad. The company obtained rules *nisi* for writs of *mandamus* directed to the London County Council, commanding them to hear and determine the applications for such licences according to law, on the ground that in determining the applications they had been actuated by extraneous considerations—namely, the shareholding and nationality of the shareholders and directors of the company:—*Held*, by the Court of Appeal, affirming the decision of the Divisional Court, discharging the rules, that, whether or not the alien enemy shareholders had a right to vote by proxy in the affairs of the company, the London County Council were entitled to take into consideration the fact that the majority of the shares were held by alien enemies, and in the exercise of their discretion to refuse to renew the licences on that ground. *Rex* v. *London County Council; London and Provincial Electric Theatres, Ex parte*, 84 L. J. K.B. 1787; [1915] 2 K.B. 466; 113 L. T. 118; 79 J. P. 417; 13 L. G. R. 847; 59 S. J. 382; 31 T. L. R. 329—C.A.

The decision in *London County Council* v. *Bermondsey Bioscope Co.* (80 L. J. K.B. 141; [1911] 1 K.B. 445), to the effect that the terms and conditions which, by section 2, sub-section 1 of the Cinematograph Act, 1909, a county council may impose on the grant of a cinematograph licence, are not confined to provisions for securing safety, approved. *Ib.*

DISTRESS.

A. For Rent and Charges on Land.

1. *Persons Distraining*, 511.
2. *What Goods Distrainable and what not*, 511.
3. *How Goods Disposed of*, 513.
4. *Declarations under Law of Distress Amendment Act*, 1908, 514.

B. Damage Feasant, 514.

C. Costs of Distress, 515.

D. Remedy for Wrongful, Irregular, or Excessive Distress, 515.

E. For Rates. *See* Rates.

F. Restraining Distress where Company in Liquidation. *See* Company (Winding-up).

A. FOR RENT AND CHARGES ON LAND.

See also Vol. V. 976, 1694.

1. Persons Distraining.

Surrender of Tenancy—Tenant Remaining in Possession—Execution—Claim by Landlord for Rent.]—Sections 6 and 7 of 8 Anne, c. 14, do not apply to a case of the seizure of goods by an execution creditor, but are confined to cases between landlord and tenant. Section 160 of the County Courts Act, 1888, has no application to sections 6 and 7 of 8 Anne, c. 14. *Lewis* v. *Davies*, 83 L. J. K.B. 598; [1914] 2 K.B. 469; 110 L. T. 461; 30 T. L. R. 301—C.A.

Decision of the Divisional Court (82 L. J. K.B. 631; [1913] 2 K.B. 37) reversed. *Ib.*

2. What Goods Distrainable and what not.

Piano Hired by Lessee of Theatre—Trade Custom—Goods in Possession, Order, or Disposition of Lessee—Reputed Ownership—Liability of Piano to Distress.]—In the absence of evidence establishing a custom that pianos are so constantly hired to lessees of theatres for theatrical purposes as to exclude the doctrine of reputed ownership, the Court cannot assume as a matter of law that the lessee of a theatre is not the true owner of a piano which is in the theatre. In such a case the piano is not exempted by the Law of Distress Amendment Act, 1908, from liability to distress by the landlord of the theatre. *Chappell* v. *Harrison*, 103 L. T. 594; 75 J. P. 20; 27 T. L. R. 85—D.

Goods Comprised in Hire-purchase Agreement—Notice by Owner Purporting to Terminate Agreement—Demand for Possession of Goods—Subsequent Seizure by Landlord—Declaration by Owner.]—Goods which are in the possession of a tenant under a hire-purchase agreement are comprised in a hire-purchase agreement within the meaning of section 4 of the Law of Distress Amendment Act, 1908, notwithstanding that a demand for possession of the goods has been made by their owner upon the tenant, and consequently such goods are not exempt from being distrained at the instance of the landlord for arrears of rent. *London Furnishing Co.* v. *Solomon* (*infra*) not followed. *Hackney Furnishing Co.* v. *Watts*, 81 L. J. K.B. 993; [1912] 3 K.B. 225; 106 L. T. 676; 28 T. L. R. 417—D.

The plaintiffs let furniture to one L. under a hire-purchase agreement which by clause 6 provided that the hirer should regularly and punctually pay the rent of the house where the furniture was and should "keep the articles of furniture . . . free and exempt from all legal process"; and by clause 8 it provided "that if the hirer do not duly perform and observe this agreement the owners may retake possession of the said furniture." L. became in arrears with her rent to the defendant, her landlord, and thereupon the plaintiffs wrote to L. that in consequence of her non-compliance with the terms of the agreement they had decided to terminate the same. They sent a carman to remove the furniture, but he was informed that rent was in arrear, and the furniture was not allowed to be removed. The plaintiffs thereupon served a declaration on the defendant under section 1 of the Law of Distress Amendment Act, 1908, claiming the furniture. Notwithstanding such declaration, the defendant distrained upon the furniture:—*Held*, that from the time the plaintiffs gave notice terminating the agreement L. had no property or beneficial interest in the furniture, and that as the plaintiffs had served a declaration under section 1 of the Law of Distress Amendment Act, 1908, the defendant was not entitled to distrain on the furniture. *London Furnishing Co.* v. *Solomon*, 106 L. T. 371; 28 T. L. R. 265—D.

Provision Determining Agreement ipso Facto on Breach by Hirer—Power on such Determination to Enter and Re-take Goods—Continued Existence of Agreement—Goods "comprised" therein.]—A hire-purchase agreement provided that the hirer of the goods therein comprised should pay punctually the weekly rent commencing on a specified date and all expenses incurred in the collection of any arrears thereof; that if the hirer did not duly perform and observe the agreement, it should *ipso facto* be determined, and the hirer should return the goods to the owners, and the owners should be entitled to re-take possession of the same and for that purpose to enter upon the premises; and that the hirer should remain liable for arrears of hire up to the date of the determination of the agreement. The hirer committed a breach of the agreement by failing to pay punctually an instalment of rent, and the owners gave him notice terminating the agreement, and then endeavoured to enter and re-take possession of the goods. These had been distrained for rent by the hirer's landlords. The owners, having served the landlords with a declaration under section 1 of the Law of Distress Amendment Act, 1908, that the goods belonged to them, brought an action against them for illegal distress under section 2 of the Act:—*Held*, that by reason of the provision conferring on the owners the right of entering and re-taking the goods, and of the provisions relating to the hirer's continued liability for arrears, and for expenses in the collection thereof, the agreement did not determine on the breach by the hirer, but was in existence at the date of the distress, and that, consequently, the goods were then comprised in a hire-purchase agreement within the meaning of section 4, sub-section 1 of the Act, and by virtue of that sub-section not within the provisions of the Act exempting from distress the goods of persons other than a tenant. *Jay's Furnishing Co.* v. *Brand & Co.*, 84 L. J. K.B. 867; [1915] 1 K.B. 458; 112 L. T. 719; 59 S. J. 160; 31 T. L. R. 124—C.A.

Decision of the Divisional Court (83 L. J. K.B. 505; [1914] 2 K.B. 132) affirmed. *Ib.*

Statement by Bailiff that Plaintiff's Cattle not Distrainable—Subsequent Seizure of Cattle—Estoppel.]—The defendant J. was the landlord of a farm the tenant of which was in arrear with his rent. On the farm the

plaintiff had cattle grazing. J. instructed the defendant D., a bailiff, to distrain for the rent due, and the fact that a distress was likely to be levied came to the knowledge of the plaintiff, who thereupon had a conversation with the defendant D. and said that he would move his cattle off the farm. D. said, "Don't be such a fool; I can't touch your cattle, because you took the keep by auction." On that the plaintiff, believing the cattle to be safe, took no steps to remove them; but when a distress was subsequently levied four of the plaintiff's cattle were seized. In an action for wrongful distress the jury found that D. or J. led the plaintiff to believe that he was not going to, and had no right to, levy distress on the plaintiff's cattle:—*Held*, that the statement by D. was either a misstatement of law or a declaration of intention to abandon a legal right to distrain, and that in neither case could it create an estoppel. *Cresswell* v. *Jeffreys*, 28 T. L. R. 413—D. Reversed on other grounds, 29 T. L. R. 90—C.A.

3. How Goods Disposed of.

Purchase of Goods Distrained by Landlord at Appraised Value—User of Goods by Landlord—Conversion by Landlord.]—The defendants in 1902 granted to one J. a yearly tenancy of a certain seam of coal, together with the right to take and work all the coal in that seam upon payment quarterly of certain royalties. The agreement contained a provision that if the royalties were unpaid for thirty days after the stipulated quarter days the landlord might distrain. In 1908 J. assigned to the plaintiffs all the plant and machinery used in the colliery, together with the right to get coal in his name, under the agreement upon payment of all such sums of money as should become due in respect of the royalties. The plaintiffs hired from a waggon company two colliery waggons at a certain rent payable quarterly. The defendants in August, 1910, distrained upon the colliery for money due from J. in respect of royalties under the agreement, and seized the two colliery waggons, and also five pit ponies, the property of the plaintiffs. The ponies and waggons were duly appraised, and the defendants purported to buy them at their appraised value. The defendants subsequently used the ponies for their own purposes, but they returned the waggons to the waggon company on a demand being made by that company for them. At the time of the seizure no rent was due by the plaintiffs to the waggon company for the hire of the waggons:—*Held*, that the user by the defendants of the ponies for their own purposes and the return by them of the waggons were not irregularities or unlawful acts committed after the distress by the party distraining within section 19 of the Distress for Rent Act, 1737, so as to entitle the plaintiffs to recover only compensation for the special damage which they had sustained thereby, but were acts done by the defendants in their capacity as owners and not as distraining landlords; and that, inasmuch as the purported purchase by the defendants of the ponies and waggons was void, such acts constituted a conversion by the defendants of the ponies and waggons which entitled the plaintiffs to recover their full value from the defendants. *Plasycoed Collieries Co.* v. *Partridge, Jones & Co.*, 81 L. J. K.B. 723; [1912] 2 K.B. 345; 106 L. T. 426; 56 S. J. 327—D.

4. Declarations under Law of Distress Amendment Act, 1908.

Rent in Arrear—Hire-purchase Agreement by Wife of Tenant—Declaration by Owner of Goods Hired—Action by Owner of Goods for Illegal Distress.]—It is not essential to the validity of a declaration under section 1 of the Law of Distress Amendment Act, 1908, that it should be a statutory declaration in the form prescribed by the Statutory Declarations Act, 1835. *Rogers* v. *Martin*, 80 L. J. K.B. 208; [1911] 1 K.B. 19; 103 L. T. 527; 75 J. P. 10; 55 S. J. 29; 27 T. L. R. 40—C.A.

A declaration under the Law of Distress Amendment Act, 1908, may be properly made on behalf of a firm by one partner signing in his own name. *Ib.*

In that part of section 4, sub-section 1 of the Law of Distress Amendment Act, 1908, which provides that the Act shall not apply to goods comprised in "any bill of sale, hire-purchase agreement, or settlement made by such tenant," the words "made by such tenant" are not limited to "settlement," but apply also to "bill of sale" and "hire-purchase agreement," and consequently that part of the sub-section does not except from the protection given by the Act goods comprised in a hire-purchase agreement made by the wife of a tenant. *Ib.*

That part of section 4, sub-section 1 of the Law of Distress Amendment Act, 1908, which provides that the Act shall not apply to "goods belonging to the husband or wife of the tenant . . . nor to goods in the possession, order, or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof," does not except from the protection of the Act goods comprised in a hire-purchase agreement made by the wife of the tenant and permitted by their owner to remain on the demised premises. *Ib.*

B. DAMAGE FEASANT.

Right to Impound—Cattle Driven to Pound more than Three Miles.]—The statute 1 & 2 Ph. & M. c. 12, s. 1, provides that "... no distress of cattle shall be driven out of the hundred, rape, wapentake, or lathe where such distress is or shall be taken, except that it be to a pound overt within the same shire, not above three miles distant from the place where the said distress is taken . . . ":—*Held*, that on the true construction of this section the word "not" should not be read as "nor," and that the section means that the distress may be driven to any pound within the hundred or similar area where the distress was taken, even though more than three miles from the place where the distress was taken, but may not be driven outside that area except to a pound within the same shire and not more than three miles from the place where

the distress was taken. *Berdsley* v. *Pilkington* (Gouldsb. 100) followed. *Coaker* v. *Willcocks*, 80 L. J. K.B. 1026; [1911] 2 K.B. 124; 104 L. T. 769; 27 T. L. R. 357—C.A.

C. COSTS OF DISTRESS.

See also Vol. V. 1038, 1700.

Sum not Exceeding Twenty Pounds—Charges—Man in Possession.]—The charges contained in the Distress for Rent Rules, 1888, made under section 8 of the Law of Distress Amendment Act, 1888, have superseded the charges in the schedule to the Distress (Costs) Act, 1817, and in the case of a distress for rent where the sum due does not exceed 20*l.* the proper charge for a man in possession is that prescribed by Appendix II. Scale II. of the Rules. *Walker* v. *Retter*, 80 L. J. K.B. 623; [1911] 1 K.B. 1103; 104 L. T. 821; 75 J. P. 331—D.

D. REMEDY FOR WRONGFUL, IRREGULAR, OR EXCESSIVE DISTRESS.

See also Vol. V. 1039, 1700.

Illegal Distress—Sale—Retention of Proceeds by Landlord—Ratification.]—A landlord who, knowing that it is alleged that his bailiff has made an illegal distress, retains the proceeds of the sale of the things distrained, thereby ratifies the act of the bailiff, and if the distress was in fact wrongful is liable to the tenant in damages. *Becker* v. *Riebold*, 30 T. L. R. 142—Horridge, J.

Excessive Charges—Order by Justices for Payment of Treble Amount—Penalty.]—An order made by Justices under section 2 of the Distress (Costs) Act, 1817, for the payment of treble the amount of moneys unlawfully taken on the levying of a distress is enforceable by imprisonment in default of sufficient distress, such sum being a penalty and not a civil debt. *Rex* v. *Daly*: *Newson, Ex parte*, 104 L.T. 892; 75 J. P. 333; 22 Cox C.C. 461—D.

E. FOR RATES.

See RATES.

F. RESTRAINING DISTRESS WHERE COMPANY IN LIQUIDATION.

See COMPANY (WINDING-UP).

DIVORCE.

See HUSBAND AND WIFE.

DOCKS.

See SHIPPING.

DOCTOR.

See MEDICINE.

DOCUMENTS.

See DISCOVERY; EVIDENCE; INJUNCTION.

DOG.

See ANIMALS.

DOMICIL.

See INTERNATIONAL LAW.

DONATIO MORTIS CAUSA.

See GIFT; REVENUE (ESTATE DUTY).

DOWER.

See HUSBAND AND WIFE.

EASEMENTS AND PRESCRIPTION.

I. PRIVATE WAYS, 516.
II. LIGHT AND AIR, 520.
III. RIGHT OF SUPPORT, 521.
IV. DRAINS AND WATERCOURSES. *See* WATER.
V. OTHER EASEMENTS, 522.

I. PRIVATE WAYS.

See also Vol. V. 1082, 1703.

Sale of Land with Right of Way over Adjoining Land of Vendor—Mortgage of Dominant Tenement together with Right of Way—Sale of Servient Tenement Released

from Right of Way — Reconveyance by Mortgagee — Sale of Dominant Tenement — No Notice to Purchaser of Release of Right of Way — Extinction of Right of Way — Estoppel.] — By an indenture of May 7, 1897, W., who was the owner of two adjoining pieces of land lying respectively to the east and west of their common boundary line and of a cottage on the western land close to that line, conveyed the western land and the cottage together with a right of way along certain paths over the eastern land to his wife in fee-simple. On May 8, 1897, Mrs. W. mortgaged the western land and cottage with the right of way to certain persons in fee-simple. In April, 1907, in contemplation of the sale of the eastern land by W. to the plaintiff, an agreement was made between Mrs. W. and the plaintiff that a window in the cottage which overlooked that land should be built up, and it was built up accordingly. By an indenture of May 25, 1907, W. conveyed the eastern land to the plaintiff in fee-simple, and in a subsequent part of the indenture it was recited that under the indenture first above mentioned Mrs. W. "is entitled" to a right of way over the said paths, and that it had been agreed for her to join in the reciting indenture for the purpose of releasing the land conveyed from the right of way, and it was then witnessed that she thereby released the land conveyed from the right of way. The plaintiff had no notice or knowledge of the mortgage by Mrs. W. On December 10, 1910, Mrs. W. died, and on November 18, 1909, W. died, R. being executor and trustee of them both. On March 14, 1910, the mortgagees, who had never taken possession, reconveyed the mortgaged premises to R., as executor of Mrs. W., in fee-simple discharged from the mortgage debt. By an indenture of March 25, 1910, R. conveyed to the defendant the western land and cottage, together with a right of way over the aforesaid paths, in fee-simple. In this indenture the release by Mrs. W. of the right of way was not mentioned, and the defendant had no notice or knowledge of it. Subsequently, the defendant entered upon the said paths and re-opened the window. The plaintiff thereupon brought an action in the County Court against the defendant claiming a declaration that the defendant was not entitled to the right of way or of light, an injunction to restrain the defendant from exercising the right of way and damages. The County Court Judge gave judgment for the plaintiff. In the Divisional Court, Bray, J., was of opinion that the judgment of the County Court Judge should be reversed, while Lush, J., who was of opinion that it should be affirmed, withdrew his judgment, with the result that the appeal was allowed:—*Held*, by the Court of Appeal, that the defendant had no right of way, seeing that Mrs. W., who, at the date of the indenture of May 25, 1907, as mortgagor in possession of the western land, was the only person entitled to the right of way, had by that indenture released the eastern land from that right, subject only to the contingency of the mortgagees taking possession and exercising the right of way; that the mortgagees, by reconveying the western land to R. as the representative of Mrs. W., without having taken possession, had finally determined that contingency; and that, therefore, no interest in the right of way had passed from R. to the defendant. *Poulton* v. *Moore*, 84 L. J. K.B. 462; [1915] 1 K.B. 400; 112 L. T. 202; 31 T. L. R. 43—C.A.

Held, further, that the defendant was estopped from claiming the right of way, inasmuch as the recital in the indenture of May 25, 1907, contained so clear, precise, and unambiguous a statement that Mrs. W. was entitled to the entire interest in the right of way as to estop her and those claiming under her from denying that by that indenture she had wholly released the eastern land from the right of way. *Ib.*

Held, also, that the defendant had no right of light for the window, seeing that Mrs. W., by the agreement between her and the plaintiff as to building up the window, and of her joining in the indenture of May 25, 1907, had abandoned that right subject to the contingency of the mortgagees taking possession and re-opening the window, which contingency had been determined as in the case of the right of way. *Ib.*

Decision of Divisional Court (83 L. J. K.B. 875) reversed. *Ib.*

Removal of Refuse—Removal by Local Authority — Lost Grant.] — The owners of adjoining houses A and B had an easement of depositing house refuse in a dustbin on land C, and for twenty years before 1902 the refuse was periodically removed from the dustbin by the local authority across land C, and down a pasage D into E Street. The owners of C had a right of way over D, and a tenant of A had permission to use D from its owner; but there was no evidence of permission to use a way across C. The passage D was kept locked, and the dustmen of the local authority always applied to the owner for the key. In and after 1902 the refuse was not taken through D, but over another part of C into a back road. The owners of C having in 1908 erected a building between the dustbin and D, the owner of A and B brought an action against them, claiming a right of way by presumption of a lost grant, and an injunction against obstruction of such way:—*Held*, that though the plaintiff had an easement of depositing the refuse, it was for the defendants to remove it; that the removal carried out by the local authority was not carried out by them as agents of the plaintiff; and that a lost grant of a right of way over C could not be presumed. *Foster* v. *Richmond*, 9 L. G. R. 65—Swinfen Eady, J.

Verbal Agreement—Construction.]—In 1883 F. the appellants' predecessor in title and P. the respondent's predecessor in title, who were owners of adjacent properties, made a verbal agreement by which F. agreed to set back a party wall which bounded his property in order to give P. a more convenient access by widening a private road on his property, and P. agreed to give F. a right of way along the road to a gate nine feet wide to be made in the wall to give access to the back of his property. In 1911 the appellants widened the gate to fifteen feet, and set back the party

wall :—*Held*, that under the agreement they had no right of access except by a gate of the original width in the original place. Decision of the Court of Appeal (82 L. J. Ch. 57; [1913] 1 Ch. 113) affirmed. *Grand Hotel, Eastbourne, Lim.* v. *White*, 84 L. J. Ch. 938; 110 L. T. 209; 58 S. J. 117—H.L. (E.)

Reservation—Easement in Futuro—Covenant to "make and provide"—Crossing over Tramway — Perpetuity — Personal Covenant.] — In 1889 the defendant conveyed to the plaintiff's predecessors in title a strip of land for a tramway, the deed containing a reservation by the vendors of the right to cross the line at two points to be selected by them, and a covenant by the purchasers to "make and provide" crossings at the points selected by the vendors on notice being given. In 1892 the defendants gave notice of one point selected, and from that date crossed the line there from time to time, but no crossing was ever constructed. In 1910 the plaintiff obstructed the crossing, and sought to restrain the defendant from using it :—*Held*, that the reservation was void as breaking the rule against perpetuities, but that the covenant contained an implied personal obligation not to interfere with the defendants' crossing, which obligation became fixed and attached to the land as soon as the point was selected, and that the plaintiff had notice thereof, and was bound thereby. *Sharpe* v. *Durrant*, 55 S. J. 423—Warrington, J.

Obstruction by Gate—No Substantial Interference with Right—Right of Entry into Side of Road from Dominant Tenement—Unreasonable Opening.]—The defendant conveyed to the plaintiff a piece of land, the plaintiff covenanting to make and maintain as a private road a strip of this land ten feet wide. This strip was on the northern boundary of the land conveyed to the plaintiff, running east and west, and connected two roads running north and south, the western being a private lane and the eastern a highway. Land which the defendant retained, and which was open, adjoined the strip all along its northern side. The conveyance reserved to the defendant the right to pass and repass "over and along" the private road, and the plaintiff granted the right of way to the defendant as appurtenant to the defendant's land "and every part of it." The plaintiff duly laid out the strip as a private road, and the defendant placed a wooden fence along its northern side. Subsequently the defendant removed this fence and built shops on his land abutting on the northern side of the private road, except that at about sixteen feet from the eastern end they were curved back so as to leave a triangular strip of the defendant's land vacant and open to the highway and along the sixteen feet of the private road. The plaintiff thereupon put up a fence along the sixteen feet, and a ten-foot gate across the entrance of the private road into the highway. The defendant knocked down the fence and the ten-foot gate. The plaintiff claimed the right to erect and maintain the gate, and also the fence with a small gate in it. Sargant, J., held that the plaintiff was not entitled to put up the fence or the gate. On appeal,—*Held*, that the plaintiff was entitled to put up a gate across the private way, but that it must be without a lock and be kept open during business hours, such a gate not being a substantial interference with the right of way as granted; and that the plaintiff was also entitled to put up the fence as claimed, as such fence would not interfere with the defendant's reasonable right of access to the way. A gate is not necessarily an obstruction to a private right of way. *Pettey* v. *Parsons*, 84 L. J. Ch. 81; [1914] 2 Ch. 653; 111 L. T. 1011; 58 S. J. 721; 20 T. L. R. 655—C.A.

—— **Holdings under Common Landlord.**] — The plaintiff and the defendant were tenants of holdings held under a common landlord. The defendant had acquired a right of way over the plaintiff's holding. Across the end of this way, where it entered the county road, the plaintiff erected a gate for the convenient use of his holding. The defendant was allowed free ingress and egress through the gate :—*Held*, no obstruction of the right of way. *Flynn* v. *Harte*, [1913] 2 Ir. R. 322—Dodd, J.

The law as to the acquisition of a right of way as between tenants of a common landlord considered. *Ib.*

—— **Locking Gates—Offer to Provide Keys.**] —It is an obstruction to a person's free right of way if another person locks gates across such way, and it is no answer to the complaint as to the obstruction to say that keys for the gates will be supplied. *Guest's Estates* v. *Milner's Safes*, 28 T. L. R. 59—Swinfen Eady, J.

II. LIGHT AND AIR.

See also Vol. V. 1129, 1710.

Variation of Direction of Light — Equal Amount of Light—Future Obstruction.]—In an action for obstruction of ancient lights, it appeared that the defendants' building had been so altered as to greatly diminish the amount of light coming to the plaintiff's window from the east, while allowing it a largely increased access of light from the west :—*Held*, that the action failed, as the plaintiff was not entitled to any particular rays of light coming from any particular direction, but only to the same *quantum* of light that he had enjoyed for twenty years. *Colls* v. *Home and Colonial Stores* (73 L. J. Ch. 484; [1904] A.C. 179) discussed. *Davis* v. *Marrable*, 82 L. J. Ch. 510; [1913] 2 Ch. 421; 109 L. T. 33; 57 S. J. 702; 29 T. L. R. 617—Joyce, J.

Acquiescence by Dominant Owner in Abstraction of Light over Adjoining Property —Easement of Light over other Adjoining Property not Entirely Negatived—Rights of Dominant Owner as to that Property.]—An abstraction or diminution of light coming over adjoining property acquiesced in or consented to by the owner of the dominant tenement does not negative entirely his right to an easement of light in respect of the same openings over other adjoining property, though he does not acquire any further right entitling him to

prevent the erection on that other property of a building which he could not have prevented had he not assented to the prior abstraction of light over the first adjoining property. *Ankerson* v. *Connelly* (76 L. J. Ch. 402; [1907] 1 Ch. 678) applied. *Bailey & Son, Lim.* v. *Holborn and Frascati, Lim.*, 83 L. J. Ch. 515; [1914] 1 Ch. 598; 110 L. T. 574; 58 S. J. 321—Sargant, J.

Obstruction—Incidental Injury—Site Value—Measure of Damages.]—In estimating the damages due for the wrongful obstruction of ancient lights, it is proper to consider not only the injury done to the dominant tenement as it actually exists, but also to the dominant tenement as it is capable of being developed in the future. *Griffith* v. *Clay & Sons*, 81 L. J. Ch. 809; [1912] 2 Ch. 291; 106 L. T. 963—C.A.

Where, accordingly, the owner of two small houses possessing ancient lights towards the street was also the owner of a separate plot of land at the rear of these two houses that possessed no ancient lights,—*Held*, that, in assessing the damages due to him for the obstruction of his ancient lights, it was proper to take into consideration the injury inflicted on him by this obstruction with respect to the site value of the two houses and of the separate plot as a whole, in view of the possibility of their future development as a single property. *Ib.*

Interference with Light and Air—Nuisance.]—In an action for interference with light and air the owner of the dominant tenement is entitled to the uninterrupted access of a quantity of light measured by what is required for the ordinary purposes of the use of his tenement, and the test is whether the obstruction complained of amounts to a nuisance. *Colls* v. *Home and Colonial Stores* (73 L. J. Ch. 484; [1904] A.C. 179) and *Jolly* v. *Kine* (76 L. J. Ch. 1; [1907] A.C. 1) discussed and explained. *Paul* v. *Robson*, 83 L. J. P.C. 304; L. R. 41 Ind. App. 180; 111 L. T. 481; 30 T. L. R. 533—P.C.

Interruption—Verbal Agreement of Tenancy — Tenancy of Dominant Tenement under Person Occupying Servient Tenement.]—The access of light during a verbal agreement for a tenancy is not "enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing" as required by section 3 of the Prescription Act, 1832, and the existence of such a tenancy agreement with a person who was also during the tenancy the occupier of the servient tenement does not prevent the owners of the dominant tenement from acquiring the right to access of light through their windows. *Harbridge* (or *Harbidge*) v. *Warwick* (18 L. J. Ex. 245; 3 Ex. 552) explained. *Mallam* v. *Rose*, 84 L. J. Ch. 934; [1915] 2 Ch. 222—Sargant, J.

III. RIGHT OF SUPPORT.

See also Vol. V. 1178, 1720.

Grant of Land Reserving Minerals—Right to Work them "in as full and ample a way" as before Grant—No Express Reservation of Right to Let Down Surface—Necessary Implication of Right.]—In 1829 a vendor who was then owner in fee of certain lands conveyed them to a purchaser, but excepting and reserving all the minerals thereunder and the means and power of working them "in as full and ample a way and manner as if these presents had not been made and executed." There was a compensation clause, but only for damage by surface workings. The deed gave no express right in terms to let down:—*Held*, that by necessary implication from the words "in as full and ample a way and manner" the right to let down the surface in working the minerals was reserved. *Beard* v. *Moira Colliery Co.*, 84 L. J. Ch. 155; [1915] 1 Ch. 257; 112 L. T. 227; 59 S. J. 103—C.A.

Restricted Interpretation of Words "in as full and ample a way" in Inclosure Acts—Not Applicable to Construction of Deeds.]—The restricted interpretation of such words in the construction of Inclosure Acts is not applicable to the construction of deeds. *Ib.*

Support of Railway.—The mining sections (77 to 85) of the Railways Clauses Consolidation Act, 1845, relate to mines within forty yards of a railway, and do not apply to mines outside that limit. A railway company has therefore a common law right of lateral support for its railway from mines lying outside the forty yards limit. *Howley Park Coal Co.* v. *London and North-Western Railway*, 82 L. J. Ch. 76; [1913] A.C. 11; 107 L. T. 625; 57 S. J. 42; 29 T. L. R. 35—H.L. (E.)

IV. DRAINS AND WATERCOURSES.

See WATER.

V. OTHER EASEMENTS.

See also Vol. V. 1188, 1721.

Prospect or Privacy.]—The law does not recognise any easement of prospect or privacy. *Browne* v. *Flower*, 80 L. J. Ch. 181; [1911] 1 Ch. 219; 103 L. T. 557; 55 S. J. 108—Parker, J.

Prescription—Right of Common—User for Sixty Years—No Acquiescence—Claim to Soil only—Lost Grant.]—Under section 1 of the Prescription Act, 1832, a right of common appurtenant is not taken and enjoyed by the claimant for sixty years within the meaning of that section, if the user has not been acquiesced in by the owner of the servient tenement, or if the claim has not been a claim to a profit, but only a claim to a title in the soil. The doctrine of lost grant only applies where the enjoyment cannot otherwise be reasonably accounted for. *Lyell* v. *Hothfield (Lord)*, 84 L. J. K.B. 251; [1914] 3 K.B. 911; 30 T. L. R. 630—Shearman, J.

ECCLESIASTICAL LAW.

I. CHURCH OF ENGLAND.

See also Vol. V. 1196, 1724.

1. Archdeacons.

Archdeacon's Fees — Procuration.] — The Ecclesiastical Fees Act, 1867, and the table of fees settled thereunder in 1908, have not substituted a fee of two shillings for the old customary procuration. The customary procuration is still annually due and payable to the archdeacon irrespective of whether his visitation is held in respect of grouped parishes or in respect of an individual parish. *Exeter (Archdeacon)* v. *Green*, [1913] P. 21; 28 T. L. R. 8—Consist. Ct. of Exeter.

2. Discipline.

"Immoral act"—Sending Indecent Letter to Female Parishioner.]—The sending by a clergyman of an indecent letter to a female parishioner is an "immoral act" within the meaning of that term in the Clergy Discipline Act, 1892. *Ely (Bishop)* v. *Close*, [1913] P. 184; 29 T. L. R. 668—Arches Ct. of Canterbury.

II. NONCONFORMIST MINISTER.

Baptist Minister—Termination of Employment—Effect of Resignation as from a Future Date—Right to Withdraw Resignation.]—A Baptist minister, who expresses his intention to resign his ministry on or before a certain date, at a formal meeting of the communicants of his church, does not thereby terminate his employment. If a Baptist minister does definitely resign his appointment as from a future date, he may, before that date arrives, withdraw his resignation at a formal meeting of the communicants of the church, although the meeting is not such as would have power to appoint a new minister. *Nickson* v. *Dolphin*, 56 S. J. 123—Warrington, J.

III. ADVOWSON.

See also Vol. V. 1226, 1728.

Settlement—Power of Appointment among a Class—Failure to Appoint—Gift Over a Power—Refusal by all Members of the Class—Whether "failure" within the Settlement.] —An advowson was conveyed in strict settlement with a declaration of trust that only the Fellows of a certain college should be presented to the benefice. On "failure" of the donees of the power of appointment to make such presentation the advowson was to be for the benefit of the Master and Senior Fellows of the college for ever. The plaintiff, who was a donee of the power, ordered the benefice, which was vacant at the time, to each of the Fellows, but they all refused it, and he appointed himself :—*Held*, that there had been no "failure" within the meaning of the settlement, and therefore the advowson was still vested in the plaintiff, subject to a trust on future occasions to appoint a Fellow in accordance with the deed. *Hopper* v. *St. John's College, Cambridge*, 31 T. L. R. 139—Astbury, J.

Estate Duty—Proceeds of Sale—Chargeability.]—By section 15, sub-section 4 of the Finance Act, 1894, "Estate duty shall not be payable in respect of any advowson or church patronage which would have been free from succession duty under section twenty-four of the Succession Duty Act, 1853." By section 24 of the Succession Duty Act, 1853, "A successor shall not be chargeable with duty in respect of any advowson or church patronage comprised in his succession, unless the same . . . shall be disposed of by or in concert with him for money or money's worth, in which case he shall be chargeable with duty upon the amount or value of the money or money's worth, for which the same . . . shall be so disposed of at the time of such disposal." A testator, who died in 1898, by his will left property, including two advowsons, to three of the defendants as trustees, to the use of his son C. for life, with remainder to the use of his grandson W., the other defendant, for life, with remainders over. C. died in 1901, and in 1905 W. attained the age of twenty-one, and in 1909, under the powers vested in him by the Settled Land Acts, 1882 to 1890, sold the two advowsons. Upon an information by the Attorney-General claiming a declaration that the defendants, upon the death of either the testator or his son, became liable to pay estate duty and settlement estate duty in respect of the advowsons,—*Held*, that upon the true construction of the above enactments these duties were not payable. *Att.-Gen.* v. *Peek*, 82 L. J. K.B. 767; [1913] 2 K.B. 487; 108 L. T. 744—C.A.

Decision of Hamilton, J. (81 L. J. K.B. 574; [1912] 2 K.B. 192), affirmed. *Ib.*

IV. CHURCHES AND CHAPELS.

See also Vol. V. 1295, 1732.

Parish Church — Conventual Church — Perpetual Curate—Churchwardens—Non-repair.] —The perpetual curate and one of the two churchwardens of a parish church instituted an action against the lay rector to restrain him from preventing them resuming possession of certain ruined aisles adjoining the church for the purpose of restoring them :—*Held*, that one only of two churchwardens could not sue,

but that the perpetual curate, though having no seisin of anything appertaining to the church, had sufficient possession to sue for any interference with his right and duty to hold services. *Fowke* v. *Berrington* (*No.* 2), 83 L. J. Ch. 878; [1914] 2 Ch. 308; 111 L. T. 440; 58 S. J. 610—Astbury, J.

A church building may be partly parochial and partly conventual. If the vicar of the parochial part sues to recover the other part, claiming that it is all parochial, the onus lies upon the vicar to shew that the other part was parochial. The fact that the parish has never contributed to the repairs of the other part is strong evidence to shew that it was not parochial. *Ib.*

Private Chapel—Absence of Dedication—Rights of Public.]—No person can intrude into a private chapel against the will of the owner in the absence of such a dedication as would give the public a legal right to go there. *Hancock* v. *Stephens*, 31 T. L. R. 434—C.A.

V. DIVINE SERVICE.

See also Vol. V. 1314, 1733.

Repulsion from Holy Communion—Marriage with Deceased Wife's Sister — "Open and notorious evil liver."]—Section 1 of the Deceased Wife's Sister's Marriage Act, 1907, makes a marriage between a man and the sister of his deceased wife valid for all purposes, notwithstanding the proviso in the same section, and such a marriage does not now constitute a lawful cause justifying a clergyman in refusing to admit the married persons to Holy Communion. *Thompson* v. *Dibdin*, 81 L. J. K.B. 918; [1912] A.C. 533; 107 L. T. 66; 56 S. J. 647; 28 T. L. R. 490—H.L. (E.)

Decision of the Court of Appeal, *sub nom. Rex* v. *Dibdin; Thompson, Ex parte* (79 L. J. K.B. 517; [1910] P. 57), affirmed. *Ib.*

VI. FACULTIES.

See also Vol. V. 1328, 1735.

Wishes of Parishioners — Discretion of Court.]—Where, on an application for a faculty, a Chancellor has all the materials before him, it is open to him, if in the exercise of his judicial discretion he comes to the conclusion that he ought to do so, to grant or refuse the faculty in opposition to the wishes of a majority of the parishioners. *St. Stephen's, Hampstead*, 28 T. L. R. 584—Consist. Ct. of London.

Erection of Non-provided School on Consecrated Ground—Discretion.]—The Ecclesiastical Courts have jurisdiction in their discretion to grant faculties authorising the erection on consecrated ground of the buildings of public elementary schools not provided by the local education authority in cases where it is proved that in the buildings so to be erected religious instruction will be given according to the principles of the Church of England, and that interments have never taken place in the ground upon which it is proposed that the school buildings shall be erected. *Bettison, In re* (L. R. 4 A. & E. 294), followed. *Corke* v. *Rainger*, [1912] P. 69; 76 J. P. 87; 28 T. L. R. 130—Arches Ct. of Canterbury.

Consecrated Ground—Powers of Secular and Ecclesiastical Courts.]—When ground is once consecrated and dedicated to sacred purposes no secular Court has power to sanction the use of it for secular purposes. Ecclesiastical Courts, however, have discretionary jurisdiction to grant faculties for the erection of buildings and the like in consecrated ground under certain circumstances. *Bideford Parish, In re* ([1900] P. 314), and *Corke* v. *Rainger* ([1912] P. 69) approved. *Campbell* v. *Paddington Parishioners* (2 Rob. Ecc. 558) criticised. *Sutton* v. *Bowden*, 82 L. J. Ch. 322; [1913] 1 Ch. 518; 108 L. T. 637; 29 T. L. R. 262—Farwell, L.J.

Baldacchino.]—The Court, holding itself bound by the decision in *White* v. *Bowron* (43 L. J. Ecc. 7; L. R. 4 Ad. & E. 207), declined to grant a faculty for the erection of a *baldacchino* over a Communion table. *Grosvenor Chapel, South Audley Street, In re* (*No.* 1), 29 T. L. R. 286—Consist. Ct. of London.

Chancel Screen with Figures—Holy Table—Choir Stalls.]—Faculty granted for the erection of a chancel screen surmounted by a figure of the crucified Saviour in the centre, with figures of the Blessed Virgin on one side and St. John on the other. Wherever, on an application to the Court for a faculty, it is proposed to place the holy table on a raised platform, the Court will require that there should be standing room on the platform at the ends as well as at the front of the holy table, and that there should be no fixed curtains at the sides cutting off access to those ends. The Court in granting a faculty for alterations in the arrangement of the chancel required that all choir stalls should run from east to west, and none from north to south. *Hendon Parish Church*, 28 T. L. R. 438—Consist. Ct. of London.

Rood Beam with Figures—Inscription.]—The Court granted a faculty for the removal from a rood beam of the inscription "O Lord God, Lamb of God, Son of the Father, that takest away the sins of the world," and when that was done authorising the retention of the figures of the Saviour, St. Mary, and St. John on the rood beam. *St. Paul, Bow Common*, 28 T. L. R. 584—Consist. Ct. of London.

Rood Screen — Discretion.]—Where the erection of a chancel screen, with a rood loft and beam surmounted by the figures of Our Lord upon the Cross, the Virgin Mary, and St. John, is proposed as an architectural decoration and there is no probability of the figures being subjected to superstitious reverence, the Consistory Court is entitled, in its discretion, to grant a faculty for the erection. *All Saints, Westbury, In re*, 30 T. L. R. 389—Consist. Ct. of Salisbury.

Parish Church—Picture of Crucified Saviour—Opposition of Parishioners—Faculty for

Removal.]—The rector of a parish placed a picture of the crucified Saviour near the pulpit in the parish church without consulting the churchwardens or the congregation. The vestry resolved by 37 votes to 27 that the parishioners should apply for a faculty to remove the picture :—*Held*, on an application for a faculty to confirm the rector's action, that as the introduction of such a picture had not been sanctioned by authority, and as it had not been shewn by the petitioners that there was a general desire on the part of the church-going parishioners for its introduction, a faculty must be decreed for the removal of the picture. *Hudson* v. *Fulford*, 30 T. L. R. 32—Consist. Ct. of London.

VII. CHURCHWARDENS.

Action by One of Two Churchwardens and Perpetual Curate against Lay Rector.]—*See Fowke* v. *Berrington* (*No.* 2), *ante*, IV.

VIII. SEXTON.

See also Vol. V. 1356.

Ancient Parish—Freehold Office—Presumption of Law.]—The office of sexton in an ancient parish is not by presumption of law a freehold office. Where, therefore, a man claims to be restored to the office of sexton in a particular parish, the Court will not grant a *mandamus* for that purpose unless there is evidence that the office of sexton in that parish is a freehold office, which the person elected thereto is entitled to hold for life. *Ile's Case* (Vent. 153), *Merrick's Case* (2 Peck. 91), and *Rex* v. *Thame* (*Churchwardens*) (1 Str. 115) discussed and applied. *Rex* v. *Dymock* (*Vicar*); *Brooke*, *Ex parte*, 84 L. J. K.B. 294; [1915] 1 K.B. 147; 112 L. T. 156; 79 J. P. 91; 13 L. G. R. 48; 31 T. L. R. 11—D.

IX. CHURCH AND CHAPEL RATES.

See also Vol. V. 1362, 1750.

Rate made under Authority of Local Act—Rate made in Consideration of Extinguishment of Tithes—Rate Partly for Ecclesiastical and Partly for other Purposes.]—Section 5 of the Compulsory Church Rate Abolition Act, 1868, which saves church rates authorised by any local Act to be made or levied in consideration of the extinguishment of tithes, is not limited to church rates as defined by section 10—that is to say, to rates for ecclesiastical purposes—but applies to any rate so authorised to be made or levied as a church rate, even though it is in part applicable to purposes other than ecclesiastical. By a local Act of Parliament passed in 1825, expressed to be an Act for extinguishing tithes within a certain parish and making compensation to the rector for the time being in lieu thereof, it was enacted as follows : By section 1 the churchwardens for the time being were from time to time for ever thereafter to pay to the rector for the time being a fixed annual sum in lieu, satisfaction, and discharge of all tithes within the parish; by section 7 all tithes within the parish were to cease and be for ever extinguished; and by section 14 the churchwardens were to make an assessment, to be called "the church rate," for raising from time to time the said annual sum and such further sum as should be necessary for repairing the church and churchyard and for the payment of all necessary and proper salaries and disbursements relative to the church and churchyard. In 1912 the churchwardens made a rate under the above Act "for provision of the rector's stipend and for other purposes authorised by that Act" :—*Held*, that the whole of the rate, and not only that part of it which was applicable to the rector's stipend, was a church rate authorised to be made by a local Act in consideration of the abolition of tithes within the meaning of section 5 of the Compulsory Church Rate Abolition Act, 1868, and was therefore enforceable, notwithstanding section 2 of that Act. *London County Council* v. *St. Botolph-without-Bishopsgate Churchwardens*, 83 L. J. K.B. 953; [1914] 2 K.B. 660; 110 L. T. 737; 78 J. P. 161; 12 L. G. R. 168—C.A.

X. PRACTICE AND PROCEDURE IN ECCLESIASTICAL MATTERS.

See also Vol. V. 1386, 1751.

Application for Leave to Intervene after Expiration of Time for Appealing from Grant of Faculty.]—The Consistory Court of London granted a faculty for the erection of a rood screen, a new altar, and certain structural alterations in Grosvenor Chapel, but refused a faculty for a proposed *baldacchino*. After the time for appealing from that decision had expired an application was made by a parishioner for leave to intervene and to be added as a respondent for the purpose of appealing to the Court of Arches from the decision of the Consistory Court :—*Held*, that the application must be refused, as the faculty had issued and there was no case before the Court in which an appearance could be entered. *Grosvenor Chapel, South Audley Street, In re* (*No.* 2), 29 T. L. R. 411—Consist. Ct. of London.

XI. TITHE.

See also Vol. V. 1415, 1755.

Tithe Rentcharge—Bankruptcy of Incumbent—Sequestration—Tithes Paid by Mistake of Fact—Right to Recover from Bishop—Money Had and Received—Principal and Agent.]—Tithe rentcharge paid in mistake of fact to the sequestrator of a benefice appointed by the bishop under the Bankruptcy Act, 1883, s. 52, may be recovered from the bishop as money had and received, even after, in ignorance of the mistake, the bishop has paid the money over to the trustee in bankruptcy of the incumbent or otherwise duly accounted for it to him. *Sadler* v. *Evans* (4 Burr. 1984) considered. *Baylis* v. *London* (*Bishop*), 82 L. J. Ch. 61; [1913] 1 Ch. 127; 107 L. T. 730; 57 S. J. 96; 29 T. L. R. 59—C.A.

Decision of Neville, J. (81 L. J. Ch. 586; [1912] 2 Ch. 318), affirmed. *Ib.*

—— **Recovery of—Portion of Land Let on Long Lease—Joint Owners—Whole of Land not in Occupation of same Owner—Proceedings for Recovery—Appointment of Receiver—Distress.**]—The respondent U. was the owner in fee-simple of a building estate out of which tithe rentcharge amounting to 2*l.* 14*s.* 4*d.* issued. A portion of the land was let on long leases to various lessees who were in occupation of their respective plots. An application having been made to the County Court for an order for the recovery of the tithe rentcharge issuing out of the land, the County Court Judge made an order, under section 2, subsection 3 of the Tithe Act, 1891, for the recovery of the tithe rentcharge by the appointment of a receiver to receive the rents and profits of the lands out of which the tithe rentcharge issued:—*Held*, that sub-section 2 of section 2 of the Tithe Act, 1891, under which a County Court Judge may make an order for the recovery of tithe rentcharge by means of distress, only applies where the whole of the lands which are the subject of the application are in the occupation of the owner thereof, and that where the owner is only in occupation of a portion of the lands out of which the tithe rentcharge issues the proper order to be made is an order for the appointment of a receiver under sub-section 3 of section 2 of the Tithe Act, 1891. *Ecclesiastical Commissioners* v. *Upjohn*, 82 L. J. K.B. 435; [1913] 1 K.B. 501; 108 L. T. 417—D.

—— **Covenant by Tenant to Pay Landlord such Sums as Landlord shall Expend for Tithe Rentcharge—Validity.**]—The provision in section 1, sub-section 1 of the Tithe Act, 1891, that "any contract made between an occupier and owner of lands, after the passing of this Act, for the payment of the tithe rentcharge by the occupier shall be void," is not limited to a contract between an occupier and owner of lands for payment of the tithe rentcharge by the occupier to the tithe owner, but extends also to a contract between an occupier and owner of lands for payment by the former to the latter of such sums as the latter shall expend in payment of tithe rentcharge to the tithe owner. *Tuff* v. *Drapers' Co.*, 82 L. J. K.B. 174; [1913] 1 K.B. 40; 107 L. T. 635; 57 S. J. 43; 29 T. L. R. 36—C.A.

Ludlow (Baron) v. *Pike* (73 L. J. K.B. 274; [1904] 1 K.B. 531) approved by Vaughan Williams, L.J., and Kennedy, L.J.; disapproved by Buckley, L.J. *Ib.*

Extraordinary Tithe Rentcharge—Redemption—Money in Court—Costs of Application to Invest.]—The costs of an application to invest money paid into Court under the Extraordinary Tithe Redemption Act, 1886, s. 5, sub-s. 4, in redemption of an extraordinary charge on land, ordered to be paid by the landowner. *Extraordinary Tithe Redemption Act*, 1886, *Ex parte; Wigan, in re*, 80 L. J. Ch. 670; [1911] 2 Ch. 438; 105 L. T. 405—Neville, J.

Scheme for Transfer of Townships from One Parish to Another—Provision as to Fees for "marriages, churchings, and burials, and other ecclesiastical dues, offerings, and emoluments."]—In 1909 it was proposed for ecclesiastical purposes to transfer certain townships from the parish of E. to the parish of I., and a scheme was accordingly drawn up under section 26 of the Pluralities Act, 1838, and subsequently approved by Order in Council. The scheme provided that "the incumbent of the said parish of I. shall have exclusive cure of souls within the limits of the said districts now part of the parish of E., and proposed to be annexed to the parish of I., and the fees for marriages, churchings, and burials, and other ecclesiastical dues, offerings, and emoluments arising from the said districts, shall henceforth belong to the incumbent of the said parish of I., to which such districts shall have been so annexed. That no alteration shall be made as to the patronage or (save as aforesaid) the endowments of any of the benefices affected by this scheme":—*Held*, that the words of the scheme, "other ecclesiastical dues, offerings, and emoluments," did not include tithes. *Bolam* v. *Allgood*, 110 L. T. 8; 58 S. J. 46; 30 T. L. R. 46—C.A.

XII. BURIAL.

See also Vol. V. 1433, 1757.

Burial Ground—Proposed Sale—Approval of Charity Commissioners—Authority of Act of Parliament.]—A sale of a disused chapel and burial ground, although authorised by the Board of Charity Commissioners under section 24 of the Charitable Trusts Act, 1853, is not a sale under the authority of an Act of Parliament within section 5 of the Disused Burial Grounds Act, 1884, and therefore the burial ground cannot by virtue of that authority be sold free from restrictions as to building. *Howard Street Congregational Chapel (Sheffield), In re*, 83 L. J. Ch. 99; [1913] 2 Ch. 690; 109 L. T. 706; 58 S. J. 68; 30 T. L. R. 16—Astbury, J.

—— **Portion of—Widening Highway—Faculty—Exercise of Discretion.**]—The power to sanction the use of part of a burial ground for widening a highway is one which must be exercised with great discretion and reserve, and where the proposal involves an extensive disturbance of graves and is reasonably obnoxious to many of the relatives of the persons buried there, and where there has been no approval by the vicar, churchwardens, and parishioners, such use ought not to be sanctioned unless there is urgent and immediate necessity. *Uxbridge Urban Council, Ex parte*, 30 T. L. R. 448—Consist. Ct. of London.

Disused Burial Ground—Acquirement by Public Authority for Street Widening—Statutory Authority to Acquire Freehold.]—On an application by the rector and churchwardens, and by the London County Council, for a faculty authorising an agreement by which the Council was to acquire a strip of a disused burial ground for widening a road, the Court declined to decide whether the Council has statutory authority to acquire the freehold of consecrated land, and determined to deal with the case in its discretion,

under the usual procedure, which is to grant a user of the land. *St. Anne, Limehouse*, 31 T. L. R. 539—Consist. Ct. of London.

—— Extension of Churchyard — Interment within One Hundred Yards of Dwelling House.]—The extension of a churchyard, even if situate in an area in which an Order in Council has been made enacting that no new burial ground shall be opened without the previous approval of the Local Government Board, does not come within the purview of section 9 of the Burial Act, 1855, and the consent in writing of the owner, lessee, and occupier of a dwelling house within one hundred yards of such extension is therefore not required before it can be used for burials. Section 9 of the Burial Act, 1855, applies only to land used as or appropriated for a burial ground, or an addition to a burial ground, by burial boards under the Burial Acts. *Greenwood* v. *Wadsworth* (43 L. J. Ch. 78; L. R. 16 Eq. 288) not followed. *Clegg* v. *Metcalfe*, 83 L. J. Ch. 743; [1914] 1 Ch. 808; 111 L. T. 124; 78 J. P. 251; 12 L. G. R. 606; 58 S. J. 516; 30 T. L. R. 410—Sargant, J.

EDUCATION.

See SCHOOL.

ELECTION (IN EQUITY).

See also Vol. V. 1531, 1763.

English Doctrine—Scots Law—"Approbate and reprobate."]—The Scottish doctrine of "approbate and reprobate" is in principle identical with the English doctrine of election. It is that no person can accept and reject the same instrument. Where a deed or will proposes to make a general distribution of property for the benefit of a person named in it, such person cannot accept a benefit under the instrument without at the same time conforming to all its provisions and renouncing every right inconsistent therewith. *Pitman* v. *Crum-Ewing*, 80 L. J. P.C. 178; [1911] A.C. 217; 104 L. T. 611—H.L. (Sc.)

A testator bequeathed to his daughter the life rent of a fund with a power of appointment among her children, and in default of appointment among the children equally. The daughter, massing together her own property with the fund bequeathed by her father, purported, by an exercise (which was invalid) of her power of appointment, to bequeath the whole to her children in life rent and then to the children's children in fee:—*Held*, that these grandchildren were put to their election between their rights under their grandfather's will and their rights under their mother's will, of which they could not accept part and reject part. *Ib.*

Foreign Will—Devise of Real Estate in England—Defective Execution—Invalidity—Devolution — Residuary Legatee Heir.]—Where by a foreign will, not so executed as to pass real estate in England, real estate in England is devised away from the heir and personal estate is bequeathed to the heir, the heir is not bound to elect between the real and personal estates, but takes both. *Hearle* v. *Greenbank* (3 Atk. 695, 715) applied. *De Virte, In re; Vaiani* v. *De Virte*, 84 L. J. Ch. 617; [1915] 1 Ch. 920; 112 L. T. 972—Joyce, J.

A testatrix resident and domiciled in Italy in 1899 made an Italian will purporting to give real estate in England to V. absolutely, and her residuary real and personal estate to R. The will was not so executed as to be effectual to pass real estate in England. R. was the testatrix's heiress-at-law. In 1901 the testatrix by deed settled the English real estate upon trust for V. for life, with remainder for his children in tail, and an ultimate remainder to the use of herself in fee. V. died, not having had children:—*Held*, that R. was entitled to both the English realty as heiress-at-law and the personalty as residuary legatee, and was not put to her election between the two. *Ib.*

Restraint on Anticipation—Power in Trustees to Vary Trusts—Intention—Spinsters.]—The doctrine of election is not excluded in the case of a spinster who takes a settled interest under a will merely because a restraint on anticipation is attached to her interest while under coverture or because her trustees have powers in certain events to revoke or alter the trusts declared in her favour. *Haynes* v. *Foster* (70 L. J. Ch. 302; [1901] 1 Ch. 361) distinguished. *Hargrove, In re; Hargrove* v. *Pain*, 84 L. J. Ch. 484; [1915] 1 Ch. 398; 112 L. T. 1062; 59 S. J. 364—Astbury, J.

Spinster—Will—Restraint on Anticipation.]—In the case of a spinster, to whom an interest with a restraint on anticipation during coverture attached thereto is given by the same instrument as that which gives rise to the question of election, the doctrine of election applies. The fact that she would be restrained from anticipation, if and when she married, is immaterial, and she will accordingly be put to her election. *Haynes* v. *Foster* (70 L. J. Ch. 302; [1901] 1 Ch. 361) distinguished. *Tongue, In re; Burton, In re; Higginson* v. *Burton*, 84 L. J. Ch. 378; [1915] 1 Ch. 390; 112 L. T. 685—Warrington, J. Affirmed, 84 L. J. Ch. 933; [1915] 2 Ch. 283—C.A.

Mortgage by Testator of Property Belonging to His Wife—Election by Wife to Take under Will—Liability of Property Brought in by Election for Debts—Contribution towards Deficiency.]—A testator gave all his estate upon trust for his wife for life, and after her death he gave his leasehold property in James Street upon trust for his daughter for life, and after her death for her children; and after the death of his wife he gave his villa known as "Birchfield" to his niece. The testator died in 1913. The James Street

property was assigned to the testator's wife in 1888, and on August 25, 1909, the testator purported to mortgage the same for 400*l*. The "Birchfield" villa was assigned to the testator and his wife jointly, and on August 15, 1905, they mortgaged it for 400*l*. The widow elected to take under the will:—*Held*, that as to the James Street property it was not primarily liable for payment of the mortgage debt, and what the widow brought in under her election was the property free from the incumbrance; but as to the "Birchfield" property, the Real Estate Charges Act, 1854, applied, and therefore the mortgage debt was primarily payable out of it. *Held* also, that, the residue of the estate being insufficient for the payment of debts, the property brought in by reason of the widow's election was liable to contribute *pari passu* with the testator's property in discharging his debts. *Cooper* v. *Cooper* (44 L. J. Ch. 6, 14; L. R. 7 H. L. 53, 69) applied. *Williams, In re; Cunliffe* v. *Williams*, 84 L. J. Ch. 578; [1915] 1 Ch. 450—Eve, J.

Personalty to be Held on same Trusts as Proceeds of Sale.]—A testator, after devising his land in strict settlement, gave his trustees a power of sale, and declared that the moneys arising from any such sale should, subject to a power of interim investment, be re-invested in land. He then bequeathed all his residuary personal estate to his trustees upon the trusts and with and subject to the powers and provisions applicable to moneys to arise from a sale under the powers of sale thereinbefore contained:—*Held*, that the residuary personal estate must be treated as realty, though not actually laid out in the purchase of land. *Held*, also, that the devisees being put to election in respect of the devised real estate, such election, on the true construction of the will, extended so as to include the residuary personal estate. *Upton-Cottrell-Dormer, In re; Upton* v. *Upton*, 84 L. J. Ch. 861; 112 L. T. 974; 31 T. L. R. 260—Eve, J.

ELECTION LAW.

A. PARLIAMENTARY.

1. Registration of Voters.

See also Vol. VI. 3, 1900.

a. Ownership.

County Vote—Ownership Qualification—Receipt of Rents and Profits.]—Four persons claimed to have their names inserted in the list of ownership voters for the parish of Trowbridge. The houses which formed the qualifying property were devised to the mother of the four claimants. At her death it was believed that her husband, the father of the claimants, took a life estate in the houses, and the trustee for some years paid the rents to him. It was afterwards found that he had no life interest, and that the property had passed to his children, and they thereupon authorised the trustee to pay the money direct to their father as before. The Revising Barrister having disallowed the claims,—*Held*, that under the circumstances there had been a "receipt" by the claimants "of the rents and profits" of the property "for their own use" within the meaning of section 26 of the Representation of the People Act, 1832, and that they were entitled to be registered as ownership voters. *White* v. *Bown*, 82 L. J. K.B. 89; [1913] 1 K.B. 78; 108 L. T. 159; 77 J. P. 78; 11 L. G. R. 23; 2 Smith, 386; 29 T. L. R. 63—D.

—— **Freehold Premises in Parliamentary Borough—Occupation by Freeholder of Flat in Freehold Premises—"House . . . or other building occupied by himself."**]—The appellants claimed the county franchise in respect of their ownership in each case of a freehold house situate in a Parliamentary borough. Each house was divided into two flats—an upper and a lower—each appellant respectively occupying the upper flat, and being registered as a voter in respect of such occupation in Division I. of the occupiers' list for the parish in the said borough in which the flats were situate. In one case the lower flat was in the occupation of a tenant, who was also in Division I., while in the other it was vacant:—*Held*, that each of the four flats was a separate freehold for the purposes of the county franchise; that the appellants were not in occupation of the lower flats within the meaning of section 24 of the Representation of the People Act, 1832, and, consequently, that each was entitled to the county franchise in respect of his freehold interest in such lower flats respectively. *Douglas* v. *Sanderson; Potts* v. *Sanderson*, 80 L. J. K.B. 294; [1911] 1 K.B. 166; 103 L. T. 841; 75 J. P. 108; 9 L. G. R. 1; 2 Smith, 234; 55 S. J. 94; 27 T. L. R. 81—D.

b. Occupiers.

"Inhabitant occupier"—Dwelling House—Tenant of Part of House—Landlord's Residence in House—Landlord's Control—Evidence to Rebut.—The tenant of rooms forming part of a dwelling house in a borough, in which dwelling house the landlord resides, is not entitled, in virtue of his occupation of the rooms, to the borough franchise as an inhabitant occupier of a dwelling house under section 3 of the Representation of the People Act, 1867, unless he rebuts the presumption of the landlord's right of control over the rooms arising from the latter's residence in the house; and he does not rebut that presumption by merely proving that the landlord has never expressly claimed any right to enter into or exercise control over the rooms, or in fact entered or exercised any control over them, the circumstances not having been such as to require the latter to claim such right or exercise any control, and that no services have been rendered to him in the rooms by the landlord. *Kent* v. *Fittall* (*No.* 4), 81 L. J. K.B. 82; [1911] 2 K.B. 1102; 103 L. T. 668; 9 L. G. R. 27; 75 J. P. 113; 2 Smith, 279; 27 T. L. R. 79—D. *See* s.c. in C.A. (*infra*).

Objection—Prima Facie Proof—Evidence—Rebuttal.]—At the Court of a Revising Barrister an objector proved that a person, whose name appeared in a list of voters as the inhabitant occupier of a dwelling house, occupied rooms in a house which itself would ordinarily be described as a dwelling house, that the landlord resided in the house, and that the landlord was rated for the whole house. The name of the same person had, in the previous year, appeared in the similar list for the same qualifying property, the same objector had then made the same objection and proved the same facts, the person objected to had given evidence and been cross-examined, and the same Revising Barrister had retained his name in the list. The Revising Barrister refused to require the person objected to to adduce evidence or to be cross-examined, and held that the objection failed, upon the ground that in the circumstances *prima facie* proof of the objection had not been given:—*Held*, that the decision of the Revising Barrister was wrong, inasmuch as *prima facie* proof of the objection had been given and there was no evidence before him to rebut it. *Kent* v. *Fittall* (*No.* 5), 105 L. T. 428; 9 L. G. R. 1186—C.A.

Evidence of Parting with Control—Hearsay—Question of Fact—Admissibility of Evidence.]—The name of A. B. appeared on the occupation list in respect of his occupation of a dwelling house at No. 20 W. Street. Notice of objection was given, and it was admitted that the house in which A. B.'s rooms were situate was an ordinary dwelling house; that the landlady resided in the house and paid rates for the whole house. The Revising Barrister then held that *prima facie* proof of the objection had been given so as to satisfy the Registration Act, 1878, s. 28, subss. 10, 11. In order to ascertain the facts, the Revising Barrister proceeded to examine the person employed by the town clerk for the purpose of verifying the accuracy of the entry on the list. He was one of a staff of official canvassers whose duty it was to call at the several houses and obtain from the resident landlord, or some other person competent to give it, all necessary information as to the terms of the occupation of the respective inmates. The canvasser produced his canvass book containing his notes made at the actual time of each enquiry, and reading therefrom deposed on oath that he had been expressly informed by the landlady of the house in question that the premises occupied by A. B. were let to him unfurnished; that he had separate and exclusive occupation; that she performed no services whatsoever for him and exercised no control over the premises. On this evidence, which was uncontradicted, the Revising Barrister decided that the *prima facie* evidence was rebutted, and he retained the name of the voter on the list of voters:—*Held*, that it could not be said that the evidence so given was directed to a question of fact solely within section 65 of the Parliamentary Voters' Registration Act, 1843, so that there was no appeal from the decision of the Revising Barrister; and that there was not sufficient or proper evidence to establish the relinquishment by the landlady of the right to control, and therefore the objection had not been rebutted. *Astell* v. *Barrett*, 103 L. T. 905; 9 L. G. R. 253; 75 J. P. 225; 2 Smith, 256; 55 S. J. 237; 27 T. L. R. 205—D.

A widower was enrolled as a county voter as tenant of a house which consisted of three rooms and a kitchen. He, however, only occupied one of the rooms, the rest of the house being occupied by his daughter and her husband and family. The daughter cooked her father's meals in the kitchen, but he partook of them in his own room. His son-in-law paid him half the total rent and taxes, and owned the furniture in the portion of the house occupied by himself and his family. All the apartments and the street door were fitted with locks and keys, the key of the street door being left in the lock, and the last person coming in at night locking the door:—*Held*, that the inference from these facts was that the father-in-law retained the control of the house, and accordingly that the son-in-law was not entitled to the franchise as an inhabitant occupier of a separate dwelling. *Gregory* v. *Traquair*, [1912] S. C. 637—Ct. of Sess.

Tenant not Separately Rated—Constructive Rating.]—The tenant of rooms forming part of a dwelling house in a borough, in which dwelling house the landlord resides, is not entitled, in virtue of his occupation of the rooms, to the borough franchise as an inhabitant occupier of a dwelling house under section 3 of the Representation of the People Act, 1867, unless he or some other person is separately rated and pays separate rates for the rooms; and he cannot avail himself of the fact that the landlord is rated for the house as a whole, the cases of constructive rating

of the occupier where rates are paid by the owner being limited to the case of a dwelling house or tenement wholly let out in apartments or lodgings under section 7 of the above Act, and the case of small tenements under sections 3 and 4 of the Poor Rate Assessment and Collection Act, 1869. *Kent* v. *Fittall* (*No.* 4), 81 L. J. K.B. 82; [1911] 2 K.B. 1102; 105 L. T. 422; 9 L. G. R. 999; 75 J. P. 378; 2 Smith, 279; 55 S. J. 687; 27 T. L. R. 564—C.A.

c. Service Franchise.

Married Soldiers Living in Barracks.]—Married officers and non-commissioned officers occupied during the qualifying period, with their wives and families, quarters in barracks allotted to them. They took their meals in their quarters; each had a key, and could go in and out of his quarters during the day without hindrance. The quarters consisted of a sitting room, with one or more bedrooms and scullery. The barracks were subject to military control. The commanding officer, who lived outside the barracks, could move an officer to other quarters. Quarters were liable to inspection, and non-commissioned officers could not be out of barracks after midnight without a pass, and lights in quarters were to be out at a certain hour:—*Held*, that each officer or non-commissioned officer occupied his quarters as a dwelling house by virtue of service, and was entitled to the franchise. *McDaid* v. *Barton* (4 Lawson, 61) distinguished. *Steele* v. *Dowling*, [1914] 2 Ir. R. 432—C.A.

Attendant in Lunatic Asylum.]—An attendant in a lunatic asylum had the separate and exclusive use and occupation of a room in an asylum, primarily used as a bedroom. There were in the asylum a dining room and recreation room for the attendants, but each attendant was at liberty to receive guests in his own room, and it was the practice for the attendant when off duty to read in his private room, and to provide himself there with food or delicacies in addition to the meals supplied in the dining room. Each attendant had a key to his room, but the same key opened all the rooms in the block. He could not light a fire in his room without leave of the medical superintendent. The attendants had no contractual right to any special rooms, but in practice they were never moved from one to another. They used the rooms as sitting as well as bedrooms. The furniture belonged to the asylum, but any decorations belonged to the attendants. The outer gate of the asylum was closed at a particular hour at night, after which no attendant was allowed in or out without special leave. The Revising Barrister found as a fact that the room occupied by an attendant, whose name appeared on the list of registered voters and was objected to, was a dwelling house, and occupied as such by the attendant during the qualifying period:—*Held* (Cherry, L.J., *dissentiente*), that there was no evidence on which the Revising Barrister could properly act that the occupation of the room by the attendant was as a dwelling or dwelling house within section 3 of the Representation of the People Act, 1884, or otherwise than as a bedroom merely. *Stribling* v. *Halse* (55 L. J. Q.B. 15; 16 Q.B. D. 246) disapproved. *O'Brien* v. *M'Carthy*, [1912] 2 Ir. R. 17—C.A.

"Person under whom" Claimant "serves."]—The supreme authority in an asylum was the chief medical superintendent, who controlled, with power of appointment and dismissal, an assistant medical superintendent and the attendants. The assistant medical superintendent had, under the chief, wide powers of suspension and control, the attendants in the asylum being subject to his orders, and in the chief's absence he exercised full power of control. The chief lived in a separate house, but the assistant occupied rooms in the asylum, and in respect of this occupation was enrolled as a Parliamentary elector under the service franchise. An attendant in the asylum, who also occupied a bedroom there, having claimed the service franchise, it was objected that he was not entitled thereto in respect that the asylum was inhabited by a person—namely, the assistant medical superintendent—"under whom" the claimant served within the meaning of section 3 of the Representation of the People Act, 1884:—*Held*, that the person under whom the claimant served in the sense of the Act was the chief, and not the assistant superintendent, and that, accordingly, he was entitled to be put upon the roll. *Shortt* v. *Wright*, [1911] S. C. 489—Ct. of Sess.

Rating and Payment of Rates—Rating and Payment of Master.]—In order to qualify a servant to be put on Division II. (Service) of the Occupation List of Parliamentary Voters, the rating of and payment of rates by the master for the premises in respect of which the servant claims is sufficient, and he is, by the operation of section 3 and section 9, subsection 8 of the Representation of the People Act, 1884, to be deemed to be an inhabitant occupier of such premises as a tenant, and to be rated and to have paid the rates within the meaning of section 3 of the Representation of the People Act, 1867. *Chesterton* v. *Gardom*, 81 L. J. K.B. 198; [1912] 1 K.B. 176; 105 L. T. 300; 9 L. G. R. 1274; 76 J. P. 78; 2 Smith, 353; 56 S. J. 92; 28 T. L. R. 55—D.

d. Lodgers.

Occupation as Sole Tenant—Wife and Children of Occupier Sleeping in Rooms Occupied — Lodgings Occupied "separately and as sole tenant."]—An appellant, who had claimed the lodger franchise, occupied during the requisite qualifying period two bedrooms in a house. He and his wife slept in one of the rooms and his three daughters slept in the other room. If let unfurnished the two rooms jointly were of sufficient value to confer the lodger franchise, but the room in which the appellant and his wife slept was not of sufficient value. The appellant in another case occupied with his wife and two children during the qualifying period one bedroom in a house, the children sleeping in the

room :—*Held*, that the appellant occupied "separately and as sole tenant" the room in which his daughters slept, and in the second case the room which he occupied with his wife and children, and that the appellant in each case was entitled to the lodger franchise. *Searle* v. *Staffordshire County Council (Clerk)*, 104 L. T. 61; 75 J. P. 116; 9 L. G. R. 24; 2 Smith, 244—D.

Occupation "separately and as sole tenant"—Room Occasionally Shared with Guest.]—A son paid for and had the sole right to occupy a bedroom in his father's house :—*Held*, that the fact that during the period of qualification for the lodger franchise he had occasionally *ex gratia* allowed a young brother (who could have had a bed of his own) to sleep in the room with him did not prevent him from having occupied the room separately and as sole tenant. *Milne* v. *Douglas*, [1912] S. C. 635—Ct. of Sess.

Occupation of Rooms in Part Remuneration for Lodger's Services.]—An assistant priest, who was provided with board and lodging in the rectory of the priest to whom he was assistant, and whose salary was fixed on the basis that he was so provided,—*Held*, entitled to the lodger franchise, the rooms occupied exclusively by him being of the requisite value. *Doyle* v. *Craig*, [1911] S. C. 493—Ct. of Sess.

Member of Brotherhood Occupying Room in College.]—A member of a voluntary association or brotherhood, which devoted itself to teaching, occupied a bedroom in a college belonging to the brotherhood. He was not paid for his services, but was provided with board, lodging, clothing, and everything necessary for his maintenance :—*Held*, that he was not a lodger for the purposes of the franchise, in respect that there was no contract, either express or implied, between him and the brotherhood, under which he had a right to occupy the room. *Doyle* v. *Craig* ([1911] S. C. 493) distinguished. *O'Connell* v *Blacklock*, [1912] S. C. 640—Ct. of Sess.

Occupier or Lodger.]—*See* cases under (**b**) (*supra*).

Rateable Value of House—Rebutting Declaration.]—The appellant, in due form and with the proper declaration, claimed to have his name inserted in the list of lodger voters. The declaration stated that the appellant paid 5*s*. a week for a furnished bedroom. The rateable value of the house in which the appellant lodged was less than 14*l*. per annum. The appellant did not appear at the Revision Court to support his claim, although notice had been served that his claim would be opposed. The Revising Barrister held that the *prima facie* case established by the declaration attached to the claim had been rebutted, and disallowed the claim :—*Held*, that the Revising Barrister was entitled to weigh the *prima facie* case made by the declaration against the rebutting case furnished by the rate book, and in the absence of further evidence to hold that the claim was not established. *Ainsworth* v. *Cheshire County Council (Clerk)*, 104 L. T. 62; 75 J. P. 117; 9 L. G. R. 21; 2 Smith, 248; 27 T. L. R. 82—D.

The rateable value of a house in which lodgings are let is an admissible but not conclusive test of the sufficiency or otherwise of the annual value of the lodgings to support the lodger's claim to a vote; and a Revising Barrister may properly entertain such evidence of rateable value so long as he does not treat it as conclusive, to the exclusion of other evidence for or against the claim. *Rex* v. *Allen; Griffiths, Ex parte*, 74 J. P. 454; 8 L. G. R. 979; 2 Smith, 227—D.

e. Successive Occupation.

Occupation of Part of House—Subsequent Occupation of Entire House.]—J.'s name appeared on the list of voters as "inhabitant householder" of part of a house. J. had during portion of the qualifying period in fact occupied part of the house, a sub-tenant of J.'s occupying the remaining part; but on the determination of the sub-tenancy J. went into possession of and occupied the entire house during the remainder of the qualifying period :—*Held* (Lord O'Brien, L.C.J., dissenting), that the claimant was entitled to a vote, and that it was unnecessary that the qualifying premises should have been set out in the list of voters as a house in succession from part to the whole of the premises. *Jackson* v. *Mahon*, [1911] 2 Ir. R. 318—C.A.

f. Rating.

Borough Franchise—Inhabitant Occupier—Rating—Tenant not Separately Rated—House "wholly let out in apartments or lodgings."]—By section 7 of the Representation of the People Act, 1867, where a dwelling house is "wholly let out in apartments or lodgings not separately rated, the owner of such dwelling house . . . shall be rated in respect thereof to the poor rate." The appellant claimed to be put on Division I. of the occupiers' list of voters in respect of his occupation of certain premises as tenant under section 3 of the Representation of the People Act, 1867. He occupied separately one-half of an ordinary dwelling house—which was not structurally divided—on the "half-house" system, the other half being similarly occupied by another tenant, the passages, front door, &c., being used by them in common, the landlord not residing in nor reserving to himself any part of the house. The appellant was not rated in respect of his occupation :—*Held*, that the house was "wholly let out in apartments"; that the landlord ought, consequently, to have been rated in respect thereof by virtue of section 7; and that, therefore, under section 19 of the Poor Rate Assessment and Collection Act, 1869, and section 14 of the Parliamentary and Municipal Registration Act, 1878, the appellant must be deemed to be rated, and, being otherwise properly qualified, was entitled to have his claim allowed. *Crow* v. *Hilleary*, 82 L. J. K.B. 380; [1913] 1 K.B. 385; 108 L. T. 300; 77 J. P. 164; 11 L. G. R. 226; 2 Smith, 410; 29 T. L. R. 147—D.

Landlord not Residing in House—Rates Paid by Landlord—Qualification of Occupier.]—The appellant had during the whole of the qualifying period been the inhabitant occupier as tenant of a dwelling house which was separately rated, the rateable value being 12*l*. The landlord, who did not reside in the house, paid all the rates under an arrangement entered into with the rating authority. His name, as well as that of the appellant, appeared in the rate book, but there was evidence that the rating authority considered that the ultimate liability for the rates rested upon the appellant, and that in case the landlord made default they would have enforced payment against the appellant. The overseers having inserted the appellant's name in Division I. of the occupiers list,—*Held*, that the appellant was the rated occupier of the house, and had paid the rates through his landlord, and that his name must therefore be retained in the list. *Kent* v. *Fittall* (81 L. J. K.B. 82; [1911] 2 K.B. 1102) distinguished. *Smith* v. *Newman*, 81 L. J. K.B. 183; [1912] 1 K.B. 162; 105 L. T. 631; 9 L. G. R. 1254; 76 J. P. 25; 2 Smith, 327; 56 S. J. 16; 28 T. L. R. 19—D.

Occupier of Separate Floor of House—Landlord Rated in Respect of Whole House.]—The appellant occupied part of an ordinary house, the whole of which was rented by a doctor, who was the rated occupier, who used the ground floor and paid the rates for the whole house. The top floor was occupied by the appellant, and the first floor by another claimant. The appellant's name did not appear in the occupiers' column of the rate book, but for part of the qualifying period only it did appear in the column headed "Representation of the People Act, 1884," as follows: "Josh Havercroft. Top floor." The appellant contended that he was entitled to be put on the occupiers' list either as a householder or as a 10*l*. occupier:—*Held*, following *Kent* v. *Fittall* (81 L. J. K.B. 82; [1911] 2 K.B. 1102), that the appellant was not entitled to be put on the register, inasmuch as the premises occupied by him had not been rated as a separate hereditament and no rates had been paid in respect of them. *Havercroft* v. *Dewey*, 108 L. T. 296; 77 J. P. 115; 11 L. G. R. 28; 2 Smith, 393; 29 T. L. R. 62—D.

g. Making, Publication, and Delivery of Lists.

See also Vol. VI. 69, 1912.

Vestry Clerk—Obligation in Making Out Lists of Voters.]—Under section 7 of the Vestries Act, 1850, the obligation imposed upon the vestry clerk to "prepare, make out, and publish" lists of voters does not extend to cover the verification at his own expense of the accuracy of the returns made by owners. *Rex* v. *Davies; Peake, Ex parte*, 80 L. J. K.B. 993; [1911] 2 K.B. 669; 104 L. T. 778; 75 J. P. 265; 9 L. G. R. 564—D.

Parliamentary Borough—More than One Municipal Borough within its Boundaries—Creation of New Municipal Borough—New Borough having Largest Population—Lists of Parliamentary Voters—Delivery to Town Clerk of Original Municipal Borough.]—Under the Representation of the People Act, 1867, the Parliamentary borough of The Hartlepools comprised the municipal borough of Hartlepool and three townships. The municipal borough of West Hartlepool was created in 1887, and the Parliamentary borough of The Hartlepools then consisted of the municipal boroughs of Hartlepool and West Hartlepool and portions of three townships. According to the last census, the municipal borough within the Parliamentary borough of The Hartlepools having the largest population was the municipal borough of West Hartlepool. On the completion of the revision of the lists of voters the town clerk of West Hartlepool claimed that the revised lists of voters should be delivered to him. The Revising Barrister decided that the town clerk of Hartlepool was the proper person to receive the revised lists of Parliamentary voters, as the writs of election had on the occasion of every Parliamentary election since 1867 been directed to the mayor of Hartlepool:—*Held*, that, inasmuch as the writs of election for all the Parliamentary elections since 1867 had always been directed to the mayor of Hartlepool, he was entitled under section 12, sub-section 4 of the Redistribution of Seats Act, 1885, to be the returning officer for the Parliamentary borough of The Hartlepools, and that, therefore, the town clerk of Hartlepool was the proper person to receive the revised lists of Parliamentary voters from the Revising Barrister. *Rex* v. *Macaskie; West Hartlepool Corporation, Ex parte*, 83 L. J. K.B. 1158; [1914] 3 K.B. 62; 111 L. T. 160; 78 J. P. 333; 12 L. G. R. 964; 2 Smith, 427—D.

Municipal Borough a County of itself—Two Mayors in One Parliamentary Borough.]—The provisions of the Municipal Corporations Act, 1882, s. 224, sub-s. 1, which provides that "In boroughs, other than cities and towns being counties of themselves, the mayor shall be the returning officer at parliamentary elections; . . ." and sub-section 2, which enacts that "If there are more mayors than one within the boundaries of a parliamentary borough, the mayor of that borough to which the writ of election is directed shall be the returning officer," taken in conjunction with section 12, sub-section 4 of the Redistribution of Seats Act, 1885, have no application where one of such boroughs is a city or town being a county of itself; and where the writ of election has formerly been directed to the sheriff of such borough, he still remains the returning officer, and the town clerk of such borough is entitled to receive the revised list of voters. *Rex* v. *Richards; Rex* v. *Williams; Llanelly Corporation, Ex parte*, 84 L. J. K.B. 2217; [1915] 3 K.B. 402; 31 T. L. R. 581—C.A.

Decision of Divisional Court (84 L. J. K.B 484; [1915] 1 K.B. 299) affirmed. *Ib.*

h. Notice of Objections.

See also Vol. VI. 76, 1913.

Objector's Place of Abode—List upon which Name of Objector Appears.]—A notice of objection to the name of a person being

retained on a list of electors for a parish is not invalid by reason of the omission of the parish from the statement of the objector's place of abode if it can reasonably be inferred that the place of abode stated is within the parish. *Hall* v. *Jones*, 84 L. J. K.B. 973; 112 L. T. 693; 13 L. G. R. 622; 3 Smith, 8; 31 T. L. R. 125—D.

Where a Parliamentary borough is divided into two divisons, it is not necessary for an objector to state, in his notice of objection, for which of the two divisions he is registered as an elector. The only requirement is that he should state that he is on the list of electors for the parish. *Ib.*

i. Revising Barrister.

See also Vol. VI. 93, 1914.

Lists of Voters—Omission through Inadvertence to Expunge Names of Persons Successfully Objected to—Lists with Names not Expunged Handed to Town Clerk—Register Printed from Lists Containing Names Successfully Objected to—Power of Court to Order Revising Barrister to Correct Mistake—Lists Lost or Destroyed — Mandamus.] — A Revising Barrister in the course of revising the list of voters of a Parliamentary borough decided that the names of 316 persons who had been duly objected to should be expunged from the lists of voters, and be duly read out in open Court the names so expunged. In consequence, however, of an accident, the Revising Barrister was unable to write, and had to avail himself of clerical assistance in striking off the lists of voters the names of persons successfully objected to. The lists of voters, which were copied and printed by the town clerk of the borough from the revised lists of voters delivered to him by the Revising Barrister, and which formed the register of electors for the borough, contained, as printed, the names of the 316 persons which had been directed by the Revising Barrister to be expunged, those names having been retained on the lists of voters through some mistake or inadvertence. In July of the following year the mistake was discovered, a Parliamentary election being then pending. The original lists of voters handed to the town clerk were then either lost or destroyed :—*Held*, that the Court had power, notwithstanding the lapse of time and the fact that the original lists were destroyed, to order the Revising Barrister to correct the mistake by making on a copy of the register the alterations which ought to have been made in the original lists of voters—namely, by striking off the register the names of those 316 persons, and to direct the town clerk to insert those corrections in his copies of the register. *Rex* v. *Hanley Revising Barrister; Rex* v. *Stoke-on-Trent (Town Clerk)*, 81 L. J. K.B. 1152; [1912] 3 K.B. 518; 76 J. P. 438; 10 L. G. R. 842; 2 Smith, 361; 28 T. L. R. 531—D.

Power to Amend—Bona Fide Mistake not Tending to Mislead.]—Where the name of a voter, otherwise duly qualified, appeared in the supplemental list of inhabitant householders for the registration unit of A, polling district of B, and the qualifying premises were situate in the same unit, polling district of C, and the Revising Barrister, being satisfied that the error arose from a *bona fide* mistake, and that no person had been thereby misled or prejudiced, transferred the name from the list for B to the list for C,—*Held*, that he had power to make such amendment. *Gregg* v. *Kennedy*, [1911] 2 Ir. R. 196—C.A.

j. Appeals.

See also Vol. VI. 105, 1919.

Person to Sign Case—Person Interested in Appeal—Person Signing as Agent.]—Where a Revising Barrister states a Case upon appeal, the person signing as appellant should be a person really interested in the appeal, and not a person who merely signs as agent. *White* v. *Bown*, 82 L. J. K.B. 89; [1913] 1 K.B. 78; 108 L. T. 159; 77 J. P. 78; 11 L. G. R. 23; 2 Smith, 386; 29 T. L. R. 63—D.

Jurisdiction of Court to Consider Point not Stated.]—Only points of law reserved by the Revising Barrister in the Case stated by him can be considered by the Court. *Crow* v. *Hilleary*, 82 L. J. K.B. 380; [1913] 1 K.B. 385; 108 L. T. 300; 77 J. P. 164; 11 L. G. R. 226; 2 Smith, 410; 29 T. L. R. 147—D.

2. Election of Members.

See also Vol. VI. 113, 1919.

Returning Officer — Municipal Borough a County of itself—Two Mayors in One Parliamentary Borough.]—The provisions of the Municipal Corporations Act, 1882, s. 244, sub-s. 1, which provides that "In boroughs, other than cities and towns being counties of themselves, the mayor shall be the returning officer at parliamentary elections" . . ., and sub-section 2, which enacts that "If there are more mayors than one within the boundaries of a parliamentary borough, the mayor of that borough to which the writ of election is directed shall be the returning officer"—taken in conjunction with section 12, sub-section 4 of the Redistribution of Seats Act, 1885—have no application where one of such boroughs is a city or town being a county of itself; and where the writ of election has formerly been directed to the sheriff of such borough, he still remains the returning officer. *Rex* v. *Richards; Rex* v. *Williams; Llanelly Corporation, Ex parte*, 84 L. J. K.B. 484; [1915] 1 K.B. 299; 112 L. T. 496; 79 J. P. 140; 13 L. G. R. 86; 31 T. L. R. 57—D. Affirmed, 84 L. J. K.B. 2217; [1915] 3 K.B. 402; 31 T. L. R. 581—C.A.

B. MUNICIPAL.

See also Vol. VI. 157, 1923.

1. Burgesses.

Residence "in the borough or within seven miles thereof"—Residence for Part of Qualifying Period Within Seven Miles of, but Outside, and for Residue of the Period Within, a Borough.]—Section 9, sub-section 2 (*c*) of the Municipal Corporations Act, 1882, provides

that a person shall not be entitled to be enrolled as a burgess unless he has during the whole of the twelve months then last preceding July 15 in any year resided in the borough, or within seven miles thereof :—*Held*, that residence for part of the twelve months within seven miles of, but outside, and for the residne of the twelve months within, the borough of which a person claims to be enrolled as a burgess, is a proper qualification therefor by reason of residence within the meaning of the section. *Lloyd* v. *Shrewsbury (Town Clerk)*, 84 L. J. K.B. 446; [1915] 1 K.B. 195; 112 L. T. 456; 13 L. G. R. 265; 3 Smith, 1; 31 T. L. R. 55—D.

2. Election to Corporate Offices.

Election as Mayor and as Alderman—Qualification — "Councillor" — Disqualification of Councillor having Interest in Contract—"Being."]—A person elected a member of a borough council, although disqualified under the provisions of section 12, sub-section 1 (*c*) of the Municipal Corporations Act, 1882, for being elected or for being a councillor by reason of his having an interest in a contract with the council, is nevertheless a councillor within the meaning of section 14, sub-section 3, and section 15, sub-section 1, and qualified to be elected alderman and mayor of the borough where, under the provisions of section 73, his election is to be deemed to all intents good and valid because it has not been questioned within twelve months thereof. And within the meaning of the above sub-sections he is "qualified to be a councillor." *Forrester* v. *Norton*, 80 L. J. K.B. 1288; [1911] 2 K.B. 953; 105 L. T. 375; 75 J. P. 510; 9 L. G. R. 991; 55 S. J. 668; 27 T. L. R. 542—D.

"Being" in section 12, sub-section 1 (*c*), means "holding the office of." *Ib.*

Borough Council—Member of Committee—Power to Resign.]—A member of a borough council appointed member of a committee of the council under the powers of section 22, sub-section 2 of the Municipal Corporations Act, 1882, does not hold a public office within the operation of the common law rule that a person qualified and duly elected to serve in a public office cannot refuse to serve, and consequently such member of a committee may resign. *Rex* v. *Sunderland Corporation*, 80 L. J. K.B. 1337; [1911] 2 K.B. 458; 105 L. T. 27; 75 J. P. 365; 9 L. G. R. 928; 27 T. L. R. 385—D.

ELECTRIC LIGHTING AND SUPPLY.

See also Vol. VI. 219, 1930.

"Supply" of Electricity—Sale of Electric Fittings—Ultra Vires.]—There is nothing in the Electric Lighting Act, 1882 (even when read in conjunction with the Electric Lighting Act, 1909), to justify undertakers, who have obtained powers to "supply" electric energy under a Provisional Order made under that statute, to engage in the sale, or hire, of apparatus for the use of the energy thus supplied by them. On the contrary, the powers bestowed upon them under the statute are completely exhausted the moment that they have supplied electric energy at the consumer's terminals. *Att.-Gen.* v. *Leicester Corporation*, 80 L. J. Ch. 21; [1910] 2 Ch. 359; 103 L. T. 214; 74 J. P. 385; 9 L. G. R. 185; 26 T. L. R. 568—Neville, J.

—— Common Law Powers of Municipal Corporation.]—Under the Electric Lighting Acts and Provisional Orders made thereunder a municipal authority has no power to carry on the trade or business of supplying electric fittings and wires for use by those to whom they supply electrical energy or by others. While a municipal corporation may have a common law right to carry on such a trade or business, it has no power to use for that purpose funds raised under statutory authority for the purpose of supplying electrical energy. *Att.-Gen.* v. *Leicester Corporation* (80 L. J. Ch. 21; [1910] 2 Ch. 359) followed. *Att.-Gen. v. Sheffield Corporation*, 106 L. T. 367; 76 J. P. 185; 10 L. G. R. 301; 56 S. J. 326; 28 T. L. R. 266—Eve, J.

Differentiation by Undertakers in Charges to Different Consumers—"Similar circumstances" — "Undue preference."] — Undertakers for the supply of electricity, subject to the provisions of the Electric Lighting Act, 1882, proposed to make a higher charge for the supply of power to those consumers who took a supply for power only, or for power and partial lighting, than to consumers who took from them exclusively for both power and lighting :—*Held*, that this proposal was a breach of section 19 of the Act, which provides that every consumer is to be entitled to a supply on the same terms on which any other consumer is entitled under similar circumstances to a corresponding supply; and that it was an "undue preference" within section 20 of the Act. *Long Eaton Urban Council* v. *Att.-Gen.*, 84 L. J. Ch. 131; [1915] 1 Ch. 124; 111 L. T. 514; 79 J. P. 129; 13 L. G. R. 23; 31 T. L. R. 45—C.A.

Decision of Sargant, J. (83 L. J. Ch. 774; [1914] 2 Ch. 251), affirmed. *Ib.*

To carry on the trade or business of providing, selling, or letting on hire electric lamps, electric heating apparatus, electric motors, or other electric fittings, appliances, or apparatus, is *ultra vires* of a local authority. A reduction by the local authority in the price for electricity in respect of houses electrically lighted throughout constitutes an "undue preference" within the meaning of sections 19 and 20 of the Electric Lighting Act, 1882. *Long Eaton Urban Council* v. *Att.-Gen.* (84 L. J. Ch. 131; [1915] 1 Ch. 124) applied. *Att.-Gen.* v. *Ilford Urban Council*, 84 L. J. Ch. 860; 13 L. G. R. 441—Sargant, J.

Provisional Order—Laying Mains—Board of Trade Sanction to Overhead Mains—Erection of Standard on Highway—Street or Part of a

Street—Portion not Repairable by Inhabitants at Large—No Consent of Owner of Soil—Mandatory Injunction.]—The plaintiff was the owner and occupier of a hotel which fronted on a street. The hotel was erected on land which, at the time when the hotel was erected, was bounded by an old parish road. It was set back four or five feet from the boundary of the road, a pavement being laid in front by the plaintiff's predecessor in title (his father) upon his own land. The defendants (a local authority) having obtained a Provisional Order (duly confirmed) for the supply of electrical energy, which empowered and required them to lay distributing mains in the street on which the hotel fronted, subsequently obtained the sanction of the Board of Trade to a supply by means of overhead mains in that street. For the purposes of that supply, but without the consent either of the plaintiff or of the Board of Trade, they erected a standard on the pavement in front of, and close to, the hotel, and fixed it below the soil into the footings of the hotel wall. The paved strip of land had never been acquired by the defendants; it had become a highway as having been dedicated by the plaintiff's father to the use of the public; but it was not repairable by the inhabitants at large. It remained the property of the plaintiff, who, although not legally liable to repair the pavement, had done so from time to time. The plaintiff having brought an action for a mandatory injunction to compel the defendants to remove the standard.—*Held*, by Warrington, J., applying *Escott* v. *Newport Corporation* (73 L. J. K.B. 693; [1904] 2 K.B. 369), that, the defendants having, under clause 21 of the schedule to the Electric Lighting (Clauses) Act, 1899, and the corresponding section of their Provisional Order, power to lay mains in the street, and the pavement being part of the street, they were entitled to place the standard on the pavement, as being necessary and incidental to the work they had to carry out, and that the plaintiff's remedy (if any) was a claim for compensation under section 68 of the Lands Clauses Consolidation Act, 1845. *Held*, by all the members of the Court of Appeal (reversing Warrington, J.), that the plaintiff was entitled to a mandatory injunction for the removal of the standard on the ground that the fixing of the standard into the footings of the hotel wall without the plaintiff's consent was a breach of section 7 of the Gasworks Clauses Act, 1847, which was incorporated in the Electric Lighting Act, 1882; and also (by Cozens-Hardy, M.R., and Buckley, L.J.; Kennedy, L.J., dissenting) on the ground that, upon the true construction of section 13 of the Electric Lighting Act, 1882, and section 12, sub-section 2 of the schedule to the Electric Lighting (Clauses) Act, 1899—which prohibit the breaking up or interference with any street or part of a street not repairable by the local authority without the consent of the person by whom the same is repairable, or of the Board of Trade after notice to such person—it was not competent to the defendants under the circumstances to break open any portion of the pavement opposite the plaintiff's hotel. Kennedy, L.J., considered that these latter sections had no application, inasmuch as there was no person by whom the pavement in question was repairable, and consequently there was no person whose consent could be obtained. *Andrews* v. *Abertillery Urban Council*, 80 L. J. Ch. 724; [1911] 2 Ch. 398; 105 L. T. 81; 75 J. P. 449; 9 L. G. R. 1009—C.A. Reversing, 55 S. J. 347—Warrington, J.

Connection between Authorised Areas—More than One Connection between Same Areas.]—The London Electric Supply Act, 1908, s. 4, sub-s. 2, which provides that authorised undertakers or specified companies may "by means of electric mains make a connection" between any two or more of their areas of supply or between any such area and a generating station, empowers such undertakers or companies to lay more than one connecting main between any two of their areas. *Battersea Borough Council* v. *County of London Electric Supply Co.*, 82 L. J. Ch. 500; [1913] 2 Ch. 248; 108 L. T. 938; 77 J. P. 325; 11 L. G. R. 1126; 29 T. L. R. 561—C.A.

Contract—Construction—Agreement to Grant Licence to Take Water—Rent Varying with Certain Contingencies.]—In an agreement for a licence to take water from a river within defined limits for the purpose of constructing works and generating and supplying electricity, the respondent company agreed to pay a fixed rental of fifteen thousand dollars a year, and a rental varying in amount by reference to the electricity generated and used and sold or disposed of by the respondent company:—*Held*, that in ascertaining the amount of the varying rent the true standard was the highest amount or quantity of electricity generated and used and sold or disposed of which the accommodation and facilities afforded enabled the respondents to attain, and remained the standard until a higher point was reached. *Att.-Gen. for Ontario* v. *Canadian Niagara Power Co.*, 82 L. J. P.C. 18; [1912] A.C. 852; 107 L. T. 629—P.C.

Construction and Effect of Agreement between Two Electric Supply Companies.]—By the London Electric Supply Act, 1908, electrical supply companies were authorised to enter into and carry into effect, with the approval of the Board of Trade, any agreement for mutual assistance or for association with each other in regard to *(inter alia)* the giving and taking of a supply of electrical energy and the distribution and supply of the same so taken and for the management and working of any part of their undertakings. Two electrical supply companies obtained statutory powers to supply electrical energy within the City of Westminster, and at the expiration of a certain period the City of Westminster had the right to acquire the undertakings of the respective companies. One of the two companies (the respondents) supplied within the district of their operations electricity on the system of continuous current; the other company (the appellants) supplied electricity on the principle of alternating current. In 1910 an agreement was come to by which the respondent company was to manage the appellants' under-

taking in the Westminster area, receiving and retaining all amounts due for energy consumed by the appellants' customers therein. The appellants were to supply the respondents all alternating current required by the appellants' customers in Westminster. The respondents were to pay to the appellants a fixed annual sum until the year 1931, when the undertakings of both parties might be acquired by the London County Council, and in the event of the purchase price of the appellants' undertaking being less than a certain sum the respondents were to make up the deficiency. The question between the parties was—first, whether on the construction of that agreement, in view of the powers granted by the Electric Lighting Acts, the respondents were entitled to reduce the working of the appellants' undertaking by soliciting persons, who were entitled to apply and did apply to the appellants to supply them with electricity, to take their supply from the respondents instead; and secondly, whether under the terms of the appellants' Provisional Order, 1889, the respondents were entitled to claim a supply from the appellants, and having acquired the right to manage the appellants' undertaking as well as their own had an option to dictate to consumers which supply they should have:—*Held*, that the respondents were under a statutory obligation so to manage the appellants' undertaking as not to lessen its receipts nor interfere with the consumers' right to be supplied with alternating current; and further that they could do nothing which would be likely to decrease the value of the appellants' undertaking whenever it should be acquired by the City of Westminster, although they had contracted with the appellants that if the purchase price paid was below a certain sum they should be answerable to make up the price paid by the City of Westminster to that sum. *London Electric Supply Corporation* v. *Westminster Electric Supply Corporation*, 11 L. G. R. 1046—H.L. (E.)

Exclusive Right of Company to Supply Electrical Energy in Urban District—Tramways—Inclusion of District in Adjoining City.]—By an Electric Lighting Order of 1899 the W. Council obtained power to supply electrical energy in their own district. In 1900 the council agreed with a company to take their supply of energy from the company for a period of ten years ending August 6, 1910. In 1902 the corporation of N. agreed with the council to take energy for its tramways in the W. district from the council through the company during the period of ten years; and that afterwards (clause 4) it would take the energy from "the council or their contractors," and would not itself supply it without the consent of the council. In 1903 the council assigned to the company their undertaking under the 1899 Order, with the benefit of the 1902 agreement, and undertook to appoint the company to be the council's contractor and to do anything necessary to enable the company to enjoy the full benefit of clause 4 of the 1902 agreement. Clause 9 of the deed of assignment provided that the council should not sanction or consent to the taking of any steps by any person or body other than the company with the object *(inter alia)* of supplying electricity in the council's district, and the clause then proceeded: "But nothing in this clause shall prevent the Council after the sixth day of August, 1910, entering into any agreement with the N. Corporation in respect of the laying or placing of electric mains and lines and the transmission and user of energy in connection with their tramways undertaking." By the Newcastle-upon-Tyne (Extension) Order, 1904, confirmed by a Provisional Order Confirmation Act of that year, the boundaries of N. were enlarged so as to include the district of W.; and it was provided that "all the property, powers, duties, and liabilities" attaching to the Council under the 1899 Order should be transferred to the corporation. As from August 6, 1910, the corporation declined to take from the company electricity for its tramways in the former district of the council:—*Held*, on the construction of the documents, that the proviso to clause 9 of the deed of 1903 only reserved to the council a right to consent as to "the transmission and user" of the electricity, but not as to its "supply"; and that, in view of the assignment of the benefit of the 1902 agreement, neither the council nor the corporation as their successors, could give the consent required by clause 4 of the 1903 agreement. And therefore that the corporation was bound to take from the company the energy for its tramways in the former district of W., and that an injunction must go to restrain the corporation from itself supplying such energy. *Newcastle-upon-Tyne Electric Supply Co.* v. *Newcastle-upon-Tyne Corporation*, 9 L. G. R. 161; 75 J. P. 97—Swinfen Eady, J.

Negligence—Electrical Supply in Street—Escape of Electric Spark into Electric Chamber—Escape of Gas from Main—Leakage of Gas into Electric Chamber—Explosion—Injury to Foot Passenger—Liability of Electrical Undertaker.]—The principle enunciated in *Rylands* v. *Fletcher* (37 L. J. Ex. 161; L. R. 3 H.L. 330), that a person who brings into being, or collects on his premises, an agent likely to do damage if it escapes, is liable for the consequences of such escape, does not apply where, in the absence of negligence or nuisance, the consequences are the result of a combination between that agent and another agent over which the owner or possessor of the first agent has no control. *Goodbody* v. *Poplar Borough Council*, 84 L. J. K.B. 1230; 79 J. P. 218; 13 L. G. R. 166—D.

A local authority, authorised under the Electric Lighting Acts to supply electricity within their district, had, as part of their system, a brick-built chamber under the pavement of a street within their district, inclosing a box containing electric cables or wires and a fusing apparatus which acted as a kind of safety valve whenever the electric current was overloaded. The construction of the chamber and box was that generally adopted by suppliers of electricity. When the "fusing" took place, electric sparks were emitted from the "fuse." Near the chamber were the gas mains of two gas companies, and gas frequently escaped from the mains and found its way into the chamber. This chamber was

periodically examined, but it was found impossible to prevent the gas entering therein. An explosion occurred in this chamber, caused by a spark from the fusing (which took place at the time) coming into contact with a mixture of air and gas in the chamber, with the result that the plaintiff, who was walking on the pavement close to the chamber, was injured. In an action brought by him against the local authority for damages for personal injuries, the jury found, in answer to questions put to them by the County Court Judge with the consent of both parties, that the chamber did not constitute a nuisance, and that the defendants were not guilty of negligence in having the chamber improperly constructed, and they assessed the damages (if recoverable) at 25*l*. The Judge entered judgment for the defendants:—*Held*, on appeal, that his decision was right. *Ib.*

Midwood & Co. v. *Manchester Corporation* (74 L. J. K.B. 884; [1905] 2 K.B. 597) and *Charing Cross, West End, and City Electricity Supply Co.* v. *London Hydraulic Power Co.* (83 L. J. K.B. 116, 1352; [1913] 3 K.B. 442; [1914] 3 K.B. 772) distinguished. *Ib.*

ELEGIT.

See EXECUTION.

EMERGENCY POWERS.

See PRACTICE.

EMPLOYERS' LIABILITY.

See MASTER AND SERVANT; WORKMEN'S COMPENSATION.

EQUITABLE ASSIGNMENT.

See ASSIGNMENT.

ESCROW.

See DEED.

ESTATE.

See also Vol. VI. 222, 1943.

Equitable Estate in Fee—No Words of Inheritance—Estate for Life or in Fee-simple—Intention.]—A limitation in a deed of an equitable estate without words of limitation may confer the equitable fee where the intention to do so appears from the deed. *Cross's Trust, In re; Cross* v. *Cross*, [1915] 1 Ir. R. 304—M.R.

By deed, reciting that C. had agreed, in consideration of B. paying off certain debts of C., to convey certain lands held in fee-farm to a trustee in trust for B. and his wife during their lives, with remainder to C. and his wife during their lives, with remainder, subject to a sum of 600*l*. charged in favour of the eldest son of C. and his issue, in trust for the children of C. and his wife as he should appoint, and in default of appointment for all the children save the eldest son, C. conveyed the lands unto, and to the use of, a trustee and his heirs upon the trusts so agreed upon, the ultimate trust being for the children of C. as he, or in default his wife, should appoint, and in default of such appointment "then to such issue save the eldest son, share and share alike." The lands were not of very great value:—*Held*, that there was sufficient evidence on the face of the instrument to shew that it was the intention of the settlor to dispose of his whole estate, and that the younger children, notwithstanding the absence of words of inheritance in the limitation to them in default of appointment, took an equitable estate in fee-simple, as tenants in common in equal shares, in the lands. *Tringham's Trusts* (73 L. J. Ch. 693; [1904] 2 Ch. 487), *Houston, In re* ([1909] 1 Ir. R. 319), and *Stinson's Estate* ([1910] 1 Ir. R. 47) followed. *Meyler* v. *Meyler* (11 L. R. Ir. 522) and *Bennett's Estate, In re* ([1898] 1 Ir. R. 385), not followed. *Ib.*

Estate for Life and Ultimate Remainder in Fee—Contingent Remainder Interposed—Merger of Life Estate and Remainder—Extinguishment of Charge on Inheritance.]—A., by her mother's will, was given a life estate in realty, which, subject thereto, was to be settled on her issue in such way as she might desire. In default of issue she was given a general power of appointment with remainder to herself in fee. A., at the time of her mother's death, was entitled to a charge on the estate. She died at the age of seventy without having been married, and without having done any act indicating a desire to keep the charge alive:—*Held*, that A. took under the will an estate in fee, subject to be re-opened if the contingent estate to the issue became vested in interest, and that the charge had become extinguished. *Toppin's Estate, In re*, [1915] 1 Ir. R. 198—Ross, J.

Devise to Widow for Life—Remainder to Son—Executory Gift over on Death of Son—Conveyance of Life Interest to Son—Death of Son in Lifetime of his Mother.]—A testator devised a farm to his widow for life, with remainder to his son in fee, with an executory

gift over in case his son died unmarried in the lifetime of his mother. The widow conveyed her life interest to her son, who afterwards died unmarried in the lifetime of his mother: —*Held*, that the fact that the executory gift over took effect before the determination of the life interest did not prevent a merger, and that there had been a merger both at law and in equity. *Attkins, In re; Life* v. *Attkins*, 83 L. J. Ch. 183; [1913] 2 Ch. 619; 109 L. T. 155; 57 S. J. 785—Eve, J.

Barring of Estate Tail—Common Recovery—Tenant to the Præcipe.]—In order that a common recovery should have been effective to bar an estate tail, the tenant to the *præcipe* must have been seised of the lands for an estate of freehold, either by right or by wrong. The presumption of law is that seisin follows the title, and the Court will not presume disseisin of a tenant for life for the purpose of upholding a recovery purporting to have been suffered by a tenant in tail in remainder. *Witham* v. *Notley*, [1913] 2 Ir. R. 281—C.A.

Grant by Settlor of Rentcharge de Novo to Trustee and his Heirs in Trust for Persons in Tail—Ultimate Remainder to Use of Settlor to Attend Inheritance—Effect of Barring Entail.]—A, the tenant in fee-simple of certain lands, granted a rentcharge issuable out of the lands to a trustee and his heirs upon trust for successive tenants in tail, with ultimate remainder to the use of A, his heirs and assigns, to attend upon the inheritance or be disposed of as A, his heirs and assigns, should think proper:—*Held*, that an equitable tenant in tail in possession could, by a valid disentailing assurance, bar the subsequent limitations, and thereby acquire for himself an absolute equitable estate in fee-simple in a perpetual rentcharge. *Chaplin* v. *Chaplin* (3 P. Wms. 229) and *Drew* v. *Barry* (Ir. R. 8 Eq. 260) considered. *Franks's Estate, In re*, [1915] 1 Ir. R. 387—C.A.

Two tenants in tail of equitable rentcharges, which had been granted to them *de novo* without remainders over, executed a disentailing deed:—*Held*, that the disentailing deed created merely a base fee in each rentcharge determinable on failure of the issue in tail. *Chaplin* v. *Chaplin* (3 P. Wms. 229) applied. *Franks's Estate, In re* (*supra*), distinguished. *Pinkerton* v. *Pratt*, [1915] 1 Ir. R. 406—Barton, J.

Joint Tenancy—Severance.]—*Semble*, the demise by three joint tenants to one of themselves severs the joint tenancy during the term, and the lessee is entitled to two-thirds of the land by virtue of the lease, remaining seised of his original one-third for his original estate in fee. *Napier* v. *Williams*, 80 L. J. Ch. 298; [1911] 1 Ch. 361; 104 L. T. 380; 55 S. J. 235—Warrington, J.

Implication of Equitable Assignment of a Share of an Estate.]—If A executes an equitable assignment of his reversionary interest under the will of B, and such reversionary interest is an interest as joint tenant with others expectant on the death of the then tenant for life, such assignment will operate by implication to create a severance of the joint tenancy, for it could not have been the intention of the parties thereto that the security should be void if A should predecease any of the joint tenants in reversion. *Sharer, In re; Abbott* v. *Sharer*, 57 S. J. 60—Neville, J.

ESTATE DUTY.

See REVENUE.

ESTOPPEL.

A. BY RECORD.

See also Vol. VI. 377, 1967.

Action to Recover Money Lent—Writ Issued before Two Instalments Due—Objection not taken on Application for Judgment under Order XIV.]—The plaintiffs sued the defendant to recover the amount of three promissory notes signed by him, amounting in all to 960*l*. By mistake, the writ was issued before the second and third notes were due. A summons for judgment under Order XIV. was taken out, on the hearing of which the defendant was represented by a solicitor who did not raise the defect in the writ in the defence. The Master gave judgment for the plaintiffs for 600*l*. and gave leave to defend as to the balance. At the trial of the action,—*Held*, that as the defendant had not set up the premature issue of the writ as a defence on the hearing of the summons under Order XIV. the judgment then obtained cured the defect in the writ. *Stirling* v. *North*, 29 T. L. R. 216—Bucknill, J.

Res Judicata—Action for Arrears of Rent under Agreement—Action for Further Arrears—Consideration.]—The rule in *Howlett* v. *Tarte* (31 L. J. C.P. 146; 10 C. B. (N.S.) 813)—namely, that if the defendant to a second action attempts to put on record a plea inconsistent with any traversable allegation in the declaration in the first action he will be estopped from doing so—does not apply to a plea in confession and avoidance, or to a special plea necessitating proof by the defendant. *Dictum* of Farwell, L.J., in *Humphries* v. *Humphries* (79 L. J. K.B. 919, at p. 920; [1910] 2 K.B. 531, at p. 535), followed. *Cooke* v. *Rickman*, 81 L. J. K.B. 38; [1911] 2 K.B. 1125; 105 L. T. 896; 55 S. J. 668—D.

Per Bankes, J.: Where a necessary traversable allegation is omitted from the statement of claim in the first action, and the defendant does not then taken advantage of the omission,

he cannot in a second action allege that there was no traversable allegation in the statement of claim in the first action. *Ib.*

—— **Action for Criminal Conversation—Judgment that Action not Maintainable—Subsequent Ordinance Restoring Jurisdiction in Action for Criminal Conversation—New Action after Ordinance on Same Facts.**] — The respondent in 1907 brought an action in Hong-Kong against the appellant for criminal conversation. That action was dismissed on the ground that by the effect of certain ordinances such actions had been abolished in Hong-Kong. In 1908 a new ordinance was promulgated restoring the jurisdiction of the Hong-Kong Courts in such actions, and that ordinance had a retro-active effect to the extent of enabling actions to be brought in respect of criminal conversation during the period when the right of action in such cases had ceased to exist in the colony. After the promulgation of the new ordinance the respondent commenced a fresh action against the appellant in respect of the same acts of misconduct as he had alleged in the former action. The appellant pleaded *res judicata* :—*Held*, that the judgment in the first action brought by the respondent was a final determination of the rights of the parties; that the ordinary principle that a man was not to be vexed twice for the same alleged cause of action applied, unless it was excluded by the Legislature in unmistakable terms; and that there was nothing in the new ordinance to indicate that the Legislature intended not merely to alter the law, but to alter it so as to deprive the appellant of the subsisting judgment in his favour. *Lemm* v. *Mitchell*, 81 L. J. P.C. 173; [1912] A.C. 400; 106 L. T. 359; 28 T. L. R. 282—P.C.

—— **Compromise of Divorce Proceedings—Costs of Wife's Solicitor—Judgment against Wife for Costs—Subsequent Action against Husband.**]—Where a divorce suit in which the wife was petition was settled without notice to her solicitors, who thereupon brought an action against her in which they recovered judgment on which nothing was realised, and they afterwards applied for an order that the husband should pay them the wife's costs.—*Held*, that the judgment obtained against the wife was a bar to any claim against the husband. *Priestley* v. *Fernie* (34 L. J. Ex. 172; 3 H. & C. 977) followed and applied to the case of a debt incurred by a wife as agent for her husband. *Sullivan* v. *Sullivan*, [1912] 2 Ir. R. 116—C.A.

—— **Desertion — Dismissal of Summons — Adjournment — Second Summons for same Cause of Complaint—Res Judicata.**]—A wife, whose summons against her husband for desertion under the Summary Jurisdiction (Married Women) Act, 1895, has been dismissed, cannot obtain an order on a second summons for the same cause of complaint. It is immaterial that desertion is a continuing offence: its commencement must be referable to some particular date, and if the evidence of it is incomplete or unavailable on the return of a summons complaining of it, the wife should apply for, and be allowed, an adjournment for the purpose of completing her case. When the complaint has been once disposed of by the Justices, the matter is *res judicata*. *Stokes* v. *Stokes*, 80 L. J. P. 142; [1911] P. 195; 105 L. T. 416; 75 J. P. 502; 55 S. J. 690; 27 T. L. R. 553—D.

Bequest to Chapel Building Fund—Reversionary Bequest to Same—Immediate Bequest Held Invalid in 1876 under then Existing Statute of Mortmain—Claim to Reversionary Bequest—Res Judicata.]—A will proved in 1874 gave an immediate legacy of 200*l.* to a chapel building fund, and also a reversionary bequest, payable after the death or re-marriage of the testator's widow. The executors believed that these legacies transgressed the then operative Statutes of Mortmain, and an order was made in chambers, dated May 8, 1876, directing that the 200*l.* should fall into the residue. The testator's widow died in 1909 :—*Held*, that the representatives of the building fund were entitled to the reversionary bequest, inasmuch as the fund had other objects than those involving the purchase of land, to which the money might be applied. *Held*, further, that the order of 1876 did not constitute an estoppel by *res judicata*, as such order had been in respect of another bequest, and had been based on a belief which was erroneous. *Surfleet's Estate, In re; Rawlings* v. *Smith*, 105 L. T. 582; 56 S. J. 15—Parker, J.

B. BY DEED.

See also Vol. VI. 423, 1974.

Implied Right of Way—Deed—Alteration of Date—Parcels—Plan.]—A lessor granted a lease of certain plots of land on which had been erected certain then nearly finished houses. The grant was defined by reference to a plan in the margin, which shewed a narrow strip of ground, coloured brown, at the rear of the plots, and running along other land that belonged to the lessor, but was not included in the lease. The lease contained no express grant of any right of way along this strip, nor indeed further reference to it; but the evidence shewed that the use of the strip was essential to the tenants of the new houses for the convenient ingress of coal and manure, and for the egress of garden rubbish. At the time of the original granting of the lease the dates of the day and month were left in blank, but subsequently there was an alteration of the year (with the consent of all parties), and the blanks were also filled in. At the date of the original granting of the lease the plots were not yet fenced on the side towards the strip; but at the time of the alteration they were so fenced, and the position was indicated for gates communicating between the plots and the strip :—*Held*, that the alteration of the lease did not avoid it, and that the lessor was estopped from shewing that the date inserted by himself was not the date from which the demise operated, so as to prevent any one

claiming under the lease from relying upon the circumstances existing at the date that the lease finally bore. *Held*, further, that under those circumstances, an implied right of way over the strip in question had passed under the lease from the lessor to the lessee. *Rudd* v. *Bowles*, 81 L. J. Ch. 277; [1912] 2 Ch. 60; 105 L. T. 864—Neville, J.

By Recital—Applicability of Doctrine to Easement.]—On May 7, 1897, W. sold a plot of land, on which was situated a cottage, to his wife, and by the deed effecting the sale granted to her, her heirs and assigns, a right of way over an adjoining plot of land belonging to him. By a deed dated May 8, 1897, Mrs. W. mortgaged the cottage, and on May 25, 1907, whilst the mortgage was still in force, W. sold the adjoining plot of land to the plaintiff, and with a view to extinguishing the right of way Mrs. W. joined in the deed of conveyance. The deed contained a recital to the effect that under and by virtue of the deed of conveyance to her of May 7, 1897, she was entitled to the right of way for herself, her heirs and assigns, and that it had been agreed for her to join in the deed of conveyance to the plaintiff for the purpose of releasing the hereditament thereby conveyed from such right of way. The mortgagees were not parties to the deed, and the mortgage was not recited or referred to in it. Mrs. W. died on December 10, 1907, and W. died on November 18, 1909, the second defendant R. being the executor of both. After the death of W. and his wife the mortgagees were paid off, and the mortgage premises reconveyed to R. by a deed of March 14, 1910. By a further deed of March 25, 1910, R. conveyed the cottage to the defendants Mr. and Mrs. M., and by the same deed granted to them the same right of way over the plaintiff's land which had been released by Mrs. W., the release not being mentioned in the deed, and none of the defendants having notice of it. The defendants Mr. and Mrs. M. claimed to have and use the right of way:—*Held*, that they had no such right; that the doctrine of estoppel by recital applied to the case of an easement, and that the words of the recital in the deed of May 25, 1907, was sufficiently precise and particular to estop Mrs. W. and her successors in title from asserting that the right of way was not extinguished, and that the plaintiff was accordingly entitled to maintain an action of trespass. *Poulton* v. *Moore*, 84 L. J. K.B. 462; [1915] 1 K.B. 400; 112 L. T. 202; 31 T. L. R. 43—C.A.

—— Deviation from Statutory Form—Joinder of Wife of Grantor.]—A husband and wife were parties to a bill of sale and joined in executing it, but the wife did not purport to grant the chattels, the subject of the bill of sale, the husband alone actually assigning those chattels. The bill of sale also contained recitals stating how the liability, in respect of which the security was given, arose:—*Held*, that the bill of sale was valid, as the joining of the wife was mere surplusage, and did not give the bill of sale a legal consequence other than that which would attach to it if drawn in the form required by the Bills of Sale Act (1878) Amendment Act, 1882, s. 9, and schedule, and that it would not prevent a borrower understanding the nature of the security, nor a creditor, searching the register, understanding the position of the borrower; and further, that the recitals could not operate against the wife by way of estoppel, as she had not entered into any contract. *Brandon Hill, Lim.* v. *Lane*, 84 L. J. K.B. 347; [1915] 1 K.B. 250; 112 L. T. 346; 59 S. J. 75—D.

C. BY MATTERS IN PAIS.

See also Vol. VI. 444, 1978.

Owner by Estoppel.]—The secretary of a club put a caretaker into possession of a cottage on grounds belonging to the club, the legal estate in which was vested in trustees for the club:—*Held*, that the secretary was owner by estoppel and was also the known agent of the actual owners, and as such was entitled to take summary proceedings for recovery of the premises after reasonable notice to the caretaker to give up possession. *Rex* v. *Swifte*, [1913] 2 Ir. R. 113—C.A.

Invalid Exercise of Power to Appoint by Will—Entry of Tenant for Life under the Will—Acquisition of Statutory Title—Position of Remainderman.]—Where a person enters as tenant for life under a will, which purports to be an exercise of a power to appoint lands, whether rightfully as a proper appointee or wrongfully under a void appointment, he is not estopped from saying as against the remainderman that the devise over to him is void as being an invalid exercise of the power. *Paine* v. *Jones* (43 L. J. Ch. 787; L. R. 18 Eq. 320), *Stringer's Estate, In re* (46 L. J. Ch. 633; 6 Ch. D. 1), and *Anderson, In re* (74 L. J. Ch. 433; [1905] 2 Ch. 70), considered and applied. *Board* v. *Board* (43 L. J. Q.B. 4; L. R. 9 Q.B. 48) and *Dalton* v. *Fitzgerald* (66 L. J. Ch. 604; [1897] 2 Ch. 86) distinguished. *Tennent's Estate, In re*, [1913] 1 Ir. R. 280—Wylie, J.

Misrepresentation as to Character of Document—Signature to Document Obtained by Misrepresentation — Document Amounting to Guarantee—Defence to Action on Guarantee.]—One R., a customer of the plaintiffs, who were bankers, having overdrawn his account, was pressed by them to give a guarantee for a larger sum than was secured by a guarantee which they then held. R. thereupon went to the defendant, and, having produced a paper, induced him to sign it upon the misrepresentation that it was an insurance paper, whereas it was a guarantee of R.'s account at the bank up to a certain amount. R. had so folded the paper that only the space for the defendant's signature was visible. Subsequently R., having fraudulently affixed the name of a certain person as attesting witness, gave the paper to the plaintiffs, who thereupon allowed

R. to increase his overdraft. In an action against the defendant as guarantor the jury found that the defendant was induced to sign the guarantee by R.'s fraud; that he did not know that the document he signed was a guarantee; and that he was negligent in signing the document:—*Held*, that in the circumstances the finding of negligence on the part of the defendant in signing the document was immaterial, and that the defendant, not being prevented by that finding from setting up the defence that the signature on the document sued on by the plaintiffs was not his signature by reason of its having been obtained by the misrepresentation of R, was entitled to judgment. *Foster* v. *Mackinnon* (38 L. J. C.P. 310; L. R. 4 C.P. 704) considered. *Carlisle and Cumberland Banking Co.* v. *Bragg*, 80 L. J. K.B. 472; [1911] 1 K.B. 489; 104 L. T. 121—C.A.

Pledge of Certificates—Blank Transfer.]—The plaintiff employed a firm of stockbrokers to buy for him shares in a Colonial railway, and the brokers did so. The shares were registered in the name of one H., the certificates were in his name, and the transfers on the back had been signed by him in blank. On the brokers' suggestion the plaintiff left the certificates with them and subsequently consented to the shares being put into other names. The brokers deposited the shares with the defendant bank as security for loans, and at the broker's request the shares were put in the names of the bank's nominees. The defendant bank took the shares in good faith. In an action by the plaintiff against the defendant bank to recover the share certificates,—*Held*, that the bank was not put upon enquiry by the mere fact of the brokers depositing the shares as security for their own account, that the transfer from H.'s name was not an intimation to the bank that the shares did not belong to the brokers and did not put the bank upon enquiry, that the principle of *Colonial Bank* v. *Cady* (60 L. J. Ch. 131; 15 App. Cas. 267), that any one who signs a transfer on a certificate in blank and hands it to another person knows that third persons would think that that person had authority to deal with it, extends to a person who without having had such a certificate in his possession leaves it in the hands of his broker, and that therefore the plaintiff was estopped from recovering the certificates from the defendants. *Fuller* v. *Glyn, Mills, Currie & Co.*, 83 L. J. K.B. 764; [1914] 2 K.B. 168; 110 L. T. 318; 19 Com. Cas. 186; 58 S. J. 235; 30 T. L. R. 162—Pickford, J.

ESTOVERS.

See COMMON.

EVIDENCE.

I. ADMISSIONS AND DECLARATIONS.

See also Vol. VI. 521, 1988.

Statements by Deceased against Interest.]—In a probate suit it was alleged that the testatrix destroyed her will at a time when she was not of sound mind, memory, or understanding. Under the will which had been destroyed her husband took a life interest in her estate, whereas under an ante-nuptial settlement he was, in the events that had happened, entitled absolutely to her estate:—*Held*, that a statement by the husband, who had died before the suit was brought, that he did not think the testatrix was of sound mind when she destroyed her will, was admissible in evidence as being in disparagement of his own title by limiting it to a life estate. *Fawke* v. *Miles*, 27 T. L. R. 202—Evans, P.

Statements by Deceased as to Paternity of Posthumous Illegitimate Child.]—In proceedings taken under the Workmen's Compensation Act, 1906, on behalf of the posthumous illegitimate child of a workman who was killed by an accident, statements made by the deceased man to the effect that he admitted that he was the father of the child, and would marry the mother before its birth, and would provide a home for her, are admissible in evidence on the issues of paternity and dependence. *Lloyd* v. *Powell Duffryn Steam Coal Co.*, 83 L. J. K.B. 1054; [1914] A.C. 733; [1914] W.C. & I. Rep. 450; 111 L. T. 338; 58 S. J. 514; 30 T. L. R. 456—H.L. (E.)

Judgment of the Court of Appeal (82 L. J. K.B. 533; [1913] 2 K.B. 130; [1913] W.C. & I. Rep. 355) reversed. *Ib.*

Report by Agent—Death of Agent—Admissibility of Report—Shares—Action for Rescission on Ground of Misrepresentation in Prospectus.]—In an action for rescission of a contract to take shares in a company on the ground of misrepresentations contained in the prospectus, the plaintiff tendered as evidence of the misrepresentations a confidential report as to the property in question made to the company by an agent since deceased. The report had not been drawn up for more than a month after the inspection of the property by the agent had taken place:—*Held*, that the report, not having been made contemporaneously with the inspection by the agent, was not admissible in evidence. *Djambi* (*Sumatra*)

Rubber Estates, In re, 107 L. T. 631; 57 S. J. 43; 29 T. L. R. 28—C.A.

Duty of Historian.]—When a matter of history which is not of general importance is in issue, a statement bearing on the point in issue made by a particular person (since deceased) under no duty to make it is not admissible unless the statement purported to be made from reputation. As to whether or not a church is a parish church is not a matter of general importance. *Fowke* v. *Berrington* (*No.* 1), 83 L. J. Ch. 820; [1914] 2 Ch. 308; 111 L. T. 440; 58 S. J. 379—Astbury, J.

II. PRESUMPTIONS.

See also Vol. VI. 566, 1990.

Against Child-bearing.]—A fund in Court, a moiety of which in the event of a spinster lady then aged fifty-one years having children attaining twenty-one years would belong to them, but which otherwise belonged to the petitioners, of whom she was one, was ordered to be paid out to the petitioners upon a policy at a single premium being taken out in an approved office for the value of the moiety payable in the event of the spinster lady having a child. *Carr* v. *Carr*, 106 L. T. 753—Warrington, J.

III. DOCUMENTARY EVIDENCE.

See also Vol. VI. 606, 1992.

a. Public, Official and other Documents.

Regulations for Territorial Force.]—The Regulations for the Territorial Force and for County Associations fall within section 163 of the Army Act, 1881 (as amended by the Army Annual Acts to 1911), and may accordingly be proved by production of a copy purporting to be printed by a Government printer, without other evidence; but the Court does not take judicial notice of the Regulations. *Todd* v. *Anderson*, [1912] S. C. (J.) 105—Ct. of Just.

Post Office—Telegrams—Times of Delivery — Written Records — Admissibility.] — The documents kept by the Post Office shewing the times of the receipt and delivery of telegrams are not admissible in evidence as public records, inasmuch as they are kept only a short time, are not accessible to the public, are not the result of a public enquiry, and do not deal with a general public right, but are merely kept for the purpose of regulating the pay and the work of Post Office servants. *Heyne* v. *Fischel & Co.*, 110 L. T. 264; 30 T. L. R. 190—Pickford, J.

Tithe Map.]—A tithe map certified by the Tithe Commissioners as a first-class map is not admissible as evidence of the extent of a public right, though it may be evidence that at the date the map was made certain land was not inclosed or was not titheable. *Copestake* v. *West Sussex County Council*, 80 L. J. Ch. 673; [1911] 2 Ch. 331; 105 L. T. 298; 75 J. P. 465; 9 L. G. R. 905—Parker, J.

Ancient Maps—Public Highways—Reputation.]—Ancient maps produced from the custody of the British Museum and Guildhall Library, there being no evidence that the map makers were competent or had any special duty to perform in making the maps or that the maps had been received and acted on by the public, are not admissible as evidence of reputation of public highways. *Att.-Gen.* v. *Horner* (*No.* 2), 82 L. J. Ch. 339; [1913] 2 Ch. 140; 108 L. T. 609; 77 J. P. 257; 11 L. G. R. 784; 57 S. J. 498; 29 T. L. R. 451—C.A.

Per Hamilton, L.J.: *Trafford* v. *St. Faith's Rural Council* (74 J. P. 297) doubted. Statement of Lord Alverstone, C.J., in *Vyner* v. *Wirrall Rural Council* (7 L. G. R. 628; 73 J. P. 242) that the competence of the map maker goes more to the weight of the evidence than to its admissibility disapproved of. Statement of Cave, J., in *Reg.* v. *Berger* (63 L. J. Q.B. 529; [1894] 1 Q.B. 823), that a map if made by one of the public cannot be excluded on a question of highway, considered too wide. *Ib.*

Ordnance Survey Map.] — An Ordnance survey map of 1841 *held* admissible to shew what physical features the persons employed to make the survey did or did not see at the time of the survey. *Att.-Gen.* v. *Meyrick*, 79 J. P. 515—Scrutton, J.

Certificate of Conviction.]—Where a convicted felon, or the personal representative of a convicted murderer who has been executed, brings any civil proceedings to establish claims or to enforce rights which result to the felon or to the convicted testator from his own crime, the conviction is admissible in evidence, not merely as proof of the conviction, but also as presumptive proof of the commission of the crime. *Crippen, In the goods of*, 80 L. J. P. 47; [1911] P. 108; 104 L. T. 224; 55 S. J. 273; 27 T. L. R. 258—Evans, P.

Non-parochial Registers—Society of Friends —Entries Prior to 1837—Extracts from Digest — Copies.] — The Non-parochial Registers Act, 1840, provides (section 6) that all registers deposited in the General Register Office by virtue of that Act shall be deemed to be in legal custody, and (section 9) that certified copies thereof under the seal of the office shall be receivable in evidence. In 1840 the registers of the Society of Friends, prior to 1837, were duly deposited in accordance with that Act, but a digest of all births, deaths, and marriages recorded therein was retained at the central office of the society:—*Held*, that the registers were only admissible in evidence by virtue of the above Act and in the manner there provided: and that extracts from the digest relating to births, deaths, and marriages before 1837, certified by the recording clerk of the society, were inadmissible. *Woodward, In re: Kenway* v. *Kidd*, 82 L. J. Ch. 230; [1913] 1 Ch. 392; 108 L. T. 635; 57 S. J. 426—Swinfen Eady, J.

Bankers' Books—Copy made by Person not an Official of Bank—"Some person."]—The words "some person" in section 5 of the

Bankers' Books Evidence Act, 1879, are not limited to a partner or officer of a bank; they include any person who has examined the copy of the books which it is proposed to give in evidence with the books themselves. *Rex* v. *Albutt*, 75 J. P. 112—C.C.A.

—— Application for Inspection in Case of Criminal Libel.]—In proceedings for criminal libel, in which they proposed to put in a plea of justification, the defendants applied for an order under the Bankers' Books Evidence Act, 1879, to inspect the banking account of the person they were alleged to have libelled:—*Held*, that an order would not be made in those circumstances. *Rex* v. *Bono*, 29 T. L. R. 635—D.

b. Parol Evidence as to Documents.

To Vary the Effect of a Deed of Sale.]—Under section 92 of the Indian Evidence Act extrinsic evidence is admissible to shew that a deed which was in form a deed of sale with a receipt for the consideration was in reality intended to operate as a deed of gift. *Hanif-un-nisa* v. *Faiz-un-nisa*, L. R. 38 Ind. App. 85—P.C.

Promissory Note Given by Makers in Payment for Goods—Note Signed by Indorser as Surety—Admissibility of Oral Agreement that Surety was not to be Liable if Goods not up to Sample — Liability of Surety.] — The defendant company bought certain leather goods from the plaintiffs and gave the plaintiffs in payment therefor a promissory note of which they were the makers, and which the defendant D. at the request of the plaintiffs indorsed as surety. The plaintiffs delivered the goods to the defendant company, who kept them. The plaintiffs subsequently sued the defendant company as the makers, and the defendant D. as the indorser of the promissory note. The defendant company did not appear at the trial, but the defendant D. pleaded that he signed the note as surety, and proved an oral agreement with the plaintiffs, contemporaneous with the promissory note, that if the goods when received by the defendant company should not be equal to sample, he was not to be called upon to pay the promissory note. He also proved that the goods were in fact not equal to sample:—*Held*, that evidence of the oral agreement relied upon by D. was not admissible, as it was not an agreement suspending the coming into force of the contract contained in the promissory note, but was an agreement in defeasance of that contract, and that therefore the defendant D. was liable on the promissory note. *Hitchings and Coulthurst Co.* v. *Northern Leather Co. of America*, 83 L. J. K.B. 1819; [1914] 3 K.B. 907; 111 L. T. 1078; 20 Com. Cas. 25; 30 T. L. R. 688—Bailhache, J. Cp. *Motabhoy Mulla Essabhoy* v. *Mulji Haridas*, L. R. 42 Ind. App. 103—P.C.

IV. PRODUCTION AND ADMISSION OF EVIDENCE.

See also Vol. VI. 797, 1998.

Documents—Production of Partnership Deed by One of Several Partners.]—Each of several members of a firm signed a copy of the partnership deed and each partner retained a copy of the deed. In an action for penalties against one of the partners,—*Held*, that a partner of the defendant was compellable to produce his copy of the partnership deed upon a *subpœna duces tecum*. *Forbes* v. *Samuel*, 82 L. J. K.B. 1135; [1913] 3 K.B. 706; 109 L. T. 599; 29 T. L. R. 544—Scrutton, J.

Bundle of Copy Correspondence—Taken as Put in—Agreement by Parties—Indorsement on Bundle.]—Where at the trial parties agree that a bundle of copy correspondence shall be taken as put in, saving all just exceptions, it is desirable that the agreement should be indorsed on the bundle and signed by the parties or their solicitors. The Registrar ought not to be called upon to say whether the whole of the bundle is put in. *Perry* v. *Hessin*, 56 S. J. 345—Eve, J.

Res inter Alios Acta—Frauds in other Case as Evidence of Systematic Course of Dealing.]—An action was brought by a life insurance company claiming to have a policy set aside on the ground of fraud. There was no averment in the statement of claim that the alleged fraud was part of a fraudulent system, nor any allegation that the defendant had been a party to any similar acts of fraud. At the trial it was proposed, without previous notice to the defendant, to adduce evidence connected with the effecting of other policies by the defendant under similar fraudulent circumstances as evidence of a system of fraud:—*Held*, that the evidence of the similar frauds would be admissible if the substance of the allegation that the fraud was part of a system were stated in the statement of claim. *Edinburgh Life Assurance Co.* v. *Y.*, [1911] 1 Ir. R. 306—Barton, J.

Unstamped Document.]—A document which the Stamp Act, 1891, requires to be stamped cannot, except in criminal proceedings, be received in evidence for any purpose whatever, if unstamped, whether for the purpose of enforcing it, or for any collateral purpose. *Fengl* v. *Fengl*, 84 L. J. P. 29; [1914] P. 274; 112 L. T. 173; 59 S. J. 42; 31 T. L. R. 45—D.

V. ATTENDANCE AND EXAMINATION OF WITNESSES.

See also Vol. VI. 854, 902, 2001.

Examination at Request of Foreign Court—Production of Documents—Documents in Possession of Servant — No Instructions from Master as to Production—Right of Servant to Refuse to Produce — Attachment.] — Pursuant to letters rogatory addressed to it by a foreign Court in an action pending in that Court, the English Court made an order under the Foreign Tribunals Evidence Act, 1856, requiring a witness who was resident within the jurisdiction of the latter Court to attend before an examiner to be examined and to produce certain documents alleged to be relevant. The witness was a salaried managing clerk in the employment of an English firm, and the docu-

ments were the property of the firm, and were only in the possession, custody, or control of the witness as such managing clerk. The witness had never received from the firm any instructions either to produce the documents or not to produce them. At a previous examination held by agreement between the parties the witness had voluntarily produced some of the documents and promised to produce others, and had answered some questions regarding them; but at the examination held pursuant to the order of the Court he refused to produce the documents or to answer any questions regarding them. The plaintiffs in the action obtained an order for the issue of a writ of attachment against the witness for his refusal to comply with the order for examination and production:—*Held* (Kennedy, L.J., dissenting), that the witness, in the absence of instructions from his employers in that behalf, could not without violating his duty towards his employers, produce the documents and answer the questions, and was therefore entitled to refuse to do so, and consequently that the order for his attachment should be set aside. *Eccles* v. *Louisville and Nashville Railroad Co.*, 81 L. J. K.B. 445; [1912] 1 K.B. 135; 105 L. T. 928; 56 S. J. 107; 28 T. L. R. 67—C.A.

Privilege of Witness—Preliminary Examination by Solicitor.]—The preliminary examination of a witness by a solicitor is within the same privilege as that which the witness would have if he had said the same thing in his sworn testimony in Court. *Beresford* v. *White*, 58 S. J. 607; 30 T. L. R. 591—C.A.

—— Public Policy—Affairs of State—Statements to Lord Chamberlain.]—The Lord Chamberlain cannot be compelled to disclose in evidence communications made to him in his official capacity. *West* v. *West*, 27 T. L. R. 476—C.A.

VI. EVIDENCE ON AFFIDAVIT.

See also Vol. VI. 1050, 2004.

Affidavit Sworn before Solicitor of any of the Parties to the Proceeding—Deed of Arrangement—Validity of Registration.]—A commissioner for oaths who is acting as solicitor for any of the parties on the registration of a deed of arrangement under the Deeds of Arrangement Act, 1887, is disabled by the Commissioners for Oaths Act, 1889, s. 1, sub-s. 3, from administering an oath to the debtor and from taking the debtor's affidavit mentioned in section 6 of the Deeds of Arrangement Act, 1887; and inasmuch as the filing of such affidavit is an essential constituent of a valid registration, the fact that the affidavit was sworn before a commissioner acting as solicitor for any of the parties is not an irregularity which is cured by registration, but on the contrary renders the registration bad and the deed void. *Baker* v. *Ambrose* (65 L. J. Q.B. 589; [1896] 2 Q.B. 372) approved. *Bagley, In re*, 80 L. J. K.B. 168; [1911] 1 K.B. 317; 103 L. T. 470; 18 Manson, 1; 55 S. J. 48—C.A.

EXCISE.

See REVENUE.

EXECUTION.

A. Extent, 566.
B. Fieri Facias, 566.
C. Elegit, 567.
D. Sequestration, 567.
E. Equitable Execution, 568.

A. EXTENT.

See also Vol. VI. 2007.

Seizure under Writ—Writ Set Aside—Liability of Treasury Solicitor in Trespass.]—The plaintiff's goods were seized under a writ of extent, which was subsequently set aside on the ground that the affidavit upon which the *fiat* of the Judge was obtained for the issue of the writ was defective in not alleging that the plaintiff was insolvent. In an action against the defendants—the Treasury Solicitor and his assistants—for the trespass to the plaintiff's goods by their seizure under the writ,—*Held*, that as there was a judicial determination interposed between the filing of the affidavit upon which the writ was obtained and the issue of the writ, and as such issue was in consequence of that interposition, the defendants were protected from liability. *Pridgeon* v. *Mellor*, 28 T. L. R. 261—Pickford, J.

B. FIERI FACIAS.

See also Vol. VI. 1132, 2007.

Chattels — Equitable Interest — Vesting of Whole Interest—Rights of Creditor.]—Though as a general rule a judgment creditor may not be entitled under a writ of *fi. fa.* to seize goods which are only at the equitable disposition of the judgment debtor, yet where the whole of the beneficial interest in the chattels is vested in the judgment debtor, the trust is no defence to an execution at the instance of the judgment creditor. *Stevens* v. *Hince*, 110 L. T. 935; 58 S. J. 434; 30 T. L. R. 419—Bailhache, J.

Sheriff's Fees—Execution Withdrawn under Order of Court — Liability of Execution Creditor.]—By the Order as to Fees made under section 20, sub-section 2 of the Sheriffs Act, 1887, where an execution is withdrawn, satisfied, or stopped, the fees under the Order are to be paid "by the person issuing the execution, or the person at whose instance the sale is stopped, as the case may be. . . ." The defendants, having obtained a judgment against a certain company, issued a writ of *fi. fa.*, under which the sheriff seized the goods of the company. On the day on which the sheriff went into possession a resolution

to wind up the company voluntarily had been passed, and a summons was afterwards issued by the liquidator asking that the defendants should be restrained from selling the goods. An order was made in accordance with the summons, and the sheriff was subsequently ordered to withdraw. He thereupon brought an action in the County Court to recover from the defendants the amount of his fees, but the County Court Judge gave judgment for part only of the fees claimed :—*Held*, that, under the law as existing at the time when the Order as to fees was made, the execution creditors would, under the circumstances, have been liable to pay the sheriff's fees; that the Order did not affect such liability; and that the sheriff was therefore entitled to judgment for the full amount of his claim. *Montague* v. *Davies, Benachi & Co.*, 80 L. J. K.B. 1131; [1911] 2 K.B. 595; 104 L. T. 645—D.

C. ELEGIT.

See also Vol. VI. 1159, 2014.

Judgment Creditor—Land in Mortgage—Registration of Writ or Order Affecting the Land—Arrangement between Debtor and Tenant—Subsequent Appointment of Receiver.]—Under the Judgments Act, 1838, s. 13, and the Land Charges Act, 1900, s. 2, a judgment creditor obtains a charge on the land of the judgment debtor upon the registration of a writ of *elegit* under section 5 of the Land Charges Registration and Searches Act, 1888, even though the judgment debtor's interest in the land is not of a nature which is capable of being extended under a writ of *elegit* :—So *held* by Lord Cozens-Hardy, M.R., and Swinfen Eady, L.J. (Kennedy, L.J., dissenting). *Ashburton (Lord)* v. *Nocton*, 84 L. J. Ch. 193; [1915] 1 Ch. 274; 111 L. T. 895; 59 S. J. 145; 31 T. L. R. 122—C.A.

After the registration by a judgment creditor of writs of *elegit*, but before the appointment of a receiver, the judgment debtor, whose land was subject to a legal mortgage, entered into an arrangement with a tenant by which the tenant paid him rent in advance. The judgment creditor obtained the appointment of a receiver before the rent became due. The tenant made the arrangement *bona fide* and without notice of the judgment creditor's claim :—*Held* (Kennedy, L.J., dissenting), that the arrangement was not binding on the judgment creditor, and that he was entitled to payment of the rent by the tenant. *Ib.*

Decision of Sargant, J. (83 L. J. Ch. 831; [1914] 2 Ch. 211), reversed. *Ib.*

D. SEQUESTRATION.

See also Vol. VI. 1169, 2014.

Liability of Sequestrators for Costs.]—A writ of sequestration issued to enforce an order of Court, the defendants being the sequestrators. Under the writ they claimed certain property which had been purchased by the plaintiff, they alleging fraud and *mala fides* in the plaintiff. On the trial of an issue the jury found in favour of the plaintiff :—*Held*, that although the defendants, as sequestrators, had acted under the direction of the Court, that did not justify them in taking action as to property to which they had no right, and therefore that they were liable for the costs of the action. *Wiebalck* v. *Told*, 29 T. L. R. 741—Bucknill, J.

E. EQUITABLE EXECUTION.

See also Vol. VI. 1199, 2017.

Rent of House and Furniture—Apportionment—Lump Sum Payable to Debtor's Mortgagee—Creditor Entitled to have Rent of Furniture Apportioned.]—A mortgagor and mortgagee of houses joined in making a lease of the houses and of furniture in them which belonged to the mortgagor at an inclusive rent payable to the mortgagor until the mortgagee should give notice to the contrary. The mortgagee entered into receipts of the rents, and a judgment creditor of the mortgagor obtained the appointment of a receiver of the interest of the mortgagor in the rent reserved by the lease. The mortgagor was under covenant not to remove the furniture from the houses without the mortgagee's consent :—*Held*, that the creditor was entitled to have the rent apportioned as between the houses and the furniture, so that the receiver could recover the amount apportioned to the furniture, and that it must be referred to a Master to make the apportionment. *Hoare* v. *Hove Bungalows*, 56 S. J. 686—C.A.

Sheriff Unable to Identify Property.]—The Court has no jurisdiction to appoint a receiver by way of so-called equitable execution in aid of a judgment at law, except in cases where, by reason of the nature of the property, execution cannot be levied in the ordinary way, and in which the Court of Chancery would, before the Judicature Act, 1873, have had jurisdiction to make the order. *Harris* v. *Beauchamp* (63 L. Q.B. 480; [1894] 1 Q.B. 801) followed. *Morgan* v. *Hart*, 83 L. J. K.B. 782; [1914] 2 K.B. 183; 110 L. T. 611; 30 T. L. R. 286—C.A.

EXECUTOR AND ADMINISTRATOR.

I. TITLE OF EXECUTOR OR ADMINISTRATOR.

See also Vol. VI. 1226, 2022.

Executor de Son Tort—Liability—Repairing Covenant in Lease — Death of Assignee Intestate.]—The plaintiffs sued the defendant as *executor de son tort* for breaches of covenant in a lease of which they were the lessors and the defendant's mother had been assignee. The defendant's mother died in 1910 intestate. No letters of administration were taken out. From that date onwards the defendant, who had collected the rents in his mother's lifetime, collected them for her sister. The sister died in 1912. The defendant continued to collect the rents, and, after paying ground rent to the plaintiffs, held the balance for the owners, whoever they might be. In December, 1912, the plaintiffs first discovered that the defendant's mother was dead, and, acting on the defendant's suggestion, they took possession of the premises. Subsequently they brought this action. There were no assets of the mother's estate :—*Held*, that the defendant was not liable by privity of estate since the term had not vested in him, and he was not liable by estoppel. Position of a lawful executor distinguished. *Stratford-upon-Avon Corporation* v. *Parker*, 83 L. J. K.B. 1309; [1914] 2 K.B. 562; 110 L. T. 1004; 58 S. J. 473—D.

Grant of Letters of Administration—Subsequent Discovery of Will—Sale of Property by Administratrix—Action by Executors to Set Aside Sale.]—H. died in 1899 without issue, but leaving a widow. No will being found, letters of administration were granted to the widow, who sold part of the estate to the defendant and conveyed it to him. Of the proceeds of sale one-third was invested as dower for the widow, and the remainder was divided among three co-heiresses of the deceased. After the widow's death in 1911 her executor discovered the will of her husband H., and by it H. appointed the plaintiffs his executors, and left the property which had been sold to the defendant to the widow for life, and after her death to one of the plaintiffs, whom he exhorted to hold the property " as an heirloom and on no account to sell it, but should such occur " the proceeds were to be equally divided among certain named persons. The letters of administration granted to the widow were revoked and probate of the will was granted to the plaintiffs, and they now sought to set aside the sale of the property to the defendant :—*Held*, that the plaintiffs were not entitled to recover possession of the estate, as the person for the time being clothed by the Court of Probate with the character of legal personal representative had all the powers of a legal personal representative until the grant of administration was revoked or had determined, and as section 2 of the Land Transfer Act, 1897, conferred upon the legal personal representative for the time being the same powers (with certain immaterial exceptions) with reference to real estate as he would have with reference to personal estate. *Held*, further, that the title of the purchaser was protected under section 70 of the Conveyancing Act, 1881, even if the grant of administration could be held void. *Hewson* v. *Shelley*, 83 L. J. Ch. 607; [1914] 2 Ch. 13; 110 L. T. 785; 58 S. J. 397; 30 T. L. R. 402—C.A.

Decision of Astbury, J. (82 L. J. Ch. 551; [1913] 2 Ch. 384), reversed. *Ib.*

II. RIGHTS, POWERS, AND DUTIES.

See also Vol. VI. 1239, 2024.

a. Allowances and Indemnity.

Executors Carrying on Business of Testator —Right of Indemnity Subject to Satisfaction of Liability to Estate—Priority.]—A testator by his will directed his executors to carry on his business as long as they should think fit. At his death there was a considerable balance of assets over liabilities. The executors, with the financial assistance of the testator's bank and the assent of some creditors, carried on the business for three years, when it had become insolvent. In an administration action commenced by the bank against the executors, —*Held*, that the executors' right of indemnity, to which the bank claimed to be subrogated, was subject to the satisfaction of their own liability to the estate, and that creditors of the testator who had not assented were entitled to be paid out of the available assets in priority to the bank and other creditors of the executors. Form of order for accounts and enquiries in administration discussed. *East, In re; London and County Banking Co.* v. *East*, 111 L. T. 101; 58 S. J. 513—C.A.

—— **Assets of Testator—Rights of Creditors of Testator and Subsequent Creditors of Executors—Right of Executors to Indemnity—Acquiescence of Original Creditors.**] — A testator who carried on a business died in 1908, leaving all his property to his widow and appointing her and a son his executors. He died solvent. There was no provision in his will for the carrying on of the business, but his executors carried it on for four years after his death, his widow drawing money from it, and his sons being employed in it. At his death there were certain creditors of his estate. These creditors knew that the business was being carried on by the executors and did not interfere, but there was no agreement or arrangement with them. In 1912 the executors became bankrupt, whereupon the creditors brought an action for administration of the testator's estate. They did not claim the business assets so found. Now creditors of the business since the testator's death claimed that the executors were entitled, in priority to the old creditors, to be indemnified out of the testator's estate against their business debts, and that they ought to have the benefit of such indemnity : —*Held*, that the old creditors had not assented to the business being carried on by the executors, who were not therefore entitled to be indemnified. *Oxley, In re; Hornby* v. *Oxley*, 83 L. J. Ch. 442; [1914] 1 Ch. 604; 110 L. T. 626; 58 S. J. 319; 30 T. L. R. 327—C.A.

Decision of Kekewich, J., in *Brooke, In re; Brooke* v. *Brooke* (64 L. J. Ch. 21; [1894]

2 Ch. 600), that non-interference coupled with knowledge amounts to assent within *Dowse* v. *Gorton* (60 L. J. Ch. 745; [1891] A.C. 190), followed in *Hodges, In re; Hodges* v. *Hodges* ([1899] 1 Ir. R. 480), overruled. *Ib.*

Account against Executor at Suit of Creditor —Right to be Allowed Payments made to Beneficiaries more than Six Years before Action Brought—Trustee Act, 1888.]—In 1902, on the death of a testator, his two executors distributed all his estate except a leasehold property which they held upon trust for beneficiaries under the testator's will. One of the executors died in 1906. In 1909 the rack rents of the leasehold property became insufficient to keep down the head rents. In 1911 the lessors commenced an action for an account against the surviving executor and the executors of the deceased executor:—*Held* (Phillimore, L.J., dissenting), that in taking the account the executors must be allowed the sums which had been honestly paid away to the beneficiaries more than six years before proceedings were commenced, as they were protected by the Trustee Act, 1888, s. 1, sub-s. 1 (*b*), executors being as much entitled to plead the statute against creditors as against beneficiaries. *Blow, In re; St. Bartholomew's Hospital (Governors)* v. *Cambden*, 83 L. J. Ch. 185; [1914] 1 Ch. 233; 109 L. T. 913; 58 S. J. 136; 30 T. L. R. 117—C.A.

Dictum of Fletcher Moulton, L.J., in *Lacons* v. *Warmoll* (76 L. J. K.B. 914, 920; [1907] 2 K.B. 350, 364) approved. *How* v. *Winterton (Earl)* (65 L. J. Ch. 832; [1896] 2 Ch. 626) and *Croyden, In re; Hincks* v. Roberts (55 S. J. 632), followed. *Ib.*

Per Swinfen Eady, L.J.: An action for an account is "an action to recover money" within the Trustee Act, 1888, s. 8, sub-s. 1 (*b*). *Ib.*

Decision of Warrington, J. (82 L. J. Ch. 207; [1913] 1 Ch. 358), reversed. *Ib.*

Right of Executor to Commission for Professional Services—Art Expert.]—By his will the testator declared that any executor or trustee for the time being of his will engaged in any profession or business should be entitled to charge and be paid all usual professional or other charges for any business done by him in the premises, whether in the ordinary course of his profession or business or not. The testator had a large and valuable collection of works of art, and in the sale of this collection the defendant, who was one of the executors and was a well-known art expert and keeper of mediæval antiquities at the British Museum, priced the various articles and gave valuable advice as to their sale:—*Held*, that the defendant was carrying on a profession or business within the meaning of the clause of the will, and was entitled to be paid a commission of 10*s.* per cent. on the sale prices. *Wertheimer, In re; Groves* v. *Read*, 106 L. T. 590; 28 T. L. R. 337—Neville, J.

b. Right of Retainer.

Specialty and Simple Contract Creditors.]—An executor may retain his simple contract debt as against both specialty and simple contract creditors, inasmuch as by Hinde Palmer's Act both classes of creditors are made of equal degree as regards priority of payment in the administration of estates. The *ratio decidendi* in *Samson, In re* (76 L. J. Ch. 21; [1906] 2 Ch. 584), and in *Jennes, In re* (53 S. J. 376), applied in support of the executor's right of retainer. *Wilson* v. *Coxwell* (52 L. J. Ch. 975; 23 Ch. D. 764) and *Jones, In re; Calver* v. *Laxton* (55 L. J. Ch. 350; 31 Ch. D. 440), not followed. *Olpherts* v. *Coryton* (*No.* 1), [1913] 1 Ir. R. 211—Barton, J.

Retaining Simple Contract Debt against Specialty Creditors.]—It follows from the decision of the Court of Appeal in *Samson, In re; Robbins* v. *Alexander* (76 L. J. Ch. 21; [1906] 2 Ch. 584), that the effect of the Administration of Estates Act, 1869, has been to enlarge the right of retainer of a legal personal representative, by enabling him to retain his simple contract debt against specialty as well as simple contract creditors. *Olpherts* v. *Coryton* ([1913] 1 Ir. R. 211) followed. *Harris, In re; Davis* v. *Harris*, 83 L. J. Ch. 841; [1914] 2 Ch. 395; 111 L. T. 666; 58 S. J. 653—Sargant, J.

Letters of Administration Granted to Undischarged Bankrupt—Debt Due from Deceased to Administrator.—Letters of administration of the estate of a deceased person were granted to the defendant, who was an undischarged bankrupt. The deceased at the time of his death was indebted to the defendant for money lent, but the defendant was adjudicated a bankrupt after the debt was contracted:—*Held*, that the defendant was not entitled as administrator to retain out of the assets collected by him the amount of the debt due to him from the deceased, the proper person to sue for the debt being the trustee in the bankruptcy. *Wilson* v. *Wilson*, 80 L. J. K.B. 296; [1911] 1 K.B. 327; 104 L. T. 96; 18 Manson, 18—Channell, J.

Covenant in Marriage Settlement—Legal Personal Representative and Beneficiary—Trustees' Right of Action.]—A testator by his marriage settlement covenanted that he would by deed or will, or his heirs, executors, or administrators would within twelve months after his decease, transfer to the trustees 3,000*l.* in trust for his then intended wife for life, with remainders over for the children of the marriage. By his will he appointed his wife sole executrix, and directed that in accordance with the covenant the 3,000*l.* should be realised and paid to the trustees of the settlement within six calendar months after his decease. There was one child only of the marriage, a daughter. The wife appointed the daughter to be one of the executors of her will. Upon the death of the wife, the 3,000*l.* not having been paid, the daughter claimed to be entitled to retain that sum out of the estate of her mother, as a debt due from her mother to herself:—*Held*, that the 3,000*l.* was not a simple debt due to the daughter, but was a debt due to the trustees of the marriage settlement, who were the only persons capable of

giving a discharge for the money, and that the daughter had no right of retainer in respect thereof. *Cockroft* v. *Black* (2 P. Wms. 298) discussed. *Sutherland (Dowager Duchess), In re; Michell* v. *Bubna (Countess)*, 84 L. J. Ch. 126; [1914] 2 Ch. 720; 112 L. T. 72—Joyce, J.

Partnership Debt—Legacies to Individual Partners.]—The doctrine of *Cherry* v. *Boultbee* (9 L. J. Ch. 118; 4 Myl. & Cr. 442)—namely, that executors may retain out of a legacy or share of residue a debt owing to their testator by the legatee—does not entitle them to retain a joint debt owing from a firm out of legacies or a share of residue given to the individual partners. *Smith* v. *Smith* (31 L. J. Ch. 91; 3 Giff. 263) explained and distinguished. *Turner* v. *Turner*, 80 L. J. Ch. 473; [1911] 1 Ch. 716; 104 L. T. 901—C.A.

Legatee Indebted to Testator's Firm—Executor not Entitled to Retain Legacy.]—An executor cannot, as a general rule, retain a legacy in satisfaction of a debt which was due by the legatee, not to the testator, but to a firm in which the testator was a partner. *Jackson* v. *Yeats*, [1912] 1 Ir. R. 267—Barton, J.

Administration of Insolvent Estate.]—An executor can retain the whole of his testator's chattels for the payment of a debt due to him from his testator, and is not obliged to appropriate chattels of the exact amount of his debt. When the chattels are realised the balance over (if any) goes to the other creditors. *Broad, In re; Official Receiver, ex parte*, 105 L. T. 719; 56 S. J. 35—D.

The exercise of the right of retainer by an executor, after an administration order under section 125 of the Bankruptcy Act, 1883, of chattels in his possession before the making of the order, to which he had not signified his election, is not forbidden by sub-section 9 of that section. *Ib.*

Receiver—Executor Surety for Testator—Right of Indemnity.]—There can be no retainer by an executor-surety in respect of a right to indemnify out of the testator's estate. The right of retainer only arises when there is a debt, and a surety has no debt against his principal until he has paid off the principal debt. When an executor-surety has paid off the principal debt his right of retainer arises, but only in respect of assets actually in his hands at the time he pays off the debt or assets coming to his hands thereafter. *Orme, In re; Evans* v. *Maxwell* (50 L. T. 51), followed. *Giles, In re; Jones* v. *Pennefather* (65 L. J. Ch. 419; [1896] 1 Ch. 956), not followed. *Beavan, In re; Davies, Banks & Co.* v. *Beavan*, 83 L. J. Ch. 109; [1913] 2 Ch. 595; 109 L. T. 538; 58 S. J. 31—Neville, J.

Retainer by Executor Jointly Guilty with Testator of Breach of Trust—Innocent Co-executor Appointed Trustee in Place of Testator.]—An executor who has been guilty, jointly with his testator, of a breach of trust cannot retain assets against the trust liability to the prejudice of the other creditors; nor are the beneficiaries claiming through him in any better position. *Sander* v. *Heathfield* (44 L. J. Ch. 113; L. R. 19 Eq. 21) and *Faithfull, In re* (57 L. T. 14), distinguished. *Ib.*

His co-executor, however, being himself innocent of the breach of trust, may, on being appointed trustee in place of the testator, even after the latter's death, exercise the right of retainer in respect of the trust liability. *Barratt, In re; Whitaker & Co.* v. *Barratt* (59 L. J. Ch. 218; 43 Ch. D. 70), followed. *Jones* v. *Evans* (45 L. J. Ch. 751; 2 Ch. D. 420) distinguished. *Ib.*

Executor of Executor—One Estate Liable to Account to Other—Creditor's Application to Enforce Exercise of Right.]—The defendant was the executor of the will of F., deceased, who, as executor of the will and legal personal representative of M., deceased, had got in and received assets of M.'s estate, which was insolvent:—*Held*, that the defendant could not be compelled to exercise his right of retainer over the assets of F.'s estate coming into his possession in favour of the creditors of M.'s estate. *Funnell, In re; Dyne* v. *Funnell*, 107 L. T. 145—Joyce, J.

—— **Two Estates.**]—The estates of A and B were administered in one action. The estate of B (who was A's executor) was entitled to the residue of the estate of A when ascertained. B's executor, who was a creditor of B, brought the action as executor and creditor on behalf of himself and all other creditors; and asserted his right of retainer in the statement of claim, and throughout the proceedings. A's estate was realised, and the money representing the proceeds was brought into Court. The executor of B died pending the suit, which was continued by substituting his executors as plaintiffs. After A's estate had been realised an order was made, upon the application of the plaintiffs, directing an enquiry to ascertain what part of the funds in Court represented the residue of A's estate, and ordering the same to be transferred to the credit of B's estate, and it was declared that the plaintiffs were entitled to exercise their right of retainer, as the executors of B's executor in respect of the amount so ascertained, in discharge of the debt due to them from B's estate. *Olpherts* v. *Coryton* (*No.* 2), [1913] 1 Ir. R. 381—Barton, J.

c. Respecting Creditors.

Preference—Money Advanced to Estate for Payment of Debts—Insolvent Estate—Repayment of Executor in Full—Assets in Hands of Executor.]—An executor of an insolvent estate who himself advances money to the estate for the purpose of paying the debts of the testator, looking to the estate to repay him at some future time, is entitled to prefer creditors and to be allowed the amounts so paid by him in full when assets fall in; he need not establish that at the time he made the payments he had assets of the testator in his hands, if at that time there was an out-

standing reversionary interest of the testator. *Jones, In re; Peak* v. *Jones*, 83 L. J. Ch. 568; [1914] 1 Ch. 742; 58 S. J. 579—Warrington, J.

d. Respecting Legacies.

Sole Executor a Beneficiary — Legacy — Appropriation of Securities—Ademption.]—A sole executor who is also a beneficiary cannot validly appropriate towards his own legacy or share of residue any securities which have no market value and at his own price. *Bythway, In re; Gough* v. *Dames*, 80 L. J. Ch. 246; 104 L. T. 411; 55 S. J. 235—Joyce, J.

A sole executrix was entitled to pecuniary legacies of 10,000*l.* and 1,000*l.* under the will. By her own will she specifically bequeathed those legacies, describing them as "the two several sums of 10,000*l.* and 1,000*l.*" During her life she purported to appropriate certain shares and debentures towards her legacies :—*Held*, that she had made no valid appropriation, and that therefore her bequest of these legacies was not *pro tanto* adeemed. *Barclay* v. *Owen* (60 L. T. 220) distinguished. *Ib.*

Specific Legacy—French Duties.]—In the case of a specific legacy of chattels situate in France, inasmuch as the *droits de mutation par décès* are by French law a debt due by the legatee, they are not charges and expenses of the executors payable out of the general estate unless the legatee can shew that the will imposes on the executors the duty of paying them. *Scott, In re; Scott v. Scott*, 83 L. J. Ch. 694; [1914] 1 Ch. 847; 110 L. T. 809; 30 T. L. R. 345—Warrington, J.

Legacy Duty on Life Interest—Administration—Mistaken Payment out of Capital—Executors Beneficially Entitled — Recoupment.]—A testator bequeathed a sum of 20,000*l.* to M. S. for life, and directed that on her death such sum should fall into his residuary estate, and he appointed special trustees of the fund. Under the provisions of section 12 of the Legacy Duty Act, 1796, the legacy duty was payable by four equal annual payments out of the income derived from the fund. By inadvertence the executors, two of whom were residuary legatees, paid this duty out of capital, and transferred the residue of the 20,000*l.* to the special trustees :—*Held*, that the error must be rectified, the sum paid as legacy duty upon all proper adjustments being made being retained out of the future payments of income to M. S. *Horne, In re; Wilson* v. *Cox-Sinclair* (74 L. J. Ch. 25; [1905] 1 Ch. 76), considered. *Ainsworth, In re; Finch* v. *Smith*, 84 L. J. Ch. 701; [1915] 2 Ch. 96; 113 L. T. 368; 31 T. L. R. 392—Joyce, J.

e. Power to Pledge Assets.

Pledge by One of Two Executors and Trustees — Validity — Payment of Debts — Passing of Residuary Account — Lapse of Time—Assent to Trusts of Will.]—A testator by his will, after appointing two persons executors and trustees and giving pecuniary legacies, gave his residuary estate to his trustees upon trust for sale and distribution as therein mentioned. Fourteen years after the testator's death one of the executors, without the knowledge of his co-executor, pledged certain plate, forming part of the testator's residuary estate, with a firm of pawnbrokers, who had no notice that he was not the absolute owner thereof, and misapplied the money so raised. All the debts and legacies, so far as was known, were paid, and the residuary account was passed, within one year of the testator's death, but the residuary estate had not been completely distributed. On the death of the pledgor the transaction was discovered, and an action was brought by the co-executor and a new trustee against the pawnbrokers to recover the plate : —*Held*, that the proper inference to be drawn from the facts was that at the date of the pledge the executors had assented to the trust dispositions taking effect, and held the plate as trustees; that, therefore, the deceased executor had no power to pledge the plate, and the existing trustees were entitled to recover it. *Attenborough* v. *Solomon*, 82 L. J. Ch. 178; [1913] A.C. 76; 107 L. T. 833; 57 S. J. 76; 29 T. L. R. 79—H.L. (E.)

Decision of the Court of Appeal (81 L. J. Ch. 242; [1912] 1 Ch. 451) affirmed. *Ib.*

f. Powers as to Realty.

Sale of Surface — Minerals Reserved — Sanction of Court—When Necessary.]—The power of an executor over the real estate of his testator is, since the Land Transfer Act, enlarged, and he has now the same power in dealing with it as he previously had in dealing with the personal estate. His power of realising the estate for the benefit of creditors is paramount to the provisions of the will. The phrase trustee "or other person" in section 44 of the Trustee Act, 1893, does not include an executor. *Cavendish and Arnold's Contract, In re*, 56 S. J. 468—Neville, J.

Conveyance by Executor—"All estate, right and title"—Interpretation of Deed—Purchasers for Value.]—An executor, who had a beneficial interest in the testator's estate, joined with other beneficiaries in the sale and conveyance of a part of the estate to *bona fide* purchasers for value. The executor did not purport to convey in his capacity as executor, but the deed stated that all the estate, right, and title of the vendors were conveyed :—*Held*, that the deed conveyed the whole title vested in the executor, and that it was not proper to infer from the conduct of the parties and from indications in the deed that the intention was only to convey the beneficial interest, since that inference was contrary to the terms of the conveyance. *Bijraj Nopani* v. *Pura Sundary Dassee*, L. R. 41 Ind. App. 189—P.C.

III. LIABILITIES.

See also Vol. VI. 1344, 2036.

Leaseholds—Assignment—"Purchaser."]—Where a testator's residuary estate comprises leaseholds of so onerous a nature that they can only be assigned on the executors paying

the assignees a sum of money to accept the assignments, such assignees are not "purchasers" within the meaning of section 27 of the Law of Property Amendment Act, 1859, and consequently the executors ought to set apart out of the residuary estate a sufficient sum to meet future liabilities in respect of the rents reserved by and the covenants contained in the leases. *Lawley, In re; Jackson* v. *Leighton*, 81 L. J. Ch. 97; [1911] 2 Ch. 530; 105 L. T. 571; 56 S. J. 13—Swinfen Eady, J.

Executor de Son Tort—Repairing Covenant in Lease—Death of Assignee Intestate.]—The plaintiffs sued the defendant as *executor de son tort* for breaches of covenant in a lease of which they were the lessors and the defendant's mother had been assignee. The defendant's mother died in 1910 intestate. No letters of administration were taken out. From that date onwards the defendant, who had collected the rents in his mother's lifetime, collected them for her sister. The sister died in 1912. The defendant continued to collect the rents, and, after paying ground rent to the plaintiffs, held the balance for the owners, whoever they might be. In December, 1912, the plaintiffs first discovered that the defendant's mother was dead, and, acting on the defendant's suggestion, they took possession of the premises. Subsequently they brought this action. There were no assets of the mother's estate:—*Held*, that the defendant was not liable by privity of estate since the term had not vested in him, and he was not liable by estoppel. Position of a lawful executor distinguished. *Stratford-upon-Avon Corporation* v. *Parker*, 83 L. J. K.B. 1309; [1914] 2 K.B. 562; 110 L. T. 1004; 58 S. J. 473—D.

Breach of Promise of Marriage—Death of Defendant — Action Continued against Executor — Damages — Special Damage — Giving up Millinery Business—Survival of Action.]—Pecuniary loss sustained by a woman through giving up an employment or business in consideration of a promise of marriage, or any similar loss suffered in such circumstances, is not special damage flowing from the breach of the promise to marry so as to be recoverable by her in an action against the personal representative of the promisor. *Quirk* v. *Thomas* (*Executor of*), 84 L. J. K.B. 953; [1915] 1 K.B. 798; 113 L. T. 239; 59 S. J. 350; 31 T. L. R. 237—Lush, J.

Quære, whether an action for damages for breach of promise will in any circumstances lie against the personal representative of a deceased promisor. *Ib.*

Attachment — Executor and Creditor of Estate — Fiduciary Relation — Personal Judgment against Executor — Determination of Fiduciary Relation.]—Where the only creditor of a deceased debtor has obtained in an administration action a personal order against the executor for payment of his certified debt, the fiduciary relation which previously existed between the creditor and executor is determined, and the creditor cannot subsequently pursue any remedy depending on the continued existence of this fiduciary relation. He is not entitled, therefore, to an order against the executor for payment into Court of money in his hands as such executor, or to the subsequent attachment of the executor under the punitive jurisdiction reserved to the Court under the third exception to section 4 of the Debtors Act, 1869. *Thomas, In re; Sutton, Carden & Co.* v. *Thomas*, 81 L. J. Ch. 603; [1912] 2 Ch. 348; 106 L. T. 996; 56 S. J. 571—C.A.

IV. ADMINISTRATION.

See also Vol. VI. 1418, 2039.

a. Debts, Liabilities and Priorities.

Gift of Specific Foreign Realty and Personalty Subject to Legacies and Debts—No Express Exoneration of Residuary Estate — Foreign Personalty Primarily Liable — Foreign Realty not so Liable—Mixed Fund.] A testator appointed executors and gave legacies free of duty and, subject to the payment of the said legacies and duty and his funeral and testamentary expenses and debts, he gave all his real estate situate in the Argentine Republic, together with certain personal property in or about the same, to his trustees upon trust to sell and to pay the proceeds to certain nephews in equal shares, and he gave all the residue of his real and personal estate to the plaintiff. On the question whether the testator had charged his specifically given real and personal estate in the Argentine Republic with the payment of his legacies, duties, expenses, and debts in exoneration of his residuary estate,—*Held*, first, that, as a matter of construction, the charge was confined to the Argentine property. Secondly, that the rule that something must be found in the will to shew that the testator intended not only to charge the realty, but to discharge the personalty, applies to land outside the jurisdiction. Thirdly, that, since there was no trust for conversion for the purposes of satisfying the charge upon the specifically given property, it was not a "mixed fund" within the authority of *Roberts* v. *Walker* (1 Russ. & M. 752). Fourthly, that the specifically given personalty was charged in exoneration of the residuary estate. Fifthly, that the legacies, duties, expenses, and debts were therefore payable out of the several funds in the following order of administration: (*a*) the specifically given personalty, (*b*) the residuary estate, and (*c*) the specifically given realty. *Smith, In re; Smith* v. *Smith*, 83 L. J. Ch. 13; [1913] 2 Ch. 216; 108 L. T. 952—Eve, J.

Proceedings by Beneficiaries — Clause Throwing Costs on Plaintiff—Repugnancy—Claim for Wilful Default.]—A testator by a clause in his will provided that "in case any action or other proceedings for the administration of my estate shall be commenced in the High Court of Justice in the name of any son or daughter or grandchild or reputed grandchild of mine of full age, as plaintiff or plaintiffs, then my trustees shall henceforth stand possessed of moneys to which such

plaintiff or plaintiffs would otherwise have been entitled under this my will in trust to pay thereout in the first place the costs as between solicitor and client of all parties having liberty to attend such action or proceedings and that this present trust shall have priority over all trusts herein declared in favour of such plaintiff." The testator died in 1886, and in 1910 certain grandchildren of the testator commenced proceedings against the trustees for administration on the ground of wilful default. At the hearing, the defendants admitted liability, but contended that they were not liable for costs up to and including the hearing, having regard to the above clause in the will:—*Held*, that the above clause did not apply to the present action, the gist of which was lawful default; and that in any case the clause was repugnant to the gift. *Williams, In re: Williams* v. *Williams*, 81 L. J. Ch. 296; [1912] 1 Ch. 399; 106 L. T. 584; 56 S. J. 325—Swinfen Eady, J.

Estate Consisting Partly of Mortgage Debts —Interest in Arrear at Death—Tenant for Life and Remainderman—Rents of Mortgaged Premises, how Applicable.]—A testator gave an estate consisting partly of mortgage debts to trustees for beneficiaries for life and afterwards for others. Mortgage interest was in arrear at his death. His trustees continued, as he had been, in receipt of the rents of the mortgaged premises:—*Held*, that the rents were applicable, first, in discharge of the arrears due to the estate; next, in payment to the tenants for life of sums not exceeding the mortgage interest; and lastly, as capital. *Coaks, In re; Coaks* v. *Bayley*, 80 L. J. Ch. 136; [1911] 1 Ch. 171; 103 L. T. 799—Warrington, J.

Insolvent Estate—Realisation of Assets—Separate Account—Priority.]—In a creditor's administration suit, in which the general assets turned out to be insufficient to pay the costs of suit in full, the defendants, the executors of the deceased, claimed priority for their costs of suit, as against a secured creditor who had established a charge upon a fund which had been realised in connection with a sale in another suit and had been brought into Court and carried to a separate account:—*Held*, that they could only claim priority for such of their costs of suit as were relative to the separate account. *Bell* v. *Butterly*, [1911] 1 Ir. R. 312—Barton, J.

Specific Gift of French Assets—Executors and Trustees—Sale of French Assets by Trustees — French Succession Duty — Costs Incurred in France—Incidence of Duty and Costs.]—Where trustees of a will incurred costs and paid duties abroad in respect of foreign property specifically bequeathed, they having as executors assented to the bequest,—*Held*, that both the foreign costs and the foreign duty must be borne by the specifically bequeathed property and not by the residue. *Brewster, In re; Butler* v. *Southam* (77 L. J. Ch. 605; [1908] 2 Ch. 365), followed. *Perry* v. *Meddowcroft* (12 L. J. Ch. 104; 4 Beav. 197, 204) doubted. *De Sommery, In re; Coelenbier* v. *De Sommery*, 82 L. J. Ch. 17; [1912] 2 Ch. 622; 107 L. T. 253; 57 S. J. 78—Parker, J.

Promise by Testator to Pay for Alterations in Chapel—Contract Entered into on Faith of Promise—Liability of Testator's Estate.]—A testator promised to defray the cost of certain alterations in a chapel in which he was interested, provided the total expense did not exceed a certain amount. Estimates were obtained and submitted to the testator, and thereafter the provost of the chapel entered into a formal contract for the work. The testator died after some of the work had been executed, but before a contract for the remainder had been entered into:—*Held*, that the testator's estate was liable for the cost of so much only of the work in respect of which a contract had been entered into before the testator's death. *Mountgarret (Viscount), In re: Ingilby* v. *Talbot*, 29 T. L. R. 325—Swinfen Eady, J.

Fraud by Broker—Transactions in Stocks — Claim against Broker's Estate.] — One Franklyn, who carried on business as an outside stockbroker, induced a client to enter into transactions by fraudulent statements that he was buying for her when in fact he was himself selling to her. None of the transactions were genuine purchases or sales, as Franklyn never intended to deliver, and the client never intended to accept, delivery of the stocks. In the result the client incurred a considerable loss:—*Held*, in an action for the administration of Franklyn's estate, that the client's executor was entitled to prove against Franklyn's estate for the amount which the client had placed in Franklyn's hands—first, because the transactions were induced by fraud; and secondly, because Franklyn was in a fiduciary position and the representatives of a deceased trustee were never allowed to say that they could not pay a *cestui que trust* the amount which their testator ought to have paid. *Franklyn, In re; Franklyn* v. *Franklyn*, 30 T. L. R. 187—C.A.

b. Practice.

Manager Appointed by Court to Carry on Testator's Business—Indemnity.]—A manager appointed by the Court in an administration action to carry on the business of a testator in the place of the executor, who had an implied power to carry it on, no particular assets being devoted by the will for that purpose, is entitled to be indemnified by the general assets against liabilities incurred by him in carrying on the business, and the trade creditors are consequently entitled to resort to such assets for payment of their debts. The fact that funds have been carried to the separate credits of legatees does not free such funds from liability in this respect. The effect of carrying funds to a separate credit considered. *O'Neill* v. *McGrorty*, [1915] 1 Ir. R. 1—M.R.

Sale of Land—Approval of Master—Order not Entered—Judge's Refusal to Confirm.]—In an administration suit an estate was ordered to be sold. A contract was entered

into, subject to confirmation by the Court, and approved by the Master, but before the order was passed and entered a third party, a creditor of the estate, offered to purchase the property at a higher price. Upon summonses by the third party for liberty to attend proceedings under the administration order, and by the purchaser for the passing of the Master's order,—*Held*, that the Master's confirmation was ineffective until the order had been passed and entered, and that the Judge had power to re-open the matter and refuse confirmation. *Bartlett, In re; Newman* v. *Hook* (50 L. J. Ch. 205; 16 Ch. D. 561), considered. *Thomas, In re; Bartley* v. *Thomas*, 80 L. J. Ch. 617; [1911] 2 Ch. 389; 105 L. T. 59; 55 S. J. 567—Warrington, J.

—— Order for Sale of Real Estate — Conversion.]—An absolute order for sale of real estate made within the jurisdiction of the Court in an administration action operates as a conversion of such real estate into personalty from the date of the order. *Fauntleroy* v. *Beebe*, 80 L. J. Ch. 654; [1911] 2 Ch. 257; 104 L. T. 704; 55 S. J. 497—C.A.

Following Assets — Secured Creditor — Equitable Right — Acquiescence — Lapse of Time—Delay—Not Amounting to Laches.]—Where mortgagees of a deceased mortgagor have neither actively assented to the distribution of the estate nor prejudiced by their conduct the beneficiaries in realisation, mere delay is not in itself a bar to their commencing a creditors' administration action to enforce their security by following the assets. *Eustace, In re; Lee* v. *McMillan*, 81 L. J. Ch. 529; [1912] 1 Ch. 561; 106 L. T. 789; 56 S. J. 468—Swinfen Eady, J.

Insolvent Estate—Transfer to Bankruptcy Court — Discretion.] — The jurisdiction to transfer administration proceedings from the Chancery Division to the Bankruptcy Court under section 125 of the Bankruptcy Act, 1883, may be exercised at any stage of the proceedings, and therefore after judgment. Such an order will be made where the principal questions to arise will be outside the administration action. *Tarr, In re; Darley* v. *Tarr*, 57 S. J. 60—Eve, J.

Parties—Summons—Real Estate—Creditors' Action by Single Creditor as Individual.]—Since the Land Transfer Act, 1897, it is no longer necessary for a creditor, in order to obtain an order for the administration of real estate, to sue on behalf of himself and all other creditors. *James, In re; James* v. *Jones*, 80 L. J. Ch. 681; [1911] 2 Ch. 348; 106 L. T. 214—Warrington, J.

Costs—Order without Reservation of Costs—Further Consideration.]—In an action against an executor or trustee where the Court, after hearing the facts, makes an order for administration without any reservation of costs, it is not in accordance with the practice to entertain an application on further consideration that the executor or trustee should be ordered to pay costs down to the judgment; but this practice does not extend to a case where the order is made without evidence on both sides, or full discussion, either for the sake of convenience or to save expense, or otherwise in circumstances in which the Court has not a sufficient knowledge of the facts. *Gardner, In re; Roberts* v. *Fry*, [1911] W. N. 155—Eve, J.

—— Trust Fund—Division into Thirds—Ultimate Subdivision of a Third into Moieties—Direction to Pay Testamentary Expenses out of Personalty—Costs of Ascertaining Beneficiaries.]—A testatrix (after giving a general direction for the payment of her testamentary expenses, &c., out of personalty) divided her real and personal residuary estate into thirds, with a direction that, on the happening of certain events (which had occurred), one of these shares should be further subdivided into moieties. The trusts of this last third having been administered by the Court,—*Held*, that each moiety of the third (and not the third as a whole) constituted a share within the meaning of Order LXV. rule 14B; that there were no special circumstances in the case (notwithstanding the presence of the general direction for the payment of testamentary expenses out of personalty) to justify the Court in interfering with the ordinary operation of the rule; and that, accordingly, the costs of ascertaining the beneficiaries of each separate moiety must be borne by each moiety respectively. *Whitaker, In re; Pender* v. *Evans*, 80 L. J. Ch. 63; [1911] 1 Ch. 214; 103 L. T. 657—Neville, J.

V. DISTRIBUTION.

See also Vol. VI. 1582, 2051.

Express Trustee—Earmarking Entries.]—The mere fact that an executor, who is not also appointed a trustee by the will, retains a fund to answer the claim of a particular next-of-kin, is not enough to turn the executor into an express trustee of the fund, but if, in addition, he earmarks the fund as the fund of the particular next-of-kin, and uses express words which shew that he intends to hold the fund, not for himself, but for the persons entitled to it, he does become an express trustee of the fund. *Gompertz Estate, In re; Parker* v. *Gompertz*, 105 L. T. 664; 56 S. J. 11—Warrington, J.

Personal Estate—Settled Residue—Payments by Executors—Adjustment of Accounts between Tenant for Life and Remainderman.]—Where executors at various dates long before the expiration of one year from the death of the testator paid out sums amounting to many thousands of pounds in respect of estate duty, legacy duty, and legacies,—*Held*, that, on taking the account of the share of income due to the tenants for life during the year succeeding the testator's death, the proper mode of adjustment was to charge against them in respect of the sums so paid interest on the capital sum which would with such interest make up the sums so paid, such interest being calculated only from the time of the death of the testator until the respective dates when the payments were in fact made. *McEuen,*

In re; McEuen v. *Phelps*, 83 L. J. Ch. 66; [1913] 2 Ch. 704; 109 L. T. 701; 58 S. J. 82; 30 T. L. R. 44—Sargant, J.

The rule laid down in *Allhusen* v. *Whittell* (36 L. J. Ch. 929; L. R. 4 Eq. 295), that in adjusting accounts between tenant for life and remainderman the executors must be taken to have paid debts and legacies not out of capital only, nor out of income only, but with such portion of capital as, together with the income of that portion for one year, was sufficient for the purpose, is not to be slavishly followed in every case where residue is settled, and should not be applied in a case where large sums have been expended in clearing an estate at intervals considerably prior to the end of the first year. *Lambert* v. *Lambert* (43 L. J. Ch. 106; L. R. 16 Eq. 320) observed upon. *Ib.*

Gift of Specific Foreign Realty and Personalty Subject to Legacies and Debts—No Express Exoneration of Residuary Estate—Foreign Personalty Primarily Liable—Foreign Realty not so Liable—Mixed Fund.]—A testator appointed executors and gave legacies free of duty and, subject to the payment of the said legacies and duty and his funeral and testamentary expenses and debts, he gave all his real estate situate in the Argentine Republic, together with certain personal property in or about the same, to his trustees upon trust to sell and to pay the proceeds to certain nephews in equal shares, and he gave all the residue of his real and personal estate to the plaintiff. On the question whether the testator had charged his specifically given real and personal estate in the Argentine Republic with the payment of his legacies, duties, expenses, and debts in exoneration of his residuary estate,—*Held*, first, that, as a matter of construction, the charge was confined to the Argentine property. Secondly, that the rule that something must be found in the will to shew that the testator intended not only to charge the realty, but to discharge the personalty, applies to land outside the jurisdiction. Thirdly, that, since there was no trust for conversion for the purposes of satisfying the charge upon the specifically given property, it was not a "mixed fund" within the authority of *Roberts* v. *Walker* (1 Russ. & M. 752). Fourthly, that the specifically given personalty was charged in exoneration of the residuary estate. Fifthly, that the legacies, duties, expenses, and debts were therefore payable out of the several funds in the following order of administration: (*a*) the specifically given personalty, (*b*) the residuary personal estate, and (*c*) the specifically given realty. *Smith, In re; Smith* v. *Smith*, 83 L. J. Ch. 13; [1913] 2 Ch. 216; 108 L. T. 952—Eve, J.

Intestacy—Children Taking by Representation Debt of Parent to the Intestate—Original Title of the Children.]—Where a father had covenanted with his brother to pay off a mortgage debt, and had died without carrying out such covenant, leaving four children, and the brother had subsequently died intestate,—*Held*, that the four children were entitled to receive their share of the personal estate of the intestate without first making good to the estate of the intestate the moneys secured by the mortgage; for although they did in fact take a distributive share between them as the persons who legally represented their father, yet they nevertheless took by original title, and not under or through their father. *Gist, In re; Gist* v. *Timbrill* (75 L. J. Ch. 657; [1906] 2 Ch. 280), followed. *White, In re; White* v. *White*, 111 L. T. 274; 58 S. J. 611—Sargant, J.

EXTENT, WRIT OF.

See EXECUTION.

EXTRADITION.

I. EXTRADITION ACTS AND TREATIES.

See also Vol. VII. 1, 1655.

British Subject—Offence Committed in France—Requisition by French Diplomatic Agent.]—Where, under the Extradition Act, 1870, and the treaties with France of 1876 and 1908, a British subject is sought to be extradited from England to France, the only requisition necessary is a requisition by the French diplomatic agent. It is not necessary that there should also be a requisition by the diplomatic agent of the British Government. *Rex* v. *Brixton Prison (Governor); Wells, Ex parte*, 81 L. J. K.B. 912; [1912] 2 K.B. 578; 107 L. T. 408; 76 J. P. 310; 23 Cox C.C. 161; 28 T. L. R. 405—D.

France—Time within which Surrender to Take Place—Fugitive "committed to prison"—"Two months after such committal"—Lapse of Two Months from Arrest of Fugitive.]—Article X. of the Extradition Treaty with France, signed August 14, 1876, provides that "if the fugitive criminal who has been committed to prison be not surrendered and conveyed away within two months after such committal, or within two months after the decision of the Court upon the return to a writ of *habeas corpus* in the United Kingdom, he shall be discharged from custody, unless sufficient cause be shewn to the contrary":—*Held*, that the words "committed to prison" in the article mean committed to prison by the magistrate to await surrender to the French Government, and that therefore the period of two months within which the fugitive criminal must be surrendered runs from the date of such committal and not from the date of the arrest. *Rex* v. *Brixton Prison (Governor); Mehamed Ben Romdan, Ex parte*, 81 L. J. K.B. 1128;

[1912] 3 K.B. 190; 76 J. P. 391; 28 T. L. R. 530—D.

—— **Treaty Expressed in Two Languages.**]—Where the articles of an extradition treaty with a foreign country are expressed both in the English language and in a foreign language, the English Courts, in construing the treaty, can only look at the English version of the treaty. *Ib.*

French Subject — Robbery with Violence — Conviction and Sentence in France — Prison Breach — Flight to England — "Fugitive criminal" — Extradition Order — Validity — Habeas Corpus.]—M., a French subject, was convicted and sentenced in France for robbery with violence, a crime for which, by the Extradition Treaty, 1876, between Great Britain and France, extradition is to be granted. While he was serving his sentence he broke prison, and fled to England. The French police applied for his extradition on the ground that he was a fugitive criminal who had been convicted of an extradition crime, and the magistrate made an order of committal under section 10 of the Extradition Act, 1870. An application was then made on his behalf for a rule *nisi* for a writ of *habeas corpus* on the ground that, his crime of robbery with violence having become merged in his conviction, the crime for which he was now sought to be extradited was that of prison breach, which was not an extradition crime; and, further, that he was not a "person who had been convicted of a crime" within the meaning of Article I. of the Extradition Treaty between Great Britain and France, 1876:—*Held*, refusing the rule, that M. was a "fugitive criminal" within the meaning of section 10 of the Extradition Act, 1870, and also a "person who had been convicted of a crime" within the meaning of Article I. of the Extradition Treaty between Great Britain and France, 1876, and that therefore the order of committal was good. *Held*, further, that the words "*poursuivi pour vol*," as used in the documents sent from France, meant "prosecuted to conviction for," and not merely "charged with" robbery, and that the magistrate, in committing the applicant on the ground that he had been convicted, had not therefore made an order in respect of an offence for which the extradition had not been demanded. *Moser, Ex parte*, 84 L. J. K.B. 1820; [1915] 2 K.B. 698; 113 L. T. 496; 31 T. L. R. 384, 438—D.

Germany—Grounds for Refusing Extradition —"Tried and discharged."]—Article IV. of the Extradition Treaty with Germany of 1872 provides that "The extradition shall not take place if the person claimed . . . has already been tried and discharged or punished . . . in the United Kingdom . . . for the crime for which his extradition is demanded":—*Held*, that, in order to claim the benefit of that article, there must have been a trial of the person for the crime alleged against him, accompanied by an acquittal or a sentence of punishment; and that the discharge of the person owing to some informality in the procedure on a preliminary enquiry in which the charge could not have been finally decided was not sufficient to enable him to escape extradition. *Rex* v. *Brixton Prison (Governor); Stallmann, In re*, 82 L. J. K.B. 8; [1912] 3 K.B. 424; 107 L. T. 553; 77 J. P. 5; 23 Cox C.C. 192; 28 T. L. R. 572—D.

—— **Obtaining Money by Cheating at Cards—False Pretences.**]—Section 17 of the Gaming Act, 1845, provides that "Every person who shall by any fraud . . . in playing at or with cards, . . . win from any other person to himself, or any other or others, any sum of money or valuable thing, shall be deemed guilty of obtaining such money or valuable thing from such other person by a false pretence, with intent to cheat or defraud such person of the same, and, being convicted thereof, shall be punished accordingly." A person, therefore, who obtains money or a valuable security by cheating at cards can be extradited under the Extradition Treaty with Germany of 1872 for obtaining money or goods by false pretences, notwithstanding that the offence under section 90 of the Larceny Act, 1861, of inducing a person by a false pretence, with intent to defraud, to accept or indorse a valuable security, was only made an extradition crime by the Extradition Act, 1873, and therefore does not come within the Extradition Treaty with Germany of 1872. *Rex* v. *Brixton Prison (Governor); Stallman, In re*, 82 L. J. K.B. 8; [1912] 3 K.B. 424; 107 L. T. 553; 77 J. P. 5; 23 Cox C.C. 192; 28 T. L. R. 572—D.

Italy—Order in Council—No Formal Proof of Order—Committal—Habeas Corpus—Jurisdiction of Committing Magistrate.]—Where a foreign State demands the surrender of a criminal fugitive and an Order in Council is in existence applying the Extradition Acts to that State, a writ of *habeas corpus* will not be granted for his discharge, after committal for extradition, on the mere ground that the Order in Council was not formally proved before the committing magistrate. *Rex* v. *Brixton Prison (Governor); Servini, Ex parte*, 83 L. J. K.B. 212; [1914] 1 K.B. 77; 109 L. T. 986; 78 J. P. 47; 23 Cox C.C. 713; 58 S. J. 68; 30 T. L. R. 35—D.

A prisoner, who had been arrested in England on the requisition of the Italian Government, was brought before a Metropolitan police magistrate and committed by him to Brixton Prison for the purpose of extradition on charges of forgery and other offences alleged to have been committed in Italy. The Order in Council applying the Extradition Acts to Italy, although in existence, in accordance with the general practice of the police Court in extradition cases was not formally proved before the committing magistrate, nor was any objection taken on behalf of the prisoner to this omission. A rule *nisi* to shew cause why a writ of *habeas corpus* should not be issued on the ground (*inter alia*) that no proof of the Order in Council was given having been obtained,—*Held* (by Ridley, J., and Scrutton, J.; Bailhache, J., *dubitante*), that a writ of *habeas corpus* ought not to be granted, as there had merely been an omission to give formal evidence on a matter necessary to give juris-

diction to the committing magistrate, although there was in fact no question as to the existence of such jurisdiction. *Ib.*

Per Scrutton, J.: It was desirable that in future in every case the Order in Council should be formally proved, because it might be of importance to the prisoner to know whether it contained any provisions which might assist him. *Ib.*

Requisition for Surrender not in Form Prescribed by Treaty—Order by Home Secretary to Arrest—Jurisdiction of Magistrate.]—A warrant for the arrest of a French subject who was in England was issued by a French magistrate, but the depositions accompanying the requisition for surrender were taken before a Belgian official. The treaty between this country and France required that the requisition for the surrender of the accused should be accompanied by depositions taken before the same magistrate as had issued the warrant of arrest. Nevertheless, the Home Secretary issued an order to a London magistrate requesting him, if there were due cause, to issue a warrant of arrest. The magistrate, after hearing evidence, issued the warrant:—*Held*, that, as the requirements as to depositions were procedure only, the magistrate had jurisdiction to issue the warrant, and that it was not essential to the validity of the order of the Home Secretary that the procedure in France should have been regular. *Rex* v. *Brixton Prison (Governor); Thompson, Ex parte*, 80 L. J. K.B. 986; [1911] 2 K.B. 82; 105 L. T. 66; 75 J. P. 311; 22 Cox C.C. 494; 27 T. L. R. 350—D.

II. FUGITIVE OFFENDERS ACT, 1881.

See also Vol. VII. 1658.

Committal—Order Nisi for Habeas Corpus Discharged by High Court—Original Application to Court of Appeal for Relief—Res Judicata.]—A native of India having, under section 5 of the Fugitive Offenders Act, 1881, and in pursuance of an Indian warrant charging him with certain offences, been committed to prison by a Metropolitan police magistrate to await his return to India, an application was made on his behalf to the King's Bench Division of the High Court of Justice for an order *nisi* for a writ of *habeas corpus* addressed to the governor of the prison. The King's Bench Division made an order *nisi* calling upon the governor of the prison to shew cause why a writ of *habeas corpus* should not issue directed to him to bring the body of the applicant before the Court. This order was expressed to be made on various grounds, one of which was that (following the words of section 10 of the Fugitive Offenders Act, 1881) it would be "unjust or oppressive or too severe a punishment to return" the applicant to India, because the alleged offences were of a "trivial nature," and because the application for his return was not "made in good faith in the interests of justice." On the hearing of the argument on cause being shewn before the King's Bench Division questions arising under section 10 of the Fugitive Offenders Act were discussed by counsel and were considered by the Judges in their judgments, but the order of the Court as drawn up and perfected was simply an order that the order *nisi* should be discharged. The Court of Appeal having dismissed an appeal by the applicant from that decision on the ground that it was a decision in a criminal cause or matter, the applicant made an original application to the Court of Appeal to exercise in his favour the powers conferred on the Court by section 10 of the Fugitive Offenders Act, which empowers a "superior Court" in the circumstances therein mentioned to discharge the applicant or make such other order as to the Court seems just. The objection was taken on the part of the Crown that, assuming the Court of Appeal to be by virtue of section 39 of the Fugitive Offenders Act a "superior Court" within the meaning of section 10, having concurrent jurisdiction with the High Court, this application could not be entertained, for the matter of the application was *res judicata* between the applicant and the Crown:—*Held*, that, inasmuch as the only matter which the records of the Court shewed to have been adjudicated by the King's Bench Division was that the order *nisi* for a writ of *habeas corpus* should be discharged, the matter of this application was not *res judicata*, and therefore the Court of Appeal had jurisdiction to entertain the application. *Rex* v. *Brixton Prison (Governor); Savarkar, Ex parte*, 80 L. J. K.B. 57; [1910] 2 K.B. 1056; 103 L. T. 473; 26 T. L. R. 561—C.A.

FACTORS ACT.

See PRINCIPAL AND AGENT.

FACTORY.

See MASTER AND SERVANT.

FACULTY.

See ECCLESIASTICAL LAW.

FAIR.

See MARKET.

FALSE IMPRISONMENT.

See MALICIOUS PROCEDURE.

FALSE PRETENCES.

See CRIMINAL LAW.

FATAL ACCIDENTS ACT.

See NEGLIGENCE.

FENCE.

Duty of Owner of Land.]—*See* COMMONS.

FERRY.

See WAY.

FERTILISERS AND FEEDING STUFFS.

See LOCAL GOVERNMENT.

FINE.

See REVENUE.

FINES AND RECOVERIES.

See SETTLEMENT.

FIRE.

See INSURANCE; RAILWAY.

Liability for Death of Prisoner.]—*See* NEGLIGENCE.

Liability of Shipowner.] —*See* SHIPPING (Bill of Lading).

FISH AND FISHERIES.

1. PUBLIC RIGHTS.

See also Vol. VII. 84, 1665.

River Navigable and Floatable—Exclusive Right of the Crown to Fishing—Letters Patent—Construction.]—The appellants were grantees of lands on both sides of a river which was shewn by the evidence to be navigable and floatable at such locality and from thence to its mouth :—*Held*, that the right of fishing in the river vested exclusively in the Crown, and that, as the letters patent to the appellants in 1883 granting the said lands were plain and unambiguous in their terms and did not specifically grant rights of fishing in the river opposite thereto, the patentees could not claim such rights under previous or subsequent correspondence as enlarging the terms of the grants, or by reason of such rights having been exercised by them continuously from the date of the patents without hindrance or interference. *Wyatt* v. *Att.-Gen. of Quebec*, 81 L. J. P.C. 63; [1911] A.C. 489; 105 L. T. 259—P.C.

Navigable Non-tidal Lake—Public User for Centuries—Prescription—Documentary Title—Evidence.]—The Crown is not of common right entitled to the soil or waters of an inland non-tidal lake, and no right can exist in the public to fish in such waters. One and the same law applies to inland non-tidal waters whatever may be the area of the water space. *Johnston* v. *O'Neill*, 81 L. P. P.C. 17; [1911] A.C. 552; 105 L. T. 587; 55 S. J. 686; 27 T. L. R. 545—H.L. (Ir.)

The respondents claimed the exclusive right of fishing for eels in lough Neagh and over a great stretch of the river Bann, under grants from the Crown to their predecessors in 1605 and later documents; that the Crown had a title to make the grants; that they and their predecessors had continuously possessed and enjoyed the fishery in the river and possessed the fishery on the lough, and that their predecessors had also received rents from others for the fishery in the lough itself, and that, although the public had in fact always fished in the lough, they had done so by indulgence and not of right. The appellants claimed that the public can in law have a right of fishery in non-tidal waters, and that the respondents had not established their documentary title, and the action of the respondents did not lie :—*Held* (The Lord Chancellor, Lord Shaw, and Lord Robson dissenting), that the respondents had established their documentary title, and were entitled to an injunction to restrain the appellants from fishing. *Ib.*

2. Fishery Acts.

See also Vol. VII. 90, 1667.

Fishing within "exclusive fishery limits of the British Islands"—Foreigner not Subject of a Power Signatory to Convention.]—The Sea Fisheries Act, 1883, enacts that no person on board a foreign sea-fishing boat shall fish within "the exclusive fishery limits of the British Islands"; these limits being defined in the Act as that portion of the sea within which British subjects have, by international law, the exclusive right of fishing or, where such portion is defined by any convention with any foreign State, as regards the subjects of that State, the portion so defined. By Article II. of a convention between Great Britain and certain States (of which Norway is not one) which appears in a schedule to, and is incorporated with, the Act, it is provided that the fishermen of each country shall, as regards bays, have the exclusive right of fishing within three miles of a straight line drawn across the bay at a point described. A Norwegian subject, the master of a trawler registered in Norway, having been convicted on a complaint which set forth that, contrary to the Act, he had fished "within the exclusive fishing limits of the British Islands as defined by Article II." of the schedule—namely, at a point within three miles of the line drawn across a certain bay,—*Held*, that the accused, not being the subject of a signatory nation, was not bound by the provisions of the convention, and that, accordingly, as the *locus* of the offence was defined in the complaint by reference to these provisions, the complaint was bad, and the conviction must be quashed. *Jensen* v. *Wilson*, [1912] S. C. (J.) 3—Ct. of Just.

Powers of Sea Fishery Officer—Power to "take" Offending Trawler to Nearest Port—Trawler Ordered to "go" to Nearest Port.]—A sea fishery officer, who had reasonable grounds for believing that he had detected a trawler fishing within the three mile limit, ordered the captain to go with his vessel to C., which was the nearest and most convenient port. At the time the sea was too rough to permit of a boat being sent to the trawler to put any one on board:—*Held*, that the order to go to C. was a lawful order, although the only express authority given by section 12 of the Sea Fisheries Act, 1883, was authority to "take" the offender to port, and that the master of the trawler by refusing to comply was guilty of a contravention of section 14, sub-section 2 of the Act. *Semble*, the order would have been lawful even if the weather had permitted of a boat being sent to the trawler. *Held*, further, that, as the officer had reasonable grounds for believing that the master had been trawling within the three-mile limit, the lawfulness of the order was not affected by the fact that the charge against the master was subsequently found to be not proved. *Gordon* v. *Hanson*, [1914] S. C. (J.) 131—Ct. of Just.

Trawling — Prohibition — By-law — Validity.]—Under the Sea Fisheries Regulation Act, 1888, s. 2, the Devon local committee made a by-law which prohibited trawling within a certain area. The by-law was made for the protection of a crab fishery:—*Held*, that the by-law was not *ultra vires*. *Friend* v. *Brehout*, 111 L. T. 832; 79 J. P. 25; 58 S. J. 741; 30 T. L. R. 587—D.

3. Private Fisheries.

See also Vol. VII. 91, 1667.

Unlimited Commercial Right of Fishing in Alieno Solo—Freeholders of Manor—Presumption of Charter.]—An unlimited commercial right of fishing *in alieno solo* cannot pass as appurtenant to a freehold, and in the absence of evidence a grant to a corporation cannot be presumed from the assertion and exercise of such an alleged right, for however long a period, by individual freeholders. *Harris* v. *Chesterfield (Earl)*, 80 L. J. Ch. 626; [1911] A.C. 623; 105 L. T. 453; 55 S. J. 686; 27 T. L. R. 548—H.L. (E.)

Canal—Reservation to Landowners of Right to Fish—Right to Fish from Towing Path—Appurtenant or in Gross—General Words in Conveyance—Lease of Fishery to Angling Club—Estoppel.]—By a canal Act it was provided that the owners of land through which the canal was made should be entitled to a right of fishery in the canal, but so that the towing path should not be thereby prejudiced or obstructed. Part of the land was in 1845 conveyed without any mention of the fishery to a purchaser who leased the fishery to an angling club of which the defendant was a member:—*Held*, that the right to fish carried with it the right to use the towing path, but that the fishery was a right in gross and did not pass under the general words in the conveyance of 1845, and therefore the defendant had no right to use the towing path. *Chesterfield (Earl)* v. *Harris* (77 L. J. Ch. 688; [1908] 2 Ch. 397) applied. *Staffordshire and Worcestershire Canal Navigation* v. *Bradley*, 81 L. J. Ch. 147; [1912] 1 Ch. 91; 106 L. T. 215; 56 S. J. 91—Eve, J.

Disturbance of — Penalties — Action for Damages.]—The lessee of a dwelling house and premises and of certain rights of fishing attached to the demised premises sued the occupiers of a mill on the stream in which the fishing rights were enjoyed in respect of certain acts which the plaintiff alleged obstructed the free passage of salmon to and from the sea and destroyed large numbers of young fish. An objection was taken that an action for damages for the injury to the fishery and for an injunction restraining the continuance or repetition of the acts complained of would not lie in view of the penalties imposed by the Salmon Fishery Acts:—*Held* (Kennedy, L.J., *dubitante*), that the Legislature had provided means for enforcing the prohibitions in the Acts, and that was the proper mode to deal with such a case as the present; and that, although an illegal act causing special and peculiar damage to the property of another person might justify an action to abate the mischief, it could not be said that any and

every person having fishery rights in the river in question could maintain an action against the mill owners, but some special and definite damage clearly attributable to the illegal act must be established. *Stevens* v. *Chown* (70 L. J. Ch. 571; 1901] 1 Ch. 894) approved. *Fraser* v. *Fear*, 107 L. T. 423; 57 S. J. 29—C.A.

Held, also (Farwell, L.J., *dissentiente*), that the plaintiff had failed in proving that any property right had been substantially interfered with. *Ib.*

4. Salmon Fishery.

See also Vol. VII. 103, 1670.

Device for Catching—Device for Catching Fish Placed on Apron of Weir.]—Sluice gates or hatches extended over the entire width of a salmon river, which were raised or lowered from a platform above. When lowered the passage of the water was entirely barred, and it flowed off elsewhere. When a hatch was opened the water dropped down sloping masonry and then up and along a wooden platform, the entrance to which rested on the slope at two points, which led to a trap for taking eels. The water flowed into culverts with hard, smooth flat bottoms, and thence into a pool below:—*Held* (Rowlatt, J., *dubitante*), that the above structure was a weir and the aprons of the hatches were the apron of the weir, and that the wooden platform was a device for taking fish placed upon the apron of a weir within section 15 of the Salmon Fishery Act, 1873. Spent or injured salmon had at times been found in the trap:—*Held*, that it was a device for catching salmon within the meaning of section 36 of the Salmon Fishery Act (1861) Amendment Act, 1865, although intended only to catch eels. *Lyne* v. *Leonard* (37 L. J. M.C. 55; L. R. 3 Q.B. 156) followed. *Maw* v. *Holloway*, 84 L. J. K.B. 99; [1914] 3 K.B. 594; 111 L. T. 670; 78 J. P. 347—D.

Drift Net—"Fixed engines"—Nuisance at Common Law.]—The use of drift nets in a tidal channel for the capture of salmon by night from boats which are not moored or anchored, the nets moving with the tide and the salmon becoming enmeshed in the nets, is not illegal, such nets being licensed under the Irish Fishery Acts and regulated in many districts by by-laws under those Acts. Such nets are not an obstruction to the free passage of fish, and are not a nuisance at common law as "fixed engines" prohibited by the Acts. *Irish Society* v. *Harold*, 81 L. J. P.C. 162; [1912] A.C. 287; 106 L. T. 130; 28 T. L. R. 204—H.L. (Ir.)

Wedderburn v. *Atholl (Duke)* ([1900] A.C. 403) distinguished as being an exclusively Scottish decision, inapplicable to Ireland. *Ib.*

Decision of the Court of Appeal in Ireland, *sub nom. Irish Society* v. *Fleming* ([1911] 1 Ir. R. 323), affirmed. *Ib.*

Using Net without Licence—Net not Actually Put into Water.]—In order to constitute the offence of "using" a net for catching salmon without having a proper licence under section 36 of the Salmon Fishery Act, 1865, it is not necessary that the net should have been actually put into the water. If the Justices are of opinion that the person charged was on the river for the purpose of catching salmon, and had the net with him for that purpose, it is sufficient to justify them in convicting him under the section. *Moses* v. *Raywood*, 80 L. J. K.B. 823; [1911] 2 K.B. 271; 105 L. T. 76; 75 J. P. 263; 22 Cox C.C. 516—D.

Pollution—Private Owner's Tank Waggon—Leakage of Creosote—"Causing" Creosote to Flow into Stream.]—By section 5 of the Salmon Fishery Act, 1861, "Every person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters containing salmon, or into any tributaries thereof, any liquid or solid matter to such an extent as to cause the waters to poison or kill fish, shall incur" certain penalties. Whilst a tank waggon, belonging to a private owner, which contained creosote, was travelling on the respondents' railway, the creosote, owing to a defective tap, leaked from the waggon through the permanent way into a stream which was a tributary of a salmon river, and killed fish. The waggon shewed no defect on examination before the train started, and there was no neglect or default on the part of the respondents:—*Held*, that the respondents had not "caused" the creosote to flow into the stream within the meaning of section 5 of the Act. *Moses* v. *Midland Railway*, 84 L. J. K.B. 2181; 113 L. T. 451; 79 J. P. 367; 31 T. L. R. 440—D.

FIXTURES.

See also Vol. VII. 119, 1673.

Carvings — Settlement — Sale under Settled Land Acts — Will — Construction — "Pictures and other works of art or curiosity"—Legatee and Devisees in Remainder.]—A testator devised his mansion house in strict settlement, and bequeathed to the first life tenant (subject to a bequest of certain personalty upon trusts to follow the settled estate) all his "pictures and other works of art or curiosity" absolutely. The house contained certain carvings in wood fixed to the walls by nails, screws, or pegs, serving as overmantels or as frames to pictures, which had been in the house, and (with a few exceptions) in their original positions, even since it was rebuilt about two hundred years before. The first tenant for life sold one of these pieces of carving, and claimed the proceeds of sale under the bequest to him. On a summons by the trustees of the settlement,—*Held*, that the carvings were fixtures and formed part of the mansion house, and that they were not included in the bequest, and that the proceeds of sale were capital money subject to the settlement. *Chesterfield's (Lord) Settled Estates, In re*, 80 L. J. Ch. 186; [1911] 1 Ch. 237; 103 L. T. 833—Joyce, J.

Covenant by Tenant to Complete Fittings to Shop — Covenant to Deliver up Demised Premises in Good Repair—Tenant's Right to Remove Trade Fixtures Affixed in Pursuance of Covenant.]—By the lease of an unfinished shop the lessees covenanted at their own expense to "complete and finish . . . all necessary fittings for the carrying on of the trade of a provision merchant," and also to deliver up the demised premises in good repair at the end of the term. In pursuance of their covenant the lessees affixed certain fittings to the premises which became "trade fixtures," and they removed them shortly before the end of the term :—*Held* (Vaughan Williams, L.J., dissenting), that the covenant in the lease did not take away the right of the lessees during the term to remove the fittings as trade fixtures. *Mowats* v. *Hudson*, 105 L. T. 400 —C.A.

Larceny—Tenancy Agreement Entered into with Intention to Steal Fixtures.]—Where a person enters into an agreement for the lease of a house with the fraudulent intention of stealing the fixtures on getting into possession, and where in fact he steals the fixtures on entering into possession, he is guilty of larceny under section 31 of the Larceny Act, 1861. *Rex* v. *Munday* (2 Leach C.C. 991) followed. *Rex* v. *Richards*, 80 L. J. K.B. 174; [1911] 1 K.B. 260; 104 L. T. 48; 75 J. P. 144; 22 Cox C.C. 372—C.C.A.

FOOD.

See LOCAL GOVERNMENT: METROPOLIS.

FOREIGN JUDGMENT.

See INTERNATIONAL LAW.

FORESHORE.

See SEA AND SEASHORE.

FORGERY.

See CRIMINAL LAW.

FRANCHISE.

See ELECTION LAW.

FRAUD AND MISREPRESENTATION.

See also Vol. VII. 159, 1679.

Action of Deceit—False Statements to Parties other than the Plaintiff—Plaintiff Acting on False Statement to his Detriment—Intention of Defendant to Induce Persons to Sell Shares—Direction to Jury.]—The appellant brought an action of deceit against the respondent for damages for causing the appellant to sell certain shares in a company at an undervalue. The respondent, under pressure and not of his own motion, had made an untrue statement to a third party, a broker, and subsequently voluntarily to other parties, with the effect of depressing the shares in the market to the detriment of the appellant, who had acted on such statement. At the trial, the Judge directed the jury that to render the respondent liable they must find that there must have been a direct intention on his part that people should be induced to sell shares, and that he must have had the intention when he made his statement of making people sell. The jury having absolved the respondent from fraud,—*Held*, that there had been no misdirection on the part of the Judge, and therefore no ground for granting a new trial. *Tackey* v. *McBain*, 81 L. J. P.C. 130; [1912] A.C. 186; 106 L. T. 226 —P.C.

—— Misrepresentation without Fraud—Confidential Relation — Solicitor and Client — Negligence.]—Nothing short of proof of a fraudulent intention in the strict sense will suffice to maintain an action of deceit, but an action for damages for negligence may lie, without evidence of an actual intention to deceive, where a confidential relationship exists, such as that of solicitor and client, so that the person to whom a representation was made was entitled to rely, and did in fact rely, upon it, and sustained damage in consequence. The necessity of proving moral fraud in order to succeed in an action of deceit has not narrowed the scope of this remedy. *Derry* v. *Peek* (58 L. J. Ch. 864; 14 App. Cas. 337) discussed and explained. *Nocton* v. *Ashburton* (*Lord*), 83 L. J. Ch. 784; [1914] A.C. 932; 111 L. T. 641; 30 T. L. R. 602—H.L. (E.)

Letting of House—Untrue Representation by Defendant Made to Landlord's Agents as to Character of Tenant—Knowledge of Agents as to Tenant's Character—Notice to Landlord—Reliance by Landlord on Representation.]—Where a defendant has made a statement untrue to his knowledge to induce another, whom he does not believe to know its untruth, to act upon it, and that other has acted upon it in ignorance and to his damage, the maker of the false representation cannot protect himself by proving that the agent of the other knew of the untruth. *Wells* v. *Smith*, 83 L. J. K.B. 1614; [1914] 3 K.B. 722; 111 L. T. 809; 30 T. L. R. 623—Scrutton, J.

The knowledge of an agent, not acquired in the course of his employment for the principal, cannot be imputed to the principal. *Ib.*

Sale of Bonds—Rescission—Innocent Misrepresentation.]—Bonds of a Dutch company, having property in America, were purchased on the faith of a representation that they were a charge on the property. They were not in fact a charge on the property, but the representation was made innocently :—*Held*, that the sale would not be set aside. *Seddon* v. *North-Eastern Salt Co.* (74 L. J. Ch. 199; [1905] 1 Ch. 326) followed. *Lecky* v. *Walter*, [1914] 1 Ir. R. 378—M.R.

FRAUDS, STATUTE OF.

See CONTRACT; TRUST AND TRUSTEE.

FRAUDULENT CONVEYANCE.

Ante-nuptial Settlement—Intent to Defeat or Delay Creditors—Inference of Intent—Interest to Daughter by Previous Marriage.]—A voluntary settlement may be declared void, as against the settlor's trustee in bankruptcy, without proof of actual intention to defeat or delay creditors if the circumstances of the particular case be such that the settlement must necessarily have that effect. A settlement by a widower on re-marriage is voluntary as regards a daughter by a previous marriage interested therein. *Freeman* v. *Pope* (39 L. J. Ch. 689; L. R. 5 Ch. 538) followed. *Carruthers* v. *Peake*, 55 S. J. 291—Warrington, J.

Intention to Defeat and Delay Creditors—13 Eliz. c. 5.]—A deed of assignment made in good faith by a debtor in favour of his creditor is not rendered invalid under the statute 13 Eliz. c. 5, by reason of its being made with the express intention of defeating some other particular creditor or creditors of the assignor. *Glegg* v. *Bromley*, 81 L. J. K.B. 1081; 106 L. T. 825—C.A.

A wife who was in debt to her husband for a large advance executed a deed of assignment by which she assigned to him the sum of money to which she might become entitled by virtue of a pending action of slander in which she was plaintiff. Her husband then made her a further advance to enable her to prosecute the action. The wife subsequently recovered a verdict in the action for damages. A judgment creditor of the wife thereupon served a garnishee order *nisi* attaching the damages which she had recovered :—*Held*, that the deed of assignment was not invalid either for want of consideration or as savouring of champerty, or under the statute 13 Eliz. c. 5, and that the husband, as assignee under the deed, was entitled to the damages recovered by the wife as against the execution creditor. *Ib.*

Post-nuptial Settlement—Recital of Ante-nuptial Agreement—Intention to Defeat or Delay Creditors.]—A recital in a post-nuptial deed of settlement that the settlement is made in pursuance of a parol ante-nuptial agreement is a memorandum in writing sufficient to satisfy the Statute of Frauds; but it does not dispense with the necessity of proving that the recited ante-nuptial agreement was actually made. Validity of a post-nuptial setlement under 13 Eliz. c. 5, and section 47 of the Bankruptcy Act, 1883, considered. *Gillespie, In re; Knapman* v. *Gillespie*, 20 Manson, 311—Horridge, J.

Judgment against Partner — Transfer of Business to Company—Consideration—Shares and Debentures—Notice to Company—Setting Aside.]—On November 27, 1907, an injunction was granted, at the suit of H. & Co., who were former partners of G., restraining G. from manufacturing under a certain patent in breach of an agreement. G. was then in partnership with J., in a business of the same character. On November 29, 1907, G. and J. entered into an agreement to sell to a company, which was formed for the purpose, the goodwill of their business, and all their interest in the business, and all the assets to which they were entitled in relation to it. The consideration for the sale was 1,050*l.*, paid by allotting to G. and J. 793 fully paid ordinary shares of 1*l.* each in the company, paying them 7*l.* in cash, and issuing two debentures for 125*l.* each to their nominees. The nominal capital of the company was 800*l.*, in 800 1*l.* ordinary shares. The same solicitor acted in the promotion of the company and for J. in reference to the transaction. J. was by the agreement to be first managing director of the company, at a minimum salary of 150*l.* per annum. In September, 1908, G. was adjudicated a bankrupt. H. & Co. were the principal creditors :—*Held*, that the company had notice of the character of the transaction; that an object of the formation of the company, and of the assignment to it of the property of the partnership under the agreement, was to defeat and delay the creditors of G., as well as to avoid the consequences of the injunction granted against him; and that the transaction must be set aside as fraudulent and void under 13 Eliz. c. 5. *Gonville's Trustee* v. *Patent Caramel Co.*, 81 L. J. K.B. 291; [1912] 1 K.B. 599; 105 L. T. 831; 19 Manson, 37—Phillimore, J.

Whether Conveyance a Fraud on Creditors—Existing Creditors Paid off—Future Creditor.]—In the absence of any express intention to defraud, a voluntary deed will not be set aside at the instance of a creditor whose debt comes into existence after its date, if all creditors existing at the date of the deed have been paid off. *Kelleher, In re*, [1911] 2 Ir. R. 1—C.A.

Voluntary Conveyance — Subsequent Purchaser for Value—Onus of Proving that Conveyance was made Bona Fide.]—Where a voluntary conveyance of lands is impeached by a subsequent purchaser for value, the onus of proving that such conveyance was made *bona fide* and without fraudulent intent, so as to bring it within the protection of section 2 of the Voluntary Conveyances Act, 1893, lies

on the party seeking to uphold such voluntary conveyance—*National Bank* v. *Behan*, [1913] 1 Ir. R. 512—M.R.

FRAUDULENT PREFERENCE.

See BANKRUPTCY.

FREIGHT.

See SHIPPING.

FRIENDLY SOCIETY.

A. SOCIETIES WITHIN THE ACTS.

See also Vol. VII. 433, 1691.

Enlargement of Objects—Special Resolution—Memorandum of Association—Parties to Proceedings.]—A friendly society registered under the Friendly Societies Act, 1896, passed a special resolution under section 71 to convert itself into a limited company having a memorandum of association with enlarged objects, so that, according to the decision of the Court in *Blythe* v. *Birtley* (79 L. J. Ch. 315; [1910] 1 Ch. 228) the resolution was invalid. On July 31, 1908, the Registrar of Joint-Stock Companies issued a certificate of incorporation of the company. In 1910 the plaintiff, suing on behalf of himself and all other shareholders of the company, moved for an injunction to restrain the company from carrying out any of the powers stated in the memorandum of association which were in excess of the powers possessed by a friendly society:—*Held*, that whatever relief the plaintiff might be entitled to in properly constituted proceedings, he could not while suing as a member of the company claim to restrain the company from carrying on any of the objects stated in its memorandum of association, and that the injunction must therefore be refused. *McGlade* v. *Royal London Mutual Insurance Society*, 79 L. J. Ch. 631; [1910] 2 Ch. 169; 103 L. T. 155; 17 Manson, 358; 54 S. J. 505; 26 T. L. R. 471—C.A.

Conversion into Limited Company—Members—Validity of Special Resolution.]—It was decided to convert a friendly society registered under the Friendly Societies Act, 1896, into a limited company under section 71 of the Act, and this was effected in 1913 by special resolution. No names were subscribed to the memorandum of association, and no shares had been allotted to any persons. In 1914 the company purported to pass and confirm a special resolution, by which the objects clause of the memorandum was altered and extended:—*Held*, that upon the conversion of a friendly society, under section 71 of the Friendly Societies Act, 1896, into a limited company, the members of the society are not simultaneously converted into members of the company; that at the date of the resolution of 1914 no persons had so far agreed to become members of the company, and that the resolution was not effectively passed. *Blackburn Philanthropic Assurance Co., In re*, 84 L. J. Ch. 145; [1914] 2 Ch. 430; 21 Manson, 342; 58 S. J. 798—Eve, J.

—— **Consent of Members.**]—By the rules of a registered friendly society it was provided that meetings for the "management of the society" should consist of "delegates" elected by the members:—*Held*, that a resolution for the conversion of the society into a limited company, in terms of section 71 of the Friendly Societies Act, 1896, passed by a general meeting of "delegates," was *ultra vires*, in respect that under that Act a resolution for conversion could only be carried by a certain majority of the members of the society at a general meeting of members, and that that requirement was not affected by the rule of the society providing that meetings should consist of "delegates." *Wilkinson* v. *City of Glasgow Friendly Society*, [1911] S. C. 476—Ct. of Sess.

Payment of Pensions Ultra Vires the Rules—Society which "exists for an illegal purpose"—Cancellation of Registry of Society.]—The Friendly Societies Act, 1896, s. 77, provides that upon proof "that a society exists for an illegal purpose" the Chief Registrar may cancel the registry of the society:—*Held*, first, that the time to be considered in determining whether a society is one which exists for an illegal purpose is the date on which the order is made cancelling the registry. Secondly, that the illegal purpose must be one which exists independently of the rules, and the mere fact that payments are made by the society which are *ultra vires* the rules does not make the society one which exists for an illegal purpose within the meaning of section 77 of the Act. *Middle Age Pension Friendly Society, In re*, 84 L. J. K.B. 378; [1915] 1 K.B. 432; 112 L. T. 641—D.

B. RULES.

See also Vol. VII. 435, 1693.

Effect of Alteration of Rules.]—An action was brought by the plaintiff, the widow of a member of a friendly society, against the defendant, who was the statutory officer of the society, to recover a benefit to which she claimed to be entitled under the rules. Rule 20 of the society's rules of 1908 provided that disputes between members or persons claiming through or on account of a member and the society should be decided by arbitration, and prescribed certain formalities to be observed. It further provided that each dispute should be decided by three arbitrators, the first elected by the claimant, the second by the society, and the third to be a County Court Judge or other person agreed on by the parties, who should act as umpire. The Friendly Societies Act, 1896, s. 68, sub-s. 6, provides that "Where the rules [of a friendly society] contain no direction as to disputes, or where no decision is made on a dispute within forty days after the application to the society . . . for a reference under its rules, the member or person aggrieved may apply either to the County Court or to a court of summary jurisdiction, and the court to which application is so made may hear and determine the matter in dispute." On March 11, 1910, the plaintiff applied for benefit under the rules. On April 2 the society passed a resolution refusing the plaintiff's application as being contrary to rule. On April 18 the plaintiff made an application for arbitration under the rules. This was assented to by the society, but the parties were unable to agree as to an umpire, and, after the expiration of forty days, the plaintiff in January, 1911, commenced proceedings in the County Court by virtue of section 68, sub-section 6 of the Friendly Societies Act, 1896. In September, 1910, the society had amended its rules, and by rule 20 as so amended it was provided that disputes should in the first instance be referred to the general committee, from whose decision there should be an appeal to an appeal committee. It was contended before the learned Judge that, the plaintiff not having complied with these regulations, he had no jurisdiction to entertain the action. To this contention he gave effect and declined to hear the case:—*Held*, that the learned Judge was wrong, and that the alteration in the rule could not affect the right of the plaintiff, which had become vested, to go to the County Court, and that the learned Judge accordingly had jurisdiction to try the case. *Ritson* v. *Dobson*, 104 L. T. 808—D.

Alteration — Calendar Month's Notice — Whether Lunar Month Sufficient—Resolution —Invalidity.]—The plaintiff was a member of a branch of a friendly society, and by the rules of 1906 he was entitled to certain benefits. The rules provided that before they could be altered a calendar month's notice must be given by the central committee to the local meeting. In 1914 a lunar month's notice of a proposed alteration, which would have prevented the plaintiff from being entitled to the benefits in question, was given by the central committee to the local meeting, and resolutions were passed purporting to alter the rules and the tables of payments. In an action by the plaintiff for a declaration that he was entitled to the benefits fixed by the rules of 1906,—*Held*, that as a calendar month's notice was required by the rules, a lunar month's notice, even if reasonable, was insufficient, but on the facts with regard to the adoption of the new tables of payments the resolution was bad, and that therefore the plaintiff was entitled to the benefits in question. *Orton* v. *Bristow*, 32 T. L. R. 129—Sargant, J.

Transfer of Sum to Pension Fund—Validity.]—The transfer by a friendly society of 50,000*l.* out of its actuarial surplus to the fund for providing pensions on retirement for those engaged in the active service of the society,—*Held*, not to be *ultra vires* of the society. *Kirsopp* v. *Highton*, 56 S. J. 750; 28 T. L. R. 493—C.A.

No Power to Resolve to Wind up Voluntarily—Alteration of Rules—Evidence of Acquiescence Necessary for Alteration—Ultra Vires.]—Where by its original rules a friendly society was unable to pass a resolution for a voluntary winding-up, but where at a subsequent meeting it was purported by the unanimous vote of those present to create a new rule that a resolution for voluntary winding-up could be carried if passed by a majority of two-thirds, and where subsequently such a resolution was passed by such a majority under the alleged new rule,—*Held*, that in the absence of evidence that the new rule was ratified by the acquiescence of all the members of the society, such new rule was *ultra vires*, and an order for compulsory winding-up was accordingly made. *Tean Friendly Society, In re*, 58 S. J. 234—Astbury, J.

C. RIGHTS AND LIABILITIES OF MEMBERS.

See also Vol. VII. 441, 1694.

Action to Enforce Decision of Society.]—A member of a friendly society, who had been expelled by decree of his lodge and had had that decree reversed on appeal by a superior court of the society, brought an action in the Sheriff Court for declarator that he was a member of the society and entitled to certain benefits:—*Held*, that the action was competent, and decree of declarator and payment granted. *Gall* v. *Loyal Glenbogie Lodge of the Oddfellows Friendly Society* (2 Fraser, 1187) distinguished. *Collins* v. *Barrowfield United Oddfellows*, [1915] S. C. 190—Ct. of Sess.

Misapplication of Property—Time for Taking Proceedings.]—By section 87, sub-section 3 of the Friendly Societies Act, 1896, if any person wilfully applies any property of the society to purposes other than those expressed or directed by the rules, he is liable on complaint to be summarily convicted and fined, and ordered to deliver up such property or to

repay sums of money applied improperly. By section 9 of the Friendly Societies Act, 1908, where, on such a complaint, it is not proved that he acted with any fraudulent intent, he may be ordered to repay any sum of money applied improperly, but shall not be liable to conviction, and the order is to be enforceable as an order for the payment of a civil debt :—*Held*, that the period of six months imposed by section 11 of the Summary Jurisdiction Act, 1848, within which a complaint or information must be made or laid applies to summary proceedings for an order for repayment of a sum of money under the Friendly Societies Act, 1896, which was misapplied more than six months before the laying of the information. *Mackie* v. *Fox*, 105 L. T. 523; 75 J. P. 470; 22 Cox C.C. 610—D.

Rights under Rules.] —*See* cases under B (*supra*).

D. ARBITRATIONS.

See also Vol. VII. 450, 1696.

Rule for Settlement of Disputes by Arbitration—Election of Member to Board of Management Contrary to Rule—Competency of Action for Declaration that Election Void.] —In an action by a member of a friendly society against the society for a declaration that the appointment of another member to the board of management was void in respect that under the rules of the society he was ineligible for election, it was pleaded by the defendants that the action was excluded by a rule of the society that "all disputes between the society and any member as such . . . may be determined by arbitration." The rule was passed under the Friendly Societies Act, 1896, which provides that every dispute between a member and the society shall be decided in manner directed by the rules of the society "without appeal, and shall not be removable into any Court of law . . ." :—*Held*, that the action was competent in respect that the jurisdiction of the Court was not excluded in a case where the averment was that the society had acted in violation of its rules and constitution. *M'Gowan* v. *City of Glasgow Friendly Society*, [1913] S. C. 991—Ct. of Sess.

Quære (*per* Lord Salvesen), whether the society's rule as to the settlement of disputes was in effect imperative, though in form merely permissive. *Ib.*

Case Stated—Competency of Stated Case after Judgment in Inferior Court.]—Under section 68, sub-section 7 of the Friendly Societies Act, 1876 (which provides that the Court or arbitrator to whom any dispute is referred under the rules of a friendly society may state a Case for the opinion of the Court), a Case must be stated during the progress of the reference, and cannot be stated after the Court or arbitrator has given judgment. *Smith* v. *Scottish Legal Life Assurance Society*, [1912] S. C. 611—Ct. of Sess.

E. ACTIONS BY FRIENDLY SOCIETY.

See also Vol. VII. 452, 1697.

Against Registered Branch.]—An action can be maintained by the trustees of a friendly society against the trustees, secretary, and treasurer of a registered branch in respect of their breach of trust in applying the funds of the branch in a manner not authorised by the rules of the society; for, in such a case, the trustees, secretary, and treasurer of the branch are not sued as members, but in the character of persons standing in a fiduciary relationship, and the provision of section 68 of the Friendly Societies Act, 1896, that a dispute between "an officer of" a "registered branch and the society of which that registered branch is a branch shall be decided in manner directed by the rules," does not apply. *Winter* v. *Wilkinson*, 84 L. J. Ch. 237; [1915] 1 Ch. 317; 112 L. T. 482; 79 J. P. 241; 13 L. G. R. 425; 31 T. L. R. 121—C.A.

F. JURISDICTION OF THE COUNTY COURT.

See Ritson v. *Dobson*, *ante*, col. 601.

G. DISSOLUTION.

Unregistered Friendly Society — Unexpended Funds.]—A society was established by a canal company for the benefit of its boatmen and workmen. Each member contributed a weekly sum, which was supplemented by a weekly contribution from the company. The society was not registered. The management of the society was entrusted to a committee, which consisted of three elected members and three officials of the company. This committee was given the regulation of the affairs of the society, and the power to frame or amend the rules when requisite. The contributions to the funds were lodged to the credit of the society and the company was trustee for it. The funds of the society were applied, pursuant to the rules, in payment of sick and mortality benefits to members and their families. When the National Insurance Act, 1911, came into force it was found impossible to carry on the business of the society, and it was resolved to wind it up, and an action for that purpose was brought on behalf of the members against the committee of the company, the Attorney-General being afterwards made a party. The unexpended funds amounted to 1,170*l.* :—*Held*, first, that the society was not a charity to which the doctrine of *cy-près* could be applied, neither was the Crown entitled to the funds as *bona vacantia*; secondly, that the contributions of the company were absolute gifts to the society, and that there was no resulting trust in favour of the company; and thirdly, that the funds were the property of the society, and were divisible amongst the existing members at the time when the business of the society ceased to be carried on, in proportion to the amounts contributed by them. *Cunnack* v. *Edwards* (65 L. J. Ch. 801; [1896] 2 Ch. 679) distinguished. *Printers and Transferors' Amalgamated*

Trades Protection Society, In re (68 L. J. Ch. 537; [1899] 2 Ch. 184), considered. *Tierney* v. *Tough*, [1914] 1 Ir. R. 142—M.R.

FUGITIVE OFFENDER.

See EXTRADITION.

GAMBLING.

See GAMING AND WAGERING.

GAME.

See also Vol. VII. 466, 1699.

Ground Game—Setting Spring Traps in Open—Person Authorised by Owner and Occupier of Land.]—The prohibition in the Ground Game Act, 1880, against laying spring traps, except in rabbit holes, for killing ground game, does not extend to a person who is duly authorised by the owner and occupier of land to take the ground game on his land. Authorisation by deed is not essential for this purpose. *Leworthy* v. *Rees*, 109 L. T. 244; 77 J. P. 268; 23 Cox C.C. 522; 29 T. L. R. 408—D.

Trespass in Pursuit of Game—Sending Dog on Land in Pursuit of Game—"Entering or being" upon Land.]—The words "entering or being" upon land in "search or pursuit of game" in section 30 of the Game Act, 1831, mean entering or being on such land personally; and a person who sends his dog on to such land in search or pursuit of game, and shoots game put up by such dog, cannot be convicted under that section of trespassing in pursuit of game. *Dicta* in *Reg.* v. *Pratt* (24 L. J. M.C. 113; 4 E. & B. 860) followed. *Pratt* v. *Martin*, 80 L. J. K.B. 711; [1911] 2 K.B. 90; 105 L. T. 49; 75 J. P. 328; 22 Cox C.C. 442; 27 T. L. R. 377—D.

—— **Retrieving Dead or Wounded Game.**]—A rabbit after being shot on the public road ran into private ground, and there fell dead or moribund. The shooter thereupon sent his dog into the private ground to retrieve it:—*Held*, that he did not thereby commit a trespass "in search or pursuit of" game within the meaning of section 1 of the Game (Scotland) Act, 1832 [corresponding to section 30 of the Game Act, 1831]. *Nicoll* v. *Strachan*, [1913] S. C. (J.) 18—Ct. of Just.

—— **Alleged Permission—Bona Fide Belief—Reasonable Grounds—Poaching.**]—On a summons under section 2 of the Poaching Prevention Act, 1862, for obtaining game by unlawfully going on land in search or pursuit of game, it is a good defence to prove that the defendant had a *bona fide* belief that he had permission to go on the land, together with reasonable grounds for that belief. *Dickinson* v. *Ead*, 111 L. T. 378; 78 J. P. 326; 24 Cox C.C. 308; 30 T. L. R. 496—D.

Tame Pheasants Bought for Breeding Purposes—Seller and Purchaser not Licensed to Deal in Game—Liability of Purchaser to Penalty.]—The word "game" in section 27 of the Game Act, 1831, applies to live as well as to dead game; it applies also to game which has never been wild—for example, to pheasants reared in captivity and kept for breeding purposes. If, therefore, a person who is not licensed to deal in game purchases tame pheasants for breeding purposes from a person not licensed to deal in game he commits an offence against section 27 of the Act. *Harnett* v. *Miles* (48 J. P. 455) and *Loome* v. *Baily* (30 L. J. M.C. 31; 3 E. & E. 444) followed. *Cook* v. *Trevener*, 80 L. J. K.B. 118; [1911] 1 K.B. 9; 103 L. T. 725; 74 J. P. 469; 27 T. L. R. 8—D.

Dealing in Game without a Licence—Time within which Proceedings to be Taken.]—The limitation of time for proceedings against a person for dealing in game without a licence in contravention of the Game Licences Act, 1860, is that prescribed by section 3 of the Excise Act, 1848—namely, six months, and not three months as prescribed by section 41 of the Game Act, 1831. *M'Lean* v. *Johnston*, [1913] S. C. (J.) 1—Ct. of Just.

Unlawful Possession of Eggs—Evidence.]—The appellant having been summoned for being in possession of game eggs unlawfully obtained, evidence was given on behalf of the prosecution that a constable, having seen the appellant in the month of May under circumstances of suspicion with other men, searched the appellant's cart and found a large number of game eggs which the appellant stated came off his own farm. No evidence was called on behalf of the appellant:—*Held*, that the appellant was rightly convicted of an offence within section 2 of the Poaching Prevention Act, 1862. *Stowe* v. *Marjoram*, 101 L. T. 569; 73 J. P. 498; 22 Cox C.C. 198—D.

GAMING AND WAGERING.

A. LAWFUL AND UNLAWFUL GAMES.

See also Vol. VII. 494, 1704.

Game Played in Refreshment House — Whether "unlawful game" — Question of Fact.]—Section 32 of the Refreshment Houses Act, 1860, provides that "Every person licensed to keep a refreshment house under this Act who shall . . . knowingly suffer any unlawful games or gaming therein . . . shall, upon conviction thereof . . ." be liable to a penalty. Whether a game is or is not a game of chance, and, consequently, an unlawful game within the meaning of this section, is a question of fact to be decided in each particular case. *Bracchi* v. *Rees*, 84 L. J. K.B. 2022; 79 J. P. 479; 13 L. G. R. 1365—D.

Penny-in-the-slot Machine.]—By an agreement the plaintiffs let certain automatic machines to the defendant. To an action for three weeks' rent of the machines the defendant pleaded that the use of the machines by the public constituted an unlawful game, and that the plaintiffs, in order to induce the defendant to enter into the agreement, had represented to him that the use of the machines constituted a game of skill and not a game of chance. The nature of the working of the machines was this: By means of the insertion of a penny in a slot a ball was set in motion and worked its way down among a number of pins, and the object of the player was to catch the ball, as it emerged from the pins, in a cup attached to a sliding bar. Witnesses for the plaintiffs gave evidence that skill in the game was improved by practice:—*Held*, that there was evidence of a governing element of skill in the game, and therefore that the plaintiffs were entitled to recover the amount claimed. *Pessers* v. *Catt*, 77 J. P. 429; 29 T. L. R. 381—C.A.

The appellant was convicted of using his premises for the purpose of "unlawful gaming" being carried on thereon. Proof was given of the user on the appellant's premises of an automatic machine. On the insertion of a halfpenny in the machine, a marble was released, which by the operation of a trigger manipulated by the player, was shot up to the top of the machine, whence it descended through a series of pins which deflected its course. The player, while the marble was falling, tried to bring beneath it a cup in the machine. The cup was fixed to a movable lever which could be moved laterally right or left at the option of the player. The object of the player was to catch the marble in the cup. If he succeeded, by an automatic action, a disc was released which entitled him to a pennyworth of the appellant's goods; if he failed, the halfpenny inserted became the property of the appellant without any return to the player. The appellant was convicted under section 4 of the Gaming Houses Act, 1854, the Justices finding that the game played with the machine was predominantly one of chance; that skill did not enter substantially into the game; that having regard to the players contemplated by the appellant as using the machine the chances were not alike equal to all the players including the appellant; that the chances were in the appellant's favour; and that the game could not be converted from one of chance to one of skill:—*Held*, that the findings of the Justices as to the character of the game played with the machine were questions of fact and consequently not reviewable by the Court, and that the finding that the game was one of chance and one in which the chances were not equal alike to all the players, including the appellant, brought the game within section 2 of the Gaming Act, 1845, and consequently that the game played with the machine was unlawful gaming within section 4 of the Gaming Houses Act, 1854, and that the appellant was rightly convicted. *Fielding* v. *Turner* (72 L. J. K.B. 542; [1903] 1 K.B. 867) applied and followed. *Donaghy* v. *Walsh*, [1914] 2 Ir. R. 261—K.B. D.

In a prosecution under a local Act for exposing in a shop "a lottery" consisting of a machine, it was proved that the machine was actuated by placing a penny in a slot, that this enabled a spring to be worked which projected a ball to the top of the machine, whence it descended through a number of irregularly placed pins and emerged at any one of five openings, where it might be intercepted by a sliding cup operated by the manipulator, whose object was to catch the ball in the cup. There was no part of the machine where the ball could emerge that was not within reach of the sliding cup. The manipulator, if successful, received a metal disc entitling him to twopence worth of goods in the shop; if unsuccessful he forfeited his penny:—*Held* (Lord Johnston dissenting), that although, in the hands of an ordinary member of the public, success depended largely on chance, yet, as the desired result might be attained on every occasion by the exercise of skill, the machine was not a lottery. *Forte* v. *Dewar* (7 F. (J.) 82) overruled. *Di Carlo* v. *M'Intyre*, [1914] S. C. (J.) 60—Ct. of Just.

"Three-card trick"—"Fraud or unlawful device or ill practice in playing at or with cards."]—The applicants were charged with obtaining money by false pretences within section 17 of the Gaming Act, 1845, which makes it an offence to win money of another by fraud "in playing" at cards, and enacts that it shall be deemed an obtaining of money by a false pretence. They won money from the prosecutor at a game substantially identical with the "three-card trick." The false pretences or fraud suggested were that the applicants pretended they were strangers to each other, and that the game to be played with the prosecutor would be played in the same way as a previous game between the applicants, at which latter game one of them, purporting to be the prosecutor's friend, won:—*Held*, that

there was no evidence of fraud "in playing" at cards, but only in inducing the prosecutor to play; that the game, as played, was one of skill only; and that, consequently, no offence had been committed. *Rex* v. *Brixton Prison (Governor); Sjoland, Ex parte*, 82 L. J. K.B. 5; [1912] 3 K.B. 568; 77 J. P. 23; 29 T. L. R. 10—D.

"Progressive whist."]—The appellant was the occupier of certain premises which were let to him, together with the use of one hundred tables with accompanying chairs, for 2*l.* 10*s.* per occasion, for the purpose of carrying on a game of cards known as "progressive whist," and otherwise as "whist drives." The appellant advertised these whist drives, which were to be held at the said premises weekly through the winter season, by issuing posters inviting the public to attend on payment of 6*d.* per ticket, which would admit one person. The poster stated that ten valuable prizes would be given each week. The admission tickets were obtainable on or off the premises by any one who applied for them, and were ultimately exchanged for cards on which were marked the score obtained while playing progressive whist, but did not entitle the holder to refreshments. Having obtained these cards, the players were shewn to tables and proceeded to play the ordinary game of whist. There was no choice of partners, but the winning couple on the termination of each hand proceeded to the next tables, one to the table higher up the room and the other to the table down the room, and the couple who had lost remained at the same table, one of them changing his or her seat, so as not to play with the same partner in the next hand. After about twenty hands had been played in this manner the scores were totalled up and the five ladies and five gentlemen returning the highest scores were presented with prizes varying in value from 3*s.* to 18*s.*, which were provided by the appellant out of the proceeds of the ticket money, the balance of such ticket money, after paying all expenses, being retained by the appellant for his personal profit. The appellant having been convicted of using the premises for the purpose of unlawful gaming contrary to section 4 of the Gaming Houses Act, 1854.—*Held*, that on the facts the element of skill in the game was so slight and that of chance so predominant, that the game must be considered as one of pure chance, and that, as the appellant had allowed a game of chance to be carried on for money, he had been rightly convicted. *Morris* v. *Godfrey*, 106 L. T. 890; 76 J. P. 297; 23 Cox C.C. 40; 28 T. L. R. 401—D.

B. WAGERS.

See also Vol. VII. 496, 1706.

Partnership — Bookmakers — Accounts.] — In 1908 the plaintiff and the defendant entered into a partnership to carry on a betting business. No money was subscribed at the time, but money was found by the plaintiff for the conduct of the business as required. In 1910 the partnership was dissolved by mutual consent, and on an account being taken the defendant agreed that 100*l.* was due to the plaintiff, and he gave the plaintiff an I O U for that amount. Subsequently he paid 7*l.* on account, but as he did not pay the balance of 93*l.* he was sued for that amount by the plaintiff. It was proved in evidence that 173*l.* had been drawn out of the partnership account by the defendant for private purposes; that 35*l.* was standing to the credit of the partnership at the date of the dissolution; and that the 100*l.* for which the I O U was given was a rough estimate of the share due to the plaintiff:—*Held*, first, that there was no evidence that the partnership business was carried on in a manner that was illegal within the Betting Act, 1853; secondly, that the I O U was not a promise, express or implied, to pay a sum to the plaintiff within the Gaming Act, 1892, and that the plaintiff was entitled to recover. *Brookman* v. *Mather*, 29 T. L. R. 276—Avory, J.

A partner in a bookmaker's business may sue his co-partner for an account of partnership dealings, and may recover so much of any capital advanced by him for the purposes of the business as has not been applied in payment of bets, although he cannot recover anything which represents profits of the business. *Thomas* v. *Dey* (24 T. L. R. 272) not followed. *Brookman* v. *Mather* (29 T. L. R. 276) followed. *Keen* v. *Price*, 83 L. J. Ch. 865; [1914] 2 Ch. 98; 111 L. T. 204; 58 S. J. 495; 30 T. L. R. 494—Sargant, J.

Forbearance to Make Defendant's Default Public—New Contract.]—The plaintiff and defendant were bookmakers, and as the result of certain betting transactions between them a sum of 30*l.* 10*s.* was due from the defendant to the plaintiff. In an action to recover this amount the plaintiff stated that when the debt became due the defendant asked for time to pay, and requested that the matter might be kept absolutely confidential, as if it got about it would do him a lot of harm. The plaintiff agreed to give defendant time, and promised to keep the matter confidential. He stated in his evidence that, if the matter had got about, the defendant would have been finished as a bookmaker. The County Court Judge gave judgment for the plaintiff, holding that a new contract had been entered into between the parties by which the plaintiff forbore to sue the defendant or declare him a defaulter in consideration of the defendant's promise to pay the debt at a future time:—*Held*, that there was evidence upon which the County Court Judge could come to that conclusion. *Wilson v. Conolly*, 104 L. T. 94; 27 T. L. R. 212—C.A.

The plaintiff was a bookmaker, and as the result of betting transactions the defendant owed him 138*l.* The plaintiff instructed his solicitor to proceed against the defendant, whereupon the defendant wrote saying he was trying to carry out a financial arrangement, and as soon as it was completed he would attend to the plaintiff's claim. He asked the plaintiff to withdraw the matter from the hands of his solicitor, as if anything leaked out to shew that he had lost money, and had been gambling, the financial arrangements would become impossible. The plaintiff there-

upon instructed his solicitor not to proceed at that time against the defendant, but the debt not having been paid, the plaintiff subsequently sued the defendant, contending that the letter constituted a valid and binding contract to pay :—*Held*, that the action failed, as on the facts there was a mere request for and obtaining further time for the payment of a debt which the plaintiff could not in any circumstances have enforced. *Hyams* v. *Coombes*, 28 T. L. R. 413—Lush, J.

Agreement to Submit Question of Account to Committee of Tattersall's.]—The plaintiff, a bookmaker, made bets with the defendant, and a dispute arising as to the amount owing to the plaintiff, the parties agreed to go before the committee of Tattersall's, and the defendant further agreed that if the committee decided against him he would send the plaintiff a cheque for the amount found due. The committee decided that 37*l.* 11*s.* 3*d.* was due from the defendant to the plaintiff. As the defendant did not pay this amount the plaintiff sued him to recover same. At the trial the defendant set up the Gaming Acts :—*Held*, that upon the facts there was a new promise to pay by the defendant founded upon a fresh consideration which was sufficient to prevent the operation of the Gaming Acts; and therefore that the plaintiff was entitled to recover. *Whiteman* v. *Newey*, 28 T. L. R. 240—D.

Guarantee to Bank to Enable Debtor to Pay Lost Bet—Money Paid under Guarantee.]—In March, 1904, a bookmaker borrowed 1,000*l.* to enable him to make bets on horse races, and upon the terms that the lender should have half of all the profits made by the betting. In April, 1903, the lender guaranteed an overdraft to the extent of 1,000*l.* at his debtor's bank for the purpose of the bookmaking business, and the whole of the money having been lost the lender guaranteed a further 500*l.* at the bank to enable the debtor to pay another bookmaker lost debts to that amount, and which were duly paid. In September, 1906, the lender paid the bank 1,633*l.* under the two guarantees, and on his death in 1907 his executors obtained final judgment in default of defence against the debtor for 3,019*l.* odd and costs. A bankruptcy petition having been presented against the debtor, in which the act of bankruptcy alleged was that he had failed to comply with the requirements of a bankruptcy notice founded upon the judgment, the Registrar dismissed the petition on the ground that the case was within the mischief of the Gaming Acts, and that there was no valid debt to support the petition :—*Held* (reversing the Registrar), that, irrespective of the other parts of the transaction, the guarantee for 500*l.* was not invalid under the law prior to 1892; that under such law the debt resulting from money lent to enable the borrower to pay a bet already lost by him, not being a debt for an illegal consideration, could be proved in his bankruptcy; that the law had not been altered by section 1 of the Gaming Act, 1892, but prevailed, and that the 500*l.* was not money paid by the lender under or in respect of any contract rendered null and void by the Gaming Act, 1845, within the language of section 1 of the Act of 1892 :—*Held*, also, that, the guarantee having been given in 1903, but no payment having been made in respect thereof until 1906, although the banking account still continued, the presumption was, having regard to the rule in *Clayton's Case* (1 Mer. 572), that the original transaction in respect of any vice attaching to it by reason of the Gaming Acts must have been wiped out, so that no question arose with regard to it, and consequently that there was a good debt to support the petition. *O'Shea, In re; Lancaster, ex parte*, 81 L. J. K.B. 70; [1911] 2 K.B. 981; 105 L. T. 486; 18 Manson, 349—C.A.

Lister, In re; Pike, ex parte (47 L. J. Bk. 100; 8 Ch. D. 754), applied. *Tatham* v. *Reeve* (62 L. J. Q.B. 30; [1893] 1 Q.B. 44) and *Saffery* v. *Mayer* (70 L. J. K.B. 145; [1901] 1 K.B. 11) distinguished. *Ib.*

Cheques Given for Racing Bets—Cheques Paid by Payee into his Bank—Claim by Drawer to Recover from Payee as "Holder" Amount of Cheques—Whether Banker an "Indorsee."]—By the conjoint effect of section 1 of the Gaming Act, 1710, and section 1 of the Gaming Act, 1835, all securities (including bills) given for gaming considerations shall be deemed and taken to have been made, drawn, given, or executed for an illegal consideration. By section 2 of the Gaming Act, 1835, if any person shall make, draw, give, or execute (*inter alia*) any bill for such gaming consideration, and such person shall actually pay to any indorsee, holder, or assignee of such bill the amount of the money thereby secured, or any part thereof, such money so paid shall be deemed and taken to have been paid for and on account of the person to whom such bill was originally given for such gaming consideration, and shall be deemed and taken to be a debt due and owing from such last-named person to the person who shall so have paid such money, and shall be recoverable by an action at law. The plaintiff gave the defendant five cheques in payment of certain racing bets. These cheques were made payable to the defendant or order and crossed, and were paid by the defendant into his bank. The plaintiff afterwards sued the defendant for the amount of the cheques, under section 2 of the Gaming Act, 1835. There was no evidence that the defendant's banking account was overdrawn :—*Held*, that the action failed, as the defendant was not the "holder" of the cheques within the meaning of section 2, and it must be inferred that the bankers to whom the defendant paid the cheques merely collected them for the defendant, and were therefore not "indorsees" within the meaning of the section. *Nicholls* v. *Evans*, 83 L. J. K.B. 301; [1914] 1 K.B. 118; 109 L. T. 990; 30 T. L. R. 42—Channell, J.

Quære, whether the plaintiff could have recovered under the section if the defendant had paid the cheques to his bankers in the character of holders in their own right and not in the character of agents merely for collection. *Ib.*

Deposit of Money to be Used for Speculation in Stocks—Sums Deposited to be Repaid in

Full if no Profit made—Loss of Interest on Deposit.]—The defendant sent out a circular in which he stated that if the persons receiving it would contribute certain sums to a three months' "Trust" he was about to open, he would operate in specified stocks, and if at the end of ninety days those stocks stood at a higher figure than at the opening of the "Trust," he would divide the profit, less 10 per cent., among the contributors; and that the amount of the subscription to the "Trust" would in any event—that is, whether there was a profit or a loss on the stocks—be repaid at the end of the ninety days. The plaintiff paid a sum to the defendant on the terms of the circular, and, profits having been made on the specified stocks, he sued the defendant to recover the same. He also claimed to recover the amount of his contributions to three other "Trusts" of similar kind, each of which had resulted in a loss:—*Held*, that the contract between the parties was a wagering contract, and that the plaintiff was therefore not entitled to recover. *Richards* v. *Starck*, 80 L. J. K.B. 213; [1911] 1 K.B. 296; 103 L. T. 813; 27 T. L. R. 29—Channell, J.

Definition of a gaming and wagering transaction formulated by Cotton, L.J., in *Thacker* v. *Hardy* (48 L. J. Q.B. 289; 4 Q.B. D. 685) considered and applied. Ib.

C. RACES.

See also Vol. VII. 516, 1714.

"Racecourse" — Inclosed Field — Athletic Sports—Horse Races.]—In an inclosed field, to which admission was obtained by payment, athletic sports were held. The programme included two horse races and ten other events, consisting of foot races, jumping, and other athletic competitions. At the entrance to the field there was, conspicuously exhibited, a notice prohibiting betting:—*Held*, that the field was not a "racecourse" within section 2 of the Street Betting Act, 1906, and therefore a conviction of the appellant under section 1 of that Act for betting in the field was right. *Stead* v. *Aykroyd*, 80 L. J. K.B. 78; [1911] 1 K.B. 57; 103 L. T. 727; 74 J. P. 482—D.

D. STATUTORY OFFENCES.

1. Lottery.

See also Vol. VII. 522, 1716.

Sale of Tickets—Publication of Scheme—Prize not Purchased out of Money Paid for Tickets.]—The sale of tickets which give the holders a chance of winning a prize is an offence under section 41 of the Lotteries Act, 1823, as being the sale of tickets in a lottery, notwithstanding that the prize has been presented and has not been purchased out of the money paid by the ticket holders for the tickets. *Bartlett* v. *Parker*, 81 L. J. K.B. 857; [1912] 2 K.B. 497; 106 L. T. 869; 76 J. P. 280; 23 Cox C.C. 16—D.

—— **Newspaper Article.**]—By the Lotteries Act, 1823, s. 41, any person who "shall publish any proposal or scheme for the sale of any ticket" in any lottery not authorised by Act of Parliament "shall, for every such offence, forfeit and pay the sum of fifty pounds, and shall also be deemed a rogue and a vagabond. . . .":—*Held*, that an article in a newspaper favourably criticising a proposal for a sweepstake upon a horse race, and giving information as to from whom, and at what price, tickets could be purchased, was not the "publication of a proposal or scheme for the sale of tickets in an unauthorised lottery" within the meaning of section 41 of the Lotteries Act, 1823; and that, consequently, neither the editor nor the printer of the newspaper were guilty of the offence created by that section. *Bottomley* v. *Director of Public Prosecutions*, 84 L. J. K.B. 354; 112 L. T. 458; 79 J. P. 153; 31 T. L. R. 58—D.

Per Darling, J.: The editor and printer might have been proceeded against under the Lotteries Act, 1836, because the article in question advertised the lottery. *Ib.*

Offer of Prize for Composing Sentence—Chance—Skill.]—The proprietors of a newspaper offered prizes of 500*l.*, 100*l.*, 50*l.*, twenty of 5*l.*, two hundred of 1*l.*, and one hundred of 10*s.* each, aggregating 1,000*l.* By the conditions a competitor had to select one from a list of given words, and, subject to certain rules as to initial letters, compose a sentence having some bearing on the word selected, write it on a coupon, and send it in, together with the sum of 6*d.* Specimen words and sentences and the winning sentences of the preceding competition were given. The editor undertook that every answer reaching him should receive careful consideration, and his decision as to the prizewinners was to be final. The result was to be announced ten days after the latest date for sending in the coupons:—*Held*, that this was not a lottery on the face of it, the result not being dependent on chance only. *Scott* v. *Director of Public Prosecutions*, 83 L. J. K.B. 1025; [1914] 2 K.B. 868; 111 L. T. 59; 78 J. P. 267; 24 Cox C.C. 194; 30 T. L. R. 396—D.

The alderman held that as it must be assumed that the competition was not intended to be conducted at a loss, he assumed that the proprietors contemplated at least 40,000 coupons at 6*d.* each, equivalent to the 1,000*l.* prize money; that on that footing it would be impossible to consider each of these on its merits in the ten days allotted for consideration, and that therefore the distribution must be by chance only:—*Held*, that the above facts did not constitute evidence upon which the alderman could find that the competition had been in fact conducted as a lottery. *Ib.*

Distribution of Postal Orders—Destination Determined by Chance — Exercise by Donor of Honest Judgment.] — The respondent, the proprietor of a variety entertainment, in the course of a performance distributed a number of postal orders to various persons in the audience. The respondent controlled to some extent the action of his assistants in making the distribution, but there was no evidence that he exercised any honest judgment as to the persons who were to

receive the orders :—*Held*, that the destination of the orders was determined by chance, and that the distribution was therefore a lottery within section 2 of the Lotteries Act, 1699. *Minty* v. *Sylvester*, 84 L. J. K.B. 1982; 79 J. P. 543; 13 L. G. R. 1085; 31 T. L. R. 589—D.

Company Publishing Chances in Lottery—"Rogues and vagabonds."]—A body corporate cannot be convicted as rogues and vagabonds under section 41 of the Lotteries Act, 1823. Whether an action will lie in the name of the Attorney-General to recover the penalty of 50*l.* imposed for the offence created by the section, *quære* *Hawke* v. *Hulton*, 78 L. J. K.B. 633; [1909] 2 K.B. 93; 100 L. T. 905; 73 J. P. 295; 16 Manson, 164; 22 Cox C.C. 122; 25 T. L. R. 474—D.

Action to Recover Share in Lottery.]—The plaintiff alleged that she bought from the defendant one-eighth of a ticket in the Hamburg State Lottery; that the ticket had won a prize in the lottery; that the prize money had been paid to the defendant; but that the defendant refused to pay over to the plaintiff the share to which she was entitled :—*Held*, that the action being in respect of a sum of money alleged to be due as the proceeds of a lottery was not maintainable. *Gorenstein* v. *Feldmann*, 27 T. L. R. 457—Lord Coleridge, J.

2. Advertisements of Gaming and Betting.

See also Vol. VII. 1719.

Distribution of Handbills Containing Offers by Another to Bet.]—A person who distributes to people in the street handbills which contain an offer by another person named therein to bet with any recipient thereof, the events of which he is prepared to bet, the odds offered, and the means whereby a bet can be made, can be convicted of loitering in the street for the purpose of betting within the meaning of section 1 of the Street Betting Act, 1906. *Dunning* v. *Swetman*, 78 L. J. K.B. 359; [1909] 1 K.B. 774; 100 L. T. 604; 73 J. P. 191; 22 Cox C.C. 93; 25 T. L. R. 302—D.

3. Sending Money-lending Circulars to Infants.

Reasonable Ground for Believing that Circular only Sent to Persons of Full Age.]—The respondent, who was a money-lender, was summoned for having sent a circular to an infant inviting him to borrow money contrary to the Betting and Loans (Infants) Act, 1892. The respondent had given instructions to his clerk to send out circulars to captains and lieutenants in the Army, but, knowing that many second lieutenants were minors, he directed the clerk to send no circulars to second lieutenants. Without his knowledge the clerk sent a circular to a second lieutenant who was in fact under twenty-one. The magistrate held that as the respondent had distinctly told his clerk not to send the circular to second lieutenants he did not send or cause to be sent the circular in question, and that even if he were bound by the act of his clerk he had reasonable ground for believing that all persons to whom the circulars were sent were of full age; he accordingly dismissed the summons :—*Held*, that there was evidence upon which the magistrate could so find. *Director of Public Prosecutions* v. *Witkowski*, 104 L. T. 453; 75 J. P. 171; 22 Cox C.C. 425; 27 T. L. R. 211—D.

4. Keeping a Place for Betting and Gaming.

See also Vol. VII. 526, 1721.

"Using" House for the Purpose of Betting with Persons "Resorting" thereto.]—Section 1 of the Betting Houses Act, 1853, declares that any house used by any person for the purpose of betting with any persons resorting thereto shall be a common nuisance and contrary to law, and section 3 of the Act imposes penalties on any person so using the same. The appellant employed a man to stand on the footway outside the door of a house to receive betting slips and money from persons passing along the highway, and another man to stand inside the doorway of the house and receive the bets from the first man and send them on to the appellant elsewhere. He also gave the occupier of the house various sums of money for the privilege of his employees using the house in this manner. The Justices convicted the appellant of "using the house for the purpose of betting with persons resorting thereto :—*Held*, that there was evidence of a "user of the house" and of "persons resorting thereto" within the meaning of the Act, although the persons making the bets did not enter the house, and that the Justices were entitled on the evidence to convict the appellant of the offence charged. *Reg.* v. *Brown* (64 L. J. M.C. 1; [1895] 1 Q.B. 119) distinguished. *Taylor* v. *Monk*, 83 L. J. K.B. 1125; [1914] 2 K.B. 817; 110 L. T. 980; 78 J. P. 194; 24 Cox C.C. 156; 30 T. L. R. 367—D.

"Receiving" Money as a Deposit on Bet.]—Under section 4 of the Betting Act, 1853, it is not necessary in order to constitute a receiving of money as a deposit on a bet by the occupier of premises that such deposit should be physically received in the premises from the persons making the bet. It is an offence if the money is handed to the occupier of the premises outside and is then taken by him into the premises. *Boulton* v. *Hunt*, 109 L. T. 245; 77 J. P. 337; 23 Cox C.C. 427—D.

—— **"Deposit."**]—A person makes a deposit within section 4 not only where he hands over a sum smaller than the stake, but where he hands over the full amount of the stake (Avory, J., dissenting). *Ib.*

Newspaper Offering Prizes for Forecasts of Football Matches.] — The proprietors of a weekly newspaper inserted in certain issues of their paper a notice offering a money prize to the person who, on a coupon cut from the paper and sent to their office, should give a

correct forecast of the result of certain football matches. The papers were sold by the proprietors at 9*d.* a dozen to newsagents, who retailed them to members of the public at 1*d.* each. No papers were sold directly to the public by the proprietors, and no coupons were sold apart from the papers. A certain number of papers were bought by members of the public from the newsagents solely for the sake of the coupons :—*Held*, that the proprietors of the paper used their premises solely for the selling of newspapers, and not for the receipt of money on a promise to pay on a contingency, and accordingly that they had not contravened section 1 of the Betting Act, 1853. *Leng & Co.* v. *Mackintosh*, [1914] S. C. (J.) 77—Ct. of Just.

Evidence of User.]—M., with the assistance of her brother P., kept a shop nominally for the sale of chandlery, tobacco, and stationery. The police observed that on days when the newspapers announced that horse races would take place numbers of persons visited the shop, including a man known to the police to be a bookmaker's tout, who on such days was seen to visit the shop several times a day. On making a raid the police found M. behind the counter and three men in the shop, one of whom was writing out a betting docket on the counter. Two other betting dockets were found on the floor beside another of the men, and M. was seen to crush up and throw behind the counter two slips of paper which were found to be betting dockets. Betting newspapers were found on the counter, and betting literature behind the counter and in the back parlour. M. was charged with using the shop for the purpose of betting with persons resorting thereto, and P. with "assisting in the conduct and management of the shop." The only evidence against P. was a statement that he "assisted M. in the shop," made by the prosecutor in giving evidence before the magistrate. Both M. and P. were convicted and fined :—*Held*, that the shop presented all the *indicia* of a "betting establishment," and that on the evidence the magistrate was justified in convicting in both cases. *Maguire* v. *Quinn*, [1911] 2 Ir. R. 216—K.B. D.

A local Act provided that "any constable having reason to suspect that any house . . . is kept or used as a gambling or betting house may enter such house . . . and take into custody every person who shall be found therein. . . ." A bookmaker occupied premises at which he carried on his business. No persons resorted to the premises for the purpose of betting, the bookmaker communicating with his customers only by letter, telegram, or telephone. No money was deposited when the bet was made, but accounts were rendered weekly, and the balance remitted to or by the bookmaker according to the result of the events on which the bets were made, and the state of the customer's account :—*Held*, that the premises were not kept as a "betting house" within the meaning of the local Act. *Traynor* v. *Macpherson*, [1911] S. C. (J.) 54—Ct. of Just.

The appellant, a bookmaker, received from E. by post at his house postal orders in order that E. might open a deposit account with him for the purpose of making future bets. Shortly afterwards E. backed horses with him, portions of the deposit being appropriated for that purpose. The appellant's house was entered by the police a few days later, and a large number of slips and account books relating to betting were found therein. It was not shewn that any of these related to illegal bets, and the appellant had, in fact, a large credit betting business :—*Held*, that there was evidence upon which the jury could find that the appellant used the house for the purpose of money (assuming the postal orders to be money) being received by him in consideration for his promise to pay thereafter money on the event of horse races within the meaning of section 1 of the Betting Act, 1853. *Rex* v. *Mortimer*, 80 L. J. K.B. 76; [1911] 1 K.B. 70; 103 L. T. 910; 22 Cox C.C. 359; 75 J. P. 37; 27 T. L. R. 17—C.C.A.

Quære, whether postal orders are "money" within the above section. *Ib.*

An accused was charged with, and convicted of, contravening the Betting Acts by keeping a room at an address and a room at another address "for the purpose of money . . . being received . . . as the consideration for an undertaking . . . to pay thereafter money on events . . . relating to games . . ." :—*Held*, that the conviction was good, although all the money was received and all the correspondence relating to bets was conducted at one room, while the other was used exclusively for settling up accounts. *Stoddart* v. *Hawke* (71 L. J. K.B. 133; [1902] 1 K.B. 353) applied. *Hodgson* v. *Macpherson*, [1913] S. C. (J.) 68—Ct. of Just.

Ready Money or Credit Betting.]—A bookmaker occupied premises where he carried on his business by receiving communications from his clients by telephone, the client subsequently sending by post a note of the bet along with a postal order for the sum staked. In a prosecution of the bookmaker for a contravention of the Betting Act, 1853, no nuisance was proved of money being received by the bookmaker before the race on which it was staked was run, but it was proved that clients did not receive their winnings until after their money had been received by the bookmaker :—*Held* (Lord Salvesen dissenting), that the bookmaker had committed a contravention of the Act. *Traynor* v. *Macpherson*, [1914] S. C. (J.) 174—Ct. of Just.

Whether a credit system of betting would be an infringement of the Act, *quære*. *Ib.*

Search of Suspected House — Seizure of Documents—Unopened Letters.]—Section 11 of the Betting Act, 1853, empowers a Justice of the peace in certain circumstances to authorise any constable by special warrant to enter any house or premises suspected of being used as a betting house "and to seize all lists, cards, or other documents relating to racing or betting found in such house or premises" : *Held*, that "documents" does not cover unopened letters found on the premises. *M'Lauchlan* v. *Renton*, [1911] S. C. (J.) 12—Ct. of Just.

—— "Lists, cards, and other documents relating to betting."] — Postal orders are covered by the words "lists, cards, or other documents relating to betting" within section 11 of the Betting Act, 1853. Therefore they may be seized under a search warrant granted under that section, and are admissible in evidence against the person charged with being the keeper of the betting house. *Hodgson* v. *Macpherson*, [1913] S. C. (J.) 68—Ct. of Just.

5. Betting in a Public Place.

Place to which Public have Restricted Right of Access—Railway Depot.]—A mineral depot belonging to a railway company was an irregularly shaped piece of ground surrounded by a fence except for a distance of about 213 yards, where it was bounded by and open to the main line of the company's railway. The railway system of the company was inclosed by walls or fences except where it connected with other railway systems. The only persons who had a right to enter the depot were railway servants and persons who had business with the railway company:—*Held* (*dubitante* the Lord Justice-Clerk), that the depot was an "inclosed place" to which the public had a "restricted right of access" within the meaning of section 1, sub-section 4 of the Street Betting Act, 1906. *Walker* v. *Reid*, [1911] S. C. (J.) 41—Ct. of Just.

Open Shed on Quay.]—On a quay belonging to a harbour trust there was a shed in the sides of which there were large openings without gates or doors. The public had free access to both quay and shed:—*Held*, that the shed was "uninclosed ground," and was a "public place" within the meaning of the Street Betting Act, 1906. *Campbell* v. *Kerr*, [1912] S. C. (J.) 10—Ct. of Just.

"Racecourse" — Inclosed Field — Athletic Sports—Horse Races.]—In an inclosed field, to which admission was obtained by payment, athletic sports were held. The programme included two horse races and ten other events, consisting of foot races, jumping, and other athletic competitions. At the entrance to the field there was, conspicuously exhibited, a notice prohibiting betting:—*Held*, that the field was not a "racecourse" within section 2 of the Street Betting Act, 1906, and therefore a conviction of the appellant under section 1 of that Act for betting in the field was right. *Stead* v. *Aykroyd*, 80 L. J. K.B. 78; [1911] 1 K.B. 57; 103 L. T. 727; 74 J. P. 482—D.

GARNISHEE.

See ATTACHMENT.

GAS AND GASWORKS.

1. Supply.

See also Vol. VII. 539, 1733.

Gas Supplied by Meter—Improper Use.]—A manufacturer, who was supplied with gas for power purposes at a certain rate, the quantity used being ascertained by a meter, was charged with an offence under section 18 of the Gasworks Clauses Act, 1847, in respect that he improperly used and burned such gas for lighting purposes, for which a higher rate was exigible:—*Held*, that the complaint was irrelevant as the improper using and burning of gas prohibited by section 18 referred only to gas not ascertained by meter. *Falkirk Magistrates* v. *Russell*, [1911] S. C. (J.) 99—Ct. of Just.

2. Laying Down Pipes.

See also Vol. VII. 545, 1736.

In Highway — Tunnel under Highway — Laying Pipes through Tunnel—"Building"—"Tunnel" — Re-instating Tunnel.] — The owner of land on both sides of a highway made a tunnel under the road in order to connect his two properties. A gas company having power to lay pipes in the highway laid them through the tunnel, and in doing so removed part of the roof of the tunnel:—*Held*, that the tunnel was a "building" within the meaning of section 7 of the Gasworks Clauses Act, 1847, and therefore the company had no power to lay pipes through it. *Held* also, that the tunnel in question was not a "tunnel" within the meaning of section 6 of the Act with which they could interfere, and that, even if it were, they had not re-instated the tunnel in accordance with the provisions of the Act. *Schweder* v. *Worthing Gas Light and Coke Co.* (*No.* 1), 81 L. J. Ch. 102; [1912] 1 Ch. 83; 105 L. T. 670; 76 J. P. 3; 10 L. G. R. 19; 56 S. J. 53; 28 T. L. R. 34—Eve, J.

The word "tunnel" in section 6 is used to describe something *ejusdem generis* with sewers and drains. *Ib.*

Power to Break up Roads—Land Dedicated to Public—Extent of Dedication—Depth of Soil—Laying Pipes Five Feet Below Surface.] —Although only so much of the soil of a highway is dedicated to the public as is necessary to support the road, yet under the Gasworks Clauses Act, 1847, a gas company can lay their pipes below the *stratum* necessary for that purpose. The dedication of the road to public use brings it within section 6 of that Act, and no part of the soil underlying the road is "land not dedicated to public use" within the meaning of section 7 of the Act. *Schweder* v. *Worthing Gas Light and Coke Co.* (*No.* 2), 82 L. J. Ch. 71; [1913] 1 Ch. 118; 107 L. T. 844; 77 J. P. 41; 11 L. G. R. 17; 57 S.J. 44—Eve, J.

—— **Highway not Repairable by Inhabitants at Large—Notice to Local Authority.**]—By section 8 of the Gasworks Clauses Act, 1847, "Before the undertakers proceed to open or break up any street . . . they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work . . ." The appellants, for the purposes of their undertaking, broke up a road in the respondents' district without having given notice under the above section of their intention to break up the same. The road had been dedicated to the public by the landowner, but had not been taken over or repaired by the respondents:—*Held* (Bankes, J., dissenting), that the road being a highway not repairable by the inhabitants at large, the respondents had not such a "control or management" of it as to entitle them to receive notice from the appellants under the section. *Redhill Gas Co.* v. *Reigate Rural Council*, 80 L. J. K.B. 1062; [1911] 2 K.B. 565; 105 L. T. 24; 75 J. P. 358; 9 L. G. R. 814—D.

Prohibition against Extending "Mains"—Service Pipes.]—By a local Act it was provided that it should not be lawful for the defendants to extend their existing "mains" for the supply of gas unless with the previous consent in writing of the plaintiffs. The defendants, without such consent, laid a two-inch pipe eighty-eight yards in length from their fifteen-inch main to supply a foundry with gas for power and lighting purposes. The pipe was laid alongside the road and was not of any greater capacity than was required for the present purposes of the foundry:—*Held*, that the pipe was not a "main" within the meaning of the Act, either by reason of its position or capacity or otherwise. *Whittington Gas Light and Coke Co.* v. *Chesterfield Gas and Water Board*, 83 L. J. Ch. 662; [1914] 2 Ch. 146; 111 L. T. 422; 78 J. P. 379; 12 L. G. R. 892; 58 S. J. 577; 30 T. L. R. 519—C.A.

Decision of Eve, J. (83 L. J. Ch. 390; [1914] 1 Ch. 270), affirmed. *Ib.*

Duty to Re-instate after Breaking up Street to Lay Pipes.]—A gas company are not released from their liability under section 10 of the Gasworks Clauses Act, 1847, to re-instate the soil and pavement of a street, after breaking up the street for the purpose of re-laying gas pipes, although the local authority have passed a resolution, under the powers given them by section 114 of the Metropolis Management Act, 1855, that they will in all such cases do the work of re-instatement themselves. To transfer the duty from the gas company to the local authority, together with consequent liability for negligence, it is necessary that the local authority should have actually entered upon and taken over the control of the work of re-instatement. A Metropolitan borough council passed a resolution that they would, in all cases where any pavement was opened by a gas company in their borough, do the work of re-instatement themselves. The defendants, having subsequently opened the pavement of a street for the purpose of re-laying gas pipes, temporarily re-instated the soil and pavement, and gave notice to the local authority of such temporary re-instatement. The plaintiff, a foot passenger, sustained personal injuries by reason of the negligent re-laying of one of the paving stones. There was evidence that just before and after the accident the defendants' servants exercised acts of re-instating the paving stones:—*Held*, that the mere resolution of the local authority did not, after the expiration of a reasonable time after receipt of the notice of temporary re-instatement, *ipso facto* release the defendants from their liability under the Gasworks Clauses Act, 1847, and that they were responsible for the plaintiff's injuries. *Brame* v. *Commercial Gas Co.*, 84 L. J. K.B. 570; [1914] 3 K.B. 1181; 111 L. T. 1099; 79 J. P. 55; 12 L. G. R. 1270—D.

3. Purchase of Undertaking.

Purchase by Corporation—Statutory Powers—Basis of Price.]—By section 50 of the Perth Gas Company's Act, 1886, it was made lawful for the Perth Corporation "to purchase all the land, buildings, works, hereditaments, lamps, pipes, stock and appurtenances of and belonging to the company in the name and on behalf of the corporation . . . upon such terms and conditions as shall or may be mutually agreed upon . . . but in case of any dispute or disagreement between the directors and the corporation respecting such purchase as aforesaid, then it shall be lawful for the directors or the corporation, if they or either of them think fit, to require that it shall be left to arbitration to determine what amount of purchase money shall be paid to the directors":—*Held*, that the price to be paid was the value of the commercial undertaking of the company as a going concern, not only the physical apparatus by which the company carried on their business, but their powers to use that apparatus for the purposes of carrying it on. *Perth Gas Co.* v. *Perth Corporation*, 80 L. J. P.C. 168; [1911] A.C. 506; 105 L. T. 266; 27 T. L. R. 526—P.C.

GENERAL AVERAGE.

See SHIPPING.

GIFT.

See also Vol. VII. 556, 1741.

Imperfect Gift—Contractual Obligation.]—At the death of the testator certain promises by him of donations to various institutions remained unredeemed:—*Held*, that these promises created no contractual obligation between the parties, and therefore that there

was no legal debt due from the testator's estate to the institutions. *Cory, In re; Kinnaird* v. *Cory*, 29 T. L. R. 18—Eve, J.

Undue Influence — Parent and Child — Manager of Business.]—It is not every fiduciary relation existing between donor and donee which raises a presumption that the gift was made under undue influence. *Coomber, In re; Coomber* v. *Coomber*, 80 L. J. Ch. 399; [1911] 1 Ch. 723; 104 L. T. 517—C.A.

For several years prior to his father's death a son assisted his father in the business of an ale-store keeper, and after his father's death in July, 1905, acted as manager of the same business for his mother, who was sole executrix and universal legatee under the father's will. In September, 1905, the mother, being fully advised as to the nature and consequences of her act by an independent solicitor, executed a voluntary assignment of the ale stores in favour of the son, being actuated by affection for her son and a desire to carry out what she believed to have been a wish of the father. The mother died in 1906, having by her will given her residuary estate between her three children equally. In an action impeaching the voluntary assignment,—*Held*, that the son stood in no such fiduciary relation to the mother as to throw upon him the burthen of shewing that the gift was not made under undue influence. *Held*, also, that in any case any presumption of undue influence was sufficiently rebutted by the facts. *Ib.*

Independent Advice—Duty of Solicitor.]—*Per* Fletcher Moulton, L.J.—An independent solicitor advising a competent adult donor in the matter of an intended gift should fully explain to the donor the nature and consequences of his act, but it is no part of his duty to express his approval or disapproval of the donor's intentions. *Ib.*

Donatio Mortis Causa — Sufficiency — Chattels — Bearer Bonds — Partial or Inchoate Delivery—Handing over of Key of Receptacle of Property.]—A valid *donatio mortis causa* of chattels may be made by a partial or inchoate delivery of them, effected by delivery of the means, or part of the means, of obtaining possession of the property. W., when about to undergo a serious operation, from the effects of which he died, placed a number of bearer bonds in a parcel, and wrote his wife's name on the parcel. He then left the parcel at his bank in a locked box, of which he retained the key. He handed a list of the bonds to his wife, and afterwards gave her the key of the box; and she, under his direction, then locked the list and the key in a drawer in her own room, of which she always kept the key:—*Held*, that this constituted an effectual *donatio mortis causa* of the bonds to the wife. *Jones* v. *Selby* (Pr. Ch. 300), *Taylor, In re; Taylor* v. *Taylor* (56 L. J. Ch. 597), and *Mustapha, In re; Mustapha* v. *Wedlake* (8 T. L. R. 160), followed. *Wesserberg, In re; Union of London and Smiths Bank* v. *Wasserberg*, 84 L. J. Ch. 214; [1915] 1 Ch. 195; 112 L. T. 242; 59 S. J. 176—Sargant, J.

GOODS.

Assignment of.]—*See* BILL OF SALE.

Converting.]—*See* TROVER.

Sale of.]—*See* AUCTION AND AUCTIONEER; SALE OF GOODS.

GOODWILL.

Sale and Transfer—Soliciting Customers of Old Firm—Sale by Trustee under Deed of Assignment for Benefit of Creditors.]—The rule of *Trego* v. *Hunt* (65 L. J. Ch. 1; [1896] A.C. 7), which precludes the vendor of the goodwill of a business from soliciting the customers of the old firm, does not apply to the case of a sale not by the man carrying on the business, but by the trustee of a deed of assignment for the benefit of his creditors. *Walker* v. *Mottram* (51 L. J. Ch. 108; 19 Ch. D. 355) applied. *Green* v. *Morris*, 83 L. J. Ch. 559; [1914] 1 Ch. 562; 110 L. T. 508; 58 S. J. 398; 30 T. L. R. 301—Warrington, J.

GUARANTEE.

See BILL OF EXCHANGE; INSURANCE (FIDELITY); PRINCIPAL AND SURETY.

HABEAS CORPUS.

Previous Extradition Proceedings in India with Respect to Same Charge—Applicant Discharged Owing to Informality in Proceedings—Prima Facie Case.]—Section 6 of the Habeas Corpus Act, 1679, which provides that "no person or persons which shall be delivered or set at large upon any *habeas corpus*, shall at any time hereafter be again imprisoned or committed for the same offence by any person or persons whatsoever, other than by the legal order and process of such Court wherein he or they shall be bound by recognizance to appear, or other Court having jurisdiction of the cause," only applies when the second arrest is substantially for the same cause as the first arrest, so that the return to the second writ of *habeas corpus* raises for the opinion of the Court the same question with reference to the validity of the grounds of detention as the first. The fact, therefore, that a person who had been committed for extradition in India upon the report of a magistrate was, owing to some informality in the procedure before the magistrate, released by the High Court at

Calcutta on a write in the nature of a *habeas corpus*, notwithstanding that there was evidence of a *prima facie* case against him, is no bar to his being re-arrested in England and committed for extradition to Germany upon the same charge as that preferred against him in India. *Rex* v. *Brixton Prison (Governor)*; *Stallmann, In re*, 82 L. J. K.B. 8; [1912] 3 K.B. 424; 107 L. T. 553; 77 J. P. 5; 23 Cox C.C. 192; 28 T. L. R. 572—D.

Refusal of Rule Nisi by Divisional Court—Court of Appeal—Jurisdiction.]—Where a Divisional Court has refused to grant a rule *nisi* for a *habeas corpus* in the case of a prisoner who has been committed with a view to extradition, the Court of Appeal has no original jurisdiction to grant such a rule. *Le Gros, Ex parte*, 30 T. L. R. 249—C.A.

Jurisdiction of Committing Magistrate.]—*See* EXTRADITION.

Internment of Alien Enemy.]—*See* ALIEN.

HABITUAL CRIMINAL.

See CRIMINAL LAW.

HABITUAL DRUNKARD.

See INTOXICATING LIQUORS.

HACKNEY CARRIAGE.

See also Vol. VII. 596, 1747.

Application for Licence—Discretion of Commissioner of Police to Refuse.]—The Commissioner of Police is not entitled to lay down and act upon a general rule to refuse a licence for a cab where the applicant for the licence holds his cab under a hire-purchase agreement. *Rex* v. *Metropolitan Police Commissioner; Randall, Ex parte*, 75 J. P. 486; 55 S. J. 726; 27 T. L. R. 505—D.

Under the regulations dated December 30, 1907, made by the Secretary of State in pursuance of sections 6 and 11 of the Metropolitan Public Carriage Act, 1869, the Commissioner of the Metropolitan Police has a discretion in regard to the granting of a licence for a cab or a stage carriage. This discretion is not limited to the excepted cases set out in clauses (*a*) and (*b*) of regulation 1, but is a general discretion in regard to all applications. *Rex* v. *Metropolitan Police Commissioner; Pearce, Ex parte*, 80 L. J. K.B. 223; 104 L. T. 135; 75 J. P. 85—D.

Under the regulations in the Order dated December 30, 1907, and made by the Secretary of State in pursuance of sections 6 and 11 of the Metropolitan Public Carriage Act, 1869, the Commissioner of Metropolitan Police has not a general discretion in regard to the granting or refusing of a licence for a cab or stage coach, but such discretion is limited to the excepted cases set out in clauses (*a*) and (*b*) of regulation 1 of the Order. *Rex* v. *Metropolitan Police Commissioner; Pearce, Ex parte* (80 L. J. K.B. 223), overruled. *Rex* v. *Metropolitan Police Commissioner; Holloway, Ex parte*, 81 L. J. K.B. 205; [1911] 2 K.B. 1131; 105 L. T. 532; 75 J. P. 490; 55 S. J. 773; 27 T. L. R. 573—C.A.

By-laws—Validity—Certainty and Reasonableness—Light on Dial of Taxi-cab.]—The L. Corporation made the following by-law: "The owner of every motor hackney carriage shall have fitted on such carriage an efficient lamp solely for the purpose of illuminating the dial of the taximeter whenever it is necessary in such a manner that the amount of fare recorded can be clearly seen from the inside of the carriage at all times, and every driver shall see that the lamp is properly lighted and adjusted and so kept." On a summons against a driver for breach of this by-law, the learned stipendiary magistrate declined to convict the driver, being of opinion that the by-law was invalid for uncertainty and unreasonableness, since it imposed two duties, one on the owner and one on the driver; that although the duty on the owner was to fit an efficient lamp for illuminating the dial "whenever it was necessary," these words did not appear in the part of the by-law relating to the driver; and further, that the by-law did not contain adequate information as to the driver's duties:—*Held*, that the words "whenever it was necessary" applied both to the driver and the owner; that it required the lamp to be fitted by the owner and kept alight by the driver; that it was not unreasonable that the lamp should be solely for the purpose of lighting the dial; and therefore that the by-law was valid. *Dunning* v. *Maher*, 106 L. T. 846; 76 J. P. 255; 10 L. G. R. 466; 23 Cox C.C. 1—D.

HARBOUR.

See SHIPPING.

HAWKER.

Licence.]—*See Lee* v. *Wallocks*, *post*, MARKET.

HEALTH INSURANCE.

See INSURANCE.

HEALTH (PUBLIC).

See LOCAL GOVERNMENT: METROPOLIS.

HEIRLOOMS.

See BILL OF SALE; SETTLED LAND.

HIGHWAY.

See WAY.

HOMICIDE.

See CRIMINAL LAW.

HOSPITAL.

Hospital District — Committee — Establishment by County Council—Constitution—Power to Alter.]—*Held* (Lord Cozens-Hardy, M.R., dissenting), that where a county council have by an order established a committee for a hospital district under the Isolation Hospitals Act, 1893, they have power by a subsequent order to alter the constitution of the committee. *Att.-Gen.* v. *Derbyshire County Council*, 60 S. J. 74; 32 T. L. R. 93—C.A. Reversing, 79 J. P. 489; 13 L. G. R. 1309—Sargant, J.

HOTCHPOT.

See WILL.

HOUSE.

Inhabited-house Duty.]—*See* REVENUE.

HOUSE AGENT.

See PRINCIPAL AND AGENT.

HOUSE OF LORDS.

See APPEAL.

HOUSING AND TOWN PLANNING.

See LOCAL GOVERNMENT.

HUSBAND AND WIFE.

I. MARRIAGE.

See also Vol. VII. 625, 1752.

1. Validity.

a. Petition for Declaration of Validity.

Apart from special statutory provision, such as the Legitimacy Declaration Act, 1858 (21 & 22 Vict. c. 93), the Court has no power to entertain a petition for or pronounce a declaration of the validity of a marriage. Such power, being absent in the Ecclesiastical Courts, is not supplied by the operation of Order XXV. rule 5. *De Gasquet James (Countess)* v. *Mecklenburg-Schwerin (Duke)*, 83 L. J. P. 40; [1914] P. 53; 110 L. T. 121; 58 S. J. 341; 30 T. L. R. 329—Evans, P.

Marriage Void by Law of Roman Catholic Church.]—A marriage effected in accordance with the law of the land, and followed by cohabitation, is not invalidated by the fact that such marriage is void by the law of the Roman Catholic Church, and that the parties, had they known this, would not have entered into the marriage contract. *Ussher* v. *Ussher*, [1912] 2 Ir. R. 445—K.B. D.

b. Solemnisation.

Marriage Celebrated in Austria between Irish Protestant and Austrian Catholic.]—Section 1 of an Irish statute of 1745—19 Geo. 2. c. 13—provided that every marriage after the year 1746 celebrated between a Papist and any person who hath been, or hath professed himself or herself to be, a Protestant at any time within twelve months before such celebration of marriage, if celebrated by a Popish priest, is to be null and void:—*Held*, that a marriage celebrated in 1833 in Austria between a domiciled Irish Protestant and an Austrian Catholic by a Catholic priest in accordance with the ceremonies of the Catholic Church, was a valid marriage, inasmuch as section 1 of the Act of 1745 while it was in force had no extra-territorial operation. *Swifte* v. *Att.-Gen. for Ireland (No. 1)*, 81 L. J. P.C. 158; [1912] A.C. 276; 106 L. T. 3; 28 T. L. R. 199—H.L. (Ir.).

Decision of the Court of Appeal in Ireland, *sub nom. Swifte* v. *Swifte* ([1910] 2 Ir. R. 140), affirmed. *Ib.*

c. Evidence.

Marriage after Banns—Evidence of Non-residence.]—In a suit for nullity on the ground that the marriage, a marriage after banns, was null and void because at the time the parties were not resident in the parish in which the banns had been published, no evidence of such non-residence can be given. *Bodman* v. *Bodman*, 108 L. T. 383; 57 S. J. 359; 29 T. L. R. 348—Bargrave Deane, J.

Jewish Marriage — Certificate Signed by Secretary of Synagogue—Necessity for Adding Statement that Secretary also Registrar.]—A certificate of a Jewish marriage was signed by Z., the secretary of the synagogue. Z. was also the properly constituted registering officer, but he did not state this fact on the certificate. Observed, *per* Bargrave Deane, J., that the certificate should have been signed by Z. as secretary and registrar, and that this course must be adopted in future. *Prager* v. *Prager*, 108 L. T. 734; 29 T. L. R. 556—Bargrave Deane, J.

Marriage in Register Office in Ireland—Certificate.]—A marriage which has been duly celebrated in a register office in Ireland may be proved by the certificate of such marriage. *Guillet* v. *Guillet*, 27 T. L. R. 416—Bargrave Deane, J.

"Irregular" Marriage in Scotland—Extract from Register Book.]—The validity of a marriage in Scotland by declaration in presence of two witnesses, afterwards duly registered pursuant to warrant of the Sheriff-Substitute, is sufficiently established in an English Court by production of a copy of the entry in the register, duly signed by the Registrar, pursuant to section 2 of the Marriage Law (Scotland) Amendment Act, 1856, without expert evidence of the law of Scotland. *Drew* v. *Drew*, 81 L. J. P. 85; [1912] P. 175; 107 L. T. 528; 28 T. L. R. 479—Evans, P.

Parties Married in Hong Kong.]—Where a marriage has been solemnised in Hong Kong in accordance with the provisions of section 20 of No. 7 of the Ordinances of Hong Kong, 1875, it can be proved by the production of a copy of the certificate of marriage which has been signed and certified by the Registrar-General as a true copy, and sealed and stamped with his official seal. *Smith* v. *Smith*, 109 L. T. 744—Bargrave Deane, J.

2. Legitimacy of Children.

Children of Marriage Validated by Deceased Wife's Sister's Marriage Act.]—Notwithstanding the fact that one of the parties to a marriage with a deceased wife's sister has died before the passing of the Deceased Wife's Sister's Marriage Act, 1907, the children of that marriage are legitimated by that Act. *Green, In re; Green* v. *Meinall*, 80 L. J. Ch. 623; [1911] 2 Ch. 275; 105 L. T. 360; 55 S. J. 552; 27 T. L. R. 490—Warrington, J.

The *spes successionis* which the brother of a person has during his lifetime to a share in his property is not a right, title, estate, or interest in expectancy in, to, or in respect of property protected by section 2 of the Act. *Ib.*

Legitimacy Suit — Costs — Successful Petitioner — Attorney-General's Costs — Costs of other Parties.]—In a legitimacy suit the Attorney-General neither receives nor pays costs, but the Court in view of all the circumstances of this suit, although giving judgment in favour of the petitioner, ordered each of the other parties to pay his own costs. *Slingsby* v. *Att.-Gen.*, 31 T. L. R. 246—Bargrave Deane, J.

3. Suits for Nullity.

a. Grounds for.

Incapacity — Non-consummation — Absence of Cohabitation.]—Circumstances in which the Court inferred the incapacity of the wife by her persistent refusal to consummate the marriage. *F.* v. *F.*, 55 S. J. 482; 27 T. L. R. 429—Bargrave Deane, J. S.P. *C.* v. *C.*, 27 T. L. R. 421—Bargrave Deane, J.

No Cohabitation—Wife's Persistent Refusal to Cohabit and Refusal to take Medical Advice or to Submit to Inspection—Inference of Physical Impediment.]—The persistent refusal of a wife, respondent to a petition for nullity on the ground of physical incapacity, to cohabit, coupled with her refusal to avail herself of medical advice, entitles the Court to draw the inference that there is more than wilful refusal on her part and that physical impediment also exists, and in the absence of submission on her part to the usual order for inspection, the husband being reported as capable by the inspectors, to pronounce a decree *nisi* annulling the marriage. *W.* v. *W.*, 81 L. J. P. 29; [1912] P. 78—Evans, P.

Impotence — Admitted Non-consummation — No Apparent Defect in Either Party.]—If the Court is satisfied that a marriage has not been and that, *quoad hanc et quoad hunc*, it cannot be consummated by the spouses, although no impediment to consummation is clear or apparent in either of them, the Court is justified in annulling the marriage. In a case of this description, where there are cross-prayers for relief, a decree *nisi* may be pronounced at the suit of both parties, leaving both or either of them to apply for the decree to be made absolute. *G.* v. *G.*, 81 L. J. P. 90; [1912] P. 173; 106 L. T. 647; 28 T. L. R. 481—Bargrave Deane, J.

Non-consummation—Incapacity not Inferred —Wilful Refusal.]—The contract of marriage implies not merely the ability, but also the willingness, to consummate it. There is no good reason why mere wilful refusal on the part of a woman to consummate marriage should not be a ground for annulling the marriage—provided that such wilful refusal is not a mere temporary unwillingness due to a passing phase or the result of coyness, a feeling of delicacy affected or real, or a nervous ignorance which might be got rid of or cured by patient forbearance, care, and kindness, but a wilful, determined, and stedfast refusal, likely or threatened to be persistent, to perform the obligations and to carry out the duties which the matrimonial contract involves. *D.* v. *D.* (or *Dickinson* v. *Dickinson*), 82 L. J. P. 121; [1913] P. 198; 109 L. T. 408; 58 S. J. 32; 29 T. L. R. 765—Evans, P.

A wilful and determined refusal to consummate of a like kind on the part of a man would confer the same right to relief on a woman with whom he had passed through the ceremony of marriage. *Ib.*

If either incapacity or unwillingness to carry out the contract exists, and the Court finds a suit for that purpose to be brought in good faith, the contract is voidable at the suit of the party conceiving himself or herself to be wronged, and the parties are not to be left bound by the tie until one of them is guilty of matrimonial misconduct, giving the other party a right to relief upon that ground. *Ib.*

Wilful and persistent refusal to allow any marital intercourse is not sufficient ground for a decree of nullity of marriage where no inference of incapacity is drawn. *D.* v. *D.* (or *Dickinson* v. *Dickinson*) (82 L. J. P. 121; [1913] P. 198) overruled. Decision of Sir Samuel Evans, P. (84 L. J. P. 77; [1915] P. 65), affirmed. *Napier* v. *Napier*, 84 L. J. P. 177; [1915] P. 184; 113 L. T. 764; 59 S. J. 560; 31 T. L. R. 472—C.A.

b. Procedure.

Power of Court to Hear Case in Camera— Effect of Order—Subsequent Publication of Evidence.]—Courts of justice in this country must administer justice in public. To justify an order for a hearing *in camera* it must be shewn that the paramount object of securing that justice should be done would be rendered doubtful of attainment if such order were not made. It cannot be dealt with by the presiding Judge as a matter resting in his individual discretion as to what is expedient. The Court established by the Matrimonial Causes Act, 1857, for the hearing of matrimonial causes was a new Court constituted with the ordinary incidents of other English Courts of justice, and therefore had no greater power of hearing cases *in camera* than any other Court, whatever may have been the previous practice of the Ecclesiastical Courts abolished by that statute. *Scott* v. *Scott* (*No.* 1), 82 L. J. P. 74; [1913] A.C. 417; 109 L. T. 1; 57 S. J. 498; 29 T. L. R. 520—H.L. (E.)

In any case an order for a hearing *in camera* extends only to the hearing, and does not pro-

hibit the subsequent publication of what passed at such hearing, provided that such publication be made in good faith and without malice. *Ib.*

Decision of the Court of Appeal (81 L. J. P. 113; [1912] P. 241) reversed. *Ib.*

Discovery—Liability of Person of Unsound Mind not so Found, or his Guardian ad Litem.]—A person prosecuting a suit for nullity of marriage in this Division on behalf of a person of unsound mind not so found by inquisition is as compellable to disclose documents as the person on whose behalf the suit is brought would be if he himself were prosecuting the same and of sound mind. *Paspati* v. *Paspati*, 83 L. J. P. 56; [1914] P. 110; 110 L. T. 751; 58 S. J. 400; 30 T. L. R. 390—Evans, P.

Decree Absolute — Delay.] — *Semble*, delay in application is in the absence of other reasons no ground for refusing a decree absolute, where the only result would be to put the petitioner to the expense of commencing proceedings *de novo* and filing a fresh petition. *Giannetti* v. *Giannetti*, 82 L. J. P. 111; [1913] P. 137; 108 L. T. 1037; 57 S. J. 774; 29 T. L. R. 654—Evans, P.

Maintenance — Application by Respondent "Wife" — "Husband's" Petition — Bigamy of "wife"—"Marriage" Declared Null and Void.]—It is enacted by section 1, subsection 1 of the Matrimonial Causes Act, 1907, that "The court may, if it thinks fit, on any decree for dissolution or nullity of marriage, order that the husband shall, to the satisfaction of the court, secure to the wife such gross sum of money or such annual sum of money for any term not exceeding her life as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it may deem reasonable, and for that purpose may refer the matter to any one of the conveyancing counsel of the court to settle and approve of a proper deed or instrument to be executed by all necessary parties, and the court may, if it thinks fit, suspend the pronouncing of its decree until such deed shall have been duly executed." A petitioner obtained a decree for nullity of marriage on the ground that at the time of the ceremony the respondent had a husband still living. An application was made that he should be ordered to pay maintenance to the respondent. The contention of the petitioner, who opposed the application, was that the Matrimonial Causes Act, 1907, under which it was made, did not apply to marriages that were void *ab initio*:—*Held*, that the Court had power to order maintenance. *Ramsay* v. *Ramsay*, 108 L. T. 382—Bargrave Deane, J.

—— **Allowance for Woman — Amount — Security.**] — Section 1 of the Matrimonial Causes Act, 1907, gives the Court power, after a decree of nullity on the ground of impotence, to order the man to make an allowance to the woman, although there has been a finding against both of them, and, where security can be given, to order the whole or any part of such allowance to be secured. *Gullan* v. *Gullan*, 82 L. J. P. 118; [1913] P. 160; 109 L. T. 411—Evans, P.

Semble, the amount of the allowance is in the discretion of the Court on the facts of each case, but will not be regulated by the scale obtaining in cases of dissolution. *Ib.*

—— **Permanent Maintenance — Dum Sola Clause—Reduced Amount on Re-marriage.**]— The Court has power in nullity suits to fix permanent maintenance *dum sola*, and to reduce amount on re-marriage. *Marigold* v. *Marigold*, 55 S. J. 387—Evans, P.

4. Action for Breach of Promise of Marriage.

Special Damage — Giving up Business—Pecuniary Loss—Liability of Executor.]—A pecuniary loss suffered by a woman through giving up an employment or business in contemplation of marriage, or any similar loss sustained by her in such circumstances, cannot properly be treated as special damage flowing from a breach of the promise to marry her, and cannot be recovered in an action against the executor of the promisor. *Quirk* v. *Thomas (Executor of)*, 84 L. J. K.B. 953; [1915] 1 K.B. 798; 113 L. T. 239; 59 S. J. 350; 31 T. L. R. 237—Lush, J.

Belief that Plaintiff Unfit for Marriage—Whether a Defence.]—In an action for breach of promise of marriage the plea that the defendant honestly and on reasonable grounds believed the plaintiff to be unfit for marriage is no defence in law if the plaintiff was not in fact unfit for marriage, but such a belief may affect the amount of the damages. *Jefferson* v. *Paskell*, 32 T. L. R. 69—C.A.

5. Restitution of Conjugal Rights.

a. Jurisdiction.

The Matrimonial Causes Act, 1884, has altered the consequences of disobedience to a decree for restitution of conjugal rights, but does not affect the question of service out of the jurisdiction of a petition in that form. The jurisdiction to decree restitution arises from the Matrimonial Causes Act, 1857. The joint operation of sections 41 and 42 of that Act negatives jurisdiction to order service out of the jurisdiction of the petition and citation where this class of relief is claimed. *Semble*, the domicil of the respondent is immaterial. *Firebrace* v. *Firebrace* (47 L. J. P. 41; 4 P. D. 63) approved and followed. *Dicks* v. *Dicks* (68 L. J. P. 118; [1899] P. 275) dissented from. *De Gasquet James (Countess)* v. *Mecklenburg-Schwerin (Duke)*, 83 L. J. P. 40; [1914] P. 53; 110 L. T. 121; 58 S. J. 341; 30 T. L. R. 329—Evans, P.

Apart from the question of service out of the jurisdiction the Court has no jurisdiction to entertain a suit for restitution against a respondent not domiciled in England and not

resident in England at the time of the institution of the suit. *Ib.*

Quære, whether after due service, and where jurisdiction exists to pronounce a decree, that decree can be served upon the respondent out of the jurisdiction. *Ib.*

The principle of the decision in *De Gasquet James (Countess)* v. *Mecklenburg-Schwerin (Duke)* (83 L. J. P. 40; [1914] P. 53), negativing power in the Court to order service of process out of the jurisdiction in a suit for restitution of conjugal rights, is restricted to the case of a respondent not domiciled or resident in England at the time of the institution of the suit, or, *semble*, who had not a matrimonial home in England at the date when cohabitation ceased. Where it appears from the petition that the parties were domiciled in England at the time of the institution of the suit, or that they had a matrimonial home in England at the date when cohabitation ceased, or that they were both resident in England at the time of the institution of the suit, the petition and citation may be served either within or without his Majesty's dominions, and in any event a decree for restitution of conjugal rights may be so served if made in a suit which there was jurisdiction to entertain. Additional Divorce Rules 221 and 222 will regulate the practice so laid down. *Perrin* v. *Perrin; Powell* v. *Powell*, 83 L. J. P. 69; [1914] P. 135; 111 L. T. 335; 30 T. L. R. 497—Evans, P.

b. Demand.

Written Demand by Solicitor.]—With reference to petitions for restitution of conjugal rights, Divorce rule 175 runs: "The affidavit filed with the petition, as required by rule 2, shall further state sufficient facts to satisfy one of the Registrars that a written demand for cohabitation and restitution of conjugal rights has been made by the petitioner upon the party to be cited, and that, after a reasonable opportunity for compliance therewith, such cohabitation and restitution of conjugal rights have been withheld." The "written demand" in accordance with the above rule should be conciliatory in tone and devoid of any threat; the spirit and not the letter of the rule should be observed. *Neumann* v. *Neumann*, 108 L. T. 48; 57 S. J. 228; 29 T. L. R. 213—Bargrave Deane, J.

c. When Decree will be Granted.

Previous Order Obtained from Magistrate on Account of Husband's Desertion—Non-cohabitation Clause—Whole Order Subsequently Discharged on Wife's Application.]—In 1904 a wife, who had been deserted by her husband, obtained a summary order for maintenance. The usual non-cohabitation clause was inserted in the order, but without the knowledge or approval of the applicant. In 1912 the entire order was discharged upon the wife's application. Subsequently she petitioned in the High Court for restitution of conjugal rights. The Court granted her a decree for restitution. *Niland* v. *Niland*, 108 L. T. 50; 57 S. J. 248—Evans, P.

Petitioner Guilty of Physical Violence, but not of Cruelty.]—In a suit by a wife for restitution of conjugal rights the husband alleged that the petitioner drank to excess, and, further, that she had been guilty of cruelty towards him. The jury found—first, that the petitioner had been guilty of physical violence to the respondent, but not of cruelty; secondly, that the petitioner drank to excess; thirdly, that it was not unsafe at the time the respondent left the petitioner for the parties to live together:—*Held*, that a decree of restitution of conjugal rights should be refused. *Butland* v. *Butland*, 29 T. L. R. 729—Bargrave Deane, J.

Petition by Wife—No Adultery by Petitioner—Opposition to Decree on Ground of Wife's Conduct—Grant of Decree.]—In a suit by a wife for restitution of conjugal rights, where the husband alleged that the wife's conduct, though she had not been guilty of adultery, had been such as to disentitle her to a decree, the Court declined, on a consideration of all the circumstances, to exercise its discretion by refusing to grant a decree. *Fletcher* v. *Fletcher*, 31 T. L. R. 306—Evans, P.

Separation Deed — Subsequent Bankruptcy of Husband.]—A husband and wife entered into a deed of separation which included a covenant that neither party should endeavour to compel the other to live with him or her by any proceeding for restitution of conjugal rights, and a further covenant by the husband to pay the wife 300*l.* a year for her maintenance and support. Subsequently the husband became bankrupt and obtained his discharge:—*Held*, that in these circumstances the wife was not precluded by the covenant in the deed from instituting a suit for restitution of conjugal rights. *McQuiban* v. *McQuiban*, 83 L. J. P. 19; [1913] P. 208; 109 L. T. 412; 29 T. L. R. 766—Evans, P.

d. Procedure and Practice.

Service of Process and Decree—Domicil—Residence—Matrimonial Home—New Divorce Rules.]—The principle of the decision in *De Gasquet James (Countess)* v. *Mecklenburg-Schwerin (Duke) (infra)*, negativing power in the Court to order service of process out of the jurisdiction in a suit for restitution of conjugal rights, is restricted to the case of a respondent not domiciled or resident in England at the time of the institution of the suit, or, *semble*, who had not a matrimonial home in England at the date when cohabitation ceased. Where it appears from the petition that the parties were domiciled in England at the time of the institution of the suit, or that they had a matrimonial home in England at the date when cohabitation ceased, or that they were both resident in England at the time of the institution of the suit, the petition and citation may be served either within or without his Majesty's dominions, and in any event a decree for restitution of conjugal rights may be so served if made in a suit which there was jurisdiction to entertain. Additional Divorce Rules 221 and 222 will regulate the practice so laid down. *Perrin* v. *Perrin; Powell* v. *Powell*, 83 L. J. P. 69; [1914] P. 135; 111 L. T. 335; 30 T. L. R. 497—Evans, P.

The Matrimonial Causes Act, 1884, has altered the consequences of disobedience to a decree for restitution of conjugal rights, but does not affect the question of service out of the jurisdiction of a petition in that form. The jurisdiction to decree restitution arises from the Matrimonial Causes Act, 1857. The joint operation of sections 41 and 42 of that Act negatives jurisdiction to order service out of the jurisdiction of the petition and citation where this class of relief is claimed. *Semble*, the domicil of the respondent is immaterial. *Firebrace* v. *Firebrace* (47 J. P. 41; 4 P. D. 63) approved and followed. *Dicks* v. *Dicks* (68 L. J. P. 118; [1899] P. 275) dissented from. *De Gasquet James (Countess)* v. *Mecklenburg-Schwerin (Duke)*, 83 L. J. P. 40; [1914] P. 53; 110 L. T. 121; 58 S. J. 341; 30 T. L. R. 329—Evans, P.

Apart from the question of service out of the jurisdiction the Court has no jurisdiction to entertain a suit for restitution against a respondent not domiciled in England and not resident in England at the time of the institution of the suit. *Ib.*

Quære, whether after due service, and where jurisdiction exists to pronounce a decree, that decree can be served upon the respondent out of the jurisdiction. *Ib.*

Apart from special statutory provision, such as the Legitimacy Declaration Act, 1858 (21 & 22 Vict. c. 93), the Court has no power to entertain a petition for or pronounce a declaration of the validity of a marriage. Such power, being absent in the Ecclesiastical Courts, is not supplied by the operation of Order XXV. rule 5. *Ib.*

Where a sealed copy of a petition for the restitution of conjugal rights and a copy of the citation had been duly served upon the respondent in Ireland, the Court granted a decree, although no leave had been previously obtained, for service out of the jurisdiction. *Bateman* v. *Bateman* (70 L. J. P. 29; [1901] P. 136) not followed. *Buckley* v. *Buckley*, 107 L. T. 590; 57 S. J. 9—Evans, P.

Answer by Husband Alleging Wife's Adultery —Reply by Wife Alleging Husband's Adultery — Relevancy — "Compensatio criminis."] — Where a wife petitions for restitution of conjugal rights and the husband by his answer alleges adultery by the wife but does not himself ask for any relief, an allegation by the wife in her reply that the husband has committed adultery is irrelevant by way of rebuttal of the husband's answer, is no ground in support of her petition, and should be struck out. *Brooking Phillips* v. *Brooking Phillips*, 82 L. J. P. 57; [1913] P. 80; 108 L. T. 397; 29 T. L. R. 288—C.A.

The doctrine of *compensatio criminis* is not now recognised by the law, and the rule laid down in *Seaver* v. *Seaver* (2 Sw. & Tr. 665) has no longer any application in England since the Matrimonial Causes Acts, 1857 and 1884. *Ib.*

Petition by Wife—Refusal of Compliance by Husband—Periodical Payments by Husband—For "joint lives" or "for life of wife"—Discretion.]—By section 2 of the Matrimonial Causes Act, 1884, it is enacted: "From and after the passing of this Act a decree for restitution of conjugal rights shall not be enforced by attachment, but where the application is by the wife the Court may, at the time of making such decree, or at any time afterwards, order that in the event of such decree not being complied with within any time in that behalf limited by the Court, the respondent shall make to the petitioner such periodical payments as may be just, and such order may be enforced in the same manner as an order for alimony in a suit for judicial separation. The Court may, if it shall think fit, order that the husband shall, to the satisfaction of the Court, secure to the wife such periodical payment, and for that purpose may refer it to any one of the conveyancing counsel of the Court to settle and approve of a proper deed or instrument to be executed by all necessary parties." A wife, aged forty-two, having obtained a decree for restitution of conjugal rights, petitioned for periodical payments to be secured to her by the respondent. The Registrar by his report submitted that the husband, who was seventy-seven years of age, should be ordered to secure periodical payments at the rate of 60*l.* per annum "during their joint lives." On a motion to vary the report to the effect that the periodical payments should be secured to the wife for her life,—*Held*, that the Court had a discretion as to the duration of time for the payments, and that, having regard to the respective ages of the parties, the report should be varied as prayed. *Clutterbuck* v. *Clutterbuck*, 108 L. T. 573; 57 S. J. 463; 29 T. L. R. 480—Bargrave Deane, J.

Non-compliance with Decree — Periodical Payments—Analogy to Alimony—Duration of Payments.]—An order for periodical payments made under the Matrimonial Causes Act, 1884, s. 2, is a personal order against the respondent who has failed to comply with a decree for restitution of conjugal rights, and enforceable in the same manner as an order for alimony in a suit for judicial separation. The payments are analogous to alimony, depending on the means of the parties, and the Court has power by section 4 to modify them. These considerations shew that it was not the intention of the statute to make the payments under section 2 to extend for a longer period than that of the alimony, which would be a consequence of proceeding for a judicial separation as a remedy for the same non-compliance under section 5, and which would be limited to the joint lives of the parties. The power of the Court to order security to be given for the payments does not alter their character, which the statute expresses to be variable as that of alimony. *Clutterbuck* v. *Clutterbuck* (29 T. L. R. 480; 108 L. T. 573) disapproved. *Tangye* v. *Tangye*, 83 L. J. P. 164; [1914] P. 201; 111 L. T. 944; 58 S. J. 723; 30 T. L. R. 649—Evans, P.

Wife's Suit—Decree—Husband Serving with Army Abroad—Decree to Lie in Office.]—In a wife's suit for restitution of conjugal rights, where it was shewn that the respondent, who was in the Army, was serving abroad at the time of the hearing of the suit,

the Court pronounced a decree and directed that it should remain in the office and should not be served till further order. *Lang* v. *Lang*, 59 S. J. 561; 31 T. L. R. 467—Evans, P.

II. DIVORCE.

See also Vol. VII. 730, 1772.

1. Jurisdiction and Duty of Court.

Co-respondent an Indian Native Prince—Extra-territoriality — Status of Sovereign.]—The native princes of India, falling within the class referred to in section 18, sub-section 5 of the Interpretation Act, 1889, though not independent, but subject to the suzerainty of His Majesty, are reigning sovereigns to the extent that they are immune from the jurisdiction of an English Court. An Indian prince, coming within this category and sued as co-respondent in a suit for divorce, was on his application struck out of the proceedings. *Statham* v. *Statham*, 81 L. J. P. 33; [1912] P. 92; 105 L. T. 991; 28 T. L. R. 180—Bargrave Deane, J.

Marriage in England between Englishwoman and Domiciled Mexican — Irregularity by Mexican Law.]—The petitioner, an Englishwoman, married in England a domiciled Mexican. By Mexican law a marriage is not valid in Mexico unless it is registered by one or other of the parties to it. The marriage of the petitioner and respondent had not been registered in Mexico. The petitioner, by registering the marriage in Mexico, could have obtained a judicial separation, a decree of divorce not being granted in that country. The petitioner having brought a suit for divorce in this country on the ground of the respondent's adultery, cruelty, and desertion:—*Held*, that as the respondent's domicil was Mexican, the Court had no jurisdiction to entertain the suit. *Ramos* v. *Ramos*, 27 T. L. R. 515—Bargrave Deane, J.

Marriage in England of Domiciled Greek and Englishwoman—Marriage Invalid by Greek Law — Change of Domicil — Original Status.]—A wife, before her marriage domiciled in England, who has contracted in England a marriage valid in English law with a domiciled foreigner, and has thereby acquired the domicil of her husband, is nevertheless, upon the marriage being annulled by the Court of her husband's domicil, for a cause unknown to English law, remitted to her original domicil, and thereby obtains the right to sue in the English Court for breaches of matrimonial obligations, recognised by English law, in the same manner as if her domicil had remained unchanged. *Stathatos* v. *Stathatos*, 82 L. J. P. 34; [1913] P. 46; 107 L. T. 592; 56 S. J. 114; 29 T. L. R. 54—Bargrave Deane, J.

A domiciled Englishwoman validly married in England to a domiciled Greek, who later deserted her and obtained from the Court of his (Greek) domicil a decree of nullity on the ground that no Greek priest had been present at the ceremony, was *held* thereby remitted to her English domicil, entitling her to a divorce in England on the grounds of the desertion and adultery of her husband, who had married and cohabited with a second wife in Greece. The suggestion of the Court of Appeal in *Ogden* v. *Ogden* (77 L. J. P. 34, at p. 51; [1908] P. 46, at pp. 82, 83) adopted and followed. *Ib.*

See also De Montaigu v. *De Montaigu*, *post*, col. 739.

Deed of Separation—Covenant not to Sue—Provision for Avoidance of Deed by Subsequent Judicial Separation or Dissolution on Ground of Subsequent Misconduct of Husband—Effect of Subsequent Misconduct on Covenant not to Sue—Circuity of Proceedings.]—A husband was guilty of cruelty and adultery. He and his wife then separated under the provisions of a deed which contained a mutual covenant for the condonation of antecedent offences, with a covenant not to sue in respect of them, and a further provision that all the covenants of the deed should be avoided by any further misconduct of the husband resulting in a judicial separation or dissolution of the marriage:—*Held*, that, although subsequent adultery of the husband could not *per se* revive his expressly condoned offences so as to permit his wife to sue in respect of them, nevertheless, as he did not set up the deed, his wife need not be put to the circuitous method of obtaining redress by first suing for a judicial separation on the ground of the subsequent adultery and then suing for dissolution from which the covenant in the deed debarred her previous to a judicial separation, and that she could proceed at once for dissolution. *Bourne* v. *Bourne*, 82 L. J. P. 117; [1913] P. 164; 108 L. T. 1039; 29 T. L. R. 657—Evans, P.

Dowling v. *Dowling* (68 L. J. P. 8; [1898] P. 228) followed; the *ratio decidendi* of the same case doubted. *Ib.*

—— **Desertion.**]—The Court granted a decree *nisi* for divorce at the instance of a wife on the ground of her husband's adultery and desertion where, after the parties had lived apart under a deed of separation, the husband, by his conduct, repudiated the deed. *Hussey* v. *Hussey*, 109 L. T. 192; 29 T. L. R. 673—Evans, P.

Wife's Petition for Divorce — Clause in Separation Deed — Bar to Relief — Grant of Judicial Separation.]—On a wife's petition for divorce on the grounds of her husband's cruelty and adultery it was proved that the parties had entered into a separation deed, and evidence of cruelty before the deed, and of adultery after it, was given. The deed provided in clause 3 that neither party should bring against the other any proceedings relating to their relationship of husband and wife, and in clause 9 that in the event of a divorce or judicial separation by reason of misconduct occurring after the date of the deed the provisions thereinbefore contained should become void, but without prejudice to any act previously made or done thereunder or to any pledges on the part of either party in respect of any then antecedent breach of any covenant or provision therein contained. As the wife was debarred by the deed from relying on

antecedent cruelty, the Court only granted her a judicial separation on the ground of adultery. *Lipman* v. *Lipman*, 60 S. J. 157; 32 T. L. R. 173—Horridge, J.

2. Cruelty.

Communication of Venereal Disease—Communication Knowingly, Wilfully, or Recklessly—Onus of Proof.]—In order to establish a charge of cruelty arising from the communication of a venereal disease, it is sufficient to prove in the first instance that the petitioner has had no intercourse with a third person and has in fact suffered from the disease. The onus then lies upon the respondent to prove that he was ignorant or innocent or otherwise not guilty of the legal cruelty constituted by the communication of the disease. *Morphett* v. *Morphett* (38 L. J. P. 23; L. R. 1 P. & D. 702) disapproved. The dissenting judgment of Willes, J., in that case adopted. *Browning* v. *Browning*, 80 L. J. P. 74; [1911] P. 161; 104 L. T. 750; 55 S. J. 462; 27 T. L. R. 404—Evans, P.

—— **Pleading.**]—Allegations in pleading that the respondent knowingly, wilfully, or recklessly communicated the disease are unnecessary. *Ib.*

Covenant Prohibiting Proceedings for Prior Matrimonial Offences—Husband's Subsequent Adultery—Petition for Divorce by Wife—Cruelty Revived—Deed not Set up by Husband.]—A wife, who had entered into a deed of separation with her husband by which both parties covenanted not to institute proceedings in respect of matrimonial offences committed prior to the deed, petitioned for a divorce on account of the husband's subsequent adultery. It was contended that the condoned cruelty of the husband was thereby revived and that she was entitled to a decree: —*Held*, that as the husband had not set up the deed a decree could be granted to the wife. *Dowling* v. *Dowling* (68 L. J. P. 8; [1898] P. 228) considered and followed. *Bourne* v. *Bourne*, 82 L. J. P. 117; [1913] P. 164; 108 L. T. 1039; 29 T. L. R. 657—Evans, P.

3. Desertion.

Petition for Judicial Separation—Adultery and Desertion—Supplemental Petition for Dissolution—Two Years' Desertion not Complete at Date of Petition.]—A wife presented a petition for judicial separation on the ground of her husband's adultery. Before the petition was heard she presented a supplemental petition for dissolution of marriage on the ground of her husband's adultery and desertion for two years. At the date of the presentation of the original petition the desertion had been for eighteen months only:—*Held*, that there had not been desertion without reasonable excuse for two years, as the presentation of the original petition for judicial separation prevented the subsequent desertion being without excuse. *Lapington* v. *Lapington* (58 L. J. P. 26; 14 P. D. 21), *Kay* v. *Kay* (73 L. J. P. 108; [1904] P. 382), and *Harriman* v. *Harriman* (78 L. J. P. 62; [1909] P. 123) followed. *Stevenson* v. *Stevenson*, 80 L. J. P. 137; [1911] P. 191; 105 L. T. 183; 27 T. L. R. 547—C.A.

Deed of Separation—Failure of Husband in Payment of Allowance.]—A husband having threatened to break up the home, which led to the execution of a deed of separation, failed to keep up the payments under the deed. In the circumstances of the case, having also committed adultery, he was held guilty of desertion. But *quære*, whether in all cases mere failure to pay will avoid the consequences of a deed. *Smith* v. *Smith*, 85 L. J. P. 16; [1915] P. 288; 60 S. J. 25; 32 T. L. R. 43—Horridge, J.

Separation Order by Justices—Two Years' Desertion before Order—Subsequent Adultery by Husband.]—A wife obtained from Justices an order under the Summary Jurisdiction (Married Women) Act, 1895, in respect of her husband's desertion for over two years, and that order contained a non-cohabitation clause. Subsequently she discovered that her husband had committed adultery. She then filed a petition for divorce:—*Held*, that as there had been desertion for more than two years at the time when the separation order was made, and as the husband had committed adultery, the wife was entitled to a decree. *Churner* v. *Churner*, 28 T. L. R. 318—Evans, P.

Statutory Desertion — Revival of Condoned Adultery.]—The offence of statutory desertion arising under section 5 of the Matrimonial Causes Act, 1884, for non-compliance with a decree for restitution of conjugal rights has for the purpose of revival the same effect as desertion in fact for two years and upwards and will revive antecedent adultery which has been condoned. *Price* v. *Price*, 80 L. J. P. 145; [1911] P. 201; 105 L. T. 441; 55 S. J. 689; 27 T. L. R. 560—Evans, P.

Separation Deed — Repudiation.] — *See Hussey* v. *Hussey*, *ante*, col. 640.

4. Bars to.

a. Generally.

Suppression of Material Facts—Intervention of King's Proctor—Fresh Allegations by Petitioner in Answer to King's Proctor's Plea—Discretion of Court to Rescind or Suspend Decree Nisi or Adopt Intermediate Course—Further Enquiry—Definition of "Material facts"—Purpose of Exercise of Discretion.]—On an intervention by the King's Proctor, even where material facts have been withheld or deliberately suppressed at the original hearing of the petition, the Court must consider all the facts then established by either the King's Proctor or the petitioner before deciding whether it will rescind the decree *nisi* or exercise a discretion under section 31 of the Matrimonial Causes Act, 1857, or adopt some intermediate course which would necessitate a further enquiry in order to ascertain the true facts. *Brooke* v. *Brooke* (No. 1), 81 L. J. P. 75; [1912] P. 136; 106 L. T. 766; 56 S. J. 382; 28 T. L. R. 314—Evans, P.

The suppression of material facts is of grave importance, and even when innocent may bring about the rescission of a decree *nisi*. *Ib.*

All facts are material which the Court ought to know and weigh when determining how its discretion should be exercised. The Court has to deal with cases as justice may require, not regarding merely the parties themselves and other persons, such as issue whose interest is more remote, but what is right in the interests of public decency and the State. To this end the Court may rescind the decree *nisi* or suspend its operation or direct that notice of any fresh allegations made by a petitioner in answer to the King's Proctor's plea should be served upon the respondent to enable the King's Proctor to make further investigation and to lay before the Court all that it should know to guide the exercise of its discretion. *Roche* v. *Roche* (74 L. J. P. 50; [1905] P. 142) disapproved. *Ib.*

Adultery of Petitioner — Application for Exercise of Discretion of Court.]—Although the discretion given to the Court by section 31 of the Matrimonial Causes Act, 1857, is unfettered, the Court ought to be extremely careful in exercising that discretion, not only with respect to the parties concerned in the particular case, but also in the interests of public morality. Circumstances in which the Court exercised its discretion in favour of a petitioner who had not disclosed the fact of her own adultery. *Brooke* v. *Brooke* (*No.* 2), 81 L. J. P. 147*n.*; [1912] P. 205*n.*; 107 L. T. 202; 28 T. L. R. 577—Evans, P.

Where it is shewn that the misconduct of a petitioner has been fully forgiven and completely condoned by the respondent, the Court ought to exercise its discretion in favour of the petitioner, unless there are special or aggravating circumstances in the case or unless strong overriding public reasons exist for denying the relief claimed. The Court refused to exercise its discretion in favour of a petitioner where it was not satisfied as to the fact of condonation, and where it was satisfied that the petitioner had given false testimony on oath. *Munzer* v. *Munzer*, 81 L. J. P. 148*n.*; 107 L. T. 203; 57 S. J. 45; 28 T. L. R. 596—Evans, P.

On an undefended petition filed by the wife on the grounds of the cruelty and misconduct of the husband, consisting of an isolated act after his wife had left him, a decree *nisi* was pronounced, but was subsequently rescinded on the intervention of the King's Proctor alleging the adultery of the wife. Condonation and re-cohabitation followed. On further and subsequent misconduct on the part of the wife a decree *nisi* was pronounced upon the petition of the husband, the Court exercising the discretion conferred on it by section 31 of the Matrimonial Causes Act, 1857, in his favour upon the facts as stated, and expressly laying down that each case should be dealt with on its own merits and that the exercise of the discretion of the Court should be fettered by no strict rule of law. *Woltereck* v. *Woltereck*, 81 L. J. P. 145; [1912] P. 201; 107 L. T. 27; 56 S. J. 706; 28 T. L. R. 532—Evans, P.

In exercising the discretion given it by section 31 of the Matrimonial Causes Act, 1857, to pronounce a decree of dissolution at the instance of a petitioner guilty of adultery, the Court does not treat the sexes on an equal footing. That which would not be excusable in the man may be excusable in the woman, and when the adultery has resulted from her husband's treatment she may retain a decree obtained on the ground of his misconduct, even although she has concealed her own fault from the Court and committed perjury in denying it, provided that the Court is of opinion on the facts that leniency towards the erring petitioner may result in her moral re-instatement. *Pretty* v. *Pretty*, 80 L. J. P. 19; [1911] P. 83; 104 L. T. 79; 27 T. L. R. 169—Bargrave Deane, J.

A wife petitioner obtained a decree *nisi* for the dissolution of her marriage on the grounds of the adultery and cruelty of her husband. At the hearing of her petition, she was advised, in view of her denial of actual misconduct, that no disclosure was to be made of circumstances communicated by her to her solicitor, in consequence of which, on the subsequent hearing of an intervention by the King's Proctor, a jury, disbelieving her denial on oath, found her guilty of adultery and of suppression of material facts:—*Held*, nevertheless, that, having regard to her future in life, and to the fact that her misconduct had been brought about by the treatment of her husband, the case was one fit for the exercise of the discretion of the Court in her favour. The Court expressed disapproval of the course adopted at the original hearing. *Ib.*

In the exercise of its discretion under section 31 of the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), the Court is not bound by any rigid rules, but will consider every case entirely upon its own merits. *Bullock* v. *Bullock*, 103 L. T. 847—Evans, P.

The Court, while allowing an intervention by the King's Proctor, exercised its discretion in favour of the petitioner, who had been guilty of desertion, but ordered him to pay a weekly sum to the respondent, with liberty to apply to rescind or vary that order. *Freeman* v. *Freeman*, 105 L. T. 383; 27 T. L. R. 523—Evans, P.

The Court exercised its discretion in favour of a husband guilty of misconduct which he had not kept back from the Court, when his guilty wife had condoned such misconduct and had by her persistent refusal to cohabit conduced to it. *Habra* v. *Habra*, 83 L. J. P. 54; [1914] P. 100; 110 L. T. 991; 30 T. L. R. 391—Bargrave Deane, J.

On a wife's petition for divorce, the Court, being satisfied that but for the husband's gross misconduct she would not have committed adultery, exercised its discretion by granting her a decree *nisi*, notwithstanding her adultery. *Cleland* v. *Cleland*, 109 L. T. 744; 58 S. J. 221; 30 T. L. R. 169—Bargrave Deane, J.

In the special circumstances of the case, on the promise to marry her of the man with whom she had misconducted herself, a wife's decree for divorce was allowed to be made absolute, the Court exercising its discretion in her favour, in spite of the intervention of the King's Proctor, on the grounds that the petitioner had suppressed material facts and

denied the misconduct on oath, being thereby guilty of perjury. The Court intimated that in future the discretion would only be exercised in favour of petitioner's making full disclosure. *Hampson* v. *Hampson*, 83 L. J. P. 53; [1914] P. 104; 110 L. T. 992; 58 S. J. 474; 30 T. L. R. 392—Bargrave Deane, J.

Semble, misconduct of a petitioner should not only be disclosed at the hearing, but also admitted in the petition. *Ib.*

Circumstances in which the Court will exercise its discretion by refusing to rescind a decree *nisi* on the ground that material facts have been withheld from the knowledge of the Court. *Barrett* v. *Barrett*, 30 T. L. R. 63—Evans, P.

Circumstances in which the Court will exercise its discretion in favour of a guilty petitioner considered. *Coverdale* v. *Coverdale*, 30 T. L. R. 20—Evans, P.

A petitioning wife who had herself been guilty of adultery was granted a decree *nisi* for divorce in the exercise of the discretion of the Court upon evidence being given that a man with whom she had lived was willing to marry her. *Hale* v. *Hale*, 32 T. L. R. 53—Bargrave Deane, J.

On a divorce petition by a husband who had been guilty of adultery which had been condoned, the Court granted a decree *nisi* on the terms that the petitioner's father should enter into a deed making an allowance to the wife. *Strutt* v. *Strutt*, 31 T. L. R. 156—Evans, P.

The Court, in the exercise of its discretion, granted a decree *nisi* to a petitioning husband, though he had himself been guilty of adultery on two isolated occasions. *Clutterbuck* v. *Clutterbuck*, 31 T. L. R. 614—Horridge, J.

On the hearing of a wife's petition for a divorce from her husband on the ground of his desertion and adultery, where it appeared that the petitioner had herself been living in adultery with a man who was now willing to marry her, the Court came to the conclusion that the husband's conduct ought not to have conduced to the wife's adultery, and refused to exercise its discretion in her favour. *Goddard* v. *Goddard*, 31 T. L. R. 616—Horridge, J.

After a long separation from his wife, her husband, the present petitioner for dissolution on the ground of her adultery, himself committed an isolated act of misconduct, resulting in the birth of a child. There had been no condonation on the wife's part by reason of the separation, and the husband believed himself a widower. On the intervention of the King's Proctor the Court, although there had been no disclosure at the hearing, exercised its discretion on the grounds of public morality, and in the interest of the woman with whom misconduct had been committed and her child, and allowed the decree *nisi* to stand. *Schofield* v. *Schofield*, 84 L. J. P. 186; [1915] P. 207; 112 L. T. 1000; 31 T. L. R. 236—Evans, P.

Where a wife had obtained a decree *nisi* for a divorce on the ground of her husband's cruelty and adultery, and the King's Proctor, on the ground of the wife's adultery, intervened to shew cause why the decree should not be made absolute, but was satisfied that the husband's conduct had conduced to the wife's adultery, the Court exercised its discretion in favour of the petitioner and made the decree absolute. *Firman* v. *Firman*, 32 T. L. R. 50—Evans, P.

—— **Terms.**]—The petitioning husband had been guilty of adultery, which had been condoned, and the Court exercised its discretion in the petitioner's favour on the terms that before the decree *nisi* was made absolute he should secure a weekly allowance to the respondent. *Fremantle* v. *Fremantle*, 31 T. L. R. 180—Evans, P.

No Admission in Petition—Pleading—Discretion of the Court to Grant Relief.]—In cases where the Court is asked to exercise its discretion under the Matrimonial Causes Act, 1857, s. 31, to grant a decree to a petitioner who has been guilty of misconduct, that guilt must be expressly admitted in the petition and the exercise of the discretion specifically asked for in the prayer of the petition. *King* v. *King*, 84 L. J. P. 80; [1915] P. 88; 112 L. T. 1047; 59 S. J. 334; 31 T. L. R. 240—Bargrave Deane, J.

b. Condonation.

Condonation not Pleaded—Powers of Judge.] Where in a suit for divorce condonation is not pleaded, but becomes an issue in the course of the trial, the Judge and not the jury can find whether there has been condonation or not. *Moosbrugger* v. *Moosbrugger* (*No.* 2), 109 L. T. 192; 29 T. L. R. 715—Evans, P.

c. Collusion.

Collusion is an improper act done by a petitioner with another person, or an improper refraining from an act with a dishonest purpose. It amounts to misconduct which will deprive a party of a decree to which he or she would otherwise on the facts be entitled. *Scott* v. *Scott* (*No.* 2), 82 L. J. P. 39; [1913] P. 52; 108 L. T. 49; 57 S. J. 227; 29 T. L. R. 206—Bucknill, J.

A petitioning wife, who had already obtained a decree of judicial separation on the ground of her husband's desertion, accepted his offer of a sum of money to be paid at once, a further like sum on decree absolute, and an increase of her allowance if she would proceed for a dissolution of marriage on the further ground of her husband's adultery, the means of proving which were furnished to her:—*Held*, that there was no collusion. *Ib.*

5. Custody of and Access to Children.

See also Vol. VII. 789, 1793.

Right of Access of Divorced Mother—Age of Child — Discretion — Mother Living in Adultery.]—Although the former rule that a guilty mother who has been divorced by her husband cannot be allowed access to the child of the marriage against the husband's wish is no longer the law, the Court has a discretion to permit such access. Where the child was a boy eight years of age, about to be sent to school, and the mother was living

in adultery with the co-respondent, the Court refused to order that she should be allowed access. *Mozley Stark* v. *Mozley Stark* (79 L. J. P. 98; [1910] P. 190) distinguished. *Clarke* v. *Clarke*, 57 S. J. 644—C.A.

6. Judicial Separation.

See also Vol. VII. 798, 1795.

Jurisdiction—Act on Petition—Summons to Strike out—Procedure.]—A wife, who was living within the jurisdiction, filed a petition for judicial separation on the ground of adultery, alleging that her husband's residence was in England and that his domicil was either Spanish or English. The petition was served on the husband in England, and he appeared under protest and filed an action on petition, alleging that his domicil of origin was Spanish and that he had never acquired an English domicil or had a permanent residence in this country, and that he was only temporarily within the jurisdiction. On a summons to strike out the act on petition on the ground that it did not shew that the Court had no jurisdiction,—*Held*, that the act on petition should not be struck out by an order made on the summons, but should be tried along with the wife's suit for judicial separation. *Riera* v. *Riera*, 112 L. T. 223; 59 S. J. 206; 31 T. L. R. 50—Bargrave Deane, J.

Countercharge of Adultery against Wife Petitioner—Claim for Damages in Answer.]—A husband countercharging his wife with adultery in her suit for judicial separation may also by his answer claim damages against the alleged adulterer. *N.* v. *N.*, 82 L. J. P. 56; [1913] P. 75; 108 L. T. 271; 57 S. J. 343; 29 T. L. R. 321—Evans, P.

No Appearance by Respondent—Application by Respondent to Dismiss Petition for Non-prosecution — Decree Nisi Rescinded and Decree for Judicial Separation Granted at Petitioner's Instance.]—A wife petitioned for dissolution of marriage or in the alternative for a judicial separation. The husband did not enter an appearance and filed no answer. On June 11, 1909, a decree *nisi* for dissolution was granted. In 1912 the respondent applied by summons that the decree *nisi* should be rescinded and the petition dismissed for want of prosecution on the ground that the decree had never been made absolute. The petitioner opposed that application and asked for a rescission of the decree *nisi* and for a decree of judicial separation in lieu thereof: —*Held*, that the decree *nisi* should be rescinded and a decree of judicial separation pronounced. *Griffiths* v. *Griffiths*, 106 L. T. 646; 56 S. J. 364; 28 T. L. R. 281—Evans, P.

7. Variation of Settlements.

See also Vol. VII. 806, 1796.

Petition before Decree Absolute—Jurisdiction.]—There is no jurisdiction under section 5 of the Matrimonial Causes Act, 1859, to take any proceedings to vary a settlement until the decree for dissolution of marriage has been made absolute. The Court, however, may allow a petition for variation of a settlement to remain on the file, but only in order that it may take effect the moment the decree is made absolute. *Constantinidi* v. *Constantinidi* (73 L. J. P. 91; [1904] P. 306) considered. *Clarke* v. *Clarke*, 80 L. J. P. 135; [1911] P. 186; 105 L. T. 1; 55 S. J. 535—C.A.

Insertion of Fresh Power of Appointment among Children of Future Marriage—Protection of Interest of Existing Child.]—The Court varied a marriage settlement by the insertion of a power to a petitioning husband, who was sole contributor of the settled funds, of appointment to the extent of three-fourths of the capital and income of the funds in favour of a second wife and the children of a second marriage respectively, with provision for a minimum interest for the existing child of the dissolved marriage. *Atkins* v. *Atkins*, 83 L. J. P. 18; [1913] P. 211; 109 L. T. 640—Evans, P.

Wife Guilty of Adultery — Allowance to Wife—"Dum sola et casta."]—Where a decree for dissolution of marriage has been pronounced on the ground of the wife's adultery, and application is made for variation of the marriage settlement, any allowance directed to be paid to the wife should be made payable only while she remains *sola et casta*. *Squire* v. *Squire* (74 L. J. P. 1; [1905] P. 4) followed. *Ollier* v. *Ollier*, 84 L. J. P. 23; [1914] P. 240; 111 L. T. 697; 58 S. J. 754—C.A.

Moiety of Income to Wife of Property Brought into Settlement by Husband—Bargain—Discretion of Court.]—There is nothing in an agreement—even assuming it to be a valid one—between a husband and wife that in proceedings by the husband for dissolution of their marriage their marriage settlement shall in no circumstances be so varied as to deprive the wife of a certain portion of the income of the settled property that will have the effect of fettering the judicial discretion of the Court as to the insertion of the *dum sola et casta vixerit* clause in an order made for the dissolution of the marriage. *Ollier* v. *Ollier* (*supra*) considered and applied. *Woodcock* v. *Woodcock*, 111 L. T. 924—C.A.

Scheme for Settlement of Property of Guilty Wife — Property subject to Forfeiture on Alienation and to Restraint on Anticipation — Jurisdiction.] — The Court has no power under section 45 of the Matrimonial Causes Act, 1857, to make such a settlement of the property of a divorced woman as will involve the removal of a restraint on anticipation; and this is true even in a case in which the petition for a settlement under section 45 has been presented whilst the divorced woman was still unmarried, but in which she has married again prior to the hearing of the petition. *Constantinidi* v. *Constantinidi* (73 L. J. P. 91; [1904] P. 306) distinguished. *Loraine* v. *Loraine*, 82 L. J.

P. 29; [1912] P. 222; 107 L. T. 363; 56 S. J. 687; 28 T. L. R. 534—C.A.

Decision of the President (81 L. J. P. 22; [1912] P. 86) reversed. *Ib.*

8. Alimony and Maintenance.

See also Vol. VII. 828, 1806.

Alimony Pendente Lite — Allegation by Husband that Wife Cohabiting with and Maintained by Co-respondent—Denial by Wife on Oath—Right to Cross-examine.]—A wife petitioned for alimony *pendente lite* in divorce proceedings brought against her by her husband on the ground of adultery. The husband alleged in answer to this petition that the wife was cohabiting with and being maintained by the co-respondent. The wife made an affidavit in reply denying this :—*Held*, that the husband ought to be allowed to cross-examine the wife on her affidavit and to file evidence as to her means of support, but only on condition that no question was put in cross-examination and no affidavit filed which would go directly or indirectly to the issue of adultery, so as not to deprive her of the protection afforded by the Evidence Further Amendment Act, 1869, s. 3. *Bass* v. *Bass*, 84 L. J. P. 53; [1915] P. 17; 112 L. T. 70; 31 T. L. R. 49—C.A.

Alimony—Conduct of Petitioning Wife, short of Matrimonial Misconduct — Proportion to Joint Means of Amount of Alimony to be Ordered.]—In considering a wife's claim to alimony, her conduct, short of matrimonial misconduct, should be looked to. If she has no means, her husband must make her some allowance, but the Court is not bound in the *quantum* of its order to observe any fixed proportion to the joint means of the parties. *Leslie* v. *Leslie*, 80 L. J. P. 139; [1911] P. 203; 104 L. T. 462; 55 S. J. 386; 27 T. L. R. 316—Evans, P.

—— **Application to Reduce—Means of Husband—Irrelevant Allegations.**]—Upon a husband's petition for the reduction of the amount of alimony payable to a wife under an absolute order, the only material matter for the consideration of the Court is the ability of the husband to pay, and allegations in the petition with respect to the past conduct of the parties will be struck out as irrelevant, although the conduct of the parties is a material matter to be considered when the order for alimony is made. *Hall* v. *Hall*, 111 L. T. 403—C.A.

Permanent Maintenance—Consent Order for Payment to Wife "for her life"—Jurisdiction to Vary Order—Wife's Subsequent Petition for Increase — Husband's Cross-petition for Decrease—Withdrawal of Wife's Petition.]—In 1908 a wife obtained a decree for divorce, and filed a petition for permanent maintenance. The Registrar reported that the amount to be paid was agreed by both parties at 90*l.* a year for the wife and 30*l.* a year for the only issue of the marriage, a daughter, until twenty-one; he submitted that the husband should be ordered to pay the agreed amount of 90*l.* a year to the wife for her life and 30*l.* a year to the daughter till she was twenty-one. In June, 1908, an order was made confirming the report and ordering the payment in the terms of the Registrar's submission. In 1913 the wife petitioned for an increase of maintenance, and the husband cross-petitioned for a decrease. At the hearing before the Registrar the wife's petition was withdrawn on the ground that as the order of June, 1908, was a consent order the Court had no power to vary it. The Registrar dismissed the cross-petition, and the President affirmed his order. The husband appealed :—*Held*, by the Court of Appeal, dismissing the appeal, that, if there had been an order by consent for the payment of maintenance to the wife during the joint lives of the husband and wife, the mere fact that the parties had agreed the amount to be paid would not have prevented an application under section 1, subsection 2 (*a*) of the Matrimonial Causes Act, 1907, for an increase or decrease of the sum if the circumstances of the parties afterwards changed, but that as the consent order was for the payment to the wife "for her life" there was no jurisdiction, and that the presentation and withdrawal of the wife's petition for increase of maintenance did not affect her position, there having been no fresh agreement. *Maidlow* v. *Maidlow*, 84 L. J. P. 20; [1914] P. 245; 112 L. T. 804—C.A.

—— **Registrar's Report Recommending Quarterly Payments during Joint Lives—Decree not made Absolute—Order Nunc pro Tunc for Monthly Payments.**]—An order under section 1, sub-section 2 of the Matrimonial Causes Act, 1907, for the payment by a husband to his wife during their joint lives of a weekly or monthly sum of money may be made before decree absolute by way of confirmation of the usual Registrar's report recommending such an order, such confirmation to be *nunc pro tunc* and the order operative as from the date of the decree absolute. *Cavendish* v. *Cavendish*, 82 L. J. P. 112; [1913] P. 138; 108 L. T. 1039; 57 S. J. 741; 29 T. L. R. 653—Evans, P.

—— **Restraining Dealings with Property—No Subsisting Order for Payment of Fixed Sum.**]—The principle laid down in *Newton* v. *Newton* (55 L. J. P. 13; 11 P. D. 11)—that the Court will not restrain from dealing with his property a husband against whom no order has yet been made—is of general application and not confined to the case of alimony pending suit. The Court will not, in order to protect a wife's right to permanent maintenance, restrain a husband against whom no order for a fixed sum has been made. *Noakes* v. *Noakes* (47 L. J. P. 20; 4 P. D. 60) commented on. *Burmester* v. *Burmester*, 82 L. J. P. 54; [1913] P. 76; 108 L. T. 272; 57 S. J. 392; 29 T. L. R. 323—Evans, P.

—— **Petition for Reduction—Consent Order "until further order"—Power to Vary.**]—On February 5, 1906, a wife obtained a decree absolute for the dissolution of her marriage, and on February 26, 1906, she obtained a consent order for maintenance, under which the husband was ordered to pay her maintenance

at the rate of 120*l.* per annum "out of his present income and until further order." On March 26, 1914, the husband petitioned for a reduction of the maintenance on the grounds, first, that since the date of the order he had been compelled to commute a part of his army pension for the purpose of paying legal costs and expenses incurred through illness, and had thereby reduced his pension, which was his sole source of income, from 420*l.* to 320*l.* per annum; and secondly, that the wife's means had increased since that date:—*Held*, that the Court had power to reduce the amount of the maintenance, and that in a case where the original order for maintenance was made until further order the decrease in the husband's income and the increase in the wife's means were both matters which might be taken into account as grounds for granting a reduction. *Dictum* of Bargrave Deane, J., in *Sharpe* v. *Sharpe* (78 L. J. P. 21, at p. 22; [1909] P. 20, at p. 23), discussed and distinguished. *Hall* v. *Hall*, 84 L. J. P. 93; [1915] P. 105; 113 L. T. 58; 59 S. J. 381—C.A.

9. Proceedings for.

See also Vol. VII. 860, 1810.

a. Petition.

No Addresses Given—Refusal of Certificate of Completion—Application to Enter Case.]—Where a Registrar had refused a certificate owing to a petition not setting out the addresses where the parties thereto had cohabited, and had thereby caused the case to be too late for insertion in the next term's list, the Court, while refraining from laying down any rule, ordered the case to be entered as on the date when the certificate was refused. *Lawton's Petition, In re*, 107 L. T. 591; 57 S. J. 61—Bargrave Deane, J.

Pleading — Venereal Disease.]—Where a petitioner relies upon a charge of wilfully communicating a venereal disease it should be specifically pleaded in the petition. *E.* v. *E.* (23 T. L. R. 364) distinguished. *Walker* v. *Walker*, 107 L. T. 655; 57 S. J. 175—Bargrave Deane, J. *But see Browning* v. *Browning*, *ante*, col. 641.

—— Wife's Petition—Bigamy with Adultery—Specific Plea of Bigamy—General Charge of Adultery.]—Where a case of bigamy is specifically pleaded, adultery with the same woman ought to be specifically pleaded, in order to entitle the petitioner to relief for bigamy with adultery, and a general charge of adultery with divers women will not suffice for this purpose. *Sparrow* v. *Sparrow*, 30 T. L. R. 47—Bargrave Deane, J.

—— Answer—Cross-relief—Claim for Nullity—Trial.]—The answer to a petition for dissolution of marriage may set up a claim for a decree of nullity on the ground of the impotence of the petitioner, and the issue as to nullity will be tried first. *S.* v. *S.*, 81 L. J. P. 16; [1912] P. 16; 106 L. T. 464—Bargrave Deane, J.

b. Particulars.

Explanatory Affidavit in Default of Further and Better Particulars—Sufficiency.]—In a petition for divorce the petitioner alleged adultery by the respondent at two addresses between various dates. On an application for further and better particulars, the Registrar ordered particulars of "dates and times of day, or explanatory affidavit." The petitioner's solicitor filed an affidavit that he personally or through his agent had caused the witnesses who would be subpœnaed to be carefully questioned and that they were unable to fix the dates:—*Held*, that a person who swears an explanatory affidavit must himself have seen and questioned the witnesses; and therefore that the affidavit sworn by the petitioner's solicitor was insufficient. *C.* v. *C.*, 27 T. L. R. 161—Bargrave Deane, J.

c. Discovery.

Notes Made by Medical Man.]—Where a husband, respondent in a divorce suit, asked for discovery of notes made by a medical man who had attended the wife petitioner, the Court refused to make an order. *D.* v. *D.*, 55 S. J. 331—Evans, P.

d. Delay in Prosecuting Suit.

Motive for Presenting Petition—Refusal of Decree — Discretion — Appeal.]—Where there has been great delay in instituting proceedings for a divorce, the motive for commencing the suit may be taken into consideration when deciding whether there has been unreasonable delay in presenting the petition within section 31 of the Matrimonial Causes Act, 1857; and where the Judge in the exercise of his discretion under that section has refused to grant a divorce on the ground of unreasonable delay, the Court of Appeal will not interfere unless he has decided the case on some wrong principle of law. *Pears* v. *Pears*, 107 L. T. 505; 56 S. J. 720; 28 T. L. R. 568—C.A.

On a petition by a husband for divorce on the ground of his wife's adultery, the Court refused a decree for the reason that the petitioner had been guilty of three years' delay without any excuse. *Hughes* v. *Hughes*, 31 T. L. R. 631—Horridge, J. Affirmed, 32 T. L. R. 62—C.A.

e. Intervention of King's Proctor.

Striking out Petitioner's Answer on Ground of his Silence.]—In a matrimonial suit, where the King's Proctor shewed cause against the decree being made absolute, the petitioner's solicitors were directed to communicate with their client with a view to ascertaining whether he still defended the proceedings, and whether he would agree to certain evidence being taken on affidavit. For several months communications passed between the petitioner and his solicitors, but the solicitors were left without instructions. On a summons being taken out, the Court directed the petitioner's answer to the King's Proctor's plea to be struck out, and subsequently on motion rescinded the

decree. *Forster* v. *Forster*, 29 T. L. R. 22—Bargrave Deane, J.

Discretion of Court to Grant Relief notwithstanding Intervention of King's Proctor.]—*See* cases under BARS TO DIVORCE, *ante*, cols. 642 *et seq.*

f. Other Interveners.

Person not a Party to Suit—Allegation of Adultery.]—In a divorce suit, between the decree *nisi* and the application to make it absolute, the Court, on terms, allowed the intervention of a lady who was not a party to the suit, but with whom the respondent was alleged by the petition to have committed adultery. *French* v. *French*, 30 T. L. R. 584—Evans, P.

Decree Nisi—No Evidence Adduced—Intervention by Stranger—Order to Try Issue of Wife's Adultery—Security for Wife's Costs—Jurisdiction.]—A husband presented a petition for divorce against his wife. She presented a cross-petition for divorce against him. The suits were heard together. No evidence was given in support of the husband's petition, which was dismissed, but the wife obtained a decree *nisi* on her petition. Before it was made absolute a stranger intervened, and the issue of the wife's adultery was ordered to be tried. No terms as to costs were then imposed, but a fortnight later the wife applied that the intervener should be ordered to give security for her costs of the intervention:—*Held*, that the Court had no jurisdiction to order the intervener to give security. *Gilroy* v. *Gilroy*, 83 L. J. P. 49; [1914] P. 122; 110 L. T. 601; 58 S. J. 378; 30 T. L. R. 365—C.A.

g. Evidence.

Power to Hear in Camera.]—*See Scott* v. *Scott* (*No.* 1), *ante*, col. 632.

Evidence Taken in Camera.]—In cross-suits for divorce, the case for the wife having been opened in public, and the wife, on being called as a witness, finding it almost impossible to give her evidence by reason of the presence of people in Court, the President directed this part of the case to be heard *in camera*. *Moosbrugger* v. *Moosbrugger* (*No.* 1). 29 T. L. R. 658—Evans, P.

Identification of Petitioner—Photograph.]—Circumstances in which the Court is justified in acting on a photograph of a party to a divorce suit as evidence of identification. *Hills* v. *Hills*, 31 T. L. R. 541—Horridge, J.

Factum of Marriage Established in Previous Suit for Restitution of Conjugal Rights.]—When the *factum* of marriage has been established in a suit for restitution of conjugal rights it is unnecessary to give further proof of it in a subsequent suit between the same parties for dissolution of marriage unless upon any grounds the validity of the marriage is then put in issue. *Cowley* (*Countess*) v. *Cowley* (*Earl*), 82 L. J. P. 120; [1913] P. 159; 109 L. T. 48; 29 T. L. R. 690—Evans, P.

Incestuous Adultery with Wife's Sister—Proof of Relationship.]—In a suit by a wife for divorce on the ground of her husband's incestuous adultery with her sister, a certificate of birth to prove the relationship should, as a rule, be produced. *Green* v. *Green*, 29 T. L. R. 357—Bargrave Deane, J.

Cross-examination as to Adultery.]—Notwithstanding the provisions of section 3 of the Evidence (Further Amendment) Act, 1869, a wife respondent who countercharged her husband with conduct conducing to her adultery and connivance at it was allowed to be cross-examined as to her relations with the co-respondent upon her electing to give evidence in support of her countercharges. *Ruck* v. *Ruck*, 80 L. J. P. 17; [1911] P. 90; 104 L. T. 462; 27 T. L. R. 191—Evans, P.

It is contrary to the intention of the Evidence Further Amendment Act, 1869, that a witness, party to the suit, should be questioned concerning adultery which has not been alleged in the pleadings. *Brown* v. *Brown*, 84 L. J. P. 153; [1915] P. 83; 113 L. T. 190; 59 S. J. 442; 31 T. L. R. 280—Evans, P.

A husband, respondent to a petition for dissolution of marriage on the ground (*inter alia*) of several alleged acts of adultery, was asked in cross-examination whether he had committed adultery on another and earlier occasion not charged in the petition. The question was objected to and disallowed. *Ib.*

Where cruelty is alleged to have consisted in part of the making by one spouse against the other of a charge of adultery which is stated to be false and the truth or falsity of the charge is therefore material on the question of cruelty, the party alleging the cruelty in a suit for judicial separation may be cross-examined as to her or his adultery, although she or he may not have already given evidence in denial of such adultery. *Lewis* v. *Lewis*, 81 L. J. P. 24; [1912] P. 19; 106 L. T. 191; 56 S. J. 189; 28 T. L. R. 174—Bargrave Deane, J.

"Proceedings instituted in consequence of adultery."]—*Semble*, the consolidation for purposes of hearing of a suit for judicial separation with a cross-suit for dissolution of marriage on the ground of adultery does not have the effect of making the consolidated suits a "proceeding instituted in consequence of adultery" within the meaning of section 3 of the Evidence Further Amendment Act, 1869. *Ib.*

Plea of Connivance—Cross-examination as to Adultery.]—Where in a divorce suit a respondent made a counter-charge of connivance against her husband, the Court permitted her to be cross-examined as to her own adultery, although she had previously not denied it. *Dennys* v. *Dennys*, 107 L. T. 591; 57 S. J. 61—Bargrave Deane, J.

Corroboration—Previous Statement Admitted to Corroborate Testimony in the Box—Circumstances Precluding Motive to Misrepresent.]—The co-respondent, having given evidence that he had not committed adultery with the respondent, a letter written by him to the respondent,

at a date subsequent to that on which adultery was now alleged to have taken place, but previous to any charge having been made, in which he referred to the fact that he had not "held her in his arms" since her marriage was relied on to prove the truth of the fact stated in corroboration of the testimony of the co-respondent in the box. *O'Gorman* v. *O'Gorman*, 56 S. J. 634—Evans, P.

h. Co-respondent.

Leave to Proceed without Naming Co-respondent.]—Circumstances in which the Court, in the exercise of its discretion, gave leave to a petition to proceed without naming a co-respondent. *Jeffreys* v. *Jeffreys*, 28 T. L. R. 504—Evans, P.

Death of Co-respondent after Appearance—Order Dismissing Co-respondent from Suit—Charge of Adultery with Co-respondent Proceeded with.]—In a husband's petition for divorce an appearance was entered for the co-respondent L. Shortly thereafter L. died, and an order was made that he should be dismissed from the suit:—*Held*, that, notwithstanding that order, the charge of adultery by the respondent with L. could be gone into at the trial. *Wigglesworth* v. *Wigglesworth*, 27 T. L. R. 463—Horridge, J.

Rescission of Decree—Dismissal of Petition—Fresh Order Condemning Co-respondent in Costs.]—Where on the reconciliation of the petitioner and the respondent the decree *nisi* is rescinded and the petition is dismissed, the co-respondent remains liable for the costs of the suit in which he has been condemned by the decree *nisi*. The decree *nisi* will not be severed, retaining that portion of it which deals with the costs, but the order rescinding the decree and dismissing the petition will contain a provision condemning the co-respondent in the costs. *Quartermaine* v. *Quartermaine*, 80 L. J. P. 89; [1911] P. 180; 105 L. T. 80; 55 S. J. 522; 27 T. L. R. 458—Bargrave Deane, J.

i. Trial.

Discharge of Jury.]—Before a jury can be discharged it is necessary that all parties should express their consent. *Jones* v. *Jones* (*No.* 2), 108 L. T. 1038—Evans, P.

j. The Decree.

Decree Nisi—No Application for New Trial—Decree Absolute—Motion by Co-respondent to Set Aside both Decrees and Verdict on Ground of Alleged Fraud.]—After decree absolute the Court has no jurisdiction at the instance of a co-respondent, upon motion made for that purpose, to rescind that decree and the decree *nisi* or to set aside the verdict of a jury against the co-respondent which these decrees have followed, although fraud is alleged by him in the obtaining of that verdict and decree *nisi*, the co-respondent having had time and opportunity for applying for a new trial after the decree *nisi* and having failed to do so. *Kemp-Welch* v. *Kemp-Welch*, 81 L. J. P. 25; [1912] P. 82; 106 L. T. 643; 28 T. L. R. 185—Evans, P.

Rescission.]—On the intervention of the King's Proctor the Court, on the ground that the petitioning wife had concealed material facts, rescinded the decree *nisi*, which, although the wife had committed adultery, the Court had granted in its discretion (*vide King* v. *King* (*No.* 1), 84 L. J. P. 80; [1915] P. 88). *King* v. *King* (*No.* 2), 32 T. L. R. 78—Bargrave Deane, J.

k. Costs.

i. *Wife's Petition.*

Costs Incurred by Wife Unpaid—Reversionary Interest—Injunction.]—In a suit at the instance of the wife for divorce an order was made on the husband to pay a certain sum in respect of the wife's costs, and to give security for a further sum. The order was served on the husband's solicitor, but it was not possible to serve the husband himself as he had gone out of the jurisdiction. The husband had no property in this country on which execution could be levied to pay those costs, but he had a reversionary interest under his father's will which he had partially charged and which he had expressed his intention of further charging. On an application by the wife to restrain the trustees of the husband's father's will from paying over, and the husband and his agents from receiving, charging, or dealing with the property in question,—*Held*, that an injunction should be granted. *Dooley* v. *Dooley*, 56 S. J. 207; 28 T. L. R. 113—Bargrave Deane, J.

Wife's Costs—Change of Solicitor—Resumption of Cohabitation—Application to Dismiss Petition—Remedy of Discharged Solicitor—Stay of Proceedings.]—A wife client in the Divorce Division cannot by simply giving notice of change of solicitors deprive the solicitor, who has hitherto acted for her, of the right to tax his costs in that Division or drive him to his remedy by an action against the husband for necessaries at common law. In spite of the parties in a matrimonial suit returning to cohabitation, an immediate order need not be made for the dismissal of the petition without provision being made for the costs of a discharged solicitor of the wife, but the proceedings may be stayed pending the taxation of his bill of costs. *Jinks* v. *Jinks*, 80 L. J. P. 84; [1911] P. 120; 104 L. T. 655; 55 S. J. 366; 27 T. L. R. 326—Evans, P.

Jurisdiction of Divorce Division to Decide Reasonableness of Solicitor's Charges and to Tax.]—The liability for, or the reasonableness of, the charges in the bill can be determined in the Divorce Division without the necessity of instituting an action against the husband at common law. *Ib.*

ii. *Husband's Petition.*

Husband's Petition Dismissed — Second Petition—Stay of Proceedings till Wife's Costs

of First Petition Paid.]—The husband's first petition for dissolution of marriage on the ground of the adultery of the wife was dismissed with costs. Some of the wife's costs of this petition had not yet been paid. The husband now presented a second petition for dissolution of marriage on the ground of the adultery of the wife with another co-respondent, the acts of adultery alleged being all prior in date to the first petition:—*Held*, that the principle of *Kemp-Welch* v. *Kemp-Welch* (79 L. J. P. 92; [1910] P. 232) applied to the case, and that the wife was entitled to a stay of proceedings in the second petition until her costs of the first petition had been paid by the husband. *Yeatman* v. *Yeatman* (39 L. J. P. 37) not followed. *Sanders* v. *Sanders*, 80 L. J. P. 44; [1911] P. 101; 104 L. T. 231; 55 S. J. 312—C.A.

Wife's Costs — Guilty Wife — Duration of Trial Exceeding Estimate—Further Taxation of Wife's Costs—Party and Party Costs—Discretion of Judge at Trial.]—When after a a trial exceeding the duration anticipated on the Registrar's estimate of her costs a respondent wife is found guilty of adultery and obtains the "usual" order for her costs, she is not, in the absence of special application on behalf of the petitioning husband, limited to the sum previously fixed by the Registrar and ordered to be secured before the trial, but is entitled to such further sum (if any) as in the opinion of the taxing Registrar would have been allowed if the duration of the trial had been known at the time of the previous order, and these further costs will be taxed as between party and party. *Robertson* v. *Robertson* (51 L. J. P. 5; 6 P. D. 119) followed. *Palmer* v. *Palmer*, 83 L. J. P. 58; [1914] P. 116; 110 L. T. 752; 58 S. J. 416; 30 T. L. R. 409—Evans, P.

Secus, if the Judge at the trial is applied to and exercises the discretion given to him by statute, and by the Divorce Rules—*Butler* v. *Butler* (15 P. D. 126). *Ib.*

Wife's Costs—Husband's Petition—Wife's Cross-charges and Claim for Relief—Non-compliance by Husband with Order for Security for Costs—Attachment.]—The wife, respondent in the original suit, who puts cross-charges upon the record and claims relief becomes in fact a petitioner in respect of her cross-charges, and may move for a writ of attachment on failure to get her costs of the suit secured pursuant to an order. *Clarke* v. *Clarke* (60 L. J. P. 97; [1891] P. 278) dissented from. *Jones* v. *Jones* (*No.* 1), 82 L. J. P. 16; [1912] P. 295; 107 L. T. 590; 57 S. J. 10; 29 T. L. R. 22—Bargrave Deane, J.

iii. *Against Co-respondent.*

Infant Co-respondent.]—Where a petitioner obtained a decree of divorce against the respondent and co-respondent,—*Held*, that the fact that the co-respondent was an infant and had not appeared was no reason for not making an order against him for costs. *Brockelbank* v. *Brockelbank*, 55 S. J. 717; 27 T. L. R. 569—Evans, P.

Rescission of Decree—Dismissal of Petition—Fresh Order Condemning Co-respondent in Costs.]—Where on the reconciliation of the petitioner and the respondent the decree *nisi* is rescinded and the petition is dismissed, the co-respondent remains liable for the costs of the suit in which he has been condemned by the decree *nisi*. The decree *nisi* will not be severed, retaining that portion of it which deals with the costs, but the order rescinding the decree and dismissing the petition will contain a provision condemning the co-respondent in the costs. *Quartermaine* v. *Quartermaine*, 80 L. J. P. 89; [1911] P. 180; 105 L. T. 80; 55 S. J. 522; 27 T. L. R. 458—Bargrave Deane, J.

iv. *Of King's Proctor and other Interveners.*

Decree Nisi—Rescission—Petitioning Wife—No Separate Estate.]—Where the Court on the intervention of the King's Proctor rescinds a decree *nisi* obtained by a wife, the Court will not condemn the wife in costs unless it is proved that the wife has separate estate. *Morris* v. *Morris*, 112 L. T. 999; 31 T. L. R. 217—Bargrave Deane, J.

Discretion—Order for Costs against Married Woman — Evidence of Separate Estate.] — The general rule that a wife shall not be condemned in the costs of litigation with her husband in the Divorce Division without evidence of her having separate estate does not extend to cases in which she is party to intervention proceedings in that division. In intervention proceedings the Court has an absolute discretion as to costs. This discretion is conferred by the Matrimonial Causes Act, 1878, s. 2, which is silent as to separate estate, and the Court exercises its power as it may think proper in intervention proceedings to make orders for costs against a married woman without evidence of her having separate estate. *Kennard* v. *Kennard*. *Morris* v. *Morris*, 84 L. J. P. 172; [1915] P. 194; 59 S. J. 630; 31 T. L. R. 534—Bargrave Deane, J.

Wife's Petition—Charge of Adultery against Husband—Intervention of Woman Charged with Adultery—Costs of Intervener.]—Where a wife presents a petition for divorce against her husband on account of his alleged adultery and cruelty, and the person with whom he is alleged to have committed adultery intervenes under section 28 of the Matrimonial Causes Act, 1857, or section 3 of the Matrimonial Causes Act, 1907, such person is an "opposite party" within the meaning of section 2 of the Married Women's Property Act, 1893, and on the petition being dismissed an order may be made for payment of her costs out of property of the wife which is subject to a restraint on anticipation. *Studley* v. *Studley*, 82 L. J. P. 65; [1913] P. 119; 108 L. T. 657; 57 S. J. 425—C.A.

The "property" out of which payment of costs may be ordered under section 2 of the Married Women's Property Act, 1893, is the whole property which is subject to a restraint on anticipation, and not merely that portion of the property which is for the time being

effectively restrained from anticipation. An order for payment of costs thereout need not therefore be limited to the period during which the married woman is under coverture, and the restraint applies. *Ib.*

10. Summary Proceedings.

See also Vol. VII. 823, 1832.

a. In what Cases.

Desertion—Dismissal of Summons—Adjournment—Second Summons for same Cause of Complaint — Res Judicata.]—A wife, whose summons against her husband for desertion under the Summary Jurisdiction (Married Women) Act, 1895, has been dismissed, cannot obtain an order on a second summons for the same cause of complaint. It is immaterial that desertion is a continuing offence; its commencement must be referable to some particular date, and if the evidence of it is incomplete or unavailable on the return of a summons complaining of it, the wife should apply for, and be allowed, an adjournment for the purpose of completing her case. When the complaint has been once disposed of by the Justices, the matter is *res judicata*. *Stokes* v. *Stokes*, 80 L. J. P. 142; [1911] P. 195; 105 L. T. 416; 75 J. P. 502; 55 S. J. 690; 27 T. L. R. 553—D.

After the dismissal of a summons under the Summary Jurisdiction (Married Women) Act, 1895, for desertion at the instance of a wife who has left her husband, it must be taken that she has left him voluntarily, and the charge of desertion is *res judicata*; she cannot afterwards prosecute a second summons against him on the same ground of complaint, on the suggested subsequent discovery by her of fresh evidence in support of it which has not been brought forward upon the hearing of the first summons—for example, of the husband having suffered from a venereal disease; and his refusal to maintain her, on the footing that since that discovery she is not bound to return to him, does not constitute desertion by him as from the date of such refusal. *Blackledge* v. *Blackledge*, 82 L. J. P. 13; [1913] P. 9; 107 L. T. 720; 77 J. P. 427; 23 Cox C.C. 230; 57 S. J. 159; 29 T. L. R. 120—D.

The withdrawal by a wife of a summons under the Summary Jurisdiction (Married Women) Act, 1895, does not necessarily render the subject-matter of complaint *res judicata* or dispose of her right to take further proceedings on similar facts. The withdrawal may be conditional; but if it is unconditional, it is an estoppel, barring the same cause of complaint in subsequent proceedings before Justices, though the complaining wife may be able to raise the same subject-matter, coupled with adultery, to obtain relief in the Superior Court. *Pickavance* v. *Pickavance* (70 L. J. P. 14; [1901] P. 60) commented on. *Hopkins* v. *Hopkins*, 84 L. J. P. 26; [1914] P. 282; 112 L. T. 174—D.

—— **Persistent Cruelty—Time within which Proceedings to be Taken.**]—A married woman took out a summons in October, 1912, under the Summary Jurisdiction (Married Women) Act, 1895, for a maintenance order on the ground of her husband's desertion since April, 1900. At the hearing the Justices held that the husband had been guilty of cruelty towards his wife, and that on April 2, 1900, he struck her in the eye; they considered that he had persisted in that conduct with the view of forcing her to leave him, and that she was obliged to and did actually leave him on April 2, 1900; and they held that such cruelty, coupled with such intention, amounted to desertion from that date. They accordingly made an order for maintenance:—*Held*, that such order could not stand as there was no evidence of desertion in April, 1900, and that the proceedings were out of time in respect of the charge of cruelty. *Kay* v. *Kay*, 108 L. T. 813; 77 J. P. 128—D.

b. Practice and Procedure.

Desertion — Evidence — Complaint by Wife of Desertion—Finding as to Date of Commencement of Desertion.]—Courts of summary jurisdiction, purporting under the Summary Jurisdiction (Married Women) Act, 1895, to find desertion established, should insert in their finding of fact, or in the order drawn up afterwards, the date on which they held that desertion commenced. *Fengl* v. *Fengl*, 84 L. J. P. 29; [1914] P. 274—D.

—— **Corroboration.**]—The Court will not act upon the uncorroborated evidence of a party, contradicted by the other party, alleging marital intercourse at a material date, upon a summons taken out under the Summary Jurisdiction (Married Women) Act, 1895, complaining of desertion. *Joseph* v. *Joseph*, 84 L. J. P. 104; [1915] P. 122; 112 L. T. 170—D.

Separation Order—Weekly Payments—Effect of Resumption of Cohabitation—Discharge of Order—Arrears of Weekly Payments—Limitation as to Number Recoverable.]—Where an order has been made by a Court of summary jurisdiction under section 5 of the Summary Jurisdiction (Married Women) Act, 1895, that a wife be no longer bound to cohabit with her husband and that the husband should make weekly payments to his wife, the payment of arrears of such weekly sums which can be enforced is, by virtue of section 9 of the Act of 1895, section 4 of the Bastardy Laws Amendment Act, 1872, section 54 of the Summary Jurisdiction Act, 1879, and section 11 of the Summary Jurisdiction Act, 1848, limited to the arrears which accrued due within six months before the date when the application to enforce payment of such arrears was made. *Matthews* v. *Matthews*, 81 L. J. K.B. 970; [1912] 3 K.B. 91; 107 L. T. 56; 76 J. P. 315; 23 Cox C.C. 65; 28 T. L. R. 421—D.

Semble, *per* Lord Alverstone, C.J., and Pickford, J. (Avory, J., dissenting), an order for separation and for maintenance made under section 5 of the Act of 1895 is not *ipso facto* discharged by the voluntary resumption by the wife of cohabitation with her husband; it remains in force until it is discharged under

section 7 of the Act by a Court of summary jurisdiction acting within the district in which the order was originally made, upon a proper application made to the Court for that purpose. *Ib.*

Failure to Comply with Maintenance Order — Jurisdiction to Commit Defendant — No Evidence of Means.]—An order for the payment of maintenance money to a wife under the Summary Jurisdiction (Married Women) Act, 1895, may be enforced in default of sufficient distress by committal to prison, although no affirmative evidence of means is given by the person applying for such committal. *Rex* v. *Richardson; Sherry, Ex parte*, 79 L. J. K.B. 13; [1909] 2 K.B. 851; 101 L. T. 541; 73 J. P. 434; 22 Cox C.C. 182; 25 T. L. R. 711—D.

Justices' Separation Order—Evidence Required—Allowance of Wife's Costs.]—On this appeal by a husband from a maintenance order made by Justices under the Summary Jurisdiction (Married Women) Act, 1895, the Court made some observations on the evidence which Justices ought to require before making such an order, and allowed the appeal, but granted the respondent her costs. *Terry* v. *Terry*, 32 T. L. R. 167—D.

c. Appeal.

Refusal to Enforce Payment of Arrears under Justices' Order.]—An appeal from the refusal of a Court of summary jurisdiction to enforce arrears under an order for maintenance made under the Summary Jurisdiction (Married Women) Act, 1895, lies to the King's Bench Division under section 9 of the Summary Jurisdiction Act, and not to the Probate, Divorce, and Admiralty Division under section 11 of the Act. *Ruther* v. *Ruther* (72 L. J. K.B. 826; [1903] 2 K.B. 270) followed. *Adams* v. *Adams*, 83 L. J. P. 151; [1914] P. 155; 111 L. T. 414; 58 S. J. 613—D.

Aggravated Assault — Conviction — Grounds of Conviction.]—In the case of a conviction under the Offences Against the Person Act, 1861, s. 43, of a husband of an aggravated assault upon his wife as a ground for entitling the Court, so convicting, to make an order for separation on the application of the wife, pursuant to the proviso concluding the Summary Jurisdiction (Married Women) Act, 1895, s. 4, and to section 8 of the same Act, there is no appeal under section 11 of the later Act to the Probate, Divorce, and Admiralty Division against the merits of the conviction. In such a case the order for a separation is complete in itself without reference to the conviction or its grounds or their sufficiency. *Bryant* v. *Bryant*, 84 L. J. P. 30; [1914] P. 277; 112 L. T. 171; 59 S. J. 75; 31 T. L. R. 36—D.

Appeal of Husband — Poor Person — Wife's Costs.]—The fact that a husband, successfully appealing from an order of Justices under the Summary Jurisdiction (Married Women) Act, 1895, has been admitted to appeal as a poor person is no ground for departing from the usual practice to allow the wife respondent her costs of supporting the order made in the Court below. Order XVI. rule 29 is in point. *Hope* v. *Hope*, 84 L. J. P. 176; [1915] P. 125; 113 L. T. 377; 79 J. P. 320; 59 S. J. 457—D.

Security for Costs—Appeal by Husband to Divisional Court. — Where a husband, possessed of means, appealed from an order of a Court of summary jurisdiction, the President granted the application of the wife, without means, that the husband should find security for her costs of appeal. *L.* v. *L.* (*No.* 1), 55 S. J. 330—Evans, P.

—— **Stay of Husband's Appeal.**]—On the appeal of a husband from an order made at the instance of his wife under the Summary Jurisdiction (Married Women) Act, 1895, the wife made an application in chambers, supported by an affidavit as to the means of the parties, for security for her costs of the appeal. The Judge in chambers, considering the application fit for a Divisional Court, consulted the other Judge of the Division, and afterwards announced their decision in Court without the Divisional Court being actually constituted to sit. The application was allowed, the husband being ordered to pay into Court a sum fixed, or give security to the satisfaction of a Registrar, and the hearing of the appeal being in the meanwhile stayed. *Sirrell* v. *Sirrell*, 80 L. J. P. 8; [1911] P. 38; 104 L. T. 79; 27 T. L. R. 155—D.

Striking out Non-cohabitation Clause.]—In proceedings before Justices under the Summary Jurisdiction (Married Women) Act, 1895, a married woman obtained an order by which it was adjudged that her husband had deserted her, and it was ordered that she was no longer bound to cohabit with him. The husband unsuccessfully appealed, but on his application the Court varied the Justices' order by striking out the non-cohabitation clause. *Dunning* v. *Dunning*, 55 S. J. 650; 27 T. L. R. 534—D.

Res Judicata—Wife's Costs.]—*Semble*, a wife whose ground of complaint is held by the Court of Appeal to be *res judicata* is not, when that point has been taken before the Justices, entitled to costs against her husband either in the Court of Appeal or before the Justices. *Blackledge* v. *Blackledge*, 82 L. J. P. 13; [1913] P. 9; 107 L. T. 720; 77 J. P. 427; 57 S. J. 159; 23 Cox C.C. 230; 29 T. L. R. 120—D.

III. SEPARATION DEEDS.

See also Vol. VII. 986, 1842.

Agreement Providing for Immediate Reconciliation and for Contingency of Future Separation.] — An agreement entered into between a husband and wife while living separate and apart, providing for their resuming cohabitation, and further that, in the event of a future separation, provision should be made for the wife, is legal and enforceable.

MacMahon v. *MacMahon; Purser* v. *Purser*, [1913] 1 Ir. R. 428—C.A.

Covenant by Husband for Allowance to Wife — Consideration — Wife Refraining from taking Legal Proceedings against Husband.]—A deed of separation was entered into between a husband and wife after the latter had been subjected to treatment at the hands of her husband which would have justified her in taking proceedings for assault against him before a magistrate. Such proceedings were not in fact taken. By the terms of the deed of separation the husband agreed to make his wife a weekly allowance. In an action by the wife to recover arrears of the allowance due to her,—*Held*, that the fact that the wife refrained from taking proceedings against her husband when she was legally entitled to do so was sufficient consideration to support the agreement for separation, which was accordingly not void as being against public policy, and that the defendant was liable thereunder upon his covenant to make his wife an allowance. *Hulse* v. *Hulse*, 103 L. T. 804—D.

Recital of Agreement that Husband is to Pay Weekly Sum to Wife while she Remains Chaste—Covenant by Husband to Pay Weekly Sum in General Terms—Recital Controlling Covenant.]—By a deed of separation, after a recital that the husband had "agreed to allow" the wife "the sum of five shillings per week for her maintenance during her life so long as she shall remain chaste, such weekly payments to commence as from February 5, 1910," it was witnessed that "for effectuating the said agreement and in consideration of the premises" the husband "doth hereby covenant that he . . . will duly and punctually pay or cause to be paid the said sum of five shillings per week to" the wife "or to such person as she shall from time to time authorise to receive the same on Saturday in each week":—*Held*, that the covenant was controlled by the recital and that the weekly sum of five shillings was only payable to the wife while she remained chaste. *Hesse* v. *Albert* (3 Man. & Ry. 406) followed. *Crouch* v. *Crouch*, 81 L. J. K.B. 275; [1912] 1 K.B. 378; 106 L. T. 77; 56 S. J. 188; 28 T. L. R. 155—D.

Validity of Deed of Separation as Bar to Suit for Restitution.]—Where a deed of separation contains covenants not to sue for restitution of conjugal rights and for the payment by the husband of an allowance to his wife, it is of the essence of the agreement that the allowance be maintained. As the allowance is provable in bankruptcy, and an action cannot after discharge in bankruptcy be maintained on the covenant, it is clear, after the husband has made default in payment, been adjudicated a bankrupt and received his discharge, and the wife has proved in the bankruptcy, that the deed and the covenant not to sue cannot be set up in bar of proceedings by the wife for restitution of conjugal rights. *McQuiban* v. *McQuiban*, 83 L. J. P. 19; [1913] P. 208; 109 L. T. 412; 29 T. L. R. 766—Evans, P.

IV. WIFE'S RIGHTS AND PROPERTY.

See also Vol. VII. 1022, 1847.

1. Dower.

Sale of Land—Purchase Money—Claim of Doweress.]—On the sale of lands out of which dower is payable the doweress is not entitled, as of right and against the heir, to have an apportioned part of the purchase money paid to her in satisfaction of her claim to dower, but is only entitled to payment of the dower as it accrues due. *Wilson, In re; Wilson* v. *Clark*, 32 T. L. R. 150—Sargant, J.

2. Jointure.

Prima facie a jointure is an estate to the wife for life to take effect on the death of the husband. *De Hoghton* v. *De Hoghton* (65 L. J. Ch. 667; [1896] 2 Ch. 385) followed. *Greenwood* v. *Lutman*, [1915] 1 Ir. R. 266—Barton, J.

3. Power to Disclaim.

Gift by Will of Annuity for Separate Use—Restraint on Anticipation.]—A married woman may, since the Married Women's Property Act, 1882, disclaim a gift to her by will of personal estate although it is given to her with a restraint on anticipation. *Wimperis, In re; Wicken* v. *Wilson*, 83 L. J. Ch. 511; [1914] 1 Ch. 502; 110 L. T. 477; 58 S. J. 304—Warrington, J.

4. Effect of Deceased Wife's Sister's Marriage Act on Property.

Gift of Interest during Widowhood—Marriage with Deceased Sister's Husband—Subsequent Validation — Right to Retain Interest.]—The effect of section 2 of the Deceased Wife's Sister's Marriage Act, 1907, is that no rights of property, whether of the so-called husband and wife or of third parties, depending on the invalidity of a marriage with a deceased wife's sister contracted before the Act, are to be altered or interfered with by the validation of the marriage, as a civil contract, by section 1:—*Held*, therefore, that a widow who, being entitled to an interest during widowhood, had before the passing of the Act married her deceased sister's husband, was entitled to retain the interest notwithstanding the validation of her second marriage by the Act. *Whitfield, In re; Hill* v. *Mathie*, 80 L. J. Ch. 263; [1911] 1 Ch. 310; 103 L. T. 878; 55 S. J. 237; 27 T. L. R. 203—Parker, J.

5. Policies of Insurance.

Policy "for the benefit of" Wife.]—A married man effected with a life assurance society a policy of assurance, described as an "endowment bond," in terms of which the society undertook, in consideration of the payment of certain annual premiums, to pay to him the principal sum assured, with interest and profits, on the expiry of twenty years. The society also undertook, in the event of the

husband's death before the expiry of the twenty years, to pay the principal sum assured to his widow, whom failing, to the husband's executors, administrators, or assigns. The husband having died within the twenty years, survived by his widow, and his estate having been sequestrated,—*Held* (*dub.* the Lord President), that the policy in question was a policy "for the benefit of his wife" within the meaning of section 2 of the Married Women's Policies of Assurance (Scotland) Act, 1880 (*cf.* section 11 of the Married Women's Property Act, 1882), and accordingly that the proceeds thereof fell to the widow and not to the husband's creditors. *Chrystal's Trustee* v. *Chrystal*, [1912] S. C. 1003—Ct. of Sess.

Trust for Wife and Children — Tontine Dividends — Assignment by Husband for Benefit of Creditors—Rights to Benefits under Policy.]—By a policy effected by a husband on his own life, the insurance company contracted to pay to E. M., the wife of the insured, for her sole use, "if then living," and, if not living, to the children of the insured or their trustees for their use, or if there should be no such children surviving, then to the executors, administrators, or assigns of the insured, the sum of 1,000*l*. On the back of the policy were various conditions, from which it appeared that the policy was issued on the semi-tontine plan; that the tontine dividend period expired on June 20, 1910; that no dividend was to be allowed unless the insured survived the completion of that period and the policy should be then in force; that the surplus or profits derived from semi-tontine policies not in force when their respective tontine dividend periods expired were to be apportioned among such as completed their periods; and that on June 20, 1910, the insured in question, if the policy was then in force, would have the option of—first, withdrawing in cash the policy's entire share of the assets; secondly, of converting the same into a paid-up policy for an equivalent amount; thirdly, of withdrawing in cash the share of accumulated surplus and continuing the policy on the ordinary plan; or fourthly, of continuing the assurance for the original amount and applying the entire dividend to the purchase of an annuity payable together with the annual dividends in cash to the insured or his assigns. The insured's wife died before the completion of the dividend period, leaving one daughter. In 1905 the insured assigned his property to a trustee for the benefit of his creditors, and the terms of the assignment were wide enough to include the policy if capable of assignment. On the expiration of the dividend period the insured was still alive, and the trustee for his creditors claimed the right to exercise the first option and of receiving the entire assets for the creditors:—*Held*, that the options under the policy could only be exercised for the benefit of the persons for whom the trust was created; that so long as any objects of the trust remained unperformed the trusts could not be defeated; that the options must be exercised in the best manner for the benefit of those entitled, and that the proper course was for the insurance company to issue a paid-up policy within the meaning of option 2 for the benefit of the child or children surviving the insured, and if there should be none the benefit of it would fall into his estate. *Equitable Life Assurance Society of United States and Mitchell, In re*, 27 T. L. R. 213—Swinfen Eady, J.

Insurance by Married Woman for Benefit of Children.]—On August 2, 1872, a married woman effected a policy of insurance on her own life for the benefit of her children. By her will she bequeathed the policy moneys to her four daughters equally. She survived her husband and died in November, 1914, leaving four daughters and five sons, all of whom were born before the date of the policy:—*Held*, that the testatrix had no power, under the Married Women's Property Act, 1870, s. 10, to take out a policy for the benefit of her children, and that the four daughters were entitled to the policy moneys as legatees under the will. *Burgess's Policy, In re; Lee* v. *Scottish Union and National Insurance Co.*, 113 L. T. 443; 59 S. J. 546—Eve, J.

6. Receipt by Husband.

Whether Gift to Husband by Wife.]—Where husband and wife are living together in amity, and the husband, with the wife's consent, receives her separate income, he is, in the absence of an agreement express or to be inferred from the circumstances, taken to receive it in his capacity as head of the family and is entitled to deal with it as he pleases and is not liable to account for it to his wife or to repay any part of it to her. It is a question of fact whether an agreement has been arrived at which rebuts the presumption arising from the receipt of the wife's money by the husband. A wife's separate income was, with her consent, received by her husband:—*Held*, on the evidence, that the money was only paid to the husband for the purpose of investment and that it remained the wife's property. *Young, In re; Young* v. *Young*, 29 T. L. R. 391—Warrington, J.

7. Dealings with.

Undue Influence — Common Solicitor for Husband, Wife, and Creditor—Surrender of Wife's Property—No Independent Advice.]—A married woman living with her husband, at her husband's request and with the knowledge of her husband's solicitor, who was also the solicitor of the appellant bank, in a long series of transactions surrendered to the bank her whole fortune as guarantee for the company of which the solicitor was a director and shareholder, but was himself unwilling to guarantee the liabilities:—*Held*, that the transactions must be set aside; that the solicitor ought to have plainly informed the lady of the whole situation and the risks which she was incurring, and ought to have insisted on her taking independent advice. *Bank of Montreal* v. *Stuart*, 80 L. J. P.C. 75; [1911] A.C. 120; 103 L. T. 641; 27 T. L. R. 117—P.C.

Transfer of Wife's Money into Joint Names of Husband and Wife — Intention — Joint

Tenancy.]—A, who carried on business in a small shop and was possessed of 1,200*l.* in money, married B, a workman earning wages. According to evidence accepted by the Court, A, both before and after marriage, announced her intention, in the presence of B, of putting the 1,200*l.* in their joint names, to become the property of the survivor; and she did, in fact, a few days after the marriage, without any solicitation or pressure by B, lodge the money on deposit receipt, in the joint names of A and B; and in answer to the question, "Whose was the money to be?" she said in her evidence, "On both our names to work on it as husband and wife should." After the marriage B paid his wages to A, and the money on deposit receipt was drawn on from time to time as required for the shop or other expenses, the profits of the shop being lodged from time to time on deposit receipt, in the names of A and B:—*Held*, that the money so lodged on deposit receipt was the joint property of A and B during their joint lives, and would become the absolute property of the survivor of them. *Foley* v. *Foley*, [1911] 1 Ir. R. 281—C.A.

8. Restraint on Anticipation.

Restraint on Anticipation at Time of Entering into Contract—Judgment against Married Woman—Instalments of Annuity Accruing Due before Judgment—Money in Hands of Trustee.]—A contract entered into by a married woman can, under section 1 of the Married Women's Property Act, 1893, be enforced only against such of her separate property as neither at the time when she entered into the contract nor at any subsequent time has been subject to restraint against anticipation. *Wood* v. *Lewis*, 83 L. J. K.B. 1046; [1914] 3 K.B. 73; 110 L. T. 994—C.A.

A bill of exchange was accepted by a married woman at a time when she was entitled to the benefit of a deed of covenant, by the terms of which a sum of money was to be paid quarterly to a trustee in trust to pay the same to her for her separate use without power of anticipation. After the commencement of an action against her on the bill a sum of money was under the covenant paid to the trustee, and five days later judgment was entered against her in default of defence. In garnishee proceedings taken by the judgment creditor against the trustee,—*Held*, that the sum of money in the hands of the trustee was not attachable to answer the judgment debt. *Barnett* v. *Howard* (69 L. J. Q.B. 955; [1900] 2 Q.B. 784) followed. *Ib.*

9. Mortgages.

Mortgage of Wife's Estate — Money Expressed to be Paid to Husband and Wife—Inference—Exoneration of Wife's Estate—Rebutting Evidence.]—The law as stated by Wood, V.C., in *Hudson* v. *Carmichael* (23 L. J. Ch. 893, at p. 894; Kay, 613, at p. 620)—that "Whenever the wife's estate is mortgaged, and the money is paid to the husband, or" (in a case arising before 1883) "to the husband and wife . . . If the deed expresses that it was paid to the husband and the wife . . . it may be shewn by extrinsic evidence that the payment was in fact for the benefit of the wife. If it was not, then, the estate of the wife being a surety for the husband's debt, she has the advantage of that position as against all persons except the husband's other creditors"—and to the same effect by Hardwicke, L.C., in *Kinnoul* (*Earl*) v. *Money* (3 Swanst. 202*n.*, at p. 208*n.*), is not, and was not intended to be, overruled or dissented from by Lindley, L.J. (in delivering the judgment of the Court of Appeal) in *Paget* v. *Paget* (67 L. J. Ch. 266, at p. 270; [1898] 1 Ch. 470, at pp. 474, 475). *Hall* v. *Hall*, 80 L. J. Ch. 340; [1911] 1 Ch. 487; 104 L. T. 529—Warrington, J.

To prevent an inference being drawn that the wife was a surety only, it must be shewn by affirmative evidence either that the money was applied for her benefit, or that, when raised, it became, by assent or agreement of the husband, her separate property and was afterwards given by her to him. *Ib.*

V. HUSBAND'S LIABILITIES.

See also Vol. VII. 1198, 1865.

Authority of Wife to Pledge Husband's Credit after Leaving Him — Ostensible Authority.]—A wife who was living with her husband received authority from the latter to order goods from the plaintiffs. The goods so ordered were booked to the "account address," that being the house at which the wife was living with her husband, and the bills therefore were settled by the husband. The defendant's wife left him and went to live with another man. Between the date when she left her husband and the time when he discovered her whereabouts the wife ordered goods from the plaintiffs, which she directed to be booked to the account address and forwarded to the place where she was living. On learning where his wife was, the defendant inserted an advertisement in the newspapers stating that he would not be responsible for her debts. In an action by the plaintiffs against the defendant to recover the amount due for the goods supplied to his wife after she had left him,—*Held*, *per* Darling, J., that the ostensible authority given by the defendant to his wife to pledge his credit only continued whilst she was living with him as a virtuous wife, and did not continue after she had left him to live with another man. *Held*, *per* Bucknill, J., that the ostensible authority given to the wife by her husband to order goods on his behalf was subject to the limitation that it only applied to such goods as were to be sent to the house where she was living with her husband. *Swan & Edgar* v. *Mathieson*, 103 L. T. 832; 27 T. L. R. 153—D.

Wife's Tort—Husband's Liability—Decree of Judicial Separation.]—The plaintiff sued the defendants, who were husband and wife, to recover 3,590*l.*, which he alleged he had been induced to pay by reason of certain false and fraudulent statements of the female defendant. The defendants were living together at

the time the money was so paid by the plaintiff, but subsequently the male defendant obtained a judicial separation from his wife. At the trial the jury found—first, that the alleged misrepresentations were made by the female defendant to the plaintiff; secondly, that the alleged misrepresentations were not made by her as agent for her husband, that they were not made at his instigation, but that they were made with his knowledge, authority, and acquiescence; thirdly, that the male defendant derived benefit by receiving 240*l.* from his wife knowing it to be derived from the swindle; fourthly, that the motive of the male defendant in petitioning for a decree of judicial separation from his wife was to avoid liability:—*Held*, that the male defendant was in the position of an independent tortfeasor; that his liability extended to all money obtained in consequence of the frauds in which he took part; and that he was liable to the plaintiff for the full amount claimed. *Burdett* v. *Horne*, 28 T. L. R. 83—C.A.

VI. GIFTS BETWEEN HUSBAND AND WIFE.

See also Vol. VII. 1269, 1869.

Presumption of Advancement — Resulting Trust—Deposit Receipt in Names of Husband, Wife, and Third Party.]—A placed on deposit receipt with his bankers the sum of 1,200*l.*, his own money, in the names of himself, his wife, and his brother. By his will, made shortly afterwards, he left all his property to his wife and his brother for their lives, and after their deaths for charitable purposes. There was no evidence beyond the fact of the deposit to shew A's intention in making it in the joint names:—*Held*, that the presumption of advancement in favour of the wife was not affected by the insertion of the name of the brother in the receipt, and that he was trustee of the fund for her. *Eykyn's Trusts* (6 Ch. D. 115) followed. *Condrin, In re; Colohan* v. *Condrin*, [1914] 1 Ir. R. 89—M.R.

See also Foley v. *Foley*, *ante*, col. 667.

VII. ACTIONS BETWEEN HUSBAND AND WIFE.

See also Vol. VII. 1272, 1871.

Marriage Settlement—Chattels Assigned to Trustees—Wife Entitled to User—Detention by Husband—Action by Wife—Trustees not Joined.]—By a marriage settlement a husband assigned to trustees certain chattels upon trust to allow them to be used by the wife during her life free from the control of her husband. In an action by the wife against her husband for the wrongful detention of the chattels,—*Held*, that the action could be maintained by the wife without joining the trustees of the settlement as parties. *Healey* v. *Healey*, 84 L. J. K.B. 1454; [1915] 1 K.B. 938; 113 L. T. 694—Shearman, J.

Dispute as to Property — Reference to Registrar to Report — Conclusiveness of Report.]—Where in proceedings by a husband to recover property from his wife under section 17 of the Married Women's Property Act, 1882, the Judge refers the question to a Registrar for report, it is not necessary for the claimant to move to adopt the report, but either party may move to vary the report, and unless so varied the report must be taken to be correct in subsequent proceedings. When the report did not find that the property in dispute was in the wife's possession, an order on the wife to deposit it in Court within three days cannot be supported. On proof of possession such an order may be made under Order L. rule 3, with a view to the interim preservation of the property pending the determination of the right of ownership. *Wilder* v. *Wilder*, 56 S. J. 571—C.A.

ILLEGALITY.

See CONTRACT; GAMING.

ILLEGITIMATE CHILDREN.

See BASTARDY; INFANT (CUSTODY AND RESPONSIBILITY FOR CARE OF).

IMPRISONMENT.

Of Criminals.]—*See* CRIMINAL LAW.

Of Debtors.]—*See* DEBTORS ACT.

INCLOSURE.

See COMMONS.

INCOME TAX.

See REVENUE.

INDIA.

1. Administration and Government.

See also Vol. VII. 1310, 1876.

Native Prince—Extra-territoriality—Status of Sovereign—"India."]—The native princes of India, falling within the class referred to in section 18, sub-section 5 of the Interpretation Act, 1889, though not independent, but subject to the suzerainty of His Majesty, are reigning sovereigns to the extent that they are immune from the jurisdiction of an English Court. An Indian prince, coming within this category and sued as co-respondent in a suit for divorce, was on his application struck out of the proceedings. *Statham* v. *Statham*, 81 L. J. P. 33; [1912] P. 92; 105 L. T. 991; 28 T. L. R. 180—Bargrave Deane, J.

Legislative Power—Jurisdiction of Civil Court — Claim against Government.] — The Government of India cannot by legislation take away the right to proceed against it in a Civil Court in respect of any right over land. *Secretary of State for India* v. *Moment*, L. R. 40 Ind. App. 48; 29 T. L. R. 140—P.C.

2. Jurisdiction—Courts.

See also Vol. VII. 1313, 1877.

Jurisdiction as to Infants.]—The High Court of Madras has no jurisdiction to make an order directing a guardian of Hindu infants, who are residing in England, to hand the infants over to their father in India. *Besant* v. *Narayaniah*, L. R. 41 Ind. App. 314; 30 T. L. R. 560—P.C.

3. Legal Decisions.

See also Vol. VII. 1314, 1878.

Administration—Inventory Required by Law—Approximate Lump Figure—Motion for Enquiry—Time Limit.]—By section 98 of the Probate and Administration Act, 1881, as substituted in that Act by section 15 of the Probate and Administration Act, 1889 (Acts of the Governor-General of India in Council), "An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession . . ." By section 2, sub-section 4 of the Court Fees Amendment Act, 1889 (also an Indian Act), "If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made to hold an inquiry into the true value of the property: provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by . . . section 98 of the Probate and Administration Act, 1881":—*Held*, that the time limited in this proviso only ran from the date of the lodging of the inventory required by law, and that it could not run from the depositing of a document which omitted the details of a full and true estimate and only gave an estimated lump figure of the approximate value. *Musammat Rameshwar Kumar* v. *Gaya (Collector)*, L. R. 40 Ind. App. 236; 30 T. L. R. 65—P.C.

Adoption — Partition — Share of Adopted Son.] — In certain instances, according to Hindu law, on the distribution of family property by partition, an adopted son is only entitled to a reduced share, but those instances do not include cases where there is no competition between an adopted son and a subsequently born legitimate son of the same father. *Nagindas Bhugwandas* v. *Bachoo Hurkissondas*, 32 T. L. R. 132—P.C.

Benami Transaction—Purchase of Bungalow — Registration in Name of Purchaser's Mistress.]—*Held*, on the facts, that the purchase by a Rajput of a bungalow, of which the deed of sale was registered in the name of his mistress, was a *benami* transaction, which resembled the doctrine of English law that the trust of the legal estate results to the person who pays the purchase money. *Musammat Bilas Kunwar* v. *Desraj Ranjit Singh*, 31 T. L. R. 562—P.C.

Burma—Appeal to Privy Council—Award of Compensation for Land Compulsorily Taken.]—A special and limited appeal is given by the Indian Land Acquisition Act, 1894, from the award of "the Court" to the High Court, but no appeal lies under the Act from the High Court to the Judicial Committee of the Privy Council. *Rangoon Botatoung Co.* v. *Rangoon Collector*, L. R. 39 Ind. App. 197; 28 T. L. R. 540—P.C.

—— Succession — Relatives — Preference.] — According to the Burmese Buddhist law of succession, where a family does not continue to live together the brothers and sisters of the deceased succeed to his property in preference to the parents. *Mah Nhin Bwin* v. *U Schwe Gone*, L. R. 41 Ind. App. 121; 30 T. L. R. 353—P.C.

Company — Conclusiveness of Registrar's Certificate.]—The certificate of incorporation of a company given by the Registrar under the Indian Companies Act, 1882, is conclusive for all purposes. *Moosa Goolam Ariff* v. *Ebrahim Goolam Ariff*, L. R. 39 Ind. App. 237; 28 T. L. R. 505—P.C.

Criminal Law — Improper Admission of Evidence.]—The Judicial Committee allowed an appeal from a conviction for murder on the ground that a body of wholly inadmissible evidence had been admitted in the Indian Court, and that when admitted it was used to the grave prejudice of the accused. *Vaithinatha*

Pillai v. *Regem*, L. R. 40 Ind. App. 193; 29 T. L. R. 709—P.C.

—— **Special Leave to Appeal — Limit of Jurisdiction.**]—Leave to appeal from convictions and sentences on the grounds of alleged irregular conduct of the proceedings, misdirection of the jury, and misreception of evidence refused, the case not coming within the principle as laid down in *Dillet, In re* (12 App. Cas. 459). *Clifford* v. *King-Emperor*, 83 L. J. P.C. 152; L. R. 40 Ind. App. 241—P.C. *And see* COLONY.

Ejectment—Land in Cantonment—Proprietor or Licensees.]—*Held*, that certain land within the Poona Cantonment was only held by the appellants on military or cantonment tenure, and that the Government could resume it at their pleasure, subject to making compensation for buildings erected by the licensees thereon. *Ghaswala* v. *Secretary of State for India*, 27 T. L. R. 521—P.C.

Fishery in Ganges — Shifting Channel — Right to Follow.]—By the law of Bengal the grantee from the Crown of a several fishery in the river Ganges, in which new channels are frequently formed, can follow the shifting river for the enjoyment of his exclusive fishery so long as the waters form part of the river system within the upstream and downstream limits of his grant, whether the Government owns the subjacent soil or whether it is still in a riparian proprietor as being the site of a recent encroachment of the river. *Raja Srinath Roy* v. *Dinabandhu Sen*, L. R. 41 Ind. App. 221; 30 T. L. R. 662—P.C.

Infants — Guardianship — High Court of Madras—Jurisdiction.]—By Hindu as well as by English law the father is the natural guardian of his children during their minorities, but this guardianship is in the nature of a sacred trust, and he cannot therefore during his lifetime substitute another person to be guardian in his place. If he affects to do so, the authority conferred upon the substituted guardian is revocable, and the question whether the father is entitled to revoke it depends on the infants' interests, welfare, parentage, and religion. The High Court of Madras has no jurisdiction to make an order directing a guardian of Hindu infants, who are residing in England, to hand the infants over to their father in India. *Besant* v. *Narayaniah*, L. R. 41 Ind. App. 314; 30 T. L. R. 560—P.C.

—— **Specific Performance.**]—It is not within the competence of a manager of a minor's estate, or within the competence of a guardian of a minor, to bind the minor or the minor's estate by a contract for the purchase of immovable property. Therefore such a contract, if entered into, cannot be specifically enforced. *Mir Sarwarjan* v. *Fakaruddin Mahomed Chowdhry*, 28 T. L. R. 56—P.C.

Joint Hindu Family—Widow's Share of Immovables on Partition—Succession.]—The members of a joint Hindu family effecting a partition may agree that a portion of the property shall be transferred to the widow by way of absolute gift as part of her *stridhan* so as to constitute a provision for her *stridhan* heirs; but in the absence of such an agreement the property acquired by a widow on a partition of the joint estate is on the same footing as property coming to her by way of inheritance. *Debi Mangal Prasad Singh* v. *Mahadeo Prasad Singh*, L. R. 39 Ind. App. 121; 28 T. L. R. 219—P.C.

—— **Contract by Managing Members of Family — Power to Sue.**]—The managing members of a Hindu joint family, who are entrusted with the management of a business carried on in the interests of the family, are entitled to enforce at law the ordinary business contracts entered into by them without joining the other members of the family as plaintiffs. *Kishen Parshad* v. *Har Narain Singh*, L. R. 38 Ind. App. 45; 27 T. L. R. 243—P.C.

Life Insurance—Policy—Right of Assignee as against Depositary of Policy.]—The appellant and respondent each claimed to be entitled to the proceeds of a policy of insurance on the life of one D. deceased. The appellant based his claim on an assignment in writing by D.; the respondent based his claim upon a deposit with him by D. of the policy as security for the repayment of a debt:—*Held*, that as by virtue of section 130 of the Indian Transfer of Property Act, 1900, a transfer of an actionable claim can only be effected by an instrument in writing, the respondent acquired no right to the policy or its proceeds, and that the appellant, who claimed under an instrument in writing conforming to the provisions of the section, was entitled to the proceeds of the policy. *Mulraj Khatau* v. *Vishwanath Prabhuram Vaidya*, 29 T. L. R. 89—P.C.

Limitations, Statute of — Immovables — Mortgage — Sale — Proceeds in Hands of Wrongdoer—Suit against Wrongdoer—Period of Limitation.]—By article 132 of the Second Schedule to the Indian Limitation Act, 1877 (Indian Statute), a suit "to enforce payment of money charged upon immovable property" must be brought within twelve years from the time when the money becomes due. By article 120 a "suit for which no period of limitation is provided elsewhere in this schedule" must be brought within six years from the time when the right to sue accrues. The appellants advanced money on mortgage of immovable property in India, and the respondents advanced money on a second mortgage. The appellants having subsequently obtained a decree for the sale of the property, the property was sold, and the appellants wrongfully obtained a balance over and above the amount due to them, with knowledge that such balance was affected with a charge to the respondents. The respondents, at a date more than six but less than twelve years after the money became due to them, brought a suit against the appellants to recover the surplus sale proceeds:—*Held*, that the suit was a suit "to enforce payment of money charged upon immovable property" within article 162

and was therefore brought in time. *Barhamdeo Prasad* v. *Tara Chand*, L. R. 41 Ind. App. 45; 30 T. L. R. 143—P.C.

Money Paid to Prevent Compulsory Sale—Coercion.]—The appellant's mill having been, as he alleged, wrongfully attached by the respondents, the appellant paid under protest the sum claimed, and thereafter sued for a return of the money so paid:—*Held*, that although the payment under protest of the sum demanded by the respondents was not the only course open to the appellant to rid himself of the alleged unlawful interference with his property, it was an involuntary payment produced by coercion, and that the appellant was entitled to maintain an action for its recovery. *Kanhaya Lal* v. *National Bank of India*, 29 T. L. R. 314—P.C.

Mortgage—Instrument to be "attested" by Two Witnesses.]—Section 59 of the Indian Transfer of Property Act, 1882, provides that in a certain class of cases a mortgage "can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses":—*Held*, that this provision requires that the witnesses should be actually present at and witness the execution of the mortgage, and that attestation upon the acknowledgment of the mortgagor is not sufficient. *Shamu Patter* v. *Abdul Kadir Ravuthan*, L. R. 39 Ind. App. 218; 28 T. L. R. 583—P.C.

Pardanishin Women—Deed of Gift—Proof of Intelligent Execution—Independent Advice.]—Where a person claims under a deed of gift from a Pardanishin woman, the onus is on the claimant to shew that the transaction had been explained to her and that she understood it, but there is no rule of law that such a gift cannot stand unless the woman had independent advice. If the giving of independent advice would not really have made any difference in the result, the deed ought to stand. *Kali Bakhsh Singh* v. *Ram Gopal Singh*, L. R. 41 Ind. App. 23; 30 T. L. R. 138—P.C.

Pre-emption.]—The right of pre-emption held to exist among the Hindus of Behar. *Jadu Lal Sahu* v. *Maharani Janki Koer*, 28 T. L. R. 369—P.C.

Punjab—Custom of Agriculturists—Sale of Ancestral Lands—Necessity—"Just debt."]—By the custom of the agriculturists of the Punjab the male proprietor of lands may validly, as against reversioners, alienate ancestral lands in payment of a just debt:—*Held*, that a "just debt" means a debt which is actually due and is not immoral, illegal, or opposed to public policy, and has not been contracted as an act of reckless extravagance or of wanton waste, or with the intention of destroying the interests of the reversioners. *Sardar Kirpal Singh* v. *Sardar Balwant Singh*, 29 T. L. R. 69—P.C.

Sale of Property—Irregularities in Publishing and Conducting Sale.]—Sale of property set aside on the ground of material irregularities within the meaning of section 311 of the Indian Code of Civil Procedure, 1882, in publishing and conducting the sale. *Tekait Krishna Prasad Singh* v. *Moti Chand*, L. R. 40 Ind. App. 140; 29 T. L. R. 345—P.C.

Trespass—Search of Premises Ordered by District Magistrate in Course of Enquiry into Disturbance—Action of Trespass against Magistrate.]—A serious disturbance having taken place in a district in India, the appellant, a district magistrate, in the course of his enquiry into same, ordered a search of (*inter alia*) the respondent's cutcherry. The respondent's cutcherry being locked, and there being no one on the ground to open it, the doors were forced and the contents of the buildings were searched, but nothing of an incriminating nature was found. The respondent having sued the appellant for trespass in respect of the search and obtained judgment, the appellant appealed:—*Held*, allowing the appeal, that the appellant was warranted by the provisions of the Code of Criminal Procedure in directing the search of the respondent's cutcherry. *Clarke* v. *Brojendra Chowdhry*, L. R. 39 Ind. App. 163; 28 T. L. R. 486—P.C.

Will—Hindu Law—Bequest to a Class—Unborn Persons.]—By Hindu law, where there is a gift to a class some of whom may be incapacitated from taking because not born at the time of the testator's death, and where there is no other objection to the gift, it enures for the benefit of those members of the class who are capable of taking. Observations of Wilson, J., in *Ram Lal Sett* v. *Kanai Lal Sett* (12 Ind. L. R., Calcutta Series, 663) approved. *Bhagabati Barmanya* v. *Kali Charan Singh*, L. R. 38 Ind. App. 54; 27 T. L. R. 267—P.C.

INDUSTRIAL SCHOOL.

See INFANT (OFFENCES BY).

INDUSTRIAL SOCIETY.

Nomination of Property by Members—Limit of Amount—Time of Ascertaining Amount—Date of Nomination.]—By section 25, subsection 1 of the Industrial and Provident Societies Act, 1893, a member of a registered society is enabled to nominate a person or persons to or among whom his property in the society shall be transferred at his decease, "provided the amount credited to him in the books of the society does not then exceed 100*l.* sterling":—*Held* (Lord Shaw dissenting), that as the word "then" in the proviso to the sub-section refers to the date of nomination and not of death, a nomination is valid if at its date the sum standing to the credit of the member in the books of the society does not exceed 100*l.*, although at the date of the death

of the member it does exceed that sum. *Eccles Provident Industrial Co-operative Society* v. *Griffiths*, 81 L. J. K.B. 594; [1912] A.C. 483; 106 L. T. 465; 56 S. J. 359; 28 T. L. R. 299—H.L. (E.)

Decision of the Court of Appeal (80 L. J. K.B. 1041; [1911] 2 K.B. 275) affirmed. *Ib.*

Life Assurance Business.]—*See Hampton* v. *Toxteth Co-operative Society*, *post*, col. 731.

INEBRIATE.

See INTOXICATING LIQUORS.

INFANT.

I. RIGHTS AND LIABILITIES.

See also Vol. VII. 1331, 1891.

Apprenticeship Deed—Covenant by Apprentice to take Effect after Termination of Apprenticeship—Breach—Right of Master to Injunction.]—A covenant in an apprenticeship deed, made while the apprentice is an infant, to do or abstain from doing something after the apprenticeship shall have terminated, which covenant is reasonable and for the benefit of the apprentice, is enforceable against him. *Gadd* v. *Thompson*, 80 L. J. K.B. 272; [1911] 1 K.B. 304; 103 L. T. 836; 55 S. J. 156; 27 T. L. R. 113—D.

An apprentice, an infant, covenanted that he would not, after the apprenticeship should have terminated, carry on the same trade as his master within a specified area during a specified time. After the termination of the apprenticeship he committed a breach of this covenant. There was evidence that he could not have been apprenticed except on the terms of the covenant:—*Held*, that as the covenant was a reasonable one, and for the benefit of the apprentice, an injunction restraining him from committing further breaches of it should be granted. *Ib.*

See also Apprentice.

Contract for Employment and Instruction—Breach—Liability for Infant for Damages—Executory Contract—Necessaries.]—An infant, who had acquired a reputation as a billiard player, entered into a contract with a well-known and ex-champion billiard player to go for a tour with him round the world as billiard players. The tour was to be for eighteen months and the net earnings were to be divided between them. The tour was to be under the sole control and arrangement of the adult billiard player. The infant having acted under this contract for three weeks refused to continue it:—*Held*, that the contract was one for the employment and instruction of the infant, and being for his benefit was binding upon him as a contract for necessaries; and that he was therefore liable in damages for its breach notwithstanding that the breach took place at an early stage when the contract was still to a large extent executory. *Roberts* v. *Gray*, 82 L. J. K.B. 362; [1913] 1 K.B. 520; 108 L. T. 232; 57 S. J. 143; 29 T. L. R. 149—C.A.

—— **Professional Boxer — Enforceability.**] — An agreement by which the defendant, an infant, who was a professional boxer, appointed the plaintiff his sole manager on commission, and agreed not to take engagements under any other management without the plaintiff's consent for three years, held unenforceable against the infant, as it was a trading contract and as it could not be construed as being beneficial to him. *Shears* v. *Mendeloff*, 30 T. L. R. 342—Avory, J.

Trading Contract — Benefit of Infant — Liability—Claim ex Delicto—Money Had and Received.]—An infant is not liable upon a contract made in the course of a trade in which he is engaged, and money paid to him under such a contract cannot be recovered back. But if in an action against an infant for money had and received it can be shewn that in substance the plaintiff's claim is a claim *ex delicto*, the action is maintainable. *Cowern* v. *Nield*, 81 L. J. K.B. 865; [1912] 2 K.B. 419; 106 L. T. 984; 56 S. J. 552; 28 T. L. R. 423—D.

Goods Obtained by Fraud—Necessaries—Bill of Sale—Liability of Infant.]—In an action brought by the plaintiff to recover from the defendant the price of certain furniture and effects, the defendant pleaded that at the time he entered into the contract he was an infant to the plaintiff's knowledge. The goods were transferred to the defendant by an agreement containing a licence to the plaintiff to resume possession of the goods if the price was not paid on a certain date. The defendant sold some of the goods for a sum of 30*l.*, and, with the plaintiff's assent, transferred the remainder by bill of sale as security for an advance of 100*l.* by the grantee. The jury found that the defendant represented that he was of full age fraudulently to deceive the plaintiff, and that the goods were necessaries:—*Held*, that there was no evidence on which the jury could find that the goods were necessaries, and that the agreement was therefore void, and no action could be brought upon it. But *held*, that in equity, where an infant has wrongfully sold property acquired by a fraudulent misrepresentation as to his age, he must account for the proceeds of the sale to the party defrauded, and that the plaintiff was therefore entitled to recover the sums received

by the defendant in respect of the goods. *Held*, further, that the agreement by which the goods were transferred by the plaintiff to the defendant was a bill of sale which was governed by the Bills of Sale Act, 1878, and not by the Bills of Sale Act, 1882, and was not therefore void for not complying with the requirements of the later Act. *Stocks* v. *Wilson*, 82 L. J. K.B. 598; [1913] 2 K.B. 235; 108 L. T. 834; 20 Manson, 129; 29 T. L. R. 352—Lush, J.

Loan Obtained by Infant by Fraudulent Misrepresentation that he was of Age—Liability of Infant — Equitable Relief.] — An infant obtained loans by a fraudulent misrepresentation that he was of full age :—*Held*, that the infant was not liable to repay the loans, either as damages for fraudulent misrepresentation, or as "money had and received," or on the ground that the infant was compellable in equity to refund the moneys which he had obtained by fraud. *Leslie, Lim.* v. *Shiell*, 83 L. J. K.B. 1145; [1914] 3 K.B. 607; 111 L. T. 106; 58 S. J. 453; 30 T. L. R. 460—C.A.

Decision of Horridge, J. (29 T. L. R. 554), reversed. *Ib.*

Marriage Settlement by Infant—Repudiation — Reasonable Time.] — The reasonable time within which an infant may exercise his right to repudiate a settlement commences to run, not from the time when the property, the subject-matter of the settlement, falls into possession, but from the time when the infant attains twenty-one years of age. *Jones, In re; Farrington* v. *Forrester* (62 L. J. Ch. 996; [1893] 2 Ch. 461) not followed. *Edwards* v. *Carter* (63 L. J. Ch. 100; [1893] A.C. 360) and *Carter* v. *Silber* (61 L. J. Ch. 401; [1892] 2 Ch. 278) followed. *Cornell* v. *Harrison*, 60 S. J. 121—Neville, J.

Cheque—Liability on.]—The defendant, who was an infant at the time, drew a cheque on a date prior to July 29, 1913, making it payable to one Bell, and postdating it August 14. The cheque was not given for necessaries. On July 29 the defendant came of age. On August 11 the plaintiff cashed the cheque for Bell, and on August 14 presented it, but it was returned marked "Account closed" :—*Held*, in an action on the cheque, that the plaintiff could not recover. *Hutley* v. *Peacock*, 30 T. L. R. 42—Scrutton, J.

Necessaries—Hire of Motor-car for Specific Journey—User beyond Limits Contracted for—Damage to Car—Liability of Infant.]—The defendant, an infant of twenty years of age and in receipt of an allowance of 80*l.* a year, hired a motor car from the plaintiff for the purpose of driving it to a place six miles off to fetch his bag. It was alleged by the plaintiff, but not proved, that the car was hired on the terms that it should be at the defendant's risk. The defendant drove to the place where his bag was, and meeting a friend drove him to a place twelve miles further on. In the course of this additional part of the journey the car was damaged beyond repair without negligence on the part of the defendant. In an action by the plaintiff to recover the value of the car,—*Held*, first, that the defendant was not liable in tort, since his act in taking the car for a longer journey than that contemplated by the contract did not make him a trespasser in regard to the car during the extended portion of the journey, so as to render him liable for damage done to the car without default on his part; and secondly, that he was not liable in contract, inasmuch as the mere hiring of the car did not render him liable for its loss owing to causes not depending upon any want of skill or care on his part. *Fawcett* v. *Smethurst*, 84 L. J. K.B. 473; 112 L. T. 309; 59 S. J. 220; 31 T. L. R. 85—Atkin, J.

Although the hiring of the car for the purpose in question by an infant in the position of the defendant might be a necessary, it would not be so if an onerous term, such as that the car should be at the infant's risk, formed part of the contract of hiring. *Ib.*

Entering on Infant's Estate with Notice of Infant's Rights.]—A person entering upon an infant's estate with notice of the infant's rights becomes his bailiff, and continues to be such bailiff, notwithstanding the infant's coming of age, until the relationship is dissolved by some other circumstance or combination of circumstances. A demand of possession by the infant will be such a circumstance, but if made within six years before action brought it affords no defence under section 3 of the Real Property Limitation Act, 1874. *McMahon* v. *Hastings*, [1913] 1 Ir. R. 395—M.R.

Deposit of Money in Joint Names of Father and Daughter—Presumption of Resulting Trust Rebutted.]—Where money is placed on deposit by a father in the joint names of himself and his daughter, and to be paid out to the survivor, the relationship of father and child, in the absence of special circumstances, rebuts the ordinary presumption of a resulting trust for the owner, and raises the presumption that the child was meant to take beneficially if she survived her father. *Warwick, In re; Warwick* v. *Chrisp*, 56 S. J. 253—Parker, J.

Action by Infant Suing by Father as Next Friend—Staying Action—Costs.]—The Court, being of opinion that an action for an account brought by an infant suing by his father as next friend was instituted by the father with the sole object of extorting money and ought never to have been commenced, stayed the action on the application of the defendant and ordered the next friend to pay the costs. *Huxley* v. *Wootton*, 57 S. J. 145; 29 T. L. R. 132—Eve, J.

Administration Action — Infant Plaintiff — Costs of Next Friend—Debt Due to Testator by Next Friend—Set-off.]—The costs of a next friend of an infant in an administration action are treated as the costs of the infant, and accordingly they cannot be set off against a debt which the next friend owes to the estate. *Barton, In re; Holland* v. *Kersley*, 56 S. J. 380—Neville, J.

Negligence of Fellow Servant — Common Employment.]—The plaintiff, a boy of four-

teen, who had been invited by the defendants' firemen to assist along with other boys in pulling the defendants' fire escape home after it had been used in fire drill, was injured in so doing. In an action claiming damages from the defendants the jury found, first, that the defendants were not themselves guilty of negligence; secondly, that the fire escape was a fit and proper one for its purpose; thirdly, that the defendants' servants were guilty of negligence in the management of the fire escape or in allowing the plaintiff to pull it; and fourthly, that the plaintiff was not aware of the danger:—*Held*, that the doctrine of common employment applied, and that judgment should be entered for the defendants. *Bass* v. *Hendon Urban Council*, 28 T. L. R. 317—C.A. Reversing 76 J. P. 13—Darling, J.

II. WARD OF COURT.

See also Vol. VII. 1354, 1895.

Removal Out of the Jurisdiction — Committal.]—It is no answer to a motion for committal to prison for contempt of Court in removing a ward of Court out of the jurisdiction to say that the act was done on the solicitation of the ward, and that, although there was knowledge that the girl was a ward of Court, there was not full knowledge of the meaning of that *status*. *J. (an Infant)*, *In re*, 108 L. T. 554; 57 S. J. 500; 29 T. L. R. 456—Sargant, J.

Where there was no knowledge that the girl was a ward of Court such ignorance of the fact did not altogether exonerate the ignorant parties, but constituted an alleviation of their contempt. *Ib.*

III. GUARDIANSHIP AND MAINTENANCE.

See also Vol. VII. 1424, 1899.

Vested Reversionary Interest in Realty—Charging Order—Judgment—Registration.]—An infant aged twelve was entitled to an indefeasible vested interest in remainder in real estate expectant on the death of a tenant for life aged eighty-five years. The infant was without any means of support. Upon application by the infant's next friend for an order charging the interest in remainder with the repayment of such sums as might be advanced for "necessaries,"—*Held*, that the Court had no power to make an order charging an interest in land which is not in possession. *Cadman* v. *Cadman* (55 L. J. Ch. 833; 33 Ch. D. 397) followed. *Badger*, *In re*; *Badger* v. *Badger*, 82 L. J. Ch. 264; [1913] 1 Ch. 385; 108 L. T. 441; 57 S. J. 339—C.A.

A judgment could not formerly be enforced against a reversionary interest in land under the Judgments Act, 1864, because such an interest could not be delivered in execution; and now a judgment cannot operate as a charge on such a interest because, as no order to enforce a judgment against the interest could be made, no such order could be registered as required by section 2 of the Land Charges Act, 1900. *Ib.*

In the absence of any property which it can reach the Court will not express an opinion that it would be right for an infant's guardian to borrow for "necessaries." *Ib.*

Power in Will to Apply Income of Daughter's Share in Maintenance while an Infant and Unmarried — Direction to Accumulate Rest of Income — Power to Apply Income in Maintenance between Marriage and Attaining Twenty-one — "Contrary intention."] — A testator gave his residuary estate on trust in equal shares for his daughters for life, with remainder to their issue. He empowered his trustees to apply the whole or any part of the income of a daughter's share for her maintenance while an infant and unmarried, and directed that the residue of the income should be accumulated and added to the share. One of the daughters married some months before attaining twenty-one, there being at the date of her marriage large sums of accrued income of her share in hand:—*Held*, that the will did not express a "contrary intention" within the meaning of section 43 of the Conveyancing Act, 1881, and that the trustees had power under that section to apply income of the daughter's share accruing due before her marriage for her maintenance between the date of her marriage and the date of her attaining twenty-one. *Cooper*, *In re*; *Cooper* v. *Cooper*, 82 L. J. Ch. 222; [1913] 1 Ch. 350; 108 L. T. 293; 57 S. J. 389—Farwell, L.J.

Thatcher's Trusts, *In re* (53 L. J. Ch. 1050; 26 Ch. D. 426), followed. Order in *Wise*, *In re*; *Jackson* v. *Parrott* (65 L. J. Ch. 281; [1896] 1 Ch. 281), explained. *Ib.*

Contingent Legacy — Legacy on Attaining Twenty-one — Right to Interest During Minority.] — A testator left certain specific legacies to his children on their attaining the age of twenty-one. He also left certain funds to trustees to be applied for their benefit. In a certain contingency, which had not happened, this trust would determine:—*Held*, that so long as this trust was in operation, there was in existence a fund other than the contingent legacy, which precluded the infant from being entitled to the interest on that legacy as maintenance. *Stewart*, *In re*; *Stewart* v. *Bosanquet*, 57 S. J. 646—Warrington, J.

Infants Contingently Entitled—Delegation of Discretionary Power—Maintenance out of Appointed Share.]—An attempt by the donee of a power of appointment amongst children to empower trustees to apply the income of expectant shares of the appointed fund towards the maintenance of the children is void as amounting to a delegation of the power. *Greenslade*, *In re*; *Greenslade* v. *McCowen*, 84 L. J. Ch. 235; [1915] 1 Ch. 155; 112 L. T. 337; 59 S. J. 105—Eve, J.

Semble, the provisions for maintenance and education and for advancement usually inserted in settlements do not in general apply to an appointed share, such share being by the appointment withdrawn from the general operation of the settlement. *Ib.*

Jurisdiction to make Orders as to Guardianship and Maintenance on Originating Summons.] — There is jurisdiction upon an originating summons to make an order as to

the guardianship and care, maintenance or advancement, of infants, and thereby to make them wards of Court. *Cunninghams, In re*, [1915] 1 Ir. R. 380—C.A.

Children—Young Person—Conviction—Cost of Maintenance—Liability.]—By section 74, sub-section 1 of the Children Act, 1908, "Where a youthful offender is ordered to be sent to a certified reformatory school, it shall be the duty of the council of the county or county borough in which he resides . . . to provide for his reception and maintenance in a certified reformatory school suitable to the case, . . ." Sub-section 3: "For the purposes of the foregoing provisions of this section a youthful offender or child shall be presumed to reside in the place where the offence was committed, . . . unless it is proved that he resided in some other place." Sub-section 7 empowers a local authority who are aggrieved by the decision of a Court as to the place of residence of a youthful offender, to apply to a petty sessional Court, and that Court, "on proof to its satisfaction that the youthful offender . . . was resident in the area of another local authority, and after giving such other local authority an opportunity of being heard, may transfer the liability to maintain the youthful offender . . . in a certified school to that other local authority, . . ." A boy under sixteen years of age left his father's residence and went into the employment of a farmer in another county for several weeks. He then left that employment, and entered the service of another farmer in the same county, where he worked for three days, sleeping and having his meals at the farmer's house. He was arrested, and was subsequently convicted and ordered to be sent to a reformatory:—*Held*, that the boy was not, at the time of his arrest, constructively resident with his parents, but that his place of residence was the place where he was employed, and that an order might properly be made under section 74, sub-section 7 of the Children Act, 1908, transferring the liability to maintain him in a certified school to the local authority of such place. *Stoke-upon-Trent Corporation* v. *Cheshire County Council*, 85 L. J. K.B. 36; [1915] 3 K.B. 699; 113 L. T. 750; 79 J. P. 452; 13 L. G. R. 1077—D.

IV. CUSTODY AND RESPONSIBILITY FOR CARE OF.

See also Vol. VII. 1504, 1904.

Custody — Illegitimate Child — Rights of Mother—Interest of Child.]—Where an illegitimate child had been adopted by the respondents and been brought up by them for ten years, the Court refused an application by the child's parents for the delivery up to them of the child, being of opinion that it would not be for the benefit of the child to remove him from the custody of the respondents. *Rex* v. *Walker*, 28 T. L. R. 342—D. Compromised on appeal, 28 T. L. R. 375—C.A.

—— **Disobedience to Order as to Custody—Attachment—Sequestration.**]—By an order of Court the custody of a child was given to the mother, the father being given liberty of access on certain days of the week. Both father and mother gave an undertaking not to remove the child out of the jurisdiction. The father, on one of the days on which he had access to the child, took her away and removed her out of the jurisdiction. The mother applied for and obtained a rule for *habeas corpus* and a rule *nisi* for attachment against the father, but as he had left the country personal service upon him of the orders was impossible:—*Held*, that the rule for attachment should be made absolute, and that a writ of sequestration should also issue notwithstanding the absence of personal service upon the father. *Rex* v. *Wigand; Wigand, In re*, 82 L. J. K.B. 735; [1913] 2 K.B. 419; 109 L. T. 111; 29 T. L. R. 509—D.

—— **After Divorce.**]—*See* Husband and Wife.

Neglect of Children — Husband Separated from Wife—Neglect by Wife—Liability of Husband.]—A husband who is separated from his wife by agreement, and who remits to her sufficient money for the support of their children, is nevertheless criminally liable for neglect of the children if to his knowledge she neglects them. *Poole* v. *Stokes*, 110 L. T. 1020; 78 J. P. 231; 12 L. G. R. 629; 24 Cox C.C. 169; 30 T. L. R. 371—D.

—— **Illegitimate Child—Putative Father Cohabiting with Child's Mother—Person having "custody, charge, or care" of Child—No Affiliation Order.**]—Section 12 of the Children Act, 1908, enacts that any person over the age of sixteen years, who has "the custody, charge, or care" of any child and wilfully neglects such child in a manner likely to cause such child unnecessary suffering or injury to his health, shall be guilty of a misdemeanour:—*Held*, that the putative father of a child, who is cohabiting with the child's mother, but against whom no affiliation order has been made, may have the custody, charge, or care of the child within the meaning of the section, although the mother is the child's parent and sole legal custodian or guardian, and although the father may not be one of the persons enumerated in section 38, sub-section 2 of the Act as being presumed to have the custody, charge, or care of the child. *Liverpool Society for Prevention of Cruelty to Children* v. *Jones*, 84 L. J. K.B. 222; [1914] 3 K.B. 813; 111 L. T. 806; 79 J. P. 20; 12 L. G. R. 1103; 24 Cox C.C. 434; 58 S. J. 723; 30 T. L. R. 584—D.

—— **Wilful Neglect by Parent "Causing Injury to Health" — Failure to Provide Adequate Medical Aid—Refusal to Permit Operation.**]—By section 12, sub-section 1 of the Children Act, 1908, a parent is deemed to have wilfully neglected his child in a manner likely to cause injury to his health, if he fails to provide (*inter alia*) adequate medical aid, and is guilty of a misdemeanour:—*Held*, that the question whether there has been such failure is a question of fact in each case. *Oakey* v. *Jackson*, 83 L. J. K.B. 712; [1914] 1 K.B. 216; 110 L. T. 41; 78 J. P. 87;

12 L. G. R. 248; 23 Cox C.C. 734; 30 T. L. R. 92—D.

The respondent's child was suffering in her health through adenoids, for which the only remedy was a surgical operation, which would not be a dangerous one. This the respondent refused to allow:—*Held*, that the Justices might, on these facts, find that the respondent had failed to provide adequate medical aid for his child. *Ib.*

—— **Verminous Child—Service of Notice on Parent.**]—By a local Act the medical officer of health was empowered to examine the person and clothing of any school child, and if he should be of opinion that the person or clothing was infested with vermin or was in a foul or filthy condition he should give notice to the parent or guardian of such child to have him or her cleansed within twenty-four hours. Any notice was to be "deemed to be properly served by giving it to the person to whom it is addressed or leaving it for him with some inmate of his residence":—*Held*, that a notice under the Act was properly served at the parents' house by leaving it with the child to whom it referred, and that the period of twenty-four hours ran from the time of such receipt by the child. *Hope* v. *Devaney*, 111 L. T. 571; 78 J. P. 343; 12 L. G. R. 1286; 24 Cox C.C. 393—D.

Children in Bar of Public House.] — *See* Intoxicating Liquors.

Infant Life Insurance—Payment of Premiums on Policy Effected Prior to Commencement of Children Act, 1908.]—The Children Act, 1908, makes it an offence for a person to insure the life of an infant which he has undertaken to nurse for reward:—*Held*, that the payment of premiums upon a policy of insurance, effected prior to the date when the Act came into operation, was not an offence under the Act. *Glasgow Parish Council* v. *Martin*, [1910] S. C. (J.) 102—Ct. of Just.

V. STREET TRADING.

The appellants, a co-operative society, carried on (*inter alia*) the business of bakers at various establishments. They used to send vans round daily to the houses of their members, each in charge of a vanman assisted by a boy. One of these boys, carrying a basket of bread taken from the van, knocked at the door of a member's house, which was opened by the member, who asked for two loaves, which she paid for. The boy, when he went to the house, did not know whether any or how much bread would be purchased by the member. The vanman and boy had the appellants' authority to sell to non-members on their request, but in fact had never done so:—*Held* (Atkin, J., *dissentiente*), that the boy was not engaged in street trading within the meaning of sections 2 and 13 of the Employment of Children Act, 1903, and that the appellants could not be convicted, under a by-law made under that Act of employing the boy in street trading. *Held*, further, that street trading in the Act is not confined to street trading by a person on his own account. *Stratford Co-operative and Industrial Society* v. *East Ham Borough*, 84 L. J. K.B. 645; [1915] 2 K.B. 70; 112 L. T. 516; 79 J. P. 227; 13 L. G. R. 285; 31 T. L. R. 129—D.

Purchasing of "Article" from Child under Fourteen.]—A local Act defined a "broker" as a dealer in "second-hand goods or articles, or in old metals, bones, or rags," and made it an offence for a broker to purchase "any article" from a person apparently under fourteen years of age:—*Held*, that a complaint charging a broker with purchasing from such a person "16 pounds or thereby in weight of rags" was relevant, and was not open to the objection that what the accused was charged with purchasing was not an "article" within the meaning of the Act. *M'Intyre* v. *M'Intee*, [1915] S. C. (J.) 27—Ct. of Just.

VI. OFFENCES BY.

Child "charged . . . with an offence punishable in the case of an adult with penal servitude or a less punishment"—Offence Charged not Punishable with Penal Servitude—Power to Send to Industrial School. — Section 58, sub-section 3 of the Children Act, 1908, provides that "Where a child, apparently of the age of twelve or thirteen years, who has not previously been convicted, is charged before a petty sessional Court with an offence punishable in the case of an adult by penal servitude or a less punishment . . . the Court may order the child to be sent to a certified industrial school." A boy between twelve and thirteen years of age, who had not been previously convicted, was charged before a petty sessional Court with having committed an indecent assault on a little girl. The maximum punishment for such an offence in the case of an adult is imprisonment for two years, and not penal servitude:—*Held*, that the Justices had power under section 58, subsection 3, to send the boy to a certified industrial school, as the words "offence punishable by penal servitude or a less punishment" referred to two classes of offence—namely, an offence punishable by penal servitude, and an offence punishable by a less punishment—and that they did not merely refer to an offence punishable by penal servitude or, as an alternative, by a less punishment. *Tydeman* v. *Thrower*, 83 L. J. K.B. 814; [1914] 2 K.B. 494; 110 L. T. 1018; 78 J. P. 182; 12 L. G. R. 739; 24 Cox C.C. 163; 30 T. L. R. 374—D.

Conviction—Child Sent to Reformatory—Costs of Maintenance.] — *See Stoke-upon-Trent Corporation* v. *Cheshire County Council*, *ante*, col. 683.

Proceedings against "young person"—Attendance of Parent.] — The father of a "young person" charged with theft was served by a constable with a written notice signed by the constable, stating that his son had been summoned to appear at the Police Court on a charge of theft, and that the father or some other guardian must attend. The notice also set out the powers of the Court over the parent conferred by the Children Act,

1908 :—*Held*, that the father had been sufficiently notified that he must attend, and an objection that in the case, at any rate, of a "young person" (as opposed to a child) an antecedent warrant of the Court citing the parent to attend was necessary *repelled*. *Montgomery* v. *Gray*, [1915] S. C. (J.) 94—Ct. of Just.

INHABITED-HOUSE DUTY.

See REVENUE.

INJUNCTION.

See also Vol. VII. 1527, 1907.

Mandatory Injunction — Contract for Maintenance of Structure bearing Defamatory Inscription.]—The Court will not enforce by mandatory injunction a contract to maintain a structure which bears an inscription calculated to hold up a public institution to execration and to provoke a breach of the peace. *Woodward* v. *Battersea Borough Council*, 104 L. T. 51; 9 L. G. R. 248; 75 J. P. 193; 27 T. L. R. 196—Neville, J.

—— Legal Proceedings Necessary.]—*Semble*, that an order in the nature of a mandatory injunction, obedience to which will necessitate the prosecution of legal proceedings, cannot be made. *Yorkshire (W. R.) Rivers Board* v. *Linthwaite Urban Council (No. 2)*, 84 L. J. K.B. 1610; 113 L. T. 547; 79 J. P. 433; 13 L. G. R. 772—*per* Lawrence, J.

Documents — Privilege — Letters Improperly Obtained—Copies Improperly Made—Right to Use — Evidence.] — Where confidential documents are improperly obtained by a person who has no right to the documents or the information contained therein, and who has made copies thereof, that person may be restrained from using the originals and the copies and from divulging their contents notwithstanding pending litigation in which such person might desire to use such documents as evidence by production of the originals or by giving secondary evidence of their contents. The decision in *Calcraft* v. *Guest* (67 L. J. Q.B. 505; [1898] 1 Q.B. 759), that a litigant who desires to prove particular documents, but on grounds of privilege cannot obtain production of the originals, may produce copies as secondary evidence of their contents, although such copies have been obtained by improper means, has no application to a case where the subject-matter of the action is the right to retain and make use of the originals or copies of privileged documents improperly obtained by the defendant. *Ashburton (Lord)* v. *Pape*, 82 L. J. Ch. 527; [1913] 2 Ch. 469; 109 L. T. 381; 57 S. J. 644; 29 T. L. R. 623—C.A.

Pollution of Stream—Breach of Undertaking —Motion to Sequestrate and for Injunction —Jurisdiction to Pay Costs.]—Where the defendants, on a motion for an injunction to restrain them from polluting a stream, gave an undertaking against discharging or allowing to be discharged any noxious or offensive matter so as to pollute the water of the stream, and the plaintiffs subsequently moved to sequestrate the defendant companies on the ground that they had on several occasions committed breaches of the undertaking, the Judge, while holding that the facts strictly entitled him to make the sequestration order, decided that he had a discretion to grant an injunction in the terms of the undertaking and to penalise the defendants by ordering them to pay all the costs of the application as between solicitor and client, and he made such order for an injunction and as to costs forthwith. *Marsden & Sons, Lim.* v. *Old Silkstone Collieries*, 13 L. G. R. 342—Sargant, J.

Restraining Receipt of Money—Contempt.]—Where an injunction has been granted restraining a party to an action from receiving certain moneys, he is guilty of a contempt if he receives the money while the injunction is in force, although the payment was made to him by the Government, who were not bound by the injunction. *Eastern Trust Co.* v. *McKenzie, Mann & Co.*, 84 L. J. P.C. 152; [1915] A.C. 750; 113 L. T. 346—P.C.

Property in Soda-water Bottles—Participation in Illegal Use of Property.]—An aerated-water manufacturer sought to interdict a drysalter from putting paraffin oil into bottles belonging to the pursuer. The pursuer averred that bottles belonging to him, and marked with his name, were lent by him to his customers in the course of his trade, and were brought to the defender by persons coming to purchase paraffin oil, and that at their request the defender put paraffin oil into the bottles, in the knowledge that the bottles were the property of the pursuer, and that the pursuer objected to such a practice since it injured them for use in his business :—*Held*, that the pursuer had relevantly averred participation by the defender in a wrongful use of the pursuer's property which, if proved, would form a good ground for interdict against him. *Wilson* v. *Shepherd*, [1913] S. C. 300—Ct. of Sess.

Trade Association—Expulsion of Member—Rules—Ultra Vires.] — The Court will not control the rules and regulations which a majority of the members of an association adopt for the conduct of their undertaking unless satisfied that they are so oppressive as to defraud the minority or violate some principles of law. *Merrifield* v. *Liverpool Cotton Association*, 105 L. T. 97; 55 S. J. 581—Eve, J.

Interlocutory Injunction — Breach of Covenants in Lease—Parties to Action—Sub-lessee not Added as Party by Plaintiff.]—Where the lessor does not add the sub-lessee as a party to his action for an injunction against his lessee for breach of the covenants contained in the lease, although he may be entitled to an injunction against such lessee,

the scope of the injunction must be confined to the lessee, his servants and agents, and must not extend to the sub-lessee. *Metropolitan District Railway* v. *Earl's Court, Lim.*, 55 S. J. 807—Lush, J.

Interim Injunction against Persons not Parties to Action.]—The Court has jurisdiction to grant an injunction to restrain persons who are not parties to an action from aiding and abetting the defendant in the action in committing a breach of an injunction which has been obtained from the Court against such defendant by the plaintiff. The defendant in this case was under order of the Court not to sell certain meadow grass. He nevertheless instructed some auctioneers to sell it. The defendant could not readily be found, so the plaintiff obtained an *ex parte* injunction against the auctioneers :—*Held*, that there was jurisdiction to continue that injunction without adding the auctioneers as parties to the action. *Seward* v. *Paterson* (66 L. J. Ch. 267; [1897] 1 Ch. 545) followed. *Hubbard* v. *Woodfield*, 57 S. J. 729—Neville, J.

Discharge—Undertaking.]—A Court of law has no power to grant a dispensation from obedience to an Act of Parliament and ought not to substitute, for an injunction to obey a statute, an undertaking by parties merely to do their best to obey. *Att.-Gen.* v. *Birmingham, Tame, and Rea Drainage Board*, 82 L. J. Ch. 45; [1912] A.C. 788; 107 L. T. 353; 76 J. P. 481; 11 L. G. R. 194—H.L. (E.)

The Attorney-General, at the relation of the Tamworth Corporation and the Tamworth Rural Council, obtained a perpetual injunction restraining the respondents from discharging sewage water into a river in breach of section 17 of the Public Health Act, 1875. Upon the appeal the respondents did not contest the propriety of the injunction on the facts at the trial, but obtained successive adjournments to enable them to execute works in order to comply with section 17. The works for this purpose were completed, but there was a conflict of evidence as to their sufficiency, and the Court referred the question to an expert, who reported favourably to the respondents, and the Court dissolved the injunction upon an undertaking by the respondents to do their best to prevent any future breach :—The House held that, though the Court of Appeal had jurisdiction to dissolve the injunction, it ought not to have accepted in lieu thereof the undertaking in its limited form, and they inserted the words "and the defendants undertaking that the results shall in the future be secured, perpetuated, and maintained," and subject to this variation affirmed the order of the Court of Appeal. *Ib.*

Decision of Court of Appeal (79 L. J. Ch. 137; [1910] 1 Ch. 48) varied. *Ib.*

INLAND REVENUE.

See REVENUE.

INNKEEPER.

See also Vol. VII. 1638, 1916.

Goods of Guest—Liability.]—The plaintiff, who had been staying at the defendant's hotel, paid his bill in the afternoon and directed that his luggage should be brought from his room and placed where he might get it without delay when he returned later in the evening for it. With his knowledge the luggage was placed in the hall near where the hotel porter sat. When the plaintiff called for the luggage later in the evening it was missing, and he thereupon sued the defendant, claiming in respect of the loss. The County Court Judge held that the relationship of innkeeper and guest had ceased to exist when the plaintiff paid his bill, and that there was contributory negligence on the part of the plaintiff in the directions given by him as to the place where the luggage should be put. The plaintiff appealed :—*Held*, that the questions whether the relationship of innkeeper and guest had come to an end, and whether there was contributory negligence on the part of the plaintiff, were questions of fact, and that as there was evidence to support the findings of the County Court Judge the appeal must be dismissed. *Portman* v. *Griffin*, 29 T. L. R. 225—D.

Lien—Guest Living at Inn for Long Period on Inclusive Terms—Motor-car Left by Guest—Motor-car Sent by Innkeeper to Repairer Preparatory to Sale before Lapse of Six Weeks—Amount for which Lien Enforceable.]—In the absence of an express or an implied arrangement under which a visitor at an hotel resides at the hotel in some different capacity from that of other and ordinary visitors, an hotel keeper cannot set up against such visitor that he has ceased to be responsible as an innkeeper for the loss of the guest's goods, and equally the guest or visitor cannot set up against the innkeeper that the latter has ceased to have a corresponding right of lien; and this is so even though the visitor has been so long at the hotel that the hotel proprietor could refuse to keep him any longer. The mere fact that the guest is staying at the hotel on inclusive terms does not affect the liability or rights of the innkeeper. A guest who had been staying at the defendants' hotel left there on December 21, 1910, leaving an hotel bill unpaid, and leaving a motor car in the hotel garage. About three weeks thereafter, the defendants took steps to have the car sold by auction, and for that purpose it was dispatched in charge of their servants to London to a firm of auctioneers. On the way there it broke down and had to be towed back, when it was sent to a local repairer for the necessary repairs. After being repaired it was taken to the auctioneers, who advertised it in a London and a local newspaper on January 10, 1913, and catalogued it for sale. The sale was to take place on February 13—that is, more than six weeks from December 21 :—*Held*, that by sending the motor car off the premises in these circumstances before the expiration of the six weeks mentioned in the proviso to section 1 of the Innkeepers Act, 1878, the defendants had not lost their lien, as they still retained

charge of the car, and could have enforced its delivery to the guest if necessary. *Held*, further, that the defendants' lien only extended to the expenses incurred by the guest in respect of food and accommodation and the cost of keeping his goods, and did not extend to sums lent to, or disbursed for, him; but *held* that the defendants were entitled to add to their claim the cost of the repair of the car and the cost of advertising it and arranging with the auctioneers for its sale. *Chesham Automobile Supply* v. *Beresford Hotel*, 29 T. L. R. 584—Lush, J.

—— **Money Lent by Innkeeper on Articles Brought by Guest.**]—The defendants, who were innkeepers, lent money to a guest staying at their hotel on the security of three railway tickets which he had in his possession. The tickets had been stolen from the plaintiff, who now claimed them from the defendants. The defendants set up that they were entitled to a lien upon the tickets as innkeepers:—*Held*, that the plaintiff was entitled to recover, as the transaction between the defendants and the guest was merely a money-lending transaction, and no question of innkeeper's lien arose. *Matsuda* v. *Waldorf Hotel Co.*, 27 T. L. R. 153—Bankes, J.

INNUENDO.

See DEFAMATION.

INQUEST.

See CORONER.

INSOLVENCY.

See BANKRUPTCY.

INSPECTION.

Of Documents.]—*See* DISCOVERY.

INSURANCE.

Marine Insurance.]—*See* SHIPPING, MARINE INSURANCE.

A.—Life.

B.—National.

C.—Accident,

D.—Fire.

E.—Guarantee, Plate Glass, Burglary, and other Policies.

F.—Insurance Companies.

A. LIFE.

I. POLICY.

See also Vol. VIII. 6, 1656.

Insurance by Married Woman—Policy for Benefit of Children.]—On August 2, 1872, a married woman effected a policy of insurance on her own life for the benefit of her children. By her will she bequeathed the policy moneys to her four daughters equally. She survived her husband and died in November, 1914, leaving four daughters and five sons, all of whom were born before the date of the policy:—*Held*, that the testatrix had no power,

under the Married Women's Property Act, 1870, s. 10, to take out a policy for the benefit of her children, and that the four daughters were entitled to the policy moneys as legatees under the will. *Burgess' Policy, In re; Lee* v. *Scottish Union and National Insurance Co.*, 113 L. T. 443; 59 S. J. 546—Eve, J.

Condition not to Travel Outside Specific Limits without Licence—Breach of Condition —Forfeiture of Premiums.] —A condition indorsed on a policy of life insurance effected in 1894 provided that if the assured should go beyond certain geographical limits without obtaining the insurance company's licence "the assurance shall be void, and the premiums paid shall be forfeited." In ignorance or forgetfulness of this condition, the assured in 1897 travelled to India, which was outside the specified geographical limits, without obtaining the company's licence. He continued to pay the premiums till 1911, when he informed the company of his visit to India in 1897. The company thereupon replied that, strictly speaking, the policy was void, but that they were prepared to waive the breach of the condition on payment of the extra premium that would have been charged if he had informed them at the time of his visit to India. The company afterwards said that they would waive any claim to extra premium. The assured, however, sued the company, claiming the return of all the premiums paid since 1897 on the footing that the policy was void:—*Held*, that, even on the assumption that the policy became void on breach by the assured of the condition indorsed on the policy, no action lay for the return of the premiums as money paid without consideration. *Sparenborg* v. *Edinburgh Life Assurance Co.*, 81 L. J. K.B. 299; [1912] 1 K.B. 195; 106 L. T. 567; 28 T. L. R. 51—Bray, J.

Condition that only One Policy to be in Force on Life of Assured.] —A policy of insurance effected by M. upon her life with the defendant society contained the following clause: "One policy only is allowed to be in force on the life of the person assured and named therein, unless special permission be obtained from the committee of management for any additional policy created, and should any such additional policy be obtained without the knowledge and consent of the committee (which consent shall be evidence by an indorsement on the policy signed by the secretary of the society), such policy other than the first shall if discovered during the life of the assured be rejected, or if discovered after death be null and void, and the sum or sums assured forfeited to the society." During the year preceding the issue of the policy in question three other policies had been effected on the life of M. by different persons. These other policies were all treated by the defendants as valid and the amounts due on them had been paid. No indorsement had been made by the defendants' secretary on the policy in question as to the existence of the other policies. M. having died, her executor claimed the amount due under the policy:—*Held*, that there might be a consent to the existence of other policies without any indorsement on the policy in question; that in the circumstances the burden of proof was on the defendants to shew that they had not consented to more than one policy on the life of M. being in force; and that as they had failed to shew that they had not consented they were liable on the policy in question. *Marcovitch* v. *Liverpool Victoria Friendly Society*, 28 T. L. R. 188—C.A.

II. INTEREST.

See also Vol. VIII. 8, 1659.

Absence of Insurable Interest—Innocent Misrepresentation by Insurance Agent — Recovery of Premiums.] —Premiums paid under a policy of life insurance which is void by reason of the fact that the person paying the premiums had no insurable interest in the life of the person insured cannot be recognised on the ground that the insurer was induced to take out the policy on the faith of an innocent misrepresentation by the agent of the insurance company as to the validity of the policy. *British Workman's and General Insurance Co.* v. *Cunliffe* (18 T. L. R. 425) and *Harse* v. *Pearl Life Assurance Co.* (73 L. J. K.B. 373; [1904] 1 K.B. 558) discussed and reconciled. *Phillips* v. *Royal London Mutual Insurance Co.*, 105 L. T. 136—D.

A policy of insurance was effected with a friendly society on the life of a person in whom the person effecting the policy had no insurable interest, and a number of premiums were paid thereon. Subsequently it became known that the policy was illegal and void for want of insurable interest, and an action for the return of the premiums was brought in which it was alleged that fraudulent misrepresentations as to the validity of the policy were made by the collector of the society. It having been held that there was no evidence of fraud on the part of the collector,—*Held*, that, fraud not having been proved, the premiums paid under the policy could not be recovered back, either on the ground of money had and received, or on the ground that the premiums were paid for a consideration which had wholly failed. The principles laid down in *Harse* v. *Pearl Life Assurance Co.* (90 L. T. Rep. 245; [1904] 1 K.B. 558) applied to insurances by friendly societies. *Evanson* v. *Crooks*, 106 L. T. 264; 28 T. L. R. 123—Hamilton, J.

The plaintiff signed a proposal form for an insurance with the defendants, an insurance company, on the life of his mother, having in fact no insurable interest in her life, and not insuring to cover funeral expenses. The policy proposed was one in favour of the plaintiff in his own right, and not as agent for his mother. No such policy was issued to the plaintiff, but he received a policy purporting to insure his mother on her own life and making the policy moneys payable to her representative. The plaintiff's mother had made no proposal for a policy and had given no one authority to make one for her, being in fact totally ignorant of the matter. The plaintiff duly paid the premiums under the policy in question. In an action by the plaintiff to recover the premiums so paid, the deputy County Court Judge found that there had been no fraud on the part of

the agent of the company, but held that, although if the plaintiff had received such a policy as was contemplated in the proposal it would have been illegal and the plaintiff, being *in pari delicto*, would be debarred from recovering the premiums, yet, since what he actually obtained was not a policy of any kind, legal or illegal, but a mere nullity, there was a total failure of the consideration for which the premiums were paid, and that the plaintiff was entitled to recover them :—*Held*, allowing the appeal, that the plaintiff was not entitled to a return of the premiums. *Elson* v. *Crookes*, 106 L. T. 462—D.

—— Parties in Pari Delicto—Onus on Plaintiff to Prove Absence of Fraud on his Part.]—The plaintiff effected a policy of insurance with the defendants upon the life of a person in whom she had no insurable interest, and, for the purpose of taking out the policies, signed a card which contained untrue statements, filled in by the defendants' agent, as to her relationship to the person whose life was insured. The policy contained a term to the effect that if any material statement on the card was either fraudulent or untrue the policy should be void and the premiums forfeited. In an action by the plaintiff to recover back the premiums paid by her on the policy,—*Held*, first, that, in the absence of a finding by the jury that she was induced by the fraud of the defendants' agent to sign the contract without knowing its terms, she was not entitled to recover; and secondly, that, the contract being an illegal one, the parties were *prima facie in pari delicto*, and that, in order to entitle the plaintiff to succeed, the onus was upon her to prove not only that there had been fraud on the part of the agent of the company, but also to obtain a finding by the jury exculpating her from participation in such fraud, and that, in the absence of such a finding, the premiums were not recoverable. *Howarth* v. *Pioneer Life Assurance Co.*, 107 L. T. 155—D.

Policies on Lives of Parents — Mourning Expenses — Fraudulent Representation by Agent of Company.]—In 1902 the plaintiff effected two policies with the defendants on the lives of his father and mother respectively to cover his expenses for mourning in the event of their deaths. He was induced to do so by the fraudulent misrepresentation of the defendants' agent that such policies would be valid, whereas the agent knew they were in fact invalid for want of insurable interest. In 1909 the Assurance Companies Act, 1909, was passed. Section 36, sub-section 2 of that Act validated certain policies (within which the policies in question came) effected before the Act, which, apart from the Act, would have been void for want of insurable interest :—*Held*, that the sub-section did not validate policies which would otherwise come within its meaning, if such policies had been obtained by fraud. *Tofts* v. *Pearl Life Assurance Co.*, 84 L. J. K.B. 286; [1915] 1 K.B. 189; 112 L. T. 140; 59 S. J. 73; 31 T. L. R. 29—C.A.

Funeral Expenses — Policies Effected with Several Companies—Amount Assured in Excess of that Expended by Assured—Capacity of Assured to Recover Full Amount Assured.]—Where a person effects several policies of insurance with different insurance companies against any funeral expenses he may incur on the death of his mother, and, on the mother's death, is paid by one or more of such companies the full amount of such funeral expenses he cannot maintain a further claim against another of the companies which has failed to pay him the amount of the policy he has effected therewith. Neither can he, in the absence of fraud or mistake of fact, obtain the return of the premiums he has paid to this latter company, the company having been under a risk during the whole of the currency of the policy. *Wolenberg* v. *Royal Co-operative Collecting Society*, 84 L. J. K.B. 1316; 112 L. T. 1036—D.

Semble, policies issued under section 36, sub-section 1 of the Assurance Companies Act, 1909, are policies of indemnity. *Ib.*

III. RISK INSURED.

See also Vol. VIII. 15, 1661.

Exception — Death from Inhalation.]—A life insurance policy provided that it did not "insure against death or disablement by accident directly or indirectly caused to any extent by medical or surgical treatment or fighting, ballooning, racing, self-injury or suicide, or anything swallowed or administered or inhaled." The assured was found dead in a house of which he was the sole occupant. His body was in the lavatory, where the gas was turned on but not lighted. The insurance company repudiated liability on the ground that death was caused by "inhalation" :—*Held*, that the company were not liable on the policy. *United London and Scottish Insurance Co., In re; Brown's Claim*, 84 L. J. Ch. 620; [1915] 2 Ch. 167; [1915] W.C. & I. Rep. 485; 113 L. T. 397; 59 S. J. 529; 31 T. L. R. 419—C.A.

Decision of Astbury, J. (31 T. L. R. 202), reversed. *Ib.*

Re-insurance—Conditions of Life Policy—Settlement in Good Faith—Liability of Re-insurers.]—The respondent society granted a policy of insurance on the life of one M., which recited that a declaration and statement made by M. were the basis of the contract, and that the policy should be void if any document upon the faith of which it was granted should contain any untrue statement. The respondents afterwards effected a policy of re-insurance on the life of M. with the appellant society. The proposal form stated that in accepting the risk the appellants did so on the same terms and conditions as those on which the respondents had granted a policy, "by whom in the event of claim the settlement will be made." The policy of re-insurance also recited that the declaration and statement relating to the original insurance were the basis of the contract and were to be deemed to be incorporated therewith. M. died, and the respondent society paid the claim of his executrix on the policy, acting reasonably and in good faith in the honest exercise of their

discretion. Afterwards it appeared that M. had made false statements as to his health, and the appellant society refused to pay the claim of the respondents on the policy of re-insurance : —*Held*, that the policy of re-insurance was an independent contract, not a contract of indemnity, conditional on the truth of the statements which were made the basis of it, and that the appellants were not liable under it, notwithstanding that the respondents had acted reasonably and in good faith in paying the claim under the original policy. *Australian Widows' Fund Life Assurance Society* v. *National Mutual Life Association of Australasia*, 83 L. J. P.C. 289; [1914] A.C. 634; 111 L. T. 353—P.C.

IV. PREMIUMS.

See also Vol. VIII. 30, 1664.

Husband's Life Premiums Paid by Wife—Lien.]—Where a wife, by reason of the impecuniosity of her husband, paid the premiums on the policies on his life to prevent the policies from lapsing, it was held that she could not be recouped for such payments out of the policy moneys on his death. *Leslie, In re; Leslie* v. *French* (52 L. J. Ch. 762; 23 Ch. D. 552), applied. *Jones' Settlement, In re; Stunt* v. *Jones*, 84 L. J. Ch. 406; [1915] 1 Ch. 373; [1915] W.C. & I. Rep. 277; 112 L. T. 1067; 59 S. J. 364—Astbury, J.

Recovery of Premiums—Payment Induced by Fraud.]—Premiums paid on a life insurance policy which is prohibited by statute under a penalty cannot be recovered back, even if the payment of the premiums was induced by a fraudulent representation on the part of the insurance company or their employees. *Hughes* v. *Liverpool Victoria Legal Friendly Society*, 31 T. L. R. 635—Scrutton, J.

See also cases under II. INTEREST, *ante*, col. 694.

Infant Life Insurance — Payment of Premiums on Policy Effected Prior to Commencement of Children Act, 1908.] — The Children Act, 1908, makes it an offence for a person to insure the life of an infant which he has undertaken to nurse for reward :—*Held*, that the payment of premiums upon a policy of insurance, effected prior to the date when the Act came into operation, was not an offence under the Act. *Glasgow Parish Council* v. *Martin*, [1910] S. C. (J.) 102—Ct. of Just.

V. MORTGAGE AND ASSIGNMENT.

See also Vol. VIII. 45, 1665.

Half Credit Policy—Ineffective Charge on Policy—Equitable Sub-mortgage—Payment of Premiums by Sub-mortgagee—Redemption on Payment of Premiums.]—In 1858, C., a married woman, effected a policy on her own life which provided that if she elected to pay, during the first seven years, one-half of the annual premiums, the unpaid half premiums were to be a debt at 5 per cent. interest due to the insurance company, and the unpaid premiums with interest should be "held as a claim against the policy at settlement." The assured availed herself of the option, and in 1867 she deposited the policy with W. to secure money advanced. In 1879 W. deposited the policy with Y. to secure money advanced. Y. died in September, 1905. From September, 1880, to the death of the assured in November, 1913, the interest on the half premiums and the renewal premiums had been paid by Y. or persons claiming under him. The executor of C. now claimed the policy moneys as against the representatives of Y. : —*Held*, that the policy being a reversionary *chose in action* in personalty, neither W. nor Y. could acquire any title from C., but that as the relationship of mortgagor and mortgagee had been established by the keeping down of the interest on the unpaid premiums, the executor of C. could only redeem on payment of such interest, and of the renewal premiums with interest on the latter at 4 per cent. *City of Glasgow Life Assurance Co., In re; Clare's Policy*, 84 L. J. Ch. 684; 112 L. T. 550; [1915] W.C. & I. Rep. 481—Eve, J.

Joint Tenancy—Payment of Premiums by one Joint Tenant at Request of other—Assignment by other Joint Tenant—Equity—Lien.]—A wife and husband agreed that each should pay one-half of the premiums on a policy of insurance on their joint lives, payable on the death of whichever died first. In several years the wife at the husband's request paid the whole of the premiums. Charges were created on the policy by both jointly, and subsequently the husband assigned all his property to a trustee for the benefit of his creditors. There was no specific mention of the policy in the deed of assignment, and no notice of the deed was given to the insurance company. The husband died and one moiety of the balance of the policy moneys (after deducting the joint charges) proved less in amount than the premiums paid by the wife for her husband :—*Held*, that, the wife being entitled to the policy moneys at law, the only claim of the trustee was in equity, and that he must do equity and allow the wife (as against him) to set off her claim against her husband. *Held*, further, that the wife was entitled to a lien on the policy moneys for premiums paid by her at the request of her husband. *McKerrell, In re; McKerrell* v. *Gowans*, 82 L. J. Ch. 22; [1912] 2 Ch. 648; [1913] W.C. & I. Rep. 85; 107 L. T. 404—Joyce, J.

Semble, that the assignment, in the circumstances, passed to the trustee no interest whatever, whether legal or equitable, in the policy moneys, but that, if the husband had survived the wife, it might have passed the right to all the policy moneys. *Ib.*

See also Harrington v. *Pearl Life Assurance Co., infra.*

VI. ACTIONS ON POLICIES.

See also Vol. VIII. 73, 1668.

Proposal—Acceptance—Assignment of Policy—Illness of Insured before Payment of

Premium—Action by Assignee.]—One Bentley signed proposals for the insurance of his life with the defendants, an insurance company, and their medical officer certified that his life was a good one. The proposals were accepted, but came to an end owing to the premiums not being paid within the prescribed time. Subsequently, on October 1, 1912, Bentley made fresh proposals on the same terms, the policies to begin from October 18, the applicant declaring that there had been no material change in his health since examination. The fresh proposals were accepted by the defendants, who stated that the policies would be forwarded if the premiums were received within thirty days. On November 4 Bentley purported to assign one of the policies to the plaintiff, and on November 6 was taken ill. On November 8 the plaintiff paid the first premium, and later on the same day Bentley died. On November 12 the plaintiff handed the assignment to the defendants' agent. In an action on the policy it was submitted for the defendants that until the first premium was paid the warranties as to the health of the insured remained in force:—*Held*, that there was no real assignment by Bentley to the plaintiff, that the policy if issued would have been Bentley's, and that as the defendants would never, with knowledge of the facts, have issued the policy, the action must fail. *Harrington* v. *Pearl Life Assurance Co.*, 30 T. L. R. 613—C.A.

Decision of A. T. Lawrence, J. (30 T. L. R. 24), affirmed. *Ib.*

Arbitration Clause—Questions of Law—Life Insurance Policy.]—A life insurance policy provided that it should not cover death by war, and the policy contained an arbitration clause. The assured lost his life by the explosion which caused the loss of H.M.S. *Bulwark*, and his executrix brought an action on the policy against the insurance company. The defendants applied to have the action stayed. The plaintiff contended that as serious questions of law were involved the case ought not to be sent to arbitration:—*Held*, that the Court was not justified in refusing the application merely because there were important questions of law to be considered, and that as no sufficient reason had been shewn why the contract to submit to arbitration should not be observed the action must be stayed. *Lock* v. *Army, Navy, and General Assurance Association*, 31 T. L. R. 297—Astbury, J.

Deceased Policy-holder Domiciled Abroad—Foreign Executor—No Grant of Representation from Court in United Kingdom—Right to Recover Policy Moneys—"Receive."]—By section 19 of the Revenue Act, 1889, where a policy of life insurance has been effected (with a British insurance company) by a person who shall die domiciled elsewhere than in the United Kingdom, the production of a grant of representation from a Court in the United Kingdom shall not be necessary to establish the right to receive the money payable in respect of such policy:—*Held*, that the production of such grant was also not necessary to establish the right of a foreign executor of a testator who had died domiciled abroad to recover as well as receive the policy moneys. *Haas* v. *Atlas Insurance Co.*, 82 L. J. K.B. 506; [1913] 2 K.B. 209; [1913] W.C. & I. Rep. 375; 108 L. T. 373; 57 S. J. 446; 29 T. L. R. 307—Scrutton, J.

Consideration of the insurance company's right to retain out of the policy moneys a sum estimated to be sufficient to meet any claim by the Revenue authorities to estate duty payable on such moneys. *Ib.*

B. NATIONAL.

I. INSURED PERSONS.

Curates in the Church of England.]—The work and duties of a curate in the Church of England, whether he be appointed under a bishop's formal licence given under seal or merely as a probationer under a bishop's signed permit, are not employment "under any contract of service" within the meaning of Part I. of the National Insurance Act, 1911; and no curate is therefore compulsorily insurable under that Act. *Church of England Curates' Employment, In re*, 82 L. J. Ch. 8; [1912] 2 Ch. 563; [1913] W.C. & I. Rep. 34; 107 L. T. 643; 28 T. L. R. 579—Parker, J.

Assistant Missionaries—Student Missionaries—Lay Missionaries.]—Assistant missionaries in the Church of Scotland and United Free Church of Scotland are not employed persons within the meaning of the National Insurance Act, 1911, in respect that they are persons holding an ecclesiastical office and perform the duties of that office subject to the general laws of the Church, and not subject to the control and direction of a master under a contract of service. Student missionaries in connection with the same Churches are not employed persons, in respect that their services are rendered as an incident in the course of their studies and not as work done under a contract of service; but lay missionaries who hold no ecclesiastical *status* and are appointed by, and are subject to the control of, a minister or kirk session or a committee, are employed persons within the meaning of the Act. *Scottish Insurance Commissioners* v. *Church of Scotland*, [1914] S. C. 16—Ct. of Sess.

United Methodist Ministers.]—The employment of ministers of the United Methodist Church and the employment of ministers (under probation) of the Wesleyan Methodist Church by the conference of each of those Churches, or by the circuits to which the ministers are attached, is not employment within the meaning of Part I. of the Insurance Act, 1911. *United Methodist Church Ministers, In re*, 107 L. T. 143; 56 S. J. 687; 28 T. L. R. 539—Joyce, J.

Medical Staff of Infirmary.]—Persons appointed to act in an infirmary—first, as resident physicians and resident surgeons; secondly, as non-resident house physicians, non-resident house surgeons, and clinical assistants; and thirdly, as supervisors of the

administration of anæsthetics,—*Held*, not to be persons employed within the meaning of the National Insurance Act, 1911, in respect that, as the managers of the infirmary had no control over the manner in which these members of the staff carried out their treatment of the patients, no contract of service existed between them. *Scottish Insurance Commissioners* v. *Edinburgh Royal Infirmary*, [1913] S. C. 751; [1913] W.C. & I. Rep. 383—Ct. of Sess.

Pupil Teachers and Monitors.]—The employment of pupil teachers and monitors in National schools in Ireland is an employment within the meaning of the National Insurance Act, 1911, and the Commissioners of National Education are the employers. It is not a contract of apprenticeship, because an essential element of apprenticeship—the right to receive instruction—is absent from the contract, but is a contract of service within the meaning of Part I. section 1, sub-section 1 of the Act. *Pupil Teachers and Monitors, In re*, [1913] 1 Ir. R. 219; [1913] W.C. & I. Rep. 366—Barton, J.

Officers of Poor Law Union.]—Officers of a poor law union are not employed under a contract of service within the meaning of Part I. of Schedule I. to the National Insurance Act, 1911. *South Dublin Union Officers, In re*, [1913] 1 Ir. R. 244; [1913] W.C. & I. Rep. 245—M.R.

School Attendance Inspector—"Employed contributor."]—A person appointed as school attendance inspector by a school attendance committee under the provisions of the Irish Education Act, 1892, is an "employed contributor" within the meaning of the National Insurance Acts, 1911 to 1913, and the committee is liable for the payment of the contributions in respect of them. *O'Callaghan* v. *Irish Insurance Commissioners*, [1915] 2 Ir. R. 262; [1915] W.C. & I. Rep. 412—K.B. D.

"Employment under any local or other public authority" — Pilots Appointed and Licensed by Port Authority under Local Act.]—Pilots appointed and licensed by the Port Authority under a local Act, *held* (Dodd, J., dissenting), not to be employees of or under the Port Authority, who were therefore not liable to contribute to the insurance of the pilots under the National Insurance Acts, 1911 to 1913. *Westport Port and Harbour Commissioners* v. *Irish Insurance Commissioners*, [1915] 2 Ir. R. 283; [1915] W.C. & I. Rep. 406—K.B. D.

Share Fishermen.] — Share fishermen remunerated by shares in the profits of fishing vessels, and under an obligation sanctioned by custom to share any losses incurred, but having no proprietary interest in the vessels, nets, or gear; and also net share fishermen, similarly situated except that they received in addition to such share of profits a further share thereof in respect of their ownership of the nets used on board the vessels, *held* not to be employed persons within the meaning of the National Insurance Act, 1911. *Scottish Insurance Commissioners* v. *M'Naughton*, [1914] S. C. 826—Ct. of Sess.

"Employment otherwise than by manual labour"—Lithographic Artist—Engraver.]—Lithographic artists and engravers engaged in the correction or improvement of half-tone engraved plates are employed otherwise than by way of manual labour within Schedule I. Part II. (*g*) of the National Insurance Act, 1911. Where, therefore, the remuneration of such persons exceeds 160*l*. a year they are not employed contributors within the meaning of Part I. of the Act. *Lithographic Artists, In re; Engravers, In re*, 108 L. T. 894; 57 S. J. 557; 29 T. L. R. 440—Warrington, J.

Dairyman's Foreman—Tailor's Cutter.]—The question whether a person is employed in manual labour within the meaning of Schedule I. Part II. clause (*g*) of the National Insurance Act, 1911, is to be determined by considering whether any manual labour that he may do in the course of his service is the real substantial work for which he is engaged, or whether it is only incidental or accessory thereto. If it is the latter the employment is not employment in manual labour. The employments of a dairyman's foreman and tailor's cutter,—*Held*, not to be employment in manual labour within the National Insurance Act, 1911, inasmuch as, although those persons did some manual work, their duties were mainly supervisory. *Dairymen's Foremen, In re, and Tailor's Cutters, In re*, 107 L. T. 342; 28 T. L. R. 587—Swinfen Eady, J.

Master Tailors — Outworkers.] — Master tailors, who make up and finish garments for merchant tailors or wholesale clothing manufacturers, the work being done at the house or other premises of the master tailors, are employed as outworkers within Part I. (*c*) of Schedule I. of the National Insurance Act, 1911, and persons engaged as such are "employed contributors" within section 1 of the Act unless they come within the exceptions in Part II. of Schedule I. or are exempted by the Insurance Commissioners. *Master Tailors as Outworkers, In re*, 29 T. L. R. 725—Warrington, J.

One Workman Employing Another—Non-liability of Head Employers.]—Informations were laid against the respondents, who were the owners of silk mills, for non-payment of contributions under the National Insurance Act, 1911, in respect of two women, and it was proved that a number of block printers were employed by the respondents and that the two women were "tierers" who assisted the block printers. Each "tierer" was selected and engaged by the workman whom she was to assist, and the respondents had no voice in the selection. The wages of each "tierer" were paid by the workman who had engaged her, and she could be dismissed from her work by him. The Justices found that the "tierers" were not under the general control and management of the respondents, and therefore dismissed the summonses:—*Held*, that the question was a question of fact for the Justices.

Newell v. *King*, 110 L. T. 76; 78 J. P. 23; 12 L. G. R. 132; 30 T. L. R. 34—D.

Workman Engaged by Foreman—Independent Contractor—Relationship of Master and Servant.] —A firm of coal merchants employed a yard foreman, for the purpose of loading and unloading coal at the yard, who was paid by the firm weekly at a fixed rate per ton of coal handled. His earnings amounted to less than 27*s.* a week, and he was an employed contributor under the National Insurance Act, 1911. As the work at the yard could not be done by one man alone, the foreman, by the instructions of the firm, engaged other men to assist. The foreman received from the firm the amount at the fixed rate due for all coal handled at the yard, which he divided between himself and the men employed, all taking equal shares. If the foreman was away, one of the other men received the money and shared it equally among those who had done the work. The firm supervised the work of loading and unloading, and exercised control over the men in the performance of their duties. The foreman engaged and dismissed the men, but the firm had the right to require the foreman to dismiss a particular man. The firm was summoned for not paying a contribution under the National Insurance Act, 1911, in respect of one of these men:—*Held*, that the man was a person employed by the firm within the meaning of the National Insurance Act, 1911, and that he was not employed by the foreman as an independent contractor, and that therefore the coal merchants were liable to pay insurance contributions in respect of him. *Hill* v. *Beckett*, 84 L. J. K.B. 458; [1915] 1 K.B. 578; [1915] W.C. & I. Rep. 1; 112 L. T. 505; 79 J. P. 190; 13 L. G. R. 530—D.

Repair of Roads Entrusted to Contractor—Labourers Appointed by County Surveyor, Paid by and Bound to Obey Orders of Contractor as well as those of Surveyor.] —A county council entrusted the repair of certain roads to a contractor. The terms of the contract provided that the contractor should "keep" a surface man and pay him at a rate of wages prescribed by the county council; that the surface labourers "will be appointed by the county surveyor, and may be dismissed by him at any time on just complaint from the contractor, or for other causes." According to the "instructions for surface labourers" embodied in the contract, the surface men were bound to attend closely to the orders of the assistant surveyor and to those of the contractor when the assistant had not given any particular instructions. The Irish Insurance Commissioners issued a summons against the county council, as employers of the surface men, for failure to pay the contributions under the National Insurance Act in respect of the surface men:—*Held*, that the contract of service was between the contractor and the surface men, and that accordingly the contractor, and not the county council, was liable for payment of the contributions. *Held*, also, that where a county council enter into a contract for the repair of roads, they cannot legally reserve for the county surveyor, or for a person employed by him, the performance of part of that repair. *Down County Council* v. *Irish Insurance Commissioners*, [1914] 2 Ir. R. 110—K.B. D.

Workmen Employed on Roads under System of Direct Labour—Power of County Council as to Giving Disablement Benefits.] —A county council has no power to give to workmen employed on roads under a system of direct labour terms of employment securing to them provision in respect of disablement as favourable as that conferred by Part I. of the National Insurance Act, 1911, and a county council cannot therefore, as regards such workmen, bring itself within the exception in Part II. of the First Schedule to the Act. *Tipperary County Council* v. *Irish Insurance Commissioners*, [1915] 1 Ir. R. 79—M.R.

II. MEDICAL BENEFITS.

a. Administration of by Approved Societies.

Proof of Disease—Rule of Society Requiring Medical Certificate or other Sufficient Evidence of Incapacity—Resolution Requiring Certificate of Panel Doctor—Ultra Vires—Action for Declaration—Dispute between Society and Member—Arbitration in Accordance with Rules.]—The plaintiff, being an insured person under the National Insurance Act, 1911, and a member of an approved society, sent to the secretary of the society a claim for sickness benefit, offering as proof of sickness a certificate of a medical man who was not on the panel of doctors specified in section 15 of the Act. Payment of sickness benefit was refused on the ground of a resolution passed by the society to the effect that in every claim for sickness benefit the insured person should send a certificate of a panel doctor. By the rules of the society, which had been approved by the Insurance Commissioners, no member was entitled to sickness benefit until he had sent to the secretary a medical certificate or other sufficient evidence of incapacity for work. In an action brought by the plaintiff, suing on behalf of himself and all other members of the society except the defendants, against the trustees and the secretary of the society on behalf of the society, for a declaration that the resolution was illegal and *ultra vires*,—*Held*, that the resolution was illegal and *ultra vires*, and that, notwithstanding section 67 of the Act, by which every dispute between a society and a member was to be decided by arbitration, the plaintiff was entitled to a declaration as claimed. *Heard* v. *Pickthorne*, 82 L. J. K.B. 1264; [1913] 3 K.B. 299; [1913] W. C. & I. Rep. 685; 108 L. T. 818; 11 L. G. R. 621; 57 S. J. 532; 29 T. L. R. 497—C.A.

Medical Certificate—Evidence of Incapacity—Sufficiency of Certificate—Dispute between Member and Society—Jurisdiction of Court.] —By the rules of an approved society under the National Insurance Act, 1911, it was provided that, with regard to sickness and disablement benefits, an illness should not be deemed to commence or continue unless the member was rendered incapable for work by "some specific disease or by bodily or mental

disablement," and that he should send notice of illness to the local secretary . . . and should not be entitled to sickness benefit until he had sent to the local secretary . . . a medical certificate or other sufficient evidence of incapacity and its cause; also that disputes arising between insured members and the society should be decided by the general delegates' meeting. The plaintiff, an insured member of the society, sent to their local secretary a claim for sickness benefit accompanied by a medical certificate which stated that she was "suffering from debility and unable to work." The society required the certificate to be amended by a statement of the cause of the debility, and refused to pay unless this was done. The plaintiff thereupon sued the society, claiming an injunction to restrain them from refusing to accept and consider the medical certificate as evidence of her claim to sickness benefit and also a sum of money representing three weeks' sickness benefit:—*Held*, that the matter was a dispute within section 67, sub-section 1 of the National Insurance Act, 1911, that it must be decided by the tribunal created by the society's rules, and therefore that the Court had no jurisdiction to entertain the claim. *Heard* v. *Pickthorne* (82 L. J. K.B. 1264; [1913] 3 K.B. 299) distinguished. *Bailey* v. *Co-operative Wholesale Society*, 83 L. J. K.B. 948; [1914] 2 K.B. 233; 110 L. T. 816; 78 J. P. 285; 12 L. G. R. 545; 58 S. J. 304; 30 T. L. R. 299—D.

b. Panel Doctors.

Panel—Requirement of Duplicate Prescriptions — Refusal by Practitioner — Removal from Panel.]—Where an insurance committee under the National Insurance Act, 1911, have made an agreement with a medical practitioner which incorporates the Act and which does not deprive him of his right to be removed from the panel without an enquiry under section 15, sub-section 2 (*b*), and have placed his name on the panel, the committee have no power to remove his name from the panel if he declines to make out prescriptions in duplicate, inasmuch as the period of service can only be terminated by the act of the practitioner or after an enquiry into his alleged default. *Rex* v. *County of London Insurance Committee; Salter, Ex parte*, 111 L. T. 835; 79 J. P. 36; 12 L. G. R. 1262; 30 T. L. R. 607—D.

Drug Fund—Deficit—Requirement of Contribution from Doctors on Panel.]—A pharmaceutical committee under the National Insurance Acts, in consequence of a deficit in the drug fund, requested the panel committee for an investigation into cases where panel doctors had ordered drugs beyond the average amount. This request was granted and the panel committee reported to the insurance committee that there was a deficit in the drug fund and recommended them to make it up by requiring any doctor who had ordered drugs in excess of the average to contribute in proportion to the amount of the excess. The plaintiff was a panel doctor and he had had no opportunity of attending the investigation, but he received notice that in his account with the insurance committee he was to be debited with his share of the contribution. In an action by the plaintiff against the insurance committee for an injunction restraining them from deducting the amount from the money due to him under the Act,—*Held*, that as the pharmaceutical committee had not made a representation to the panel committee in the terms of regulation 40 of the National Health Insurance (Medical Benefit) Regulations (England), 1913, and as the panel committee did not report to the insurance committee that any practitioner had been extravagant in ordering drugs, and as the report was therefore not a report within the terms of the regulation, the plaintiff was entitled to the injunction even if the regulation was not *ultra vires*. *Moore* v. *Leicester Insurance Committee*, 32 T. L. R. 80—Rowlatt, J.

Fees of Panel Doctor—Moneys in Hands of Insurance Committee — Debt "owing or accruing."]—When an insurance committee has received moneys from the Insurance Commissioners for the purposes of the National Health Insurance Acts, a debt becomes due from the committee to every panel doctor who has done work within their area, although the exact amount payable to him under his agreement with the committee may not, as a matter of calculation, have been ascertained. *O'Driscoll* v. *Sweeny*, 84 L. J. K.B. 734; [1915] 1 K.B. 811; 112 L. T. 594; 59 S. J. 235; 31 T. L. R. 103—Rowlatt, J. Affirmed, 85 L. J. K.B. 83; [1915] 3 K.B. 499; 113 L. T. 683; 13 L. G. R. 1156; 59 S. J. 597; 31 T. L. R. 532—C.A.

It is not contrary to public policy that such a debt should be attached under Order XLV. rule 1, as a debt "owing or accruing" from the committee to the doctor. *Ib.*

III. CONTRIBUTORS ENTITLED TO COMPENSATION OR DAMAGES.

Right of Approved Society to take Proceedings for Compensation in Name of Workman.]—In the provision in section 11, sub-section 2 of the National Insurance Act, 1911, that, where an insured person appears to be entitled to compensation or damages under the Workmen's Compensation Act, 1906, or otherwise, "and unreasonably refuses or neglects to take proceedings to enforce his claim," it shall be lawful for his approved society to do so in his name, the word "neglects" connotes a failure to do something which is a matter of legal or moral obligation, or a failure to comply with a request made by a person entitled to make it. *Rushton* v. *Skey & Co.*, 83 L. J. K.B. 1503; [1914] 3 K.B. 706; [1914] W. C. & I. Rep. 497; 111 L. T. 700; 58 S. J. 685; 30 T. L. R. 601—C.A.

A workman met with an accident in January, 1913, and was incapacitated until February 3, 1913, receiving compensation during this time from his employers at the rate of 17*s.* 2*d.* a week. He was again incapacitated on July 6, 1913, from the same trouble, and was away from work for over two months. During this time he received

15*s*. a week from his approved society, but no compensation from his employers. On September 2, 1913, the approved society sent him a form asking questions as to his accident and injury, and as to whether he proposed to take proceedings to recover compensation. The workman answered that he did not think his present illness was due to the accident in January, and that he did not propose to take proceedings against his employers. In the form there was a note that "In the event of a member through lack of means or other causes neglecting to enforce his claim, the society, if of opinion there is a good claim, will take proceedings on his behalf." In November, 1913, the approved society brought proceedings for compensation in the workman's name and satisfied the County Court Judge that the accident was the cause of the workman's injury:—*Held*, that the workman had not unreasonably refused or neglected to take proceedings for compensation within the meaning of the National Insurance Act, 1911, s. 11, sub-s. 2, and therefore that it was not competent to the approved society to maintain the proceedings for compensation in the workman's name. *Ib*.

—— **Accident—Possible Claim to Compensation—Insured Workman—Whether Proceedings by Workman or Approved Society—Issue of Fact.**]—An insured workman desiring to make a claim against his employer under the Workmen's Compensation Act, 1906, may be helped by his approved society. *Allen* v. *Francis*, 83 L. J. K.B. 1814; [1914] 3 K.B. 1065; [1914] W.C. & I. Rep. 599; 112 L. T. 62; 58 S. J. 753; 30 T. L. R. 695—C.A.

On September 5, 1913, a workman met with an accident and applied for sickness benefit to his approved society. The society thought the workman to be entitled to recover compensation from his employer under the Workmen's Compensation Act, 1906, and on January 31, 1914, their solicitor wrote to the employer and threatened proceedings. The employer denied liability, and thereupon the society instructed their local solicitors to investigate the case. These solicitors wrote to the employer on February 11, 1914, that they were instructed to act for the workman, and the workman was in fact informed by the society that, if he wished, these solicitors would act for him free of charge in taking proceedings for compensation. On March 26, 1914, the workman signed a retainer of the solicitors, and on March 31, 1914, arbitration proceedings were commenced in his name. Before the County Court Judge the point was taken that the proceedings were in fact brought by the society in the workman's name and were not maintainable, as the workman had not unreasonably refused or neglected to take proceedings within the meaning of the National Insurance Act, 1911, s. 11, sub-s. 2. The County Court Judge then asked counsel for the applicant for whom it was that he actually appeared, and on his refusal to answer the question except by producing the retainer, dismissed the application with costs:—*Held*, that the case must go back to be heard. The County Court Judge ought to have heard the evidence and fully ascertained the facts, and ought only to have dismissed the application if he then came to the conclusion that the application was really being brought by the society. *Ib*.

—— **Approved Society and Trade Union—No Refusal on Part of Workman to take Proceedings—Reasonable Inference that Workman Insured Member of Approved Society—Surprise.**]—A workman having met with an accident, two letters, dated April 23, 1914, and May 2, 1914, were written on behalf of an approved society, stating that it was purposing to take proceedings for the workman against the employer to obtain compensation under the Workmen's Compensation Act, 1906. Proceedings were then brought, and at the hearing the secretary of the local branch of the approved society, who was called to give expert evidence, said, in answer to questions put in cross-examination, that his society was an approved society and had taken these proceedings in the name of the workman. He also said that the workman had not refused to take proceedings, but, though anxious to do so, had not the necessary money. The County Court Judge thereupon dismissed the application on the ground that under the National Insurance Act, 1911, s. 11, sub-s. 2, an approved society was not entitled to bring proceedings in a workman's name unless he had unreasonably neglected or refused to take them himself. On appeal it was alleged on the workman's behalf that he was not an insured member of the approved society, but was merely a member of it as a trade union, and it was contended that in these circumstances the National Insurance Act, 1911, s. 11, sub-s. 2, had no application, and that the proceedings were maintainable:—*Held*, that, on the evidence as it stood, the County Court Judge was entitled to draw the inference that the workman was insured in the society under the National Insurance Act, 1911, and that, as no case of surprise had been made, the County Court Judge's decision must stand. *Burnham* v. *Hardy*, 84 L. J. K.B. 714; [1915] W.C. & I. Rep. 146; 112 L. T. 837—C.A.

IV. REGULATIONS FOR ADMINISTRATION OF NATIONAL INSURANCE ACT.

Provisional Regulations—Validity.]—The National Health Insurance (Collection of Contributions) Regulations, 1912, are valid, notwithstanding that regulations were not at the same time made for the provision of medical and other benefits under the Act. The Regulations are not rendered invalid by reason of the fact that they are called "Provisional Regulations." *Hurlock* v. *Shinn*, 82 L. J. K.B. 391; [1913] 1 K.B. 290; [1913] W.C. & I. Rep. 277; 108 L. T. 254; 77 J. P. 97; 11 L. G. R. 367; 23 Cox C.C. 288; 29 T. L. R. 133—D.

By section 83, sub-section 1 of the Act of 1911, a joint committee of the several bodies of Commissioners is to be constituted in accordance with regulations to be made by the Treasury; and by sub-section 2 the joint committee

" shall exercise and perform such powers and duties of the several bodies of commissioners under this part of this Act, either alone or jointly with any of those bodies, as may be provided by such regulations." Under the powers conferred upon them by this section, the Treasury made the National Insurance (Joint Committee) Regulations, 1912, regulation 5 of which provided that the joint committee should exercise jointly with the Commissioners " (*a*) under sub-section (1.) of section 4, and sub-section (1.) of section 5 of the Act, the power of prescribing the intervals at which contributions payable in respect of employed contributors and voluntary contributors respectively are to be payable . . . (*c*) under section 7 of the Act, the power of making regulations for matters incidental to the payment and collection of contributions " : —*Held*, that the regulation was not *ultra vires* of the Treasury, and that the joint committee were thereby empowered to join with the Commissioners in the making of the regulations. *Ib.*

By regulation 6 (1) (*a*) of the National Health Insurance (Collection of Contributions) Regulations, 1912, the time for stamping the card of a contributor shall be " (*a*) where money payment is made by the employer in respect of any employment—before the money payment in respect of the period for which the contribution is payable . . ." :—*Held*, that although section 4, sub-section 1 of the Act of 1911 provides for payment at " weekly or other prescribed intervals," the regulation was not *ultra vires*. *Ib.*

Regulations Made by Insurance Commissioners under Statutory Powers—Power of Court to Review.]—The National Insurance Act, 1911, by section 65, authorises the Insurance Commissioners to make regulations for the purpose of carrying into effect Part I. of the Act (which deals with National Health Insurance), and provides that such regulations shall be laid before both Houses of Parliament and shall have effect as if enacted in the Act, unless annulled by His Majesty in Council on an address presented by either House :—*Held* (Lord Johnston dissenting), that regulations made by the Commissioners, which had not yet been laid before Parliament, could not be challenged in a Court of law as being *ultra vires* of the Commissioners, provided they dealt with matters falling within the scope of Part I. of the Act, but could be set aside only by means of the Parliamentary procedure provided by the section. *Glasgow Insurance Committee* v. *Scottish Insurance Commissioners*, [1915] S. C. 504; [1915] W.C. & I. Rep. 182—Ct. of Sess.

Inclusion of Other Trades—Order of Board of Trade — Ultra Vires — Commissioner Appointed to Hold Enquiry — Powers of Commissioner.] — By section 103 of the National Insurance Act, 1911, " If it appears to the Board " of Trade " that it is desirable to extend the provisions of this Part of this Act, to workmen in any trade other than an insured trade, . . . the Board may, with the consent of the Treasury, make, . . . a special order extending this Part of this Act to such workmen . . . Provided that no such order shall be made if the person holding the inquiry in relation to the order reports that the order should not be made, . . ." :—*Held*, that a Commissioner appointed under the Act to hold an enquiry with regard to a draft Order made by the Board of Trade has no jurisdiction to enquire as to whether the proposed Order is or is not *ultra vires*, but only as to whether, upon the facts, it is desirable that it should be made. *Rex* v. *Hudson*, 84 L. J. K.B. 773; [1915] 1 K.B. 838; [1915] W.C. & I. Rep. 227; 112 L. T. 852—C.A.

The Sixth Schedule contains a list of insured trades for the purposes of Part II. of the Act, one of which is " Sawmilling (including machine woodwork) carried on in connection with any other insured trade . . ." The Board of Trade made an Order extending the provisions of Part II. of the Act to workmen in the trade of " Sawmilling, including machine woodwork, whether carried on in connection with any other insured trade or not " : —*Held*, that the Order was not *ultra vires*. *Ib.*

Decision of the Divisional Court (84 L. J. K.B. 194; [1915] 1 K.B. 133) affirmed. *Ib.*

V. POWERS OF INSURANCE COMMISSIONERS.

Whether Regulations made by Commissioners are Open to Review by Court.] — *See Glasgow Insurance Committee* v. *Scottish Insurance Commissioners*, *ante*, col. 709.

Determination by Commissioners of Rates of Contribution.]—The Court dismissed an action for the setting aside of a determination by the Insurance Commissioners under section 66, sub-section 1 (*c*) of the National Insurance Act, 1911, holding that in the absence of averments that they had acted *ultra vires* the Court had no jurisdiction to interfere with their decision. *Don Bros., Buist & Co.* v. *Scottish Insurance Commissioners*, [1913] S. C. 607; [1913] W.C. & I. Rep. 259—Ct. of Sess.

VI. UNEMPLOYMENT INSURANCE.

Termination of Employment—Duty of Employer to Return Card and Book—Return through Post—Failure to Obtain Fresh Employment by Reason of Non-return—Damages—Remoteness.]—It is provided by regulations made under the National Insurance Act, 1911, that an employer must return health insurance cards and unemployment insurance books deposited with him to the workman on the termination of the employment. An employer unable to find the workman at the address he had given, which he had quitted, posted his health insurance card and unemployment insurance book, addressed to him at the above address. Although the workman had given due notice to the post-office that letters so addressed should be forwarded to him at another address, the card and book were lost in the post. By reason of not being able to produce them, the workman was unable to obtain other employment, and preferred a

claim for damages against the employer under the Employers and Workmen Act, 1875:—*Held*, that the claim could not succeed on the ground (by Ridley, J., and Pickford, J.; Avory, J., *dubitante*) that the above damages were too remote; and (*per* Avory, J.) on the ground that the employer had returned the cards to the workman because, the post-office under the Act being the agents of the owners of the cards, the Insurance Commissioners, the cards had been entrusted to their agent to be given to the workman. *Quære*, whether such action would lie at all. *Price* v. *Webb*, 82 L. J. K.B. 720; [1913] 2 K.B. 367; [1913] W.C. & I. Rep. 368; 108 L. T. 1024; 77 J .P. 333; 11 L. G. R. 602; 29 T. L. R. 478—D.

Married Woman — Temporary Unemployment after Marriage—"Person whose normal occupation is employment" — Right to Benefits.]—By section 44, sub-section 1 of the National Insurance Act, 1911, "Where a woman who has before marriage been an insured person marries, she shall be suspended from receiving the ordinary benefits under" Part I. of the Act "until the death of her husband . . . Provided that, where a woman who has been employed within the meaning of this Part of this Act before marriage, proves that she continues to be so employed after marriage, she shall not be so suspended so long as she continues to be so employed, . . ." By section 79: "A person whose normal occupation is employment within the meaning of this Part of this Act shall, for the purpose of reckoning the number and rate of contributions, be deemed to continue to be an employed contributor notwithstanding that he is temporarily unemployed, . . ." The appellant, an insured person within the meaning of the Act, was a member of the respondent society. In August, 1913, she was married, and gave up her employment. She was then pregnant, and was physically incapable, until after December 6, 1913, when her child was born, of following her employment; but at the time of her marriage she *bona fide* intended to return to it, and she continued to be a person whose normal occupation was employment within the meaning of the Act. The society having refused to allow her sickness and maternity benefits,—*Held*, that section 79 was applicable to the appellant, and that, notwithstanding her temporary unemployment after her marriage, she was entitled to claim sickness and maternity benefits. *Davidson* v. *New Tabernacle Approved Society*, 85 L. J. K.B. 124; [1915] 3 K.B. 569—Atkin, J.

Presentation of Unemployment Book.] — *See Nunnery Colliery Co.* v. *Stanley*, *post*, col. 713.

VII. OFFENCES.

Non-payment of Contributions by Employer—Proceedings before Court of Summary Jurisdiction—Separate Summonses for Each Week's Non-payment — Combined Order for Payment of Fine and Unpaid Contribution.] —The provisions of the Summary Jurisdiction Acts are applicable to an information under section 69, sub-section 2 of the National Insurance Act, 1911, charging an employer with having failed to pay a contribution which he was liable to pay in respect of an employed contributor, and the magistrate has power to make a combined order for the payment of a fine and of the amount of the contribution. *Hurlock* v. *Shinn; Rex* v. *Baggallay; Morris* v. *Ashton; Rex* v. *Hedderwick*, 82 L. J. K.B. 391; [1913] 1 K.B. 290; [1913] W.C. & I. Rep. 277; 108 L. T. 254; 77 J. P. 97; 11 L. G. R. 367; 23 Cox C.C. 288; 29 T. L. R. 133—D.

Under section 69, sub-section 2 of the Act of 1911, each failure by an employer to pay a weekly contribution is a separate offence, and separate summonses may be taken out against him in respect of each failure to pay. *Ib.*

Employment—Determination of Question—No Decision by Commissioners—Jurisdiction of Magistrate.]—The provision in section 66, sub-section 1 of the National Insurance Act, 1911, that "If any question arises—(*a*) as to whether any employment or any class of employment is or will be employment within the meaning of this Part of this Act . . . the question shall be determined by the Insurance Commissioners," does not oust the jurisdiction of a magistrate, where the Commissioners have not made any such determination, to decide, on a summons against an employer under section 69, sub-section 2 of the Act for failure to pay contributions in respect of a person alleged to be an employed contributor, whether such person is an employed contributor within the Act or not. *Rex* v. *Wilberforce*, 32 T. L. R. 163—D.

Sufficiency of Evidence — Ordinary and Emergency Cards.]—An employer, charged with failure to pay the contributions due by him under the National Insurance Act, 1911, in respect of two servants in his employment, was convicted upon an admission in the witness-box, by each of the servants, that he did not get an insurance card—that is, an ordinary card—stamped by the accused while in his service, and upon proof that the accused and the two servants had refused to give any information when interrogated by the representatives of the National Insurance Commissioners:—*Held*, that the charge had not been proved as, even assuming that the evidence was sufficient to establish that no ordinary cards had been stamped the prosecutor had failed to prove that the accused had not adopted the alternative course of stamping "emergency" cards. *Kinnear* v. *Brander*, [1914] S. C. (J.) 141—Ct. of Just.

Observations on the evidence required to prove a charge of failure to pay contributions under the National Insurance Act, 1911, and, in particular, upon the question whether the evidence of one servant that the employer had not stamped a card for him was evidence supporting a similar charge made against the accused with regard to another servant. *Ib.*

—— Card Handed to Head Gardener by Gardener's Labourer—No Direct Dealings with Employer—Failure to Affix Stamps to Card—Liability of Employer. — A gardener's labourer was employed by the respondent and

was paid wages weekly. The labourer handed his National Health Insurance card to the head gardener and had no direct dealings with the respondent. No stamps were placed on the card in respect of certain weeks :—*Held*, that the respondent had committed a criminal offence, inasmuch as though the duty of stamping the cards could be lawfully delegated, yet if the duty was not performed the employer was responsible. *Godman* v. *Crofton* (*No.* 1), 110 L. T. 387; 78 J. P. 133; 12 L. G. R. 330; 24 Cox C.C. 90; 30 T. L. R. 193—D.

—— **Presentation of Unemployment Book—Whether Condition Precedent—Fitter.**]—The appellants engaged one S. as a fitter to attend to and repair plant and machinery in an engineering workshop of their colliery premises. On a summons against the appellants under section 101 of the National Insurance Act, 1911, for non-payment of unemployment contributions in respect of S., the magistrate held that the presentation of an insurance book by the workman to the employer was not a condition precedent to the obligation of the employer to get stamps and endeavour to use them, and that as S. was employed as above stated the appellants must be convicted. One of the insured trades under the Act is that of mechanical engineering :—*Held*, that on non-presentation of the unemployment book to the employer by the workman it became the duty of the employer to obtain an emergency book, and that there was evidence that S. was employed in the insured trade of mechanical engineering, and therefore the magistrate's decision must be affirmed. *Nunnery Colliery Co.* v. *Stanley*, 111 L. T. 843; 78 J. P. 422; 30 T. L. R. 549—D.

—— **Bricklayer's Labourer—Employment as General Colliery Labourer — Employment in Construction of Buildings.**]—The respondent engaged one W., who was a bricklayer's labourer, as a general colliery labourer, and employed him to break up material for concrete and to make concrete, which was used in the alteration of a fan-house at a colliery. On a summons by the appellant against the respondent under section 101 of the National Insurance Act, 1911, for failing to pay unemployment contributions in respect of W., it was contended for the appellant that W. was employed in the construction, maintenance, or repair of colliery buildings, and that therefore he came within the list of insured trades set out in the Sixth Schedule to the Act and in a decision of the umpire. The Justices dismissed the summons on the ground that W. was a general labourer and not a bricklayer's labourer :—*Held*, that W. was employed in an insured trade, and that therefore the respondent ought to have been convicted. Opinion reserved on the question whether, in proceeding under section 101, in which a dispute arises as to whether the employment is in an insured trade, the Justices are bound, if there has been no previous decision by the umpire, to refer the matter to him. *Robinson* v. *Morewood*, 111 L. T. 840; 78 J. P. 445; 30 T. L. R. 547—D.

C. ACCIDENT.

See also Vol. VIII. 81, 1669.

Exception in Policy—"Anything inhaled"—Construction—Death of Assured from Gas Fumes—Liability of Insurance Company. — By a personal accident and sickness policy the assured was insured against bodily injury by "violent accidental external and visible means," with an exception that the policy was not to insure *(inter alia)* against death or disablement by accident directly or indirectly caused by "anything swallowed, administered, or inhaled." The assured was found dead in a room with the unlighted gas turned on, and the cause of the death was certified as suffocation from gas poisoning :—*Held*, that the words "anything . . . inhaled" were clear and unambiguous in their meaning, and could not be construed as having the restricted meaning "anything voluntarily inhaled." The death of the assured was not therefore due to a risk covered by the policy. *United London and Scottish Insurance Co., In re; Brown's Claim*, 84 L. J. Ch. 620; [1915] 2 Ch. 167; [1915] W.C. & I. Rep. 485; 113 L. T. 397; 59 S. J. 529; 31 T. L. R. 419—C.A.

Third-party Policy—Limit of Liability for any one Accident or Occurrence — Action against Assured — Defence Conducted by Insurance Company—Liability for Costs.]—By a policy of insurance the defendants insured the assured in respect of accidents caused by his employees when in charge of his horse-drawn vehicles. The total liability of the defendants was limited to 300*l.* for all claims for compensation and costs, charges, and expenses paid or payable in respect of or arising out of any accident or occurrence, and the defendants were to be entitled, in the name and on behalf of the assured, to take over and have the absolute control of all negotiations and proceedings which might arise in respect of any accident or claim. There was a further provision that the defendants might pay the maximum sum to the assured in the case of any one accident or occurrence, and thereupon their liability in respect of that accident or occurrence should cease; but if the assured desired the defendants to continue the defence he should pay and make good all costs and expenses incurred thereby. Two persons who had been injured by an accident caused by a cart belonging to the assured brought actions against him claiming damages. The assured gave notice thereof to the defendants, and they defended the actions, the assured not being consulted nor having anything to say as to the advisability of defending the actions. The actions resulted in verdicts against the assured for 200*l.* and 175*l.* respectively. The costs in these actions recoverable by the two plaintiffs against the assured amounted to 218*l.*; and as he did not pay those costs an execution was levied on his goods, and to get rid of this he had to pay the 218*l.*, which he now claimed to recover from the defendants :—*Held*, that although there were two accidents there was only one "occurrence" within the meaning of the policy, and therefore that the defendants'

limit of 300*l.* applied; but that the defendants having denied the actions in the name of the assured without his consent they incurred a common law liability for the costs, and were therefore liable to repay the 218*l.* which the assured had been compelled to pay. *Allen* v. *London Guarantee and Accident Co.*, 28 T. L. R. 254—Phillimore, J.

Policy against Accidents to Employees — Proviso for Keeping Wages Book—Condition Precedent.]—A policy of insurance taken out by a currier and small farmer against liability for accidents under the Workmen's Compensation Act, 1906, contained a proviso that the observance of the conditions of the policy should be "a condition precedent to any liability of the Society under this policy." A number of conditions were stated, including the following: "The first premium and all renewal premiums that may be accepted are to be regulated by the amount of wages and salaries and other earnings paid to employees by the insured during such period of insurance. The name of every employee and the amount of wages, salary, and other earnings paid to him shall be recorded in a proper wages book. The insured shall at all times allow the society to inspect such books and shall supply the society with a correct account of all such wages, salaries, and other earnings paid during any period of insurance, within one month from the expiry of such period of insurance, and if the total amount so paid shall differ from the amount on which premium has been paid the difference in premiums shall be met by a further proportionate payment to the society or by a refund by the society, as the case may be." The insured employed one labourer only, who met with an accident entitling him to compensation under the Act of 1906. He kept no wages book or record of wages paid by him. The society disputed his right to claim under the policy on account of the omission to keep a wages book:—*Held* (Fletcher Moulton, L.J., dissenting), that the policy in any case of ambiguity ought to be construed against the society and in favour of the claimant, and that as a matter of construction the condition as to keeping a wages book was not a condition precedent the omission to observe which debarred the claimant from his right to indemnity under the policy. *Bradley and Essex and Suffolk Accident Indemnity Society, In re*, 81 L. J. K.B. 523; [1912] 1 K.B. 415; 105 L. T. 919; 28 T. L. R. 175; [1912] W.C. Rep. 6.

Policy of Indemnity — Condition against Agent of Assured making Admission of Liability — Admission of Negligence and Responsibility by Agent not Authorised by Assured—No Breach of Condition.]—An admission of liability, made by a driver of a traction engine after a collision caused by his negligence, is not a breach of a condition contained in a policy of insurance made with his employer that the assured shall not by his agent make any admission of liability, unless the admission is authorised by the employer. Under a policy of insurance the defendants were to be indemnified against damage for which they might be liable by reason of a collision with their traction engine, provided that the assured should not, by himself or his agent, make any admission of liability to any person in respect of whom indemnity might be claimed under the policy. After a collision between the traction engine and the plaintiff's motor car, caused by the negligence of the defendants' driver, the plaintiff wrote out, and the driver (who was illiterate) signed with a cross, a document in which the driver admitted that he was negligent and responsible for the collision. In an action for damages brought by the plaintiff against the defendants, and which was settled by the defendants paying him a reasonable sum therefor, the defendants claimed from the insurers, as third parties, indemnity for such payment, and the insurers repudiated liability on the ground that the driver's admission of liability was a breach of the proviso in the policy:—*Held*, that as the driver had not the defendants' authority to make the admission of liability, and the document signed by him was not part of the *res gestæ* and therefore was not admissible in evidence against the defendants, the insurers must indemnify the defendants in respect of the moneys paid to the plaintiff. *Semble*, that an agent's admission of liability, if part of the *res gestæ*, would not be a breach of such proviso, unless expressly authorised by the principal. *Tustin* v. *Arnold*, 84 L. J. K.B. 2214; 113 L. T. 95; [1915] W.C. & I. Rep. 560; 31 T. L. R. 368—Bailhache, J.

D. FIRE.

I. CONTRACT.

See also Vol. VIII. 90, 1676.

Marine or Fire—Ship—Insurance against "risk of fire only, including general average and salvage charges arising therefrom"—Insurance Company — Winding-up Order — Subsequent Total Loss by Fire — Right of Assured.]—A policy issued by an insurance company insured a steamer while on the Great Lakes of America "against the risk of fire only, including general average and salvage charges arising therefrom." The ship was entirely destroyed by fire a few days after a winding-up order had been made against the insurance company:—*Held*, that the policy was a fire policy within the Assurance Companies Act, 1909, and that the assured could only prove therefore for the unexpired portion of the premium in accordance with section 17 and Schedule 6 (B) of that Act. *United London and Scottish Insurance Co., In re; Newport Navigation Co.'s Claim*, 84 L. J. Ch. 544; [1915] 2 Ch. 12; 20 Com. Cas. 300; 113 L. T. 400; 59 S. J. 529; 31 T. L. R. 424—C.A.

Decision of Astbury, J. (31 T. L. R. 261), affirmed. *Ib.*

Non-disclosure—Refusal by Another Company to Continue Insurance.]—The appellant was insured against fire up to August, 1910, with the L. Co. for 2,000*l.* Desiring to be insured for a further sum, negotiations took

place with the respondent company, who on August 15, 1910, agreed to cover the appellant for 1,600*l.* for thirty days, and if the insurance was not taken for a longer period the appellant was to pay a proportionate part of the premium. On September 21, 1910, the respondents wrote to the appellant that they would insure him for 3,600*l.* from Michaelmas, 1910, to Michaelmas, 1911, at a premium of 36*l.* 16*s.*, and would take the risk from August 15 to Michaelmas on the 1,600*l.* at a premium of 1*l.* 8*s.* At the foot of this document was the following note : " No insurance is in force until the premium is paid and a printed receipt issued from the office," and across it were the words " Held covered." On September 27, 1910, the appellant knew that the L. Co. had refused to continue his insurance. On September 28 the appellant paid the premium to the respondents, who issued their policy for 3,600*l.*, but he did not inform them of the refusal by the L. Co. to continue the insurance. The appellant having claimed for a loss by fire which occurred on September 28, 1911,—*Held*, that the document sent by the respondents to the appellant on September 21, 1910, was not a contract to insure for 3,600*l.*, but was an offer to insure and a statement that the appellant was covered for 1,600*l.*; that the insurance was not concluded till September 28, 1910, when the premium was paid; that it was material to the respondents to know that the L. Co. had refused to continue the appellant's insurance; that as the fact of that refusal came to the appellant's knowledge before the contract was concluded it ought to have been disclosed by him to the respondents; and that as it had not been disclosed the respondents were not liable on the policy. *Yager and Guardian Assurance Co., In re*, 108 L. T. 38; 29 T. L. R. 53—D.

Misstatement—Correction to Agent of Company—Duty of Agent—Previous Insurance—Previous Refusal.]—Where a person in making a proposal to an insurance company for an insurance against fire makes a *bona fide* mistake in his answers to the questions on the proposal form, but before the issue of a cover note draws the attention of the agent of the company to the mistake and corrects it, it is the duty of the agent to convey to the company the correct answer, and if he fails to do so the company are not entitled to refuse to pay a claim under the cover note on the ground that there was a misstatement in the answers to the questions on the proposal form. A question on a fire insurance proposal form as to whether the proposer is or has been " insured in this or any other office " does not include all property ever occupied by the proposer, but only refers to the particular premises proposed to be insured, unless other premises are distinctly referred to. The question whether any other office has declined to " accept " or " renew " the proposer's insurance has no reference to a refusal to transfer to the proposer a policy issued to another person. *Golding* v. *Royal London Auxiliary Insurance Co.*, 30 T. L. R. 350—Bailhache, J.

Damage Caused by Fire and by Water in Extinguishing Fire.]—A fire having occurred in the appellant's cotton mill, which was insured with the respondent company, the machinery was seriously damaged, not only by the fire, but by the effect of the water that had been used to extinguish the fire, the injury due to this latter cause being progressive—that is, it was seriously increased by the length of time during which the water was allowed to lie on the machinery. Immediately after the fire the respondents took possession of the mill, under powers reserved to them by the policy, and they retained possession for a considerable time for salvage purposes. Possession was ultimately given back to the appellant, who then put forward his claim under the policy :—*Held*, that the loss due to fire and water under such a policy was to be determined, not at the moment the fire was extinguished, but when the respondents gave up possession to the appellant after exercising the powers given to them by the policy for the purpose of enabling them to minimise the damage. *Ahmedbhoy Habbibhoy* v. *Bombay Fire and Marine Insurance Co.*, L. R. 40 Ind. App. 10; 107 L. T. 668; 29 T. L. R. 96—P.C.

Fire Policy—Arbitration Clause—Charge of Fraud—Repudiation of Policy by Insurers—Forfeit of all Benefit under it.]—The appellant insured his stock-in-trade with the respondent company against damage by fire. The policy contained a condition making it a condition precedent to any right of action on the policy that the amount of the loss should be first determined by arbitration. It also contained a condition that if a claim was in any respect fraudulent, or if the loss was occasioned by the wilful act of the insured, all benefit under the policy should be forfeited. The goods insured were destroyed by fire, and the appellant made a claim on the respondents. The respondents rejected the claim, and charged the appellant with fraud and arson, but these issues were found against them by a jury :—*Held*, that as the respondents had repudiated the policy, and had contended that all benefit under it was forfeited, they could not set up the arbitration clause as a bar to an action against them on the policy. *Scott* v. *Avery* (25 L. J. Ex. 308; 5 H.L. C. 811) distinguished. *Jureidini* v. *National British and Irish Millers Insurance Co.*, 84 L. J. K.B. 640; [1915] A.C. 499; [1915] W.C. & I. Rep. 239; 112 L. T. 531; 59 S. J. 205; 31 T. L. R. 132—H.L. (E.)

Consequential Loss—Assessment of Loss—Arbitration.] — *See Recher & Co.* v. *North British and Mercantile Insurance Co.*, *ante*, col. 57.

II. CONDITIONS.

See also Vol. VIII. 96, 1678.

" Gasoline—stored or kept."]—A condition in a policy of fire insurance provided that the company should not be liable for loss or damage " occurring while . . . gasoline . . . is . . . stored or kept in the building insured." A fire broke out from a small quantity of gasoline remaining in a cooking stove which

was used on an emergency for a particular purpose :—*Held*, that there was no breach of the condition, as the gasoline was not within the meaning of the condition "stored or kept in the building," and that the respondents were liable on the policy. *Thompson* v. *Equity Fire Insurance Co.*, 80 L. J. P.C. 13; [1910] A.C. 592; 103 L. T. 153; 26 T. L. R. 616—P.C.

Provision that "other policies should be declared and mentioned and that insured should not transfer his interest in the property."]—A provision in a policy of insurance against damage by fire that the existence of further policies should be declared to the insurers and mentioned in the policy or indorsed on it is complied with by declaring and mentioning the fact of the existence of such further policies without specifying with whom they were effected. *National Protector Fire Insurance Co.* v. *Nivert*, 82 L. J. P.C. 95; [1913] A.C. 507; [1913] W.C. & I. Rep. 363; 108 L. T. 390; 29 T. L. R. 363—P.C.

A provision that the insured should not transfer his interest in the property does not apply to a case in which the insured let the property for one year and continued himself to pay the premium on the policy. *Ib.*

Action by Policy-holder—Condition Precedent—Waiver by Course of Conduct.]—It was a condition of a fire insurance policy that the loss should not become payable until sixty days after notice, ascertainment, estimate, and satisfactory proof of the loss had been received by the company, and that a magistrate or notary public should, if the company required it, certify that he had examined the circumstances and believed the insured had honestly sustained the loss as appraised. The plaintiffs, having suffered losses by fire, served notice of a claim on the insurance company and appointed an adjuster with the assent of the company to ascertain the loss. A full report of the adjustment having been sent to the company, a long correspondence ensued, and ultimately the company asked to be supplied with a certificate of a magistrate or notary public, and, further, they said that if that information, in their opinion, was insufficient, they would require the loss to be ascertained by disinterested appraisers. In an action brought by the plaintiffs to recover their losses as ascertained by the adjuster :—*Held*, that the defendant company had by their conduct waived their right to insist on the above stipulations in the policy as a condition precedent to the plaintiffs' right of action. *Toronto Railway* v. *National British and Irish Millers Insurance Co.*, 111 L. T. 555; 20 Com. Cas. 1—C.A.

III. REBUILDING PREMISES.

See also Vol. VIII. 110, 1680.

Mortgage—Premises Destroyed by Fire—Right to have Insurance Money Applied in Rebuilding.]—Section 83 of the Fires Prevention (Metropolis) Act, 1774, which authorises and requires insurance offices, upon the request of any person or persons interested in or entitled to any house which may be burnt down, to cause the insurance money to be laid out and expended towards rebuilding, reinstating, or repairing such house, is, notwithstanding the doubt expressed by Lord Watson in *Westminster Fire Office* v. *Glasgow Provident Investment Society* (13 App. Cas. 699, 716), of general as opposed to local application. *Gorely, Ex parte; Barker, in re* (34 L. J. Bk. 1; 4 De G. J. & S. 477), followed. *Sinnott* v. *Bowden*, 81 L. J. Ch. 832; [1912] 2 Ch. 414; [1913] W.C. & I. Rep. 464; 107 L. T. 609; 28 T. L. R. 594—Parker, J.

The same section, notwithstanding the doubt expressed by Lord Selborne in *Westminster Fire Office* v. *Glasgow Provident Investment Society* (*supra*) applies as between mortgagor and mortgagee, and a mortgagee may, therefore, under the section, require the money to be spent in rebuilding, &c. *Ib.*

"Insurance effected under the mortgage deed."]—Where a mortgagor covenants in a mortgage deed to insure and keep insured the mortgaged property, and such property is already prior to the date of the mortgage insured by a yearly policy, and subsequent to the mortgage the mortgagor renews the policy in the ordinary course at the date when renewal becomes due, the policy is "an insurance effected under the mortgage deed" within the meaning of section 23, sub-section 3 of the Conveyancing and Law of Property Act, 1881. *Ib.*

Garnishee Order Nisi.] — A mortgagee's statutory rights are not displaced by a garnishee order *nisi*. On this point *Evans* v. *Rival Granite Quarries Co.* (79 L. J. K.B. 970; [1910] 2 K.B. 979), *Cairney* v. *Back* (75 L. J. K.B. 1014; [1906] 2 K.B. 746), and *Norton* v. *Yates* (75 L. J. K.B. 252; [1906] 1 K.B. 112) applied. *Ib.*

E. GUARANTEE, PLATE GLASS, BURGLARY, AND OTHER POLICIES.

I. GUARANTEE.

See also Vol. VIII. 120, 1681.

Fidelity—Policies Covering Loss by Defalcations of Employees—Two Policies—Loss—Contribution between Insurers.]—The plaintiffs, an American insurance company, issued a policy by which they covenanted to pay an American bank for any loss or damage occasioned by the dishonesty of any of the employees according to an amount appended to each name in a schedule. Among the employees guaranteed was one K., who was guaranteed up to 2,500 dollars. The bank also took out a policy at Lloyd's for 40,000*l.*, by which the underwriters were to be liable for loss caused by the dishonesty of employees, and also for loss sustained by the loss or destruction on the owners' premises of bonds, banknotes, &c., owing to fire or burglary. K.

made defalcations to the extent of 2,680 dollars, and the bank claimed from the plaintiffs the full amount of the insurance—namely, 2,500 dollars, leaving a balance of 180 dollars. The bank claimed 180 dollars on the Lloyd's policy, which was paid. The present action was brought by the plaintiffs against the defendant, who was one of the underwriters on the Lloyd's policy, for contribution in respect of the loss:—*Held*, first, that the case was governed by English law; and secondly, that the defendant was liable to pay a proportion of the whole loss of 2,680 dollars in the ratio of 2,680 to 2,500. *American Surety Co.* v. *Wrightson*, 103 L. T. 663; 16 Com. Cas. 37; 27 T. L. R. 91—Hamilton, J.

—— **Employee Insured "from issuance" of Policy.**]—The plaintiffs, who carried on business in various towns, including Paris, requested the defendants to issue a bond guaranteeing the plaintiffs against loss through the dishonesty of L., their Paris manager. On the application form the plaintiffs, in answer to the question "From what date is it [the bond] to be in force and for what amount?" answered thus: "From issuance, 1,000*l*." On March 7, 1912, the rate of premium was arranged, and on March 8 the bond was drawn up and executed at the defendants' London office. It recited that in consideration of the premium paid to the defendants they agreed to reimburse the plaintiffs for any loss they might sustain by the larceny or embezzlement of L. "during the period from March 8, 1912, to March 7, 1913." The premium had not then been paid, nor by the terms of the bond was its payment a condition precedent to liability upon the bond. The bond was forwarded the same day to the defendants' French agents, who on March 9 sent it to the plaintiffs' Paris office; it was, however, returned to the agents with a request that they should deliver it at the plaintiffs' London office, and this was done on March 18, with a request for a cheque for the premium. The plaintiffs' London manager was then absent, and it was finally arranged that the matter should stand over till his return. On April 13 L. left his office in Paris, and by April 18 the plaintiffs were in a state of suspicion about him, although not sure that his absence was incapable of a satisfactory explanation. On that day the plaintiffs' London manager returned, and on being informed of the facts paid the premium to the defendants and obtained the bond from them. A few days later, the plaintiffs discovered defalcations by L., and made a claim on the bond, but the defendants repudiated liability on the ground that the contract was not complete till April 18, and that there had been concealment of material facts:—*Held* (A. T. Lawrence, J., dissenting), that at the date of L.'s defalcations the plaintiffs were not covered. *Allis Chalmers Co.* v. *Fidelity and Deposit Co. of Maryland*, 111 L. T. 327; 30 T. L. R. 445—C.A.

Decision of Phillimore, J. (29 T. L. R. 506), reversed. *Ib.*

—— **Liability to Reimburse Assured for Loss by Larceny or Embezzlement — Meaning of "embezzlement."**]—By a fidelity policy the defendants undertook to reimburse the assured in respect of loss sustained by any act of larceny or embezzlement upon the part of their employee:—*Held*, that the word "embezzlement" in the policy is to be construed in the same way as it would be construed when used in an indictment. *Debenhams, Lim.* v. *Excess Insurance Co.*, 28 T. L. R. 505—Hamilton, J.

Guarantee of Debenture Issue — Re-insurance of Risk — Suretyship — Indemnity — Liquidation of Insurer—Measure of Liability of Re-insurer—Whether Amount Proved for or Dividend Actually Paid in Liquidation.]—On the issue of debentures by a firm a contract in the form of a memorandum at the end of each debenture was entered into between the debenture-holders and an insurance society, by which the society guaranteed to the debenture-holders, in case the firm should make default, payment of the principal and interest to become due under the debentures, the events in which the society was to be liable to pay not being in all respects the same as those in which the firm was liable. Subsequently, a contract, also in the form of a memorandum added to each debenture, was entered into between the society and an insurance company which, in consideration of a premium, provided that the company guaranteed the society to the extent of two-elevenths of the risk assured by, and subject to the conditions of, the within policy of debenture insurance (meaning the contract first above mentioned), and also the like proportion of all costs and expenses incurred by the society, with the consent of the guarantors in respect of any claim under the within policy. The debentures of the firm became enforceable, and the risk which the society had guaranteed became a claim against the society. The society then went into liquidation, and a proof for the claim of the debenture-holders, so far as unsatisfied by the assets of the firm, was admitted:—*Held*, that, whether the above contracts were contracts of insurance or of indemnity, the company was liable to the liquidators of the society for two-elevenths of the entire claim for which the proof of the debenture-holders had been admitted in the liquidation, and not merely for two-elevenths of the dividend which the estate of the society would be able actually to pay to the debenture-holders. *Held*, further, that the above contracts were contracts of insurance rather than contracts of indemnity or guarantee. *Law Guarantee Trust and Accident Society, In re (No. 2)*, 84 L. J. Ch. 1; [1914] 2 Ch. 617; 111 L. T. 817; 58 S. J. 704; 30 T. L. R. 616—C.A.

Dane v. *Mortgage Insurance Corporation* (63 L. J. Q.B. 144; [1894] 1 Q.B. 54), *Finlay* v. *Mexican Investment Corporation* (66 L. J. Q.B. 151; [1897] 1 Q.B. 517), and *Eddystone Marine Insurance Co., In re; Western Insurance Co., ex parte* (61 L. J. Ch. 362; [1892] 2 Ch. 423), applied. *Richardson, In re; St. Thomas's Hospital Governors, ex parte* (80 L. J. K.B. 1232; [1911] 2 K.B. 705), explained and distinguished. *Ib.*

Judgment of Neville, J. (83 L. J. Ch. 25; [1913] 2 Ch. 604), reversed. Order of Warrington, J. (49 L. J. N.C. 196; [1914] W. N. 117), discharged. *Ib.*

Debentures — Liquidation of Guarantee Society — Re-insurance — Debenture-holder's Rights of Indemnity — Fiduciary Relationship.] — Where certain assets of a brewery company were mortgaged to a guarantee society as trustees for the debenture-holders, and the guarantee society re-insured the debentures with other companies, on an application by the debenture-holders for a declaration that they were entitled to the benefit of all the re-insurances,—*Held*, that the society were under no fiduciary relation to the debenture-holders in respect of the money resulting from the re-insurances, and that it accordingly formed part of the general assets of the society. *Law Guarantee Trust and Accident Society, In re; Godson's Claim*, 84 L. J. Ch. 510; [1915] 1 Ch. 340; 112 L. T. 537; [1915] H. B. R. 103; 59 S. J. 234—Neville, J.

Mortgage Insurance—Condition—Building Society — Liquidation — Assignment by Liquidator without Consent of Insurers — Transfer by Operation of Law.]—A building society, which was registered under the Building Societies Acts, lent a sum of money upon mortgage and insured repayment of the loan. The policy of insurance contained a clause providing that the policy should cease to be in force if the whole or any part of the interest of the insured in the mortgage debt or mortgaged property or any part thereof should pass from the insured otherwise than by will or operation of law, unless notice in writing should be given to the insurers, and the insurance should be declared to be continued to a successor in interest by a memorandum made on the policy by them; and the expression "the insured" was declared to include a successor in interest to whom the insurance should be so declared to be or be otherwise continued. The building society was ordered to be wound up by the Court, and the official receiver, as liquidator, gave notice to the insurers of his intention to assign the mortgage together with the policy; the insurers claimed the right to refuse their consent:—*Held*, that, upon the true construction of the condition referred to, the insurers could not withhold their consent to an assignment after receipt of notice thereof; and further, that the official receiver being under an obligation to assign, the policy would pass to the assignee by operation of law, and that therefore the consent of the insurers was not required. *Doe d. Goodbehere* v. *Bevan* (3 M. & S. 353) followed. *Birkbeck Permanent Benefit Building Society* v. *Licensees' Insurance Corporation and Guarantee Fund, Lim.*, 82 L. J. Ch. 386; [1913] 2 Ch. 34; [1913] W.C. & I. Rep. 566; 108 L. T. 664; 57 S. J. 559—Neville, J.

Insurance of Performance of Executory Contract—Release of Insurers by Failure to Notify Breaches of Contract.] — A firm of contractors were employed to lay certain water pipes, and, as required by their employers, they obtained from an insurance company a policy insuring the employers against loss arising out of failure duly to complete the work. The policy contained a clause declaring that it was executed "upon the following express conditions, which shall be conditions precedent to the right of the employer to recover hereunder." The first of these conditions was: "The surety shall be notified in writing of any non-performance or non-observance on the part of the contractors of any of the stipulations or provisions contained in the said contract, and on their part to be performed and observed, which may involve a loss for which the surety is responsible hereunder." The pipe-laying contract contained stipulations that the work should be commenced on a specified date, that a certain length of pipes should be laid each week, and that the whole work should be completed within eleven months. The contractors did not commence the work until long after the stipulated date, and during the progress of the work they fell more and more heavily behind the stipulated time-table, but no notices of these breaches of the provisions of the contract were sent to the insurance company. After working for twelve months only about half the contract was completed. Shortly afterwards the contractors became bankrupt, and the employers took over the work and completed it themselves at considerable loss. In an action by them against the insurance company for recovery of the sum so lost,—*Held* (The Lord President dissenting), that as the delays by the contractors were non-observance of stipulations of the contract which might reasonably involve the insurance company in loss, the employers were bound to give notice of them, and that, as they had failed to do so, they were in breach of a condition precedent to their right of recovery under the insurance policy. *Held*, therefore, that the defenders were not liable. *Clydebank and District Water Trustees* v. *Fidelity and Deposit Co. of Maryland*, [1915] S. C. 362—Ct. of Sess.

Workmen's Compensation — Employee of Company — Company in Liquidation.] — An employee of a colliery company, which had taken out a policy indemnifying it against all sums payable under the Workmen's Compensation Act, 1906, met with an accident permanently injuring him in a mine on August 28, 1910. On December 20, 1910, the assurance company went into liquidation. The colliery company went into liquidation in February, 1912. The employee claimed the value of an annuity of 46*l.* per annum, 979*l.* The liquidator admitted the claim as to 697*l.* 11*s.* 7*d.*, deducting 54*l.* paid by the colliery company before it went into liquidation from 751*l.* 11*s.* 7*d.* the value of the annuity after deducting 25 per cent. in accordance with the Assurance Companies Act, 1909 (9 Edw. 7, c. 49), s. 17, which enacts that where an assurance company is being wound up the value of the policy shall be estimated as provided by the Sixth Schedule, and in the Sixth Schedule (D) as respects employers' liability policies provides for the purchase of an annuity equal to 75 per cent. of the annual value of the weekly payment. The question was whether the workman was entitled to the

full value of the annuity as from the date when the colliery company went into liquidation, or whether he was only entitled to 75 per cent. from the date the assurance company went into liquidation :—*Held*, that the liability of the assurance company must be ascertained at the date it went into liquidation, and that the deduction of 25 per cent. was right, but that the deduction of the 54*l.* was wrong. *Law Car and General Insurance Corporation, In re*, 110 L. T. 27; 58 S. J. 251—Astbury, J.

—— **Policy against Claims — Condition — Assured to Give Notice of Claims — Request for Arbitration.**] — A policy of insurance against claims arising under the Workmen's Compensation Act provided that the assured should forward to the insurance company every notice of claim. A notice of claim accompanied by a request for arbitration was sent to the assured, who forwarded the notice of claim, but not the request for arbitration. The company resisted liability on the ground that the assured had not forwarded every notice of claim :—*Held*, that the request for arbitration was only a step in the proceedings to obtain an award and was not a notice of claim. *Wilkinson and Car and General Insurance Corporation, In re*, 110 L. T. 468; 58 S. J. 233—C.A.

II. PLATE GLASS.

Perils—"Civil commotion or rioting"—Windows Broken by Suffragists — Payment under Former Policy—Estoppel.]—The plaintiffs, a plate-glass insurance company, took out a policy of re-insurance with the defendants, who were underwriters at Lloyd's, by which the defendants bound themselves to make good to the plaintiffs such loss as the plaintiffs might sustain from damage to plate glass "caused directly by or arising from civil commotion or rioting." In the course of an agitation for obtaining the political franchise for women known as the militant suffragette movement some of the windows insured by the plaintiffs were broken, and the plaintiffs having paid for the damage to these windows brought an action against the defendants on the re-insurance policy. It was proved in evidence that some hundreds of women appeared simultaneously in various streets in London armed with hammers, and broke a large number of plate-glass windows, including those in question; that in each case a woman going alone and without assistance broke one or more windows; that a crowd then collected and looked at the window without taking any further part in the proceedings; that the woman was arrested without resistance or attempt at rescue, and was convicted only of doing malicious damage; and it was admitted that there might have been co-operation among the women in the sense that they had all agreed to break the windows at the same time. It was further proved that under a previous re-insurance policy in the same terms the defendants had paid the plaintiffs in respect of a loss similarly caused :—*Held*, first, that there was no evidence to go to the jury that the windows had been broken by "civil commotion" or "rioting" within the meaning of the policy; secondly, that proof of the payment under the previous policy was not evidence to shew that the defendants had intended that the expression "civil commotion" in the re-insurance policy sued on had a meaning sufficiently wide to include such a disturbance as that in question, or to estop the defendants from denying that they had intended that it should have such a meaning. *London and Manchester Plate-Glass Insurance Co.* v. *Heath*, 82 L. J. K.B. 1183; [1913] 3 K.B. 411; [1913] W.C. & I. Rep. 696; 108 L. T. 1009; 29 T. L. R. 581—C.A.

Definition of "civil commotion" by Lord Mansfield in *Langdale* v. *Mason (Park on Marine Insurance* (7th ed.), p. 657; (8th ed.), p. 965) adopted. *Ib.*

Decision of Bucknill, J. (29 T. L. R. 103), affirmed. *Ib.*

III. BURGLARY.

See also Vol. VIII. 124, 1683.

Exception—Theft by Member of Assured's Business Staff—Accessory before the Fact—Principal in the Second Degree.]—The plaintiffs effected a Lloyd's burglary insurance policy with the defendants, by which the plaintiffs were insured against loss by theft or robbery or burglary of the property therein specified. There was a proviso that there should be no claim on the policy for loss by theft by members of the assured's business staff. A porter in the plaintiff's employ, having, in pursuance of a previously concocted scheme, admitted a member of a gang of thieves into the premises, a quantity of jewellery belonging to the plaintiffs was stolen. The porter took no part in the actual robbery and was not present at the time, but he afterwards received a share of the proceeds :—*Held*, that the porter was a principal in the second degree, and not (as Walton, J., had held) an accessory before the fact to the theft, and that he was actually guilty of the substantive crime of theft under section 2 of the Accessories and Abettors Act, 1861, and that the case therefore fell within the terms of the proviso, and the defendants were not liable upon the policy. *Cornwall's Case* (2 Str. 881) applied. *Saqui & Lawrence* v. *Stearns*, 80 L. J. K.B. 451; [1911] 1 K.B. 426; 16 Com. Cas. 32—C.A.

IV. OTHER POLICIES.

See also Vol. VIII. 124, 1684.

Banker's Policy — Construction — "Coin . . . in or upon their own premises . . . taken out of their possession or control by any fraudulent means"—Forged Promissory Notes Discounted for Customer — Money Realised Subsequently Drawn by Customer's Cheques.]—Under a policy dated March 16, 1913, a bank insured for twelve months against loss occasioned to them "by reason of any . . . currency, coin, or other similar securities . . . which during the said period of

twelve months may be in or upon their own premises, . . . being (while so in or upon such premises . . .) lost, destroyed, or otherwise made away with by robbery, theft, fire, embezzlement, burglary or abstraction, or taken out of their possession or control by any fradulent means." A company having opened an account with the bank, the bank discounted five promissory notes for the company, on a representation that they were drawn by customers of the company in payment of amounts due to them, and credited the amount of the notes, less discount, to the company's current account. The whole amount was drawn out by the company by cheques on the account honoured by the bank. The bank subsequently discovered that the notes were forgeries and worthless :—*Held*, that the loss so occasioned to the bank was not recoverable, under the terms of the policy, from the underwriters. *Century Bank of New York* v. *Young*, 84 L. J. K.B. 385; 112 L. T. 484; 20 Com. Cas. 90; 31 T. L. R. 127—C.A.

Decision of Pickford, J. (110 L. T. 261; 19 Com. Cas. 178), affirmed. *Ib.*

Motor Car—Refusal to Renew—Disclosure to Agent—Absence of Collusion—Validity of Policy.]—The plaintiff insured a motor car with an insurance company, but the company refused to renew the insurance, and he mentioned this fact to an agent of the defendants, another insurance company. The defendants' agent offered to propose him to the defendants, and the plaintiff, on receiving a proposal form, with the question whether any company had refused to renew his insurance, spoke about it to the defendants' agent, who replied that he would make it all right. The plaintiff did not fill in any answer to the question. The company accepted the proposal, and afterwards agreed that it should cover a new Vauxhall car. Subsequently the plaintiff insured a Siddeley car with the defendants, and they had notice that the plaintiff had had a previous insurance, but the spaces for answers to the questions on the proposal form were left blank. Accidents occurred to both cars, and the defendants refused to pay on the ground that the plaintiff had originally represented that no insurance company had refused to renew. The plaintiff brought an action against the defendants for a declaration that the policies on the Vauxhall and Siddeley cars were valid. There was no evidence of any collusion between the plaintiff and the defendants' agent :—*Held*, that, as the plaintiff had made full disclosure to the defendants' agent, and as there was no evidence of collusion, the plaintiff was entitled to the declaration. *Thornton-Smith* v. *Motor Union Insurance Co.*, 30 T. L. R. 139—Channell, J.

War Risks Policy for Three Months—Loss of or Damage to Timber at Antwerp Caused "by war . . . military or usurped power"—Occupation of Antwerp by German Army during Currency of Policy—Assured Unable to Deal with Timber—Timber Intact at Expiration of Policy.] — The plaintiffs, who were a Japanese company carrying on business in London and also at Antwerp, were insured by a non-marine Lloyd's policy for a period of three months from August 4, 1914, "against loss of or damage to timber at Antwerp directly caused by . . . war . . . military or usurped power." The policy also provided that no claim was to attach for delay or loss of market. The city of Antwerp was occupied by the German Army on October 9, 1914, during the currency of the policy, and the plaintiffs were unable to deal with the timber or to sell it, and it remained under the custody and control of the plaintiffs' agent in the same warehouse at Antwerp as that in which it was stored when the policy was taken out. On November 3, 1914, when the policy expired, the timber was still intact, although there was considerable risk that the Germans might seize it for military purposes, giving receipts for it of doubtful value. The plaintiffs sued one of the underwriters on the policy, alleging that the timber had become a total and/or a constructive total loss, and that they had given notice of abandonment :—*Held*, that, although there cannot be a constructive loss under a policy which is not a policy of marine insurance, yet the Court, in considering whether there has been a loss under such a policy, will take into account considerations similar to those which would be taken into account in determining a question of constructive total loss under a policy of marine insurance. *Mitsui & Co.* v. *Mumford*, 84 L. J. K.B. 514; [1915] 2 K.B. 27; [1915] W.C. & I. Rep. 169; 112 L. T. 556; 20 Com. Cas. 107; 59 S. J. 189; 31 T. L. R. 144—Bailhache, J.

Held, further, that the fact that Antwerp had become alien territory through its occupation by the Germans, and that the plaintiffs were in consequence forbidden to have any business relations with people in Antwerp, did not constitute a loss of the timber within the policy, and that, as the timber had not in fact been seized by the Germans during the currency of the policy, the actions failed. *Ib.*

Re-insurance—Guarantee of Issue of Debentures—Nature of Risk—Default of Company—Deficiency in Security—Realisation at Discretion of Insurer.]—In 1903 the plaintiffs and defendants entered into a contract under which the defendants agreed to accept in re-insurance 50 per cent. of risks, which the plaintiffs agreed to re-insure, arising (among other things) under debenture guarantees given by the plaintiffs. The defendants' liability was to commence simultaneously with that of the plaintiffs and follow it in every case. In 1904 the plaintiffs guaranteed an issue of 4½ per cent. debentures made by R. & Co. The principal of the debentures was to become due on winding up. The plaintiffs guaranteed the payment of interest if R. & Co. made default, and also the principal. The debentures were secured by a trust deed, of which the plaintiffs were trustee. The security was to become enforceable on R. & Co.'s default in respect of principal or interest, or on their winding up. The security was then to be realised at the trustee's discretion, with a power to postpone realisation, the power to effect which was to be regarded as conferred not only for the benefit of the debenture-holders, but for the trustee's pro-

tection and benefit as guarantor of the debentures. The plaintiffs re-insured this risk as to two-thirteenths with the defendants. In 1909 the plaintiffs went into liquidation; and under a scheme of arrangement sanctioned by the Court the interest secured by the debentures was to be payable at the rate of 3 per cent. only; the securities for the debentures were to be realised under the direction of the Court; and the debenture-holders were placed in the position of secured creditors. In 1911 R. & Co. went into liquidation, and made default in payment of interest:—*Held*, that the risk insured by the plaintiffs was the default of R. & Co. in paying principal and interest under the debentures, and not a deficiency in the security for the debenture-holders; that the risk had therefore become a claim; and that there had been no such alteration of the risk by reason of the liquidation of the plaintiffs and the scheme of arrangement as to relieve the defendants from their liability as re-insurers, even if the risk had been a deficiency in the security. *Law Guarantee Trust and Accident Society* v. *Munich Re-insurance Co.*, 81 L. J. Ch. 188; [1912] 1 Ch. 138; 105 L. T. 987; 56 S. J. 108—Warrington, J.

—— Whether Creating Fiduciary Relationship—What Risks Included—Liability of Re-insurers.]—In November, 1897, a guarantee society granted a policy of insurance of a mortgage on a public house. By a treaty of re-insurance made in June, 1898, between the guarantee society and a re-insurance company, and fixed to commence from May 16, 1898, the company agreed, subject to certain stipulations, to re-insure certain risks, including those under mortgage insurance policies. The liability of the company was to commence simultaneously with that of the society, provided that advice of the issue of fresh policies or cover notes was dispatched to the company within a certain time, it being, however, agreed that if through inadvertence re-insurance was omitted the company would, on certain conditions, hold the society covered for twelve months. Notification of re-insurances was to be forwarded to the company on a certain form at least once a week, and notification of renewals was to be forwarded to the company on a similar form. In November, 1901, the original mortgagors of the public house were released and a fresh mortgage to the same mortgagees was executed by a new mortgagor, there being several variations in the new as compared with the old mortgage, and a fresh policy of insurance of the new mortgage was granted by the society. Re-insurance of the new policy was effected by the society with the company, but all material facts relating to the risk were not disclosed by the society to the company. In 1908 the mortgagees called in their mortgage and the society became liable to make a payment under the policy. In the following year the company repudiated liability to the society:—*Held*, on a case stated in an arbitration between the society and the company, that the re-insurance treaty was a contract of indemnity only, and did not create a fiduciary relationship between the parties, that the right of the society to call for an indemnity did not include risks undertaken before the date fixed for the commencement of the contract, but that the substance of the insurance of November, 1901, was not the same as that of the insurance of November, 1897, and that therefore the company was liable under the treaty to pay their quota of the loss due from the society to the insured. *Law Guarantee Trust and Accident Society* v. *Munich Re-insurance Co.*, 31 T. L. R. 572—Eve, J.

F. INSURANCE COMPANIES.

See also Vol. VIII. 124, 1686.

I. CARRYING ON LIFE ASSURANCE BUSINESS.

Memorandum of Association—Life Assurance—Policies in Relation to Life Ultra Vires.]—A limited company, which, by its memorandum of association was prohibited from carrying on the business of life insurance, issued policies in two different forms. By one of these policies it undertook in consideration of a certain weekly premium to pay the policy-holder the respective sums of 6*l.*, 7*l.* 10*s.*, and 9*l.* at the end of five, ten, and fifteen years respectively; but, in the event of his death before the end of the fifteen years, all premiums paid since the last payment made by the company were to be returned to his personal representatives. By the second policy it undertook, in consideration of a certain premium, to pay the policy-holder a certain sum at the termination of a certain number of years; but, in the event of his death before the end of the term, a certain percentage of the premiums already actually paid was to be returned to his personal representatives:—*Held*, that policies made in either of these two forms were policies of life insurance, and therefore, as such, *ultra vires* the company. *Joseph* v. *Law Integrity Insurance Co.*, 82 L. J. Ch. 187; [1912] 2 Ch. 581; [1913] W.C. & I. Rep. 337; 107 L. T. 538; 20 Manson, 85—C.A.

Industrial Society—Sums Payable to Members on Death—Proportion of Average Purchases—Life Assurance Business—"Policy of life assurance."] — The defendants, an industrial and provident society registered under the Industrial and Provident Societies Act, 1876, in 1911 amended their rules so as to provide that they should have power to carry on the business of insurance under rule 14A, which empowered the committee of management to invest or appropriate out of investments or from the profits of the business "a fund for insuring the building, fixtures, and stock against losses by fire or otherwise, also for providing a sum to be paid on the death of a member, or the wife or husband of a member, such sum to be proportioned to one year's average purchases of the member from the society during the three years immediately preceding death." After the adoption of this rule the society advertised "free life insurance" and that it paid 4*s.* in the pound

on the average twelve months' purchases on the death of a member or husband of a member, and 2*s.* in the pound on the death of a married woman member or wife of a member, and sums were in fact paid on the deaths of members and of the husbands and wives of members. The plaintiff, a member of the society, brought an action alleging that the society was carrying on life insurance business and was an assurance company within the Assurance Companies Act, 1909, and that the business was *ultra vires*, and in any case could not be carried on without a deposit of 20,000*l.* in accordance with the Act, and he asked for an injunction to restrain the society from so doing. Members of the society received share books, membership cards, purchase books, and copies of rules of the society: —*Held* (Phillimore, L.J., dissenting), that the society was not carrying on life assurance business within the Assurance Companies Act, 1909. The membership cards or other documents received by members did not constitute policies of assurance within the Act, which, by section 30 (*a*) provides that a "policy on human life" means "any instrument by which the payment of money is assured on death . . . or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life." *Hampton* v. *Torteth Co-operative Society*, 84 L. J. Ch. 633; [1915] 1 Ch. 721; 113 L. T. 62; [1915] W.C. & I. Rep. 488; 59 S. J. 397; 31 T. L. R. 314—C.A.

II. TRANSFER OF BUSINESS.

Competency of Application for Sanction to Proposed Transfer.] — The directors of an insurance company, which was conducting (*inter alia*) an unprofitable life insurance business, and which had power under its memorandum and articles of association to sell or dispose of the business and property of the company or any part thereof in consideration of payments in cash, or such other considerations as the directors might deem proper, entered into an agreement with another company, of greater financial stability, in terms of which the life policies of the former company were to be cancelled and policies of the latter company, on terms generally similar to those of the cancelled policies, were to be issued in lieu thereof. Non-profit policies were to be issued in lieu of cancelled profit-bearing policies, but the holders of such policies had the option of obtaining profit-bearing policies of the new company at an increased premium, and an actuary reported that the future bonus prospects of such insured would be greatly improved under the new policies. None of the policy-holders objected to the proposed transfer. In a petition under section 13 of the Assurance Companies Act, 1909, for sanction of this arrangement, presented in name of the company,—*Held*, first (*dub.* Lord Johnston), that the petition had been competently presented although it was in the name of the company and not of the directors; and secondly (*diss.* Lord Johnston), that the proposed arrangement, although it involved the cancelling of the old policies and the issuing of new policies, was a transfer of business within the meaning of section 13; and, further, that under the articles of the company it was within the powers of the directors to enter into such an arrangement. *Empire Guarantee and Insurance Corporation, In re*, [1911] S. C. 1296—Ct. of Sess.

Sale of Business of Insurance Company — Specific Performance — Failure to Deliver — Deposit under Assurance Companies Act, 1909.]—The respondent company agreed to sell their business to the appellant company, including a sum of 20,000*l.* deposited with the Paymaster-General under the provisions of section 2 of the Assurance Companies Act, 1909, as a condition of carrying on employers' liability insurance business:—*Held*, that such deposit could only be transferred subject to the outstanding liabilities on policies issued by the respondents in respect of employers' liability insurance business, and that the respondents were entitled to specific performance of the contract, although they could not give a clean transfer of the 20,000*l.* deposit. *United London and Scottish Insurance Co.* v. *Omnium Insurance Corporation*, 84 L. J. Ch. 777—H.L. (E.)

Judgment of the Court of Appeal affirmed. *Ib.*

Dispensing with Notice to Policy-holders.]—On an amalgamation or transfer under the Assurance Companies Act, 1909, s. 13, the Court will, where the policies are very numerous and of small value, dispense with the statutory notice to small policy-holders, but this will only be done where other steps are taken to inform the policy-holders of the proposed arrangement, and to give them an opportunity of objecting to the same. *Hearts of Oak Assurance Co., In re* (*No.* 1), 58 S. J. 433—Eve, J.

Petition—Absence of Opposition—Duty of Court.]—Under section 13 of the Assurance Companies Act, 1909, the Court has the duty of considering objections to the transfer of one assurance company to another, whether there is or is not any opposition to the petition for a transfer. *Hearts of Oak Assurance Co., In re* (*No.* 2), 30 T. L. R. 436—Eve, J.

"Subsidiary company."] — The fact that one assurance company has acquired a controlling interest in another assurance company by the purchase of shares in that other company, and that the two companies have entered into agreements for the guaranteeing of each other's policies and for mutual re-insurance, does not amount to a transfer of assurance business so as to constitute one company a subsidiary company and the other a principal company within section 16 of the Assurance Companies Act, 1909. *Lancashire Plate-Glass Fire, and Burglary Insurance Co., In re*, 81 L. J. Ch. 199; [1912] 1 Ch. 35; 105 L. T. 570; 19 Manson, 149; 56 S. J. 13—Swinfen Eady, J.

III. DEPOSIT.

Application for Payment of Dividends—Summons or Petition.]—An application for pay-

ment of dividends on the deposit paid into Court, under the Life Assurance Companies Act, 1909, and the Board of Trade Order, 1910, rules 2-4, may be made by summons under Order LV. rule 2 (3) of the Rules of the Supreme Court, 1883, and need not be made by petition. *Royal Exchange Assurance Corporation, In re* ([1910] W. N. 211) not followed. *New York Life Assurance, In re*, 60 S. J. 106—Sargant, J.

See also British Union and National Insurance Co., In re, post, col. 734.

IV. WINDING-UP.

Creditors—Policy-holder.]—A Scottish insurance company, carrying on employers' liability insurance and other classes of insurance business, entered into a contract of re-insurance with a Welsh insurance company whereby it undertook, in consideration of a percentage of the premiums, to relieve the Welsh company of claims arising under its employers' liability insurance policies. The Scottish company having gone into liquidation at a date when it was indebted, under the re-insurance contract, to the Welsh company in certain sums, the latter company claimed to be ranked in respect of these sums on the employers' liability fund of the Scottish company along with its direct policy-holders: —*Held*, first, that section 3 of the Assurance Companies Act, 1909, did not give a preference on the separate fund of a particular class of business to the policy-holders over the ordinary creditors of the company having claims in connection with that class of business; and secondly, that the Welsh company as a creditor of the Scottish company in its employers' liability insurance business, was accordingly entitled to be ranked, along with the direct policy-holders, on that company's employers' liability fund. *Glasgow Assurance Corporation (Liquidators)* v. *Welsh Insurance Corporation*, [1914] S. C. 320—Ct. of Sess.

Whether the Welsh company was a "policyholder" of the Scottish company within the meaning of the Act, *quære*. *Ib.*

Employers' Liability Policies — Liabilities "requiring to be valued" — Date at which Valuation to be Ascertained.] — Employers were insured against workmen's compensation risks with an insurance company which went into liquidation. At the date of the liquidation the employers were making weekly payments to two of their workmen, who had been injured. After the date of the liquidation, but before they had lodged a claim for a ranking, they compromised these weekly payments for a lump sum. Thereafter they lodged a claim for a ranking for a sum made up according to the Rules in the Schedule to the Assurance Companies Act, 1909, for valuing weekly payments. That sum was greatly in excess of the amount actually paid by them to compromise the workman's claims. They maintained, however, that the valuation of the liability under the policy fell to be made as at the date of liquidation, and was unaffected by the subsequent compromise of the weekly payments. The Court rejected the claim, holding that the provisions of the Assurance Companies Act did not apply in respect that the date when the valuation fell to be made was the date of the claim, and that, as the value of the weekly payments had *de facto* been ascertained at that date, there was no liability "requiring to be valued." *Empire Guarantee and Insurance Corporation (Liquidators)* v. *Owen & Sons, Lim.*, [1915] S. C. 985—Ct. of Sess.

Contributories—Mutual Insurance Policies — Fixed Premium Policies — Liabilities of Policy-holders.]—*Held*, on the construction of the P. Underwriting Association's memorandum, that the liability of holders of mutual insurance policies issued by the association was limited to 5*l.* in respect of each policy. *Held*, further, that the association could validly issue fixed-premium policies, but that the holders of these policies had not by taking them out thereby agreed to become members of the association, and therefore that they were not properly put on the list of contributories in the winding-up of the association. *Corfield* v. *Buchanan*, 29 T. L. R. 258—H.L. (E.)

Life Assurance Deposit—Priorities—Claim of Fire and Accident Policy-holders.]—In the winding-up of an insurance company transacting life assurance and other business,—*Held*, that the holders of fire and accident policies had no claim upon the statutory deposit of 20,000*l.* made in respect of the life assurance business in priority to the claims of general creditors. *British Union and National Insurance Co., In re*, 83 L. J. Ch. 596; [1914] 1 Ch. 724; 21 Manson, 297; 30 T. L. R. 290—Astbury, J.

Annuity Granted to Manager of Life Department in Compromise of Claim for Damages—Claim of Annuitant.]—The company by deed had agreed to pay an annuity to a former manager of their life department in satisfaction of a claim for breach of contract to employ:—*Held*, that the manager was an "annuitant" within the meaning of section 30 (*b*) of the Assurance Companies Act, 1909, and could claim priority for his annuity out of the statutory deposit as a life policyholder over the general creditors. *British Union and National Insurance Co., In re*, 83 L. J. Ch. 596; [1914] 2 Ch. 77; 111 L. T. 357; 21 Manson, 297; 30 T. L. R. 520—C.A.

INTEREST.

Claim for Sum Certain—Set-off.]—A claim may be for a "sum certain" within the meaning of section 28 of the Civil Procedure Act, 1833, upon which interest may be claimed, notwithstanding that a set-off is pleaded which may cause a reduction in the amount which may finally be found due to the plaintiff. *Alexandra Docks and Railway Co.* v. *Taff Vale Railway*, 28 T. L. R. 163—C.A.

As Damages.]—*See* DAMAGES.

On Arrears of Annuity.]—*See* ANNUITY.

On Costs.]—*See* COSTS.

On Legacies.]—*See* WILL.

INTERNATIONAL LAW.

I. SOVEREIGN STATES, THEIR RULERS AND OFFICERS.

See also Vol. VIII. 178, 1693.

Indian Native Prince—Extra-territoriality—Status of Sovereign.]—The native princes of India, falling within the class referred to in section 18, sub-section 5 of the Interpretation Act, 1889, though not independent, but subject to the suzerainty of his Majesty, are reigning sovereigns to the extent that they are immune from the jurisdiction of an English Court. An Indian prince, coming within this category and sued as co-respondent in a suit for divorce, was on his application struck out of the proceedings. *Statham* v. *Statham*, 81 L. J. P. 33; [1912] P. 92; 105 L. T. 991; 28 T. L. R. 180—Bargrave Deane, J.

Diplomatic Privilege—Waiver.]—A foreign diplomatist is, by common law and statute, absolutely exempt from the jurisdiction of the English Courts. If the decision in *Taylor* v. *Best* (23 L. J. C.P. 89; 14 C. B. 487) can be maintained, and it is sought to shew that he has waived his privilege, the waiver must be strictly proved, and it must also be shewn that he had at the time of the alleged waiver a full knowledge of his privileged position and a desire to waive it. Further, the privilege being that of the sovereign State which he represents, it is doubtful if a diplomatist can waive his right to exemption and submit himself to the jurisdiction of the English Courts without first obtaining the sanction of his own Government. *Republic of Bolivia Exploration Syndicate, Lim., In re* (*No.* 1), 83 L. J. Ch. 226; [1914] 1 Ch. 139; 109 L. T. 741; 110 L. T. 141; 58 S. J. 173; 30 T. L. R. 78—Astbury, J.

II. PERSONS.

See also Vol. VIII. 196, 1694.

a. British Nationality.

Son Born Abroad of Naturalized British Subject.]—Prior to the coming into operation of the British Nationality and Status of Aliens Act, 1914, a child born in a foreign State did not, by the mere fact that his father was a naturalized British subject, obtain the status of British nationality. *Rex* v. *Albany Street Police Superintendent; Carlebach, Ex parte*, 84 L. J. K.B. 2121; [1915] 3 K.B. 716; 113 L. T. 777; 31 T. L. R. 634—D.

b. Alienage.—*See* ALIENS.

c. Husband and Wife and Divorce.

1. *Marriage.*

English Suit for Restitution of Conjugal Rights—English Marriage—Parties Resident and Domiciled Abroad—Foreign Court—Decree of Nullity—Jurisdiction of English Court.]—Where a marriage has been celebrated in England between two persons, neither of whom has ever possessed a domicil or a residence in England, the English Court has no power, in a suit for restitution of conjugal rights, to serve the citation and petition upon the respondent abroad or to grant a decree of restitution, or to entertain a suit for a declaration that the marriage is valid. *De Gasquet James (Countess)* v. *Mecklenburg-Schwerin (Duke)*, 83 L. J. P. 40; [1914] P. 53; 110 L. T. 121; 58 S. J. 341; 30 T. L. R. 329—Evans, P.

The principle of the decision in *De Gasquet James (Countess)* v. *Mecklenburg-Schwerin (Duke)* (83 L. J. P. 40; [1914] P. 53), negativing power in the Court to order service of process out of the jurisdiction in a suit for restitution of conjugal rights, is restricted to the case of a respondent not domiciled or resident in England at the time of the institution of the suit, or, *semble*, who had not a matrimonial home in England at the date when cohabitation ceased. Where it appears from the petition that the parties were domiciled in England at the time of the institution of the suit, or that they had a matrimonial home in England at the date when cohabitation ceased, or that they were both resident in England at the time of the institution of the suit, the petition and citation may be served either within or without His Majesty's dominions, and in any event a decree for restitution of conjugal rights may be so served if made in a suit which there was jurisdiction to entertain. Additional Divorce Rules 221 and 222 will regulate the practice so laid down. *Perrin* v. *Perrin; Powell* v. *Powell*, 83 L. J. P. 69; [1914] P. 135; 111 L. T. 335; 30 T. L. R. 497—Evans, P.

2. *Marriage Settlement.*

Scottish Law—Scottish Domicil—English Settlement — Husband's Contract as to Separate Property—After-acquired Property Clause—Jus Relicti and Legitim—Contract "Affected."]—An Englishwoman married to a domiciled Scotchman made a will by which she disposed, to the complete exclusion of her husband and their only child, of all her movable property, consisting of savings out of the income of movable property to which she was entitled for life for her separate use without power of anticipation—(*a*) under an antenuptial settlement made by her father in English form (her husband being a party and covenanting to settle in like manner her after-acquired property, with a trust for its conversion in common form), and (*b*) under the wills of third parties. The husband and child having claimed the *jus relicti* and *legitim* given to surviving husbands and children by sections 6 and 7 of the Married Women's Property (Scotland) Act, 1881,—*Held*, that the settlement, construed as it must be according to English law, amounted to a contract by the husband, binding on him and on the issue, that the wife should have a power (*inter alia*) of disposition by will—such being the effect of saying that the property should belong to her for her separate use; that this power was not lost by her acquiring on her marriage a Scottish domicil; that, seeing she had exercised the power, the rights given by the law of the domicil were subject thereto; that savings out of income were as much separate property as the income; that savings out of income derived under the wills were equally within the contract, and were not liable to conversion (the express wording of the trust excluding them) or affected by the restraint on anticipation—imposed, as this was held to be, by the settlement itself and not merely by third parties; and that even if the settlement were construed according to Scottish law the result would be the same, since the power of testamentary disposition was a *par contractus*, and, as such, was saved by section 8 of the Act from being "affected" by the two previous sections. *Mackenzie, In re; Mackenzie* v. *Edwards Moss*, 80 L. J. Ch. 443; [1911] 1 Ch. 578; 105 L. T. 154; 55 S. J. 406; 27 T. L. R. 337—Swinfen Eady, J.

Destination to "next-of-kin"—Marriage Contract Executed in Scotland — Spouses Dying Domiciled in England.]—An antenuptial contract of marriage was entered into between an Englishman residing in Scotland and a Scotswoman. The contract was prepared by a Scottish solicitor, was in Scottish form, and contained a provision that a fund provided by the wife should after her death, failing issue, belong to her "next-of-kin, excluding her husband." Some years after the marriage the parties moved from Scotland to England, and the wife died domiciled there: —*Held* (Lord Johnston dissenting), that it was the intention of the parties to the contract that the wife's next-of-kin entitled to succeed to the fund should be ascertained according to the law of Scotland, and accordingly that brothers and sisters of the half-blood were excluded. *Lister's Judicial Factor* v. *Syme*, [1914] S. C. 204—Ct. of Sess.

Scottish Settlement — Beneficiaries and Trustees Resident in England—Form.]—The marriage settlement of an Englishman and a lady of Scottish domicil, comprised both English property of the husband and an interest in reversion of the wife under a Scottish settlement made in Scottish form, in terms unknown to English law; the beneficiaries and the present trustees were now all resident in England, and the whole of the trust funds were now invested in English securities:—*Held*, that the settlement still remained a Scottish settlement, to be dealt with in accordance with Scottish law, and that the Public Trustee could not act as trustee of a Scottish or foreign settlement. *Hewitt's Settlement, In re; Hewitt* v. *Hewitt*, 84 L. J. Ch. 358; [1915] 1 Ch. 228; 112 L. T. 287; 59 S. J. 177; 31 T. L. R. 81—Eve, J.

3. *Divorce.*

Marriage in England between Englishwoman and Domiciled Mexican—Irregularity by Mexican Law.]—The petitioner, an Englishwoman, married in England a domiciled Mexican. By Mexican law a marriage is not valid in Mexico unless it is registered by one or other of the parties to it. The marriage of the petitioner and respondent had not been registered in Mexico. The petitioner, by registering the marriage in Mexico, could have obtained a judicial separation, a decree of divorce not being granted in that country. The petitioner having brought a suit for divorce in this country on the ground of the respondent's adultery, cruelty, and desertion, —*Held*, that as the respondent's domicil was Mexican, the Court had no jurisdiction to entertain the suit. *Ramos* v. *Ramos*, 27 T. L. R. 515—Bargrave Deane, J.

Marriage Solemnised in England between Greek Subject and Domiciled Englishwoman —Decree of Nullity in Greece at Instance of Husband—Re-marriage of Husband—Suit by Wife for Divorce in England.]—The petitioner, a domiciled Englishwoman, was married in England to the respondent, who was a Greek subject domiciled in Greece. Subsequently the husband deserted the petitioner, and obtained from a Greek Court a decree of nullity of his marriage with the petitioner on the ground that it had not been celebrated in accordance with the rites of the Greek Church, in that no priest of that Church was present at the ceremony as required by Greek law. The respondent thereafter married another woman in Greece, with whom he was living. The petitioner filed a petition for divorce on the ground of the respondent's desertion and adultery:—*Held*, that the Court had jurisdiction to grant the relief claimed by the petitioner, inasmuch as the respondent having gone abroad and taken adverse advantage of his own domicil, the petitioner had reverted to her English domicil. *Stathatos* v. *Stathatos*, 82 L. J. P. 34; [1913] P. 46; 107 L. T. 592; 56 S. J. 114; 29 T. L. R. 54—Bargrave Deane, J.

English Marriage Annulled by Domestic Tribunal of Foreign Husband Domiciled Abroad — Wife Left in Country where Marriage Recognised as Valid—Wife Treated as having Domicil of her Own—Capacity of Wife to Sue in Court of her Domicil for Causes there Recognised.]—The rule that the domicil of the spouses, which is that of the husband, is the test of jurisdiction in cases of dissolution, is not without exception. In certain cases a wife may be treated as having a domicil in her own country, which is not that of the husband. The rule as to domicil assumes the existence of a marriage the validity of which is recognised in the country where the suit is brought and that both parties are domiciled there. If, however, the country of the husband's domicil refuses to recognise the marriage, and therefore will not entertain a suit for divorce against him, the justice of the rule as to domicil, which is international, ceases to be apparent, and the wife, having no right of suit against the husband in his country, and being left in the country of her original domicil, where the marriage was celebrated and is still recognised as binding upon both parties, is entitled to sue in the latter country for the dissolution of the tie, which is recognised therein, though not in her husband's country, in cases where the grounds of suit would be sufficient for a divorce if the husband had been domiciled in her country. *De Montaigu* v. *De Montaigu*, 82 L. J. P. 125; [1913] P. 154; 109 L. T. 79; 57 S. J. 703; 29 T. L. R. 654—Evans, P.

Dictum of Lord Gorell in *Ogden* v. *Ogden* (77 L. J. P. 34, at p. 51; [1908] P. 46, at p. 82) followed. *Stathatos* v. *Stathatos* (82 L. J. P. 34; [1913] P. 46) approved. *Ib.*

4. *Other Matters.*

General Power of Appointment under English Will — Exercise by Domiciled Foreigner—Operation of—Law of Domicil.]—A domiciled Dutchwoman having under an English will a general testamentary power of appointment over personal property, made a will in Dutch form, but executed and attested as required by English law, whereby she appointed her husband sole heir of all of which the law in force at the time of her death should allow her to dispose in his favour, and appointed him her executor. According to Dutch law the testatrix could not dispose of more than seven-eighths of her own estate in this way, the remaining one-eighth going to her mother:—*Held* (reversing Parker, J.), that, the effect of the will being to make the appointed property assets of the testatrix for all purposes, the disposition became subject to the law of the domicil, and that the husband was therefore beneficially entitled to no more than seven-eighths of the appointed property, the remaining one-eighth going to the mother. *Hadley, In re; Johnson* v. *Hadley* (78 L. J. Ch. 254; [1909] 1 Ch. 20), followed and applied. *Pouey* v. *Hordern* (69 L. J. Ch. 231; [1900] 1 Ch. 492), *Mégret, In re; Tweedie* v. *Maunder* (70 L. J. Ch. 451; [1901] 1 Ch. 547), and *Bald, In re; Bald* v. *Bald* (76 L. T. 462), considered. *Pryce, In re; Lawford* v. *Pryce*, 80 L. J. Ch. 525; [1911] 2 Ch. 286; 105 L. T. 51—C.A.

Will of Domiciled Foreigner—Restriction on Testamentary Capacity by Law of Domicil—Subsequent Acquisition of English Domicil—Extension of Power of Disposition—Effect on Provisions of Will.]—By her will made in 1868, in Dutch form, a domiciled Dutchwoman appointed her husband heir of her estate "with the reservation only of the legitimate portion or the lawful share coming to her relatives in a direct line." By Dutch law she could only dispose by will of one-fourth of her estate, the remaining three-fourths passing to her children. In 1889 she and her husband came to live in this country, and acquired an English domicil. She died in 1903, leaving her husband and several children surviving her:—*Held*, that on the true construction of the will the testatrix had not made a gift of three-fourths of her estate to her children, but had constituted her husband her universal legatee so far as she could so constitute him, while recognising the possibility that her children would become entitled to share in her estate, and that, her testamentary power of disposition having been extended to the whole of her estate by her acquisition of an English domicil, the whole of her residuary estate passed to her husband. *Bridger, In re; Brompton Hospital* v. *Lewis* (63 L. J. Ch. 186; [1894] 1 Ch. 297), applied. *Groos, In re; Groos* v. *Groos*, 84 L. J. Ch. 422; [1915] 1 Ch. 572; 112 L. T. 984; 59 S. J. 477—Sargant, J.

Foreign Parents Divorced Abroad—Decree of Foreign Court Regulating Access to Children.]—The marriage of two domiciled Danes was dissolved by decree under the law of Denmark. By this decree the custody of a son of the marriage was awarded to the father and access to the child by the mother was refused. Thereafter, both parents being resident in Scotland, the mother presented a petition to the Scottish Courts for access to the child "in respect of her natural rights as his mother":—*Held*, that the question of access having been determined by the Court of the parents' domicil, the Scottish Courts had no jurisdiction to entertain an application based on such grounds. *Westergaard* v. *Westergaard*, [1914] S. C. 977—Ct. of Sess.

Semble, the Scottish Courts have power to protect the children of foreign parents resident in Scotland, and may for this purpose intervene in an application brought in the interests of the children. *Ib.*

III. DOMICIL.

See also Vol. VIII. 235, 1703.

Married Woman Entitled to Judicial Separation—Separate Domicil.]—A married woman who had left her husband, a domiciled Scotchman, successfully defended a Scottish suit brought by him, on the ground of wilful non-adherence and desertion, for divorce *a vinculo*, the House of Lords expressing the opinion that she would be entitled to a decree for judicial separation. She did not claim

such a decree, but lived apart till her death under circumstances evincing an intention to acquire an English domicil :—*Held*, on the authority of *Dolphin* v. *Robins* (29 L. J. P. 11; 7 H.L. C. 390), that she had no power to acquire a new domicil independent of that of her husband. *Mackenzie, In re; Mackenzie* v. *Edwards-Moss*, 80 L. J. Ch. 443; [1911] 1 Ch. 578; 105 L. T. 154; 55 S. J. 406; 27 T. L. R. 337—Swinfen Eady, J.

See also cases under DIVORCE, *ante*, cols. 738, 739.

IV. PROPERTY.

See also Vol. VIII. 257, 1706.

Charity — Mortmain — Bequest — Testator Domiciled in England—Mortgages on Freeholds in Ontario—Movables or Immovables—Impure Personalty—Lex Rei Sitæ—Invalidity of Bequest.]—A testator, who died in 1888, domiciled in England, bequeathed property, which included mortgages on freeholds in Ontario, for charitable purposes. The mortgages contained covenants to pay the moneys thereby secured. At the date of the testator's death the Charitable Uses Act, 1735, then in force, extended to Ontario, and would admittedly have invalidated the bequest of the mortgages had the testator been domiciled there :—*Held* (Fletcher Moulton, L.J., doubting), that mortgages on land are deemed to be immovables and not movables, and governed by the *lex rei sitæ*, and that therefore the bequest of the mortgages was a gift of impure personalty and was invalid. *Jeringham* v. *Herbert* (6 L. J. (o.s.) Ch. 134; 4 Russ. 388) and *Fitzgerald, In re; Surman* v. *Fitzgerald* (73 L. J. Ch. 436; [1904] 1 Ch. 573), applied. *Hoyles, In re; Row* v. *Jagg* (*No.* 1), 80 L. J. Ch. 274; [1911] 1 Ch. 179; 103 L. T. 817; 55 S. J. 169; 27 T. L. R. 131—C.A.

The terms "movable" and "immovable" are not technical terms in English law, though they are often used, and conveniently used, in considering questions between English law and foreign systems which differ from that law. But where the two systems are identical, *quære* whether the terms are appropriate—*per* Cozens-Hardy, M.R. The division into movable and immovable property is no part of the law either of England or of Canada, and is only called into operation in England when the English Courts have to determine rights between domiciled Englishmen and persons domiciled in countries which do not adopt the English division into real and personal property—*per* Farwell, L.J. *Ib.*

Disposition by One Instrument of Real Estate in England and Scotland — Use of Technical Expressions Creating Estate Tail in England—Difference of Incidents of Estate in England and Scotland—Giving Effect to Estate as to English Realty according to English Law.]—M., being seised in fee-simple of real estate in England, and entitled to a disposable estate according to the law of Scotland in lands in Scotland, made a trust disposition and settlement in Scotch form whereby he directed his trustees to hold his heritable or real estate in Scotland, and the real estate in England, for behoof of his eldest son and the heirs male of his body in fee, whom failing his second son and the heirs male of his body in fee. By the law of Scotland this disposition did not create a strict entail, but gave the eldest son power to dispose of the property. The eldest son died without issue and without having disentailed, but leaving a trust disposition and settlement effectual, by Scotch law, to dispose of the property :—*Held*, that the words "heirs male of his body in fee" being technical and proper expressions for the creation of an estate in tail male in lands in England, that estate must take effect as to the English real estate according to the law of England, although the incidents of an estate tail in Scotland were different from its incidents in England. Observations of Lord Selborne in *Studd* v. *Cook* (8 App. Cas. 577) applied. *Miller, In re; Baillie* v. *Miller*, 83 L. J. Ch. 457; [1914] 1 Ch. 511; 110 L. T. 505; 58 S. J. 415—Warrington, J.

Foreign Lunatic not so Found—Provisional Administrator — Order of French Court — Securities in Hands of English Bailees—Refusal to Deliver without Order of the English Court.] — A domiciled Frenchman resident in Paris deposited securities for safe custody with the defendants in London. He afterwards became a person of unsound mind not so found, and a provisional administrator of his property was appointed by the French Court with express power to receive the securities in question. The defendants, however, when requested to do so, refused to act on the order of the French Court, and insisted on an action being brought in the English Court, in which they submitted to act as the Court should direct, but claimed to retain their costs of the action. There were no lunacy proceedings in England :—*Held*, that having regard to the decision of the Court of Appeal in *Didisheim* v. *London and Westminster Bank* (69 L. J. Ch. 443; [1900] 2 Ch. 15), the defendants, in refusing to act on the order of the French Court, had shewn an undue and unreasonable excess of caution, and ought to bear their own costs of the action. *Pélégrin* v. *Coutts & Co.*; *Pélégrin* v. *Messel & Co.*, [1915] 1 Ch. 696; 113 L. T. 140—Sargant, J.

Domiciled Foreigner — Italian Holograph Will—Gift of English Real Estate—Election.]—Certain real estate at D. in England was devised to A. by an Italian will by a testatrix domiciled in Italy at the date of her death. The testatrix also thereby nominated her daughter, who was her heiress-at-law, the residuary legatee of her real and personal estate of whatsoever nature, but the will was not executed so as to pass real estate according to English law :—*Held*, that the daughter was under no obligation by virtue of any actual or implied contract to give up to A. the real estate at D., nor was she, under the circumstances of the case, bound to elect between the personalty bequeathed to her and the real estate at D. *Hearle* v. *Greenbank* (3 Atk. 695, 715) followed. *De Virte, In re; Vaiani* v. *De Virte*, 84 L. J. Ch. 617; [1915] 1 Ch. 920; 112 L. T. 972—Joyce, J.

V. CONTRACTS.

See also Vol. VIII. 280, 1713.

By what Law Governed — Minor with Foreign Domicil Contracting in Scotland.]—A minor, whose domicil was Irish and whose father resided in Ireland, took service as a labourer with a firm in Scotland. He was injured by an accident in the course of his employment, for which he agreed, without consulting his father, to accept compensation under the Workmen's Compensation Act, 1906. After compensation had been paid for some time he brought an action claiming damages at common law in respect of his injuries, contending (*inter alia*) that being a minor he was not bound by the agreement:—*Held*, that the pursuer's capacity as a minor to enter into the agreement fell to be determined not by the *lex domicilii* (Irish law), but by the *lex loci contractus* (Scots law). *M'Feetridge* v. *Stewarts and Lloyds*, [1913] S. C. 773—Ct. of Sess.

Contract made in England and in Accordance with Law thereof—Agreement to Submit to Arbitration — Proceedings Commenced in Foreign Court in Breach of Contract — Jurisdiction to Restrain.]—The Court has discretionary jurisdiction to restrain the prosecution of proceedings in a foreign Court by an English persou, if the bringing of those proceedings is in breach of a contract made in this country. Where, therefore, a contract provided that the same should be "construed and take effect as a contract made in England and in accordance with the law of England," and that the rights, duties, or liabilities of the parties thereto should be referred to arbitration in conformity with the provisions of the Arbitration Act, 1889, the award of the arbitrators to be a condition precedent to any liability of either party, an injunction to restrain one of the parties from continuing or prosecuting (except under or in pursuance of an award under the contract) proceedings commenced by that party against the other in a foreign Court was held to be rightly granted. *Hamlyn* v. *Talisker Distillery Co.* ([1894] A.C. 202) applied. *Pena Copper Mines* v. *Rio Tinto Co.*, 105 L. T. 846—C.A.

VI. FOREIGN JUDGMENT.

See also Vol. VIII. 323, 1720.

French Law — Prosecution for Criminal Offence — Intervention of Person Claiming Damages—Judgment Awarding Damages and Inflicting Penalties—Severability.]—By the law of France, where a prosecution is instituted for a criminal offence a person who has been damaged by the act constituting the criminal offence has the option, instead of instituting separate civil proceedings, of intervening in the prosecution and claiming damages from the accused, and the Court may award him damages and at the same time inflict a penalty for the criminal offence:—*Held*, that for the purpose of enforcing in this country the part of the judgment awarding damages, that part can be severed from the part inflicting the penalty, and that such enforcement is not a violation of the rule of international law that the Courts of one country will not enforce the penal laws of another. *Raulin* v. *Fischer*, 80 L. J. K.B. 811; [1911] 2 K.B. 93; 104 L. T. 849; 27 T. L. R. 220—Hamilton, J.

Rule of Foreign Law Excluding Evidence of Parties—Whether Contrary to Substantial Justice.] — The Court will not refuse to enforce a judgment obtained in an Italian Court merely because by Italian law neither party to a litigation can be called as a witness on his own behalf. The exclusion of such evidence cannot be said to be contrary to substantial justice within the meaning of the rule laid down by Lindley, M.R., in *Pemberton* v. *Hughes* (68 L. J. Ch., at pp. 285 *et seq.*; [1899] 1 Ch., at p. 790). *Scarpetta* v. *Lowenfeld*, 27 T. L. R. 509—A. T. Lawrence, J.

Exclusion of Evidence in Foreign Court—Whether Contrary to Natural Justice.]—Where a foreign judgment has been pronounced by a Court of competent jurisdiction, and the parties have been duly summoned and have had a hearing or an opportunity of being heard, an English Court will not refuse to enforce it as being contrary to natural justice merely because the foreign Court has excluded evidence tendered to shew that the written contract in respect of which the action was brought was induced by fraudulent verbal misrepresentation. *Robinson* v. *Fenner*, 83 L. J. K.B. 81; [1913] 3 K.B. 835; 106 L. T. 542—Channell, J.

Divorce Suit in India—Award of Damages against Co-respondent — Co-respondent not Resident in India where Suit Commenced or Pending — Action against Co-respondent on Indian Decree.] — The English Courts will recognise and enforce the judgments as to *status* of the Indian Courts in matters within their jurisdiction, and will also recognise and enforce the ancillary orders as to damages such as they themselves make in similar cases. *Phillips* v. *Batho*, 82 L. J. K.B. 882; [1913] 3 K.B. 25; 109 L. T. 315; 29 T. L. R. 600—Scrutton, J.

The plaintiff, who was domiciled in British India, obtained in the Bengal High Court a divorce from his wife on the ground of her adultery with the defendant, and an award of damages against the defendant, who was joined in the suit as co-respondent. The defendant, who was a British subject domiciled in England, had resided in India, but had left and returned to England before the divorce proceedings were commenced. He was served by registered post in England, but did not appear in the divorce proceedings. In an action against the defendant to recover the damages awarded against him in the divorce suit,—*Held*, that the plaintiff was entitled to recover, as the decree against the defendant in India, being ancillary to the decree of divorce, which was a judgment *in rem*, was enforceable in this country. *Ib.*

Judgment of Colonial Court — Defendant Native of Colony — Judgment Recovered in

Defendant's Absence — Enforceability in English Court.]—The defendant was born in Victoria and lived at Melbourne for twenty-six years until 1890, when he came to reside in England. Since then he had lived chiefly in London, but had visited Victoria during certain periods down to 1906. The plaintiffs issued a writ against the defendant in the Supreme Court of Victoria to recover a sum of money alleged to be due from him on accounts stated. The writ was served upon the defendant in London, but he did not appear to it, and the plaintiffs signed judgment against him in the Supreme Court of Victoria. They subsequently brought an action against him in this country upon the judgment so recovered. The defendant pleaded that the Supreme Court of Victoria had no jurisdiction over him or the alleged cause of action:—*Held*, that the defendant was not under the circumstances domiciled in Victoria, and that the fact that he was born there did not constitute him a subject of the colony so as to make the judgment binding upon him in an English Court. *Gibson & Co.* v. *Gibson*, 82 L. J. K.B. 1315; [1913] 3 K.B. 379; 109 L. T. 445; 29 T. L. R. 665—Atkin, J.

Appearance of Defendant in Foreign Court Voluntary Appearance — Enforceability of Judgment in English Court.] — Proceedings were commenced by the plaintiff, who carried on business in Paris, in the Tribunal de Commerce de la Seine against the defendants, who were merchants in London, claiming damages for breach of contract. Notification of the proceedings was sent to the defendants, but they declined to take up the documents. Judgment by default was afterwards given by the Tribunal de Commerce, and notification was given to the defendants, who, however, took no steps in regard to it. The plaintiff thereupon obtained a *saisie-arrêt*, which is analogous to a garnishee order, attaching a small sum of money standing to the credit of the defendants at the Crédit Lyonnais. On being informed of this, the defendants entered an "opposition" in the Tribunal de Commerce asking to have the judgment by default set aside. The Tribunal de Commerce reheard the case, and gave judgment for the defendants. The plaintiff appealed, and the Court of Appeal in Paris reversed the judgment given for the defendants, and restored the judgment by default in favour of the plaintiff. In an action by the plaintiff upon the judgment of the Court of Appeal,—*Held*, that the judgment was enforceable against the defendants, as their appearance in the French proceedings must, under the circumstances, be taken to have been a voluntary one. *Held*, further, that the judgment sued upon was not a judgment by default, inasmuch as it derived its whole force and validity not from the original decision of the Tribunal de Commerce, but from that of the Court of Appeal. *Guiard* v. *De Clermont*, 83 L. J. K.B. 1407; [1914] 3 K.B. 145; 111 L. T. 293; 30 T. L. R. 511—A. T. Lawrence, J.

—— **Conditional Appearance—Voluntary Appearance—Submission to Jurisdiction.**]—The plaintiff, who was a domiciled Manxman, brought an action of criminal conversation in the High Court of the Isle of Man against the defendant, who was a domiciled Englishman residing in England. The action was commenced in accordance with the practice of the Manx Court by the filing of a statement of claim, and subsequently the plaintiff obtained leave to issue a writ for service out of the jurisdiction, and such writ was issued and duly served on the defendant in England. On the day on which the defendant was required by the writ to appear his advocate appeared in Court conditionally to set aside the writ, and an entry was made in the Court book to the effect that the defendant was to file a motion to set aside the writ, and on a later day a motion was accordingly filed by the defendant to set aside the writ on various grounds, and this motion was dismissed by the Court after hearing argument on both sides. The defendant taking no further part in the proceedings in the Manx Court, the plaintiff obtained interlocutory judgment in default and, after the damages had been assessed, final judgment for the amount so found and costs. In an action to enforce such judgment,—*Held*, that the defendant had so acted that he must be taken to have submitted to the jurisdiction of the Manx Court, and that the plaintiff was therefore entitled to enforce his judgment in this country. *Harris* v. *Taylor*, 84 L. J. K.B. 1839; [1915] 2 K.B. 580; 113 L. T. 221—C.A.

VII. FOREIGN AWARD.

Enforcement of.]—An award in a foreign arbitration is not a decision which the Court here ought to recognise as a foreign judgment, and therefore cannot be enforced. *Merrifield* v. *Liverpool Cotton Association*, 105 L. T. 97; 55 S. J. 581—Eve, J.

VIII. PRIZE COURT.—*See* WAR.

INTERPLEADER.

See also Vol. VIII. 347, 1723.

Judgment by Consent—Subsequent Application for Interpleader Issue.]—The right to commence interpleader proceedings under Order LVII. is not without restriction as to the time within which such proceedings must be commenced. An applicant will not be allowed to commence such proceedings after judgment has actually been given against him, and *a fortiori* if the judgment has been given by his own consent. *Stevenson* v. *Brownell*, 81 L. J. Ch. 691; [1912] 2 Ch. 344; 106 L. T. 994; 56 S. J. 571—C.A.

Right to Relief — Adverse Claims — Fire Insurance Company — Policy in Names of Lessor and Lessee — Notice by Lessor to Company to Lay out Insurance Money in Reinstatement—Claim by Lessee to Payment of Insurance Money—Insurance Company.]—In

pursuance of a lessee's covenant to insure against fire a policy of insurance on the demised premises was effected in the names of the lessors and the lessee. A fire having occurred, the insurance money was adjusted at a certain sum. The lessors served notice on the insurance company under section 83 of the Fires Prevention (Metropolis) Act, 1774, requesting them to cause the insurance money to be laid out in rebuilding and reinstating the premises. The lessee began to do the work of rebuilding and reinstating himself, and informed the company that he would not ask for payment of the insurance money until the work was completed. The insurance company having taken out a summons for an order calling upon the lessee and the lessors to appear and maintain their respective claims, —*Held*, that the insurance company were not entitled to an interpleader order—*per* Vaughan Williams, L.J., because there were not "two or more parties making adverse claims" within the meaning of Order LVII. rule 1 (*a*), the lessee not having made any claim at all; *per* Buckley, L.J., and Kennedy, L.J., because, assuming that the lessee had made any claim at all, the lessors and the lessee were not "making adverse claims" with regard to any "debt, money, goods or chattels," but were making inconsistent claims as to the nature of the obligation owed by the company. *Sun Insurance Office* v. *Galinsky*, 83 L. J. K.B. 633; [1914] 2 K.B. 545; 110 L. T. 358—C.A.

Claim to Proceeds of Goods Taken in Execution and Sold—Claim by Assignee of Execution Creditor — Assignment of Debts Owing or to Become Owing—Absence of Title to Goods Themselves.]—A claimant in an interpleader summons issued under section 157 of the County Courts Act, 1888, to the proceeds of goods taken in execution and sold under the provisions of section 156 of the Act, must, in order to succeed, shew that he had a good title to the goods themselves. Therefore, where the claimant is the assignee of all the book and other debts of the execution creditor, and his real object is to enforce under the assignment his right to the particular judgment debt, a summons under section 157 is not his appropriate remedy. *Plant* v. *Collins*, 82 L. J. K.B. 467; [1913] 1 K.B. 242; 108 L. T. 177; 29 T. L. R. 129—C.A.

Judgment of Divisional Court (Ridley, J., and Lush, J.) (81 L. J. K.B. 868; [1912] 2 K.B. 459) affirmed. *Ib.*

—— **Proof of Part Ownership as Partner—Right to Succeed.**]—On an interpleader issue in the County Court the question is whether the goods taken in execution are those of the claimant as against the execution creditors. The claimant gave notice that the goods were his. At the trial of the issue the jury found that they were not, but were the property of a partnership in which he and the execution debtor were the partners:—*Held*, that as between him and the execution creditors the issue should be determined in his favour. *Wells* v. *Hughes* (76 L. J. K.B. 1125; [1907] 2 K.B. 845) distinguished. *Flude, Lim.* v. *Goldberg*, 84 L. J. K.B. 511; [1915] 2 K.B. 157; 59 S. J. 333—D. Reversed 59 S. J. 691—C.A.

Appeal—Trial of Issue by Master—Order Determining Rights of Parties — Right of Appeal.]—Where an interpleader issue has, under Order LVII. rule 7, been ordered to be tried before a Master, and the Master makes an order which, in addition to determining the issue, finally disposes of the whole matter of the proceedings, an appeal will lie to a Divisional Court from so much of the order as determines the issue. *Cox* v. *Bowen*, 80 L. J. K.B. 1149; [1911] 2 K.B. 611; 105 L. T. 141; 55 S. J. 581—D.

INTESTACY.

Indictment for Murder of Intestate Brother and Father — Found Guilty of Murder of Brother, but Insane—Indictment for Murder of Father not Proceeded with — Right to Share in Father's Estate.]—Where a son kills his father, and is found insane, he can take his proper share in his father's estate under his father's intestacy. *Houghton, In re*; *Houghton* v. *Houghton*, 84 L. J. Ch. 726; [1915] 2 Ch. 173; 113 L. T. 422; 59 S. J. 562; 31 T. L. R. 427—Joyce, J.

Quære, where the father dies intestate, whether the Statute of Distributions can be disregarded, even if the son should not be found insane. *Ib.*

INTOXICATING LIQUORS.

A. EXCISE LICENCE.

See also Vol. VIII. 397, 1726.

New On-licence — Conditions — Monopoly Value — Capital Value — Grant of Justices Licence for Annual Payments—Grant not "in accordance with" Act.]—By section 14, sub-section 1 of the Licensing Consolidation Act, 1910, "The licensing justices, on the grant of a new justices' on-licence, may attach to the grant of the licence such conditions . . . as they think proper in the interests of the public; subject as follows:—(*a*) Such conditions shall in any case be attached as . . . the justices think best adapted for securing to the public any monopoly value which is represented by the difference between the value which the premises will bear, in the opinion of the justices, when licensed, and the value of the same premises if they were not licensed." On the grant of a new on-licence the Justices ordered annual sums representing precentages of trade takings to be paid as monopoly value each year. The Excise collector refused to grant the licence holder an Excise licence:—*Held*, that "monopoly value" in section 14 means capital monopoly value, and is a lump sum to be definitely fixed upon the grant of the Justices' licence, to be paid as the Justices may direct; that the Justices' licence had not therefore been granted "in accordance with" the Act within section 1, and that the Excise licence had been rightly refused. *Rex* v. *Sunderland Customs and Excise Commissioners*, 83 L. J. K.B. 555; [1914] 2 K.B. 390; 110 L. T. 527; 78 J. P. 185; 12 L. G. R. 580; 30 T. L. R. 298—C.A.

Decision of the Divisional Court (83 L. J. K.B. 51; [1913] 3 K.B. 483) affirmed. *Ib.*

"Beer"—Liquor made of Glucose and Hops containing 2 per cent. of Proof Spirit.]—The incorporation by sections 92 and 96, sub-section 3 of the Finance (1909-10) Act, 1910, of the laws relating to Excise duties or licences, together with the provision in the First Schedule to that Act under the heading "C. Retailers' Licences" as to the "licence to be taken out annually by a retailer of beer," imposes an obligation under the Act on a person who sells by retail intoxicating liquor to take out a licence. Where therefore a person sells by retail such liquor without a licence he is liable to the penalty provided in section 50, sub-section 3 of the Finance (1909-10) Act, 1910. *Fairhurst* v. *Price*, 81 L. J. K.B. 320; [1912] 1 K.B. 404; 106 L. T. 97; 76 J. P. 110; 22 Cox C.C. 660; 28 T. L. R. 132—D.

The appellant was summoned under the Finance (1909-10) Act, 1910, for having sold by retail beer, for the retail sale of which he was required to take out a licence under that Act, without having taken out such licence. The following advertisements were exhibited in the shop where the liquor was sold: "The ales and stouts which are offered to the public on these premises are manufactured at about the same strength as ordinary ales and stouts, guaranteed free from chemicals, and to contain no preservatives." "Finlay's ales and stouts brewed from the best malt and Kent and Worcester hops." On analysis the liquor in question had the ordinary gravity of beer and contained 2 per cent. of proof spirit. It was manufactured from liquid glucose and hops, and was fermented with yeast. In colour and appearance it was exactly like ordinary beer. The Justices held that the liquor so sold was "beer" within section 52 of the Finance (1909-10) Act, 1910; that the clause in that section defining "beer" could be subdivided; and that it was necessary to have an Excise licence for the sale of such liquor. They accordingly convicted the appellant:—*Held*, that the Justices had properly construed the clause in section 52 defining "beer," and that they were entitled to hold on the evidence before them that the liquor sold by the appellant was "beer" within that section. *Ib*

B. LICENCE DUTY.

Annual Value of Premises—Conclusiveness of Valuation List as to Annual Value.]—The valuation list for the time being in force under the Valuation (Metropolis) Act, 1869, is not conclusive evidence of the annual value of licensed premises for the purpose of determining the amount of the licence duties imposed by the Finance (1909-10) Act, 1910. *Wrigglesworth* v. *Regem*, 104 L. T. 593; 75 J. P. 118; 9 L. G. R. 329; 27 T. L. R. 154—Channell, J.

—— **Basis of Calculation—Ejusdem Generis—"Increased value arising from profits not derived from the sale of intoxicating liquor."**]—In ascertaining the "annual licence value" of a licensed house, for the purposes of the register of annual licence value established by section 44, sub-section 2 of the Finance (1909-10) Act, 1910, only the value arising from the increased profits derived from the sale of non-intoxicants owing to the fact that they are sold on licensed premises, and not all the profits derived from such sales, is to be excluded from consideration under the last paragraph of that sub-section. *Inland Revenue Commissioners* v. *Truman, Hanbury, Buxton & Co.*, 82 L. J. K.B. 1042; [1913] A.C. 650;

109 L. T. 337; 77 J. P. 397; 57 S. J. 662; 29 T. L. R. 661—H.L. (E.)

The words "other premises" in section 44, sub-section 2 of the Act do not refer only to premises *ejusdem generis* with "hotels" mentioned in the same sub-section. *Ib.*

Judgment of the Court of Appeal (82 L. J. K.B. 474; [1912] 3 K.B. 377) reversed on the first point and affirmed on the second. *Ib.*

Free House—Licensed Premises held under Lease — "Grantor of the lease" — Claim against Person Receiving Rent for Proportion of Increased Duty.] — In section 2 of the Finance Act, 1912, the words "the grantor of the lease" mean the person who actually puts his signature and seal to the lease as lessor, and do not mean persons who for the time being are in receipt of the rent of the licensed premises. The lessee of licensed premises cannot, therefore, claim the relief in respect of increased licence duty given by section 2 of the Finance Act, 1912, from an assignee of the original grantor. *Bodega Co.* v. *Read*, 84 L. J. Ch. 36; [1914] 2 Ch. 757; 111 L. T. 884; 59 S. J. 58; 31 T. L. R. 17—C.A.

"Grantor of lease."]—Where the owners of licensed property contract to grant a lease and the premises are subsequently conveyed to a person absolutely as security for money advanced by him on the faith of the performance of such contract and the lender afterwards executes a lease in order to give effect to the contract, he is the "grantor of the lease" within the meaning of section 2 of the Finance Act, 1912, and the lessee is entitled under that section to recover from him so much of any increase of duty payable under the Finance (1909-10) Act, 1910, as is proportionate to any increased rent payable in respect of the premises being let as licensed premises. *Bodega Co.* v. *Martin*, 85 L. J. Ch. 17; [1915] 2 Ch. 385; 60 S. J. 10; 31 T. L. R. 595—C.A.

Liability of Lessor to Pay Proportion of Increase — "Licensed premises held under lease."]—Section 2 of the Finance Act, 1912, which provides that "Where the licensed premises are held under a lease . . . made before the passing of the Finance (1909-10) Act, 1910. . . . the lessee under such lease . . . shall be entitled, . . . to recover . . . from . . . the grantor of such lease . . . so much of any increase of the duty payable in respect of the licence under the provisions of the Finance (1909-10) Act, 1910, as may be agreed upon as proportionate to any increased rent or premium payable in respect of the premises being let as licensed premises," applies where the lessee is not himself the occupier of the premises, but has sub-let them and is not the holder of the licence. *Watney, Combe, Reid & Co.* v. *Berners*, 84 L. J. K.B. 1561; [1915] A.C. 885; 113 L. T. 518; 79 J. P. 497; 59 S. J. 492; 31 T. L. R. 449—H.L. (E.)

Decision of the Court of Appeal (83 L. J. K.B. 1431; [1914] 3 K.B. 288) reversed. *Ib.*

Licensed Premises not being a "tied house" — Lease — Increased Rent due to Licence — Proportionate Increase in Duty Recoverable by Lessee.]—By section 2 of the Finance Act, 1912, where licensed premises are held under a lease made before the passing of the Finance (1909-10) Act, 1910, which does not contain any covenant on the part of the lessee to obtain a supply of intoxicating liquor from the lessor, the lessee shall be entitled to recover from the lessor so much of any increase of the licence duty payable under the Act of 1910 as is proportionate to any increased rent payable in respect of the premises being let as licensed premises:—*Held*, that in order to ascertain whether any, and what, increased rent is payable in respect of the premises being let as licensed premises, the question to be determined is what annual rent a tenant might be expected to give for the premises as they stand, but without a licence. It is necessary to compare the annual rent which could be obtained for the same premises if let for the same term without a licence, with the rent reserved by the lease for the premises licensed. The comparison should not be made upon the assumption that the premises are altered so as to secure the most profitable use of them by a lessee under a lease for a long term of years. *Proctor* v. *Tarry*, 84 L. J. K.B. 1096; [1915] 2 K.B. 242; 112 L. T. 1006; 79 J. P. 321; 31 T. L. R. 262—C.A.

Decision of the Divisional Court (83 L. J. K.B. 1073; [1914] 2 K.B. 178) affirmed. *Ib.*

Increased Licence Duty—Lease Made before Finance (1909-10) Act, 1910 — Liability of Lessor to Contribute—Sums Spent in Rebuilding by Lessor Pursuant to Agreement for Lease — Surrender Value of Unexpired Lease — "Premium."] — Where, in pursuance of an agreement for a lease of licensed premises, a lessee has expended a sum of money in erecting new buildings on the premises, and has also surrendered a prior unexpired lease of the premises, and a new lease has been made before the passing of the Finance (1909-10) Act, 1910, neither the sum so expended nor the surrender value of the old lease is a "rent or premium" within the meaning of section 2 of the Finance Act, 1912, and the lessor is not therefore under any liability, in respect of either amount, to bear a proportion of any increase of duty payable in respect of the licence under the Finance (1909-10) Act, 1910. *King* v. *Cadogan (Earl)*, 84 L. J. K.B. 2069; [1915] 3 K.B. 485; 59 S. J. 680—C.A.

Decision of the Divisional Court (84 L. J. K.B. 779; [1915] 1 K.B. 821) affirmed. *Ib.*

Proportion Payable by Grantor of Lease—Issue as to Liability of Grantor to Pay—Jurisdiction of County Court.] — Under section 2 of the Finance Act, 1912, when the issue is raised as to the liability of the grantor of a lease to pay any proportion of the increase of licence duty, and is not merely as to the amount payable, the County Court has no jurisdiction to determine this issue, and the grantor is entitled to a writ of prohibition to the Judge from proceeding therein. *Tratt* v. *Good*, 84 L. J. K.B. 1550; [1915] 3 K.B. 59; 113 L. T. 556; 79 J. P. 413; 31 T. L. R. 441—D.

C. GRANTING OF LICENCES BY JUSTICES.

1. Jurisdiction.

See also Vol. VIII. 1728.

Appointment of Date for Annual Licensing Meeting.]—It is not *ultra vires* for a borough licensing committee appointed in 1911 to fix the date of the general annual licensing meeting for 1912. *London and North-Western Railway* v. *Beesly*, 77 J. P. 21—D.

Alteration in Premises without Consent of Justices — Exits — Premises Ill-conducted or Structurally Unsuitable.] — In 1896 licensed premises included two buildings, a hotel and a restaurant, and, with the consent of the licensing Justices, in 1903 part of the ground was excluded from the licensed area and various structures, including a theatre, were erected on the excluded portion. At the beginning of 1910 the construction of a stage door communicating between the theatre and the licensed area was commenced without the knowledge or consent of the licensing Justices, but there was no evidence that this door had been used. In June, 1909, application was made to the licensing Justices to exclude from the licensed area a further portion of the ground originally included therein, known as the kitchen garden, for the purpose of erecting a skating rink thereon. This application was refused by the Justices, but, notwithstanding such refusal, the appellant or certain lessees of the owners of the premises proceeded to build upon this portion of ground a skating rink. No intoxicating liquors have been sold or consumed thereon. Four exits from the skating rink into portions of the licensed area and a main entrance from a public street called P. Avenue to the skating rink were made without the knowledge and consent of the licensing Justices. There was no evidence that the exits had been used. The appellant or the owners of the premises, also without the permission and without the knowledge of the licensing Justices, leased with an option of purchase a portion of the ground forming part of the area originally included in the licensed area. The Justices at quarter sessions held that the matters set out made the premises ill-conducted within the meaning of section 1 of the Licensing Act, 1904. They also further held that, by reason of the hereinbefore mentioned alterations, the premises were not structurally suitable; and that the Justices of the licensing district had rightly refused the renewal of the licence :—*Held*, that there was evidence to support the finding of the Justices. *Marshall* v. *Spicer*, 103 L. T. 902; 75 J. P. 138—D.

2. Original Licence.

See also Vol. VIII. 410, 1730.

Off-licence — Power to Attach Condition to Grant — Power to Demand Undertaking as Condition Precedent to Grant.] — Licensing Justices have no power to grant a licence for the sale of intoxicating liquor off the premises with a condition attached thereto; but they may demand from an applicant for the grant of such a licence, as a condition precedent to the grant, an undertaking as to matters relevant to the question whether the licence shall be granted or refused, although by such undertaking the licensee undertakes not to exercise some of the legal rights which the licence, when granted, will confer on him. *Rex* v. *Birmingham Licensing Justices; Hodson Ex parte*, 82 L. J. K.B. 23; [1912] 3 K.B. 583; 77 J. P. 19; 29 T. L. R. 9—D.

New On-licence — Conditions — Monopoly Value — Capital Value — Grant of Justices' Licence for Annual Payments—Grant not "in accordance with" Act — Refusal of Excise Licence.]—By section 14, sub-section 1 of the Licensing Consolidation Act, 1910, "The licensing justices, on the grant of a new justices' on-licence, may attach to the grant of the licence such conditions . . . as they think proper in the interests of the public; subject as follows :—(*a*) Such conditions shall in any case be attached as . . . the justices think best adapted for securing to the public any monopoly value which is represented by the difference between the value which the premises will bear, in the opinion of the justices, when licensed, and the value of the same premises if they were not licensed." On the grant of a new on-licence the Justices ordered annual sums representing percentages of trade takings to be paid as monopoly value each year. The Excise collector refused to grant the licence holder an Excise licence :—*Held*, that "monopoly value" in section 14 means capital monopoly value, and is a lump sum to be definitely fixed upon the grant of the Justices' licence, to be paid as the Justices may direct; that the Justices' licence had not therefore been granted "in accordance with" the Act within section 1, and that the Excise licence had been rightly refused. *Rex* v. *Sunderland Customs and Excise Commissioners*, 83 L. J. K.B. 555; [1914] 2 K.B. 390; 110 L. T. 527; 78 J. P. 185; 12 L. G. R. 580; 30 T. L. R. 298—C.A.

Decision of the Divisional Court (83 L. J. K.B. 51; [1913] 3 K.B. 483) affirmed. *Ib.*

Beerhouse Licence Granted before 1904 — Grant of Licence to Sell Spirits — Full Licence.]—Where the holder of a beerhouse licence granted prior to 1904 applies to the Justices for a licence to sell spirits, the Justices, if they grant the licence, are not entitled to grant one purporting to authorise him to sell spirits only, but must grant a full publican's licence. *Customs and Excise Commissioners* v. *Curtis*, 83 L. J. K.B. 931; [1914] 2 K.B. 335; 110 L. T. 584; 78 J. P. 173; 30 T. L. R. 232—D.

—— **Monopoly Value.**]—The monopoly value which the holder of a beerhouse licence must pay on the grant of a new publican's licence, under section 14 of the Licensing (Consolidation) Act, 1910, is not merely the difference between the value of the premises with the new full licence and their value with the beerhouse licence, but the difference between the value of the premises when licensed with the new full

licence and the value they would bear if not licensed at all. *Ib.*

Similar Licence already in Force — Monopoly Value—Reduction of.—Section 12, sub-section 1 of the Licensing (Consolidation) Act, 1910, provides that "for the purposes of this Act a new Justices' licence is a Justices' licence granted at a general annual licensing meeting otherwise than by way of renewal or transfer as defined by this Act." By section 16, sub-section 1. "the renewal of a Justices' licence means the grant of a Justices' licence at a general annual licensing meeting by way of renewal of a similar licence which is in force in respect of the premises at the date of the application":—*Held*, upon the above sections, that the words "a similar licence" in section 16 mean a licence to sell the same kind of intoxicating liquors as are being sold at premises already licensed, and that where a particular class of licence is in force the Justices have no jurisdiction to grant what purports to be a new licence of the same kind in respect of the same premises with the object of making an alteration of the monopoly values subject to which the existing licence was granted. *Rex* v. *Taylor*. *Rex* v. *Amendt (No. 2)*, 84 L. J. K.B. 1489; [1915] 2 K.B. 593; 113 L. T. 167; 79 J. P. 382; 31 T. L. R. 317—D.

3. Renewals.

See also Vol. VIII. 417, 1733.

a. Generally.

Old On-licence — Premises of Insufficient Value—"Disqualified premises"—Refusal to Renew — Mandamus.—Premises which by reason of insufficient annual value are not, under the provisions of section 37, sub-section 1 of the Licensing (Consolidation) Act, 1910, qualified to receive a Justices' on-licence for the sale of intoxicating liquor are "disqualified premises" within the meaning of sections 34 and 36, so as to make an on-licence granted in respect of them void; and the Court will not in such a case grant a *mandamus* to Justices to hear and determine an application for the renewal of the licence. *Rex* v. *Hull Licensing Justices; Glossop & Bulay, Lim., Ex parte*, 82 L. J. K.B. 946; [1913] 3 K.B. 425; 109 L. T. 184; 77 J. P. 303; 29 T. L. R. 500—D.

Appeal to Quarter Sessions—No Application by Appellant to Licensing Justices—Jurisdiction of Quarter Sessions to Grant Renewal to Appellant.—L., the licence holder of an old on-licence other than an old beerhouse licence, agreed to transfer it to P. The latter's application to the Justices for the transfer to him was adjourned to the general annual licensing meeting. At that meeting P. also applied for a renewal of the licence to himself. Notice of opposition to a renewal to them had been served on both L. and P., as to the former alleging grounds none of which were personal to him. At the general annual licensing meeting the Justices refused P.'s application for a transfer and also that for a renewal on the ground (*inter alia*) that the house was ill-conducted. No application in form was made by L. for a renewal to himself; but the Divisional Court held that the Justices' refusal to P. on the above ground amounted to a refusal to renew to anybody. L., P., and the brewers, the owners, appealed to quarter sessions, who found that there was no evidence that the house was ill-conducted, but that the Justices were right in refusing to grant a renewal to P.; and they then granted a renewal to L. On an appeal by the opponents of the renewal of the licence,—*Held*, that quarter sessions had jurisdiction to grant the renewal to L. under the powers conferred on them by section 29, sub-section 4 of the Licensing (Consolidation) Act, 1910, which provides that on an appeal they can grant the renewal of a licence in the same manner as the licensing Justices. *Parkes* v. *Dudley Justices*, 82 L. J. K.B. 337; [1913] 1 K.B. 1; 107 L. T. 855; 77 J. P. 51; 29 T. L. R. 31—D.

Two Convictions on Same Day—"Second offence" — Forfeiture of Licence.] — Two informations were preferred against the applicant, who was the holder of an off-licence for the sale of beer, under section 3 of the Licensing Act, 1872, for having sold beer at places where he was not authorised by his licence to sell the same, and for having at the same time and places exposed beer for sale. The two cases were heard together, and the applicant was convicted and fined upon each information. At the next general annual licensing meeting the applicant applied for a renewal of his licence, but the licensing Justices refused the application on the ground that the applicant had been convicted of a "second offence" under section 3, and that therefore his licence had become forfeited:—*Held*, that a "second offence" under the section meant an offence committed after a conviction for a previous offence, and that the decision of the Justices was therefore wrong. *Rex* v. *South Shields Licensing Justices*, 80 L. J. K.B. 809; [1911] 2 K.B. 1; 105 L. T. 41; 75 J. P. 299; 22 Cox C.C. 431; 55 S. J. 386; 27 T. L. R. 330—D.

Annual Meeting of Licensing Justices — "Court in law or recognised by law" — Application for Renewal of Licence—Notice of Objection — Defamatory Statement.] — The rule of law that defamatory statements made in the course of proceedings before a Court of justice or a Court having similar attributes are absolutely privileged does not apply in the case of licensing Justices when dealing with an objection to the renewal of an old on-licence. They are not in such case a "Court in law or a Court recognised by law" within the meaning of the rule. *Attwood* v. *Chapman*, 83 L. J. K.B. 1666; [1914] 3 K.B. 275; 111 L. T. 726; 79 J. P. 65; 30 T. L. R. 596—Avory, J.

The plaintiff was the holder of an old on-licence of an inn, and applied for the renewal thereof at the general annual meeting of the licensing Justices. The defendant, a bookmaker, gave written notice of his intention to oppose the application, and alleged various grounds of objection to the effect that the plaintiff was not a fit and proper person to

hold the licence. He served copies of this notice on the plaintiff, on the clerk to the licensing Justices, on the superintendent of police, and on a firm of brewers, owners of the inn. The plaintiff brought an action claiming damages for libel in respect of the statements contained in the notice, and the defendant pleaded that he was taking a necessary and proper step in a judicial proceeding in serving the notices, and that the publication thereof was absolutely privileged:—*Held*, first, that the licensing Justices were not a Court of law to which the privilege attached; secondly, that, assuming they were, the defendant, as objector, being neither a party nor a witness in the proceedings, was not a person on whose behalf the privilege could be claimed; and thirdly, that, assuming the defendant was such a person, the privilege did not extend to the notices served on the superintendent of police and on the brewers. *Ib.*

Dictum of Lord Halsbury, L.C., in *Boulter* v. *Kent Justices* (66 L. J. Q.B. 787, 789; [1897] A.C. 556, 561), and adopted by the Court of Appeal in *Rex* v. *Howard* (71 L. J. K.B. 754; [1902] 2 K.B. 363), followed. *Ib.*

b. Referring Renewal to Compensation Authority.

Evidence of Comparison with other Licensed Premises—Power of Justices to Close House.]—Where the renewal of an old on-licence is referred by the licensing Justices to the compensation authority, and the compensation authority have evidence before them as to the number of the licensed houses in the district, the character and population of the locality, and the respective situations and accommodation of the various licensed houses in the district, they are entitled, in the exercise of their honest judgment upon such evidence, to hold that the particular licence referred to them is redundant and to refuse the renewal of such licence, notwithstanding that that particular house, on the evidence, compares favourably with other houses in the district. *Colchester Brewery Co.* v. *Essex Licensing Justices*, 84 L. J. K.B. 1500; [1915] 3 K.B. 48; 113 L. T. 460; 79 J. P. 428; 31 T. L. R. 439—D.

—— **Award of Compensation — Reference to Inland Revenue Commissioners — Reference to County Court—Delay in Payment of Compensation—Refusal of Licensing Justices to Grant Further Provisional Renewal of Licence.**]—By rule 41 of the Licensing Rules, 1910, it is provided that where, under section 19 of the Licensing (Consolidation) Act, 1910, the renewal authority refer the question of the renewal of a licence to the compensation authority, the renewal authority shall grant a provisional renewal of the licence. Rule 42 provides that if the compensation authority refuse the renewal of a licence, the renewal of which is provisional, the licence shall cease to have effect as from the expiration of the seventh day after the date fixed for the payment of the compensation money. Rule 43 provides that when compensation becomes payable in the case of a licence provisionally renewed, and it appears to the renewal authority at the next general annual licensing meeting after the licence has been provisionally renewed that the compensation money has not been paid and is not likely to be paid before the next 5th day of April, they shall, on a proper application being made for the purpose at that meeting, grant a further provisional renewal of the licence in accordance with the foregoing rules. The licensee of a beerhouse applied for the renewal of his licence to the licensing Justices, who in February, 1911, referred the question to the compensation authority, but granted him a provisional renewal of his licence. In July, 1911, the compensation authority refused the renewal, subject to the payment of compensation. In May, 1912, the compensation authority decided as to the parties entitled to the compensation money, but the amount of compensation not being agreed upon by them, the matter was referred to the Inland Revenue Commissioners, who in April, 1913, issued their award, and in May, 1913, referred the question as to the division of the amount awarded to the County Court. In January, 1914, the County Court Judge partly determined the question referred to him, but adjourned the case to a future date for further evidence. Meantime the licensing Justices again provisionally renewed the licence in February, 1912, and also in February, 1913. As the compensation money was not likely to be paid by April 5, 1914, the licensee applied in February, 1914, to the licensing Justices for a further provisional renewal of the licence, but they refused the application, being of opinion that the parties interested in the compensation money had unreasonably delayed the proceedings, and that but for the delay the compensation money would have been paid earlier and the application rendered unnecessary. The licensee thereupon obtained a rule *nisi* for a *mandamus* requiring the licensing Justices to hold a further meeting for the purpose of hearing and determining the application for a further provisional renewal:—*Held*, that rule 43 of the Licensing Rules does not limit the power to grant a provisional renewal to one further renewal after the first grant by the renewal authority, but empowers the grant of a provisional renewal as often as may be necessary until the licence is finally extinguished by payment of the compensation money. *Held*, also, that the rule *nisi* for a *mandamus* must be made absolute, on the ground (*per* Bray, J., and Rowlatt, J.) that, assuming there had been delay on the part of the persons interested in the compensation money, such delay did not entitle the Justices to refuse the grant of a provisional renewal, and (*per* Avory, J.) that there was no evidence that there had been any wilful delay by those persons. *Rex* v. *Newington Licensing Justices; Makemson, Ex parte*, 83 L. J. K.B. 1367; [1914] 2 K.B. 710; 111 L. T. 72; 78 J. P. 271; 30 T. L. R. 426—D.

Quære, whether misconduct by a licensee in carrying on his business on the licensed premises after the question of the renewal of

his licence has been referred to the compensation authority entitles the licensing Justices to refuse the grant of a further provisional renewal. *Ib.*

Prohibition to Compensation Authority.]— Where licensing Justices have referred the matter of the renewal of an old on-licence to the compensation authority, together with their report thereon, under section 19 of the Licensing (Consolidation) Act, 1910, a writ of prohibition will not lie to the compensation authority to prohibit them from considering the report so made to them, inasmuch as sub-section 2 of section 19 provides that "the compensation authority shall consider all reports so made to them." *Rex* v. *Chester Licensing Justices; Bennion, Ex parte*, 83 L. J. K.B. 1259; [1914] 3 K.B. 349; 111 L. T. 575; 78 J. P. 447—D.

Evidence by Magistrate Sitting on Authority.] — A licensing committee referred a licence to the compensation authority on the ground that it was redundant. One of the Justices who sat on the licensing committee sat on the compensation authority, and this authority refused the licence, but subsequently re-opened the case and heard further evidence, including that of the magistrate above referred to, who, however, after the case had been re-opened, did not adjudicate. Ultimately the licence was again refused :— *Held*, that though there was no authority for saying that the evidence of the magistrate was not good legal evidence, he ought not to have combined the function of sitting on the compensation authority with that of a witness, but that as there was evidence to support the decision to refuse the licence the decision must be affirmed. *Mitchell* v. *Croydon Justices*, 111 L. T. 632; 78 J. P. 385; 30 T. L. R. 526—D.

c. Assessment and Division of Compensation for Non-renewal.

Assessment by Commissioners of Inland Revenue—Discretion of Court to Order Commissioners to Pay Costs of Appeal.] — The compensation payable under the Licensing Act, 1904, in respect of the non-renewal of a licence came to be determined by the Commissioners of Inland Revenue under section 2 of that Act, and they fixed the amount. On appeal to the High Court by the persons interested, the amount fixed by the Commissioners was substantially increased, the Commissioners appearing on such appeal to support their decision in whole. A question as to the jurisdiction of the Judge to order the Commissioners to pay the appellant's costs having arisen, counsel for the Commissioners at the trial refused, though called upon, to give any evidence on the matter, or to produce any documents or reports which they had in reference to it, or to give the name of the person who would know what materials were before the Commissioners, what enquiries they had made, and what information they had obtained. The Judge being of opinion that the Commissioners in refusing to give this information had acted unreasonably, and that their conduct had led to the appeal, ordered them to pay the costs of the appeal :—*Held*, that there were proper materials before the Judge upon which in the exercise of his discretion he could hold that the Commissioners had acted unreasonably in reference to the appeal and could order them to pay the appellant's costs, and that being so the Court could not interfere with or review his decision. *Hardy's Crown Brewery, In re* (*No.* 2), 103 L. T. 520; 75 J. P. 1; 55 S. J. 11; 27 T. L. R. 25—C.A.

—— **Compensation Authority — "Persons aggrieved" — Right of Appeal.**]—Where the Inland Revenue Commissioners fix the amount of compensation payable upon a refusal to renew an old on-licence under section 20, sub-section 2 of the Licensing (Consolidation) Act, 1910, the compensation authority are not "persons aggrieved" by the decision of the Commissioners within the meaning of section 10, sub-section 1 of the Finance Act, 1894, and have, therefore, no right of appeal from their determination. *Liverpool Compensation Authority* v. *Inland Revenue Commissioners*, 82 L. J. K.B. 349; [1913] 1 K.B. 165; 108 L. T. 68; 29 T. L. R. 169—Horridge, J.

Costs Incurred by Compensation Authority in Performance of Duties — Compensation Authority Supporting Validity of their Decision for Non-renewal of Licence.]—An application for the renewal of a licence was referred by licensing Justices to the compensation authority, and when the matter came before that authority the renewal was refused subject to the payment of compensation. Thereafter, certain facts came to the knowledge of the applicant which caused him to apply for a *mandamus* to question the decision of the compensation authority on the ground that there was a probability of bias on the part of one of the members. A rule *nisi* for a *mandamus* was refused by the Divisional Court, but granted by the Court of Appeal. On the return to the rule the compensation authority appeared by counsel and shewed cause against the rule, which, however, was made absolute. The compensation authority thereafter passed a resolution that the costs incurred by them in shewing cause against the rule should be paid out of the compensation fund, and this was accordingly done. In an action to have it declared that such payment was illegal, and to have the amount so paid repaid to the compensation fund,—*Held*, that the action failed, as the costs were incurred in good faith and reasonably, and in the exercise by the compensation authority of their duties within section 21, sub-section 5 of the Licensing (Consolidation) Act, 1910. *Att.-Gen.* v. *Thomson*, 82 L. J. K.B. 673; [1913] 3 K.B. 198; 109 L. T. 234; 77 J. P. 287; 29 T. L. R. 510—Scrutton, J.

Apportionment among Persons Interested — Alleged Erroneous Apportionment — Mandamus.]—Where a compensation authority has heard and determined an application for the apportionment of compensation money among the various parties interested,

mandamus will only lie if the compensation authority have considered matters outside the ambit of their jurisdiction. *Rex* v. *Monmouthshire Justices; Neville, Ex parte*, 109 L. T. 788; 78 J. P. 9; 30 T. L. R. 26—C.A.

Where a compensation authority has heard and determined an application for the apportionment of compensation money among the various parties interested, *mandamus* will not lie directing them to hear the matter again merely because they may have come to an erroneous decision on the questions of law and fact submitted to them. *Rex* v. *Cheshire Justices; Heaver, Ex parte*, 108 L. T. 374; 77 J. P. 33; 29 T. L. R. 23—D.

"Persons interested in the licensed premises"—Tenant for Life and Remainderman—Capital Money.]—The tenant for life of a freehold public house forming part of a settled estate received the sum of 450*l.*, which was paid to her as lessor in respect of the extinction of the licence under the Licensing Act, 1904. Subsequently she died:—*Held*, that she must be taken to have received this sum as trustee for all the persons interested in the settled estate. *Bladon, In re; Dando* v. *Porter*, 81 L. J. Ch. 117; [1912] 1 Ch. 45; 105 L. T. 729; 28 T. L. R. 57—C.A.

Per Fletcher Moulton, L.J.: Quarter sessions ought to have apportioned the sum between the tenant for life and remainderman at the time when the compensation was granted. *Ib.*

—— **Lord of Manor.**]—The appellants were the lords of the manor of H., and the freehold of all the copyhold lands within the manor was vested in them. They were also entitled to all the manorial rights. The appellants and the respondents were entered as the registered owners of certain licensed premises within the manor in the register of licences kept pursuant to section 36 of the Licensing Act, 1872. The compensation authority having refused the renewal of the licence of the premises subject to compensation,—*Held*, that the appellants were owners of the licensed premises, and were therefore "persons interested" therein within the meaning of section 2, sub-section 1 of the Act of 1904, and that they were accordingly entitled to a share of the compensation money. *Ecclesiastical Commissioners* v. *Page*, 80 L. J. K.B. 1346; [1911] 2 K.B. 946; 105 L. T. 827; 75 J. P. 548—D.

Devise of Licensed Premises—Bequest of Business — Right of Legatee of Business to Participate.]—Where the owner of licensed premises devises them to A, and bequeaths the business there carried on to B, and the business is discontinued before compensation is awarded for non-renewal of the licence, B has no claim to participate in the compensation. *Spurge, In re; Culver* v. *Collett*, 104 L. T. 669; 75 J. P. 410; 55 S. J. 499—Eve, J.

d. Power of Compensation Authority to State Case.

A determination by a compensation authority under section 2, sub-section 2 of the Licensing Act, 1904, as to the division of compensation money amongst the persons interested in licensed premises is a judicial determination, and the compensation authority have therefore power to state a Case for the opinion of the High Court. *Ecclesiastical Commissioners* v. *Page*, 80 L. J. K.B. 1346; [1911] 2 K.B. 946; 105 L. T. 827; 75 J. P. 548—D.

4. Transfers.

See also Vol. VIII. 429, 1746.

Ante-1869 Beerhouse Licence — Fit and Proper Person to Hold Licence—Consideration of Extraneous Matters by Justices—Business Relations between Tenant and Landlords.]—On an application for a transfer of an ante-1869 beerhouse licence the Justices are entitled to enquire whether the applicant is a fit and proper person to be the holder of such licence; but they cannot take into consideration the terms of the agreement of tenancy between the applicant and the brewers from whom the premises are taken unless such terms necessarily involve that the applicant will be unable to keep the premises within the prescriptions of the law. *Rex* v. *Cooke* (or *Hyde Justices*), 81 L. J. K.B. 363; [1912] 1 K.B. 645; 106 L. T. 152; 76 J. P. 117—D.

Refusal — Non-insertion in Agreement of Tenancy of Provision for Payment of Increased Licence Duty.] — The mere fact that an agreement by the landlords to pay the increased licence duty imposed by the Finance (1909-10) Act, 1910, has not been inserted in the agreement of tenancy of the licensed premises does not justify the licensing Justices refusing a transfer of an old on-licence. *Rex* v. *Underwood; Beswick, Ex parte*, 76 J. P. 154—D.

Grant Subject to Undertaking.]—In 1896 a licence holder, who was the owner of the licensed premises, consented that the licence should be held subject to an undertaking that the house should be a free and not a tied house. The licence holder died in 1907, and ultimately, in 1914, the house was sold to a firm of brewers, and they put in a tenant, who applied for a transfer. The Justices granted the transfer subject to the above undertaking:—*Held*, that since the passing of the Licensing Act, 1904, since re-enacted by the Licensing (Consolidation) Act, 1910, the Justices had no power to insist upon the undertaking as the licence was an on-licence which existed before 1904. *Rex* v. *Crewe Licensing Justices; Bricker, Ex parte*, 111 L. T. 1074; 79 J. P. 26; 30 T. L. R. 626—D.

5. Confirmation, Appeal, and Costs.

See also Vol. VIII. 436, 1749.

Confirming Authority — Order Declaring District a "populous place" — Power to Revise Order—Power of Quarter Sessions to State Case.]—Schedule 6 of the Licensing (Consolidation) Act, 1910, provides that

licensed premises in a populous place in Wales may remain open until 11 P.M., but in districts other than a populous place not later than 10 P.M. By special provision 2 of the schedule "populous place" means any area with a population of not less than 1,000, which by reason of the density of its population the confirming authority of the county by order determine to be a populous place. It provides that an order restrictive of a previous order shall not be made except on a revision after the publication of a census, and that as soon as may be after the publication of each census the confirming authority of the county shall, at a meeting to be specially convened for the purpose, revise orders then in force within their jurisdiction, and may alter or cancel any of those orders, or may make such further orders, if any, as they shall deem necessary to give effect to the provisions of the Act. A licensing district in Wales was some years ago declared to be a "populous place," and its population had, subsequent to such declaration, increased, but other adjacent districts had, owing to the opening of new collieries therein, increased in population to a still greater extent. In 1913 the confirming authority held that it was no longer a "populous place," and cancelled the previous order. An appeal from their decision by way of a Case stated by the confirming authority for the opinion of the High Court was made, and a preliminary objection taken that quarter sessions had no power to state the same :—*Held*, that quarter sessions were not dependent for their power to state a Case on the Summary Jurisdiction Acts, and, although acting in an administrative capacity, could state the Case submitted. *Rex* v. *Southampton Justices; Cardy, Ex parte* (75 L. J. K.B. 295; [1906] 1 K.B. 446), followed. *Nicholas* v. *Davies*, 83 L. J. K.B. 1137; [1914] 2 K.B. 705; 111 L. T. 56; 78 J. P. 207; 30 T. L. R. 388—D.

Held also, on the merits, that it was open to the confirming authority to raise the standard of a "populous place," and that the Court would not consider whether their reasons for so doing were or were not adequate. *Ib.*

Jurisdiction of Quarter Sessions to Grant Renewal to Person other than Main Applicant to Justices.]—In October, 1911, an application was made to the licensing Justices for a transfer of a licence from the appellant L. to the appellant P., which application was adjourned to the general annual licensing meeting, 1912, a protection order being granted to P. till that meeting. In January, 1912, notice of opposition to a renewal was served on L. and also on P., and in February, 1912, the licensing Justices refused P.'s application for a renewal on the ground that the premises had been ill-conducted. L. and his solicitor were present, but made no application. On appeal by P., L., and the brewers against the refusal of a renewal to P., quarter sessions dismissed P.'s appeal, but granted a renewal to L. :—*Held*, that quarter sessions had jurisdiction to do so under section 29, sub-section 4 of the Licensing (Consolidation) Act, 1910. *Parkes* v. *Dudley Justices*, 82 L. J. K.B. 337; [1913] 1 K.B. 1; 107 L. T. 855; 77 J. P. 51; 29 T. L. R. 31—D.

Renewal of Licence Refused — Appeal by Licensee and Owners of Premises—Death of Licensee before Hearing of Appeal—Termination of Licence—Right of Licensee's Representative and of Owner to Prosecute Appeal —"Any person . . . aggrieved."] — The licensee and the owners of certain licensed premises appealed to quarter sessions against the refusal of the licensing Justices to renew the licence of the house. Before the appeal was heard the licensee died, and the licence also came to an end by effluxion of time. Letters of administration were duly granted to the widow of the deceased licensee, who continued the appeal. The Court of quarter sessions dismissed the appeal on the ground that the licence had become extinct by the death of the licensee :—*Held*, that the widow of the deceased licensee was entitled to maintain the appeal, as the licence, for the purpose of enabling the representative of a deceased licensee to obtain its renewal, must be regarded as still in existence; and further, that the owners of the premises could also appeal against the refusal to renew the licence as being persons aggrieved by the refusal of the Justices to renew the licence within the meaning of section 29 of the Licensing (Consolidation) Act, 1910. *Cooke* v. *Bolton Justices* or *Cooper*, 81 L. J. K.B. 648; [1912] 2 K.B. 248; 105 L. T. 818; 76 J. P. 67—D.

Objection by Licensing Justices to Hearing of Appeal—Special Case Stated by Quarter Sessions — Appeal Allowed and Licensing Justices Ordered to Pay Costs—Refusal by Quarter Sessions to make Indemnity Order in Favour of Licensing Justices—Mandamus.]—The renewal of a licence having been refused by licensing Justices, the licensee appealed to quarter sessions. When the appeal came on for hearing, counsel for the licensing Justices objected that, as since the notice of appeal was given the licensee had died, the licence had become extinct, and that therefore no appeal lay from the refusal to renew the licence, and that the owners had no right of appeal. Quarter sessions upheld this objection and dismissed the appeal subject to a Special Case stated by them for the opinion of the King's Bench Division. At the hearing of the Special Case the licensing Justices did not appear, and the King's Bench Division reversed the order of quarter sessions, remitted the Case for re-hearing, and ordered the licensing Justices to pay the costs of the appeal to the King's Bench Division. Subsequently the appeal was re-heard and determined by quarter sessions and dismissed with costs. An application was then made to quarter sessions under section 23 of the Licensing (Consolidation) Act, 1910, for an order on the treasurer of the borough for which the licensing Justices acted to pay to them the costs they had had to pay in the appeal by Special Case to the King's Bench Division. Quarter sessions having refused to make such order, the licensing Justices obtained a rule *nisi* for a *mandamus* requiring them to do so :—*Held*, that the licensing Justices were entitled under section 32 to the order asked for, and that the costs of the rule for the *mandamus* should be included with the

other costs in the order to be made upon the borough treasurer. *Rex* v. *Salford Hundred Justices; Bolton Justices, Ex parte*, 81 L. J. K.B. 952; [1912] 2 K.B. 567; 107 L. T. 174; 76 J. P. 395; 23 Cox C.C. 110—D.

D. COMPENSATION FUND.

See also Vol. VIII. 1752.

Old On-licence—Forfeiture Prior to 1910—Grant of Licence at Special Sessions—Renewal Thereof—"Old on-licence renewed."]—By section 21, sub-section 1 of the Licensing (Consolidation) Act, 1910, the compensation authority shall impose charges for the purposes of the compensation fund in respect of all old on-licences renewed in respect of premises within their area. By Schedule II. Part I. an old on-licence is described as one in force on August 15, 1904, and as including renewals of such a licence whether it continues to be held by the same person or is or may be transferred to another person. In July, 1907, M., the holder of a licence of a public house which was in force on August 15, 1904, was convicted of felony, and the licence thereby became forfeited. In August, 1907, the owners, under section 15 of the Licensing Act, 1874, obtained authority for their representative, J., to carry on the business until the next special or transfer sessions. At those sessions, in September, J., under the above section 15, obtained a licence to remain in force until the following April, when M.'s licence, if not forfeited, would have expired in the ordinary course. At the general annual licensing meeting in February, 1909, the Justices renewed this licence to J., and henceforth it was renewed annually to successive occupiers, including, finally, the suppliant, the present holder:—*Held*, that the licence granted in September to J. was a transfer to him of the licence forfeited by M., and was therefore a licence granted to J. by way of renewal of a licence in force on August 15, 1904, and eventually transferred to the suppliant, within the meaning of Schedule II. Part I. of the Act of 1910, and was therefore an "old on-licence renewed" within the meaning of section 21, sub-section 1 of the Act, and that, consequently, the suppliant was liable to pay the charges leviable by the compensation authority under that sub-section. *Wernham* v. *Regem*, 83 L. J. K.B. 395; [1914] 1 K.B. 468; 110 L. T. 111; 78 J. P. 74—Bailhache, J.

Restaurant—Rate of Levy—What Evidence may be Required.]—It is in the discretion of the licensing Justices, when fixing the amount of the compensation levy on a restaurant, to require that the figures of the trade done by the restaurant should be given to them, including the gross receipts from the sale of alcohol and all other goods, and they are not bound to be satisfied with a statement shewing the proportion of the receipts for liquor to the gross receipts. *Holborn and Frascati, Lim., Ex parte*, 30 T. L. R. 614—D.

Deduction from Rent—Reversionary Lease to Commence on Determination of Lease—Interest of Lessee in Premises.—A brewery company who were by assignment underlessees of a licensed house also acquired by assignment the interest in two reversionary under-leases which were expressed to be extensions of the under-lease. The terms of years created by the two reversionary under-leases were to commence on the expiration of the under-lease and the first reversionary lease respectively, the second reversionary lease expiring in 1951. The reversionary under-leases were expressed to be subject to the like rent and conditions as were reserved and contained in the under-lease, and they also contained a proviso that if the terms granted by the under-lease and the first reversionary under-lease respectively should be determined under the proviso for re-entry, then the reversionary under-leases should be absolutely void. A compensation charge was imposed by quarter sessions in respect of the house under section 3 of the Licensing Act, 1904, sub-section 3 of which allows such deductions as are set out in the Second Schedule to be made by a licence holder who pays the charge, and also by any person from whose rent a deduction is made in respect of the payment of such charge. The scale of deductions in the Second Schedule varies according to the length of the "unexpired term" of the person making the deduction:—*Held*, that the deduction must be calculated according to the unexpired term of the under-lease without taking into account the length of the two reversionary under-leases. *Llangattock (Lord)* v. *Watney, Combe, Reid & Co.* (79 L. J. K.B. 559; [1910] A.C. 394) followed. *Knight* v. *City of London Brewery Co.*, 81 L. J. K.B. 194; [1912] 1 K.B. 10; 106 L. T. 564—A. T. Lawrence, J.

Proportion of Compensation Fund Payable to New Borough.]—A section of the Eastbourne Corporation Act, 1910, provided that "within six months after April 1, 1911, the Court of quarter sessions for the county shall pay to the Justices acting in and for the borough out of the compensation fund of the county established under the Licensing Act, 1904, such proportion of any sum standing to the credit of that fund on the said day, after deducting therefrom any sums due in respect of compensation awarded prior to that day, as the amount of the charges paid under that Act during the year ending March 31, 1911, in respect of premises situate within the area of the borough may bear to the whole amount of such charges paid during the same period in respect of premises within their area:—*Held* (Avory, J., dissenting), that the words "sum standing to the credit of that fund on the said day" meant the amount which ought to stand to the credit of the fund on that day, and therefore it included a sum which should have been collected by that day, but was in fact collected subsequently. *Rex* v. *Sussex Justices; Langham, Ex parte*, 76 J. P. 476—D.

E. GENERAL RIGHTS AND LIABILITIES OF LICENSEE.

See also Vol. VIII. 1755.

Licensed Person Abroad.]—Where a publican is abroad, he ought to have on the

premises a person who for the purposes of his statutory obligations fully represents him, on whom, in proceedings for an offence under the Licensing Act, service of a summons can be effected. *Rex* v. *Louth Justices*, [1914] 2 Ir. R. 54—K.B. D.

F. LICENSED PREMISES.

Business other than Sale of Intoxicating Liquors Carried on—Structural Separation.]—A sale of drink consists in the order for the drink and the delivery of the drink in pursuance of the order. Where a publican carries on upon the licensed premises a business other than that of the sale of intoxicating liquors, and that portion of the premises used for the sale of such liquors is divided from the portion used for the purposes of such other business by a separation of such a character that, notwithstanding its existence, an effective order for drink can be given by a person in the latter portion to, and be received by, a person in the former portion of the premises, and drink can be supplied in pursuance of that order, such separation is not a "structural" separation within section 2 of the Intoxicating Liquors (Ireland) Act, 1906. *Beirne* v. *Duffy*, [1914] 2 Ir. R. 68—K.B. D.

A separation between the bar of an hotel and a billiard room (which is not licensed, but which is owned by the hotel proprietor and used for the purposes of profit), if it contains a glass portion through which a signal for drink can be given and received, resulting in the delivery of the drink ordered, by taking out the drink from the bar to the billiard room through a yard, is not a "structural" separation within the section. *Ib.*

Alteration in Premises without Consent of Justices — Premises Ill-conducted or Structurally Unsuitable.]—*See Marshall* v. *Spicer*, *ante*, col. 753.

G. OFFENCES.

1. Permitting Gaming.

See also Vol. VIII. 446, 1756.

Betting—Connivance.]—The respondent G., the licensee of a public house, was charged with having unlawfully suffered the house to be used for the purpose of betting with persons resorting thereto. The magistrate found as a fact that on the material dates one T. used the bar of the public house in question for the purpose of betting with persons resorting thereto; that the prosecution had failed to prove that any one in the house knew as a fact that betting was being carried on therein; and that the respondent G. and his servants had ample opportunity of seeing and ought to have seen the passing of the betting slips and otherwise becoming aware of the betting which was going on, and had ample opportunity of seeing and ought to have seen enough to bring to their minds a reasonable suspicion that betting on horse racing was going on in the house. Upon these findings the magistrate dismissed the information:—*Held*, that the case should be remitted back to the magistrate with a direction to consider whether the respondent G. had connived at betting being carried on. *Lee* v. *Taylor*, 107 L. T. 682; 77 J. P. 66; 23 Cox C.C. 220; 29 T. L. R. 52—D.

Conviction of Bookmaker for Using Licensed Premises for Betting—Subsequent Proceedings against Licensee—Admissibility of Conviction of Bookmaker.]—On May 4, 1911, a bookmaker was convicted at petty sessions for having unlawfully used the bar parlour of the appellant's licensed premises on April 29, 1911, for betting with persons resorting thereto. On May 15, 1911, the appellant was summoned for having suffered his premises to be so used for betting on April 29, 1911. At the hearing of the charge against the appellant he desired to raise the question whether betting had in fact taken place on April 29, in addition to the question whether he had suffered betting to take place, but the Justices ruled that they were bound by the conviction of the bookmaker on May 4 to hold that betting had taken place on the premises on April 29, and that the appellant could not, in view of that conviction, seek to shew that no betting had taken place on that date. The Justices having convicted the appellant,—*Held*, that evidence of the conviction of the bookmaker on May 4 was wrongly admitted and that the conviction of the appellant must be quashed. *Taylor* v. *Wilson*, 106 L. T. 44; 76 J. P. 69; 22 Cox C.C. 647; 28 T. L. R. 97—D.

2. Permitting Drunkenness.

See also Vol. VIII. 449, 1756.

Reasonable Steps to Prevent Drunkenness on Premises.]—While two men, M. and P., were on the premises of the respondent, a licensed beerhouse keeper, P. handed to M. a bottle of whisky, and M. drank some of the contents without the knowledge or consent of the respondent. Shortly thereafter M. became helplessly drunk and utterly insensible. The respondent caused him to be carried into a back room and laid on a sofa, and provided him with tea in order to bring him to his senses. Later on the same evening, while M. was still in a dazed condition, he was conducted home by the respondent's daughter. The respondent being summoned for having permitted drunkenness on her licensed premises, the Justices dismissed the summons, being of opinion that the respondent had taken all reasonable steps for preventing drunkenness on the premises:—*Held*, that there was evidence upon which the Justices could so find. *Townsend* v. *Arnold*, 75 J. P. 423—D.

Two Drinks Ordered—Enquiry by Barman.]—Where a sober person orders on licensed premises two drinks at the same time it is a reasonable step for preventing drunkenness on the premises within the meaning of section 75 of the Licensing (Consolidation) Act, 1910, for the barman to ascertain whether the second drink is intended for consumption by a sober person. *Radford* v. *Williams*, 110 L. T. 195; 78 J. P. 90; 24 Cox C.C. 22; 30 T. L. R. 108—D.

3. Selling during Prohibited Hours.

See also Vol. VIII. 451, 1757.

Beer Ordered and Paid for on Sunday Night —Purchaser's Bottle Placed in Yard of Premises—Beer Taken Away by Purchaser on Monday during Prohibited Hours.]—A man went to a public house on Sunday about 8 P.M. and handed the publican a bottle, which he asked should be filled with beer and that night put in the stable yard, so that he could take it away the next morning before the house opened. The beer was paid for when it was ordered. The bottle was filled with beer by the publican, and placed the same evening in the stable yard, which was part of the licensed premises. The purchaser came and took away the bottle from the stable yard on the Monday morning during prohibited hours:—*Held* (Avory, J., dissenting), that the whole transaction of sale was complete during legitimate hours on the Sunday evening, and that there was no delivery on the Monday, and that therefore the Justices were right in dismissing an information preferred against the publican under the Licensing (Consolidation) Act, 1910, s. 61, for keeping open his licensed premises during prohibited hours. *Bristow* v. *Piper*, 84 L. J. K.B. 607; [1915] 1 K.B. 271; 112 L. T. 426; 79 J. P. 177; 59 S. J. 178; 31 T. L. R. 80—D.

"Consumption" of Liquor during Prohibited Hours—Bona Fide Guests of Licensee.]—By an order made on February 5, 1915, under section 1, sub-section 1 of the Intoxicating Liquor (Temporary Restriction) Act, 1914, by the Licensing Justices for the City of Leeds, it was directed that "thereafter the sale or consumption of intoxicating liquor on all premises to which a retail intoxicating liquor licence is attached shall be suspended between 2.30 P.M. and 6 P.M. on Sunday." At 4 P.M. on Sunday, February 21, the police entered the premises of which the respondent was the licensee (which premises were duly closed according to law), and found the respondent and three other men at a table in the bar with glasses partly full of liquor before them. The three men were *bona fide* the guests of the respondent, and were being entertained by him at his own expense:—*Held* (Ridley, J., *dubitante*), that the consumption of the intoxicating liquor on the licensed premises in these circumstances did not constitute an offence under the order. *Blakey* v. *Harrison*, 84 L. J. K.B. 1886; [1915] 3 K.B. 258; 113 L. T. 733; 79 J. P. 454; 31 T. L. R. 503—D.

"Consumption" of intoxicating liquor under the Licensing Acts defined. *Ib.*

4. Selling at Unlicensed Place.

See also Vol. VIII. 461, 1760.

Sale by Brewer's Drayman—Liability of Employer—Aiding and Abetting.]—By the system in use in connection with the appellants' brewery business each of their draymen had a book called an "order and delivery book," which he took out each day, in which it was his duty to enter, when received, orders for beer, and hand in each evening to the appellants' clerk at their office. Each evening the drayman entered on a "load ticket" the orders for next day's delivery, which would be handed with the order and delivery book to the appellants' clerk. From these the loads for the next day's deliveries were made up, and it was the duty of a foreman and certain clerks to see that only a sufficient amount of beer was loaded to satisfy each day's orders. One of the appellants' draymen on May 1, 1908, gave in his order and delivery book, which contained the names of three persons, W., L., and F., the order for each being one crate of bottled beer. On May 2 the drayman went out with a horse and van containing crates and bottled beer of the appellants. None of the goods bore the name of any customer for whom the goods were intended, and there was no appropriation or identifying marks upon any of the bottles or crates. The drayman delivered a crate to F., two bottles to one B., one bottle to L., and one bottle to W. There was no entry in the book of a single bottle as the order of W. and L. The beer delivered was paid for on delivery and the money was duly accounted for to the appellants at the end of the day. Draymen were warned not to deliver beer unless an order had first been taken to the licensed premises. The drayman having been convicted of selling beer without being duly licensed, the appellants were subsequently charged with aiding and abetting him in committing the offence, and were convicted, the Justices coming to the conclusion that no sufficient appropriation of the bottles of beer had taken place before they left the licensed premises:—*Held*, that the conviction was right. *Stansfeld* v. *Andrews*, 100 L. T. 529; 73 J. P. 167; 22 Cox C.C. 84; 25 T. L. R. 259—D.

Two Convictions on Same Day—"Second offence"—Forfeiture of Licence.]—Two informations were preferred against the applicant, who was the holder of an off-licence for the sale of beer, under section 3 of the Licensing Act, 1872, for having sold beer at places where he was not authorised by his licence to sell the same, and for having at the same time and places exposed beer for sale. The two cases were heard together, and the applicant was convicted and fined upon each information. At the next general annual licensing meeting the applicant applied for a renewal of his licence, but the licensing Justices refused the application on the ground that the applicant had been convicted of a "second offence" under section 3, and that therefore his licence had become forfeited:—*Held*, that a "second offence" under the section meant an offence committed after a conviction for a previous offence, and that the decision of the Justices was therefore wrong. *Rex* v. *South Shields Licensing Justices*, 80 L. J. K.B. 809; [1911] 2 K.B. 1; 105 L. T. 41; 75 J. P. 299; 55 S. J. 386; 27 T. L. R. 330—D.

Sale to Members of Club.]—*See* cases under sub tit. Clubs, *post.*

5. Selling without Licence.

See also Vol. VIII. 1764.

"Beer"—Liquor Manufactured from Glucose and Hops—Liquor Containing 2 per cent. of Proof Spirit.]—The appellant was summoned under section 50, sub-section 3 of the Finance (1909-10) Act, 1910, for having sold by retail beer, for the retail sale of which he was required to take out a licence under that Act, without having taken out such licence. On the premises where the liquor was sold there were exhibited the following advertisements: "The ales and stouts which are offered to the public on these premises are manufactured at about the same strength as ordinary ales and stouts, guaranteed free from chemicals, and to contain no preservatives." "Finlay's ales and stouts brewed from the best malt and Kent and Worcester hops Ale 1½*d.* per pint, stout 2*d.* per pint, to be consumed on or off the premises." On analysis the liquor in question had the ordinary gravity of beer and contained 2 per cent. of proof spirit. It was manufactured from liquid glucose and hops, and was fermented with yeast. In colour and appearance it was exactly like ordinary beer. The Justices were of opinion that the liquor so sold was "beer" within section 52 of the Finance (1909-10) Act, 1910; that the clause in that section defining "beer" could be subdivided; and that it was necessary to have an Excise licence for the sale of such liquor. They accordingly convicted the appellant:—*Held*, that the Justices had properly construed the clause in section 52 defining "beer," and that they were entitled to hold on the evidence before them that the liquor sold by the appellant was "beer" within that section. *Fairhurst* v. *Price*, 81 L. J. K.B. 320; [1912] 1 K.B. 404; 106 L. T. 97; 76 J. P. 110; 22 Cox C.C. 660; 28 T. L. R. 132—D.

Sale by Owners of Licensed Premises by their Manager — Manager Licensed — Owners not Licensed.]—The appellants, a firm of brewers, owners of licensed premises, put a manager on those premises, who held the licence, resided therein, personally conducted the sale of intoxicating liquor thereon, and was responsible for the management thereof. The intoxicating liquor on the premises was the property of the appellants, and they received the profits derived from their sale:—*Held*, that there had not been a sale by the appellants without a licence of intoxicating liquor within the meaning of section 65, sub-section 1 of the Licensing (Consolidation) Act, 1910. *Dunning* v. *Owen* (76 L. J. K.B. 796; [1907] 2 K.B. 237) and *Peckover* v. *Defries* (71 J. P. 38) considered. *Mellor* v. *Lydiate*, 84 L. J. K.B. 8; [1914] 3 K.B. 1141; 111 L. T. 988; 79 J. P. 68; 24 Cox C.C. 443; 30 T. L. R. 704—D.

—— **Aiding and Abetting.**]—The appellant, a brewer, was in the habit of supplying three of his private customers, small cottagers, with beer for their own consumption. Shortly after war broke out between Great Britain and Germany a brigade of Territorials was quartered in a building whose principal entrance was directly opposite the three cottages, and the supply by the appellant of beer to the cottagers increased considerably—in one case from two gallons a week to twenty-five gallons a day. The appellant was told by his carman that these customers were selling beer to the soldiers, when he said that they must not do it, but that there was nothing to prevent the soldiers giving the cottagers something for their trouble in obtaining the beer. This remark was communicated by the carman to the cottagers, and the increased supply of beer continued. The cottagers were charged with, and pleaded guilty to, selling intoxicating liquors without a licence to the soldiers, and the appellant was charged with, and convicted of, aiding and abetting them:—*Held*, that there was evidence before the Justices which would support such conviction. *Cook* v. *Stockwell*, 84 L. J. K.B. 2187; 113 L. T. 426; 79 J. P. 394; 31 T. L. R. 426—D.

Passenger Vessel—Six-days Licence Held by Steward—Sale on Sunday.]—A licence was taken out in the name of the steward of a passenger vessel for the sale of liquor on board which was indorsed with a condition prohibiting the sale of liquor on Sunday. On a Sunday, when the steward was not on board, sales of liquor were made by waiters employed on the vessel. In an action against the owners for the recovery of penalties under section 50, sub-section 3 of the Finance (1909-10) Act, 1910.—*Held*, that the sales were sales without licence by the owners, and not sales in breach of his licence by the steward, and accordingly that the owners were liable in the statutory penalties. *Lord Advocate* v. *Nicol*, [1915] S. C. 735—Ct. of Sess.

Selling by Retail—Wholesale Licence—Sale of Wholesale Quantity—Delivery by Retail Quantities.]—The respondent was not licensed to sell beer by retail, but held a wholesale beer dealer's licence under the Act 6 Geo. 4. c. 81, which empowered him to sell beer in quantities of not less than four and a half gallons. On April 8, 1910, one J. B. bought at the licensed premises eighteen quart bottles of stout. On the same day J. B. paid to the respondent 6*s.*, the price of the eighteen quart bottles of stout, and the respondent agreed to store and deliver the bottles as the purchaser from time to time might require. The respondent gave on April 8 to J. B. a receipt, and in his presence put aside eighteen quart bottles of stout, which were placed in a locker under the counter in the shop together with a billhead bearing J. B.'s name. From time to time the stout delivered was taken from the bottles which had been set aside by the respondent on April 8, and each delivery was recorded on the billhead bearing J. B.'s name which had been placed with the bottles. On May 28, 1910, the last two of the eighteen bottles paid for by J. B. on April 8 were delivered at his house in accordance with an order given by him:—*Held*, that there was a complete sale on April 8, 1910, and that the respondent had not sold in respect of the last delivery the stout by retail without a licence, contrary to section 3 of the Licensing Act, 1872. *Hales* v. *Buckley*, 104 L. T. 34; 75 J. P. 214—D.

Recovery of Penalty for each Sale of Liquor without Licence—Power of Court to Modify Penalty.]—An action having been brought by the Commissioners of Inland Revenue against the owners of a passenger vessel, for which a six-days licence had been obtained, to recover penalties under section 50, sub-section 3 of the Finance (1909-10) Act, 1910, for sales of liquor without a licence, which had taken place on Sundays,—*Held*, first, that the Commissioners were entitled to recover a separate penalty for every separate sale, even though these sales were to the same individual on the same day; and secondly, that the Court had no power to modify the penalties. *Lord Advocate* v. *Nicol*, [1915] S. C. 735—Ct. of Sess.

—— **Proof.**] — For proof in the Court of Exchequer of the offence under section 50, sub-section 3, the evidence of one credible witness is, under the provisions of section 65 of the Excise Management Act, 1827, sufficient. *Ib.*

Conviction — Non-payment of Fine and no Sufficient Distress—Term of Imprisonment.] —Section 65, sub-section 1 of the Licensing (Consolidation) Act, 1910, prohibits the sale of any intoxicating liquor by retail except by a licensed person, and sub-section 2 enacts that "If any person acts in contravention of this section, he shall be liable . . . in the case of the first offence to a fine not exceeding fifty pounds, or to imprisonment with or without hard labour for a term not exceeding one month." Section 99, sub-section 1, provides that, "Except as otherwise expressly provided, any offence under this Act may be prosecuted, and every fine or forfeiture may be recovered and enforced in manner provided by the Summary Jurisdiction Acts":—*Held*, that as no method of recovering a fine imposed for a contravention of section 65 of the Licensing (Consolidation) Act, 1910, is provided by that Act, the provisions of section 5 of the Summary Jurisdiction Act, 1879, apply; and therefore, where a person is convicted under section 65, and a fine exceeding 20*l.* is imposed, he may, on non-payment of the fine and in default of sufficient distress, be sentenced, in accordance with the scale provided by section 5 of the Act of 1879, to a term of imprisonment not exceeding three months. *Reg.* v. *Hopkins* (62 L. J. M.C. 57; [1893] 1 Q.B. 621) applied. *Rex* v. *Leach; Fritchley, Ex parte*, 82 L. J. K.B. 897; [1913] 3 K.B. 40; 109 L. T. 313; 77 J. P. 255; 23 Cox C.C. 535; 29 T. L. R. 569—D.

6. Selling otherwise than by Standard Measure.

Sale by Barman—"Person"—"Sells."]—A barman, employed by the licensee of licensed premises to sell his intoxicating liquor in the usual way, without the knowledge of the licensee sold the licensee's beer to a customer in a measure not marked according to the Imperial standards, in accordance with section 69, sub-section 1 of the Licensing (Consolidation) Act, 1910:—*Held*, that the barman was a "person" who "sells" within the meaning of sub-section 2 of section 69, and therefore liable to the penalties imposed thereby for a sale made in the above manner. *Caldwell* v. *Bethell*, 82 L. J. K.B. 101; [1913] 1 K.B. 119; 107 L. T. 685; 77 J. P. 118; 23 Cox C.C. 225; 29 T. L. R. 94—D.

7. Allowing Children to be in Bar of Licensed Premises.

Bar—Box Partitioned off from Bar.]—In the corner of the main bar of certain licensed premises a space about six feet square was separated therefrom by wooden partitions seven feet in height, which did not reach the ceiling The box or apartment so formed had a door to it, and inside were chairs and a table, liquor and food being there supplied to customers. It was not proved to be exclusively or mainly used for the supply of intoxicating liquor:—*Held*, that the box did not form part of the "bar" of the premises within the meaning of section 120 of the Children Act, 1908. *Donaghue* v. *M'Intyre*, [1911] S. C. (J.) 61—Ct. of Just.

"Part of the premises exclusively or mainly used for the sale and consumption of intoxicating liquor"—Kitchen Used for Trade Purposes during Portions of the Day and for Domestic Purposes during other Portions of Day.]—The Children Act, 1908, provides in section 120, sub-section 1, that "The holder of the licence of any licensed premises shall not allow a child to be at any time in the bar of the licensed premises, except during the hours of closing." The term "bar of licensed premises" is defined in sub-section 5 as meaning "any open drinking bar or any part of the premises exclusively or mainly used for the sale and consumption of intoxicating liquor." The kitchen of the appellant's licensed premises contained the ordinary fittings and appliances of a kitchen, and was also fitted up as a drinking room. A child, two years old, was in the room while its mother was drinking beer. The Justices found that the room was extensively used for trade purposes during certain portions of the day and for domestic purposes during other portions of the day, and they convicted the appellant of an offence under section 120 of the Children Act, 1908:—*Held*, that the fact that the room was used for domestic purposes during certain portions of the day did not preclude the Justices from holding that the room was "mainly used for the sale and consumption of intoxicating liquor." *Pilkington* v. *Ross*, 83 L. J. K.B. 1402; [1914] 3 K.B. 321; 111 L. T. 282; 78 J. P. 319; 12 L. G. R. 944; 24 Cox C.C. 277; 30 T. L. R. 510—D.

Liability of Licensee for Act of his Wife.]—The appellant, who was the licensee of a public house, was charged, under section 120 of the Children Act, 1908, with having unlawfully allowed a child under the age of fourteen to be in the bar of his licensed premises while the premises were open. The child in question, a girl of ten, had gone to the licensed premises in the evening with an elder sister to see the appellant's wife—who was a dressmaker and carried on business in a room on the upper floor of the premises—about a dress she was making for the elder girl. When the

two girls entered the licensed premises the appellant's wife saw them and, without the appellant's knowledge, invited them to wait in the bar parlour while she went to her workroom to bring down the dress, so as to avoid the necessity of lighting up the workroom, which was almost in darkness. The girls went into the bar parlour and waited there for the dress to be brought. While they were so waiting there were no customers in the bar parlour, nor was any intoxicating liquor sold there during that time. The appellant did not see the two girls enter, nor did he know they were in the bar parlour until his attention was called to their presence by police officers who had entered. The Justices convicted the appellant, being of opinion that he was responsible for the action of his wife and so was guilty of an offence under the Act in allowing the younger of the two girls to be on the licensed premises while those premises were open :—*Held*, that the conviction must be quashed, as in the circumstances the appellant was not responsible for the action of his wife. *Russon* v. *Dutton* (*No.* 2), 104 L. T. 599; 75 J. P. 207; 22 Cox C.C. 487; 27 T. L. R. 198—D.

H. CONVICTION AND PUNISHMENT BY JUSTICES.

See also Vol. VIII. 467, 1770.

Two Convictions on Same Day—"Second offence"—Forfeiture of Licence.] —Two informations were preferred against the applicant, who was the holder of an off-licence for the sale of beer, under section 3 of the Licensing Act, 1872, for having sold beer at places where he was not authorised by his licence to sell the same, and for having at the same time and places exposed beer for sale. The two cases were heard together, and the applicant was convicted and fined upon each information. At the next general annual licensing meeting the applicant applied for a renewal of his licence, but the licensing Justices refused the application on the ground that the applicant had been convicted of a "second offence" under section 3, and that therefore his licence had become forfeited :—*Held*, that a "second offence" under the section meant an offence committed after a conviction for a previous offence, and that the decision of the Justices was therefore wrong. *Rex* v. *South Shields Licensing Justices*, 80 L. J. K.B. 809; [1911] 2 K.B. 1; 105 L. T. 41; 75 J. P. 299; 22 Cox C.C. 431; 55 S. J. 386; 27 T. L. R. 330—D.

Sale by Unlicensed Person — Conviction — Non-payment of Fine and no Sufficient Distress —Term of Imprisonment.]—Section 65, sub-section 1 of the Licensing (Consolidation) Act, 1910, prohibits the sale of any intoxicating liquor by retail except by a licensed person, and sub-section 2 enacts that "If any person acts in contravention of this section, he shall be liable . . . in the case of the first offence to a fine not exceeding fifty pounds, or to imprisonment with or without hard labour for a term not exceeding one month." Section 99, sub-section 1, provides that, "Except as otherwise expressly provided, any offence under this Act may be prosecuted, and every fine or forfeiture may be recovered and enforced, in manner provided by the Summary Jurisdiction Acts" :—*Held*, that as no method of recovering a fine imposed for a contravention of section 65 of the Licensing (Consolidation) Act, 1910, is provided by that Act, the provisions of section 5 of the Summary Jurisdiction Act, 1870, apply; and therefore, where a person is convicted under section 65, and a fine not exceeding 20*l.* is imposed, he may, on non-payment of the fine and in default of sufficient distress, be sentenced, in accordance with the scale provided by section 5 of the Act of 1879, to a term of imprisonment not exceeding three months. *Reg.* v. *Hopkins* (62 L. J. M.C. 57; [1893] 1 Q.B. 621) applied. *Rex* v. *Leach; Fritchley, Ex parte*, 82 L. J. K.B. 897; [1913] 3 K.B. 40; 109 L. T. 313; 77 J. P. 255; 23 Cox C.C. 535; 29 T. L. R. 569—D.

I. COVENANTS AND AGREEMENTS RESPECTING LICENSED HOUSES.

See also Vol. VIII. 470, 1770.

Lease — Covenant — Construction — Sale of Goods "at fair market price"—Tied and Free Public Houses — Two Market Prices.] — The respondent was the lessee of a public house in London of which the appellants, a firm of brewers, were the owners. By his lease he covenanted that he would deal exclusively with them for all malt liquors which should be sold or consumed on the premises, "provided they shall be willing to supply the same at the fair market price." It was proved that of the public houses in London about 93 per cent. were "tied" houses, and 7 per cent. were "free" houses, and that the London brewers supplied beers at standard prices, fixed by agreement among themselves, subject to discounts, and that the discounts allowed to "free" houses were larger than those allowed to "tied" houses. In an action brought by the appellants to recover the balance of an account for beer supplied to the respondent, he counterclaimed for sums which he alleged that he had paid to the appellants in excess of the fair market price for beer supplied to him. The jury found that there were two market prices—one for "tied" and one for "free" houses—and that the respondent had been charged the fair market price as applying to a "tied" house :—*Held*, that the term "market price" in a contract had not a fixed definite legal significance which attached to it invariably, but that it must be construed with reference to the context and surrounding circumstances, and that the respondent was not entitled to recover on the counterclaim. *Charrington & Co.* v. *Wooder*, 83 L. J. K.B. 220; [1914] A.C. 71; 110 L. T. 548—H.L. (E.)

Judgment of the Court of Appeal (29 T. L. R. 145) reversed. *Ib.*

—— Compensation Charge—Covenant not to Deduct from Rent—Willingness of Tenant not to Deduct—Invalidity of Covenant—Best Rent —Lease Void against Remaindermen.]—By section 7, sub-section 2 of the Settled Land

Act, 1882, "Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case." It was enacted by section 3, sub-section 3 of the Licensing Act, 1904, that a percentage of the compensation charge might, "notwithstanding any agreement to the contrary," be deducted from his rent by any licence holder who pays such a charge. A similar provision is contained in section 21, sub-section 3 of the Licensing (Consolidation) Act, 1910. A tenant for life demised licensed premises to the defendant, who covenanted to pay the compensation charge without making any deduction from the rent, and the defendants in fact paid the charge without making any deduction:—*Held*, that the covenant was invalid, and that as the defendants were willing to pay the full rent without deductions the rent minus the deduction was not the best rent reasonably obtainable, and therefore the lease was void as against the remaindermen. *Pumford* v. *Butler & Co.*, 83 L. J. Ch. 858; [1914] 2 Ch. 353; 111 L. T. 408; 78 J. P. 457; 58 S. J. 655; 30 T. L. R. 556—Joyce, J.

Insurance of Licence—Covenant by Lessee—Loss or Forfeiture of Licence—Loss by Reason of Redundancy.]—Where a lease of a public house has been granted since the provisions of the Licensing Act, 1904, for compensation, in the event of the renewal being refused on the ground of redundancy, came into operation, a covenant by the lessee to insure against the loss or forfeiture of the licence is performed by his insuring merely against loss or forfeiture through any act on his part, but not against loss by reason of redundancy. *Wootton* v. *Lichfield Brewery Co.*, 59 S. J. 744; 31 T. L. R. 615—Astbury, J. Affirmed, 32 T. L. R. 50—C.A.

Attempt to Create Property in Licence Apart from Premises.]—By an agreement dated July 5, 1892, purporting to be made between the plaintiffs, a brewery company, and the defendant, the occupier of a house in D. street in the borough of C., it was recited that the company were beneficial owners of a licence for a house in B. street, and that the defendant had requested the company to allow her to apply for a transfer of the licence to the house in D. street to her own name, and to sell thereunder, to which the company agreed on her undertaking to pay them the sum of 300*l.* secured by a bond executed by her contemporaneously, and the defendant thereby agreed to take all necessary steps to have the licence transferred to her own name, and to the house in D. street, and to maintain the licence in full force, and renew it, and to indorse and deposit it with the company, to be transferred by her to such other person and house as the company might name, the 300*l.* to be repaid to defendant on such transfer being obtained from the licensing authority. The defendant further agreed, while licensed, to deal exclusively with the company for all porter and for all stout so long as they should brew and vend stout, which she should sell on the premises or elsewhere under colour of the licence, and also to purchase from the company four tierces of porter in every month, and the company agreed to supply her while licensed with such quantity of good merchantable porter, and, so long as the company should brew and vend stout, such quantity of good merchantable stout as she might require, on being paid in cash therefor the price usually charged to customers. The agreement was executed by the defendant under seal, but was not executed by the company. The company had purchased the licence of the house in B. street (apart from the house itself) for 160*l.* in 1891, and the defendant had obtained at quarter sessions an interim transfer of this licence to the house in D. street at the licensing sessions in June, 1892, which was confirmed at the annual licensing sessions in October, 1892. The defendant dealt with the company for porter, but only to a very small extent for stout, which she procured almost exclusively from another brewery, and in 1907 she entered into an agreement with this other brewery to sell its bottled stout exclusively. Throughout there was painted on the outside of her shop "J. L. Murphy & Co.'s XX Stout." The plaintiffs were aware for a long time that the defendant was selling some stout of the other brewery, but did not know that she was selling it in large quantities till shortly before bringing the present action, which claimed damages for breach of the agreement of July 9, 1892, and an injunction to restrain the defendant from selling porter and stout other than that manufactured by the plaintiffs. The defendant pleaded want of, and illegality of, consideration, unreasonable restraint of trade, *laches*, and acquiescence. There was no plea that the agreement, apart from the consideration, was illegal:—*Held*, that the action should be dismissed. *Per* O'Brien, L.C., and Holmes, L.J.: The dominant object of the agreement was an attempt to create property in a licence apart from the premises, in contravention of the licensing laws, and the agreement was therefore illegal and not enforceable. *Per* Palles, C.B.: Illegality pervaded the entire agreement—both the consideration and the promises. *Held*, further, that as the illegality of the agreement appeared on its face it was not necessary that such illegality should have been pleaded. *Murphy & Co.* v. *Crean*, [1915] 1 Ir. R. 111—C.A.

J. CLUBS.

See also Vol. VIII. 1777.

Excise Duty—Intoxicating Liquor Supplied in Registered Club—Basis on which Duty Payable.]—The Excise duty of sixpence imposed upon every registered club by section 48, sub-section 1 of the Finance (1909-10) Act, 1910, in respect of every pound of intoxicating liquor purchased by the club is to be paid on the actual price paid by the club for such intoxicating liquor, notwithstanding that in such price there may be included a duty already paid by the merchant from whom the club purchased the liquor. *Callaway* v. *Regem*, 108 L. T. 1029; 29 T. L. R. 603—Atkin, J.

Club Struck off Register—Power to Re-register — "Unregistered club."] — A club, struck off the register of clubs under the provisions of section 95, sub-section 1 of the Licensing (Consolidation) Act, 1910, cannot be re-registered, and therefore the sale of liquor on the premises of such club is a sale on the premises of an "unregistered club," as defined in section 110, within the meaning of section 93, sub-section 1. *Lees* v. *Lovie*, 81 L. J. K.B. 978; [1912] 2 K.B. 425; 107 L. T. 165; 76 J. P. 372; 23 Cox C.C. 92; 28 T. L. R. 441—D.

Sale to Members of Club—Intoxicating Liquor Property of Members of Club.]—The appellants were the officers carrying on a club which was duly registered under the Licensing (Consolidation) Act, 1910, and the property of which was by the rules vested in trustees representing and acting for the whole of the members of the club. The club was struck off the register for twelve months on the ground that it had not been conducted in good faith as a club. The appellants were summoned for selling intoxicating liquor by retail which they were not licensed to sell on a date before the club was struck off the register. The magistrate found that the intoxicating liquor formed part of the general property of the club vested in trustees on behalf of the members of the club. He also found that the club was not a *bona fide* club, but was conducted solely for the purpose of enabling frequenters of the club to purchase intoxicating liquors in a place other than in a licensed house and during prohibited hours:—*Held*, that, having regard to the finding of the magistrate, there had been no sale by retail by the appellants of intoxicating liquor within the meaning of section 65 of the Licensing (Consolidation) Act, 1910, but merely a distribution of the property of the club among the members to whom it belonged. *Metford* v. *Edwards*, 84 L. J. K.B. 161; [1915] 1 K.B. 172; 112 L. T. 78; 79 J. P. 84; 30 T. L. R. 700—D.

Distribution of Liquor, the Property of the Club, among Members of the Club, at Place other than Club Premises.]—A supper and smoking concert for the members of a club, which was registered under section 91 of the Licensing (Consolidation) Act, 1910, was held at a place other than the club premises. A supply of intoxicating liquor, belonging to the club, was taken to that place by certain members of the club, and there distributed only to the members of the club, in the same way as it was distributed at the club:—*Held*, that the fact that the distribution of the liquor among the members of the club took place at a place other than the club premises did not make the distribution a sale of intoxicating liquor by retail, so as to constitute an offence under section 65 of the Licensing (Consolidation) Act, 1910. *Quære*, whether an offence had been committed under section 94 of the Licensing (Consolidation) Act, 1910, if the appellants had been prosecuted under that section. *Humphrey* v. *Tudgay*, 84 L. J. K.B. 242; [1915] 1 K.B. 119; 112 L. T. 152; 79 J. P. 93—D.

Sale, Supply, or Consumption of Intoxicating Liquor—Suspension—Suspension "at an hour earlier than nine at night"—Approval of Order by Secretary of State.]—By section 1, sub-section 1 of the Intoxicating Liquor (Temporary Restriction) Act, 1914, "The licensing justices for any licensing district may, . . . by order direct that the sale or consumption of intoxicating liquor on the premises of any persons holding any retailers' licence . . . and the supply or consumption of intoxicating liquor in any registered club . . . shall be suspended while the order is in operation, during such hours and subject to such conditions or exceptions (if any) as may be specified in the order: Provided that, if any such order suspends the sale, supply, or consumption of intoxicating liquor at an hour earlier than nine at night, the order shall not have effect until approved by the Secretary of State." Licensing Justices made an order under the above section providing that the sale or consumption of intoxicating liquor on the premises of persons holding retailers' licences, and the supply or consumption of such liquor in registered clubs, should be suspended "in the evening of each day after the hour of 10 o'clock until 6 A.M. on the following day being a week day and 12.30 P.M. on the following day being a Sunday":—*Held*, that the object of the Act was to put licensed premises and registered clubs on the same footing with regard to restrictions on the sale and supply of intoxicating liquor; that the order meant that, in regard both to licensed premises and registered clubs, there should be a suspension from 10 P.M. till the normal opening hour of licensed premises the next morning; and that it did not come within the proviso to section 1, and did not therefore require the approval of the Secretary of State. *Lee* v. *Aykroyd*, 84 L. J. K.B. 1831; [1915] 2 K.B. 692; 113 L. T. 454; 79 J. P. 381; 31 T. L. R. 445—D.

K. OFFENCES BY OTHER THAN LICENCE HOLDERS.

See also Vol. VIII. 1779.

Guest of Lodger—Using Licensed Premises merely for Obtaining Liquor.]—By section 62, sub-section 1 of the Licensing (Consolidation) Act, 1910, "If, during any period during which any premises are required under the provisions of this Act, to be closed, any person is found on those premises, he shall, unless he satisfies the Court that he was an inmate, servant, or a lodger on the premises, or a *bona fide* traveller, or that otherwise his presence on the premises was not in contravention of the provisions of this Act with respect to closing hours, be liable in respect of each offence to a fine not exceeding forty shillings." The appellant's cousin was staying at licensed premises as an ordinary hotel guest or lodger, and he invited the appellant and some friends to have a drink at the hotel during closing hours. The appellant was found on the premises after closing time drinking whisky which had been ordered and paid for by his cousin. Upon the hearing of an information against the appellant charging him under the above section with being unlawfully on licensed

premises at a time when they were required to be closed, he was convicted and fined by the Justices:—*Held*, that the onus was on the appellant of satisfying the Justices that his presence on the premises was not in contravention of the Act, and that they were justified on the evidence in convicting him. *Atkins* v. *Agar*, 83 L. J. K.B. 265; [1914] 1 K.B. 26; 109 L. T. 891; 78 J. P. 7; 23 Cox C.C. 677; 30 T. L. R. 27—D.

Pine v. *Barnes* (57 L. J. M.C. 28; 20 Q.B. D. 221) distinguished. *Jones* v. *Jones* (79 L. J. K.B. 762; [1910] 2 K.B. 262) followed. *Ib.*

Person Found Drunk on Licensed Premises after Closing Hours—Lodger.]—A *bona fide* lodger in licensed premises, who is found drunk on such premises after closing hours, cannot be convicted under section 12 of the Licensing Act, 1872. *Lester* v. *Torrens* (46 L. J. M.C. 280; 2 Q.B. D. 403) followed. *Young* v. *Gentle*, 84 L. J. K.B. 1570; [1915] 2 K.B. 661; 113 L. T. 322; 79 J. P. 347; 31 T. L. R. 409—D.

L. HABITUAL DRUNKARD.

See also Vol. VIII. 1779.

Definition—Order for Judicial Separation by Justices.]—Justices are not entitled to find that a person is a habitual drunkard within the meaning of the Habitual Drunkards Act, 1879, unless they are satisfied that by reason of the habitual intemperance the person charged is dangerous at times to himself or herself or to others, or is incapable of managing himself or herself and his or her affairs. It is necessary to prove that, though a person may be excessively intemperate and violent at times, the acts of violence were brought about by reason of the intemperance. *Tayler* v. *Tayler*, 56 S. J. 572—D.

INVENTION.

See PATENT.

INVESTMENT.

Powers of.]—*See* TRUST.

IRELAND.

See also Vol. VIII. 484, 1781.

Bonus Payable under Irish Land Act—Whether an Interest in the Lands.]—The percentage or bonus payable under section 48 of the Irish Land Act, 1903, is a personal thing given as an inducement to an owner to sell lands. It is not an interest in the lands sold, nor is it part of the proceeds of sale of the lands. View of Eve, J., in *Tremayne* v. *Rashleigh* (77 L. J. Ch. 365; [1908] 1 Ch. 681), that the bonus is an interest in the lands, dissented from. *Heard* v. *Gabbett*, [1915] 1 Ir. R. 213—Ross, J.

Charitable Trusts—Bonus Percentage in the Hands of Trustees—Capital or Income—Irish Land Purchase.]—Where trustees of lands, held after a life tenancy for charitable purposes, sell the lands under the Irish Land Purchase Acts, 1903 and 1904, the percentage bonus received by them under section 48 of the Act of 1903 is to be applied upon the trusts of the settlement, but is capital, not income, and is to be paid over as capital to the official trustee with the rest of the purchase money. *Thorngate's Settlement, In re: Churcher* v. *Att.-Gen.*, 84 L. J. Ch. 561; 113 L. T. 483; 13 L. G. R. 901—Eve, J.

Land Purchase Acts—Appeal to House of Lords.]—Section 24, sub-section 13 of the Irish Land Act, 1903, does not of itself create or enact a right of appeal to the House of Lords. *Scottish Widows' Fund Life Assurance Society* v. *Blennerhassett*, 81 L. J. P.C. 160; [1912] A.C. 281; 106 L. T. 4; 28 T. L. R. 187—H.L. (Ir.)

Local Government—Improvement Scheme—Letting of Cottages Erected under Scheme—Preference to Labourer Signing Representation.]—The provision in section 29, sub-section 2 of the Labourers (Ireland) Act, 1906, that, on the first letting of any cottage or allotment comprised in an improvement scheme under the Act, preference shall be given to the agricultural labourers who have signed the representation on which the scheme was founded, does not give to any such labourer a right to any particular cottage, but the district council have a discretion in allotting cottages among applicants. *Marron* v. *Cootehill Rural Council*, 84 L. J. P.C. 125; [1915] A.C. 792; 79 J. P. 401—H.L. (Ir.)

Decision of the Court of Appeal in Ireland ([1914] 1 Ir. R. 201) affirmed. *Ib.*

Marriage—Celebration by a Roman Catholic Priest—Whether Statute Extra-territorial in Operation.]—The Irish statute 19 Geo. 2. c. 13, which enacted that every marriage after the year 1746 celebrated between a Papist and any Protestant, or between two Protestants, if celebrated by a Roman Catholic priest, should be null and void, was not extra-territorial in its operation, and did not, while it was in force, affect a marriage celebrated in a foreign country. Where, therefore, while that Act was in force a marriage was celebrated in Austria between A, a Protestant and domiciled Irishman, and B, who was an Austrian and a Roman Catholic, by a Roman Catholic priest *in facie ecclesiæ*, the marriage being valid according to Austrian law,—*Held*, that the marriage in Austria was not avoided by 19 Geo. 2. c. 13, and therefore that A could

not, while B was alive, contract a valid marriage with another woman. *Swifte* v. *Att.-Gen. for Ireland* (*No.* 1), 81 L. J. P.C. 158; [1912] A.C. 276; 106 L. T. 3; 28 T. L. R. 199—H.L. (Ir.)

Congested District Board — Compulsory Powers.]—*See* LANDS CLAUSES ACT.

Salmon Fishery.]—*See* FISHERY.

JOINT TENANCY.

See ESTATE; INSURANCE (LIFE).

JOINTURE.

See HUSBAND AND WIFE; POWER.

JUDGMENT.

Foreign Judgment.] — *See* INTERNATIONAL LAW.

Practice Relating to.]—*See* PRACTICE.

JUDICIAL SEPARATION.

See HUSBAND AND WIFE.

JUDICIAL TRUSTEE ACT, 1896.

See TRUSTEE.

JURY.

See CRIMINAL LAW; PRACTICE.

JUSTICE OF THE PEACE.

A. JURISDICTION AND DUTY.

See also Vol. VIII. 543, 1784.

1. GENERALLY.

Priority of Jurisdiction.]—The settled rule as to the jurisdiction of Justices is, that in each particular case it attaches to the first set of Justices duly authorised who have possession and cognisance of the facts. *Rex* v. *Cork Justices*, [1912] 2 Ir. R. 151—K.B. D.

Justices for County—Petty Sessional Divisions — Sale of Milk — Place of Delivery to Purchaser.] — By section 20 of the Sale of Food and Drugs Act, 1875, proceedings for the recovery of a penalty for an offence against a provision of the Act may be taken "before any justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser, in a summary manner":—*Held*, that where an article sold is actually delivered to a purchaser in one petty sessional division of a county, Justices who usually sit and act in another division of that county have jurisdiction to adjudicate upon an information for an offence under the Act. *Held*, also, that a county Justice who usually sits and acts in one petty sessional division of the county has jurisdiction to issue a summons for an offence under the Act, although the article sold was actually delivered to the purchaser in another division of the county. *Rex* v. *Beacontree Justices; Rex* v. *Wright*, 84 L. J. K.B. 2230; [1915] 3 K.B. 388; 79 J. P. 461; 13 L. G. R. 1094; 31 T. L. R. 509—D.

2. Where Disqualified from Acting.

See also Vol. VIII. 543, 1784.

Bias—Application for Renewal of Licence—Justice a Member of Order of Rechabites.]—The renewal of a licence having been refused by the compensation authority by a majority, one of the Justices wrote a letter to a newspaper giving the names of those who voted for and those who voted against the granting of the renewal. Among those stated in that letter to have voted for the granting of the renewal was W. W. thereupon wrote a letter to the same newspaper contradicting this statement, and adding, "I should be nothing less than a traitor, considering the position I hold, if I had voted as he states in his letter." It appeared that W. had been for many years the secretary of a branch of the Order of Rechabites, and as a member of that society he had signed the following declaration: "I hereby declare that I will abstain from all intoxicating liquors . . . I will not engage in the traffic of them, but in all possible ways will discountenance the use, manufacture, and sale of them." On an application for a rule *nisi* for a *mandamus* to hear and determine the application for the renewal according to law, on the ground that there was evidence of bias on the part of W. in considering the application,—*Held* (Kennedy, L.J., dissenting), that the rule for a *mandamus* must be made absolute, inasmuch as the circumstances were such as to make bias so probable that W. ought not to have taken part in the case. *Robinson, Ex parte*, 76 J. P. 233; 28 T. L. R. 288—C.A.

—— Member Belonging to Society Pledged to Prohibition Principles.]—The mere fact of belonging to a temperance society pledged to the principle of "no licence in any form under any circumstances for the sale of liquors to be used as a beverage," does not operate as a disqualification for sitting as a member of a licensing Court. *M'Geehen* v. *Knox*, [1913] S. C. 688—Ct. of Sess.

Statutory Disqualification—Court of Summary Jurisdiction — Acquittal — Order — Voidable, not Void — Certiorari to Quash Acquittal.]—Two miners were charged before a Court of summary jurisdiction with an offence under the Coal Mines Act, 1911. An order of acquittal was made by the Justices, one of whom was disqualified from acting as a member of the Court by section 103 of the Coal Mines Act, 1911, as he was a person employed in a mine:—*Held*, that the order of acquittal could not be quashed on *certiorari* —*per* Ridley, J., upon the ground that the accused had stood in peril of conviction, the order of the Justices being voidable only and not void, and that therefore the maxim *Nemo debet bis vexari* applied; *per* Scrutton, J., upon the ground that otherwise the accused would be prevented from raising the plea of *autrefois acquit* if subsequent proceedings were taken against them; *per* Bailhache, J., upon the ground that the acquittal was by a competent tribunal notwithstanding that one of its members was disqualified. *Rex* v. *Simpson; Smithson, Ex parte*, 83 L. J. K.B. 233; [1914] 1 K.B. 66; 110 L. T. 67; 78 J. P. 55; 23 Cox C.C. 739; 58 S. J. 99; 30 T. L. R. 31—D.

—— Certiorari—Affidavit in Support of Rule —Sufficiency.]—By section 15 of the Bread Act, 1836, "no person who shall follow or be concerned in the business of a miller, mealman, or baker shall be capable of acting or shall be allowed to act as a justice of the peace under this Act . . ." The applicant for a rule for a writ of *certiorari* had been convicted by a Court of summary jurisdiction of selling bread otherwise than by weight, contrary to section 4 of the Bread Act, 1836. The affidavit in support of the rule stated that, upon the hearing of the information, one of the Justices had sat and acted as chairman of the Court, he being at the time concerned in the business of a baker. It did not, however, state that at the time of the hearing the applicant had no knowledge of the alleged disqualification of the Justice:—*Held*, that as the affidavit did not state that at the time of the hearing the applicant was ignorant of the facts giving rise to the disqualification he was precluded from claiming a *certiorari ex debito justitiæ*; that the granting of a rule was therefore discretionary, and must, under the special circumstances of the case, be refused. *Rex* v. *Williams; Phillips, Ex parte*, 83 L. J. K.B. 528; [1914] 1 K.B. 608; 110 L. T. 372; 78 J. P. 148—D.

Interest.]—If, on an application to bring up, for the purpose of being quashed, a conviction on the ground that one of the Justices was interested in the matter of the conviction, it appears that the applicant for the *certiorari*, or his solicitor, knew the Justice's position and did not take objection to his sitting, the Court will refuse to grant the writ. *Rex* v. *Byles; Hollidge, Ex parte*, 108 L. T. 270; 77 J. P. 40; 23 Cox C.C. 314—D.

Interested Justice—Conduct Calculated to Lead Public to Think he was Taking Part in Adjudicating.] — U. was prosecuted before Justices for having on his premises purloined yarn. The prosecution was brought by the direction of a linen trade association, and on the complaint of their inspector. When the case came on, U.'s solicitor objected to any magistrate taking part in the proceedings who was a member of the association. M., who was one of the Justices, and was presiding as chairman, stated that he was a member of the association, but that he had no personal interest and would adjudicate. At the close of the statement of the complainant's case, and before any evidence was given, M. left the chair and took his seat on the bench some distance from the other magistrates. After a short time he left the bench and went into the magistrates' room, and was there when the other magistrates came in to consider their decision, but at once retired. He took no part in the adjudication. U. was convicted of the offence charged:—*Held*, that the conviction must be quashed, with costs to be paid by M. *Rex* v. *Armagh Justices*, [1913] 2 Ir. R. 410 —K.B. D.

Refusal of Admission to Court by Justice.]—C. was arrested on a warrant charged with an indictable offence, and brought before E., a Justice of the peace for the county of the city of Belfast, who had been asked by the Crown Solicitor to take the depositions. E. sat in a room in the police station, and on the request of the Crown Solicitor made an order excluding all persons except representatives of the accused. Several other Justices for the county of the city of Belfast endeavoured to enter the room, but were refused admission. C.'s solicitor applied to E. to admit the other magistrates, but E. refused to do so, giving as a reason that he was guided by the Crown, and directed by the Crown not to allow the other magistrates to be present. C. having applied for a writ of prohibition to prohibit E. from proceeding further in the matter on the ground of bias,—*Held*, while entirely acquitting E. of any moral blame, that a reasonable public might think that the expression used by E. implied that in making his order he was acting by the direction of the Crown and not exercising his own discretion, and that the writ of prohibition should be granted. *Rex* v. *Emerson*, [1913] 2 Ir. R. 377—K.B. D.

Costs.]—The case of E. having been taken up on his behalf by the Crown,—*Held*, that there was no power to give costs against the Crown. *Ib.*

Function of Justices in Returning for Trial.]—The function of Justices in returning for trial is judicial, and prohibition will lie if bias or want of jurisdiction is established. *Rex* v. *Davison*, [1913] 2 Ir. R. 342—K.B. D.

3. Where Claim of Right Set up.

See also Vol. VIII. 553, 1789.

Assault—Claim of Title to Land—Title not Disputed.]—The appellant, the chairman of the managers of a voluntary school, ordered one of the pupils to leave the school for alleged disobedience, and directed the head mistress to take her name off the register. Upon subsequently visiting the school the appellant found the girl there, sitting at a desk in the room of the head mistress. He told the girl to leave the school, and as she did not obey, he forcibly removed her from the school to the highway, and locked the gate to prevent her from returning. Upon an information charging the appellant with assault, he contended that, after the directions he had given, the girl had no right in law to attend the school, and was a trespasser; that he had sole control of the school; that a question of title had arisen, and that under section 46 of the Offences against the Person Act, 1861, the jurisdiction of the Justices was ousted:—*Held*, that, assuming that the appellant was a trustee of the school, and that in acting as he did he was asserting a title to, or an interest in land, yet it was a title which was not disputed, and that therefore the jurisdiction of the Justices was not ousted. *Lucan* v. *Barrett*, 84 L. J. K.B. 2130; 113 L. T. 737; 79 J. P. 463; 13 L. G. R. 1361; 31 T. L. R. 508—D.

Private Oyster Bed—Fishing—Right of Public.]—Under section 19 of the Ipswich Fishery Act, 1867, the oyster fishery in the river Orwell and the oysters in the river were to be deemed to belong to the Ipswich Corporation, and they were given power by section 20 to demise and lease the oyster fishery. The Act also provided that the lessee under such lease should have the exclusive right of depositing, propagating, dredging, and fishing for and taking oysters in the river; and that all oysters in the river should, during any such lease, be the absolute property of the lessee and be deemed to be in his possession. The Ipswich Corporation demised the oyster fishery to the respondent, who marked out the oyster beds by buoys. The appellant, who had fished with a trawl within the limits of the oyster bed so marked out, was charged with an offence under section 53 of the Sea Fisheries Act, 1868, which forbids any person other than the owner of a private oyster bed, within the limits of such bed, knowingly to use any instrument of fishing, except a line and hook or a net adapted solely for catching floating fish, and so used as not to disturb or injure in any manner any oyster bed. The appellant alleged that, as the river was an arm of the sea, the members of the public had the right to fish in the river, which right was not defeated by the lease to the respondent, and that therefore the jurisdiction of the Justices was ousted by that claim of right:—*Held*, that the right set up by the appellant was one which could not exist in law, having regard to the terms of the Ipswich Fishery Act, 1867, and the Sea Fisheries Act, 1868, and that therefore the jurisdiction of the Justices was not ousted; and further, that the fact that the appellant honestly believed that he had the right to fish in that manner did not prevent his being convicted, as a guilty mind was not a necessary ingredient of the offence. *Smith* v. *Cooke*, 84 L. J. K.B. 959; 112 L. T. 864; 79 J. P. 245—D.

Railway—Right of Way.]—Where in a case before Justices a claim of right is raised, and, as part of the enquiry whether there is such a right, a question of fact has to be decided, and in the event of a certain finding of fact there is a legal possibility of the existence of the right, the jurisdiction of the Justices is ousted; but if on the admitted facts it appears certain that the right claimed cannot legally exist, their jurisdiction is not ousted. *Arnold* v. *Morgan*, 80 L. J. K.B. 955; [1911] 2 K.B. 314; 103 L. T. 763; 75 J. P. 105; 9 L. G. R. 917—D.

The respondent was summoned for trespassing on a railway, and, before the Justices, claimed a right as a member of the public to pass to and fro on the railway. The railway was only used for goods traffic:—*Held*, that, as the railway company had the power to dedicate a right of way to the public along their railway, provided that the user of the right was not incompatible with the user of the railway as a railway, and that the question whether it was incompatible or not was a question of fact depending on the particular circumstances, and as it was legally

possible for such a right to exist if the facts were found in favour of the respondent, the jurisdiction of the Justices was ousted. *Ib.*

Obstruction of Street.]—On a prosecution for obstruction to the public street of the town of M., there was evidence that the act complained of as an obstruction was the exposing for sale, during a public fair held in the streets of M., of goods on the pavement; that the same class of goods had been sold at such fairs in the public street twenty years before; and that public fairs had been held in the streets of the town for twenty years and upwards. The defendant in the prosecution claimed before the Justices the right so to expose her goods, but was convicted and fined. Upon motion for *certiorari*,—*Held*, that on the evidence it might be inferred that the dedication of the street was subject to the right to hold thereon public fairs at stated intervals, that there was evidence that the defendant had the right to sell her goods as a member of the public at such public fair, and that there was consequently a *bona fide* claim of right on her part to do the acts complained of as an obstruction, which claim being material to their decision ousted the jurisdiction of the Justices. *Rex* v. *Cork Justices*, [1913] 2 Ir. R. 391—K.B. D.

When there is a *bona fide* claim of right material to the decision, as the Justices have no jurisdiction to determine the existence of the right, they have no jurisdiction to determine whether, in the case before them, there has been an excessive user of the alleged right. *Ib.*

Removing Shingle.]—The Board of Trade, in pursuance of the powers conferred upon them by the Harbours Act, 1814, as amended by the Harbours Transfer Act, 1862, issued an order prohibiting the taking or removing of any shingle or ballast from the shores or banks of the sea between certain points. The appellant, the owner in fee of the *locus in quo*, prosecuted the respondent, one of his agricultural tenants, for having, in contravention of the statute, removed ballast from the shore within the points indicated in the order of the Board of Trade. The defence set up by the respondent was, that as tenant he had always drawn gravel and sand off the foreshore and that he enjoyed a right of property within the meaning of section 28 of the Act of 1814. The magistrates declined jurisdiction on the ground that a *bona fide* question of title was involved: —*Held*, that the magistrates were right in declining jurisdiction. *Burton* v. *Hudson* (78 L. J. K.B. 905; [1909] 2 K.B. 564) followed. *Anderson* v. *Jacobs* (93 L. T. 17) distinguished. *Talbot de Malahide (Lord)* v. *Dunne*, [1914] 2 Ir. R. 125—K.B. D.

Order to Enter into Recognisances to Keep the Peace.]—The question whether Justices have power to order defendants to enter into recognizances to keep the peace where a *bona fide* question of title is raised, considered. *Rex* v. *Londonderry Justices*, [1912] 2 Ir. R. 374—K.B. D.

4. Matters Within.

See also Vol. VIII. 568, 1792.

Power to Order Person to Enter into Recognisances and Find Sureties.] — Under the statute 34 Edw. 3, c. 1, Justices have power to make an order binding over a person, and requiring him to find sureties for his good behaviour, and, in default of his so doing, to order him to be imprisoned; and they make that order notwithstanding that no complainant has stated on oath that he is under actual fear of bodily harm from the person sought to be bound over. *Lansbury* v. *Riley*, 83 L. J. K.B. 1226; [1914] 3 K.B. 229; 109 L. T. 546; 77 J. P. 440; 23 Cox C.C. 582; 29 L. T. R. 733—D.

The fact that threats, or an assault, which would authorise Justices in requiring sureties for the peace and good behaviour, arose by reason of a *bona fide* dispute as to title does not oust the jurisdiction of the Justices to require such sureties. *Rex* v. *Monaghan Justices*, [1914] 2 Ir. R. 156—K.B. D.

An order of Justices, setting out a complaint that the defendant used threatening language to the complainant, thereby putting him in fear and dread of the defendant, and ordering the defendant to enter into recognizances to keep the peace and be of good behaviour, sufficiently shews on its face jurisdiction to make such order. *Rex* v. *Londonderry Justices* ([1912] 2 Ir. R. 374) explained. *Ib.*

The applicant was called upon on June 26, 1909, at the instance of the chief constable of Liverpool to shew cause why he should not be ordered to find sureties to keep the peace and to be of good behaviour. The information of the chief constable stated that the applicant had informed him that he intended to lead a parade of his Bible class through certain streets of Liverpool on Sunday, June 27, and that the chief constable apprehended and believed that if the applicant did so the natural consequence would be a breach of the peace, riot, and disorder. Upon the applicant undertaking at the hearing not to hold a procession on Sunday, June 27, he was released on bail. At the adjourned hearing on July 1 the chief constable expressed his willingness to withdraw the proceedings as the proposed object had been attained—namely, the prevention of the procession on June 27—but the magistrate refused to allow this unless the applicant would enter into his own recognizances to keep the peace and to be of good behaviour, and he made an order accordingly, or, in the alternative, that the applicant should go to prison for four months. The applicant refused to enter into the recognizances. A rule *nisi* having been obtained calling upon the magistrate to shew cause why he should not state a Case, the magistrate filed an affidavit in which he stated that the applicant had been twice previously directed to find sureties to keep the peace; that serious sectarian riots had taken place in Liverpool on June 5 and 20 in connection with processions of the applicant's Bible class; that the chief constable had reasonable grounds for anticipating a breach of the peace if the procession had taken place on June 27; that a few days previously the

applicant had, in addressing a meeting, used insulting language with reference to Roman Catholics; that between the date of granting the warrant against the applicant and his decision he had had to hear charges against numbers of rioters animated by sectarian animosities; and that he could not use any discretion in favour of a person who had acted as the applicant had done:—*Held*, that the rule *nisi* must be discharged; that the magistrate had ample grounds for saying that he would not be satisfied with anything less than the applicant entering into his recognizances to be of good behaviour; and that he was justified in refusing to state a Case. *Rex* v. *Little; Wise, Ex parte*, 101 L. T. 859; 74 J. P. 7; 22 Cox C.C. 225; 26 T. L. R. 8—D.

Criminal Libel—Civil Proceedings Pending—Injunction Granted against Publication.]—Proceedings were taken in the High Court in which L. claimed an injunction restraining E. from publishing certain defamatory statements. An interim injunction was granted, and subsequently E. gave an undertaking not to publish any further defamatory statements in relation to L. E. having afterwards published further statements of the same character alleged to be libellous, L. laid an information before a Metropolitan police magistrate charging E. with publishing a criminal libel. E. applied for a rule for a writ of prohibition directed to the magistrate on the ground that L., having chosen his civil remedy, was precluded from proceeding criminally in respect of the same subject-matter:—*Held*, refusing a rule, that the magistrate had jurisdiction to enquire whether E. had published a criminal libel. *Edgar, Ex parte*, 77 J. P. 283; 29 T. L. R. 278—D.

5. Withdrawal of Justice from Adjudicating.

Court Consisting of Stipendiary Magistrate and Justice of Peace—Court Differing in Opinion—Acquiescence by Justice—Magistrate Adjudicating Alone.] — The applicant appeared before a Court of summary jurisdiction on a charge under the Pawnbrokers Act, 1872, the Court consisting of a stipendiary magistrate and a Justice of the peace. After the evidence had been heard the Justice discussed the matter privately with the magistrate and said that the evidence, in his opinion, would not justify a conviction. The magistrate was satisfied that the case for the prosecution was made out, and expressed this view to the Justice, adding that he would take upon himself the burden of adjudicating alone on the case. Thereupon the Justice said "Very well," and the magistrate then convicted the applicant of the offence, saying that he alone was responsible for the decision, and that the Justice was not a party thereto:—*Held*, that what took place amounted to a withdrawal by the Justice from being a party to the decision, and that the magistrate, having jurisdiction to decide the case himself, the conviction was valid. *Rex* v. *Thomas; O'Hare, Ex parte*, 83 L. J. K.B. 351; [1914] 1 K.B. 32; 109 L. T. 929; 78 J. P. 55; 23 Cox C.C. 687—D.

B. PROCEDURE BEFORE.

1. Information.

See also Vol. VIII. 578, 1796.

Information on Behalf of Corporation—Malicious Damage—Right of Private Individual to Prosecute.] — The appellant, on behalf of the Mayor and Corporation of London, preferred an information against the respondents under section 22 of the Malicious Damage Act, 1861, for damaging a tree, the property of the Corporation. The appellant was not formally authorised by the Corporation to prefer the information. Before the Justices it was contended by the respondents that as the information was laid on behalf of a corporate body it could only be laid by an attorney duly appointed under the common seal or warrant of the Corporation. The Justices upheld this contention and dismissed the information:—*Held*, that any person could prefer an information for such an offence, that the words in the information "on behalf of" the Corporation might either be treated as surplusage or as shewing that the appellant prosecuted because the property was that of the Corporation, and therefore that the Justices were wrong in dismissing the information. *Duchesne* v. *Finch*, 107 L. T. 412; 76 J. P. 377; 10 L. G. R. 559; 23 Cox C.C. 170; 28 T. L. R. 440—D.

Husband and Wife Charged Jointly in one Information—Old Age Pension—Making False Representations for the Purpose of Obtaining Old Age Pension.]—A husband and wife, who make a false representation for the purpose of obtaining an old age pension for the wife, can be charged jointly in one information with the offence, under section 9, sub-section 1 of the Old Age Pensions Act, 1908, of making a false representation for the purpose of obtaining an old age pension, inasmuch as the information does not charge two separate offences, but merely charges two persons with committing the same offence. *MacPhail* v. *Jones*, 83 L. J. K.B. 1185; [1914] 3 K.B. 239; 111 L. T. 547; 78 J. P. 367; 12 L. G. R. 1237; 24 Cox C.C. 373; 30 T. L. R. 542—D.

2. Summons.

See also Vol. VIII. 581, 1797.

Absence of Seal—Objection to Validity.]—The absence of a seal from a summons issued by a Justice of the peace upon an information or complaint is merely a defect in form, to which, by section 1 of the Summary Jurisdiction Act, 1848, objection cannot be taken. *Rex* v. *Garrett-Pegge; Brown, Ex parte*, 80 L. J. K.B. 609; [1911] 1 K.B. 880; 104 L. T. 649; 75 J. P. 169; 22 Cox C.C. 445; 27 T. L. R. 187—D.

Per Hamilton, J.: A summons must, in order to comply with the Summary Jurisdiction Acts and Rules, have a seal affixed to it.

Per Avory, J. : Whether a summons need be sealed in order to comply with the Summary Jurisdiction Acts and Rules, *quære*. *Ib.*

Service of—"Place of abode"—Estoppel.]—"Place of abode" in section 1 of the Summary Jurisdiction Act, 1848, does not include a shop where the person sought to be served does not reside. A shopkeeper informed an inspector under the Sale of Food and Drugs Act on the purchase of a sample that the shop was his private address and he lived there. As a fact he resided elsewhere, and summonses were served by a police officer on the wife of the tenant of one of the flats in the building of which the shop formed the ground floor. The shopkeeper had no knowledge of any proceedings until after he had been convicted :—*Held*, that the service was bad; and, further, that the shopkeeper was not estopped from setting up such bad service, as there was no evidence that he made the statement to the inspector for the purpose of avoiding service. *Rex* v. *Lilley; Taylor, Ex parte*, 104 L. T. 77; 75 J. P. 95—D.

—— Last or Usual Place of Abode—Lodger only.]—The house where a defendant lodged for a period of six weeks while temporarily employed on work therein is not "his last or most usual place of abode" within the meaning of these words in section 12, sub-section 3 of the Petty Sessions (Ireland) Act, 1851 (*cf.* section 1 of the Summary Jurisdiction Act, 1848), and to leave a copy of a summons at such house two days after the defendant has ceased to reside there is not sufficient service. *Rex* v. *Cork Justices*, [1911] 2 Ir. R. 258—K.B. D.

The expression "place of abode" in section 1 of the Summary Jurisdiction Act, 1848, means the person's place of residence. Service of a summons by leaving the same for him at his lock-up office is therefore not good service. *Rex* v. *Rhodes; McVittie, Ex parte*, 79 J. P. 527—D.

Withdrawal of Summons—Effect of.]—An order of Justices permitting a summons for an offence punishable on summary conviction to be withdrawn does not amount to an acquittal of the defendant, and a fresh summons may subsequently be issued for the same offence. Statement in *Pickavance* v. *Pickavance* (70 L. J. P. 14, at p. 15; [1901] P. 60, at p. 63), that the withdrawal of a summons puts an end to the complaint, dissented from. *Rex* v. *Tyrone Justices*, [1912] 2 Ir. R. 44—K.B. D.

The withdrawal of a summons owing to a technical informality in the proceedings is not equivalent to a dismissal of the summons which could be pleaded in bar to subsequent proceedings for the same offence. *Davis* v. *Morton*, 82 L. J. K.B. 665; [1913] 2 K.B. 479; 108 L. T. 677; 77 J. P. 223; 23 Cox C.C. 359; 29 T. L. R. 466—D.

The occupier of a beerhouse was charged under section 1 of the Betting Act, 1853, with using his house for the purpose of betting with persons resorting thereto. During the hearing of the information it was discovered that he had not been informed at the commencement of the hearing of his right to be tried by a jury, and the summons was thereupon withdrawn. A further information was subsequently preferred against the same person under the same section for using his house for the purpose of moneys being received by him for the consideration of assurances to pay sums of money on the happening of certain events—namely, the winning of horse races. The evidence on the hearing of the second summons was substantially the same as that given on the hearing of the first summons : —*Held*, that the withdrawal of the first summons was no bar to the subsequent proceedings. *Ib.*

3. Hearing.

See also Vol. VIII. 586, 1800.

Evidence—Enquiry Commenced before One Magistrate and Completed before Another Magistrate—Reading Depositions to Witnesses.]—Where a preliminary enquiry on a criminal charge has been commenced before one magistrate and is completed before another magistrate, the second magistrate, if in his discretion he deems it advisable to do so, may, instead of taking the evidence *de novo*, recall the witnesses, have them re-sworn, read their depositions over to them (including not only their examination-in-chief, but also their cross-examination and re-examination), with instructions that they should correct them if necessary and then allow counsel further to examine and cross-examine the witnesses. *Bottomley, Ex parte*, 78 L. J. K.B. 547; [1909] 2 K.B. 14; 100 L. T. 782; 73 J. P. 246; 22 Cox C.C. 106; 25 T. L. R. 371—D.

Reception of Unsworn Evidence—Mis-trial—Re-hearing of Case on Same Day—Second Conviction—Validity of Second Hearing.]—The applicant was charged before a Metropolitan police magistrate with assaulting a police constable in the execution of his duty. The evidence of one of the two police constables who gave evidence in support of the charge was given without the police constable having been sworn. No evidence was called on behalf of the applicant, and the magistrate on this evidence convicted the applicant. The attention of the magistrate having been called to the fact that some of the evidence given against the applicant had not been given on oath, he, on the same day, and before the conviction on the first hearing had been drawn up, re-heard the case, when the police constable was duly sworn and evidence given on behalf of the applicant. The magistrate upon the evidence before him on the second hearing again convicted the applicant :—*Held*, that the first hearing was a mis-trial, and that as a conviction on the first hearing could have been quashed owing to the improper reception of unsworn evidence, the applicant never was in peril on that hearing, and was not entitled to plead *autrefois convict* upon the second hearing, and that therefore she was properly convicted upon the second hearing. *Rex* v. *Marsham : Pethiek Lawrence, Ex parte*, 81 L. J. K.B. 957; [1912] 2 K.B. 362; 107 L. T. 89; 76 J. P. 284; 23 Cox C.C. 77; 28 T. L. R. 391—D.

Dealing with Case Summarily — Duty of Justices.]—*Semble*, it is not necessary for Justices when they ask a person charged with an indictable offence whether he will be dealt with summarily, to inform him that if he elects to be dealt with summarily he thereby loses his right of appeal. *Walker* v. *Morgan*, 76 J. P. 325—D.

Declaration of Objection by Accused to be Tried by Court of Summary Jurisdiction—Right to be Tried by Jury.]—Section 9 of the Conspiracy and Protection of Property Act, 1875, gives to a person charged before a Court of summary jurisdiction with an offence made punishable by that Act, and for which a penalty of 20*l.* or imprisonment may be imposed, the right of making a declaration of his objection to being tried by a Court of summary jurisdiction to have such objection entertained, and that thereupon the Court are bound to exercise the power given to them by the section and deal with the case in all respects as if the person were charged with an indictable offence and not an offence punishable on summary conviction. *Rex* v. *Mitchell; Livesey, Ex parte*, 82 L. J. K.B. 153; [1913] 1 K.B. 561; 108 L. T. 76; 77 J. P. 148; 23 Cox C.C. 273; 29 T. L. R. 157—D.

Right to Trial by Jury — Incorrigible Rogue.]—Section 5 of the Vagrancy Act, 1824, provides that Justices in petty sessions may commit incorrigible rogues for detention with hard labour until the next quarter sessions, and by section 10 of the Act quarter sessions may order such offenders to be further imprisoned with hard labour. Section 17 of the Summary Jurisdiction Act, 1879, provides that a person charged before a Court of summary jurisdiction with an offence for which he is liable to more than three months' imprisonment and which is not an assault may claim to be tried by a jury:—*Held*, that section 17 of the Act of 1879 only applies when the Justices at petty sessions can pass an actual sentence of more than three months' imprisonment, and therefore that a person convicted as an incorrigible rogue at petty sessions and committed until the next quarter sessions is not entitled to claim a trial by jury, although he may be liable to more than three months' detention owing to the next quarter sessions not being held within that time. *Rex* v. *Evans; Rex* v. *Connor*, 83 L. J. K.B. 905; 110 L. T. 780; 24 Cox C.C. 138; 30 T. L. R. 326—C.C.A.

Decision by Justices to Try Case as Court of Summary Jurisdiction — Decision during Hearing to Commit for Trial—Jurisdiction to Try on Indictment.]—Where Justices have a discretion whether to deal summarily with an accused person, or to commit him for trial, they may exercise that discretion and commit him for trial at any time after all the circumstances of the case are before them. *Rex* v. *Hertfordshire Justices*, 80 L. J. K.B. 437; [1911] 1 K.B. 612; 104 L. T. 312; 75 J. P. 91; 22 Cox C.C. 378; 27 T. L. R. 156—D.

The Justices decided to deal with the defendant summarily, but, after all the evidence had been given both for the prosecution and the defence, being of opinion that the case had assumed a serious aspect, they changed their minds and committed him for trial:—*Held*, that they had power to do so, and that he could be tried on indictment. *Ib.*

Dismissal of Summons—"Extenuating circumstances."]—On an information laid by the police against the respondent for placing a stall on the footway of a certain street contrary to the provisions of a local Act, it was proved that the stall projected over the footway about sixteen inches, that in the same street there were other stalls projecting over the footpath causing more obstruction than the respondent's stall, and that no proceedings had been instituted against the owners of those other stalls. The Justices dismissed the information under the provisions of section 1, sub-section 1 of the Probation of Offenders Act, 1907, owing to the extenuating circumstances under which the offence was committed:—*Held*, that there were extenuating circumstances, and that the Justices were therefore justified in dismissing the information. *Dunning* v. *Trainer*, 101 L. T. 421; 73 J. P. 400; 7 L. G. R. 919; 22 Cox C.C. 170; 25 T. L. R. 658—D.

Withdrawal of Justice from Adjudicating.]—*See Rex* v. *Thomas; O'Hare, Ex parte*, *ante*, col. 791.

4. Warrants.

See also Vol. VIII. 596, 1805.

Appearance of Defendant by Counsel—Issue of Warrant to Compel Defendant's Personal Attendance—Jurisdiction.]—Where upon the hearing of an information the defendant is represented by counsel, and the Justices decide to convict, they have no jurisdiction to issue a warrant for the apprehension of the defendant, for the purpose of his being identified by witnesses for the prosecution in relation to alleged previous convictions. *Rex* v. *Thompson*, 78 L. J. K.B. 1085; [1909] 2 K.B. 614; 100 L. T. 970; 73 J. P. 403; 7 L. G. R. 979; 22 Cox C.C. 129; 25 T. L. R. 651—D.

A summons was taken out against the applicant for exceeding the speed limit with his motor car. The applicant did not appear when the summons was returnable, but he wrote to the prosecutor admitting the offence and offering to pay the fine and all charges. The Justices adjourned the hearing, and notice was given to the applicant that unless he attended a warrant would be granted for his arrest. At the adjourned hearing the applicant was not personally present, but he was represented by a solicitor, who stated that the applicant pleaded guilty and also admitted a previous conviction which the police alleged against him. The police inspector in charge of the case having intimated that he required the applicant's personal attendance, the Justices granted a warrant for his arrest. A rule *nisi* having been obtained by the applicant to set aside the warrant,—*Held*, that there was no justification for the issue of the warrant, which therefore must be set aside. *Rex* v. *Brentford Justices; Long, Ex parte*, 102 L. T. 325; 8 L. G. R. 234; 74 J. P. 110; 22 Cox C.C. 304; 26 T. L. R. 225—D.

5. Orders.

See also Vol. VIII. 600, 1806.

Common Assault—Power to Require Defendant to Find Sureties for Good Behaviour.]—When Justices convict summarily of an assault under section 42 of the Offences against the Person Act, 1861, they may further order the defendant to find sureties for good behaviour. *Rex* v. *Cork Justices*, [1912] 2 Ir. R. 64—K.B. D.

Quære, *per* Lord O'Brien, L.C.J., and Gibson, J.: When the Justices acquit of the assault, but direct the defendant to find sureties, must the order state on its face facts shewing jurisdiction to give such direction? *Ib.*

To Find Sureties for the Peace and Good Behaviour—Shewing Jurisdiction on Face of Order.]—An order of Justices requiring a person to find sureties to keep the peace and be of good behaviour must shew on its face facts necessary to give the Justices jurisdiction to make such order. *Rex* v. *Londonderry Justices*, [1912] 2 Ir. R. 374—K.B. D.

6. Convictions.

See also Vol. VIII. 605, 1808.

No Appointment of Days for Trial of Indictable Offences.]—Conviction of the appellant, who was dealt with summarily on an indictable charge, quashed on the ground that no public notice had been given, in accordance with section 20, sub-section 8 of the Summary Jurisdiction Act, 1879, of days appointed by the Justices for hearing indictable offences. *Walker* v. *Morgan*, 76 J. P. 325—D.

Power to Impose Consecutive Sentences.]—Under section 25 of the Summary Jurisdiction Act, 1848, Justices before whom a defendant is at one and the same time convicted on several charges have no jurisdiction to impose more than two consecutive sentences. *Reg.* v. *Cutbush* (36 L. J. M.C. 70; L. R. 2 Q.B. 379) considered. *Rex* v. *Martin; Smythe, Ex parte*, 80 L. J. K.B. 876; [1911] 2 K.B. 450; 105 L. T. 220; 75 J. P. 425; 22 Cox C.C. 560; 27 T. L. R. 460—D.

Informant not Present and not Represented—Offer by Justices to Adjourn—Refusal by Defendant's Solicitor—Waiver.]—Upon the hearing of an information under section 1 of the Motor Car Act, 1903, the defendant was present with his solicitor, but the informant was not present and was not represented by counsel or solicitor. The informant's witnesses were called in support of the charge, and were examined by a police officer. The Court thereupon announced that the case would be adjourned, but the defendant's solicitor stated that he preferred that it should go on. The hearing accordingly proceeded and the defendant was convicted:—*Held*, that, after the refusal by the defendant's solicitor of the Justices' offer to adjourn, it was not competent to the defendant to object to the conviction, under section 13 of the Summary Jurisdiction Act, 1848, on the ground that the informant was not present at the hearing. *May* v. *Beeley*, 79 L. J. K.B. 852; [1910] 2 K.B. 722; 102 L. T. 326; 74 J. P. 111; 8 L. G. R. 166; 22 Cox C.C. 306—D.

Defendant Charged with One Offence—Four Separate Convictions—Cruelty to Animals—Jurisdiction.]—Upon the hearing of an information under section 2 of the Cruelty to Animals Act, 1849, for ill-treating four ponies, the defendant appeared, and the Justices, after hearing the evidence, convicted him and imposed a fine of 20*l.*, being 5*l.* in respect of each pony. Four separate convictions were subsequently drawn up. It was not intimated to the defendant when he was before the Justices that he had to answer more than one charge, nor that the fine was imposed in respect of more than one conviction:—*Held*, that, in the absence of notice to the defendant that he was being tried for four offences, the Justices had no jurisdiction to convict him of more than one offence, and that three of the convictions were therefore bad. *Rex* v. *Trafford-Rawson*, 78 L. J. K.B. 1156; [1909] 2 K.B. 748; 101 L. T. 463; 73 J. P. 483; 22 Cox C.C. 173; 25 T. L. R. 785—D.

Sale by Unlicensed Person—Non-payment of Fine and no Sufficient Distress—Term of Imprisonment.]—Section 65, sub-section 1 of the Licensing (Consolidation) Act, 1910, prohibits the sale of any intoxicating liquor by retail except by a licensed person, and sub-section 2 enacts that "If any person acts in contravention of this section, he shall be liable . . . in the case of the first offence to a fine not exceeding fifty pounds, or to imprisonment with or without hard labour for a term not exceeding one month." Section 99, sub-section 1, provides that, "Except as otherwise expressly provided, any offence under this Act may be prosecuted, and every fine or forfeiture may be recovered and enforced, in manner provided by the Summary Jurisdiction Acts":—*Held*, that as no method of recovering a fine imposed for a contravention of section 65 of the Licensing (Consolidation) Act, 1910, is provided by that Act, the provisions of section 5 of the Summary Jurisdiction Act, 1879, apply: and therefore, where a person is convicted under section 65, and a fine exceeding 20*l.* is imposed, he may, on non-payment of the fine and in default of sufficient distress, be sentenced, in accordance with the scale provided by section 5 of the Act of 1879, to a term of imprisonment not exceeding three months. *Reg.* v. *Hopkins* (62 L. J. M.C. 57; [1893] 1 Q.B. 621) applied. *Rex* v. *Leach; Fritchley, Ex parte*, 82 L. J. K.B. 897; [1913] 3 K.B. 40; 109 L. T. 313; 77 J. P. 255; 23 Cox C.C. 535; 29 T. L. R. 569—D.

Defendant Called as Witness — Cross-examination—Question as to Previous Conviction—Question not Answered—Conviction of Defendant—Validity of Conviction.]—The appellant was charged before a Court of summary jurisdiction with unlawfully assaulting the respondent, and gave evidence on his own behalf. In cross-examination he was asked whether he had been previously convicted of a similar offence. The question was dis-

allowed, but the respondent's solicitor stated that he had a certified copy of the conviction. The Justices convicted the appellant, but stated that the above incident was entirely ignored by them in arriving at their decision: —*Held*, that, although the question ought not to have been asked, yet as the decision of the Justices was not affected by it, or by the observation of the respondent's solicitor, the conviction was valid. *Barker* v. *Arnold*, 80 L. J. K.B. 820; [1911] 2 K.B. 120; 105 L. T. 112; 75 J. P. 364; 22 Cox C.C. 533; 27 T. L. R. 374—D.

Court Consisting of Stipendiary Magistrate and Justice of Peace — Court Differing in Opinion — Acquiescence by Justice — Magistrate Adjudicating Alone.] — The applicant appeared before a Court of summary jurisdiction on a charge under the Pawnbrokers Act, 1872, the Court consisting of a stipendiary magistrate and a Justice of the peace. After the evidence had been heard the Justice discussed the matter privately with the magistrate and said that the evidence, in his opinion, would not justify a conviction. The magistrate was satisfied that the case for the prosecution was made out, and expressed this view to the Justice, adding that he would take upon himself the burden of adjudicating alone on the case. Thereupon the Justice said "Very well," and the magistrate then convicted the applicant of the offence, saying that he alone was responsible for the decision, and that the Justice was not a party thereto:—*Held*, that what took place amounted to a withdrawal by the Justice from being a party to the decision, and that the magistrate, having jurisdiction to decide the case for himself, the conviction was valid. *Rex* v. *Thomas; O'Hare, Ex parte*, 83 L. J. K.B. 351; [1914] 1 K.B. 32; 109 L. T. 929; 78 J. P. 55; 23 Cox C.C. 687—D.

7. Costs of Prosecution.

See also Vol. VIII. 619, 1814.

Borough Prosecutions—Borough with Separate Commission of the Peace, but no Separate Court of Quarter Sessions.]—A borough with over 10,000 inhabitants had a separate commission of the peace, but no separate Court of quarter sessions. It had the right of appointing and paying for its own police, and it exercised that power by contracting with the county in which the borough was situate for the services of a certain number of police, for whom it paid a fixed sum. Fines imposed by the borough bench under certain statutes which did not provide for their appropriation were retained by the clerk to the Justices for the borough, who, in rendering an account to the county treasurer, deducted the costs of prosecutions undertaken by the police before the borough Justices in cases where such costs were not remitted and were not paid by the parties chargeable:—*Held*, that such costs were not chargeable to the funds of the county, but must be defrayed out of the borough fund. *George* v. *Thomas*, 80 L. J. K.B. 7; [1910] 2 K.B. 951; 103 L. T. 456; 74 J. P. 398; 8 L. G. R. 849—Scrutton, J.

C. APPEAL.

1. To High Court.

See also Vol. VIII. 628, 1818.

Power to State Case — Claim for Seamen's Wages—Order of Court—Final Order.]—Section 33, sub-section 1 of the Summary Jurisdiction Act, 1879, empowers any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a Court of summary jurisdiction, on the ground that it is erroneous in point of law, to apply to the Court to State a Special Case setting forth the facts and the grounds upon which the proceeding is questioned. Section 164 of the Merchant Shipping Act, 1894, provides that "A seaman . . . may as soon as any wages due to him, not exceeding fifty pounds, become payable, sue for the same before a Court of summary jurisdiction in or near the place at which his service has terminated, or at which he has been discharged . . . and the order made by the Court in the matter shall be final":—*Held*, that, an order made by a Court of summary jurisdiction nnder section 164 of the Act of 1894 for the payment of seamen's wages being a "final" order, a "person aggrieved" is not entitled to appeal by way of Special Case under the provisions of section 33, sub-section 1 of the Act of 1879. *Westminster Corporation* v. *Gordon Hotels* (76 L. J. K.B. 482; [1907] 1 K.B. 910; 77 L. J. K.B. 520; [1908] A.C. 142) applied. *Wills* v. *McSherry* (*No.* 2), 83 L. J. K.B. 596; [1914] 1 K.B. 616; 110 L. T. 65; 78 J. P. 120; 12 Asp. M.C. 426—D.

—— **Cinematograph — Licence.**] — County councils and, in the case of county boroughs, borough councils are empowered by section 2 of the Cinematograph Act, 1909, to license premises for the purpose of cinematograph exhibitions. By section 5 of that Act county councils or borough councils are empowered to delegate the powers conferred upon them by the Act to Justices sitting in petty sessions:—*Held*, that Justices sitting in petty sessions for the purpose of exercising the powers delegated to them under section 5 of the Cinematograph Act, 1909, are not a Court of summary jurisdiction, and therefore have no power to state a Case for the opinion of the High Court. *Boulter* v. *Kent Justices* (66 L. J. Q.B. 787; [1897] A.C. 556) followed. *Huish* v. *Liverpool Justices*, 83 L. J. K.B. 133; [1914] 1 K.B. 109; 110 L. T. 38; 78 J. P. 45; 12 L. G. R. 15; 58 S. J. 83; 30 T L. R. 25—D.

—— **Dismissal of Charge of Perjury—Order on Prosecutor to Pay Costs.**]—A charge of perjury brought against two persons was dismissed by the Justices, who, being of opinion that the charge was not made in good faith, made an order under section 6, sub-section 3 of the Costs in Criminal Cases Act, 1908, that the prosecutor should pay *5l. 5s.* as the costs of the defence:—*Held*, that in making that order the Justices were acting as a Court of summary jurisdiction, and could be ordered to state a Case for the opinion of the High Court. *Rex* v. *Allen; Hardman, Ex parte*, 81 L. J.

K.B. 258; [1912] 1 K.B. 365; 106 L. T. 101; 76 J. P. 95; 22 Cox C.C. 669; 28 T. L. R. 145 —D.

——**Confirming Authority — Order Declaring District a "populous place" — Power to Revise Order.**]—Schedule 6 of the Licensing (Consolidation) Act, 1910, provides that licensed premises in a populous place in Wales may remain open until 11 P.M., but in districts other than a populous place not later than 10 P.M. By special provision 2 of the schedule "populous place" means any area with a population of not less than 1,000, which by reason of the density of its population the confirming authority of the county by order determine to be a populous place. It provides that an order restrictive of a previous order shall not be made except on a revision after the publication of a census, and that as soon as may be after the publication of each census the confirming authority of the county shall, at a meeting to be specially convened for the purpose, revise orders then in force within their jurisdiction, and may alter or cancel any of those orders, or may make such further orders, if any, as they shall deem necessary to give effect to the provisions of the Act. A licensing district in Wales was some years ago declared to be a "populous place," and its population had, subsequent to such declaration, increased, but other adjacent districts had, owing to the opening of new collieries therein, increased in population to a still greater extent. In 1913 the confirming authority held that it was no longer a "populous place," and cancelled the previous order. An appeal from their decision by way of a Case stated by the confirming authority for the opinion of the High Court was made and a preliminary objection taken that quarter sessions had no power to state the same:—*Held*, that quarter sessions were not dependent for their power to state a Case on the Summary Jurisdiction Acts, and, although acting in an administrative capacity, could state the Case submitted. *Rex* v. *Southampton Justices; Cardy, Ex parte* (75 L. J. K.B. 295; [1906] 1 K.B. 446), followed. *Nicholas* v. *Davies*, 83 L. J. K.B. 1137; [1914] 2 K.B. 705; 111 L. T. 56; 78 J. P. 207; 30 T. L. R. 388—D.

Held also, on the merits, that it was open to the confirming authority to raise the standard of a "populous place," and that the Court would not consider whether their reasons for so doing were or were not adequate. *Ib.*

Special Case—Notice of Appeal—Disappearance of Respondents—Impossibility of Service of Notice of Appeal and Copy of Case—Jurisdiction to Hear Appeal.]—On an appeal by way of Special Case from an order by a Court of summary jurisdiction the appellants made every effort to give the notice of appeal and the copy of the Case to the respondents in the manner and within the time prescribed by section 2 of the Summary Jurisdiction Act, 1857, but were unable to do so. Within the same time they gave the notice and a copy of the Case to the solicitor who had appeared for the respondents before the Justices, and who still had instructions from them to receive the money payable to them by the appellants under the above order and to remit it to them. The respondents did not appear on the appeal, nor were they represented:—*Held*, in the circumstances (Channell, J., *hæsitante*), that the giving of the notice and the copy of the Case could be dispensed with, and the appeal heard. *Syred* v. *Carruthers* (27 L. J. M.C. 273; E. B. & E. 469) followed. *Foss* v. *Best* (75 L. J. K.B. 575; [1906] 2 K.B. 105) not followed. *Wills* v. *McSherry* (*No.* 1), 82 L. J. K.B. 71; [1913] 1 K.B. 20; 107 L. T. 848; 77 J. P. 65; 23 Cox C.C. 254; 29 T. L. R. 48 —D.

—— **Service on Respondent's Solicitor — Sufficiency of Service.**]—On an appeal by way of Special Case from an order by a Court of summary jurisdiction, service of the notice of appeal and the copy of the Case within the prescribed time on the solicitors acting for the respondent in those proceedings is sufficient compliance with the requirements of section 2 of the Summary Jurisdiction Act, 1857, in the absence of evidence that the retainer of the solicitor has in fact been withdrawn by the respondent; and service on the respondent personally is not necessary. *Pennell* v. *Uxbridge Churchwardens* (31 L. J. M.C. 92; 8 Jur. N.S. 99) followed and applied. *Hill* v. *Wright* (60 J. P. 312) commented upon. *Godman* v. *Crofton* (*No.* 2), 83 L. J. K.B. 1524; [1914] 3 K.B. 803; 111 L. T. 754; 79 J. P. 12; 12 L. G. R. 1330; 24 Cox C.C. 424—D.

Transmission of Case within Three Days of its Receipt from Justices—Case Left at Crown Office after Office Hours on Third Day.]—The provision of section 2 of the Summary Jurisdiction Act, 1857, which requires the appellant from a determination of Justices to transmit the Case stated by them within three days after its receipt from them, is sufficiently complied with if the Case is left at the Crown Office before the expiration of the third day, although after office hours. *Holland* v. *Peacock*, 81 L. J. K.B. 256; [1912] 1 K.B. 154; 105 L. T. 957; 76 J. P. 68; 10 L. G. R. 123; 22 Cox C.C. 636—D.

Case Stated—Case Set Down before Notice of Appeal Given.]—Where a Case stated by Justices was set down for hearing before notice of appeal was given or copy of the Case was served on the respondents,—*Held*, that the Court had no jurisdiction to hear the appeal in consequence of the non-compliance with the requirements of section 2 of the Summary Jurisdiction Act, 1857. *Hollidge* v. *Ruislip-Northwood Urban Council*, 77 J. P. 126—D.

Point not Taken before Justices—Right to Raise Point on Appeal.] — Upon an appeal from Justices, the Court will not entertain a point which was not taken before the Justices, unless it is a point of law which could not have been altered by evidence. Judgment of Lord Alverstone, C.J., in *Giebler* v. *Manning* (75 L. J. K.B. 463, 469; [1906] 1 K.B. 709, 716) considered. *Kates* v. *Jeffery*, 83 L. J. K.B. 1760; [1914] 3 K.B. 160; 111 L. T. 459; 78 J. P. 310; 12 L. G. R. 974; 24 Cox C.C. 324 —D.

Power of Court to Remit Case to Justices for Re-trial.]—*Semble*, where on a Case stated it appears that Justices have convicted a person on a wrong ruling of law, the Court will not remit the Case to the Justices under section 6 of the Summary Jurisdiction Act, 1857, to be re-tried, unless in the Case itself the Justices request this to be done in the event of their determination being held to be wrong. *Taylor* v. *Wilson*, 106 L. T. 44; 76 J. P. 69; 22 Cox C.C. 647; 28 T. L. R. 97—D.

Case Stated by Quarter Sessions—Questions of Fact.] — A public-house licence was granted by way of transfer to one Davies, who was the lessee of the premises under an agreement with the owners, a firm of brewers. Subsequently the terms of the agreement were altered, and the owners received a proportion of the takings for the purpose of paying off Davies's liability to them. Ultimately the owners put an end to the arrangement with Davies and applied for a transfer to one Hickton. The licensing Justices refused the transfer on the ground that liquor was sold on the premises by the firm, which was not licensed, and that therefore the premises were ill-conducted. On appeal to quarter sessions it was admitted that the character of the house was good, that Hickton was a fit and proper person to hold a licence, and that he was in possession. Quarter sessions held that Davies was merely a manager, and that the house had therefore been ill-conducted, and they dismissed the appeal :—*Held*, first, that section 2 of the Supreme Court of Judicature Act, 1894, did not make every Case stated by quarter sessions an appeal on the facts as well as on law, although the High Court could decide whether the conclusions drawn by quarter sessions from the facts were correct; and secondly, that there was no evidence that the owners had been selling their own beer on the premises, and therefore the decision of quarter sessions was wrong. *Hickton* v. *Hodgson*, 110 L. T. 380; 78 J. P. 93; 30 T. L. R. 221—D.

2. To Quarter Sessions.

See also Vol. VIII. 649, 1822.

Appeal to Quarter Sessions—Order to Take Down or Repair Dangerous Wall.] — Section 24 of the Petty Sessions (Ireland) Act, 1851, gives a right of appeal to quarter sessions from *(inter alia)* an order of Justices for payment of any penal or other sum exceeding 20*s.* or for the doing of anything at a greater expense than 40*s.* :—*Held*, that no appeal lies under this section from an order of Justices made under section 75 of the Towns Improvement Clauses Act, 1847, ordering the owner of a dangerous wall to take it down, rebuild or repair it, even though the expense involved in doing the work may exceed 40*s.* *Rex* v. *Cork (Recorder)*, [1913] 2 Ir. R. 35—K.B. D.

Notice — Successful Objector to Renewal — "The party against whom the appeal shall be brought" — Costs.] — Where an appeal is brought from the refusal of the renewal of a music licence the person who successfully objected to the renewal is not, within section 262 of the Manchester Police Act, 1844, "the party against whom the appeal shall be brought," and therefore notice in writing of such appeal need not be served upon him, and costs cannot be given against him under section 263. For the purposes of section 262 only the Justices who refused the renewal are the parties against whom the appeal is brought, but they are not parties in the sense that costs can be given against them under section 263. *Rex* v. *Ashton; Walker, Ex parte*, 85 L. J. K.B. 27; 113 L. T. 696; 79 J. P. 444—D.

Prisoner Consenting to Summary Trial—Indecent Assault upon Child.] — By section 128, sub-section 2 of the Children Act, 1908, "The First Schedule to the Summary Jurisdiction Act, 1879, shall include the offence mentioned in the Second Schedule to this Act in the same manner as if that schedule formed part of the First Schedule to the Summary Jurisdiction Act, 1879." The offence referred to is committing an indecent assault upon a child or young person :—*Held*, that the effect of the enactment is to place that offence in the same category as the other offences mentioned in the First Schedule to the Act of 1879, and that where a person charged with such an assault consents under section 12 to be dealt with summarily he has no right of appeal to quarter sessions. *Rex* v. *Dickinson; Davis, Ex parte*, 79 L. J. K.B. 256; [1910] 1 K.B. 469; 102 L. T. 48; 74 J. P. 76; 22 Cox C.C. 249—D.

Non-payment of Poor Rate—Issue of Distress Warrant—Levy—"Order of a Court of summary jurisdiction"—Procedure on Appeal—Recognisance.]—An appeal to quarter sessions under section 7 of 17 Geo. 2. c. 38, by a person aggrieved by a distress for non-payment of a poor rate is not an appeal from an "order" of a Court of summary jurisdiction within section 31 of the Summary Jurisdiction Act, 1879, and the appeal is therefore not subject to the conditions and regulations prescribed by that section. *Rex* v. *London Justices* (68 L. J. Q.B. 383; [1899] 1 Q.B. 532) applied. *Rex* v. *Lincolnshire Justices*, 81 L. J. K.B. 967; [1912] 2 K.B. 413; 107 L. T. 170; 76 J. P. 311; 10 L. G. R. 703; 23 Cox C.C. 102—D.

Time within which Recognisances to be Entered into.]—The applicants having been convicted before a magistrate on May 21, 1912, desired to appeal to quarter sessions. Under section 31, sub-section 2 of the Summary Jurisdiction Act, 1879, they had till May 28 within which to give notice of appeal, but they in fact gave such notice on May 25. On May 29 they attended before the magistrate to enter into the recognisances as required by section 31, sub-section 3 of the Act of 1879, but the magistrate refused to take the recognisances on the ground that, as more than three days had elapsed since the date of the notice of appeal was given, the time allowed by section 31, sub-section 3, had expired. On an application for a *mandamus* directing the magistrate to take the recognisances,—*Held*,

that as the time prescribed by section 31, subsection 3, for entering into the recognisances had expired, a rule must be refused. *Grafton Club* or *Ashton, Ex parte*, 76 J. P. 383; 28 T. L. R. 473—D.

Death of Appellant before Hearing — Whether Appellant's Personal Representatives Liable for Costs.]—A person was charged before Justices with being drunk on a highway while in charge of a motor car. He pleaded guilty and was sentenced to fourteen days' imprisonment. He gave notice of appeal to quarter sessions and entered into a recognisance to appear and prosecute the appeal. Before the quarter sessions were held at which the appeal would have been heard the appellant died. Counsel appeared at quarter sessions and informed the Court that the appellant had died, and he also made a statement that the appellant would have been able to put a different complexion on the case if he had been alive. The quarter sessions made an order that the appeal should be dismissed with costs to be paid by the personal representatives of the appellant:—*Held*, that the personal representatives had not become parties to the proceedings and that there was no jurisdiction to order them to pay the costs. *Rex* v. *Spokes; Buckley, Ex parte*, 107 L. T. 290; 76 J. P. 354; 23 Cox C.C. 141; 28 T. L. R. 420—D.

Convictions for Wilful Damage and Trespass—Notice of Appeal to Quarter Sessions—Appeal not Entered or Prosecuted—Order for Payment of Respondent's Costs of Appeal—Certiorari—Refusal of High Court to Grant Order Nisi—Jurisdiction—"Criminal cause or matter."]—Where a Court of quarter sessions has made an order under section 6 of the Quarter Sessions Act, 1849, for the payment to the respondent of the costs of an appeal against a conviction by Justices in petty sessions for trespass or for wilful damage, imposing a fine and costs or in default of payment to be imprisoned, the appellant not having either entered or prosecuted such appeal after having given notice of appeal, such order for costs is one made in a "criminal matter," and under section 47 of the Judicature Act, 1873, no appeal lies to the Court of Appeal from the refusal of the High Court to grant an order *nisi* for a writ of *certiorari* to remove such order for costs into the High Court. *Rex* v. *Wiltshire Justices; Jay, Ex parte*, 81 L. J. K.B. 518; [1912] 1 K.B. 566; 106 L. T. 364; 76 J. P. 169; 10 L. G. R. 353; 56 S. J. 343; 28 T. L. R. 255; 22 Cox C.C. 737—C.A.

D. SITTINGS OF QUARTER SESSIONS.

Authority to Fix Place at which Courts shall Sit.]—The London County Council, and not the standing joint committee of quarter sessions and County Council, has the duty to decide at what place or places within the County of London the Courts of quarter sessions shall sit. *London Quarter Sessions* v. *London County Council* (*No.* 1), 104 L. T. 923; 9 L. G. R. 1239; 75 J. P. 455; 27 T. L. R. 473—D.

Right to Determine Character of Accommodation.]—While the London County Council and not the standing joint committee of quarter sessions and County Council, has the duty to decide as to the site within the County of London at which the Courts of quarter sessions shall sit, the power and duty of determining the character of the accommodation to be provided on that site are vested in the joint committee, and when that committee has come to a decision thereon the County Council must provide the accommodation demanded. *London Quarter Sessions* v. *London County Council* (*No.* 2), 75 J. P. 459; 9 L. G. R. 1239; 55 S. J. 716; 27 T. L. R. 567—D.

E. JURISDICTION OF QUARTER SESSIONS AS TO INDICTABLE OFFENCES.

Living on Earnings of Prostitution—Procedure on Indictment — Charge in Respect of One Specified Day only—Validity of Indictment—Admissibility of Evidence of Similar Offences on other Days.]—In an indictment for the offence of knowingly living on the earnings of prostitution a male person can properly be charge with having committed the offence on one specified day only, and evidence of the offence having been committed on other days is admissible to prove the offence on the specified day. An indictment for such offence after a previous conviction for a similar offence can, under sub-section 5 of the Criminal Law Amendment Act, 1912, be tried by a Court of quarter sessions. *Rex* v. *Hill; Rex* v. *Churchman*, 83 L. J. K.B. 820; [1914] 2 K.B. 386; 110 L. T. 831; 78 J. P. 303; 24 Cox C.C. 150—C.C.A.

Recognisances — Felony — Conviction on Indictment—Binding Over on Conditions to Come up for Sentence—Breach of Condition—Power to Sentence.]—A prisoner, convicted of felony on indictment at quarter sessions, was bound over in recognisances to come up for judgment when called upon, and (*inter alia*) to abstain from intoxicating liquor, but on breach of the latter condition he was brought before the Court of quarter sessions for sentence:—*Held*, that, although it was probable that there was no power to sentence him conferred by section 6, sub-section 5 of the Probation of Offenders Act, 1907, which apparently deals only with prisoners bound over by a Court of summary jurisdiction to appear for conviction and sentence, the Court of quarter sessions, having duly bound the prisoner over under section 1, sub-section 2 of the Act, had an inherent power to pass the postponed sentence on the prisoner so brought before it. *Rex* v. *Spratling*, 80 L. J. K.B. 176; [1911] 1 K.B. 77; 103 L. T. 704; 75 J. P. 39; 22 Cox C.C. 348; 55 S. J. 31; 27 T. L. R. 31—C.C.A.

F. COMPELLING JUSTICES TO DO THEIR DUTY.

See also Vol. VIII. 676, 1825.

Dismissal of Complaint — Evidence on Behalf of Defendant Improperly Admitted—Refusal of Justices to State Case.]—Where

Justices have dismissed a complaint, the Court will not grant a *mandamus* to compel them to state a Case on the ground that evidence tendered on behalf of the defendant, and objected to by the complainant, was improperly admitted, the evidence given on behalf of the complainant being such as would have justified the Justices in dismissing the complaint. *Rex* v. *Cork Justices*, [1914] 2 Ir. R. 249—K.B. D.

G. CLERKS TO JUSTICES.

See also Vol. VIII. 691, 1829.

Appointment.]—The appointment of petty sessions clerk is a ministerial and not a judicial act, and it is not necessary that it should be made in open Court. *Rex* v. *Carlow Justices*, [1911] 2 Ir. R. 382—D.

LADING (BILL OF).

See SHIPPING.

LAND.

Adjoining Owners—Extraordinary Misfortune—Right to Protect Land—Liability for Damage to Adjoining Land.]—The owner or occupier of land has a right to repel an extraordinary misfortune coming to him by way of his neighbour's land, though the effect may be to transfer the mischief from his own land to that of his neighbour. Therefore where the respondent endeavoured to drive a swarm of locusts, which were moving from the appellant's land, away from his own land, and so caused them to remain on the appellant's land,—*Held*, that he was not liable for the damage thereby caused to the appellant's crops. *Greyvensteyn* v. *Hattingh*, 80 L. J. P.C. 158; [1911] A.C. 355; 104 L. T. 360; 27 T. L. R. 358—P.C.

Licence—Injury to Infant from Heap of Stones Deposited by Landowner—Infant mere Licensee on Land — Non-liability of Landowner.]—A landowner who allows persons, whether adults or children, to come on to his land is not liable for an accident which happens to one of them there unless the coming on to the land was the result of allurement or invitation, or unless the accident was due to something in the nature of a concealed trap or to something dangerous and outside the ordinary use of the land which the landowner brought on to it without warning the licensee. *Latham* v. *Johnson*, 82 L. J. K.B. 258; [1913] 1 K.B. 398; 108 L. T. 4; 77 J. P. 137; 57 S. J. 127; 29 T. L. R. 124—C.A.

A child of two and a half years of age came unaccompanied on to land belonging to the defendants, who were aware that children were in the habit of coming there to play. Whilst on the land the child was injured by the fall of a stone from a heap of stones deposited there by the defendants :—*Held* (reversing the decision of Scrutton, J.), that the child was not entitled to recover damages from the defendants for negligence. The child was at most a mere licensee, while the use of the land by the defendants had been perfectly normal, and the heap of stones did not constitute a trap. *Cooke* v. *Midland Great Western Railway of Ireland* (78 L. J. P.C. 76; [1909] A.C. 229) explained and distinguished. *Ib.*

Tort — Embankment Raised by Owner to Protect against Flood — Consequent Damage to other Land—Damnum absque Injuria.]—Every owner of land is entitled, provided he acts with reasonable care and skill, and provided he uses only reasonable and usual means for that purpose, to do what is necessary to protect himself or protect his land against damage by anticipated flood. Accordingly, where a landowner erects an embankment on his own ground to prevent natural flooding waters which by the lie of the ground would come upon his land from doing so, and in consequence the water floods other land and does damage, it is a case of *damnum absque injuria*. *Maxey Drainage Board* v. *Great Northern Railway*, 106 L. T. 429; 10 L. G. R. 248; 76 J. P. 236; 56 S. J. 275—D.

Yorkshire — Registration — Mortgage — Priority.]—An incumbrancer on an interest in the proceeds of sale of real estate in Yorkshire settled upon trust for sale but with power to postpone conversion obtains no priority over prior incumbrancers of such interest by registering his mortgage deed, and the priorities of such incumbrancers are determined by the dates of their respective notices to the trustees. This is so, although the land in fact is not sold. *Arden* v. *Arden* (54 L. J. Ch. 655; 29 Ch. D. 702) followed. *Gresham Life Assurance Society* v. *Crowther*, 84 L. J. Ch. 312; [1915] 1 Ch. 214; 111 L. T. 887; 59 S. J. 103—C.A.

Decision of Astbury, J. (83 L. J. Ch. 867; [1914] 2 Ch. 219), affirmed. *Ib.*

Settlement — Trust for Sale — Power to Postpone—Conversion.]—By a settlement real property was conveyed to trustees upon trust for sale and to hold the proceeds on certain trusts with power to postpone conversion for so long as the trustees should think fit, and a direction that while it should remain unsold the property should be held upon such trusts as should, as nearly as the nature of the property would admit, correspond with the trusts thereinbefore declared concerning the trust fund :—*Held*, that there was an imperative trust to convert, and the property must be treated as converted for the purposes of the Yorkshire Registries Act, 1884, even although no sale had in fact taken place, and a *cestui que trust* was, subject to a mortgage, entitled to the property absolutely. *Ib.*

Trespass to Land.]—*See* TRESPASS.

LANDLORD AND TENANT.

A. COMMENCEMENT AND DURATION OF TERM.

See also Vol. VIII. 706, 1833.

Implied Right of Way—Deed—Alteration of Date—Parcels—Plan.]—A lessor granted a lease of certain plots of land on which had been erected certain then nearly finished houses. The grant was defined by reference to a plan in the margin, which shewed a narrow strip of ground, coloured brown, at the rear of the plots, and running along other land that belonged to the lessor but was not included in the lease. The lease contained no express grant of any right of way along this strip, nor indeed further reference to it; but the evidence shewed that the use of the strip was essential to the tenants of the new houses for the convenient ingress of coal and manure, and for the egress of garden rubbish. At the time of the original granting of the lease the dates of the day and month were left in blank, but subsequently there was an alteration of the year (with the consent of all parties), and the blanks were also filled in. At the date of the original granting of the lease the plots were not yet fenced on the side towards the strip; but at the time of the alteration they were so fenced, and the position was indicated for gates communicating between the plots and the strip:—*Held*, that the alteration of the lease did not avoid it, and that the lessor was estopped from shewing that the date inserted by himself was not the date from which the demise operated, so as to prevent any one claiming under the lease from relying upon the circumstances existing at the date that the lease finally bore. *Held*, further, that under those circumstances an implied right of way over the strip in question had passed under the lease from the lessor to the lessee. *Rudd* v. *Bowles*, 81 L. J. Ch. 277; [1912] 2 Ch. 60; 105 L. T. 864—Neville, J.

Lease of Business Premises in Name of One Partner—Rent Paid out of Profits—Nature of Tenancy.]—In the absence of any provision in the partnership articles, where the lease of the business premises was acquired prior to the commencement of the partnership and stands in the name of one partner, but the firm pays the rent, the inference is that the tenancy exists during the continuance of the partnership only, and is not a tenancy from year to year. *Poeock* v. *Carter*, 81 L. J. Ch. 391; [1912] 1 Ch. 663; 106 L. T. 423; 56 S. J. 362—Neville, J.

See also eases under Termination of the Contract, F. (*infra*).

B. EXTENT OF PREMISES INCLUDED.

See also Vol. VIII. 718, 1835.

Demise of First-floor Offices—Flower Boxes Fixed to Window Sill—Demise of Both Sides of Outside Wall.]—Where the owner of a building demises a floor or a room bounded in part by an outside wall, the floor or room so demised comprises both sides of the wall, unless there is something in the lease which excludes the demise of the outside wall. The decision of Byrne, J., in *Carlisle Café Co.* v. *Muse Brothers & Co.* (67 L. J. Ch. 53) followed. *Hope* v. *Cowan*, 82 L. J. Ch. 439; [1913] 2 Ch. 312; 108 L. T. 945; 57 S. J. 559; 29 T. L. R. 520—Joyce, J.

Demise of Rooms — External Walls Included.]—The demise of a room includes the external walls by which it is bounded, unless there is anything in the document itself to limit the demise. *Carlisle Café Co.* v. *Muse Brothers & Co.* (67 L. J. Ch. 53) followed and explained. *Dictum* in *Hope* v. *Cowan* (82 L. J. Ch. 439; [1913] 2 Ch. 312) followed. *Goldfoot* v. *Welch*, 83 L. J. Ch. 360; [1914] 1 Ch. 213; 109 L. T. 820—Eve, J.

—— **Parol Evidence—Admissibility.**]—Parol evidence that the demise of a room does not include the external walls is not admissible where the document itself is unambiguous. *Ib.*

C. LEASES.

See also Vol. VIII. 809, 1838.

Arbitration Clause in Lease — Action for Rectification.]—A lease contained the following clause: "Any dispute, difference, or question which may at any time arise between all or any of the parties hereto touching the construction, meaning, or effect of these presents or any clause herein contained or the rights or liabilities of the said parties respectively, or any of them, under these presents or otherwise howsoever, in relation to these presents, shall be referred to the arbitration of a single arbitrator if the parties so agree, or otherwise of two arbitrators . . ." An action was brought by the lessors against the lessees claiming (*inter alia*) rectification of the lease. Upon a motion by the lessees that, pursuant to section 4 of the Arbitration Act, 1889, all proceedings in the action might be stayed and that the matters in difference therein between the parties be referred to arbitration,—*Held*, that the claim for rectification of the lease did not fall within the arbitration clause, and that that was a sufficient reason for refusing to stay the proceedings. *Printing Machinery Co.* v. *Linotype and Machinery, Lim.*, 81 L. J. Ch. 422; [1912] 1 Ch. 566; 106 L. T. 743; 56 S. J. 271; 28 T. L. R. 224—Warrington, J.

Covenant for Renewal on Surrender and Payment of a Fine — Right of Perpetual Renewal.]—A lease dated August 5, 1901, for twenty-one years from September 29, 1901, contained a covenant by the lessors, a municipal corporation, with the lessee, that "they the lessors will at the expiration of the first eleven years of the term hereby granted in case the lessee shall surrender or resign these presents and the term of twenty-one years hereby granted to the lessors and upon such surrender as aforesaid and paying to the lessors at the expiration of eleven years aforesaid or upon the 29th day of September next after the determination of the said eleven years the sum of seven pounds and ten shillings for a fine for the said premises that then the lessors shall and will at the proper costs and charges of the lessee grant unto the lessee a new lease of the premises hereby demised with the appurtenances for the term of twenty-one years to commence from the expiration of the said eleven years at with and under the like rents covenants and agreements as are in these presents mentioned expressed or contained and so often as every eleven years of the said term shall expire the lessors will grant and demise unto the lessee such new lease of the said premises upon surrender of the old lease as aforesaid and paying such fine of seven pounds and ten shillings on the day or time hereinbefore limited or appointed." Since the year 1824 the predecessors in title of the lessee, and subsequently the lessee himself, had been lessees or lessee of the corporation under a series of leases for twenty-one years, each lease being in the same form and containing a covenant in similar terms to that above stated, and such leases had been regularly renewed at the end of the first eleven years of the term upon payment of a fine of 7*l.* 10*s.* The first eleven years of the term of twenty-one years granted by the lease of August 5, 1901, expired on September 29, 1912, but the corporation refused to grant the lessee a new lease in the terms of the covenant. The lessee brought an action for specific performance:—*Held*, that, on the fair construction of the covenant, so often as every first eleven years of the term of twenty-one years last granted should expire, the lessors covenanted to grant a similar new lease upon the surrender of the old lease, and consequently that the covenant conferred upon the lessee a perpetual right of renewal at the expiration of every successive period of eleven years upon payment of the fine of 7*l.* 10*s.* *Hare* v. *Burges* (27 L. J. Ch. 86; 4 K. & J. 45) applied. *Wynn* v. *Conway Corporation*, 84 L. J. Ch. 203; [1914] 2 Ch. 705; 111 L. T. 1016; 78 J. P. 380; 13 L. G. R. 137; 59 S. J. 43; 30 T. L. R. 666—C.A.

Cancellation of Lease—Innocent Misrepresentation.]—A lease cannot be cancelled on the ground that its execution was brought about by means of an innocent misrepresentation. *Legge* v. *Croker* (1 Ball & B. 506) followed. *Angel* v. *Jay*, 80 L. J. K.B. 458; [1911] 1 K.B. 666; 103 L. T. 809; 55 S. J. 140—D.

Knowledge of Trespass — Rescission of Lease.]—A lessee who has known for years of operations on the part of his lessor which he alleges constitute a trespass to his lands, cannot make such operations the ground of an action for the rescission of the contract of lease. *South African Breweries* v. *Durban Corporation*, 81 L. J. P.C. 217; [1912] A.C. 412; 106 L. T. 385—P.C.

Society — Right to Sue — Under-lease to Society—Forfeiture of Head-lease—Claim of Society to a Vesting Order.]—A member of an unregistered society purported to take an under-lease for and on behalf of his society. On the head-lease being forfeited for breach of covenant the trustees of the society, suing on behalf of the members, brought this action for an order vesting the premises in them for the residue of the term of the under-lease under section 4 of the Conveyancing Act, 1892:—*Held*, that the plaintiffs were not entitled to sue. *Jarrott* v. *Aekerley*, 113 L. T. 371; 59 S. J. 509—Eve, J.

D. TENANCIES FROM YEAR TO YEAR.

Holding over—Implied Tenancy—Agreement by Tenant to Pay Tithe Rentcharge—Non-payment of Rent — Statute of Limitations.]—A lessee for a term held over after the expiration of the term, paying no rent, but paying the tithe rentcharge. In an action brought by the landlord for recovery of possession more than twelve years after the expiration of the lease,—*Held*, that the relationship between the parties continued after the expiration of the term, that a tenancy from year to year must be implied, and therefore the plaintiff was entitled to recover

possession. *Neall* v. *Beadle*, 107 L. T. 646; 57 S. J. 77—Eve, J.

E. RENT.

See also Vol. VIII. 902, 1846.

1. Premises Let for Immoral Purposes.

Agreement for Letting Premises to Kept Mistress — Right of Landlord to Recover Rent.]—The plaintiff let a flat to the defendant, a spinster. At the time of letting the plaintiff's agent knew that the defendant was the mistress of a certain man who visited her at the flat; that the rent of the flat would come through the defendant being a kept woman; and that the man whose mistress she was would find the money for the rent. Certain rent not having been paid by the defendant, the plaintiff sued her to recover it:—*Held*, that the flat being let for an immoral purpose, the plaintiff was not entitled to recover. *Upfill* v. *Wright*, 80 L. J. K.B. 254; [1911] 1 K.B. 506; 103 L. T. 834; 55 S. J. 189; 27 T. L. R. 160—D.

2. Recovery of Rent.

a. By Action.

Agreement to Let for Seven Years — No Lease — Entry into Possession — Action for Rent Commenced before Expiration of Term —Hearing Subsequent.]—The plaintiff agreed in writing to let certain premises to the defendant for seven years. The defendant entered in possession, but subsequently, with the consent of the plaintiff, assigned his interest in the agreement and premises. No lease of the premises was ever granted. Shortly before the expiration of the term the plaintiff commenced an action against the defendant for three quarters' rent, but this action was heard after the expiration of the seven years:—*Held*, that specific performance of the agreement would have been granted, and that the action was maintainable. *Gilbert* (or *Gilbey*) v. *Cossey*, 106 L. T. 607; 56 S. J. 363—D.

Liability of Executors for Rent.] — The executors of a deceased lessee entered into possession of the demised lands, the rent of which was payable in advance on November 1 in each year. Within two months of the lessee's death an order for the administration of his estate was made in a creditor's suit, and a receiver was appointed by the Court who took possession and complete control of the leasehold premises, accounting to the Court for any profits arising therefrom. In an action against the executors to recover one year's rent, which became due in advance on the following November 1, the executors pleaded that the leasehold premises were of no value and that they had been unable, and would during the period in respect of which the rent was claimed be unable, to derive any profit or advantage out of the leasehold premises. The jury were unable to say whether the executors could have made any profit out of the premises, and the Judge thereupon gave judgment for the year's rent. No question was left to the jury as to the value of the premises, although there was evidence that they were not value for the rent:—*Held* (Cherry, L.J., *dissentiente*), that the personal liability of an executor who has entered into possession of a testator's leasehold property is limited to the profits which he makes, or by the exercise of due care, skill, and diligence could make, out of them; and that the appointment of the receiver, and the possession by him of the premises, precluded the executors from making any profit during the period for which the rent claimed was payable, and that they were consequently entitled to have a verdict entered for them; and further, that the action was premature, as it would be impossible at the beginning of a year to ascertain by anticipation what profits could be made out of a particular holding during the ensuing twelve months. *Minford* v. *Carse*, [1912] 2 Ir. R. 245—C.A.

The protection afforded to an executor by an order for the administration of the testator's estate considered and explained by the Lord Chancellor. *Ib.*

Liability of Alien for Rent.]—*See* Alien.

Premises Let for Immoral Purposes.]—*See Upfill* v. *Wright*, *ante*, col. 813.

Tenancy for Three Years — Subsequent Lease of Premises for Seven Years to Another Person — Lease to Commence at once — No Attornment of Tenant—Right of Lessee to Sue Tenant for Rent.] — The defendant in June, 1908, took a certain flat on a three years' agreement expiring in June, 1911. During the currency of the defendant's tenancy a lease of the flat for twenty-one years was granted to the plaintiff, to commence immediately, the plaintiff being aware of the existence of the tenancy agreement. The defendant, however, never knew of the existence of the lease till after the termination of his tenancy, the rent both before and after the grant of the lease to the plaintiff having been paid by the defendant to the same firm of solicitors:—*Held*, that the plaintiff was entitled to sue the defendant for unpaid rent under the tenancy agreement which had accrued due subsequent to the grant of the lease, notwithstanding that the defendant had not attorned tenant to the plaintiff, inasmuch as the lease to the plaintiff operated under 4 & 5 Anne, c. 16, s. 9, to pass the reversion, together with the right to the rent under the tenancy agreement, without the necessity of an attornment, the effect of the statute being to create an immediate privity between the grantee of the lease and the tenant. *Horn* v. *Beard*, 81 L. J. K.B. 935; [1912] 3 K.B. 181; 107 L. T. 87—D.

Fee-farm Grant — Grantees Holding in Severalty — Joint and Several Covenants by Grantees to Pay Entire Rent—Liability of Assignee of One of Grantees.]—A fee-farm grant made under the Renewable Leasehold Conversion Act to several persons contained a joint and several covenant on the part of the grantees to pay the entire rent reserved by the grant. As between themselves the grantees held their respective shares of the lands in severalty, each paying an apportioned part of the rent. All the estate and interest of one of the grantees in the lands subsequently became vested in the defendant, against whom

an action was brought as such assignee to recover the entire rent :—*Held*, that the defendant was liable only for such proportion of the rent as was applicable to the share of the lands which had become vested in her. *Dooner* v. *Odlum*, [1914] 2 Ir. R. 411—K.B. D.

Tenant Remaining in Possession after Surrender of Tenancy — Judgment Creditor — Claim by Landlord for Rent.]—A tenant surrendered his tenancy of a farm to the landlord on March 25, 1912. By a verbal agreement of the same date it was arranged that the tenant should continue in occupation of the farmhouse, rent free, but subject to the liability to give up possession at any time when required by the landlord. Subsequently, on July 9, 1912, a County Court execution was levied on the tenant's goods. The landlord thereupon claimed payment by the bailiff of the arrears of rent due before the surrender, out of the proceeds of the execution, under the provisions of section 160 of the County Courts Act, 1888 : —*Held*, that the claim for rent by the landlord was not good as against the execution creditor. *Cox* v. *Leigh* (43 L. J. Q.B. 123; L. R. 9 Q.B. 333) followed. *Lewis* v. *Davies*, 83 L. J. K.B. 598; [1914] 2 K.B. 469; 110 L. T. 461; 30 T. L. R. 301—C.A.

Decision of the Divisional Court (82 L. J. K.B. 631; [1913] 2 K.B. 37) reversed. *Ib.*

Rent of Immediate Tenant in Arrear — Notice to Under-tenant to Pay Rent to Superior Landlord—Service—Sufficiency of Personal Service.] — The provision in section 6 of the Law of Distress Amendment Act, 1908, relating to the service by registered post on the under-tenant of a notice requiring future payments of rent to be made to the superior landlord till arrears of the immediate tenant's rent have ben paid, is inserted only to enable the superior landlord to effect service by registered post if he so desires. The object of the section is that the notice should come to the knowledge of the under-tenant, and personal service is sufficient. *Jarris* v. *Hemmings* (*No.* 1), 81 L. J. Ch. 290; [1912] 1 Ch. 462; 106 L. T. 419; 28 T. L. R. 195—Warrington, J.

Non-payment of Rent — Recovery of Possession—Moratorium—Postponement of Payments Act, 1914.]—By section 1, sub-section 1 of the Postponement of Payments Act, 1914, and a proclamation issued in pursuance thereof, the payment of any sum due and payable before the date of the proclamation in respect of a contract made before that time was postponed to a specified date :—*Held*, that rent due and payable before the date of the proclamation could not be recovered in an action in which the writ was issued after the proclamation and before the specified date, because not due and payable at the date of the writ; and that as the right, given by the agreement of tenancy, to re-enter for non-payment of rent was only a security for the rent, it followed that that right also did not exist at the date of the writ and could not be enforced in the action. *Durell* v. *Gread*, 84 L. J. K.B. 130; 112 L. T. 126; 59 S. J. 7; 31 T. L. R. 22—Scrutton, J.

Set-off—Mortgagee of Reversion and Tenant — Action by Mortgagee for Rent — Counterclaim by Lessee for Damages against Lessor —Damages for Breach of Covenant in Building Agreement.]—The rule that an assignee of a *chose in action* can set off a claim for damages against the assignor arising out of the same transaction has no application as between a lessee and a mortgagee of the reversion. The rule that a purchaser or mortgagee is bound by the equities of a tenant in possession does not apply to the right of a tenant to damages for breach of a covenant in a building agreement. *Reeves* v. *Pope*, 83 L. J. K.B. 771; [1914] 2 K.B. 284; 110 L. T. 503; 58 S. J. 248—C.A.

b. Recovery by Distress. *See* DISTRESS.

3. PAYMENT OF RENT.

First Quarter's Rent Payable "on the 25th of December next."] — By a lease dated December 23, 1910, but which had been executed earlier by the lessor, the rent was payable by equal quarterly payments to be made on the usual quarter days "of which the first shall be made on the 25th day of December next" :—*Held*, that the first quarterly payment of rent was due on December 25, 1910. *Simmer* v. *Watney*, 28 T. L. R. 162—C.A.

Deduction of Landlord's Property Tax — Right of Tenant to Deduct after Paying Rent without Deduction.]—A tenant is entitled to deduct from his rent sums paid in respect of landlord's property tax, although since such payment he has made a payment of rent without deduction. *Sturmey Motors, Lim., In re; Rattray* v. *Sturmey Motors, Lim.*, 82 L. J. Ch. 68; [1913] 1 Ch. 16; 107 L. T. 523; 57 S. J. 44—Warrington, J.

Severance of Reversion—No Apportionment —Payment to One Reversioner.] — Where a lease is granted and there is afterwards a severance of the reversion without the rent being apportioned, and no notice of the severance is given to the lessee, payment of the whole rent to one of the reversioners is not a payment to a person wrongfully claiming it within section 9 of the Real Property Limitation Act, 1833, so as to bar the claim of the other reversioner. *Mitchell* v. *Mosley*, 83 L. J. Ch. 135; [1914] 1 Ch. 438; 109 L. T. 648; 58 S. J. 218; 30 T. L. R. 29—C.A.

F. TERMINATION OF THE CONTRACT.

See also Vol. VIII. 970, 1850.

1. GENERALLY.

Proviso for Determination by Lessee — Notice to Determine — Outstanding Legal Estate.] — An assignee of a lease with an equitable title only cannot exercise the right, given by a proviso in the lease, to determine the tenancy before the expiration of the full term by giving six months' notice. Such notice is only valid from the person possessing the legal estate; and the lessor is not estopped from asserting this contention by having

licensed the assignment to and received rent from the assignee, where he did so without full knowledge of the facts and without knowing that the legal estate was outstanding in another person. *Dictum* of Channel, J., in *Seaward* v. *Drew* (67 L. J. Q.B. 322) not followed. *Stait* v. *Fenner: Fenner* v. *McNab*, 81 L. J. Ch. 710; [1912] 2 Ch. 504; 107 L. T. 120; 56 S. J. 669—Neville, J.

Conditions Precedent before Determination.]—Where such notice of earlier determination is given, under a proviso requiring the payment of all rent and performance of all covenants by the lessee up to the determination, the performance of covenants to pay the last quarter's rent in advance and put the premises in repair before delivering up to the lessor is a condition precedent, the nonfulfilment of which will prevent the determination. *Grey* v. *Friar* (4 H.L. C. 565) distinguished. *Seaward* v. *Drew* (*supra*) not followed. *Ib.*

2. Notice to Quit.

See also Vol. VIII. 975, 1851.

Sufficiency of—Tenancy for Three Years and so on from Year to Year.]—By an agreement a farm was let to the defendants for a period of three years commencing on March 25, 1907, and so on from year to year until the tenancy should be determined by either party giving to the other one year's notice in writing. On March 21, 1910, the plaintiffs gave the defendants a notice to quit on March 25, 1911: —*Held*, that the notice so given was good. *Herron* v. *Martin*, 27 T. L. R. 431—Darling, J.

Six Months' Notice to be given "on the 1st of March or the 1st of September in any year" — Notice to Quit "at the earliest possible moment"—Sufficiency.]—The defendants were tenants of the plaintiff under an agreement for a yearly tenancy, which provided that the tenancy might be determined by six months' notice on either side, to be given on March 1 or September 1 in any year. The defendants on December 23, 1913, sent the following letter to the plaintiff: "We very much regret having to give you notice to quit the studio at Deerhurst at the earliest possible moment. We are hoping to effect a satisfactory re-organisation of our film enterprise shortly after Christmas, in which case the notice will be cancelled; but should our expectations not be realised we naturally wish to relieve ourselves of the studio at the earliest possible moment, unless in the meantime we see some other use for it":—*Held*, a good notice to quit determining the tenancy on August 31, 1914. *May* v. *Borup*, 84 L. J. K.B. 823; [1915] 1 K.B. 830; 113 L. T. 694—D.

Lease Determinable "after expiration of three years" — Notice to Determine — Validity.]—A lease for five years contained a provision that "after the expiration of the first three years of the term," if the lessees should desire to determine the lease, and should give to the lessors six calendar months' previous notice in writing, such notice to determine on any quarter day, the lease should determine on the expiration of such notice:—*Held*, that no valid notice could be given until the expiration of the first three years and that the lease could not therefore be determined until the expiration of a further six months. *Gardner* v. *Ingram* (61 L. T. 720) followed. *Lancashire and Yorkshire Bank's Lease, In re: Davis* v. *Lancashire and Yorkshire Bank*, 83 L. J. Ch. 577; [1914] 1 Ch. 522; 110 L. T. 571—Eve, J.

Tenancy "for two years certain and thereafter from year to year"—When Determinable.]—A tenancy "for two years certain and thereafter from year to year" is not terminable at the end of the second, but only, by giving notice, at the end of the third or any subsequent year. *Searle, In re: Brooke* v. *Searle*, 81 L. J. Ch. 375; [1912] 1 Ch. 610; 106 L. T. 458; 56 S. J. 444—Neville, J.

3. Forfeiture.

See also Vol. VIII. 1000, 1854.

Notice of Breaches—Sufficiency.]—A notice under section 14 of the Conveyancing and Law of Property Act, 1881, ought to be such as to enable the tenant to understand with reasonable certainty what he is required to do, so that he may have an opportunity of remedying the things complained of before an action to enforce a forfeiture of the lease is brought against him, but it need not contain a detailed specification of the work to be done. *Fox* v. *Jolly*, 84 L. J. K.B. 1927; 59 S. J. 665; 31 T. L. R. 579—H.L. (E.)

Where a block of similar houses is held on one lease, and is bound by one covenant, and it is alleged in general terms that the covenant has been broken throughout, and the breaches are specified generally in a schedule, without reference to the separate houses in detail, it is sufficient. A vague and indefinite description of one breach does not vitiate the precise and accurate description of others. *Ib.*

Decision of the Court of Appeal, *sub nom. Jolly* v. *Brown* (83 L. J. K.B. 308; [1914] 2 K.B. 109), affirmed. *Ib.*

Relief against Forfeiture for Breach — Covenant to Repair and Keep in Repair—Structural Alterations—Waste.]—The discretion entrusted to the Court under section 14, sub-section 2 of the Conveyancing Act, 1881, for relief against forfeiture for breach of covenant in a lease is wide in its terms, and it is not advisable to lay down rigid rules for guiding that discretion so as to fetter it by limitations which have nowhere been enacted. *Hyman* v. *Rose*, 81 L. J. K.B. 1062; [1912] A.C. 623; 106 L. T. 907; 56 S. J. 535; 28 T. L. R. 432—H.L. (E.)

In the case of a building which for many years had been used as a chapel, and was being converted into a place of public entertainment —certain extensive interior and external alterations being made, which included the removal of staircases and the construction of new ones, the opening of a new door, and the removal of iron railings—relief against forfeiture was granted by the House of Lords on the deposit

by the appellants of a sum sufficient to secure the restoration of the building to its former condition at the end of the lease. *Ib.*

Decision of the Court of Appeal (80 L. J. K.B. 1011; [1911] 2 K.B. 234) reversed. *Ib.*

G. ASSIGNMENT.

See also Vol. VIII. 1059, 1869.

Agreement for Lease not under Seal — Assignment of Term by Deed to Mortgagees —No Entry by Mortgagees—Claim by Lessor against Mortgagees for Rent—Privity of Contract—Privity of Estate.] — Where there is neither privity of contract nor privity of estate between a lessor and an assignee of the lessee, the assignee is not liable to the lessor for rent of the demised premises. *Purchase* v. *Lichfield Brewery Co.*, 84 L. J. K.B. 742; [1915] 1 K.B. 184; 111 L. T. 1105—D.

A lessor, by an agreement in writing not under seal, agreed to let certain premises to a tenant for a term of fifteen years. The tenant assigned the term by deed to mortgagees, who accepted the assignment, but never executed the deed nor took possession of the premises. The lessor sued the mortgagees for rent of the premises :—*Held*, that they were not liable. *Dowell* v. *Dew* (12 L. J. Ch. 158; affirming, 1 Y. & C. C.C. 345) and *Walsh* v. *Lonsdale* (52 L. J. Ch. 2; 21 Ch. D. 9) distinguished. *Ib.*

Vesting of Reversion by Private Act of Parliament—Assignee of Reversion.]—By a lease made in 1844 the Freemen and Stallingers of the Antient Borough of Sunderland demised unto the lessees certain pieces or parcels of land, messuages, tenements, and hereditaments, for a term of ninety-nine years at a yearly rent. The lease subsequently became vested in the Secretary of State for War, and was assigned by him to the defendants. By a private Act of Parliament of 1853 made in pursuance of the desire of the Freemen and Stallingers of the Antient Borough of Sunderland the reversion of these lands and hereditaments became vested in the plaintiffs :—*Held*, that the plaintiffs were assignees of the original lease within the meaning of the statute 32 Hen. 8. c. 34, and so entitled to enforce the covenants therein contained. *Sunderland Orphan Asylum* v. *Wear (River) Commissioners*, 81 L. J. Ch. 269; [1912] 1 Ch. 191; 106 L. T. 288—Warrington, J.

H. COVENANTS.

1. That Run with the Land.

See also Vol. VIII. 1091, 1872.

Covenant by Covenantor with Himself and Others—Validity. —The three trustees of a will, as lessors, leased to one of themselves, as lessee, a freehold house for twenty-one years; and the lessee covenanted for himself, his executors, administrators, and assigns, with the lessors, their heirs and assigns (*inter alia*), to keep the property in repair and not to assign without the lessor's consent. The lessee entered into possession of the house and carried on his business there until he sold the business to a company and assigned the term to them. The company issued debentures which were secured by a trust deed. By this deed the premises were assigned to the trustees of the debenture trust deed for the residue of the term. In an action by the lessors against the trustees of the debenture trust deed.—*Held*, that the lease was not void in law, but that the covenants were by one person with himself and others jointly and, following *Ellis* v. *Kerr* (79 L. J. Ch. 291; [1910] 1 Ch. 529), were void; and therefore that there was no covenant which could run with the land and impose any personal liability on the defendants. *Napier* v. *Williams*, 80 L. J. Ch. 298; [1911] 1 Ch. 361; 104 L. T. 380; 55 S. J. 235—Warrington, J.

2. To Repair.

See also Vol. VIII. 1100, 1874.

Tenant to Pay all Outgoings—Landlord to Keep Exterior of House and Buildings in Repair—Outside Drain—Repair Necessarily Involving Improvements.]—The plaintiff let a house to the defendant, and by the lease the defendant covenanted to "pay and discharge all rates, taxes, assessments, charges, and outgoings whatsoever which now are or during the said term shall be imposed or charged on the premises or the landlord or tenant in respect thereof (land tax and landlord's property tax only excepted)." The plaintiff, as landlord, covenanted to "keep the exterior of the said dwelling house and buildings in repair." During the tenancy an outside drain was found to be defective, and the local authority compelled the plaintiff to put it in proper condition. To comply with the local authority's requirements a certain amount of reconstruction or improvement, such as putting in inspection chambers and ventilation pipes, was involved in doing the work. The plaintiff paid for the work and claimed to be recouped by the defendant in respect of that portion of it which was attributable to reconstruction or improvement as distinct from repairs :—*Held*, that the whole expense fell upon the plaintiff inasmuch as he could not perform his covenant to keep the exterior of the house and buildings in repair without executing the reconstruction or improvement. *Howe* v. *Botwood*, 82 L. J. K.B. 569; [1913] 2 K.B. 387; 108 L. T. 767; 29 T. L. R. 437—D.

Tenant to Complete Fittings to Shop — Covenant to Deliver up Demised Premises in Good Repair — Tenant's Right to Remove Trade Fixtures Affixed in Pursuance of Covenant.]—By the lease of an unfinished shop the lessees covenanted at their own expense to "complete and finish . . . all necessary fittings for the carrying on of the trade of a provision merchant," and also to deliver up the demised premises in good repair at the end of the term. In pursuance of their covenant the lessees affixed certain fittings to the premises which became "trade fixtures," and they removed them shortly before the end of the term :—*Held* (Vaughan Williams, L.J.,

dissenting), that the covenant in the lease did not take away the right of the lessees during the term to remove the fittings as trade fixtures. *Mowats* v. *Hudson*, 105 L. T. 400—C.A.

Lessee to Repair and Keep in Thorough Repair and Good Condition — Old House — Decay of Wall—Liability of Lessee.—Under a lessee's covenants in the lease of a house to well and substantially repair and keep in thorough repair and good condition the demised premises, and in such repair and condition to deliver them up at the end of the term, the lessee is bound to renew and rebuild any subsidiary part of the demised premises which is past ordinary repair. Where, therefore, the front wall of the demised premises, consisting of an old house, had by natural decay at the end of the term fallen into such a state that it had been condemned as a dangerous structure, the lessee was held liable under his covenant to pull down and rebuild the same. *Lurcott* v. *Wakeley*, 80 L. J. K.B. 713; [1911] 1 K.B. 905; 104 L. T. 290; 55 S. J. 290—C.A.

Per Fletcher Moulton, L.J.—A covenant to keep a house in good condition involves an obligation on the part of the covenantor to do all that is necessary to maintain it as a habitable house, and, if necessary, to put it in that condition, whether the means to that end consist of repair or renewal, though the nature of the obligation will vary according to the age and character of the house. *Ib.*

Proudfoot v. *Hart* (59 L. J. Q.B. 389; 25 Q.B. D. 42) followed. *Gutteridge* v. *Munyard* (1 Moo. & R. 334; 7 Car. & P. 129), *Lister* v. *Lane* (62 L. J. Q.B. 583; [1893] 2 Q.B. 212), and *Torrens* v. *Walker* (75 L. J. Ch. 645; [1906] 2 Ch. 166) explained and distinguished. *Ib.*

Under-lease—Similar Covenants to Repair — Notice to Lessee to Repair — Notice by Lessee to Under-lessee—Failure to Repair—Costs of Relief against Forfeiture—Right of Lessee to Recover from Under-lessee.—The plaintiff was the holder of a lease of certain premises, granted to his predecessors in title, containing a covenant to repair within three months after notice in writing. His predecessors had granted an under-lease of part of the premises to the defendant, which contained a covenant in similar terms. Notice to repair was served on the plaintiff by the superior landlord, and the plaintiff thereupon served a similar notice on the defendant. The notices were not complied with, and the superior landlord brought an action against the plaintiff to recover possession of the premises. The defendant obtained leave to appear and defend. The repairs having been executed, the plaintiff obtained an order for relief against forfeiture on payment of costs as between solicitor and client. In an action by the plaintiff for damages for the breach of the defendant's covenant to repair,—*Held*, that the plaintiff was not entitled to recover such costs from the defendant in the absence of a covenant of indemnity by him or of a covenant to perform the covenants of the head-lease. *Dictum* of Lindley, L.J., in *Ebbetts* v. *Conquest* (64 L. J. Ch. 702; 65 L. J. Ch. 808; [1895] 2 Ch. 377; [1896] A.C. 490) followed. *Clare* v. *Dobson*, 80 L. J. K.B. 158; [1911] 1 K.B. 35; 103 L. T. 506; 27 T. L. R. 22—Lord Coleridge, J.

Death of Assignee of Lease—Executor de Son Tort—Personal Liability.—The mother of the defendant, who was the assignee of a lease which had been granted by the plaintiffs, died intestate, leaving no estate. The defendant continued to collect the rents, and, after paying the ground rent to the plaintiffs in his mother's name, paid the balance over to his sister until her death. He afterwards collected the rents, and paid the ground rent to the plaintiffs, retaining the balance on behalf of the persons who might be found to be entitled to it. The plaintiffs, who were not aware of the death of the defendant's mother, sent a notice calling upon her to execute certain repairs to the premises, and upon subsequently ascertaining the facts they took possession of the premises, and brought an action against the defendant as executor *de son tort* for breach of the covenant to repair contained in the lease, and in the alternative claiming damages against him in his personal capacity. The County Court Judge found that the defendant had acted as agent for his mother and sister, and that he had never taken possession of the term as his own nor intended to act for himself, and gave judgment for the defendant:—*Held*, that the decision of the County Court Judge was right, as the term had never vested in the defendant so as to make him liable by reason of privity of estate. *Williams* v. *Heales* (43 L. J. C.P. 80; L. R. 9 C.P. 177) considered. *Stratford-upon-Avon Corporation* v. *Parker*, 83 L. J. K.B. 1309; [1914] 2 K.B. 562; 110 L. T. 1004; 58 S. J. 473—D.

Action for Breach of Covenant—Judgment for Damages — Subsequent Bankruptcy of Assignee—Proof Lodged in Bankruptcy—No Assets — Money Recovered from Cestui que Trust under Indemnity — Whether Money Assets Divisible amongst Creditors Generally or Belonged to Lessors.—The assignee of a lease was trustee thereof for his wife, and consequently had an equitable right to be indemnified by her against any claim under the covenants in the lease. On the expiration of the lease the lessors brought an action against the assignee for arrears of rent and damages for breach of covenant, and recovered judgment for the amount to be found to be due to them by an official referee, and costs. The certified sum was 711*l.*, but before it had been ascertained the assignee was adjudicated a bankrupt and the lessors lodged a proof in the bankruptcy for that amount. The proof was not dealt with, as there were no assets. The lessors then obtained liberty in the bankruptcy to use the name of the trustee in bankruptcy in an action to be brought by them against the bankrupt's wife to recover the 711*l.* under her indemnity as *cestui que trust*, one of the terms being that the Court in bankruptcy was to determine whether any sum to be so recovered should be treated as assets divisible amongst the creditors generally, or should be retained by the lessors. The action was commenced and was compromised on the payment

by the wife of 520*l.* :—*Held*, that the right of indemnity which passed to the trustee in bankruptcy could only be used by him for the purpose of paying the claim of the lessors against which the bankrupt's estate was indemnified, and that as no such payment had been made by him the 520*l.* did not form part of the general assets of the bankrupt, but belonged to the lessors and might be retained by them on account of their judgment debt. The proof lodged by them was directed to be withdrawn, but without prejudice to their right to lodge such other proof as they might be advised. *Richardson, In re; St. Thomas's Hospital, ex parte*, 80 L. J. K.B. 1232; [1911] 2 K.B. 705; 105 L. T. 226—C.A.

Sufficiency of Notice of Breaches.] —*See Fox* v. *Jolly*, *ante*, col. 818.

3. For Quiet Enjoyment and Title.

See also Vol. VIII. 1136, 1878.

Derogation from Grant—Building Scheme—Easement.]—The law does not recognise any easement of prospect or privacy. There will be assumed in favour of a purchaser or lessee under the doctrine that no one can derogate from his own grant, when a vendor or lessor sells or lets land for a particular purpose, an obligation not to do anything to prevent its being used for that purpose; but it will not be assumed that the vendor or lessor has undertaken restrictive obligations which would prevent his using land retained by him for any lawful purpose whatsoever merely because he might thereby affect the amenities or comfortable occupation of the property he had sold or let. *Browne* v. *Flower*, 80 L. J. Ch. 181; [1911] 1 Ch. 219; 103 L. T. 557; 55 S. J. 108—Parker, J.

Covenant for Quiet Enjoyment—Privacy—Comfort.] — To constitute a breach of a covenant for quiet enjoyment there must be some physical interference with the enjoyment of the demised premises, and a mere interference with the comfort of persons using the demised premises by the creation of a personal annoyance such as might arise from noise, invasion of privacy, or otherwise, is not enough. *Ib.*

Implied Covenants for Title — Lessee and Assignee—Third-party Notice to Indemnify—Assignment as "beneficial owner"—Rectification of Assignment.] — A lessee and an intending sub-assignee of the lease executed an agreement for sale by which it was recited that the legal interest in the lease was outstanding in a third party. The agreement provided that the lessee should not be required to get it in, nor to obtain the consent of the third party to the assignment. The lessee assigned "as beneficial owner" to the sub-assignee. The sub-assignee having been prevented from availing himself of one of the conditions in the lease, through not having the legal estate, and having been obliged to indemnify the lessee against the rent and covenants in the lease, claimed damages from the lessee for breach of the covenants for title implied under section 7, sub-section 1 (*a*) of the Conveyancing Act, 1881 :—*Held*, that, in view of the agreement between the parties, the lessee was entitled to have the assignment rectified by inserting a proviso that his covenants for title should not be deemed to imply that he had power to assign the outstanding legal estate in the term or to render him liable by reason of the fact that the said legal estate was not effectually assigned. *Stait* v. *Fenner; Fenner* v. *McNab*, 81 L. J. Ch. 710; [1912] 2 Ch. 504; 107 L. T. 120; 56 S. J. 669—Neville, J.

4. Not to Assign or Under-let.

See also Vol. VIII. 1156, 1882.

Not to Assign without Consent — Consent not to be Withheld in Respect of "respectable and responsible person" — Limited Company. —A limited company may be a "respectable and responsible person" within the meaning of a covenant by a lessee not to assign without the consent of the lessor (such consent not to be withheld in the case of a "respectable and responsible person"). *Harrison, Ainslie & Co.* v. *Barrow-in-Furness Corporation* (63 L. T. 834) overruled on this point. *Willmott* v. *London Road Car Co.*, 80 L. J. Ch. 1; [1910] 2 Ch. 525; 103 L. T. 447; 54 S. J. 873; 27 T. L. R. 4—C.A.

The plaintiff, who was the assignee of a lease which contained a covenant not to assign without the consent of the lessors, unless such consent should be unreasonably withheld, applied to the lessors for leave to assign to certain persons. The lessors stated that they would not grant any licence to assign, whereupon the plaintiff's solicitors wrote that in view of this attitude they would advise the issue of a writ forthwith. Before the writ was served the lessors wrote again that they were taking up the proposed assignees' references. Subsequently, the lessors wrote stating that having taken up the references they could not accept the proposed assignees. Thereupon the plaintiff executed an assignment of the premises, and in this action claimed a declaration that the lessors had unreasonably withheld their consent :—*Held*, that the lessors' consent had not been unreasonably withheld and that the action failed. *Shanley* v. *Ward*, 29 T. L. R. 714—C.A.

Where an agreement for a lease provided that the lease should contain a covenant not to assign without the written consent of the lessor, such consent not to be unreasonably or vexatiously withheld,—*Held*, that the lessor was, on the facts justified in refusing to give the consent, without stating any reason for such refusal; and that the covenant ran with the land and bound the assigns of the lessee although they were not mentioned therein. *Goldstein* v. *Sanders*, 84 L. J. Ch. 386; [1915] 1 Ch. 549; 112 L. T. 932—Eve, J.

"Lessors" Including "their executors administrators and assigns" — "Lessees" Including "their executors and administrators."]—Where there was a covenant in a sub-lease for over seventy years as follows,

"the lessees will not at any time during the said term assign or sublet the said demised premises or any part thereof," and the lease defined "lessors" as including "their executors administrators and assigns" and lessees as including "their executors and administrators," it was *held*, first, that a covenant against assignment or under-letting runs with the land, although "assigns" are not mentioned if a contrary intention is not shewn; and secondly, that there was not a sufficient indication of an intention that the covenant should be personal only and should not run with the land, either (*a*) in the fact that it was a long leasehold with an absolute prohibition of consignment, or (*b*) in the definition of "lessors" and "lessees." *Goldstein* v. *Sanders* (84 L. J. Ch. 386; [1915] 1 Ch. 549) applied. *Stephenson & Co., In re*; *Poole* v. *The Company* (*No.* 2), 84 L. J. Ch. 563; [1915] 1 Ch. 802; 113 L. T. 230; 59 S. J. 429; 31 T. L. R. 331—Sargant, J.

Not to Under-let without Consent—Consent not to be Withheld in the Case of Respectable and Responsible Person.]—Where there is a covenant in a lease that the lessee shall not assign or sub-let without the lessor's consent, with the usual proviso that such consent shall not be withheld in the case of a respectable and responsible person, a withholding of the consent when asked enables the lessee to assign or under-let to a respectable and responsible person without breach of covenant. *Lewis & Allenby, Lim.* v. *Pegge*, 83 L. J. Ch. 387; [1914] 1 Ch. 782; 110 L. T. 93; 58 S. J. 155—Neville, J.

Withholding Consent—Reasonable Time—Under-lease without Consent.] — Where the consent was requested within eleven days, and there were no special circumstances to warrant a longer notice, a failure by the lessor to give consent within that period was held to amount to a withholding within the meaning of the proviso. *Ib.*

Consent of Lessor not to be "Unreasonably" Withheld—Consent Refused, except on Condition of Insertion of Restrictive Covenant.] — The defendants, who carried on business as a cinematograph theatre, granted a lease of premises adjoining their own, the lessees not to assign their lease without consent in writing of the lessors, such consent not to be "unreasonably or vexatiously" refused. The lessees desired to assign, but the lessors refused to consent thereto, except on condition of the insertion in the lease of a covenant not to use the demised premises for the purposes of a cinematograph theatre:—*Held*, that in the circumstances the consent was "unreasonably" refused. *Premier Rinks* v. *Amalgamated Cinematograph Theatres*, 56 S. J. 536—Joyce, J.

Not to Assign or Sub-let — Implied Covenant.]—A provision in an agreement for a lease that the lessor shall not, save for "exceptionally strong and good reasons," withhold assent to an assignment or sub-lease did not amount to an implied covenant on the part of the lessee not to assign or sub-let without leave of the lessor. *De Soysa (Lady)* v. *De Pless Pol*, 81 L. J. P.C. 126; [1912] A.C. 194; 105 L. T. 642—P.C.

Not to Under-let without Lessor's Consent—Lease made in 1874—Licence to Under-let—Money Payment as Condition—Statute—Retrospective Operation—Action by Lessee—Declaration merely Claimed—Costs.]—The provisions of section 3 of the Conveyancing and Law of Property Act, 1892—that in all leases containing a covenant against assigning or under-letting without licence or consent, such covenant shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent—apply to all leases, whether made before or after the commencement of the Act. *West* v. *Gwynne*, 80 L. J. Ch. 578; [1911] 2 Ch. 1; 104 L. T. 759; 55 S. J. 519; 27 T. L. R. 444—C.A.

A lease dated July 31, 1874, by which certain premises were demised for ninety-four and a half years from March 25, 1874, at a yearly rent of 640*l.*, contained a covenant by the lessees not to assign or under-let without the lessor's consent, and also a proviso for re-entry on default in the performance of any of the lessees' covenants, and the usual covenant by the lessor for quiet enjoyment. In 1906 the lease was duly assigned, and in 1909 the lessor, in reply to an application by the assignees, stated that he was prepared to grant them a licence for a proposed under-lease for twenty-one years of part of the demised premises at a yearly rent of 340*l.* on condition that he should thenceforth receive one-half of the surplus rental to be obtained by the assignees over and above the rent of 640*l.* payable under the lease. The assignees brought an action against him merely for a declaration that he was not entitled to impose any monetary condition in respect of the licence, and that, in the events which had happened, the plaintiffs were entitled to grant, without any further consent on the part of the defendant, an under-lease on the terms approved by him. The defendant contended that section 3 of the Act of 1892 had not a retrospective operation:—*Held*, that the section interfered with existing rights, and that "retrospective operation" was an inaccurate term to apply to it; and that the plaintiffs were entitled to the declaration asked for, together with the costs of the action. *Ib.*

Dicta in *Andrew* v. *Bridgman* (77 L. J. K.B. 272; [1908] 1 K.B. 596) affirmed and followed. *Jenkins* v. *Price* (76 L. J. Ch. 507; [1907] 2 Ch. 229) and *Evans* v. *Levy* (79 L. J. Ch. 383; [1910] 1 Ch. 452) in effect overruled as regards costs. *Ib.*

5. As to Rates and Taxes.

See also Vol. VIII. 1169, 1887.

Lessee to Pay all "assessments charged on the premises"—Inhabited House Duty—Assessment of Owner of House—No Appeal—Payment of Duty by Owner — Action to

Recover Amount Paid from Lessee — "Dwelling house brought into charge."]—A lessor, before the making of the lease, was assessed to landlord's property tax and inhabited house duty. By a covenant in the lease the lessee agreed to "pay, bear and discharge all rates, taxes, duties, assessments, charges, impositions and out-goings whatsoever of an annual nature, whether parliamentary, parochial, or of any other description, which now are or during the term shall be imposed or charged on the premises or the owner or occupier in respect thereof, except landlord's property tax," &c. After the making of the lease the lessor, who did not appeal against the assessment, continued to pay the tax and duty as before. In an action by the lessor to recover from the lessee the amount of inhabited house duty so paid by her during the term:—*Held*, that inhabited house duty was an assessment charged upon the premises within the meaning of the covenant. *Held*, also, that the lessor, not having appealed against the assessment, was bound thereby and liable to pay the duty, and that, having paid it, she could recover the amount paid from the lessee as upon an implied request by the lessee to pay the same and an implied promise by the lessee to repay the lessor the amount so paid. *Juson* v. *Dixon* (1 M. & S. 601) and *MacGregor* v. *Clamp* (83 L. J. K.B. 240; [1914] 1 K.B. 288) followed. *Eastwood* v. *McNab*, 83 L. J. K.B. 941; [1914] 2 K.B. 361; 110 L. T. 701; 12 L. G. R. 517—D.

6. In Restraint of Trade.

See also Vol. VIII. 1214, 1899.

Absolute Covenant or Qualifying Clause.]—An under-lease of a house contained the following clause: "The tenant shall use the said premises only for private residential purposes, but shall be entitled to carry on thereon a high-class boarding establishment": —*Held*, on construction, that the words "but shall be entitled to carry on thereon a high-class boarding establishment" were not an absolute covenant for title by the under-lessor, but merely a qualification of the preceding words. *Milch* v. *Coburn*, 55 S. J. 170; 27 T. L. R. 170—Joyce, J. Reversed, 55 S. J. 441; 27 T. L. R. 372—C.A.

Agreement to Let Premises for Dancing — Restrictive Covenant against Use of Premises for Dancing—Collateral Agreement.]—The plaintiff, in an action for damages for breach of warranty in connection with the letting to him of certain premises, alleged that, as a basis of negotiations which culminated in an agreement in writing whereby the defendants agreed to let and the plaintiff agreed to take the premises in question, the defendants verbally warranted to let the premises for dancing purposes. The defendants had no power to let the premises for such purposes without the consent of the superior landlord, and such consent was never in fact obtained. The plaintiff took possession under the agreement and expended considerable sums in alterations, and now claimed to recover the amount of such expenses less the sums received by him during his possession of the premises. There was no fraudulent misrepresentation:—*Held*, that the plaintiff had failed to establish the alleged parol agreement, and that even if the evidence had established that before the contract was entered into the plaintiff had asked whether the premises could be let for dancing and had been answered in the affirmative it would only have been evidence as to the subject-matter of the contract, and could not control, vary, or add to the terms of the written contract. *Crawford* v. *White City Rink*, 57 S. J. 357; 29 T. L. R. 318—Eve, J.

Not to Let as "motor garage."] — A covenant not to let premises as a "motor garage and office" is not infringed by letting them as a shed or house where motor cars may be taken for temporary storage, and for no other purpose. *Derby Motor Cab Co.* v. *Crompton and Evans' Union Bank* (*No.* 2), 31 T. L. R. 185—Eve, J.

Lessor not to Let any of Adjoining Shops for Purposes of Certain Trades—Meaning of word "Adjoining."] — The defendant, who was the owner of six shops in a terrace forming part of the Limes estate and numbered 1 to 6 consecutively, let No. 4 for a term of years to the plaintiffs, who covenanted not to carry on any trade or business except certain specially named trades or businesses, including that of cabinet makers, without the defendant's licence in writing. The defendant also covenanted with the plaintiffs that he would not at any time during the continuance of the lease "let or agree to let any of the adjoining shops belonging to him on the Limes estate" for the purpose of certain trades or businesses, including that of cabinet makers. Subsequently the defendant let shop No. 6 to G. for the purpose of carrying on the business (*inter alia*) of a cabinet maker. In an action to recover damages for breach of his covenant by the defendant,—*Held*, that shop No. 6 was an "adjoining" shop within the meaning of the covenant, which extended to all the shops, and that the defendant, by letting that shop to G., had committed a breach of his covenant with the plaintiffs, which entitled them to damages. *Cave* v. *Horsell*, 81 L. J. K.B. 981; [1912] 3 K.B. 533; 107 L. T. 186; 28 T. L. R. 543—C.A.

The defendants in a lease of premises to the plaintiffs covenanted not to let the "adjoining" premises as a motor garage and office without giving the plaintiffs the first refusal. The defendants having let premises which were near to, but not next door or physically adjoining, those let to the plaintiffs as a lock-up show room for motor cars without giving the plaintiffs the first refusal, the plaintiffs claimed an injunction:—*Held*, first, on the evidence, that the premises were not being used as a motor garage; and secondly, that the premises were not "adjoining" those let to the plaintiffs, and therefore on both grounds the plaintiffs were not entitled to an injunction. *Cave* v. *Horsell* (81 L. J. K.B. 981; [1912] 3 K.B. 533) distinguished. *Derby Motor Cab Co.* v. *Crompton and Evans Union Bank* (*No.* 1), 57 S. J. 701; 29 T. L. R. 673—Eve, J.

Not to Demise Adjoining Land for Erection of other than Specified Buildings—Height—Erection of Bandstand.]—The plaintiff was the owner and occupier of certain leasehold premises in C. Crescent, which in 1842 had been the subject of a demise for a term of ninety-nine years by the predecessors in title of the D. Harbour Board, whereby the lessors covenanted not, during the continuance of the term, to demise or lease any part of the ground between C. Crescent and the sea for the erection of any building other than public baths, with or without libraries, nor suffer any such building to be erected thereon to exceed the height of 15 feet 7 inches. In 1880 a bandstand was erected on the land which had been laid out as public gardens, and in 1893 an agreement was entered into between the board and the corporation for a yearly tenancy of the gardens. In 1911 the corporation executed improvements in the gardens, and erected a new bandstand on the site of the old, exceeding the height of 15 feet 7 inches. In an action by the plaintiff for a mandatory order to remove the bandstand,—*Held*, that, upon the true construction of the covenant contained in the lease of 1842, the board's predecessors had covenanted only not to demise the land in question for the erection of other than the specified buildings, and not to permit such buildings, if erected, to exceed the height of 15 feet 7 inches, and that there was no covenant not to permit any buildings erected thereon to exceed that height; and that there being no evidence that the board had leased, for the purpose of, or authorised the erecting of, the bandstand, there had been no breach of the covenant. *Palliser* v. *Dover Corporation*. 110 L. T. 619; 58 S. J. 379—Joyce, J.

Not to Carry on Business of Fishmonger—Prohibition against Using Premises "otherwise than as a restaurant"—Carrying on Fried-fish Shop—Annoyance to Neighbours.]—A lease of premises contained a covenant restricting the lessee from carrying on on the premises the business of a "fishmonger," or any other trade which should be a nuisance or an annoyance to the tenants or occupiers of any messuage in the neighbourhood. The lessee let a part of the premises to a tenant who agreed not to use the premises "otherwise than as a restaurant," and not to do upon the premises any act or thing which should or might be a "nuisance, annoyance, or inconvenience" to the lessee or her tenants or the occupiers of any adjoining houses or the neighbourhood. The tenant set up and carried on on the premises the business of a fried-fish shop for the sale of cooked fish for consumption on and off the premises. The occupier of the adjoining house had complained of the annoyance caused by the steam and smell from the fish shop. In an action by the lessee for an injunction to restrain the tenant from using the premises otherwise than as a restaurant, or so as to be an annoyance or inconvenience to occupiers in the neighbourhood,—*Held*, that the carrying on of the business of a fried-fish shop was not the carrying on of the business of a "fishmonger" within the meaning of the covenant in the lease; but that the use of the premises as a fried-fish shop was a use of the same "otherwise than as a restaurant," and was an "annoyance or inconvenience" to the occupiers of adjoining houses and the neighbourhood, and that the lessee was entitled to the injunction claimed. *Errington* v. *Birt*, 105 L. T. 373—Avory, J.

Premises not to be Used except for Business of Hosier.]—In a lease of certain premises the lessees covenanted that the demised premises should not, without the consent in writing of the lessors, be used in any way except for the purpose of carrying on therein the business or businesses of a hosier or hatter and mercer, including the sale of fancy waistcoats and mackintoshes:—*Held*, that the sale of overcoats (not being mackintoshes) and sports jackets on the premises was a breach of the covenant. *Wartski* v. *Meaker*, 110 L. T. 473; 58 S. J. 339—Joyce, J.

Condition—Yearly Tenancy—Tied Public House — Agreement to Continue Exclusive Dealing with Assignees of Reversion—Notice of Agreement to Assignee of Tenancy.]—M., a brewer in the town of S., let a public house to K. as tenant from year to year on the terms that K. would deal with M. exclusively for draught porter. The house, with the licence attached, was worth far more than the yearly rent, and, in fact, the only profit M. had out of it was the benefit of the agreement for exclusive dealing. D. & Co., brewers in the town of C., purchased M.'s reversion in the house, but did not acquire his brewery at S., which was discontinued. D. & Co. entered into an arrangement with K. to continue the yearly tenancy "on the same conditions as K. had formerly held under M." K. afterwards assigned the house to O'L. and informed O'L. "of the arrangement to deal with D. & Co. for draught porter." O'L. did not take any draught porter from D. & Co., but dealt with a rival firm:—*Held*, that the condition as to exclusive dealing with D. & Co. for draught porter was valid and binding on O'L. *O'Leary* v. *Deasy*, [1911] 2 Ir. R. 150—C.A.

7. As to Building and Alteration.

See also Vol. VIII. 1231, 1905.

To Build—Waiver—Covenant to Repair—Continuing Breach—Right of Re-entry.]—Where in a lease there is an express covenant to erect buildings by a certain date, a further continuing covenant to erect these buildings cannot be implied from a covenant to repair them contained in the same document. *Dictum* of Stirling, J., to the contrary effect in *Jacob* v. *Down* (69 L. J. Ch. 193; [1900] 2 Ch. 156) disapproved. *Stephens* v. *Junior Army and Navy Stores*, 84 L. J. Ch. 56; [1914] 2 Ch. 516; 111 L. T. 1055; 58 S. J. 808; 30 T. L. R. 697—C.A.

Where, therefore, the right of forfeiture for not erecting buildings pursuant to the building covenant has been waived, any right or forfeiture for not repairing these buildings has necessarily been waived also. *Ib.*

Lessor to Erect Buildings on Demised Property — Death of Lessor before Complete Performance — Incidence of Liability — Lessor's General Estate or Specific Devisees.]—A lease of premises used as pottery works contained a covenant by the lessor to build, if required by the lessees during the term, an additional oven and cone, shed and workshops according to a specified plan, though such a plan did not then exist. The lessor died during the term, having devised the property specifically. Only the workshops had been erected at his death. Disputes between the lessees and his executors were referred to arbitration, and the arbitrator's award directed the executors to erect the remaining works, and to pay the costs of the arbitration:—*Held*, that the covenant was not incident to the relation of landlord and tenant, but was intended to be performed forthwith, and not to remain attendant on the lease; and that the expenses of performing it must be discharged primarily out of the lessor's general estate, and not by the specific devisees. *Eccles* v. *Mills* (67 L. J. P.C. 25; [1898] A.C. 360) applied *Hughes, In re; Ellis* v. *Hughes*, 83 L. J. Ch. 31; [1913] 2 Ch. 491; 109 L. T. 509—Warrington, J.

Covenant not to Alter Premises without Landlord's Consent—"The like consent"—Consent Reasonably Withheld.] — A lessee covenanted with his lessor not to sub-let without the lessor's previous consent in writing, such consent not to be unreasonably withheld, and not "without the like consent" to make any alteration to the demised premises, which consisted of the gardens in the centre of a London square. The lessee subsequently proposed to erect a building in the said square, to which the lessor refused his consent:—*Held*, that the lessor was precluded from withholding his consent unreasonably to any proposed alteration by the lessee, but that in the circumstances his consent to the proposed alteration was reasonably withheld. *Cartwright* v. *Russell*, 56 S. J. 467—Joyce, J.

No Alteration in Elevation of Buildings—Electric Light Advertisements.] — Electric light advertisement held not to constitute a breach of a covenant in a lease not to permit "any alteration in the elevation of the buildings or in the architectural decoration thereof," on the ground that the covenant referred to an alteration in the fabric and not to an alteration in appearance caused by temporary advertisements and frameworks which could be removed at any time. *Joseph* v. *London County Council*, 111 L. T. 276; 58 S. J. 579; 30 T. L. R. 508—Astbury, J.

8. For Renewal.—*See ante*, D.

9. Other Covenants.

See also Vol. VIII. 1241, 1905.

Exclusion of Implied by Express Covenant.]—In 1903 the plaintiff demised to the defendant company certain lands for a term of years, subject as to part of the lands, to a weekly tenancy created therein by the plaintiff, together with "all the right, benefit, and advantage" of the plaintiff under a memorandum of agreement, by which the said tenancy had been created. By the said memorandum of agreement the payment of the weekly rent had been guaranteed by two sureties; but prior to 1903 the sureties had been released by the plaintiff. During the negotiations for the lease of 1903 a copy of the said memorandum of agreement was sent to the defendant company, but the release of the sureties was not disclosed by the plaintiff, nor was any requisition in relation to the contract of suretyship made by the defendant company. The lease contained an express covenant by the plaintiff for quiet enjoyment, which did not make any reference to the contract of suretyship. The defendant company, having failed to recover the weekly rent from the tenant, sued the sureties, who successfully relied on their release by the plaintiff. In an action by the plaintiff against the defendant company for rent due under the lease of 1903, the defendant company counterclaimed damages for breach of contract to assign to them the full benefit of the contract of suretyship and for non-disclosure of the discharge of the sureties, but abandoned any claim founded on fraudulent concealment or misrepresentation:—*Held*, that the presence in the lease of the above-mentioned express covenant negatived the existence of any implied covenant or warranty that at the date when the lease was executed the contract of suretyship was still valid and subsisting, even assuming that such a covenant could otherwise have been implied from the terms of the lease, as to which *quære*. *Murphy* v. *Bandon Co-operative Society*, [1909] 2 Ir. R. 510. Affirmed, [1911] 2 Ir. R. 631—C.A.

Covenant by Lessee—Implied Covenant by Lessor.]—Where a lessor who is the owner of certain premises demises part of the premises to a lessee who covenants that he will conduct it as a restaurant, there is an implied covenant by the lessor that he will take all reasonable steps to prevent the lessee from being prejudiced in the business, and if the lessor demises to another lessee another part of the same premises and if with the knowledge and consent of the lessor disturbances occur therein which interfere with the first lessee's business, the lessor is liable to an injunction and damages at the suit of the first lessee. *Malzy* v. *Eichholz*, 32 T. L. R. 152—Darling, J.

I. OTHER RIGHTS AND LIABILITIES OF LANDLORD AND TENANT.

1. Tenant's Right to Compensation for Improvements under Agricultural Holdings Acts.

See also Vol. VIII. 1258, 1917.

Statutory Notice of Intention to Execute Improvements—Agreement to Dispense with Notice.]—In a claim by tenants of a holding for compensation under the Agricultural Holdings (Scotland) Act, 1908, in respect of

drainage improvements, it appeared that no notice in compliance with section 3, sub-section 1 of the Act [section 3 is in the same terms as section 3 of the Agricultural Holdings Act, 1908] had been given by the tenants to the landlord, but the tenants maintained that there had been an agreement under section 3, sub-section 4 to dispense with notice. It was proved that, before the improvements were executed, the tenants had interviews with the landlord's factor, at which, although the question of compensation or notice was never specifically raised, the factor was informed of the nature of the proposed work; and that the tiles were supplied to the tenants under orders given by the landlord's factor and were paid for by the landlord, while the cartage and the laying of the drains were done by the tenants at their own expense, and that this was the custom on the estate:—*Held*, that an agreement to dispense with the notice required by section 3, sub-section 1 of the Act could not be inferred. *Barbour* v. *M'Douall*, [1914] S. C. 844—Ct. of Sess.

Whether such an agreement must be proved by writing, *quære*. *Ib.*

Notice of Claim—Time for.]—A clause in a lease by which an agricultural tenant can make no claim for compensation for improvements "later than one month prior to the determination of the tenancy" is void under section 36 of the Agricultural Holdings (Scotland) Act, 1883, as being inconsistent with the provisions of section 2, sub-section 2 of the Agricultural Holdings Act, 1900, under which he is entitled to claim up to the last day of his tenancy. *Cathcart* v. *Chalmers*. 80 L. J. P.C. 143; [1911] A.C. 246; 104 L. T. 355—H.L. (Sc.)

Improvements "then" Executed.]—The Agricultural Holdings (Scotland) Act, 1908, s. 29, sub-s. 2 [corresponding to section 42, sub-section 2 of the Agricultural Holdings Act, 1908], begins with these words: "Where under a lease current on the first day of January, 1898, a holding was at that date in use or cultivation as a market garden . . . and the tenant thereof has then executed thereon . . . any improvement":—*Held*, that the word "then" means thereafter. *Smith* v. *Callander* (70 L. J. P.C. 53; [1901] A.C. 297) followed. *Taylor* v. *Steel-Maitland*, [1913] S. C. 562—Ct. of Sess.

Artificial Manure Applied in Terms of the Lease—"Benefit" Given by Landlord—Implied Benefit—Lower Rent.]—A lease contained a provision by which the tenant was bound to apply to the land a certain amount of farmyard manure per acre, and, so far as he had not sufficient farmyard manure for the purpose, to make up the amount with artificial manure. On quitting his holding the tenant claimed compensation for the unexhausted value of artificial manure applied in terms of that provision. The landlord maintained that the tenant was not entitled to claim compensation for manure applied in terms of the lease, in respect that he had received a "benefit" in the sense of section 1, sub-section 2 (*a*) of the Agricultural Holdings (Scotland) Act, 1908, the benefit of having to pay less rent than he would otherwise have to pay:—*Held*, that such an implied benefit was not a "benefit" in the sense of the section. *M'Quater* v. *Fergusson*, [1911] S. C. 640—Ct. of Sess.

Per The Lord President: A "benefit" must be one specially mentioned and allowed. *Ib.*

Improvements Executed in Accordance with Lease.]—A tenant is not entitled to compensation under the Agricultural Holdings (Scotland) Act, 1908, for making an improvement comprised in Schedule I. to the Act, if the improvement was one which he was bound under his lease to execute. *Galloway (Earl)* v. *M'Clelland*, [1915] S. C. 1062—Ct. of Sess.

Whether, in order to entitle the tenant to compensation, it is necessary that the operation executed by him should result in an improvement in the condition of the holding at the waygoing as compared with its condition at the date of entry under the lease, *quære*. *Ib.*

"Benefit" Given by Landlord—Pasture Handed Over at Entry to Holding.]—A tenant under a lease entered into prior to the date of the Agricultural Holdings (Scotland) Act, 1908, claimed compensation under that Act for an improvement, in respect of temporary pasture laid down by him in carrying out the system of cultivation imposed on him by the lease. The landlord maintained that, if compensation fell to be awarded, the arbitrator must set against it the temporary pasture handed over to the tenant free of charge on his entry as being in terms of section 1, sub-section 2 (*a*) of the Act a "benefit" which the landlord had given or allowed to the tenant in consideration of his executing the improvement. There was no reference in the lease to the temporary pasture received by the tenant on his entry. *Semble*, that this temporary pasture, although it was not specially mentioned and allowed as a benefit, must be taken into account as being a benefit under section 1, sub-section 2 (*a*). *M'Quater* v. *Fergusson* ([1911] S. C. 640) discussed. *Galloway (Earl)* v. *M'Clelland*, [1915] S. C. 1062—Ct. of Sess.

Valuation of Stock.]—A valuation of stock which is to be taken over by the owner or the new tenant from the outgoing tenant is an arbitration and must be made in the method prescribed by section 11, sub-section 1 of the Agricultural Holdings (Scotland) Act, 1908, notwithstanding any agreement in the lease providing a different method. [This section corresponds to section 13, sub-section 1 of the Agricultural Holdings Act, 1908.] *Stewart* v. *Williamson*, 80 L. J. P.C. 29; [1910] A.C. 455; 102 L. T. 551—H.L. (Sc.)

—— **Basis of Valuation.**]—A lease of a farm provided that the tenant should, at the end of the lease, leave the sheep stock on the farm to the proprietor or incoming tenant at a valuation to be fixed by arbitration. In a Case stated under the Agricultural Holdings (Scotland) Act, 1908, with regard to the basis of valuation to be adopted by the arbitrator, —*Held*, that it is the duty of the arbiter to

value the sheep upon the basis of their value to an occupant of the farm in view of the arbiter's estimate of the return to be realised by such occupant from them, in accordance with the course of prudent management, in lambs, wool, and price when ultimately sold; and not upon the basis either, first, of market value only or, secondly, of the cost and loss which would be involved in the restocking of the farm with a like stock if the present sheep stock were removed. *Held*, further, that the arbiter is entitled to take into account both current market prices and the special qualities of the sheep, both in themselves and in their relation to the ground, which in his opinion will tend either to enhance or to diminish the return to be realised from them by an occupant of the farm. *Williamson* v. *Stewart*, [1912] S. C. 235—Ct. of Sess.

Compensation for Unreasonable Disturbance — Reasonable Opportunity to Landlord of Making Valuation of Tenants' Stock and Implements.]—The tenants of a holding gave notice to their landlord on May 24, 1912, that they intended to claim compensation under section 10 of the Agricultural Holdings (Scotland) Act, 1908 [corresponding to section 11 of the Agricultural Holdings Act, 1908], and thereafter without further notice or intimation to the landlord, proceeded on February 13, 1913, to sell their stock and implements by public auction :—*Held*, that the tenants had given to the landlord a reasonable opportunity of making a valuation in terms of the Act, there being no obligation on a tenant, on his own initiative, to make an offer to the landlord of such an opportunity. *Barbour* v. *M'Douall*, [1914] S. C. 844—Ct. of Sess.

Observed that, where there was a displenishing sale, what the tenant would be entitled to as compensation under the section would include not merely the expense of the sale, but also the loss through deterioration of the stock upon a sale. *Ib.*

Market Garden — Compensation — Tenancy from Year to Year—"Contract of tenancy current at the commencement of the Act."]—A tenant from year to year under a contract of tenancy current on January 1, 1896, of a holding which was at that date used to the knowledge of the landlord as a market garden, is not, in the absence of any agreement that the premises should be let or treated as a market garden, entitled to compensation for improvements executed by him or his predecessors after the earliest day on which, if notice had been given immediately after January 1, 1896, the tenancy could have been determined. *Kedwell and Flint, In re*, 80 L. J. K.B. 707; [1911] 1 K.B. 797; 104 L. T. 151; 55 S. J. 311—C.A.

Termination of Tenancy by Notice to Quit —"Good and sufficient cause"—"Reasons inconsistent with good estate management" —Demand of Increase of Rent—Reason for such Demand—Value of Holding Increased by Improvements.]—A notice to quit given by a landlord to the tenant of an agricultural holding in order that a higher rent may be obtained is a "good and sufficient cause" and is not a reason "inconsistent with good estate management" within the meaning of section 11 (*a*) of the Agricultural Holdings Act, 1908, and excludes the operation of the section which gives a tenant a right to compensation for disturbance. Observations of the Lord President (Lord Dunedin) on this point in *Brown* v. *Mitchell* ([1910] S. C. 369) approved. *Bonnett and Fowler, In re*, 82 L. J. K.B. 713; [1913] 2 K.B. 537; 108 L. T. 497; 77 J. P. 281—C.A.

—— **Burden of Proof.**]—The burden of proof *prima facie* lies on an agricultural tenant under section 11 (*b*) of the Agricultural Holdings Act, 1908, to shew, where an increase of rent has been demanded, that such increase was demanded by reason of an increase in the value of the holding due to improvements executed by or at the cost of the tenant and for which he has not, either directly or indirectly, received an equivalent from the landlord, and that such demand has resulted in the tenant quitting the holding. *Ib.*

—— **Power of Court of Appeal to Draw Inferences of Fact.** —*Quære*, whether the Court of Appeal has power to draw inferences of fact in an appeal from the decision of a County Court Judge on a Case stated by an arbitrator under the provisions of the Agricultural Holdings Act, 1908. *Ib.*

Application to County Court to Set Aside Award on Ground of Misconduct of Arbitrator —Refusal to Admit Material Evidence— Appeal.]—On the termination of a tenancy the landlord claimed damages for breach of a covenant to deliver up the premises "in as good and tenantable repair as they now are," and the claim was referred to an arbitrator under the provisions of the Agricultural Holdings Act, 1908. The tenant applied under the Act to the County Court to have his award set aside on the ground that he had misconducted himself by refusing to admit evidence as to the condition of the premises at the commencement of the tenancy. The County Court held that this was not misconduct within the meaning of the Act, and dismissed the application. The tenant appealed to the High Court :—*Held*, that section 120 of the County Courts Act, 1888, applied and that the appeal lay. *Held* also, that refusal by an arbitrator to admit material evidence is evidence of misconduct by him as arbitrator. *Williams* v. *Wallis*, 83 L. J. K.B. 1296; [1914] 2 K.B. 478; 110 L. T. 999; 78 J. P. 337; 12 L. G. R. 726; 58 S. J. 536—D.

2. Tenant's Obligation.

Implied Obligation of Tenant to Cultivate Land in a Husbandlike Manner according to the Custom of the Country — Measure of Damages.]—An agricultural farmer, occupying land as yearly tenant under a parol agreement, impliedly agrees with his landlord to cultivate the whole of the land in his occupation in a husbandlike manner, according to the custom of the country, whether the land is or is not in good condition at the commencement

of his tenancy, and the measure of damage for breach of the implied agreement is the injury to the reversion occasioned by the breach. The diminution in the rent that the landlord will get on re-letting, or the allowance which he will have to make to the incoming tenant, may be a fair indication of the loss sustained by the landlord by reason of the breach, but such loss must be proved in the usual manner. *Williams* v. *Lewis*, 85 L. J. K.B. 40; [1915] 3 K.B. 493; 32 T. L. R. 42—Bray, J.

3. Wrongful Acts and Nuisances.

a. Liability of Landlord.

i. *To Tenant.*

See also Vol. VIII. 1268, 1921.

Damage by Escape of Water from Lavatory—Negligence—Liability for Malicious Act of Third Person.]—The landlord of a building let out as offices to different tenants placed on the top floor a properly constructed lavatory basin for the use of his tenants. One night water escaped from this lavatory and damaged goods belonging to the tenant of a lower floor. In an action by the tenant against the landlord it was proved that the overflow was caused by the tap of the lavatory having been turned on and the pipes intentionally choked, and the jury found that the lavatory was in proper order when the caretaker left the building in the evening, and that the overflow was caused by "the malicious act of some person":—*Held*, that the landlord was not liable for the consequences of a wrongful act, which he could not have reasonably anticipated, committed by a third person. *Rickards* v. *Lothian*, 82 L. J. P.C. 42; [1913] A.C. 263; 108 L. T. 225; 57 S. J. 281; 29 T. L. R. 281—P.C.

Unfurnished Flat — Repair of Roof — Duty of Lessor — Whether Absolute — Breach — Claim for Rent—Whether a Defence.]—The lessor of an unfurnished flat, where the roof forms no part of the demise, but remains in the control of the lessor, owes an absolute duty to his lessee to keep the roof in repair and is not merely under an obligation to use reasonable care to keep it in repair. A breach of this duty is, however, no answer to a claim for rent, but is a matter for cross-action. *Miller* v. *Hancock* ([1893] 2 Q.B. 177) considered and applied. *Hart* v. *Rogers*, 32 T. L. R. 150—Scrutton, J.

ii. *To Third Parties.*

See also Vol. VIII. 1269, 1924.

Wife of Tenant of House—Injured Owing to Defect in Stair.]—The wife of the tenant of a dwelling house on a common stair claimed damages against the landlord for injuries sustained by her owing to the defective condition of the stair. The defender pleaded that the pursuer had no title to sue as she was not a party to the lease:—*Held*, that the pursuer was entitled to sue, in respect that the stair was not included in the lease, but remained under the control of the landlord, who was bound to keep it reasonably safe for tenants and others using it as a means of access to the houses. *Cameron* v. *Young* (77 L. J. P.C. 68; [1908] A.C. 176) and *Cavalier* v. *Pope* (75 L. J. K.B. 609; [1906] A.C. 428) distinguished. *Mellon* v. *Henderson*, [1913] S. C. 1207—Ct. of Sess.

—— **Dangerous Premises—Building Let out in Flats—Building Approached by Flight of Steps — Steps in Possession of Landlord—Steps not Protected by Railing.**]—The defendant was the owner of a tenement house, the rooms on each floor of which were separately let out in flats. The house was entered by a front door on the ground-floor level, which was approached from the street by a flight of six or seven steps, which were only protected on each side by a coping about eight inches high, and on either side of the steps was an area. These steps remained in the possession of the defendant. The plaintiff, who lived with her husband in two rooms on the ground floor, of which her husband was the tenant, alleged that she tripped in consequence of a defect in one of the steps and fell into the area owing to the steps being insufficiently fenced, and was injured. She sued the defendant for damages for negligence in respect of the condition of the steps. The jury found that the plaintiff was injured through a defect in the flight of steps, which consisted not in the defective condition of the steps, as alleged by the plaintiff, but in the absence of a railing at the side of the steps; that the defect was due to the negligence of the defendant, but that the plaintiff knew of the existence of the defect prior to the accident:—*Held*, that although, under the circumstances, the defendant was under an implied duty towards persons using the steps to see that there was nothing in the nature of a trap, yet as the plaintiff knew of the absence of the railings prior to the accident, and the danger, if any, was patent to every one, she voluntarily took upon herself to bear the risk, and therefore could not recover. *Huggett* v. *Miers* (77 L. J. K.B. 710; [1908] 2 K.B. 278) followed. *Miller* v. *Hancock* ([1893] 2 Q.B. 177) distinguished. *Lucy* v. *Bawden*, 83 L. J. K.B. 523; [1914] 2 K.B. 318; 110 L. T. 580; 30 T. L. R. 321—Atkin, J.

—— **Defective Condition of House.**]—The wife of the tenant of a house to which the Housing, Town Planning, &c. Act, 1909, applies, has no cause of action against the landlord in respect of injuries sustained by her by reason of the premises being out of repair. *Middleton* v. *Hall*, 108 L. T. 804; 77 J. P. 172—Bankes, J.

Injury to Tenant's Daughter.]—The undertaking implied by section 15 of the Housing, Town Planning, &c., Act, 1909, in a contract for the letting for habitation of a house at a rent not exceeding the sum therein mentioned, that the house shall, during the holding, be kept by the landlord in all respects reasonably fit for human habitation, is a purely contractual obligation, and gives the tenant of the house alone a right to sue for a breach of

the undertaking. *Ryall* v. *Kidwell*, 83 L. J. K.B. 1140; [1914] 3 K.B. 135; 111 L. T. 240; 78 J. P. 377; 12 L. G. R. 997; 30 T. L. R. 503—C.A.

The daughter of the tenant of a house to which sections 14 and 15 of the Housing, Town Planning, &c., Act, 1909, applied, was injured through the failure of the landlord to keep the house in all respects reasonably fit for human habitation :—*Held*, that she was not entitled to maintain an action against the landlord for a breach of the statutory undertaking. *Cavalier* v. *Pope* (74 L. J. K.B. 857; 75 L. J. K.B. 609; [1905] 2 K.B. 757; [1906] A.C. 428) applied. *Ib.*

Decision of the Divisional Court (82 L. J. K.B. 877; [1913] 3 K.B. 123) affirmed. *Ib.*

Injury to Tenant's Child—Demise of Single Room in House—Flight of Steps Giving Access to House—Gap in Railings Protecting Steps from Area.]—The defendant was the owner of a house containing four rooms, one of which she let to a tenant at a weekly rent. The house was approached from the street by a flight of steps, on each side of which was an area, and the steps were protected from the area on both sides by railings. From the railing on one side one of the upright posts was missing, so that there was a gap in the railing on that side. The post had been so missing from a time before the commencement of the tenancy. The tenant's child, a boy of the age of three and a-half years, while playing on the steps fell through the gap into the area, and was seriously injured. In an action by the infant to recover damages for personal injuries, and by the father to recover out-of-pocket expenses, alleging negligence on the part of the defendant in not keeping the railings in a reasonable safe and fit state of repair, thus causing a danger and a nuisance to persons lawfully using the steps,—*Held*, that, there being nothing in the nature of a trap, the defendant was not liable. *Miller* v. *Hancock* ([1893] 2 Q.B. 177) distinguished. *Dobson* v. *Horsley*, 84 L. J. K.B. 399; [1915] 1 K.B. 634; 112 L. T. 101; 31 T. L. R. 12—C.A.

Visitor Injured through Defect in Outside Stair Giving Access to Premises.]—The only access to premises let to a tenant was by an outside stair and gangway which formed the access to these premises alone. All the repairs to the stair and gangway were executed by the landlord and not by the tenant. A visitor to the premises having been injured through the defective condition of the stair and gangway, sued the landlord for damages :—*Held* (Lord Skerrington *dub.*), that the landlord was not liable in respect that, in the circumstances, he could not be held to have retained possession and control of the stair and gangway. *M'Ilwaine* v. *Stewart's Trustees*, [1914] S. C. 934—Ct. of Sess.

Injuries Sustained by Trespasser—Holding over by Tenant.]—In an action to recover damages for personal injuries sustained through the negligence of the defendants, evidence was given that the plaintiff (who was a minor of six years of age) resided with his parents in two rooms on the first floor of a tenement house; that the parents had held these rooms on a weekly tenancy from the defendants; that the stairs and landings were kept by the defendants under their own control; that on August 8, 1910, the defendant served a notice to quit upon the parents; that this notice expired on the 15th; that on the 16th demand of possession was made; that on the 17th a summons under the Summary Jurisdiction (Ireland) Act, 1851, was issued to recover possession of the premises; that on the 22nd the infant plaintiff fell through an open window, on the same landing as the rooms, to the yard below, a distance of some twenty-four feet; that on the 25th an order for possession was obtained from the magistrate :—*Held*, on these facts, that the infant plaintiff and his parents were trespassers, and there was therefore no obligation on the landlord to maintain the premises in such a condition as to prevent the child falling through the window in question. *Coffee* v. *McEvoy*, [1912] 2 Ir. R. 95—K.B. D. Affirmed, [1912] 2 Ir. R. 290—C.A.

Whether Freeholder or Tenant Liable to Sub-tenant.]—A tenement of eight houses was let by the proprietor to a company, and the individual houses were sub-let by the company to their employees. A child visiting one of the houses, which was approached by an outside stair common to that and to another house, fell from the stair in consequence of a concealed defect in the railing, and was injured. In an action for damages against the proprietor and the company,—*Held*, that the latter were alone liable on the ground that they had possession and control of the stair and railing, and that in consequence of their contract with their tenant the child was to be regarded as being on the stair on their invitation. *Kennedy* v. *Shotts Iron Co.*, [1913] S. C. 1143—Ct. of Sess.

Nuisance — Rabbit Coursing — Evidence——Judicial Notice—Pleading.]—An owner let his field for the holding of rabbit-coursing matches on Sundays and Wednesdays. The holding of the meetings was a nuisance to the adjoining owner :—*Held*, that the agreement for the use of the field amounted to a letting and not a mere licence; that the landlord was only liable for the nuisance if it was the inevitable result of the purpose for which the land was let. *Held*, further, that the fact that the rabbit coursing was an inevitable nuisance was a fact which ought to have been pleaded, that the Court could not take judicial notice of such a fact, but that it must be proved by evidence. *Ayers* v. *Hanson*, 56 S. J. 735—Warrington, J.

b. Liability of Tenant.

See also Vol. VIII. 1272, 1927.

Tenant's Duty to Preserve Premises from Injury—Duty to Turn off Water when Leaving House Empty.]—The tenant of a villa, who left it unoccupied for a month in winter without having either turned off the water or informed the landlord of her intended

absence, *held* liable to the landlord for damage caused by the bursting of the water pipes owing to frost. *Mickel* v. *M'Coard*, [1913] S. C. 896—Ct. of Sess.

LANDS CLAUSES ACT.

I. UNDER COMPULSORY POWERS.

1. Notice to Treat.

See also Vol. VIII. 1317, 1932.

Mortgaged Property—Assessing Compensation in Absence of Mortgagee—Entry by Promoters—Right to Serve Subsequent Notice to Treat on Mortgagee.]—Promoters of an undertaking who have proceeded to assess the compensation in respect of mortgaged premises which they are empowered to acquire in the absence of the mortgagee, and have entered into possession, do not thereby lose the right to serve a subsequent notice to treat on the mortgagee, nor will they be restrained from exercising their statutory powers against him. *Cooke* v. *London County Council*, 80 L. J. Ch. 423; [1911] 1 Ch. 604; 104 L. T. 540; 75 J. P. 309; 9 L. G. R. 593—Parker, J.

2. What Lands or Interests.

See also Vol. VIII. 1328, 1933.

a. For what Purposes.

Building Necessary for the Working of Tramway—Residences for Staff.]—The appellant company had by statute compulsory powers of taking land "in case the construction of any tramway, or of any works or building necessary for the working thereof pursuant to the terms of the licence granted, involves the acquisition of" such land. The licence required them to construct, maintain, and work tramways "with all . . . necessary and convenient . . . buildings . . . for the due and efficient working of the said tramways": —*Held*, that their compulsory powers did not extend to taking land for the erection of residences for the housing of their staff. *West India Electric Co.* v. *Kingston Corporation*, 83 L. J. P.C. 380; [1914] A.C. 986; 111 L. T. 1038—P.C.

Conditions of Lease—Public Purpose——Provision of Residences for Government Officers—Right to Resume Possession.]—In order to constitute a "public purpose" in taking land it is not necessary that the land when taken is to be made available to the public at large. *Hamabai Framjee Petit* v. *Secretary of State for India*, L. R. 42 Ind. App. 44—P.C.

The Government had, under a lease, a right, subject to giving notice and paying compensation, to resume possession of the land granted if they desired to use it for a public purpose. The Government gave notice of their intention to resume possession with the object of using the land for the provision of residences to be let at moderate rentals to Government officers: —*Held*, that the use to which it was proposed to put the land was a "public purpose" within the meaning of the lease. *Ib.*

Exercise of Powers by Congested Districts Board.]—Where an administrative body has been authorised by statute to take land compulsorily for specified purposes, the Court will not interfere with the exercise of such powers if the administrative body in its discretion *bona fide* intends to take land for those purposes and if the land is in fact capable of being used for them. *Clanricarde (Marquess)* v. *Congested Districts Board for Ireland*, 13 L. G. R. 415; 79 J. P. 481; 31 T. L. R. 120—H.L. (Ir.)

b. Houses, Buildings and Manufactories.

Part of "House or other building or manufactory"—Requiring Promoters to take Whole—Undertaking of Canal Company—Meaning of "Building."]—A "building" within the meaning of section 92 of the Lands Clauses Consolidation Act, 1845, is something in the nature of a house, although in ordinary language it would not be called a house. Observations of Brett, L.J., in *Richards* v. *Swansea Improvement and Tramways Co.* (9 Ch. D. 425), followed:—*Held*, therefore, that the undertaking of a canal company, though it included, besides the canal, a number of houses and other buildings, was not a "building" within the meaning of section 92, and that promoters, who desired to take under statutory powers some pieces of land belonging to the company, could not be required to take the whole undertaking. *Regent's Canal and Dock Co.* v. *London County Council*, 81 L. J. Ch. 377; [1912] 1 Ch. 583; 106 L. T. 745; 76 J. P. 353; 10 L. G. R. 358; 56 S. J. 309; 28 T. L. R. 248—Warrington, J.

Power of Canal Company to Convey Whole Undertaking.]—*Semble*, that the canal company could have conveyed the whole undertaking under the provisions of the Lands Clauses Consolidation Act, 1845. *Ib.*

Power to Acquire Part of Property Subject to Proviso against Interference with Main Structure—Destruction of Access to Chapel.]—By section 18 of the London County Council (Tramways and Improvements) Act, 1913, the Council were given power in connection with certain street improvements to take the parts of properties specified in the Third Schedule to the Act without being required or compelled to purchase the whole of such properties, but there was a proviso that the section was not to "entitle the Council to take or interfere with the main structure of any house, building, or manufactory." Under this section the Council served notice to treat for the acquisition of the "forecourt, walls, gates and railings" of a Baptist chapel specified in the Third Schedule. The result of the taking of this forecourt and the lowering of its level for the purpose of a street widening would be to make access to the chapel impossible without extensive alterations to the main structure:—*Held*, that the taking of the forecourt amounted to an interference with the main structure of the chapel, and that section 18 of the special Act was therefore inapplicable and that the Council could not acquire compulsorily the lands specified in the notice without taking the whole building. *Genders* v. *London County Council*, 84 L. J. Ch. 42; [1915] 1 Ch. 1; 112 L. T. 365; 79 J. P. 121; 13 L. G. R. 14; 59 S. J. 58; 31 T. L. R. 34—C.A.

II. PURCHASE MONEY, DISPOSAL OF.

See also Vol. VIII. 1380, 1939.

A. Payment out to Persons Absolutely Entitled.

Compensation Money Lodged in Court—Words in Deed Sufficient to Pass.]—X was tenant in tail in remainder, under an indenture of settlement made in 1870, of considerable estates in Galway and in other parts of Ireland. In 1890 a railway company acquired a small portion of the Galway lands under their compulsory powers, and the compensation money was lodged and remained in Court. In 1901 X mortgaged his estates by several instruments in which they were variously described as "all my estates in Galway and wheresoever situate in Ireland," "all my estate situate in Galway and elsewhere in Ireland," and "all my lands, hereditaments, and premises in county Galway, Ireland, and other lands, hereditaments, and premises wheresoever situate in Ireland." X was adjudicated a bankrupt in England in 1902, and the estate tail in remainder given to him by the settlement having subsequently become an estate in possession, the official receiver and trustee of his estate duly executed a disentailing assurance of the lands comprised in and settled by the indenture of settlement of 1870, and all other "if any, the tenements and hereditaments of or to which the said X was seised or entitled as tenant in tail whether at law or in equity, under the said indenture or otherwise howsoever." Upon a summons by the official receiver in bankruptcy for payment out of Court of the compensation moneys, which was opposed by the mortgagee,—*Held*, first, that the compensation moneys were not included in the mortgage; and secondly, that they were included in the disentailing assurance and should be paid out to the official receiver in bankruptcy. *Ballinrobe and Claremorris Light Railway and Kenny, Ex parte*, [1913] 1 Ir. R. 519—Barton, J.

B. Costs of Payment Out.

Trustees for Purposes of Settled Land Acts—Petition by—Tenant for Life Respondent—Costs.]—Where there is a petition for payment out of Court of money paid in by a railway company as the purchase money of real estate settled by the will of a testator, which the company had taken under their compulsory powers, presented by the trustees of the will for the purposes of the Settled land Acts, and that petition is served upon the tenant for life, the tenant for life is entitled to be separately represented and to have his costs paid by the railway company. *Piggin, In re; Mansfield Railway, ex parte*, 82 L. J. Ch. 431; [1913] 2 Ch. 326; 108 L. T. 1014—Warrington, J.

Order for Transfer to Several Transferees—Separate Fees for Requests and Attendance before Paymaster.]—The allowance of two fees for attendance before the Accountant-General, on an application, under the new rules for payment out of funds paid in under the Lands Clauses Act, which originated when under the practice in Chancery under the old Consolidated Orders it was necessary for the solicitor to attend both before the Registrar and also before the Accountant-General, was *held* to be common form to-day, and such fees were accordingly not disallowed. *Butler's Will, In re; Metropolitan Board of Works, ex parte*, 106 L. T. 673; 56 S. J. 326—Parker, J.

Costs Incidental to Application for Payment out—Letters of Administration—Tenant for Life.]—Freehold premises, which were devised to a widow for life, and after her death to her children as tenants in common in fee, were during the life tenancy taken compulsorily and the purchase money paid into Court. On the death of the life tenant, the fund, which was divisible into six shares, was ordered to be distributed and the costs paid by the promoters, in accordance with the Lands Clauses Consolidation Act, 1845, s. 80. Upon taxation the Master disallowed (*a*) the costs of taking counsel's opinion as to the persons entitled, (*b*) the costs of an application to the Probate Division for leave to presume the death of one child, and (*c*) the costs of obtaining administration to the estates of two children who predeceased the tenant for life. The applicants appealed:—*Held*, by Astbury, J., that the costs under heading (*a*) were not payable by the promoters; but *held*, by the Court of Appeal (affirming

Astbury, J.), that the costs under headings (*b*) and (*c*) were reasonable charges incident to obtaining payment of the fund out of Court, and were therefore payable by the promoters. *Lloyd and North London Railway (City Branch) Act*, 1861, *In re* (65 L. J. Ch. 626; [1896] 2 Ch. 397), approved. *Griggs, In re; London School Board, ex parte*, 83 L. J. Ch. 835; [1914] 2 Ch. 547; 111 L. T. 931; 13 L. G. R. 27; 58 S. J. 796—C.A. Affirming, 78 J. P. 595—Astbury, J.

III. COMPENSATION.

See also Vol. VIII. 1505, 1948.

A. In Respect of what Injuries.

Mortgaged Lands—Mortgagee in Possession—Part taken Compulsorily—Claim of Compensation for Injurious Affection of Residue.]—Mortgagees of lands in possession with a power of sale are entitled under the Lands Clauses Act, 1845, as being parties entitled to sell and convey them, to the rights of owners thereof. Where part of the mortgaged lands is taken they are also entitled, as being parties interested in such lands, to claim compensation for damage by reason of the residue being injuriously affected by the execution of the works by the promoters of the undertaking. Their rights in that respect are not restricted by the special provisions relating to mortgagees in sections 108 to 114 of the Act. *Rex* v. *Middlesex (Clerk of the Peace)*, 83 L. J. K.B. 1773; [1914] 3 K.B. 259; 111 L. T. 579; 79 J. P. 7—D.

B. In Respect of what Interests.

Lessee's Interest—Arrears of Rent.]—A lessor cannot claim arrears of rent out of money lodged in Court under the Lands Clauses Act as compensation for the interest of the lessee. *Carey, Ex parte; Great Southern and Western Railway, In re* (10 L. T. (o.s.) 37), followed. *Dublin Corporation and Baker, In re; Thompson, ex parte*, [1912] 1 Ir. R. 498—M.R.

C. In Respect of what Persons.

Mortgaged Lands—Mortgagee in Possession—Part taken Compulsorily—Claim of Compensation for Injurious Affection of Residue.]—Mortgagees of lands in possession with a power of sale are entitled under the Lands Clauses Act, 1845, as being parties entitled to sell and convey them, to the rights of owners thereof. Where part of the mortgaged lands is taken they are also entitled, as being parties interested in such lands, to claim compensation for damage by reason of the residue being injuriously affected by the execution of the works by the promoters of the undertaking. Their rights in that respect are not restricted by the special provisions relating to mortgagees in sections 108 to 114 of the Act. *Rex* v. *Middlesex (Clerk of the Peace)*, 83 L. J. K.B. 1773; [1914] 3 K.B. 259; 111 L. T. 579; 79 J. P. 7—D.

D. Principles of Assessment.

Land Specially Adapted to Railway Purposes.]—On the expiration of the lease of a piece of land over which the main line of a railway company passed, the company obtained compulsory powers to purchase the land. This railway was also the only means of conveying coal from the neighbouring collieries to their port of shipment:—*Held*, that in assessing compensation the arbitrator ought to take into consideration the special adaptability of the land for railway purposes, because had the railway company not obtained compulsory powers they would have had to compete with the colliery companies for its acquisition; but that he ought not to consider its special value to the railway company in respect of the fact that a part of the passenger railway ran over it, for there could be no competition with any other for its purchase, as the railway company alone could use it for the purposes of a passenger railway, and in the absence of competition the doctrine of special adaptability had no application. *Sidney* v. *North-Eastern Railway*, 83 L. J. K.B. 1640; [1914] 3 K.B. 629; 111 L. T. 677—D.

Restricted Use of Land.]—Where land is taken compulsorily for public purposes the value upon which compensation is to be assessed is the value to the old owner who parts with the property, not the value to its new owner who takes it over. If, therefore, the old owner holds the property subject to restrictions, the question of how far those restrictions affect the value is to be considered in assessing the compensation. *Hilcoat* v. *Canterbury and York (Archbishops)* (19 L. J. C.P. 376; 10 C. B. 327) and *Stebbing* v. *Metropolitan Board of Works* (40 L. J. Q.B. 1; L. R. 6 Q.B. 37) discussed and explained. *Corrie* v. *MacDermott*, 83 L. J. P.C. 370; [1914] A.C. 1056; 111 L. T. 952—P.C.

Owner of Two Contiguous Pieces of Land—One Building Site—Purchase of Strip of one Piece without Reference to other Piece—Valuation.]—Where the owner of two contiguous pieces of land, which he has separately acquired, sells under compulsion a strip of one piece without any reference to his interest in the other piece, the purchase price of the strip must be ascertained without reference to the other piece, although the vendor has, after the purchase has been agreed upon, dealt with the two properties as one building site. *South-Eastern Railway* v. *London County Council*, 84 L. J. Ch. 756; [1915] 2 Ch. 252; 113 L. T. 392; 79 J. P. 545; 13 L. G. R. 1302; 59 S. J. 508—C.A.

E. Settling Amount and Practice Thereon.

1. Reference to Arbitration.

a. Award.

Light Railway — Taking up Award — Mandamus.]—The promoters of a light railway under an Order made under the Light Railways Act, 1896, incorporating the Lands

Clauses Consolidation Act, 1845, are bound under section 35 of the Lands Clauses Consolidation Act, 1845, to take up an award of compensation in respect of land compulsorily acquired by the company, and if they fail to do so the Court will issue a *mandamus* to compel them to take up the award. The provisions of the Light Railways Act, 1896, are only substituted for those of the Lands Clauses Act as regards the manner of the determination of the compensation—the amount being ascertained by a single arbitrator instead of by the verdict of a jury, by arbitration, or by two Justices, as under the Lands Clauses Consolidation Act, 1845. *Rex* v. *Barton and Immingham Light Railway; Simon, Ex parte*, 81 L. J. K.B. 964; [1912] 3 K.B. 72; 76 J. P. 344—D.

Action on Award—Statute of Limitations.] —*See Turner* v. *Midland Railway*, *post*, col. 860.

b. Costs.

Award in Favour of Plaintiff — Costs — Sufficiency of Previous Offer.]—A railway company having, pursuant to compulsory powers, diverted a public footpath, the owner of adjoining land claimed compensation under the Lands Clauses Consolidation Act, 1845, on the ground that the diversion of the footpath had injuriously affected his estate and interest in such land, and the matter went to arbitration. The company, before appointing their arbitrator, wrote to the claimant stating that they had arranged for the construction of a road which would compensate him for the diversion of the footpath, and, "on the understanding that such road will be made," offering him 50*l.* in settlement of his claim. The proposed road was in fact completed before the arbitration took place. The umpire awarded the plaintiff 50*l.* compensation and his costs :—*Held*, that the company's offer was not a valid offer under section 34 of the Act, inasmuch as it was not a plain, clear, and unconditional offer of a sum of money only, but was an offer of either a sum of money and the making of a road, or a sum of money conditional upon the making of a road; and consequently, as in effect no sum had been offered at all under the section, the plaintiff's costs of and incident to the arbitration should be borne by the company. *Fisher* v. *Great Western Railway*, 80 L. J. K.B. 299; [1911] 1 K.B. 551; 103 L. T. 885; 55 S. J. 76; 27 T. L. R. 96—C.A.

LAND TRANSFER.

Vendor and Purchaser—Leasehold Land—Ninety-nine Years Term—Mortgage by Sub-demise Less One Day—Registration of Term—Sale by Mortgagee under Statutory Power—Requisitions.]—Where leasehold land is registered under the Land Transfer Acts, after a mortgage by sub-demise for the terms less one day has been created (and not registered), the mortgagee selling under the statutory power of sale is not the vendor of registered land within the meaning of section 16, sub-section 2 of the Land Transfer Act, 1897, and the purchaser is not entitled to require him either to be registered as proprietor of the land or of a charge giving a power of sale over the land, or to procure a transfer from the registered proprietor to the purchaser. ***Voss and Saunders' Contract, In re***, 80 L. J. Ch. 33; [1911] 1 Ch. 42; 103 L. T. 493; 55 S. J. 12—Warrington, J.

Land held under a lease of ninety-nine years was sub-demised, by way of mortgage, for the residue of the term less the last day. The mortgage contained no express power of sale, but a provision that on a sale by the mortgagee under the statutory power the mortgagor should stand possessed of the last day in trust for the purchaser. Subsequently a purchaser from the mortgagor was registered under the Land Transfer Act, 1897, as the first proprietor, with possessory title. The mortgage having been transferred, the transferee's executor contracted under the statutory power of sale to sell. To a requisition by the purchaser that the vendor must get himself put on the register as the registered proprietor, the vendor replied that he would not, as he was not selling a registered title :—*Held*, that the requisition had been sufficiently answered. *Ib.*

LAND TAX.

See REVENUE.

LAND VALUES.

See REVENUE.

LARCENY.

See CRIMINAL LAW.

LEASE.

See LANDLORD AND TENANT.

LEGACY.

See WILL.

LEGACY DUTY.

See REVENUE.

LEGITIMACY.

See HUSBAND AND WIFE.

LETTERS.

Property in.]—*See* INJUNCTION.

LETTERS PATENT.

See PATENT.

LIBEL.

Generally.]—*See* DEFAMATION.

Criminal.]—*See* CRIMINAL LAW.

LICENCE.

Power to Revoke Licence—Theatre—Ticket for Seat—Effect of Purchase—Right to Retain Seat—Mere Licence—Licence Coupled with an Interest.]—The plaintiff was occupying a seat, for which he had bought a ticket, in the defendants' theatre during a cinematograph exhibition, when he was forcibly removed by the defendants' servants under the mistaken belief that he had not obtained a ticket for his seat. In answer to an action for assault, the defendants, on the authority of *Wood* v. *Ledbitter* (14 L. J. Ex. 161; 13 M. & W. 838) asserted that the plaintiff had a mere licence to be in the theatre, and claimed that they had the power to revoke that licence at will at any time:—*Held* (Phillimore, L.J., dissenting), that since the Judicature Act, *Wood* v. *Ledbitter* (*supra*) was no longer law, and that the plaintiff was entitled to recover damages for the assault. *Hurst* v. *Picture Theatres, Lim.*, 83 L. J. K.B. 1837; [1915] 1 K.B. 1; 111 L. T. 972; 58 S. J. 739; 30 T. L. R. 642—C.A.

Right to Revoke — Assignment of Subject-matter to which Licence Attached.]—By a contract contained in an agreement not under seal, entered into on July 1, 1913, between the defendant, therein described as "the licensor," and the plaintiffs, described as "the licensees," the defendant granted to the plaintiffs exclusive permission to affix posters and advertisements to one of the walls of a picture house proposed to be erected on his property by a company about to be formed for a term of four years from November 1, 1913, or the first day the picture house should be opened for business, at a rent of 12*l.* per annum. An agreement for a lease of the site, dated August 29, 1913, and made between the defendant and a trustee for the Picture House Co., provided that the defendant should assign to the trustee for the company his interest under the agreement of July 1, and that the trustee should, as soon as the company should be registered, obtain the ratification by the company of the said agreement. On September 2, 1913, the Picture House Co. was registered with articles of association containing a provision for carrying the agreement of August 29 into effect. The lease to the company was executed on September 13, 1913, and at a meeting of directors on the same day the agreement of August 29 was ratified and adopted. Neither the articles of association nor the lease contained any reference to the agreement of July 1. The Picture House Co., having refused the permission granted by the licence, the licensees brought an action for damages for breach of contract against the licensor:—*Held* (Kenny, J., dissenting), that the licensor was answerable in damages for breach of the contract embodied in the agreement of July 1. *Hurst* v. *Picture Theatres, Lim.* (83 L. J. K.B. 1837; [1915] 1 K.B. 1), applied and followed. *Allen* v. *King*, [1915] 2 Ir. R. 213—K.B. D.

For Music.]—*See* DISORDERLY HOUSE.

Licence Duty.]—*See* INTOXICATING LIQUORS.

For Cinematographs.]—*See* CINEMATOGRAPH.

LICENSING LAW.

See INTOXICATING LIQUORS.

LIEN.

See also Vol. VIII. 1620, 1974.

Contract for Work to be Done upon Goods —Sub-contract for Part of Work—Right of Sub-contractor to Retain Goods as against Owner — General Lien — Particular Lien — Calico-printing Trade — Custom as to Bleacher's Right of Lien.]—The plaintiffs, being possessed of a quantity of calico, sent it to some calico printers to be printed. The printers, without any express authority from

the plaintiffs so to do, sent on the calico to the defendants, who were bleachers, with instructions to them to bleach it. There was nothing in these instructions to indicate to whom the goods belonged, but each piece of calico was marked with the plaintiffs' initials. On the defendants' invoices and on their correspondence paper was a printed notice that all goods received by them would be subject to a lien for the general balance of account. After the defendants had bleached all the calico, and while half of it remained in their hands, the printers went into liquidation, being indebted to the defendants in respect of a general balance of account between them. The plaintiffs demanded delivery from the defendants of the calico which remained in their hands, but the defendants, relying on an alleged custom in the calico-printing trade, claimed to be entitled to retain the goods under a lien for the general balance of account between themselves and the printers. The defendants also asserted such a general lien by virtue of an authority from the plaintiffs to the printers to create such a lien to be implied from the ordinary course of business in the calico-printing trade. In the alternative the defendants asserted a particular lien for the price of bleaching the plaintiffs' goods:—*Held*, such alleged custom not being proved, and there being no evidence of such implied authority, that the defendants were not entitled to retain the goods under either a general lien or a particular lien. *Cassils & Co.* v. *Holden Wood Bleaching Co.*, 84 L. J. K.B. 834; 112 L. T. 373—C.A.

Contract to Maintain Motor Car and Supply Driver and Materials — Right to Lien for Unpaid Moneys — Maintaining but not Improving Article—Owner to be at Liberty to Remove Article.]—If a repairer under a contract to repair an article improves the article by the repair, he has a lien on it for the amount of his charges; but if he merely maintains it in its former condition he gets no lien on it for the amount spent on maintenance. Even if in such circumstances the contractor had a lien, it would be lost under an arrangement by which the owner of the article was to be at liberty to remove it at pleasure, and did so remove it. Where, therefore, a company contracted with the owner of a motor car to maintain it, supply all necessaries for running it, and repair it if it broke down, and to supply a driver, for a fixed annual sum, and the company permitted the owner to remove the car from their garage as often as she pleased,—*Held*, that the company had no lien on the car for moneys due from the owner under the contract. *Hatton* v. *Car Maintenance Co.*, 84 L. J. Ch. 847; [1915] Ch. 621; 110 L. T. 765; 58 S. J. 361; 30 T. L. R. 275—Sargant, J.

Of Carriers.]—*See* CARRIER.

Of Solicitors.]—*See* SOLICITOR.

LIGHTERMAN.

See CARRIER.

LIMITATIONS (STATUTES OF).

A. ACTIONS ON SIMPLE CONTRACT, ACTIONS OF TORT, AND OTHER PERSONAL ACTIONS AND PROCEEDINGS.

I. Computation of Period of Limitation.

See also Vol. IX. 9, 1875.

Bills of Exchange — Promissory Note — Calculation of the Six Years—Limit Expiring on Sunday—Order LXIV. rule 3.]—The time for payment of a promissory note, including the days of grace, expired on Saturday, September 22, 1906. The writ in the action to recover the amount due on the note was issued on Monday, September 23, 1912:—*Held*, that the action on the note was barred by the Statute of Limitations, as the cause of action was complete on the expiration of September 22, 1906, the day on which payment was due, and the six years next after the cause of such action, within which the action must be brought in order to comply with the Limitation Act, 1623, expired on Sunday, September 22, 1912. *Held*, further, that Order LXIV. rule 3 of the Rules of the Supreme Court, which provides that, "Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason

thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open," has no effect on the operation of the Statute of Limitations, and that therefore the writ, which was issued on Monday, September 23, 1912, could not be considered as having been issued on Sunday, September 22, 1912. *Gelmini* v. *Moriggia*, 82 L. J. K.B. 949; [1913] 2 K.B. 549; 109 L. T. 77; 29 T. L. R. 486—Channell, J.

II. Application of Statutes to Particular Persons.

1. **Attorney-General.**

Action at Relation of Attorney-General—Lapse of Time.]—To an action for an injunction by the Attorney-General, suing not *ex officio*, but at the relation of an individual or individuals, lapse of time may be a sufficient defence. *Att.-Gen.* v. *Warren Smith*, 76 J. P. 253—Joyce, J.

2. **Trustee and Cestui que Trust.**

See also Vol. IX. 40, 1878.

Express Trustee—Shipping Agent—Sale of Cargo in Course of Business—Payment of Salvage Claims — Balance Remaining in Agent's Hands.]—The plaintiff was the surviving partner of a firm who carried on the business of average adjusters in Paris. In the year 1883 a vessel called the *International* became a total wreck near Ramsgate. The bill of lading was sent by the plaintiff's firm, who was acting for the insurers, to the defendant, who was a shipping agent, with instructions to sell the cargo on behalf of the firm. The cargo was sold by the defendant, and, after deducting salvage claims and other expenses, there remained in his hands a sum of 96*l.*, which appeared for several years in his books as owing in respect of the vessel. The entry ceased to appear after the year 1888, but the amount was not paid over to the plaintiff's firm. In an action brought by the plaintiff in 1912 to recover the sum of 96*l.* the defendant pleaded that the claim was barred by the Statute of Limitations:—*Held*, that as the defendant had been employed to sell the cargo in the ordinary course of his business, he was not bound to keep the proceeds of the sale as a separate fund to be paid over to the plaintiff's firm; that the defendant was not therefore an express trustee of the amount, but only a debtor to the plaintiff in respect of the ultimate balance of account as between them, and that the claim was consequently barred by the Statute of Limitations. *Henry* v. *Hammond*, 82 L. J. K.B. 575; [1913] 2 K.B. 515; 108 L. T. 729; 12 Asp. M.C. 332; 57 S. J. 358; 29 T. L. R. 340—D.

Payment to Wrong Beneficiary—Mistake of Fact—Right of Recovery—Lapse of Time.]—The right of a *cestui que trust* to recover a trust fund from another *cestui que trust*, to whom the fund has been wrongfully paid by the trustee through a *bona fide* mistake of fact, of which all parties were ignorant, can be defeated by the Statute of Limitations (21 Jac. 1. c. 16), where the claim is in the nature of a claim for money, and not for a specific trust fund impressed with the trust. *Harris* v. *Harris* (*No.* 2) (29 Beav. 110) explained. *Robinson, In re; McLaren* v. *Public Trustee*, 80 L. J. Ch. 381; [1911] 1 Ch. 502; 104 L. T. 331; 55 S. J. 271—Warrington, J.

See also Croydon, In re: Hincks v. *Roberts*, *infra*.

3. **Executors, Administrators, Devisees, Legatees and Heirs.**

See also Vol. IX. 47, 1879.

Assets Paid to Wrong Person by Legal Personal Representative—Recovery by Person Entitled—Lapse of Time.]—A legal personal representative handed over assets to the wrong person more than six years before the commencement of proceedings by the person entitled to recover the same:—*Held*, that the claim was barred. *Croyden, In re; Hincks* v. *Roberts*, 55 S. J. 632—Eve. J.

Equitable Charge on Lands Appointed in Certain Shares—Interest.]—Certain shares in an equitable charge of 20,000*l.* were appointed, pursuant to a power contained in marriage articles, to the daughters of the marriage, and were by them assigned to the trustees of their respective settlements. 8,000*l.*, the share appointed to one of the daughters, was afterwards paid off by J. P. the father, who was at the time tenant for life of the lands subject to the charge, and was assigned to him for his own benefit. Subsequently J. P. assigned 3,001*l.*, portion of this sum of 8,000*l.*, to the trustees of the settlement of another of the daughters. On his death in 1877 the entire charge became raisable. Since that time interest had been regularly paid on the other appointed shares and also on the 3,001*l.*, but no payment of principal or interest had been made since that time or acknowledgment given in respect of the 4,999*l.*, the balance of the 8,000*l.*:—*Held*, that the claim to the 4,999*l.* was barred. *Young* v. *Lord Waterpark* (8 L. J. Ch. 214) distinguished. *Power's Estates, In re*, [1913] 1 Ir. R. 530—Wylie, J.

Account against Executor, at Suit of Creditor—Right to be Allowed Payments made to Beneficiaries More than Six Years before Action.]—Notwithstanding section 8 of the Trustee Act, 1888, an order for an account against an executor in a creditors' administration action ought not to be so limited as to entitle the executor to be allowed sums paid to beneficiaries more than six years before the commencement of the proceedings, the provisions of the section being inapplicable to the case. *Dictum* of Fletcher Moulton, L.J., in *Lacons* v. *Warmoll* (76 L. J. K.B. 914; [1907] 2 K.B. 350) not followed. *Croyden, In re; Hincks* v. *Roberts* (55 S. J. 632), distinguished. *Blow, In re; St. Bartholomew's Hospital* v. *Cambden*, 82 L. J. Ch. 207; [1913] 1 Ch. 358; 108 L. T. 413; 57 S. J. 303; 29 T. L. R. 279

—Warrington, J. Reversed, 58 S. J. 136; 30 T. L. R. 117—C.A.

Residuary Devise of Real and Personal Estate — Trust to Sell and Convert — Trust to Pay Debts—Mixed Fund—Whether Debt Barred so far as Attributable to the Personal Estate.]—A testator devised the residue of his real and personal estate to trustees upon trust for sale and conversion, and out of the moneys produced by such sale and conversion to pay his debts :—*Held*, that the testator by creating a mixed fund and imposing a duty not on the executors, but on the trustees, of paying his debts out of that mixed fund, had created a charge not of a part but of the whole of the debts on the real estate, and that it could not be said that any particular part of the debts was attributable to the personal estate; therefore no part of a claim for a debt was barred by the Statutes of Limitation if brought within twelve years of the testator's death. *Query* of Kay, J., in *Stephens, In re; Warburton* v. *Stephens* (59 L. J. Ch. 109, 111; 43 Ch. D. 39, 45), answered in the negative. *Raggi, In re; Brass* v. *Young & Co.*, 82 L. J. Ch. 396; [1913] 2 Ch. 206; 108 L. T. 917—Warrington, J.

4. Principal and Agent.

See also Vol. IX. 64, 1882.

Shipping Agent—Sale of Cargo in Course of Business — Payment of Salvage Claims — Balance Remaining in Agent's Hands.]—The plaintiff was the surviving partner of a firm who carried on the business of average adjusters in Paris. In the year 1883 a vessel called the *International* became a total wreck near Ramsgate. The bill of lading was sent by the plaintiff's firm, who were acting for the insurers, to the defendant, who was a shipping agent, with instructions to sell the cargo on behalf of the firm. The cargo was sold by the defendant and, after deducting salvage claims and other expenses, there remained in his hands a sum of 96*l.*, which appeared for several years in his books as owing in respect of the vessel. The entry ceased to appear after the year 1888, but the amount was not paid over to the plaintiff's firm. In an action brought by the plaintiff in 1912 to recover the sum of 96*l.* the defendant pleaded that the claim was barred by the Statute of Limitations :—*Held*, that as the defendant had been employed to sell the cargo in the ordinary course of his business, he was not bound to keep the proceeds of the sale as a separate fund to be paid over to the plaintiff's firm; that the defendant was not therefore an express trustee of the amount, but only a debtor to the plaintiff in respect of the ultimate balance of account as between them, and that the claim was consequently barred by the Statute of Limitations. *Henry* v. *Hammond*, 82 L. J. K.B. 575; [1913] 2 K.B. 515; 108 L. T. 729; 12 Asp. M.C. 332; 57 S. J. 358; 29 T. L. R. 340—D.

5. Bankrupt.

Power of Appointment—Exercise—Effect of Bankruptcy.]—Where a person has the absolute power of appointing the capital of a trust fund by will, the exercise of such power, coupled with the death of the appointer, does not give his creditors a new cause of action, but merely a new remedy. Where a cause of action has arisen and the Statute of Limitations has begun to run, the subsequent bankruptcy of the debtor does not prevent the statute from continuing to run. *Benzon, In re; Bower* v. *Chetwynd*, 83 L. J. Ch. 658; [1914] 2 Ch. 68; 110 L. T. 926; 21 Manson, 8; 58 S. J. 430; 30 T. L. R. 435—C.A.

III. Matters in Avoidance of the Statutes.

1. Acknowledgment.

See also Vol. IX. 89, 1884.

Letter—Admission.]—The plaintiff sued the defendant for money lent. To the defence that the claim was barred by the Statute of Limitations the plaintiff relied on the following letter, written to him by the defendant as being a sufficient acknowledgment to prevent the operation of the statute : "I do not forget, old friend, the debt I owe you, and which I do wish I could wipe out. Why, it must be at least six years since you cabled me promptly the help I then needed" :—*Held*, that this letter constituted a sufficient acknowledgment to prevent the operation of the Statute of Limitations. *Tanner* v. *Smart* (5 L. J. (o.s.) K.B. 218; 6 B. & C. 603) distinguished. *Brown* v. *Mackenzie*, 29 T. L. R. 310—Lush, J.

In an action to recover a debt due under a promissory note the defendant relied on the Statute of Limitations. After the time fixed by the statute had run, the defendant, in answer to a demand for payment by the plaintiff's solicitors, wrote admitting the debt and adding, "I have no means of any sort . . . if I could I should gladly pay" :—*Held*, that this was a sufficient acknowledgment and unconditional promise to pay to take the case out of the operation of the statute. *Parson* v. *Nesbitt*, 60 S. J. 89—Lord Coleridge, J.

Affidavit for Probate.]—A statute-barred debt was set out in the schedule of debts of a testator's estate in the Inland Revenue affidavit for probate by the executors : *Held*, that it was not a sufficient acknowledgment within the Statute of Frauds Amendment Act, 1828, to take the debt out of the Statute of Limitations. *Smith* v. *Poole* (10 L. J. Ch. 192; 12 Sim. 17) not followed. Principle that the acknowledgment must be to the creditor or his agent laid down by Lord Herschell in *Stamford, Spalding, and Boston Banking Co.* v. *Smith* (61 L. J. Q.B. 405; [1892] 1 Q.B. 765) applied. *Beavan, In re; Davies, Banks & Co.* v. *Beavan*, 81 L. J. Ch. 113; [1912] 1 Ch. 196; 105 L. T. 784—Neville, J. S. P. *Lloyd* v. *Coote & Ball*, 84 L. J. K.B. 567; [1915] 1 K.B. 242; 112 L. T. 344—D.

2. Concealed Fraud.

See also Vol. IX. 121, 1888.

Breach of Contract — Fraudulent Concealment.]—In a common law action for breach of contract it is no answer to a plea of the

Statute of Limitations that the breach was fraudulently concealed. *Osgood* v. *Sunderland*, 111 L. T. 529; 30 T. L. R. 530—Bailhache, J.

Trust.]—*See Levesley, In re; Goodwin* v. *Levesley*, *post*, col. 860.

Right of Defrauded Party to Rescind Contract.]—The plaintiff claimed to set aside certain transactions which he had entered into with the defendant, who was his stockbroker, with regard to certain shares, on the ground that the defendant had fraudulently represented that he would act in the plaintiff's interest with reference to the transactions, whereas he had in fact acted as principal, and had sold his own shares to the plaintiff. The jury found that the plaintiff was induced to purchase the shares by the false and fraudulent representations of the defendant. The transactions took place between November, 1905, and August, 1906, but the plaintiff did not discover the fraud till July, 1912. The action was commenced in November, 1912 :—*Held*, that when once fraud is established the rights of the party defrauded are not affected by the Statute of Limitations so long as he remains, without any fault of his own, in ignorance of the fraud, and that therefore the plaintiff's claim was not barred by the statute. *Gibbs* v. *Guild* (51 L. J. Q.B. 313; 9 Q.B. D. 59) considered. *Oelkers* v. *Ellis*, 83 L. J. K.B. 658; [1914] 2 K.B. 139; 110 L. T. 332—Horridge, J.

B. ACTIONS RELATING TO LAND, AND ACTIONS ON SPECIALTIES.

I. Application of the Statutes to Particular Persons.

1. Landlord and Tenant.

See also Vol. IX. 152, 1893.

Tenancy at Will — Determination.] — A tenancy at will may be implied where a person enters into and remains in occupation of lands and the enjoyment of the profits, by arrangement with the owner, without payment of rent, and not as agent or under any express contract of tenancy. If the owner visits the lands in the character of owner and exercises rights of ownership *animo possidendi*, such visits may prevent the Statute of Limitations from running in favour of the tenant at will. *Woodhouse* v. *Hooney*, [1915] 1 Ir. R. 296—Barton, J.

2. Mortgagor and Mortgagee.

See also Vol. IX. 206, 1895.

Claim for Account and Recovery of Rents by Second Mortgagee against First Mortgagee.]—The second mortgagee of lands claimed an account against the first mortgagee of all rents and profits of the lands received by the first mortgagee after the first mortgagee had been satisfied, and repayment by the first mortgagee of any surplus of rents in his hands, and a reconveyance of the lands. The first mortgagee, who had ceased to be in possession of the lands and in receipt of the rents and profits thereof for more than six years previous to action brought, pleaded section 20 of the Common Law Procedure (Ireland) Act, 1853, which (*inter alia*) provides that all actions of account (other than merchants' accounts) must be commenced within six years, as a bar to the action :—*Held*, that the action, being one for redemption and other appropriate remedies, was not barred by section 20. *Ocean Accident and Guarantee Corporation* v. *Collum*, [1913] 1 Ir. R. 328—Ross, J.

Mortgage in Form of Trust — Building Society—Entry of Mortgagee before whole Mortgage Debt Payable — Possession by Mortgagee after Mortgage Debt Satisfied—Statutory Claim of Mortgagor for Surplus Rents and Profits.]—A member of a building society mortgaged certain leasehold property to the society in order to secure repayment of a sum of 400*l.* within the period of ten years by equal monthly payments. The mortgage contained a clause enabling the society, on failure of the mortgagor to keep down the monthly payments, to enter into possession of the rents and profits. This clause was in the form of a trust, and provided that the society, after satisfying all sums due to them on account of the mortgage, should pay the surplus (if any) to the mortgagor. Three years after the date of the mortgage the society duly entered into possession under the clause; and at the end of fifteen years they had received sufficient from the rents and profits to satisfy the whole of the mortgage debt. At this time the mortgagor had left England, and for the next eight years, or thereabouts, there was no communication of any kind between him and the society. At the end of this period, however, when the society was being wound up, the mortgagor appeared, and put in a claim for the surplus rents and profits that had been received by the society since the date of the complete satisfaction of the mortgage debt. The lease under which the mortgagor held the property had by this time come to an end :—*Held*, that the period of twelve years of uncontested adverse possession on the part of the society (required by section 7 of the Real Property Limitation Act, 1874, to bar the mortgagor's right to recover the surplus rents and profits) began to run from the date at which the society first entered into possession of the rents and profits, and not from the date when the whole mortgage debt first became repayable—that is, at the end of the ten years; that the statutory annual statement of the society's accounts that was made in accordance with section 40 of the Building Societies Act, 1874, did not amount to such an acknowledgment within the meaning of section 7 as was sufficient to exclude the operation of the section; and that, accordingly, inasmuch as the prescribed period of twelve years had expired before the whole mortgage debt had been completely satisfied, the claim of the mortgagor to recover the surplus rents and profits that had since accrued had been thereby, once and for all, completely barred, and could not afterwards be resuscitated by the operation of the trust subsequent to such complete satisfaction. *Dictum* of Walton, J., in *Wilson* v. *Walton and Kirkdale Permanent Building Society* (19 Times L. R. 408) not

followed. *Metropolis and Counties Permanent Investment Building Society, In re*, 80 L. J. Ch. 387; [1911] 1 Ch. 698; 104 L. T. 382—Neville, J.

Quære, as to whether the mortgagor would not have been entitled to recover the surplus rents and profits had the period of twelve years not expired prior to the complete satisfaction of the mortgage debt. *Ib.*

Trust for Sale—Proceeds of Sale.]—A mortgagor's interest in the proceeds of sale of land held on trust for sale is an "interest in land" as defined by the Real Property Limitation Act, 1833, s. 1, and therefore, under section 34 of the same Act and section 8 of the Real Property Limitation Act, 1874, after the lapse of twelve years, in the absence of any payment or acknowledgment, the title of the mortgagee is extinguished. *Hazeldine's Trusts, In re* (77 L. J. Ch. 97; [1908] 1 Ch. 34), and *Kirkland* v. *Peatfield* (72 L. J. K.B. 355; [1903] 1 K.B. 756) followed. *Fox, In re; Brooks* v. *Marston*, 82 L. J. Ch. 393; [1913] 2 Ch. 75; 108 L. T. 948—Warrington, J.

Inclusion in Deed of Power of Sale.]—In 1890, A by deed conveyed certain lands to B and C, as tenants in common in fee-simple, to secure a sum of 300*l.*, therein recited to be due, with a proviso for redemption on payment of the principal money, the deed being silent as to interest. There was a provision that the powers and remedies conferred on mortgagees by the Conveyancing and Law of Property Act, 1881, were thereby given to B. On the execution of the deed, B and C went into possession, and had since remained in possession, without accounting to A for the rents and profits or having given any acknowledgment in writing of his title:—*Held*, that the express inclusion in the deed of a power of sale shewed that it was not intended to operate as a Welsh mortgage, and that A's right to redeem was barred by the Statute of Limitations. *Cronin, In re*, [1914] 1 Ir. R. 23—Madden, J.

3. Reversioners.

Mines and Minerals—Land Subject to Mining Lease—Conveyance of Part of Land—Conveyance of Reversion—Severance of Reversion—Apportionable Rent.]—In 1740 the defendant's predecessors in title granted a mining lease of the coal under certain of their lands for a term of two hundred years. By deeds of 1791 and 1828 the defendant's predecessors in title assured a part of these lands to the plaintiff's predecessors in title. There was no exception of minerals in either deed. In the deeds of 1791 the mining lease was only mentioned in the vendor's covenant against incumbrances, from which it was excepted. In the deed of 1828 the grant was expressly "subject to" the mining lease. No apportionment was made of the rent of the mining lease, and the whole of the rent had been received by the defendant and his predecessors in title. Upon action by the plaintiff claiming the reversion on the mining lease in respect of her part of the lands and an account, upon apportionment, of what might be due to her as rent for six years before the issue of the writ,—*Held*, that the deeds of 1791 and 1828 conveyed the land and the minerals, so that the reversion on the mining lease was severed and the rent became apportionable; that no apportionment having been made there had never been any wrongful receipt of rent by the defendant's predecessors in title to bring the case within section 9 of the Real Property Limitation Act, 1833, and that the plaintiff was therefore entitled to the account as asked. *Mitchell* v. *Mosley*, 83 L. J. Ch. 135; [1914] 1 Ch. 438; 109 L. T. 648; 58 S. J. 218; 30 T. L. R. 29—C.A.

4. Persons Claiming under Lands Clauses Acts.

See also Vol. IX. 243, 1899.

Compensation—Arbitrator's Award—Cause of Action.]—A railway company under the powers conferred by their special Act, which incorporated the Lands Clauses Consolidation Act, 1845, stopped up a certain road in October, 1902, thereby causing the plaintiff's cottages to be injuriously affected. The plaintiff made a claim for compensation in August, 1909, under section 68 of the Lands Clauses Consolidation Act, 1845, and the arbitrator made his award fixing the amount of compensation in January, 1910:—*Held*, that the plaintiff had no cause of action under section 68 of the Act of 1845 until the arbitrator had made his award, and therefore that the plaintiff's claim was not statute-barred. *Turner* v. *Midland Railway*, 80 L. J. K.B. 516; [1911] 1 K.B. 832; 104 L. T. 347; 75 J. P. 283—D.

5. Trustee.

Trust—"Concealed fraud."]—In 1900 the testator, a North Sea skipper, by a deed of gift gave his sons W. and F. in fee-simple in equal moieties certain land at P. and at S. In July, 1901, he sold the land at S. and bought additional land at P. In August, 1901, W. died. The testator by his will, dated 1913, gave to F. all the land at P., and his residue to the children of a deceased son. The testator received the rents of the land at P. down to his death in 1914, the sons never having known of the deed of gift. F. died in 1915:—*Held*, that as the testator might have thought the deed non-effective until communicated to his sons, there had been no "concealed fraud" by him, and therefore he had not become a trustee for W. and F., and in the case of the land at P. section 26 of the Real Property Limitation Act, 1833, did not apply and the Statute of Limitations ran and the representatives of W. and F. were not entitled to the land at P. under the deed of gift. *Levesley, In re; Goodwin* v. *Levesley*, 60 S. J. 142; 32 T. L. R. 145—Peterson, J.

II. Possession.

See also Vol. IX. 249, 1901.

Trespass—Claim of Right—Discontinuance and Acquisition of Possession—Acts of Owner-

ship.] — A defendant in an action for an injunction and damages for trespass was the owner of land divided from the land of the plaintiffs by a wall belonging to the plaintiffs, and by a strip of land, on the defendant's side of the wall, the ownership of which was in dispute. The defendant had tipped rubbish on his own land and also on the disputed strip up to and against the wall. There was evidence that the wall had been built in 1894 and 1895, and that the plaintiffs had since then made no further use of the strip except occasionally in repairing and altering their wall; and there was some evidence that the defendant or his tenant had grazed cows up to the wall. The defendant contended that the plaintiffs had discontinued possession and that the defendant had acquired a good title under the Real Property Limitation Acts, 1833 and 1874:—*Held*, that the plaintiffs were entitled to succeed. Observations on discontinuance and acquisition of possession under the Real Property Limitation Acts. *Kynoch, Lim.* v. *Rowlands*, 55 S. J. 617—Joyce, J. See S. C. in C.A., *infra*.

—— Adjoining Owners—Wall Within Boundary Line—Strip Outside Wall—Abandonment—Adverse Possession—Acts of Ownership.] — Where a person claims to have acquired a possessory title in law under the Real Property Limitation Act, 1833, upon the abandonment of possession by the original owner, he must prove not only a discontinuance of possession by the original owner for the statutory period, but also acts of possession by himself. *Norton* v. *London and North-Western Railway* (13 Ch. D. 268) and *Marshall* v. *Taylor* (64 L. J. Ch. 416; [1895] 1 Ch. 641) followed. *Kynoch, Lim.* v. *Rowlands*, 81 L. J. Ch. 340; [1912] 1 Ch. 527; 106 L. T. 316—C.A.

The mere straying of cattle over a known boundary by reason of there being no fence is not an act of such exclusive possession as will enable the trespasser whose cattle has so strayed on to land of an adjoining owner to acquire a statutory title as against the true owner. *Ib.*

Inclosure Acts — Award — Allotment to Ecclesiastical Corporation Sole — Action of Ejectment Based on Award — Defence of Sixty Years' Possession—Acts of Ownership for Sixty Years, Partly Before and Partly After Award—"Ancient inclosure"—Question for Determination of Valuer and Commissioners—Conclusiveness of Award.] — The rector of a parish brought an action in 1913 to recover possession of a piece of land which had in 1866 been allotted to a former rector by an inclosure award made by a valuer and confirmed by the Inclosure Commissioners under the provisions of the Inclosure Acts. The defendant set up the defence that he and his predecessors in title had been in possession of the land for sixty years. The effect of the evidence was that the defendant's father had encroached upon the land in question and inclosed it, and that acts of ownership had been exercised thereon by the defendant's father and the defendant for more than sixty years before the commencement of the action:—*Held*, first, that the defendant failed to establish a sixty years' possessory title, because the sixty years' possession required by section 29 of the Real Property Limitation Act, 1833, would not begin to run against the plaintiff, as an ecclesiastical corporation sole, until 1866, the date of the award; and secondly, that it was not open to the defendant to say by way of defence to the action that the encroachment was at the date of the award an ancient inclosure under section 52 of the Inclosure Act, 1845, because by sections 49, 50, and 105 of that Act the question whether an encroachment was an ancient inclosure was a question for the determination of the valuer and the Commissioners, and the award itself must be taken to be a decision binding and conclusive on all persons that the encroachment was not an ancient inclosure. *Chilcote* v. *Youldon* (29 L. J. M.C. 197; 3 E. & E. 7) and *Jacomb* v. *Turner* ([1892] 1 Q.B. 47) considered. *Blackett* v. *Ridout*, 84 L. J. K.B. 1535; [1915] 2 K.B. 415; 113 L. T. 267—C.A.

III. Charges on Land.

See also Vol. IX. 273, 1905.

Covenant to Pay—Remedy on Covenant Barried—Remedy against Land.] — A personal covenant to pay a rentcharge cannot be enforced after the expiration without acknowledgment of twelve years from the last payment, as the effect of section 1 of the Real Property Limitation Act, 1874, is to reduce the period of twenty years fixed by the Civil Procedure Act, 1833, s. 3, to twelve years. *Shaw* v. *Crompton*, 80 L. J. K.B. 52; [1910] 2 K.B. 370; 103 L. T. 501—D.

Joint Owners of Equitable Charge in Receipt of Rents of Lands Subject to Charge—Constructive Payment of Interest on Charge.] — Where the owners of an equitable charge on land had, under an assumption of title to the land as tenants in tail, entered into receipt of the rents and profits, constructive payment of interest on the charge will be presumed, so as to prevent it being barred, it being for their benefit to pay such interest until they had acquired by statute a title to the lands. *Battersby's Estate, In re*, [1911] 1 Ir. R. 453—Wylie, J.

Legacy Charged on Land—Express Trust.] — A testator left a farm to A. adding, "I direct that he shall pay the following legacies which I hereby charge upon my said farm," the legacies being set out. He appointed A sole executor. The testator died in 1891, and A proved the will and went into possession of the farm. He subsequently purchased it under the Land Purchase Acts, and in 1905 was registered in the Land Registry as owner, subject to equities. A died, having devised the lands to B, and appointed B executor. No payment had ever been made on account of the legacies or any acknowledgment given in respect of them. There were no other charges on the lands. B applied to the registering authority to have the note as to equities cancelled:—*Held*, that the legacies were not secured by an express trust; that, even if they had been so secured, the claims

of the legatees were barred as against the lands by section 10 of the Real Property Limitation Act, 1874, and that B was entitled to have the note as to equities cancelled. *Hazlette, In re*, [1915] 1 Ir. R. 285—C.A.

IV. Acknowledgment.

Acknowledgment of Mortgage.]—A claim by a legal mortgagee for payment of principal and interest due on his mortgage, brought in in a suit for the administration of the real and personal estate of a deceased owner of the equity of redemption, is a proceeding to recover money secured by a mortgage charged upon or payable out of the land within section 8 of the Real Property Limitation Act, 1874, and not an action or suit to recover the land, within section 1 of that Act, and consequently the mortgagee in such case can rely upon an acknowledgment of his right given in writing by the agent of the owner of the equity of redemption, as keeping alive a mortgage debt, which would otherwise have become statute-barred. *Lloyd's Estate, In re; Waters* v. *Lloyd*, [1911] 1 Ir. R. 153—C.A.

LOCAL GOVERNMENT.

A.—In Metropolis—*See* Metropolis.

B.—Outside Metropolis.

A. IN METROPOLIS.

See METROPOLIS.

B. OUTSIDE METROPOLIS.

I. AUTHORITIES.

1. County Council.

See also Vol. IX. 346, 1915.

Acting as Member of a County Council.]—M., a member of a county council, was present at a meeting of that body during the reading of the minutes of the previous meeting, and took part in a discussion on a matter not on the agenda—namely, a circular drawing attention to the disqualification of members who directly or indirectly derived any financial benefit from certain county schemes. At the close of that discussion M. retired from the meeting, having come to the conclusion that

he was not qualified any longer to be a member of the council. *Per* Cherry, L.C.J.: M. had acted as a member of the council. *Keeffe* v. *McMahon*, [1915] 2 Ir. R. 312—K.B. D.

2. District Council.

See also Vol. IX. 351, 1919.

a. Election.

Nomination Paper—Name of Candidate—Misnomer.]—A candidate for election as rural district councillor described himself in his nomination paper as Michael B. Walsh, the name in which he appeared in the register of voters, and which he always assumed, and signed in transactions requiring his signature. His mother's name was Barry, and he had added the initial "B." to the Christian name "Michael" to distinguish him from others in the district named Michael Walsh. The deputy returning officer rejected the nomination paper on the ground that it did not comply with the terms of rule 4, sub-rule 2 of the County and Rural District Councillors (Ireland), No. 2, Election Order, 1889 [*cf.* rule 4, sub-rule 2 of the (English) Rural District Councillors Election Order, 1898, and the same rule of the (English) Urban District Councillors Election Order, 1898], by setting out the surname and other name or names in full:—*Held*, that under the circumstances the name of the candidate was properly stated in accordance with rule 4, sub-rule 2; that, even assuming there was a misnomer, it was cured by rule 32 of the said Order [corresponding to rule 33 of the English Rural District Councillors Election Order and rule 32 of the English Urban District Councillors Election Order]; and that a peremptory writ of *mandamus* should issue to the deputy returning officer directing him to include the prosecutor's name in the list of candidates validly nominated. *Reg.* v. *Plenty* (38 L. J. Q.B. 205; L. R. 4 Q.B. 346) followed. *Mather* v. *Brown* (45 L. J. C.P. 547; 1 C.P. D. 596) distinguished. *Rex* v. *Casey*, [1914] 2 Ir. R. 243—K.B. D.

b. Members.

Chairman—First Meeting of Council—Right of Chairman of Previous Council to Preside.]—At the first meeting of a newly elected urban district council, the chairman of the previous council took the chair and gave a casting vote upon the election of a chairman for the ensuing year:—*Held*, that he was not entitled to act as chairman at the meeting merely by reason of his having been chairman of the previous council. *Held*, further, that the members of a council have an inherent right to elect a chairman, and that the new urban council should therefore have elected a chairman for the purpose of carrying on the business of the meeting, which would include the election of a chairman for the ensuing year. *Held*, further, that this course might have been adopted under rule 5 of the rules in Schedule I. of the Public Health Act, 1875, which provides for the case of a chairman being absent from a meeting. *Rex* v. *Rowlands; Beesly, Ex parte*, 80 L. J. K.B. 123; [1910] 2 K.B. 930; 103 L. T. 311; 74 J. P. 453; 8 L. G. R. 923; 54 S. J. 750; 26 T. L. R. 658—D.

Combination of Urban District Council with Another Authority to Provide Joint Hospital—Officer of Joint Managing Hospital Committee—Person Holding "paid office under" Council.]—Under the powers of an enabling statute a borough and a district council entered into an agreement for the provision of a joint hospital. Under that agreement a committee was formed, for administering the hospital, consisting of twelve members, six appointed by the borough and six by the district council from their members respectively. To this committee the parties to the agreement delegated all their powers with reference to the management, maintenance, and otherwise of the hospital. The committee appointed, paid, and dismissed its own officers, including, as their paid clerk, the appellant, who was also chairman of the district council. The fund out of which his salary was paid was provided by a *pro rata* contribution from the borough and the district council:—*Held*, that the appellant held a paid office under the district council, and was consequently disqualified from acting as such chairman by section 46, sub-section 1 (*d*) of the Local Government Act, 1894, and had committed an offence under that Act in so acting. *Greville-Smith* v. *Tomlin*, 80 L. J. K.B. 774; [1911] 2 K.B. 9; 104 L. T. 816; 75 J. P. 314; 9 L. G. R. 598—D.

Disqualifications—Absence from Meetings—Illness or Reason Approved by the Council or Board.]—Illness in fact is a sufficient reason to prevent a member of a council of a parish, or of a district other than a borough, or of a board of guardians, who has been absent from meetings of a council or board for more than six months consecutively from being disqualified by section 46, sub-section 6 of the Local Government Act, 1894, for holding office; and it is not necessary that the council or board should "approve" of the reason of one of their members for his absence from that cause. *Rex* v. *Hunton; Hodgson, Ex parte*, 9 L. G. R. 751; 75 J. P. 335—D.

c. General Powers and Duties.

Right of Way—Aid in Defence of Action—Joinder of District Council as Defendants—Claim for Declaration and Injunction—Declaratory Judgment.]—A district council who, under the provisions of section 26 of the Local Government Act, 1894, elect to aid members of the public in maintaining a right of way action, may be properly joined as parties to the action. Where the council assert the existence of a right of way, although they have not by their servants or agents entered on the land in question, the landowner may allege that they threaten and intend to do so, and may obtain a declaratory judgment against them that the right of way does not exist, together with an injunction to restrain them from exercising any such alleged

right. *Shafto* v. *Bolckow, Vaughan & Co.* (56 L. J. Ch. 735; 34 Ch. D. 725) and *Hext* v. *Gill* (L. R. 7 Ch. 699) followed. *Thornhill* v. *Weeks* (*No.* 1), 82 L. J. Ch. 299; [1913] 1 Ch. 438; 108 L. T. 892; 77 J. P. 231; 11 L. G. R. 362; 57 S. J. 477—Swinfen Eady, J.

—— **District Council Joined as Co-defendants —Right of Way neither Claimed nor Denied— Motion to Strike out—Embarrassing—Costs.**]—A district council who have elected, under the provisions of section 26 of the Local Government Act, 1894, to aid others in defending a right of way action, and who, though unwilling to become active parties to the suit, have themselves been joined as co-defendants, may assert in their defence that the public right of way is neither claimed nor denied by them. Such a pleading does not embarrass or fail to disclose an answer, within the meaning of Order XIX. rule 27 or Order XXV. rule 4. But *semble*, such a pleading would not prevent the council being ordered to pay the costs of the action if the plaintiff should succeed. *Thornhill* v. *Weeks* (*No.* 2), 82 L. J. Ch. 485; [1913] 2 Ch. 464; 109 L. T. 146; 11 L. G. R. 1183—C.A. Affirming, 77 J. P. 327; 57 S. J. 645—Neville, J.

—— **Council's Resolution to Defend—Action— Judgment for Plaintiff — Right to Costs against Council.**]—A district council, acting under section 26 of the Local Government Act, 1894, became co-defendants in a right of way action, and in answer to a claim for a declaration that there was no such right asserted that a public right of way was neither claimed nor denied by them. They then proceeded to take up the whole defence until the trial, and failed to establish their case:—*Held*, that the plaintiffs were entitled to a declaration with costs against all the defendants, including the district council. *Thornhill* v. *Weeks* (*No.* 2) (82 L. J. Ch. 485); [1913] 2 Ch. 464) followed. *Rex* v. *Norfolk County Council* (70 L. J. K.B. 575; [1901] 2 K.B. 268) and *Offin* v. *Rochford Rural Council* (75 L. J. Ch. 348; [1906] 1 Ch. 342) distinguished. *Thornhill* v. *Weeks* (*No.* 3), 84 L. J. Ch. 282; [1915] 1 Ch. 106; 111 L. T. 1067; 78 J. P. 154; 12 L. G. R. 597—Astbury, J.

—— **Whether Joinder of Attorney-General Necessary.**]—In an action by a rural district claiming a declaration that a certain road was a public right of way,—*Held*, that it was not necessary that the Attorney-General should be joined as plaintiff. *Newton Abbot Rural Council* v. *Wills*. 77 J. P. 333—Swinfen Eady, J.

Right of Parochial Elector to Inspect Documents — Threatened Litigation — Opinion of Counsel — "Documents" — Mandamus.]—A parochial elector threatened to take legal proceedings against a district council, who thereupon submitted a case for the opinion of counsel, and an opinion was given. The parochial elector claimed a right to inspect the case and opinion under sub-division 5 of section 58 of the Local Government Act, 1894:—*Held*, that the case and opinion were "documents" within the meaning of the sub-section, and that the parochial elector had a right to inspect them; bnt the Court in the exercise of its discretion refused in the circumstances to enforce that right by *mandamus*. *Rex* v. *Godstone Rural Council*, 80 L. J. K.B. 1184; [1911] 2 K.B. 465; 105 L. T. 207; 75 J. P. 413; 9 L. G. R. 665; 27 T. L. R. 424—D.

When the clerk to a rural district council is absent from his office he should leave some person in authority who can produce the council's books to any person entitled to see them. *Rex* v. *Andover Rural Council*, 77 J. P. 296; 11 L. G. R. 996; 29 T. L. R. 419—Ridley, J.

3. Parish Council.

See also Vol. IX. 367, 1924.

Chairman — Election of New Council — Annual Meeting of Council—Election of New Chairman—Right of Former Chairman to Vote.]—Sub-section 1 of section 3 of the Local Government Act, 1894, provides that "The parish council for a rural parish . . . shall consist of a chairman and councillors." Sub-section 8 provides that "At the annual meeting, the parish council shall elect, from their own body or from persons qualified to be councillors of the parish, a chairman, who shall, unless he resigns, or ceases to be qualified, or becomes disqualified, continue in office until his successor is elected." The chairman of the parish council of a rural parish, on the termination of his year of office as chairman, is entitled under section 3 of the Local Government Act, 1894, and rules 9 and 10 of the rules in Part II. of Schedule I. to the Act to preside at the annual meeting of the parish council until his successor is elected, and, being a member of the parish council, to give an original vote in the election of the new chairman as well as a second or casting vote in case of an equal division of votes, notwithstanding that he may have been an elected councillor in the retiring parish council and have failed to be re-elected as councillor. *Rex* v. *Jackson: Pick, Ex parte*, 82 L. J. K.B. 1215; [1913] 3 K.B. 436; 109 L. T. 175; 77 J. P. 443; 11 L. G. R. 1237; 29 T. L. R. 735—D.

Assistant Overseer Clerk to Parish Council— Guarantee Policy.]—A was appointed assistant overseer of the parish of H, and by virtue of his appointment under section 17, sub-section 2 of the Local Government Act, 1894, he became clerk to the parish council of H. The defendants entered into a bond guaranteeing the faithful performance of his duties as assistant overseer. A committed defalcations in respect of moneys received by him as clerk to the parish council. In an action to recover the amount of such defalcations under the guarantee given by the defendants:—*Held*, that the defalcations of H in relation to the parish council accounts were not covered by the terms of the bond guaranteeing the faithful performance of his duties in

the office of assistant overseer. *Cosford Guardians* v. *Poor Law Guarantee Association*, 103 L. T. 463; 75 J. P. 30; 8 L. G. R. 995—D.

Clerk to—Quo Warranto.]—*See Rex* v. *Hunton; Hodgson, Ex parte, post*, col. 876.

II. CONTRACTS BY AND WITH AUTHORITIES.

See also Vol. IX. 369, 1925.

Contract Exceeding 50*l.* — Necessity for Seal.]—The Public Health (Ireland) Act, 1878, s. 201, sub-s. 1 [corresponding to section 174, sub-section 1 of the Public Health Act, 1875], enacts that "every contract made by a sanitary authority whereof the value or amount exceeds 50*l.* shall be in writing, and sealed with the common seal of such authority." The "value or amount" of a contract within the meaning of this enactment is the amount which, in the light of the facts within the contemplation of the parties, and in reference to which the contract is made, would be recoverable by the contractor from the sanitary authority on completion. *Munro* v. *Mallow Urban Council*, [1911] 2 Ir. R. 130—K.B. D.

—— Contract to Make up Highway—Validity—Part Performance—Specific Performance.]—The plaintiff was the owner of certain freehold land adjoining a highway known as Stag Lane in a parish for which the defendants were the urban authority. In 1908 the plaintiff submitted to the defendants plans for the erection of thirty-six houses on this land facing Stag Lane. The defendants approved these plans, and they were signed by the plaintiff and the chairman of the council. It was also arranged between the plaintiff and the chairman of the council that if the plaintiff would throw a strip of his land twenty feet wide and about one thousand feet in length into Stag Lane, and level it, the council would make up and adopt the same as a highway at their own cost as the building of the houses proceeded. A written agreement to this effect was drawn up, dated May 26, 1909, and signed by the plaintiff. It was not, however, signed by or on behalf of the defendants, neither was their common seal affixed. The plaintiff proceeded to erect the proposed houses, and gave up and levelled the strip of land as part of the highway according to the terms of the agreement. The defendants then placed posts and trees upon the strip, and exercised other acts of ownership upon it. In 1912 the plaintiff had nearly completed the erection of the thirty-six houses, but the council had not made up the road, and disregarded the requests of the plaintiff to do so. In an action for specific performance of the agreement of May 26, 1909,—*Held*, that the agreement was entered into by the defendants as an urban authority under powers contained in the Public Health Act, 1875, and not under the powers of a highway board or surveyor of highways; and that as the power to purchase land for widening a street contained in section 154 of the Public Health Act, 1875, includes power to pay in money's worth, an agreement such as the present was within the powers of the council. *Held*, also, upon the construction of the agreement, that it was for over 50*l.* in value; and that no conduct on the part of the defendants having been proved which could estop them from relying on the fact that the agreement was not under seal, as required by section 174 of the Public Health Act, 1875, the original agreement was unenforceable, nor would any agreement to pay *quantum meruit* be implied. *Held*, further, that, although there was sufficient part performance of the agreement to take it out of the Statute of Frauds, the equitable doctrine of part performance does not extend to contracts by an urban authority so as to do away with the necessity for obtaining the seal of the authority in contracts falling under section 174. *Hoare* v. *Kingsbury Urban Council*, 81 L. J. Ch. 666; [1912] 2 Ch. 452; 107 L. T. 492; 76 J. P. 401; 10 L. G. R. 829; 56 S. J. 704—Neville, J.

The equitable doctrine of part performance discussed and distinguished from acquiescence. *Ib.*

Young & Co. v. *Royal Leamington Spa Corporation* (52 L. J. Q.B. 713; 8 App. Cas. 517) and *Frend* v. *Dennett* (27 L. J. C.P. 314; 4 C. B. (N.S.) 576) followed. *Ib.*

—— Work Done for Purposes of Local Government Enquiry — Executed Consideration — Benefit — Quantum Meruit.] — An urban council, exercising the powers of the R. Improvement Commissioners, applied to the Local Government Board to sanction a loan in order that they might, under powers conferred by local Improvement Acts, purchase and extend the pier at R. The Board directed that a valuation and estimates should be prepared by an independent expert for the purposes of an enquiry. The council passed and confirmed a resolution appointing the plaintiff to value, estimate, and report, upon agreed terms. His report was used for the enquiry, but the Board refused to sanction the loan and the scheme was not proceeded with. The plaintiff claimed the amount of his fees under a contract of employment or, alternatively, on a *quantum meruit*. The council refused payment on the ground that, as there was no contract under seal, section 174 of the Public Health Act, 1875, had not been complied with:—*Held*, that the contract was not made under the powers or for the purposes of the Public Health Act, 1875, but under the powers and for the purposes of the Improvement Acts; that section 174 of the Public Health Act, 1875, had no application; and that under the circumstances the plaintiff was entitled to his fees on a *quantum meruit*. *Lawford* v. *Billericay Rural Council* (72 L. J. K.B. 554; [1903] 1 K.B. 772) followed. *Lea* v. *Facey* (55 L. J. Q.B. 371; 17 Q.B. D. 139. On app., 56 L. J. Q.B. 536; 19 Q.B. D. 352) distinguished. *Douglass* v. *Rhyl Urban Council*, 82 L. J. Ch. 537; [1913] 2 Ch. 407; 109 L. T. 30; 77 J. P. 373; 11 L. G. R. 1162; 57 S. J. 627; 29 T. L. R. 605—Joyce, J.

—— Employment of Architect—Dismissal of Architect before Work Completed—Right to Recover on Quantum Meruit.]—At a meeting

of the defendant council it was verbally resolved that the plaintiff should be employed as joint architect for the erection of a kursaal which the defendants were authorised under a private Act to erect. The plaintiff prepared plans, and for some time did work in pursuance of the resolution, but before the work was finished he was dismissed. In an action against the defendants,—*Held*, that, although the contract was not under seal, the plaintiff was entitled to recover on a *quantum meruit* as the defendants had had the benefit of his work in an employment within the scope of their authority and for the purposes for which they were created. *Hodge* v. *Matlock Bath Urban Council*, 74 J. P. 374; 8 L. G. R. 958; 26 T. L. R. 617—A. T. Lawrence, J. Appeal dismissed on terms, 75 J. P. 65; 8 L. G. R. 1127; 27 T. L. R. 129—C.A.

Agreement with Local Authority in Compromise of a Dispute—Necessity for Seal.]—An agreement was made between a local authority and an architect by which the former agreed not to sue the latter in respect of his alleged negligent supervision of a building contract on his agreeing to make the defective work good :—*Held*, that this agreement did not require to be under seal. *Leicester Guardians* v. *Trollope*, 75 J. P. 197—Channell, J.

"Concerned" in Contract.]—Certain commissioners agreed to purchase land for a public purpose :—*Held*, that the fact that one of the commissioners was the eldest son of a landowner whose property would be improved by the proposed action of the commissioners, and that he acted for his father in negotiations with the commissioners, did not make him "concerned" in the contract within the meaning of section 286 of the Isle of Man Local Government Act, 1886. *Laughton* v. *Port Erin Commissioners*, 80 L. J. P.C. 73; [1910] A.C. 565; 103 L. T. 148—P.C.

Public Water Supply—Covenant to Allow Vendor's House a Reasonable Supply Free of Charge—Enlargement of House—Presumed Increased User—Lapse of Covenant—Covenant to Supply Farm Buildings—Severable Contracts—Motor House.]—A covenant by a local authority to supply a small farmhouse with a reasonable supply of water free of charge is no longer binding if the house be so altered and enlarged that the identity of the old building is lost, and the measure of what would have been a reasonable supply at the date of the contract no longer ascertainable. But a similar covenant, entered into at the same time, to supply a reasonable amount of free water to the farm buildings is still enforceable, the covenants being severable; and this is so, notwithstanding that the buildings have been let off to a neighbouring farmer. A motor house, to which the water is carried for the purpose of washing a car, is not, however, a "farm building" within the scope of the covenant, and such user is unreasonable. *Hadham Rural Council* v. *Crallan*, 83 L. J. Ch. 717; [1914] 2 Ch. 138; 111 L. T. 154; 78 J. P. 361; 12 L. G. R. 707; 58 S. J. 635; 30 T. L. R. 514—Neville, J.

III. BORROWING POWERS.

Credit of Fund or Rates—Mortgage—Money Borrowed without Security—Payment of Interest—Surcharge by Auditor.]—A municipal corporation, having obtained the sanction of the Local Government Board in accordance with section 233 of the Public Health Act, 1875, to borrow a certain sum of money, proceeded to borrow the amount from their bankers, and secured the repayment of the advance by a mortgage of the rates. Subsequently they transferred their current account and their loan account to other bankers, with whom was deposited the sanction of the Local Government Board, but who did not require a mortgage or a transfer of the original mortgage. Certain members of the corporation having signed cheques in payment of interest on the loan, the district auditor surcharged them in respect of such payment on the ground that the corporation had borrowed money without giving proper security for the sum advanced—namely, by a mortgage of the rates. A *certiorari* to bring up the certificate of surcharge was granted by the Court of Appeal, on the ground that on the true view of the facts the transaction was a transfer both of the debt and of the mortgage by which it was secured. *Rex* v. *Locke; Bridges, Ex parte*, 80 L. J. K.B. 358; [1911] 1 K.B. 680; 103 L. T. 790; 75 J. P. 145; 9 L. G. R. 103; 55 S. J. 139; 27 T. L. R. 148—C.A.

Quære, whether section 233 of the Public Health Act, 1875, prohibits a local authority from borrowing money without securing the repayment thereof by a mortgage of the rates. *Ib.*

Consolidated Loans Fund—Overdrafts on Bank for Electrical Purposes—Repayments out of Consolidated Loans Fund.]—A corporation possessed statutory powers to borrow moneys (with the consent of the Local Government Board) for the purposes of its electrical undertaking. It also possessed various other statutory powers to borrow moneys for various other specific purposes. It further possessed a consolidated loan fund for the purpose of paying dividends upon its corporation stock and of redeeming the same when redemption became necessary, and it was entitled, in place of exercising any statutory borrowing power, to borrow money from this consolidated loans fund, so far as the latter was not needed for the time for the payments of dividends on corporation stock. It did not, however, obtain sanction from the Local Government Board to borrow moneys for the purposes of its electrical undertaking, but borrowed large sums for these purposes by way of overdraft from its bankers. Part of these sums was repaid from time to time out of the consolidated loans fund :—*Held*, that the overdrafts obtained from the bank for the purposes of the electrical undertaking in respect of borrowing powers granted for other specific purposes were *ultra vires* and illegal; that the application of moneys due to the consolidated loans fund in repayment of these overdrafts was *ultra vires* and illegal; that the application of moneys due to the consolidated loans fund in repayment of these overdrafts was *ultra vires* and illegal;

and that the borrowing of moneys from the bank for the purpose of the electricity account otherwise than in the exercise of borrowing powers with the sanction of the Local Government Board was *ultra vires* and illegal. *Att.-Gen.* v. *West Ham Corporation*, 80 L. J. Ch. 105; [1910] 2 Ch. 560; 103 L. T. 394; 74 J. P. 406; 9 L. G. R. 433; 26 T. L. R. 683 —Neville, J.

IV. TRANSFER OF AREAS, DUTIES, AND ADJUSTMENT OF LIABILITIES.

See also Vol. IX. 1932.

Alteration of Areas — Adjustment — Loan Debt—Increase of Burden.]—By the Queenborough Extension Order, 1912 (confirmed by the Local Government Board's Provisional Orders Confirmation (No. 7) Act, 1912), certain portions of the rural district of Sheppey were added to the borough of Queenborough. An adjustment thereupon became necessary, and reference was made to arbitration between the corporation and the district council with regard to certain matters, including a loan debt incurred by the district council for the purpose of constructing sewers and sewage disposal works. No part of these works was situated within the transferred area, but a due proportion of the burden in respect of the loan debt was upon the ratepayers of the transferred area. The arbitrator found as a fact that the ratepayers of the remaining area derived no advantage from the fact that the works remained in their area. The district council claimed to be paid that part of the debt outstanding which would have been borne by the transferred area if the alteration of area had not taken place. By the Local Government Board's Provisional Orders Confirmation (No. 7) Act, 1912, s. 2 (which was in effect the same as the Local Government (Adjustments) Act, 1913, s. 1, sub-s. 1), it was enacted that on any adjustment made otherwise than by agreement in respect of matters connected with this alteration of area provision should be made for the payment to any council or other authority affected by the alteration of such sum as seemed equitable in respect of any increase of burden properly thrown on the ratepayers of the area of that council or other authority in meeting the cost incurred by them in the execution of any of their powers or duties in consequence of the alteration of area : —*Held*, that the increased rate which the ratepayers of the remaining area would have to pay as a result of the expenditure by the rural district council in respect of the loan debt remaining constant, while the number of ratepayers had been diminished by the alteration of area, was an increase of burden within the meaning of section 2 of the Local Government Board's Provisional Orders Confirmation (No. 7) Act, 1912, and that therefore the claim of the rural district council must succeed. *Queenborough Corporation* v. *Sheppey Rural Council*, 84 L. J. K.B. 337; [1915] 1 K.B. 356; 112 L. T. 305; 79 J. P. 155; 13 L. G. R. 184 —Atkin, J.

—— **Adjustment of Liabilities.**] — A burgh having extended its boundaries so as to embrace part of the county area, the county council, which had raised loans secured on the county rates and repayable by instalments, sought to recover from the burgh the amount of these loans proportional to the assessable area taken over by the burgh. The arbitrator refused the claim on the ground that what was sought was not an " adjustment of liabilities " within the meaning of section 50 of the Local Government (Scotland) Act, 1889 (*cf.* section 62 of the Local Government Act, 1888), but compensation for loss of assessable area : —*Held*, that such loans were " liabilities " within the meaning of the section which might be proper subjects for adjustment. *Caterham Urban Council* v. *Godstone Rural Council* (73 L. J. K.B. 589; [1904] A.C. 171) distinguished. *Midlothian County Council* v. *Musselburgh Magistrates*, [1911] S. C. 463— Ct. of Sess.

Observations on the nature of " liabilities " which would be proper subjects for adjustment, and on the considerations to be kept in view in adjusting them. *Ib.*

Guardians—Transfer of Duty—Rural District Council — Urban District Council.] — Guardians who, as the sanitary authority, had constructed sewers, were at common law under a duty to dispose of their sewage so as not to interfere with private rights and a liability to others for injury caused by the escape of the sewage :—*Held*, that this duty and liability were transferred by section 25 of the Local Government Act, 1894, to a rural district council; and the liability is also included in a transfer to the urban district council, by an order of the county council converting the rural into an urban district, of the liabilities attaching to the rural district council. *Glossop* v. *Heston and Isleworth Local Board* (49 L. J. Ch. 89; 12 Ch. D. 102) discussed and distinguished. *Jones* v. *Llanrwst Urban Council* (*No.* 1), 80 L. J. Ch. 145; [1911] 1 Ch. 393; 103 L. T. 751; 75 J. P. 68; 9 L. G. R. 222; 55 S. J. 125; 27 T. L. R. 133 —Parker, J.

Adjustment of Financial Relations—County Borough—Contribution to County Expenses—Grant of Court of Quarter Sessions to Borough —Redemption of Liability of Borough to Contribute.]—By section 32, sub-section 1 of the Local Government Act, 1888, which provides for the adjustment of financial relations between counties and county boroughs, it is enacted that an equitable adjustment respecting all financial relations between each county and each county borough specified in the Third Schedule to the Act shall be made by agreement between the councils of each county and each borough, and, in default of agreement, by the Commissioners appointed under the Act. By sub-section 3 (*b*) : " If the borough is not at the passing of this Act a quarter sessions borough, the borough council shall contribute a proper share of the costs of and incidental to the quarter sessions and petty sessions of the county, and of and incidental to the coroners of the county or any franchise therein; and if a grant of a Court of quarter sessions is hereafter made to the borough, the borough shall redeem the liability to such con-

tribution on such terms as may be agreed upon, or, in default of agreement, may be determined by arbitration under this Act." A grant of a Court of quarter sessions was made to a county borough which was contributing annually to the county in which it was situated a share of the costs specified in section 32, sub-section 3 (*b*) of the Local Government Act, 1888. The county council having claimed that the borough should redeem their liability to such contribution under the provisions of the section, and the borough having tendered evidence before an arbitrator that the share of the costs incurred by the county in respect of the borough exceeded the amount of the contribution,—*Held*, on appeal, that the words "redeem the liability" in sub-section 3 (*b*) did not mean that, although the county were no longer to render services to the borough, yet the annual payment was to be capitalised for an amount which would bring in annually the same sum as the county had been receiving from the borough in respect of the services which the county had been rendering, but had ceased to render: and that evidence was rightly admitted to shew that in consequence of the grant of quarter sessions to the borough the county were relieved from incurring in respect of the borough costs greater than the sums they received for rendering the services. *Held*, also, that where an arbitrator has stated his award in the form of a Special Case for the opinion of the Court, there is no power to remit to the arbitrator otherwise than in the terms of the Special Case. *Yorkshire (N. R.) County Council and Middlesbrough County Borough Council, In re*, 83 L. J. K.B. 1004; [1914] 2 K.B. 847; 110 L. T. 961; 78 J. P. 257; 12 L. G. R. 555; 58 S. J. 431 —C.A.

Decision of Bailhache, J. (82 L. J. K.B. 308; [1913] 1 K.B. 93), varied. *Ib.*

—— **Between County Council and County Boroughs — Powers of Arbitrator.**] — An arbitrator appointed under the Local Government Act, 1888, to make a new equitable adjustment of the financial relations of the county of Glamorgan and the county boroughs of Cardiff and Swansea, by his award apportioning the aggregate proceeds of the local taxation licences and the estate duty grant between these authorities directed that out of such proceeds priority payments should be made to the authorities representing the payments which they were required to make under section 23, sub-section 2 (i.) (ii.) (iii.), and section 34 of the Act, and that the remainder of such proceeds should be divided among them in the proportion of their respective rateable values. There were many main roads in the county, few in the county borough of Swansea, and none in the county borough of Cardiff, and on an appeal by Case stated it was contended on behalf of the county that the arbitrator should have taken into account among the priority payments the annual sums expended by the authorities in respect of the maintenance of their main roads. The Commissioners under the Act in making the original adjustment had taken into account as priority payments these last-mentioned sums. There was no evidence that if these sums were not taken into account the county would be placed in a worse financial position within the meaning of section 32, sub-section 3 of the Act:—*Held*, that the duty of the arbitrator was to make what he himself considered to be an equitable adjustment, and that he was not bound to follow the original adjustment of the Commissioners; that it could not be said that the adjustment made by the arbitrator was not an equitable adjustment because it did not take the main road expenditure into account as a priority payment; and that the appeal should be dismissed. Decision of Lawrence, J. (12 L. G. R. 752), affirmed. *Glamorgan County Council* v. *Cardiff Corporation*, 84 L. J. K.B. 2073; [1915] 3 K.B. 438; 113 L. T. 356; 79 J. P. 905; 13 L. G. R. 1039—C.A.

—— **"Property."**] — A tramway company, authorised by Act of Parliament to lay tramways in a county, were bound, in every year in which their profits sufficed to provide a certain dividend, to pay the county 50*l.* for every mile of tramway laid in the county. A portion of the county in which lines were authorised but not laid having been transferred to a burgh,—*Held*, that the contingent right to payments from the tramway company was not "property" within section 50 of the Local Government (Scotland) Act, 1889, to be taken into account in adjusting the financial liabilities of the burgh and county. *Lanark County Council* v. *Motherwell Magistrates*, [1912] S. C. 1251—Ct. of Sess.

V. OFFICERS.

See also Vol. IX. 1936.

Appointment of Town Clerk—Right to Prescribe Qualifying Examination.]—A resolution passed by an urban district council that a candidate to be elected by the council at a forthcoming election to fill the office, then vacant, of town clerk, must have passed a qualifying examination is valid. But a resolution the effect of which is to interfere with the discretion of the council at future elections in making future appointments is *ultra vires*. *Rex* v. *Tralee Urban Council*, [1913] 2 Ir. R. 59 —K.B. D.

Clerk to Parish Council.]—It is necessary, on an application for a rule for a *quo warranto* information against a person appointed clerk to a parish council or board, for the applicant, if he relies upon the fact, to prove that the members who voted for the person appointed had not duly made the declaration required by section 35 of the Municipal Corporations Act, 1835, as applied to rural district councillors by the Rural District Councils Election Order, 1898; and the onus is not upon the person appointed to prove that they had made such declarations. *Rex* v. *Hunton; Hodgson, Ex parte*, 9 L. G. R. 751; 75 J. P. 335—D.

Vestry Clerk—Duties—Preparation of Lists of Voters—Checking Returns made by Owners —Expense of Canvassing—Salary of Vestry Clerk—Non-payment by Overseers—Remedy—Mandamus.]—The proper remedy of the vestry clerk of a parish against the overseers of the

parish who have refused to pay his salary, which by section 8 of the Vestries Act, 1850, is chargeable upon and payable out of the moneys raised for the relief of the poor, is by writ of *mandamus*, and not by action of debt or on the case. *Rex* v. *Davies; Peake, Ex parte*, 80 L. J. K.B. 993; [1911] 2 K.B. 669; 104 L. T. 778; 75 J. P. 265; 9 L. G. R. 564—D.

The duties of a vestry clerk under section 7 of the Vestries Act, 1850, in regard to the preparation of lists of voters do not include the verification of the returns made by owners to the overseers pursuant to section 9 of the Representation of the People Act, 1884, and therefore the vestry clerk of a parish cannot be called upon by the overseers to undertake at his own expense the work of making enquiries for the purpose of verifying such returns. *Ib.*

County Surveyor Attending by Direction of County Council before House of Commons as Expert Witness—Right to Special Fee.]—Where a county surveyor attends the House of Commons by direction of and on behalf of his county council to give assistance as an expert witness in opposing a bill before Parliament, such attendance is not within his ordinary duties, and he is entitled to a special fee therefor in addition to his ordinary salary. *Rex* v. *Newell*, [1911] 2 Ir. R. 535—K.B. D.

VI. JURISDICTION.

1. Streets and Roads.

See also Vol. IX. 376, 1937.

a. Formation and Alteration of.

"New street" By-laws—Width and Construction—Penal Character of By-laws—Intended Breach Abandoned—Injunction—"Laying out" Street—Nothing done on Street Itself.]—The model by-laws of urban authorities under section 157 of the Public Health Act, 1875, with respect to the level, width, and construction of new streets, are of a penal character, and ought not to be construed so as to impose on the party whose compliance with them it is sought to enforce any greater burden than the by-laws in their fair and natural construction will allow. *Att.-Gen.* v. *Dorin*, 81 L. J. Ch. 225; [1912] 1 Ch. 369; 106 L. T. 18; 76 J. P. 181; 10 L. G. R. 194; 56 S. J. 123; 28 T. L. R. 105—Warrington, J.

The by-laws refer, as regards the laying out of a new street, to a physical laying out, and not to a metaphorical one; and a person does not "lay out" a new street within their meaning merely by making a road a street by building houses on the side of it, but only if he does something on the street itself. Observations of Collins, M.R., and Romer, L.J., in *Devonport Corporation* v. *Tozer* (72 L. J. Ch. 411; [1903] 1 Ch. 759) followed. *Ib.*

In 1907 the defendant bought a field surrounded by a hedge, bordering on an occupation road about nineteen feet wide, which had been made up under section 150 of the Public Health Act, 1875, and on the other side of which two houses had been built with their sides turned towards the road. No house fronted towards it. The defendant submitted to the local authority, in whose district the model by-laws were in force, plans for building a row of houses on the field, to be approached by a footpath a few feet wide, leading from the road to the side of the houses furthest from the road, and with an open space of about sixteen feet between them and the road. The local authority objected to the plans on the ground of their non-compliance with the by-laws; and the defendant thereupon removed the footpath, when it had reached a length of about 150 feet, and informed the authority that he had abandoned the intention of laying it out. Instead, he made the approaches to the houses on the side of the road, putting gates in the hedge opposite each house as it was completed, with cement paths leading to the houses. He also carried the drains under the road; but he did nothing on the road itself; nor had he made, or proposed to make, the space between the houses and the road part of the road:—*Held*, that the footpath would have been a breach of the by-laws, but that in view of the defendant's abandonment of it there was no ground for an injunction; and that, while the defendant by building the row of houses had made the road a street, he had not laid out a street within the meaning of the by-laws. *Ib.*

—— Building Estate—Approval of Plans by Local Authority—Right of Local Authority to Consider Practicability.]—Where, under the Public Health Act, 1875, a local authority have the power to approve plans, they have power, before approving them, to enquire into the practicability of carrying them out. *Rex* v. *Tynemouth Corporation; Cowper, Ex parte*, 80 L. J. K.B. 892; [1911] 2 K.B. 361; 105 L. T. 217; 75 J. P. 420; 9 L. G. R. 953—D.

The applicant had submitted a plan to the local authority shewing a proposed new street. The local authority were aware of the existence of certain restrictive covenants enforceable by adjoining owners which might affect the power of the applicant to carry out the plan as submitted, and refused to approve it:—*Held*, that the Court would not grant a *mandamus* directed to the local authority to hear and determine the application to approve the plan. *Ib.*

—— By-law Requiring Approval of Plans—Right of Owner to Vary Deposited Plans.]—Where a local by-law requires that no person shall commence to build in any new street until the whole length of the street shall have been defined to the satisfaction of the local authority, and a plan for making a new street has been deposited and approved and building begun, but no order varying the position or length of the street has been made under section 17 of the Public Health Acts Amendment Act, 1907, then at any time if the road has not become a highway and the owner finds that any part of it is not required for the purpose of developing his building estate, he may inclose such part and devote it to any other purpose he pleases. *Kirby* v. *Paignton*

Urban Council, 82 L. J. Ch. 198; [1913] 1 Ch. 337; 108 L. T. 205; 77 J. P. 169; 11 L. G. R. 305; 57 S. J. 266—Neville, J.

—— **Resolution—Right of Ratepayer to Claim Injunction without Joining Attorney-General.**] —The plaintiff, a ratepayer in the rural district of E., sought to restrain the county council and the rural district council of E. from acting on a resolution carrying into effect a proposal of the latter council to make a new road :—*Held*, that it was competent for the plaintiff to sue without making the Attorney-General a party. *Weir* v. *Fermanagh County Council*, [1913] 1 Ir. R. 63—Ross, J.

The proposal was defective as it omitted to state the number of years within which the money to be borrowed for the work should be repaid :—*Held*, that this omission was fatal to the proposal. *Ib.*

The county council by resolution of January 13 approved of the proposal by resolution of February 24, rescinded the resolution of January 13, and by resolution of May 15 rescinded that of February 24 :—*Held*, that the county council, in the absence of standing orders to the contrary, had power to rescind the prior rescinding resolution. *Ib.*

—— **Agreement to Give Land—Construction—"Opening" of Street—Macadamising.**]—The respondent gave land to the appellant town to form "a public street . . . to be forthwith opened by the said town for use as a public street," and it was agreed between the parties "that no special assessment shall be levied upon the remainder" of the respondent's land "to defray the cost of the opening of the" street, "but this shall not be construed as exempting the lands . . . from special assessments for drains and macadamising such street" :—*Held*, that the land of the respondent was not liable to be assessed in respect of the cost of grading and levelling and doing other preliminary work in making the street. *Outremont Corporation* v. *Joyce*, 107 L. T. 569—P.C.

Approval of Plans Subject to Agreement under Local Act—Estoppel.]—Section 32 of the W. Local Board Act, 1890, provides that "every undertaking or agreement in writing, given by or to the board or by or on behalf of any owner of property on the passing of plans or for the removal of obstructions, or otherwise in connection with the property of such an owner, shall be binding upon the owner of the property for the time being and upon his successors in title and upon the board, and may be enforced by either party in any Court of summary jurisdiction by a penalty . . ." The appellant, in 1910, purchased a house and garden, as to which his predecessor in title had, in 1892, by agreement with the then local board under the above section, undertaken whenever required by the board to give up so much of the garden as the board might require for widening a lane on which it abutted. Before the completion of his purchase the appellant had received a letter from the clerk of the W. Urban District Council, in answer to his enquiry, that the lane was a highway repairable by the inhabitants at large, and that the council had no outstanding charges for private improvement expenses against the property. In 1911 he received notice from the respondent corporation (successors of the local board and urban district council) to carry out the agreement of 1892 in pursuance of section 32 of the Act. He objected that the agreement was void for remoteness, that section 32 did not apply, and that the council were estopped by the letter of their clerk :—*Held*, that the agreement of 1892 was enforceable against the appellant; that section 32 was not confined to the removal of obstructions but applied to the widening of highways, and was sufficient to make the agreement binding upon the successor in title of the owner who had entered into it; and that the letter of the town clerk created no estoppel. *Crane* v. *Wallasey Corporation*, 107 L. T. 150; 76 J. P. 326; 10 L. G. R. 523—D.

—— **By-laws — Completion of Construction — Private Road—Alteration after Completion.**] —A by-law of a local authority provided that every person who should construct for use as a carriage road a new street intended to form the principal approach or means of access to any building should comply with certain requirements as to the width of the carriageway and footways. In 1905 a portion of a road on a building estate, then in the course of development, was constructed as a new street, in accordance with the by-law. The appellant subsequently purchased the estate, and in 1910 continued the road by a section, which section was also constructed as a new street in accordance with the by-law. In 1911 he further continued the road by another section, which section was also constructed as a new street in accordance with the by-law. The whole, when completed, formed one road, and terminated at each end in a public highway. It had never been dedicated to the public, and remained a private road with buildings of a residential nature abutting thereon. In 1913 the appellant, as owner of the road, and at the request of the residents on the estate, placed at one end of the road (the termination of that section which was constructed in 1905) some piers and gates, which, when the gates were open, limited the extent of the width of the carriageway and footways to less than that required by the by-law. He was summoned before the Justices for unlawfully constructing a new street not in accordance with the requirements of the by-law by reason of the erection of the piers and gates, and was convicted :—*Held*, that the conviction was wrong. As the section of the road on which the piers and gates were placed was completed as a "new street" in 1905, it could not be said that the placing of the obstruction in 1913 was in any way the construction of a new street within the meaning of the by-law, and there was nothing in the by-law to prevent the appellant, as owner of a private road, from making alterations in it which might not have been permitted at the time of its construction. *Tarrant* v. *Woking Urban Council*, 84 L. J. K.B. 314; [1914] 3 K.B. 796; 111 L. T. 800; 79 J. P. 22; 12 L. G. R. 1293—D.

Whether section 157 of the Public Health Act, 1857, which empowers an urban authority

to make by-laws with respect to the level, width, and construction of "new streets," authorises the making of a by-law which would constitute a reduction of the original width of the street an offence, *quære*. *Ib.*

"Part of a street"—Strip of Ground Marked by Line of Pillars—Sufficiency of Evidence.]—On an objection taken by the appellants in pursuance of section 7 of the Private Street Works Act, 1892, that a certain strip of ground did not form part of the street with which the urban district council were dealing under the Act, the evidence shewed that the strip in question had been shewn upon a plan deposited in 1909 by the appellants' predecessors in title, and approved by the respondent council, in pursuance of the by-laws as to new streets and buildings which were in force in the district. On this plan the strip was coloured green, and bounded on the side adjoining the then existing street by a dotted line, and on the other side by a proposed corner shop which was to be set back in line with existing buildings further along the street. The shop had been built practically in accordance with the plan; and a wall, which had stood where the dotted line was marked, had been taken down, and five large stone pillars had been erected at intervals along its site. The strip between the line of pillars and the shop was partly asphalted in a similar manner to the footpath of the main road round the corner of the shop, and foot traffic passed over it without interruption. The council had previously purchased similar strips of ground from the appellants' predecessors in title for the purpose of widening the main road. After the council had taken steps under the Private Street Works Act, 1892, with respect to the street, the appellants placed wooden rails between the stone pillars and across the strip. The Justices found that the strip of ground in question was part of the street:—*Held*, that there was sufficient evidence before the Justices to support their finding. *Bell* v. *Great Crosby Urban Council*, 108 L. T. 455; 77 J. P. 37; 10 L. G. R. 1007—D.

Footpath—Bank of Stream on which Footpath Ran being Eaten Away—Danger to Public—Obligation to Protect.]—The appellants were the owners of certain parts of the bank of the river Mersey over which an ancient footpath ran. There was no obligation on the appellants to repair the footpath *ratione tenuræ*. By the action of the weather and by erosion caused by the Mersey eating away the bank, portions of the bank, on which the footpath ran, were washed away, and portions of the footpath fell into the river, and further portions were threatening to fall, and the way was thereby rendered dangerous to persons lawfully using the same. The respondents, the local authority for the district, called upon the appellants under section 30 of the Public Health Acts Amendment Act, 1907, to repair and protect the bank, so as to prevent danger therefrom:—*Held*, that section 30 did not apply in such circumstances and that the appellants were under no liability to comply with the notice served upon them. *Cheshire Lines Committee* v. *Heaton Norris Urban Council*, 81 L. J. K.B. 1119; [1913] 1 K.B. 325; 107 L. T. 348; 76 J. P. 462; 10 L. G. R. 972; 28 T. L. R. 576—D.

Per Darling, J.: The narrow strip of land between the footpath and the river was not a "bank" in the sense in which that expression is used in section 30. *Per* Phillimore, J.: The proper construction of section 30 is to limit its application to artificially constructed dangers. *Ib.*

b. Fencing Land Adjoining Street.

Vacant Land Adjoining Street—Land Used for "purpose causing inconvenience or annoyance to the public"—Power of Local Authority to Fence—Recovery of Expenses from Owner.]—Section 32 of the Willesden Urban District Council Act, 1903, provides that "If any land in the district . . . adjoining any street is allowed to remain unfenced or the fences thereof are allowed to be or to remain out of repair and such land is in the opinion of the council owing to the absence or inadequate repair of any such fence a source of danger to passengers or is used for any immoral or indecent purposes or for any purpose causing inconvenience or annoyance to the public," then, after notice to the owner or occupier, "the council may cause the same to be fenced or may cause the fences to be repaired in such manner as they think fit and the expenses thereby incurred may be recovered from such owner or occupier summarily as a civil debt." The appellant erected, round some vacant land belonging to him within the district of the respondent council, a barrier consisting of posts three feet four inches high and eight feet apart with a rail along the top. This barrier was not out of repair. The respondent council served upon the appellant a notice stating that the land, owing to the absence of a proper fence, was used for a purpose causing inconvenience or annoyance to the public and requiring him forthwith properly to fence in the land. The respondents subsequently erected round the land an "economic" fence and sued the appellant to recover the expenses thereby incurred. The Justices held that it was for the council and not for them to decide whether the land was used for a purpose causing inconvenience or annoyance to the public, and that as the council had decided that the land was being so used they could recover:—*Held*, that the decision of the Justices was wrong; that the user of the land for a purpose causing inconvenience or annoyance to the public must be proved by evidence of the fact in the proceedings before the Justices; and that the case should be remitted to the Justices in order that the respondents might have the opportunity of giving such evidence. *Upjohn* v. *Willesden Urban Council*, 83 L. J. K.B. 736; [1914] 2 K.B. 85; 109 L. T. 792; 78 J. P. 54; 11 L. G. R. 1215; 58 S. J. 81; 30 T. L. R. 62—C.A.

c. Regulating Traffic.

Order by Local Authority Regulating Traffic in Streets—"In any case when the streets are thronged or liable to be obstructed"—Prohibi-

tion of Hawkers Selling Fruit from Barrows in Certain Streets during Certain Hours—Validity of Order.]—Section 21 of the Town Police Clauses Act, 1847, enables the local authority from time to time to make orders "for preventing obstruction of the streets . . . in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged or liable to be obstructed." A local authority made an order in which, after reciting that certain streets specified in the schedule were, between the hours of ten in the forenoon and eight in the afternoon, thronged and liable to be obstructed on all days except Sundays, prohibited costermongers and hawkers from using those streets during those hours for selling fruit, &c., from barrows:—*Held*, that the local authority were entitled under section 21 to make a general order applicable to any street which was usually or habitually thronged or liable to be obstructed, and that the power of the local authority to make an order was not limited to a case similar to those of public processions, rejoicings, or illuminations. *Teale* v. *Williams*, 83 L. J. K.B. 1412; [1914] 3 K.B. 395; 111 L. T. 285; 78 J. P. 383; 24 Cox C.C. 283; 12 L. G. R. 958—D.

Meaning of "left or near side of the road."]—A by-law of a borough council imposed a penalty on any person who should drive any carriage in the borough and should not keep the same on the left or near side of the road, except in cases when he should have occasion to pass any other carriage, or of actual necessity or some sufficient reason for deviation therefrom. A lorry was driven for about 380 yards in a street from 29½ to 31 feet wide, so that its near-side wheels were about ten feet from the kerb on the near side, whilst its off-side wheels were within a few inches of the centre of the road, but never crossed the centre line. There were two sets of tramway lines in the street, and electric tram cars passed every two or three minutes, but none passed nor were there other vehicles in the street at the time, and no one was obstructed or inconvenienced:—*Held*, that so long as the off-side wheels of the lorry were kept within the centre line of the roadway it was on the "left or near side of the road," notwithstanding the presence of the tramway lines; that the by-law did not require the driver to keep his near-side wheels as near as he conveniently could to the kerb on the near side; and that the Justices were wrong in convicting him of having infringed the by-law. *Bolton* v. *Everett*, 105 L. T. 830; 9 L. G. R. 1050; 75 J. P. 534; 22 Cox C.C. 632—D.

2. Buildings.

See also Vol. IX. 390, 1948.

a. Definition.

New Buildings—Conversion of Dwelling Houses into Warehouse—Notice to Local Authority—Deposit of Plans.]—Section 26 of the Bolton Corporation Act, 1901, provided that the conversion of a dwelling house into any other building not intended for human habitation "shall for all purposes of the former Acts and this Act and of any by-law made thereunder respectively be deemed to be the erecting of a new building." By order of the corporation two adjoining dwelling houses were compulsorily closed as unfit for habitation; whereupon the owners let them to tenants who used and occupied them for two and a half years as separate warehouses. The owners subsequently made certain interior alterations so as to convert the two warehouses into one, intending to occupy the same themselves as a warehouse. They failed, however, to give any notice of conversion to the corporation, nor did they deposit plans before making the alterations. Upon proceedings against them by the corporation for contravening the above section Justices were of opinion that these premises were warehouses and not dwelling houses at the time of the alterations, that no offence had been committed, and dismissed the information:—*Held* (Darling, J., *dissentiente*), that the case was one of the conversion of one class of building—namely, a dwelling house, into another class of building—namely, a warehouse—and consequently the work which was being done came within section 36 as the conversion of a dwelling house into any other building not intended for human habitation. It therefore became the erection of a new building for which notices should have been given and plans and details deposited in accordance with the by-laws. *Morgan* v. *Kenyon*, 110 L. T. 197; 78 J. P. 66; 12 L. G. R. 140—D.

Erection and Occupation of New Building—No Notice to Local Authority.]—The appellant was summoned for erecting and occupying a new building without having given notice to the local authority and without having delivered plans, &c., contrary to the provisions of the local authority's by-laws. It was proved that the appellant had from 1909 till April, 1912, occupied and used as a dwelling house two vans standing at right-angles to one another; that in April, 1912, he removed these vans, and on the ground previously occupied by them built a dwarf wall of brickwork; that he then brought back the vans, placed them side by side, one of them standing partly on blocks of wood and partly on the dwarf wall; that he cut part of the side of one of the vans and caused it to be placed against a brick chimney stack which was built into the opening created in the side of the van; that new brickwork was added to the flue and a chimney stack erected, this being built right into the side of the van; that a mortar joint was made between the vans and the dwarf wall; that the appellant then occupied the vans as a dwelling house. Upon these facts the Justices found that the appellant had erected a new building without having given notice to the local authority and without having delivered plans; they further found that he had occupied them before they had been certified as fit for human habitation; they accordingly convicted the appellant:—*Held*, that there was evidence which war-

ranted this conclusion. *James* v. *Tudor*, 77 J. P. 130; 11 L. G. R. 452—D.

Re-erection of Buildings—Part of Old Building Pulled Down and New Part Erected—"New building"—Notice of Intention to Erect—Plans of Whole Building—By-laws of Local Authority.]—The by-law of a local authority, made and approved in 1906, provided that "Every person, who shall intend to erect a building, shall give to the council notice in writing of such intention . . . and shall at the same time deliver or send . . . complete plans and sections of every floor of such intended building . . ." Section 23 of the Public Health Acts Amendment Act, 1907, which came into force in the district of the local authority in 1909, provides that, for the purposes of the Act and the Public Health Acts and any by-laws made thereunder, the following operation—namely, the re-erection, wholly or partially, of any building of which an outer wall is pulled down or burnt down to or within ten feet of the surface of the ground adjoining the lowest storey of the building shall be deemed to be the erection of a new building. The owners of an old building, which was erected before by-laws came into existence, pulled down a part including some of the outer walls, leaving the remaining part of the premises standing, and gave notice in writing to the local authority of their intention to erect on the site of the part pulled down a new part, the notice being accompanied by plans and sections of the new part, but they gave no notice as to, or plans or sections of, the whole building:—*Held*, that, under section 23 of the Act, the whole building—that is, the old part and the new part—was to be deemed to be a new building, and the owners were therefore bound to send to the local authority notice as to, and plans and sections of, the whole building. *Leonard* v. *Hoare & Co.*, 83 L. J. K.B. 1361; [1914] 2 K.B. 798; 111 L. T. 69; 78 J. P. 287; 12 L. G. R. 844; 30 T. L. R. 425—D.

The by-laws of a local authority, made and approved in 1906, provided that every person who intended to erect a building should give notice in writing of such intention, and deliver complete plans and sections of every floor. Section 23 of the Public Health Acts Amendment Act, 1907, provides that "for the purposes of this Act and the Public Health Acts, and any bye-laws made thereunder, (*a*) the re-erection, wholly or partially, of any building of which an outer wall is pulled down to within ten feet of the surface . . . shall be deemed the erection of a new building." The appellants pulled down part of a very old inn, including certain outer walls, but left the rest standing. They gave notice in writing to the local authority of their intention to erect a new part on the site of the old part pulled down. This new part was to fit into the part left standing. With the notice plans and section of the new part were sent, but not of the whole of the building—that is, the part left standing and the new part. The local authority admitted that if the portion of the old building left standing was not, and should not be, treated as part of a new building, by-law 104 had been complied with by the building owners; but on the decision of *Leonard* v. *Hoare & Co.* (83 L. J. K.B. 1361; [1914] 2 K.B. 798), in which it was held that the present appellants were erecting what must be deemed a new building, they refused to pass the plans. Thereupon a rule *nisi* for a *mandamus* was obtained:—*Held*, that, upon the true construction of section 23 of the Act of 1907, only such part of a building as had been pulled down to be re-erected was to be deemed a new building; and as in that view the appellants had conformed to the by-laws, the rule must be made absolute. *Rex* v. *Foots Cray Urban Council*, 85 L. J. K.B. 191; 113 L. T. 705; 79 J. P. 521; 13 L. G. R. 1027; 59 S. J. 597—C.A.

Conversion into more than one Dwelling House—Rejection of Plans by Corporation—Conversion nevertheless Completed—Failure of Corporation to Determine which of New Dwelling Houses Original Dwelling House—Proceedings for Breach of By-law.]—Section 21 of the Liverpool Improvement Act, 1882, enacts that "the conversion into more than one dwelling-house of any building originally constructed as one dwelling-house only shall be deemed for the purposes of this Act and of any . . . bye-law in force within the City to be the erection of a new dwelling-house or dwelling-houses and in cases of division or conversion of a building into more than one dwelling-house the Corporation shall determine which (if any) one of the houses formed out of the previously existing house shall be deemed to be the old or original dwelling-house"; and by-law 4 of the Liverpool Corporation By-laws with respect to New Buildings, 1890, provides that "every new dwelling-house . . . shall, . . . have at the rear thereof an open space. . . ." The respondent deposited with the city authorities a plan shewing a proposal to convert certain premises into three separate dwelling houses. The plan was disapproved, and notice to that effect was sent to the respondents. The respondents, nevertheless, proceeded with the conversion of the premises and completed the work. The new dwelling houses created by the conversion did not comply with the requirements of by-law 4 above, and the respondents were summoned. They contended that, as the corporation had failed to make the determination required by section 21 of the Liverpool Improvement Act as to which (if any) of the houses formed out of the previously existing house should be deemed to be the old or original dwelling house, the proceedings were irregular and should be dismissed:—*Held*, that, the corporation having disapproved the plan submitted to them by the respondents, their failure to make the determination did not affect the proceedings. *Alexander* v. *Tracy*, 84 L. J. K.B. 1890; 79 J. P. 458—D.

Addition to House—Porch on Wheels.]—The respondent placed in the garden in front of his house a wooden porch which stood on wheels, and which projected beyond the front main wall of the house six and a half feet. On proceedings being taken against him by

the local authority for a contravention of section 3 of the Public Health (Buildings in Streets) Act, 1888, the Justices dismissed the information, being of opinion that the porch in question did not constitute an addition to the house within section 3:—*Held*, that the Justices could on the facts properly come to that conclusion. *Sunderland Corporation* v. *Charlton*, 77 J. P. 127; 11 L. G. R. 484—D.

b. General Regulations.

Disapproval of Plans on General Grounds—By-laws — Mandamus to Approve Plans Granted after Completion of the Work.]—A local authority cannot refuse their approval of plans of a proposed new building, deposited with them in pursuance of their by-laws, where such plans comply with the by-laws and the general law, merely on general grounds, such as that the situation of the building and its cesspool for slop water would be so close to the seashore that the cesspool would be filled by sea water at spring tides. And a *mandamus* may, in special circumstances, be granted directing the local authority to approve such plans, even though the building has been completed. *Rex* v. *Bexhill Corporation; Cornell, Ex parte*, 9 L. G. R. 640; 75 J. P. 385—D.

—— **One Domestic Building.**] — The local authority refused to approve the plans for the erection of a barn adjoining to and at the back of a dwelling house, on the ground that their by-laws required that there must be an open space at the rear of a new domestic building:—*Held*, that the dwelling house and proposed barn constituted one domestic building, and therefore that the plans did not infringe the by-laws. *Rex* v. *Preston Rural Council; Longworth, Ex parte*, 106 L. T. 37; 10 L. G. R. 238; 76 J. P. 65—D.

Restraining Local Authority from Approving Plans Contravening By-law — Attorney-General — Inspection of Deposited Plans — Amendment of Writ.] — Ratepayers in a borough issued a writ claiming an injunction to restrain the borough council from approving certain deposited plans, an injunction restraining them from refusing to allow the plaintiffs to inspect the plans, and an injunction to restrain the persons who had deposited the plans from carrying them out. They then moved for interim injunctions in the terms of the indorsement on the writ:—*Held*, on appeal against the refusal of the Judge in chambers to grant any relief on the motion: First, with regard to the approval of the plans by the defendant council, that as at the time of the hearing of the appeal the plans had in fact been approved, though only on the day when the appeal was opened, no injunction could be granted; secondly, with regard to the council's refusal to allow inspection of the plans, that an injunction to restrain a refusal to allow inspection was equivalent to a mandatory order to allow inspection, and that such an order could not be made on an interlocutory application; and thirdly, with regard to the carrying out of the plans by the other defendants, that, as the plaintiffs had not joined the Attorney-General, and had not sued on behalf of themselves and all other ratepayers in the borough, and had not shewn any special injury to themselves beyond a mere grievance, they could not succeed without amending their writ, and that no leave to amend would be given for the purpose of an interlocutory application. *Stockport District Water Works Co.* v. *Manchester Corporation* (9 Jur. N.S. 266) and *Tottenham, In re; Tottenham* v. *Tottenham* (65 L. J. Ch. 549; [1896] 1 Ch. 628), considered. *Dover Picture Palace* v. *Dover Corporation*, 11 L. G. R. 971—C.A.

Building Line—Notice—Compensation—Payment or Tender—Mandatory Injunction.]—Where a local authority on a house being pulled down in a street prescribes, under section 155 of the Public Health Act, 1875, a building line to which the house to be rebuilt in the same situation is to conform, it is not necessary that the authority should expressly inform the owner that it is proceeding under that section, or specify a building line only for the particular house, provided it makes it clear that it is in reference to that house that the building line is to be compulsory. *Att.-Gen.* v. *Parish*, 82 L. J. Ch. 562; [1913] 2 Ch. 444; 109 L. T. 57; 77 J. P. 391; 11 L. G. R. 1134; 57 S. J. 625; 29 T. L. R. 608—C.A.

Section 155 does not require that compensation for the damage sustained by the owner in setting back his building should be paid or tendered upon any particular date, or make such payment or tender a condition precedent to the prescription of the building line. *Ib.*

Where the local authority have acted in good faith in prescribing a building line the Court will not refuse to enforce their decision by mandatory injunction because the matter may appear trivial and unimportant and of little public benefit. *Ib.*

"Land laid out for buildings"—Covering over Watercourse — "Adjoining land."] — A local Act provided that: "If any watercourse or ditch in the district situate upon land laid out for buildings, or on which any such land abuts, requires in the opinion of the Council to be wholly or partially filled up or covered over, the Council may by notice in writing require the owner of such land, before any building is commenced or proceeded with, to execute such works as may in their opinion be necessary for effecting the objects aforesaid. . . ." A certain firm purchased land abutting on such a watercourse, and contemporaneously they sold a strip of the land to O., a person in their employ. The strip, which for the greater part of its length was only some six feet wide, extended along the watercourse and entirely separated it from the rest of the land. The firm commenced to erect a factory on the land retained by them and disregarded a notice of the urban district council requiring them in pursuance of the local Act to cover over the watercourse before proceeding with the building of the factory. Thereupon an action was brought by the Attorney-General at the relation of

the council against the firm and O. to restrain them from proceeding with the factory until they had culverted the watercourse. Before the action came on for hearing the factory was completed, and at the hearing the plaintiffs asked for an order upon the defendants to culvert the watercourse :—*Held*, upon the construction of the section, that it only enabled the council to compel the owners for the time being of land, which was then laid out for building, and also abutted on a watercourse, to cover over the watercourse before proceeding to build; and *held* that the action failed as against the firm because they were not owners of land abutting on the watercourse by turning sewage. On the other hand, and never had had any intention of building on his strip. *Att.-Gen.* v. *Rowley*, L. G. R. 121; 75 J. P. 81—Swinfen Eady, J.

"Back-to-back" Houses — "Working classes."] — By section 43 of the Housing, Town Planning, &c. Act. 1909, the erection of back-to-back houses intended to be used as dwellings for the working classes is prohibited. Houses standing back to back, containing garages on the ground floor and living rooms on the first floor, which were separated by a party wall on the ground floor and by an air shaft on the first floor, were erected and intended to be used as dwelling houses for chauffeurs :—*Held*, that the questions whether these were back-to-back houses, and whether they were intended to be used as dwellings for the working classes, were questions of fact, the first being whether they were substantially back-to-back houses; and that a chauffeur was, in the ordinary and popular sense, a member of the working classes, and it was therefore open to the Local Government Board, as a matter of law, to find that the houses in question were intended to be used as dwellings for the working classes. *White* v. *St. Marylebone Borough Council*, 84 L. J. K.B. 2142; [1915] 3 K.B. 249; 113 L. T. 447; 79 J. P. 350; 13 L. G. R. 977—D.

It was proposed to erect a block of three-storeyed tenements, each storey containing four dwelling-houses, two to the front and two to the back. It appeared from the plans that in the centre of each tenement there was a space or well containing a common stair which was roofed over, and that all the houses in each tenement entered from this well. It also appeared that in each storey the division between the front and back houses was formed by the walls inclosing the well in the centre and by an unbroken wall common to the front and back houses on each side of the well :—*Held*, that the proposed houses were "back-to-back houses" within the meaning of section 43 of the Housing, Town Planning, &c. Act, 1909, which prohibits the erection of such houses as dwellings for the working classes. *Murrayfield Real Estate Co.* v. *Edinburgh Magistrates*, [1912] S. C. 217—Ct. of Sess.

Bungalows—Seaside Encampment—Alleged Public Nuisance.]—About forty bungalows of two or three rooms apiece, constructed on footings above the level of the ground, had been erected for occupation in the spring and summer months on some eleven acres of low-lying land between a sea-wall and the sea without notice to the rural district council. They were erected on separate sites or plots let at weekly rents. There were also a considerable number of tents on these sites. The land lay below the level of high tides, and no system of drainage was practicable. Sets of closets at different parts of the land were erected for men and women respectively, and their contents were removed and emptied on land at a distance from the residences. The water supply was from stand-pipes. In an action by the Attorney-General, at the relation of the rural district council, for an injunction to restrain the defendants from continuing an alleged public nuisance, and from continuing to maintain the bungalows in contravention of by-laws and from erecting more, and by the rural district council for specific performance of an agreement to take down existing bungalows,—*Held*, on the evidence, that the plaintiffs had failed to establish that the encampment was a nuisance to the public health. *Att.-Gen.* v. *Kerr*, 79 J. P. 51; 12 L. G. R. 1277—Lush, J.

Refreshment House — Keeping Open Contrary to Law—Shop for Sale of Fruit.]—A local Act subjected to a penalty any person occupying "a building or part of a building, or other place of public resort for the sale or consumption of provisions or refreshments of any kind" who failed to comply with the regulations contained therein as to the hours of opening and closing :—*Held*, that the Act applied to a fruiterer's shop. *M'Intyre* v. *Wilson*, [1915] S. C. (J.) 1—Ct. of Just.

c. Right of Entry on Premises.

Preventing Officers of Local Authority from Entering.] — Preventing medical or other officers of a local authority from entering working-class dwelling houses for survey and examination under section 36 (*c*) of the Housing, Town Planning, &c. Act, 1909, to carry into effect the provisions of Part II. of the Housing of the Working Classes Act, 1890, is an offence under section 51 of the latter Act, and an order may be made against the owner for entry to examine and survey under that section. *Arlidge* v. *Serase*, 84 L. J. K.B. 1874; [1915] 3 K.B. 325; 79 J. P. 467—D.

d. Closing Order.

Validity—Insanitary Houses.]—The form of closing order of houses provided by the Local Government Board under the powers bestowed upon them by section 41 of the Housing, Town Planning, &c. Act, 1910, (Form 5 of the Statutory Rules and Orders, 1910, No. 2), is not valid when served upon an owner of property unless it embody the note as to his right of appeal that is printed at the end of the prescribed form. *Rayner* v. *Stepney Borough Council*, 80 L. J. Ch. 678; [1911] 2 Ch. 312; 105 L. T. 362; 75 J. P. 468; 10 L. G. R. 307; 27 T. L. R. 512—Neville, J.

Houses "unfit for human habitation"—Reason of Unfitness—Circumstances External

to House—Insufficient Ventilation.]—A building may be "unfit for human habitation" within the meaning of section 41 of the Manchester Corporation Waterworks and Improvements Act, 1867, if it is so unfit for any reason, such as insufficient ventilation, and not only if it is so unfit because of some structural or other defect existing in the building itself. Whether it is so unfit or not is a question of fact to be determined by the corporation in a judicial spirit. *Semble*, the standard of fitness or unfitness to be applied is that of the ordinary reasonable man. *Hall* v. *Manchester Corporation*, 84 L. J. Ch. 732; 113 L. T. 465; 79 J. P. 385; 13 L. G. R. 1105; 31 T. L. R. 416—H.L. (E.)

Decision of the Court of Appeal (111 L. T. 182; 12 L. G. R. 688) affirmed. *Ib.*

—— **Appeal to Quarter Sessions—Time for Appealing.**]—*Semble*, that the time for appealing to quarter sessions from an order made under the above section declaring the building unfit for habitation runs from the date when such order is affixed to the building. *Ib.*

"Dangerous or injurious to health."]—A local authority, acting under section 17, subsection 2 of the Housing, Town Planning, &c. Act, 1909, issued, upon a representation by their medical officer, a closing order with regard to a tenement of dwelling houses, as being, in the words of the statute, a "dwelling house . . . in a state so dangerous or injurious to health as to be unfit for human habitation":—*Held*, first, that a tenement of dwelling houses was a dwelling house in the sense of the Act, and that a closing order was competently issued with regard to a whole tenement generally; secondly, that a closing order was competently issued without specifying as between two alternatives whether the house was "dangerous" or "injurious to health," these not being alternative grounds for an order, but the second being exegetical of the first; thirdly, that, the closing order being in a statutory form which did not require a statement of the grounds upon which it was issued, non-disclosure of these grounds in the order did not render it inept; fourthly, that the closing order was competently issued without previous exercise by the local authority of their statutory powers under section 15 to require remedial works, and without affording to the owner of the house an opportunity of being heard. *Kirkpatrick* v. *Maxwelltown Town Council*, [1912] S. C. 288—Ct. of Sess.

Intention of Owner to Convert into Warehouses — Demolition Orders — Appeal to and Powers of Local Government Board.]—Where, under the Housing, Town Planning, &c. Act, 1909, s. 17, a closing order in respect of a dwelling house has been made by the local authority and has become operative, and the local authority, on taking into consideration the question of the demolition of the dwelling house, are of opinion that the dwelling house has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit, it is the duty of the local authority to order the demolition of the building, under section 18, although they may be satisfied that there is no intention on the part of the owner to use the house as a dwelling house, or that prior to the demolition order the house has been so altered as to become incapable of use as a dwelling house. But the Local Government Board, in the exercise of their appellate jurisdiction under section 39 of the Act, have power, notwithstanding that the local authority may be bound to make a demolition order, to quash or vary such order or to make such other order as they may consider equitable in the circumstances of the particular case. *Lancaster* v. *Burnley Corporation*, 84 L. J. K.B. 181; [1915] 1 K.B. 259; 112 L. T. 159; 79 J. P. 123; 12 L. G. R. 1319; 31 T. L. R. 13—D.

A local authority, being satisfied that certain dwelling houses were unfit for human habitation, made closing orders in respect of them, and the appellant, after the orders had become operative, purchased the houses with notice of the closing orders, but with the intention of converting them into warehouses. Subsequently he proceeded to convert some of the dwelling houses into warehouses with the result that they could not be used as dwelling houses, and he gave notice to the local authority of his intention to convert all the houses into warehouses, submitting plans for their approval, which plans were, however, disapproved. After due notice to the appellant the local authority considered the question of the demolition of the houses and made demolition orders in respect of them, being satisfied that the houses were then unfit for human habitation, and that the necessary steps were not being taken with all due diligence to render them so fit. The appellant appealed to the Local Government Board, contending that, under the circumstances, the demolition orders ought not to have been made. The Local Government Board gave no decision, but, for the purpose of arriving at a decision, stated a Case for the opinion of the Court upon questions of law arising in the appeals:—*Held*, first, that, on the facts as stated, the local authority were bound to make the demolition orders; but secondly, that, in the exercise of the appellate jurisdiction given by section 39 of the Housing, Town Planning, &c. Act, 1909, the Local Government Board were not restricted to making orders which the local authority might have made, but that they could, on the facts stated, quash or vary the demolition orders. *Ib.*

Refusal to Determine Closing Order—Appeal to Local Government Board—Order of Board Dismissing Appeal—Procedure—Right of Appellant to See Report of Inspector—Right to a Hearing before the Board.]—Where the decision of a question in dispute between parties has been entrusted by statute to an administrative body, the enquiry must be taken, in the absence of directions in the statute, to be intended to be conducted in accordance with the ordinary procedure of that body; and therefore, although they must act judicially and in good faith, and give to both parties an opportunity of presenting their case, they are not bound to treat such a question as

if it were a trial *inter partes*. In the case of an appeal against a refusal by a local authority to determine a closing order, closing a dwelling house as being unfit for human habitation, which appeal is, by the Housing, Town Planning, &c. Act, 1909, to the Local Government Board, it is not contrary to the principles of natural justice that the Board should, in accordance with its ordinary procedure, under rules made under the statute, dismiss the appeal without disclosing to the appellant the report of an inspector made after a public enquiry at which the appellant was represented, and without giving the appellant an opportunity of being heard orally before the Board itself. *Local Government Board* v. *Arlidge*, 84 L. J. K.B. 72; [1915] A.C. 120; 111 L. T. 905; 79 J. P. 97; 12 L. G. R. 1109; 30 T. L. R. 672—H.L. (E.)

Decision of the Court of Appeal, *sub nom. Rex* v. *Local Government Board; Arlidge, Ex parte* (83 L. J. K.B. 86; [1914] 1 K.B. 160), reversed. *Ib.*

Service of Order on Lessee—Freeholder not Known—Service of Order on Freeholder by Leaving Order with the Inmate of the Premises.]—Where the defendant council made all the usual enquiries, but were unable to discover the owner of the freehold, and accordingly served a sealed copy of a closing order addressed to the owner of the premises by leaving it with a woman who was in occupation thereof,—*Held*, that such service was sufficient, and that for the purposes of section 17, sub-section 3 of the Housing, Town Planning, &c. Act, 1909, it was not necessary that the order should be served personally. *Arlidge* v. *Hampstead Urban Council*, 59 S. J. 717—Neville, J. Affirmed, 60 S. J. 43—C.A.

Statement of Special Case.]—The Housing, Town Planning, &c. Act, 1909, allows any person aggrieved by a closing order to appeal in Scotland to the Sheriff [in England to the Local Government Board], and enacts by section 39 that the Sheriff [Local Government Board] may "at any stage of the proceedings on appeal" state a Special Case on a question of law for the opinion of the Court:—*Held*, that such a Case must be stated during the progress of the appeal, and cannot be stated after the Sheriff [Local Government Board] has given judgment. *Johnston's Trustees* v. *Glasgow Corporation*, [1912] S. C. 300—Ct. of Sess.

e. Demolition.

Dangerous Wall.]—*Semble*, although Justices in making an order under section 75 of the Towns Improvement Clauses Act, 1847, ordering the owner of a dangerous wall to take it down, rebuild, or repair it, have jurisdiction to enquire who is the owner of the wall, in order to ascertain whether the proper notices have been given, that enquiry is one preliminary to the exercise of their jurisdiction, and their decision as to ownership is not conclusive in a subsequent proceeding to recover the expenses. *Rex* v. *Cork (Recorder)*, [1913] 2 Ir. R. 35—K.B. D.

Insanitary Dwelling Houses—Obstructive Building—"Any building"—Workshop.]—The expression "any building" in section 38 of the Housing of the Working Classes Act, 1890, which provides for the removal of "obstructive buildings," includes buildings of every description, such as a workshop, and is not confined to dwelling houses. Section 38 contains a complete code for fixing the compensation for the removal of an "obstructive building" which is not a dwelling house. *Jackson* v. *Knutsford Urban Council*, 84 L. J. Ch. 305; [1914] 2 Ch. 686; 111 L. T. 982; 79 J. P. 73; 58 S. J. 756—Eve, J.

f. By-laws.

Room Used for Human Habitation—Scullery.]—By By-law 69 of the B. and R. Urban District Council, "Every person who shall erect a new building and shall construct any room therein so that it may be used for human habitation shall comply with the following requirements: If such room is not intended to be used as a sleeping room he shall construct such room so that it shall not be less in any part thereof than 9 feet in height." The respondents erected three scullieries eight feet by eight feet six inches in area and eight feet three inches in height only:—*Held*, that the scullieries were not rooms constructed so that they "may be used for human habitation" within the by-law. *Bain* v. *Compstall Co-operative Society*, 103 L. T. 759; 75 J. P. 76; 9 L. G. R. 75—D.

Chimneys—Flues—Thickness of Back—Party Wall.]—By one of the by-laws of the borough of E. it was provided as follows: "Every person who shall erect a new building shall cause the back of every chimney opening in a party wall to be at least 9 in. thick, and he shall cause such thickness to be continued at the back of the flue; such person shall cause the back of every other chimney opening to be at least 4½ in. thick if such opening be in an external wall and 9 in. thick if such opening be elsewhere than in an external wall, and he shall cause such thickness to be continued at the back of the flue. Provided that where flues are constructed back to back, the thickness at the back of such flues may be not less than 4½ in.":—*Held*, that the proviso contained in the above by-law had no application in the case of flues in a party wall which divided two adjoining houses. *Miller* v. *Field*, 110 L. T. 36; 78 J. P. 5; 12 L. G. R. 284—D.

Keeping Premises Open Contrary to By-law.—A corporation by-law provided that "a person registered . . . to keep or use any . . . premises as a place for public refreshment shall not keep such premises open, or suffer them to be kept open" except during hours specified:—*Held*, that proof that an accused person had kept his premises open, or had suffered them to be kept open, after the hours specified was sufficient *per se* to establish a contravention of the by-law without any proof as to the purpose for which they were kept open. *M'Intyre* v. *Persichini*, [1914] S. C. (J.) 126—Ct. of Just.

3. Sewers and Drains.

See also Vol. IX. 412, 426, 1961, 1973.

Single Private Drain.]—A pipe connected with the drains of several dwelling houses, owned by different owners, and constructed by the owners of those dwelling houses on private ground, as, and used as, a common conduit to receive and carry away the sewage from those houses brought down by the connecting drains, is not a "sewer," but is a "single private drain." *Holywood Urban Council* v. *Grainger*, [1913] 2 Ir. R. 126—K.B. D.

—— **Conduit Used for Drainage of Roadway and Cottages Belonging to one Owner—Cul-de-sac—Highway.** —By section 49, sub-section 1 of the Kingston-upon-Hull Act, 1903, "Where two or more houses or premises are connected with a single private drain which conveys their drainage into a public sewer, the Corporation shall have all the powers conferred by section 41 of the Public Health Act, 1875." Section 49, sub-section 2, provided that section 19 of the Public Health Acts Amendment Act, 1890, should cease to be in force in the locality, and section 49, sub-section 3, that the expression "drain" should include a drain used for the drainage of more than one building, whether owned or occupied by the same person or not. Section 4 of the Act provided that words to which meanings were assigned by the Public Health Acts should have those meanings, unless there was something repugnant or inconsistent in the subject or context. By section 4 of the Public Health Act, 1875, the word "premises" includes "messuages buildings lands easements and hereditaments of any tenure." The defendants were the proprietors of a roadway and of a row of cottages on each side of it. The roadway was a *cul-de-sac*. As the result of a notice under section 23 of the Public Health Act, 1875, served on the defendants in 1876, they laid a conduit under the whole length of the roadway, a great part of which was outside the limit mentioned in that section of 100 feet from the public sewer with which it connects. This conduit was used for surface drainage only, and was fed by conduits from gullies in the backyards of the cottages and by other conduits from gullies in the roadway:—*Held*, that there was no sufficient evidence that the roadway had been dedicated to the public; but that, whether it had or not, the conduit under the roadway was a "single private drain" within section 49 of the local Act, the conduit being an exclusive and private system of drainage for the defendants' cottages and land on each side of the roadway and the roadway itself, the soil of which was vested in the defendants. *Per* Bankes, L.J.: "Premises" in section 49 of the local Act must be taken to mean premises in the same ownership as one or more of the houses connected with the single private drain." *Hull Corporation* v. *North-Eastern Railway*, 84 L. J. Ch. 905; 60 S. J. 58—C.A.

Sewer or Drain—Underground Culvert for Water of a Natural Watercourse.]—The mere fact that a natural watercourse is culverted or piped by the several owners of the lands which are intersected by it does not make it a drain or sewer so as to vest it in the local authority under the Public Health Act, 1875. *Shepherd* v. *Croft*, 80 L. J. Ch. 170; 103 L. T. 874—Parker, J.

Sewer—Natural Stream—Pollution.]—The mere pollution of a natural stream or watercourse by turning sewage into it does not convert it into a sewer. On the other hand, if it is substantially a sewer, the fact that at certain portions of the year clean water flows into it does not prevent it being a sewer. In each case it is a question of fact and degree. *Att.-Gen.* v. *Lewes Corporation*, 81 L. J. Ch. 40; [1911] 2 Ch. 495; 55 S. J. 703; 27 T. L. R. 581—Swinfen Eady, J.

Sewage Farm — Discharge of Sewage Effluent—"Natural stream or watercourse"—"Sewer."]—An agricultural ditch or channel constructed by a landowner on his land for the purpose of carrying off surface water, but in which there is no constant flow of water is not a "natural stream or watercourse" within the meaning of section 17 of the Public Health Act, 1875. *Phillimore* v. *Watford Rural Council*, 82 L. J. Ch. 514; [1913] 2 Ch. 434; 109 L. T. 616; 77 J. P. 453; 11 L. G. R. 980; 57 S. J. 741—Eve, J.

Such a channel is a "sewer" within section 4, but it falls within the first of the three classes of excepted sewers enumerated in section 13, and is not therefore vested in the local authority. *Sykes* v. *Sowerby Urban Council* (69 L. J. Q.B. 464; [1900] 1 Q.B. 584) followed. *Ib.*

—— **Grant of Right of Passage to Local Authority—Effect.**]—The grant of a right of "passage and running of water" through a drain or watercourse does not entitle the grantee to discharge sewage effluent into such drain or watercourse. *Ib.*

Grant of Land for Sewage Works—Access to Sewer.]—The common predecessor in title of the plaintiffs and of the defendants granted to the plaintiffs' predecessors the right to lay a sewer through certain land, and from time to time to repair, maintain and renew the same, the grantees to reinstate the ground as soon as possible after disturbing the same:—*Held*, that the right of access by the plaintiffs to the sewer was a right of access to it in the condition in which it was when it was first laid down, and that the defendants were not entitled to alter the condition of the ground as by increasing the quantity of soil above the sewer to impose a greater obligation on the plaintiffs in the execution of their right. *Birkenhead Corporation* v. *London and North-Western Railway* (55 L. J. Q.B. 48; 15 Q.B. D. 572) distinguished. *Thurrock Grays and Tilbury Joint Sewerage Board* v. *Goldsmith*, 79 J. P. 17—Eve, J.

4. Water Closets.

See also Vol. IX. 429, 1978.

Privies—Notice to Owner to Substitute Water Closets—Notice to Owner that he would

be Charged with Cost of Work—Decision of Local Authority—Appeal of Owner to Local Government Board.]—A local authority passed a resolution in pursuance of section 36 of the Public Health Act, 1875, that the privies of four houses were insufficient, and notices were served upon the owner requiring him to provide a water closet for each of the houses. As the work was not carried out by the owner, the local authority decided that their engineer should carry out the work, and that the owner should be charged with the cost of carrying out the work. Notices of these decisions were given to the owner, who, deeming himself aggrieved by the decisions, addressed a memorial by way of appeal to the Local Government Board under section 268 of the Act of 1875, stating the grounds of his complaint. The Local Government Board refused to hear the appeal. Upon a rule *nisi* for a *mandamus* to the Local Government Board to hear and determine the appeal,—*Held*, that the only right of appeal given by section 268 of the Public Health Act, 1875, was against the decision of the local authority that the expenses incurred by the local authority should be recovered in a summary manner instead of being declared private improvement expenses, and that, as the local authority had not come to such a decision, the appeal was premature, and the Local Government Board were entitled to refuse to hear it. *Reg.* v. *Local Government Board* (52 L. J. M.C. 4; 10 Q.B. D. 309) applied. *Rex* v. *Local Government Board; Thorp, Ex parte*, 84 L. J. K.B. 1184; 112 L. T. 860; 79 J. P. 248; 13 L. G. R. 402—D.

Enforcement of Provision of Earth Closets.]—Undisputed evidence was given by the surveyor of a rural district council that he had reported to them the insanitary condition of certain houses, that his report was considered by them, and that they directed the subsequent proceedings—namely, to enforce the substitution of earth closets for privies in some of the houses; the minutes were produced of resolutions of the sanitary committee recommending that the work be carried out (the owners having failed to comply with notices to execute it), and that the expenses be recovered from such owners, and afterwards that proceedings be taken for recovery of the expenses (the work having then been executed by the council); and the minutes were also produced of a resolution of the council adopting the last-mentioned resolution of the committee:—*Held*, that this was sufficient evidence that the condition of the houses and the means to be taken to improve it had been properly considered by the council, so as to enable them to recover the expenses of the work under section 36 of the Public Health Act, 1875. *Bower* v. *Caistor Rural Council*, 9 L. G. R. 448; 75 J. P. 186—D.

5. Baths and Washhouses.

Swimming Bath—Power of Borough Council to Let—Healthful Recreation—Cinematograph Entertainment.]—By section 5 of the Baths and Washhouses Act, 1878, a borough council may in winter close their public swimming bath and allow it to be used for purposes of "healthful recreation" or exercise:—*Held*, that the letting of the bath for a cinematograph entertainment was a letting for a "healthful recreation" within the meaning of the above provision. *Att.-Gen.* v. *Shoreditch Borough Council* (No. 1), 58 S. J. 415; 30 T. L. R. 382—Eve, J. *See* next case.

A local authority fitted up and let a public swimming bath for certain afternoons and evenings every week during the winter season of 1913-14 for the purpose of cinematograph entertainments. At these entertainments music was performed and money taken at the doors. The authority had obtained a music licence. The Baths and Washhouses Act, 1878, s. 5, empowers a local authority for five months in any year, between November and March, to allow a public swimming bath "to be used as 'an empty building'" for "purposes of healthful recreation," subject to a proviso that it was not to be used for music. The Baths and Washhouses Act, 1896, s. 2, repealed this proviso, but enacted, by sub-section (*a*) of section 2, that before any such bath was used for "music" a licence must be obtained; and sub-section (*b*) of section 2 provided that no portion of the premises for which such licence was granted should be let "otherwise than occasionally," and that no money should be taken at the doors:—*Held*, that the bath was not being used as "an empty building," within section 5 of the Baths and Washhouses Act, 1878; that the "music" was not incidental merely, but required a licence; that the prohibitions in section 2, sub-section (*b*) of the Act of 1896 were therefore applicable and had been contravened, and that the letting was illegal. *Att.-Gen.* v. *Shoreditch Borough Council* (No. 2), 84 L. J. Ch. 769; [1915] 2 Ch. 154; 112 L. T. 626; 79 J. P. 369; 13 L. G. R. 1144; 59 S. J. 439; 31 T. L. R. 400—C.A.

Decision of Joyce, J. (13 L. G. R. 154), affirmed. *Ib.*

6. Omnibuses.

Regulation Prohibiting Passengers from Riding on Top of Omnibuses on Section of Route — Notice to Passenger — Refusal to Descend from Top—Delay of Omnibus—Wilful Obstruction of Corporation's Servants in Execution of their Duty.]—A municipal corporation, having statutory authority to run motor omnibuses, in view of the camber of the road on a section of the omnibus route made an order prohibiting passengers from riding on the top of their omnibuses whilst travelling over the section. The order was made in the interest of the passengers and notice thereof was exhibited on the top of each omnibus, but no reference thereto was made on the passengers' tickets. One of the corporation's by-laws provided that "No passenger or other person shall wilfully obstruct or impede any officer or servant of the Council in the execution of his duty upon or in connection with any motor omnibus."

The appellant, who had previous knowledge of the order and notice, was an outside passenger on a motor omnibus on this route, having paid his fare entitling him to travel over the section; and on the omnibus arriving at the beginning of the section, although requested by the conductor and an inspector to descend, and his attention having been again called to the notice, he refused to do so, stating that he had got his ticket and intended to ride on the top to the terminus. The appellant remained on top of the omnibus for some twenty minutes, during which time the inspector declined to allow the omnibus to proceed, and it was consequently delayed. The appellant was convicted of a breach of the by-law:—*Held*, that, as the corporation had not held themselves out as common carriers of passengers on the top of their omnibuses, or contracted to carry the appellant on the top of their omnibus over the section, he was not entitled to be carried as an outside passenger over the section; that his conduct amounted to wilful obstruction of the corporation's servants within the meaning of the by-law; and that therefore he was rightly convicted. *Baker* v. *Ellison*, 83 L. J. K.B. 1335; [1914] 2 K.B. 762; 111 L. T. 66; 78 J. P. 244; 12 L. G. R. 992; 24 Cox C.C. 208; 30 T. L. R. 426—D.

7. Small Holdings.

Compulsory Purchase of Land—Reservation of Minerals—Risk of Subsidence—Assessment of Compensation.]—Where a county council acquire the surface of land compulsorily under section 7 of the Small Holdings and Allotments Act, 1908, and the subjacent minerals are retained by the landowner, the arbitrator in estimating the compensation to be paid by the county council for the acquisition of the surface may properly leave out of consideration the risk of subsidence, because the Legislature affords a sufficient remedy by sections 77 and 78 of the Railways Clauses Consolidation Act, 1845 (incorporated in the Small Holdings and Allotments Act, 1908), which enable the council to require that the minerals be left unworked on payment of further compensation. The arbitrator may also leave out of consideration the question whether the county council is or is not in a position to avail itself of such remedy. *Carlisle (Earl) and Northumberland County Council, In re*, 105 L. T. 797; 75 J. P. 539; 10 L. G. R. 50—Channell, J.

—— **Petition for Payment out—Wilful Refusal to Convey.**]—After an order for compulsory purchase of land had been duly confirmed under section 39, sub-section 3 of the Small Holdings and Allotments Act, 1908, the solicitor for the owner wrote that he was advised by counsel that the order might be bad, and subsequently he wrote again refusing to convey, alleging the same advice:—*Held*, that there had been a wilful refusal to convey within the meaning of section 80 of the Lands Clauses Consolidation Act, 1845. *Jones and Cardiganshire County Council, In re*, 57 S. J. 374—Farwell, L.J.

Compensation to Tenant—Loss or Expense Directly Attributable to Quitting Holding.]—A county council being desirous of acquiring a certain holding for the purposes of the Small Holdings Act, by an agreement of January 24, 1912, agreed to pay the tenant 500*l.*, being the estimated amount of one year's profits of the farm, and also "to pay to the tenant such compensation for the loss or expense directly attributable to the quitting which the tenant may unavoidably incur upon and in connexion with the sale or removal of his household goods and his implements of husbandry, produce, and farm stock on or used in connexion with the land as he would have been entitled to under the Small Holdings Act, 1910, if his tenancy of the said farm had been terminated by a notice to quit as in the said Act stated." The tenant sold his farm stock by public auction and sent in his claim for compensation in connection therewith. Certain items of the claim were disputed by the council, and the matter eventually went to arbitration. The items more particularly in dispute were: (*a*) cost of refreshments at the sale, 34*l.* 11*s.* 8*d.*—this item referred to lunches and drink provided for those attending the sale; (*b*) valuation of farming stock and tenant right, 73*l.* 2*s.* 6*d.*; (*c*) loss on compulsory auction sale as against valuation, 442*l.* 0*s.* 6*d.*; (*d*) fee for settling the agreement of January 24, 2*l.* 2*s.* The umpire disallowed item (*a*), but found as a fact that it was reasonable in amount, and that it was customary and desirable at agricultural auction sales to provide refreshments for buyers and persons attending the sale. With respect to item (*b*) he stated that to make a valuation of the tenant's farming stock prior to sale was, in his opinion, a reasonable and prudent expenditure and one which a tenant was absolutely justified in incurring under the circumstances of the case, and he awarded to the tenant in respect of such valuation the sum of 21*l.*, which he considered was fair and ample. He did not award any sum for valuation of tenant right, as tenant right was not a subject with which he had authority to deal. With respect to item (*c*), the umpire allowed the sum of 181*l.* He allowed item (*d*), and found as a fact that it was not a charge for legal work, but was a charge made by the valuer for time and services in arranging and agreeing the basis of the agreement, and that it was a reasonable charge. On a Special Case stated on the award,—*Held*, that item (*a*), being found by the umpire to be reasonable and the provision of refreshments being customary and desirable at such sales, should be allowed; that item (*b*) for valuation of the stock should not be allowed; that as to item (*c*) the tenant was entitled to compensation for any loss or expense which he unavoidably incurred by the sale; and that item (*d*) could not be allowed, as a fee for settling the agreement was not an unavoidable expense incurred in connection with the sale. *Evans and Glamorgan County Council, In re*, 76 J. P. 468; 10 L. G. R. 805; 56 S. J. 668; 28 T. L. R. 517—Joyce, J.

8. Offensive Trades.

See also Vol. IX. 437, 1984.

Order of Local Authority Declaring Certain Trade to be Offensive Trade—Establishment of Trade before Making of Order.]—In order that a person may commit the offence under section 112 of the Public Health Act, 1875, as amended by section 51 of the Public Health Acts Amendment Act, 1907, of establishing an offensive trade within the district of an urban authority without their consent in writing, or of carrying on an offensive trade so established, the trade (which must have been established after the passing of the Act of 1875) must be one of the six offensive trades specified in section 112 of the Act of 1875, or be a trade which at the time it was established had been declared by order of the urban authority duly confirmed by the Local Government Board to be an offensive trade. *Butchers' Hide, Skin, and Wool Co.* v. *Seacome*, 82 L. J. K.B. 726; [1913] 2 K.B. 401; 108 L. T. 969; 77 J. P. 219; 11 L. G. R. 572; 23 Cox C.C. 400; 29 T. L. R. 415—D.

The appellants established in December, 1911, without the consent in writing of the urban authority, the trade of dealers in raw hides and skins. Such trade was subsequently declared by an order of the urban authority, duly confirmed by the Local Government Board, to be an offensive trade:—*Held*, that the appellants had not committed the offence of carrying on an offensive trade within the meaning of section 112 of the Act of 1875, as amended by section 51 of the Act of 1907, as their trade had been established before it was declared to be an offensive trade. *Ib.*

9. Nuisances.

Bungalows—Seaside Encampment—Alleged Public Nuisance.]—About forty bungalows of two or three rooms apiece constructed on footings above the level of the ground had been erected for occupation in the spring and summer months on some eleven acres of low-lying land between a sea-wall and the sea without notice to the rural district council. They were erected on separate sites or plots let at weekly rents. There were also a considerable number of tents on these sites. The land lay below the level of high tides, and no system of drainage was practicable. Sets of closets at different parts of the land were erected for men and women respectively, and their contents were removed and emptied on land at a distance from the residences. The water supply was from stand-pipes. In an action by the Attorney-General at the relation of the rural district council for an injunction to restrain the defendants from continuing an alleged public nuisance, and from continuing to maintain the bungalows in contravention of by-laws and from erecting more, and by the rural district council for specific performance of an agreement to take down existing bungalows,—*Held*, on the evidence, that the plaintiffs had failed to establish that the encampment was a nuisance to the public health. *Att.-Gen.* v. *Kerr*, 79 J. P. 51; 12 L. G. R. 1277—Lush, J.

Abatement—Sufficiency of Notice to Abate.]—A notice was served on the owner of certain premises under section 94 of the Public Health Act, 1875, requiring him to abate a nuisance arising from his allowing water to rise and accumulate in his cellar. The water came from a spring in the cellar. The notice continued: "and for that purpose to drain off the water, and to fill up the cellar, and to execute all such other works, and do all such other things as may be necessary for the abatement of the said nuisance":—*Held*, that the notice was bad—by Ridley, J., on the ground that, although it need not set out the work to be done in detail, it ought to set out the character of the work to be done—namely, pumping, and not draining; by Avory, J., and Lush, J., on the ground that it was ambiguous in that it might mean either that the owner was to effectively drain the water from the cellar or only to pump out the water then in the cellar. *Whatling* v. *Rees*, 84 L. J. K.B. 1122; 112 L. T. 512; 79 J. P. 209; 13 L. G. R. 274—D.

10. Food and Drink.

a. Sale of Unsound Meat.

See also Vol. IX. 443, 1984.

Local Government — Unsound Meat — Sale without Exposure for Sale — Jurisdiction to Inflict Penalty—"Sold or exposed for sale."]—On a prosecution under section 117 of the Public Health Act, 1875, as amended by section 28 of the Public Health Acts Amendment Act, 1890, for selling diseased meat intended for the food of man, it is necessary to prove that the meat has been exposed for sale by the defendant, and that the defendant was the owner of the meat at the time of the exposure for sale. The word "sold" in section 28 of the Act of 1890 gives jurisdiction to deal with the article of food and with the defendant on the termination of the exposure for sale by a sale—*per* Rowlatt, J. The appellants sold a diseased live bullock to a butcher, knowing that he intended to use it for human food, but they had not exposed it for sale. It was seized on the butcher's premises, and condemned by a Justice:—*Held*, that the appellants could not be convicted because they had not exposed the meat for sale. The article sold, the bullock, was not the same thing as the article seized and condemned, the meat; therefore the conviction was bad on that ground also—*per* Avory, J. *Bothamley* v. *Jolly*, 84 L. J. K.B. 2223; [1915] 3 K.B. 425; 31 T. L. R. 626—D.

Seizure on other than Seller's Premises after Sale — Condemnation — Jurisdiction to Inflict Penalty—"So seized."]—In order to give jurisdiction, under sections 116 and 117 of the Public Health Act, 1875, and section 28 of the amending Act of 1890, to inflict a penalty for selling, exposing for sale, depositing for the purpose of sale or of preparation for sale meat intended for the food of man and unfit for the food of man, it is not necessary that it should have been seized at the time when so sold or exposed. *Salt* v. *Tomlinson*, 80 L. J.

K.B. 897; [1911] 2 K.B. 391; 105 L. T. 31; 75 J. P. 398; 9 L. G. R. 822; 22 Cox C.C. 479; 27 T. L. R. 427—D.

Meat was seized on the premises of the medical officer of health for the district, who had received it from a person who had purchased it from the appellant on the previous day, and it was subsequently condemned by a Justice, it being found as a fact that it was unfit for the food of man at the time of the sale:—*Held*, that the appellant was rightly convicted of selling the meat when so unfit. *Ib.*

Possession of Diseased Meat—Proceedings by Police Officer—Consent of Attorney-General.]—A police officer is precluded by the provisions of section 253 of the Public Health Act, 1875, from taking proceedings, without the consent of the Attorney-General, under section 117, against a person for unlawfully having in his possession meat, for the purpose of preparation for sale and intended for the food of man, which is diseased. *Dodd* v. *Pearson*, 80 L. J. K.B. 927; [1911] 2 K.B. 383; 105 L. T. 108; 75 J. P. 343; 9 L. G. R. 646; 22 Cox C.C. 526; 27 T. L. R. 376—D.

Evidence of Possession at the Time of Seizure of Unsound Meat intended to be Sold for Food.]—Meat supplied for the use of a regiment was delivered at their barracks and rejected as unsound. It was subsequently found by the inspector of nuisances in a waggon on the premises of a slaughterer, and was condemned by a Justice. The appellant had after the seizure admitted his ownership of the meat to the inspector, and had said to him that it was perfectly fit for food. The appellant had also requested the medical officer of health to keep the meat for further examination on his behalf, and had told that officer that if it had not been seized he was prepared to sell it:—*Held*, that there was sufficient evidence to justify the Justices in finding that the meat was in the possession of the appellant when it was seized, and in convicting him under section 117 of the Public Health Act, 1875. *Bull* v. *Lord*, 9 L. G. R. 829—D.

Seizure of Meat Erroneously Alleged to be Unsound — Claim for Compensation.] — A veterinary surgeon, approved by the local authority under the Public Health (Scotland) Act, 1897, seized and carried away meat which appeared to him to be diseased, but which eventually did not prove to have been diseased. The owners of the meat claimed compensation from the local authority for the value of the meat, and presented an application to the Local Government Board, more than six months after the seizure of the meat, for the appointment of an arbiter to ascertain the compensation due. The local authority thereupon brought an action to interdict the application from proceeding:—*Held*, first, that the local authority were not relieved from liability by virtue of section 166 of the Public Health (Scotland) Act, the claim not being a claim of damages for an "irregularity" in the sense of that section, but a claim for compensation under section 164; secondly, that the proceedings were timeously taken, in respect that this was not the case of an "action or prosecution" for a "wrong" in the sense of section 166 of the Act which had to be brought within two months, nor of an "action, prosecution, or other proceeding" in the sense of section 1 of the Public Authorities Protection Act which had to be brought within six months. *Glasgow Corporation* v. *Smithfield and Argentine Meat Co.*, [1912] S. C. 364—Ct. of Sess.

Action against Medical Officer and Sanitary Inspector—Non-communication of Condition of Food.]—*See Weir* v. *Thomas*, *post*, col. 1073.

b. Adulteration of Food.

i. *Offences Generally.*

See also Vol. IX. 446, 1987.

Refusing to Sell to Inspector for Analysis—Milk Kept in Counter Pan—Milk only Sold Mixed with Something Else—"Exposed to sale, or on sale by retail."]—The respondent, who kept an eating house, had on the counter in his shop a pan labelled "Pure milk." The appellant, who was an inspector under the Sale of Food and Drugs Acts, asked to be supplied with a glass of milk from the counter pan for the purpose of analysis. The respondent's servant refused to serve him, as he did not sell milk alone, the milk being on the premises only for the purpose of being added to cups of tea, coffee, cocoa, or glasses of soda water:—*Held*, that the milk was "exposed to sale, or on sale by retail" within the meaning of section 17 of the Sale of Food and Drugs Act, 1875, notwithstanding that it was only sold mixed with something else, and that therefore the respondent was guilty of the offence under section 17 of the Act of 1875 of refusing to sell to an inspector an article of food "exposed to sale or on sale by retail" in his shop. *McNair* v. *Terroni*, 84 L. J. K.B. 357; [1915] 1 K.B. 526; 112 L. T. 503; 79 J. P. 219; 13 L. G. R. 377; 31 T. L. R. 82—D.

Notification of Intention to Submit Article to Analysis—Notification to "seller or his agent selling the article"—Notification to Agent other than Agent Selling the Article.]—Section 14 of the Sale of Food and Drugs Act, 1875, which requires that a person purchasing an article with the intention of submitting it to analysis shall, after the purchase is completed, forthwith "notify to the seller or his agent selling the article" his intention to have the same analysed by the public analyst, may be sufficiently complied with by a notification to an agent of the seller other than the agent who actually sold the article:—So *held* by Lord Alverstone, C.J., and Avory, J.; Pickford, J., dissenting. *Davies* v. *Burrell*, 81 L. J. K.B. 736; [1912] 2 K.B. 243; 107 L. T. 91; 76 J. P. 285; 10 L. G. R. 645; 23 Cox C.C. 81; 28 T. L. R. 389—D.

Milk not of the Nature, Substance, and Quality Contracted to be Sold—Milk not Tampered with.]—The respondent was charged on an information with having consigned to a purchaser milk which was not of the nature, substance, and quality contracted to be sold, the milk being deficient in fat to the extent of 26 per cent. of the minimum amount fixed

by the Sale of Milk Regulations, 1901. At the hearing the facts stated in the information were proved or admitted, and evidence was also given and admitted that another consignment of the same morning's milk from the same cows shewed on analysis 3.1 per cent. fat (being in excess of the said minimum), and that the morning's milk from the same cows seven days later shewed on analysis a deficiency in fat below such minimum of 3 per cent. only. The Justices, on this evidence, were of opinion that, although the sample, the subject of the summons, was not of the nature, substance, and quality contracted to be sold, yet the respondent had not tampered with the milk and that the milk was as it came from the cows. They accordingly dismissed the information :—*Held*, that the Case must be remitted to the Justices to convict the respondent unless further evidence was given before them bearing upon the question whether or not the difference between the quantities of fat in the two consignments on the day in question was consistent with there having been ordinary milking. *Marshall* v. *Skett*, 108 L. T. 1001; 77 J. P. 173; 11 L. G. R. 259; 23 Cox C.C. 435; 29 T. L. R. 152—D.

Deficiency of Fat in Milk Due to Method of Feeding.]—J. was charged with selling "sweet milk which was not of the nature, substance, and quality of sweet milk, the article demanded by the purchaser, in respect that" it did not contain the percentage of milk fat and solids required by the Regulations, "contrary to the Sale of Food and Drugs Act, 1875, s. 6, and to the Sale of Milk Regulations, 1901." It was proved that the milk did not contain the percentage of milk fat and solids required by the Regulations; that it had not been tampered with or adulterated, but had been sold in the same condition as yielded by the cows; and that the deficiency of milk fat and solids was due to the method of feeding, which had been purposely adopted to produce quantity of milk irrespective of quality :—*Held*, that the milk was "genuine," and that the accused was not guilty of the offence charged. *Smithies* v. *Bridge* (71 L. J. K.B. 555; [1902] 2 K.B. 13) commented on. *Scott* v. *Jack*, [1912] S. C. (J.) 87—Ct. of Just.

Milk Deficient in Fat—Proof of Genuineness—Onus.]—The Sale of Milk Regulations, 1901, provide that where a sample of milk contains less than 3 per cent. of milk fat it shall be presumed, "until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk fat, or the addition thereto of water" :—*Held*, that the onus of proof so imposed upon a seller of milk was sufficiently discharged by the evidence of the accused himself and his mother and servants (which was not disbelieved) that the milk had not been tampered with, and that it was not necessary for him to have the corroboration of a neutral witness or witnesses. *Lamont* v. *Rodger*, [1911] S. C. (J.) 24—Ct. of Just.

Deficiency in Milk Solids—12 per cent. of Added Water—Contents of Churn not Stirred Prior to Purchase—Offence of Trivial Nature.]—The respondent was charged with selling milk not of the nature, substance, and quality demanded by the appellant. The milk purchased was analysed, and the analyst stated in his certificate that in his opinion the sample contained 12 per cent. of added water. The churn from which the milk was taken was not stirred prior to the quantity purchased by the appellant being taken therefrom. No evidence was given, or called, by the respondent, nor did he require the public analyst to be called. The Justices stated that they were of opinion from their own knowledge that the sample taken by the appellant did not fairly represent the whole contents of the churn, and that the slight deficiency in the standard prescribed by the Sale of Milk Regulations, 1901, might be due to causes other than abstraction of solids or the addition of water, and they did not feel justified in convicting the respondent on so small a percentage of water in excess of the Regulations, having regard to the fact that the milk supplied was of good quality; they were further of opinion that, in any event, the offence was of so trivial a nature that they were justified in dismissing the information :—*Held*, that in view of the findings of the Justices the Court could not say that they were not entitled to come to the conclusion at which they arrived. *Preston* v. *Redfern*, 107 L. T. 410; 76 J. P. 359; 10 L. G. R. 717; 23 Cox C.C. 166; 28 T. L. R. 435—D.

Sample Taken "in course of delivery."]—The respondent, a milkman, drew milk from a can and delivered it to a customer who came out of her house with a jug to get it. He was under contract to deliver to the customer pure milk from one cow. As soon as the customer received the milk she went back with it into her house and shut the door. The appellant, an inspector under the Sale of Food and Drugs Acts, then went to the respondent and bought some milk from the same can, being told by the respondent that the milk was diluted. The appellant then knocked at the door of the customer's house, and the door was opened by the customer, who still had the jug in her hand, and said that the milk in the jug was exactly as she received it. The appellant took a sample from the milk in the jug and sent it, with the sample bought from the respondent, for analysis. The result of the analysis was the same as to each sample, both being adulterated with 30 per cent. of water. In a prosecution for selling to the customer milk which had been adulterated the Justices held that the sample taken from the milk supplied to her had not been taken by the appellant while the milk was "in course of delivery" to the customer within section 3 of the Sale of Food and Drugs Act Amendment Act, 1879, and they accordingly dismissed the charge :—*Held* (Lord Alverstone, C.J., dissenting), that there was evidence upon which the Justices could find that there was a complete delivery of the milk before the sample was taken by the appellant. *Helliwell* v. *Haskins*, 105 L. T. 438; 9 L. G. R. 1060; 75 J. P. 435; 27 T. L. R. 463; 22 Cox C.C. 603—D.

A consignment of forty-two gallons of milk in six barrels, five of which contained eight

gallons each and the remaining one two gallons, was delivered at a milk shop. It was there sampled by the sanitary inspector, the method adopted being as follows: Four of the five eight-gallon barrels were poured separately into a ten-gallon dish, and a sample of each taken, and the last of the five eight-gallon barrels and the sixth barrel of two gallons were poured together into the dish, and a sample taken. Each of the five samples was separately analysed, and the average of these analyses was taken as representing the quality of the whole consignment:—*Held*, that this was a fair method of sampling. *Lamont* v. *Rodger*, [1911] S. C. (J.) 24—Ct. of Just.

Per Lord Ardwall.—It would have been preferable to have mixed all the samples together before the analysis. *Ib.*

Skimmed Milk.]—The Sale of Food and Drugs Act, 1899, s. 4, sub-s. 1, empowers the Board of Agriculture to make regulations determining what deficiency in the constituents of "genuine milk, cream, butter, or cheese," or what addition of extraneous matter "in any sample of milk (including condensed milk), cream, butter, or cheese," shall raise a presumption that the same is not genuine:—*Held*, that "milk" included skimmed milk, and that "genuine" meant merely "unadulterated"; and accordingly that the Board of Agriculture had power under the section to make regulations as to skimmed milk. *Gordon* v. *Lore*, [1911] S. C. (J.) 75—Ct. of Just.

Cream—Sale of Mixture as Article of Commerce—Notice to Purchaser by Label.]—Section 6 of the Sale of Food and Drugs Act, 1875, provides that any person selling an article of food not of the nature, substance, and quality of the article demanded by the purchaser, shall be liable to a penalty, except in the case of any matter or ingredient not injurious to health being added to the food because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food, or conceal the inferior quality thereof. Section 8 of the Act provides that, in respect of the sale of an article of food mixed with any matter or ingredient referred to in section 6, no person shall be guilty of an offence under that section if at the time of delivering the article he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article, to the effect that the same is mixed. A purchaser asked for cream and was supplied with a mixture of cream and boric acid, which mixture was poured from a can into an earthenware pot. Attached to this pot was a label on which were legibly printed these words: "Preserved cream containing boric acid not exceeding 0.5 per cent." After filling the pot the vendor placed it in a plain paper bag for the convenience of the purchaser so quickly that the purchaser had no opportunity of seeing the label, but there was no intention on the part of the vendor of concealing the label from him:—*Held*, that the vendor had not supplied to the person receiving the pot the notice required by section 8 of the Act, inasmuch as he had omitted to bring to his mind the fact that there was a label thereon. *Batchelour* v. *Gee*, 83 L. J. K.B. 1714; [1914] 3 K.B. 242; 111 L. T. 256; 78 J. P. 362; 12 L. G. R. 931; 24 Cox C.C. 268; 30 T. L. R. 506—D.

Pearks, Gunston & Tee v. *Houghton* (71 L. J. K.B. 385; [1902] 1 K.B. 889) followed. *Jones* v. *Jones* (58 J. P. 653) dissented from. *Ib.*

—— **Added Matter or Ingredient—Boron Preservative—"Injurious to health"—Notice to Purchaser.**]—The appellant, a dairyman, sold to a purchaser cream mixed with a preservative. Nothing was said by the appellant at the time of the sale, but opposite to the entrance of his shop a notice was exhibited stating that all cream sold at the establishment contained a small portion of boron preservative to keep the cream "sweet and wholesome." The purchaser read the notice before he was supplied with the cream. Upon an information under section 6 of the Sale of Food and Drugs Act, 1875, charging the appellant with having sold "to the prejudice of the purchaser" an article of food which was not of the nature, substance, and quality of the article demanded by him, the Justices found that the article sold was injurious to health, and convicted the appellant:—*Held*, that there was no evidence that the sale was a sale "to the prejudice of the purchaser" within the meaning of section 6, inasmuch as he was informed by the notice that the cream was mixed. *Held*, further, that for the purposes of section 6 the fact that the article was found to be injurious to health was immaterial. *Williams* v. *Friend*, 81 L. J. K.B. 756; [1912] 2 K.B. 471; 107 L. T. 93; 76 J. P. 301; 10 L. G. R. 494; 23 Cox C.C. 86; 28 T. L. R. 407—D.

Mixture of Butter and Margarine—Evidence—Maximum Legal Proportion of Butter—Proportion Relative thereto in Mixture—"Quality."]—By section 8 of the Sale of Food and Drugs Act, 1899, it is unlawful to sell margarine containing more than 10 per cent. of butter fat. Hence where the defendant sold, as a mixture, a mixture of butter and margarine which contained 4½ per cent. of butter fat,—*Held*, that there was no evidence to justify a finding that it was merely colourable, as the proportion to be considered was that of the butter in the mixture to the legal maximum of butter fat it could contain, and not its proportion to the total quantity of the mixture. "Quality," in section 6 of the Sale of Food and Drugs Act, 1875, means commercial quality. *Anness* v. *Grivell*, 85 L. J. K.B. 121; [1915] 3 K.B. 685; 79 J. P. 558; 13 L. G. R. 1215—D.

Admixture of Coffee and Chicory—Notice to Purchaser by Label—"Supply . . . a notice."]—The appellant bought at the respondent's shop some half-dozen articles, including half a pound of coffee. These, in accordance with trade custom and for the

purchaser's convenience, the respondent wrapped up together in a parcel, and handed to the appellant. When the latter opened the parcel he immediately saw a label on the coffee bearing a notice, "This is sold as a mixture of coffee and chicory." He had had no opportunity of seeing this label before :—*Held* (Avory, J., *dissentiente*), that the respondent had complied with section 8 of the Sale of Food and Drugs Act, 1875, which enacts that where the article of food or drug is mixed the seller "shall supply to the person receiving the same a notice, by a label," and that he had not sold to the prejudice of the purchaser an article of food not of the nature, substance, and quality demanded within the meaning of section 6 of the Act. *Jones* v. *Jones* (58 J. P. 653) followed. *Batchelour* v. *Gee* (83 L. J. K.B. 1714; [1914] 3 K.B. 242) not followed. *Clifford* v. *Battley*, 84 L. J. K.B. 615; [1915] 1 K.B. 531; 112 L. T. 765; 79 J. P. 180; 13 L. G. R. 505; 31 T. L. R. 117—D.

Sardines in Oil.]—The respondent requested the appellant to supply him with nine tins of sardines in olive oil. The tins sold to him by the appellant, in fact, contained sardines in cotton-seed oil, an oil which is not injurious to health :—*Held*, that there had been a sale by the appellant "to the prejudice of the purchaser" within the meaning of section 6 of the Sale of Food and Drugs Act, 1875. *Winterbottom* v. *Allwood*, 84 L. J. K.B. 1225; [1915] 2 K.B. 608; 112 L. T. 590; 79 J. P. 161; 13 L. G. R. 551; 31 T. L. R. 68—D.

Sugar — Demerara Sugar — Coloured Mauritius Sugar — Place of Origin.] — The respondent was summoned, under section 6 of the Sale of Food and Drugs Act, 1875, for selling as "Demerara sugar" crystallised cane sugar grown in Mauritius and coloured with an organic dye. Evidence was given that the sugar was equal to the best West Indian cane sugar and that the public expect under the designation "Demerara sugar" a yellow crystallised cane sugar without reference to its origin. The magistrate found that "Demerara sugar" had become a generic term referring to a process and not to a place, and he dismissed the summons :—*Held*, that although the sugar was not grown in Demerara, yet as it was "Demerara sugar" in every other respect, the magistrate's decision must be affirmed. *Anderson* v. *Britcher*, 110 L. T. 335; 78 J. P. 65; 12 L. G. R. 10; 24 Cox C.C. 60; 30 T. L. R. 78—D.

Lardine — Percentage of Water.] — The respondents were summoned for having sold to the prejudice of the appellant a certain article of food, to wit lardine, which was not of the nature, substance, and quality demanded by the appellant. It was proved that the appellant having asked for one pound of lardine was supplied with one pound of a substance which contained the following percentages of ingredients : Fat, &c., 25 per cent., water 25 per cent.; that lardine is a substitute for, and is sold at a lower price than, lard (which contains no water), but that there is no statutory standard for lardine; that during the three months ending June 30, 1910, twenty-six samples of lard substitutes were analysed by the county analyst, of which twenty-two samples contained no water and that four samples did contain water; that during the three months ending September 30, 1910, eight samples or lard substitutes were analysed, six of them containing no water and two containing water. The Justices were of opinion that, there being no statutory standard for lardine, and the only evidence before them of any commercial standard being the composition of the samples analysed by the county analyst, they were not justified in holding that lardine must contain no water; nor, in the absence of evidence as to the percentage of water in such samples, did they consider the evidence sufficient to enable them to fix a percentage of water permissible, and to say that what was sold by the respondent was not lardine. The Justices accordingly dismissed the summons : —*Held* (Bray, J., dissenting), that the Justices ought to consider whether there was adulteration or not, and that the case must go back to them for this purpose. *Rudd* v. *Skelton Co-operative Society*, 104 L. T. 919; 75 J. P. 326; 22 Cox C.C. 469—D.

ii. *Analysis.*

See also Vol. IX. 453, 1995.

Notification of Intention to Submit Article to Analysis—Notification to "seller or his agent selling the article" — Notification to Agent other than Agent Selling the Article.] —Section 14 of the Sale of Food and Drugs Act, 1875, which requires that a person purchasing an article with the intention of submitting it to analysis shall, after the purchase is completed, forthwith "notify to the seller or his agent selling the article" his intention to have the same analysed by the public analyst, may be sufficiently complied with by a notification to an agent of the seller other than the agent who actually sold the article :—So *held* by Lord Alverstone, C.J., and Avory, J.; Pickford, J., dissenting. *Davies* v. *Burrell*, 81 L. J. K.B. 736; [1912] 2 K.B. 243; 107 L. T. 91; 76 J. P. 285; 10 L. G. R. 645; 28 T. L. R. 389—D.

Sample—Purchase for Analysis—Deterioration of Sample—Mode of Sealing up—Impossibility of Analysis — Condition Precedent to Prosecution.]—The sale of sardines in olive oil is not a sale of two separate articles—namely, sardines and oil—but of one article, and it is not necessary, under section 14 of the Sale of Food and Drugs Act, 1875, for the respondent to give the appellant a separate sample of each. *Winterbottom* v. *Allwood*, 84 L. J. K.B. 1225; [1915] 2 K.B. 608; 112 L. T. 590; 79 J. P. 161; 13 L. G. R. 551; 31 T. L. R. 68—D.

It is not a condition precedent to proceedings under section 14 that each part of the article shall be "sealed or fastened up" in such a manner as to be capable of effective

analysis at the date of the service of the summons; but the purchaser is bound to take reasonable care in regard to the sealing up. *Ib.*

Certificate.] — An analyst's certificate in respect of certain skimmed milk was as follows: Solids not fat, 7.35; fat, 1.31; water, 91.34. Total, 100.00. Ash, .59: — *Held*, that the certificate was not open to the objection that it was unintelligible because the "solids" were not described as "milk solids," or because the amount of the ash was added. *Gordon* v. *Love*, [1911] S. C. (J.) 75—Ct. of Just.

Serving of Certificate with Summons.]—*See Grimble & Co.* v. *Preston*, *post*, col. 913, and *Haynes* v. *Davis*, *post*, col. 914.

iii. *Persons Liable.*

See also Vol. IX. 457, 2001.

Sale by "Person"—Limited Company.]—A limited company are liable to be convicted, under section 20, sub-section 6 of the Sale of Food and Drugs Act, 1899, for giving to a purchaser a false warranty in writing in respect of an article of food or drug sold by the company as principal or agent. *Chuter* v. *Freeth & Pocock*, 80 L. K.B. 1322; [1911] 2 K.B 832; 105 L. T. 238; 75 J. P. 430; 9 L. G. R. 1055; 27 T. L. R. 467; 22 Cox C.C. 573—D.

"Carrying on trade of purveyor of milk"—Small Quantity of Milk Sold at Refreshment Buffet — Necessity for Registration.] — The appellants were the occupiers of a refreshment buffet at a railway station in London, and among other articles sold there by them was milk, which they obtained from a firm of F. & Sons, who undertook to supply it guaranteed pure and to convey it to the appellants as they might require. The sale of milk by the appellants at the buffet in question was extremely small, amounting to about three or four glasses per week, the takings for milk being about 4*d.* out of 50*l.* per week. In no circumstances was milk sold for consumption off the premises, but it was never refused when asked for for consumption on the premises:—*Held*, that the appellants did not at the buffet in question "carry on the trade of purveyors of milk" within the meaning of the Dairies, Cowsheds, and Milkshops Order, 1885, and therefore that it was not necessary for them to be registered as purveyors of milk in respect of that buffet. *Spiers & Pond, Lim.* v. *Green*, 82 L. J. K.B. 26; [1912] 3 K.B. 576; 77 J. P. 11; 10 L. G. R. 1050; 29 T. L. R. 14—D.

Sale by Shop Assistant—Company Carrying on Business — Liability of Director and Principal Shareholder.] — Butter containing margarine was sold to the respondent's representative by an assistant at a shop of which a limited company were the proprietors. The appellant, a director of the company, was practically the only shareholder. He was also the secretary and general manager of the company's business, but was not on the premises at the time of the sale. Upon an information charging the appellant with an offence under section 6 of the Sale of Food and Drugs Act, 1875, the Justices found that the assistant was a person employed by the appellant as a salesman, and convicted the appellant of the offence charged:—*Held*, that the assistant was employed, not by the appellant, but by the company, which was a separate entity, and that the appellant was therefore improperly convicted. *Booth* v. *Helliwell*, 83 L. J. K.B. 1548; [1914] 3 K.B. 252; 111 L. T. 542; 78 J.P. 223; 12 L. G. R. 940; 24 Cox C.C. 361; 30 T. L. R. 529—D.

Unauthorised Sale by Servant.] — In the prosecution of a dairyman for selling, by the hand of his servant, milk which was not genuine, it was proved that the servant who sold the milk had no authority to do so, his duty being merely to deliver milk to his master's customers—*Held*, that as the servant had exceeded his authority in selling the milk, there had been no sale by the accused, and that he must therefore be acquitted. *Lindsay* v. *Dempster*, [1912] S. C. (J.) 110—Ct. of Just.

iv. *Prosecution.*

See also Vol. IX. 458, 2002.

Jurisdiction of Justices—Place of Delivery — County — Petty Sessional Division.] — The provision in section 20 of the Sale of Food and Drugs Act, 1875, that proceedings may be taken for an offence against the Act "before any Justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser," authorises the taking of proceedings in any part of the county in which delivery took place, and does not require that they should be taken in the particular petty sessional division in which delivery took place. *Rex* v. *Beacontree Justices; Rex* v. *Wright*, 84 L. J. K.B. 2230; [1915] 3 K.B. 388; 113 L. T. 727; 79 J. P. 461; 13 L. G. R. 1094; 31 T. L. R. 509—D.

Article Intended to be Used for Adulteration of Butter—Sample Taken by Officer for Analysis—Necessity for Division into Parts—Limit of Time for Instituting Proceedings.] —Where an officer acting under the powers conferred by section 2, sub-section 1 of the Butter and Margarine Act, 1907, enters registered premises and takes a sample for analysis of any article capable of being used for the adulteration of butter, margarine, margarine cheese, or milk-blended butter, it is not a condition precedent to the institution of a prosecution of the occupier of the premises under section 3 of the Act that the officer should have notified the occupier of his intention to have the sample analysed by the public analyst, or shall have divided it into parts or otherwise have complied with the provisions of section 14 of the Sale of Food and Drugs

Act, 1875; and section 19, sub-section 1 of the Sale of Food and Drugs Act, 1899, which prescribes a time limit for a prosecution, does not apply to such prosecution. Principle laid down in *Rouch* v. *Hall* (50 L. J. M.C. 6; 6 Q.B. D. 17) applied. *Monro* v. *Central Creamery Co.*, 81 L. J. K.B. 547; [1912] 1 K.B. 578; 106 L. T. 114; 76 J. P. 131; 10 L. G. R. 134; 22 Cox C.C. 682—D.

Information by Inspector—Proof of Appointment.]—The appellant preferred an information against the respondent under section 6 of the Sale of Food and Drugs Act, 1875, for selling whisky which was not of the nature, substance, and quality demanded by the appellant. On the hearing before the Justices the appellant stated that he was an inspector under the Sale of Food and Drugs Act. He was not cross-examined as to his appointment, nor asked to produce it. The respondent's solicitor thereupon contended that it was necessary for the appellant to produce his appointment as inspector, and that, as he had not done so, the case should be dismissed. The Justices were of opinion that it was necessary that the appellant should have formally proved his appointment, and dismissed the information, refusing an application for an adjournment:—*Held*, that, assuming that it was necessary for the appellant to prove his appointment as inspector, there was sufficient *prima facie* evidence before the Justices that he was an inspector, and that they were wrong in dismissing the information. *Ross* v. *Helm*, 82 L. J. K.B. 1322; [1913] 3 K.B. 462; 107 L. T. 829; 77 J. P. 13; 11 L. G. R. 36; 23 Cox C.C. 248—D.

Semble (*per* Channell, J., and Avory, J.), that upon an information under section 6 of the Act of 1875 it is unnecessary for the informant to prove that he is an inspector. *Ib.*

False Warranty — Where Given — Vinegar —Jurisdiction.]—Where a false warranty in respect of food or drugs is sent by post to a purchaser or sent to him with the goods purchased, the Justices of the place where the warranty is received have jurisdiction to deal with the offence. *Grimble & Co.* v. *Preston*, 83 L. J. K.B. 347; [1914] 1 K.B. 270; 110 L. T. 115; 78 J. P. 72; 12 L. G. R. 382; 24 Cox C.C. 1; 30 T. L. R. 119—D.

Analyst's Certificate not Served with Summons — Waiver.] — An objection to the jurisdiction of Justices, on the ground that section 19, sub-section 2 of the Sale of Food and Drugs Act, 1899—which provides that in any prosecution under the Sale of Food and Drugs Acts there must be served with the summons a copy of any analyst's certificate obtained on behalf of the prosecutor—has not been complied with, is waived by the defendant's advocate cross-examining the witnesses for the prosecution; and he cannot take the objection when he is called upon to open his defence. *Ib.*

The appellants, brewers in London, on receipt of an order from a grocer at Nuneaton, Warwickshire, sent him by carrier some vinegar labelled "Guaranteed pure malt vinegar, free from added acid, warranted unadulterated," and also at the same time an invoice by post containing these words: "All our vinegar warranted unadulterated." A summons to appear before the Justices at Nuneaton on a charge of having given a false warranty to the grocer in respect of the vinegar was served on the appellants, but no copy of the analyst's certificate obtained on behalf of the prosecutor was served therewith. On the hearing of the summons the appellants' solicitor cross-examined the witnesses for the prosecution, and at the end of the case for the prosecution objected to the jurisdiction of the Justices, on the grounds that, first, the warranty was not given at Nuneaton, but in London; and secondly, that no copy of the analyst's certificate had been served with the summons. The Justices overruled the objections:—*Held*, on a Case stated by the Justices, that their decision was right. *Ib.*

Semble, that the omission to serve a copy of the analyst's certificate together with the summons could not have been cured, either by amendment or adjournment, if a preliminary objection had been taken thereto. *Ib.*

—— Dismissal of Summons—Issue of Second Summons—Autrefois Acquit.]—The appellant was summoned for an offence under the Sale of Food and Drugs Act, 1875. At the hearing of the summons it appeared that the analyst's certificate had not been served on the appellant with the summons, as required by section 19, sub-section 2 of the Sale of Food and Drugs Act, 1899, and the magistrate thereupon dismissed the case. Subsequently a fresh summons was issued in respect of the same offence and based on the same facts, and on this occasion was served on the appellant with the certificate. At the hearing of this second summons the appellant contended that the matter was *res judicata*, and that the proceedings were therefore bad. The magistrate considered that the appellant had not been in peril on the first occasion, and that, consequently, he could not raise a good plea of *autrefois acquit*, and proceeded to convict. The appellant appealed:—*Held*, on the authority of *Grimble & Co.* v. *Preston* (83 L. J. K.B. 347; [1914] 1 K.B. 270), that the service of the certificate with the summons was not a condition precedent to the jurisdiction of a magistrate to try a summons under the Sale of Food and Drugs Acts. The appellant, therefore, had been in peril at the hearing of the first summons and could not be put on his trial again for the same offence, and under the circumstances the magistrate was wrong in convicting him. *Haynes* v. *Davis*, 84 L. J. K.B. 441; [1915] 1 K.B. 332; 112 L. T. 417; 79 J. P. 187; 13 L. G. R. 497—D.

Per Ridley, J.: A man who has been in peril and acquitted is entitled to protection from any further proceedings with reference to the same offence, whether the acquittal is by the verdict of the jury on the merits, or on some point of law. *Rex* v. *Galway (Justices)* ([1906] 2 Ir. R. 499) principle applied. *Ib.*

Per Lush, J. (dissenting): The service of the certificate with the summons was a condition precedent to the magistrate having jurisdiction. The appellant was therefore never in peril on the first occasion. An

acquittal of a charge on a purely technical ground which operates as a bar to the adjudication does not entitle a defendant to raise a successful plea of *autrefois aequit*. *Ib.*

v. *Defences to Prosecution.*

See also Vol. IX. 460, 2005.

Written Warranty — Sufficiency.]—In proceedings under the Sale of Food and Drugs Acts by an inspector against a retail milk dealer for selling milk not of the nature, substance, and quality demanded, on the ground that a certain percentage of water had been added to the milk, the dealer relied upon the warranty of his vendors, a limited company, as a defence, and claimed, under section 25 of the Sale of Food and Drugs Act, 1875, to be discharged from the prosecution. The warranty relied upon consisted of the following agreement by the company: "The said S. S. and G. Dairies Limited purchase all milk sold by them under a warranty of its purity from the farmers, and agree to put the same on rail thoroughly well cooled over a refrigerator, and guarantee it as such up to the time of delivery at the above address":—*Held*, that this was a warranty of the purity of the milk as delivered at the dealer's address, upon which he was entitled to rely under section 25, and not merely a guarantee that the milk should arrive "thoroughly well cooled over a refrigerator." *Jackling* v. *Carter*, 107 L. T. 24; 76 J. P. 292; 10 L. G. R. 632; 23 Cox C.C. 54—D.

Notice of Defence—"Sent to the purchaser"—"Within seven days after service of summons"—Notice Put into Post within Seven Days — Notice Reaching Purchaser after Expiration of Seven Days.]—Section 20 of the Sale of Food and Drugs Act, 1899, provides that "A warranty or invoice shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts unless the defendant has, within seven days after service of the summons, sent to the purchaser a copy of such warranty or invoice, with a written notice stating that he intends to rely on the warranty or invoice":—*Held*, that the word "sent" simply meant despatched, and that the section was complied with if the defendant put the documents into the post within seven days, even although they were not received by the party to whom they were sent until after the expiration of the seven days. *Retail Dairy Co.* v. *Clarke*, 81 L. J. K.B. 845; [1912] 2 K.B. 388; 106 L. T. 848; 76 J. P. 282; 10 L. G. R. 547; 23 Cox C.C. 6; 28 T. L. R. 361—D.

Notice Sent by Defendant to Person Giving Warranty of Intention to Rely upon Warranty—Time within which Notice must be Sent.]—Section 20 of the Sale of Food and Drugs Act, 1899, provides that "A warranty or invoice shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts unless the defendant has, within seven days after service of the summons, sent to the purchaser a copy of such warranty or invoice with a written notice stating that he intends to rely on the warranty or invoice, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person":—*Held*, that the words "within seven days after service of the summons" did not apply to the notice to be sent to the person giving the warranty, and that the words "within a reasonable time" could not be read into the section as applying to such notice; it was sufficient if, at the time the Court had to decide whether a warranty or invoice was available to the defendant as a defence, notice had been given by the defendant to the person giving the warranty or invoice of his intention to rely on the warranty or invoice as a defence. *Marcus* v. *Crook*, 83 L. J. K.B. 1376; [1914] 3 K.B. 173; 111 L. T. 461; 78 J. P. 430; 12 L. G. R. 923; 24 Cox C.C. 328; 30 T. L. R. 538—D.

Semble, the Court were not bound to grant an adjournment of the hearing in order to enable the defendant to give notice to the warrantor of his intention to rely on the warranty as a defence. *Ib.*

Written Warranty — Vendors' Responsibility to Cease after Delivery other than under Food and Drugs Act.]—By an agreement made between the appellant and a dairy company, the company agreed to supply the appellant with the whole of the new milk required by him in his business as a milk seller. The agreement contained the following provisions: "The company hereby warrants each and every consignment of milk delivered under this contract to be pure, genuine new milk with all its cream according to the conditions of the Food and Drugs Act . . . The company take great precautions to obtain a supply of pure milk with all its cream and to deliver the same in that condition to the buyer. It is therefore agreed that no responsibility is taken by the company after delivery other than under the Food and Drugs Act, and that for all other purposes the buyer must satisfy himself at the time of delivery that the milk is sweet, sound, pure, and contains all its cream, and if the milk is accepted by the buyer he shall not be entitled to make any claim for compensation, damages or costs upon the company afterwards in respect of any milk which shall been accepted by him under this contract" The appellant sold certain milk in the same state as that in which he purchased it from the dairy company, and as, on analysis, it was found to be deficient in fat, proceedings were taken against him for selling to the prejudice of the purchaser milk which was not of the nature, substance, and quality demanded. The appellant contended that the agreement under which he purchased the milk constituted a written warranty within section 25 of the Sale of Food and Drugs Act, 1875, and that he was entitled to the protection of that section. The magistrate was of opinion that the agreement was so qualified as not to amount to a written warranty within section 25, and he accordingly convicted the appellant:—*Held*, that the conviction was wrong, as the agreement constituted a written warranty within section 25. *Wilson* v. *Playle* (88 L. T. 554) followed. *Plowright* v. *Burrell*, 82 L. J. K.B. 571; [1913] 2 K.B.

362; 108 L. T. 1006; 77 J. P. 245; 11 L. G. R. 457; 23 Cox C.C. 438; 29 T. L. R. 398—D.

Selling with False Warranty — Time for Laying Information.]—On August 9, 1910, the appellants, wholesale milk dealers, agreed to supply to a retail firm all the milk which the firm might require at one of their branches, and at the same time gave them a written warranty by which they warranted that all new milk which might thereafter be supplied by the appellants should be pure new milk with all its cream and unadulterated. On January 17, 1911, the purchasers received from the appellants a consignment of milk which was not in accordance with the warranty. On February 15, 1911, an information was laid against the appellants charging them with having given a false warranty in respect of the milk, contrary to section 20, sub-section 6 of the Sale of Food and Drugs Act, 1899:—*Held*, that the warranty was a continuing one, and therefore applied to all subsequent deliveries of milk by the appellants to the purchasers; that the six calendar months limited by section 11 of the Summary Jurisdiction Act, 1848, for laying such informations ran from the date of each delivery, and not from the date of the original warranty; and that the information laid against the appellants was therefore in time. *Thomas, Lim.* v. *Houghton*, 81 L. J. K.B. 21; [1911] 2 K.B. 959; 105 L. T. 825; 75 J. P. 523; 9 L. G. R. 1142; 22 Cox C.C. 628—D.

Person Giving Warranty having Reason to Believe that Statements in Warranty were True—Evidence.]—The appellants, wholesale dealers in milk, who purchased their milk from farmers in the country, were charged with having given to a purchaser from them a false warranty in writing. The milk in respect of which they gave the warranty in question was received from a farmer with whom they had dealt for three years, and during that time nothing had occurred to lead them to suppose that the milk was not of the proper standard. The farmer had given the appellants a warranty with the milk in question. The appellants having been convicted,—*Held*, on the facts, that when the appellants gave the warranty they had reason to believe that the statements contained therein were true within section 20, sub-section 6 of the Sale of Food and Drugs Act, 1899, and that the conviction must therefore be quashed. *Dairy Supply Co.* v. *Houghton*, 106 L. T. 220; 76 J. P. 43; 10 L. G. R. 208; 22 Cox C.C. 704; 28 T. L. R. 94—D.

c. Margarine.

See also Vol. IX. 464, 2011.

Printed Matter on Wrapper — Fancy or Descriptive Name — "On" the Wrapper — —"In" any Wrapper.]—The words "in any wrapper" in section 8 of the Butter and Margarine Act, 1907, are used advisedly; and therefore that section which permits a person dealing in margarine to describe it "in any wrapper" by the name "margarine," either alone or in combination with a fancy or other descriptive name approved as therein provided, does not repeal section 6, sub-section 2 of the Sale of Food and Drugs Act, 1899, which prohibits any printed matter other than the word "margarine" to appear "on the wrapper." *Williams* v. *Baker*, 80 L. J. K.B. 545; [1911] 1 K.B. 566; 104 L. T. 178; 75 J. P. 89; 9 L. G. R. 178—D.

—— **Transparent Wrapper — Printed Words Appearing through.**]—The appellant sold to the respondent a packet of margarine wrapped in the following manner: The margarine was first wrapped in a piece of plain paper. Next, the parcel was inclosed in a cardboard case upon the outside of which were the words "Green Leaf Margarine," and around such case was a transparent wrapper upon which was printed the word "Margarine" only, the wrapper being fastened at each end by means of a circular gummed label upon which was printed the words "4*d.* per packet about ½ lb." The words "Green Leaf" appeared through the transparent wrapper. The magistrate having convicted the appellant of an offence under section 6 of the Margarine Act, 1887, and section 6 of the Sale of Food and Drugs Act, 1899, under which no other printed matter than the word "Margarine" shall appear on the wrapper,—*Held*, that the fact that the words "Green Leaf" appeared through the wrapper might constitute an offence under the above sections, and that the magistrate was not wrong in convicting the appellant upon that ground. *Held*, further, that the appellant had committed an offence by attaching the printed circular labels to the wrapper. *Millard* v. *Allwood*, 81 L. J. K.B. 514; [1912] 1 K.B. 590; 106 L. T. 111; 76 J. P. 139; 10 L. G. R. 127; 22 Cox C.C. 676—D.

d. Fertilisers and Feeding Stuffs.

See also Vol. IX. 2014.

Food for Cattle—Failure to Give Invoice—Liability of Seller — Fertilisers and Feeding Stuffs.]—By section 6, sub-section 1 of the Fertilisers and Feeding Stuffs Act, 1906, if any person who sells any article for use as food for cattle fails without reasonable excuse to give, on or before or as soon as possible after the delivery of the article, the invoice required by the Act, he is liable to a penalty; and by sub-section 3 "a prosecution for an offence under this section shall not be instituted except with the consent of the Board of Agriculture and Fisheries. . . ." The Department of Agriculture and Technical Instruction for Ireland instituted a prosecution against the respondents for an offence committed in England under section 6, sub-section 1 of the Act without having obtained the consent of the Board of Agriculture and Fisheries:—*Held*, that such consent was necessary under section 6, sub-section 3, notwithstanding that certain preliminary steps had been taken in Ireland, and that the magistrate had therefore no jurisdiction to entertain the case. *Hill* v. *Phœnix Veterinary Supplies, Lim.*, 80 L. J. K.B. 669; [1911] 2 K.B. 217; 105 L. T. 73; 75 J. P. 321; 9 L. G. R. 731; 22 Cox C.C. 508—D.

Invoice—"Invoice required by this Act"—Statement of Percentages of Oil and Albuminoids.]—By section 6, sub-section 1 (*a*) of the Fertilisers and Feeding Stuffs Act, 1906, a person who sells any article for use as food for poultry is liable to a penalty if he fails to give "the invoice required by this Act." By section 1, sub-section 2, this, in the case of any article artificially prepared otherwise than by being mixed, broken, ground, or chopped is an invoice stating "what are the respective percentages (if any) of oil and albuminoids contained in the article":—*Held*, on a sale of greaves, that an invoice expressed as follows: "Greaves, not less than 15 per cent. albuminoids and 2½ per cent. oil" did not comply with the requirements of the Act. *Kyle* v. *Jewers*, 84 L. J. K.B. 255; 112 L. T. 422; 79 J. P. 176; 13 L. G. R. 260—D.

Poultry Food—Article Artificially Prepared—Preparation by Mixing—Invoice—Fertilisers and Feeding Stuffs.]—The respondents sold a quantity of poultry food without giving to the purchaser an invoice stating what were the respective percentages of oil and albuminoids contained in it. The food was composed of three substances—namely, (*a*) biscuits made by the respondents by baking a cereal substance; (*b*) greaves, the refuse or sediment left in making tallow or soap grease, purchased by the respondents in blocks; (*c*) oyster-shells broken to a suitable size. The biscuits were broken by the respondents' machinery to the size required, and the greaves chopped to pieces; the broken fragments of biscuits, the pieces of greaves, and the broken pieces of oyster-shells were then mixed together by the machinery, and the resulting mixture formed the poultry food:—*Held*, that the food was an article artificially prepared "otherwise than by being mixed, broken, ground, or chopped" within the meaning of section 1, sub-section 2 of the Fertilisers and Feeding Stuffs Act, 1906, and that the respondents had therefore committed an offence in failing to supply to the purchaser an invoice stating the percentages of oil and albuminoids contained in the food as required by that sub-section. *Latham* v. *Spillers & Bakers, Lim.*, 82 L. J. K.B. 833; [1913] 2 K.B. 355; 108 L. T. 996; 77 J. P. 277; 11 L. G. R. 539; 23 Cox C.C. 422—D.

"Sharps"—Article Artificially Prepared Otherwise than by Being Mixed, Broken, Ground, or Chopped—Natural Substance Produced by Separation—Invoice Stating Percentages of Oil and Albuminoids.]—Section 1, sub-section 2 of the Fertilisers and Feeding Stuffs Act, 1906, provides that every person who sells for use as food for cattle or poultry any article which has been artificially prepared otherwise than by being mixed, broken, ground, or chopped, shall give to the purchaser an invoice stating what are the respective percentages (if any) of oil and albuminoids contained in the article. The respondents sold for use as food for cattle or poultry a substance known as "sharps," which contained oil and albuminoids. Sharps are an offal of wheat, being that part of the wheat which remains after the flour and bran have been removed by the following process: Wheat is taken in the whole grain and passed by the miller through his mill. The wheat-meal so made is then by mechanical means passed by air currents through a series of sieves, whereby it is separated and divided into three substances—flour, sharps, and bran. The chemical composition of each of these three substances, when thus produced, differs from that of each other and from that of the original wheat, but no other chemical change is effected:—*Held* by Avory, J., and Shearman, J. (Rowlatt, J., dissenting), first, that sharps are not an article artificially prepared within the meaning of the section; and secondly, that, assuming they are, they are not artificially prepared otherwise than by being ground. The respondents were, therefore, not compelled to give to the purchaser an invoice stating the percentages of oil and albuminoids in the article sold. *Worcestershire County Council* v. *Notley*, 83 L. J. K.B. 1750; [1914] 3 K.B. 330; 111 L. T. 382; 78 J. P. 340; 12 L. G. R. 874; 24 Cox C.C. 316; 30 T. L. R. 516—D.

11. Smoke.

See also Vol. IX. 474, 2017.

Emission of Black Smoke.]—The provisions of Article II. (2) (*a*) of the Bolton Order, confirmed by the Local Government Board Provisional Orders Confirmation (No. 15) Act, 1893, making it an offence to allow the emission of black smoke from any chimney not being the chimney of a private dwelling house, are not controlled by section 334 of the Public Health Act, 1875. *Bessemer* v. *Gould*, 107 L. T. 298; 76 J. P. 349; 10 L. G. R. 744; 23 Cox C.C. 145—D.

Emission Caused by Negligence of Stoker—Liability of Occupier of Premises.]—Section 5, sub-section 2 of the Bradford Corporation Act, 1910, provides that if any person uses or suffers to be used any furnace in any building used for trade or manufacture "which shall not be constructed upon the principle of consuming and so as to consume or burn its own smoke, or if any person using or permitting to be used any furnace so constructed shall in the event of the smoke arising therefrom not being effectually consumed or burnt fail to shew that such furnace has not been negligently used, he shall, if he is the owner or occupier of the premises or a foreman or other person employed by such owner or ocupier, be liable to a penalty not exceeding 5*l*. . . ." :—*Held*, that under this provision the owner or occupier of the premises is liable to the penalty if the furnace has been used negligently, whether by himself or by some one else. *Chisholm* v. *Doulton* (58 L. J. Q.B. 133; 22 Q.B. D. 736) distinguished. *Armitage* v. *Nicholson*, 108 L. T. 993; 77 J. P. 239; 11 L. G. R. 547; 23 Cox C.C. 416; 29 T. L. R. 425—D.

Emission of Smoke from Furnace Constructed so as to Consume its Own Smoke—Emission Due to Default of Stoker—Sufficiency of Evidence.]—By section 53, sub-section 1 of the Bradford Corporation Act, 1910, every

furnace employed in any mill is to be constructed upon the principle of consuming, and so as to consume or burn, the smoke arising from such furnace. Sub-section 2: "if any person using or permitting to be used any furnace so constructed shall in the event of the smoke arising therefrom not being effectually consumed or burnt fail to show that such furnace has not been negligently used he shall if he is the owner or occupier of the premises . . . be liable to a penalty. . . ." By section 72, sub-section 3 of the Bradford Corporation Act, 1913, no penalty is to be inflicted on an owner or occupier under sub-section 2 of section 53 of the Act of 1910 "where the furnaces are constructed in manner provided by sub-section 1 of the said section and the emission of smoke was due to the act or default of a stoker, engineer or other person employed by such owner or occupier." Upon the hearing of an information under section 53 of the Act of 1910 an expert witness gave evidence that the emission of the smoke could not have been caused otherwise than by means of some act or default of the stokers or engineer:—*Held*, that the Justices were not bound to accept this evidence as conclusive, but were entitled to exercise their own judgment upon the whole of the evidence and to convict the defendants. *Held*, further, that the burden of shewing that they came within the exemption in section 72, sub-section 3 of the Act of 1913 lay upon the defendants. *Drummond* v. *Nicholson*, 84 L. J. K.B. 2190; 79 J. P. 525; 13 L. G. R. 958—D.

—— No Mechanical Apparatus for Stoking.]—The fact that the furnace of the boiler of a steam engine is not fitted with any of the systems for mechanical stoking, which have among their objects improved smoke consumption, does not make the furnace a nuisance within the meaning of section 16, sub-section 9 of the Public Health (Scotland) Act, 1897, where mechanical stoking as contrasted with stoking by hand is unsuitable for the particular business. *Leith Magistrates* v. *Bertram*, [1915] S. C. 1133—Ct. of Sess.

12. Water Supply.

See also Vol. IX. 474, 2017.

Covenant to Allow Vendor's House a Reasonable Supply Free of Charge—Enlargement of House—Presumed Increased User—Lapse of Covenant—Covenant to Supply Farm Buildings — Severable Contracts — Motor House.]—A covenant by a local authority to supply a small farmhouse with a reasonable supply of water free of charge is no longer binding if the house be so altered and enlarged that the identity of the old building is lost, and the measure of what would have been a reasonable supply at the date of the contract no longer ascertainable. But a similar covenant, entered into at the same time, to supply a reasonable amount of free water to the farm buildings is still enforceable, the covenants being severable; and this is so, notwithstanding that the buildings have been let off to a neighbouring farmer. A motor house, to which the water is carried for the purpose of washing a car, is not, however, a "farm building" within the scope of the covenant, and such user is unreasonable. *Hadham Rural Council* v. *Crallan*, 83 L. J. Ch. 717; [1914] 2 Ch. 138; 111 L. T. 154; 78 J. P. 361; 12 L. G. R. 707; 58 S. J. 635; 30 T. L. R. 514—Neville, J.

13. Cinematograph—*See* title Cinematograph.

14. Indecent or Profane Language.

Street or Public Place — Annoyance of Passengers — Public House.]—A by-law forbidding the use of profane, obscene, or indecent language in any street or public place to the annoyance of passengers cannot be held to apply to language alleged to be indecent used in a public house and only heard by persons present therein. *Russon* v. *Dutton* (*No.* 1), 104 L. T. 601; 75 J. P. 209; 9 L. G. R. 558; 22 Cox C.C. 490; 27 T. L. R. 197—D.

15. Foreshore.

See also Vol. IX. 2020.

Regulation of Selling and Hawking Articles —By-laws Restricting Selling and Hawking to Portion of Shore Allotted by Notice—Conviction.]—Under powers conferred by their local Act the corporation of R. made a by-law that where any part of the seashore had by notices conspicuously affixed been set apart for the hawking of specified articles, no person should hawk such articles on any other part of the seashore. The appellant had been convicted by Justices of hawking on a prohibited portion of the seashore:—*Held*, that as there was no finding in the case which enabled the Court to say that the portion set apart for hawking was insufficient in fact, nor evidence that the corporation had improperly made the by-law for their own benefit, and nothing on the face of the case to shew the by-law was unreasonable, the conviction must be upheld. *Cassell* v. *Jones*, 108 L. T. 806; 77 J. P. 197; 11 L. G. R. 488; 23 Cox C.C. 372—D.

Per Channell, J.: By-laws of public bodies relating to seashores to which the public have access stand on a different footing to other by-laws of such bodies; and the assigning of one part for hawking of specified articles, and allowing the erection of stalls (for which the holders pay a rent to the local authority) for the sale of the same articles on another, is *prima facie* within their power so long as the portion set apart for hawking is not so wholly insufficient and obviously illusory as to be prohibitive. The principle is that local authorities are to decide local questions. *Ib.*

Public Assemblages—Delivery of Addresses, Sermons, Lectures, &c.—Restriction as to Places and Hours.]—Under the provisions of a local Act enabling a local authority to make by-laws "for the preservation of order and good conduct among persons frequenting the parades, foreshores, &c." of a maritime town, the local authority made a by-law prohibiting the delivery of speeches or holding of public assemblages except upon such portion or portions of the foreshore as they should from time to time appoint by notice affixed or set up

thereon, and subject to such conditions and regulations as they might from time to time prescribe. Regulations under this by-law reserved certain specified places for orderly public assemblages; and the Salvation Army had for years held services on one of these reserved spots. Subsequently the local authority abolished this particular spot as a place for the delivery of public addresses and the holding of public assemblages, substituting another, and by order prescribed a new set of regulations and conditions in substitution for those previously in force. Proper notice of this order was given, but no confirmation or allowance of the new regulations and conditions by the Local Government Board was considered necessary or obtained. The appellant, however, continued to hold orderly Salvation Army services on the original spot, and was convicted of doing so, and fined:—*Held*, that the power given by the special Act enabled the local authority to prohibit that which would otherwise have been a perfectly lawful act on the part of the appellant. The by-laws were neither *ultra vires* nor vitiated by the subsequent regulations and conditions, which the Court did not consider unreasonable. The allocation of particular places for the holding of Salvation Army meetings was not beyond the scope of the by-law, and it was not intended that the Local Government Board, who knew nothing of the locality, should fix them. *Slee* v. *Meadows*, 105 L. T. 127; 9 L. G. R. 517; 75 J. P. 246; 22 Cox C.C. 537—D.

Seaside Encampment — Alleged Public Nuisance.]—*See Att.-Gen.* v. *Kerr*, *ante*, col. 901.

VII. EXPENSES.

1. Notice to do Works.

See also Vol. IX. 490, 2042.

Notice to Make Drain and Provide Water Closet.]—Where notice is given by a local authority to a person to do work which he cannot legally do without the permission of a third party, and where there is a substantial difficulty in the way of his obtaining such permission, it is doubtful whether, when the work is done by the local authority, the cost can be recovered from the person to whom notice was given, but it lies upon him to shew that he could not obtain the necessary permission. *Meyrick* v. *Pembroke Corporation*, 76 J. P. 365; 10 L. G. R. 710—D.

—— "House" within One Hundred Feet of Sewer.]—A "house" may be within one hundred feet of a sewer within the meaning of section 23 of the Public Health Act, 1875, although the main building is not within that distance. *Ib.*

Notice to Execute Works within Specified Time—Right of Frontager to Complete his Share of the Work after Expiration of the Time.]—Where a local authority has given notice to a frontager under section 150 of the Public Health Act, 1875, to execute works, including the connection of drains from the gullies with an existing surface-water sewer in the street, within a specified time, and the frontager has *bona fide* commenced but has not finished his share of the work within the time specified, he may, after the expiration of that time, if the local authority have not in the meantime intervened and taken over the completion of the work, himself complete it, and make the necessary connection of the drains from the gullies with the sewer. *Denman* v. *Finchley Urban Council*, 10 L. G. R. 697; 76 J. P. 405—Joyce, J.

Urgent Repairs to Private Streets—Notice by Local Authority to Frontagers — Counter-notice to Authority to Proceed under Private Street Works Act, 1892—Withdrawal of Original Notice.]—A local authority gave notice under section 19, sub-section 1 of the Public Health Acts Amendment Act, 1907, to frontagers "to execute repairs in a street, not being a highway repairable by the inhabitants at large." This was met by a counter-notice of a majority of the frontagers under sub-section 4, requiring the local authority to proceed under the Private Street Works Act, 1892. The local authority resolved to proceed accordingly, but subsequently abandoned their resolution, and withdrew the notice they had given under the first-mentioned sub-section. A rule *nisi* for a *mandamus* requiring the local authority to proceed forthwith in relation to the street, under the Private Street Works Act, 1892, was then obtained by the frontagers:—*Held*, that, inasmuch as questions had been raised—first, as to part of the road being repairable by the inhabitants at large; secondly, as to the work which the local authority had, before they withdrew their notice, resolved to execute under the Act of 1892 being excessive; and thirdly, as to some of the persons served with that notice not being frontagers, the Court, in the exercise of its discretion, ought not to make the rule absolute. *Rex* v. *Epsom Urban Council; Course, Ex parte*, 76 J. P. 389; 10 L. G. R. 609—D.

Quære, whether a counter-notice under section 19, sub-section 4 of the Act of 1907 does more than require the local authority, if they proceed further in the matter at all, to proceed under one or other of the enactments mentioned in that sub-section. *Quære*, whether the application for the *mandamus* was barred under the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1 (*a*), by the lapse of more than six months since the alleged default of the local authority. *Ib.*

2. Apportionment.

See also Vol. IX. 493, 2043.

Private Street Works — Premises not Abutting on Street—Access through "court, passage, or otherwise."]—By section 10 of the Private Street Works Act, 1892, in a provisional apportionment of expenses the apportionment, unless the urban authority otherwise resolve, is to be according to the frontage of the respective premises; but the urban authority may, if they think just, "include any premises which do not front,

adjoin, or abut on the street or part of a street, but access to which is obtained from the street through a court, passage, or otherwise, and which in their opinion will be benefited by the works, and may fix the sum or proportion to be charged against any such premises accordingly :—*Held*, that, in applying the above section to a road or way giving access to particular premises, the urban authority should consider whether the road is substantially a means of access from the street to the premises in the same way in which a court or passage gives access, or whether it is a road made for other purposes and only incidentally affording access to the premises. *Newquay Urban Council* v. *Rickard*, 80 L. J. K.B. 1164; [1911] 2 K.B. 846; 105 L. T. 519; 9 L. G. R. 1042; 75 J. P. 382—D.

If the road is one along which houses may be built, and which will probably become a street, it is not within the section. *Ib.*

Held, further, that the words "court, passage, or otherwise" do not mean that the road or way along which access to the premises is obtained must necessarily be narrow. *Ib.*

—— **Premises Outside Urban District—Insertion in Provisional Apportionment.**]—Premises situate outside a local district should not be included in a provisional apportionment under section 6 of the Private Streets Works Act, 1892, of the expenses of making up a street within the local district, although they front, adjoin, or abut on the street. *Herne Bay Urban Council* v. *Payne* (76 L. J. K.B. 685; [1907] 2 K.B. 130) explained. *Alderson* v. *Bishop Auckland Urban Council*, 82 L. J. K.B. 737; [1913] 2 K.B. 324; 76 J. P. 347; 10 L. G. R. 722—D.

Charge in Respect of Making up Roads—Several Different Properties Belonging to Same Owner in Road.]—Where an owner has several premises in the same street, and the local authority have incurred expenses in executing street works under section 150 of the Public Health Act, 1875, and such expenses have not been recovered from the owner, the expenses of such works must be apportioned in respect of each of the separate premises fronting on the street, and the local authority is entitled under section 257 of that Act to a charge in respect of each of such separate premises and not to a charge for one sum in respect of all the premises belonging to such owner. *Croydon Rural Council* v. *Betts*, 83 L. J. Ch. 709; [1914] 1 Ch. 870; 12 L. G. R. 906; 58 S. J. 556—Warrington, J.

Notice in respect of Part only.]—It appeared that the respondents, the local authority, had put five earth closets into five houses of the appellant, but had only given notice under the section in respect of four of them, and their surveyor accordingly took the total expenditure on the five houses, divided it by five, and charged the appellant with four-fifths of the whole :—*Held*, that this operation was merely a division of expenses between the respondents on the one hand and the appellant on the other, and not an apportionment of expenses within the meaning of section 257; and accordingly that the appellant was not entitled to a lapse of three months' time before the respondents could proceed to recover their expenses in respect of the four houses : the words in section 257—"where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner"—having reference to an apportionment between such owner and other owners. *Bower* v. *Caistor Rural Council*, 9 L. G. R. 448; 75 J. P. 186—D.

Private Street Works—Apportionment of Expenses—Premises not Abutting on Street—Access through "court, passage, or otherwise."]—Where works are executed under the Private Street Works Act, 1892, by a local authority, the expenses thereof can, under section 6, sub-section 1, be apportioned on premises fronting, adjoining, or abutting on the street or part of the street in which the works are executed; and, under section 10, on premises access to which from such street or part of street is obtained "through a court, passage, or otherwise" :—*Held*, that the words "or otherwise" refer to some means of access of the same character as a court or passage, and do not include access through a private street. *Dictum* of Lord Alverstone, C.J., in *Newquay Urban Council* v. *Rickeard* (80 L. J. K.B. 1164, at p. 1168; [1911] 2 K.B. 846, at p. 851) to the contrary disapproved. *Chatterton* v. *Glanford Brigg Rural Council*, 84 L. J. K.B. 1865; [1915] 3 K.B. 707; 113 L. T. 746; 79 J. P. 441; 13 L. G. R. 1352—D.

3. Arbitration.

See also Vol. IX. 496, 2046.

Omission of One of a Frontager's Houses from Notice and Apportionment—Jurisdiction of Arbitrator.]—The notice to execute certain private street improvement works under section 150 of the Public Health Act, 1875, served on the owner of two houses, R. and F., the gardens of which adjoined each other and abutted on the street, and also the apportionment of the expenses incurred by the local authority in executing the works on the default of the owners, by mistake referred only to the "garden of R.," though the length of frontage, according to which the owner's share of the expenses was apportioned, consisted of that of the two gardens. The owner disputed the apportionment, and the dispute was referred to arbitration. The arbitrator having by his award declared the apportionment of the owner's share to be bad, and having adjudged that such share should be reduced to a sum which was proportionate to the frontage of the "garden of R."—*Held*, that the award was valid. *Thomas* v. *Hendon Rural Council*, 9 L. G. R. 234; 75 J. P. 161—D.

Withdrawal by Frontager of Notice Disputing Apportionment—Award—Jurisdiction of Arbitrator.]—A local authority, acting under the provisions of the Public Health Act, 1875, served on the owner of premises adjoining or abutting on a certain street or yard a notice requiring him within a specified time to level, pave, flag, and channel that portion of the

street or yard on which his premises abutted. The notice not being complied with, the local authority did the work themselves, and their surveyor served upon the owner an apportionment of his proportion of paving, &c., the whole of the street or yard. Within the time limited by the Act the owner disputed the apportionment solely on the ground that the larger portion of the area paved &c. was private property, for which he contended he was not liable; but he was willing to pay an apportionment in respect of a small portion of the area for which he admitted liability. The local authority appointed their arbitrator to determine the dispute, but the owner declined, when requested, to appoint his arbitrator, and within fourteen days, the time limited by section 180 of the Act, withdrew his notice disputing the apportionment. The arbitrator appointed by the local authority thereupon, after duly notifying both parties, proceeded to hear and determine the dispute between them in the absence of the owner who declined to attend the reference. By his award he declared *(inter alia)* that the said street or yard was a street within the meaning of section 4 of the Act, that the portion of such street forming the subject of the reference was not repairable by the inhabitants at large, that the cost of making it up under section 150 of the Act was properly payable by the owners of premises fronting, adjoining, or abutting on such street, and that the owner in question was the owner of property fronting, adjoining, or abutting on the said street to the extent of 112 feet 10 inches, including the gateway. He awarded that the contribution payable by the owner in respect of his premises was 19*l.* 16*s.* 3*d.*, and that he should pay the costs of the arbitration and the arbitrator's charges and expenses. The Divisional Court *held*—first, that the revocation by the owner of his notice disputing the apportionment was too late, and that the arbitrator was properly appointed; but secondly, that the matters determined by the arbitrator were unnecessary for assessing the proper apportionment of the owner, and therefore beyond the arbitrator's province, and that the award was bad for excess of jurisdiction:—*Held*, on appeal, that as the owner had not appointed an arbitrator to act on his behalf, he had the right to withdraw his notice disputing the apportionment within fourteen days, and that as he had withdrawn his notice he had made no submission to arbitration, and therefore the arbitrator was not entitled to act as sole arbitrator, and the award was a nullity, and must be set aside. *Held*, further, that even if the arbitrator had jurisdiction to make an award, he had no jurisdiction to determine that the place was a "street" within the meaning of the Act and was not repairable by the inhabitants at large, and for this reason also the award must be set aside. *Stoker and Morpeth Corporation, In re*, 84 L. J. K.B. 1169; [1915] 2 K.B. 511; 112 L. T. 753; 79 J. P. 201; 13 L. G. R. 233—C.A.

4. Proceedings for Recovery.

See also Vol. IX. 498, 2047.

Works Executed on Default of Owner—Notice — Authentication of Documents — Signature of Rating Surveyor.] — Expenses incurred under section 36 of the Public Health Act, 1875, by a local authority in substituting water closets for privies in houses were demanded from the owner of the houses, who had failed to carry out the work after having been required to do so. The notice demanding payment was signed on behalf of the local authority by their rating surveyor. In summary proceedings for the recovery of the amount expended the Justices found as a fact that it was part of the duty of such rating surveyor to prepare, sign, and serve all notices demanding payment of moneys due to the local authority, and to collect and receive payment on their behalf of all such moneys:—*Held*, that the notice of demand had been sufficiently signed in compliance with section 266, and that an objection to it on the ground that it ought to have been signed by the clerk to the local authority, or their surveyor or inspector of nuisances, could not be maintained. *Per* Lord Alverstone, C.J.: It is better upon principle that a notice connected with a particular department should be signed by an officer of that department. *Willis* v. *Rotherham Corporation*, 105 L. T. 436; 9 L. G. R. 948; 75 J. P. 421—D.

Vacant Land Adjoining Street—Land Used for "purpose causing inconvenience or annoyance to the public"—Power of Local Authority to Fence—Recovery of Expenses from Owner.] —Section 32 of the Willesden Urban District Council Act, 1903, provides that "If any land in the district . . . adjoining any street is allowed to remain unfenced or the fences thereof are allowed to be or to remain out of repair and such land is in the opinion of the council owing to the absence or inadequate repair of any such fence a source of danger to passengers or is used for any immoral or indecent purposes or for any purpose causing inconvenience or annoyance to the public," then, after notice to the owner or occupier, "the council may cause the same to be fenced or may cause the fences to be repaired in such manner as they think fit and the expenses thereby incurred may be recovered from such owner or occupier summarily as a civil debt." The appellant erected round some vacant land belonging to him within the district of the respondent council a barrier consisting of posts 3 feet 4 inches high and 8 feet apart, with a rail along the top. This barrier was not out of repair. The respondent council served upon the appellant a notice stating that the land, owing to the absence of a proper fence, was used for a purpose causing inconvenience or annoyance to the public and requiring him forthwith properly to fence in the land. The respondents subsequently erected round the land an "economic" fence and sued the appellant to recover the expenses thereby incurred. The Justices held that it was for the council and not for them to decide whether the land was used for a purpose causing inconvenience or annoyance to the public, and that as the council had decided that the land was being so used they could recover:—*Held*, that the decision of the Justices was wrong; that the user of the land for a purpose causing inconvenience or annoyance to the public must be

proved by evidence of the fact in the proceedings before the Justices; and that the case should be remitted to the Justices in order that the respondents might have the opportunity of giving such evidence. *Upjohn* v. *Willesden Urban Council*, 83 L. J. K.B. 736; [1914] 2 K.B. 85; 109 L. T. 792; 78 J. P. 54; 11 L. G. R. 1215; 58 S. J. 81; 30 T. L. R. 62—C.A.

Action Claiming Charge in Respect of Apportioned Expenses—Time for.]—An action by a local authority claiming to be entitled to a charge on premises under section 13 of the Private Street Works Act, 1892, in respect of apportioned expenses, and 5 per cent. interest thereon, may be brought, although three months have not elapsed from the date of the notice served on the defendant requiring payment of such expenses. *Pontypridd Urban Council* v. *Jones*, 75 J. P. 345—Swinfen Eady, J.

Charge on Property—Neglect to Answer—Inquiry as to Incumbrances — Contempt of Court—Attachment—Costs.]—Where an order has been obtained by a local authority giving them a charge in priority to other incumbrances on property adjoining a road for their costs of paving such road, and directing an enquiry as to incumbrances, and the sole partner of the defendant company neglects to obey an order that he should answer such enquiry on affidavit, and a subsequent order that he should attend for examination :—*Held*, on a motion to attach him, that an order for attachment must be made, and the costs of, and incidental to, the motion were directed to be added to the charge. *Tottenham Urban Council* v. *Nielson & Co.*, 79 J. P. 504; 59 S. J. 667—Neville, J.

Time Running from Demand, not from Apportionment — Cumulative Remedies.] — The B. Corporation Act, 1872, provided by section 117 that all expenses incurred by the corporation for private improvements expenses under the Public Health Acts, for the payment of which the owner of the land or buildings concerned was liable, should, if not paid on demand, be recoverable by the corporation either as a debt in any Court of competent jurisdiction, or by distress after summoning the owner. In 1901 S. was served with notice to execute certain improvements, which were executed by the corporation, the apportionment of expenses being in December, 1905. Notice of the apportionment was served in February, 1906, and a demand for payment in June, 1906. In August, 1911, summary proceedings were taken for recovery of the amount due, but were dismissed as being out of time. In March, 1912, proceedings were commenced in the Salford Hundred Court for recovery of the amount due as a civil debt :—*Held*, that the remedies given by section 117 of the Act were cumulative; that the limitation of time applicable to summary proceedings did not apply to proceedings in a Court of competent jurisdiction for the recovery of a sum as a civil debt, which was six years, running from the date of the demand for payment, and not from the apportionment; and that the plaintiffs were entitled to the amount claimed. *Bolton Corporation* v. *Scott*, 108 L. T. 406; 77 J. P. 193; 11 L. G. R. 352—C.A.

VIII. RATES.

1. Liability.

a. Property Liable to Lower Rates.

See also Vol. IX. 518, 2054.

Owner Rated instead of Occupier at Reduced Amount—Owner Occupying his own House.]—The power given to an urban authority by section 211, sub-section 1 (*a*) of the Public Health Act, 1875, to rate at a reduced amount the owner instead of the occupier where the rateable value of the premises does not exceed the sum of ten pounds only applies where the owner and occupier of the premises are different persons. *Rex* v. *Propert; Jones, Ex parte*, 80 L. J. K.B. 98; [1911] 1 K.B. 83; 103 L. T. 844; 74 J. P. 474; 9 L. G. R. 38—D.

Owners of Properties, under the Net Annual Value of 10*l.*, Rated — Abatement or Compensation Claimed by Owners.]—Prior to the passing of the Public Health Act, 1875, the R. Improvement Commissioners had under section 65 of their special Act of 1865, which Act incorporated section 181 of the Towns Improvement Clauses Act, 1847, as to the rating of owners instead of the occupiers of property of 10*l.* per annum and under, levied a rate called "the R. Improvement Rate." After 1875 the R. Improvement Commissioners became the urban district council and continued to levy the rate as a local improvement rate in the nature of a general district rate under their special Act of 1865 and the Public Health Act, 1875, ss. 207 and 227. Section 211 of the Public Health Act, 1875, allows properties of a rateable value not exceeding 10*l.* where the owner is rated instead of the occupier, to be assessed on a reduced estimate. In 1912 certain owners of properties in R. of 10*l.* per annum and under refused to pay the rate in full and demanded the reductions or compensation allowances given to owners of such properties by section 211 of the Public Health Act, 1875 :—*Held*, that the rate was an improvement rate in the nature of a general district rate governed by the R. Improvement Act, 1865, and the incorporated Towns Improvement Act, 1847, s. 181; that the 10*l.* property owners were liable to pay in full, and were not entitled to reductions or allowances under section 211 of the Public Health Act, 1875. *Ross Urban Council* v. *Daniels*, 109 L. T. 933; 77 J. P. 456; 11 L. G. R. 1225—D.

Land Used as Railway.]—Certain premises alleged by a railway company to be "used as a railway," and as such liable to be assessed at one-fourth only of their net annual value, were included in the valuation list under the heading "buildings" and not under the heading "railways, fisheries, &c.," and were accordingly assessed by the urban council at their full value. No objection was made by the railway company to the valuation list prior

to the making of the rate, and no appeal was taken by them either against the valuation or against this rate. The urban council having sued the railway company for the disputed rates,—*Held*, that the plaintiffs were entitled to recover the full rate. *Whaley* v. *Great Northern Railway*, [1913] 2 Ir. R. 142—C.A.

—— Land at the Side of Railway—Necessary Adjuncts of Conveyance.]—Whether land is "used as a railway" for the purposes of rating is a question of fact in each particular case. By the Liverpool Corporation Act, 1893, power was given to levy a general rate on all property assessed to the relief of the poor in the city, and by section 36 (ii.) it was provided that "No person occupying land used . . . only . . . as a railway made under the powers of any Act of Parliament for public conveyance shall be rated in respect of the same to the general rate in any greater proportion than one-fourth part of the net annual value thereof." The appellant company were the owners and occupiers of two goods stations in the city, which were made under the powers of various Acts of Parliament. These stations included, in addition to the lines of railway, loading ways, platforms, and mounds for goods and cattle, sidings and turntables, hoist houses, capstans, and machinery, approach roads, and other buildings, and roofs over the lines, loading ways, and loading platforms:—*Held*, that the exemption in the Act extended not only to the actual lines of railway, but included land at the side of the rails used for necessary adjuncts of conveyance, but did not extend to accommodation and appliances which, though convenient, were not reasonably necessary for the conveyance of public traffic; and therefore the loading ways, platforms, and mounds, sidings and turntables, hoist houses, capstans, and machinery were within the exemption, but the approach roads, roofs, and other general buildings used in connection with the railway were not. *Lancashire and Yorkshire Railway* v. *Liverpool Corporation*, 83 L. J. K.B. 1273; [1915] A.C. 152; 111 L. T. 596; 78 J. P. 409; 12 L. G. R. 771; 58 S. J. 653; 30 T. L. R. 563—H.L. (E.)

Decision of the Court of Appeal (82 L. J. K.B. 1096; [1913] 3 K.B. 247) reversed. *Ib.*

Tramway—Not a "Railway."]—In public legislation the word "railway" does not include a tramway unless it is expressly made to do so by the terms of the Act. Therefore a tramway company is not entitled to the exemption from rating given to railways by section 211, sub-section 1 (*b*) of the Public Health Act, 1875. *Swansea Improvements and Tramway Co.* v. *Swansea Urban Sanitary Authority* (61 L. J. M.C. 124; [1892] 1 Q.B. 357) approved. *Wakefield Corporation* v. *Wakefield and District Light Railway* (77 L. J. K.B. 692; [1908] A.C. 293) distinguished. *Tottenham Urban Council* v. *Metropolitan Electric Tramways*, 83 L. J. K.B. 60; [1913] A.C. 702; 109 L. T. 674; 77 J. P. 413; 11 L. G. R. 1071; 57 S. J. 739; 29 T. L. R. 720—H.L. (E.)

Judgment of the Court of Appeal (81 L. J. K.B. 793; [1912] 2 K.B. 216) reversed. *Ib.*

Graving Dock — Entrance — "Land covered with water."]—By section 211, sub-section 1 (*b*) of the Public Health Act, 1875, "the occupier of any land covered with water" is to be assessed in respect of it to the general district rate at one-fourth only of its net annual value. By an agreement made between the parties an arbitrator was appointed to value the dock estate of the Mersey Docks and Harbour Board, a portion of which consisted of graving docks, for the purpose of assessment. The graving docks were excavations with walls, quays, and gates having direct access to the adjoining Birkenhead Docks, of which they formed part. They were used for the examination and repair of ships. The ships were floated into them, and the water was then pumped out. After the work was carried out, the water was re-admitted and the ships were floated out. The water was then generally, but not always, pumped out and the docks left dry. Each dock was approached by an entrance, which was always covered with water. The arbitrator held that the docks with their entrances were not land covered with water, and that they were therefore assessable at their full value:—*Held*, that the graving docks were not "land covered with water" within the meaning of section 211, sub-section 1 (*b*) of the Act of 1875, and must therefore be assessed at their full net annual value, but that the entrances were "land covered with water," and were assessable at one-fourth only of such value. *Mersey Docks and Harbour Board* v. *Birkenhead Corporation*, 84 L. J. K.B. 1207; [1915] 2 K.B. 312; 113 L. T. 183; 79 J. P. 318; 13 L. G. R. 764; 31 T. L. R. 323—Scrutton, J.

b. Exemption.

See also Vol. IX. 521, 2057.

Building Exclusively Used for Purposes of Public Charity—Borough Rate—General District Rate.]—The trustees of a will, acting under their testator's directions, founded and endowed a perpetual charity for the establishment of an institution for ladies in reduced circumstances. By the deed of foundation one of the objects of the charity was to provide a home for a limited number of such ladies, who were to be called lady occupants, and for the purpose of carrying out that object the trustees were to build a number of houses, not exceeding twenty-four, of such dimensions and in such manner as they might from time to time determine. The number of lady occupants was to be the same as the number of houses, and the trustees were from time to time to elect as lady occupants such persons, being not less than fifty years of age and being either spinsters or widows, as they might consider most deserving of the charity; but a preference was to be given to ladies who were born in the parish in which the home was situate or who had resided in that parish for five years. Each lady occupant had to be in possession in her own right of an income not less than 20*l.* per annum. No candidate was to be ineligible by reason of her religious profession or opinion. Any lady occupant contracting marriage was to cease thenceforth

to be entitled to any benefit under the charity. In pursuance of the deed of foundation the trustees built twelve houses with money left by the testator augmented by bequests, twelve in number, of varying amounts from other persons. In each of the houses a lady occupant resided under the conditions laid down in the deed of foundation. All the lady occupants possessed the qualifications required by the deed of foundation. A small portion of the furniture of each house was the property of the trustees; the rest of the furniture of each house was the property of the lady occupant of the house. All repairs were done and all rates and taxes were paid by the trustees; but each lady occupant paid for the gas and coals used by her and for medical attendance :—*Held*, that the houses were buildings exclusively used for the purposes of public charity within the meaning of section 168 of the Towns Improvement Clauses Act, 1847, and that therefore neither the trustees nor the lady occupants were liable to be rated in respect of them. *Shaw* v. *Halifax Corporation*, 84 L. J. K.B. 761; [1915] 2 K.B. 170; 112 L. T. 921; 79 J. P. 257; 13 L. G. R. 316; 59 S. J. 315—C.A.

2. Mandamus to Enforce.

See also Vol. IX. 523, 2058.

Agreement for Joint User of Hospital—Sharing of Expenses — Notice to Determine Agreement — Validity — Arrears of Establishment Expenses — Excusable Delay.] — Under section 210 of the Public Health Act, 1875, a general district rate may only be made and levied retrospectively in order to raise money to pay charges and expenses incurred within six months before the making of the rate, excluding from this period the time taken by any proceedings to enforce the same; but a judgment obtained in any such proceedings itself operates as a new charge within the meaning of section 210, and in a case when proceedings are not commenced until more than six months after the liability accrued the Court will grant a *mandamus* for the levying of a rate to satisfy the judgment, if the delay in commencing the proceedings was under the circumstances excusable. *Woolstanton United Urban Council* v. *Tunstall Urban Council*, 79 L. J. Ch. 522; [1910] 2 Ch. 347; 103 L. T. 98; 74 J. P. 353; 8 L. G. R. 870—Neville, J. Varied, 80 L. J. Ch. 418; [1911] 1 Ch. 229; 103 L. T. 473; 75 J. P. 203; 9 L. G. R. 557—C.A.

By an agreement dated June 1, 1885, the predecessors of the plaintiffs and of the defendants and a corporation were to have the use of a hospital and contribute rateably to the expenses of the same. By an agreement dated June 16, 1898, and made between the same parties or their successors, the provisions of the first agreement as to the management of the hospital were varied, and this agreement was made determinable on six months' notice. By the terms of a third agreement dated August 2, 1905, made between the plaintiffs, the defendants, and the corporation, and stated to be supplemental to the previous agreements, further alterations were made in the management of the hospital and provisions were made for discharging the corporation from all liabilities under the agreements. In April, 1906, the defendants gave notice under the second agreement to determine the agreements, and ceased to use the hospital. There were protracted negotiations between the parties which lasted until November, 1909, and in December, 1909, the plaintiffs brought an action to recover from the defendants their share of the expenses of the hospital up to March 31, 1909 :—*Held*, first, that the notice was invalid to determine the first and third agreements, which were still valid and subsisting; and secondly, that the third agreement constituted an agreement adjusting the liabilities of the parties within section 62 of the Local Government Act, 1888, so that the defendants were not entitled to resort to arbitration under that section; and *held*, that the plaintiffs were entitled to judgment as asked, and that, as the delay in commencing proceedings was excusable, a *mandamus* must go to enforce the levying of a rate to satisfy the judgment. *Reg.* v. *Rotherham Local Board* (27 L. J. Q.B. 156; 8 E. & B. 906) and *Worthington* v. *Hulton* (35 L. J. Q.B. 61; L. R. 1 Q.B. 63) applied. *Ib.*

3. Misapplication of.

See also Vol. IX. 525, 2061.

Expenses — Sanction of Local Government Board to Expenditure in Connection with Royal Coronation—Injunction.]—On April 18, 1911, the Local Government Board, in exercise of their powers under the Local Authorities (Expenses) Act, 1887, s. 3, made a general order sanctioning any reasonable expenses to be incurred by a local authority in connection with the public local celebration of the Coronation of King George 5. In May, 1911, the defendants resolved to expend a sum not exceeding a certain amount upon the Coronation festivities in their district. On June 20, 1911, an action was commenced by the Attorney-General on the relation of two ratepayers seeking to restrain the defendants from making any order for payment out of the general district rates of this or any other sum towards the local Coronation festivities. On motion for an interim injunction in similar terms, it was contended that the only effect of the general order of the Local Government Board was to prevent the district auditor disallowing these expenses, and that notwithstanding that order the expenditure was illegal as being for purposes not authorised by statute :—*Held*, without deciding this point, that it was not a case in which the Court would interfere by injunction before the trial of the action. *Att.-Gen.* v. *Merthyr Tydfil Union* (69 L. J. Ch. 299; [1900] 1 Ch. 516) applied. *Att.-Gen.* v. *East Barnet Urban Council*, 9 L. G. R. 913; 75 J. P. 484—Neville, J.

4. Proceedings.

See also Vol. IX. 526, 2061.

Invalid Rate — Seizure under Distress — Liability of Rate Collector and County

Council.]—Where a county council issues a warrant to a rate collector authorising and directing him to levy a rate which is invalid, and the rate collector, in pursuance of the warrant, levies the rate by distress in such manner that the distress would have been lawful had the rate been valid, the county council, as well as the rate collector, is liable to an action for damages in respect of the illegal seizure. *Held*, however, on the facts of the particular case, that the county council was not liable as no evidence was given of the issue of the warrant by them. *O'Neill* v. *Drohan and Waterford County Council*, [1914] 2 Ir. R. 495—C.A.

IX. LIABILITY OF AUTHORITIES.

1. Action.

a. Generally.

Action against Public Body—Naming Special Defendants.]—When misconduct in the performance of their duties is alleged against a public body, and it becomes necessary to take legal proceedings against them, the individual members who are principally responsible ought to be made special defendants for the purpose of visiting them with the costs of the action. *O'Shea* v. *Cork Rural Council*, [1914] 1 Ir. R. 16—M.R.

b. Negligence.

See also Vol. IX. 528, 2064.

Damage by Flooding—Sewage Discharged into Burn—Overflow—Liability.]—*Held*, that the respondents, as the road and drainage authority of Edinburgh, were not protected by the provisions of the Edinburgh Corporation Act, 1900, from liability to the appellant for the flooding of his market garden by reason of an insufficient culvert for carrying away drainage. *Hanley* v. *Edinburgh Corporation*, [1913] A.C. 488; [1913] S. C. (H.L.) 27; 77 J. P. 233; 11 L. G. R. 766; 57 S. J. 460; 29 T. L. R. 404—H.L. (Sc.)

Fire-Plug Notice—Erroneous Statement as to Position of Fire Plug—Delay in Finding Fire Plug—Consequent Damage by Fire—Liability of Urban Council—Statutory Duty—Misfeasance.]—The Public Health Act, 1875, s. 66, requires every urban authority to provide fire plugs, and to "paint or mark on the buildings and walls within the streets words or marks near to such fire-plugs to denote the situation thereof." The defendants, an urban council, provided a fire plug and affixed to premises in the street a plate which purported to indicate the position of the fire plug, but did not in fact indicate its true position. The fire plug was covered with earth as the result of repairs to the street, but for this the defendants were not responsible, as the street was not vested in them and they had not done the repairs. A fire having broken out in premises of the plaintiffs fronting on the street, the fire brigade, owing to the plate being incorrect, were prevented for some time from finding the fire plug, and the premises were more seriously damaged than would otherwise have been the case:—*Held*, that the defendants in putting up the incorrect plate had been guilty of a breach of their statutory duty under the above section in the nature of a misfeasance, and that they were liable to the plaintiffs for the damage thereby done to the premises. Observations of James, L.J., in *Glossop* v. *Heston and Isleworth Local Board* (49 L. J. Ch. 89; 12 Ch. D. 102) held inapplicable. *Dawson* v. *Bingley Urban Council*, 80 L. J. K.B. 842; [1911] 2 K.B. 149; 104 L. T. 659; 75 J. P. 289; 9 L. G. R. 502; 55 S. J. 346; 27 T. L. R. 308—C.A.

Sewage Disposal — Liability of District Council for Negligence of Contractor—Terms of Contract—Emptying of Cesspools—Nuisance from Contents of Cesspool Deposited on Land by Contractor.]—An urban district council having undertaken, under section 42 of the Public Health Act, 1875, to empty the cesspools in a part of their district, employed a contractor for the purpose of emptying the cesspools, he using for that purpose the council's sewage van, but the disposal of the contents was left to the contractor, no express provision being made in the contract with reference thereto. The contractor, without the council's authority, deposited the contents of certain cesspools over lands in the neighbourhood without the permission of the landowners. In an action by the landowners claiming an injunction and damages,—*Held*, that the duty of the disposal of the sewage under the terms of the contract remained with the council, and that they were responsible for the wrongful acts of the contractor. *Robinson* v. *Beaconsfield Urban Council*, 80 L. J. Ch. 647; [1911] 2 Ch. 188; 105 L. T. 121; 75 J. P. 353; 9 L. G. R. 789; 27 T. L. R. 478—C.A.

Per Buckley, L.J.: Even if the contract had provided for the disposal of the sewage by the contractor, the council would have been equally liable on the ground that they were under a statutory duty to dispose of the sewage and could not escape from responsibility by delegating that duty to a contractor. *Ib.*

—— **Effluent from Sewage Disposal Works—Liability of Persons Controlling Works although Sewer Vested in Local Authority.**]—The defendants were the lessees of a number of cottages which drained into sewage disposal works, of which a firm of builders were the lessees. Sewage escaped from the disposal works into a stream which flowed through a farm belonging to the plaintiff, and injured cattle and pasturage belonging to him. In an action by the plaintiff for damages and an injunction evidence was given that at the time when the damage was caused the defendants were in control of the sewage disposal works. The local authority had passed the plans for the sewers "subject to the drainage being carried out to the satisfaction of the surveyor," but there was no evidence that the surveyor had ever expressed such satisfaction. The County Court Judge gave judgment for the plaintiff for 50*l.*:—*Held*, that, even assuming that the sewage disposal works and the pipes connected therewith were sewers vested in the

local authority under section 13 of the Public Health Act, 1875, there being evidence upon which the learned Judge could come to the conclusion that it was by the act or default of the defendants themselves that the sewage was in fact being discharged into the brook, his decision could not be interfered with. *Titterton* v. *Kingsbury Collieries*, 104 L. T. 569; 75 J. P. 295; 9 L. G. R. 405—D.

2. Compensation for Damages.

See also Vol. IX. 548, 2075.

Construction of Sewer in Street—Interference with Access to Premises.]—Where a person sustains damage by reason of an act done by a local authority in the exercise of the powers conferred upon them by the Public Health Act, 1875, and done reasonably and without negligence, that person is entitled to compensation under section 308 of the statute, notwithstanding that the act so done is lawful, if the act is one which, but for their statutory powers, would have rendered the local authority liable to an action at law. *Lingke* v. *Christchurch Corporation*, 82 L. J. K.B. 37; [1912] 3 K.B. 595; 107 L. T. 476; 76 J. P. 433; 10 L. G. R. 773; 56 S. J. 735; 28 T. L. R. 536—C.A.

A person is not disentitled to compensation under section 308 of the Public Health Act, 1875, by reason only that the state of matters causing him damage is temporary and during the construction of the works, provided it continues for more than a merely negligible time. *Ib.*

The defendants, a local authority, in exercise of their powers under the Public Health Act, 1875, laid down a sewer in a public street in which the plaintiff occupied premises consisting of a house and a shop in which she carried on the business of a furniture dealer. In the course of the work the defendants reasonably and without negligence opened the pavement and the roadway in front of the plaintiff's premises and threw up a heap of earth, thus obstructing the access to her house and shop and interfering with her business, and this state of matters continued for about three months:—*Held*, that the plaintiff was entitled to recover compensation from the defendants under section 308 of the Public Health Act, 1875, for the damage she had sustained by these acts. *Ib.*

Herring v. *Metropolitan Board of Works* (34 L. J. M.C. 224; 19 C. B. (N.S.) 510) distinguished by Vaughan Williams, L.J., disapproved by Fletcher Moulton, L.J., and held not to be applicable by Buckley, L.J. *Ib.*

LOCOMOTIVE.

See WAY.

LODGER.

Franchise.]—*See* Election Law.

LODGING HOUSE.

By-laws as to.]—*See* Metropolis.

LONDON.

See METROPOLIS.

LORDS, HOUSE OF.

See APPEAL; PARLIAMENT.

LOTTERY.

See GAMING AND WAGERING.

LUGGAGE.

See CARRIER.

LUNATIC.

I. Lunatic so Found, 938.

II. Lunatic not so Found, 939.

III. Mentally Defective Person, 943.

IV. Pauper Lunatics — *See* Poor Law (Pauper Lunatics).

V. Insanity in Relation to Crime — *See* Criminal Law.

I. LUNATIC SO FOUND.

See also Vol. IX. 560, 2080.

Committee of Estate—Application by Person Found Incapable of Managing his Affairs to Attend Proceedings.]—In 1906 Lord T. was

found to be a person incapable of managing his affairs, but capable of managing himself. A committee of the estate was appointed, and the person who in default of issue male to Lord T. was the next heir to the title and also tenant for life in remainder of the settled estates was given liberty to attend generally upon the proceedings. Since the management of the estate was taken over by the committee the income received by Lord T. had increased from a nominal sum to about 800*l.* per annum. In 1911 Lord T. and his wife applied that they or one of them might be at liberty to attend the future proceedings in the matter generally at the expense of the estate:—*Held*, that the application must be refused. *Townshend (Marquess), In re*, 28 T. L. R. 12—C.A.

Power to Bar Lunatic's Estate Tail—Jurisdiction of Master—Re-settlement of Proceeds of Sale.]—Where a lunatic is tenant in tail of land which it is desired to sell, the sale cannot be carried out merely under clause (*a*) of section 120 of the Lunacy Act, 1890, which authorises the sale of a lunatic's property, but it is competent for the Judge in Lunacy to order the committee under clause (*l*) to bar the entail with a view to sale, as the statutory right to bar an entail conferred by the Fines and Recoveries Act, 1833, is a "power vested in the lunatic for his own benefit." The order may be made by a Master in Lunacy under section 27 of the Lunacy Act, 1891, which enables the Master to exercise the jurisdiction of a Judge in Lunacy as regards administration and management. Where the sale has taken place it should in ordinary cases be referred to the Judge to make a re-settlement of the proceeds of sale not applied under the powers of the Act, so that they should remain subject to trusts as if no disposition had been made and the interests of remaindermen should not be defeated. *E. D. S., In re*, 83 L. J. Ch. 505; [1914] 1 Ch. 618; 110 L. T. 631; 58 S. J. 338—C.A.

Entry on Lands of Lunatics—New Letting.]—The doctrine applicable to entry on the lands of a minor applies also to entry on the lands of a lunatic. A person entering on the lands of a lunatic, with notice of the lunacy and of the rights of the lunatic, becomes a bailiff in respect of the lunatic's estate in the lands, and where the lands are held by the lunatic under a contract of tenancy, and a new tenancy is subsequently made to the person so entering, such new letting will be deemed a graft on the old tenancy. *Smyth* v. *Byrne*, [1914] 1 Ir. R. 53—C.A.

II. LUNATIC NOT SO FOUND.

See also Vol. IX. 636, 2084.

Appointment of Person to Act as Committee—Two Sisters of Unsound Mind—Separate Applications—Duplicate Evidence—Consolidation of Proceeding—Costs.]—Where two sisters are alleged to be of unsound mind, and application is made for the appointment of a receiver of their property and for directions for their maintenance under section 116 of the Lunacy Act, 1890, separate summonses are properly issued in the case of each sister; but if the evidence on which the applications are grounded is similar, it is improper to file separate affidavits with separate undertakings of the proposed receiver in each case, and only such costs should be allowed as if there had been only one set of affidavits and one undertaking in the two cases. *Morris, In re*, 81 L. J. Ch. 451; [1912] 1 Ch. 730; 106 L. T. 553—C.A.

Receiver Appointed to Exercise Powers of Committee—Solicitor Appointed by Receiver—Liability for Costs Incurred — Statute of Limitations.]—In 1900 an order was made under section 116 of the Lunacy Act, 1890, appointing F. G. (hereinafter called the receiver) to exercise certain of the powers of a committee of the estate of a person of unsound mind not so found. The receiver employed a solicitor, and certain costs were incurred in 1904, 1905, and 1906 in respect of the lunatic's estate. Some of these costs were directed to be taxed and paid, and some had not been taxed, but no payment had been made as to any of them. The solicitor died in 1906, and certain moneys having lately fallen into the lunatic's estate, his executor applied in lunacy for payment of the unpaid costs due to him. It was objected that the solicitor's proper remedy was to sue the receiver personally, and that the executor was not entitled to receive out of the lunatic's estate any costs barred by the Statute of Limitations as against the receiver:—*Held*, that the lunatic and not the receiver was the solicitor's client, and it was for the Judge in Lunacy to say what ought to be done. Even if the Statute of Limitations could be pleaded on behalf of the lunatic, this was not a case in which the Judge should allow it to be pleaded. The costs must therefore be paid out of the lunatic's estate. *Plumpton* v. *Burkinshaw* (77 L. J. K.B. 961; [1908] 2 K.B. 572) followed. *E. G., In re*, 83 L. J. Ch. 586; [1914] 1 Ch. 927; 111 L. T. 95; 58 S. J. 497—C.A.

Receiver — Purchase of Freehold Reversion of Lease under Order of Master in Lunacy—Conversion — Realty or Personalty.]—It is within the power of the Court in Lunacy to alter the nature and consequent devolution of the estate of a lunatic. Where a receiver of a lunatic's estate, acting on an order of the Master in Lunacy, purchases the freehold reversion of leasehold premises belonging to the lunatic the leasehold merges in the freehold reversion, and passes, on the death of the lunatic intestate, to the heir-at-law of the lunatic. *Searle, In re; Ryder* v. *Bond*, 81 L. J. Ch. 751; [1912] 2 Ch. 365; 106 L. T. 1005; 56 S. J. 613—Joyce, J.

Alleged Lunatic—Detention in Workhouse—Order of Relieving Officer for Temporary Detention—No Order of Justice—Certificate of Medical Officer—Further Detention—No Want of Good Faith or Reasonable Care—Action against Workhouse Master—Stay of Action—Legality of Further Detention.]—A relieving officer, acting under section 20 of the Lunacy

Act, 1890, removed the plaintiff as an alleged lunatic to a workhouse of which the defendant was the master, and she was received into it under an order of the relieving officer which required the defendant to receive and detain her in the workhouse for a period of three days. During that period she was visited and examined by a Justice, who made no order under section 13 or otherwise in regard to her. The medical officer of the workhouse, however, during that period made a certificate in writing under section 24 for the detention of the plaintiff for fourteen days from its date. The plaintiff was detained in the workhouse for a further period of nearly six days beyond the first three days, and was then discharged. The plaintiff brought an action against the defendant for false imprisonment, alleging that her detention for the further period was unauthorised, as no order of a Justice had been made in regard to her:—*Held*, that, assuming that, on the true construction of the Act, the further detention was unauthorised in the absence of a Justice's order, yet in the circumstances, and more particularly having regard to the certificate of the medical officer purporting to authorise the further detention, it could not be said that the defendant, in detaining the plaintiff, had acted otherwise than in good faith and with reasonable care, and therefore that the action should be stayed under section 330 of the Act. *Shackleton* v. *Swift*, 82 L. J. K.B. 607; [1913] 2 K.B. 304; 108 L. T. 400; 77 J. P. 241; 11 L. G. R. 462—C.A.

Semble, that the further detention was authorised by the certificate of the medical officer and that a Justice's order was unnecessary. *Ib.*

Necessaries — Advances by Bank to Procure.]—A person lending money to provide necessaries for a lunatic has an equitable right to stand in the shoes of the lunatic's creditors who have been paid out of the moneys lent. *Beavan, In re; Davies, Banks & Co.* v. *Beavan*, 81 L. J. Ch. 113; [1912] 1 Ch. 196; 105 L. T. 784—Neville, J.

A bank advanced money to a person who had taken upon himself the management of the affairs of a lunatic not so found. The money being applied for the necessary maintenance of the lunatic and his family and for the protection of his estate,—*Held*, that the bank could prove against the lunatic's estate for the money advanced, but not for interest or bank charges. *Ib.*

Will made before Lunacy—Specific Bequest of Chattels — Chattels Sold under Order in Lunacy—Recovery of Sanity shortly before Death—Ademption.]—P., who was possessed of considerable estate, by his will dated April 4, 1910, after bequeathing all his motor cars with their accessories to the defendant M., gave the residue of his estate to a charity, and appointed the plaintiff and the defendant M. his executors. In May, 1910, the testator became of unsound mind, and on an order of two magistrates was placed in a private asylum. On June 14, 1910, the Master in Lunacy made an order appointing a receiver of the income of the lunatic's estate, and authorised the receiver to sell the motor cars with their accessories. Under this order the receiver sold the motor cars and accessories and paid the proceeds into Court to a separate account in the lunacy, and they were invested in 1,014*l.* Consols. On October 14, 1910, a doctor certified that P. had recovered his sanity; but he was very ill, and, without leaving the asylum or resuming control of his affairs, he died at the asylum on November 5. The executors proved the will, and this summons was taken out to determine whether the specific bequest of the motor cars and accessories to the defendant M. was adeemed by the sale of those chattels under the order in lunacy so that the proceeds passed to the residuary legatee. The receiver did not pass his final accounts until December, 1910:—*Held*, that these chattels were sold under the order made under section 123 of the Lunacy Act, 1890, and that that section applied; there was no evidence that the testator, on recovering his sanity, elected to take his property into his own possession and management, and therefore the operation of the section continued until after his death, and that the specific legatee is entitled to the sum of Consols which represented the proceeds of sale of the chattels in question. *Palmer, In re; Thomas* v. *Marsh*, [1911] W. N. 171—Neville, J.

Order to Divide Surplus Income amongst Daughters — Death of Lunatic — Funds in Hands of Committee—Income Accrued but not Paid before Death—Claim by Daughters—Residuary Estate.]—Under orders made in Lunacy the net surplus income of the estate of a lunatic so found was divided by the committee between the daughters of the lunatic. Upon the death of the lunatic there was in the hands of the committee a certain sum representing surplus income which had not been distributed amongst the daughters. There was also a sum received by the administrator with the will annexed of the lunatic in respect of income accruing during the life of the lunatic, but not paid till after her death. The daughters claimed these sums as due to them under the orders in Lunacy:—*Held*, that the orders in Lunacy came to an end on the death of the lunatic, and that both these sums formed part of the capital of the residuary estate of the testatrix. *Way, In re* (30 L. J. Ch. 815; 3 De G. F. & J. 175), and *Marman's Trusts, In re* (8 Ch. D. 256), followed. *Bennett, In re; Greenwood* v. *Bennett*, 82 L. J. Ch. 506; [1913] 2 Ch. 318; 109 L. T. 302—Warrington, J.

Capacity—Settled Account—Expert Witness — Function of the Court.] — Where a married woman carries on a trade or business, and an action is brought by her next friend for an account against her trustee, who had managed her property, and her trustee, in defending the action, denied that she was of unsound mind and pleaded settled account, and the medical evidence as to her state of mind was conflicting,—*Held*, that it is the function of the Court in such a case to form an independent opinion with regard to the technical aspect. *Richmond* v. *Richmond*, 111 L. T. 273; 58 S. J. 784—Neville, J.

Arrears of Maintenance in Asylum.] — Arrears of maintenance of a lunatic in an asylum are an ordinary debt of the lunatic, to which the Statute of Limitations applies. *Murphy, In re; Prendergast* v. *Murphy*, [1913] 1 Ir. R. 504—Barton, J.

III. MENTALLY DEFECTIVE PERSON.

Petition for Order to Send to Institution—Petition by Mother—"The parent"—"Without visible means of support"—Jurisdiction as to Costs.]—Either parent of a defective person may, under section 2, sub-section 1 of the Mental Deficiency Act, 1913, present a petition for an order that the defective be sent to an institution; but where the mother presents the petition and the father is alive, his written consent must, under section 6, be produced unless it is proved that such consent is unreasonably withheld, or that he cannot be found. A defective is not "without visible means of support" within the meaning of section 2, sub-section 1 (*b*), merely by reason of the fact that he has no property of his own, and cannot earn his own living, and has no legal right to compel his parents to maintain him in their home. Where a judicial authority makes an order under section 2, it has jurisdiction, in a proper case, to order the costs to be paid by the local authority. *Rex* v. *Radcliffe*, 84 L. J. K.B. 2196; [1915] 3 K.B. 418; 13 L. G. R. 1192; 31 T. L. R. 610—D.

Conviction—Residence—Authority Liable for Care of Defective.]—H. L., a defective within the meaning of the Mental Deficiency Act, 1913, was found guilty of an offence committed in September, 1914, within the area of the London County Council. The county in which H. L., had she been a pauper, would have been deemed to have acquired a settlement within the meaning of the law relating to the poor was Kent. Subsequently to 1910 H. L. was in the care of a rescue society, who found situations for her, but she never retained any situation for more than a short time. In January and May, 1912, situations were found for her in London. Evidence was also given that in April, 1914, she was in service in London, that from April till July, 1914, she was living in London, and that after that date she was seen several times in London: —*Held*, that these facts did not constitute a case of doubt within the meaning of section 44, sub-section 4 of the Mental Deficiency Act, 1913, and that, therefore, H. L.'s residence must, by virtue of section 44, sub-section 1, be presumed to be within the County of London. *Kent County Council* v. *London County Council*, 84 L. J. K.B. 1781; 79 J. P. 486; 13 L. G. R. 1070—D.

MAGISTRATE.

See JUSTICE OF THE PEACE.

MAINTENANCE.

Of Infants.]—*See* INFANT.

Of Paupers.]—*See* POOR LAW.

Of Suits.]—*See* CHAMPERTY.

MALICIOUS INJURY.

See CRIMINAL LAW.

MALICIOUS PROCEDURE AND FALSE IMPRISONMENT.

A. FALSE IMPRISONMENT, 944.

B. MALICIOUS PROCEDURE, 945.

A. FALSE IMPRISONMENT.

See also Vol. IX. 702, 2093.

Person Given in Charge for a Particular Felony — Failure of that Charge — Proof of Committal of other Felonies—Reasonable and Probable Cause for Suspicion—Whether sufficient Justification for Imprisonment.]—In an action for false imprisonment the defendants, in order to justify the imprisonment, must prove that the particular felony for which the plaintiff was imprisoned has in fact been committed; and if that particular felony has not been committed, it is no justification for the defendants to prove that at the time of the plaintiff's arrest other felonies had been committed, and that they had reasonable and probable cause for suspecting the plaintiff of having committed them. *Walters* v. *Smith*, 83 L. J. K.B. 335; [1914] 1 K.B. 595; 110 L. T. 345; 78 J. P. 118; 58 S. J. 186; 30 T. L. R. 158—Sir Rufus Isaacs, C.J.

Detention in Coal Mine—Contract to Work—Breach of Contract by Workman—Right to be Conveyed to the Surface.]—It is not false imprisonment to hold a man to conditions which he has voluntarily accepted. A workman went down into a coal mine upon the terms that he should work for a certain fixed period, and then be conveyed to the surface by machinery provided by the employers. Before the termination of his period of work the workman, in breach of his contract, refused to continue his work, and came to the bottom of the shaft and demanded to be conveyed to the surface at once. The machinery was available, but the employers refused to convey the workman to the surface immediately, and detained

him in the mine for a certain time :—*Held*, that an action for false imprisonment would not lie against the employers. *Herd* v. *Weardale Steel, Coal and Coke Co.*, 84 L. J. K.B. 121; [1915] A.C. 67; 111 L. T. 660; 30 T. L. R. 620—H.L. (E.)

There is nothing in the Coal Mines Regulation Act, 1887, which gives a minor a right to use the winding-up machinery whenever he pleases. *Ib.*

Decision of the Court of Appeal (82 L. J. K.B. 1354; [1913] 3 K.B. 771) affirmed. *Ib.*

B. MALICIOUS PROCEDURE.

See also Vol. IX. 714, 2095.

Notice to Abate Nuisance—Summons before Justices — Dismissal — Criminal Offence — Malice—Absence of Reasonable and Probable Cause—Injury to Reputation or Liberty.]—The plaintiff was the occupier of a house within the Romford Urban District, and the defendant Bailey, as sanitary inspector thereof, served on the plaintiff a sanitary notice, under section 94 of the Public Health Act, 1875, requiring him to abate a nuisance in the house. With this notice the plaintiff refused to comply, alleging that it was the duty of his landlord to abate the nuisance. The defendant Bailey, on the instructions of the defendant council, then preferred a complaint before the Justices under section 95 of the Act, but the Justices dismissed the summons with costs. At the trial of an action for malicious prosecution brought by the plaintiff against the defendants, the Judge held on the evidence that the defendants had no reasonable and probable cause for preferring the complaint, whilst the jury found that the defendants had acted maliciously in so doing, that the plaintiff's reputation was thereby injured, and they awarded him 250*l.* damages as against the defendant council. On the case coming on for further consideration, Horridge, J., held that the co-defendants were joint tortfeasors, and that there must be judgment for 250*l.* against both defendants :—*Held*, on appeal, that a complaint under section 95 of the Public Health Act, 1875, for non-compliance with a notice to abate a nuisance, is not in itself a proceeding of such a nature as is calculated to involve damage to the fair fame, or liberty through danger of imprisonment, of the person against whom the complaint is made, sufficient to support an action by him for malicious prosecution, even if such complaint has been preferred maliciously and without reasonable and probable cause, and that consequently judgment must be entered for the defendants. *Rayson* v. *South London Tramways* (62 L. J. Q.B. 593; [1893] 2 Q.B. 304) distinguished. *Wiffen* v. *Bailey*, 84 L. J. K.B. 688; [1915] 1 K.B. 600; 112 L. T. 274; 79 J. P. 145; 13 L. G. R. 121; 59 S. J. 176; 31 T. L. R. 64—C.A.

Decision of Horridge, J. (83 L. J. K.B. 791; [1914] 2 K.B. 5), reversed. *Ib.*

Absence of Reasonable and Probable Cause —No Evidence—Reasonable Care by Defendants to Inform themselves—Leaving Question to Jury.]—The plaintiff was a workman at a weekly wage in the employment of the defendants, and they were in the habit of buying skins by measurement from one Miller, by whom one Simmons was employed as manager. Miller ceased to employ Simmons, and the latter informed the defendants that he had been bribing the plaintiff to pass skins as of larger measurement and better quality than they really were, and that the money was obtained by an account being kept in Miller's books in fictitious names, and cheques being drawn in favour of these fictitious payees and cashed by Miller. Simmons also stated that the plaintiff used to go to Miller's house to arrange these matters, and he produced a letter in support of this statement. The plaintiff, on being sent for, denied Simmon's allegations, but a large proportion of the skins which should have been checked by the plaintiff were found to be wrongly marked. The defendants prosecuted Miller and the plaintiff, but Miller was acquitted, and the defendants then offered no evidence against the plaintiff. In an action by the plaintiff against the defendants for malicious prosecution the plaintiff put in the depositions, which shewed that the defendants had acted on the above information. The Judge declined to ask the jury whether the defendants took reasonable care to inform themselves of the facts and whether they honestly believed in the charge, and he dismissed the action on the ground that there was no evidence of the absence of reasonable and probable cause :—*Held*, that in the circumstances the Judge was right in refusing to leave the above questions to the jury, inasmuch as there was no evidence of the defendants not having made proper enquiries, and that there was no evidence of the absence of reasonable and probable cause, and therefore the Judge's decision must be affirmed. *Bradshaw* v. *Waterlow & Sons, Lim.*, [1915] 3 K.B. 527; 31 T. L. R. 556—C.A.

MANDAMUS.

Right to—Specific Legal Right—Clause Inserted in Act of Parliament for Benefit of Applicant—By-law not in Accordance with Statute.]—In a bill promoted in Parliament by a corporation for the acquisition of certain tramways a clause was inserted at the instance and for the benefit of an insurance company requiring the corporation to make by-laws prescribing the distance at which carriages using the tramways should be allowed to follow one after the other. The company, however, was not mentioned in the Act :—*Held* (Avory, J., doubting), that the insurance company, although they were not mentioned in the Act, had such an interest in regard to the matter as entitled them to apply for a *mandamus* requiring the corporation to comply with the statute and to make by-laws specifying the distance at which one tramcar should follow another. *Rex* v. *Manchester*

Corporation; Wiseman, Ex parte, 80 L. J. K.B. 263; [1911] 1 K.B. 560; 104 L. T. 54; 75 J. P. 73; 9 L. G. R. 129—D.

Alternative Remedy—Employment Agency—Whether Mandamus Lies to London County Council to Hear Application for Licence.]—Whether a *mandamus* will lie to the London County Council to hear and determine an application for a licence to carry on an employment agency, *quære*. As section 22, sub-section 5 of the London County Council (General Powers) Act, 1910, provides a remedy by appeal in the case of a person aggrieved by the refusal of the London County Council to grant a licence for an employment agency, the Court discharged a rule which had been obtained for a *mandamus* requiring the Council to hear an application for an employment agency licence. *Rex* v. *London County Council; Thornton, Ex parte*, 27 T. L. R. 422—D.

Income Tax Commissioners — Refusal to Hear Expert Evidence.] — The owner and occupier of licensed premises appealed to the Income Tax Commissioners against the assessment of his premises. He attended and gave evidence before the Commissioners, and his solicitor then stated that he wished to call an expert valuer. The Commissioners said they already had all the facts before them and did not think any further evidence would assist them, and they declined to hear the expert. A rule *nisi* was then obtained calling upon the Commissioners to shew cause why they should not hear and determine the appeal according to law:—*Held*, that *mandamus* would not lie for the purpose of appealing from the Commissioners' decision as to the non-necessity of hearing the evidence tendered, and that the rule should therefore be discharged. *Rex* v. *Offlow Income Tax Commissioners*, 27 T. L. R. 353—D.

To Repair Dangerous Bridge — Disused Canal.]—A canal company, the predecessors in title of the defendants, acting under powers conferred upon them by a private Act of Parliament, made a canal, and in so doing cut through an old highway, which they carried by a new bridge over the canal. The canal under the bridge was no longer used for navigation, and the bridge, owing to its steepness and narrowness, was very inconvenient for the traffic of the district. The bridge having fallen into disrepair and become dangerous, the Court granted a *mandamus* to compel the canal company to repair the bridge. *Rex* v. *Wilts and Berks Canal Co.; Berkshire County Council, Ex parte*, 82 L. J. K.B. 3; [1912] 3 K.B. 623; 107 L. T. 765; 77 J. P. 24; 10 L. G. R. 1033—D.

Variation between Writ and Order.] — Where the command in a writ of *mandamus* varies from that contained in the order allowing the issue of such writ, it is a matter of course to quash the writ so varying. There is no jurisdiction to amend a writ of *mandamus* that varies as aforesaid, unless the order giving leave to issue it is similarly amended either prior to or contemporaneously with the amendment of the writ. Where a *mandamus* commands several things the prosecutor must shew that he is entitled to enforce every one of such commands; and, if he fails to establish a right to enforce any one of such commands, a peremptory *mandamus* cannot go. *Rex* v. *Cork County Council*, [1911] 2 Ir. R. 206—K.B. D.

Irregular Affidavit — Other Adequate Remedy.]—A rule had been granted calling upon the Master of the Crown Office to shew cause why he should not summon a grand jury of Middlesex in the King's Bench Division under the Middlesex Grand Jury Act, 1872:—*Held*, that the rule must be discharged on the ground that the affidavit on which it was granted was irregular and because there was another remedy open to the applicant. *Rex* v. *Crown Office Master*, 29 T. L. R. 427—D.

No Affidavit Stating Name of Prosecutor.]—On an application for a *mandamus*, rule 65 of the Crown Office Rules (which provides that no order for the issuing of any writ of *mandamus* shall be granted unless, at the time of moving, an affidavit be produced, made by the applicant himself or his solicitor, stating at whose instance such motion is made as prosecutor) must be strictly complied with. *Rex* v. *Andover Rural Council*, 77 J. P. 296; 11 L. G. R. 996; 29 T. L. R. 419—*per* Avory, J.

Practice—Motion on Last Day of Term.]—The Court will not hear a motion for a *mandamus* on the last day of term. *McBean, Ex parte*, 27 T. L. R. 401—D.

MANSLAUGHTER.

See CRIMINAL LAW.

MAPS.

See EVIDENCE.

MARGARINE.

See LOCAL GOVERNMENT JURISDICTION—FOOD AND DRINK.

MARINE INSURANCE.

See SHIPPING (INSURANCE).

MARINER.

See SHIPPING.

MARKET GARDENS.

See LANDLORD AND TENANT.

MARKETS AND FAIRS.

A. GENERALLY.

See also Vol. IX. 759, 2102.

Franchise — Market Days — Lost Grant — User of Streets—Obstruction—Legal Origin—Injunction — Tolls — Reasonableness — Payment of Tolls by Buyers.]—In 1682 a charter was granted by King Charles 2 for the holding of a market on Thursday and Saturday in each week in or near Spittle Square. The defendant was the lessee of the market lands and premises and of the franchise rights, and had for many years held markets and taken tolls in the market place and certain adjoining streets on every day of the week except Sunday. In an action brought by the Attorney-General at the relation of the City Corporation,—*Held*, first, that the defendant was not entitled to hold markets or take tolls on any days of the week other than Thursday and Saturday, seeing that a lost grant from the Crown to hold markets on these other days of the week could not be presumed in view of the decision of the Court of Appeal in *Att.-Gen.* v. *Horner* (*No.* 1) (54 L. J. Q.B. 227; 14 Q.B. D. 245); secondly, that except on Thursdays and Saturdays the defendant had no right to use or authorise the use of the streets in or about the market for the sale of goods, and must be restrained from so doing by injunction; thirdly, that the tolls charged by the defendant need not be uniform, provided the amount charged was in all cases reasonable; and fourthly, that at common law tolls were payable by the buyers and not by the sellers, and that, apart from some contractual arrangement under which any individual seller agreed with the defendant to pay the tolls demandable from the buyer, the defendant was not entitled to obtain payment of tolls from the sellers instead of the buyers, and must be restrained from so doing. *Att.-Gen.* v. *Horner* (*No.* 2), 82 L. J. Ch. 339; [1913] 2 Ch. 140; 108 L. T. 609; 77 J. P. 257; 11 L. G. R. 784; 57 S. J. 498; 29 T. L. R. 451—C.A.

Nature and limits of the presumption of a lost grant or other legal origin of a long-established usage considered. *Ib.*

Decision of Warrington, J., affirmed except in so far as he held that an arrangement by sellers to pay the tolls in place of and on behalf of the buyers could be inferred from the invariable practice of the market. *Ib.*

Sale of Cattle—Provision of Facilities for Weighing.]—The respondents had the exclusive use of a portion of the Chichester cattle market as a cattle sale yard, such portion consisting of a covered shed, inclosed from the rest of the market. On a particular day there was no weighbridge which could be used in the respondents' portion of the yard, but there was a weighbridge provided in the market by the corporation, and any animal sold in the respondents' sale yard could be weighed on the market weighbridge on payment. The respondents were summoned for selling cattle at a mart, where cattle were periodically sold, without providing facilities for weighing same as required by the Markets and Fairs (Weighing of Cattle) Acts, 1887 and 1891:—*Held*, that the Acts only required weighing facilities to be in or near the market, and as there were weighing facilities close to the respondents' premises the respondents had committed no offence. *Quære*, whether such an inclosure as that occupied by the respondents, being within a market, came within the Markets and Fairs (Weighing of Cattle) Acts, 1887 and 1891. *Knott* v. *Strides*, 109 L. T. 181; 77 J. P. 222; 11 L. G. R. 534; 23 Cox C.C. 505; 29 T. L. R. 418—D.

Market Overt—Custom of City of London—Sale in Auction Room.]—It is a question of fact in each case whether premises in which goods are sold constitute a "shop" within the custom of market overt in the City of London. A watch was sold in an auction room which was on the first floor of a building in the City of London. In the auction room, sales, largely of unredeemed pledges, were periodically held:—*Held*, on the facts, that the auction room was not a "shop" and that the sale of the watch there was not a sale in market overt. *Clayton* v. *Le Roy*, 81 L. J. K.B. 49; [1911] 2 K.B. 1031; 104 L. T. 419; 75 J. P. 229; 27 T. L. R. 206—Scrutton, J. Reversed on other grounds. *See post*, TROVER.

B. DISTURBANCE OF MARKET.

See also Vol. IX. 765, 2104.

Disturbance—Prohibition against Sales—Exception in Case of Sales "on any land or in any building belonging" to a Seller or in his Occupation.]—By the Hailsham Cattle Market Act, 1871, the plaintiffs were incorporated and empowered to carry on a market for the sale of certain cattle and other live-stock within the limits therein mentioned. By section 2 of the Act the Markets and Fairs Clauses Act, 1847, was incorporated with the Act of 1871, except where expressly varied. By section 42 of the Act every person who

should on the days appointed for holding markets sell or expose for sale at any place within the market limits, "except on any land or in any building belonging to him or in his occupation," any animals in respect of which tolls were by the Act authorised to be taken, should forfeit and pay to the plaintiffs a sum not exceeding 40*s*. The defendant had acquired land within the market limits, and there erected buildings in which he held auction sales of cattle and other livestock on days other than market days. The defendant or his clerks acted as auctioneers and salesmen :—*Held*, that section 42 of the private Act was an express variation of section 13 of the Markets and Fairs Clauses Act, 1847, and was alone applicable; that upon the construction of the whole private Act the only protection given to the plaintiffs against sales within the market limits was that contained in section 42 thereof; and that, although, if the plaintiffs' market had been an ancient market by franchise the defendant's acts would have been restrained as amounting to a disturbance of the market, yet that these acts came within the exception in section 42, with the result that the defendant was exempted not only from the penalty imposed by the section, but also from the liability of being restrained from doing them. *Hailsham Cattle Market Co.* v. *Tolman*, 84 L. J. Ch. 607; [1915] 2 Ch. 1; 113 L. T. 254; 79 J. P. 420; 13 L. G. R. 926; 59 S. J. 493; 31 T. L. R. 401—C.A.

Decision of Sargant, J. (84 L. J. Ch. 299; [1915] 1 Ch. 360), affirmed. *Ib*.

Statutory exemptions are from any general prohibition against the excepted acts that would otherwise arise from the creation of a statutory market, and not merely from the penalties imposed by the Act and the prohibitions implied in such penalties. *Abergavenny Improvement Commissioners* v. *Straker* (58 L. J. Ch. 717; 42 Ch. D. 83) followed. *Hailsham Cattle Market Co.* v. *Tolman*, 84 L. J. Ch. 299; [1915] 1 Ch. 360; 79 J. P. 185; 13 L. G. R. 248; 59 S. J. 303; 31 T. L. R. 86—Sargant, J.

Difference between Market Franchise at Common Law and Statutory Markets.]—The permissions given to statutory markets are not subject to any vague overriding prohibition arising from a monopoly ordinarily incident to a grant of market rights or a franchise of market at common law. *Ib*.

Warehouse—Sale in "own shop."]—The Southwark Market was originally founded by a charter of Edward 6, granting the manor to the Corporation of London with the right to hold the market, and was confirmed by 29 Car. 2. c. 4. In 1754 the market had become a nuisance to the traffic, and in that year the old market was abolished by 28 Geo. 2. c. 9; and by another statute in the same year (28 Geo. 2. c. 23) a new market was granted to new grantees on a site provided by them, section 4 of which made it unlawful for any person "to erect or hold any other market" within the borough. An amending Act (30 Geo. 2. c. 31) by section 10 imposed a penalty "if any poulterer, country chapman, lader, kidder, victualler, gardener, fruiterer, fish-seller, or any other person or persons, shall sell, utter, or put to shew or sale, by way of hawking, or as a hawker, or otherwise any . . . fruit, herbs . . . or other victuals or provision whatsoever, in any private house, lane, alley, inn, warehouse, street, . . . or other place . . . within 1,000 yards" of the market, but excepted from this provision sales by a person in his "own shop." For many years the market had been carried on as a fruit and vegetable market, where salesmen sold goods wholesale, and where, besides selling their own goods, they sold those of other persons on commission. In 1909 the defendant gave up his stalls in the market and took large premises near the market on lease for twenty-one years, where he carried on a wholesale business similar to that of salesmen in the market, using the greater part of his premises to expose goods for sale and store them with a view to a sale. In an action by the market trustees for an injunction to restrain him from so carrying on his business, —*Held*, that the defendant was carrying on business in his "own shop" within the permissive part of section 10 of 30 Geo. 2. c. 31, and had therefore incurred no penalty under the Act, and that no injunction ought to be granted. *Haynes* v. *Ford*, 80 L. J. Ch. 490; [1911] 2 Ch. 237; 104 L. T. 696; 75 J. P. 401; 9 L. G. R. 702; 27 T. L. R. 416—C.A.

Selling within Prescribed Limits—Tollable Article—"Sell."]—By section 13 of the Markets and Fairs Clauses Act, 1847, "After the market place is open for public use every person other than a licensed hawker who shall sell or expose for sale in any place within the prescribed limits, except in his own dwelling place or shop, any articles in respect of which tolls are by the special Act authorized to be taken in the market, shall for every such offence be liable to a penalty . . ." The appellant, who was a farmer, at his dwelling house, which was within the prescribed limits of the town of Ilfracombe, agreed to sell to a butcher in Ilfracombe two pigs at the rate of 10*s*. 6*d*. per score. They were to be at the appellant's risk until delivered. The appellant subsequently killed the pigs and delivered the carcasses to the butcher at his shop, which was within the prescribed limits of the town, but outside the market, where they were weighed, and the price ascertained. The appellant, having refused to pay toll in respect of the pigs, was convicted of an offence under section 13 :— *Held*, that in construing the section the niceties of the law relating to the sale of goods must be disregarded; that the section applies to an agreement which would popularly be called a sale; that the sale of the pigs was therefore at the appellant's "dwelling place," and not at the shop where the carcasses were subsequently delivered, and that the appellant was wrongly convicted. *Lambert* v. *Rowe*, 83 L. J. K.B. 274; [1914] 1 K.B. 38; 109 L. T. 939; 78 J. P. 20; 12 L. G. R. 68; 23 Cox C.C. 696—D.

Sale in Street—Hawker's Licence—Licence of Corporation—Exemption—Sale otherwise than as Hawker.]—By section 53 of the Derby

Corporation Act, 1877 (40 & 41 Vict. c. 118) it is provided that if any person sells or exposes for sale, except in his own dwelling house or shop, or in the dwelling house or shop of the buyer or intended buyer, or carries about for sale any article in respect of the sale or exposure for sale whereof in any market place or market hall, or fair, or in respect of the user of any stall or other convenience for the sale or exposure for sale whereof in any market place or market hall, or fair, the corporation are entitled to take any toll, stallage, or rent, he shall be liable to a penalty unless he is duly licensed for that purpose under the Act by the corporation. By section 55 of the same Act it is provided that nothing in the Act shall interfere with the lawful exercise of their calling by pedlars and hawkers duly licensed or certificated under any Act relating to such calling. An information was laid against the respondent under the Derby Corporation Act, 1877, for selling tomatoes from a hand-barrow in a street in the county borough of D. without having obtained a licence as required by the Act from the corporation. Under the Act tomatoes were included amongst the articles in respect of the sale of which in a market place the corporation were entitled to take a toll. The respondent had taken out a licence under the Hawkers Act, 1888 :—*Held*, that the mere fact that the respondent had taken out a hawker's licence under the Hawkers Act, 1888, was not sufficient to relieve him from the necessity of taking out a licence from the corporation of D. under the local Act for the sale of the articles in question, since in selling the same he was not acting under his hawker's licence, and that the exemption granted by section 55 of the Act did not apply to hawkers as a class, but only to hawkers in the lawful exercise of their calling as hawkers. *Lee* v. *Wallocks*, 111 L. T. 573; 78 J. P. 365; 12 L. G. R. 1221; 24 Cox C.C. 398—D.

Sale by Agent—Unauthorised and Contrary to Instructions—Liability of Principal.]—By a market Act it was provided : " For preventing any encroachments . . . on the said market, be it further enacted . . . that it shall not be lawful . . . to vend or expose to sale any . . . meat . . . in any shop . . . and every person who shall so vend or expose to sale " such meat, on conviction shall forfeit 5*l.* to be recovered by distress; and in default of distress imprisonment could be inflicted. The respondent, who had only a pork licence for his shop, brought some sheep carcasses to such shop for storage, intending to remove them to his stall in the market next morning. His wife, contrary to his instructions, and without his knowledge or authority express or implied, sold some of the mutton to a customer at the shop :—*Held*, that the respondent was not liable to the penalty. *Wake* v. *Dyer*, 104 L. T. 448; 75 J. P. 210; 9 L. G. R. 348; 22 Cox C.C. 413—D.

C. TOLLS.

See also Vol. IX. 773, 2104.

Sale of Milk.]—By a table of tolls of a certain market there was to be a toll " for every cart containing milk, fish, or other goods, provisions, marketable commodities, or articles, 6*d.*" The respondent sold milk from a cart within the prescribed limits, and was summoned under section 13 of the Markets and Fairs Clauses Act, 1847, which was incorporated in the local Act, for unlawfully selling, within the prescribed limits, milk in respect of which toll was duly authorised to be taken in the market :—*Held*, that the toll was a toll on every cart containing milk and not on the sale of milk, and the respondent could not be convicted for unlawfully selling milk within the prescribed limits. *Jenkins* v. *Thomas*, 104 L. T. 74; 75 J. P. 87; 9 L. G. R. 321—D.

See also Att.-Gen. v. *Horner (No. 2)*, *ante*, col. 949, and *Lambert* v. *Rowe*, *ante*, col. 952.

D. HAWKER.

See Lee v. *Wallocks*, *ante*, col. 953.

MARRIAGE.

See HUSBAND AND WIFE; INTERNATIONAL LAW.

MARRIED WOMAN.

See HUSBAND AND WIFE; BANKRUPTCY.

MASTER AND SERVANT.

I. Rights and Liabilities of Master and Servant.

A. *Contract of Hiring.*

1. Wages and Remuneration, 955.
2. Other Rights under the Contract, 956.
3. Termination of, 958.

B. *Character of Servant.* 959.

C. *Injuries to Servant in Course of Employment.*

Under Employers' Liability Act, 959.

2. Acts of Fellow Servant; Common Employment, 960.
3. Master's Negligence, 962.
4. Under Workmen's Compensation Act—*See* title Workmen's Compensation.

I. RIGHTS AND LIABILITIES OF MASTER AND SERVANT.

A. Contract of Hiring.

1. Wages and Remuneration.

See also Vol. IX. 812, 2116.

Servant's Right to Salary when Absent through Illness—Headmistress.]—The plaintiff, a married woman, was the headmistress of one of the defendants' schools. By the terms of her employment she was entitled in case of absence through illness to full pay for a month, after which time the defendants were entitled to take into consideration the circumstances of the case as to whether she was entitled to anything further:—*Held*, first, that "absence through illness" was not confined to a period of absence during actual illness, but included the period of convalescence and also absence occasioned by approaching illness; but secondly, that the absence of the plaintiff for a period of three months before her child was born, because in the defendants' view it was not desirable that the elder school children should see the plaintiff in her then condition, was not absence through illness, and as such absence was due to the defendants' request, they were liable for her salary during that period. *Davies* v. *Ebbw Vale Urban Council*, 75 J. P. 533; 9 L. G. R. 1226; 27 T. L. R. 543—Channell, J.

Wages — Trade Scheduled under Trade Boards Act, 1909 — "Outworker" — Person Employing Workmen.]—A person may be an "outworker" within the meaning of the Trade Boards Act, 1909, notwithstanding that he himself employs workmen. *Street* v. *Williams*, 83 L. J. K.B. 1268; [1914] 3 K.B. 537; 111 L. T. 544; 24 Cox C.C. 365; 78 J. P. 442—D.

Tailoring Trade—Occasional Employment in Tailoring Work.]—The Board of Trade made an Order under section 5, sub-section 2 of the Trade Boards Act, 1909, making minimum rates of wages obligatory for certain branches of the tailoring trade engaged in making garments for male persons. The schedule to the Order provided that the rates were to apply to all male workers who were "engaged during the whole or any part of their time" in any branch of the ready-made and wholesale bespoke tailoring trade which is engaged in making garments to be worn by male persons, but that they should not apply to "persons engaged merely as clerks, messengers, . . . and to others whose work stands in a relationship to the trade similar to that of the above excluded classes":—*Held*, that, where a worker is engaged for any substantial part of his time in work in the tailoring trade, he is entitled to be paid at the minimum rate of wages for such part of his time, notwithstanding that he may be employed in other work for the rest of his time. *Board of Trade* v. *Roberts*, 85 L. J. K.B. 79; 113 L. T. 739; 79 J. P. 465—D.

Wages of Miners.]—*See* Mines.

Truck Act—Payment of Wages in Coin—Deduction for Rent.]—A company let to its employees houses for the period of their employment with the company. At each fortnightly pay day the employees signed receipts for their wages, which contained a clause authorising the deduction of their house rent from their future wages, and also this clause: "In the event of my leaving your employment I authorise you to retain whatever moneys are in your hands until I remove from your house." On March 1, 1912, the employees left the employment owing to a strike, and from the wages payable on that day the company, in virtue of the authority granted in the receipts signed on the preceding pay day, February 16, withheld in the case of each employee a sum as against what might thereafter become due for the occupation of his house:—*Held*, that the contract of February 16 and the retention of part of the wages on March 1 were both illegal in respect, first (following *Williams* v. *North's Navigation Collieries*, 75 L. J. K.B. 334; [1906] A.C. 136), that they were in contravention respectively of sections 2 and 3 of the Truck Act; and secondly (following *M'Farlane* v. *Birrell*, 16 R. (J.) 28), that they did not fall within the exception in section 23, seeing that, the tenancies having determined with the employment, any sums due after March 1 were not rent, but damages for illegal occupation. *Summerlee Iron Co.* v. *Thomson*, [1913] S. C. (J.) 34—Ct. of Just.

2. Other Rights under the Contract.

See also Vol. IX. 825, 2121.

Confidential Employment—Trade Secrets—Disclosure to New Employer — Contract to Preserve Secrecy — Injunction — Nature of Secret not Disclosed to Court.]—The Court will restrain an ex-servant from publishing or divulging anything which has been communicated to him in confidence, or under a contract by him, express or implied, not to do so; and generally from making improper use of information obtained in the course of a confidential

employment; also from using, to his late master's detriment, information and knowledge surreptitiously obtained from him during the term of service. The Court will grant an injunction to restrain the disclosure of a secret process although the process has not been disclosed to the Court, provided it is satisfied that the process exists, and can be disclosed if necessary. *Amber Size and Chemical Co.* v. *Menzel*, 82 L. J. Ch. 573; [1913] 2 Ch. 239; 109 L. T. 520; 30 R. P. C. 433; 57 S. J. 627; 29 T. L. R. 590—Astbury, J.

Misconduct of Servant — Suspension from Work—Right of Master.]—The appellant was a workman in the employ of the respondents under a contract of service determinable by fourteen days' notice on either side. On Sunday, June 14, 1914, he absented himself from work without the respondents' leave, and as a result on Monday, June 15, the respondents suspended him from work for that one day. On June 29 the appellant preferred a summons against the respondents under the Employers and Workmen Act, 1875, on the ground that he had been wrongfully dismissed by the respondents on June 15 without having given or received the necessary notice, and he claimed damages:—*Held*, that the respondents had a right either to dismiss the workman for his misconduct in absenting himself from work without leave, and thus put an end to the contract of service, or to treat the contract as continuing (subject to their right to claim damages against the workman), but that they had no right to suspend the workman for one day and thus prevent him from earning wages for that period. *Hanley* v. *Pease and Partners, Lim.*, 84 L. J. K.B. 532; [1915] 1 K.B. 698; [1915] W. C. & I. Rep. 178; 112 L. T. 823; 79 J. P. 230—D.

—— Powers of Court of Summary Jurisdiction.]—A Court of summary jurisdiction, when dealing with a dispute between master and servant under the Employers and Workmen Act, 1875, is not strictly confined to the consideration of the claim made before it, but can deal with all disputes which may appear in the course of the hearing to have arisen between master and workmen. *Ib.*

Indemnity for Losses Incurred by Servant in Performance of Duty—Employee of Company — Costs of Libel Action Brought in Consequence of Report—Provision in Articles for Indemnity of Officers and Servants.]—A mining engineer was employed by a company, on certain terms as to remuneration and travelling and other expenses, to visit and report on property of the company abroad. While carrying out this commission he discovered matters relating to the conduct of a director, which matters he had not been employed to investigate, but which, having discovered them, it was his duty to report to the company. He made such a report and incurred large costs in defending successfully a libel action brought against him in consequence by the director. One of the company's articles of association provided that its officers and servants should be indemnified by it against loss, and that all costs, losses, and expenses which any officer or servant might incur or become liable to by reason of acts or deeds done by him as such officer or servant should be paid out of the company's funds. Sargant, J., *held*, distinguishing *The James Seddon* (35 L. J. Adm. 117; L. R. 1 A. & E. 62), that the engineer as a servant of the company was not entitled either at common law or under the articles of association to be indemnified by the company in respect of the costs:—*Held*, by the Court of Appeal on the facts, that the engineer was an agent of the company and not a mere servant. On well settled principles he was entitled as such agent to be indemnified against all liability reasonably occasioned by his employment. *Famatina Development Corporation, In re*, 84 L. J. Ch. 48; [1914] 2 Ch. 271; 30 T. L. R. 696—C.A.

3. Termination of.

See also Vol. IX. 828, 2126.

Engagement for a Year — Condition as to "satisfaction of directors"—Honest Dissatisfaction—Right of Dismissal Within the Year.]—By an agreement in writing the defendants engaged the plaintiff as shop superintendent. The agreement provided that the engagement should be for one year, subject to the plaintiff's carrying out his duties "to the satisfaction of the directors." Before the expiration of the year the defendants dismissed the plaintiff on the ground that he had not carried out his duties satisfactorily. In an action brought by the plaintiff to recover damages for wrongful dismissal the jury found—first, that the defendants were genuinely dissatisfied with the plaintiff's discharge of his duties; but, secondly, that they had no good grounds for such dissatisfaction. The County Court Judge entered judgment for the defendants:—*Held*, that upon the findings of the jury judgment was properly entered for the defendants, inasmuch as genuine dissatisfaction was sufficient to entitle them to terminate the agreement, and their reasons for such dissatisfaction were immaterial. *Diggle* v. *Ogston Motor Co.*, 84 L. J. K.B. 2165; 112 L. T. 1029—D.

Domestic Service—First Month's Service—Custom to Determine by Fortnight's Notice—Judicial Notice of Custom—Right of Servant to Wages for Month's Service.]—The plaintiff entered the defendant's employment as a domestic servant on November 3, 1910, at the yearly wage of 23*l.*, payable monthly. No special agreement was made as to the length of notice required to determine the contract. On November 17, 1910, the plaintiff gave the defendant notice of her intention to leave at the end of a month's service, and accordingly she left on December 3. The defendant having declined to pay the plaintiff any wages upon the ground that she had broken the contract by failing to give a month's notice, the plaintiff sued the defendant in the County Court to recover her wages for the month she had served. At the trial the plaintiff relied upon a custom that either master or servant may determine such a contract at the end of the first month by notice given at or before the expiration of the first fortnight. No

evidence was given in support of this custom, but the County Court Judge said he would take judicial notice of it, adding that he had done so upon previous occasions. He accordingly gave judgment for the plaintiff for the month's wages :—*Held*, first, that the County Court Judge having had the question before him on previous occasions was entitled to take judicial notice of the custom; and secondly, that in any view the plaintiff was entitled to be paid for the month she had served. *Moult* v. *Halliday* (67 L. J. Q.B. 451; [1898] 1 Q.B. 125) considered. *George* v. *Davies*, 80 L. J. K.B. 924; [1911] 2 K.B. 445; 104 L. T. 648; 55 S. J. 481; 27 T. L. R. 415—D.

Action for Wrongful Dismissal — Prima Facie Case of Misconduct—Burden of Proof—Condonation.]—Where a master dismissed his servant on the ground of the servant taking a secret commission, and established a *prima facie* case, the burden of proof held to be shifted and to lie on the servant to prove the innocence of the transaction. A man cannot condone a wrong which he does not believe that servant to have committed, and of which he accepts the servant's denial, without making enquiries which would have disclosed the truth. The master does not waive his rights by postponing action until he is fully satisfied of the servant's guilt. *Federal Supply and Cold Storage Co.* v. *Angehrn*, 80 L. J. P.C. 1; 103 L. T. 150; 26 T. L. R. 626—P.C.

—— **Contract of Service — Restriction on Trade—Dismissal.**]—It is not competent for a servant to contend that he has been wrongfully dismissed when, instead of being given a week's notice to quit, in accordance with the terms of his contract, he is paid a week's salary and dismissed. Such a transaction does not amount to a wrongful dismissal, coupled with a tender of damages. *Dennis* v. *Tunnard*, 56 S. J. 162—Swinfen Eady, J.

B. Character of Servant.

See also Vol. IX. 857, 2130.

Conspiracy to Give False Character to Servant—Oral Character.]—A false character, not in writing, is within the operation of sections 2 and 3 of the Characters of Servants Act, 1792, and the giving of such false character orally is an indictable offence. *Rex* v. *Costello* (or *Connolly*), 79 L. J. K.B. 90; [1910] 1 K.B. 28; 101 L. T. 784; 74 J. P. 15; 22 Cox C.C. 215; 54 S. J. 13; 26 T. L. R. 31—C.C.A.

C. Injuries to Servant in Course of Employment.

1. Under Employers' Liability Act.

See also Vol. IX. 860, 2134.

Action for Damages under Employers' Liability Act, 1880, or Alternatively at Common Law—Remission for Trial—Scotland.]—An action by the father of a deceased workman, claiming damages for the death by accident of his son, against the employers, based upon common law or alternatively upon the Employers' Liability Act, 1880, is not a claim by an employee against his employers, and is not within the exception in the Sheriff Courts (Scotland) Act, 1907, s. 30, by which actions for damages in the Sheriff Court may at the suit of either party be remitted to the Court of Session for jury trial. The effect of that section is to repeal section 14 of the Workmen's Compensation Act, 1906. *Banknock Coal Co.* v. *Lawrie*, 81 L. J. P.C. 89; [1912] A. C. 105; 106 L. T. 283; 28 L. R. 136; [1912] W.C. Rep. 1—H.L. (Sc.).

2. Acts of Fellow Servant; Common Employment.

See also Vol. IX. 877, 2139.

Common Employment—Hiring for Particular Service—Control of Servant—Negligence — Injury to Hirer's Servant.] — The Belfast Harbour Commissioners have, under their statutory powers, the control of the harbour and of all piers, docks, and quays belonging to it; and it is their duty to assign a berth to a vessel to be discharged in the port; they have power to provide cranes for the unloading of such vessels, and it is their duty to provide proper servants and labourers for working such cranes for the use of the public. The master of a vessel hired a crane from the commissioners for the purpose of her discharge. He signed a request for its use, subject to the commissioners' regulations, containing an agreement that he was to be responsible for all loss or damage arising from any improper use of the crane while so employed. The crane was put in position by the craneman, and the vessel was moved to a berth opposite it. The practice is that the buckets are filled by the hirer's servants in the hold, one of whom directs the craneman to raise and lower each bucket and to swing round the arm of the jib. The craneman regulates by a brake the speed of ascent and descent of each bucket, and he alone works the machine. While the plaintiff, being employed for that purpose by the shipmaster, was filling a bucket in the hold, an empty bucket, while being lowered by the crane, descended with great speed and violence and struck the plaintiff, who was seriously injured. The craneman was employed and paid by the commissioners, who alone could dismiss him. Except in directing buckets to be raised or lowered, neither the hirer nor his servants had any control over the craneman. If the shipmaster was dissatisfied, his only remedy would be to direct the craneman to stop working, and to apply to the commissioners to send another in his place, which they might or might not do. In no event could the hirer employ a servant of his own to work the crane, or procure a crane workable on the pier from any one but the commissioners. In an action by the plaintiff, against the commissioners to recover damages for personal injuries, the jury found that the hirer had no authority to control the craneman otherwise than in respect of the time and place of movement of the crane, and the time of raising and lowering the buckets; that the bucket which injured the plaintiff got out of

the control of the craneman through his negligence; and that this negligence was the cause of the accident:—*Held*, that the plaintiff was entitled to a verdict; that the agreement of the hirer to be responsible for any improper use of the crane afforded no defence to the plaintiff's action, and that the plaintiff and craneman were not at the time of the accident fellow servants engaged in a common employment. *Donovan* v. *Laing* (63 L. J. Q.B. 25; [1893] 1 Q.B. 629) distinguished. *M'Cartan* v. *Belfast Harbour Commissioners*, [1911] 2 Ir. R. 143—H.L. (Ir.)

—— **Negligence of Fellow Servant—Infant.**]—The plaintiff, a boy of fourteen, who had been invited by the defendants' firemen to assist along with other boys in pulling the defendants' fire escape home after it had been used in fire drill, was injured in so doing. In an action claiming damages from the defendants the jury found, first, that the defendants were not themselves guilty of negligence; secondly, that the fire escape was a fit and proper one for its purpose; thirdly, that the defendants' servants were guilty of negligence in the management of the fire escape or in allowing the plaintiff to pull it; and fourthly, that the plaintiff was not aware of the danger:—*Held*, that the doctrine of common employment applied, and that judgment should be entered for the defendants. *Bass* v. *Hendon Urban Council*, 28 T. L. R. 317—C.A. Reversing 76 J. P. 13—Darling, J.

—— **Licensee—Person Assisting Another in Executing Work—Injury to Person Assisting — Common Employment.**]—The plaintiff's employers engaged the defendants to repair a linotype machine. The defendants sent one of their servants to the premises of the plaintiff's employers for that purpose. The plaintiff, at the request of the defendants' servant, was assisting in the work when a chip of metal flew into his eye and injured him. In an action brought by the plaintiff to recover damages from the defendants in respect of the injury, the jury found that the defendants' servant was guilty of negligence in executing the work; that the plaintiff did not voluntarily assist the defendants' servant for the benefit of the defendants, but that he assisted him for the benefit of his own employers in order to expedite the work:—*Held*, that, having regard to the findings of the jury, the doctrine as to common employment was not applicable, and that the plaintiff was entitled to recover. *Williams* v. *Linotype and Machinery, Lim.*, 84 L. J. K.B. 1620; 112 L. T. 558—Avory, J.

—— **Plaintiff's Negligence Sole Effective Cause of Injury.**]—Where an employer supplies machinery reasonably effective for its purpose, and causes the staff to be informed that certain rules should be observed, he is not liable for an injury caused by a rash and reckless violation of a rule. *Sword* v. *Cameron* (1 Dunlop, 493) distinguished. *Canadian Pacific Railway* v. *Fréchette*, 84 L. J. P.C. 161; [1915] A.C. 871; 31 T. L. R. 529—P.C.

—— **Statutory Duty — Common Law Liability.**]—The defence of common employment cannot be pleaded to an action for breach of a statutory duty. *Butler* or *Black* v. *Fife Coal Co.*, 81 L. J. P.C. 97; [1912] A.C. 149; 106 L. T. 161; 28 T. L. R. 150—H.L. (Sc.)

—— **Accident Caused by Breach of Statutory Duty by Employer.**]—The breach of a statutory duty by an employer is not one of the risks which a servant must be assumed to have undertaken to run when he entered the employer's service, and therefore, where an employer has employed an unqualified person in breach of his statutory duty, he cannot rely on the defence of "common employment" in the case of an accident to a servant caused, or contributed to, by the conduct of such unqualified person. *Jones* v. *Canadian Pacific Railway*, 83 L. J. P.C. 13; 110 L. T. 83; 29 T. L. R. 773—P.C.

A railway company employed a person who had not passed the tests required by an order of the Railway Commissioners, which had the force of a statute, to work a train. He allowed the train to run past danger signals, and an accident resulted:—*Held*, that there was evidence that the breach of the statutory duty caused, or contributed to, the accident. *Ib.*

3. Master's Negligence.

See also Vol. IX. 886, 2141.

Condition of Plant—Failure to Use Safety Appliance — Common Law Liability of Master.]—At common law a master does not warrant the condition of his plant, and is not liable for an accident caused by a defect which could not have been discovered by him by reasonable diligence, and he is not bound to adopt all the latest improvements and appliances; but where an accident had occurred, and the master had made enquiries as to safety appliances which might have prevented such an accident in the future, but had not adopted any of them, and afterwards a similar accident occurred,—*Held*, that there was evidence on which a jury might find in the second case that there was an absence of reasonable care on the part of the master. *Toronto Power Co.* v. *Paskwan*, 84 L. J. P.C. 148; [1915] A.C. 734; [1915] W.C. & I. Rep. 444; 113 L. T. 353—P.C.

4. Under Workmen's Compensation Act.

See title Workmen's Compensation.

D. Under the Factory Acts.

1. Definition of Factory, Workshop, and Manufacturing Process.

See also Vol. IX. 894, 2306.

"Non-textile factory"—Bottling Beer by Machinery—"Bottle-washing works."]—On the first floor of premises occupied by a firm of wholesale and retail grocers, wine merchants, and Italian warehousemen, there was a portable bottle-filling machine used for bottling beer, and on the ground floor another machine used for washing the firm's bottles, both machines being worked by electricity:—*Held*,

first, that the premises on the first floor were not a "non-textile factory" within section 149, sub-section 1 of the Factory and Workshop Act, 1901, in respect that the process of bottling beer was neither an "adapting for sale of any article" nor a "manufacturing process"; and secondly, that the premises on the ground floor were not "bottle-washing works" within the meaning of the same section and sub-section and Schedule VI. Part II. (28), in respect that the bottle washing was merely incidental to the firm's proper business. *Keith, Lim.* v. *Kirkwood*, [1914] S. C. (J.) 150—Ct. of Just.

—— **Workshop on One Floor — Factory on Floor Above.**]—A building was occupied by a tenant who used the ground floor as a shop, the first floor partly as a shop and stock room and partly as a millinery room for the trimming of hats, no mechanical power being used; the second floor as a factory for dressmaking, where mechanical power was used; and the third floor as a storeroom. The floors were connected by internal staircases:—*Held*, that the millinery room was not a factory or part of a factory within section 149, sub-section 1 of the Factory and Workshop Act, 1901. *Vines* v. *Inglis*, [1915] S. C. (J.) 18—Ct. of Just.

Carpet-beating Works — "Manufacturing process."]—By section 149, sub-section 1 (*b*) of the Factory and Workshop Act, 1901, "non-textile factory" means any premises or places named in Part II. of the Sixth Schedule "wherein steam, water or other mechanical power is used in aid of the manufacturing process carried on there." Part II. of the Sixth Schedule includes carpet-beating works. The respondents carried on in a part of their premises the business of carpet beaters, carpets being there beaten by means of a machine driven by a gas engine within the premises:—*Held*, that the premises were a "factory" within the meaning of the above enactment. *Johnston* v. *Lalonde*, 81 L. J. K.B. 1229; [1912] 3 K.B. 218; 76 J. P. 378; 10 L. G. R. 671—D.

Men's Workshop — Out-worker — Non-furnishing of Statement of Rate of Wages Applicable.]—By reason of the provisions of section 157 of the Factory and Workshop Act, 1901, which enacts that the provisions of section 116 of the Act shall not apply to men's workshops, a Secretary of State has no power under the provisions of sub-section 5 of section 116 to apply the provisions of the section to out-workers employed in connection with a men's workshop; and in such a case an employer, who carries on business as a tailor, is under no obligation to furnish to a person who is an out-worker a written or printed statement of the particulars of the rate of his wages applicable to the work to be done by him. *Seal* v. *Alexander*, 81 L. J. K.B. 628; [1912] 1 K.B. 469; 106 L. T. 121; 76 J. P. 156; 22 Cox C.C. 697; 28 T. L. R. 196—D.

"Manufacturing process" — Cleaning Machinery.]—*See Crabtree* v. *Commercial Mills Spinning Co.*, *post*, col. 966.

Laundries—Affixing of Abstract of Factory and Workshop Act in Laundry — "Public institution."]—An orphan asylum, although it receives no Government grant, and is subject to no public control, but is maintained in its own private premises and grounds by subscriptions and donations, for which appeals are made to the general public, is nevertheless a "public institution" within section 1 of the Factory and Workshop Act, 1907, and an abstract of the Factory and Workshop Act, 1901, must accordingly be affixed in the laundry of the asylum, as prescribed by section 128 of the last-mentioned Act. *Seal* v. *British Orphan Asylum*, 104 L. T. 424; 9 L. G. R. 238; 75 J. P. 152; 22 Cox C.C. 392—D.

—— **Laundry Carried on "incidentally to the purposes of any public institution."**] — The Royal Masonic Institution for Boys is almost entirely maintained by the subscriptions of freemasons belonging to the English constitution of freemasons. No appeal is made to the general public, though the trustees are ready to accept and do receive voluntary contributions from persons other than freemasons. The election of boys is confined to the sons of subscribing freemasons and decided by vote. The management and control are in the board of management, consisting of thirty freemasons who are life governors. In 1910 the institution received a grant from the Board of Education as a secondary school, Division A. The grounds and premises are strictly private. A building on the premises is used as a laundry with machinery driven by mechanical power. Six resident servants are employed in the laundry, but none of the inmates of the institution is so employed. Upon an information for not affixing at the laundry the abstract prescribed by section 128 of the Factory and Workshop Act, 1901,—*Held*, that the school was a public institution within the meaning of section 1 of the Factory and Workshop Act, 1907, and that the laundry was carried on "incidentally to the purpose of a public institution," and was therefore a "factory" within the meaning of the Factory and Workshop Act, 1901, and that the trustees had committed an offence in not having the abstract affixed to the premises. *Royal Masonic Institution* v. *Parkes*, 82 L. J. K.B. 33; [1912] 3 K.B. 212; 106 L. T. 809; 76 J. P. 218; 10 L. G. R. 376; 22 Cox C.C. 746; 28 T. L. R. 355—D.

—— **Laundry Attached to Hotel—Necessity of Compliance with Factory and Workshop Acts—"Laundry carried on as ancillary to another business."**] — The respondent, the occupier of a hotel where he carried on the business of a hotel proprietor, on a certain day employed two women in a laundry in such circumstances as to constitute breaches of the Factory and Workshop Acts if the laundry was, within the meaning of section 1 of the Factory and Workshop Act, 1907, carried on as ancillary to the business of hotel proprietor. The laundry was not used for the washing of

visitors' linen, but was used only for washing the table linen, sheets, &c., used in and for the purposes of the hotel, for which purpose two women were exclusively employed during the summer and one during the winter. Upon informations for offences under the Factory and Workshop Acts, 1901 and 1907, the Justices, being of opinion that the laundry was not carried on as ancillary to the hotel business, dismissed the informations :—*Held*, that, assuming that the place was in fact a laundry, as the Justices must be taken to have found as a fact, the laundry was, within the meaning of the section, carried on as "ancillary" to the hotel business, and was a "laundry" to which the section applied, and that therefore the respondent ought to have been convicted. *Sadler* v. *Roberts*, 105 L. T. 106; 75 J. P. 342; 22 Cox C.C. 520—D.

2. Offences under the Acts.

See also Vol. IX. 896, 2311.

"Occupier" of Factory — Limited Company.]—A limited company, as the occupier of a factory, may be proceeded against for a contravention of section 137 of the Factory and Workshop Act, 1901, in employing persons contrary to the Act. *Rex* v. *Gainsford*, 29 T. L. R. 359—D.

Proceedings against Master — Abstract of Statute Affixed in Factory — No Notice to Produce Abstract—Admissibility of Secondary Evidence of Abstract.]—By section 128, sub-section 1 of the Factory and Workshop Act, 1901, there shall be affixed in every factory and be constantly kept so affixed the prescribed abstract of the Act, including the notice required by section 32 specifying the period of employment and times allowed for meals in the factory. By sub-section 2 the occupier of the factory is liable to a fine not exceeding 40*s.* for contravention of the section. The respondents were charged on an information preferred by the appellant, an inspector of factories, with allowing a young person in their employment to remain in a room in their factory, in which a manufacturing process or handicraft was being carried on, during a part of the time allowed for meals in the factory. On the hearing of the information the appellant proposed to give secondary evidence of the printed abstract of the Act and notice affixed in the respondents' factory, although no notice to produce it had been given. He admitted that the abstract and notice was a printed form hung up in the factory and was movable. Objection being taken to the admission of such secondary evidence, the Justices upheld the objection and dismissed the summons. On a Case stated,—*Held*, that as by reason of the statute the abstract must be continually affixed in the factory, and its removal by the respondents would be a breach of the statute subjecting them to a penalty, this was an exception to the rule requiring a notice to produce, and secondary evidence was admissible of the contents of the abstract. *Mortimer* v. *M'Callan* (9 L. J. Ex. 73; 6 M. & W. 58) followed. *Owner* v. *Beehive Spinning Co.*, 83 L. J. K.B. 282; [1914] 1 K.B. 105; 109 L. T. 800; 78 J. P. 15; 12 L. G. R. 42; 23 Cox C.C. 626; 30 T. L. R. 21—D.

Hoist or Teagle—Fencing of Machinery—Liability of Master to Fence.]—Section 10, sub-section 1 (*a*) of the Factory and Workshop Act, 1901, provides that "Every hoist or teagle and every fly-wheel directly connected with . . . mechanical power, . . . must be securely fenced" :—*Held*, that the words "directly connected with . . . mechanical power" do not apply to the words "hoist or teagle," and that there is an absolute obligation to fence every hoist in a factory whether worked by mechanical power or not. *Jackson* v. *Mulliner Motor Body Co.*, 80 L. J. K.B. 173; [1911] 1 K.B. 546; 104 L. T. 181; 75 J. P. 103—D.

Employment of Women—Prohibited Hours—Machine in Motion for Purpose of Cleaning—Manufacturing Process also Carried on.]—By section 24, sub-section 3 (*b*) of the Factory and Workshop Act, 1901, the period of employment of women in a textile factory on a Saturday must end at half-past eleven o'clock in the forenoon "as regards employment in any manufacturing process," and at noon as regards employment for any purpose. In the respondents' cotton-spinning factory an inspector found at 11.50 A.M. on a Saturday two women engaged in cleaning the machines at which they were working, and which it was their duty to tend and clean. The machines had not been in motion from 11.30 A.M. till immediately before 11.50 A.M., and they were then in motion merely for the purpose of being cleaned, and not for the purpose of manufacturing. The machines could not be properly cleaned without setting them in motion for that purpose; and they performed the manufacturing process completely without the intervention of the women, except for the purpose of feeding, cleaning, and regulating. While the women were cleaning the machines the machines were apparently working and performing the manufacturing process as if the women had not been cleaning them. Upon informations against the respondents for employing the women in a "manufacturing process" during the prohibited time,—*Held*, that, inasmuch as the machines were in motion merely for the purpose of being cleaned, and not for the purpose of manufacturing, the women were not employed in a "manufacturing process" within the meaning of the sub-section, and no offence thereunder had been committed. *Crabtree* v. *Commercial Mills Spinning Co.*, 103 L. T. 879; 75 J. P. 6—D.

Employment of Children — Cleaning Machinery while in Motion.]—In the course of spinning woollen yarn part of the material which is being spun is stripped off and becomes a species of fluff which adheres to the revolving rollers. Unless the fluff is removed—which has to be done while the machine is in motion by the aid of mechanical power—the rollers become choked and the process stops :—*Held*, that the removal of the fluff from the rollers by a child is a cleaning of part of the machinery within the meaning of section 13,

sub-section 1 of the Factory and Workshop Act, 1901, and therefore prohibited, notwithstanding that the fluff which is removed has a saleable value, and is in fact sold. *Taylor* v. *Dawson*, 80 L. J. K.B. 102; [1911] 1 K.B. 145; 103 L. T. 508; 75 J. P. 5; 27 T. L. R. 45—D.

Fire Escape—Houses Belonging to Different Owners Adapted by Tenant as One Factory—"Owner."]—Four houses—90, 88, 84, and 82 G. Road—had been adapted and were used by one tenant as a boxmaking factory. The four houses were let in sets of two by two different owners, the respondent being the owner of Nos. 90 and 88. To obtain fire escape facilities for the factory workers by the provision of an additional staircase, the London County Council, under section 14, sub-section 2 of the Factory and Workshop Act, 1901, summoned the respondent as owner of the whole factory to provide the required staircase:—*Held*, that "owner" in section 14, sub-section 2, could not be read as "owners." The prosecution had been launched against the respondent as owner of a factory consisting of four houses, and it was sufficient to defeat it when it was proved that he was only owner of part of the factory. *London County Council* v. *Leyson*, 110 L. T. 200; 78 J. P. 91; 12 L. G. R. 253—D.

Per Darling, J.: Had the procedure been taken, with the proper assents, under section 149, sub-section 2, there was nothing to prevent Nos. 90 and 88 being a separate factory, the owner of which, if it gave occupation to more than forty people, could be compelled to provide means of escape in case of fire. *Ib.*

3. Liability to Actions.

See also Vol. IX. 899, 2314.

Injury to Servant—Negligence—Breach of Statutory Duty—Liability of Factory Owner.]—The Factory and Workshop Act, 1901, provides, by section 10, sub-section 1, that with respect to the fencing of machinery in a factory the following provisions shall have effect: "(*c*) All dangerous parts of the machinery and every part of the mill gearing must either be securely fenced or be in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced." A workman in the employment of the defendants was injured whilst working on a milling machine in the defendants' factory. The machine, which was constructed for working downwards, was, on the direction of the defendants' foreman, being worked by the plaintiff in an upward direction, and no guard or fence had been provided. In an action claiming damages for negligence the jury found, in answer to questions, that the milling machine was in fact dangerous to the workman when working upwards; that it was so dangerous to the knowledge of the defendants' authorised agent; that the accident was due to the negligence of the defendants, and was due to the dangerous part of the machinery not being securely fenced:—*Held*, that the section imposed an unqualified obligation on the defendants to provide proper fencing so as to make the machinery safe to the workman in whichever direction it was used, and that as they had failed to do so they were liable in damages. *Watkins* v. *Naval Colliery Co., Lim.* (81 L. J. K.B. 1056; [1912] A.C. 693), applied. *Pursell* v. *Clement Talbot, Lim.*, 111 L. T. 827; 79 J. P. 1—C.A.

E. Under the Employers and Workmen Act.

See also Vol. IX. 901, 2318.

Breach of Contract by Workman—Claim by Employer for Damages—Wages Due to Workman—No Claim put Forward by Workman—Jurisdiction of Magistrate to Set off.] — A Court of summary jurisdiction has power, under the Employers and Workmen Act, 1875, to adjust and set off damages awarded to an employer against a workman against wages due to the workman, although no "claim" has been made for wages at the date of the hearing of the summons. *Keates* v. *Lewis Merthyr Consolidated Collieries*, 80 L. J. K.B. 1318; [1911] A.C. 641; 105 L. T. 450; 75 J. P. 505; 55 S. J. 667; 27 T. L. R. 550—H.L. (E.)

F. Under the Shops Act.

See also Vol. IX. 915, 2319.

1. Generally.

Limited Company Occupier of Shop.] — A limited company which is the occupier of a shop is liable to be convicted under section 4, sub-sections 1 and 7 of the Shops Act, 1912, for not closing the shop for the serving of customers not later than one o'clock in the afternoon on one weekday in every week. *Evans & Co.* v. *London County Council*, 83 L. J. K.B. 1264; [1914] 3 K.B. 315; 111 L. T. 288; 78 J. P. 345; 12 L. G. R. 1079; 24 Cox C.C. 290; 30 T. L. R. 509—D.

Two Closing Orders—Grocers and Provision Dealers Closed on Thursdays—Butchers Closed on Mondays—Dripping Sold both by Butchers and by Grocers—Sale of Dripping by a Butcher on a Thursday.] — Where an article is sold in the ordinary course of two different businesses having different closing days under the Shops Act, 1912, the sale of such article in the ordinary course of one business on a day on which shops in which the other class of business is carried on are closed does not amount to a carrying on of such other business by the vendor of the article so as to render him guilty of an offence against the Shops Act, 1912. *Schuch* v. *Banks*, 83 L. J. K.B. 1168; [1914] 2 K.B. 491; 111 L. T. 44; 78 J. P. 229; 12 L. G. R. 512; 24 Cox C.C. 187; 30 T. L. R. 378—D.

No Day Fixed by Order of Local Authority for Half-holiday—Day Agreed upon by Shopkeepers—Change of Day.]—Where no weekly half-holiday order has been made by a local authority and the shopkeepers of a town have themselves fixed the day and specified it in notices affixed in their shops in accordance

with section 4, sub-section 3 of the Shops Act, 1912, a change of the day in one week and the reversion in the subsequent week back to the original closing day is a contravention of the sub-section which goes on to enact that "it shall not be lawful for the occupier of a shop to change the day oftener than once in any period of three months." *Owen* v. *Parry*, 79 J. P. 64; 12 L. G. R. 1228—D.

Bank Holiday—Christmas Day—Weekday—Two Bank Holidays in One Week.]—H. was employed as an assistant in the appellants' shop on each weekday of the week ending Saturday, December 21, 1912, after half-past one. In the following week he was not employed on Christmas Day or the following day, but was employed on every other weekday of that week after 1.30 P.M. :—*Held*, it being assumed that Christmas Day was a Bank holiday within the meaning of the Shop Hours Act, 1912, that the expression "Bank holiday" in section 1, sub-section 1, must be read in the singular only; that the expression "weekday" was used in contradistinction to Sunday, and not to holiday; and that therefore the case came within the proviso in sub-section 1, and the appellants could not be convicted of the offence charged. Whether Christmas Day is a Bank holiday within the meaning of the Act, *quære*. *Todd, Burns & Co.* v. *Dublin Corporation*, [1913] 2 Ir. R. 397—K.B. D.

2. **Shops.**

Railway Bookstall.]—By section 1, sub-section 1 of the Shops Act, 1912, "On at least one weekday in each week a shop assistant shall not be employed about the business of a shop after half-past one o'clock in the afternoon," and by sub-section 4, in case of any contravention of the provisions of the section the occupier of the shop is guilty of an offence against the Act. The respondents were the owners of a railway bookstall which was under the control of one of their clerks. It was a movable structure which would take an hour and a half to take down and fix up again. It was not separately rated. The respondents had affixed to the bookstall the statutory notice stating that Wednesday was taken as the half-holiday. During a particular week the clerk was engaged or otherwise employed at the bookstall on every day of the week and did not take the half-holiday, notwithstanding that the respondents had sent him a notice requiring him to do so :—*Held* (Phillimore J., and Bankes, J.; Avory, J., dissenting), that, assuming the bookstall to be a "shop" within the meaning of section 19 of the Act, an offence had been committed under section 1, sub-section 1, for which the respondents would be liable unless they could bring themselves within the provisions of section 14 by shewing that the offence had in fact been committed by a "manager, agent, servant, or other person." *Ward* v. *Smith*, 82 L. J. K.B. 941; [1913] 3 K.B. 154; 109 L. T. 439; 77 J. P. 370; 11 L. G. R. 741; 23 Cox C.C. 562; 29 T. L. R. 536—D.

Sale by Automatic Machine.]—The shops Act, 1912, enacts by section 4, sub-section 1, that "Every shop shall, . . . be closed for the serving of customers not later than one o'clock in the afternoon on one week day in every week," and by section 9 that "It shall not be lawful in any locality to carry on in any place not being a shop retail trade or business of any class at any time when it would be unlawful in that locality to keep a shop open for the purposes" of such retail trade or business. The respondent, a dairyman, had had affixed to the door of his shop an automatic machine, from which by the insertion of a penny in a slot and the turning of a handle any person in the street outside the shop could obtain milk during the hours in which under the Act the shop had to be closed. The milk thus procured was contained in a reservoir situated within the shop. This reservoir was filled with a supply of milk before the hour of closing, and the attendance of a shop assistant after the closing hour was unnecessary. The door of the shop was locked, and no customer could obtain entrance to the shop. The respondent was summoned for offences, first, under section 4, sub-section 1, and, secondly, under section 9 :—*Held*, that the place where the sale of milk occurred was a "shop" within the meaning of the Act, and therefore that section 9 had no application. *Held*, also (Avory, J., *dubitante*), that as regards section 4, sub-section 1, there was present no element of personal service on a customer which, in view of the object of the Act being to insure a weekly half-holiday for shop assistants, would be necessary before there could be a "serving of customers" within the section, and that, consequently, there was no offence under the section. *Willesden Urban Council* v. *Morgan*, 84 L. J. K.B. 373; [1915] 1 K.B. 349; 112 L. T. 423; 79 J. P. 166; 13 L. G. R. 390; 59 S. J. 148; 31 T. L. R. 93—D.

Employment about Business of Shop—"A" Shop.]—Three assistants, employed in one of the shops of Lipton, Lim., of which the appellant was manager, volunteered to distribute handbills in the streets and at houses "in their spare time." Their offer was accepted and they were paid for this service. They in fact distributed the bills on the weekly half-holiday rendered obligatory by the Shops Act, 1912. The bills advertised "Lipton's Margarine Overweight," and contained a statement that "We sell" this margarine at specified prices; but they contained no address of any particular shop or shops :—*Held*, that the assistants were "employed about the business" of the shop in question within the meaning of section 1, sub-section 1 of the Act, which prohibits such employment on the said half-holiday, and that the words "a shop" in the sub-section mean the shop in which the assistant in question is an assistant within the meaning of the Act. *George* v. *James*, 83 L. J. K.B. 303; [1914] 1 K.B. 278; 110 L. T. 316; 78 J. P. 156; 12 L. G. R. 403; 24 Cox C.C. 48; 30 T. L. R. 230—D.

3. **Trading Elsewhere than in Shop.**

Carrying on Retail Trade in a Place not a Shop at a Time when it would be Unlawful

to Keep a Shop Open.]—The respondent sold groceries on Wednesday afternoon after 1 P.M., in her house, which on all the other days of the week was used solely as an ordinary dwelling house. Under an order made by the local authority all shops to which the order applied were obliged to close for serving customers on Wednesday in each week from 1 P.M., but the order contained a proviso that the occupier of a shop might elect to close his shop for the weekly half-holiday on a Saturday instead of Wednesday. No notice under the Shops Act was affixed to the respondent's house :—*Held*, that the respondent had committed the offence under section 9, sub-section 1 of the Shops Act, 1912, of carrying on a retail trade in a place not a shop at a time when it would be unlawful to keep a shop open for the purposes of retail trade, and that the fact that the occupier of a shop could elect to close his shop on a Saturday instead of Wednesday afforded no answer to the charge. *Cowden* v. *McEvoy*, 83 L. J. K.B. 1249; [1914] 3 K.B. 108; 111 L. T. 549; 24 Cox C.C. 377; 78 J. P. 336; 12 L. G. R. 1216—D.

Sale by Automatic Machine Fixed to Door of Shop.]—*See Willesden Urban Council* v. *Morgan*, *ante*, col. 970.

4. Shop Assistants.

Kitchen Maid in Restaurant—Employment "in connection with the serving of customers" —"Shop"—"Shop assistant."]—The appellant kept a restaurant, and employed a kitchen maid in the kitchen, which was connected with the restaurant and on the same level with it. She attended to the fires, washed the china and dishes, and prepared vegetables for cooking for the customers :—*Held*, that there was evidence upon which the magistrate could find that the restaurant and the kitchen together formed one shop, and that the kitchen maid was a shop assistant employed about the business of a shop within the meaning of section 1, sub-section 1 of the Shops Act, 1912, because employed therein in connection with the serving of customers within the meaning of section 19, sub-section 1. *Melluish* v. *London County Council*, 83 L. J. K.B. 1165; [1914] 3 K.B. 325; 111 L. T. 539; 24 Cox C.C. 353; 78 J. P. 441; 12 L. G. R. 1086; 30 T. L. R. 527—D.

Licensed Premises—Potman "Person . . . mainly employed . . . in connexion with the serving of customers."]—The appellant, the licensee of licensed premises, employed a potman, who was mainly employed in putting up tables for customers' dinners and taking them down again; cleaning knives in so far as they were for subsequent use at the customers' tables; polishing pewter and copper measures used thereafter for measuring or serving out drinks to customers; collecting glasses, after they had been used by customers, from various parts of the bar for cleaning by the barmen; and cleaning and tidying the premises for use for customers at various times of the day :—*Held*, that each of these employments was sufficiently proximate to the serving of customers to justify the finding of the magistrate that the potman was employed in connection with the serving of customers, and was therefore a shop assistant within the meaning of section 1, sub-section 1, and section 19, sub-section 1 of the Shops Act, 1912, and consequently that the appellant was bound to allow him a half-holiday on one weekday in each week. *Prance* v. *London County Council*, 84 L. J. K.B. 623; [1915] 1 K.B. 688; 112 L. T. 820; 79 J. P. 242; 13 L. G. R. 382; 31 T. L. R. 128—D.

5. Exemptions.

Area — Resolution of Local Authority that Area not "unreasonably small" — Majority of Shopkeepers in Favour of Exemption.]—On April 3, 1912, a local authority resolved that area A was unreasonably small for the purposes of an exemption order under section 4, sub-section 4 of the Shops Act, 1912. On June 5 they resolved that area B, which was smaller than and contained within area A, should be exempted. In the latter part of June a poll of the shopkeepers in area B was taken, which resulted in a majority in favour of exemption. On July 3 the local authority rescinded the resolution of June 5, and no exemption order was made. It was contended, in support of a rule *nisi* ordering the local authority to grant an exemption order, that, there being a time when the two necessary conditions precedent were fulfilled, the local authority were bound to grant an exemption order :—*Held*, that under the circumstances the Court in its discretion would not issue a *mandamus* to the local authority to make an exemption order. *Rex* v. *Manchester City Council: Batty, Ex parte*, 107 L. T. 617; 77 J. P. 43; 10 L. G. R. 1081; 29 T. L. R. 28 —D.

Exempted Trade — Confectioners Making and Selling Sausages as Incidental to their Main Business — Pork Butchers.] — By the Exempted Shops (Weekly Half-holiday) Bradford Order, 1912, made by the council of that city, the provisions of section 4 of the Shops Act, 1912, were extended to such parts of the retail trade or business of (among others) pork butchers as were exempted by sub-section (6) of that section and the Second Schedule to the Act; and pork butchers were ordered to close their shops on and after 1 P.M. on Wednesday in each week throughout the year. The respondents were confectioners and refreshment-room proprietors, and, besides selling confectionery on and off the premises, made sausages composed of pork, bread, and other materials. On a Wednesday afternoon they sold some pork sausages to a customer, not to be consumed on the premises, and were summoned for keeping their shop open for the trade or business of a pork butcher after 1 P.M., contrary to the statute and the Order : —*Held*, that the respondents had not contravened the Order. The case was not one of more than one trade carried on in their shop. Upon the findings of the Justices their main trade was that of confectioners—an exempted trade—and as incidental to that trade they sold sausages. By doing so they did not become pork butchers. *Margerison* v. *Wilson*,

112 L. T. 76; 79 J. P. 38; 12 L. G. R. 1098—D.

Sale of Run Honey — "Confectionery" — Sale of Butter — "Articles of a perishable nature."]—By section 4, sub-section 1 of the Shops Act, 1912, every shop, save as otherwise provided by the Act, must be closed for the serving of customers not later than one o'clock in the afternoon on one weekday in every week. By sub-section 6 of section 4 the section is not to apply to any shop in which the only business carried on is, under Schedule II., the sale of (*inter alia*) "confectionery" or "articles of a perishable nature":—*Held*, that butter is an article of a perishable nature and (Ridley, J., *dissentiente*) that run honey—that is, honey which has been run from the comb without mixture or any process except extraction—is not confectionery within the meaning of the schedule, and that a shop—in which the notices required by section 10, sub-section 1, and the Shops Regulation Order, 1912, have not been exhibited—selling both these articles was not exempt under sub-section 6. *London County Council* v. *Welford's Surrey Dairies*, 82 L. J. K.B. 669; [1913] 2 K.B. 529; 108 L. T. 998; 77 J. P. 206; 11 L. G. R. 831; 23 Cox C.C. 428; 29 T. L. R. 438—D.

"Sale of motor, cycle, and aircraft supplies and accessories to travellers."] —The words "sale of motor, cycle, and aircraft supplies and accessories to travellers" in the Second Schedule of the Shops Act, 1912, refer to the sale of supplies and accessories to travellers relating to motors, cycles, or aircraft, and not to the sale of all supplies and accessories to travellers. *Williams* v. *Gosden*, 83 L. J. K.B. 77; [1914] 1 K.B. 35; 109 L. T. 870; 77 J. P. 464; 11 L. G. R. 1174; 23 Cox C.C. 655; 58 S. J. 49; 30 T. L. R. 4—D.

II. RIGHTS AND LIABILITIES OF MASTER AND THIRD PARTIES.

A. Rights of Master.

See also Vol. IX. 916, 2320.

Seduction — Wife Living with Husband — Girl Adopted by Wife — Girl Rendering Domestic Services—Right of Wife to Maintain Action.]—The plaintiff, a married woman living with her husband, adopted a girl, who lived in the house and performed the ordinary domestic services. The plaintiff gave the girl 5*s*. a week for pocket money and supplied her with clothes, the plaintiff's husband providing the money. In an action by the plaintiff against the defendant for the seduction of the girl,—*Held*, that in order to maintain an action for seduction the relation of master and servant must subsist between the plaintiff and the person seduced, that the domestic services rendered by the girl must be taken to have been rendered to the plaintiff's husband, and that the plaintiff was not entitled to maintain the action. *Hamilton* v. *Long* ([1903] 2 Ir. R. 407; [1905] 2 Ir. R. 552) approved and followed. *Peters* v. *Jones*, 83 L. J. K.B. 1115; [1914] 2 K.B. 781; 110 L. T. 937; 30 T. L. R. 421—Avory, J.

—— Loss of Service — Service at Time of Seduction—Service at Time of Confinement.] —In an action by a father to recover damages for the seduction of his daughter, it appeared that the daughter had been engaged by the defendant's wife as a domestic servant, one of the terms of the employment being that during any absence from home of the defendant's wife the girl was to return to her father's house and remain there unless called on to perform household duties in the defendant's house. During one of these periods of absence she was called to the house by the defendant and there seduced by him. She was subsequently, while in the service of the defendant's wife, confined of a child, the confinement taking place in the defendant's house:—*Held*, that a verdict directed for the defendant was sustainable—*per* O'Brien, L.C., on the ground that the girl was not in the service of the plaintiff at the time when the confinement took place; *per* Cherry, L.J., on the ground that she was not in the plaintiff's service at the time of the seduction; *per* Holmes, L.J., on either of these grounds. *Barnes* v. *Fox*, [1914] 2 Ir. R. 276—C.A.

Employing a Person in Breach of His Contract of Service with another Employer — Damages.] — Where A under a contract of service with B for a term of years wrongfully leaves and in breach of the obligation of such contract before the end of the term enters the service of C and is employed by him with a knowledge of A's contract with B, C is liable for the damages occasioned by reason of A leaving his employment and being employed by C, in breach of his agreement with B. *De Francesco* v. *Barnum* (*No.* 2) (60 L. J. Ch. 63; 45 Ch. D. 430) followed. *Wilkins, Lim.* v. *Weaver*, 84 L. J. Ch. 929; [1915] 2 Ch. 322—Joyce, J.

B. Liability of Master.

See also Vol. IX. 928, 2324.

Negligence of Servant — Scope of Employment—Servant having General Authority to take out Motor Cars belonging to Employer.] —I., the manager of the department for the sale of secondhand motor cars in the defendant firm, while driving on a Saturday evening in a secondhand motor car belonging to the defendants, ran over and killed G. B. In an action by G. B.'s widow against the defendants, under Lord Campbell's Act, evidence was given that I. frequently took out secondhand cars from the department of the business of which he was the manager without accounting to any one for so doing, and that the petrol used by I. in so taking out these cars was charged to the secondhand department of the business. I. admitted that he took out the cars without accounting for so doing, and in his evidence he stated that his being on the road gave him better opportunities for doing business for the firm: that on one or two occasions, of which that of the accident was not one, he had himself paid for the petrol he

used in taking out the cars, but that upon the occasion of the accident he was driving solely for his own pleasure. The jury found that at the time of the accident I. was acting within the scope of his employment as the servant of the defendants:—*Held*, that there was evidence to justify the verdict, and that the defendants were liable. *Boyle* v. *Ferguson*, [1911] 2 Ir. R. 489—K.B. D.

Quære, whether, where a servant has a general authority to take out his master's vehicles, not only for the purposes of the master, but also for his own pleasure, it is to be inferred that every user of the vehicles under such general authority is a user by the servant as such within the scope of his employment. *Ib.*

—— **Servant under Control of Manager — Unauthorised Order Given to Servant by Manager—Duty of Servant to Obey Manager —Act Done in Course of Employment.**]—A driver in the employment of the defendants, who let out motor cars for hire, was ordered by the defendants' manager to drive him in a car to a named destination on his (the manager's) private business. The manager had no authority, without the permission of the defendants, to give the order in question. The driver was not aware that the manager had given him an order which the latter had no right to give, but it was his duty to obey orders as to driving given by the manager. The driver, whilst carrying out the manager's order, caused injury to the plaintiff by negligent driving. In an action by the plaintiff to recover damages for the injuries sustained by him,—*Held*, that, it being the duty of the driver to obey an order given by the manager with regard to driving, the negligent act done by him was an act done in the course of his employment, and consequently the defendants were liable for his negligence. *Irwin* v. *Waterloo Taxicab Co.*, 81 L. J. K.B. 998; [1912] 3 K.B. 588; 107 L. T. 288; 56 S. J. 720; 28 T. L. R. 567—C.A.

—— **Motor Omnibus Driven by Conductor—Driver Seated beside Conductor—Duty to Control Driving.**]—A motor omnibus belonging to the defendants, having arrived at the end of one of its journeys, was being driven by the conductor to the point at which it was to commence its return journey, and the driver was sitting on the box beside the conductor. Owing to the negligent driving of the conductor the omnibus mounted the pavement and caused personal injuries to the plaintiff, who brought an action against the defendants for damages for these injuries. At the trial the Judge held that the fact that the conductor was driving the omnibus was no evidence that he had authority from the defendants to drive it, that the fact that the driver was sitting beside the conductor was no evidence that he was exercising control over the driving within the scope of his authority as driver, and that there was thus no evidence that the accident had been caused by the negligence of any servant of the defendants acting within the scope of his authority, and he therefore withdrew the case from the jury and gave judgment for the defendants:—*Held*, on appeal, that the fact that the driver was sitting beside the conductor was some evidence to shew that he was exercising control over the driving within the scope of his authority as driver, that the questions ought to have been left to the jury whether the driver was exercising such control, and whether the accident arose from any failure on his part to exercise such control properly, and that there ought to be a new trial of the action. *Ricketts* v. *Tilling, Lim.*, 84 L. J. K.B. 342; [1915] 1 K.B. 644; 112 L. T. 137; 31 T. L. R. 17—C.A.

Engelhart v. *Farrant & Co.* (66 L. J. Q.B. 122; [1897] 1 Q.B. 240) considered and applied. *Beard* v. *London General Omnibus Co.* (69 L. J. Q.B. 895; [1900] 2 Q.B. 530) and *Gwilliam* v. *Twist* (64 L. J. Q.B. 474; [1895] 2 Q.B. 84) considered and distinguished. *Ib.*

—— **Assault by Tramway Conductor — Mistaken Impression.**]—A tramway conductor in the employment of the defendants ran after and injured the plaintiff, a boy of nine years of age, under the mistaken impression that he was one of several boys who had been in the habit of jumping on to his car. It was admitted that the act of the conductor was done not to prevent the plaintiff from there and then entering the car or otherwise infringing the defendants' by-laws, or to prevent other boys from doing so, but to punish the plaintiff or other boys who had broken the by-laws with a view to prevent them doing so in the future. The plaintiff sued the defendants to recover damages for the injuries he had received:—*Held*, that the act of the conductor was not done within the scope of his authority, and therefore that the defendants were not liable. *Abrahams* v. *Deakin* (60 L. J. Q.B. 238; [1891] 1 Q.B. 516) followed and applied. *Radley* v. *London County Council*, 109 L. T. 162; 11 L. G. R. 1035; 29 T. L. R. 680—D.

—— **Passenger in Tramcar Suspected of Avoiding Payment of Fare—Ejected by Conductor — Action for Assault — Liability of Tramway Authority.**]—The conductor of a tramcar belonging to the respondents, a tramway authority, thinking that the appellant, a passenger in the car, was attempting to avoid payment of his fare, ejected him from the car with such force that he suffered injuries. The appellant brought an action in the County Court against the respondents, claiming damages for the assault committed on him by their servant. The respondents denied their liability on the ground that sections 51 and 52 of the Tramways Act, 1870, and their by-laws gave them power to detain and bring before a magistrate, who might impose a fine on a person who had committed the offence alleged against the appellant, but that they had no power to eject such a person from a car, and could not therefore delegate the power to eject him to their servant, who had acted outside the scope of his authority:—*Held*, on appeal, that the remedies given to the respondents by sections 51 and 52 of the Tramways Act, 1870, being in addition to, and not exclusive of, their common law right as owners of the tramcar to eject a trespasser from their property, using no more force than

might be necessary for the purpose, the respondents had power to eject from one of their cars a person who refused to pay his fare; that they could delegate that power to a servant; that the tort of the conductor was consequently committed in the course of his service; and that the appellant was therefore entitled to recover his claim against the respondents. *Whittaker* v. *London County Council*, 84 L. J. K.B. 1446; [1915] 2 K.B. 676; 79 J. P. 437; 13 L. G. R. 950; 31 T. L. R. 412—D.

—— **Knife Left About by Gas Inspector—Injury to Infants.**]—The plaintiff, a boy of three or four, was injured while playing with an open knife which had been left about by F., who was a gas inspector and not a repairer of meters, who had been called to the plaintiff's father's house to remedy an automatic gas meter, and had gone away to get proper tools to repair it. In respect of his injuries the plaintiff sued the defendants. The jury found that the inspector ought not reasonably to have anticipated that if he left the knife where he did some such accident as happened might result therefrom; that it was negligence on the inspector's part to leave the knife where he did; that the accident was caused by such negligence; that the act done by the inspector was done by him in the course of his employment; and that those in charge of the plaintiff were not negligent :—*Held*, that there was no evidence to support the finding that the inspector was acting in the course of his employment, and that the defendants were not liable to the plaintiff. *Forsyth* v. *Manchester Corporation*, 107 L. T. 600; 76 J. P. 465; 29 T. L. R. 15—C.A.

—— **Person Injured while Assisting Servant—Authority of Servant to Invite Assistance—Emergency.**]—The plaintiff, at the invitation of the defendant's servant, got into a cart belonging to the defendant for the purpose of rendering assistance to another servant of the defendant, who had been injured. The servant then negligently caused the horse to start, and the plaintiff was thrown out and injured. The plaintiff claimed damages against the defendant :—*Held*, that the servant had no implied authority, as the result of the emergency which had occurred, to invite the plaintiff into the cart, and that the defendant was not liable. *Cox* v. *Midland Railway* (18 L. J. Ex. 65; *sub nom. Cox* v. *Midland Counties Railway*, 3 Ex. 268) followed. *Houghton* v. *Pilkington*, 82 L. J. K.B. 79; [1912] 3 K.B. 308; 107 L. T. 235; 56 S. J. 633; 28 T. L. R. 492—D.

—— **Contractor and Sub-contractor—Injury by Negligent Act of Sub-contractor's Servant—Liability of Contractor.**]—The defendants were employed to erect certain premises, and the contract involved the employment by the defendants of sub-contractors to execute the special work of putting metallic casements into the windows. While one of these casements was being put in, an iron tool was placed by a servant of the sub-contractors on the window sill; and the casement having been blown to by the wind, the tool fell and struck the plaintiff, who was passing along the street. The tool was not placed on the window sill in the normal course of doing the work which the sub-contractors were employed to do. The plaintiff sued the defendants, claiming damages in respect of his injuries :—*Held*, that the injuries were caused to the plaintiff by an act of collateral negligence on the part of a workman who was a servant of the sub-contractors and not of the defendants, and that the latter were therefore not liable for the consequences of that negligence. *Padbury* v. *Holliday and Greenwood*, 28 T. L. R. 494—C.A.

Liability of Corporation for Slander by Servant—Scope of Employment—Relevancy of Averments.]—An employer is not liable in damages for the conduct of a servant which is outside the scope of the servant's employment. A rate collector of the appellants, in demanding payment of an instalment of rates due by the respondent's husband, requested the production of the receipts of the previous instalments. These were shewn, and the collector, in the presence of a third person, said that one of the receipts had been fraudulently altered :—*Held*, that this statement was not a relevant averment in an action for slander against the corporation, it being no part of a rate collector's duty to express an opinion of the conduct of the persons with whom he had to deal in the course of his work. *Glasgow Corporation* v. *Lorimer*, 80 L. J. P.C. 175; [1911] A.C. 209; 104 L. T. 354—H.L. (Sc.)

Fraud of Servant.]—A master is not liable in respect of the fraudulent appropriation of money by his servant unless the servant had actual authority from the master to accept the money, or the master has held out the servant as having such authority and the person entrusting the money to the servant reasonably believed the servant to have authority and relied upon it. *Terrill* v. *Parker*, 32 T. L. R. 48—Lush, J.

Dishonest Servant—Ratification of Acts.]—Ratification of the acts of a dishonest servant must be presumed when the master has had cause to suspect the servant's honesty and has refrained from making full enquiry into the facts. *Morison* v. *London County and Westminster Bank*, 83 L. J. K.B. 1202; [1914] 3 K.B. 356; 111 L. T. 114; 19 Com. Cas. 273; 58 S. J. 453; 30 T. L. R. 481—C.A.

MAXIMS.

"Nemo debet bis vexari pro una et eadem causa."]—*See Rex* v. *Simpson; Smithson, Ex parte*, *ante*, col. 786.

MEASURE.

Of Damages.]—*See* DAMAGES.

MEAT.

Unsound Meat.]—*See* LOCAL GOVERNMENT; METROPOLIS.

MEDICINE.

A. MEDICAL PRACTITIONERS.

1. PHYSICIANS AND SURGEONS.

See also Vol. IX. 999, 2341.

Unauthorised Post-mortem Examination.]—In an action of damages brought against a doctor by the widow and children of a deceased miner the pursuers averred—first, that the defender had made an unauthorised *post-mortem* examination of the body of the deceased; and secondly, that in consequence of the method in which it had been performed and of certain other actings of the defender, difficulty, delay, and expense had been incurred in prosecuting a claim under the Workmen's Compensation Act. Some of the pursuers were not persons entitled to compensation under the Act:—*Held*, that while the action was competent in so far as founded on the wrong done to all the pursuers jointly by the unauthorised *post-mortem* examination, it was incompetent in so far as founded on the second wrong, which affected certain of them only. *Hughes* v. *Robertson*, [1913] S. C. 394—Ct. of Sess.

Fees — Custom to Attend Family of Deceased Medical Man without Fee.]—Although there is not a binding custom, there is a very general practice among medical men not to charge the widow and children of a deceased medical man for attendance. If, therefore, a doctor intends to charge in such a case he must say so, and thus give the patient the opportunity of declining his services and of going to another doctor who will not charge. *Corbin* v. *Stewart*, 28 T. L. R. 99—Scrutton, J.

2. DENTISTS.

See also Vol. IX. 1000, 2342.

Unregistered Person—Description—Using Name or Title Implying Registration.]—By section 3 of the Dentists Act, 1878, "a person shall not be entitled to take or use the name or title of 'dentist' . . . or of 'dental practitioner,' or any name, title, addition, or description implying that he is registered under this Act or that he is a person specially qualified to practise dentistry, unless he is registered under this Act." The appellant, a schoolmaster under the London County Council, went to a dental institute carried on by the respondent, an unregistered person, and shewed an operator there a form which he had received from the Council stating that it would be necessary for the appellant to obtain a dental certificate shewing that his teeth were in a satisfactory condition, and concluding with the words "only the certificate of a *Registered Dentist* can be accepted." The appellant had some teeth extracted. Two days afterwards he went again to the institute and saw the respondent, to whom he handed the form. The respondent stated that he had granted hundreds of such certificates and that he would give the appellant the certificate required when he returned on a subsequent date. The respondent did not in writing or orally use the name or title of dentist. Upon an information charging the respondent with an offence under section 3 of the Dentists Act, 1878, the magistrate declined to convict:—*Held*, that there was evidence that the respondent had used a name, title, or description implying that he was registered under the Act, and that the magistrate ought to have convicted him. *Robertson* v. *Hawkins*, 82 L. J. K.B. 97; [1913] 1 K.B. 57; 107 L. T. 795; 77 J. P. 63; 23 Cox C.C. 239; 29 T. L. R. 32—D.

—— **"The United Dental Service, Limited" —Registrar of Joint-Stock Companies—Discretion to Register.**]—Application was made to the Registrar of Joint-Stock Companies to register the memorandum and articles of association of a company called "The United Dental Service, Limited," which proposed to carry on the business of practitioners in dentistry. The signatories to the memorandum and articles were all unregistered practitioners in dentistry. The Registrar refused to register, on the ground that the object of the company was not lawful:—*Held*, that the words "United Dental Service" were not a description implying that the persons using it were qualified by diploma, &c., to be or were registered under the Dentists Act, 1878, and that, consequently, the object of the company was not unlawful. *Held*, further, that the Registrar had no discretion to refuse to register, on the ground that, even though not unlawful, the title of the company was calculated to mislead the public into the belief that the persons using the title were so qualified. *Bellerby* v. *Heyworth* (79 L. J. Ch. 402; [1910] A.C. 377) and *Minter* v. *Snow* (74 J. P. 257) applied. *Panhaus* v. *Brown* (68 J. P. 435) commented on. *Rex* v. *Registrar of Joint-Stock Companies; Bowen, Ex parte*, 84 L. J. K.B. 229; [1914] 3 K.B. 1161; 112 L. T. 38; 30 T. L. R. 707—D.

B. VETERINARY SURGEONS.

See also Vol. IX. 1009, 2345.

Description—Unqualified Person—Description of Business Premises — "Canine surgery."]—By section 17, sub-section 1 of the Veterinary Surgeons Act, 1881, "If . . . any person, other than a person who for the time being is on the register of veterinary surgeons,

or who at the time of the passing of this Act held the veterinary certificate of the Highland and Agricultural Society of Scotland, takes or uses . . . any name, title, addition, or description stating that he is a veterinary surgeon or a practitioner of veterinary surgery or of any branch thereof, or is specially qualified to practise the same, he shall be liable to a fine. . . .'' The respondent, who had neither of the specified qualifications, exhibited over the door of his premises a red-glass lamp on which were the words " A. E. Kennard, Canine Surgery " :—*Held*, that the words so used were merely a description of the respondent's premises, and did not amount to a statement that he was " specially qualified to practise " veterinary surgery within the meaning of the sub-section. *Royal College of Veterinary Surgeons* v. *Kennard*, 83 L. J. K.B. 267; [1914] 1 K.B. 92; 109 L. T. 866; 78 J. P. 1; 23 Cox C.C. 645; 30 T. L. R. 3—D.

C. PHARMACY ACTS.

See also Vol. IX. 1009, 2346.

Poisons—Insecticide—Sale by Unlicensed Assistant of Qualified Person.]—The effect of section 2 of the Poisons and Pharmacy Act, 1908, is to add to the category of persons who may sell poisons persons licensed by a local authority under that section, but it does not confer upon an unlicensed assistant of such a licensed person the right to sell a poisonous substance mentioned in the section on behalf of his master. *Pharmaceutical Society* v. *Nash*, 80 L. J. K.B. 416; [1911] 1 K.B. 520; 103 L. T. 802; 75 J. P. 151; 55 S. J. 156; 27 T. L. R. 147—D.

—— Sale in Unlabelled Receptacle by Person Registered by Local Authority — Civil Liability of Person Selling.]—Where a person who is licensed by a local authority under the Poisons and Pharmacy Act, 1908, to sell poisonous substances to be used exclusively in agriculture or horticulture sells such substances in breach of the regulations made under section 2 of that Act, by selling them in receptacles not duly labelled, he may be sued in the County Court, under section 15 of the Pharmacy Act, 1868, for the statutory penalty or sum of 5*l.* imposed by that section in respect of the sale of poison by an unregistered person. *Pharmaceutical Society* v. *Jacks*, 80 L. J. K.B. 767; [1911] 2 K.B. 115; 104 L. T. 640; 75 J. P. 351; 27 T. L. R. 373—D.

D. MIDWIVES.

See also Vol. IX. 2347.

Removal of Name from Roll — Midwife Alleged to be Living in Adultery — " Misconduct " — Hearing by Central Midwives Board — Evidence Considered in Breach of Statutory Rules.]—Misconduct in a midwife within the meaning of section 3, V. of the Midwives Act, 1902, justifying the removal of her name from the roll of midwives, is not confined to misconduct in the discharge of her duties as a midwife, but must be such as in the opinion of the Central Midwives Board tends to unfit her for the performance of those duties. Hence, to live in adultery may be such misconduct, and the board is the body most fit to deal with each case as it arises. *Stock* v. *Central Midwives Board*, 84 L. J. K.B. 1835; [1915] 3 K.B. 756; 113 L. T. 428; 79 J. P. 397; 13 L. G. R. 1227; 31 T. L. R. 436—D.

The board, in dealing with a charge of misconduct against a midwife, considered evidence in her absence which was not, as required by the rules made by them under section 3, I. (*a*) of the Act, verified by statutory declaration, and of which no copy had been served on her; and, influenced by that evidence, removed her name from the roll of midwives :—*Held*, that the decision could not stand. *Ib.*

Semble, an appeal from the decision of the board to the High Court under section 4 of the Act is as full a right of appeal as is given by any statute to the Court, and the Court is absolutely unfettered in any investigations it may think it right to make on such an appeal. *Ib.*

MEETING.

See WAY.

MENTAL DEFICIENCY.

See LUNATIC.

MERCHANDISE MARKS.

See TRADE MARK.

MERGER.

See also Vol. IX. 1013, 2348.

Devise to Widow for Life — Remainder to Son—Executory Gift over on Death of Son—Conveyance of Life Interest to Son—Death of Son in Lifetime of his Mother.]—A testator devised a farm to his widow for life, with remainder to his son in fee, with an executory gift over in case his son died unmarried in the lifetime of his mother. The widow conveyed her life interest to her son, who afterwards died unmarried in the lifetime of his mother :—*Held*, that the fact that the executory gift over took effect before the determination of the life estate did not prevent a merger, and that there

had been a merger both at law and in equity. *Attkins, In re; Life* v. *Attkins*, 83 L. J. Ch. 183; [1913] 2 Ch. 619; 109 L. T. 155; 57 S. J. 785—Eve, J.

Extinguishment of Charge on Inheritance—Estate for Life and Ultimate Remainder in Fee—Interposed Contingent Remainder in Favour of Issue—Possibility of Issue Extinct.] —Lands were limited by will to A for life, with remainder to her issue as she should appoint, with remainder as she should appoint generally, with an ultimate remainder to A in fee. On the testator's death A also became absolutely entitled to a charge on the lands. A died a spinster, aged over seventy years, having by her will devised her real estate and bequeathed her personal estate to different persons without mention of the charge, and without having indicated any intention during her life either to keep the charge subsisting or to extinguish it:—*Held*, that A had, at the date of her death, such an estate in the lands as to admit of the making of the presumption that the charge had become extinguished, and that, as it was a matter of indifference to her during her life whether the charge was kept subsisting or not, the presumption of extinguishment should be made. *Toppin's Estate, In re*, [1915] 1 Ir. R. 330—C.A.

Settled Land—Incumbrances—Payment off by Tenant for Life out of Income—Intention to Keep Charge Alive.]—In 1904 the plaintiff became entitled as tenant in tail to the family estates, which were subject to heavy incumbrances. With his consent a considerable part of the income was applied in the reduction of the charges. In February, 1909, the plaintiff came of age and disentailed and re-settled the estate, becoming the first tenant for life. The same course as to payment off of incumbrances out of income was continued:—*Held*, that the presumption in favour of a limited owner who pays off incumbrances had not been rebutted, and that the payments out of income were a charge on the inheritance in favour of the plaintiff. *Williams* v. *Williams-Wynn*, 84 L. J. Ch. 801—Eve, J.

METROPOLIS.

A. AUTHORITIES.

1. London County Council.

See also Vol. IX. 1042, 2356.

Powers—Drainage Works in, over, or under the River Thames—Interference with Navigation.] — The Metropolis Management Act, 1858, is a subsisting enactment relating to the main drainage of London. The London County Council are entitled, by virtue of the Metropolis Management Amendment Act, 1858, to construct works in, over, or under the River Thames. *London County Council* v. *Port of London Authority*, 84 L. J. Ch. 20; [1914] 2 Ch. 362; 12 L. G. R. 911; 30 T. L. R. 406—Warrington, J.

Offensive Business—Sanitary Authority—Failure to Institute Proceedings—Proceedings by London County Council—Liability of Sanitary Authority for Expenses.]—Where a borough council have made default in instituting proceedings against a person for an offence under section 19 of the Public Health (London) Act, 1891, the London County Council may, under section 100, take such proceedings, and may, where the proceedings are successful, recover from the borough council all such expenses as they may incur and may not have recovered from any other person. *London County Council* v. *Bermondsey Borough Council*, 84 L. J. K.B. 1699; [1915] 3 K.B. 305; 113 L. T. 743; 13 L. G. R. 987; 79 J. P. 449—D.

2. Metropolitan Borough Councils.

See also Vol. IX. 2357.

Borough Council Officer—Superannuation—Person "designated an officer in an established capacity by a resolution of the Council"—Warrant Officer—Absence of Resolution "designating" him an Officer—Eligibility for Pension.] — The St. Marylebone Borough Council (Superannuation) Act, 1908, provides a scheme under which every officer of the council who shall have completed a certain length of service or attained a certain age shall be entitled to a superannuation allowance. By section 2: "Officer" is defined to mean "every officer in the service of the Council designated an officer in an established capacity by a resolution of the Council passed or to be passed." In 1876 the plaintiff was, by a resolution of the vestry of the parish of St. Marylebone, the defendants' predecessors, appointed the broker to execute warrants of

distress for the recovery of the parochial rates, and acted in that capacity for many years. In 1899 the powers of the vestry were transferred to the defendants by the London Government Act, 1899, and the plaintiff passed into their service as an officer to collect rates. From time to time resolutions were passed by the council, and entered in their minutes, in which the plaintiff was referred to as their warrant officer. The plaintiff, on leaving the defendants' employment, claimed to be entitled to a pension under the Act of 1908, as being an officer within the meaning of section 2 :—*Held*, that the word "designated" in section 2 did not mean "incidentally referred to," but meant "pointed out with particularity," and that, in the absence of any resolution designating the plaintiff an officer in an established capacity, he was not entitled to participate in the superannuation scheme. *Newton* v. *Marylebone Borough Council*, 84 L. J. K.B. 1721; 113 L. T. 531; 79 J. P. 410; 13 L. G. R. 711; 59 S. J. 493—C.A.

Decision of Channell, J. (12 L. G. R. 713), affirmed. *Ib.*

Liability for Expenses of Proceedings under Section 19 of Public Health (London) Act, 1891.]—*See London County Council* v. *Bermondsey Borough Council* (*supra*).

B. TRANSFER OF AREAS.

Adjustment—Transfer of Statutory Liability to Contribute to Maintenance of Bridge.]—By section 46 of the Metropolitan Street Improvement Act, 1883, the expenses of the maintenance, &c., of a certain footbridge over the Grand Junction Canal in a detached portion of the parish of St. Luke, Chelsea, were to be borne as to three-sixths by the vestry of that parish, as to two-sixths by the vestry of the parish of Kensington, and as to one-sixth by the vestry of the parish of Paddington. Under the London Government Act, 1899, the parishes became Metropolitan boroughs, and as from the appointed day, November 9, 1900, the property and liabilities of the vestries were transferred to the borough councils. By the London (Chelsea Detached) Order in Council, 1900, a portion of the detached part of Chelsea in which the footbridge with its approaches was situated was annexed to the Metropolitan borough of Paddington, and the remainder was annexed to the royal borough of Kensington. In 1903 by a scheme of adjustment between the Paddington and Chelsea Borough Council, to which the Kensington Council was not a party, and which did not refer to the footbridge, all property belonging to the former vestry of Chelsea within the area annexed to the borough of Paddington was transferred to the council of that borough :—*Held*, that by section 4 of the London Government Act, 1899, which was distributive in its operation, the property and liabilities in and relating to the footbridge were, apart from the adjustment scheme of 1903, transferred to the Paddington Borough Council as from November 7, 1900; and consequently that the right to receive contribution towards the expenses of the footbridge was vested in the Paddington Borough Council, and the liability of the former Kensington Vestry to contribute two-sixths of those expenses was transferred to the Kensington Borough Council, and that the latter council must therefore pay to the former the same proportion of the expenses. *Paddington Borough Council* v. *Kensington Borough Council*, 105 L. T. 35; 9 L. G. R. 868; 75 J. P. 514—D.

C. JURISDICTION.

1. STREETS.

See also Vol. IX. 1051, 2361.

Power to Take Part of a House for Widening.]—Part only of a house cannot be taken against the wish of the owner for the purpose of street widening under the provisions of the Metropolitan Paving Act, 1817, where such taking will substantially interfere with the enjoyment of the house by the owner and destroy the identity of the premises. Where the tenant is willing to allow a part to be taken, but the freeholder wishes the whole house to be taken, the wishes and intentions of the freeholder must be taken into account by the local authority. *Gibbon* v. *Paddington Vestry* (69 L. J. Ch. 746; [1900] 2 Ch. 794) followed. *Beyfus* v. *Westminster Corporation*, 84 L. J. Ch. 838; 112 L. T. 119; 79 J. P. 111; 13 L. G. R. 40; 59 S. J. 129—Sargant, J.

—— **House—Notice to Take Part—Injunction—"Necessary."**]—When a local authority, acting under the powers conferred upon it by Michael Angelo Taylor's Act, is acquiring property for the purpose of street widening it is competent to that authority to adjudge that the purchase of a part only of a house is necessary for the purpose of the widening. But in order to justify the taking of a part only the facts must be such that persons acting in a *quasi*-judicial capacity can honestly come to the conclusion that it is unnecessary to take the whole. There is no reason for confining the word "necessary" in section 80 of Michael Angelo Taylor's Act to physical necessity. The wishes and intention of the owner as well as the physical condition of the house may be circumstances to be taken into account by the authority in making its adjudication. *Davies* v. *London Corporation*, 82 L. J. Ch. 286; [1913] 1 Ch. 415; 108 L. T. 546; 77 J. P. 294; 11 L. G. R. 595; 57 S. J. 341; 29 T. L. R. 315—Warrington, J.

—— **House Used as Factory.**]—In order to justify a local authority in taking part only of premises (instead of the whole premises) under the powers conferred on them by sections 80 and 82 of the Metropolitan Paving Act, 1817, it is necessary for them to shew that the taking of the part will not substantially injure the use of the premises as at present actually enjoyed. It is not sufficient for them to shew merely that what remains of the premises can still possibly be used in a similar manner, though perhaps on a diminished scale. *Green* v. *Hackney Corporation*, 80 L. J. Ch. 16; [1910] 2 Ch. 105; 102 L. T. 722; 74 J. P. 278; 9 L. G. R. 427—Neville, J.

—— Proviso Against Interference with Main Structure—Destruction of Access to Chapel.]—By section 18 of the London County Council (Tramways and Improvements) Act, 1913, the Council were given power in connection with certain street improvements to take the parts of properties specified in the Third Schedule to the Act without being required or compelled to purchase the whole of such properties, but there was a proviso that the section was not to "entitle the Council to take or interfere with the main structure of any house, building or manufactory." Under this section the Council served notice to treat for the acquisition of the "forecourt, walls, gates and railings" of a Baptist chapel specified in the Third Schedule. The result of the taking of this forecourt and the lowering of its level for the purpose of a street widening would be to make access to the chapel impossible without extensive alterations to the main structure:—*Held*, that the taking of the forecourt amounted to an interference with the main structure of the chapel, and that section 18 of the special Act was therefore inapplicable, and that the Council could not acquire compulsorily the lands specified in the notice without taking the whole building. *Genders* v. *London County Council*, 84 L. J. Ch. 42; 12 L. G. R. 1063; 59 S. J. 58; 31 T. L. R. 34—C.A.

Paving—Power of Local Authority to Alter Width of Carriage-way and Footway.] — A local authority in the formation of a new street under section 105 of the Metropolis Management Act, 1855, has no power to alter the dedication of the road by altering the width of the carriage-way or footways forming such street. *Robertson* v. *Bristol Corporation* (69 L. J. Q.B. 590; [1900] 2 Q.B. 198) considered and applied. *Wandsworth Borough Council* v. *Golds*, 80 L. J. K.B. 126; [1911] 1 K.B. 60; 103 L. T. 568; 74 J. P. 464; 8 L. G. R. 1102—D.

2. Buildings.

a. General Line.

See also Vol. IX. 1069, 2376.

Buildings Erected before 1894 beyond General Line with Consent.] — A consent given by the Metropolitan Board of Works, predecessors of the London County Council, to transgress the general building line does not alter that line or prevent the refusal of consent in the future—each consent being an exception and assuming that the building line remains. *Fleming* v. *London County Council; Metropolitan Railway* v. *London County Council*, 80 L. J. K.B. 35; [1911] A.C. 1; 103 L. T. 466; 8 L. G. R. 1055; 75 J. P. 9; 55 S. J. 28—H.L. (E.)

A road in London was laid out under an Act of 1756, which provided that no buildings should be erected on new foundations in the road within fifty feet of the highway. That provision continued in force down to the passing of the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), which provided by section 75 that no building should, without the consent in writing of the Metropolitan Board of Works, be erected beyond the general line of buildings in any street in case the distance of such line from the highway did not exceed fifty feet. Before 1862 a line of buildings had in fact been erected on the north side of a part of the road in question at a distance of about fifty feet back from the roadway, and in front of these buildings, on what had been originally their forecourts, another discontinuous row of buildings had been erected, there being no evidence to shew that these latter buildings were erected on old foundations which had existed before 1756. In 1867 the Metropolitan Board of Works passed a resolution approving and adopting a line of frontage in that part of the road almost corresponding to the actual frontage of the existing projecting buildings, and coming up to eleven feet from the roadway; and for some years that resolution was acted upon, and buildings were erected upon that line. Subsequently the London County Council, the successors of the Metropolitan Board of Works, required the superintending architect to define the general line of buildings in that part of the road under the London Building Act, 1894:—*Held*, that, in fixing the general line of buildings, he was entitled to disregard and treat as non-existent the buildings brought up to the inner line. *London County Council* v. *Clode*, 84 L. J. K.B. 1705; [1915] A.C. 947; 113 L. T. 754; 13 L. G. R. 1234; 59 S. J. 628; 31 T. L. R. 483—H.L. (E.)

Decision of the Court of Appeal (83 L. J. K.B. 1587; [1914] 3 K.B. 852) reversed. *Ib.*

Building Erected on Railway Company's Land—Powers Conferred by Special Act of Parliament for Railway Purposes—Exemption from General Provisions.]—By their special Act of 1866 the appellants were empowered to enter upon, take, and use (*inter alia*) two houses in Euston Road as they might require them for the purposes of their Acts. In 1867 the appellants purchased those houses, and in 1882 placed on the forecourts thereof a ventilating shaft. By their special Act of 1898 the appellants were empowered to enter upon, take, and use a large number of lands, including the two houses in Euston Road, and to make and maintain thereon openings and other works for the purpose of ventilating their railway. That Act also contained a provision that nothing therein contained should authorise the erection of any building beyond the general building line without the consent of the respondents. In 1909 the appellants erected on the forecourts of the said two houses in Euston Road, and on the site of the ventilating shaft which was done away with, an accumulator shed in which were placed accumulators used in connection with the electrical signalling on their railway. This was erected beyond the general building line without the respondents' consent. In proceedings against the appellants for contravening section 22 of the London Building Act, 1894, by the erection of the accumulator shed, the magistrate found as a fact that the accumulators used therein were used for railway purposes, but he was of opinion that the appellants were not protected by section 31 of the London Building Act, 1894, and he accordingly convicted the appel-

lants :—*Held*, that the accumulator shed was erected by the appellants under powers conferred upon them by their special Act of 1866 for railway purposes, and therefore that they were protected by section 31 of the London Building Act, 1894. *Metropolitan Railway* v. *London County Council*, 82 L. J. K.B. 542; [1913] 2 K.B. 249; 108 L. T. 420; 77 J. P. 190; 11 L. G. R. 494; 29 T. L. R. 361—D.

Meaning of "Structure" — Projections from Building — Open Ironwork and Glass Advertisement Frame Tailed into Wall of Building.] — For advertising purposes the appellants without the consent of the London County Council had placed immediately over the main entrance to their premises in Oxford Street an open iron framework filled in at the sides and centre with glass and illuminated by electric lamps. This framework weighed 15 cwt., and two stay rods supporting part of its weight were "tailed" or fastened by plugs and cement into holes cut in the wall of the building. It measured eighteen feet from side to side, five feet four inches from front to back, and one foot eight inches from top to bottom. It was sixteen feet above the pavement, and projected some five feet six inches beyond the general line of buildings. It was found by a Metropolitan police magistrate that this framework was a "structure" within section 22, sub-section 1 of the London Building Act, 1894, and also a "projection" within section 73, sub-section 8, and had become part of the main building by the way in which it had been "tailed" into the wall; and he therefore convicted the appellants on information charging them with having contravened those enactments :—*Held*, affirming the convictions, that there was evidence upon which the magistrate could find, as he did, that the framework was part of the main building and not merely something hanging on it, and that he had not misdirected himself, but had addressed his mind to the right facts, in taking into consideration the weight of the frame, the strength and rigidity of the iron rods supporting the structure, and the permanent character of the "tailing" adopted in fastening them to the wall of the main building. *Pears* v. *London County Council*, 105 L. T. 525; 75 J. P. 461; 9 L. G. R. 834—D.

Appeals to Tribunal of Appeal—Statement of Separate Case for Opinion of the Court on Each Appeal.]—Where several appeals have been made to the tribunal of appeal by owners of different properties on one side of a street, against a general building line defined for that side of the street by the certificate of the superintending architect, the tribunal can in their discretion state separate Cases for the opinion of the High Court under section 182 of the London Building Act, 1894, in respect of each of such appeals, and need not state one Case, and one only, with respect to the whole of the appeals. *Rex* v. *Tribunal of Appeal; London County Council, Ex parte*, 76 J. P. 345; 10 L. G. R. 637—D.

Per Lord Alverstone, C.J.—There is no power in the High Court to fetter the jurisdiction of the tribunal of appeal as to whether they should state one or more than one Case. *Ib.*

b. Notice to Set Back.

Forecourt or other Space—Old Wall.]—The London County Council has no power under section 3, sub-section 1 of the London Building Act, 1894 (Amendment) Act, 1898, to serve a notice on the owner or occupier of land, who has erected a new building thereon, to set back an old boundary wall which forms the boundary of the forecourt or space then created between the new building and the street, so that it shall be at not less than the prescribed distance from the centre of the roadway of the street. *Rea* v. *London County Council*, 80 L. J. K.B. 704; [1911] 1 K.B. 740; 104 L. T. 501; 75 J. P. 261; 9 L. G. R. 299—D.

c. Party Walls.

See also Vol. IX. 1079, 2385.

External Wall — Wall a Party Wall for Portion of its Height.]—Under the London Building Act, 1894, a wall which is used for the separation of adjoining buildings is a party wall for such part of the height of the wall as is so used; and therefore a wall may be a party wall as to a portion, but cease to be a party wall as to the rest, of its height. *London, Gloucestershire, and North Hants Dairy Co.* v. *Morley*, 80 L. J. K.B. 908; [1911] 2 K.B. 257; 104 L. T. 773; 9 L. G. R. 738; 75 J. P. 437—D. Appeal settled, 80 L. J. K.B. 1361; [1911] 2 K.B. 1143; 105 L. T. 658; 75 J. P. 548—C.A.

Defect — Damp — Past History of Party Structure.] — The right conferred on the building owner by section 88 of the London Building Act, 1894, is confined to making good the party structure so as to make it effective in those respects in which it is defective for the purposes for which it is actually used or intended to be used. Dampness in a wall is not a "defect" within the meaning of the Act unless its existence renders the wall less effective for such purposes. The previous history and user of the wall ought not to be taken into consideration. Work entailing inconvenience on the adjoining owner ought not to be directed if it is possible to direct other works equally effective, and not involving considerable extra cost, which would cause no such inconvenience. *Barry* v. *Minturn*, 82 L. J. K.B. 1193; [1913] A.C. 584; 109 L. T. 573; 77 J. P. 437; 11 L. G. R. 1087; 57 S. J. 715; 29 T. L. R. 717—H.L. (E.)

Judgment of the Court of Appeal (81 L. J. K.B. 1235; [1912] 3 K.B. 510) varied. *Ib.*

See also Spiers & Son, Lim. v. *Troup, post*, col. 995.

d. Protection from Fire.

Royal Albert Hall—Necessity of Certificate.]—The provisions of section 12 of the Metropolis Management and Building Acts Amendment Act, 1878, requiring for places to be kept open for public entertainment a cer-

tificate from (now) the London County Council that the place is in accordance with the Council's regulations, only applies to buildings coming into existence after the passing of the Act. *London County Council* v. *Hall of Arts and Sciences Corporation*, 110 L. T. 28; 78 J. P. 11; 11 L. G. R. 1177; 30 T. L. R. 3 —D.

Means of Escape from Fire — Conditional Approval of Plans — Failure to Appeal — Refusal of Certificate—Appeal to Tribunal of Appeal — Jurisdiction to Determine Reasonableness of Condition.]—On an appeal from the refusal of the London County Council to issue a certificate that a building which is within the provisions of section 7 of the London Building Acts (Amendment) Act, 1905, has been provided with means of escape therefrom in case of fire in accordance with plans approved by the London County Council (subject to compliance with certain conditions), or (on appeal) by the tribunal of appeal, the tribunal of appeal has jurisdiction only to enquire whether means of escape have been provided in fact in accordance with the approved plans and conditions, and, where the means actually provided are not in accordance therewith, has no jurisdiction to enquire whether the building has been provided with all such means of escape therefrom in case of fire as can reasonably be required under the circumstances of the case. *London County Council* v. *Clark*, 81 L. J. K.B. 225; [1912] 1 K.B. 511; 105 L. T. 713; 10 L. G. R. 59; 76 J. P. 60; 56 S. J. 125—D.

—— Means of Access to Roof—Public House Fronting Two Streets—Main Front—Projecting Shops — "Dwelling house occupied as such by not more than two families"—Members of Public House Staff.]—A fully licensed public house had an elevation of four storeys above the basement. Nearly the whole of the ground floor was used as a bar. There were two sitting rooms on the first floor and six bedrooms on the second and third floors. The house was inhabited by thirteen persons—namely, the tenant, his wife, three children, their servant, and the seven members of the public house staff—all of whom slept and had their meals there. Upon a summons for failing to comply with the requirements of section 12 of the London Building Acts (Amendment) Act, 1905, the magistrate held that the public house did not come within section 12 of the Act of 1905, because it was "a dwelling house occupied as such by not more than two families," inasmuch as the thirteen persons formed only one family:—*Held*, that upon the facts the decision of the magistrate was right, inasmuch as it was impossible to draw any distinction between the servant of the tenant and the members of the public house staff, and to say that the latter were not equally members of the same "family" as the former. *London County Council* v. *Cannon Brewery Co.*, 80 L. J. K.B. 258; [1911] 1 K.B. 235; 103 L. T. 574; 74 J. P. 461; 8 L. G. R. 1094 —D.

—— Houses Belonging to Different Owners Adapted by Tenant as Factory.]—*See London County Council* v. *Leyson*, *ante*, col. 967.

e. Surveyor's Powers and Duties.

See also Vol. IX. 1087, 2387.

Metropolis—District Surveyors—Tenure of Office—Power of County Council to Dismiss.] —The London County Council have power, under the provisions of the Metropolitan Building Act, 1855, the Local Government Act, 1888, and the London Building Act, 1894, to dismiss at their pleasure district surveyors who have been appointed after August 14, 1855. *Notley* v. *London County Council*, 85 L. J. K.B. 113; [1915] 3 K.B. 580; 13 L. G. R. 1346 —Rowlatt, J.

Building in Occupation of Crown—Shed for Purposes of Territorial Association.] — A magistrate has no jurisdiction to make an order under section 153, sub-section 1 of the London Building Act, 1894, requiring a person upon whom a notice of irregularity has been served by the district surveyor to comply with such notice in a case where at the date of the application for the order the building to which the notice relates is vested in and in the occupation of a Territorial Association for the purposes of the Territorial and Reserve Forces Act, 1907. *Dellar* v. *Drury*, 81 L. J. K.B. 766; [1912] 2 K.B. 209; 106 L. T. 806; 76 J. P. 239; 10 L. G. R. 395; 29 T. L. R. 345 —D.

Erection as a Public Elementary School—Building Notice — "Provision in local Act dealing with construction of new buildings."] —Section 145 of the London Building Act, 1894, provides that, when a building or structure is about to be begun, then two clear days before it is begun the builder or other person causing or directing the work to be executed shall serve on the district surveyor a building notice respecting the building or structure as therein prescribed. Section 200, sub-section 11, provides that any person who, being a person who ought to serve a building notice, fails to do so is liable to a penalty. Section 3 of the Education (Administrative Provisions) Act, 1911, enacts that the provisions of any by-laws made by any local authority under section 157 of the Public Health Act, 1875, as amended by any other Act, with respect to new buildings (including provisions as to the giving of notices and deposit of plans and sections), and any provisions in any local Act dealing with the construction of new buildings, shall not apply to the case of any new buildings being school premises to be erected, or erected, according to plans which are required to be and have been approved by the Board of Education. A firm of builders, in pursuance of a contract made by them with the London County Council as the education authority for the County of London for the erection of some new buildings to be erected as a public elementary school according to plans approved by the Board of Education, commenced the work without giving any notice thereof in accordance with section 145 of the London Building Act, 1894, and were convicted under section 200, sub-section 11 of that Act for failing to give notice:—*Held*, that section 145 of that Act was a "provision in a local Act dealing with

the construction of new buildings " within the meaning of section 3 of the Education (Administrative Provisions) Act, 1911, and did not apply to the buildings in question. The conviction, therefore, was wrong. *Holliday & Greenwood* v. *District Surveyors' Association*, 83 L. J. K.B. 1482; [1914] 2 K.B. 803; 110 L. T. 983; 78 J. P. 262; 12 L. G. R. 633; 30 T. L. R. 370—D.

Public Elementary Schools Added to by London County Council—District Surveyor's Duties and Fees—New Building.] — The exemption of education authorities in section 3 of the Education (Administrative Provisions) Act, 1911, as regards the giving of notice to the district surveyor in respect of new buildings, being school premises, does not extend to alterations or additions to old buildings such as the remodelling of the infants' department of a public elementary school: and a district surveyor, having received a building notice under section 145 of the London Building Act, 1894, which imposes duties upon him in respect of such an alteration, is consequently entitled to the fees provided for him under section 154 and Schedule III., Parts I. and III. of that Act. *Galbraith* v. *Dicksee* (102 L. T. 890; 8 L. G. R. 800, 869) applied. *Akers* v. *Daubney*, 79 J. P. 516; 13 L. G. R. 1201—D.

Semble, that if a case should occur in which the notice served on the district surveyor imposed no duties upon him whatever, he could not, by reason of the service of such a notice on him, recover fees. *Ib.*

f. Consent of Local Authority.

See also Vol. IX. 1089, 2389.

Erection of Hoarding — Licence — School Premises Approved by Board of Education—Exemption from Necessity for Licence.] — Section 121 of the Metropolis Local Management Act, 1855, enacts that a person building, taking down, or repairing any building, in cases where the footway is thereby obstructed or rendered inconvenient, shall erect a hoarding to the satisfaction of the borough council. By section 122 it shall not be lawful to erect in any street any hoarding " for any purpose whatever " without the licence first had and obtained of the borough council :—*Held*, that a person erecting a hoarding under the mandatory provisions of section 121 must first obtain the licence of the borough council. *Higgs & Hill, Lim.* v. *Stepney Borough Council*, 83 L. J. K.B. 294; [1914] 1 K.B. 505; 110 L. T. 377; 78 J. P. 134; 12 L. G. R. 395; 30 T. L. R. 198—D.

Section 3 of the Education (Administrative Provisions) Act, 1911, enacts that any provision in any local Act (which it was admitted that the Act of 1855 was) dealing with the construction of new buildings shall not apply in the case of any new buildings being school premises erected according to plans approved by the Board of Education (which the building in question was) :—*Held*, that the section did not apply to exempt the appellants from the necessity of obtaining a licence for the erection of a hoarding, as the provisions of sections 121 and 122 of the Act of 1855 did not deal with the construction of new buildings, but only with the consequences to the public arising from the construction of new buildings. *Ib.*

g. Dangerous Structures.

See also Vol. IX. 1090, 2390.

Uninhabited — Structure not Adjoining Highway—Structure Temporarily Shored up by Local Authority—Structure not Dangerous Owing to Shoring—Structure Dangerous only to Trespassers — Ruinous and Neglected Structure.] — Two buildings in a row in Islington, which were separated from the highway by a forecourt and were uninhabited, were certified by the district surveyor under sections 103 and 105 of the London Building Act, 1894, to be dangerous structures. The London County Council caused each of the buildings to be temporarily shored up. Notice was served upon the owners under section 106 of the Act to execute certain specified repairs, which, however, were not carried out. The County Council thereupon took proceedings against the owners under section 107 to enforce compliance with the notice. The magistrate found as a fact that the premises were not dangerous at the moment owing to the fact that they had been temporarily shored up, and that apart from the shoring they were not dangerous to any persons except to trespassers. He held that the buildings were not dangerous structures, and refused to make any order on the owners to carry out the works specified :—*Held*, that the fact that the buildings were not at the moment dangerous owing to the temporary shoring did not prevent them from being " dangerous structures " within the meaning of the Act; that a building might be at the same time both a ruinous and neglected structure and also a " dangerous structure "; that it was not necessary that a building should be dangerous to any person in order that it should be a " dangerous structure," but that it was sufficient if there was a possibility of danger to person or property arising from the fall of the structure; that a building might be a " dangerous structure " even though the only person to whom it might be dangerous was a trespasser. *London County Council* v. *Jones*, 81 L. J. K.B. 948; [1912] 2 K.B. 504; 106 L. T. 872; 76 J. P. 293; 10 L. G. R. 471—D.

Party Wall a Dangerous Structure—Magistrate's Order to Pull Down—Compliance therewith—Building Owner and Adjoining Owner—Right of Building Owner to Contribution.] — Section 90, sub-section 1 of the London Building Act, 1894, provides that a building owner shall not, except *(inter alia)* in cases where any wall is dangerous (in which case the provisions of Part IX. of the Act shall apply), exercise any of his rights under the Act in relation to any party wall, unless at least two months before doing so he has served on the adjoining owner a party wall notice, stating the value and particulars of the proposed work, and the time at which the work is proposed to be commenced. In the course of rebuilding a house of which the plaintiffs

were the building owners within the meaning of the above statute, they were served with a magistrate's order to pull down the party wall as being a dangerous structure, which they did, and, presumably under the powers of section 88, sub-sections 2, 6, or 7 contained in Part VIII. of the Act, rebuilt it, but higher and thicker than the old one, and without complying with the provisions of section 91 contained in Part VIII. of the Act as to the settlement of any difference which might arise in the rebuilding thereof between the plaintiffs and the defendant, the adjoining owner. In an action in which the plaintiffs claimed contribution for a share of the expenses incurred in pulling down and rebuilding the party wall, —*Held*, first, that, as the building owner and adjoining owner were each liable under Part IX. of the Act for the expenses of pulling down the party wall, the plaintiffs' claim for contribution for such expenses succeeded; but secondly, that, inasmuch as the plaintiffs had not complied with the above provisions of Part VIII. of the Act, their claim for contribution for expenses in rebuilding the party wall failed. *Spiers & Sons, Lim.* v. *Troup*, 84 L. J. K.B. 1986; 112 L. T. 1135; 79 J. P. 341; 13 L. G. R. 633—Scrutton, J.

3. Sewers and Drains.

See also Vol. IX. 1095, 2392.

Sewer or Drain — Order for Combined Drainage—Order not Carried Out—Notice to Builder to make Drains in Accordance with Approved Plan—Work Carried Out by Local Authority—Liability of Purchaser to Repair Combined Drain.]—A sewer vests in a local authority only for the purpose of enabling that authority to perform the duty imposed upon it, and if at any time that duty is shifted from the local authority to an individual and the pipe ceases to be a sewer, it also ceases to be vested in the local authority, notwithstanding that the statute which imposes the duty on the local authority contains no divesting clause. *Kershaw* v. *Smith*, 82 L. J. K.B. 791; [1913] 2 K.B. 455; 108 L. T. 650; 77 J. P. 297; 11 L. G. R. 519—D.

In 1884 an order was made by the vestry of a Metropolitan parish, on the application of the builder, for the drainage of twelve houses by a combined operation according to a plan which was approved by the vestry; seven houses were to be drained into one sewer and five houses into another sewer, the drainage from one of the groups of houses being carried by a combined drain passing under one of the houses, No. 178, into the public sewer. In 1887 No. 178 was purchased by S., and was subsequently assigned to the respondents for valuable consideration and without notice that the drainage was in contravention of the approved plan. In 1912 the local authority discovered that the drainage of the houses had not been carried out in accordance with the approved plan, the houses being grouped differently and the drainage from a workshop and certain gullies being without the permission of the local authority drained into the combined drain passing under No. 178, that line of pipes being thereby converted from a drain into a sewer. The local authority served upon the original builder of the twelve houses a notice under section 83 of the Metropolis Management Act, 1855, requiring him to cause the drains of the twelve houses to be altered in accordance with the approved plans. As the builder did not comply with the notice the local authority themselves carried out the work, disconnecting the drain from the workshop and gullies and bringing the drainage of the twelve houses into conformity with the approved plan. The local authority then served upon the respondents a notice under section 85 of the Act of 1855 requiring them to take up the combined drain under No. 178 and remedy a nuisance therein :—*Held*, by Ridley, J., and Avory, J. (Pickford, J., dissenting), that after the work had been carried out by the local authority under section 83 of the Act of 1855, the combined drain passing under No. 178, which by the wrongful act of the builder had become a sewer, was re-converted into a drain, and thereupon ceased to be vested in the local authority, and that therefore the respondents were liable to a penalty under section 64 of the Metropolis Management Act, 1862, for not complying with the notice served upon them under section 85 of the Act of 1855. *St. Leonard, Shoreditch (Vestry)* v. *Phelan* (65 L. J. M.C. 111; [1896] 1 Q.B. 533) commented upon and not followed. *Ib.*

—— **Pipe Carrying Internal Drainage of One House and Rain Water from Roofs of Adjoining Houses.**]—A pipe (not being a drain for the drainage of a block of houses by combined operation) which carries off the internal drainage of one house only, but which also receives and carries off the rain water from the roofs of the adjoining houses on either side, is a sewer and not a drain within section 250 of the Metropolis Management Act, 1855. *Silles* v. *Fulham Borough Council* (72 L. J. K.B. 397; [1903] 1 K.B. 829) followed; but discussed by Channell, J., in view of the possible distinction capable of being drawn between the facts in that case and those in *Holland* v. *Lazarus* (66 L. J. Q.B. 285). *Dicta* of the same learned judge in *Heaver* v. *Fulham Borough Council* (72 L. J. K.B. 715; [1904] 2 K.B. 383) referred to. *Kershaw* v. *Paine*, 78 J. P. 149; 12 L. G. R. 297—D.

"Combined drains"—Application and Payment for Communication between Drain and Sewer.]—In the absence of any minutes of a Metropolitan local authority with respect to the drainage of a group or block of houses by a combined operation, the production of a written application of January 28, 1858, addressed by a building owner to the local authority (then the vestry) to connect up the drainage of his group or block of houses to their sewer, coupled with an entry in the vestry's cash book of February 8, 1858, of payment to the vestry by the building owner of the cost of their having made the connection, is enough to shew that the method of the system of drainage was within the knowledge of the vestry through its officials, and

to allow the inference to be drawn that the vestry had sanctioned the application, and that therefore the houses had been drained by a combined operation by order of the vestry, so as to prevent the combined drain from being a "sewer" vested in the local authority. The principle laid down in *High* v. *Billings* (1 L. G. R. 723), *Geen* v. *Newington Vestry* (67 L. J. Q.B. 557; [1898] 2 Q.B. 1), and *Bateman* v. *Poplar District Board of Works* (56 L. J. Ch. 149; 33 Ch. D. 360) followed. *House Property and Investment Co.* v. *Grice*, 9 L. G. R. 758: 75 J. P. 395—D.

Soil Pipe—Construction of.]—A by-law of the London County Council required that a person who provided a soil pipe in connection with a new building or who should construct a soil pipe in connection with an existing building should, whenever practicable, cause such soil pipe to be situate outside the building and should construct the pipe in drawn lead or heavy cast iron; and that when it was necessary to construct the soil pipe within the building it was to be constructed of drawn lead with proper joints and so as to be easily accessible:—*Held*, that the by-law applied where the soil pipe was partly outside and partly inside a building. *Marylebone Borough Council* v. *White*, 76 J. P. 382; 10 L. G. R. 767—D.

Repair of Sewer in Street under Jurisdiction of Crown Paving Commissioners.]—The Commissioners for executing the Crown Estate Paving Act, 1851, were, as successors of Commissioners under an Act of 1824, authorised and empowered to repair and maintain the streets within a certain area, including a street one-half of the breadth of which is now in the Metropolitan borough of St. M. and the other half in the Metropolitan borough of St. P. Their predecessors had been, under the Act of 1824, Commissioners of Sewers for the same area; a sewer under the half of the street in St. M. had been repairable by them, but under an Act of 1848 became vested in and repairable by the Metropolitan Commissioners of Sewers, and ultimately vested in and was repairable by the borough council of St. M. In December, 1909, the sewer, having perished for want of repair, fell in and the road above it subsided. In March, 1910, the Commissioners called upon the council to repair the sewer, and on their default repaired it and made good the road, completing the work in the month of May following. In July of the same year they paid the expenses incurred by them in executing the work, and demanded repayment from the council; and in the following September they commenced an action against the council to recover the amount of the expenses:—*Held*, that the Commissioners were in the discharge of their statutory duty obliged to repair the sewer, and that they were therefore entitled to recover the amount so expended from the council as money paid at the council's request. *Hart* v. *Marylebone Borough Council*, 76 J. P. 257; 10 L. G. R. 502—A. T. Lawrence, J.

Sewer and Highway Authority—Gully in Road Negligently Constructed — District Divided—Creation of Local Authority for Part of District—Act to be Read as if New Body had been Named in Act—Accident through Defective Condition of Gully — Transfer of Liability of Original Authority—Liability of New Authority as Sewer Authority.]—A gully in a road in the parish of Battersea was negligently constructed in 1883 by the Wandsworth District Board of Works, which body was, by sections 31, 68, 69, and 96 of the Metropolis Management Act, 1855, constituted the sewer and highway authority for the district. In 1888 the parish of St. Mary, Battersea, was by section 4 of the Metropolis Management (Battersea and Westminster) Act, 1887, separated from the parishes mentioned in Schedule B of the Act of 1855 as forming the Wandsworth district, and the vestry of that parish was duly incorporated. The section provided that the Act of 1855 should be read and have effect as if the parish of St. Mary, Battersea, had been named in Schedule A of the Act of 1855. Under section 4 of the London Government Act, 1899, the defendants became the successors of the vestry of St. Mary, Battersea, and the property and liabilities of the vestry were transferred to them. An accident happened to the plaintiff, who was riding her bicycle along the road, through the defective condition of the gully, and she was severely injured. The jury found that the gully was negligently constructed, and that the defendants were liable both as sewer authority and also as highway authority for not remedying the defect in the gully:—*Held*, that the liability of the Wandsworth District Board of Works in respect of the negligent construction of the gully was not transferred to the vestry of the parish of St. Mary, Battersea, by section 4 of the Act of 1887, and consequently was not transferred to the defendants; but that the defendants were liable in their capacity as sewer authority, although not in their capacity as highway authority, for their negligence in not remedying the defect in the gully. *Papworth* v. *Battersea Borough Council* (*No.* 1), 83 L. J. K.B. 358; [1914] 2 K.B. 89; 110 L. T. 385; 78 J. P. 172; 12 L. G. R. 308—Horridge, J. New trial ordered, 84 L. J. K.B. 1320; [1915] 1 K.B. 392; 112 L. T. 681; 79 J. P. 105; 13 L. G. R. 197; 59 S. J. 74; 31 T. L. R. 52—C.A.

A gully in a road in the parish of Battersea was negligently constructed in 1883 by the Wandsworth District Board of Works, which body, under the Metropolis Management Act, 1855, constituted the sewer and highway authority for the district. In 1888 the parish of St. Mary, Battersea, was, by section 4 of the Metropolis Management (Battersea and Westminster) Act, 1887, separated from the parishes forming the Wandsworth district, and the vestry of that parish was duly incorporated. The defendants became the successors of the vestry of St. Mary, Battersea, under section 4 of the London Government Act, 1899, and the property and liabilities of the vestry were transferred to them. An accident happened to the plaintiff as she was riding her bicycle along the road, through the defective condition of

the gully, and she was severely injured. At the first trial the jury found that the defendants were liable both as sewer authority and also as highway authority for not remedying the defect in the gully, and Horridge, J., held (83 L. J. K.B. 358; [1914] 2 K.B. 89) that although the liability of the Wandsworth District Board of Works in respect of the negligent construction of the gully was not transferred to the vestry of the parish of St. Mary, Battersea, and consequently was not transferred to the defendants, yet the defendants were liable in their capacity as sewer authority for their negligence in not remedying the defect in the gully. The Court of Appeal (84 L. J. K.B. 1320; [1915] 1 K.B. 392) ordered a new trial, and the jury on the second trial found that the accident was caused by the frame of the grating of the gully hole being broken and by there being an excessive depression; that the grating over the gully formed part of the road and was controlled and maintained by the highway authority, but that the highway authority did not at the time of the accident know of the defect:—*Held*, following the decision of Horridge, J., that the liability of the Wandsworth District Board of Works in respect of the original negligent construction of the gully was not transferred to the defendants; and that, as the grating formed part of the road and was controlled and maintained by the defendants as highway authority and not as sewer authority, the plaintiff's action failed, as all that had been proved was the failure of the defendants to remedy the defects in works done by their predecessors, and not actual misfeasance on the part of the defendants themselves. *Cowley* v. *Newmarket Local Board* (62 L. J. Q.B. 65; [1892] A.C. 345) applied. *Papworth* v. *Battersea Borough Council* (*No.* 2), 84 L. J. K.B. 1881; 79 J. P. 309—Scrutton, J. Affirmed, 60 S. J. 120—C.A.

4. Employment Agency.

Lecture Agency—Necessity for Licence.]—Section 20 of the London County Council (General Powers) Act, 1910, which provides that, from and after January 1, 1911, "no person shall carry on an employment agency without a licence from the licensing authority authorising him so to do," applies to agencies for the employment of persons in any capacity, and not only to those which create the relationship of master and servant. The section therefore applies to an agency which carries on the business of engaging lecturers. *Lecture League, Lim.* v. *London County Council*, 108 L. T. 924; 77 J. P. 329; 11 L. G. R. 645; 23 Cox C.C. 390; 29 T. L. R. 426—D.

5. Unsound Food.

See also Vol. IX. 1110, 2407.

Liability of Seller a Limited Company.]—A limited company may be proceeded against by indictment for the offence created by section 47, sub-section 3 of the Public Health (London) Act, 1891. *Rex* v. *Puck & Co.* (*No.* 2), 76 J. P. 487; 11 L. G. R. 136; 29 T. L. R. 11—Rowlatt, J.

Unsound Fruit Voluntarily Given up by Purchaser for Condemnation.]—A person who sells to another unsound food, which, although liable to be seized, is not in fact seized, but is voluntarily given up for condemnation by the purchaser, does not commit the offence created by section 47, sub-section 3 of the Public Health (London) Act, 1891. *Ib.*

Fish Unfit for Food of Man—Exposure for Sale—Condemnation by Magistrate—Condition Precedent to Prosecution.]—Upon an information under section 47, sub-section 2 of the Public Health (London) Act, 1891, charging the defendant with having exposed for sale an article unfit for the food of man, it is not necessary to prove as a condition precedent to the prosecution that the article has been previously condemned by a magistrate:—So *held* by Lord Alverstone, C.J., and Avory, J.; Pickford, J., dissenting. *Hewett* v. *Hattersley*, 81 L. J. K.B. 878; [1912] 3 K.B. 35; 107 L. T. 228; 76 J. P. 369; 10 L. G. R. 620; 23 Cox C.C. 121; 28 T. L. R. 433—D.

6. Smoke.

See also Vol. IX. 1111, 2408.

Black Smoke—Meaning of "Recurrence of nuisance."]—On November 5, 1910, the occupiers of an electric-power station were required by notice under section 4 of the Public Health (London) Act, 1891, to abate a nuisance which occurred on October 24 from a chimney sending forth black smoke. From that time until April 9, 1911 (with a few exceptions in March), no further nuisance due to the chimney was observed, but on the latter date the chimney again sent forth black smoke; whereupon the occupiers were summoned for an alleged breach of the notice of November 5, 1910. The magistrate dismissed the summons, holding that the nuisance of April 9, 1911, was a recrudescence and not a continuance of the nuisance of which the notice of November required the abatement, and that the occupiers had not made default in complying with the requisitions of the notice:—*Held*, that no connection between the nuisance of October 24, 1910, and that of April 9, 1911, having been established by evidence before him, the decision of the magistrate must be upheld. *Greenwich Borough Council* v. *London County Council*, 106 L. T. 887; 76 J. P. 267; 10 L. G. R. 488; 23 Cox C.C. 32—D.

7. Lodging Houses.

See also Vol. IX. 2412.

Lodgers Received for the Night or Less than a Week—Absence of Common Room for Eating or Sleeping—Necessity for Licence.]—A house in which lodgers are received for a night or other periods less than a week, and where each person has the exclusive use of a room, is not a "common lodging house" for the purposes of the London County Council (General Powers) Act, 1902, unless it contains a common room either for eating or sleeping. *London County Council* v. *Hankins*, 83 L. J. K.B. 460; [1914] 1 K.B. 490; 110 L. T. 389;

78 J. P. 137; 12 L. G. R. 314; 24 Cox C.C. 94; 30 T. L. R. 192—D.

The definition of the expression "common lodging house" adopted by the Court of Appeal in *Parker* v. *Talbot* (75 L. J. Ch. 8; [1905] 2 Ch. 643) is not exhaustive. *Ib.*

D. RATES.

See also Vol. IX. 1122, 2413.

Rateable Value — Deductions from Gross Value — Maximum Rate of Deductions — "Houses or buildings let out in separate tenements."]—A building divided into flats each of which is let separately, and is separately inserted in the valuation list as a rateable hereditament, is a "house or building let out in separate tenements" within the meaning of the footnote to Schedule III. of the Valuation (Metropolis) Act, 1869, and therefore the maximum rate of deductions prescribed by that schedule does not apply to it. *Western* v. *Kensington Assessment Committee* (77 L. J. K.B. 328; [1908] 1 K.B. 811) approved. *Marylebone Assessment Committee* v. *Consolidated London Properties, Lim.*, 83 L. J. K.B. 1251; [1914] A.C. 870; 111 L. T. 553; 78 J. P. 393; 12 L. G. R. 885; 58 S. J. 593; 30 T. L. R. 551—H.L. (E.)

Decision of the Court of Appeal (82 L. J. K.B. 972; [1913] 3 K.B. 230) affirmed. *Ib.*

Provisional Valuation—Quinquennial List —"Subsequently made."]—A valuation list is not "made" within the meaning of section 47, sub-section 8 of the Valuation (Metropolis) Act, 1869, until it has been finally approved by the assessment committee. *Parrish* v. *Hackney Borough Council*, 81 L. J. K.B. 304; [1912] 1 K.B. 669; 105 L. T. 859; 10 L. G. R. 3; 76 J. P. 89; 56 S. J. 140; 28 T. L. R. 110—C.A.

A provisional valuation list came into operation on June 30, 1910, and in that list certain licensed premises were assessed at the rateable value of 266*l.* The new quinquennial valuation list was sealed by the overseers on May 30, 1910, was finally approved by the assessment committee on October 31, 1910, and came into operation on April 6, 1911, and in that list the premises were assessed at the rateable value of 150*l.* No other list had in the meantime been made. On April 12, 1911, the overseers made a general rate and charged the occupier of the premises on the higher value at which they were assessed in the provisional list. Between June 30, 1910, and the coming into force of the new list the occupier had paid certain rates on the higher value of the premises:—*Held*, that the quinquennial list was the first list "subsequently made" to the provisional list within the meaning of section 47, sub-section 8 of the Valuation (Metropolis) Act, 1869, and that, therefore, by that sub-section, the provisional list ceased to have effect when the quinquennial list came into operation on April 6, 1911; and consequently that the overseers were only entitled to rate the occupier on the smaller value appearing in the quinquennial list, and were bound, under sub-section 10, to repay to him the excess rates paid by him beyond what he would have paid on the lower value. *Ib.*

Structural Alterations in Tramways—Jurisdiction of Quarter Sessions to Entertain Appeal against Rate Based on Provisional List.]—The appellants, as owners of tramways in a Metropolitan borough, had constructed a new curve for relieving congestion of traffic, and reconstructed certain tramway lines for electric traction. In consequence of this alteration the respondents as overseers raised the rateable value of the tramway lines by a provisional valuation list to the extent of 1,000*l.* The appellants appealed to the quarter sessions for the county of London against a general rate based upon the provisional list:—*Held*, that as there was evidence before the assessment committee of alterations in the hereditament, the question whether they had rightly come to the conclusion that such alterations had resulted in an increase of value was not one which could properly be raised on appeal to the quarter sessions. *London County Council* v. *Shoreditch Borough Council*, 105 L. T. 515; 9 L. G. R. 939; 75 J. P. 386—D.

Semble, that if there had been no evidence at all upon which the assessment committee could have come to the conclusion that there had been an increase in value the provisional list would have been a nullity and might have been quashed upon *certiorari*. *Ib.*

Reduction in Value of Hereditament—Basis of Comparison.]—Where a requisition is made to the overseers of a parish under section 47 of the Valuation (Metropolis) Act, 1869, to make a provisional valuation list, on the ground that a hereditament in the parish has been from some cause increased or reduced in value, the basis of comparison is with the value appearing in the existing valuation list, and not with the value at the close of the immediately preceding year. *London County Council* v. *Islington Assessment Committee*, 84 L. J. K.B. 1942; [1915] A.C. 762; 113 L. T. 289; 79 J. P. 353; 13 L. G. R. 785; 31 T. L. R. 348—H.L. (E.)

Decision of the Court of Appeal affirmed on this point. *Ib.*

The duty of the overseers (or of the assessment committee on their failure to do so) to prepare a provisional list on the requisition of a ratepayer is purely ministerial, and they are bound to comply with such requisition if it is made *bona fide* and is not frivolous, and a *mandamus* will be granted to compel them to make such list. *Ib.*

—— Licensed Premises—Increase of Licence Duty — "Any cause" — Refusal to Appoint Valuer—Mandamus.]—When a *prima facie* case of a reduction in the value of a hereditament is shewn, it is the duty of the assessment committee, on a proper requisition being made to them, under the provisions of section 47, sub-section 2 of the Valuation (Metropolis) Act, 1869, on the overseers making default in sending them a provisional list, to appoint a person to make such list:—*Held*, that the fact that the licence duty on fully licensed premises had, in consequence of the provisions of the

Finance (1909-10) Act, 1910, been increased from 35*l.* to 130*l.*, constituted such *prima facie* case. *Held*, also, that the refusal of the assessment committee to appoint a valuer on the ground that no sufficient "cause" was stated in the requisition was wrong, that their action involved a mistake in law, and that consequently the tenant of the licensed premises was entitled to a *mandamus*. *Rex* v. *Southwark Assessment Committee* (78 L. J. K.B. 319; [1909] 1 K.B. 274) applied. *Rex* v. *Shoreditch Assessment Committee; Morgan, Ex parte*, 80 L. J. K.B. 185; [1910] 2 K.B. 859; 103 L. T. 262; 74 J. P. 361; 8 L. G. R. 744; 26 T. L. R. 663—C.A.

MIDWIVES.

See MEDICINE.

MILK.

See LOCAL GOVERNMENT (FOOD AND DRINK).

MINERAL RIGHTS DUTY.

See REVENUE.

MINES AND MINERALS.

I. WHAT ARE MINERALS.

See also Vol. IX. 1168, 2435.

Substance not Regarded as a Mineral at Date of Acquisition of Lands—Oil Shale.]—A private Act passed in 1817, authorising the construction of a canal, reserved to the owners of any lands through which the canal should be made "the mines and minerals lying within or under the said lands." A statutory form was also provided by which lands acquired for the purpose of making the canal might be conveyed to the canal company, the registration of which was declared to have the same effect as a formal disposition followed by charter and sasine. The price of certain lands required for the formation of the canal was agreed upon and consigned in 1818, in which year the canal company entered into possession of them, and the canal was constructed and opened for traffic in 1822. The statutory conveyance of these lands, however, was not completed and registered until 1862. In 1909 the representative of the vendor of the lands brought an action against the canal proprietors, in which he sought a declaration of his right of property in a seam of oil shale subjacent and adjacent to the canal within the lands in question. It was admitted by the defenders that by 1862 oil shale had become recognised as a "mineral" in the sense of the reservation, but they denied that it was recognised as a "mineral" in 1818:—*Held* (Lord Johnston dissenting), first, that what was denoted by the term "mineral" was to be ascertained as at 1818, the date when possession of the lands passed to the defenders, and not at 1862, the date of the statutory conveyance; and secondly, that in 1818 oil shale was not described as a mineral in the vernacular of the mining world, the commercial world, and landowners, and therefore that the action failed. *Linlithgow (Marquis)* v. *North British Railway*, [1912] S. C. 1327—Ct. of Sess.

See s.c. in H.L. (*infra*).

Decision of the Court of Sessions ([1912] S. C. 1327) affirmed on the construction of the private Act of 1817, the House expressing no opinion upon the question whether shale was a mineral. *Linlithgow (Marquis)* v. *North British Railway*, [1914] A.C. 820; [1914] S. C. (H.L.) 38—H.L. (Sc.)

Freestone — Proof — Sufficiency of Averment.]—Whether or not a particular substance—such as freestone—is a "mineral" within the meaning of sections 70 and 71 of the Railways Clauses (Consolidation) Act, 1845, is a question of fact; and averments that the substance in question is a mineral in the vernacular of the mining and commercial worlds and the world of landowners, exceptional in use, value, and character, and not the common rock of the district or substratum of the soil, are sufficiently specific to justify a proof. *Symington* v. *Caledonian Railway*, 81 L. J. P.C. 155; [1912] A.C. 87; 106 L. T. 193; 56 S. J. 87—H.L. (Sc.)

Decision of the Court of Session ([1911] S. C. 552) reversed. *Ib.*

"Coal, ironstone, slate, or other minerals" —Fireclay.]—"Minerals" which by the Railways Clauses Consolidation (Scotland) Act, 1845, are excepted from the conveyance of lands to a railway company include seams of fireclay and anything exceptional in use, character, or value which can be embraced within the term "minerals" in the vernacular of the mining and commercial worlds and of the landowners. *Caledonian Railway* v. *Glenboig Union Fireclay Co.*, 80 L. J. P.C. 128;

[1911] A.C. 290; 104 L. T. 657; 75 J. P. 377—H.L. (Sc.)

II. MINING COMPANIES.

Stannaries — Partnership — "Company" — Winding-up — Jurisdiction — High Court — County Court.]—A partnership "formed for working" mines within the Stannaries is by virtue of the definition of "company" in section 2 of the Stannaries Act, 1887, a "company" within section 28 of that Act over which the Court of the Vice-Warden of the Stannaries had jurisdiction in winding-up. This jurisdiction which by section 28 is to be the same as that formerly exercised by the Vice-Warden's Court under section 81 of the Companies Act, 1862, over incorporated companies "engaged in working" mines within the Stannaries, was exclusive, and is now by virtue of the Stannaries Court (Abolition) Act, 1896, vested exclusively in the County Courts of Cornwall. *Dunbar* v. *Harvey*, 83 L. J. Ch. 18; [1913] 2 Ch. 530; 109 L. T. 285; 20 Manson, 388; 57 S. J. 686—C.A.

Decision of Neville, J. (82 L. J. Ch. 452; 20 Manson, 269), affirmed. *Ib.*

The High Court has jurisdiction under section 133, sub-section 1 of the Companies (Consolidation) Act, 1908, to transfer to the Court exercising the Stannaries jurisdiction a petition to wind up a company formed to work mines within the Stannaries. *Quære*, whether the High Court has jurisdiction to retain such a petition. *Radium Ore Mines, In re*, 110 L. T. 57; 30 T. L. R. 66—C.A.

III. LEASES OF MINES.

Tenant for Life and Remainderman—Will Directing Sale of Real Estate—Power to Postpone—Direction as to Payment of Rents and Profits till Sale—Rents and Royalties under Mining Leases—Open Mines.]—Testator gave his real and personal estate to a trustee upon trusts for sale and conversion and investment of the proceeds of sale, and gave one fourth part of his residuary trust fund in trust to pay the income thereof to A. during his life and after his death upon trusts in favour of his children, and gave another fourth part on similar trusts in favour of B. and her children; and the testator empowered his trustee to postpone the sale and conversion of any part of his real and personal estate for so long as he should think fit, and directed that the "rents, profits and income" of such parts of his estate as should remain unsold and unconverted should be paid to the persons to whom the income of the proceeds of such sale and conversion would be payable under his will if such sale and conversion had been actually made. The testator's estate comprised open mines which were leased to lessees and were still unsold:—*Held*, that under the terms of the will A. and B. were respectively entitled to receive the whole of the rents and royalties attributable to their respective shares, no part being retained as capital. *Morgan, In re; Vachell* v. *Morgan*, 83 L. J. Ch. 573; [1914] 1 Ch. 910; 110 L. T. 903—Sargant, J.

Testator in 1889 granted a lease of part of a mineral area and entered into negotiations with the lessees for a lease of the adjoining part. He died in March, 1912, and the trustee of his will continued the negotiations, and in October, 1912, granted a lease to the same lessees of such adjoining part which was intended to be worked through the shaft sunk on the part comprised in the lease of 1889:—*Held*, that the minerals comprised in the lease of October, 1912, must be treated as an open mine at the date of the testator's death. *Chaytor* v. *Trotter* (87 L. T. 33) applied. *Ib.*

In 1883 a lease of minerals was made to lessees, who worked them through a shaft sunk on other land. In 1897 the lessees surrendered this lease to the testator owing to the working becoming unprofitable, and the minerals remained unworked till the testator's death in 1912, though the testator had entered into negotiations for continuing or resuming their working. In December, 1912, the trustee of the testator's will granted a new lease of these minerals to new lessees, who worked them through a shaft sunk on other land:—*Held*, that these minerals must be treated as an open mine at the date of the testator's death. *Ib.*

IV. WORKING AND WINNING MINES.

See also Vol. IX. 1213, 2442.

1. Rights and Obligations of Adjoining Owners.

Grant of Land, Reserving Minerals—Right to Work them "in as full and ample a way" as before Grant—No Express Reservation of Right to Let Down Surface—Necessary Implication of Right.]—In 1829 a vendor who was then owner in fee of certain lands conveyed them to a purchaser, but excepting and reserving all the minerals thereunder and the means and power of working them "in as full and ample a way and manner as if these presents had not been made and executed." There was a compensation clause, but only for damage by surface workings. The deed gave no express right in terms to let down:—*Held*, that by necessary implication from the words "in as full and ample a way and manner" the right to let down the surface in working the minerals was reserved. *Beard* v. *Moira Colliery Co.*, 84 L. J. Ch. 155; [1915] 1 Ch. 257; 112 L. T. 227; 59 S. J. 103—C.A.

Restricted Interpretation of Words "in as full and ample a way" in Inclosure Acts—Not Applicable to Construction of Deeds.]—The restricted interpretation of such words in the construction of Inclosure Acts is not applicable to the construction of deeds. *Ib.*

2. Under and Adjoining Railways.

Lateral Support—Mines Lying beyond the Forty Yards Limit — Natural Right.] — The right to lateral support is not an easement arising out of grant or by implication. It is a natural right of property. In order to take away such a natural right of property there must be something more than a conjectural intention on the part of any statute which may affect it: there must be a plain indication of intention. The statutory mining code con-

tained in sections 78-85 of the Railways Clauses Consolidation Act, 1845, has no application outside the limit of forty yards or other limit prescribed by the special Act, and the railway company's common law right to lateral support from minerals outside the limit is unaffected thereby. *Howley Park Coal and Cannel Co.* v. *London and North-Western Railway*, 82 L. J. Ch. 76; [1913] A.C. 11; 107 L. T. 625; 57 S. J. 42; 29 T. L. R. 35—H.L. (E.)

Decision of the Court of Appeal (80 L. J. Ch. 537; [1911] 2 Ch. 97) affirmed. *Ib.*

V. COAL MINES.

See also Vol. IX. 1280, 2453.

1. Regulation and Inspection of.

Negligence—Duty of Owners—Competence of Managers.]—A miner lost his life in consequence of the presence in the mine of carbon mon-oxide gas, of which there had been previous indications. The managers, for whose competence the owners are by the Coal Mines Regulation Act, 1887, made responsible, had no special knowledge of this obscure and noxious gas:—*Held*, that the mine owners were liable in damages at common law for negligence for failure to appoint managers with the requisite knowledge. *Butler* or *Black* v. *Fife Coal Co.*, 81 L. J. P.C. 97; [1912] A.C. 149; 106 L. T. 161; 28 T. L. R. 150—H.L. (Sc.)

Decision of the Court of Session ([1909] S. C. 152) reversed. *Ib.*

Breach of Statutory Duty — Duty of Mine Owner.] — Section 16, sub-section 1 of the Coal Mines Regulation Act, 1887, provides that "the owner . . . of a mine shall not employ any person in the mine . . . unless . . . (*c*) proper apparatus for raising and lowering persons at each shaft . . . shall be kept on the works belonging to the mine; and such apparatus . . . shall be constantly available for use." The manager of the respondent colliery increased from twenty to twenty-six the number of men authorised to be lowered or raised in a cage at a time. The brake power on the winding engine was adequate for twenty, but not for twenty-six men. The appellant's husband was killed in consequence of the breakdown of the winding engine by the snapping of the spanner bar, which was defective, and the insufficiency of the brake, with the result that a cage fell:—*Held*, that the respondents had been guilty of a breach of an absolute statutory obligation imposed by section 16, for which they were liable, and that no question of negligence or of the doctrine of common employment was relevant. *Britannia Merthyr Coal Co.* v. *David* (79 L. J. K.B. 153; [1910] A.C. 74) explained. *Watkins* v. *Naval Colliery Co.*, 81 L. J. K.B. 1056; [1912] A.C. 693; 107 L. T. 321; 56 S. J. 719; 28 T. L. R. 569—H.L. (E.)

Decision of the Court of Appeal (80 L. J. K.B. 746; [1911] 2 K.B. 162) reversed. *Ib.*

"Mechanical haulage"—Haulage Worked by Gravity—Safeguards.]—A system of haulage was in use in a mine by which an empty tub was drawn up an incline by the weight of a loaded tub descending on a parallel set of rails and attached to the empty tub by a chain passing round a pulley situated at the top of the incline:—*Held*, that this was not a system of "mechanical haulage" within section 46, sub-section 4 of the Coal Mines Act, 1911, and that accordingly the mine owners were not bound to provide certain safeguards which under the section were compulsory "on every haulage road where mechanical haulage . . . is used." *Soutar* v. *Reid*, [1913] S. C. (J.) 84—Ct. of Just.

Explosives—Price to Workmen—"Actual net cost to the owner."]—Section 61, sub-section 2 of the Coal Mines Act, 1911, provides that "No explosives shall be taken into or used in any mine except explosives provided by the owner, and the price, if any, charged by the owner to the workman for any explosives so provided shall not exceed the actual net cost to the owner":—*Held*, that the words "actual net cost to the owner" were not limited to the sum paid by the owner for the explosives up to the time when they were delivered into his possession, but included a charge incurred by him in respect of the delivery of the explosives to the workman. *Evans* v. *Gwendraeth Anthracite Colliery Co.*, 83 L. J. K.B. 1312; [1914] 3 K.B. 23; 110 L. T. 959; 30 T. L. R. 376—C.A.

Decision of the Divisional Court (82 L. J. K.B. 983; [1913] 3 K.B. 100) reversed. *Ib.*

Maximum Period of Consecutive Underground Employment of Workman — Exceptions — "Meeting danger or apprehended danger."]—The Coal Mines Regulation Act, 1908, enacts (section 1, sub-section 1) that a workman shall not be below ground for more than eight hours during any consecutive twenty-four, but (sub-section 2) that no contravention of this provision shall be deemed to take place in the case of any workman who is below ground for the purpose (*inter alia*) of "meeting any danger or apprehended danger":—*Held*, that "danger" was limited to danger arising out of some abnormal occurrence, and accordingly that workmen engaged on a Sunday night and Monday morning in repairing falls, such as were expected to occur, and normally did occur, every week when the pit was idle between Saturday and Monday, did not fall within the exception. *Thorneycroft* v. *Archibald*, [1913] S. C. (J.) 45—Ct. of Just.

—— **Firemen—Shifts.**]—Sub-sections 1 and 2 of section 1 of the Coal Mines Regulation Act, 1908, apply to firemen (with the modification that in their case nine and a-half hours is to be substituted in each sub-section for eight hours), and accordingly that there had been no contravention of the Act in the case of two firemen members of a shift who had been underground for more than fifteen hours, in respect that less than nine and a half hours had elapsed between the time when the last member of the shift left the surface and the

first member returned thereto. *Roger* v. *Stevenson*, [1913] S. C. (J.) 30—Ct. of Just.

Observed, that the question whether men are working in shifts or not is a question of fact for the Judge who tries the case, and is to be determined on a strict view of the definition of a shift contained in section 1 of the Act. *Ib.*

—— **"Connivance" at Contravention of Statutory Provision.**]—The respondent, the manager of a colliery, was convicted by Justices on a charge of conniving at the failure of a workman working below ground in a mine to comply with section 1 of the Coal Mines Regulation Act, 1908. On appeal to quarter sessions it appeared that the respondent took no action when the Act was not complied with except sometimes cautioning the men and sometimes threatening that they should be suspended for a day. It was admitted that he had not aided or encouraged the workmen to disobey the law; and the only statutory duty which he had failed to perform was to enter in the register required to be kept by section 2 of the Act the reason why the workman was below ground for more than the period fixed; but he explained that this omission was due to his inability to ascertain a definite reason for the workman failing to reach the surface in proper time. Quarter sessions allowed the appeal, holding that the respondent had not connived at a breach of the Act:—*Held*, that upon the evidence it was open to quarter sessions to come to that conclusion. *Gregory* v. *Walker*, 77 J. P. 55; 29 T. L. R. 51—D.

Special Rules—Refusal to Obey Lawful Command.]—Under the powers given by section 51 of the Coal Mines Regulation Act, 1887, special rules were made for a mine providing that all persons employed in the mine should be under the control of the manager, under-manager, and deputies, and should at all times obey their lawful commands, and that any person committing a breach of any of the special rules should be guilty of an offence against the Act. A number of trammers in a mine, whose duty was to convey tubs when filled with coal to the "straight road," and bring back the empty tubs, their pay varying with the number of tubs conveyed by them, after being at work for some hours stopped work, and asked to be drawn out of the mine. They were ordered by the under-manager to return to work, but they refused to do so, saying that they had not a sufficiency of tubs, and owing to their stopping work certain miners were also compelled to leave work. One of the trammers having been summoned under one of the above special rules, and convicted,—*Held*, that the conviction under the special rule was right. *Colbeck* v. *Whitwham*, 107 L. T. 22; 76 J. P. 291; 23 Cox C.C. 50—D.

Accumulation of Coal Dust — Clearing Away "as far as practicable"—Responsibility of Manager.]—On an information against the manager of a colliery for not causing the floor, roof, and sides to be systematically cleared so as to prevent, as far as practicable, coal dust from accumulating, conformably with the provisions of section 62, sub-section 3 of the Coal Mines Act, 1911, the Justices found that it was not practicable to carry out the provision of the sub-section, and that all that was reasonably practicable under the circumstances had been done:—*Held*, that the manager was exempted by sub-section 3 of section 102 from the penalty for non-compliance with the provisions of sub-section 3 of section 62. *Atkinson* v. *Shaw*, 84 L. J. K.B. 1748; [1915] 2 K.B. 768; 113 L. T. 485; 79 J. P. 376; 31 T. L. R. 421—D.

Ventilation—Cavity Caused by Fall of Roof—Responsibility of Manager.]—The manager of a coal mine is responsible for adequate and constant ventilation under section 29, sub-section 1 of the Coal Mines Act, 1911; and he is not relieved from responsibility by virtue of section 75, because a competent staff of firemen has been appointed. Where by a fall in the roof in a level a cavity was formed, and to repair it timbering was used which prevented the air current reaching it and sufficiently diluting inflammable and noxious gases, the manager was held responsible for not producing adequate and constant ventilation in accordance with section 29 of the Act, although work was not at the time being carried on in the mine. *Atkinson* v. *Morgan*, 84 L. J. K.B. 1431; [1915] 3 K.B. 23; 113 L. T. 488; 79 J. P. 378—D.

—— **Fireman Failing to Inspect—Responsibility of Owners and Agent—Exemption from Penalty.**]—Section 102, sub-section 1 of the Coal Mines Act, 1911, is intended to afford an additional protection to that given by section 75 to the owner or agent of a mine. If they have not been "in the habit of taking" part in the management of the mine, and have not taken part in its management in regard to the particular matter in question, protection is not limited to the case under section 75, which makes exemption depend on having taken means to prevent contravention of, or non-compliance with, the provisions of Part II. of the Act. The question of the habit of management in the particular instance is one of fact for the Justices. *Atkinson* v. *Jeffreys*, 84 L. J. K.B. 1739; 113 L. T. 492; 79 J. P. 373—D.

Informations were preferred respectively against the fireman of a mine for having failed to inspect the mine immediately before the commencement of work conformably with section 64 of the Coal Mines Act, 1911, and against the agent and owners for failing to enforce the regulations providing for such inspections in accordance with sections 64 and 75 of the Act. The Justices convicted the fireman of an offence under section 64, but dismissed the informations against the agents and owners:—*Held*, that the decision of the Justices was right. *Ib.*

Control of Detonators.]—The Explosives in Coal Mines Order of September, 1913, provides, section 1 (*e*): "(*i*) Detonators shall be under the control of the manager of the mine, or some person or persons specially appointed in writing by the manager for the purpose, and shall be issued only" to shot firers

appointed in terms of Part II. of the Order, "or (in mines to which Part II. of this Order does not apply) to officials specially authorised in writing by the manager. (*ii*) Shot firers and other authorised persons shall keep all detonators issued to them, until about to be used for the charging of a shot hole, in a suitable case or box, securely locked, separate from any other explosives. . . ." In a mine to which Part II. of the Order did not apply, two of the firemen were given written authority from the manager to have charge of detonators. On a certain morning one of these firemen, in obedience to verbal orders, went to the store and took out a case of detonators, which he handed at the pit bottom to the other fireman, who then proceeded to distribute them, one or two hours before they would be required for firing shots, among a number of miners who were proceeding to their work. Each of these miners was authorised in writing by the manager to fire shots, and each had a case in which he kept the detonators locked until they were actually required for firing a shot. In a charge against the manager of the mine for a contravention of the Order it was contended for the prosecution that there ought to have been a special official in control of the detonators in the store, who should have issued them to officials (other than ordinary miners) specially authorised in writing, who in their turn should have retained them in their keeping and given them to the miners only when the shots were about to be fired:—*Held* (Lord Ormidale dissenting), that the manager had not been guilty of a contravention of the Order, in respect that the firemen were persons specially appointed in writing to have "control" of detonators within the meaning of the Order, and that the miners to whom the detonators had been issued were "officials specially authorised in writing" also within the meaning of the Order. *Tennant* v. *Allardice*, [1915] S. C. (J.) 9—Ct. of Just.

Electric Cables in Coal Mines.]—Regulation 129 (*c*) of the General Regulations dated July 10, 1913, made under the Coal Mines Act, 1911, provides (*inter alia*) that where roadways conveying electric cables are also used for mechanical haulage the electric cables must be protected by a metallic covering. Regulation 137 (*b*) exempts from this provision "any apparatus which was in use before June 1, 1911," and which conformed to the requirements then in force. Unprotected electric cables, which had been in use in a ventilating road in a coal mine prior to June, 1911, and conformed to the requirements at that date, were transferred in 1914 to a mechanical haulage roadway:—*Held*, that they did not fall within the exemption in Regulation 137 (*b*) in respect that, in view of their changed environment, they were no longer an "apparatus which was in use" before June, 1911; and accordingly, that they constituted a contravention of Regulation 129 (*c*). *Shotts Iron Co.* v. *Thomson*, [1915] S. C. (J.) 29—Ct. of Just.

Prosecution with Consent in Writing of the Secretary of State — Proof of Consent.]—Under section 102, sub-section 5 of the Coal Mines Act, 1911, prosecutions for offences under the Act must in certain circumstances be "with the consent in writing of the Secretary of State":—*Held*, that evidence of the consent is unnecessary and incompetent, the statement of the Lord-Advocate or of his representative that it has been obtained being sufficient. *Semble*, that if evidence were required and competent, a letter requesting that proceedings should be taken, signed by an Under-Secretary of the Home Department, was sufficient, and that the signature of the Secretary of State himself was unnecessary. *Stevenson* v. *Roger*, [1915] S. C. (J.) 24—Ct. of Just.

Check Weigher — Appointment to Inspect Mine on Behalf of Workmen—Eligibility.]—A person holding the office of check weigher at a mine under section 13 of the Coal Mines Regulation Act, 1887, is eligible to be appointed by the workmen employed in the mine to inspect the mine on their behalf under section 16 of the Coal Mines Act, 1911. *Date* v. *Gas Coal Collieries*, 84 L. J. K.B. 1529; [1915] 2 K.B. 454; 113 L. T. 205; 31 T. L. R. 341—C.A.

Judgment of Bailhache, J. (83 L. J. K.B. 1827; [1914] 3 K.B. 1175), affirmed. *Ib.*

2. Miners' Wages.

Minimum Wage—Butty System—Payment of Holer's Wages by Contractor or Stallman—Liability of Mine Owner for Deficit.]—Section 1, sub-section 1 of the Coal Mines (Minimum Wage) Act, 1912, which came into operation on March 29, 1912, provides that, subject to certain conditions, it shall be an implied term of every contract for the employment of a workman underground in a coal mine that the employer shall pay to that workman wages at not less than the minimum rate settled under the Act and applicable to that workman. The plaintiff was a "holer" in the employment of the defendant company under an agreement to observe certain rules and regulations, rule 3 of which provided that he should be deemed to be a servant of the company to the extent only that he should be bound to obey these rules and regulations. Another rule reserved to the company the exclusive right of dismissing him and of receiving notice from him. The holer's work consisted in removing the earth from the coal obtained by the "stallman" or contractor, whilst a filler's duty consisted in filling the tubs with the coal. The "stallman" or contractor arranged with the company to receive a certain sum of money (known as the tonnage rate) per ton of coal obtained by him from a "stall" or certain area of the mine, and out of this sum he paid the holer and filler respectively certain amounts per "stint" (a portion of the said area), and which amounts were based on prices known as district rates. The tonnage and district rates had been in force for some years, in accordance with agreements made between the colliers (including the stallmen, holers, and fillers) or their representatives, and the company. The stallman had no choice of the men working in the stalls, who were appointed by the company,

and the company, in paying to the stallman his tonnage rate, deducted therefrom the fines, &c., contributions for sick club and under the Insurance Act, 1911, payable respectively by the holer and filler, but paid their own contribution under that Act. The rule as to dismissal and notice was observed in practice. After the Coal Mines (Minimum Wage) Act, 1912, came into operation, but before the minimum wage was ascertained in accordance with its provisions, the plaintiff continued to work as a holer, receiving from the stallman his wages based on the district rate; and on the publication of the minimum wage it was found that there was a deficit to which he was entitled, and he claimed the same from the company. The company contended that he must look to the stallman for payment. In an action, brought in the County Court against the company for the difference between the district rate and the minimum wage, the Judge awarded the plaintiff the amount of his claim, and his decision was affirmed by the Divisional Court:—*Held*, that the contract between the parties was contained in written documents, and oral evidence was not admissible to vary the written documents; that, having regard in particular to rule 3, there was no evidence of any contract by the company to pay wages to the plaintiff, and that, although for the proper working and safety of the mine the plaintiff was the disciplinary servant of the company, the company were not his paymasters; and that as there was no contract to pay, there was no implied term to pay the minimum wage. *Hooley* v. *Butterley Colliery Co.*, 84 L. J. K.B. 1969—C.A.

Decision of the Divisional Court (112 L. T. 449) reversed. *Ib.*

"Dayman"—Wages—Liability of Colliery Owner—Statutory Contract.]—The defendants were the owners of a colliery in which the colliers worked in gangs, each gang working in a separate "stall" and consisting of one or more "stallmen" or "contractors" to whom the stall was assigned by the defendants, and usually also of several "daymen" who assisted the stallmen. The plaintiff was employed at the mine aas a dayman, and, like the other employees, he had entered upon his employment by signing a form of contract which provided that he would serve the defendants (*inter alia*) on the terms of the contract rules in force at the colliery. The plaintiff worked in a stall for several days, and the amount of his wages and of other wages earned in the stall was paid by the defendants to one of the stallmen, who absconded without paying the plaintiff. The plaintiff brought an action against the defendants in the County Court claiming his wages for these days at the minimum rate fixed for the district. The evidence went to shew that the practice at the colliery was that the defendants paid to a stallman on the fortnightly pay day the net aggregate amount due for the work done in the stall, and that out of that amount the stallman paid to each dayman whatever wage, not less than the minimum wage, the latter, in the opinion of the stallman, was worth. The County Court Judge, having regard to the terms of the form of contract, and of the contract rules, and to the evidence, held that the contract between the plaintiffs and the defendants did not impose any obligation on the defendants to pay the plaintiff his wages; and, further, that if it did impose any such obligation on the defendants, they were to be discharged therefrom on paying the stallman: and he gave judgment for the defendants. The Divisional Court affirmed the judgment of the County Court Judge. The plaintiff appealed:—*Held*, by the Court of Appeal, first, that there was evidence to support the conclusions of the County Court Judge as to the nature of the contract between the plaintiff and the defendants; and secondly, that as there was no already existing contract between the plaintiff and the defendants as to payment of wages, section 1, sub-section 1 of the Coal Mines (Minimum Wage) Act, 1912, did not create such a contract. *Richards* v. *Wrexham and Acton Collieries* (83 L. J. K.B. 687; [1914] 2 K.B. 497) discussed and followed on both points. *Higginson* v. *Blackwell Colliery Co.*; *Pitchford* v. *Same*, 84 L. J. K.B. 1189; 112 L. T. 442; 31 T. L. R. 95—C.A.

Decision of Divisional Court (30 T. L. R. 175) affirmed. *Ib.*

"Filler"—Wages—Liability of Colliery Owner—Privity of Contract—Statutory Obligation.]—The defendants were the owners of a colliery in which the plaintiff was employed as a filler. The colliers employed at the colliery worked in "setts." To each sett of colliers at least one filler was attached, whose duty it was to load into tubs the coal got by the colliers of the sett. For many years before the passing of the Act mentioned below the practice as to payment of wages in the colliery had been as follows: The colliers were paid by the defendants weekly wages according to the quantity of coal got by them, the colliers of each sett appointing one of their number, called the contractor, to receive from the defendants the wages due each week to the colliers of the sett. The filler was paid a weekly wage at the fixed rate of 5*s.* 11*d.* a day, which was received by him from the contractor of his sett out of the colliers' wages; and, except under a special arrangement which it is not material to consider the defendants had never made any allowance to the colliers in respect of the amount so paid to the fillers. The Coal Mines (Minimum Wage) Act, 1912, provided by section 1, sub-section 1, that it should be an implied term of every contract for the employment of a workman underground in a coal mine that the employer should pay him wages at not less than the minimum rate settled under the Act (unless in certain circumstances which it is not material to specify), and that any agreement for the payment of wages in so far as it was in contravention of this provision should be void, and by section 2, sub-section 1, that nothing in the Act should prejudice any agreement or custom existing before the Act for the payment of wages at a rate higher than the minimum. For the district in question the minimum wage of a collier was fixed at 6*s.* a day, and of a filler at 4*s.* 10*d.* a day. The plaintiff brought an action against the defendants in the County Court

claiming 4*s*. 4*d*., the balance of wages alleged to be due to him for four days' work, being the difference between four days at 5*s*. 11*d*. a day and four days at 4*s*. 10*d*. a day, which had been paid to him by the defendants. The evidence went to show that the fillers were engaged, controlled, sent to work with a particular sett, and might be dismissed by the defendants' manager, but that they were paid their wages by the contractor of the sett and had always received them without deduction, even though the colliers went short. The County Court Judge found that there was a custom to pay the filler a wage of 5*s*. 11*d*. a day, that this had always been paid by the contractor on behalf of the colliers, and that there was no privity of contract in regard to wages between the plaintiff and the defendants, and he gave judgment for the defendants. The Divisional Court reversed this decision, holding that the evidence was conclusive of privity of contract between the plaintiff and the defendants:—*Held*, first, that, apart from the Act of 1912, there was evidence on which the County Court Judge could properly find that there was no privity of contract in respect of wages between the plaintiff and the defendants; secondly (Vaughan Williams, L.J., dissenting on this point), that the Act of 1912 did not create such privity of contract between the plaintiff and the defendants, inasmuch as it did not apply in the case of persons between whom there did not exist independently of the Act a contract for employment at wages, and therefore that the defendants were not liable and that the appeal should be allowed. *Richards* v. *Wrexham and Acton Collieries: Davies* v. *Same*, 83 L. J. K.B. 687; [1914] 2 K.B. 497; 110 L. T. 402; 30 T. L. R. 228—C.A.

Minimum Wage in Coal Mine — Rules — Validity.]—The chairman of a joint district board created by the Coal Mines (Minimum Wage) Act, 1912, acting under section 4, subsection 2 of the Act, settled the minimum rates of wages and the district rules for the purposes of the Act for the district. Rule 5 provided that if at any time any workman should in consequence of circumstances over which he alleged he had no control be unable to perform such an amount of work as would entitle him to a sum equal to the daily minimum rate, he should forthwith give notice thereof to the official in charge of the district, and that if he acted in contravention of this rule he should forfeit the right to wages at the minimum rate for the pay in which such contravention took place. Rule 7 provided that, in ascertaining whether the minimum wage had been earned by any workman on piecework, the total earnings during two consecutive weeks should be divided by the number of shifts and parts of shifts he had worked during such two weeks, so that the average actual earnings thus ascertained might be compared with the minimum wage. The plaintiffs, who were colliers employed at the defendants' colliery within the district, where the men were paid weekly, claimed a declaration that rules 5 and 7 were *ultra vires*:—*Held*, that rule 5 was *intra vires* and rule 7 was *ultra vires*. *Davies* v. *Glamorgan Coal Co.*, 83 L. J. K.B. 831; [1914] 1 K.B. 674; 110 L. T. 224; 58 S. J. 184; 30 T. L. R. 161—C.A.

Judgment of Pickford, J. (82 L. J. K.B. 956; [1913] 3 K.B. 222), varied. *Ib*.

—— District Rules — Earnings of Miner — Method of Ascertaining Earnings—Certificate —Right of Miner to Sue for Minimum Wage.]—Rule 4 of the district rules made under the Coal Mines (Minimum Wage) Act, 1912, by a joint district board, provided that "for the purpose of ascertaining what sum (if any) is due to a workman for any pay week in respect of his right to wages at a minimum rate, regard shall be had to the amount of his actual earnings during" a period consisting "of the pay week in question and as few preceding pay weeks as shall be necessary to make up a period during which the colliery has worked not less than ten full days, provided nevertheless that the period shall not be longer than four pay weeks in all." Rule 7 provided that if any question shall arise: (*a*) whether any workman in the district is a workman to whom the minimum rate of wages is applicable, or (*b*) whether a workman has complied with the condition laid down by these rules, or (*c*) whether a workman who has not complied with such conditions has forfeited his right to wages at the minimum rate, such question shall be decided in the last resort by a board, and failing a settlement by the board the independent chairman shall be called in and he shall have power to decide the question, and the decision of the board or the independent chairman shall in every case be final and binding, and a certificate of the decision shall be drawn up which shall be conclusive evidence of the decision arrived at. A strike of miners took place at the defendant company's colliery in February, 1912. On April 15, 1912, the miners returned to work, but only worked one day during the week ending April 16. On April 17, 1912, the plaintiff, who was a miner in the employ of the defendant company, returned to work along with the other miners, and during the week April 17 to 23, 1912, the defendants' colliery worked five and a half days. The plaintiff was paid 19*s*. 4*d*. for the week April 17 to 25. He claimed to be paid the difference between that amount and 1*l*. 11*s*. 8*d*., the amount due to him according to the minimum rate as settled under the Act for his district. The dispute went before the district board and finally before the independent chairman, who decided the dispute and gave a certificate that the plaintiff was a person excluded under the district rules from the operation of section 1 of the Act, and that he was not a workman to whom the minimum rate of wage was applicable in respect of the pay week ending April 23, 1912. The plaintiff then brought an action against the defendants in the County Court for wages due to him under the Coal Mines (Minimum Wage) Act, 1912:—*Held*, that it was a condition precedent to the right of a workman to bring an action in the County Court to recover from his employer a minimum wage as settled under the Act; that he should have obtained a certificate from the district board or from the independent chairman certifying that he was

a workman to whom the minimum rate of wages was applicable; and that as the plaintiff had not obtained such certificate he could not recover :—*Held*, further, that rule 4 of the district rules was not *ultra vires*. *Davies* v. *Glamorgan Coal Co.* (82 L. J. K.B. 956; [1913] 3 K.B. 222) discussed. *Randle* v. *Clay Cross Co.*, 83 L. J. K.B. 167; [1913] 3 K.B. 795; 109 L. T. 522; 29 T. L. R. 624—D.

—— **Work in Abnormal Places in Mine.**]—By the rules regulating the management of a colliery the *minimum* standard of wages for colliers working in hard or difficult places was fixed at 6*s.* a day. The plaintiffs, who were colliers engaged at the particular colliery, had worked at a place in the mine which was a hard or difficult one within the meaning of the rules. In an action by the plaintiffs to recover their wages the County Court Judge awarded them the difference between what they actually earned and what they would have earned if the place had been a normal one, and he fixed the latter sum at 5*s.* per day :—*Held*, that the County Court Judge was wrong, and that the plaintiffs were entitled to be paid at the rate of 6*s.* per day. *Jones* v. *Phœnix Colliery Co.*, 28 T. L. R. 374—D.

—— **Action to Recover Wages — Condition Precedent—Certificate that Workman is Excluded—Production of Certificate.**]—A miner brought an action in the County Court, under the Coal Mines (Minimum Wage) Act, 1912, to recover wages alleged to be due. At the trial it was admitted on his behalf that a dispute between him and his employers had been properly submitted to an umpire in accordance with a district rule made under the Act, that the certificate of the umpire could not be put in in support of his case, and that the case of *Randle* v. *Clay Cross Co.* (83 L. J. K.B. 167; [1913] 3 K.B. 795) was fatal to him in that Court. The learned Judge thereupon gave judgment for the defendants, and his decision was affirmed by a Divisional Court :—*Held*, that it was not a condition precedent to the plaintiff's right to sue that he should, at the stage which the proceedings had reached, put in the certificate of the umpire, and that the action must be remitted to the County Court for further hearing. *Randle* v. *Clay Cross Co.* (83 L. J. K.B. 167; [1913] 3 K.B. 795) overruled on this point. *Barwell* v. *Newport Abercarn Black Vein Steam Coal Co.*, 84 L. J. K.B. 1105; [1915] 2 K.B. 256; 112 L. T. 806; 59 S. J. 233; 31 T. L. R. 136—C.A.

—— **Wages Exceeding Minimum—Regularity and Efficiency.**] — A County Court Judge, whose decision was affirmed by the Divisional Court, held that the provisions of the Coal Mines (Minimum Wage) Act, 1912, are applicable, notwithstanding that a workman may be receiving an amount for wages in excess of the minimum rate settled under the Act, and that the powers of the domestic tribunal to decide a dispute as to the regularity and efficiency of a miner's work are not thereby ousted :—*Held*, on appeal, that the County Court Judge had in fact found, and there was evidence on which he could find, that the workman's wages were based on the statutory minimum rate, and were not the subject of a common law contract. *Fairbanks* v. *Florence Coal and Iron Co.*, 84 L. J. K.B. 1115; [1915] 2 K.B. 714; 112 L. T. 1013—C.A.

Where a miner is suing for his minimum wage, and a dispute under the Act is before the domestic tribunal, the proper course is for the Court to adjourn the trial in order that the dispute may be decided. *Barwell* v. *Newport Abercarn Black Vein Steam Coal Co.* (84 L. J. K.B. 1105; [1915] 2 K.B. 256) followed. *Ib.*

Decision of the Divisional Court (83 L. J. K.B. 1063; [1914] 2 K.B. 461) affirmed. *Ib.*

—— **Agreement that in Certain Circumstances Workmen should Get Full Day's Pay although Full Day not Worked—Effect of.**]—By an agreement made prior to 1912 between the defendants and their workmen it was agreed that if a fatal accident occurred in the defendants' mine before twelve o'clock, the day wagemen in the district in which the accident happened, if they came out, should be paid a full day's wage :—*Held*, that in the case of a workman who was getting a higher wage than the minimum rate, this agreement was not superseded by a rule made under the Coal Mines (Minimum Wage) Act, 1912, which provided that, in the event of any interruption of work during a shift due to an emergency over which the management had no control, the workman should only be paid such a proportion of the minimum rate as the time he worked bore to the total number of hours of the shift. *Mackinnon* v. *North's Navigation Collieries*, 29 T. L. R. 615—Pickford, J.

—— **Construction of Award — Meaning of "Pits."**]—The Joint District Board for West Yorkshire constituted under the Coal Mines (Minimum Wage) Act, 1912, were empowered by section 2, sub-section 5 of the Act to subdivide West Yorkshire into two or more districts, if desirable, for the purpose of settling minimum rates of wages. The masters and men upon the board were unable to agree as to the division, and the chairman of the board divided the district into two parts, fixing the Great Northern main line to Leeds as the line of division. By an award dated June 10, 1912, the eastern subdivision was to include all pits situate on the east of the Great Northern line, as therein described, and the western subdivision was to include all pits situate on the west of the same railway, as similarly described, and by the same part of his award minimum rates of wages were fixed for each subdivision. The plaintiffs, who were the owners of the mine, claimed that their collieries were in the western, and the defendant, who represented the miners, claimed that they were in the eastern subdivision, the importance of the matter being that the rates of wages applicable to the western subdivision were lower than those applicable to the eastern subdivision. The question of construction was the sense in which the word "pits" was used in the chairman's award. The Judge found as a fact that the word "pits" was used to denote (*a*) the shaft; (*b*) the underground workings, with or without the shafts; and (*c*) the colliery as a whole; and that the primary meaning of

"pits" was the shafts:—*Held*, first, that the Court had jurisdiction under Order XXV. rule 5 to put a construction upon the award to the extent of declaring the rights of the parties under it; and secondly, that the word "pits" was used to mean the shafts by which the men came up and went down, and that upon the true meaning of the word "pits" the plaintiffs' colliery was in the eastern subdivision of West Yorkshire. *Lofthouse Colliery* v. *Ogden*, 82 L. J. K.B. 910; [1913] 3 K.B. 120; 107 L. T. 827; 57 S. J. 186; 29 T. L. R. 179—Bailhache, J.

—— **Application for Revision of Minimum Rates—Right of Applicants to Present their Case to Joint District Board.**]—Where an application is made under section 3, subsection 2 of the Coal Mines (Minimum Wage) Act, 1912, upon behalf of any workmen or employers, as representing a considerable body of opinion amongst either the workmen or employers concerned, for the variation of the existing minimum rate of wages as fixed by the joint district board, the applicants are entitled to present their case to the board independently of their representatives on the board. *Rex* v. *Amphlett*, 84 L. J. K.B. 884; [1915] 2 K.B. 223; 112 L. T. 1077; 31 T. L. R. 229—D.

The procedure regulating the method in which the case of the applicants is to be laid before the board must be determined by the board itself. *Ib.*

MINISTER.

See ECCLESIASTICAL LAW.

MISDEMEANOUR.

See CRIMINAL LAW.

MISDESCRIPTION.

See VENDOR AND PURCHASER.

MISDIRECTION.

See CRIMINAL LAW.

MISFEASANCE.

See COMPANY.

MISREPRESENTATION.

See FRAUD.

MISTAKE.

See also Vol. IX. 1293, 2460.

Banker—Money Paid under Mistake of Fact—Liability of Banker to Refund.]—The position of a banker does not differ from that of any other recipient of money acting as factor or agent; and money paid to a banker under a mistake of fact can be successfully redemanded from the banker by the person who so paid it. *Kerrison* v. *Glyn, Mills, Currie & Co.*, 81 L. J. K.B. 465; 105 L. T. 721; 17 Com. Cas. 41; 56 S. J. 139; 28 T. L. R. 106—H.L. (E.)

The appellant, who lived in England, was the English manager of a mine in Mexico. By a system of revolving credit, he agreed to pay to the respondents moneys paid to the New York bankers of the mine. For this purpose he had paid 500*l.* to the respondents. The New York bank stopped payment, and the appellant immediately demanded repayment of the 500*l.* The New York bank was largely indebted to the respondents, who claimed to retain the 500*l.*:—*Held*, that the appellant was entitled to be repaid the 500*l.* *Ib.*

Money Paid by Mistake—Right to Recover—Agreement for Water Supply—Ignorance of Consumer of his Rights—Condition Precedent to Right to Supply.]—The claimants were the owners of a colliery and of certain brick and tile works for which a supply of water was necessary. By an agreement entered into in 1910 between the claimants and the respondents, who were the local water authority, it was agreed that in the event of the claimants being unable to obtain sufficient water for the purposes of their works from all their available sources of supply, the respondents would supply the claimants with water at cost price not exceeding 2*d.* per 1,000 gallons. The claimants' supply of water from their available resources proving insufficient for their requirements, from the date of the agreement until June 30, 1910, they used over 81,000,000 gallons of water supplied by the respondents. The claimants did not call upon the respondents to supply them at the rate of 2*d.* per 1,000 gallons, but paid the usual charge of 8*d.* per 1,000 gallons. The arbitrator found that the claimants were, during the period between June 24, 1900 (the date of the agreement), and December 30, 1909, when they discovered their rights under the agreement, *bona fide* ignorant of the existence of legal rights of any nature or extent whatsoever whereby they could require the respondents to supply them with water under the agreement; that they were ignorant of the covenants in the conveyance which related to such rights, and that the sums paid in respect of the water consumed

were paid by inadvertence and in ignorance of any legal rights entitling them as aforesaid. In these circumstances the claimants sought to recover the sum of 6*d.* upon each 1,000 gallons of water paid by them in excess of the agreed price. Bailhache, J., held that whether the ignorance of the claimants was ignorance of the fact that the agreement contained the covenant in their favour, or whether their ignorance consisted of what the meaning of the covenant was, they were not prevented from obtaining relief in respect of the money overpaid by them if they were otherwise entitled to it. He held upon the facts that the claimants were entitled to recover 1.426*l.* of the amount claimed by them. *Stanley* v. *Nuneaton Corporation*, 108 L. T. 986; 77 J. P. 349; 11 L. G. R. 902; 57 S. J. 592—C.A.

Held, on appeal, that the claimants were not entitled under the agreement to a supply of water at the rate of 2*d.* per 1,000 gallons unless they gave notice to the respondents that their sources of supply were insufficient; that such a notice was a condition precedent to the claimants being entitled to the supply, and, as no such notice had been given, the claimants were not entitled to the supply, and therefore had no claim to be repaid the money which they had already paid. *Ib.*

Decision of Bailhache, J. (107 L. T. 760; 77 J. P. 89; 11 L. G. R. 397), reversed. *Ib.*

Tithe Rentcharge—Payment in Error—Mistake of Fact—Right to Recover—Principal and Agent.]—Where certain moneys payable as tithe rentcharge had been demanded in error by a sequestrator of the property of a bankrupt rector, and had been paid by mistake by the trustees of the estate out of which they had formerly been properly payable after the right to demand them had ceased,—*Held*, that the destination of the money could not be assumed beyond the sequestrator, and that the sequestrator was liable to refund such moneys, he being something more than an agent of the trustee in bankruptcy of the bankrupt rector. *Baylis* v. *London (Bishop)*, 81 L. J. Ch. 586; [1912] 2 Ch. 318; 19 Manson, 219; 56 S. J. 614—Neville, J. Affirmed, 57 S. J. 96; 29 T. L. R. 59—C.A.

Money Had and Received—Tolls—Payment under Threat of Distress—Right to Recover.]—If a person, with knowledge of the facts, pays money which he is not in law bound to pay, not in order to avoid litigation, but under the threat of and in order to avoid a distress on and seizure of his goods, and in circumstances which imply that he is not paying voluntarily in order to close the transaction, he can recover it back again as money had and received to his use. The fact that he paid under protest is evidence only that he did not intend to close the transaction. *Maskell* v. *Horner*, 84 L. J. K.B. 1752; [1915] 3 K.B. 106; 113 L. T. 126; 79 J. P. 406; 13 L. G. R. 808; 59 S. J. 429; 31 T. L. R. 332—C.A.

The plaintiff, a produce dealer, from time to time paid tolls to the defendant, the lessee of a market, which it was subsequently held the latter had no right to demand. The plaintiff had refused to pay on the first demand, but under a threat to distrain his goods had eventually paid; and all the subsequent payments were made under protest. In an action by him to recover the sums paid for tolls,—*Held*, that he was entitled to recover the sums so paid by him to the defendant during the last six years immediately preceding the action as money had and received to his use, and earlier payments being barred by the Statute of Limitations. *Ib.*

Decision of Rowlatt, J. (30 T. L. R. 343), reversed. *Ib.*

Holding out—Estoppel.]—The appellant had been in the habit of personally ordering goods from the respondents, and he had an employee named Cox who had no authority to order goods. The appellant dismissed Cox, and the latter subsequently obtained goods from the respondents on the representation that the appellant had sent him for them. When the appellant was paying the respondents' account he did not notice the items for these articles, and he paid the account in full. A second account containing charges for further articles fraudulently obtained by Cox in the name of the appellant was looked over by the appellant's clerk, but was not properly checked, and the appellant paid it in full. The appellant claimed to recover back from the respondents the sum overpaid:—*Held*, that the appellant was entitled to recover the sum, as he had not held out Cox as his agent and there was no estoppel. *Bailey & Whites, Lim.* v. *House*, 31 T. L. R. 583—D.

Deed of Separation—Marriage Unlawful—Belief in its Lawfulness—Validity.]—If the parties to an agreement make a mutual mistake of fact which is material to the existence of an agreement the agreement is void. The plaintiff and the defendant, believing (as was not the fact) that they were lawfully married, entered into a deed of separation:—*Held*, that the deed of separation was void. *Galloway* v. *Galloway*, 30 T. L. R. 531—D.

MONEY COUNTS.

Payment under Compulsion of Foreign Law—Right to Recover.]—Money paid under the compulsion of legal proceedings instituted in a foreign country cannot be recovered in an action in an English Court, being money paid under compulsion of law. *Clydesdale Bank* v. *Schröder & Co.*, 82 L. J. K.B. 750; [1913] 2 K.B. 1; 106 L. T. 955; 17 Com. Cas. 210; 56 S. J. 519—Bray, J.

Hire-Purchase—Impressment of Article by War Office—Compensation—Division between Owner and Bailee.]—The plaintiffs delivered to the defendants a motor chassis under a hire-purchase agreement, by which the property in the chassis was to remain in the plaintiffs until payment had been made in full. Payment was to be made in three instalments, subject to the defendants' right to pay in full at any time. The defendants fitted

the chassis with a body, and, after two instalments had been paid, the War Office impressed the lorry and paid compensation to the defendants. In an action by the plaintiffs against the defendants to recover a proportion of the compensation,—*Held*, that the plaintiffs were entitled to an amount equal to that of the last instalment, together with interest. *British Berna Motor Lorries, Lim.* v. *Inter-Transport Co.*, 31 T. L. R. 200—Rowlatt, J.

MONEY-LENDER.

I. APPLICATION OF MONEY-LENDERS ACT.

See also Vol. IX. 2463.

Business of Money-lending—Loan on Bill of Sale—Pawnbroker.]—A pawnbroker who on an isolated occasion lends money on a bill of sale is not, for that reason merely, a money-lender within the meaning of the Money-lenders Act, 1900. *Newman* v. *Oughton*, 80 L. J. K.B. 673; [1911] 1 K.B. 792; 104 L. T. 211; 55 S. J. 272; 27 T. L. R. 254—D.

Section 6 of the Money-lenders Act, 1900, excludes pawnbrokers from the operation of that Act as long as they only carry on the business of pawnbrokers within the meaning of the Pawnbrokers Acts. *Ib.*

II. REGISTRATION OF MONEY-LENDERS.

See also Vol. IX. 2465.

"Usual trade name"—Carrying on Business in More than One Name.]—A bill of sale taken in the registered name of a money-lender is not void although the name was improperly registered. So long as the name remains on the register, contracts in that name are not to be held void or the money-lender's action in making such contracts punishable by fine or imprisonment. *Whiteman* v. *Sadler*, 79 L. J. K.B. 1050; [1910] A.C. 514; 103 L. T. 296; 17 Manson, 296; 54 S. J. 718; 26 T. L. R. 655—H.L. (E.)

It is a breach of the Money-lenders Act, 1900, for a money-lender to carry on business alone under one name and in partnership with another under a different name. *Ib.*

A name assumed for the first time for the purpose of registration cannot be described as the money-lender's usual trade name. (Lord Mersey dissenting on this point.) *Ib.*

Members of Firm Incorrectly Registered—Mortgage—Assignment—Bona Fide Holder for Value without Notice — Invalidity of Security.]—A *bona fide* holder for value without notice of a security given to a money-lender which is invalidated by reason of non-compliance with the provisions of section 2 of the Money-lenders Act, 1900, is in no better position than the original holder of the security. *Robinson, In re; Clarkson* v. *Robinson (No. 1)*, 80 L. J. Ch. 309; [1911] 1 Ch. 230; 103 L. T. 857; 27 T. L. R. 182—C.A.

A firm was registered under the Money-lenders Act, 1900, in the firm name, and was stated to consist of two partners, C. A. B. and J. C. B. C. A. B. was in fact not a partner, but merely a nominee of G. C. B., who supplied all the capital of the firm, which consisted of himself and J. C. B.:—*Held*, that securities given to the firm in respect of money-lending transactions were void, as the money-lenders were not properly registered, and that an assignee of the securities for value without notice was in no better position than the original lenders, and could obtain no benefit from the securities. *Ib.*

Carrying on Business in other Name—Immaterial Variance.]—A money-lender registered her name under the Money-lenders Act, 1900, as the W. Loan and Discount Office. In a promissory note which she took from a borrower in respect of money lent by her she was described as of the W. Loan and Discount Co.:—*Held*, that the substitution of the word "company" for the word "office" did not constitute a carrying on by her of the money-lending business in a name other than her registered name within the meaning of section 2, sub-section 1 (*b*) of the Money-lenders Act. *Peizer* v. *Lefkowitz*, 81 L. J. K.B. 718; [1912] 2 K.B. 235; 106 L. T. 776; 28 T. L. R. 334—C.A.

S. P. was registered as a money-lender under the name of the "Wentworth Loan and Discount Office, of 27, Stafford Houses, Wentworth Street, E." She lent money to the defendants on promissory notes, which were upon printed forms and which described her as S. P., of the "Wentworth Loan and Discount Company, of Stafford Houses, Wentworth Street, E." In an action by the plaintiff on the promissory notes, the defendants contended that as the word "company" appeared on the notes instead of the word "office," the plaintiff was not trading in her registered name within section 2 of the Money-lenders Act, 1900. The County Court Judge gave judgment for the plaintiff on the ground that the variation in the description of the plaintiff had not deceived the defendants. The defendants appealed:—*Held*, dismissing the appeal, that it was open to the County Court Judge to say that the distinction was so small as not to amount to a difference in the description, and, further, that he was entitled to say that he was not satisfied that the single transaction was sufficient to force him to the conclusion that the plaintiff was carrying on business in any other than her registered name. *Wentworth Loan Co.* v. *Lefkowitz*, 105 L. T. 585; 56 S. J. 54; 28 T. L. R. 31—D.

Carrying on Business in more than one Registered Name.] — The prohibition from carrying on the business of a money-lender "in more than one name" in sub-section 2 of section 2 of the Money-lenders Act, 1900, applies whether all the names or either of them are registered or unregistered. *Whiteman* v. *Director of Public Prosecutions*, 80 L. J. K.B. 681; [1911] 1 K.B. 824; 104 L. T. 102; 75 J. P. 136; 27 T. L. R. 180—D.

Loan by Unregistered Money-lender in Course of his Business — Mortgage — Failure of one Defendant to Plead Act—Illegal Transaction—Unenforceable Deed.]—The plaintiff lent money to trustees upon the security of a mortgage of their trust property. The Court, having come to the conclusion on the evidence that the plaintiff was a money-lender who had lent the money at a time when he was not registered as a money-lender under the Money-lenders Act, 1900, *held* the mortgage to be void, and refused to enforce it even against one of the defendants, who had failed to plead the Act by way of defence. *Scott* v. *Brown & Co.* (61 L. J. Q.B. 738; [1892] 2 Q.B. 724) applied. *Robinson's Settlement, In re; Gant* v. *Hobbs*, 81 L. J. Ch. 393; [1912] 1 Ch. 717; 106 L. T. 443; 28 T. L. R. 298—C.A.

—— Action for Debt — Final Judgment in Default of Defence — Arrangement for Payment of Debt by Instalments—Order Staying Proceedings—Debtor made Bankrupt—Proof Based on Arrangement — Agreement with Respect to Advance and Repayment of Money —Unlawful Transaction.]—A solicitor, an unregistered money-lender, being the holder of certain promissory notes given to him by the debtor in respect of a loan which was a money-lending transaction, brought an action on the notes against the debtor, and obtained final judgment under Order XIV. in default of defence. An arrangement was thereupon come to between the parties under which the debt was to carry interest at 9 per cent. reducible to 7½ per cent., and the debtor agreed to pay the debt by instalments; and an order was subsequently made staying all further proceedings against the debtor on the terms of the arrangement. The debtor having become bankrupt, the creditor tendered a proof in the bankruptcy based on the arrangement:—*Held*, that, notwithstanding that the arrangement was not executed before the advance, it was an agreement entered into by a money-lender in the course of his business as a money-lender with respect to the advance and repayment of money within the meaning of section 2, sub-section 1 (*c*) of the Money-lenders Act, 1900, and that the original contract with the unregistered money-lender was not only void, but unlawful, and that therefore neither the judgment nor the subsequent arrangement prevented the Court of Bankruptcy from going behind the transaction, on the objection of the trustee in bankruptcy, and rejecting the proof. *Campbell, In re; Seal, ex parte*, 81 L. J. K.B. 154; [1911] 2 K.B. 992; 105 L. T. 529; 19 Manson, 1—C.A.

—— Onus—Volume of Business to be Considered.]—Where in an action for money lent the defendant raises the defence that the plaintiff is an unregistered money-lender, the onus of proof that the plaintiff is a money-lender within the meaning of section 6 of the Money-lenders Act, 1900, lies in the first instance on the defendant. In considering whether the defendant has discharged that onus the tribunal must take into consideration the total volume of business of money-lending carried on by the plaintiff, including the exceptions mentioned in section 6. *Fagot* v. *Fine*, 105 L. T. 583; 56 S. J. 35—D.

A person carried on business as a jeweller and lent money to customers who came into contact with him in connection with his jewellery business:—*Held*, that such loans were not made in the course and for the purposes of a business not having for its primary object the lending of money within the meaning of section 6 (*d*) of the Money-lenders Act, 1900. *Ib.*

Security taken in other than Registered Name.]—R., the beneficiary under a will, in consideration of 400*l.* paid to him by one Levine, a money-lender, who carried on business under the registered name of Leslie, transferred to Levine 800*l.*, part of the share to which he was entitled under the will. The deed purported to be an out-and-out transfer of the 800*l.* to Levine in his individual name, and contained no covenant by R. to pay the 800*l.* or any sum of money or interest:—*Held*, that, notwithstanding the form of the deed, it was a security for money given to Levine in the course of his business as a money-lender, and, as it had not been taken by him in his registered name of Leslie, it was void under section 2, sub-section 1 (*c*) of the Money-lenders Act, 1900. *Robinson, In re; Clarkson* v. *Robinson* (No. 2), 104 L. T. 712; 27 T. L. R. 441—C.A.

—— Carrying on Business at Registered Address—Excessive Interest—Harsh and Unconscionable Transaction.] — Section 2, sub-section 1 (*c*) of the Money-lenders Act, 1900, which provides that a money-lender, as defined by the Act, shall not take any security for money in the course of his business as a money-lender otherwise than in his registered name, does not prohibit him from taking a security in which his names does not appear at all, but prohibits him from taking it in a name other than his registered name. *Shaffer* v. *Sheffield*, 83 L. J. K.B. 817; [1914] 2 K.B. 1; 110 L. T. 1023; 58 S. J. 363; 30 T. L. R. 276—Channell, J.

The plaintiff carried on business as a registered money-lender at Manchester, and prior to the loan the subject-matter of this action had had several money-lending transactions with the defendant Sheffield. Sheffield sent a letter to the plaintiff's registered address at Manchester asking him to come to London for the purpose of granting a loan on the security of certain furniture belonging to the defendant Moore, who knew of the suggested visit and its object. The plaintiff accordingly interviewed the defendant at the St. Pancras Hotel, London, and there lent Sheffield 150*l.*,

taking as security a bill of exchange for 175*l.*, payable one month after date, drawn by Sheffield upon, and accepted by, Moore as surety, and indorsed in blank to the plaintiff: —*Held*, first, that the plaintiff had not taken the security "otherwise than in his registered name"; secondly, that he had not carried on business otherwise than at his registered address; but thirdly, that interest would only be allowed at the rate previously charged by the plaintiff—namely, 5*l.* on a loan of 50*l.* for a month. *Ib.*

Judgment in Registered Name against Debtor — Bankruptcy Petition — Change of Registered Name—Agreement for Payment of Debt — Agreement Entered into by Money-lender under First Registered Name.] — The plaintiff, a money-lender, obtained judgment in his registered name against C., his debtor, and, as the judgment was not satisfied, he presented a bankruptcy petition, in the same registered name, against C. When the petition was about to be heard, and in consideration of it being withdrawn, an arrangement was entered into between the plaintiff, in the same registered name as that in which he had obtained judgment, and the defendant H. by which H. paid a portion of the debt, and agreed to redeem certain shares for 50*l.* within fourteen days. At the time this agreement was entered into, but after he had obtained judgment against C., the plaintiff had changed his registered name. H. not having paid the 50*l.*, the plaintiff sued him to recover same:—*Held*, first, that the agreement was one "with respect to the advance and repayment of money" within section 2, sub-section 1 (*c*) of the Money-lenders Act, 1900; secondly, that, as it was ancillary to the bankruptcy petition, it was rightly entered into on the part of the plaintiff in the registered name under which he had obtained judgment and presented the bankruptcy petition; and thirdly, that H. was liable. *Blair* v. *Holcombe*, 28 T. L. R. 198—Scrutton, J.

III. RE-OPENING AND AVOIDANCE OF TRANSACTIONS.

See also Vol. IX. 2470.

"Harsh and unconscionable" — Excessive Interest.]—The Court being of opinion that the interest charged by the money-lender for a loan was, in view of the borrower's financial position, excessive, re-opened the transaction of loan and reduced the rate of interest. *Stirling* v. *Musgrave*, 29 T. L. R. 333—Bankes, J.

Where on a loan by a money-lender the rate of interest charged is grossly excessive as compared with the risk, having regard to the facts as to the financial position of the borrower known to the lender, or which would have been known to him if he had made proper enquiries, the Court may re-open the transaction as being harsh and unconscionable within section 1 of the Money-lenders Act, 1900, although the borrower is competent, and there is no element of fraud or other unfairness in the transaction. *Thomas* v. *Ashbrook*, [1913] 2 Ir. R. 416—K.B. D.

Interest charged at the rate of 80 per cent. per annum where the Court was of opinion that the reasonable rate, having regard to the risk and all the circumstances, should not have exceeded 25 per cent.:—*Held*, sufficient of itself to entitle the borrower to have the transaction re-opened. *Ib.*

The defendant borrowed from the plaintiff, who was a money-lender, the sum of 1,000*l.*, and gave a promissory note for 1,600*l.*, which was payable in instalments spread over twelve months, the first payment to be 150*l.* at the end of three months, and there was the usual default clause. The defendant made default in paying the first instalment, and the plaintiff brought an action to recover the 1,600*l.* The defendant gave evidence that the plaintiff agreed that the interest should be 60 per cent. per annum, but did not explain the default clause and that it was agreed that he should be at liberty to pay off the whole amount at any time and only pay interest at 60 per cent. After action the defendant paid the principal and offered to pay 60 per cent. interest:—*Held*, that the note did not contain all the terms of the bargain, that the defendant did not understand the effect of the default clause, that the transaction was harsh and unconscionable, and that the plaintiff should have judgment for 60 per cent. on 1,000*l.* up to the date when the offer was made. *Stirling* v. *Rose*, 30 T. L. R. 67—Avory, J.

The Court, being of opinion that the interest charged was, in the circumstances, excessive, reduced it to 50 per cent. *Fortescue* v. *Bradshaw*, 27 T. L. R. 251—Pickford, J.

The Court, being of opinion that the rate of interest charged was, in the circumstances, excessive, reduced it to 30 per cent. *Wheatley* v. *Part*, 27 T. L. R. 303—Pickford, J.

In cases under the Money-lenders Act, 1900, where the Court is asked to re-open a transaction on the ground that the interest charged is excessive, all the circumstances, such as time and risk, and, further, whether the interest was deducted in cash or still remained in the region of speculation, have to be taken into consideration. Merely to say that the percentage of interest is too high affords no assistance to the Court in determining the question. Whether the equitable rule that in money-lending transactions with an expectant heir the onus is on the money-lender to prove that the transaction is fair, and that if it is not fair only 5 per cent. interest is allowed, applies where the expectant heir is of full age, *quære*. *King* v. *Hay Currie*, 28 T. L. R. 10—Scrutton, J.

Where loan transactions between a borrower and a money-lender, consisting of promissory notes, under which principal and interest are repayable by instalments and containing a default clause, are so involved that the borrower cannot understand the rate of interest charged, which is in fact excessive, the Court will re-open the transactions and grant the borrower relief on the ground that the dealings are "harsh and unconscionable" within the Money-lenders Act, 1900, s. 1, sub-s. 1. *Halsey* v. *Wolfe*, 84 L. J. Ch. 809; [1915] 2 Ch. 330; 113 L. T. 720—Joyce, J.

—— **Request for Terms—Sending Money—Avoidance of Negotiation.**]—When a person who has recently refused a loan from a money-lender writes to him shortly afterwards in order to ascertain his terms, and the money-lender induces a transaction by sending him money and thereby avoiding the negotiation of terms, the transaction may be re-opened under section 1 of the Money-lenders Act, 1900. *Lewis* v. *Mills*, 30 T. L. R. 438—Rowlatt, J.

—— **Nature of Risk.**]—The plaintiff, a registered money-lender, sued the defendant for money lent. The defendant contended that under the Money-lenders Act, 1900, s. 1, the transaction ought to be re-opened on the ground that, in view of the high rate of interest charged, it was harsh and unconscionable. The plaintiff submitted that excessive interest was not, in itself, sufficient ground for the re-opening of the transaction :—*Held*, in considering whether to re-open a transaction under section 1 the Court must have regard to all the facts in the case—for instance, the financial embarrassment of the borrower at the time of the making of the loan. *Glaskie* v. *Griffin*, 111 L. T. 712—Sankey, J.

—— **Secured Advance—Nature of Risk—Sum Adjudged to be "fairly due."**]—Where an advance granted to a borrower by a registered money-lender was on the security of certain real estate, interest at the rate of 50 per cent. —or, in one view, 40 per cent.—being charged for the same, it was held that as a secured advance stood in a different position from an unsecured advance, the interest was so excessive as to render the transaction "harsh and unconscionable" within the meaning of section 1, sub-section 1, of the Money-lenders Act, 1900; that the transaction ought, therefore, to be re-opened; and that, having regard to all the circumstances, it was reasonable that the money-lender should receive interest at the rate of 20 per cent. as "fairly due" within the meaning of the sub-section. *Salaman* v. *Blair; Blair* v. *Johnstone*, 111 L. T. 426—C.A.

—— **Questions of Law for Judge.**]—Where proceedings are taken in any Court by a money-lender for the recovery of money lent, or the enforcement of any agreement or security in respect of money lent, the questions under section 1 of the Money-lenders Act, 1900, whether the transaction is harsh and unconscionable, and whether the interest charged is excessive, are questions of law for the Judge, and ought not to be left to a jury. The jury may, however, be asked to find any facts which the Judge may think necessary for his decision of the questions of law. *Abrahams* v. *Dimmock*, 84 L. J. K.B. 802; [1915] 1 K.B. 663; 112 L. T. 386; 59 S. J. 188; 31 T. L. R. 87—C.A.

Decision of the Divisional Court (83 L. J. K.B. 1033; [1914] 2 K.B. 372) affirmed. *Ib.*

—— **Expectant Heir—Excessive Interest.**]—The plaintiff, who was a money-lender, advanced 1,000*l.* to the defendant on July 29, 1914, and received from him a promissory note for 1,600*l.* payable in four monthly instalments of 400*l.* each, the first instalment to be paid on October 1, 1914. There was a default clause to the effect that if any instalment was unpaid the whole amount was to become payable and interest at 60 per cent. was to be paid from the date of default. Default was made in the payment of the first instalment. The defendant had an income of about 2,000*l.* a year, and was entitled to the reversion of certain property worth about 4,000*l.* a year. The defendant had had previous transactions with the plaintiff and had settled them voluntarily. In an action on the promissory note,—*Held*, that in the circumstances the defendant was not entitled to relief under the equitable doctrine as to catching bargains made with expectant heirs and that the past transactions ought not to be opened up, but that as the terms on which the money was lent in the present case were out of all reason the transaction must be opened up under the Money-lenders Act, 1900, s. 1, and the plaintiff would have judgment for the principal with interest at 30 per cent. *Wolfe* v. *Lowther*, 31 T. L. R. 354—Rowlatt, J.

See also Shaffer v. *Sheffield*, *ante*, col. 1026.

MONEY PAID INTO COURT.

See COUNTY COURT; PRACTICE.

MORATORIUM.

Banker and Customer—Dishonour of Cheque—Breach of Contract—Libel.]—The plaintiff, who was a newsagent, had an account with the defendant bank, and on August 5, 1914, she drew a cheque for 4*l.* 5*s.* in favour of the company from whom she was in the habit of buying newspapers. On August 6 a moratorium proclamation was issued, providing that all payments of not less than 5*l.* due and payable before August 6 or any day before September 4 in respect of any cheque drawn before August 4 "or in respect of any contract made before that time" should be deemed due and payable one month after the original due date or on September 4. The cheque was presented on August 10 and returned with the words "Refer to drawer" upon it. On August 10 the plaintiff had 6*l.* 15*s.* 5*d.* to her credit on the pre-moratorium account and 3*l.* 9*s.* 3*d.* on the post-moratorium account. In an action by the plaintiff against the defendants for breach of contract and libel,—*Held*, that the defendants were protected by the moratorium, as the case was one of a payment in respect of a contract made before August 4, and that in the circumstances the words "Refer to drawer" were not capable of a libellous meaning, and therefore the plaintiff was not entitled to recover. *Flach* v. *London*

and South-Western Bank, 31 T. L. R. 334—Scrutton, J.

—— **Deposits—Agreed Interest—Moratorium Rate—Meaning of "if not otherwise carrying interest."**] — In July, 1914, the plaintiffs deposited with the defendant bank two sums, repayable on August 14 with interest at 3¼ and 3½ per cent. per annum respectively. On August 6 a Royal proclamation set up a moratorium and provided that payments postponed thereunder should, "if not otherwise carrying interest, and if specific demand were made for payment, and payment was refused, carry interest until payment at the Bank of England rate current on August 7, 1914"—namely, 6 per cent. per annum. On August 14 repayment was demanded, but it was not made till October 31. The deposits fell within the class of payments to which the proclamation applied:—*Held*, that between August 14 and October 31 the plaintiffs were only entitled to interest at the agreed rates and not at 6 per cent., as at the date of the proclamation the deposits were carrying interest otherwise than by virtue of the proclamation. *Coats, Lim.* v. *Disconto Gesellschaft*, 31 T. L. R. 446—Bailhache, J.

—— **Overdraft—Moneys Paid in by Customer—Appropriation in Discharge of Overdraft—Dishonour of Customer's Cheque—Liability of Banker.**] — The defendants on February 11, 1914, agreed to allow the plaintiff, who was a customer of the bank, an overdraft for a period of six months. On August 6, 1914, when the plaintiff's account was overdrawn, a moratorium was proclaimed. On August 28 the plaintiff, without making any express appropriation, paid a sum of money into his account, and the defendants applied a part of it in discharge of the overdraft. On the following day the plaintiff drew a cheque upon the bank, but in consequence of the discharge of the overdraft his balance was not sufficient to meet it. The cheque was dishonoured, and returned to the holder marked "R.D." In an action brought by the plaintiff against the bank for damages for breach of contract and for libel,—*Held*, that the effect of the moratorium was to postpone the date of payment of the overdraft for a month, that the defendants were not entitled under the circumstances to refuse payment of the plaintiff's cheque, and that the plaintiff was entitled to recover. *Allen* v. *London County and Westminster Bank*, 84 L. J. K.B. 1286; 112 L. T. 989; 31 T. L. R. 210—Lord Coleridge, J.

Contract—Date of Making—Applicability of Moratorium.] — The moratorium proclaimed under the Postponement of Payments Act, 1914, does not extend to contracts made after August 4, 1914. *Softlaw* v. *Morgan*, 31 T. L. R. 54—C.A.

Sale of Goods — C.i.f. Contract — Payment against Shipping Documents — Tender of Documents — Refusal to Pay.] — The defendant sold to the plaintiff opium, shipment during July, 1914, payment cash against documents upon arrival of steamer. The steamer arrived in London on August 14, after the outbreak of the war with Germany and the proclamation of August 6, 1914, postponing payments due and payable (*inter alia*) before September 4, 1914. The defendant offered to tender the shipping documents on payment; the plaintiff claimed delivery of the goods without present payment, contending that under the above proclamation he was entitled to postpone payment:—*Held*, that the proclamation did not apply to a c.i.f. contract, and that the plaintiff could only get the documents, if tendered, on payment under the contract. *Happe* v. *Manasseh*, 84 L. J. K.B. 1895; 113 L. T. 177—Sankey, J. Affirmed, 32 T. L. R. 112—C.A.

Payment of Cash in London for Roubles in Russia—Effect of Proclamations.]—The plaintiff bank and the defendant bank entered into a contract by which in exchange for the payment of sovereigns in London by the defendant bank on August 31, 1914, the plaintiff bank were to pay roubles in Petrograd at the exchange rate of 95.25. On August 6, 1914, a moratorium proclamation was issued under the Postponement of Payments Act, 1914, in regard to "payments . . . which will become due and payable on any day before the beginning of the 4th day of September, 1914, . . . in respect of any contract made before that time," and it postponed payment until September 4, or until a month after the day on which the payment became due, whichever was the later date. The proclamation also provided for interest. Just before August 31 the defendant bank claimed that under the proclamation they had a right to postpone payment, but the plaintiff bank did not agree to a postponement. Further extensions of the moratorium were made by a second and a third proclamation, but the third differed from the other two in that it provided that the moratorium of a month could only be obtained if within three days after the date to which payment had been already postponed interest was paid up to that date, and within a day or two after the second postponed date the defendant bank paid the sovereigns, and the roubles were handed over. The plaintiff bank then brought an action against the defendant bank to recover interest either under the proclamations or as damages or under the Civil Procedure Act, 1833:—*Held*, that the proclamations did not apply to the contract, as they must be construed as being limited to payments which automatically became due without the condition precedent of a tender by the payee, and that the defendant bank broke their contract by not paying on the due date, but that as the rouble was worth less in sovereigns on the date of the actual performance of the contract than on the contract date, the plaintiff bank were only entitled to recover a nominal sum. *Credito Italiano* v. *Swiss Bank-Verein*, 31 T. L. R. 554—Scrutton, J.

Goods Sold and Delivered—Several Consignments of Goods—Aggregate Prices Exceeding Five Pounds—Separate Prices not Exceeding Five Pounds—Setting Aside Writ.]—Under the powers conferred by the Postponement of Payments Act, 1914, a proclamation was made on August 6, 1914, which provided that all

payments which had become due and payable before a certain date in respect of contract should be deemed to be due and payable on a specified later date; but that the proclamation should not apply to "any payment in respect of a liability which when incurred did not exceed five pounds in amount." Between the above dates the plaintiffs issued and served upon the defendants a writ specially indorsed with a claim for a sum of upwards of 61*l*., made up of the prices of thirty-four parcels of goods alleged to have been sold and delivered under separate contracts of sale, all these prices having become due before the earlier of the above dates, and twenty-eight of them being individually though not in the aggregate below 5*l*., while the remaining six were individually above that amount. The defendants took out a summons to set aside the writ on the ground that the plaintiffs' claim was barred by the moratorium created by the proclamation:—*Held*, that the defendants' liability for each of the prices which was below 5*l*. was a liability which came within the words of the above exemption, and that the plaintiffs' claim so far as it consisted of these prices was not barred, and therefore that the writ could not be set aside, notwithstanding that the total claims or the other individual prices were above 5*l*. *Auster, Lim.* v. *London Motor Coach Works*, 84 L. J. K.B. 580; 112 L. T. 99; 59 S. J. 24; 31 T. L. R. 26—C.A.

Promissory Note — Issue of Writ — Subsequent Suspension of Remedy—Termination of Moratorium — Right to Judgment.]—When, after money has become due, a writ has been issued in an action to recover the amount, the fact that after the issue of the writ a statutory moratorium temporarily suspended the plaintiff's remedy is not a defence, if before the trial of the action the temporary moratorium has ceased to apply to the plaintiff's claim. *Glaskie* v. *Petry*, 59 S. J. 92; 31 T. L. R. 40—Scrutton, J.

Rent — Distress — Removal of Goods.]—Though a landlord who had levied a distress for rent before the date of the proclamation of a moratorium under the Postponement of Payments Act, 1914, but who had not sold the goods before that date, was not entitled to sell the goods during the currency of the moratorium, yet he was entitled to remove the goods from the demised premises for the purpose of securing his possession of the goods. *Shottland* v. *Cabins, Lim.*, 31 T. L. R. 297—Shearman, J.

—— Non-payment—Recovery of Possession.]—By section 1, sub-section 1 of the Postponement of Payments Act, 1914, and a proclamation issued in pursuance thereof, the payment of any sum due and payable before the date of the proclamation in respect of a contract made before that time was postponed to a specified date:—*Held*, that rent due and payable before the date of the proclamation could not be recovered in an action in which the writ was issued after the proclamation and before the specified date, because not due and payable at the date of the writ; and that as the right, given by the agreement of tenancy, to re-enter for non-payment of rent was only a security for the rent, it followed that that right also did not exist at the date of the writ and could not be enforced in the action. *Durell* v. *Gread*, 84 L. J. K.B. 130; 112 L. T. 126; 59 S. J. 7; 31 T. L. R. 22—Scrutton, J.

—— Shares—Forfeiture for Non-Payment of Calls — Validity of Resolution — Attempt to Take Possession of Property.]—A call upon shares which is payable on a date falling within the moratorium proclaimed under the Postponement of Payments Act, 1914, is a debt within the moratorium, and consequently a resolution of the directors of the company purporting to forfeit the shares for non-payment of the call during the currency of the moratorium is invalid. Such a resolution is also an attempt without the leave of the Court to take possession of property within the meaning of section 1, sub-section 1 (*b*) of the Courts (Emergency Powers) Act, 1914. *Burgess* v. *O.H.N. Gases, Lim.*, 59 S. J. 90; 31 T. L. R. 59—Neville, J.

Suspension of Payment.]—A debtor commits an act of bankruptcy by suspending payment of his debts within the period of the moratorium proclamations issued under the Postponement of Payments Act, 1914, and a debt within those proclamations is payable at a certain future time, and forms a good petitioning creditor's debt. *Sahler, In re*, 84 L. J. K.B. 1275; 112 L. T. 133; [1915] H. B. R. 119; 59 S. J. 106—D.

Writ Issued during Suspensory Period—Default of Appearance.]—The effect of the proclamations made under the Postponement of Payments Act, 1914, was to give a statutory credit for the period mentioned therein, so that during such period no action was maintainable in respect of a debt coming within the proclamations. If during the suspensory period a writ has been issued, the plaintiff is not entitled to judgment, although no appearance has been entered; and the Court, on the facts being brought to its notice, will of its own motion either dismiss the action or remove the writ from the files of the Court. If judgment has been inadvertently allowed to be signed, it will be set aside by the Court when brought to its notice without requiring the defendant to institute a motion for the purpose. *Gramophone Co.* v. *King*, [1914] 2 Ir. R. 535—K.B. D.

MORTGAGE.

I. THE CONTRACT.

See also Vol. IX. 1385, 2477.

Land Held on Trust for Sale—Proceeds—"Interest in land"—Period of Limitation.]—An interest in the proceeds of sale of land held on trust for sale is an "interest in land" within the meaning of the Real Property Limitation Acts, 1833 and 1874; and the period of limitation applicable to a claim by a mortgagee of such an interest is therefore twelve years. *Kirkland* v. *Peatfield* (72 L. J. K.B. 355; [1903] 1 K.B. 756) and *Hazeldine's Trusts, In re* (77 L. J. Ch. 97; [1908] 1 Ch. 34), followed. *Fox, In re; Brooks* v. *Marston*, 82 L. J. Ch. 393; [1913] 2 Ch. 75; 108 L. T. 948—Warrington, J.

Agreement not to Call in Principal on Punctual Performance of Covenants — Breach of Covenants—Receipt of Interest—Waiver.]—A mortgagee agreed with a mortgagor that if the mortgagor punctually performed the covenants contained in the mortgage deed he would not call in the mortgage money for five years. The mortgagor during the first year committed several breaches of covenant. About one year and a half after the last of these breaches, and before the expiration of the five years, the mortgagee gave notice calling in the mortgage money, alleging the breaches aforesaid. During this period of a year and a half the mortgagee had duly received the interest on the mortgage money on each quarter day as it accrued due:—*Held*, that the receipt of interest was one of the facts receivable in evidence in determining whether the plaintiff had waived his right to call in the money before the expiration of the five years accruing to him on the commission of the breaches of covenant by the mortgagor. *Seal* v. *Gimson*, 110 L. T. 583—Lord Coleridge, J.

Assignment of Equity of Redemption — Death of Mortgagor — Payment of Interest Continued by Assignee — Failure to Repay Principal—Insufficient Security—Mortgagor's Estate—Claim to Follow Assets—Delay.]—Where a mortgagor dies after assigning the equity of redemption, a default is made in repaying the principal, and the security proves insufficient, the fact that the mortgagee has continued to receive interest from the assignee for a number of years, and has delayed enforcing his security, does not debar him from following the assets of the mortgagor's estate, such delay not amounting to *laches*. *Blake* v. *Gale* (55 L. J. Ch. 559; 32 Ch. D. 571), *Ridgway* v. *Newstead* (30 L. J. Ch. 889), and *Leahy* v. *De Moleyns* ([1896] 1 Ir. R. 206), considered and distinguished. *Eustace, In re; Lee* v. *McMillan*, 81 L. J. Ch. 529; [1912] 1 Ch. 561; 106 L. T. 789; 56 S. J. 468—Swinfen Eady, J.

Clogging of Equity of Redemption—Debentures — Floating Charge — Licence to Work Mines—Charter—Monopoly.]—In April, 1892, the appellant company advanced to the respondents 112,000*l.*, to be repaid in manner provided. It was also provided that in the event of the respondent company issuing debentures the appellant company should be at liberty to require debentures to be issued in satisfaction of the debt; that in the event of there being no issue of debentures or of the appellant company not exercising their option to take debentures, but of desiring the exclusive right to work diamondiferous mines in the respondent company's territory, the appellants might decline to accept repayment for five years of the 112,000*l.*, and be entitled to a grant in perpetuity of such exclusive right or licence. By a supplemental agreement dated December 7, 1892, the appellants agreed to advance a further 100,000*l.*, to be repaid as provided, to be secured on a contemplated issue of 250,000*l.* debentures, which was to be a floating charge on all the property of the respondent company, and that the respondents should grant to the appellants the exclusive right or licence above mentioned. The debenture trust deed was executed in June, 1894, and debentures to the value of 212,000*l.* taken by the appellants. They were paid off long before the action was brought:—*Held*, that the debenture issue and floating charge were wholly separate from the licence to work the mines, and that the latter did not operate as a clog on the equity of redemption, or as a monopoly within the meaning of the respondent's charter. *De Beers Consolidated Mines* v. *British South Africa Co.*, 81 L. J. Ch. 137; [1912] A.C. 52; 105 L. T. 683; 56 S. J. 175; 28 T. L. R. 114—H.L. (E.)

Decision of the Court of Appeal (80 L. J. Ch. 65; [1910] 2 Ch. 502) reversed. *Ib.*

—— **Stipulation for Collateral Advantage.**]—There is no rule in equity which precludes a mortgagee from stipulating for any collateral advantage, provided that such collateral advantage is not either unfair and unconscionable, in the nature of a penalty clogging the equity of redemption, or inconsistent with or repugnant to the right to redeem. *Kreglinger* v. *New Patagonia Meat and Cold Storage Co.*, 83 L. J. Ch. 79; [1914] A.C. 25; 109 L. T. 802; 58 S. J. 97; 30 T. L. R. 114—H.L. (E.)

The appellants advanced money to the respondents upon the security of a floating charge over all their property present and future, and agreed not to demand repayment for a period of five years, but the respondents were to be at liberty to repay the debt at an earlier period on giving notice. The agreement also contained a provision that the borrowers should not sell any sheepskins to any purchasers other than the lenders for a period of five years from the date of the agreement

so long as the lenders were willing to purchase the same at an agreed price. The loan was paid off before the expiration of the five years: —*Held*, that the option of purchasing the sheepskins was not terminated, but continued for the period of five years. *Ib.*

Noakes & Co. v. *Rice* (71 L. J. Ch. 139; [1902] A.C. 24), *Bradley* v. *Carritt* (72 L. J. K.B. 471; [1903] A.C. 253), and *Samuel* v. *Jarrah Timber and Wood-Paving Corporation* (73 L. J. Ch. 526; [1904] A.C. 323) discussed and distinguished. *Ib.*

—— **Equal Payments—Validity—Tied Public House.**]—It is now fully established by the House of Lords that the old rule that a mortgage cannot be made irredeemable still prevails and that equity will not permit any clause or contrivance, being part of the mortgage transaction or contemporaneous with it, to prevent or impede redemption. *Fairclough* v. *Swan Brewery Co.*, 81 L. J. P.C. 207; [1912] A.C. 565; 106 L. T. 931; 28 T. L. R. 450—P.C.

The appellant, in consideration of a mortgage of licensed premises granted to him by the respondents, borrowed 500*l.*, to be repaid by 208 monthly instalments. The mortgagor was not to be at liberty to pay off the debt otherwise than by instalments without the express consent in writing of the respondents, and the premises, which were to be a tied house during the continuance of the security, were held for a term of years which exceeded by six weeks only the actual expiration of the lease. On the failure of the respondents on one occasion to supply beer in accordance with their covenant, the appellant assumed to treat the tie as at an end, and the respondents brought an action for damages and an injunction. The appellant counterclaimed to redeem:—*Held*, that the mortgage being obviously meant to be irredeemable, the provision as to repayment of the debt could not be enforced, and the appellant was entitled to redeem. *Ib.*

—— **Sale of—Liability of Purchaser to Indemnify the Mortgagor against Mortgage Debt—Contingent Reversionary Interest—Construction of Purchase Deed.**] — The doctrine of *Waring* v. *Ward* (7 Ves. 332)—namely, that the purchaser of an equity of redemption is bound to indemnify the vendor against all personal liability in respect of the mortgage debt—is one which bends to the circumstances of any particular case, and is inapplicable where the terms of the purchase deed are themselves inconsistent with any such indemnity being intended. *Semble*, the doctrine is not limited to the case where the purchaser is in possession of the property, but applies to the purchase of the equity of redemption in a contingent reversionary interest before it falls into possession. *Per* Farwell, L.J.—The doctrine is based upon an equity binding on the conscience, and not upon implied contract. *Mills* v. *United Counties Bank*, 81 L. J. Ch. 210; [1912] 1 Ch. 231; 105 L. T. 742; 28 T. L. R. 40—C.A.

The plaintiff was the owner of a contingent reversionary interest subject to a first mortgage to the defendants and to a second mortgage in favour of a second mortgagee. The defendants having commenced an action against the plaintiff and his co-partners, an agreement was come to which involved the purchase by the defendants of the plaintiff's contingent reversionary interest, which was carried out by an indenture of assignment (to which the second mortgagee was not a party), whereby (after certain recitals shewing an intention by the defendants to protect themselves against the second mortgage) the contingent reversionary interest was assigned to the defendants with an express provision against the merger of their mortgage by way of protection against the second mortgage only, and the defendants thereby expressly covenanted to indemnify the plaintiff against succession and other duties, and it was provided that any moneys to arise from a sale of the property should be applied in payment of the amount owing on the defendants' mortgage, and the residue so far as it would go in payment of the amount owing on the second mortgage, and the balance (if any) should be paid to the defendants. The second mortgagee having demanded payment from the plaintiff under his covenant, the latter brought an action claiming to be indemnified by the defendants:—*Held*, that the terms of the deed excluded the notion of any larger indemnity than was there expressed, and that it was not the intention of the parties that the defendants should indemnify the plaintiff against his personal liability in respect of the second mortgage, and that therefore they were not liable to do so. *Ib.*

Decision of Eve, J. (80 L. J. Ch. 334; [1911] 1 Ch. 669), affirmed on the effect of the deed, but doubted so far as he decided that the doctrine of *Waring* v. *Ward* (*supra*) is limited to the case where the purchaser is in possession of the property. *Ib.*

Proviso for Redemption — Effect of, in Charging Prior Mortgage Debts on Additional Property.]—By deed dated April 15, 1872, A. mortgaged certain lands to B. (a corporate body) to secure 32,000*l.* By deed dated October 31, 1872, A. mortgaged the same lands to B. to secure a further sum of 5,000*l.* The deed contained a proviso for redemption on payment of the said sums of 32,000*l.* and 5,000*l.* By a third deed dated July 9, 1874, reciting the two prior mortgages, A. mortgaged the lands therein, together with other lands at N., to B. to secure a further sum of 6,000*l.* The *habendum* in the last mentioned deed was "to have and to hold the said lands and hereditaments hereinbefore expressed to be firstly granted"—that is, the lands mortgaged in 1872—"to B., its successors and assigns, to the use of B., its successors and assigns for ever, but subject nevertheless" to the said recited mortgages, "and also to the proviso for redemption hereinafter mentioned, and to have and to hold the said lands and hereditaments and all other the premises hereinbefore expressed to be hereby secondly and thirdly granted"—that is, the additional lands at N. —"to B., its successors and assigns, to the use of B., its successors and assigns for ever," subject to the rents and covenants in certain fee-farm grants, "and subject to the proviso for

redemption hereinafter contained; that is to say, provided, and it is hereby agreed and declared that if the said A., his executors, administrators or assigns, shall on October 4, 1874, pay to B., its successors and assigns, the said sum of 6,000*l.* with interest at the rate of 5*l.* 10*s.* per cent. per annum . . . then the said B., its successors or assigns, shall at any time thereafter upon the request and at the costs of the said A., his executors, administrators or assigns and upon payment also of the said sum of 32,000*l.* and interest, so secured as aforesaid by the said indenture of April 15, 1872, and also of said sum of 5,000*l.* and interest, so secured as aforesaid by the said indenture of October 31, 1872, reconvey the said lands, hereditaments, and premises, hereinbefore expressed to be granted and released, unto and to the use of the said A., his heirs and assigns, or as he or they shall direct"; and it contained a proviso that, notwithstanding anything therein contained, B. should not be compelled to reconvey the lands or any part thereof until the aforesaid sums of 32,000*l.* and 5,000*l.*, as well as the said sum of 6,000*l.*, should be fully paid and satisfied:—*Held*, that by the deed of July 9, 1874, all the three mortgage deeds were charged on the additional lands at N. *Mostyn* v. *Lancaster* (52 L. J. Ch. 848; 23 Ch. D. 583) applied. *Thomson's Estate, In re*, [1912] 1 Ir. R. 460—C.A.

"Insurance Effected under the Mortgage Deed."]—*See Sinnott* v. *Bowden*, *ante*, col. 720.

II. PARTICULAR MORTGAGES AND INCUMBRANCES.

See also Vol. IX. 1438, 2483.

Property Comprised in—Exception of "logs on the way to the mill."] — A mortgage granted over the whole assets, real and personal, and the property of a company now owned by it, or which may hereafter be acquired, "excepting logs on the way to the mill," must be construed to except not only logs on the way to the mill at the date of the mortgage, but also all logs on the way to the mill from time to time. *Imperial Paper Mills of Canada* v. *Quebec Bank*, 83 L. J. P.C. 67; 110 L. T. 91—P.C.

Title of Mortgagor—Tenant in Occupation of Property Proposed to be Mortgaged — No Enquiry of Tenant by Proposing Mortgagee—Mortgagee Bound by Rights of Tenant.]—By a lease in writing a house was demised to the defendant for a term of four years at a yearly rent payable quarterly: and the defendant entered under the lease. Soon after the commencement of the term the lessor agreed to accept, and the defendant paid, a lump sum in satisfaction of all rent reserved by the lease during the term. The lessor then mortgaged the premises to the plaintiff. The plaintiff knew nothing of the payment of rent in advance by the defendant, and had only seen the counterpart lease; but she had made no enquiry of the defendant before the mortgage was completed:—*Held*, that the plaintiff was bound by the arrangement made between the defendant and the lessor, and could not recover from the defendant any part of the rent reserved by the lease. *Green* v. *Rheinberg*, 104 L. T. 149—C.A.

Set-off—Lessee and Mortgagee of Reversion — Action by Mortgagee for Rent — Counterclaim by Lessee for Damages against Lessor —Damages for Breach of Covenant in Building Agreement.]—The rule that an assignee of a *chose in action* can set off a claim for damages against the assignor arising out of the same transaction has no application as between a lessee and a mortgagee of the reversion. *Reeves* v. *Pope*, 83 L. J. K.B. 771; [1914] 2 K.B. 284; 110 L. T. 503; 58 S. J. 248—C.A.

The rule that a purchaser is bound by all the equities which a tenant in possession can enforce against the vendor only applies to an interest of the tenant in the land and does not therefore enable a lessee to set off against a mortgagee of the reversion suing for rent damages which the lessee claims against the lessor for breach of covenant in a building agreement. *Ib.*

Mortgage by Sub-demise — Concurrent Leases — Validity of Second Lease — Legal Term — Surrender — Not Applicable to Sub-demises of Leaseholds.]—A second mortgage by demise of leasehold premises for a term concurrent with that granted under a prior mortgage is not a mere equitable charge, but passes a legal term, which is an incumbrance for the discharge of which a formal surrender under seal is necessary. *Moore and Hulme's Contract, In re*, 81 L. J. Ch. 503; [1912] 2 Ch. 105; 106 L. T. 330; 56 S. J. 89—Joyce, J.

The term passed by a second mortgage by demise does not become a satisfied term under section 2 of the Satisfied Terms Act, 1845, when the money due under the mortgage is paid off without formal surrender. *Ib.*

Chattels—Inclusion by Mistake of Chattel not Owned by Borrower — Sale — Claim by Owner to Proceeds.] — A company became surety for a borrower, and he gave the company a charge on the proceeds of the sale of a number of pictures, which by mistake included a Vandyck. The Vandyck belonged not to the borrower, but to his wife, who did not know of the charge until after it had been executed. The pictures, including the Vandyck, were sold, and on the following day the borrower's wife claimed her picture. The company having gone into liquidation,—*Held*, that in the circumstances the liquidator was not entitled to retain the proceeds of the sale of the Vandyck. *Chaplin, Milne, Grenfell & Co., In re* (*No.* 2), 31 T. L. R. 279—Astbury, J.

III. INTEREST.

See also Vol. IX. 1467, 2486.

Interest in Arrear—Mortgagor Out of the Jurisdiction—Right of the Mortgagee to Re-enter.]—Where the interest upon a mortgage was in arrear and the mortgagor was in America, upon an application by the first

mortgagees under the Courts (Emergency Powers) Act, 1914, which was supported by subsequent mortgagees, the Court gave the applicants leave to go into possession of the mortgaged premises. *Coward & Co., In re*, 59 S. J. 42—Neville, J.

IV. ASSIGNMENT AND TRANSFER.

See also Vol. IX. 1483, 2489.

Transferee for Value without Notice — Negligence of Mortgagor — Fraud of Mortgagee — Equities as between Mortgagor and Transferee.]—A. a solicitor in 1897 mortgaged certain property to P. to secure 600*l.* In 1905 P. advanced a further sum of 317*l.* to A., and a new mortgage was executed for 917*l.* of the lands subject to the mortgage of 1897 and additional lands. This mortgage contained no reference to the mortgage of 1897, nor was the deed affecting that mortgage handed over to A., it being alleged by P. to have been lost. In 1907 P. transferred the 1905 mortgage to himself and H. as joint trustees of a trust fund by way of sub-mortgage to secure 1,500*l.*, the circumstances being such as to constitute P. and H. transferees for value. The principal sum of 917*l.* was then due under the mortgage of 1905, and H. had no notice of the mortgage of 1897. A. acted as P.'s solicitor in connection with the transfer, and approved of the transfer deed. In 1908 P. transferred the mortgage of 1897 to a bank, which subsequently realised the amount. The sub-mortgage of 1907 was afterwards transferred to H. and M., as the then trustees of the trust fund, and they instituted the present proceedings for a sale of the lands comprised in the mortgage of 1905, alleging that the sum of 917*l.* was due under the mortgage. A. claimed to be entitled to credit in respect of the moneys realised under the mortgage of 1897:—*Held*, that in consequence of A. having left the mortgage of 1897 outstanding in the hands of P., it was not open to A. to say that the whole amount secured by the mortgage of 1905 was not due. *Ambrose's Estate, In re*, [1913] 1 Ir. R. 506—Ross, J. Affirmed, [1914] 1 Ir. R. 123—C.A.

See also De Lisle v. *Union Bank of Scotland*, *post*, col. 1048.

V. MANAGEMENT AND ACCOUNT.

See also Vol. IX. 1491, 2493.

Order for Possession — Delivery of Possession by Mortgagor to Mortgagee—Exercise of Jurisdiction.]—The words "delivery of possession by the mortgagor" in Irish R.S.C. Order LV. rule 7 [corresponding to Order LV. rule 5A] are not to be read as merely ancillary to a sale ordered by the Court. The Court will in a proper case make an order for the delivery of possession of the mortgaged premises by the mortgagor to the mortgagee, apart from any proceedings for sale. *Semble*, such an order will not be made as a matter of course. *Bank of Ireland* v. *Slattery*, [1911] 1 Ir. R. 33—M.R.

Mortgagor in Possession—Receipt of Rent—Effect of Judicature Act, 1873, and Conveyancing Act, 1881.]—The principles laid down in *Moss* v. *Gallimore* (1 Dougl. 279) and *Rogers* v. *Humphreys* (5 L. J. K.B. 65; 4 Ad. & E. 299)—namely, that the rent payable under a lease bearing date anterior to a mortgage is only received by the mortgagor in possession by leave and licence of the mortgagee; that the mortgagee is the reversioner expectant on that lease, and if by going into possession he puts an end to the leave and licence under which the mortgagor collects and receives the rents he is entitled to the rent payable in respect of the mortgaged premises—have not been overruled or set aside by section 25, sub-section 5 of the Judicature Act, 1873, and section 10 of the Conveyancing and Law of Property Act, 1881. Those two provisions do not alter the rights of the parties as they were established at common law; all those sections do is to create a mode of procedure. *Ind, Coope & Co., In re; Fisher* v. *The Company*, 80 L. J. Ch. 661; [1911] 2 Ch. 223; 105 L. T. 356; 55 S. J. 600—Warrington, J.

Mortgagees' Right to Grant Licence to Work Minerals—Sale by Instalments.]—In the course of foreclosure proceedings, but before any order as to foreclosure had been made, mortgagees of a country estate containing deposits of peat valuable for a certain chemical process asked the Court to sanction a grant by them to a third party of an exclusive licence to work the peat for fifty years upon certain royalties. The mortgage was prior and not subject to the Conveyancing Act, 1911. The application was based on the ground that such a licence was in effect a series of deferred sales of part of the land and that the Court could therefore by virtue of section 25, sub-section 2 of the Conveyancing Act, 1881, in the exercise of its discretion, authorise such a transaction:—*Held*, that the Court had no power to sanction such a licence as proposed, and that the application must be refused. *Stamford, Spalding, and Boston Banking Co.* v. *Keeble*, 82 L. J. Ch. 388; [1913] 2 Ch. 96; 109 L. T. 310—Sargant, J.

Quære, however, whether under section 25 of the Conveyancing Act, 1881, the Court could not in its discretion direct a sale of minerals apart from surface, or *vice versa*. *Ib.*

—— Power to Grant Lease — Delivery of Counterpart to Mortgagee — Non-delivery — Effect against Lessee.]—Where a mortgagor in possession grants a lease, and fails to deliver a counterpart to the mortgagees, as provided by the Conveyancing Act, 1881, the failure to deliver does not invalidate the lease; and the same rule applies where the terms of the mortgage have given the mortgagor an extended power of leasing, unless a contrary intention appear in the mortgage deed. *Public Trustee* v. *Lawrence*, 81 L. J. Ch. 436; [1912] 1 Ch. 789; 106 L. T. 791; 56 S. J. 504—Swinfen Eady, J.

Rentcharge—Mortgagee not in Possession—Liability for Payment of Rentcharge.]—A mortgagee in fee of land is liable for the payment of a rentcharge issuing out of the land, notwithstanding that he has never been in

possession. *Cundiff* v. *Fitzsimmons*, 80 L. J. K.B. 422; [1911] 1 K.B. 513; 103 L. T. 811—D.

VI. PRIORITY OF ESTATES, DEBTS, AND INCUMBRANCES.

See also Vol. IX. 1535, 2497.

Misrepresentation by Mortgagor—Estoppel.]—Where a mortgagor makes false representations as to existing facts, relying on which a mortgagee lends him money, those who claim through the mortgagor for value, but with notice of the representations, are estopped from denying the truth of the representations, and must if possible make them good. *Gresham Life Assurance Society* v. *Crowther*, 83 L. J. Ch. 867; [1914] 2 Ch. 219—Astbury, J. Affirmed, 84 L. J. Ch. 312; [1915] 1 Ch. 214; 111 L. T. 887; 59 S. J. 103—C.A.

Trust for Sale—Power of Postponement—"Land"—Registration.]—An incumbrancer on a share of the proceeds of real estate in Yorkshire settled upon trust for sale, though with power to postpone, obtains no priority over other incumbrancers of such share by registering his mortgage deed, and the priorities of such incumbrances rank according to their respective notices to the trustees. This is so even though the land is in fact never sold. *Arden* v. *Arden* (54 L. J. Ch. 655; 29 Ch. D. 702) followed. *Ib.*

Conveyance of Portion of Mortgaged Lands "free from incumbrances"—Right of Indemnity — Notice — Indemnifying Lands Mortgaged without Notice—Right of Contribution.]—If the owner of lands A and B, on which a charge exists, conveys lands A for value, and gives a covenant that the lands are "free from incumbrances," the purchaser is entitled to throw the charge on lands B so long as lands B remain in the hands of the mortgagor or of volunteers under him, but the equity ceases on a conveyance of lands B to a purchaser for value without notice. *Ocean Accident and Guarantee Corporation* v. *Collum*, [1913] 1 Ir. R. 337—Ross, J.

The owner of lands A and B, subject to an annuity and a mortgage, conveyed lands A for value, with a covenant that the lands were free from incumbrances. He subsequently mortgaged lands B to a mortgagee without notice of the conveyance:—*Held*, that the mortgagee of lands B was entitled to make lands A contribute rateably with lands B towards the payment of the superior charges. *Ib.*

Mortgage to Bank to Secure Present and Future Advances—Subsequent Mortgage by Mortgagor "as beneficial owner"—Appropriation of Payments.]—Q. in 1894 mortgaged certain lands and a policy of assurance to a bank to secure all moneys then due or to become due, with interest. In 1897 he, "as beneficial owner," mortgaged the lands, but not the policy, to F. to secure 700*l.* and interest. F. had notice at the time of the prior mortgage to the bank. Notice of the mortgage to F. was given by F. to the bank on March 17, 1897, when a sum of 1,963*l.* was due by Q. to the bank, for which he had given them promissory notes payable three months after date. The bank continued the account with Q. as one unbroken account, instead of opening a fresh account. The notes had been originally given in 1895 and 1896, and were renewed from time to time down to 1903, and since remained unpaid. The practice had been that when the notes became due they were debited to Q.'s current account, were at once renewed, and the amount credited to the account. Subsequent to March 17, 1897, Q. paid into his current account in the bank 4,000*l.* in cash. His account with the bank was closed on June 30, 1904, and then shewed an overdraft due to the bank of 1,654*l.*, in addition to the amount due on the outstanding notes. Q. died in 1908:—*Held*, that the rule in *Clayton's Case* (1 Mer. 572) was not excluded by the conduct of the parties, and that F.'s mortgage had priority as against the lands to the bank's charge. *Chute's Estate*, *In re*, [1914] 1 Ir. R. 180—Ross, J.

On Q.'s death the bank received the amount of the policy moneys, and claimed to be entitled to apply them towards the discharge of the amount of the overdraft due on June 30, 1904, with interest, leaving the sum of 1,963*l.* and interest still charged on the mortgaged lands:—*Held*, that F. had the right to compel the bank to discharge *pro tanto* the debt due to them on March 17, 1897, out of the policy moneys, in exoneration of the lands subject to F.'s mortgage. *Ib.*

Reconveyance and New Mortgage without Notice of Intermediate Charge—Constructive Notice — Fraud — Registration.]—O. gave a first mortgage on his property to A., and a second mortgage on the same property to M., and a further third charge to A. A. pressed O. for payment, and he offered to sell the property to the appellant W., and she agreed to purchase it conditionally on being able to find some one to pay off the money due to A. The appellant F. agreed to advance sufficient to pay A. off on the security of a first mortgage on the property. O. did not disclose the existence of the charge in favour of M. The transaction was carried out by three deeds. By the first A. reconveyed the property to O. in fee-simple free from all incumbrances; by the second O. conveyed the property to W. in fee-simple free from all incumbrances; by the third W. mortgaged the property to the appellant F. All the deeds, including the mortgage to M., were duly registered in the Yorkshire Registry:—*Held*, that as the three latter deeds were framed in ignorance on the parts of W. and F. of the existence of the mortgage to M., and consequently no provisions were inserted to preserve A.'s priority for the benefit of W. and F., they would be entitled to invoke the assistance of a Court of equity in rectifying the deeds on the ground of common mistake; and in any case that neither O., nor any one claiming through him, could take advantage of his misrepresentations against them; and the provisions of the Yorkshire Registry Act, 1884, which gives priority to deeds according to date of registration, did not operate to assist M.'s claim to priority, which consequently failed. *Toulmin* v. *Steere* (3 Mer. 210) considered and distinguished. *Whiteley* v.

Delaney, 83 L. J. Ch. 349; [1914] A.C. 132; 110 L. T. 434; 58 S. J. 218—H.L. (E.)

Judgment of the Court of Appeal (81 L. J. Ch. 457; [1912] 1 Ch. 735) reversed. Judgment of Parker, J. (80 L. J. Ch. 696; [1911] 2 Ch. 448), restored. *Ib.*

Expectancy—Bankruptcy and Discharge of Mortgagor before Falling into Possession of Expectancy—Effect on Mortgage.]—In 1905 L. mortgaged to the defendants, the N. society, his then expectant share in the estate of his mother as security for an advance. In 1908 he mortgaged to the defendant A. his said expectant share, subject to the mortgage of 1905, as security for an advance. In 1908 L. was adjudicated a bankrupt, and in 1910 he obtained his discharge, neither the N. society nor A. having proved in the bankruptcy. In 1911 L., by deed as beneficial owner, assigned to the plaintiffs his said expectant share. In February, 1914, L.'s mother died intestate, and his share thereupon came into existence: —*Held*, by Warrington, J., and by the Court of Appeal, that the mortgages of 1905 and 1908 were not mere contracts to assign the then expectant share of L., but were actual assignments of that share directly it came into existence on the death of L.'s mother; that the rights of the N. society and of A. were not therefore discharged by their having failed to prove in the bankruptcy of L.; and that the N. society and A. were entitled in respect of the share in priority to the plaintiffs. *Thompson* v. *Cohen* (41 L. J. Q.B. 221; L. R. 7 Q.B. 527), *Cole* v. *Kernot* (41 L. J. Q.B. 221; L. R. 7 Q.B. 534*n.*), and *Collyer* v. *Isaacs* (51 L. J. Ch. 14; 19 Ch. D. 342) explained and distinguished. *Lind, In re; Industrials Finance Syndicate* v. *Lind*, 84 L. J. Ch. 884; [1915] 2 Ch. 345; 59 S. J. 651—C.A.

Contingent Interests—Advances by Trustee on Account of Contingent Share—Subsequent Assignee—Bound by State of Accounts.]—D. was entitled to a share of residue contingently on attaining twenty-five. During the contingency H., one of the trustees, made advances to D., who subsequently executed a mortgage to A., the money being lent without enquiry: —*Held*, that H. was entitled to recoup his advances out of the share in priority to A.'s mortgage. *Goddard, In re; Hooker* v. *Buckley*, 57 S. J. 42—C.A.

Negligence—Equitable Charge by Deposit —Subsequent Legal Mortgage—No Notice to Equitable Charge — Equitable Charge Paid off—Deeds Surrendered to Mortgagor—Deeds Subsequently Pledged.]—Title deeds of leasehold property were deposited at a bank as security. A legal mortgage was subsequently created, expressly subject to the equitable charge. No notice of the legal mortgage was given to the bank, with whom the deeds remained. The mortgagor subsequently discharged the prior equitable chargee with a cheque received from a solicitor who was the son of the legal mortgagee and who knew that part of the proceeds were to be so applied. The mortgagor without the knowledge of this solicitor obtained the title deeds from the bank and deposited them with the defendants as security without disclosing the legal mortgage. In an action by the representatives of the legal mortgagee to establish priority,—*Held*, that there had been no misconduct or negligence or want of caution for which the legal mortgagee was directly or indirectly responsible, and that, though the discharge of the prior mortgage and the recovery of the deeds by the mortgagor might have been due to the failure of the legal mortgagee to give notice of his incumbrance to the prior mortgagee, he was not bound to give any such notice, and this discharge therefore enured for the benefit of the legal mortgagee, who retained priority over the subsequent equitable incumbrance. *Grierson* v. *National Provincial Bank of England*, 82 L. J. Ch. 481; [1913] 2 Ch. 18; 108 L. T. 632; 57 S. J. 517; 29 T. L. R. 501—Joyce, J.

Demised Premises — Second Mortgagee — Right to Receive Rents and Profits — Receiver—Appointment not Notified to Tenant — Judgment against Mortgagor — Garnishee Summons on Tenant for Rent — Claim to Rent by Second Mortgagee — Payment into Court by Tenant—Issue between Execution Creditor and Second Mortgagee.]—The freeholder of a farm subject to a legal mortgage and let to a tenant executed a second mortgage thereon. The second mortgagee appointed a receiver, and notice of the appointment was given to the mortgagor, but not to the tenant. Execution creditors of the mortgagor having issued a summons in the County Court calling upon the tenant to shew cause why he should not pay to them a sum which was owing from him to the mortgagor for rent, the second mortgagee gave notice to the tenant to pay rent to him. No notice whatever was given by the receiver to the tenant. The tenant paid into Court the sum which was due from him for rent and obtained an order on the second mortgagee to appear as claimant and support his claim as against the execution creditors:—*Held* (Vaughan Williams, L.J., dissenting), that, as the notice for payment of rent had been given by the second mortgagee himself, and not by the receiver, the second mortgagee was not in possession and was not entitled to the rent; and that therefore the execution creditors were entitled to have the money in Court paid out to them. *Vacuum Oil Co.* v. *Ellis*, 83 L. J. K.B. 479; [1914] 1 K.B. 693; 110 L. T. 181—C.A.

VII. MARSHALLING.

See also Vol. IX. 1627, 2511.

Successive Charges on Both or One of Two Funds—Deficiency—Notice.]—B. was entitled to a first charge on two funds, "A" and "B," appearing on the final schedule of incumbrances affecting the purchase money of lands sold under the Land Purchase Acts. C. was entitled to a second charge on fund "B" only. B. subsequently took a further charge on funds "A" and "B"; and after that L. acquired a charge on fund "A" only.

Each had notice of all the prior charges. It appeared that if B.'s first charge were paid rateably out of both funds the residue of fund "B" would be insufficient to pay C.'s second charge in full:—*Held*, that C. was entitled to marshal B.'s first charge and to have so much of it paid out of fund "A" as would leave sufficient of fund "B" to pay his own second charge in full, notwithstanding the fact that L.'s puisne charge would be thereby prejudiced. *Archer's Estate, In re*, [1914] 1 Ir. R. 285—Wylie, J.

VIII. PAYMENT OFF, RECONVEYANCE, AND DEEDS.

See also Vol. IX. 1636, 2513.

Payment off—Reconveyance—Tender—Redemption Action — Interest and Costs.]—Where a mortgagee refused to hand over a reconveyance on tender of the money due, and subsequently the mortgagor paid the money with additional interest and mortgagee's costs under protest, the mortgagor, in a redemption action, was held entitled to recover the additional interest and costs, and the mortgagee was ordered to pay the costs of the action. *Rourke* v. *Robinson*, 80 L. J. Ch. 295; [1911] 1 Ch. 480; 103 L. T. 895—Warrington, J.

—— **Refusal of Mortgagee to Reconvey — Appointment of Master to Reconvey.**]—Where a mortgagee refuses, upon the payment off of the mortgage debt, to reconvey the mortgaged property, the Court may appoint a Master to execute the reconveyance on his behalf. *Holme* v. *Fieldsend*, 55 S. J. 552—Warrington, J.

Tender of Mortgage Debt — Obligation of Mortgagee to Transfer — Second Mortgage — Consent of Second Mortgagee — Company — Debentures.] — A mortgagee is not safe in transferring to the mortgagor or his nominee without the consent of puisne incumbrancers, of whose charges he has notice. Section 15 of the Conveyancing and Law of Property Act, 1881, and section 12 of the Conveyancing Act, 1882, have not altered the pre-existing rule in this respect. Statement of the law in *Fisher on Mortgages* (6th ed.), § 1978, p. 989, approved upon this point. *Magneta Time Co., In re; Molden* v. *The Company*, 84 L. J. Ch. 814—Neville, J.

Application for Lodgment of Title Deeds by Prior Mortgagee.] — A prior mortgagee having been served with notice of the order for sale of the mortgaged lands, the plaintiff—a puisne mortgagee—applied for an order that the prior mortgagee should lodge the title deeds in his possession in Court, and that they should be delivered to the plaintiff's solicitors. The prior mortgagee was willing to produce the deeds and let copies be taken pursuant to section 16 of the Conveyancing Act, 1881. No steps had been taken under the order for sale. The Court, having regard to the offer of the prior mortgagee, declined to make any order. *Armstrong* v. *Dickson*, [1911] 1 Ir. R. 435—M.R.

IX. REDEMPTION.

See also Vol. IX. 1663, 2516.

Notice Demanding Payment off — Tender after Expiration of Notice—Interest in Lieu of Notice—Interest until Actual Payment—Keeping Money Idle.]—Where a notice has been given requiring repayment of mortgage money, the mortgagor may, at any time, whether on or after the expiry of the notice, tender the money with interest to date of tender. If the time named in the notice has expired, the mortgagor need not give any further notice, or pay interest in lieu of notice. *Edmondson* v. *Copland*, 80 L. J. Ch. 532; [1911] 2 Ch. 301; 105 L. T. 8; 55 S. J. 520; 27 T. L. R. 446—Joyce, J.

If the mortgagor's tender is improperly refused, in order to avoid payment of interest thereafter until actual payment the mortgagor must either pay the money into Court, if there are any proceedings in which this can be done, or keep the money ready, and either make no profit on it, or, if he make a profit—for example, by obtaining interest on deposit—account for such profit to the mortgagee. *Bartlett* v. *Franklin* (36 L. J. Ch. 671; 15 W. R. 1077) explained and distinguished. *Ib.*

Transfer of Mortgage without Notice to Mortgagor—State of Accounts between Mortgagor and Mortgagee—Transfer of Stock to Mortgagee as Collateral Security—Fraudulent Pledge of Stock by Mortgagee—Mortgagor's Right to Redeem on Payment of Amount Due from Him.]—The plaintiff borrowed 4,000*l.* from his solicitor on a mortgage of a freehold property, and he also gave his solicitor 3,000*l.* debenture stock as collateral security. The solicitor was to obtain, and in fact obtained, the money from his bank. The solicitor fraudulently induced the plaintiff to execute a memorandum giving the stock to the bank as collateral security, not for the 4,000*l.*, but for all advances of the bank to the solicitor. The bank were unaware of this fraud. The solicitor subsequently, without the knowledge of the plaintiff, sub-mortgaged the land to the bank by way of equitable deposit to secure his own general indebtedness to the bank, which greatly exceeded 4,000*l.* The bank gave the plaintiff no notice at the time of this sub-mortgage. They subsequently obtained a legal transfer of the mortgage. They claimed to retain the debenture stock and also to hold the mortgage as full security for 4,000*l.* against the solicitor's indebtedness to them:—*Held*, that the transferee of a mortgage takes subject to the state of accounts between the mortgagor and mortgagee at the date when the mortgagor receives notice of the transfer, and that the plaintiff was therefore entitled to redeem the mortgage on payment of 1,000*l.*, being 4,000*l.* less the value of the stock transferred to the bank and retained by them against the solicitor's indebtedness to them. *De Lisle* v. *Union Bank of Scotland*, 83 L. J. Ch. 166; [1914] 1 Ch. 22; 109 L. T. 727; 58 S. J. 81; 30 T. L. R. 72—C.A.

Trustee Mortgagees—Legal Estate—Vesting Order—Tender of Principal, Interests, and

Costs of Reconveyance—Validity of Tender—Costs of Vesting Order—Costs of Action.]—The ordinary rule that a mortgagor must bear the costs of reconveyance involves the payment of the costs of a vesting order where, without such an order, the mortgagees are unable to make a good title. *Webb* v. *Crosse*, 81 L. J. Ch. 259; [1912] 1 Ch. 323; 105 L. T. 867; 56 S. J. 177—Parker, J.

A mortgagee is not guilty of misconduct so as to relieve the mortgagor of liability for interest or costs, merely because he transfers the mortgage debt, retaining the property subject to redemption as trustee for the person to whom the debt is transferred. *Ib.*

A tender of principal, interest, and costs by a mortgagor to a mortgagee, to be good, need not be such a tender as would afford a defence to an action at law. But where a tender is made conditional on the execution of a conveyance, a reasonable time must be allowed to obtain the execution of the conveyance, especially where the conveying parties are not the parties to whom the tender is made. *Ib.*

Trustees advanced trust moneys on the security of a mortgage in fee-simple of certain house property. Subsequently one of the trustees disappeared and could not be found. The remaining trustee appointed a new trustee to be co-trustee with him, and the appointment contained a vesting declaration, the effect of which was to vest the moneys secured by the mortgage and the right to receive the same in the appointor and the appointee, but to leave the legal estate still vested in the appointor and the trustee who had disappeared. The appointor and the appointee eventually gave notice to the mortgagor to pay the debt. Upon the mortgagor offering to redeem, questions arose as to who should bear the costs of the vesting order which would be necessary in order to get in the legal estate vested in the trustee who had disappeared. The mortgagor declined to pay for such an order, but tendered through his solicitors principal, interest, and costs. The tender was made by the mortgagor's solicitors to the managing clerk of the mortgagee's solicitor without previous appointment. The managing clerk had no authority to act in the matter and refused the tender:—*Held*, in a redemption action, first, upon the facts, that the tender was not good, and that interest on the mortgage debt did not cease to run in favour of the mortgagees as from the date of the tender; secondly, that the costs of the vesting order and of the action must be borne by the mortgagor, there being nothing which would justify the Court in varying the usual terms upon which a mortgagor is allowed to redeem. *Rourke* v. *Robinson* (80 L. J. Ch. 295; [1911] 1 Ch. 480) discussed and distinguished. *Ib.*

X. FORECLOSURE.

See also Vol. IX. 1708, 2519.

Order for Sale in Default of Payment—Default of Payment—Valuation of Mortgaged Property — Deficient Security — Foreclosure Ordered instead of Sale.]—In an action for foreclosure in which the mortgagor did not appear the Master certificated that a certain sum was due to the plaintiff under the memorandum of charge, and the usual order *nisi* was made fixing a day for payment by the mortgagor, and in default for sale of the mortgaged property and application of the proceeds of sale in payment of what was due to plaintiff. Default was made in payment of what was due on the day appointed. The plaintiff adduced evidence that the property was of less value than the amount certified to be due to him on the security of the mortgage, and asked for foreclosure instead of sale. The defendant had not appeared to the action, nor did he appear on this application:—*Held*, that, it not being for the benefit of either party that the costs of a sale or attempted sale should be incurred, foreclosure would be ordered instead of sale. *Lloyds Bank* v. *Colston*, 106 L. T. 420—Warrington, J.

Necessary Parties — Joint Mortgage of Shares in Estate — Each Co-mortgagor Primarily Liable for Part of Debt—Mutual Indemnities—Foreclosure Proceedings against one Mortgagor by Prior Mortgagee of His Share—Co-mortgagors Necessary Parties to Proceedings.]—A co-mortgagor, by way of collateral security, as distinguished from a mere surety by covenant, is a necessary party to foreclosure proceedings brought against the principal mortgagor by a prior mortgagee of the principal mortgagor's share in the mortgaged property. *Stokes* v. *Clendon* (3 Swanst. 150*n.*) followed. *Gee* v. *Liddell*, 82 L. J. Ch. 370; [1913] 2 Ch. 62; 108 L. T. 913—Warrington, J.

A, B, and C were entitled as tenants in common in equal shares to the residuary estate of a testator. In 1881 A mortgaged his share to X. In 1882 A, B, and C joined in a mortgage to Y to secure an advance to B. B alone covenanted to repay the money; but A, B, and C assigned their respective shares in the estate to the mortgagee, subject to a proviso for redemption by the three or any of them. The mortgage deed provided that as between A, B, and C and the respective premises mortgaged by them each should be primarily liable to the payment of a specified portion of the mortgage debt, and that each should accordingly contribute in those proportions towards the payment of the debt, and indemnify the others against payment of the portion in respect of which he was to be primarily liable. In 1884 X obtained a foreclosure order absolute in proceedings against A, to which B and C were not parties:—*Held*, that B and C were necessary parties to the foreclosure proceedings, and not having been made parties were not bound by them, though they were binding on A; and that the persons entitled to their shares were accordingly entitled to contribution from A's share in respect of the mortgage of 1882. *Ib.*

Right of Contribution—Sales of Parts of Share by Prior Mortgagee — Purchasers not Liable to Contribution.]—The executor of X assigned to purchasers shares in the premises comprised in the mortgage by A to X in 1881, retaining the remainder of the property:—*Held*, that the purchasers took the shares with-

out any deduction in respect of the contribution to which the holders of B's and C's shares in the testator's residuary estate were entitled. *Ib.*

XI. SALE.

See also Vol. IX. 1757, 2522.

Power of Sale — Duty of Mortgagees — Alleged Undervalue on Sale.]—The purchaser of mortgaged property sold under a power of sale is entitled, unless there is proof of fraud or collusion with the vendor, to the full benefit of his purchase unless the price is so low as in itself to be evidence of fraud or collusion or knowledge of the existence of facts which would invalidate the sale. *Haddington Island Quarry Co.* v. *Huson*, 81 L. J. P.C. 94; [1911] A.C. 722; 105 L. T. 467—P.C.

It is the duty of a mortgagee when realising the mortgaged property by sale to behave in conducting such realisation as a reasonable man would behave in the realisation of his own property, so that the mortgagor might receive credit for the fair value of the property sold. But such a doctrine recognises as a necessary corollary the right of the mortgagee to treat the reasonable expenses of such realisation as a deduction from the amount realised, and, indeed, unless that is done, the sale price does not truly represent the value of the property sold, because it is a sum which the owner could not have obtained for it without paying the necessary costs of realisation. *McHugh* v. *Union Bank of Canada*, 82 L. J. P.C. 65; [1913] A.C. 299; 108 L. T. 273; 29 T. L. R. 305—P.C.

Order for Sale of Lands—Service of Notice on Prior Mortgagee.]—Order XVI. rule 40, applies in the case of an order for sale of lands made in an action brought by a puisne mortgagee against the mortgagor for the sale of the mortgaged lands, and the Court has jurisdiction under this rule to direct the prior mortgagee to be served with notice of the order. *Armstrong* v. *Dickson*, [1911] 1 Ir. R. 435—M.R.

XII. RECEIVER.

See also Vol. IX. 1797, 2526.

Second Mortgagee's Action — Appointment of Receiver—Rents Paid to Receiver—Rights of First Mortgagee.]—When a receiver has been appointed by the Court in an action by a second mortgagee to which the first mortgagee was not a party, the receiver is entitled to the rents of the property until the first mortgagee intervenes. For this purpose mere notice by the first mortgagee to the tenants to pay rents to himself will not divest the possession of the receiver: application to the Court is necessary, and the receiver is entitled to retain as against the first mortgagee any rents received by him prior to the date of such application, although the tenants have already had notice to pay rent to the first mortgagee or a receiver appointed by him. *Thomas* v. *Brigstocke* (4 Russ. 64) and *Preston* v. *Tunbridge Wells Opera-House, Lim.* (72 L. J. Ch. 774; [1903] 2 Ch. 323), followed. *Yorkshire Insurance Co.* v. *Metropolitan Amalgamated Estates, Lim.*, 81 L. J. Ch. 745; [1912] 2 Ch. 497; 107 L. T. 545—Swinfen Eady, J.

XIII. COSTS.

See also Vol. IX. 1832, 2528.

Mortgagee's Costs—Realisation of Security — Surplus — Action for Account — Action in Nature of Redemption Action.]—The rule that a mortgagee is entitled by contract to the costs properly incident to a redemption action does not apply to an action for account against the mortgagee after he has realised his security by sale. *Tanner* v. *Heard* (23 Beav. 555) and *Charles* v. *Jones* (56 L. J. Ch. 745; 35 Ch. D. 544) followed. *Williams* v. *Jones*, 55 S. J. 500—Eve, J.

See also Webb v. *Cross*, *ante*, col. 1049.

MORTMAIN.

See CHARITY.

MOTOR CAR.

See WAY.

MUNICIPAL CORPORATION.

Elections.]—*See* ELECTION LAW.

Other Matters.]—*See* CORPORATION.

MURDER.

See CRIMINAL LAW.

MUSIC HALL.

See THEATRE.

MUTINY.

See ARMY AND NAVY.

NAME.

See COMPANY: TRADE NAME.

NATIONAL HEALTH.

See INSURANCE.

NATIONAL INSURANCE.

See INSURANCE.

NAVIGATION.

See SHIPPING.

NECESSARIES.

See INFANT; LUNATIC.

NEGLIGENCE.

I. NATURE OF ACT.

A. IN MANAGEMENT OF RAILWAY.

See also Vol. X. 31, 1662.

Sparks from Locomotive Engine—Negligent Use of Engine.]—In an action against a railway company for damages for personal injuries to certain children, it was alleged that while the children were standing on a railway platform the driver of the engine of a train, finding it necessary to put on steam while passing the platform, did so carelessly, unnecessarily, and unskilfully, in such volume that large quantities of live cinders and soot were driven from the funnel and fell upon the children, causing the injuries complained of. It was also alleged that the defenders or their servants were in fault in not having the funnel properly cleaned from time to time, and in not having a cage at the mouth of the funnel, or adopting other means to prevent such an occurrence:—*Held*, that the averments did not disclose a relevant case of improper construction, but did disclose a relevant case of improper use of the engine. *Gray* v. *Caledonian Railway*, [1912] S. C. 339—Ct. of Sess.

Passenger on Railway Platform Struck by Open Door of Train in Motion.]—The pursuer, while walking along one of the platforms of the defenders' station, was struck by an open door of a train which entered the station from behind her. The door, which had no handle on the inside, was on the side of the train which was next the platform only at the station of departure and at the station in question; at the ten intermediate stations the opposite side of the train had been next the platform. There was evidence to shew that the door was swinging open and that the compartment was empty when the train entered the station in question, but it was not proved how the door came to be open, or whether the compartment was occupied in the course of the train's journey. In an action claiming damages the jury found for the pursuer:—*Held*, first (*diss.* Lord Salvesen), that there was evidence on which the jury might infer negligence on the part of the defenders; and secondly, that the pursuer had not, as the defenders alleged, been guilty of contributory negligence in walking too near the edge of the platform. *Burns* v. *North British Railway*, [1914] S. C. 754—Ct. of Sess.

Collision—Trespasser.] — The respondent, being in the station of the appellant company, entered without leave or payment a car belonging to another company for the purpose of conveyance into the latter company's station. As he stood in a precarious position with one foot on the platform step a freight train of the appellants backed into the train on which he was standing, and he was thrown off the car platform and seriously injured:—*Held*, that, as the respondent was a trespasser both on the premises of the appellants and on the other company's train, he was not entitled to damages. *Grand Trunk Railway* v. *Barnett*, 80 L. J. P.C. 117; [1911] A.C. 361; 104 L. T. 362; 27 T. L. R. 359—P.C.

Level Crossing—Duty of Railway Company to Give Adequate Warning of Approaching Trains.]—A man while driving a horse and cart over a crossing on the defendants' railway—the crossing being habitually used for vehicular traffic to the knowledge of the defendants without hindrance by them—was killed by a train belonging to the defendants. The line curved before coming to the crossing, and at a point 183 yards above it there was a board directing engine drivers to whistle. A train travelling at twenty-five to thirty miles an hour would take about 12½ seconds from this point to the crossing. There were trees along the side of the line which prevented the signal being easily seen, and to some extent might prevent any one approaching the crossing from hearing a whistle. In an action against the defendants the jury found that the defendants had not provided sufficient safeguards for vehicular traffic, having regard to the character of the neighbourhood:—*Held*, that there was evidence justifying this finding. *Jenner* v. *South-Eastern Railway*, 105 L. T. 131; 75 J. P. 419; 55 S. J. 553; 27 T. L. R. 445—D.

—— **Railway Crossing Road — Omission to Give Warning—Injury to Foot Passenger.**]—A person passing from one side to the other of a street across which a railway passed on the level was injured by an engine belonging to the railway company. By the Canadian Railway Act, in the case of a train approaching a highway crossing on the level the duty is imposed of giving warning by whistling and the ringing of a bell. In an action to recover damages by the person who was injured the jury found that he had not taken sufficient precautions in crossing the track, and that the company's servants had not given warning of the approach of the engine:—*Held*, that to make the railway company liable it must be shewn that the omission to whistle or give the other warning, or both combined, and not the folly and recklessness of the person injured, caused the accident. *Grand Trunk Railway of Canada* v. *McAlpine*, 83 L. J. P.C. 44; [1913] A.C. 838; 109 L. T. 693; 29 T. L. R. 679—P.C.

Platform — Fog — Insufficient Lights — No Adequate Warning of Danger to Intending Passengers.]—The plaintiff sued the defendant company to recover damages for personal injuries sustained by her at one of their railway stations. She intended travelling from that station. The night was very foggy, and the lamps on the platform did not shew through the fog. While walking along the platform the plaintiff fell on to the rails and was injured. Several other people had fallen off the platform earlier on the same evening. The jury found that the accident was due to the negligence of the defendants:—*Held*, that the plaintiff was entitled to recover, as the circumstances imposed upon the defendants a duty to take all reasonable precautions to protect the plaintiff effectively from the dangers besetting all movement on the platform on the night in question, and that there was evidence which entitled the jury to find the defendants had failed to discharge the duty that rested upon them. *London, Tilbury, and Southend Railway* v. *Paterson*, 29 T. L. R. 413—H.L. (E.)

Company's Private Dock—Shunting Operations—Duty to Close Gates or Give Warning before Shunting Commenced.] — In a dock owned by a railway company three lines of rails connecting the quays with the main railway system crossed the road leading into the dock on the level at a point inside and opposite the dock gate. A seaman entered the dock by the gate, which was open, and attempted to pass between two waggons which were standing on the crossing. While he was doing so the waggons were shunted, and he was caught between the buffers and injured. In an action by him against the railway company, claiming damages, he averred that the defenders were at fault in neither shutting the gate nor giving warning before beginning to shunt the waggons:—*Held*, that there was no duty on the railway company either to shut the gate or to give warning before beginning to shunt the waggons, and action dismissed. *Clark* v. *North British Railway*, [1912] S. C. 1—Ct. of Sess.

Persons other than Passengers Permitted to be in Railway Station.]—A person who goes upon premises as a mere licensee is not there at his own risk if he suffers injury through the negligent act of the servants of the owner, committed in the course of their employment, after the licensee has entered the premises. So where a person, who had been permitted to go upon a railway platform to see friends off by a train, was injured through the fault of the station employees in starting a train without closing the doors, the railway company were held liable in damages. *Tough* v. *North British Railway*, [1914] S. C. 291—Ct. of Sess.

Duty towards Persons Using Company's Premises — Unfenced Bank — Horse Left Unattended.]—The duty of a railway company towards persons coming upon their premises as of right to do business with them is no higher than that of an occupier of private premises towards persons whom he invites to come upon them, being in both cases a duty to take reasonable care that the premises are reasonably safe for persons using them in the ordinary and customary manner and with reasonable care. *Norman* v. *Great Western Railway*, 84 L. J. K.B. 598; [1915] 1 K.B. 584; 112 L. T. 266; 31 T. L. R. 53—C.A.

The defendants were in occupation of a railway station, comprising a goods yard. As a person entered the yard there was on the right a wall, and backing against this wall, about sixty feet from the entrance, there was a weighing office for goods. Beyond the office the wall came to an end, and on that side of the yard there was an unfenced grass bank about seven feet high, sloping down to a culvert at the foot. On the left of the yard, opposite to the wall and the bank, was the railway line, the distance between the line and the top of the bank being about thirty-five feet. Goods having been consigned by the defendants' railway to the plaintiff, he sent his driver with a horse and cart to fetch

them, the driver having often been to the yard before and being well acquainted with it. The goods having been transferred to the cart from some trucks which were standing on the railway line at a point further from the entrance to the yard than the weighing office, the driver brought the horse and cart back to a point near the weighing office, and he left them there unattended while he went into the office for the purpose of signing for the goods. While he was in the office the horse backed the cart to the bank, and both of them fell over it, the horse being so badly injured that it had to be killed. The plaintiff brought an action against the defendants in the County Court, claiming damages for alleged breach of duty on the part of the defendants in not having fenced the bank, and at the trial, on proof of the above facts, the jury found for the plaintiff, and the Judge entered judgment for him. In the Divisional Court Bray, J., was of opinion that there was, and Lush, J., that there was not, evidence of a breach of duty on the part of the defendants, the result being that the judgment of the County Court Judge was affirmed :—*Held*, by the Court of Appeal, that there was no evidence of any breach by the defendants of the duty which they owed to the plaintiff, and that the decisions of the Courts below should be set aside and judgment entered for the defendants. *Ib.*

Decision of the Divisional Court (83 L. J. K.B. 669; [1914] 2 K.B. 153) reversed. *Ib.*

Child Straying on Line — Knowledge of Company—Leave and Licence—Liability.]—An infant two and a half years old, whose parents lived in a house close to the defendants' line, went on the main line of the railway and was injured. The jury found that the child got on the line through a fence separating the railway from a high road; that some of the railway servants knew that children were in the habit of playing on a pile of sleepers inside the fence, but did not know they were in the habit of getting on the main line; that the fence was not reasonably fit for separating the railway from the high road, having regard to the proximity of the houses; and that the children were in the habit of getting on to the pile of sleepers by the leave or licence of the defendants :—*Held*, that the leave and licence found by the jury did not extend to make the defendants liable for what happened to a child going beyond the pile of sleepers on to the line, and that judgment was rightly entered for the defendants. *Cooke* v. *Midland Great Western Railway of Ireland* (78 L. J. P.C. 76; [1909] A.C. 229) distinguished. *Jenkins* v. *Great Western Railway*, 81 L. J. K.B. 378; [1912] 1 K.B. 525; 105 L. T. 882—C.A.

B. In Driving Vehicles.

See also Vol. X. 43, 1664.

1. Tramways and Omnibuses.

Tramcar—Overcrowding—Precautions to be taken by Tramway Owners.]—On the occasion of a football match to be played in the suburb of B. the plaintiff boarded a tramcar of the defendants labelled "Linfield" (the football ground) "or Windsor Avenue." When the plaintiff took his seat on the top there was plenty of room, but as the car proceeded passengers continually got on, and the car became overcrowded. On reaching a stopping-place within a short distance of Windsor Avenue some passengers alighted, descending by the front steps to the motor man's platform, the collapsible gate by which it was guarded being then opened, and the step to the road being let down. As the car was approaching Windsor Avenue, the usual stopping-place for the Linfield grounds, the plaintiff rose from his seat, descended by the front steps, and told the motor man to go on, which he did, and the pressure of the descending crowd behind the plaintiff threw him off the car and he was severely hurt. At the trial the defendants, at the close of the plaintiff's case, asked for a direction, and did not offer any evidence or suggest any questions to be left to the jury. In answer to the questions left to them the jury found that the defendants should have expected that at Windsor Avenue, having regard to the overcrowding, passengers would leave the car hurriedly by the front platform: that they did not take proper precautions to prevent injury to any passengers so proceeding: and that it was by reason solely of failure to take such precautions that the injuries to the plaintiff occurred, it having been explained to the jury by the Judge that they should not find the last point in favour of the plaintiff if there was contributory negligence on his part: —*Held*, that the circumstances justified the verdict, and that the plaintiff was entitled to judgment thereon. *Pickering* v. *Belfast Corporation*, [1911] 2 Ir. R. 224—C.A.

—— **Failure to Stop when Insufficient Room to Pass Another Vehicle.**]—A was killed by being crushed between a truck, which he was pushing, and a wall, owing, as was alleged, to the negligent driving of one of the defendants' tramcars. The driver of the tramcar was going dead slow just before the accident, and it appeared that after the first part of the car had safely passed the truck A was pushing some one, who had a better opportunity than the driver of seeing whether there was room for the car to pass altogether, told the driver to go on, which he then did, with the result that A was crushed as above stated. In an action by A's widow under Lord Campbell's Act,—*Held* (Vaughan Williams, L.J., dissenting), that on these facts there was no evidence to go to the jury of negligence on the part of the defendants' tramcar driver. *Learer* v. *Pontypridd Urban Council*, 76 J. P. 31; 56 S. J. 32—H.L. (E.)

—— **Passenger Stepping Out from Behind Tramway Car without Looking.**]—A passenger who had alighted from a northward-bound car, and who had passed immediately behind it with the object of crossing to the further side of the street, was knocked down and injured by a southward-bound car at the moment when she reached the nearest rail of the line on which it was travelling. In an action for damages against the tramway com-

pany she admitted in evidence that she had not looked to see if any traffic was approaching from the north, but contended that the defenders were liable in respect that the driver of the southward-bound car had neither sounded his bell nor slowed down in passing the stationary car, as he was bound to do. The jury having returned a verdict for the pursuer, the Court set aside the verdict and gave judgment for the defenders, holding that, even on the assumption that the driver was to blame as alleged, the pursuer's evidence shewed that the accident was due to her own negligence in failing to take the ordinary precaution of looking for approaching traffic, it being clear that the southward-bound car must have been so close to the pursuer when she stepped into the danger zone that neither sounding the bell nor slowing down could have prevented the accident. *Dublin, Wicklow, and Wexford Railway* v. *Slattery* (3 App. Cas. 1155) distinguished. *Macleod* v. *Edinburgh and District Tramways Co.*, [1913] S. C. 624—Ct. of Sess.

—— **Statutory Duties and Powers — Latent Defect—Liability.**]—The plaintiff was a passenger on the outside of an uncovered tramway car belonging to the defendants, which was propelled by means of overhead electric traction. The wheel at the head of the trolly arm was detached from the electric wire and the trolly arm was plucked away from the standard at its socket and fell upon the plaintiff's head. Such an occurrence was extremely rare, and no contrivance had been discovered to prevent it. The system of electric traction adopted by the defendants was the best and most widely used; the apparatus on that particular car on which the accident occurred was in perfect order; and there was no negligence on the part of the defendants' servants. An action was brought by the plaintiff against the defendants claiming damages in respect of the injuries sustained by him. At the trial before Channell, J., and a special jury the learned Judge in his summing-up said that the plaintiff could only be entitled to recover damages if there was negligence on the part of the defendants in carrying him as a passenger; that the defendants were not insurers; and that they were bound to take every reasonable precaution that could be taken to secure the safety of their passengers, but not as insurers. The jury found for the plaintiff, but stated that no one of the alleged acts of negligence of the defendants was established to the satisfaction of the jury. The defendants applied for judgment or a new trial:—*Held (dissentiente* Farwell, L.J.), that the verdict of the jury shewed that the defendants discharged the burden which rested upon them, and that the only negligence was disproved notwithstanding the plaintiff's *prima facie* case. *Newberry* v. *Bristol Tramways and Carriage Co.*, 107 L. T. 801; 11 L. G. R. 69; 57 S. J. 172; 29 T. L. R. 177—C.A.

Per Cozens-Hardy, M.R.: As to the standard of care required in the case of a carriage of passengers, it is sufficient that the carrier should adopt the best-known apparatus, kept in perfect order, and worked without negligence by the servants he employed. If he does that he ought not to be responsible for the consequences of an extremely rare and obscure accident which cannot in a business sense be prevented by any known means. *Ib.*

Omnibus — Onus of Proof of Soundness — Defendants Liable in the Alternative—Nonsuit as against one Defendant—New Trial.]—An omnibus belonging to T. upset owing to a wheel being wrenched off by tramlines belonging to C., so that the plaintiff, a passenger, was injured. In an action against T. and C. in the alternative the Judge nonsuited the plaintiff as against T., and the jury found in favour of C., after evidence had been called by the plaintiff to prove that the omnibus was sound and that the accident was due to a defect in the tramline:—*Held*, that there was some evidence of negligent driving, and that the onus lay on T. to prove that the omnibus was sound, and that the attempt of the plaintiff to prove in the first trial that the omnibus was sound was no objection to granting him a new trial. *Lilly* v. *Tilling*, 57 S. J. 59—C.A.

2. Motor Cars.

Control of Owner—Responsibility for Damage.]—The defendant was the owner of a motor car which was being driven by his son. The defendant was not in the car, but his driver was sitting beside his son. A collision occurred between the defendant's car and a car belonging to the plaintiff owing to the negligent driving of the defendant's son. In an action for damage caused by the collision the defendant stated that he permitted his son to use the car, but never allowed him to go out without the driver:—*Held*, that there was evidence that the defendant was responsible for his son's negligence. *Reichardt* v. *Shard*, 31 T. L. R. 24—C.A.

Decision of the Divisional Court (30 T. L. R. 81) affirmed. *Ib.*

Collision—Plaintiff on Wrong Side of Road—Plaintiff Misled by Defendant's Failure to Shew Proper Light.]—A motor car was travelling at night on its proper—that is, the near or left—side of a country road, but, in contravention of the Motor Cars Order, 1904, without having a light burning upon the off or right side of the car. An approaching motor bicyclist, seeing only one light, mistook the car for a bicycle, and imagining that the dark mass of the car was a cart travelling in the same direction as himself, swerved into the middle of the road to enable him to pass the cart when he overtook it. In consequence of this manœuvre he collided with the motor car and was injured. When the collision occurred he was about three feet on his wrong side of the centre of the road. In an action at the instance of the motor bicyclist against the driver of the car,—*Held*, that the pursuer had not been guilty of contributory negligence, in respect that the error which he had committed in going over to the wrong side of the road had been induced by the fault of the defender in not having his off side light burning; and accordingly that the defender was liable in damages. *Pressley* v. *Burnett*, [1914] S. C. 874—Ct. of Sess.

—— **Car Diverging from Proper Side of Road to Avoid Oncoming Car—Contributory Negligence.**]—The driver of a motor car A. while driving along a road on his proper side—the north side—observed another car B coming towards him on the same side—that is, on its wrong side. The latter car continued on this side until the two cars were so close that the driver of A car was persuaded that a collision was unavoidable unless the course of one or other car was immediately altered; and, believing that the driver of B car did not mean to give way, he deflected his car towards the south side of the road. At the same moment the driver of B car also deflected his car from the north side of the road, and thereupon the two cars collided on the southern portion of the road :—*Held*, that the collision was due to the fault of the driver of B car in continuing for so long on his wrong side of the road; and that the action of the driver of A car in leaving his proper side of the road immediately before the collision could not in the position of difficulty in which he was placed by the conduct of the driver of B car be deemed contributory negligence. *Wallace* v. *Bergius*, [1915] S. C. 205—Ct. of Sess.

C. Dangerous and Defective Chattels.

See also Vol. X. 60, 1667.

Article Dangerous in Itself — Liability of Manufacturer for Injury to Person not Party to Contract.]—The plaintiff was injured by the explosion of a brazing lamp manufactured by the defendants and by them supplied to a retail dealer from whom it was purchased by the plaintiff :—*Held*, that the question of whether the lamp was an article dangerous in itself so as to impose a duty upon the defendants in regard to it to a person to whom they supplied it or into whose hands it came was a question of law for the Judge and not of fact for the jury. *Blacker* v. *Lake and Elliot*, 106 L. T. 533—D.

Per Lush, J.—The manufacturer of an article dangerous in itself has a duty to the person to whom he supplies it to warn him of its character, and a breach of that duty may render him liable to the recipient, or to a third person into whose hands he ought to contemplate it may come, if he is injured whilst using it. *Ib.*

The manufacturer of a dangerous article, the nature of which he has disclosed or the danger of which is apparent on the face of it, is under no obligation to a third person who is injured owing to its imperfect manufacture. *George* v. *Skivington* (L. R. 5 Ex. 1) dissented from. *Ib.*

Defective Ginger-beer Bottle—Bottle Purchased from Retailer — Injury to Purchaser through Bursting of Bottle — Liability of Manufacturer of Ginger Beer in Absence of Knowledge of Defect in Bottle—Defect Discoverable by Exercise of Reasonable Care and Skill.]—The defendants, who were manufacturers of ginger beer, sold a bottle of ginger beer to a shopkeeper, who re-sold it to the plaintiff. The bottle, which had been purchased by the defendants, was defective, but the defendants when they sold it had no knowledge of the defect. The plaintiff, who was injured through the bursting of the bottle when it was being opened, brought an action against the defendants in which the jury found that the accident was caused by the defect in the bottle; that the defect was not a latent defect which could not have been discovered by the exercise of reasonable care and skill, and that the defect was owing to the negligence of the defendants :—*Held*, that as the defendants had in fact no actual knowledge of the defect in the bottle they were not liable, notwithstanding that such defect was discoverable by the exercise of ordinary care. *White* v. *Steadman* (82 L. J. K.B. 846) distinguished. *Bates* v. *Batey & Co.*, 82 L. J. K.B. 963; [1913] 3 K.B. 351; 108 L. T. 1036; 29 T. L. R. 616—Horridge, J.

Poisonous Cattle Dip—Wrong Quantity on Labels.] — The appellants, who owned an estate in South Africa, ordered from the respondents, who were chemists and druggists, 5 cwt. of arsenite of soda for the purpose of dipping cattle, and it was delivered in ten drums, on which were labels with the word "Poison," and the statement that the tin contained 8½ lb. of 80 per cent. arsenite of soda, and that the whole contents of the tin were to be dissolved in 400 gallons of water to make the dip. Each drum in fact contained 56 lb. of arsenite, and the labels were meant for tins and not for drums. The manager of the appellants' estate, after communicating with the respondents, believed that each drum contained only 8½ lb. of arsenite, mixed with something else, and the whole of the contents of the ten drums were placed in 4,350 gallons of water. The dip so made was too strong and some of the appellants' cattle were killed and others injured. In an action by the appellants against the respondents for negligence the respondents denied negligence and pleaded contributory negligence. The Judge at the trial found in favour of the appellants :—*Held*, that there was evidence on which the Judge could reasonably so find. *British Chartered Co. of South Africa* v. *Lennon, Lim.*, 31 T. L. R. 585—P.C.

Misdelivery of Dangerous Article—Failure of Consignee to Notice Error — Liability of Carrier.]—A steamship company, which had received for carriage two barrels of paraffin oil consigned to a shopkeeper, negligently delivered along with them a third barrel containing naphtha, which had been consigned to some one else. All three barrels were similar in appearance, but each had stencilled on one end a notice of its contents. The barrels were delivered at the shopkeeper's store to one of his assistants, who did not know how many barrels had been ordered, and who receipted the entry in the carrier's delivery book, in which all three barrels were stated to contain paraffin. The assistant without noticing the stencilling on the barrels, and believing them to contain paraffin, placed them in the store. It was not brought to the notice of the shopkeeper that three barrels had been delivered. More than three weeks after the delivery of the barrels one of the assistants,

desiring to obtain paraffin, went to the store with a lighted candle and tapped the barrel of naphtha, whereupon an explosion ensued, which destroyed the store and its contents. In an action of damages at the instance of the consignee against the carriers the Court, repelling a plea of contributory negligence, *held* that the defenders were liable for the loss occasioned to the pursuer through the explosion. *Macdonald* v. *Macbrayne, Lim.*, [1915] S. C. 716—Ct. of Sess.

Lift Accessible to and Allowed to be Operated by Members of the Public — Accidents to Children.] — A father brought an action of damages against a railway company in respect of injuries sustained by his son, a boy of seven years of age, on a lift in one of the defenders' stations. The pursuer averred that the lift was used for the purpose of conveying luggage and goods between two levels of the station; that it was open to the public; and that, in the knowledge and with the acquiescence of the defenders' servants, members of the public were in the habit of going on the lift and of operating it, and boys were in the habit of going up and down therein for their own amusement; that on the occasion of the accident the lift was being used by a message boy on the invitation of one of these servants, for the purpose of delivering a parcel; that the pursuer's son entered the lift when it was being so used, and his foot, owing to the construction of the lift, was caught and crushed between the platform of the ascending lift and the stationary floor of the level which it was approaching. He further averred that the lift was a trap or dangerous attraction to children, and that the defenders had neglected the duty of insuring that the public had no access to the lift or to its operating mechanism, and of preventing the use of it by others than their own servants. There was no averment that the construction of the lift was of an unusual character:—*Held* (Lord Skerrington dissenting), that the pursuer had failed to make any relevant averment of fault against the defenders, and action dismissed. *Wilson* v. *Glasgow and South-Western Railway*, [1915] S. C. 215—Ct. of Sess.

D. Dangerous Premises.

See also Vol. X. 62, 1669.

Control of Premises—Duty towards Children Using.]—*Per* The Lord President: The duty of one having the control of premises is the same towards children as towards adults. *Grant* v. *Fleming & Co.*, [1914] S. C. 228—Ct. of Sess.

Trap — Liability of Occupier.] — If an occupier of premises allows a man to come there to do work in which the occupier is interested, and the man is unacquainted with the existence of a hatchway, which, owing to the darkness, he cannot see, the occupier is bound either to give him reasonable notice of the danger or to fence the hatchway so as to render it harmless. *Dickson* v. *Scott, Lim.*, [1914] W.C. & I. Rep. 67; 30 T. L. R. 256—C.A.

Boarding-House Keeper—Goods of Guest—Theft.]—It is the duty of a boarding-house keeper to take reasonable care that the door of the premises should be kept shut, in order to prevent the entry of thieves, but such duty does not amount to a guarantee that the door will be kept shut. *Paterson* v. *Norris*, 30 T. L. R. 393—Lord Coleridge, J.

Heap of Stones Deposited by Landowner—Injury to Infant from—Infant Mere Licensee on Land—Non-liability of Landowner.]—A landowner who allows persons, whether adults or children, to come on to his land is not liable for an accident which happens to one of them there unless the coming on to the land was the result of allurement or invitation, or unless the accident was due to something in the nature of a concealed trap or to something dangerous and outside the ordinary use of the land which the landowner brought on to it without warning the licensee. *Latham* v. *Johnson*, 82 L. J. K.B. 258; [1913] 1 K.B. 398; 108 L. T. 4; 77 J. P. 137; 57 S. J. 127; 29 T. L. R. 124—C.A.

A child of two and a half years of age came unaccompanied on to land belonging to the defendants, who were aware that children were in the habit of coming there to play. Whilst on the land the child was injured by the fall of a stone from a heap of stones deposited there by the defendants:—*Held* (reversing the decision of Scrutton, J.), that the child was not entitled to recover damages from the defendants for negligence. The child was at most a mere licensee, while the use of the land by the defendants had been perfectly normal, and the heap of stones did not constitute a trap. *Cooke* v. *Midland Great Western Railway of Ireland* (78 L. J. P.C. 76; [1909] A.C. 229) explained and distinguished. *Ib.*

Street Lighting — Lamp Extinguished — Accident — Local Authority — Whether Negligent.]—The plaintiff, a taxi-cab driver, was driving his cab at night along a street which was under the control of the defendants, who were a borough council, and the cab collided with a refuge and was damaged. The refuge was generally lighted by a lamp controlled by a lighting company, but in an action by the plaintiff against the defendants for negligence the Judge found that though at the time of the accident the lamp was out, there was nothing to shew how it came to be extinguished, and that there was no evidence of negligence on the part of the defendants or of the lighting company:—*Held*, on appeal, that on the facts there was evidence to justify the Judge's finding. *Brown* v. *Lambeth Borough Council*, 32 T. L. R. 61—D.

Building Contractor — Permission to other Tradesmen to Use Scaffolding — Accident to other Tradesman's Employee—Whether Contractor Liable.]—The defendants entered into a contract with the London County Council to rebuild a school, and were to provide the plant and afford to any other tradesman employed by the Council the use of the scaffolding for his own purposes, the defendants having control of the premises and

plant. The plaintiff, who was a hot-water engineer and was not in the defendants' employment, was engaged on the premises in fitting heating apparatus, and when using a gangway erected by the defendants fell and was injured. In an action by the plaintiff against the defendants for negligence, the jury found that the defendants were negligent in the mode in which the gangway was constructed, and that the negligence caused the accident. It was admitted for the plaintiff that there was no concealed trap:—*Held*, that the defendants were under no duty to the plaintiff to provide a gangway which was safe and were in the position of mere licensors, and therefore the plaintiff could not recover. *Elliott* v. *Roberts & Co.*, 32 T. L. R. 71—Lush, J.

Highway—Cattle on—Open Gate—No Evidence as to by Whom Opened—Burden of Proof.] — The plaintiff was riding on a bicycle at 10.30 P.M. along a highway adjoining a field in which the defendant kept a hundred cows. The field in question communicated by a gate with the highway, and at the time when the plaintiff was passing the gate was open, and she saw some cows coming through it. A little further along were other cows which had come from the field, some of which threw the plaintiff down and injured her. At the trial no evidence was given as to by whom the gate had been opened. The learned Judge held that, in the circumstances, the fact that the defendant's gate was open and that his cows had strayed on to the road through the open gate and had caused the accident to the plaintiff afforded evidence of negligence, and that it was for the defendant to displace this evidence by shewing that the gate was not left open by reason of any negligence on his part or on that of his servants. Upon the evidence he held that the defendant had not displaced this *prima facie* case, and gave judgment for the plaintiff for 75*l*.:—*Held*, that there was no evidence upon which the County Court Judge could find that the defendant either by an act of his own, or by the neglect of a duty which he owed to the public, produced an obstruction of the highway by his cattle, and that judgment therefore should be entered for the defendant. *Ellis* v. *Banyard*, 106 L. T. 51; 56 S. J. 139; 28 T. L. R. 122—C.A.

—— **Horse Straying—Damage to Cyclists—Obligation of Owner or Occupier of Land Adjoining Highway.**]—A young horse which had been placed by the defendant in a field adjoining a highway escaped owing to a defective hedge and strayed upon the highway. The plaintiffs were riding a tandem bicycle along the highway, and on seeing the horse they slowed down, but the horse turned round suddenly and ran across the road, coming in contact with the bicycle. The horse fell down, and then, jumping up, lashed out and injured one of the plaintiffs and damaged the bicycle. In an action for damages by the plaintiffs the learned County Court Judge found that there was no evidence that the horse was vicious or in the habit of trespassing or attacking bicycles or any one upon the high road. He also found that the defendant was guilty of negligence in turning the horse into a field of which the hedges were defective, but that, as the act of the horse was not one which it was in the ordinary nature of a horse to commit, the defendant was not liable:—*Held*, that the injury to the plaintiffs not being the natural consequence of the defendant's negligence, if any, the plaintiffs were not entitled to recover. *Jones* v. *Lee*, 106 L. T. 123; 76 J. P. 137; 56 S. J. 125; 28 T. L. R. 92—D.

Per Bankes, J.: The learned County Court Judge was wrong in law in holding that there had been negligence on the part of the defendant in turning the horse into a field with defective hedges, inasmuch as at common law there is no duty on the owner or occupier of land adjoining the highway to keep his animals off the highway. *Ib.*

—— **Fence—Inadequacy—Sheep Straying on Highway—Collision with Motor-cab—Damage to Cab.**]—Some sheep belonging to the defendant, owing to an inadequate fence, strayed out of a field in his occupation on to a highway, and when the plaintiffs' motor-cab was being driven along the highway, in daylight, at sixteen to twenty miles an hour, one of the sheep dashed out suddenly from the side of the road and collided with the steering apparatus, the result being that the cab was overturned and damaged. In an action by the plaintiffs against the defendant to recover the amount of the damage the Judge at the trial held that the defendant was liable on the ground either of negligence or of a nuisance:—*Held*, that, assuming there to have been evidence of negligence or of a nuisance, nevertheless it was not the proximate or effective cause of the damage, and the damage was not its natural consequence, but the cause was either the driver's failure to avoid the sheep or an act of the sheep which the defendant, as a reasonable man, would not anticipate, and therefore the defendant was not liable. *Heath's Garage, Lim.* v. *Hodges*, 32 T. L. R. 134—D.

—— **Sheep—No Light at Night.**]—There is no rule of law that to drive sheep along the highway at night without a light is a negligent act. *Catchpole* v. *Minster*, 109 L. T. 953; 12 L. G. R. 280; 30 T. L. R. 111—D.

—— **Employment of Independent Contractor—Whether Principal Liable.**]—The appellants, who were the freeholders of a tied public house which was in the occupation of a tenant, engaged a contractor to deliver beer at the house. The contractor's man raised the cellar flap, which was in the highway, and the respondent fell into the cellar while the beer was being put into it. In an action by the respondent against the appellants and against the tenant to recover damages for negligence judgment was given against both defendants:—*Held*, on an appeal by the freeholders, that they were not liable, as they employed the contractor merely to deliver the beer and not to interfere with the highway by opening the cellar flap, and he could have delivered the beer through the door if the

tenant had so wished. *Wilson* v. *Hodgson's Kingston Brewery Co.*, 32 T. L. R. 60—D.

—— **Leaving Steam-lorry in Road — Intentional Interference by Stranger — Accident — Evidence of Negligence—Proximate Cause.**]—The defendants were the owners of a Foden steam lorry, and they used it for delivering beer at a public house. Three men travelled with the lorry, and they left it on the road in such a condition that it could not be set in motion without removing the safety pin and manipulating the gear, reversing, and starting levers. While the men were absent for a few minutes and were engaged in putting the beer in the cellar, a soldier climbed on the lorry and by pulling three levers succeeded in putting it in motion, with the result that the plaintiff was injured. In an action by the plaintiff against the defendants for negligence, the Judge decided in the plaintiff's favour :—*Held*, on appeal, that it was no negligence to leave upon the road a machine which would not move unless some one intentionally interfered with it, and consequently there was no evidence of negligence, and that even if there was negligence it was not the proximate cause of the accident, and therefore the defendants were entitled to judgment. *Ruoff* v. *Long & Co.*, 32 T. L. R. 82—D.

Repair of Gas-pipe — Unguarded Fire.]—The defendants, who were a gas company, were repairing a gas-pipe in a highway, and for this purpose they had, on land immediately adjacent to the highway and accessible to the public, a fire over which there was a ladle containing molten lead. Children were playing about the road, and an employee of the defendants was usually beside the fire and kept them away from it, but he went for a moment to help the other men in a trench, and a boy who was passing spilled the lead accidentally and it burned the plaintiff, a little girl, who was playing close by. In an action by the plaintiff against the defendants the Judge found that the defendants were negligent in leaving the fire unguarded, and he awarded the plaintiff damages :—*Held*, on appeal, that there was evidence to support the Judge's finding. *Crane* v. *South Suburban Gas Co.*, 85 L. J. K.B. 172; 32 T. L. R. 74—D.

Door in Garden Wall Opening Outwards on to Street—Injury to Person on Street.]—In an action of damages against the magistrates of Edinburgh and against the proprietors of a tenement (which was let to tenants) in the city, the pursuer averred that while he was proceeding along a street which adjoined the garden wall of the tenement a door in the wall was suddenly opened outwards on to the street and struck him in the face, causing him serious injuries; that the door as constructed formed an obstruction to the street; and that it constituted a grave danger to the public and a danger which was obvious to both defenders. He averred fault against the proprietors for having on their premises a door of this dangerous construction, and he averred fault against the magistrates in failing to remove this dangerous obstruction to the street, which he alleged they had power to do under certain specified statutes :—*Held*, that the pursuer had not stated a relevant case against either defenders in respect (1) that having a door opening outwards upon a street did not *per se* infer negligence on the part of the proprietors, and there were no averments of special circumstances—such as previous accidents—to raise a case of negligence with regard to this particular door; and (2) that the statutes did not apply so as to make the magistrates liable. *Evans* v. *Edinburgh Magistrates*, [1915] S. C. 895—Ct. of Sess.

Ice on Foot Pavement — Overflow from Public Fountain — Responsibility of Road Authority.]—A person was injured from the effects of a fall on ice which had formed on the foot pavement opposite a public fountain under the defenders' control. It was averred that the ice was caused by an overflow from the fountain, but there was no allegation that there was a structural defect in the fountain, or that the defenders knew or ought to have known of the overflow, and had neglected to remedy it :—*Held*, that the pursuer's averments were irrelevant. *Dictum* of Pigott, B., in *Shepherd* v. *Midland Railway* (25 L. T. 879) approved. *O'Keefe* v. *Edinburgh Corporation*, [1911] S. C. 18—Ct. of Sess.

Pavement — Defect in — Opening in Pavement Covered by Metal Disc—Liability of Proprietor of Disc — Liability of Road Authority.]—A woman, while walking on the foot pavement of a public street in A., in front of P. & W.'s property, placed her foot on a metal disc in the pavement covering an opening into a cellar, with the result that the disc tilted, and her leg was caught in the opening and injured. The tilting of the disc was due to the worn condition of the bevel in the flagstone of the pavement on which it rested. The disc was the property of P. & W., and the opening which it covered led into their cellar. Under certain local Acts P. & W. were bound to keep the covering of the opening in repair, but the pavement was vested in the town council and could not be altered without their consent or other lawful authority. In an action of damages by the injured woman against the town council and against P. & W.,—*Held*, first, that the town council being bound to keep the pavement in a safe condition for the public, and having failed to do so were liable to the pursuer; but secondly, that P. & W. were not liable, as they had no control of, and could not interfere with, the pavement. *Laing* v. *Paull & Williamsons*, [1912] S. C. 196—Ct. of Sess.

—— **Defective Stopcock Box—Obligation of Water Board.**]—Section 8 of the Metropolitan Water Board (Charges) Act, 1907, is not retrospective in character. The plaintiff caught her foot in a stopcock box in a street outside a house, and fell and sustained injuries. The stopcock box in question, which had been constructed by the defendants' predecessors, was connected with the communication pipe which carried the supply of water from the defendants' main to the house outside which the accident occurred :—*Held*, that section 8 of the Metropolitan Water

Board (Charges) Act, 1907, not being retrospective, the stopcock box was repairable by the defendants, and that, having become a source of danger, and the plaintiff having been injured thereby, the defendants were liable. *Batt* v. *Metropolitan Water Board*, 80 L. J. K.B. 521; [1911] 1 K.B. 845; 104 L. T. 385; 9 L. G. R. 307; 75 J. P. 174; 55 S. J. 330; 27 T. L. R. 258—D. Reversed, *post*, WATER.

The plaintiff was injured by catching her foot in one of the defendants' stopcock boxes placed in the pavement. In an action claiming damages in respect of those injuries it was proved that it was the practice of the defendants to fill up the space between the top of the stopcock and the pavement with a wisp of straw. The instructions of the defendants were that the whole of the boxes should be re-wadded when necessary three times a year. At the time of the accident to the plaintiff there was no proper wisp of straw over the stopcock, and on the evidence the Judge came to the conclusion that a sufficient wisp of straw had not been put in on the last occasion when the stopcock box was dealt with by the defendants:—*Held*, that the plaintiff was entitled to recover, inasmuch as the stopcock box was in fact dangerous through not having the protection which the public had become accustomed to expect, due to the failure of the defendants to put a sufficient wisp of straw in the hole. *Held*, further, that there was a duty on the defendants to keep the plugging of the stopcock box in order. *Rosenbaum* v. *Metropolitan Water Board*, 103 L. T. 284; 8 L. G. R. 735; 74 J. P. 378; 26 T. L. R. 510—Channell, J. New trial ordered, 103 L. T. 739; 75 J. P. 12; 9 L. G. R. 315; 27 T. L. R. 103—C.A.

School Playground — Leaving Dangerous Material Unguarded in—Injury to Scholar—Liability of Education Authority and Contractor.]—A contractor, who was to carry out certain repairs at a public elementary school, left a quantity of rough stuff composed of sand and lime in a truck in a corner of the school playground. The headmaster of the school gave instructions to the school caretaker to have the stuff removed, as he considered it was dangerous, and the caretaker telephoned to the contractor asking him to remove it. The stuff, however, was not removed. When the boys came out of school the stuff was left unguarded, and one of the boys threw a portion of the stuff at the plaintiff, who was also a scholar at the school, injuring his eye. In an action by the plaintiff against the education authority and the contractor for damages,—*Held*, that there was evidence upon which the jury could find that both the education authority and the contractor had been guilty of negligence. *Jackson* v. *London County Council*, 10 L. G. R. 348; 76 J. P. 217; 56 S. J. 428; 28 T. L. R. 359—C.A.

Public Fountain in Highway—Unsafe Condition of.]—Whilst a procession was passing through a street a man climbed on to a public fountain, and in doing so dislodged the top stone, which fell on to the plaintiff and injured him. In an action by the plaintiff against the defendant corporation, to whom the fountain belonged, claiming damages, there was conflicting evidence as to the condition of the fountain at the time of the accident, and the jury found for the plaintiff. On an application by the defendants for a new trial,—*Held*, dismissing the application, that the question was entirely for the jury. *McLoughlin* v. *Warrington Corporation*, 75 J. P. 57—C.A.

Rubbish Heap in Field Frequented by Public — Injury to Child.]—A child under three years of age was injured through her clothes becoming ignited in a fire burning upon a rubbish heap where the burgh rubbish or "coup" was deposited. In an action against the burgh the pursuer averred that this coup was situated in a grass field in the neighbourhood of his house and was not fenced off from the field nor was the field sufficiently fenced to exclude the public, who in fact used it as a public park, and that children were in the habit of playing upon the coup, all of which was known to the defenders. The pursuer further averred that it was the practice of the defenders, or of those for whom they were responsible, to collect and burn inflammable material upon the coup, and that this practice had been followed by rag-pickers, with the acquiescence of the defenders. The pursuer alleged fault on the part of the defenders, in respect that they had failed to fence the coup or field or to take other precautions to exclude the public therefrom, and had failed, the coup being unfenced, to watch and properly extinguish fires which might be lighted thereon:—*Held*, that these averments were irrelevant to found an issue against the defenders in respect, first, that it appeared therefrom that the defenders were not the owners of the field or coup, and had therefore neither the right nor the duty to fence them; and secondly, that the material which they put upon the ground was not dangerous in itself, but only became so when ignited, and there was no averment that the defenders, or those for whom they were responsible, had kindled the fire in question. *Lowery* v. *Walker* (80 L. J. K.B. 138; [1911] A.C. 10) distinguished. *Johnstone* v. *Lochgelly Magistrates*, [1913] S. C. 1078—Ct. of Sess.

Sun Blind in Front of Shop and Over Highway—Sun Blind Pulled Down by Mischievous Act of Two Trespassers—Injury to Passer-by — Liability of Occupier of Shop — Duty to Take Reasonable Precautions.]—The plaintiff was walking along a highway under a sun blind outside the defendant's shop, when two men jumped up from the pavement to one of the iron supports, which was seven feet six inches from the ground, and mischievously pulled the blind down on the defendant, with the result that he was injured. The blind was properly constructed and in a good state of repair. There was evidence that accidents of the kind had happened on other occasions to blinds of similar construction, the cause in each case being that some person jumped up to the iron support of the blind and pulled it down:—*Held*, that there was no evidence on which the Court could properly hold that there was a duty on the defendant to have the blind fixed and secured so as to prevent its being

brought down on the plaintiff by the action of the two men, and that the plaintiff was not therefore entitled to damages. *Wheeler* v. *Morris*, 84 L. J. K.B. 1435; 113 L. T. 644 —C.A.

Decision of the Divisional Court (84 L. J. K.B. 269) reversed. *Ib.*

Railway Company's Premises.] — *See* cases *ante*, cols. 1054-1057.

II. RELATIONSHIP OF PARTIES.

See also Vol. X. 71, 1675.

Shopkeeper and Customer — Cat Rearing Kittens Kept in Shop—Vicious towards Dogs —Owner of Dog Attacked—Duty of Owner of Cat to take Reasonable Care to Provide for Safety of Customers. —The plaintiff and her husband went into a tea shop belonging to the defendants, accompanied by a dog, with the defendants' permission or acquiescence. A cat belonging to the shop, which was rearing kittens, came out of a store room and attacked the dog. The plaintiff picked up the dog and handed it to her husband. The cat then sprang upon the plaintiff and bit her. The plaintiff brought an action claiming damages for the injury done to her and also for the injury done to the dog. The jury found that the cat had, to the knowledge of the defendant, whilst rearing kittens a disposition to attack a dog and a person holding a dog; that the cat attacked the dog unprovoked; and that the defendants had not taken reasonable precautions for the safety of their customers. On appeal by the defendants,—*Held*, that a cat did not cease to be a domestic animal and become dangerous to mankind merely because, when she had kittens, she attacked a dog and, by accident, a person who happened to be there; and secondly, that, though the defendants were under a duty to take reasonable care to provide for the safety of their customers, they were not liable for what happened, because it was not the ordinary consequence of their act in keeping a cat on the premises, and was not such as would have been foreseen by a person of ordinary sense and prudence. *Clinton* v. *Lyons*, 81 L. J. K.B. 923; [1912] 3 K.B. 198; 106 L. T. 988; 28 T. L. R. 462—D.

—— Article Left in Shop Found by Shop Assistant—Disappearance of Article—Breach of Rule as to Lost Articles.]—The plaintiff went to the defendants' shop on a Saturday to buy a coat. She was wearing a coat fastened with a diamond brooch, and she took the coat off and put it on a glass case with the brooch by the side of it. When leaving she forgot the brooch, and it was handed by an assistant to the shopwalker, who put it in his desk. On the following Monday morning it could not be found. By the defendants' rules it ought to have been taken to their lost property office. In an action by the plaintiff against the defendants for negligence the Judge at the trial found that the defendants had not exercised proper care, and he awarded the plaintiff damages:—*Held*, that there was evidence to support the Judge's finding. *Newman* v. *Bourne & Hollingsworth*, 31 T. L. R. 209—D.

Hospital—Unskilful Treatment of Patient—Liability of Hospital Authority.]—Apart from special contract the managers of a public hospital are not responsible to the patients whom they receive (whether paying or non-paying) for unskilful or negligent medical treatment, provided they have exercised due care in the selection of a competent staff. *Hillyer* v. *St. Bartholomew's Hospital Governors* (78 L. J. K.B. 958; [1909] 2 K.B. 820) followed. *Foote* v. *Greenock Hospital Directors*, [1912] S. C. 69—Ct. of Sess.

Unskilful Treatment by Doctor—Ground of Action.] — The ground of action in a claim for damages against a medical man for unskilful treatment is breach of his duty to his patient and not breach of contract with his employer. Accordingly, a married woman *held* to have a title to maintain such an action, although the medical man had been employed to attend to her by her husband and not by herself. *Edgar* v. *Lamont*, [1914] S. C. 277 —Ct. of Sess.

Death by Fire of Prisoner in Lock-up Provided by Municipality.]—M., the husband and father of the appellants, was arrested by a constable employed by the respondents, and placed in a cell in the lock-up, which was provided and maintained by the respondents. While the constable, who was also the gaoler, was absent from the lock-up, no one being then in the building except M. and another prisoner, a fire broke out, and M. died from suffocation. It appeared that the constable was absent in the performance of some of his other duties at the time the fire broke out. The appellants did not shew how the fire was caused or that any one could reasonably expect that a fire might take place. In an action by M.'s widow, son, and daughter, under Lord Campbell's Act, claiming damages from the respondents for the death of M.,—*Held*, that the action failed, as the appellants had not shewn any breach of duty on the part of the respondents which caused or contributed to the death of M. *McKenzie* v. *Chilliwack Corporation*, 82 L. J. P.C. 22; [1912] A.C. 888; 107 L. T. 570; 29 T. L. R. 40 —P.C.

Sale of Food Unfit for Human Consumption —Action against Medical Officer and Sanitary Inspector for Non-communication of Condition of Food.]—The plaintiff, who carried on business in Stepney, had consigned to him certain tins of corned beef from Glasgow as "rejects"—that is, food unfit for human food, and to be used only for feeding poultry. The Glasgow sanitary authorities notified the defendant T., who was the Stepney medical officer of health, as to the nature of the consignment, and T. communicated it to the defendant A., the Stepney sanitary inspector. The defendants did not see the plaintiff on the subject. The plaintiff having sold some of the corned beef for human food was convicted in respect thereof. In an action for damages against the defendants for negligence in

omitting to communicate to him the information received from Glasgow as to the condition of the corned beef :—*Held*, that the plaintiff had failed to establish any cause of action, and further, that as more than six months had elapsed since the alleged neglect of the defendants, the defendants were protected by the Public Authorities Protection Act, 1893. *Weir* v. *Thomas*, 79 J. P. 54—Darling, J.

Employment of Contractor — Liability of Principal—Dangerous Work on Building Adjoining Highway — Absence of Precautions against Danger to Public.]—By an agreement between a railway company and a firm of contractors the latter were to build a superstructure over the railway company's station, and were to have a ninety-nine years' lease of same. The new building, which adjoined a public street, required scaffolding and hoardings, which the contractors were to erect in such a way as should be reasonably approved by the railway company. A gantry was also necessary by means of which building materials might be raised to the top of the existing building, and this gantry could only be erected in a particular manner as provided by the agreement. During the progress of the building operations the plaintiff, while walking on the pavement outside the station, was injured by some timber falling on her from the building, and in respect of her injuries she sued both the railway company and the contractors. Neither of the defendants called any evidence as to how the timber fell. The jury found that the accident was caused by negligence, as there was not sufficient protection to the public on the footpath, and the Judge gave judgment against both defendants :—*Held*, on an appeal by the railway company, that the agreement created no relationship of principal and agent, that the railway company were mere reversioners, that that fact of their having a right to approve plans did not make them responsible for the gantry being defective, and that therefore they were not liable for damages. Decision of Scrutton, J. (29 T. L. R. 514), reversed. *Hurlstone* v. *London Electric Railway*, 30 T. L. R. 398—C.A.

III. ACTIONS FOR NEGLIGENCE.

A. Under Lord Campbell's Act.

See also Vol. X. 104, 1687.

Negligence Causing Death—Death of Child — Damages — Reasonable Expectation of Pecuniary Benefit.]—In order to sustain an action for damages under Lord Campbell's Act for the death of a child it is not necessary to prove actual pecuniary loss in the present, but only the reasonable expectation of pecuniary benefit if the child had lived. *Taff Vale Railway* v. *Jenkins*, 82 L. J. K.B. 49; [1913] A.C. 1; 107 L. T. 564; 57 S. J. 27; 29 T. L. R. 19—H.L. (E.)

The respondent's daughter, a girl of sixteen, then approaching the end of her apprenticeship to a dressmaker, was killed in an accident for which the appellants were liable. She was earning no money, but the evidence shewed that she might expect to earn 3*s.* or 4*s.* a week as a dressmaker's improver at the end of her apprenticeship, and later to earn substantial wages and possibly to establish herself in business. She also assisted her mother in a small business. The jury awarded 50*l.* damages to the father and 25*l.* to the mother. The appellant company appealed, and in the Court of Appeal, Vaughan Williams, L.J., was for dismissing the appeal, Farwell, L.J., for allowing it, and Kennedy, L.J., for ordering a new trial, and the appeal was dismissed. The House dismissed the appeal. *Ib.*

—— Loss of Wife's Services — Expenditure by Husband in Consequence — Damages.]—An action is maintainable under the Fatal Accidents Act, 1846, by a husband to recover damages for monetary loss incurred by him in replacing services rendered gratuitously by his wife, who has been killed through the negligence of the defendants' servants, there being reasonable ground for believing that such services, but for the death, would have been rendered gratuitously in the future. *Berry* v. *Humm & Co.*, 84 L. J. K.B. 918; [1915] 1 K.B. 627; 31 T. L. R. 198—Scrutton, J.

Osborn v. *Gillett* (42 L. J. Ex. 53; L. R. 8 Ex. 88) and *Clark* v. *London General Omnibus Co.* (75 L. J. K.B. 907; [1906] 2 K.B. 648) distinguished. *Taff Vale Railway* v *Jenkins* (82 L. J. K.B. 49; [1913] A.C. 1) applied. *Ib.*

Death by Railway Accident — Time for Bringing Action.]—An action under Lord Campbell's Act is a new action, not a suit for an indemnity for damages or injury sustained by the deceased person, and therefore the provision in section 60 of the British Columbia Consolidated Railway Company's Act, 1896, that "All actions or suits for indemnity for any damage or injury sustained by reason of the tramway or railway, or the works or operations of the company, shall be commenced within six months next after the time when such supposed damage is sustained" does not apply to proceedings under the Families Compensation Act, the provisions of which are identical with the English statute—the Fatal Accidents Act, 1846. *Markey* v. *Tolworth Joint Hospital District Board* (69 L. J. Q.B. 738; [1900] 2 Q.B. 454) disapproved. *British Columbia Electric Railway* v. *Gentile*, 83 L. J. P.C. 353; [1914] A.C. 1034; 30 T. L. R. 594—P.C.

Burden of Proof—Prisoner Burnt in Cell—No Evidence of Cause of Fire.]—In an action for damages by the widow and children of a man who was burnt to death in a lock-up from a fire which arose from an unascertained cause, —*Held*, that the burden of proof of negligence in the defendants lay upon the plaintiffs, and had not been discharged in the absence of proof that the death of the deceased was in any way attributable to, or materially contributed to by, any negligent act or omission on the part of the defendants. Rule as to burden of proof laid down by Lord Halsbury, L.C., in *Wakelin* v. *London and South-Western Railway* (56 L. J. P.C. 22; [1912] A.C. 888; 107 L. T. 570; 29 T. L. R. 40—P.C.

Apportionment of Damages Paid into Court under Fatal Accidents Act, 1846—Adult and Minor Plaintiffs.]—Where money is paid into Court under the Fatal Accidents Act, 1846, and accepted in full satisfaction by the plaintiffs, one of whom is a minor, the Court has jurisdiction to apportion the money between the adult and the minor plaintiff. *Davy* v. *Gray* (48 Ir. L. T. R. 32) followed. *Cleary* v. *London and North-Western Railway*, [1915] 2 Ir. R. 210—K.B. D.

B. In Other Cases—Damages.

See also Vol. X. 117, 1688.

Personal Injuries — Obligation not to Augment Consequences of Injuries.] — A person who is suffering from the effects of an accident, in respect of which he is claiming damages, is not entitled to do everything that an ordinary person might reasonably do. He need not act with perfect knowledge and ideal wisdom, but he cannot claim damages for such injuries as are really due to wanton, needless, or careless conduct on his own part. If, however, what he does, reasonably and carefully, augments the injuries, that may be regarded as a natural consequence of the accident. *Jones* v. *Watney, Combe, Reid & Co.*, 28 T. L. R. 399—Lush, J.

Joint Tortfeasors — Indemnity by One of Joint Tortfeasors.] — A contractor was employed by a district council to do certain work which involved an excavation by the side of a road. A person having fallen into this excavation and sustained injuries from which he died, his widow and daughter sued the contractor and district council under Lord Campbell's Act, claiming damages. The jury returned a verdict for the plaintiffs. The district council thereupon claimed that under the terms of the contract between them and the contractor they were entitled to an indemnity from him:—*Held*, that it was not against public policy that the district council should take an indemnity from the contractor and be allowed to enforce it against him, and therefore a declaration should be made that they were entitled to such indemnity, which should include the costs of the action. *Newcombe* v. *Yewen and Croydon Rural Council*, 29 T. L. R. 299—Darling, J.

NEGOTIABLE SECURITIES.

Holders for Value.]—H. received from the defendants bearer bonds to the amount of 20,000*l.* to use for a specific purpose. Instead of so using them H. employed them in his own business. On becoming aware that H. was financially involved the defendants claimed repossession of the securities, and they in fact received back securities of equivalent amount and of equivalent class although not the identical bonds originally handed by them to H. Some of these bonds were claimed by the plaintiffs:—*Held*, that as the defendants had a civil claim against H. for conversion, the defendants took the securities so received back from H. for value within the principle of the decision in *London and County Banking Co.* v. *London and River Plate Bank* (57 L. J. Q.B. 601; 21 Q.B. D. 535). The defendants lent money to H., a billbroker, on bearer securities to the value of 15,000*l.* That loan having been called in by the defendants, the latter, in accordance with the usual practice between bankers and billbrokers, handed back the securities to H. in exchange for his cheque for 15,000*l.* Ascertaining in the course of the same day that H. was financially involved and that his cheque would not likely be met at the end of the day, they claimed the return by H. of the securities, and they in fact received bearer securities to the value of 15,000*l.*, but not the identical securities they had returned to H. in the morning, although this was not known at the time. On receiving these documents the defendants returned to H. his cheque for 15,000*l.*:—*Held*, that as both parties knew and treated the cheque so returned by the defendants to be worthless, the defendants were not, as regards the securities for 15,000*l.* received back from H., holders for value. *Lloyds Bank* v. *Swiss Bankverein*, 107 L. T. 309; 17 Com. Cas. 280; 56 S. J. 688; 28 T. L. R. 501—Hamilton, J.

See S. C. in C.A., *ante*, Banker.

NEWFOUNDLAND.

See COLONY.

NEW SOUTH WALES.

See COLONY.

NEWSPAPER.

Right to Name.]—*See* Trade.

Covenant not to Comment on Particular Company.] — *See Neville* v. *Dominion of Canada News Co.*, *ante*, col. 339.

NEW ZEALAND.

See COLONY.

NOISE.

See NUISANCE.

NONCONFORMIST MINISTER.

See ECCLESIASTICAL LAW.

NOTARY.

Appointment — Faculty — Opposition — Clerk who has Served his Articles.] — An articled clerk who has served his articles, and is entitled to be admitted to practise as a notary, has the same right of opposition to an application for the appointment of an additional notary in a particular district as a notary who has been actually admitted. *Warwick* v. *Cochrane*. *Same* v. *Belk*, 32 T. L. R. 165—Master of Faculties.

NOVA SCOTIA.

See COLONY.

NUISANCE.

A. WHAT AMOUNTS TO.

1. Noxious or Offensive Trades, Works, or Things.

a. Generally.

See also Vol. X. 186, 1695.

Colliery — Coal Dust — Easement—Lease—Licence to Carry on Business but not to Commit Nuisance — Adjoining Property of Lessor Affected.]—Permission to carry on a business does not imply permission to carry it on in such a manner as to create a nuisance, unless it is proved either that the business authorised cannot possibly be carried on without committing a nuisance, or that some particular method of carrying it on has been authorised which necessarily results in a nuisance being committed; and if a nuisance has been committed it is no defence to say that the business was carried on in a reasonable manner, in the ordinary way in which such operations are usually carried on, without negligence. *Pwllbach Colliery Co.* v. *Woodman*, 84 L. J. K.B. 874; [1915] A.C. 634; 113 L. T. 10; 31 T. L. R. 271—H.L. (E.)

The appellant company occupied land under a lease by which they were licensed to carry on the industry and trade of miners on the demised land. The respondent occupied adjoining land under a lease of later date from the same lessor "subject to all rights and easements belonging to any adjoining or neighbouring property." The respondent erected buildings on his land, which he used in his trade as a butcher. The appellants afterwards erected buildings on their land, which they used for breaking and screening coal. The respondent complained that coal dust blew from the appellants' buildings and created a nuisance. In answer to questions a jury found that the coal dust was a nuisance to the respondent, but that the appellants' operations were carried on in a reasonable manner, and in the way in which such operations were usually carried on in the district, and that there was no negligence on their part:—*Held*, that the appellants' lease did not authorise them to carry on their business in such a way as to create a nuisance, and that a claim to be entitled to allow their coal dust to be blown anywhere over the neighbouring land was too indefinite to be an easement. *Ib.*

Hall v. *Lund* (32 L. J. Ex. 113; 1 H. & C. 676), *Lyttelton Times Co.* v. *Warners* (76 L. J. P.C. 100; [1907] A.C. 476), and *Jones* v. *Pritchard* (77 L. J. Ch. 405; [1908] 1 Ch. 630), distinguished. *Ib.*

Decision of the Court of Appeal (111 L. T. 169) affirmed. *Ib.*

Fumes from Gasworks — Injunction or Damages — Injury to Trees — No House on Area Affected.]—The owner and occupier of a house and park adjoining a corporation's gasworks brought an action claiming an injunction to restrain the corporation from carrying on their works so as to cause a nuisance to his property. It appeared from the evidence that fumes and smoke from the gasworks were carried by the prevailing wind for a distance of one hundred to two hundred yards over the plaintiff's property, and that they had injuriously affected a plantation of trees adjoining the gasworks to such an extent that the tops of the trees were dying, while in some cases the trees were dead. There was no house on the part of the plaintiff's property affected:—*Held*, that the fumes were discharged on to the plaintiff's property in such a way as to be a nuisance causing serious growing and permanent injury to the plaintiff's property, and that it was a case where the proper remedy was an injunction and not damages. *Per* Buckley, L.J.: If the owner of property is so substantially injured in his reasonable enjoyment of it that he sustains what is equivalent to a legal nuisance, he is entitled to an injunction to stop it, although the property affected is only a garden or park and has no house or structure upon it. *Sturges* v. *Bridgman* (48 L. J. Ch. 785; 11 Ch. D. 852) distinguished. *Wood* v. *Conway Corporation*, 83 L. J. Ch. 498; [1914] 2 Ch. 47; 110 L. T. 917; 78 J. P. 249; 12 L. G. R. 571—C.A.

Market Garden—Manure Heap—Flies.]—The occupiers of a dwelling house adjoining a market garden, where intensive culture was practised, suffered physical inconvenience from the smell and from flies bred in a large heap of manure. The locality was one where market gardening was carried on, but the collection of manure in question was in excess of what might be expected in the locality :—*Held*, that the manure heap was a serious inconvenience and interference with the comfort of the occupiers of the dwelling house according to notions prevalent among reasonable English men and women, and that it amounted to a nuisance in law. *Bland* v. *Yates*, 58 S. J. 612—Warrington, J.

Noise—Annual Feast.]—On the evidence, *held*, that the annual feast held on W. Moor in 1912, and as it was likely to be conducted in the future, fell short of being an actionable nuisance. *Bedford* v. *Leeds Corporation*, 77 J. P. 430—Sargant, J.

—— Building Operations — Pile Driving at Night.]—In conducting building operations it is not reasonable and proper to do pile driving by night so that residents in an adjoining building cannot sleep, and such conduct is liable to be restrained by injunction. *De Keyser's Royal Hotel* v. *Spicer*, 30 T. L. R. 257—Warrington, J.

—— Exhibition—Side Shows.] — Where the noise from side shows at an exhibition interfered with the comfortable occupation of the plaintiff's house and injuriously affected the health of his family,—*Held*, that the noise amounted to a nuisance, and that the plaintiff was entitled to an injunction and damages. *Becker* v. *Earl's Court, Lim.*, 56 S. J. 73—Eve, J.

—— Singing and Dancing at Night—Reasonable User of Premises.]—Among the noises which, if they do not cause substantial discomfort, residents in large industrial cities may have to put up with, is a certain amount of noise which accompanies and is incident to the reasonable recreation of a crowded population. The question in every such case is whether such noises amount to a sensible or substantial interference with the comfort of neighbouring dwellers, according to ordinary common sense standards. *New Imperial and Windsor Hotel Co.* v. *Johnson*, [1912] 1 Ir. R. 327—Barton, J.

Offensive Smell—Fried-fish Shop—Physical Discomfort to Neighbours — Injunction.] — Where it is proved that the odour from a fried-fish shop escapes so as materially to interfere with the ordinary comfort of an adjoining occupier and his family, a sufficient case of nuisance is made out in law and an injunction will be granted. *Tod-Heatley* v. *Benham* (58 L. J. Ch. 83; 40 Ch. D. 80) followed. *Adams* v. *Ursell*, 82 L. J. Ch. 157; [1913] 1 Ch. 269; 108 L. T. 292; 57 S. J. 227—Swinfen Eady, J.

—— Fish-Guano Works.]—Injunction granted restraining the defendants from so using their fish-guano factory as to cause a public nuisance by the giving off of offensive and noxious smells. *Att.-Gen.* v. *Plymouth Fish-Guano and Oil Co.*, 76 J. P. 19—Parker, J.

Sewage Farm.] — The plaintiffs, who respectively owned and occupied a dwelling house, obtained an injunction against the defendants, owners of a sewage farm about 800 yards south-west of the plaintiffs' premises, restraining the defendants from conducting their sewage farm so as to cause offensive smells and vapours in the plaintiffs' premises. *Bainbridge* v. *Chertsey Urban Council*, 84 L. J. Ch. 626; 79 J. P. 134; 13 L. G. R. 935—Sargant, J.

b. Works Constructed under Statutory Powers.

See also Vol. X. 208, 1702.

High-pressure Water Mains under Surface of Roadway—Escape of Water—Damage to Electric Cables—Statutory Powers—Construction of Statute — Two Statutes to be Read Together as One.]—The defendants laid high-pressure water mains under certain streets, and subsequently the plaintiffs laid electric cables under the same streets, both acting under statutory powers. Four of the defendants' mains, without any negligence on the part of the defendants, burst and injured the plaintiffs' cables :—*Held*, that the defendants were liable for the damage done to the plaintiffs' cables by the bursting of their mains; for the doctrine of *Rylands* v. *Fletcher* (37 L. J. Ex. 161; L. R. 3 H.L. 330) is not limited to the case of neighbouring landowners or occupiers of neighbouring closes, but is applicable as between companies which have independently obtained licences to lay apparatus for their undertakings under the surface of the same street. *Midwood & Co.* v. *Manchester Corporation* (74 L. J. K.B. 884; [1905] 2 K.B. 597) followed. *Charing Cross, West End, and City Electricity Supply Co.* v. *London Hydraulic Power Co.*, 83 L. J. K.B. 1352; [1914] 3 K.B. 772; 111 L. T. 198; 78 J. P. 305; 12 L. G. R. 807; 58 S. J. 577; 30 T. L. R. 441—C.A. Affirming, 83 L. J. K.B. 116; [1913] 3 K.B. 442—Scrutton, J.

Two of the four mains had been laid under a private Act which did not contain a clause providing that nothing in the Act should exempt the defendants from liability for nuisance. The other two were laid under a later Act which did contain such a clause, and further provided that the two Acts should be read together as one Act :—*Held*, that, as the Acts were to be read together, the privilege which the defendants would have enjoyed under the earlier Act of not being liable as for a nuisance in respect of the two first-mentioned mains was taken away, and consequently the defendants were without statutory protection in respect of all four mains. *Ib.*

Electric Cables and Gas Mains Laid in Same Street—Leakage of Gas into Electric Chamber—Explosion—Injury to Passer-by—Non-liability of Electric Undertakers.] — A local authority, authorised by statute to supply electricity within their district, placed under the pavement of a highway a brick chamber,

inside of which was a box through which wires passed, but the box did not occupy the whole space within the brick chamber. The wires, or some of them, were connected by fuses in the box. Owing to an unusually strong electric current a fuse might occasionally emit a spark which would escape through the cover of the box into the unoccupied space in the brick chamber. Gas from an adjacent gas main not belonging to the local authority had leaked through the soil and thence into the unoccupied space in the brick chamber and there collected. A spark emitted from a fuse in the inner box exploded the gas, with the result that a passer-by on the pavement was injured by the explosion. In an action brought by him against the local authority to recover damages for personal injuries the jury, in answer to questions left to them by consent of both parties, found that the chamber did not constitute a nuisance, and that the local authority had not been guilty of negligence:—*Held*, that the defendant local authority were entitled to judgment. The gas had escaped from a main in or over which they had no interest or control. They were incapable of excluding it from their apparatus. They were not bound, because they kept an apparatus which might become dangerous if ignited by being combined with something else, to compensate any one hurt by its being ignited without possibility of their preventing its ignition. *Goodbody* v. *Poplar Borough Council*, 84 L. J. K.B. 1230; 79 J. P. 218; 13 L. G. R. 166—D.

There was nothing in the case to extend the principle laid down in *Rylands* v. *Fletcher* (37 L. J. Ex. 161; L. R. 3 H.L. 330) as to not allowing mischief to escape to the land of another, to keeping the mischief on other persons' land from their own. In the circumstances the case was distinguishable from the later decisions of *Midwood & Co.* v. *Manchester Corporation* (74 L. J. K.B. 884; [1905] 2 K.B. 597) and *Charing Cross, West End, and City Electric Supply Co.* v. *London Hydraulic Power Co.* (83 L. J. K.B. 1352; [1913] 3 K.B. 442), because it was not the defendants' own gas which escaped. *Ib.*

2. On Highways.

See also Vol. X. 214, 1706.

Area Adjoining Highway — Defective Railings — Liability of Owner in Possession — Knowledge of Nuisance—Permission of Continuance of Nuisance.]—The defendant was the owner in possession of an empty house with an area adjoining a public street. The area was fenced off from the street by railings, but one of the rails had been removed by trespassers, leaving a gap in the railings of a width of ten and three-quarter inches. The plaintiff, a child of the age of three years and nine months, while playing in the street, passed through the gap and was clambering along a ledge inside the railings when he fell into the area and was injured. In an action to recover damages the jury found that the area was a nuisance to persons using the highway, but that the defendant did not at the time of the accident know that the rail had been removed, neither had such time elapsed that he would have known it if he had used reasonable care, and that he had used reasonable care to prevent his premises becoming dangerous to persons using the highway:—*Held*, that the action failed on the ground that the defendant neither created the nuisance nor with knowledge of its existence permitted its continuance. *Per* Fletcher Moulton, L.J., and Farwell, L.J.—The action also failed on the ground that the injury was not the direct result of the nuisance. *Barker* v. *Herbert*, 80 L. J. K.B. 1329; [1911] 2 K.B. 633; 105 L. T. 349; 75 J. P. 481; 9 L. G. R. 1083; 27 T. L. R. 488—C.A.

Quarry Adjoining Road—Land Dug Out—Collapse of Fence and Road—Duty of Occupier to Restore—Remedy of Local Authority.]—There is a common law obligation on the possessor of land that has been subjected to excavation to keep it fenced off from any public place or right of way, whether the excavation was made before or after his possession, and whether he is or is not liable to his landlord, if he has a landlord. *Att.-Gen.* v. *Roe*, 84 L. J. Ch. 322; [1915] 1 Ch. 235; 112 L. T. 581; 79 J. P. 263; 13 L. G. R. 335—Sargant, J.

The defendant owned and occupied land which was in fact a worked-out quarry, and which immediately adjoined a public highway vested in an urban district council and repairable by the inhabitants at large, the excavation having been made in 1865 by a prior owner of the land in order to quarry for limestone, the surfaces of the road and land having up to that time been on the same level. The excavator, in order to protect the persons using the road from danger and the road itself from obstruction, had built alongside the road a wall the bottom of which rested on a ledge of limestone, left ungotten for the purpose, which served as a retaining wall for the subsoil of the road and as a fence wall above its surface. In 1913 a part of the wall collapsed and fell into the quarry, and in consequence a considerable part of the subsoil of the road and of its surface fell in:—*Held*, that in an action by the Attorney-General at the relation of the council and the council as plaintiffs a mandatory order should be made on the defendant to abate the nuisance by restoring the road to its condition prior to the subsidence, and by rebuilding the wall or providing some other reasonable fence between the road and the quarry. *Greenwell* v. *Low Beechburn Colliery Co.* (66 L. J. Q.B. 643; [1897] 2 Q.B. 165) distinguished. *Ib.*

Unlawful Erection in—Obstruction of View Special Damage.] — Where a nuisance is created by the erection of an unauthorised structure in a highway, and special damage is thereby caused to a person by reason of the view from his house being obstructed, he is entitled to recover damages from the persons creating the nuisance. *Campbell* v. *Paddington Borough Council*, 80 L. J. K.B. 739; [1911] 1 K.B. 869; 104 L. T. 394; 75 J. P 277; 9 L. G. R. 387; 27 T. L. R. 232—D.

B. PROCEEDINGS IN RESPECT OF.

See also Vol. X. 225, 1707.

Action by Reversioners — Injury to Reversion — Occupier.] — A nuisance of noise and smell from a garage is not a "permanent" injury to the reversion within the definition given by Parker, J., in *Jones* v. *Llanrwst Urban Council* (80 L. J. Ch. 145; [1911] 1 Ch. 393), and accordingly an action brought by the reversioners alone is not maintainable. *White* v. *London General Omnibus Co.*, 58 S. J. 339—Sargant, J.

NULLITY OF MARRIAGE.

See HUSBAND AND WIFE.

OFFENSIVE TRADE.

See LOCAL GOVERNMENT; NUISANCE.

OLD AGE PENSION.

See PENSION.

ONTARIO.

See COLONY.

ORDER AND DISPOSITION.

See BANKRUPTCY.

ORDERS.

Of Affiliation.]—*See* BASTARD.

Of High Court.]—*See* PRACTICE.

Of Justices.]—*See* JUSTICE OF THE PEACE.

Of Reference.]—*See* ARBITRATION.

Of Removal.]—*See* POOR LAW.

OVERSEER.

See POOR LAW.

PARENT AND CHILD.

See INFANT.

PARISH.

See LOCAL GOVERNMENT; POOR LAW.

PARISH COUNCIL.

See LOCAL GOVERNMENT.

PARLIAMENT.

1. PARLIAMENTARY DEPOSITS.

See also Vol. X. 296, 1717.

Tramway Company — Abandonment of Undertaking—Compensation—Claim in Respect of Breach of Covenant to Construct an Embankment.]—The appellant tramroad company, in contemplation of an application to Parliament for an Act to extend their tramroads, entered into an agreement with the respondent whereby they agreed (*inter alia*) that they would use their best endeavours to obtain power to construct, and in the event of their obtaining such power would construct, and afterwards maintain, a solid embankment on a part of certain marsh land of the respondent for the purpose of carrying one of their tramroads, such embankment to be formed so as to be sufficient to prevent the respondent's marsh land being inundated by certain tidal waters. An Act was accordingly obtained which authorised the making of (*inter alia*) such tramroad with all necessary embankments. The Act contained the usual provision with regard to the money deposited in respect of the application to Parliament—namely, that, if the company should make default in opening the tramroads, then the deposit fund should be applied towards compensating any landowners or other persons whose property should have been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the tramroads or any part thereof. The respondent conveyed to the company the right to construct and maintain the embankment on his land, and the

company covenanted to construct, execute, and perform the works, matters, and things specified in the agreement. The company subsequently obtained an abandonment Act, and the proposed embankment was never made :—*Held*, that, inasmuch as the breach of the covenant to make the embankment was not the necessary result of the abandonment of the tramroads, the respondent was not entitled to claim against the deposit fund in respect of the diminution in the value of his land caused by the non-construction of the embankment. *Ruthin and Cerrig-y-Druidion Railway Act, In re* (56 L. J. Ch. 30; 32 Ch. D. 438), applied. *Southport and Lytham Tramroad Act, In re; Hesketh, ex parte*, 80 L. J. Ch. 137; [1911] 1 Ch. 120; 104 L. T. 154—C.A.

—— Claim in Respect of Abandonment of Street Widening—Statutory Obligation.]—A tramway company was authorised by its Act of Parliament to construct a certain tramway passing round the junction of two roads, and to effect a widening of the roads at their junction. The applicant was the owner of a property consisting of two adjacent shops, forming a quadrangular block at the junction of the two roads and fronting on both of them. He sold a triangular strip of it to the company, whereby his remaining property was cut off from all access to one of the roads until the widening should be carried out. There was no covenant by the company to widen. The undertaking was abandoned, the tramway was not constructed, nor was the widening effected. Section 81 of the Act provided that for the protection of a district council, and unless otherwise agreed between the council and the company, the company should within a limited time complete the tramway and concurrently with its construction, and before opening it for traffic, carry out the widening to the satisfaction of the council. There was no agreement between the council and the company varying the obligations of the section. Upon application by the owner for compensation out of deposited moneys as a landowner whose property had been rendered less valuable by the " abandonment of the tramways or any portion thereof " within section 67 of the Act,—*Held*, that section 81 imposed a statutory obligation upon the company to effect the widening; that it had not been carried out owing to the abandonment of the undertaking; and that if the applicant's property had thereby been rendered less valuable he was entitled to compensation. *West Yorkshire Tramways Bill, In re*, 82 L. J. Ch. 98; [1913] 1 Ch. 170; 108 L. T. 18; 11 L. G. R. 78; 57 S. J. 111; 29 T. L. R. 115—C.A.

2. PEERS AND PEERAGES.

See also Vol. X. 304, 1718.

Peerage Claim—Assembly of 1290—Whether a Parliament Founding a Claim.]—The Committee of Privileges reported (Lord Hylton and Lord Atkinson dissenting) that the Assembly held at Westminster on May 29, 1290, which was summoned by Edward 1, and was an assembly of barons and bishops only, was not a fully constituted Parliament so as to found a claim to a hereditary peerage by proof that an ancestor of the claimant had received a writ of summons to the Assembly and had taken his seat therein. *Saint John Barony*, [1915] A.C. 282; 30 T. L. R. 640—H.L.

3. ELECTION OF MEMBERS.

Disqualification of Member for Sitting and Voting—Contract with Secretary of State for or on Account of Public Service.]—The " public service " includes any service of the Crown anywhere. Therefore where a member of Parliament was a partner in a firm which had made contracts with the Secretary of State for India in Council for the service of the Crown in India, which contracts were to be paid for out of the revenues of India, he was held disqualified from sitting and voting in the House of Commons, as having " directly or indirectly " undertaken a contract " for or on account of the public service " within the meaning of section 1 of the House of Commons (Disqualification) Act, 1782. *Samuel's (Sir Stuart) Seat, In re*, 82 L. J. P.C. 106; [1913] A.C. 514; 108 L. T. 696; 29 T. L. R. 429—P.C.

Contract with a Person or Persons for or on Account of the Public Service—Contract with Secretary of State for India.]—A member of the House of Commons was a partner in a firm which made a contract with the Secretary of State for India in Council for purchasing silver for the Indian currency :—*Held*, that he had thereby entered into a contract with a person or persons for or on account of the public service within section 1 of the House of Commons (Disqualification) Act, 1782, and was therefore disabled for sitting and voting in the House of Commons. *Forbes* v. *Samuel*, 82 L. J. K.B. 1135; [1913] 3 K.B. 706; 109 L. T. 599; 29 T. L. R. 544—Scrutton, J.

Action for Penalties—Necessity for Affidavit from Common Informer—Prior Writ for Same Penalty—Wrong Statute Founded on.]—The plaintiff, as a common informer, claimed penalties from the defendant for having sat and voted in the House of Commons when incapacitated for so doing by reason of his interest in a Government contract, contrary to the provisions of the House of Commons (Disqualification) Act, 1782. Two writs by other common informers against the defendant for penalties for the same offence were issued prior to the writ in the plaintiff's action :—*Held*, first, that it was not necessary for the maintenance of the action that the plaintiff should first have made oath under section 3 of 21 Jac. 1. c. 4 that he believed in his conscience that the offence was committed by the defendant within a year before action brought; but secondly, that the action failed inasmuch as it was barred not only by the fact of the prior issue of the other writs for penalties, but also by the fact that the plaintiff had proceeded under the House of Commons (Disqualification) Act, 1782, instead of under the House of Commons (Disqualification) Act, 1801. *Ib.*

Wrong Statute Founded on — Leave to Amend.]—An action was brought by a common informer claiming penalties from the defendant for having sat and voted in Parliament when incapacitated for so doing. The Judge having held that the plaintiff had founded his action on the wrong statute, the plaintiff asked leave to amend by pleading the proper statute :—*Held*, that in the circumstances leave to amend must be refused. *Burnett* v. *Samuel*, 109 L. T. 630; 29 T. L. R. 835—Scrutton, J.

—— **Amendment.**]—A member of the House of Commons was partner in a firm which made a contract with the Secretary of State for India in Council for purchasing silver for the Indian currency. A common informer brought an action against the member for penalties, and alleged in the statement of claim that the defendant was elected to Parliament on January 10, 1910, and that he voted on various dates in 1912. In fact Parliament was dissolved on January 10, 1910, and was again dissolved in December, 1910, and the defendant was elected at a general election in December, 1910 :—*Held*, that the defendant had entered into a contract for or on account of the public service within section 1 of the House of Commons (Disqualification) Act, 1782, that the plaintiff was entitled to an amendment of the date alleged in the statement of claim as the date of the defendant's election, and that therefore the plaintiff was entitled to recover the penalties sued for. *Forbes* v. *Samuel* (82 L. J. K.B. 1135; [1913] 3 K.B. 706) followed. *Bird* v. *Samuel*, 30 T. L. R. 323—Rowlatt, J.

PARLIAMENTARY DEPOSIT.

See PARLIAMENT.

PAROL EVIDENCE.

See EVIDENCE.

PARSON.

See ECCLESIASTICAL LAW.

PARTICULARS.

See PRACTICE.

In Patent Cases.]—*See* PATENT.

Of Sale.]—*See* VENDOR AND PURCHASER.

PARTIES.

See PRACTICE.

PARTITION.

See also Vol. X. 318, 1720.

Jurisdiction—Joint Tenancy or Tenancy in Common—Indefeasible Interest in One Moiety of Estate—Defeasible Interest in Other Moiety —Subsisting Trusts.] — The existence of a joint tenancy or a tenancy in common is essential to the jurisdiction of the Court for the purposes of an order for partition. A person who is entitled, subject to a term of one thousand years, to an estate in fee-simple, but is liable as to one moiety to have his estate divested by the attaining of a vested interest by another person, is not entitled to succeed in an action for partition. The Court has no jurisdiction to order partition of an estate where there are subsisting trusts for management vested in trustees. *Taylor* v. *Grange* (49 L. J. Ch. 24, 794; 13 Ch. D. 223; 15 Ch. D. 165) applied. *Dodd* v. *Cattell*, 83 L. J. Ch. 721; [1914] 2 Ch. 1—Warrington, J.

Request for Sale—Infant—Sale for Infant's Benefit—Conversion.]—An infant's share of the proceeds of sale of real estate, sold by the Court in a partition action, though sold at his request and for his benefit, is not converted. *Foster* v. *Foster* (45 L. J. Ch. 301; 1 Ch. D. 588) and *Barker, In re* (50 L. J. Ch. 334; 17 Ch. D. 241, 243), applied. *Dicta* of Jessel, M.R., in *Wallace* v. *Greenwood* (50 L. J. Ch. 289; 16 Ch. D. 362, 365, 366), not followed. *Hopkinson* v. *Richardson*, 82 L. J. Ch. 211; [1913] 1 Ch. 284; 108 L. T. 501; 57 S. J. 265—Swinfen Eady, J.

Order for Sale — Sale not Taking Place — Conversion — Shares of Persons Sui Juris — Disability.]—Where in a partition action an order for sale is made, and remains in force, but the sale does not take place, the order operates as a conversion in respect of the shares of those partitioners who are *sui juris* at the date of the order, but not in respect of the shares of those who are under disability. *Herbert* v. *Herbert*, 81 L. J. Ch. 733; [1912] 2 Ch. 268; 107 L. T. 491—Swinfen Eady, J.

Barker, In re (50 L. J. Ch. 334; 17 Ch. D. 241), *Pickard, In re; Turner* v. *Nicholson* (20 L. J. N.C. 124; 53 L. T. 293; [1885] W. N. 137), *Arnold* v. *Dixon* (L. R. 19 Eq. 113), *Mordaunt* v. *Benwell* (51 L. J. Ch. 247; 19 Ch. D. 302), *Dodson, In re; Yates* v. *Morton* (77 L. J. Ch. 830; [1908] 2 Ch. 638), *Hyett* v. *Mekin* (53 L. J. Ch. 241; 25 Ch. D. 735), and *Fauntleroy* v. *Beebe* (80 L. J. Ch. 654; [1911] 2 Ch. 257) explained and followed. *Ib.*

Married Woman—No Request for Sale—Death of Husband.]—The share of a married woman originally unconverted for want of a formal request for sale under section 6 of the

Partition Act, 1876, is not subsequently converted by the mere fact of her becoming discovert. *Ib.*

PARTNERSHIP.

I. THE CONTRACT OF PARTNERSHIP.

See also Vol. X. 366, 1722.

Firm Name of Testator Used by Executors —Whether Executors are Partners.]—Executors carrying on their testator's business under the powers of his will and in his own firm name are not partners within the meaning of section 1 of the Partnership Act, 1890, and cannot be adjudicated bankrupt as partners under section 115 of the Bankruptcy Act, 1883, but may be individually proceeded against as joint debtors. *Fisher & Sons, In re*, 81 L. J. K.B. 1246; [1912] 2 K.B. 491; 106 L. T. 814; 19 Manson, 332; 56 S. J. 553—Phillimore, J.

"Trading" Partnership — Cinematograph Entertainment.]—A partnership formed for the purpose of running a cinematograph entertainment is not a "trading" partnership within the meaning of the rule that a member of a trading partnership has ostensible authority to borrow money for the purposes of the partnership so as to bind the other partners, even though he is, as between himself and his co-partners, prohibited from borrowing money so as to bind the partnership. *Per* Lush, J.: A trading business is one which involves the purchase and the sale of goods. *Higgins* v. *Beauchamp*, 84 L. J. K.B. 631; [1914] 3 K.B. 1192; 111 L. T. 1103; 30 T. L. R. 687—D.

Test of Partnership.]—In order to determine whether there is or is not a partnership between persons the whole of the agreement between them must be looked at in order to see what is the intention of the parties, together with the surrounding circumstances at the time when the agreement was entered into. Subsequent conduct can only be looked at in order to shew that the agreement has been varied or a new agreement made. *Beard & Co., In re; Trustee, ex parte*, [1915] H. B. R. 191—C.A.

II. RIGHTS AND OBLIGATIONS OF PARTNERS INTER SE.

See also Vol. X. 407, 1723.

Betting Business—Account.]—The plaintiff and defendant had been in partnership as bookmakers and commission agents, the capital having been contributed by them in equal shares, and the plaintiff took proceedings against the defendant for an account of the partnership dealings:—*Held*, that the plaintiff could recover any balance of his capital which had not been applied in payment of bets, and that he was entitled to an account, it being left open to the defendant to object to any particular items and to object that anything in his hands consisted of profits. *Keen* v. *Price*, 83 L. J. Ch. 865; [1914] 2 Ch. 98; 111 L. T. 204; 58 S. J. 495; 30 T. L. R. 494—Sargant, J.

See also Brookman v. *Mather*, 29 T. L. R. 276—Avory, J.

Illegal Sale of Partnership Property — Repurchase from Bona Fide Purchaser for Value without Notice — Fiduciary Relation — Liability to Account.]—A partner who has improperly, and without the knowledge of his partner, sold partnership property to a *bona fide* purchaser for value without notice, and has afterwards re-purchased it from him, stands in a fiduciary relation to his partner, and cannot take advantage of the rule which protects a purchaser with notice taking from a purchaser without notice, but is liable to account for profits made by subsequent dealings with the property. *Knox* v. *Gye* (42 L. J. Ch. 234; L. R. 5 H.L. 656) and *Piddocke* v. *Burt* (63 L. J. Ch. 246; [1894] 1 Ch. 343) distinguished. *Gordon* v. *Holland*, 82 L. J. P.C. 81; 108 L. T. 385—P.C.

Business Premises the Property of One Partner—No Special Provision as to Tenancy —Partnership to Pay all Rent—Tenancy Implied—Continuance of Partnership.]—Where business premises the property of one partner are occupied by the partnership and all the rent is paid out of the partnership account, but there is no provision as to the duration of the tenancy, the right inference is that the tenancy is a tenancy during the continuance of the partnership. *Pocock* v. *Carter*, 81 L. J. Ch. 391; [1912] 1 Ch. 663; 106 L. T. 423; 56 S. J. 362—Neville, J.

III. RIGHTS AND OBLIGATIONS OF PARTNERS AND THIRD PARTIES.

See also Vol. X. 507, 1727.

Authority of Partner to Borrow Money for Partnership Purposes.]—The rule of law that each member of a trading firm has implied authority to borrow money for partnership purposes on the credit of the firm does not apply to a partnership firm of cinematograph-theatre proprietors. The partnership deed of a firm of cinematograph-theatre proprietors provided that no partner should without the consent of the other partners contract any debt on account of the partnership or in any manner pledge its credit except in the usual and regular course of business. The managing partner borrowed moneys from the plaintiff, ostensibly for partnership purposes, but with the intention of misappropriating them, which he did. The plaintiff sued the defendant, a partner, for the moneys lent to the firm:—*Held*, that the defendant was not liable. *Higgins* v.

Beauchamp, 84 L. J. K.B. 631; [1914] 3 K.B. 1192; 111 L. T. 1103; 30 T. L. R. 687—D.

The defendants and H. had dealings on joint account in various bearer securities. For the purposes of the joint account the defendants entrusted H. with bearer securities to the amount of 20,000*l.* for the purpose of being deposited by him as margin in respect of a loan to be borrowed from a specified lender. H. did not borrow from that lender and he had the 20,000*l.* margins in his possession on September 15, 1911, on which day H. became indebted to the plaintiffs. On subsequently discovering the existence of the joint-account transaction between H. and the defendants the plaintiffs sued the defendants in debt on the ground that they were partners with H.:—*Held*, that the claim failed, inasmuch as H. had no authority to act for the joint adventure by borrowing from any one except the specified lender, and the plaintiffs did not at the material date know or believe H. to be a partner with the defendants. *Watteau* v. *Fenwick* ([1893] 1 Q.B. 346) distinguished. *Lloyds Bank* v. *Swiss Bankverein*, 107 L. T. 309; 17 Com. Cas. 280; 56 S. J. 688; 28 T. L. R. 501—Hamilton, J.

See S. C. in C.A., *ante*, BANKER.

Liability of Partnership for Money Received "in the course of its business."]—A partner in a firm of solicitors, who acted as secretary of a mining and exploring company, received and misapplied certain of the company's funds:—*Held*, that the firm were not liable under the Partnership Act, 1890, s. 11 (*b*), in respect that the moneys in question had not been received by the firm "in the course of its business." *New Mining and Exploring Syndicate* v. *Chalmers & Hunter*, [1912] S. C. 126—Ct. of Sess.

Joint Adventure—Sale of Goods—Coals—Substituted Supplies.]—The plaintiff and defendants entered into an arrangement that they would endeavour to get the business of supplying coal to the Austrian Navy for 1911 on a basis of joint account as to profit and loss. The plaintiff put in a tender for 20,000 tons of certain Welsh coal, which was accepted. Subsequently it became obvious that the parties would suffer a heavy loss, and it was agreed that the plaintiff should cut his loss for a payment of 1,000*l.*, and that if a reduction in the loss was effected by the Austrian Admiralty giving permission to supply other coals which could be got at a cheaper rate, the 1,000*l.* was to be reduced by half the profit effected. The defendants supplied 20,000 tons of coal to the Austrian Admiralty at a lower price, which was supplied to them under a contract made by them for the supply of their own coaling depot:—*Held*, that the plaintiff was entitled to an account on the terms that the defendants could not bring into the account the coal at a higher price than that at which they actually purchased it, on the principle that one co-adventurer cannot sell his own property to the adventure, so as to make a profit himself, unless before doing so he has made the fullest disclosure to his co-adventurer. *Kuhlirz* v. *Lambert*, 108 L. T. 565; 18 Com. Cas. 217—Scrutton, J.

—— Goods Purchased by One Adventurer—Bills of Exchange.]—Where persons enter into an agreement constituting a partnership limited to a joint trading adventure and goods are purchased, ostensibly by an individual adventurer but really for the purpose of the joint adventure, the adventurers are liable as partners; but there is no such responsibility for goods purchased upon the credit of an individual adventurer, though they are afterwards brought into stock as his contribution to the joint adventure. *Gouthwaite* v. *Duckworth* (12 East, 421) followed and applied. *Saville* v. *Robertson* (4 Term Rep. 720) distinguished. *Karmali Abdulla Allarakhia* v. *Vora Karimji Jiwanji*, L. R. 42 Ind. App. 48—P.C.

Firm Name of Testator Used by Executors — Receiving Order against Firm — Whether Executors are Partners.]—Executors carrying on their testator's business under the powers of his will and in his own firm name are not partners within the meaning of section 1 of the Partnership Act, 1890, and cannot be adjudicated bankrupt as partners under section 115 of the Bankruptcy Act, 1883, but may be individually proceeded against as joint debtors. *Fisher & Sons, In re*, 81 L. J. K.B. 1246; [1912] 2 K.B. 491; 106 L. T. 814; 19 Manson, 332; 56 S. J. 553—Phillimore, J.

Instalments of Debt — Payment out of Partnership Assets — Judgment for Non-payment of Later Instalments — Satisfaction by One Partner—Contribution—Equitable Rights between the Joint Debtors.]—D. and H., who were partners, covenanted to be jointly and severally liable to P. for payment of a debt by instalments. The earlier instalments were paid out of the partnership assets, and later ones by D., after judgment for them had been recovered. D. demanded from P. that, in order to enforce his right to contribution against H., the judgments should be delivered to him, as provided by section 5 of the Mercantile Law Amendment Act, 1856; but H. informed P. that D.'s right to contribution depended on the equitable rights between D. and himself in respect of a partnership action then pending between them, upon which P. declined to hand over the judgments. D. then brought an action against P. claiming (*a*) delivery of the judgments; (*b*) damages for non-delivery; (*c*) a declaration that by reason of the refusal to assign the judgments D. was released from all liability in respect of any future instalments:—*Held*, that the provisions of section 5 of the Mercantile Law Amendment Act, 1856, might be subject to the equitable relationship between the parties, and that, although P. had committed a breach of a statutory obligation in refusing to assign the judgments, yet, as D. could not have levied execution upon them without the consent of the Judge in the partnership action, and without taking into account the inter-partnership rights of himself and H., he had suffered no actual damage. *Held*, further, that D. was not released from liability in respect of future instalments, inasmuch as there had been no alteration of the original conditions as to the liability of the parties; and the failure to

assign the judgments would have only operated to release him if and so far as the delay in handing over might have made them less valuable. *Dale* v. *Powell*; *Powell* v. *Dale*, 105 L. T. 291—Parker, J.

IV. DEATH OF PARTNER.

See also Vol. X. 610, 1730.

Purchase of Dead Partner's Share by Surviving Partner — Survivor Sole Executor of Deceased Partner — Conflict of Interest and Duty—Reopening of Transactions after Long Delay.]—By a clause in articles of partnership executed by two brothers in 1878 it was agreed that within thirty days after notice of the death of a partner "a general account in writing shall be made and taken of the partnership goods, wares, stocks, credits, and effects belonging, due, or owing to the said co-partnership; also all debts due, or owing to the said partnership . . . and in taking such account such stock and other assets as shall not consist of money shall be valued either by mutual agreement or valuation in the usual way, nothing being charged for goodwill; and the surviving . . . partner shall and will pay or cause to be paid unto the executors or administrators of the so deceased partner . . . his full share." One brother died in 1886, having appointed the other his sole executor. The survivor took an account of the assets in the same way as the half-yearly balance sheets had for several years been prepared when both partners were alive, consulting an intimate friend of the testator's, and appointed a man of high character and wide business experience to check the valuation. The testator's share, excluding goodwill, was paid with interest. Twenty years or more after the partner's death the residuary legatees brought an action against the survivor for an account:—*Held*, that there was a valid contract of sale and purchase which had been executed; that it was not necessary to appoint valuers for an exhaustive valuation; and that there was no ground for impeaching the transactions on the ground of the conflict between interest and duty in the executor which was created by the testator himself. *Hordern* v. *Hordern*, 80 L. J. P.C. 15; [1910] A.C. 465; 102 L. T. 867; 26 T. L. R. 524—P.C.

Dissolution by Death.]—*See Garwood* v. *Garwood*, *post*, col. 1094.

V. DISSOLUTION OF PARTNERSHIP.

See also Vol. X. 633, 1734.

Deed of Dissolution—Construction—Loan to Partners Jointly—Share of Profit and Loss by Retiring Partner.]—J. and W. carried on business under a deed of partnership dated May 30, 1895. In October, 1907, a bank advanced the partners jointly the sum of 11,000*l*. On September 20, 1909, J. and W. purported to dissolve the partnership and W. retired from the business. By the deed of that date W. assigned his share and interest to J., and an account was to be taken of W.'s share as on December 31, 1909, and such share when ascertained was to be credited to W. in the books of the firm and was to remain a loan to the firm for ten years, at 5 per cent. per annum interest. If on the taking of this account there was found an insufficiency of assets to meet liabilities, W. was to pay to J. half of such deficit. On November 4, 1909, J. suspended payment, and was adjudicated bankrupt on January 7, 1910, and on July 25, 1910, W. was adjudicated bankrupt, the two bankruptcies subsequently being consolidated. The trustee of the separate estate of J. claimed a sum of 1,657*l*. lying on current account at the bank on November 4, 1909, in the name of the firm, which sum the bank claimed to retain and set off against the joint liability of W. and J. for 11,000*l*. advanced to the firm: —*Held*, that upon the true construction of the deed of September 20, 1909, there was a dissolution of partnership as from that date, and not as from December 31, 1909; so that the sum standing to the credit of the firm on November 4, 1909, belonged to the separate estate of J. *Jane, In re; Trustee, ex parte*, 110 L. T. 556—C.A.

Dissolution by Death—"Gains and profits"—Principles on which Accounts ought to be Taken.]—J. G., one of three partners in a colliery, charged his one-third share and the future gains and profits in the partnership, which was dissolved by his death on April 20, 1909, with the payment of 10,000*l*. and interest to trustees of a deed for the benefit of his wife and family, and also covenanted to pay to the trustees all the balance of residue remaining of his share in the gains and profits of the business, such excess of the interest on the 10,000*l*. to be divided as to two-thirds for his wife and one-third for himself:—*Held*, that as between them and J. G.'s estate the trustees under the covenant were not entitled to have paid to them out of his share of the partnership assets surplus income which, although appearing in the partners' accounts as excess of receipts over expenditure during a particular year, was, by the settled practice of the partners, treated otherwise than as distributable profits and devoted to colliery equipment and replacing assets that had been worn out. *Held*, further, that from the taking of the last annual account previous to dissolution there must, in the absence of evidence of the amount appropriated to depreciation year by year, be an enquiry as to the amount to be so appropriated since the last account, the proper amount being ascertained by valuers appointed by the parties or by the Court. *Garwood v. Garwood*, 105 L. T. 231—C.A.

Expired Contract of Partnership Continued as Partnership at Will—Application of Pre-emption Clause in Original Contract.]—A contract of copartnery in a wine and spirit business between three parties, entered into for five years, contained a clause providing that "in the event of the copartnery not being renewed at the expiry thereof the licence shall then be valued by a neutral party mutually appointed, and the first party as holder of the licence shall in his option be entitled to pay out the second and third parties the amount due to them respectively," or that otherwise the licence should be sold in open market,

and the proceeds divided among the parties. After the expiry of the term created by the contract the partnership was carried on for several years as a partnership at will until dissolved by a notice from the first party :—*Held*, that the clause conferring the right of pre-emption was carried forward into the partnership at will, and that at its termination the first party was entitled to exercise the right. *M'Gown* v. *Henderson*, [1914] S. C. 839—Ct. of Sess.

Employment of Assets—Account—Interest.]—It is well settled that when on the dissolution of a firm one of the partners retains assets of the firm in his hands without any settlement of accounts and applies them in continuing the business for his own benefit, he may be ordered to account for those assets with interest thereon, and this apart from fraud or misconduct in the nature of fraud. *Ahmed Musaji Saleji* v. *Hashim Ebrahim Saleji*, L. R. 42 Ind. App. 91—P.C.

Receiver—Solicitors—Bills of Costs.]—In an action for dissolution of partnership between solicitors a receiver was appointed to get in outstanding costs due from clients, and the books of the firm were placed in his hands. The entries of attendances made by R., one of the partners, were not sufficiently detailed to enable the receiver to make out proper bills. R. refused to settle the bills unless remunerated by 5 per cent. on the amount thereof. The other partner thereupon took out a summons for an order that R. should be directed to settle the bills within one week :—*Held*, that the summons must be refused. *Ray* v. *Flower Ellis*, 56 S. J. 724—C.A.

VI. WINDING-UP OF LIMITED PARTNERSHIP.

Grounds on which Ordered.]—A general and limited partner entered into partnership. The limited partner contributed the capital; and it was agreed that the sum so contributed should be treated as a debt due from the partnership to the limited partner, and that interest should be paid thereon at the rate of 5 per cent. per annum. This interest had never been paid, and no part of the capital had been refunded to the limited partner. It was also agreed that the general account should be signed by both partners once every year, but the general partner had neglected to comply with this provision. The general partner had also, in breach of the partnership articles, habitually absented himself from the partnership business, and had also misapplied a sum of money advanced to him by the limited partner for a specific purpose in connection with the partnership business :—*Held*, that in these circumstances, and having regard to the provisions of the Limited Partnership Act, 1907, of section 268, sub-section 1, clause vii. of the Companies (Consolidation) Act, 1908, and of the Limited Partnership (Winding-up) Rules, 1909, the petitioner was entitled to a compulsory winding-up of the partnership. *Hughes & Co., In re*, 80 L. J. Ch. 262; [1911] 1 Ch. 342; 104 L. T. 410—Swinfen Eady, J.

PARTY WALL.

See METROPOLIS (BUILDINGS).

PASSENGER.

See CARRIER; RAILWAY; NEGLIGENCE.

PASSING-OFF.

See TRADE.

PATENT.

A. FOR WHAT GRANTED.

See also Vol. X. 688, 1742.

Subject-matter.]—A patent for the mere new use of a known contrivance without any additional ingenuity in overcoming fresh difficulties is bad and cannot be supported; but a patent for a new use of a known contrivance is good and can be supported if the new use involves practical difficulties which the patentee has been the first to see and overcome by some ingenuity of his own. An improved thing produced by a new and ingenious application of a known contrivance to an old thing is a manner of new manufacture within the meaning of the statute of James. *Layland* v. *Boldy*, 30 R. P. C. 547; 29 T. L. R. 651—C.A.

B. LETTERS PATENT.

See also Vol. X. 711, 1744.

1. Vesting Order.

Patent rights being *choses in action*, the Court has jurisdiction, under section 35 of the Trustee Act, 1893, to make an order vesting them in such persons as the Court may appoint. *Heath's Patent, In re*, 56 S. J. 538—Swinfen Eady, J.

2. Revocation.

Patent Worked "Exclusively" or "Mainly" Abroad—Cessation of Business.]—Where an application is made under section 27 of the Patents and Designs Act, 1907, for the revocation of a "patent on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside the United Kingdom," the Court is bound to satisfy itself, before it can give relief under the section, that the patented article or process is manufactured or carried on exclusively or mainly outside the United Kingdom. In coming to that conclusion, however, the Court is not bound to say that at the precise minute, or on the precise day, or the precise day or two, or even in the precise week, when the application was lodged there was a manufacture of the article or a carrying on of the process; and the mere fact that the application is lodged at a moment when no process is going on will not disturb the jurisdiction of the Court. *Green's Application, In re*, 80 L. J. Ch. 484; [1911] 1 Ch. 754; 104 L. T. 629; 28 R. P. C. 423—Parker, J.

Where it appeared that for three months before the petition to revoke a patent granted in 1906 was lodged there had been no carrying on of the patented process outside the United Kingdom at all, a permanent stop having been put to the manufacture, which had previously taken place only in France, the application was refused. *Ib.*

—— **Extent of Working within United Kingdom—Computation of—Inclusion of Working in Derogation of Patentee's Rights.**]—In computing the extent to which a patented article or process is manufactured or carried on in the United Kingdom, for the purpose of ascertaining whether it is manufactured or carried on "exclusively" or "mainly" outside the kingdom within section 27, sub-section 1 of the Patents and Designs Act, 1907, it is immaterial whether working which has taken place in this country is or is not in derogation of the patentee's rights; and working by infringers ought therefore to be included in the computation. *Fiat Motors' Application, In re*, 80 L. J. Ch. 48; [1911] 1 Ch. 66; 103 L. T. 453; 27 R. P. C. 762; 55 S. J. 64; 27 T. L. R. 74—Parker, J.

—— **Revocability of Patent as Defence to Infringement Action.**] — Observations on section 25, sub-section 2 of the Act, making the revocability of a patent a defence to an infringement action. *Ib.*

—— **Satisfactory Reasons for not Working Patent in United Kingdom—Liability to Infringement Proceedings by Applicant for Revocation — Position and Conduct of Applicant.**]—While the motive of an applicant for the revocation of a patent under section 27 of the Patents and Designs Act, 1907, is immaterial, his position and conduct, so far as they may have influenced the action of the owner of the patent, are material; and in considering whether a case for revocation has been made out the Comptroller-General or the Court must look primarily not to the interests of the individual, but to those of the public. *Taylor's Patent, In re*, 81 L. J. Ch. 438; [1912] 1 Ch. 635; 106 L. T. 600; 29 R. P. C. 296; 56 S. J. 415; 28 T. L. R. 293—Parker, J.

Applicants for the revocation of a patent under the section, on the ground that it had been worked exclusively or mainly outside the United Kingdom, were themselves the owners of a prior patent which would have been infringed by any working of the patent sought to be revoked. They had refused an offer of a licence under that patent, and its owners had not applied for a voluntary or compulsory licence under the prior patent. The prior patent would shortly expire, but the other patent had some years to run:—*Held*, that, notwithstanding the non-application for a licence by the owners of the patent sought to be revoked, the fact that it could not have been worked without the risk of infringement proceedings by the owners of the prior patent was a satisfactory reason for the patent not being worked in this country, and that it ought not therefore to be revoked. *Ib.*

Vagueness of Specification—Anticipation.]—The Court revoked a patent for an improvement in golf balls on the ground that the specification was so vague that it was impossible to say what invention was claimed, and that even if the claim was sufficient the patent had been anticipated. *Gamage, Lim. v. Spalding*, 31 T. L. R. 178—Warrington, J.

C. SPECIFICATION.

See also Vol. X. 724, 1749.

Claim too General—Colour Kinematograph—Ambiguity.]—A patent specification made the following claim: "In connexion with kinematograph apparatus, the employment of a succession of but two colour records, the records of one colour sensation alternating with those of the other colour sensation, so that the observer's persistence of vision causes him to see apparently super-imposition or blending of the colours received from series of two colour records." The essence of the invention was the employment of two colours, tri-red and tri-green, instead of the three colours, tri-red, tri-green, and tri-blue, by which a stationary colour picture can be obtained:—*Held*, that the patent was bad, first, because the claim was not confined to tri-colours and did not state that of them only red and green were claimed or that the picture would exclude blue; and secondly, owing to ambiguity. *Natural Color Kinematograph Co.*

v. *Bioschemes, Lim.*, 32 R. P. C. 256; 31 T. L. R. 324—H.L. (E.)

Sufficient Description.]—The plaintiffs, as the registered legal owners of letters patent, granted to one N. for a "process for converting unsaturated fatty acids or their glycerides into saturated compounds," alleged that the defendants were infringing their letters patent, and they claimed an injunction and the usual ancillary relief. The defendants denied the validity of the letters patent on the ground that N.'s specification did not sufficiently describe the manner in which the process was to be carried out:—*Held*, that the specification was insufficient in this respect and that the plaintiffs' action failed. *Crosfield* v. *Techno-Chemical Laboratories*, 30 R. P. C. 297; 29 T. L. R. 378—Neville, J.

Vagueness of—Revocation.]—*See Gamage, Lim.* v. *Spalding*. *See ante*, col. 1098.

Leave to Amend—Infringement—Action to Restrain—Amended Specification to Describe Invention.]—Where leave to amend the specification of a patent has been made to the Comptroller before, and leave to amend granted after, the issue of a writ in an action for infringement, the proper specification to put in evidence and refer to at the trial is the specification as it stands after amendment. *Andrew* v. *Crossley* (61 L. J. Ch. 437; [1892] 1 Ch. 492; 9 R. P. C. 165) considered. *Stepney Spare Motor Wheel Co.* v. *Hall*, 80 L. J. Ch. 391; [1911] 1 Ch. 514; 104 L. T. 665; 27 T. L. R. 283—Warrington, J. Affirmed, 28 R. P. C. 381—C.A.

D. INFRINGEMENT.

1. What is.

See also Vol. X. 756, 1754.

Substitution of Equivalent Part.]—No one who borrows the substance of a patented invention can escape the consequences of infringement by making immaterial variations. The question always is whether the infringing apparatus is substantially the same as the apparatus said to have been infringed. Where a patent is for a combination of parts or a process, and the combination or process, besides being itself new, produces new and useful results, every one who produces the same results by using the essential parts of the combination or process is an infringer, even though he has in fact altered the combination or process by omitting some unessential part or step, and substituting another part or step which is in fact equivalent to the part or step he has omitted. To ascertain the essential feature of an invention, the specification must be read and interpreted by the light of what was generally known at the date of the patent. *Marconi* v. *British Radio-Telegraph and Telephone Co.*, 28 R. P. C. 181; 27 T. L. R. 274—Parker, J.

Wireless Telegraphy—Similar Apparatus—Introduction of Two Spark Gaps.]—The plaintiffs were the owners of a patent for improvements in wireless telegraphy apparatus, and the defendants sold an apparatus which for electrical purposes was identical with an apparatus previously held to be an infringement of the plaintiffs' patent, except for the introduction into the primary circuit of two additional spark gaps and a through charging coil, the presence of the latter being consequent on the introduction of the two spark gaps:—*Held*, that by the introduction of the two spark gaps the defendants had not produced an apparatus which did not come within the scope of the plaintiffs' patent, and that therefore the defendants' apparatus was an infringement of the plaintiffs' patent. *Marconi* v. *Helsby Wireless Telegraph Co.*, 31 R. P. C. 399; 30 T. L. R. 688—Astbury, J.

2. Practice.

a. Account of Damages and Profits.

See also Vol. X. 805, 1763.

Measure of Damages—How Computed.]—In an action by patentees for damages in respect of the sale of articles infringing their patent it was proved that the defenders, the infringers, had sold such a number of the articles as would have yielded to the pursuers, had they effected the sales, a profit of approximately 5,000*l.* The Second Division of the Court of Session (recalling an award by the Lord Ordinary of 1,500*l.*) awarded the pursuers 3,000*l.*, which represented the profits on the proportion of the articles sold by the defenders which, in the opinion of the Court, the pursuers would themselves have succeeded in selling had there been no infringement. On appeal to the House of Lords the defenders asked the House to restore the Lord Ordinary's award, which they contended was well founded on the facts, and in any event was, like the verdict of a jury, only open to challenge if wholly unsupported by, or was contrary to, the evidence. The pursuers acquiesced in the figure arrived at by the Second Division. The House of Lords, holding that they were entitled to consider the question of damages on its merits, on a review of the whole evidence affirmed the judgment of the Second Division (Earl of Halsbury dissenting). *Watson, Laidlow & Co.* v. *Pott, Cassells & Williamson*, [1914] S. C. (H.L.) 18—H.L. (Sc.)

Per Lord Shaw: Legally the pursuers were entitled to damages in respect of all the articles sold by the defenders, irrespectively of whether they themselves could have sold them or not, and that in cases where they themselves could not have effected the sales, damages fell to be assessed by way of a royalty on the articles sold. *Ib.*

Whether Profits on Whole Machine or Infringing Parts only.]—The defendants sold 19,500 prepayment gas meters which contained two parts that constituted infringements of the two letters patent of the plaintiffs. The profit on the infringing parts represented about one forty-fourth of the whole profit on a meter. Under a judgment by consent an enquiry was directed as to what damages (if any) the plain-

tiffs had sustained by the defendants' infringements. The Master certified that the profit lost by the plaintiffs must be considered to be the profit on the sale of the whole of each meter. He was of opinion that 5,000 more meters would have been sold by the plaintiffs but for the defendants' sale of infringing meters; and he assessed the damages for loss of profit under this head at 13*s.* 4*d.* per meter (3,333*l.* 6*s.* 8*d.*), and for loss of profit on actual sales by the plaintiffs in consequence of a reduction in prices from the defendants' competition at 1,500*l.* The total was therefore 4,833*l.* 6*s.* 8*d.* The defendants applied to vary the Master's certificate by giving the plaintiffs only nominal damages; and the plaintiffs applied to increase the number of meters they would have sold to 10,000. It was decided by Eve, J., that the Master had rightly certified that the profit on the whole meter was the proper factor to be taken into calculation, and had rightly fixed the profit on the 5,000 meters at 13*s.* 4*d.* per meter; but that that figure ought on the evidence to be reduced to 3,500, and the damages to 2,333*l.* 6*s.* 8*d.*; and that the finding that the plaintiffs' loss on actual sales was 1,500*l.* ought not to be disturbed. On appeal,—*Held*, that, it not having been shewn that the learned Judge had proceeded on any erroneous principle, his decision must be affirmed. *Meters, Lim.* v. *Metropolitan Gas Meters, Lim.*, 104 L. T. 113; 28 R. P. C. 157—C.A.

b. Delivery up of Infringing Articles.

Judgment for the Plaintiff with Delivery up—Defendant's Right to Elect to Destroy.] —This was a motion to vary minutes of judgment delivered on June 17, 1911, whereby the defendants in the action were ordered, among other things, to make and file within fourteen days after service of the judgment upon them a full and sufficient affidavit (to be made by the secretary or other proper officer), stating what arc lamps or parts of arc lamps were in their possession or power made in infringement of the said letters patent, and within four days from the filing of such affidavit to deliver up to the plaintiffs the arc lamps or parts of arc lamps that should by such affidavit appear to be in their possession or power by adding to such minutes immediately after the words "deliver up to the plaintiffs" the words "or in the presence of the plaintiffs or their agents destroy or otherwise make unfit for use." The motion was refused. *British Westinghouse Electric and Manufacturing Co.* v. *Electrical Co.*, 28 R. P. C. 530; 55 S. J. 689 —Swinfen Eady, J.

c. Discovery.

See also Vol. X. 812, 1764.

Defence of Manufacture Outside United Kingdom—Application for Discovery of Documents by Defendants—"Fishing" Enquiry.] —Defendants in an action for infringement of patents asked for discovery of documents against the plaintiffs. The defendants had pleaded, by way of defence, under section 25, sub-section 2 (*b*) of the Patents and Designs Act, 1907 (which incorporates section 27 of that Act), that the patents were manufactured mainly outside the United Kingdom, giving a list of firms in America, Germany, and Holland by whom the patent processes were carried on. Discovery was resisted on the ground that, in cases where a petition was brought to revoke a patent on the above grounds, a *prima facie* case must have been made out before the applicant could obtain particulars of the respondents' business, otherwise the application merely became a "fishing" enquiry in order to see trade books; and where the same plea was raised as a defence the same considerations applied. Neville, J., held that as the issues were defined by the particulars given by the defendants, discovery ought to be given:—*Held*, by the Court of Appeal, that the order was right as regards the plaintiffs' cause of action for infringement of the patents, but that as regards the defence pleaded under section 25, sub-section 2 (*b*) of the Patents and Designs Act, 1907, discovery ought to be limited to documents shewing the imports from the firms or companies named in that defence, and documents shewing the amount of manufacture by the plaintiffs. *British Thomson-Houston Co.* v. *Duram, Lim.*, 84 L. J. Ch. 816; [1915] 1 Ch. 823; 113 L. T. 28; 32 R. P. C. 104 —C.A.

Order of Neville, J. (84 L. J. Ch. 327), varied. *Ib.*

d. Costs.

See also Vol. X. 819, 1764.

Judgment by Consent — Motion or Summons.] — In actions for the infringement of registered designs, or of patents, or of trade marks it is desirable that there should be some publicity given to the order of the Court. Accordingly, where defendants had consented to judgment in respect of an infringement of the plaintiffs' registered design:—*Held*, that the plaintiffs were entitled to the costs of moving for judgment in open Court, and not merely to such costs as would have been incurred had the application been made on summons in chambers. *Smith & Jones, Lim.* v. *Service, Reeve & Co.*, 83 L. J. Ch. 876; [1914] 2 Ch. 576; 111 L. T. 669; 31 R. P. C. 319; 58 S. J. 687; 30 T. L. R. 599—Sargant, J.

Gandy Belt Manufacturing Co. v. *Fleming, Birkby & Goodall, Lim.* (18 R. P. C. 276), and *Royal Warrant Holders' Association* v. *Kitson, Lim.* (26 R. P. C. 157), followed. *London Steam Dyeing Co.* v. *Digby* (57 L. J. Ch. 505; 36 W. R. 497) and *Allen* v. *Oakey* (62 L. T. 724) not followed. *Ib.*

Threats Action — Infringement Action — Threats Action Discontinued.]—In February, 1911, the plaintiffs learned that the defendants were issuing warnings as to the use of certain patented goods of the plaintiffs' manufacture. On March 31 they took out the writ in this action to restrain the continuance of threats. On April 13 there was a notice of motion for an injunction in the threats action, and on April 21 the defendants issued a writ for

infringement of their patent. On April 25 the motion in the threats action came before the Court, and it was arranged that the proceedings in the threats action should be stayed to abide the result of the infringement action, and that the costs of the threats action should be reserved, and the motion stood over with liberty to apply. The infringement action came on for trial on December 14, 1911, and judgment was given for the defendants in that action; this judgment was afterwards affirmed by the Court of Appeal. Upon the motion in the threats action being restored, it was admitted that the plaintiffs had no cause of action, the defendants having brought themselves within the proviso of section 36 of the Patents and Designs Act, 1907 :—*Held*, that although the threats action must be dismissed, the plaintiffs had taken the proper course with a view to the saving of expense, and therefore the Court should dismiss the action without costs. *Metropolitan Gas Meters v. British, Foreign, and Colonial Automatic Light Controlling Co.*, 82 L. J. Ch. 74; [1913] 1 Ch. 150; 108 L. T. 151; 29 R. P. C. 680; 57 S. J. 129—Warrington, J.

Taxation—Action for Infringement of Three Patents—Action Abandoned in Respect of Two Patents at the Trial — Particulars of Objections.]—Where an action was commenced for the infringement of three patents, and at the hearing the plaintiffs abandoned the action in respect of two of the patents and fought out the action on one patent only,—*Held*, that the action had not proceeded to trial on the two patents as to which the case had been abandoned within the meaning of Order LIII.A, rule 22, and therefore that the costs of the defendants' particulars of objections to those patents were within the discretion of the Taxing Master. *Babcock & Wilcox v. Water Tube Boiler and Engineering Co.* (27 R. P. C. 626) followed. *May v. Yuill & Co.* (27 R. P. C. 525) not followed. *British, Foreign, and Colonial Automatic Light Controlling Co. v. Metropolitan Gas Meters, Lim.*, 81 L. J. Ch. 520; [1912] 2 Ch. 82; 106 L. T. 834—Warrington, J.

—— Discontinuance with Leave of Court—Costs of Particulars of Objections.] — Order LIII.A. rule 22 of the Rules of the Supreme Court, which provides that the costs of particulars of objections, delivered by the defendant in an action for breach of patent, shall be in the discretion of the Taxing Master, will be applied to actions discontinued, whether with or without the leave of the Court. *Bibby & Baron v. Strachan*, 28 R. P. C. 305; 55 S. J. 235—Joyce, J.

E. PROLONGATION OF LETTERS PATENT.

Extending Term as to some Claiming Clauses Only—Powers of Court.]—The Court has power, under section 18 of the Patent and Designs Act, 1907, to extend the term of a patent as to one or more of its claiming clauses without extending it as to all those clauses. *Lodge's Patent, In re*, 80 L. J. Ch. 517; [1911] 2 Ch. 46: 104 L. T. 716; 28 R. P. C. 365; 27 T. L. R. 419—Parker, J.

F. ASSIGNMENT, SALE, LICENCES, AND ROYALTIES.

See also Vol. X. 843, 1768.

1. Generally.

Registered Proprietor—Right to Sue for Infringements.] — Certain rights having been conferred by statute on a registered proprietor by sub-section 3 of section 71 of the Patents and Designs Act, 1907, the Court will from such fact draw the inference that there is in such registered proprietor a right to sue. *Duncan v. Lockerbie & Wilkinson*, 29 R. P. C. 454; 56 S. J. 573—Neville, J.

2. Sale.

Rights of Patentee—Jobbers and Dealers—Conditions Imposed by Patentee.]—A prohibition in an agreement between patentees and a dealer against "Exchanging or tendering Edison phonographs or parts, records or blanks, in whole or part payment for privileges of any character, or for advertising, or for goods of some other maker or nature," is not violated by the exchange between one dealer and another of one class of goods for another, provided that the condition of the agreement is observed as to trade prices, under-cutting, and rival goods; but a dealer whose name has been removed from the list is still a restricted trader and bound by the conditions attached to his agreement as to the sale or disposal of the goods made with the patentees. *National Phonograph Co. of Australia v. Menck*, 80 L. J. P.C. 105; [1911] A.C. 336; 104 L. T. 5; 28 R. P. C. 229; 27 T. L. R. 239—P.C.

3. Licences and Royalties.

Petition for Grant of Compulsory Licence—Notice and Grounds of Opposition to Petition — Particulars of Grounds — "Written proceeding requiring particulars" — Obligation on Petition to make out Case.] — The grounds of opposition to a petition for a compulsory licence under section 24 of the Patents and Designs Act, 1907, which, with the notice of opposition, may be delivered to the Board of Trade under rule 70 of the Patents Rules, 1908, are not a "written proceeding requiring particulars" within rule 7 of Order XIX. of the Rules of the Supreme Court; and particulars of them cannot therefore be ordered. A petitioner under section 24 has to make out his own case, subject to the right of the Court to require the respondent to formulate his case if he sets up an affirmative case of his own. *Robin Electric Lamp Co., In re (No. 1)*, 84 L. J. Ch. 49; [1914] 2 Ch. 461; 111 L. T. 1062; 31 R. P. C. 341—Warrington, J.

Compulsory Licence — Case Necessary for Petitioner for, to Establish—Form of Order.] —The words "the reasonable requirements of the public shall not be deemed to have been

satisfied " in sub-section 5 of section 24 of the Patents and Designs Act, 1907, should be read " shall be deemed not to have been satisfied." *Robin Electric Lamp Co., In re* (*No. 2*), 84 L. J. Ch. 500; [1915] 1 Ch. 780; 113 L. T. 132; 32 R. P. C. 202; 31 T. L. R. 309—Warrington, J.

The mischief aimed at by the section is the failure of the patentee to satisfy the reasonable requirements of the public as distinguished from those of particular individuals; and in order to establish a case within the section a petitioner for a compulsory licence must prove default, not towards himself only, but towards the public generally, or that part of it interested in the matter in question. The expression " trade or industry " in the section is also used in a wide sense, and it is necessary for a petitioner to prove that a trade or industry as a whole, not a particular trade, is unfairly prejudiced; while the " establishment of a new trade or industry " is a different thing altogether from the entry of a particular person into an existing trade or industry, and the " demand " referred to at the end of sub-section 5 (*a*) of the section is the demand of the public at large, not that of a particular person. An order made under the section should not take the form of a general direction to grant licences, but that of a direction to grant a licence to the petitioner. Any other party desiring a licence must present a separate petition. Sub-section 5 of the section contemplates, as legitimate alternative modes of working a patent, the maintaining of an adequate supply by the patentee himself or the licensing others to do so; and a petitioner for a compulsory licence must prove that the patentee has made default in both these modes, not in one of them only. *Ib.*

Licensee—Alleged Infringement—Threats of Legal Proceedings—Whether Person Aggrieved has Remedy by Statute.] —A person who claims to be the licensee of a patent, but who does not claim to be the patentee is not liable to an action under section 36 of the Patents and Designs Act, 1907, for making groundless threats of legal proceedings in respect of an alleged infringement of the patent. *Diamond Coal Cutting Co.* v. *Mining Appliances Co.*, 60 S. J. 42; 32 T. L. R. 47—C.A.

Contracts as to Licence to Use Process—Condition Requiring Licensee to Purchase Unprotected Articles from Patentee's Agent — Defence to Action—Defendant not a Licensee.] —The patentee of a process for increasing the keeping quality of compounds containing unstable oxygen, such as hydrogen peroxide and certain solutions, consisting in adding thereto alkali pyrophosphates, before 1913 granted licences for the use of the process for the term of the patent with a condition that the licensees should, during the continuance of the licence, purchase all the pyrophosphates used by them in their hydrogen peroxide baths for the bleaching of straw-plait hats, and other fibres, from the patentee's agent. In an action for infringement of the patent brought by the patentee against a person who was not a licensee the defendant pleaded by his defence as a point of law that the condition as to the purchase of pyrophosphates had been inserted in contracts made since January 1, 1908, and still in force, and he relied on section 38, sub-section 4 of the Patents and Designs Act, 1907:—*Held*, that the patent was one for a process; that the condition in question was a condition the effect of which was to require the licensees to acquire from the licensor articles not protected by the patent, and was by virtue of section 38, sub-section 1 (*b*) null and void; that " protected by the patent " in that clause meant " claimed by the patent," that pyrophosphates being ordinary articles of commerce were not so protected; and that the insertion of the condition in the licences was available as a defence to the action under sub-section 4 of section 38 of the Act. *Sarason* v. *Frénay*, 83 L. J. Ch. 909; [1914] 2 Ch. 474; 111 L. T. 919; 31 R. P. C. 330—C.A.

Royalties—Licence—Transfer.] —A clause in a licence agreement for the use of certain patents provided that " the said licensee may . . . transfer the said licence to any limited liability company he may form to carry on his business, or the business connected with and arising out of said patents and this licence ":—*Held*, that the licensee could not under this clause rid himself of liability for royalties due under the licence agreement by transferring the licence to a company formed, not for the purpose of carrying on his business or for working the patents, but merely with the view of ridding himself of such liability. *Cummings* v. *Stewart*, [1911] 1 Ir. R. 236—M.R.

—— Lapse of Patent by Non-payment of Fees—Implied Covenant by Patentee to Pay Fees — Dependency of Covenant to Pay Royalties.]—A patentee of improvements for making re-inforced concrete called the Cummings system, patented in the United Kingdom, France, and Austria respectively, granted the exclusive right to work the patents during the full term for which they were granted; the licensee expressly admitted the validity of the patents and agreed to pay a royalty of 2½ per cent. on the total amount included in every contract for work executed on the Cummings system, and a minimum amount of 5,000 dollars each year during the continuance of the agreement. The patentee agreed to protect the patents against infringement and to defend any proceedings brought against the licensee for the infringement of other patents. There was no provision as to payment of the renewal fees. The patentee did not pay the renewal fees on the French and Austrian patents, and they lapsed owing to the non-payment. The licensee worked the invention in England only, and without success. The licensee paid the minimum royalty at first, but declined to pay at the end of the third year, and an action was brought by the patentee to recover the amount then due. The defendant resisted the claim on the ground, first, of want of novelty of the invention; secondly, that under the agreement the plaintiff was bound to pay the renewal fees, that owing to the failure to pay the fees in France and Austria the patents in those

countries lapsed, and that the lapse of the patents relieved the defendant from liability to pay the royalty. The defendant counterclaimed for a declaration that the agreement was not binding and for a return of 52*l.* 12*s.* 9*d.* paid under a mistake. The plaintiff contended, first, that the agreement imposed no obligation on him to pay the fees; secondly, that even if it did, the breach of the agreement by him in that respect was no defence to the action, but only gave a right to damages to be recovered on a counterclaim; and thirdly, that as the United Kingdom patent remained valid, there was at most a partial failure of consideration which did not release the defendant from his agreement to pay the royalty :—*Held*, first, that the defence of want of novelty was not open to the defendant; secondly, that there was an implied covenant by the plaintiff to pay the renewal fees; thirdly, that the covenant to pay the royalties was not an independent covenant, but dependent on the performance by the plaintiff of the implied covenant to pay the fees; fourthly, that, owing to the lapse of the foreign patents, a substantial part of the subject-matter of the agreement was destroyed, and the agreement in a substantial part became impossible of performance and ceased to be binding; and fifthly, that as the royalty was a fixed sum, the consideration was indivisible, and the failure of part was equivalent to the failure of the whole. *Mills* v. *Carson* (10 R. P. C. 9) distinguished. *Lines* v. *Usher* (14 R. P. C. 206) followed. *Cummings* v. *Stewart*, [1913] 1 Ir. R. 95—M.R.

G. APPEAL FROM COMPTROLLER.

Limit of Time — Long Vacation.] — The period of the Long Vacation is to be reckoned in computing the one calendar month within which, or such further time as the Court may under special circumstances allow, a petition of appeal from a decision of the Comptroller under sections 20, 26, or 27 of the Patents and Designs Act, 1907, must by Order LIII.A, rule 4, be presented. *Beldam's Patent, In re*, 80 L. J. Ch. 133; [1911] 1 Ch. 60; 103 L. T. 454; 27 R. P. C. 758; 55 S. J. 46—Parker, J.

Extension of Time—Special Circumstances —"Pleading."]—The fact that the delay in presenting an appeal was caused by the Long Vacation is not a "special circumstance" justifying an extension of time. *Ib.*

H. PATENT AGENT.

See also Vol. X. 866, 1772.

Description as Patent Agent by Unregistered Person.]—The respondent, who was not a registered patent agent, issued a circular in which he stated that he had wide experience in patent matters, and that he did, and was prepared to do, specified work in connection therewith. This work was such as is usually done by patent agents—for example, the preparation of specifications and of applications for patents. The respondent did not in terms state that he was a patent agent :—*Held*, that he had not described himself as a patent agent within the meaning of section 84 of the Patents and Designs Act, 1907. *Graham* v. *Tanner*, 82 L. J. K.B. 119; [1913] 1 K.B. 17; 107 L. T. 681; 77 J. P. 35; 23 Cox C.C. 217; 29 R. P. C. 683; 29 T. L. R. 24—D.

Unregistered Person Describing Himself as Patent Agent—"British and foreign" Patent Agent.]—A person who without being registered used the title of "British and foreign" patent agent,—*Held*, to have described himself as a patent agent within the meaning of section 84 of the Patents and Designs Act, 1907, and accordingly was guilty of a contravention of that section. *Lockwood* v. *Chartered Institute of Patent Agents*, [1913] S. C. (J.) 8—Ct. of Just.

"Patent agency."] — The appellant and another person carried on the business of a patent agent at certain premises, but neither of them was registered as a patent agent under the Patent and Designs Act, 1907. The words "Patent Agency" were affixed in prominent enamel letters to the window of the premises, and the words "Patents, Designs, Trade Marks" were on a plate fixed to the wall next to the window :—*Held*, that the appellant had not described himself as a patent agent within the meaning of section 84 of the Patents and Designs Act, 1907. *Hans* v. *Graham*, 83 L. J. K.B. 1255; [1914] 3 K.B. 400; 111 L. T. 551; 24 Cox C.C. 381; 78 J. P. 455—D.

PAUPER.

Settlement of.]—*See* POOR LAW.

Lunatic.]—*See* POOR LAW.

PAVING.

In Metropolis.]—*See* METROPOLIS.

In other Places.]—*See* LOCAL GOVERNMENT.

PAWNBROKER.

Power of Executor and Trustee to Pledge Chattels.]—*See* EXECUTOR.

PAYMENT.

See also Vol. X. 873, 1774.

Appropriation of Payments—Rule in Clayton's Case — Mortgage to Secure Current

Account — Subsequent Mortgage with Notice to the Bank.]—After notice to a bank holding a security from its customer of a subsequent mortgage by the customer, the debit of the customer is struck at the date of notice; and where a current account is merely continued and no specific appropriation of fresh payments is made, such payments are credited to the earliest items on the debit side of the account, and continue to be so credited until the first mortgage is extinguished. *Deeley* v. *Lloyds Bank* (*No.* 1), 81 L. J. Ch. 697; [1912] A.C. 756; 107 L. T. 465; 56 S. J. 734; 29 T. L. R. 1—H.L. (E.)

A customer of the respondent bank mortgaged his property to the bank to secure an overdraft limited to 2,500*l*. He then mortgaged the same property to the appellant for 3,500*l*. subject to the bank's mortgage. The bank on receiving notice of this further mortgage did not open a new account, but continued the old current account. The customer thereafter paid in moneys which at a particular date, if they had been appropriated in accordance with the rule in *Clayton's Case* (1 Mer. 572), would have extinguished the bank's mortgage. The customer's property was sold by the bank for a sum sufficient to satisfy the bank's debt, but not that of the appellant:—*Held*, that the evidence did not exclude the operation of the rule in *Clayton's Case* (*supra*), which must be applied. *Ib.*

Decision of the Court of Appeal (79 L. J. Ch. 561; [1910] 1 Ch. 648) reversed. *Ib.*

—— **Rule in Clayton's Case — Intention.**] — By an agreement between the plaintiff and L. the plaintiff made advances on goods consigned to him by L., such advances being in account current, and each set of goods being subject to a general lien for all advances. The plaintiff also discounted bills for L., entering all his advances, discounts, and securities in one current account. In discounting bills for L. the plaintiff immediately credited him with their full amount without waiting till they were paid:—*Held*, that the plaintiff did not thereby appropriate the entries of the face value of discounted bills not yet due as payment of actual advances on other bills still unpaid. *Galula* v. *Pintus*, 104 L. T. 574; 16 Com. Cas. 185; 27 T. L. R. 382—Scrutton, J.

And see O'Shea, In re; Lancaster, ex parte, ante, col. 612.

—— **No Alteration without Consent.**] — The property in suit was put up for sale by the collector in respect of the unpaid balance of a kist of revenue payable in January, 1902. It appeared that the appellant had paid and the Government accepted the full amount thereof, both parties appropriating the payment to that kist; but that subsequently the Treasury officials had appropriated the same in the first instance to the kist payable in September, 1901, with the result that money was still due for the January kist:—*Held*, that the appropriation could not be varied without the consent of the appellant, that there was nothing due in respect of the January kist, and that the sale was without jurisdiction. *Mahomed Jan* v. *Ganga Bishun Singh*, L. R. 38 Ind App. 80—P.C.

—— **Novation—New Limited Company.**]—A and B formed themselves into a partnership called the Simpitrol Lighting Co., and entered into a written agreement with the plaintiffs upon which goods were supplied to the company. A few months after its inception the Simpitrol Lighting Co. was duly registered as a limited company, and the plaintiffs continued to supply goods under the said written agreement to the new limited company, and kept the account thereof in their ledgers as one continuous account. The company while unregistered made no payments to the plaintiffs, but made considerable payments while registered as a limited company. Finding difficulty in getting payment of their accounts, the plaintiffs divided and re-arranged the account in their ledger, appropriating the payments made as against the goods supplied to the new company, and sued A and B on the written agreement for the goods supplied to the company while it was unregistered:—*Held*, that the plaintiffs were entitled to succeed. *Pitner Lighting Co.* v. *Geddis*, [1912] 2 Ir. R. 163—K.B. D.

Postponement of — Moratorium.] — *See* MORATORIUM.

PEERS AND PEERAGE.

See PARLIAMENT.

PENALTY.

See also Vol. X. 927, 1781.

Liquidated Damages or Penalty—Principle.]—Where in a contract it is provided that the party committing a breach thereof shall pay a fixed sum "as liquidated damages and not as a penalty," the question is whether the construction contended for renders the agreement unconscionable and extravagant and one which no Court ought to enforce; and where in the circumstances the amount is reasonable, and the proof of damage difficult and costly, the sum may be recovered as liquidated damages. *Webster* v. *Bosanquet*, 81 L. J. P.C. 205; [1912] A.C. 394; 106 L. T. 357; 28 T. L. R. 271—P.C.

The question whether a sum stipulated for in a contract is a penalty or liquidated damages is a question of construction for the Court, to be decided upon the terms and circumstances of the particular contract at the time of the making, not of the breach. A presumption is raised in favour of a penalty where a lump sum is to be paid as compensation in respect of many different events, some of which occasion serious and some trifling damage, but

that presumption may be rebutted by the fact that the damage so caused, though varying in importance, may be of such a nature that it cannot be accurately ascertained. In a case in which retail dealers had agreed not to sell goods of a wholesale manufacturer at prices less than the prices set out in the current price list of the manufacturers, and not to sell to certain persons whom the manufacturers had decided not to supply, and to pay 5*l.* for each and every article sold in breach of the agreement, "as and by way of liquidated damages and not as a penalty,"—*Held*, that the stipulation was to be construed as one for liquidated damages. Decision of the Court of Appeal reversed. *Dunlop Pneumatic Tyre Co.* v. *New Garage and Motor Co.*, 83 L. J. K.B. 1574; [1915] A.C. 79; 111 L. T. 862; 30 T. L. R. 625—H.L. (E.)

—— **Agreed Damages for Various Breaches.**]—The plaintiffs agreed with the defendant to sell to him their motor cars for sale by him in a certain district, the defendants undertaking not to sell any car or parts thereof below a certain price, and agreeing to pay to the plaintiffs 250*l.* for every breach of this undertaking, "such sum being the agreed damages which the manufacturer will sustain." The sum of 250*l.* was also made payable for various other breaches differing in kind. The defendant sold five cars below the price fixed:—*Held* (Bankes, L.J., dissenting), that the 250*l.* was a penalty and not liquidated damages. *Ford Motor Co.* v. *Armstrong*, 59 S. J. 362; 31 T. L. R. 267—C.A.

Decision of Atkin, J. (30 T. L. R. 400), affirmed. *Ib.*

—— **Contract for Lease — Breach of Conditions by Lessor—Continuous Breach.**]—In an agreement for a lease there were provisions that the lessors should complete by a fixed date certain works, alterations, and repairs, and that if these were not completed the lessors should pay to the lessee Rs. 150 a day from the date of breach to the beginning of the action as liquidated damages, and the same daily amount from the latter date to the completion of the works:—*Held*, that the failure to complete the work was a continuous breach, and that the daily Rs. 150, both before and after action brought, constituted liquidated damages and not a penalty, and were recoverable as such. *De Soysa* (*Lady*) v. *De Pless Pol*, 81 L. J. P.C. 126; [1912] A.C. 194; 105 L. T. 642—P.C.

—— **Lease of Hotel—Mutual Obligations.**]—An agreement between two persons for the lease of an hotel contained mutual obligations of different kinds and of varying degrees of importance. *Inter alia* the tenant was bound to apply for a transfer of the licence, to manage the hotel for the landlord until the licence was transferred, and to take over the stock at a valuation. The agreement also contained the following clause: "Both parties hereto bind and oblige themselves to implement their part of this agreement under the penalty of 50*l.*, to be paid by the party failing to the party performing or willing to perform over and above performance." The tenant having refused to go on with the lease or to carry out the agreement at all, the landlord claimed damages for breach of contract to the amount of over 300*l.*:—*Held*, first, that the sum stipulated in the agreement was not liquidated damages, but a penalty; and secondly, that the landlord's claim for damages was not limited to the amount mentioned in the penalty clause. Opinion of Lord Fitzgerald, in *Elphinstone* (*Lord*) v. *Monkland Iron and Coal Co.* (11 App. Cas. 332) commented on and doubted. *Dingwall* v. *Burnett*, [1912] S. C. 1097—Ct. of Sess.

—— **Payment of Purchase Price by Instalments—Forfeiture on Non-payment Punctually of any Instalment—Penalty—Relief.**]—The respondents agreed to sell and the appellant agreed to buy certain land for $75,000, of which $2,000 were to be paid at once, $5,000 on or before June 14, 1910, $5,000 on or before December 14, 1910, $60,000 in six equal semi-annual instalments, and the balance of $3,000 on June 14, 1914, together with interest at 7 per cent. on so much of the purchase moneys as might from time to time remain unpaid. The agreement also contained the following clause: "And it is expressly understood that time is to be considered the essence of this agreement, and unless the payments are punctually made at the times and in the manner above mentioned these presents shall be null and void and of no effect, and the said party of the first part [the vendors] shall be at liberty to re-sell the land, and all payments made hereunder shall be absolutely forfeited to the party of the first part." The respondents sought to enforce this stipulation and to re-sell the land on the non-payment at the due date of one of the instalments:—*Held*, that the stipulation was in the nature of a penalty from which the appellant was entitled to be relieved on payment of the unpaid instalment. *Dagenham Thames Dock Co., In re; Hulse's Claim* (43 L. J. Ch. 261; L. R. 8 Ch. 1022), followed. *Kilmer* v. *British Columbia Orchard Lands, Lim.*, 82 L. J. P.C. 77; [1913] A.C. 319; 108 L. T. 306; 57 S. J. 338; 29 T. L. R. 319—P.C.

Against Member of Parliament.] — *See* PARLIAMENT.

PENSION.

See also Vol. X. 956, 1785.

Civil Service—Amount of Pension—Dispute—Decision of Commissioners of the Treasury—Jurisdiction of the Court.]—Where a Civil servant has been granted a superannuation allowance, the decision of the Commissioners of the Treasury as to the amount thereof is final and cannot be reviewed by a Court of law. *Cooper* v. *Reg.* (49 L. J. Ch. 490; 14 Ch. D. 311) followed. *Yorke* v. *Regem*, 84 L. J. K.B 947; [1915] 1 K.B. 852; 112 L. T. 1135; 31 T. L. R. 220—Lush, J.

Madras Civil Service Annuity — Retired Covenanted Indian Civil Servant—Sequestration—Assignability of Annuity.]—The East India Annuity Funds Act, 1874, did not put an end to the Bengal, Madras, and Bombay Civil Annuity Funds, which by section 1 thereof were authorised to be transferred to the Secretary of State for India in Council, and did not incorporate the provisions of the (Indian) Pensions Act, 1871, so as to make annuities or pensions payable out of such funds "pensions granted or continued by Government . . . on account of past services" within the meaning of section 11 of this latter Act, which under that section are not liable to attachment, seizure, or sequestration, and the assignment of which is by section 12 of the same Act rendered null and void. Consequently an annuity or pension to which a Madras Covenanted Indian Civil Servant was admitted on retirement under section 2 of the Act of 1874 is not subject to the restrictions contained in sections 11 and 12 of the (Indian) Pensions Act, 1871, and is assignable and liable to be reached by a writ of sequestration to enforce a judgment in the High Court of Justice in England. *Knill* v. *Dumergue*, 80 L. J. Ch. 708; [1911] 2 Ch. 199; 105 L. T. 178; 55 S. J. 648; 27 T. L. R. 525—C.A.

Semble, the (Indian) Pensions Act, 1871, was intended to be confined to British India, and has no operation in England. *Ib.*

Old Age Pension—Local Pension Committee — Central Pension Authority — "Final and conclusive" — Jurisdiction.] — The appellant was awarded a pension by the local pension committee. No appeal was made to the central pension authority, new facts were ascertained, and the pension officer reported to the local committee that the woman was not yet seventy; but the committee declined to alter their award. The pension officer then reported to the central pension authority, which withdrew the pension. The appellant presented a Petition of Right claiming the pension:—*Held*, that, the appellant not having fulfilled the statutory conditions, one of which was the attainment of seventy, the order of the local pension committee was invalid, and that it was competent for the pension officer to refer the question to the central pension authority notwithstanding the words of section 7, sub-section 2, that the decision of the local pension committee was to be "final and conclusive." *Murphy* v. *Regem*, 80 L. J. P.C. 121; [1911] A.C. 401; 104 L. T. 788; 75 J. P. 417; 9 L. G. R. 675; 55 S. J. 518; 27 T. L. R. 453—H.L. (Ir.)

—— Appeal from Local Pension Committee—Notice of Appeal.]—On an appeal to the Local Government Board by a pension officer from a decision of a local pension committee allowing a pension, it is sufficient that the claimant should have notice that an appeal has been brought; it is not necessary that notice should be given to him of the time and place of hearing. The Local Government Board have a discretion as to whether or not they shall hear in person the claimant and his witnesses. *Per* Madden, J.: The claimant should be given an opportunity of presenting his case to the Local Government Board in some way suitable to the character of the enquiry, and it would probably be in writing. *Rex* v. *Local Government Board*, [1911] 2 Ir. R. 331—K.B. D.

The question how far the principle of *res judicata* applies to applications under the Old Age Pension Act, 1908, considered. *Ib.*

—— Local Pension Committee—Committee not Validly Elected — Quo Warranto.] — The term of office of a local pension committee appointed under the Old Age Pension Act, 1908, having expired, a resolution was passed at a meeting of the county council purporting to appoint a new committee which included M. as one of the members. The summons convening the meeting of the county council had not, as required by article 36 (10) vi. of the Schedule to the Local Government (Application of Enactments) Order, 1898, specified the appointment of such committee as business to be transacted at the meeting. An application having been made for an information in the nature of a *quo warranto* against M.,—*Held*, that, the committee not having been validly appointed, there was no existing office, and therefore *quo warranto* did not lie. *Rex* v. *McDonald*, [1913] 2 Ir. R. 55—K.B. D.

Quære, is regulation 21 (31*d*) of the Old Age Pensions Regulations, 1908, enabling the appointing council at any time to remove any member of the committee, *ultra vires*? *Ib.*

PERJURY.

See CRIMINAL LAW.

PERPETUITY.

I. THE RULE AGAINST, ITS SCOPE AND APPLICATION.

See also Vol. X. 957, 1786.

Will—Construction.]—It is not permissible to construe a gift otherwise than according to its natural meaning, because if construed according to its natural meaning it would offend against the rule against perpetuities, though possibly, if the gift might equally well be construed in two ways, one of which only would offend against the rule, the Court might, because of the rule, be led to adopt the other construction. *Hume, In re; Public*

Trustee v. *Mabey*, 81 L. J. Ch. 382; [1912] 1 Ch. 693; 106 L. T. 335; 56 S. J. 414—Parker, J.

—— **Discretionary Trust—Residue.**]—A testator left his residuary estate both real and personal to his executors and trustees, to be used and employed by them in their discretion, so far as it might go, in the maintenance and keeping up of his dwelling house, with full power to sell the real estate and devote the proceeds to keeping up and maintaining his said residence; and if it should be necessary for any reason that the said residence should be sold, he directed that upon such sale being completed the residuary estate then remaining should be divided in equal proportions among the pecuniary legatees under his will :—*Held*, that as there was no definite limit assigned to the duration of the discretionary trust affecting the residue it was void as tending to a perpetuity. *Kennedy* v. *Kennedy*, 83 L. J. P.C. 63; [1914] A.C. 215; 109 L. T. 833—P.C.

Gifts of Income—Marriage.]—The following gift of income *held* void for remoteness : First, to the daughters in equal shares should one of them marry. Secondly, to the surviving daughter in case one dies in the lifetime of the other without leaving issue. Thirdly, the gift of the 50*l*. per annum to Olive should Evelyn die without children and Olive be unmarried at the time. *Crichton's Settlement*, *In re; Sweetman* v. *Batty*, 106 L. T. 588; 56 S. J. 398—Neville, J.

Devise of Real Estate—Trust to Pay off Mortgage out of Rents—Trust for Sale and Division when Estate is Clear — Mortgage Debts Payable by Instalments.]—A testator devised real estate upon trust out of the rents to pay off the mortgages thereon and then upon trust to sell and divide the proceeds among his children then living and the issue then living of any of his children then dead. The mortgage debts were repayable by instalments which if punctually paid would discharge the mortgages within the life in being at the testator's death and twenty-one years afterwards :—*Held*, that, as the trust for sale and division did not necessarily arise within the prescribed period, the devise was void for remoteness. *Bewick*, *In re; Ryle* v. *Ryle*, 80 L. J. Ch. 47; [1911] 1 Ch. 116; 103 L. T. 634; 55 S. J. 109—Eve, J.

Voluntary Association.] — Where the object of an incorporated society is non-charitable, the fact that the society is a voluntary association will not enable it to take a gift under a will if the gift is coupled with words which impose a continuing trust as to its user. *Clifford*, *In re; Mallam* v. *McFie*, 81 L. J. Ch. 220; 106 L. T. 14; 56 S. J. 91; 28 T. L. R. 57—Swinfen Eady, J.

Trust for Sale at Expiration of Twenty-one Years from Date of Deed—Validity—Computation of Period—Execution of Trust by Original Trustees.]—A trust arising at the expiration of a term of twenty-one years from the date of a deed is not void for perpetuity. By a settlement dated May 13, 1892, real estate was conveyed to two trustees on trust that during a term of twenty-one years from the date of the settlement they or the survivor of them or other the trustees or trustee for the time being (therein after referred to as "the said trustees or trustee") should make certain payments, and that "at the expiration of the said term of twenty-one years" "the said trustees or trustee" should sell the property : —*Held*, that the term of twenty-one years determined, and the trust for sale arose, at the same identical moment; that on the construction of the deed the day of the date was included in the term; and that the trust for sale was therefore valid and effectual. *Semble*, that if the trust had otherwise been invalid the fact that the two original trustees were executing it would not have validated it. *English* v. *Cliff*, 83 L. J. Ch. 850; [1914] 2 Ch. 376; 111 L. T. 751; 58 S. J. 687; 30 T. L. R. 599—Warrington, J.

II. LIMITATIONS.

See also Vol. X. 986, 1796.

Void Limitation to Children who Attain Twenty-five — Subsequent Limitation of Life Interests—Persons in Being.]—The rule that a limitation ulterior to or expectant on a limitation which may infringe the rule against perpetuities is itself void applies although the subsequent limitation consists of life interests only, and although it is to persons in being at the date when the settlement came into operation. *Thatcher's Trusts*, *In re* (26 Beav. 365), followed. *Norton*, *In re; Norton* v. *Norton* (80 L. J. Ch. 119; [1911] 2 Ch. 27), considered. *Hewett's Settlement*, *In re; Hewett* v. *Eldridge*, 84 L. J. Ch. 715; [1915] 1 Ch. 810; 113 L. T. 315; 59 S. J. 476—Astbury, J.

Vesting—Remoteness—Discretionary Power in Trustees as to Maintenance.]—The creation in trustees of a mere discretionary power to apply the income of an expectant share for the maintenance or benefit of a beneficiary with a direction to accumulate the income not so applied for the benefit of the persons who ultimately attain a vested interest in the share in question, is not sufficient to vest a gift originally given upon attaining a specified age. *Hume*, *In re; Public Trustee* v. *Mabey*, 81 L. J. Ch. 382; [1912] 1 Ch. 693; 106 L. T. 335; 56 S. J. 414—Parker, J.

A testatrix bequeathed the sum of 2,000*l*. to trustees upon trust to pay the income thereof to her daughter for life, and after the daughter's death upon trust as to capital and income for all or any of her children or child who should be living at her death and being a son or sons should attain the age of twenty-three years or survive the survivor of the testatrix and her said daughter for the period of twenty-one years, or being a daughter or daughters should attain the age of twenty-three years or marry, and if more than one in equal shares as tenants in common. Two-thirds of the residuary estate were to be held upon the like trusts as were declared in respect of the 2,000*l*. The will contained an advancement clause in the usual form, and also a

clause giving the trustees a discretionary power to apply the income of the expectant contingent presumptive or vested legacy or share of any grandchild of the testatrix under the trusts of the will for or towards his or her maintenance, education, or benefit. By a codicil the testatrix revoked the said bequest of 2,000*l.*, and in lieu thereof bequeathed to her said daughter an annuity of 100*l.*; but she directed that when such annuity should cease her trustees should stand possessed of the fund appropriated for answering by its annual income such annuity upon the same trusts for her said daughter's children or child as were in the will contained with reference to the 2,000*l.* therein bequeathed. The daughter survived the testatrix and had children:—*Held*, that the interests given to the testatrix's grandchildren in the fund appropriated to answer the 100*l.* annuity mentioned in the codicil and in the two-thirds of the residuary estate were contingent and not vested interests, and that the trusts declared in respect of the same in favour of the testatrix's grandchildren were void for perpetuity. *Fox* v. *Fox* (L. R. 19 Eq. 286) and *Turney, In re; Turney* v. *Turney* (69 L. J. Ch. 1; [1899] 2 Ch. 739), distinguished. *Ib.*

Will—Estate Tail—Minority of Tenant in Tail—Trustees' Power to Enter—Implication of Estate in Trustees—Powers Capable of being Barred by Tenant in Tail—Trust for Payment of Incumbrances of other Estates.]—The testator, the seventh earl, was possessed of four estates, known as the S., L., C., and Lancashire estates respectively. By his will he settled the first two of these estates to uses in strict settlement in tail male, with remainders in tail general, and he settled the Lancashire estate by limiting it to trustees for a term of 1,000 years upon trust to discharge out of the rents incumbrances on the four estates in the order set forth above, and subject thereto to the uses declared of the S. and L. estates. He settled the C. estate to uses in strict settlement in tail male to go with the title, and the present earl, an infant, was now tenant in tail by purchase of this estate. The will directed that "if any person who, if this present proviso had not been herein inserted, would for the time being be entitled to the possession or the receipt of the rents and profits of such settled estate as tenant for life or tenant in tail, shall be under the age of twenty-one years, then in such case and so often as the same shall happen" the trustees "shall enter into possession or the receipt of the rents and profits of the same settled estate, and shall during the minority of such person continue such possession or receipt of the rents and profits." The will then gave the trustees a number of wide powers to be exercised in this eventuality, including power to purchase live and dead stock, to cut timber, to work mines and minerals, to hold manorial courts, and accept surrenders of leases; and directed that they should maintain the infant and apply the surplus rents in the same way as those of the Lancashire estate. Warrington, J., held that it was necessary for the proper exercise of the trustees' powers to imply a legal estate in the trustees, which estate was not barrable by a tenant in tail, and, not being limited to the minority of a tenant in tail by purchase, the whole of the above clause was void as infringing the rule against perpetuity:—*Held*, on appeal, that there was no sufficient ground for implying a legal estate in the trustees, and that as the powers conferred on the trustees were barrable by a tenant in tail, and as the trust of the rents was for payment of debts, the clause in question was not open to objection on the ground of perpetuity. *Stamford and Warrington (Earl), In re; Payne* v. *Grey*, 81 L. J. Ch. 302; [1912] 1 Ch. 343; 105 L. T. 913; 56 S. J. 204; 28 T. L. R. 159—C.A.

Decision of Warrington, J. (80 L. J. Ch. 281; [1911] 1 Ch. 255), reversed. *Ib.*

Clause Altering Estate Tail to Estate for Life—Application of.]—The will contained a clause providing that if any person to whom an estate tail was given should be born in the testator's lifetime the testator revoked the devise made to him, and in lieu thereof devised the hereditaments comprised in the devise to the person so made tenant in tail for his life, with remainder to his son successively in tail male, with remainder to his sons successively in tail general, with remainder to his daughters successively in tail general:—*Held*, that, as a matter of construction, this clause applied as well to the C. estate as to the S. and L. estates, notwithstanding that the result might possibly be to sever the C. estate from the title to the earldom. *Ib.*

Limitations after Estate Tail—Remoteness—Rule against.]—Where a will creates limitations to take effect upon the failure or determination of an estate tail, then, if the persons to take, although not ascertainable immediately on such failure or determination, are yet necessarily ascertainable within the period of a life in being at the death of the testator and twenty-one years after, such limitations are valid and are not void for remoteness. *Haygarth, In re; Wickham* v. *Holmes*, 81 L. J. Ch. 255; [1912] 1 Ch. 510; 106 L. T. 93; 56 S. J. 239—Joyce, J.

Gift to Issue—Rule as to Remoteness.]—By his will the testator gave certain hereditaments upon trust to pay the rents and profits to his niece Emily Johnson during her life, and after her decease for all the children of his niece who should attain the age of twenty-one years, and "in case either of them shall die after attaining the age of twenty-one years the shares of those so dying shall be equally divided between their children or issue who shall attain the age of twenty-one, and in case there shall be no child or other issue of the said Emily Johnson who shall attain the age of twenty-one years, then I direct that the same hereditaments shall be sold and equally divided between all the brothers and sisters of the said Emily Johnson who shall be then living share and share alike as tenants in common and the issue of such as shall have

died leaving issue upon attaining the age of twenty-one years so that children shall in all cases take their deceased parent's share equally divided between them" :—*Held*, that the limitations, by way of remainder, except to children of Emily Johnson who should attain twenty-one years, were void for remoteness. *Johnson, In re; Pitt* v. *Johnson*. 58 S. J. 219—Joyce, J. Affirmed. 111 L. T. 130; 30 T. L. R. 505—C.A.

Gift Void for Remoteness—Subsequent Gift over — Alternative and Independent Gift — Meaning of "without leaving lawful issue as before mentioned."]—By his will a testator, after making provision for his nephew R. D. during his life, gave all the residue of his property upon trust for the first son of R. D. who should live to attain twenty-one years of age and be christened John or take the name of John Davey (the whole of the principal fund or capital to be paid over to him on his attaining that age), and in default of there being any such son upon trust for the first son born of the body of either of the daughters of R. D. who should attain twenty-one years of age and should be christened or assume the name of John Davey as aforesaid, and in default of there being any such son upon trust as to one half of the residuary estate for the first daughter of R. D. who should have attained the age of twenty-one years, her executors, and administrators absolutely, for her sole and separate use, "And as to the other half thereof . . . And in case of the death of the said R. D. without having lawful issue as before mentioned then as to the whole thereof upon trust" for the charities therein mentioned. R. D. died in January, 1914, without having had any issue :—*Held*, that, although the gift to the first son of a daughter of R. D. who attained twenty-one years of age and the subsequent dependent gift of one half to the first daughter of R. D. to attain twenty-one years of age and one half to charity were void for remoteness, yet the ultimate charitable gift over "in case of the death of the said R. D. without having lawful issue as before mentioned" was a valid, independent, and alternative gift. The words "without leaving" must either be given their natural meaning or be construed as "without having had," and the expression "issue as before mentioned" meant a son, daughter, or son of a daughter of R. D., and did not import the attainment of twenty-one years of age or the assumption of the name of John Davey. *Davey, In re; Prisk* v. *Mitchell*, 84 L. J. Ch. 505; [1915] 1 Ch. 837; 113 L. T. 60—C.A.

Settlement—Real Property—Legal Limitation — Possibility upon a Possibility — Life Interest to Unborn Person—Void Remainder.]—Land was settled by deed, in the events which happened, to the use of the widow of J. F., a bachelor, for life, and then to the issue of J. F. J. F. married, and died leaving a widow and one child :—*Held*, that the limitation to the issue after the life of the widow was void as offending against the rule against double possibilities, which forbids a limitation to an unborn person for life with remainder to his unborn child. *Frost, In re; Frost* v. *Frost* (59 L. J. Ch. 118; 43 Ch. D. 246), and *Whitting* v. *Whitting* (53 Sol. J. 100) followed. *Park's Settlement, In re; Foran* v. *Bruce*, 83 L. J. Ch. 528; [1914] 1 Ch. 595; 110 L. T. 813; 58 S. J. 362—Eve, J.

Gift to Future Husband of a Spinster for Life with Remainder to their Children—Gift to Children of one Niece — Gift over to the Children of another Niece—Double Possibilities — Void Remainder.] — Where a testator gave a life interest in one-third of his residue to his niece I., a spinster, and after her death the same to be paid to any husband she might marry for his life, and after the death of both to hold the one-third in trust for the children of I. attaining twenty-one, and if the said I. should die without leaving a child or there should be no child of the said I. who should attain a vested interest, then in trust for the children of another niece S., and I. married but died without issue,—*Held*, that in deciding whether the gift over for the children of S. was good or void for remoteness, attention must be concentrated exclusively on the particular præpositus of the husband or wife of that præpositus being born at a time, which might possibly offend against the rule, and that accordingly on that method of construing the gift it was good and not void as infringing the rule against double possibilities. *Held*, also, that even if the original gift had been held to be void, the gift to the children of the niece S. was good as an alternative and severable gift. *Bullock's Will Trusts, In re; Bullock* v. *Bullock*, 84 L. J. Ch. 463; [1915] 1 Ch. 493; 112 L. T. 1119; 59 S. J. 441—Sargant, J.

Park's Settlement, In re; Foran v. *Bruce* (83 L. J. Ch. 528; [1914] 1 Ch. 595), not followed. Decision in *Frost, In re; Frost* v. *Frost* (59 L. J. Ch. 118; 43 Ch. D. 246), applied. Remarks on *Whitting* v. *Whitting* (53 Sol. J. 100). *Ib.*

Referential Trusts to be Ascertained at Death of Tenant for Life—Trusts as Ascertained not too Remote.]—A testator devised his D. estate to trustees upon trust for his wife for life, and subject thereto and to the raising of two sums of 4,000*l.* each, upon trust to assure the same "to such uses for such estates and with and subject to such powers and provisoes as under and by virtue of" two deeds dated July 5, 1854, and February 26, 1859, "and all mesne assurances, acts, and operations of law" should at the death of his wife be subsisting and capable of taking effect of and concerning the W. Estate. Shortly after the testator's death in 1875 there was a re-settlement of the W. estate, but at the death of the testator's widow in 1912 there was nothing in the then subsisting uses, powers, and provisos of the W. estate which, if originally inserted in the testator's will, would have infringed the rule against perpetuities :—*Held*, that the referential devise of the D. estate was not void for remoteness. *Dungannon (Lord)* v. *Smith* (12 Cl. & F. 546) distinguished. *Fane, In re; Fane* v. *Fane*, 82 L. J. Ch. 225; [1913] 1 Ch. 404; 108 L. T. 288; 57 S. J. 321; 29 T. L. R. 306—C.A.

III. POWERS.

See also Vol. X. 1032, 1800.

Appointment—Application of Income—Discretionary Trust—Contingent Interest.]—A marriage settlement contained a power of appointment in favour of the issue of the marriage (in the events which happened) as the survivor of the husband and wife should by will appoint. By her will the survivor, in exercise of this power, appointed two-fifths of the settled funds to two of her sons upon trust to apply the whole or so much of the income thereof as should be required for making up the total income of her son Walter to 200*l.* per annum as they should in their uncontrolled discretion think proper and beneficial for his support and maintenance, and to divide the residue of the income, if any, among her other four sons :—*Held*, that the interests declared in the gift were contingent and not vested, and that the gift was void for remoteness. *Whiteford's Settlement, In re; Whiteford* v. *Whiteford*, 84 L. J. Ch. 584; [1915] 1 Ch. 347; 112 L. T. 577; 59 S. J. 272—Neville, J.

Appointment Void for Remoteness — Election.]—By a marriage settlement certain trust funds were settled upon trust for the husband and wife successively for life, and after their deaths for such of the issue of the marriage, whether children or remoter issue, at such time and in such shares as the husband and wife should jointly appoint, and in default as the survivor should appoint, and in default for all the children of the marriage who should attain twenty-one or marry, in equal shares. The husband, who survived his wife, by his will, reciting his power of appointment under the settlement, and that no appointment had been made thereunder, bequeathed both the property subject to the trusts of the settlement and other property of his own to trustees upon trust to pay the income to his daughter for her life without power of anticipation, and after her death he directed his trustees to hold both capital and income in trust for the children of his daughter as she should appoint, and in default of appointment for all her children equally, and he directed that his daughter should, within such time after his decease as his trustees and executors might think proper to appoint, elect in writing whether she would rely on her rights under the marriage settlement or take the benefits provided for her by his will, and in the event of her not electing to take the benefits provided for her by his will he directed his trustees to hold the property upon certain trusts for the benefit of his son for life, and after his decease for his children. The daughter elected to take under the will :—*Held*, that, inasmuch as, reading the provisions of the will into the settlement, the restraint on anticipation of the income of the settled fund appointed to the testator's daughter and the trusts in favour of her children infringed the rule against perpetuities, she was not bound to elect, and was not bound by the election made by her, and that she was entitled to an estate for her life in the whole fund settled by the settlement free from the restraint on anticipation, and that on her death it went as in default of appointment between her and her brother in equal shares. *McCormick, In re; Hazlewood* v. *Foot*, [1915] 1 Ir. R. 315—M.R.

Objects Ascertainable after Death of Daughter and any Husband—Exercise—Appointment of Absolute Interests.]—A testatrix gave one-fifth share of her residuary estate in trust for each of her three daughters for life, and after the death of each daughter leaving a husband her surviving for her husband during his life, with power to each daughter to appoint her share by deed or will, after the death of each daughter and any husband with whom she might intermarry, among her children or more remote issue living at the death of the survivor of each daughter and any husband she might marry. One of the daughters, who survived her husband, appointed by deed absolute transmissible interests to her children :—*Held*, that the appointment by the daughter was void for remoteness; but *semble*, life interests might be validly appointed by her under the power. *Norton, In re; Norton* v. *Norton*, 80 L. J. Ch. 119; [1911] 2 Ch. 27; 103 L. T. 821; 55 S. J. 169—Joyce, J.

IV. CHARITABLE TRUSTS.

See also Vol. X. 1039, 1804.

Holiday Expenses — Workpeople in Mill — Poor Persons—Section of Public.]—A testator by his will directed the income of certain shares in a company to be paid to the directors as a contribution to the holiday expenses of the workpeople in one of the company's departments. These workpeople were about five hundred in number and earned from 15*s.* to 36*s.* a week :—*Held*, that the bequest was not a good charitable gift as it was not for poor persons or for a section of the public, and that therefore it was void as being a perpetuity. *Drummond, In re; Ashworth* v. *Drummond*, 83 L. J. Ch. 817; [1914] 2 Ch. 90; 111 L. T. 156; 58 S. J. 472; 30 T. L. R. 429—Eve, J.

Devise of Colonial Real Property—Condition of Forfeiture—Common Law Condition Subsequent—Gift over—Rule against Perpetuities—Form of Conveyance.]—Real property in Australia was given to trustees upon trust, subject to certain life interests, to convey the same to a charity, but on the express condition that the charity should annually publish certain accounts, with a gift over, in default of such publication, for the benefit of such persons and for such public purposes as the Governor of South Australia should in writing direct :—*Held*, that the gift over was not charitable and was void both for remoteness and for uncertainty. *Held*, further, that the condition in the gift to the charity was not a conditional limitation, but a common law condition subsequent, and void as infringing the rule against perpetuities. The charity was therefore entitled to a conveyance with no reference either to the condition or the gift over. *Da Costa, In re; Clarke* v. *St. Peter's Collegiate School*, 81 L. J. Ch. 293; [1912]

1 Ch. 337; 106 L. T. 458; 56 S. J. 240; 28 T. L. R. 189—Eve, J.

Rentcharge for Long Term of Years for Charitable Purposes—Proviso as to Redemption—No Limit as to Time of Redemption.]—By an indenture made in 1747 an annuity or yearly rentcharge of 15*l.* issuing out of certain lands was granted to M. J. and J. B., and the survivor of them, and the executors, administrators, and assigns of the survivor, for the term of 999 years from the death of the grantor, which annuity was subsequently declared to be upon trust for J. P. or such other person as for the time being should have the pastoral care of the congregation of the dissenting Protestants of C. The indenture contained a proviso that if the heirs, executors, administrators, or assigns of the grantor should on any of the days named for payment of the annuity pay to M. J. and J. B., or the survivor of them, or the executors, administrators, or assigns of the survivor, the sum of 300*l.* in one payment, the annuity should be no longer payable, but should determine:—*Held*, that the proviso was void as violating the rule against perpetuities. *Donoughmore's Estate, In re*, [1911] 1 Ir. R. 211—Wylie, J.

PETITIONING CREDITOR.

See BANKRUPTCY; COMPANY.

PHARMACY ACTS.

See MEDICINE.

PHOTOGRAPH.

See COPYRIGHT.

PHYSICIAN.

See MEDICINE.

PICTURES.

Copyright in.]—*See* COPYRIGHT.

PIER.

See SHIPPING.

PILOT AND PILOTAGE.

See SHIPPING.

PLATE GLASS.

See INSURANCE.

PLAYS.

Copyright in.]—*See* COPYRIGHT.

PLEADING.

See PRACTICE.

PLEDGE.

By Agent or Factor.]—*See* PRINCIPAL AND AGENT.

POISON.

Selling.]—*See* MEDICINE.

POLICE.

See also Vol. X. 1049, 1808.

Special Constable — Power to Dismiss.]—Regulation 6 of the Special Constables Order, 1914, which was made under section 1, subsection 1 of the Special Constables Act, 1914, and which empowers the Commissioner of Metropolitan Police to dismiss a special constable appointed for the Metropolitan Police District, is not *ultra vires*. *Metropolitan Police Commissioner* v. *Hancock*, 32 T. L. R. 95—D.

Special Emergency — Importation of Constables of Another Police Force by Chief

Constable — Power of Police Authority not Previously Delegated to Chief Constable — Subsequent Ratification — Power of Chief Constable to Bind County to Pay for the Housing and Feeding of Imported Constables — "Extraordinary expenses necessarily incurred by him . . . in the execution of his . . . duty."]—Owing to serious disturbances in the county of Glamorgan in 1910 the chief constable took steps to obtain outside assistance, and entered into agreements with various other police authorities under the provisions of the Police Act, 1890, whereby a large number of police from other police forces were introduced into the district. The power of the Standing Joint Committee of the Quarter Sessions and County Council of Glamorgan, who were the police authority for that county, to enter into such agreements had not previously been delegated to the chief constable, but his action was subsequently ratified by them with regard to all the imported police except the Metropolitan police. The plaintiffs incurred expenditure, at the request of the chief constable and under circumstances from which a promise of repayment might be implied, in providing board and lodging for such imported police. The standing joint committee subsequently repudiated their liability to pay. The plaintiffs then claimed to recover such expenses from the standing joint committee and the county council as money expended by them at the defendant's request; alternatively they claimed a declaration that the sums were extraordinary expenses necessarily incurred by the chief constable in the execution of his duty within section 18 of the County Police Act, 1839, and that they were entitled to have the sums paid by the county council out of the county fund: *Held*, that the chief constable, in performing his duty with regard to the preservation of order and the protection of life and property within the county, was entitled in a case of special emergency to strengthen his own police force by the addition of constables belonging to the police force of another police authority, even although his own police authority had not delegated to him, under section 25, subsection 3 of the Police Act, 1890, their powers to do so; and that he was entitled under section 18 of the County Police Act, 1839, to recover from the county fund the cost of providing board and lodging to such police as being "extraordinary expenses necessarily incurred by him, . . . in the execution of his . . . duty," subject to the examination and audit of such expenses by the standing joint committee. *Glamorgan Coal Co.* v. *Glamorganshire County Council. Powell Duffryn Steam Coal Co.* v. *Same*, 84 L. J. K.B. 812; [1915] 1 K.B. 471; 112 L. T. 598; 79 J. P. 192; 31 T. L. R. 130—Bankes, J.

Action for Illegal Arrest without Warrant—Malice.]—By the Glasgow Police Act, 1866, s. 88, a constable may "take into custody and convey to the police office any person who is either accused or reasonably suspected of having committed . . . a penal offence." In an action against police constables for an illegal arrest under this section it is sufficient for the plaintiff to allege in his pleadings that the defendants acted "wrongfully and illegally and without reasonable grounds of suspicion," without alleging that they acted "maliciously." *Shearer* v. *Shields*, 83 L. J. P.C. 216; [1914] A.C. 808; 111 L. T. 297—H.L. (Sc.)

Judgment of the Court below ([1913] S. C. 1012) affirmed. *Ib.*

"Wilfully obstructing" Constable in Execution of his Duty—Warning Motor-car Drivers of Police Trap.]—Police constables were engaged under the orders of their superior officer in timing the speed of motor cars passing along a road on which certain distances were measured off. One of the constables stood at the commencement and another constable stood at the end of a measured distance. The latter constable was provided with a stop watch, and it was his duty to set the watch going on receiving a signal from the first constable, and to stop it when a motor car passed, the object being to ascertain the actual speed at which the motor cars passed over the measured distance. While the constables were so engaged, the appellant, by means of signals, warned the drivers of certain motor cars which he saw approaching that the police were on duty at the measured distance for the purpose aforesaid. These cars, when so warned by the appellant, were being driven at a speed exceeding twenty miles an hour, but in each case, on the warning being given, the driver slackened speed, and the cars passed through the measured distance at less than twenty miles an hour. Upon an information charging the appellant under section 2 of the Prevention of Crimes Amendment Act, 1885, with obstructing the constable who was stationed at the end of the measured distance in the execution of his duty, the Justices convicted the appellant:—*Held*, that there was evidence upon which the Justices could find that the appellant was guilty of obstructing the constable in the execution of his duty, and that the conviction was therefore right. *Bastable* v. *Little* (76 L. J. K.B. 77; [1907] 1 K.B. 59) distinguished. *Betts* v. *Stevens*, 79 L. J. K.B. 17; [1910] 1 K.B. 1; 101 L. T. 564; 73 J. P. 486; 7 L. G. R. 1052; 22 Cox C.C. 187; 26 T. L. R. 5—D.

—— Waiting Outside Residence of Prime Minister to Present Petition—Refusal to Go Away.]—The appellants assembled in and near D. Street and Whitehall with the object of presenting a petition to the Prime Minister. They were informed that the Prime Minister could not see them, but they waited on for several hours outside his house in D. Street and refused to go away when requested by the police. Their presence caused numbers of the public to collect in the streets. As the appellants refused to go away, they were arrested and charged with obstructing the police in the execution of their duty under section 2 of the Prevention of Crimes Amendment Act, 1885:—*Held*, that they were rightly convicted under that section. *Despard* v. *Wilcox*, 102 L. T. 103; 74 J. P. 115; 22 Cox C.C. 258; 26 T. L. R. 226—D.

—— Deputation Desiring to Present Petition to Member of Parliament—Refusal to Receive

a Deputation — Crowd Collecting in Street — Refusal of Deputation to Disperse.]—A deputation of eight ladies, consisting of the appellants and six others, went to the Houses of Parliament with the object of presenting a petition to the Prime Minister. On their arrival at St. Stephen's entrance they were stopped by police constables under the command of the respondent, and they then stood upon the public footpath over which access to the entrance is obtained. A police inspector handed to one of the appellants a letter from the Prime Minister's private secretary refusing to receive the deputation. By this time, and in consequence of the conduct of the appellants and the deputation, a crowd of fifty or sixty persons had collected on the pavement, whereby St. Stephen's entrance and the access thereto became obstructed. The respondent gave orders to the police to clear the pavement and provide clear access to the entrance. The appellants were requested by the police to leave, but they refused to do so, asserting a right to present a petition to the Prime Minister: and in consequence of their refusal to leave, the obstruction caused by them at the St. Stephen's entrance and the access thereto, and their impeding the police in their endeavours to prevent obstruction to such entrance and access, the appellants and the other members of the deputation were arrested. On a complaint against them for obstructing the police in the execution of their duty, the magistrate convicted the appellants:—*Held*, without throwing any doubt on the right of a person to present a petition to a Member of Parliament, that the conviction was right. *Pankhurst* v. *Jarvis*, 101 L. T. 946; 74 J. P. 64; 22 Cox C.C. 228; 26 T. L. R. 118—D.

Liability of Railway for Acts of Constable.]—*See Lambert* v. *Great Eastern Railway*, *post*, col. 1225.

Costs of Prosecution.]—*See George* v. *Thomas*, *ante*, col. 799.

Right to Question Prisoner.]—*See Rex* v. *Winkel*, *ante*, col. 443.

POLICY.

Of Insurance.]—*See* INSURANCE: SHIPPING (INSURANCE).

Contracts in Violation of Public Policy.]—*See* CONTRACT.

POOR LAW.

A. AUTHORITIES.

1. GUARDIANS.

See also Vol. X. 1075, 1817.

Power to Assume Parental Control—Condition Precedent.]—Where guardians desire to exercise the powers of parental control over pauper children given to them by section 1, sub-section 1 (ii.) of the Poor Law Act, 1899, a resolution to the effect that they are of opinion that the parent of the child is unfit, by reason of the existence of some one or more of the conditions set out in sub-section 1 (ii.) of the section, is a condition precedent to the exercise of such power; and accordingly where the guardians assumed parental control of children purported to act under the section, without having passed such a resolution, the Court, upon the application of the parent, granted a writ of *habeas corpus* directed against the guardians to release such children. *McGlynn*, *In re*, [1913] 2 Ir. R. 337—K.B. D.

Workhouse Matron — Right to Dismiss without Notice.]—Poor law guardians have an absolute power to dismiss the matron of a workhouse, and are entitled to exercise this power without previous notice to her. *M'Guigan* v. *Belfast Guardians* (18 L. R. Ir. 89) followed. *Lloyd* v. *Bermondsey Guardians*, 108 L. T. 716; 77 J. P. 72; 11 L. G. R. 751; 29 T. L. R. 84—Lord Alverstone, C.J.

Liability for Act of Relieving Officer.]—*See Barns* v. *St. Mary, Islington, Guardians*, *post*, col. 1206.

2. ASSISTANT OVERSEERS.

Amalgamation of Parishes in Borough — Alteration in Areas—Remuneration—Payment by Salary in Lieu of Commission.] — Under the Hertford (Hertford) Confirmation Order, 1900, five parishes in the borough were amalgamated, and in future formed one parish. Article III. (2) of the Order provided that—"Any person holding the office of assistant overseer in any of the existing parishes shall hold and execute the like office in and for an area as nearly as possible the same as before . . . and upon the same terms as far as possible as to remuneration . . ." The applicant had, in the years 1892 and 1894 respectively, been elected by the vestry an assistant overseer of two of the then existing parishes, pursuant to section 7 of the Poor Relief Act, 1819, with a remuneration then fixed at 5 per cent. of the poor rate actually collected by him. In 1900 the borough council, to whom the powers of the vestry had been transferred in 1898, reduced the area in and for which the applicant collected the poor

rate, and altered his remuneration for collection to a fixed salary in lieu of the 5 per cent. commission. It was admitted that this fixed salary was as nearly as might be equivalent to the average sum he was earning at that time (1900) by his commission for collecting in both parishes. The applicant claimed that, having been appointed by the vestry, he had a right to be paid by commission instead of by a fixed salary, and that Article III. (2) of the Order of 1900 did not empower the borough council to cut down his remuneration by paying him a fixed salary with the result that in future, owing to the increase in rateable value of his two former parishes, he would earn a great deal less than if he were paid by commission. He accordingly obtained a rule *nisi* for *mandamus* to the overseers to shew cause why they should not pay him the balance after taking credit for his salary, calculated on commission at 5 per cent. on the amount he might have collected as assistant overseer of both his former parishes for the twelve months ended March 31, 1913:—The Court, in discharging the rule, *held*, that upon the true considerationn of Article III. (2) the borough council were empowered, first, to reduce the area of collection; and secondly, to alter the applicant's remuneration by paying him a fixed salary which "so far as possible" represented the amount earned by him at 5 per cent. commission in 1900. *Rex* v. *Hertford Union; Pollard, Ex parte*, 111 L. T. 716; 78 J. P. 405; 12 L. G. R. 863—D.

In the circumstances the case was not one in which the Court could exercise its discretion by granting a *mandamus*. *Ib.*

Assistant Overseer Clerk to Parish Council—Guarantee—Defalcations in Accounts as Clerk not Covered by Policy Given to Guardians in Respect of Defaulter's Appointment as Assistant Overseer.]—A. was appointed assistant overseer of the parish of H., and by virtue of his appointment under section 17, sub-section 2 of the Local Government Act, 1894, he became clerk to the parish council of H. The defendants entered into a bond guaranteeing the faithful performance of his duties as assistant overseer. A. committed defalcations in respect of moneys received by him as clerk to the parish council. In an action to recover the amount of such defalcations under the guarantee given by the defendants.—*Held*, that the defalcations of A. in relation to the parish council accounts were not covered by the terms of the bond guaranteeing the faithful performance of his duties in the office of assistant overseer. *Cosford Guardians* v. *Poor Law Guarantee Association*, 103 L. T. 463; 75 J. P. 30; 8 L. G. R. 995—D.

3. Relieving Officer.

Superannuation Allowance — Resignation in Consequence of "Grave misconduct" — Irregularities in Dealing with Money not of a Fraudulent Character.]—The plaintiff, who had been in the employment of the defendants as relieving officer and collector for a number of years, had been in the habit of retaining and using for his own purpose the moneys which he collected on behalf of the defendants, and only paying the sums he had collected in to the defendants' account every three months. He did this without any intention of defrauding his employers. He was told by the defendants that this system must cease and that he must pay monthly into the account of the guardians the sums which he collected. He subsequently, however, reverted to his old practice, and neglected to pay into the defendants' account monthly moneys which he had received during the month, and he was not in a position to repay those moneys until he received his salary in the following month. He was thereupon asked to resign. He sent in his resignation, and subsequently claimed a superannuation allowance under the Poor Law Officers' Superannuation Act, 1896, alleging that he had become incapable of discharging the duties of his office by reason of permanent infirmity:—*Held*, that the irregularities with regard to the money collected by the plaintiff on behalf of the defendants amounted to "grave misconduct" within the meaning of section 7 of the Poor Law Officers' Superannuation Act, 1896, and that, having in consequence thereof ceased to hold office, he had forfeited all claim to any superannuation allowance. The meaning of "grave misconduct" discussed. *Poad* v. *Scarborough Guardians*, 84 L. J. K.B. 209; [1914] 3 K.B. 959; 111 L. T. 491; 78 J. P. 465; 12 L. G. R. 1044—C.A.

Liability of Guardians for Act of.] — *See Barns* v. *St. Mary, Islington, Guardians, post*, col. 1206.

4. Medical Officer.

Public Vaccinator—Superannuation Allowance—"Officer in the service or employment of guardians"—"Emoluments" of Officer.]—A public vaccinator appointed by the guardians of a union or parish in accordance with the Vaccination Acts is not an "officer" or "servant" of the guardians within the definition of section 19 of the Poor Law Officers' Superannuation Act, 1896, and therefore the emoluments of a public vaccinator who is also district medical officer are not to be taken into account in calculating the amount of superannuation allowance to which he is entitled under that Act. *Lawson* v. *Marlborough Guardians*, 81 L. J. Ch. 525; [1912] 2 Ch. 154; 106 L. T. 838; 76 J. P. 305; 10 L. G. R. 443; 56 S. J. 503; 28 T. L. R. 404—Neville, J.

B. SETTLEMENT OF PAUPERS.

See also Vol. X. 1119, 1823.

Irremovability — Sailor — Children under Sixteen.]—In 1903 G. H., who was legally settled in the Doncaster Union, married M. E. H. From the time of his marriage until 1913 G. H. served the Crown as a sailor. When on shore he continuously resided with his wife in certain dwelling houses in two parishes, both in the Medway Union. The eldest child of the marriage, O. M. H., was born in 1904, and thereafter resided continuously with her parents in the said two parishes until 1913. A second child, G. W. H., was born in 1908, and thereafter resided continuously with his parents in one of the

said parishes until 1913. During the period of his residence in the Medway Union G. H. did not at any time receive parochial relief on his own account or on account of his wife and children, nor did he or they become actually chargeable to the parish. In February, 1914, the children O. M. H. and G. W. H. being in receipt of relief from the Woolwich Poor Law Union, the guardians of the poor of that union obtained an order from a magistrate whereby it was adjudged that the parish of Doncaster, in the Doncaster Poor Law Union, was the last legal settlement of O. M. H. and G. W. H., and whereby the guardians of the poor of the Doncaster Poor Law Union were ordered to receive and provide for O. M. H. and G. W. H. The Doncaster Union contended that the children had acquired a settlement in the Medway Union:—*Held*, that G. H., being in the service of the Crown as a sailor, did not, by virtue of the Poor Removal Act, 1846, s. 1, at any time during his residence in the Medway Union, acquire a settlement therein and a *status* of irremovability within the meaning of section 34 of the Divided Parishes and Poor Law Amendment Act, 1876, but would always have been removable to his last legal settlement—namely, the Doncaster Union—if he had at any time become chargeable to the parish. The children O. M. H. and G. W. H. had not therefore acquired a settlement in the Medway Union or a *status* of irremovability. *Doncaster Union* v. *Woolwich Union*, 84 L. J. K.B. 494; [1915] 1 K.B. 563; 112 L. T. 870; 79 J. P. 213; 13 L. G. R. 451—D.

Held, also, that the Poor Removal Act, 1795, s. 1, which enacted that no poor person should be removed from the parish or place where he or she was inhabiting to the place of his or her last settlement until he or she became actually chargeable to the parish or place in which he or she was then inhabiting, did not confer any *status* of irremovability on G. H. by reason of the fact that he had never become actually chargeable to the Medway Union, so as to take him out of the operation of the proviso to section 1 of the Poor Removal Act, 1846, and the children out of the operation of section 1 of the Poor Removal Act, 1848. *Ib.*

Children under Sixteen Living with Mother—Wife not Deserted but Living Apart from Husband—Change of Residence of Wife and Children—Wife and Children become Chargeable—Removal of Children but not of Mother.]—In 1906 a married woman and her two infant children went to live in a parish in the H. Union, where a third child was born. The husband did not reside there and had a settlement elsewhere, but the wife was not a deserted wife. In 1913 the wife and three children went to reside in a parish in the C. Union and became chargeable to that union within one year. The Court of quarter sessions held that as the wife was not deserted her last settlement was in the C. Union, but they ordered the children to be removed to the H. Union:—*Held*, that, as the wife was not a deserted wife and her husband had a settlement elsewhere, neither she nor her children acquired any settlement in the parish in the H. Union, and that therefore the children were not removable from the parish in the C. Union where they became chargeable. *Hambledon Union* v. *Cuckfield Union*, 84 L. J. K.B. 1265; 112 L. T. 911; 79 J. P. 217; 13 L. G. R. 491—D.

Deserted Married Woman—Status of Irremovability—Capacity to Acquire Settlement Apart from Husband.]—A deserted married woman can acquire a settlement of her own, and apart from her husband's settlement, by virtue of the joint operation of section 3 of the Poor Removal Act, 1861, and section 34 of the Divided Parishes and Poor Law Amendment Act, 1876. Opinions of Lord Brampton and Lord Lindley in *Rutherglen Parish Council* v. *Glasgow Parish Council* ([1912] A.C. 360; 4 Fraser (H.L.) 19) not followed. *St. Matthew, Bethnal Green, Guardians* v. *Paddington Guardians*, 83 L. J. K.B. 43; [1913] 1 K.B. 508; 107 L. T. 841; 77 J. P. 113; 57 S. J. 171; 29 T. L. R. 114—C.A.

Decision of Lord Alverstone, C.J., Pickford, J., and Avory, J. (81 L. J. K.B. 747; [1912] 2 K.B. 335), affirmed. *Ib.*

Unemancipated Child—Settlement by Residence Acquired Independently of Parent—Residence in Same Parish—Child having "no other settlement than" that of Parent.]—Section 1 of the Poor Removal Act, 1848, provides that "whenever any person should have a wife or children having no other settlement than his or her own, such wife and children should be removable from any parish or place from which he or she would be removable. . . ." *Paddington Union* v. *Westminster Union*, 84 L. J. K.B. 1727; [1915] 2 K.B. 644; 113 L. T. 328; 79 J. P. 343; 13 L. G. R. 641—D.

An unemancipated son lived for some years with his parents in the parish of P., and he and his father respectively acquired legal settlements in that parish by virtue of such residence. He was then placed under the care of a rescue society, and lived in the parish of E. for a period sufficient to entitle him to acquire a settlement there by residence. The father predeceased the mother, but neither of them acquired a settlement other than in the parish of P., and both would have been removable within the meaning of the provision in the above section from the parish of E. The son became chargeable as a pauper to the Union of W.:—*Held*, that the words "other settlement than his or her own" in the above provision meant "settlement in a different parish from that of the father or mother," and that an order for removal of the son to the parish of P., as being the place of his last legal settlement, was rightly made. *Dicta* of Lord Esher, M.R., and Lopes, L.J., in *Mitford and Launditch Union* v. *Wayland Union* (59 L. J. M.C. 86, 90, 91; 25 Q.B.D. 164, 170, 175), dissented from. *Ib.*

Residence of Child under Sixteen with Deserted Mother—Irremovability.]—A pauper who was a legitimate child lived with her deserted mother for more than three years in a parish in which she thus acquired a *status* of irremovability. Before she was sixteen she left her mother, and had not lived

in any other parish long enough to acquire a settlement. The father, when the pauper attained the age of sixteen, had acquired a settlement in another parish :—*Held*, that the pauper had, under section 34 of the Divided Parishes and Poor Law Amendment Act, 1876, acquired a settlement in the parish in which she had lived with her mother for three years. *Hackney Union* v. *Kingston-upon-Hull Incorporation*, 81 L. J. K.B. 739; [1912] A.C. 475; 106 L. T. 909; 76 J. P. 361; 10 L. G. R. 409; 56 S. J. 535; 28 T. L. R. 418—H.L. (E.)

Decision of the Court of Appeal (80 L. J. K.B. 489; [1911] 1 K.B. 748) affirmed. *Ib.*

Child under Sixteen Residing with Pauper Father—Receipt of Relief by Father—Relief not Shared in by Child.]—Where a child under the age of sixteen resides with his father in a parish under such circumstances that he would acquire a *status* of irremovability and, after a period of three years, a settlement in the parish, the mere fact that the father has during that period received poor law relief will not, in the absence of evidence that the child has shared in such relief, disqualify the child from acquiring a settlement in the parish. *Tewkesbury Union* v. *Upton-on-Severn Union*, 83 L. J. K.B. 37; [1913] 3 K.B. 475; 109 L. T. 557; 77 J. P. 9; 10 L. G. R. 1019—D.

Illegitimate Child under Sixteen—Residence Apart from Mother.]—The word "children" in the proviso to section 1 of the Poor Removal Act, 1846, and in the substituted proviso in section 1 of the Poor Removal Act, 1848, includes both legitimate and illegitimate children. *Woolwich Union* v. *Fulham Union* (75 L. J. K.B. 675; [1906] 2 K.B. 240) not followed. *Braintree Union* v. *Rochford Union*, 28 T. L. R. 60—D.

The pauper, an illegitimate child, aged eight and a half years, was born in the parish of B., in July, 1902, and shortly afterwards was placed by her mother under the care of persons residing in the parish of S. in the respondent union; and the pauper continued to reside with those persons in the parish of S. At no time since 1902 had the pauper resided with or been maintained by her mother, and at no time had the mother acquired a settlement in any parish in the respondent union, and at no time had she been irremovable therefrom. In January, 1911, an order of Justices was obtained by the guardians of the respondent union adjudging the pauper to be settled in the parish of B. in the appellant union, that being the parish in which the mother of the pauper was last legally settled, and in which the pauper was born :—*Held*, that the order was rightly made. *Ib.*

C. REMOVAL OF PAUPERS.

See also Vol. X. 1173, 1827.

Illegitimate Child—Residence in Parish for Three Years.]—The proviso to section 1 of the Poor Removal Act, 1846 (as amended by section 1 of the Poor Removal Act, 1848), which deals with the removability of "children," applies to illegitimate children. *Fulham Union* v. *Woolwich Union* (75 L. J. K.B. 675; 76 L. J. K.B. 739; [1906] 2 K.B. 240; [1907] A.C. 255) and *West Ham Union* v. *St. Matthew, Bethnal Green, Churchwardens* (63 L. J. M.C. 97; [1894] A.C. 230) considered and explained. *Braintree Union* v. *Rochford Union*, 81 L. J. K.B. 251; 106 L. T. 569; 76 J. P. 41; 10 L. G. R. 40; 28 T. L. R. 60—D.

Computation of Period of Residence—Meaning of "confined as a patient in a hospital"—Lunatic.]—The main object of an institution in the parish of L. in the L. Union, called Nazareth House, and supported by voluntary contributions, was to provide a home for the education and training for service of orphan and deserted Roman Catholic children and a refuge for the aged and deserving poor; but adults between the ages of sixteen and sixty, whose cases were suitable, were occasionally admitted as inmates. Inmates were medically treated and nursed there if occasion arose, and incurable persons were received; but such persons were admitted not on account of their complaints, but because of other qualifications. An unmarried woman, thirty-four years of age, who had acquired a settlement by residence in the parish of S. in the O. Union, was received into the institution on March 6, 1905. She was of weak intellect and quarrelsome, and at that time was unable to obtain an ordinary situation, and was destitute. During her residence in the institution she gradually grew worse in health and mind; and ultimately, becoming violent and dangerous, she was, on May 24, 1911, sent to the county lunatic asylum as a pauper lunatic. An order adjudicating her settlement to be in the parish of S. was appealed against by the guardians of the O. Union on the ground that by reason of her residence at Nazareth House she had become irremovable from and settled in the parish of L. And on a Case stated by consent under the Quarter Sessions Act, 1847,—*Held*, that the institution was not a "hospital," nor was the pauper lunatic, during her residence there, "confined as a patient in a hospital" within the meaning of section 1 of the Poor Removal Act, 1846, so as to prevent the period of her residence therefrom being computed in determining whether she had acquired a *status* of irremovability from and a settlement in the parish of L.; and the appeal against the order of adjudication was allowed accordingly. *Ormskirk Union* v. *Lancaster Union*, 107 L. T. 620; 77 J. P. 45; 10 L. G. R. 1041—D.

D. RELIEF AND MAINTENANCE OF PAUPERS.

See also Vol. X. 1833.

1. Generally.

Husband's Failing to Maintain Children—Existing Order to Pay Wife Weekly Sum and Giving Her Custody of Children—Liability of Husband to Maintain Children.] — On the prosecution of a husband under section 3 of the Vagrancy Act, 1824, for refusing to maintain his children whom he was legally bound

to maintain, whereby they became chargeable to the appellant union, the existence of an order made by a Court of summary jurisdiction under the Summary Jurisdiction (Married Women) Act, 1895, that his wife be no longer bound to cohabit with him, that she should have the custody of the children, and that he should pay her a weekly sum, which order, as to the payment, has not been obeyed by him, does not rid him of his legal liability to support the children, and he can be convicted on the above charge as an idle and disorderly person. *Shaftesbury Union* v. *Brockway*, 82 L. J. K.B. 222; [1913] 1 K.B. 159; 108 L. T. 336; 77 J. P. 120; 11 L. G. R. 176; 23 Cox C.C. 318; 29 T. L. R. 144—D.

Running Away and Leaving Children Chargeable—Address Left by Parent and no Concealment Attempted.]—A pauper, having six children inmates of the workhouse of and chargeable to the S. Union near London, took his discharge, and with his children went to the railway station, half a mile away. From there he sent his children back to the workhouse (where, being destitute, they were taken in) with a letter to the master stating that he was not running away, and giving an address in London. He was summoned under section 4 of the Vagrancy Act, 1824, for running away and leaving his children chargeable. The Justices dismissed the summons, finding, upon the principle laid down in *Cambridge Union* v. *Parr* (30 L. J. M.C. 241; 10 C. B. (N.S.) 99), that he had not run away, since there was no evidence that he had absconded, or concealed or absented himself by going a long distance:—*Held*, that in taking the view of the evidence which they took, and in applying the principle referred to, the Justices could not be said to have been wrong—the absence of concealment, and the fact that the man's address was known, being very material—and an appeal against their decision was accordingly dismissed. *Pallin* v. *Buckland*, 105 L. T. 197; 9 L. G. R. 544; 75 J. P. 362; 22 Cox C.C. 545—D.

—— Time within which Proceedings may be Taken.]—The respondent, whose daughter was admitted to the workhouse in 1902, absconded in 1905, leaving his daughter chargeable to the guardians, and was not discovered till 1909, when proceedings were commenced against him under the Poor Law Amendment Act, 1876:—*Held*, that the proceedings were out of time, as the period of two years within which they must be taken dated from the time when the respondent absconded—namely, in 1905. *Ashley* v. *Blaker*, 101 L. T. 682; 8 L. G. R. 1; 73 J. P. 495; 22 Cox C.C. 208—D.

2. Offences by Pauper in Workhouse.

Unlawful Sexual Intercourse between Two Paupers in Workhouse—"Misbehaviour."]—Unlawful sexual intercourse between two paupers in a workhouse constitutes "misbehaviour" within section 5 of the Poor Relief Act, 1815. *Holland* v. *Peacock*, 81 L. J. K.B. 256; [1912] 1 K.B. 154; 105 L. T. 957; 76 J. P. 68; 10 L. G. R. 123; 22 Cox C.C. 636—D.

E. PAUPER LUNATICS.

See also Vol. X. 1235, 1838.

Warrant for Removal of English-born Pauper Lunatic from Scotland to England—Appeal to Local Government Board—Competency—Residence of Pauper.]—Under section 5, sub-section 1 of the Poor Law (Scotland) Act, 1898, whenever a parish council in Scotland has obtained a warrant for the removal of an English or Irish-born pauper, who has neither acquired a settlement by residence in Scotland nor a *status* of irremovability under section 4 of the Act, the guardians of the parish to which it is proposed to remove such pauper have a right of appeal to the Local Government Board, though such pauper has not resided continuously in the parish from which it is proposed to remove him for not less than one year before the date of the application for relief. The section applies to both sane and insane paupers. *Edinburgh Parish Council* v. *Local Government Board for Scotland*, 84 L. J. P.C. 121; [1915] A.C. 717; 113 L. T. 50; 79 J. P. 289; 13 L. G. R. 918—H.L. (Sc.)

Decision of the Court of Session ([1914] S. C. 241; 51 Sc. L. R. 192) affirmed. *Ib.*

Computation of Period of Residence—Meaning of "confined as a patient in a hospital"—Lunatic.]—The main object of an institution in the parish of L. in the L. Union called Nazareth House, and supported by voluntary contributions, was to provide a home for the education and training for service of orphan and deserted Roman Catholic children and a refuge for the aged and deserving poor; but adults between the ages of sixteen and sixty, whose cases were suitable, were occasionally admitted as inmates. Inmates were medically treated and nursed there if occasion arose, and incurable persons were received; but such persons were admitted not on account of their complaints, but because of other qualifications. An unmarried woman, thirty-four years of age, who had acquired a settlement by residence in the parish of S. in the O. Union, was received into the institution on March 6, 1905. She was of weak intellect and quarrelsome, and at that time was unable to obtain an ordinary situation, and was destitute. During her residence in the institution she gradually grew worse in health and mind; and ultimately, becoming violent and dangerous, she was, on May 24, 1911, sent to the county lunatic asylum as a pauper lunatic. An order adjudicating her settlement to be in the parish of S. was appealed against by the guardians of the O. Union on the ground that by reason of her residence at Nazareth House she had become irremovable from and settled in the parish of L. And on a Case stated by consent under the Quarter Sessions Act, 1847,—*Held*, that the institution was not a "hospital," nor was the pauper lunatic, during her residence there, "confined as a patient in a hospital" within the meaning of section 1 of the Poor Removal Act, 1846, so as to prevent

the period of her residence there being computed in determining whether she had acquired a *status* of irremovability from and a settlement in the parish of L.; and the appeal against the order of adjudication was allowed accordingly. *Ormskirk Union* v. *Lancaster Union*, 107 L. T. 620; 77 J. P. 45; 10 L. G. R. 1041—D.

Maintenance—Pauper Lunatic—Guardians—Contribution by County Council—Time for Payment—"Net charge upon the guardians"—"Period of maintenance." —The words "period of maintenance" in section 24, sub-section 2 (*f*) of the Local Government Act, 1888, mean such period as the public authorities concerned arrange between themselves for purposes of account. The words "net charge" in the same sub-section mean the difference between the actual cost of the maintenance of the pauper lunatic during any such period of maintenance and any sum for the maintenance of the pauper lunatic received, or payment of which the guardians might have obtained, during such period. *Calne Union* v. *Wilts County Council*, 80 L. J. K.B. 548; [1911] 1 K.B. 717; 104 L. T. 607; 75 J. P. 42; 9 L. G. R. 5—Hamilton, J.

Where guardians, having power to obtain payment of sums of money for the maintenance of a pauper lunatic during several periods of maintenance, did not exercise such power, but obtained payment of the aggregate of such sums after the expiration of such periods,—*Held*, that on a claim by the guardians against the county council in respect of sums due for the maintenance of pauper lunatics under the provisions of the above sub-section, the county council were entitled to counterclaim, as for money had and received by the guardians to their use, payments made by them to the guardians during each of such periods in respect of their liability under that sub-section, which liability would not have arisen under the provisions of the sub-section had the guardians exercised such power and obtained payment of such sums of money as they became due in respect of each of such periods, and deducted them from the actual cost of maintenance during that period. *Ib.*

Money payable to guardians by a county council under this sub-section, though due after the termination of each period of maintenance, is not payable by them until the payment has been made lawful according to its constitution. *Ib.*

—— Expenses of Maintenance—Weekly Sum—Reasonable Charges—Order of Justices—Form of Order. —The functions of Justices under section 287 of the Lunacy Act, 1890, are judicial and not merely ministerial. *Dictum* of Wright, J., in *Suffolk County Lunatic Asylum* v. *Stow Union* (76 L. T. 494), which was followed in *Suffolk County Lunatic Asylum* v. *Nottingham Union* (69 J. P. 120), overruled. *Glamorgan County Asylum* v. *Cardiff Union*, 80 L. J. K.B. 578; [1911] 1 K.B. 437; 103 L. T. 819; 75 J. P. 28; 9 L. G. R. 212—C.A.

Where, therefore, an application is made under section 287 to two Justices of the county in which an asylum is situate for an order for payment by the guardians of the union to which any particular pauper lunatic confined in the asylum is chargeable of the reasonable charges of the expenses of maintenance of such lunatic, the Justices are not restricted to the weekly sum of 14*s.*, which is the maximum that may be fixed by the visiting committee under section 283. This latter section is intended primarily to enable the rating authority to ascertain how much money they ought to require from the parishes or unions liable to contribute to the maintenance of the asylum. *Ib.*

Although in practice orders under section 287 are made *ex parte*, whenever a larger sum than 14*s.* a week is asked for, on the ground of exceptional circumstances, the order ought not to be made without notice to the party chargeable; and every such order, whether *ex parte* or on notice, ought not once for all to fix a sum for the entire period during which the lunatic is maintained in the asylum, but until further order only. *Ib.*

—— Pauper Sent to Asylum from Union of Residence—Subsequent Admission by Another Union of Settlement in that Union—Union to which Lunatic "Chargeable"—Special Expenses of Maintenance. — Where a pauper lunatic has been sent from a union to an asylum in the same county, and during the residence of the lunatic in the asylum for upwards of two years the visiting committee have incurred in respect of his maintenance expenses exceeding the weekly sums fixed by the committee, and that union has paid to the visiting committee the part of such expenses corresponding to these weekly sums, and subsequently the guardians of a union in another county admit that the lunatic has all along had a settlement in their union, the Justices of the county in which the asylum is situate have jurisdiction under section 287 of the Lunacy Act, 1890, to make, on the application of the visiting committee of the asylum, an order upon the guardians of the last-mentioned union, as being the union to which the lunatic is "chargeable" within the meaning of that section, for the balance of the expenses incurred by the committee. *Rex* v. *Staffordshire Justices; Ormskirk Union, Ex parte*, 81 L. J. K.B. 894; [1912] 1 K.B. 616; 106 L. T. 579; 76 J. P. 177; 10 L. G. R. 274; 56 S. J. 324—C.A.

PORT.

See SHIPPING.

PORTIONS.

See also Vol. X. 1251, 1841.

Whether Son who Attained Twenty-one and Predeceased Parents Entitled to Share—Presumption that Shares Vested at Twenty-one.

—A clause in a will provided for the date at which the interest should vest in the case of sons—namely, twenty-one. It then provided for the date of the vesting in the case of daughters—namely, twenty-one or marriage. These two provisions were in a continuous sentence, and at the end of the words dealing with the case of daughters came the following passage: "if the same respectively shall happen after the death of H. L. P. (the father), but if the same should happen in his lifetime, then immediately after his death." The respondent, as mortgagee of H. E. L. P.'s one-third share of a portion of 6,000*l.*, claimed to have a sum of 2,000*l.* raised, notwithstanding that H. E. L. P. had died in the lifetime of his father, H. L. P.:—*Held*, that, according to the canon of construction, it had been the practice to construe a deed providing portions as vesting the portions at twenty-one, or in the case of daughters marriage, unless the deed throughout all its provisions clearly treated the vesting as contingent on the portioner surviving the parent, and therefore the one-third share of the portions sum became vested in H. E. L. P. on his attaining the age of twenty-one, and was not contingent on his surviving his father, H. L. P. *Waller* v. *Stevenson*, 56 S. J. 66—H.L. (E.)

Younger Children—Younger Son becoming Eldest—"Eldest son"—Time for Ascertaining Eldest Son—Vesting or Distribution—Eldest Son Entitled to Portion.]—A younger son in whom a portion becomes vested, and who subsequently becomes the eldest son before the portion becomes payable, is entitled to share in the portions fund if there is enough in the settlement to shew that the character of a younger son is to be ascertained at the time when the portions vest and not at the time when they become payable. *Windham* v. *Graham* (1 Russ. 331) followed. *Wise, In re; Smith* v. *Waller*, 82 L. J. Ch. 25; [1913] 1 Ch. 41; 107 L. T. 613; 57 S. J. 28—Eve, J.

Children "other than an eldest or only son"—Younger Daughter Debarred from Taking as a Younger Child—Elder Daughter Taking as a Younger Child.]—By a settlement executed in 1843 lands were conveyed to trustees to L'E. for life, with remainder to his sons in tail male, with remainder, in default of male issue, as to two of the lands, to his female issue as L'E. should appoint, and as to the other land to certain other issue in tail male, with a power to L'E. to charge the lands with a sum of 3,000*l.* as a provision for the younger child or children of L'E. By a marriage settlement executed in 1850 on the marriage of L'E., L'E., in pursuance of said power, charged the said lands with the sum of 3,000*l.* in favour of the younger children of the intended marriage "other than an eldest or only son." There were no sons of the marriage. L'E. by his will appointed the lands over which he had power of appointment to his younger daughter in fee-simple:—*Held*, that the existence of a son was not required to bring into operation the provision of the charge for younger children; that the younger daughter, having taken the bulk of the lands under the limitations of the settlement, was debarred from taking under the provision for younger children, and that the elder daughter alone took under the said provision. *L'Estrange* v. *Winniett*, [1911] 1 Ir. R. 62—Ross, J.

Younger Children—Younger Son becoming Eldest after Attaining Twenty-one.]—By a marriage settlement made in 1860 certain lands were limited to trustees for a term of one thousand years upon trust to raise portions for the children of the marriage "other than or besides the first or only son or any other son or sons who before his or their attaining the age of twenty-one years shall become entitled under or by virtue of these presents to the same premises for the first estate in tail male," if there should be one such child, the sum of 4,000*l.*, if there should be two such children, the sum of 6,000*l.*, and if there should be three or more such children, the sum of 8,000*l.*, and subject thereto the lands were limited to the use of the husband for life, with remainder to his first and other sons in tail male. There were four children of the marriage. M. W. B., the first-born son, attained twenty-one in his father's lifetime, and died without having disentailed, and thereupon E. B., the second son, joined in barring the entail and re-settling the lands, and on his father's death became entitled to the settled estates as tenant for life. Another child died under twenty-one and unmarried:—*Held*, that, according to the true construction of the settlement, the sum of 8,000*l.* was raisable for portions for younger children, and that E. B. was a younger son for the purpose of participating therein, and was entitled to be paid the sum of 4,000*l.* by the trustees. *Beresford's Settlement, In re; Irvine* v. *Beresford*, [1914] 1 Ir. R. 222—M.R.

Power of Appointment—Special Power—Appointment Equally by Will among all the Objects—Subsequent Appointments by Deed-Poll—Ademption—Rule against Double Portions—"Portion."]—A testator who had a special power of appointment by deed or will over a fund of which he was tenant for life, exercised the power by will equally among seven objects of the power. By two deeds-poll, executed subsequently, he appointed two equal seventh shares to F. and E., two of the objects of the power respectively, subject to his life interest. On his death the question arose, whether the remaining five seventh shares of the fund were to be divided equally among the seven objects of the power, including F. and E., or whether the shares of F. and E. under the will were adeemed:—*Held*, that the rule against double portions applied, and that the shares of F. and E. under the will were adeemed by the appointments to them by deed. *Montague* v. *Montague* (15 Beav. 565) followed. *Peel's Settlement, In re; Biddulph* v. *Peel*, 80 L. J. Ch. 574; [1911] 2 Ch. 165; 105 L. T. 330; 55 S. J. 580—Joyce, J.

Satisfaction—Rule against Double Portions—Person in Loco Parentis.]—G. by a voluntary deed declared that he, his executors or administrators, or such other person or persons as he should by deed or will appoint

trustee or trustees of the deed, should stand and be possessed of a sum of 6,958*l.* 10*s.* 1*d.* secured by mortgage upon trust to receive the annual interest and income, and pay the net income to his sister E. for life or spinsterhood, with other limitations in the case of her death or marriage. The mortgage was a well-secured first mortgage, and the deed contained wide powers of investment. G. received the interest and regularly paid it over to his sister. By a subsequent will he appointed trustees and executors and gave them all his real and personal property upon trust (*inter alia*) to pay to his sister E. the interest on 6,500*l.* for life or until she should marry. The powers of investment were restricted, and the subsequent limitations were different from those of the deed. It was provided by the will, that if the testator's securities and investments should so depreciate that they were unable to pay to his sister E. 180*l.* a year, she was only to receive 100*l.* a year, the balance of the income of the 6,500*l.* to be accumulated for the benefit of his sons. By a codicil he increased the gift to his sister E. by 400*l.* :—*Held*, that assuming the testator had placed himself *in loco parentis* to his sister E., and that there was a presumption of satisfaction, the presumption was rebutted by the difference in point of certainty and value between the obligations of the trust deed and the gift in the will. *Gleeson, In re; Smyth* v. *Gleeson*, [1911] 1 Ir. R. 113—Barton, J.

POSSESSION.

Adverse.]—*See* LIMITATIONS (STATUTE OF).

Mortgagee in.]—*See* MORTGAGE.

Recovery of.]—*See* LANDLORD AND TENANT.

POST OFFICE.

See also Vol. X. 1327, 1850.

Conveyance of Mails by Steamship — Remuneration—Amount.]—Upon an application to determine the amount of the remuneration to be paid by the Postmaster-General for the conveyance of mails by the applicants' steamships between Dover and Calais it was agreed between the parties that the principle laid down in the case of *Great Northern Railway (Ireland)* v. *Postmaster-General* (13 Ry. & Can. Traff. Cas. 290) should be followed, whereby the cost of service should be first ascertained, to which should be added a reasonable sum for profit *plus* a further amount, fixed according to circumstances, for compulsory working; the difference between this total and the actual earnings to be the sum payable by the Postmaster-General. *South-Eastern and Chatham Railway* v. *Postmaster-General*, 14 Ry. & Can. Traff. Cas. 216—Ry. Com.

The basis for fixing the remuneration which was applied by the Court in *Great Northern Railway (Ireland)* v. *Postmaster-General (supra)* is not to be regarded as an inflexible principle binding under all circumstances. *Ib.*

"Sent by the post"—Bill of Costs—Delivery One Month before Action—Posting of Bill.]—By section 37 of the Solicitors Act, 1843, "no attorney or solicitor . . . shall commence or maintain any action or suit for the recovery of any fees, charges, or disbursements for any business done by such attorney or solicitor, until the expiration of one month after such attorney or solicitor . . . shall have delivered unto the party to be charged therewith, or sent by the post to or left for him at his counting-house, office of business, dwelling house, or last known place of abode, a bill of such fees, charges, and disbursements" signed by such attorney or solicitor, or inclosed in or accompanied by a letter signed in like manner referring to such bill: —*Held* (Buckley, L.J., dissenting), that, on the true construction of the section, if a solicitor sends his bill by post the posting must take place at such time that in the ordinary course of post the bill should have reached its destination one clear calendar month before the date on which the action is commenced. *Browne* v. *Black*, 81 L. J. K.B. 458; [1912] 1 K.B. 316; 105 L. T. 982; 56 S. J. 144; 28 T. L. R. 119—C.A.

Record of Time of Delivery of Telegrams.] —*See* EVIDENCE.

Negligence of Sub-Postmaster—Transmission of Telegram—Liability.]—*See* TELEGRAPH.

Telegraph — Laying Wires.] — *See* TELEGRAPH.

POWERS.

I. CREATION.

See also Vol. X. 1341, 1853.

Exercise of—Trustees.]—Trustees were to hold certain parts of the residue of the estate

of a testatrix "upon trust to pay the capital or income thereof or neither to my nephew E. or to apply the capital or income thereof or any part of either for his benefit or for the benefit of his wife or any child or children of his as my trustees may in their absolute and uncontrolled discretion consider desirable":—*Held*, first, that the power or powers thus created in favour of E., his wife and children, were conferred on the trustees of the will for the time being, and not on the original trustees only. *Smith, In re; Eastick* v. *Smith* (73 L. J. Ch. 74; [1904] 1 Ch. 139), followed. *De Sommery, In re; Coelenbier* v. *De Sommery*, 82 L. J. Ch. 17; [1912] 2 Ch. 622; 107 L. T. 823; 57 S. J. 78—Parker, J.

Divisibility—Perpetuity.]—*Held*, secondly, that two powers were vested in the trustees for the time being of the will—namely, (*a*) a power of paying either capital or income to E., which was valid, being capable of being exercised only during his life; (*b*) a power of applying either capital or income for the benefit of E., his wife or children, which was void, being capable of being exercised beyond the period allowed by law. *Ib.*

Life Rent with Alternative Powers of Disposal.]—A father bequeathed to the survivor of his children a share of the residue of his estate in life rent, with full power by *mortis causa* deed "to dispose of the same and direct the succession thereto in favour either of religious or charitable institutions one or more conducted according to Protestant principles or of any person or persons whom such survivor may appoint or partly in favour of such person or persons all in such terms and subject to such conditions as such survivor may think proper." The survivor exercised this power by a deed of directions in which he bequeathed this share of residue absolutely to his wife:—*Held* (Lord Johnston dissenting), that the power was valid and had been validly exercised. *Bannerman's Trustees* v. *Bannerman*, [1915] S. C. 398—Ct. of Sess.

Semble, that the power of disposal in favour of "religious or charitable institutions, conducted according to Protestant principles," was not void for uncertainty. *Ib.*

II. LAPSE AND INTERESTS UNDISPOSED OF.

See also Vol. X. 1378, 1855.

Change of Investment — Ademption of Appointed Share.]—A testatrix had under her marriage settlement a life interest in 900*l.* Government Three per Cent. Irish Consolidated Annuities, with power to appoint the same to her children. At the date of her will the annuities had been sold, and the proceeds invested in New Zealand bonds. By her will, after reciting that she was possessed of New Zealand bonds, amounting to the sum of 900*l.* or thereabouts, and bank and other shares, she bequeathed the New Zealand bonds and the shares to her daughter, not referring in any way to the settlement. The New Zealand bonds were afterwards sold, and the proceeds invested in Consols, and so remained at the date of her death:—*Held*, that the will was an appointment of the New Zealand bonds only, and that as they had ceased to form part of the trust funds at the death of the testatrix, when the will operated, the appointment failed, and the trust fund went as in default of appointment. *Brazier Creagh's Trusts, In re; Holmes* v. *Langley*, [1913] 1 Ir. R. 232—M.R.

III. EXECUTION BY DEVISE OR BEQUEST IN GENERAL TERMS OR REFERENCE TO POWER.

Exercise — Share of Income to Daughter while Unmarried — Reduced on Marriage — Codicil Altering Share of Income—Duration of Payment of Altered Share not Mentioned—Duration Fixed by Will Implied.] — By a codicil the testatrix, in exercise of a power of appointment contained in her marriage settlement, revoked "that part of my will which directs that two-thirds of my income shall be paid annually to my daughter Olive while unmarried, and directs that three-fourths — *i.e.* about 50*l.* — be paid her annually, and also the remaining 50*l.* should Evelyn die without children and Olive be unmarried at the time": *Held*, a gift of three-fourths of the income to Olive while she remained unmarried. *Crichton's Settlement, In re; Sweetman* v. *Batty*, 106 L. T. 588; 56 S. J. 398—Neville, J.

General Power—Personal Estate—Exercise of Power—Will—Bequest of Legacies—Insufficiency of Assets—Whether Appointment Extends to Debts as well as Legacies.]—Where the donee of a general power to appoint a fund by will gives pecuniary legacies and appoints executors, and his personal estate, without the aid of the fund, is insufficient for the payment of his debts and the legacies, he will be taken to have exercised the power to the extent necessary for payment not only of the legacies, but also of the debts. *Hawthorn* v. *Shedden* (25 L. J. Ch. 833; 3 Sm. & G. 293) followed and applied. *Dictum* of Wickens, V.C., in *Davies's Trust, In re* (41 L. J. Ch. 97, 99; L. R. 13 Eq. 163, 166), approved. *Seabrook, In re; Gray* v. *Baddeley*, 80 L. J. Ch. 61; [1911] 1 Ch. 151; 103 L. T. 587—Warrington, J.

Special Power—Exercise by Will—Gift of "all property which I have power to dispose of by will"—Donee Possessing Two Powers over Property and Life Interest in it—Rule as to Exercise of Special Power.] — The best mode of stating the rule as to the exercise of a special power of appointment is that there must be a sufficient expression or indication of intention in the will or other instrument alleged to exercise it, and either a reference to the power or a reference to the property subject to it constitutes in general a sufficient indication. *Ackerley, In re; Chapman* v. *Andrew*, 82 L. J. Ch. 260; [1913] 1 Ch. 510; 108 L. T. 712—Sargant, J.

A testatrix having a contingent general testamentary power of appointment over

property in which she took a life interest, and also a special power of appointing the income of the property to her husband during his life, gave, devised, appointed, and bequeathed "all my estate property and effects whatsoever and wheresoever both real and personal which I have power to dispose of by my will" to her husband absolutely:—*Held*, that the will exercised in the husband's favour the special power of appointing the income to him, as well as the contingent general power. *Richardson's Trusts, In re* (17 L. R. Ir. 436), distinguished. *Ib.*

—— Exercise—Use of the Word "Appoint"—Indications of Contrary Intention.]—A testatrix who had a special power of appointment among her children gave, devised, bequeathed, and appointed all her real and personal estate not thereby otherwise disposed of (including all property over which she had a power of appointment) unto her trustees upon certain trusts, including a trust to pay the income to her husband for life, and after his decease in trust for all her children in equal shares:—*Held*, that the testatrix by dealing with all her property in the mass could not be considered to have shewn an intention to exercise her special power of appointment, although she used the word "appoint." *Sanderson, In re; Sanderson* v. *Sanderson*, 106 L. T. 26; 56 S. J. 291—Neville, J.

Appointment by Will during Coverture—Death after Determination of Coverture—Validity of Appointment.]—Where a marriage settlement contains a power of appointment "by will during the continuance of the intended coverture," notwithstanding that the death of the wife does not take place until after the determination of the coverture, the power is validly exercised by an appointment contained in a will executed by her before the determination of the coverture. *Cooper* v. *Martin* (L. R. 3 Ch. 47) and *Illingworth, In re; Bevir* v. *Armstrong* (78 L. J. Ch. 701; [1909] 2 Ch. 297), discussed. *Safford's Settlement, In re: Davies* v. *Burgess*, 84 L. J. Ch. 766; [1915] 2 Ch. 211; 113 L. T. 723; 59 S. J. 666; 31 T. L. R. 529—Joyce, J.

IV. CONSTRUCTION AND EXTENT OF EXECUTION.

See also Vol. X. 1468, 1868.

Voluntary Conveyance—Ex post Facto Consideration.]—L. being seised in fee of lands, by a voluntary settlement executed in May, 1879, granted the lands to trustees to the use of L. for life, with remainder to the use of trustees of a term of 500 years, upon trust for raising portions for the younger children of the settlor, and subject thereto to the use of the first and other sons of L. successively in tail, with remainder to his first and other daughters in tail, with remainders over. The deed contained a power to L. to appoint to any woman he might marry for her life, or any less period, a rentcharge by way of jointure not exceeding 150*l.* a year, charged upon all or any of the premises. By a subsequent deed executed in August, 1879, and made in consideration of a marriage afterwards solemnised, after reciting the deed of May and the powers of jointuring therein contained, and reciting also an ante-nuptial agreement to create a rentcharge of 150*l.* from and after the solemnisation of the marriage by way of jointure during the life of the intended wife, and for that purpose to exercise the power of jointuring in the deed mentioned, L., in pursuance of the agreement, and in consideration of the intended marriage, and in exercise of the aforesaid power and of every or any other power in any wise him enabling, appointed to the intended wife and her assigns during her life a yearly rentcharge of 150*l.* in full of her jointure, to be charged upon the hereditaments comprised in the deed of May, 1879, payable in quarterly payments, the first payment to be made three months after the date of the solemnisation of the intended marriage:—*Held*, that the power contained in the settlement of May, 1879, did not authorise an appointment of a rentcharge to a wife to take effect in the lifetime of L. *Held* also, that the settlement of May, 1879, was not, on the ground of being voluntary, void as against the settlement of August so as to give effect to the rentcharge purported to be created by the latter settlement to commence from marriage, inasmuch as the marriage created an *ex post facto* consideration for the deed of May, and the children of the marriage were within such consideration. *Greenwood* v. *Lutman*, [1915] 1 Ir. R. 266—Barton, J.

Advancement—Protected Life Interest—Release of Life Interest to Effectuate Advancement — Non-forfeiture — Appointed Share — Power of Advancement Applicable to Appointed Share.]—Under a marriage settlement the husband received a protected life interest terminable upon his doing or suffering anything whereby it would become vested in some other person. The husband and wife were given power to appoint the trust funds among the children and to make provisions for advancement in the appointment. The settlement further contained an advancement clause to the exent of half a share of any child. The husband and wife appointed a share of the trust funds by deed to a son subject to their life interests. This appointment contained no provision for advancement. Subsequently the husband and wife authorised the trustees to advance the son half his appointed share under the advancement clause in the settlement, and released their life interests therein to give effect to the advancement:—*Held*, first, that the advancement clause in the settlement was applicable to the appointed share; and secondly, that the husband had not forfeited his protected life interest. *Hodgson, In re: Weston* v. *Hodgson*, 82 L. J. Ch. 31; [1913] 1 Ch. 34; 107 L. T. 607; 57 S. J. 112—Neville, J.

Power of Appointment among Nephews and Nieces and other Relations of Donee—Power of Selection—Default of Appointment—Class to Take and when to be Ascertained—Vesting.]—A testator bequeathed all his property to his wife in the first place, and after her death to his "lawful nephews and nieces,

meaning such nephews and nieces and other relations as she deems fit and suitable." There was no gift in default of appointment. The testator's widow by her will left part of the property to two nieces, and part to a grand nephew. The remainder of the property was unappointed. The testator's only next-of-kin were nephews and nieces, some of whom died in the lifetime of his widow:—*Held*, first, that the power of appointment was a power of selection, and not a power of distribution, and that therefore the word "relations" was not confined to next-of-kin, and that the appointment to the grand nephew was good; and secondly, that the class to take in default of appointment was confined to nephews and nieces and other relations, if any, who were next-of-kin; and that members of the class were to be ascertained at the death of the testator, and took vested interests then. *Gun, In re; Sheehy* v. *Nugent*, [1915] 1 Ir. R. 42 M.R.

Special Power by Will or Deed—Appointment by Will among all the Objects Equally—Subsequent Appointments by Deed to Two of Several Objects of the Power—Ademption—Double Portions.] —The donee of a special power to appoint a fund amongst his children, grandchildren, or other issue, in exercise of the power by his will appointed the fund to be equally divided between the children of his second marriage. There were seven children of the second marriage. By irrevocable deeds-poll executed after the will he appointed one-seventh of the fund to each of two of the children of the second marriage:—*Held*, that the sums appointed, both by deed and by will, were portions for the purpose of applying the rule against double portions, and that the children to whom the appointments were made by deed were not entitled to share with the other children under the will. *Peel's Settlement, In re; Biddulph* v. *Peel*, 80 L. J. Ch. 574; [1911] 2 Ch. 165; 105 L. T. 330; 55 S. J. 580—Joyce, J.

Exercise of Power — Residuary Personal Estate—Proceeds of Sale of Real Estate not Included.] —A testator by his will devised real estate on trust for his daughter E. for life, and on her death for her children or remoter issue as she should appoint, and in default of appointment for her children at twenty-one or marriage. He gave his residuary estate on trust for sale and conversion, and gave the net proceeds of sale to his two daughters, of whom E. was one, her share being settled in the same way as the realty devised on trust for her. She married in his lifetime, and a portion of the real estate devised to her was settled on her. As regards the real estate settled on her the devise was inoperative, but some real estate was left on which the devise could operate. E. had six children, of whom S., a daughter, married. On her marriage her mother made an appointment in her favour of one-fifth of one-half of the residuary personal estate of the testator. At the date of the appointment E. was a trustee of the testator's will. The question was whether, having regard to the recitals in the deed-poll and subsequent marriage settlement of her daughter, the appointment was to be construed as an appointment not only of part of the residuary personal estate of the testator, but of part of the proceeds of sale of the real estate over which E. had a similar power of appointment:—*Held*, that, according to the true construction of the appointment and settlements, no part of the money arising from the sale of the real estate was included therein. *Horsfall, In re; Hudleston* v. *Crofton*, 80 L. J. Ch. 480; [1911] 2 Ch. 63; 104 L. T. 590—Parker, J.

Settlement—Mixed Fund of Personalty and Realty—Power of Appointment—Exercise of Power—No Words of Limitation—Equitable Estates Taken by Appointees—Estates for Life or in Fee — Intention of Appointor.] — In an appointment of real estate and of personalty, subject to a trust to re-invest in real estate, the omission of the customary words of limitation does not necessarily limit the appointment to that of a life estate. Where the estates dealt with are equitable estates and there is an apparent intention of the appointor to pass the whole interest, the appointees will take in fee-simple. And where the appointor has apparently distinguished between the personalty and realty by using the words "trust funds and property," and where the inference is that he intended the appointees to take the whole interest in the personalty, at any rate, the fact that the personalty is subject to a trust to re-invest in realty does not make it realty to the extent of rebutting this presumption. *Monckton's Settlement, In re; Monckton* v. *Monckton* (83 L. J. Ch. 34; [1913] 2 Ch. 636), approved. *Dearberg* v. *Letchford* (72 L. T. 489) not followed. *Nutt's Settlement, In re; McLaughlin* v. *McLaughlin*, 84 L. J. Ch. 877; [1915] 2 Ch. 431; 59 S. J. 717—Neville, J.

V. DEFECTIVE EXECUTION.

See also Vol. X. 1478, 1874.

Power to be Exercised by Ante-nuptial Settlement with Consent of Trustees of Will—Post-nuptial Settlement Executed without Consent and in Ignorance of Power—Possession—Statute of Limitations.]—By a post-nuptial settlement made in 1877 between C., the wife, W., the husband, the trustees of their ante-nuptial settlement, reciting that C. and her husband in her right had become entitled to the absolute interest in certain lands known as the W. S. estate, a life estate in these lands was limited to W., if he survived C., with successive life estates to the three children of the marriage, with remainders to their children in tail. All the parties at the time erroneously believed that the estate had vested in C. for an absolute estate in fee-simple, as heiress-at-law of her grand-uncle. In fact, however, C.'s father, J., had survived this grand-uncle and was his heir-at-law, and as such the lands had vested in him for an estate in fee-simple in remainder subject to certain prior estates which subsequently determined. J. had died before C.'s marriage, having made a will by which he devised all his real estate to C. for life, with remainder to her first and

other sons in tail male, and he empowered the trustees for the time being of his will, with the consent of C., to convey the lands by a settlement to be made on the occasion of her marriage to C. and her husband for their joint lives and the life of the survivor. The will contained provisions altering the limitations in favour of C.'s sons in case of her marriage with a husband entitled to real estate of certain value. The trustees of this will were not parties to the settlement of 1877. C. died in 1882, and W. thereupon entered into possession of the W. S. estate, and continued in possession until his death in 1905. The eldest son of the marriage had died in 1900, and on the death of W., the second son, R. (who was entitled to a life estate under the settlement and to an estate tail, if not barred by the Statute of Limitations, under the will), entered into possession. R. was entitled to an estate in certain other lands, and after his father's death he executed a disentailing deed which contained general words barring all his estates tail. He died in 1907, having made a will devising all his lands to his wife, through whom the plaintiffs claimed as assignees in her bankruptcy. On the death of R., the defendant, the third child of the marriage of W. and C., went into possession of the W. S. estate, she being entitled under the settlement to the next life estate. Until shortly before the bringing of the present action all parties believed that the settlement of 1877 was a valid settlement. The action sought a declaration that the plaintiffs were entitled to the W. S. estate in fee-simple, and an order that the defendant should deliver up possession to them, the plaintiffs claiming under the will of J. and through R. :—*Held*, that the settlement of 1877 was not a good execution of the power given by J.'s will, inasmuch as it was not executed on the occasion of C.'s marriage, and the trustees of that will were not parties to it; that the possession of W. was therefore wrongful, and that although having entered under the settlement he would have been estopped from repudiating any of the limitations created by it, his possession operated under the Statute of Limitations to extinguish the title of his eldest son to the estate tail given by J.'s will, and consequently also the title of R. to the subsequent estate tail under that will, and that the plaintiffs had no right to possession. *Frazer* v. *Riversdale*, [1913] 1 Ir. R. 539—Ross, J.

VI. FRAUDULENT APPOINTMENTS.

See also Vol. X. 1495, 1875.

Appointment Made on Condition.]—An appointment made in pursuance of a power given by a settlement in favour of objects of the power, subject to a defeasance in case a condition is performed, such condition not being one to be performed by the appointees, but to be performed if at all by third parties, over whose actions the appointees had no control, with the intention that upon the performance of the condition the funds should go upon the trusts limited by the settlement in default of appointment, is not invalid as being a fraud on the power, there being no intention to secure a benefit for some person not an object of the power. *Perkins, In re; Perkins* v. *Bagot* (62 L. J. Ch. 531; [1893] 1 Ch. 283), and *Stroud* v. *Norman* (23 L. J. Ch. 443; Kay, 313) distinguished. *Vatcher* v. *Paull*, 84 L. J. P.C. 86; [1915] A.C. 372; 112 L. T. 737—P.C.

Void Stipulation—Condition that Appointee should Pay off Debts of Appointor—Severance of Condition and Appointment.]—A testator bequeathed to his son a life interest in a fund, with power to appoint by will a life interest in the whole or any part of the income to any wife who might survive the appointor. The appointor exercised the power by appointing to his wife an annuity and (in case he should die insolvent) a further annuity; and he directed that the further annuity was to be paid to her only on condition that she spent a slightly smaller sum yearly in paying off the appointor's debts :—*Held*, that the appointment of the further annuity could not be severed from the condition, and that in respect of the further annuity the execution of the power was fraudulent and void. *Cohen, In re; Brookes* v. *Cohen*, 80 L. J. Ch. 208; [1911] 1 Ch. 37; 103 L. T. 626; 55 S. J. 11—Joyce, J.

Appointment Void or Voidable—Purchaser for Value without Notice—Legal Estate.]—An appointment under a common law power or a power operating under the Statute of Uses by which the legal estate has passed to the appointee is voidable only, and a purchaser for value with the legal estate and without notice is not affected by the fraudulent execution of the power; but a fraudulent appointment under an equitable power not operating so as to pass the legal estate or interest is void and a purchaser for value without notice, but without the legal title, can only rely on such equitable defences as are open to purchasers without the legal title who are subsequent in time against prior equitable titles. When no legal estate has passed there can be no ratification or confirmation of an appointment void in equity. *Cloutte* v. *Storey*, 80 L. J. Ch. 193; [1911] 1 Ch. 18; 103 L. T. 617—C.A.

VII. EXCESSIVE EXECUTION.

See also Vol. X. 1517, 1877.

Invalidity of Ultimate Appointment to an Object of the Power.]—The donee of a power of appointment among her three children appointed the property to a person not an object of the power for life, and after his decease to other persons not objects of the power, and in case none of the said persons should live to take the property, then she gave the same to an object of the power. Two of the persons who were not objects of the power, but in whose favour the testatrix purported to make an appointment, survived the testatrix :—*Held*, that the ultimate limitation to an object of the power, being dependent on the former void appointments, failed. *Enever's Trusts, In re; Power* v. *Power*, [1912] 1 Ir. R. 511—Ross, J.

Objects and Non-objects—Ascertainment at Period of Distribution—Severance—Valid Ap-

pointment quoad Objects.]—The donee of a power to appoint a fund in favour of her own children or issue living at her death appointed the fund among such of her children as should attain the age of twenty-one years or being daughters should marry under that age, but she directed that the share of any daughter should be held on trust for such daughter for life, and that after the death of such daughter the share should be held (in default of and subject to a power of appointment which was invalid) in trust for the child or children of such daughter who should attain the age of twenty-one years or being daughters should marry under that age:—*Held*, that the appointment to the children of a daughter was not invalid *in toto*, but only as regards such of the appointees as were not living at the death of the donee of the power, and that on the death of the daughter her funds must be divided into as many shares as there were members of the appointed class, and that each appointee who was living at the death of the donee of the power would take one share of the fund, while the remaining shares would go under the original appointment to the daughter absolutely. *Sadler* v. *Pratt* (5 Sim. 632), *Harvey* v. *Stracey* (22 L. J. Ch. 23; 1 Drew. 73), and *Farncombe's Trusts, In re* (47 L. J. Ch. 328; 9 Ch. D. 652), followed. *Witty, In re; Wright* v. *Robinson*, 83 L. J. Ch. 73; [1913] 2 Ch. 666; 109 L. T. 590; 58 S. J. 30—C.A.

Delegation of Power—Invalidity.]—A testator, by his will, settled a fund upon trust for his daughter for her life, with remainder to her issue, "for such interests in such proportions and in such manner in all respects as she should by deed or will appoint." The daughter, by her will, in exercise of this power of appointment, appointed the trust fund to trustees in trust for her children equally, and in trust to pay to each child the income of its share for the period of twenty-one years from the testatrix's death; and if any child should die within this period, without leaving issue and without exercising a general power of appointment given to it by the will, its share was to accrue to the shares of the other children. Any child leaving issue or surviving the period, took absolutely. The testatrix further empowered the trustees, in their absolute discretion, at any time during the period, to transfer the share of any son who should attain twenty-one, or any part of it, to him:—*Held*, that this power was a delegation by the testatrix of her power over the devolution of the estate, and was therefore invalid. *Joicey, In re; Joicey* v. *Elliott*, 84 L. J. Ch. 613; [1915] 2 Ch. 115; 113 L. T. 437—C.A.

Quære, whether a power of advancement might be delegated. *Ib.*

Unauthorised Conditions—Severance of Condition from Appointment—Validity of Appointment.]—Where A had a power of appointment by will in favour of her husband over certain funds "upon such conditions and with such restrictions as she should think fit," and she appointed by will the income of the funds to her husband during his life for his absolute use, provided that he should acquiesce in the several dispositions contained in her will and pay certain annuities to her nieces, and she left the residue of her own personal estate to her husband,—*Held*, first, that the desire of the testatrix to benefit her husband was the real motive and object of the appointment; and secondly, that the appointment was good, but the condition imposed upon the husband was nugatory. *Perkins, In re; Perkins* v. *Bagot* (62 L. J. Ch. 531; [1893] 1 Ch. 283), and *Cohen, In re; Brookes* v. *Cohen* (80 L. J. Ch. 208; [1911] 1 Ch. 37), distinguished. *Holland, In re; Holland* v. *Clapton*, 84 L. J. Ch. 389; [1914] 2 Ch. 595; 112 L. T. 27—Sargant, J.

The question whether such conditions as these can be disregarded, or whether they render the appointment itself void, is one of fact and of inference rather than of law. *Ib.*

Maintenance of Infant — Infants Contingently Entitled—Delegation of Discretionary Power — Maintenance out of Appointed Share.]—An attempt by the donee of a power of appointment amongst children to empower trustees to apply the income of expectant shares of the appointed fund towards the maintenance of the children is void as amounting to a delegation of the power. *Greenslade, In re; Greenslade* v. *McCowen*, 84 L. J. Ch. 235; [1915] 1 Ch. 155; 112 L. T. 337; 59 S. J. 105—Eve, J.

Semble, the provisions for maintenance and education and for advancement usually inserted in settlements do not in general apply to an appointed share, such share being by the appointment withdrawn from the general operation of the settlement. *Ib.*

VIII. REVOCATION AND NEW APPOINTMENT.

See also Vol. X. 1565. 1881.

Release and Revocation — Benefit of Appointor—Fiduciary Relation—Validity.]—By a marriage settlement the husband and wife settled trust funds, including two policies of life assurance, upon trust for the wife for life, and then for the husband for life, and then to the children, as they should by deed, with or without power of revocation, jointly appoint, and subject thereto as the survivor should by deed or will appoint. The settlement contained a covenant by the husband to pay the premiums on the policies, and a power to the trustees, with the consent of the wife, to apply the income or capital of the trust funds for the same purpose at their discretion. The husband and wife by deed jointly appointed the settlement funds subject to their life interests upon trust for their only child for life and then for her children, reserving a power of revocation thereunder to the husband and wife or the survivor. Upon the death of the husband the widow, who had for some years paid the premiums on the policies,

claimed a lien on the policy moneys for the amount so paid :—*Held*, that the wife had paid the premiums voluntarily, and had no lien on the policy moneys. The wife and her daughter (who was a spinster) wrote to the trustees that if she was not entitled as of right to a lien on the policy moneys she would revoke the existing appointment to the daughter and release her power of appointing other than to the daughter, and then would direct repayment of the premiums by the trustees to her out of the policy moneys :—*Held*, that the power to revoke was a fiduciary power, and could not be exercised otherwise than in accordance with the purpose and objects of the original power; and that the trustees ought not to pay upon a revocation, release, and request made with the avowed object of benefiting the appointor. *Leslie, In re; Leslie* v. *French* (52 L. J. Ch. 762; 23 Ch. D. 552), discussed. *Somes, In re; Somes* v. *Somes* (65 L. J. Ch. 262; [1896] 1 Ch. 250), distinguished. *Jones's Settlement, In re; Stunt* v. *Jones*, 84 L. J. Ch. 406; [1915] 1 Ch. 373; [1915] W.C. & I. Rep. 277; 112 L. T. 1067; 59 S. J. 364—Astbury, J.

Power to Tenants for Life Jointly by Deed and to Survivor by Will—Joint Appointment—Power to Both or Survivor to Revoke by Deed—Revocation and New Appointment by Survivor by Deed.]—By a marriage settlement a power of appointment over real and personal property was given to the husband and wife during their joint lives by deed with or without power of revocation and new appointment, and in default of such appointment a power of appointment by will or codicil was given to the survivor. By a deed-poll of 1889 they exercised the power, reserving to themselves or the survivor of them the power to revoke by deed the appointment thereby made. By a deed-poll of 1910 the survivor purported to revoke such appointment and to make a new appointment :—*Held*, that the revocation was valid, but that the new appointment was invalid. *Weightman's Settlement, In re; Astle* v. *Wainwright*, 84 L. J. Ch. 763; [1915] 2 Ch. 205; 113 L. T. 719; 31 T. L. R. 480—Joyce, J.

IX. POWER OF CHARGING AND JOINTURING.

See also Vol. X. 1573, 1884.

Power to Appoint Clear of all Charges and Outgoings whatsoever — Liability to Estate Duty.]—In exercise of a power under a settlement whereby C. was empowered to appoint by way of jointure to his wife an annual sum not exceeding 3,000*l.* clear of all charges and outgoings whatsoever, C. executed a settlement appointing the said sum, not expressly clear of all charges and outgoings. On the death of C.,—*Held*, that the jointure so appointed was clear of all charges and outgoings, and therefore free from estate duty. *Cadogan's (Earl) Settlements, In re; Richmond* v. *Lambton*, 56 S. J. 11—Joyce, J.

PRACTICE.

A. In the High Court of Justice.

B. In the House of Lords.—*See* APPEAL.

C. In the Court of Appeal.—*See* APPEAL.

D. In the Probate, Divorce, and Admiralty Division. — *See* HUSBAND AND WIFE; SHIPPING; WILL.

E. In Bankruptcy.—*See* BANKRUPTCY.

F. In the Privy Council.—*See* COLONY.

G. In the County Court.—*See* COUNTY COURT.

A. IN THE HIGH COURT OF JUSTICE.

I PARTIES TO ACTIONS AND PROCEEDINGS BY AND AGAINST PARTICULAR PARTIES.

a. Joinder of Parties.

See also Vol. XI. 37, 1744.

Joinder of Defendants—Action for Libel—Severing Damages.] — The plaintiff claimed damages in respect of a libel from two defendants who joined in their defence. The jury found a verdict for the plaintiff, assessing the damages at 500*l.*—495*l.* against one defendant and 5*l.* against the other:—*Held*, that the jury had no power in such a case to sever the damages and that judgment was properly entered for 500*l.* against both defendants. *Damiens* v. *Modern Society, Lim.*, 27 T. L. R. 164—Grantham, J.

—— **Separate Causes of Action — Alternative Relief — Several Defendants.**] — Rule 4 of Order XVI.—which provides that "all persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative"—when read in connection with rule 1 of that Order, is not confined in its operation to joinder of parties, but extends also to joinder of causes of action, so that persons may now be joined as defendants who are alleged to be liable in respect of causes of action which are not necessarily limited to the same exact state of facts, contracts, and circumstances as shewing liability, and in respect of which relief is claimed by the plaintiff in the alternative. *Compañia Sansinena* v. *Houlder*, 79 L. J. K.B. 1094; [1910] 2 K.B. 354; 103 L. T. 333; 11 Asp. M.C. 525—C.A.

Smurthwaite v. *Hannay* (63 L. J. Q.B. 737; [1894] A.C. 494), *Sadler* v. *Great Western Railway* (65 L. J. Q.B. 462; [1896] A.C. 450), *Frankenburg* v. *Great Horseless Carriage Co.* (69 L. J. Q.B. 147; [1900] 1 Q.B. 504), and *Bullock* v. *London General Omnibus Co.* (76 L. J. K.B. 127; [1907] 1 K.B. 264) discussed. *Ib.*

—— **Claim for Damages.**]—The plaintiff had a right of way over a certain lane. The defendants were severally the occupiers of two sets of premises approached by the lane, and the plaintiff alleged that the heavy traffic brought by them along the lane caused vibration which caused cracks to appear in his house, that the noise of the waggons creaking and grating on his garden wall constituted a nuisance, that the surface of the lane was cut up and his right of way interfered with, and that on two occasions his wall had been knocked down by the waggons. The plaintiff claimed an injunction and damages against both defendants:—*Held*, that the action could not be maintained in this form, and that one of the defendants must be struck out. *Munday* v. *South Metropolitan Electric Light Co.*, 57 S. J. 427; 29 T. L. R. 346—Swinfen Eady, J.

—— **"Necessary or proper" Party to Action against Person within Jurisdiction—Parties—Joinder of Defendant — Separate Cause of Action—Similar Circumstances.**]—The alteration made in 1896 in Order XVI. rule 1, by virtue of which it has been made to allow of the joinder in one action of plaintiffs having separate causes of action arising out of the same transaction and involving any common question of law or fact, is not limited to that rule, but extends by implication to the other rules of that Order; and, consequently, under rule 4 persons may now be joined as defendants in one action in respect of separate causes of action arising out of the same transaction and involving some common question of law or fact. *Oesterreichische Export vorm. Janowitzer* v. *British Indemnity Co.*, 83 L. J. K.B. 971; [1914] 2 K.B. 747; 110 L. T. 955—C.A.

By a contract of marine insurance made at Antwerp in the French language between the plaintiffs, merchants in Vienna, and two insurance companies, the B. Co., which was registered in England, and the S. Co., which was registered in Scotland, goods of the plaintiffs were insured on transit from Vienna to Valparaiso *via* Antwerp for 1,690 francs. In the contract it was declared that the companies insured respectively the amounts or parts stated by each of them at the foot of the contract, and at the foot of the contract appeared the names of the two companies, each being described as "of London," the sum of "845 francs" written opposite the name of each company together with a statement that the companies insured in halves for the total sum, and the signature of the contract by the common general agents of the two companies on their behalf. Both the companies had a common office and secretary in London, from that office all the letters from both companies relating to the insurance were written, and in these letters that office was described as the "head office" of both companies. The plaintiffs having issued a writ of summons against both companies in respect of alleged losses under the contract, and having served it upon the B. Co. within the jurisdiction, applied, under Order XI. rule 1 (*g*) for leave to serve it upon the S. Co. out of the jurisdiction in Scotland:—*Held*, that, even though under the contract the two companies were only severally liable for separate moieties of the total sum insured, and that the plaintiffs' cause of action against the S. Co. was separate from his cause of action against the B. Co., yet, the circumstances in which the causes of action respectively arose being similar, the S. Co. might be joined as defendants in the

action against the B. Co. under Order XVI. rule 4; and, that being so, that the S. Co. were "proper" parties to the action against the B. Co. within the jurisdiction within the meaning of Order XI. rule 1 (*g*), and therefore that service upon them out of the jurisdiction might be allowed under that sub-rule. *Ib.*

b. Unauthorised Proceedings.

Action Brought in Name of Company without Authority—Stay—Costs.]—The defendant and O. were the sole directors of and holders of an equal number of shares in the plaintiff company. O. alleged that the defendant as a director was doing something which was injurious to the company, and thereupon an action was brought against him in the name of the company, at the instance of O., asking for his removal from the office of director, and in the alternative for an injunction restraining him from dealing with or so conducting the company's business as to injure or jeopardise its goodwill. There had been no resolution of the company or directors authorising the bringing of the action, and from the constitution of the board it was known that no authority could be obtained :—*Held*, on motion by the defendants, that the name of the company should be struck out as plaintiffs, and that the action should be stayed; and, further, that the plaintiffs' solicitors should be ordered to pay the costs of the action. *West End Hotels Syndicate* v. *Bayer*, 29 T. L. R. 92—Warrington, J.

c. Adding Parties.

See also Vol. XI. 50, 57, 1746.

Revivor—Summons to Add Plaintiffs—Consent.]—A person cannot be added as plaintiff in an action without the consent of the plaintiff on the record. *Pennington* v. *Cayley* (*No.* 1), 106 L. T. 591—Neville, J.

—— **Evidence Required on Summons.**] — *Semble*, an application to carry on proceedings under Order XVII. rule 4, if made by summons, instead of by petition or motion of course, must be supported by evidence. *Ib.*

Foreclosure Action—Plaintiff Trustees — Foreclosure Absolute — New Trustees after Foreclosure—Re-opening Foreclosure—Revivor —Addition of Parties—Notice of Intention to Proceed.] — The public officer and estate trustees of an insurance company brought a foreclosure action against a mortgagor and subsequent incumbrancers, and an order for foreclosure was made absolute in 1907. Two of the trustees died after that date, and new trustees were appointed in their places. W., one of the defendants to the action, desired to re-open the foreclosure, and presented a petition of course for an order of revivor. An order was made in chambers that all future proceedings should be carried on between W. as plaintiff and the surviving defendants and all the present trustees as defendants :—*Held*, on a motion to discharge that order, that under the modern practice there could not be a revivor, and that W. should have applied to the trustees for their consent to the new trustees being added as plaintiffs, and that in the event of their refusal W. should have applied under Order XVII. rule 4 to have them added as defendants. *Pennington* v. *Cayley* (*No.* 2), 81 L. J. Ch. 522; [1912] 2 Ch. 236; 107 L. T. 116; 56 S. J. 550—Swinfen Eady, J.

Tenant Added by Amendment as Co-plaintiff with Reversioner.] — Where the gist of an action was whether a house had been rendered unfit for habitation by the erection of the garage, as no new course of action was sought to be substituted, an amendment on the usual terms as to costs was allowed in order to add a tenant as co-plaintiff. *Walcott* v. *Lyons* (54 L. J. Ch. 847; 29 Ch. D. 584) distinguished. *White* v. *London General Omnibus Co.*, 58 S. J. 339—Sargant, J.

Beneficiaries against Trustees — Trustees Nominal Defendants.] — An objection as to parties raised by a defendant—where other defendants who were trustees had the legal estate, and the claim was by beneficiaries under the trust to have a transaction, purporting to be a sale, declared to be a mortgage, with power in the trustees to redeem—that such defendant trustees ought to be co-plaintiffs with the beneficiaries, was successfully sustained at the trial, although not raised in the defence of the objecting defendant. *Walters* v. *Green* (68 L. J. Ch. 730; [1899] 2 Ch. 696) and *Chili Republic* v. *Rothschild* ([1891] W. N. 138) held not applicable; also Rules of Supreme Court, Order XVI. rules 11 and 12, not applicable to such a case. *Franklin* v. *Franklin*, 60 S. J. 43—Neville, J.

d. Representation of Parties.

See also Vol. XI. 63, 1746.

One Person Suing for Others having same Interest — Joint Contract.] — By Order XVI. rule 9 of the Rules of the Supreme Court, 1883, "Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorised by the Court or a Judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested" :—*Held*, that under the above rule, where a contract has been jointly made by numerous persons as co-contractors, one of the co-contractors may, in a representative capacity, on behalf and for the benefit of all the co-contractors, sue the other parties to the contract. *Janson* v. *Property Insurance Co.*, 19 Com. Cas. 36; 58 S. J. 84; 30 T. L. R. 49—Horridge, J.

Action of Debt against Unincorporated Society — Order Authorising One or More to Defend on Behalf of All.]—Order XVI. rule 9 provides that "Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorised by the Court or a Judge to defend in such cause or matter, on behalf or for the benefit of all persons so

interested." In a common law action of debt for services rendered the plaintiff sued four named defendants "on their own behalf and on behalf of all other members" of an unincorporated religious society, the majority of the members of which were resident abroad. After the defendants had delivered a defence, the plaintiff, with a view to binding the society and its property, issued a summons under Order XVI. rule 9, asking that the writ and all subsequent proceedings be amended by describing the defendants as being "sued on their own behalf and on behalf of all other members of" the society, and further asking that, "as the members of the said order are numerous and the above-named defendants are some of them, they be directed to defend the action on behalf of or for the benefit of all persons so interested." The four defendants were not trustees of the society, and the plaintiff did not claim by his writ any declaration of right as between himself and all the members of the society:—*Held*, that the case did not fall within the provisions of Order XVI. rule 9, and the plaintiff was not entitled to an order making the defendants representative of the society. *Walker* v. *Sur*, 83 L. J. K.B. 1188; [1914] 2 K.B. 930; 109 L. T. 888; 30 T. L. R. 171—C.A.

"Persons having same interest"—Action on Behalf of Shippers of Goods on General Ship.] —A vessel of the defendants, while carrying a general cargo on a voyage to Japan during the Russo-Japanese war, was sunk by a Russian cruiser for carrying contraband of war. The plaintiffs, who had shipped goods on board, commenced an action against the defendants by issuing a writ "on behalf of themselves and others owners of cargo lately laden on board" the vessel. The claim indorsed on the writ was for "damages for breach of contract and duty in and about the carriage of goods by sea." The defendants took out a summons for an order to set aside the writ on the ground that the case was not one to which Order XVI. rule 9, allowing plaintiffs to sue in a representative character, was applicable. It was stated on behalf of the plaintiffs that they desired to represent shippers of non-contraband goods only, and that the breach of contract and duty of which they complained consisted in the carrying of contraband of war, whereby the vessel was rendered liable to capture:—*Held* (Buckley, L.J., dissenting), that the writ ought to be set aside, even though it could be treated as amended by limiting the representation to all the owners of cargo not being shippers of goods which were contraband of war; for the plaintiffs and those whom they desired to represent were not "persons having the same interest in one cause or matter" within the meaning of Order XVI. rule 9. *Markt* v. *Knight Steamships Co.*, 79 L. J. K.B. 939; [1910] 2 K.B. 1021; 103 L. T. 369; 11 Asp. M.C. 460—C.A.

Society — Right to Sue — Under-lease to Society—Forfeiture of Head-lease—Claim of Society to a Vesting Order.]—A member of an unregistered society purported to take an under-lease for and on behalf of his society. On the head-lease being forfeited for breach of covenant the trustees of the society, suing on behalf of the members, brought this action for an order vesting the premises in them for the residue of the term of the under-lease under section 4 of the Conveyancing Act, 1892:—*Held*, that the plaintiffs were not entitled to sue. *Jarrott* v. *Ackerley*, 59 S. J. 509—Eve, J.

II. ACTION FOR DECLARATION.

Action to Declare Rights of Parties—Jurisdiction—Coal Mine—Minimum Wage—Award of Joint District Board.] — The plaintiffs brought an action asking for a declaration of the rights of the parties under an award made by a joint district board under the powers conferred on the board by the Coal Mines (Minimum Wage) Act, 1912, s. 2, sub-s. 5, subdividing their district into parts and fixing the minimum wage in each subdivision:—*Held*, that the Court, to the extent of declaring such rights, had jurisdiction to try the action, by reason of the provisions of Order XXV. rule 5 of the Rules of the Supreme Court. *Lofthouse Colliery* v. *Ogden*, 82 L. J. K.B. 910; [1913] 3 K.B. 120; 107 L. T. 827; 57 S. J. 186; 29 T. L. R. 179—Bailhache, J.

No Claim for Consequential Relief.] — Assuming that Order XXV. rule 5 purports to give the Court jurisdiction to make a declaration in favour of a plaintiff who has no cause of action, it is not to that extent *ultra vires* of the Judicature Acts, 1873 and 1875 (Buckley, L.J., dissenting). *Guaranty Trust Co. of New York* v. *Hannay & Co.*, 84 L. J. K.B. 1465; [1915] 2 K.B. 536; 113 L. T. 98—C.A. Affirming 59 S. J. 302—Bailhache, J.

Under Order XXV. rule 5 the Court has jurisdiction to entertain a claim by a plaintiff for a mere declaration, though he does not and cannot claim any consequential relief, and though the declaration relates not to any alleged right of the plaintiff, but to the alleged non-existence of an obligation of the plaintiff towards the defendant (Buckley, L.J., dissenting). *Ib.*

A firm of cotton brokers in the United States, having sold certain quantities of cotton to the defendants, who were cotton brokers in England, afterwards sold the bills of exchange which they had drawn upon the defendants in respect of these quantities of cotton to the plaintiffs, who were bankers carrying on business and having offices in the United States and in England. The plaintiffs, who acted throughout in good faith, presented the bills of exchange to the defendants for acceptance with the bills of lading attached, and the defendants accepted and in due course paid them. The defendants subsequently alleged that some of the bills of lading had been forged, and that no cotton had in fact passed under them, and they brought an action against the plaintiffs in the United States to recover the amount paid by them on one of these bills of exchange, on the ground that the plaintiffs, by presenting it for acceptance with the bill of lading attached, had warranted the genuineness of the bill of lading. That action was awaiting a new trial. The United States Courts had expressed the

opinion, and the defendants admitted, that the question of law which formed the only issue in that action was governed by English law, and it was admitted that that action might have been brought in England. In these circumstances the plaintiffs brought the present action in England against the defendants, claiming a declaration that the plaintiffs did not, by presenting the bills of exchange to which the bills of lading allege to have been forged were attached, warrant that these bills of lading were genuine, or that the cotton therein described had been shipped; and an injunction to restrain the defendants from further prosecuting the action against the plaintiffs in the United States or from instituting any other action against the plaintiffs in the United States to recover any moneys paid by the defendants in respect of any of the other bills of exchange. The defendants made an interlocutory application under Order XXV. rule 4 to strike out the indorsement on the writ for the declaration as disclosing no cause of action, on the ground that the Court had no jurisdiction under rule 5 of that Order or otherwise to make a declaration in favour of a plaintiff who had no cause of action:—*Held* (Buckley, L.J., dissenting), that the indorsement on the writ should not be struck out, and that the application should be dismissed. *Ib.*

III. JOINDER OF CAUSES OF ACTION.

See also Vol. XI. 121, 1752.

Action by Foreign Company for Balance of Account—Application by Defendants to Join Claim for Damages for Libel to Counterclaim.]—The plaintiffs, a Canadian company, sued the defendants, claiming for losses and balance of account under an agreement of re-insurance. The defendants put in a defence and counterclaimed for rescission and for damages for breach of contract. They afterwards applied for leave to add to their counterclaim a claim for damages for libel:—*Held*, that this application must be refused. *Factories Insurance Co.* v. *Anglo-Scottish General Commercial Insurance Co.*, 29 T. L. R. 312—C.A.

Claims by Plaintiff as Executor—Claims by Plaintiff Personally.]—By rule 5 of Order XVIII. "claims by . . . an executor . . . as such may be joined with claims by . . . him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff . . . sues . . . as executor." A plaintiff by his writ claimed in his personal capacity 4*l.* 10*s.* as arrears of rent, and also for possession of certain premises, and, as executor, he claimed 9*l.* as arrears of rent due to his testator's estate in respect of the same premises:—*Held*, that by reason of rule 5 of Order XVIII. there was a misjoinder of causes of action, and the plaintiff must be put to his election within fourteen days with which cause of action he would proceed. *Tredegar (Lord)* v. *Roberts*, 83 L. J. K.B. 159; [1914] 1 K.B. 283; 109 L. T. 731; 58 S. J. 118—C.A.

IV. WRIT OF SUMMONS.

a. Form and Contents of.

See also Vol. XI. 127, 1755.

Specially Indorsed Writ — Action for Recovery of Land.]—A testator's executors brought an action against the defendant, to whom the testator had let certain premises for three years from December 25, 1908, and then from year to year, to recover possession of the premises. Due notice to quit had been given by the plaintiffs to the defendant, and such notice had expired. The writ in the action was specially indorsed under Order III. rule 6 (F):—*Held*, that the plaintiffs could properly proceed by specially indorsed writ under Order III. rule 6 (F). *Casey* v. *Hellyer* (55 L. J. Q.B. 207; 17 Q.B. D. 97) distinguished. *Hopkins* v. *Collier*, 29 T. L. R. 367—Bucknill, J.

b. Service of Writ.

See also Vol. XI. 148, 1756.

Foreign Corporation—Residence Within the Jurisdiction—Carrying on Business—Fixed Place of Business—Agent—Head Officer.]—A foreign corporation may be served with a writ of summons under Order IX. rule 8, if, although they are not tenants of any place of business within the jurisdiction, the Court is of opinion that they carry on business at a fixed place in this country which may be said to be their place of business, as, for example, by an agent for the sale of their goods who is paid by commission and who rents an office in the City of London, on the door of which the corporation's name is painted, and where he performs every operation involved in the sale of their goods in this country. And such agent is a "head officer," within the meaning of the rule, on whom service may properly be effected. *Saccharin Corporation* v. *Chemische Fabrik von Heyden Actiengesellschaft*, 80 L. J. K.B. 1117; [1911] 2 K.B. 516; 104 L. T. 886—C.A.

In order that a foreign corporation may be liable to be sued in this country by reason of the fact that it has a business residence here, it is necessary that the business carried on by its agents within the jurisdiction should be the business of the corporation. It is not sufficient that the corporation's agents are merely doing work ancillary to the business of the corporation. *Allison* v. *Independent Press Cable Association*, 28 T. L. R. 128—C.A.

—— Agent—Authority to Contract—Carrying on Business.]—A foreign corporation incorporated in Sweden employed as its sole agents in this country a firm of general merchants in London. The agents submitted orders to the principals for approval and accepted such orders on their behalf when approved, but had no general authority to enter into contracts. The goods were shipped direct from Sweden to the purchasers, but payment was sometimes received by the agents in London and remitted to the principals, less commission:—*Held*, that the foreign corporation was not carrying on business by its agents in London, but only

carried on business abroad through its agents in London, and was therefore not resident within the jurisdiction. *Okura* v. *Forsbacka Jernverks Aktiebolag*, 83 L. J. K.B. 561; [1914] 1 K.B. 715; 110 L. T. 464; 58 S. J. 232; 30 T. L. R. 242—C.A.

Service of a writ on a member of the firm of agents at their London office,—*Held*, not to be good service on the foreign corporation, and ordered to be set aside. *Ib.*

Grant v. *Anderson & Co.* (61 L. J. Q.B. 107; [1892] 1 Q.B. 108) followed. *Saccharin Corporation* v. *Chemische Fabrik von Heyden Actiengesellschaft* (80 L. J. K.B. 1117; [1911] 2 K.B. 516) distinguished. *Ib.*

Where an agent in carrying on business within the jurisdiction on behalf of a foreign corporation makes contracts for the foreign corporation, and does not merely sell contracts with the foreign corporation, the foreign corporation carries on business within the jurisdiction, and service of a writ against it may be properly effected by service upon its agent. *Thames and Mersey Marine Insurance Co.* v. *Societa di Navigazione a Vapore del Lloyd Austriaco*, 111 L. T. 97; 12 Asp. M.C. 491; 30 T. L. R. 475—C.A.

Colonial Defendant—Colonial Railway Company—London Committee for Raising Capital—Residence within the Jurisdiction—Carrying on Business within the Jurisdiction.] — The defendant company was a Canadian railway company incorporated and having its offices in Canada, where the meetings of its board of directors were held. By the by-laws of the company those of the directors who resided in England constituted a London committee which, under the direction of the board, had a general supervision of the finances of the company and might make investments of its funds and issues of its capital, and which had a chairman, secretary, and staff paid by the company. The committee met at an office in London, which was lent to them by its owners rent free, and on the door of which the name of the company was written. The committee had in all cases advised the board in what form the capital of the company should be issued, and all the capital, consisting of mortgage bonds and debenture stock, had been issued by the committee in England subject to the control of the board. Circulars and prospectuses relating to these issues were sent out from the London office, and coupons on the bonds were paid there. The company had a bank account in London into which the proceeds of the issues of capital were paid and out of which small sums required by the committee were drawn. The plaintiffs, having brought an action in England against the defendant company, served the writ upon the secretary of the London committee at the office in London:—*Held*, that the company by its London committee was resident and carried on business within the jurisdiction and that the service of the writ upon the secretary of the London committee was a valid service upon the company under Order IX. rule 8. *Aktiesselskabet Dampskib "Hercules"* v. *Grand Trunk Pacific Railway*, 81 L. J. K.B. 189; [1912] 1 K.B. 222; 105 L. T. 695; 56 S. J. 51; 28 T. L. R. 28—C.A.

Alien Enemy Bankers—Branch in London—Service of Writ of Branch — Execution — Whether Leave Necessary.] — The plaintiffs were English solicitors and the defendants were bankers in Berlin. The plaintiffs had an account with the Berlin office of the defendants, who had also a branch in London. On August 1, 1914, the plaintiffs had a credit balance. On August 4 war broke out between England and Germany. On August 10 a licence under the Aliens Restriction Act, 1914, was issued to the branch to carry on business. On August 27 the plaintiffs issued a writ for the amount of the balance and it was served on the branch, and an appearance was entered by the defendants:—*Held*, that the service was good, and as it was therefore no answer to the claim to say that it could not be discharged by the branch the plaintiffs were entitled to judgment, and that as the Courts (Emergency) Powers) Act, 1914, did not apply in the case of alien enemies it was not necessary to ask for leave to issue execution. *Leader, Plunkett & Leader* v. *Disconto-Gesellschaft*, 59 S. J. 147; 31 T. L. R. 83—Scrutton, J.

c. Service out of the Jurisdiction.

See also Vol. XI. 168, 1759.

Action Properly Brought against Person within Jurisdiction — Colourable Joinder of Parties—Discontinuance of Action against Defendant within Jurisdiction.]—To justify the exercise of the power to allow service of a writ out of the jurisdiction under the Irish Order XI. rule 1 (*h*) [corresponding to Order XI. rule 1 (*g*)] the person served within the jurisdiction must be one against whom relief is *bona fide* sought by the plaintiff, and not a person, colourably joined for the purpose of effecting service out of the jurisdiction under the Order, against whom the plaintiff has no real cause of action, and against whom the action is discontinued before trial. In a case of colourable joinder, even though an unconditional appearance had been entered by the defendant out of the jurisdiction, the Court upon the discontinuance of the action against the sole defendant within the jurisdiction, stayed all further proceedings in the action on the ground that it was an abuse of the rule. *Sharples* v. *Eason*, [1911] 2 Ir. R. 436—C.A. S.P. *Ross* v. *Eason*, [1911] 2 Ir. R. 459—C.A.

Foreclosure Summons—Action Founded on Contract.]—An action to foreclose a mortgage of personalty, containing the usual covenant to repay, brought by the original mortgagee against the original mortgagors is not an action "founded on any breach of contract" within Order XI. rule 1 (*e*), and the Court cannot therefore allow service of the writ of summons on the mortgagors out of the jurisdiction. *Hughes* v. *Oxenham*, 82 L. J. Ch. 155; [1913] 1 Ch. 254; 108 L. T. 316; 57 S. J. 158—C.A.

Co-defendants—Tort—Principal and Agent.]—W., who was resident in England, wrote a number of libels concerning C., who was

resident in Ireland, and employed H., a bill poster, also resident in Ireland, to post, publish, and circulate them in the vicinty of C.'s residence. In an action by C. against W. and H. for damages for the libel, H. being served in Ireland, and there being, in the opinion of the Court, no ground for alleging that he was not *bona fide* made a defendant,—*Held*, that a concurrent writ was properly ordered to be served on W. in England. *Ross* v. *Eason* ([1911] 2 Ir. R. 459) and *Sharples* v. *Eason* ([1911] 2 Ir. R. 436) distinguished. *Cooney* v. *Wilson*, [1913] 2 Ir. R. 402—C.A.

Action to Recover Expenses of Extraordinary Traffic.]—An action brought to recover extraordinary expenses necessary for repairing roads by reason of damage caused by excessive user of the roads from the person liable to recoup such expenses, is not within any of the classes of action enumerated in Order XI. rule 1, and, consequently, where the person sought to be charged in an intended action is resident out of the jurisdiction, leave of the Court to issue and serve a writ of summons out of the jurisdiction will not be allowed:—So *held* by Holmes, L.J., and Cherry, L.J. (the Lord Chancellor dissenting). *Clare County Council* v. *Wilson*, [1913] 2 Ir. R. 89—C.A.

Action to Perpetuate Testimony — Land within Jurisdiction.]—The Court will not give leave under Order XI. rule 1 (*a*) for the writ in an action to perpetuate testimony to be served out of the jurisdiction. The fact that it is intended ultimately to use the testimony in question solely in connection with land "situate within the jurisdiction" does not render such an action one in which "the whole subject-matter of the action is land situate within the jurisdiction," within the meaning of the rule. *Slingsby* v. *Slingsby*, 81 L. J. Ch. 449; [1912] 2 Ch. 21; 106 L. T. 666—C.A.

Breach within Jurisdiction of Contract made in Isle of Man.]—A trader, resident and carrying on business in the Isle of Man, ordered goods from a company carrying on business in Ireland, through the company's traveller. From transactions between the trader and the company, it appeared that upon such orders goods were supplied by the company directly to the trader, and payment was made by the latter by cash order sent directly to the company in Ireland. Upon an application by the company for liberty to serve the trader out of the jurisdiction with a writ of summons for the price of goods sold to him through the company's traveller, liberty to do so was granted on the ground that, having regard to the course of dealing between the parties, the intended action was founded on a breach within the Irish Court's jurisdiction of the contract made by the company's agent. *O'Mara, Lim.* v. *Dodd*, [1911] 2 Ir. R. 55—Kenny, J.

Foreign Partnership Sued in Firm Name —Partnership not Carrying on Business within the Jurisdiction—Lex Domicilii or Lex Fori.]—A foreign partnership not carrying on business within the jurisdiction cannot be sued in its firm name. Where, therefore, service was effected out of the jurisdiction on a French partnership or *société en nom collectif*, as such, in proceedings commenced against the firm in its firm name, the Court set aside the service and discharged an order which had been obtained *ex parte* giving leave to serve notice of a concurrent writ on the firm out of the jurisdiction, although there was evidence that according to French law the firm was a separate person for the purpose of service of legal proceedings. The *lex fori* and not the *lex domilicii* applies in such a case. *Von Hellfeld* v. *Rechnitzer*, 83 L. J. Ch. 521; [1914] 1 Ch. 748; 110 L. T. 877; 58 S. J. 414—C.A.

V. PROCEEDINGS IN DEFAULT OF APPEARANCE.

See also Vol. XI. 199, 1766.

Indorsement of Service within Three Days —Judgment by Default—Non-compliance with Rule—Irregularity.]—The indorsement on a writ of summons on the day of the month and week of the service thereof within three days of such service, required by Order IX. rule 15, is a condition precedent to the right of the plaintiff to proceed by default, and is not a mere irregularity which can be waived by the defendant or remedied under Order LXX. rule 2. *Hamp-Adams* v. *Hall*, 80 L. J. K.B. 1341; [1911] 2 K.B. 942; 105 L. T. 326; 55 S. J. 647; 27 T. L. R. 531—C.A.

VI. JUDGMENT UNDER ORDER XIV.

See also Vol. XI. 208, 1767.

Application for Judgment—Affidavit in Support by "other person who can swear positively to the facts"—Affidavit by Clerk in London Office as to Transactions in other Places — Sufficiency.]—The plaintiffs, who carried on business in London and many other parts of the country as producers of and dealers in cinematograph films and other requisites, issued a specially indorsed writ against the defendants, who were the owners of cinematograph theatres in many places throughout the country, claiming a specific sum for balance of account for parcels of goods sold and delivered and goods hired out by the plaintiffs from various of their places of business to the defendants at various of their theatres in different places. An application by the plaintiffs for leave to sign judgment under Order XIV. was supported by an affidavit made by a clerk in the employment of the plaintiffs at their place of business in London, in which he stated that the defendants were justly and truly indebted to the plaintiffs in the sum claimed for balance of account for goods sold and delivered and for hire of goods, that he verily believed that there was no defence to the action, that he was in the employ of the plaintiffs and duly authorised by them to make the affidavit, and that it was within his knowledge that the aforesaid debt was incurred and for the consideration above stated:—*Held*, that the deponent was a

person who could "swear positively to the facts" within the meaning of Order XIV. rule 1, and that the affidavit was sufficient under that rule. *Pathé Frères Cinema* v. *United Electric Theatres*, 84 L. J. K.B. 245; [1914] 3 K.B. 1253; 112 L. T. 20; 58 S. J. 797; 30 T. L. R. 670—C.A.

"Person who can swear positively to the facts" — Affidavit Based on Information and Belief — Jurisdiction — Order for Payment of Costs Forthwith.]—An application for summary judgment under Order XIV. in an action for money received by the defendants for the use of the plaintiffs was supported by an affidavit made by the plaintiffs' manager. The deponent stated that certain cheques payable to the plaintiffs, the proceeds of which formed part of the claim, were handed to the plaintiffs' cashier for payment into the plaintiff's bank, but that the cashier never paid the cheques into the plaintiffs' bank, and that the deponent was informed and believed that the cheques came into the possession of the defendants, who passed them through their own banking account and received the proceeds thereof. The deponent further stated that he has ascertained from the drawers of the cheques that they had been paid into the account of the defendants:—*Held* (*dubitante* Kennedy, L.J.), that there was no jurisdiction to make an order for summary judgment, as the affidavit did not satisfy the requirements of Order XIV. rule 1, being made by a person other than the plaintiff, who could not swear positively to the facts verifying the cause of action, and that therefore the application should be dismissed; and, further, that under rule 9 (b) the plaintiffs should be ordered to pay the defendants' costs forthwith. *Symon* v. *Palmer's Stores*, 81 L. J. K.B. 439; [1912] 1 K.B. 259; 106 L. T. 176—C.A.

VII. INTERMEDIATE PROCEEDINGS.

a. Payment of Money into and out of Court.

See also Vol. XI. 248, 1774.

Payment into Court—By One Defendant—Joint Cause of Action against Several Defendants—Money taken out by Plaintiff in Satisfaction of Claim.]—Where several defendants are sued on a joint cause of action and one of them pays money into Court in satisfaction of the claim, the plaintiff, if he takes the money out of Court, there and then puts an end to the whole cause of action, and in a proper case he may be ordered to pay the costs of the other defendants who were not responsible for payment in. *Beadon* v. *Capital Syndicate*, 56 S. J. 536; 28 T. L. R. 427—C.A.

—— Denial of Liability—Costs—Damages in Lieu of Injunction.]—Where the defendant's shops curved away from the private road the defendant erected a pilaster, which at a height of twelve feet overhung the private road to the extent of twenty inches. The plaintiff asked for a mandatory injunction to remove the pilaster. The defendant denied liability, and paid 5*l.* into Court in respect of the overhang. Sargant, J., awarded the plaintiff 5*l.* damages in lieu of an injunction, and under Order XXII. rule 6 ordered the plaintiff to pay the costs of this issue. *Pettey* v. *Parsons*, 84 L. J. Ch. 81; [1914] 1 Ch. 704; 30 T. L. R. 328—Sargant, J.

b. Staying and Setting Aside Proceedings.

1. Generally.

(a) When Proceedings Frivolous or Vexatious.

See also Vol. XI. 283, 1780.

Vexatious Legal Proceedings — Criminal Proceedings.]—The Vexatious Actions Act, 1896, which empowers the Court to make an order prohibiting a person from instituting "legal proceedings" without the leave of the Court or a Judge, is confined to civil proceedings, and has no application to the institution of criminal proceedings. *Boalcr, In re*, 83 L. J. K.B. 1629; [1915] 1 K.B. 21; 111 L. T. 497; 24 Cox C.C. 335; 58 S. J. 634; 30 T. L. R. 580—C.A.

Administration Action in Ireland — Cross-action on Same Subject-matter in English Court.]—An action having been commenced in the Irish Court by an executor of a testator who died in Ireland, claiming as against persons interested under a voluntary settlement made by the testator that certain property was not included in it but was part of his residuary estate, and asking for administration of that estate, the defendants to the action commenced a cross-action in the English Court for a declaration that the property in question had been effectually brought into the settlement:—*Held*, that the action in England was not vexatious or oppressive, and ought not therefore to be stayed until after the trial of the Irish action. *Carter* v. *Hungerford*, 59 S. J. 428—C.A.

(b) Pendency of Actions Abroad.

See also Vol. XI. 289, 1786.

Proceedings in English and Italian Courts.]—An Englishwoman by birth died domiciled in Italy without any formal will, but it was alleged that a letter written by her in the English language to her solicitor in England relating to the disposal of her property after her death, and to a will which she instructed him to draw, constituted a valid holograph will according to the law of Italy. Proceedings were commenced in England by two of her next-of-kin against defendants who were interested under the alleged holograph will, to obtain as on an intestacy a grant of letters of administration to her personal estate, the greater part of which was in England. The defendants then instituted proceedings in Italy claiming that the document in question was a holograph will. There was some conflict of opinion amongst Italian lawyers whether or not the document constituted a good holograph will:—*Held*, that the English Court, applying Italian law to the document, was competent to decide whether or not it constituted a good holograph will, and that the English proceedings, having been commenced first, should not

be stayed so as to leave the construction and effect of a document in the English language to the Italian Court. *Bonnefoi, In re; Surrey* v. *Perrin*, 82 L. J. P. 17; [1912] P. 233; 107 L. T. 512; 57 S. J. 62—C.A.

See also Carter v. *Hungerford (infra).*

(c) Two or More Actions in this Country.

See also Vol. XI. 294, 1787.

Originating Summons to Realise Mortgage — Jurisdiction to Make Order for Personal Payment—Subsequent Action on Covenant for Payment.] — Upon an originating summons issued by a mortgagee under Order LV. rule 7 [English Order LV. rule 5 *a*], there is no jurisdiction to make a personal order for payment of the mortgage debt, and therefore if the mortgagee, pending such proceedings, brings an action in the King's Bench Division on the covenant for payment in the mortgage deed, such action will not be stayed. *Williams* v. *Hunt* (74 L. J. K.B. 364; [1905] 1 K.B. 512) distinguished. *Bradshaw* v. *McMullen*, [1915] 2 Ir. R. 187—C.A.

Debenture — Action in the Chancery Division for Receiver—Subsequent Action in the King's Bench Division on Covenant for Payment of Interest.]—A debenture-holder's action in the Chancery Division for the appointment of a receiver and consequential relief, as it is not a claim for payment, does not cover the same ground as, and is no impediment to, the prosecution of an action in the King's Bench Division by another debenture-holder on the covenant contained in the debenture for the payment of arrears of interest. *Hope* v. *Croydon and Norwood Tramways* (56 L. J. Ch. 760; 24 Ch. D. 730) distinguished. *Cleary* v. *Brazil Railway*, 85 L. J. K.B. 32; 113 L. T. 96—Rowlatt, J.

Administration Action in Ireland — Cross-action on Same Subject-matter in English Court.] — An action having been commenced in the Irish Court by an executor of a testator who died in Ireland, claiming as against persons interested under a voluntary settlement made by the testator that certain property was not included in it but was part of his residuary estate, and asking for administration of that estate, the defendants to the action commenced a cross-action in the English Court for a declaration that the property in question had been effectually brought into the settlement: —*Held*, that the action in England was not vexatious or oppressive, and ought not therefore to be stayed until after the trial of the Irish action. *Carter* v. *Hungerford*, 59 S. J. 428—C.A.

Concurrent Suits—Suit in Palatine Court of Lancaster — Vexatious Proceedings.] — The plaintiffs brought a debenture-holders' action in the Chancery Division of the High Court and gave notice of motion for a receiver. A mortgagee who claimed adversely to the debenture-holders under a specific charge of part of the property subject to the debentures then commenced an action in the Palatine Court of Lancaster to enforce his security by foreclosure or sale and obtained the appointment of a receiver, being at the time aware of the plaintiffs' action, to which, however, he was not then a party. The plaintiffs then added him as a defendant to the plaintiffs' action and moved in that action for an injunction to restrain him from continuing proceedings in the Palatine action:—*Held*, that, assuming the Palatine Court to be a Court of co-ordinate jurisdiction with the Chancery Division of the High Court of Justice, the latter had jurisdiction to grant the injunction, and that it was a proper case in which to exercise it on the ground that the mortgagee's proceedings in the Palatine Court were vexatious. *Connolly Brothers, Lim., In re; Wood* v. *Connolly Brothers, Lim.*, 80 L. J. Ch. 409; [1911] 1 Ch. 731; 104 L. T. 693—C.A. Affirming, 55 S. J. 407—Parker, J.

Transactions between Borrower and Money-lender—Action by Borrower in Chancery Division Claiming Account and Declaration that Money-lending Transactions Harsh and Unconscionable — Action by Money-lender in King's Bench Division on Promissory Note.]— The defendant, who had a number of transactions with the plaintiff, a registered money-lender, offered the plaintiff just before the last sum he had borrowed had become due the balance of the principal and a sum for interest which the money-lender declined. The borrower thereupon issued a writ in the Chancery Division claiming an account of all transactions between him and the money-lender, and a declaration that some of them were harsh and unconscionable, and for relief under the Money-lenders Act. The money-lender shortly thereafter issued a writ in the King's Bench Division for the full amount said to be owing by the borrower. The borrower thereupon took out a summons asking for a stay of the proceedings in the King's Bench Division on the ground that they were an abuse of the process of the Court in view of the proceedings pending in the Chancery Division:—*Held* (Kennedy, L.J., dissenting), that, in the circumstances of the case, the proceedings in the King's Bench Division should be stayed. *Tumin* v. *Levi*, 28 T. L. R. 125—C.A.

(d) Other Grounds.

See also Vol. XI. 314, 1788.

Appearance under Protest—Usual Terms—Defendant to Apply to Set Aside Service within Limited Time or Appearance to be Unconditional — Application after Time Elapsed.]—The entry of a conditional appearance by a defendant under protest to the jurisdiction on "usual terms," under No. 11 of the Office Rules settled by the Practice Masters—that is, that the appearance stands as unconditional unless the defendant applies within a number of days fixed by the Master on giving leave, to set aside the writ or service thereof, and obtains an order to that effect—is a proper and convenient practice for enabling the plaintiff to proceed with the action after the expiration of the time fixed where no application is previously made by the defendant; but it does not in any way preclude the

Court or a Judge from entertaining an application by the defendant to set aside the writ or service thereof after the expiration of the time fixed, if the circumstances of the case justify it. *Keymer* v. *Reddy*, 81 L. J. K.B. 266; [1912] 1 K.B. 215; 105 L. T. 841—C.A.

2. On Winding-up of Companies.
See Company.

3. On Bankruptcy.—*See* Bankruptcy.

4. Pending Appeal.—*See* Appeal.

5. Where Agreement to Refer.
See Arbitration.

c. Particulars.

See also Vol. XI. 319. 1789.

Before Defence.]—In an action brought by the P. Assurance Co. against A, B, and C, the trustees of the L. Insurance Society, and D, E, and F, certain agents of the L. society, to restrain them from interfering with the business of the P. company, the statement of claim alleged (*inter alia*) that "the said D, E, and F, and other agents and servants of the L. society at the instigation of the said society and of the said D, E, and F, have for the purpose of inducing the policy-holders of the P. company to cease insuring with the P. company and to transfer their insurances to the L. Society, made grossly false statements and representations to the policy-holders in the P. company" to a certain effect, and that "D, E, and F also themselves circulated among the policy-holders in the P. company, and caused to be circulated by other agents and servants of the L. society, a grossly libellous notice or circular imputing certain charges against the P. company, and that the said notice or circular letter continues to be circulated among the policy-holders of the P. company by the said D, E, and F:—*Held*, that, before delivering their defence, A, B, and C were entitled to obtain from the plaintiffs further and better particulars as to—first, the persons by whom, secondly the localities in which, and thirdly, the period within which, the alleged grossly false statements and representations were made, and also particulars as to whether any of the policy-holders to whom it was alleged the false representations were made were resident outside a certain district named by the plaintiffs, but that they were not entitled to receive particulars of the names and addresses of the several persons to whom the false representations were made. *British Legal and United Provident Assurance Co.* v. *Sheffield (Baron)*, [1911] 1 Ir. R. 69—M.R.

—— **Libel—Preliminary Averments—Discretion.**]—The plaintiff in a libel action alleged in his statement of claim that after the outbreak of war he was engaged, with official sanction, in relief and other work on behalf of British prisoners of war and in conveying to them money, food, and clothing, from their relatives and friends. The statement of claim then set out the alleged libel, which was to the effect that the American ambassador in Berlin had warned the British public against confiding anything to the plaintiff. The defendants, before delivering their defence, obtained a Master's order for particulars of the plaintiff's allegations as to his official position, his relief and other work, and the things conveyed by him to prisoners, and as to the relatives and friends referred to. An appeal from the Master to the Judge was dismissed:—*Held*, that though the allegations in question might not be necessary, yet, as evidence that they were true would no doubt be given at the trial, they could not be said to be immaterial to the plaintiff's case, and therefore he was bound to give the particulars, and that the question whether they should be given was a matter of discretion and there was no reason to interfere with the way in which it had been exercised. *Gaston* v. *United Newspapers, Lim.*, 32 T. L. R. 143—C.A.

False Imprisonment—Reasonable and Probable Cause.]—The plaintiff sued the defendants, who were two constables in the employment of a railway company, and also the railway company, for damages for false imprisonment. The plaintiff alleged that he had been wrongfully arrested on a charge of theft and had subsequently been discharged. The defendants denied the arrest, and pleaded that if the acts complained of had been done, they were done by constables in the execution of their duty, they having reasonable and probable cause for suspicion that a felony had been committed and that the plaintiff had committed it. On an application by the plaintiff for particulars,—*Held*, that he was entitled to an order for particulars of the alleged felony and also of the reasonable and probable cause for suspicion, but not to the names of those who had given the defendants information against him. *Green* v. *Garbutt*, 28 T. L. R. 575—C.A.

Libel — Report of Traders' Association — Enquiry as to Plaintiff — Name of Person making Enquiry.] — The defendants, an association of traders formed for the purpose (*inter alia*) of supplying information to its members, issued a report in which appeared an enquiry as to the address of the plaintiff. The plaintiff sued the defendants in respect of this publication, alleging that by it the defendants meant and were understood to mean that he had moved from the address where he had resided for eight years, and where he still resided, without leaving any indication of his movements, with the object of avoiding payment of his debts. The defendants denied the innuendo and pleaded that the words were published on a privileged occasion and without malice. The defendants by their particulars stated that a member of their association made an enquiry with regard to the plaintiff, and the secretary, in pursuance of his duty to further the objects of the association, instructed their enquiry officer to enquire for the plaintiff and that the enquiry officer was informed that the plaintiff had left, and thereupon the defendants, in the honest belief that this was true, published the information for the benefit of the members. On an application by the plaintiff for further and better particulars,—*Held*,

that the defendants were bound to give further particulars to enable the plaintiff to test the question whether the enquiry was made by a member of the defendant association. *Elkington* v. *London Association for Protection of Trade*, 27 T. L. R. 329—C.A.

—— Justification — Disclosure of Names of Probable Witnesses.]—The plaintiff, a trainer of racehorses, brought an action for libel against the defendants. The alleged libel was to the effect that the plaintiff had entered into a conspiracy with other trainers and jockeys to win or lose races dishonestly, and that he had thereby defrauded bookmakers and others. The defendants pleaded justification. Particulars in support of the plea were ordered and delivered. These particulars gave several instances in which it was alleged that a certain horse had been "pulled" by a certain jockey in a certain race at the instigation of the plaintiff when he had backed another horse for that race. Upon summons by the plaintiff for further and better particulars, giving the names of the bookmakers with or through whom it was alleged that the plaintiff had backed the horses, the times or places of the alleged backings, and the amounts of the alleged bets,—*Held*, that the plaintiff was entitled to particulars specifying the names of the bookmakers and the times or places, but not the amounts, of the bets. *Held*, also, that in every case in which the defence of justification raises an imputation of misconduct against the plaintiff, he ought to be enabled to go to trial with knowledge of the acts which it is alleged he has committed and upon which the defendant intends to rely to justify the imputation; and, if the particulars are such as the defendant ought to give, he cannot refuse to give them merely on the ground that his answer will disclose the names of his witnesses. *Wootton* v. *Sievier* (*No.* 1), 82 L. J. K.B. 1242; [1913] 3 K.B. 499; 109 L. T. 28; 57 S. J. 609; 29 T. L. R. 596—C.A.

d. Security for Costs.

See also Vol. XI. 344, 1790.

"Nominal" Plaintiff—Action by Bankrupt on Cause of Action Arising after Bankruptcy — "Personal earnings" — Intervention of Trustee.] — The plaintiff, while an undischarged bankrupt, obtained a commission note from the defendants under which he was to be paid 60*l.* if he procured a certain loan, and he brought this action to recover that sum. He was earning his living as a commission agent, and the whole or part of the 60*l.* would properly be required for his maintenance. The trustee in bankruptcy gave notice to the defendants that he claimed any money payable to the plaintiff under the commission note, but he subsequently gave them notice that he withdrew his claim. The defendants applied for an order that the plaintiff should give security for the costs of the action, upon the ground that he was a mere nominal plaintiff suing for the benefit of the trustee:—*Held*, that the money claimed by the bankrupt was his "personal earnings," within the exception established in the law of bankruptcy, and that, as the whole or part thereof was required for his maintenance, he was not a mere nominal plaintiff who could be ordered to give security for costs. *Affleck* v. *Hammond*, 81 L. J. K.B. 565; [1912] 3 K.B. 162; 106 L. T. 8; 19 Manson, 111—C.A.

Plaintiffs Resident out of the Jurisdiction—Cross-action — Substantially Independent Action.]—By agreements made in 1904 and 1907 between an English insurance company and a foreign insurance company it was agreed that the foreign company should re-insure certain proportions of risks covered by policies of insurance effected with the English company on and after October 1, 1904, against loss or damage by fire on the Continent of Europe and other parts of the world. By the terms of these agreements the English company were to render to the foreign company quarterly accounts, and the balances appearing on the accounts were to be paid within two weeks after the accounts had been confirmed; and for the purpose of checking the losses it was provided that the foreign company should have a right to inspect all original documents and vouchers. In pursuance of these agreements business was conducted between the two companies, accounts were delivered, and balances paid down to and including the first quarter of 1908. The account for the second quarter of 1908 was confirmed by the foreign company, but the balance shewn thereby was not paid by them. In 1910 the English company brought an action against the foreign company alleging that they had neglected to consider and confirm subsequent accounts which had been sent to them, and claiming the balance shewn by the account for the second quarter of 1908 and the balances shewn by the subsequent accounts, and claiming that if necessary accounts should be taken. The foreign company then brought a cross-action against the English company claiming inspection of all original documents and vouchers connected with all transactions under the agreements, and that all accounts between the two companies in connection with all transactions under the agreements might be re-opened on the ground of errors having occurred. The English company took out a summons in the cross-action asking that the foreign company should be ordered to give security for costs on the ground that they resided and carried on business out of the jurisdiction:—*Held*, that the foreign company ought to be ordered to give security for costs, inasmuch as the cross-action was in substance an independent action not brought merely by way of defence to the original action. *New Fenix Compagnie* v. *General Accident, Fire, and Life Assurance Corporation*, 80 L. J. K.B. 1301; [1911] 2 K.B. 619; 105 L. T. 469—C.A.

e. Preservation and Inspection of Property.

See also Vol. XI. 399, 1793.

Preservation of Property—Scope of Order.] —Order L. rule 3 of the Rules of the Supreme Court is not confined to administration, but extends to every case in which the Court sees

that as between the parties there is something which ought to be done for the security of the property in question. Under this order the Court authorised the receiver of the estate of a lunatic to raise out of the estate a sum of money to pay a commission to an insurance company for taking over a transfer of a mortgage on the property, the principal sum under which being due and payment being pressed for by the mortgagee. *Chaplin* v. *Barnett*, 28 T. L. R. 256—C.A.

Inspection of Premises — Tenants in Common—Action against One Tenant only—Power to Order Inspection.] — Under Order XII. rule 3 of the County Court Rules, 1903 and 1904 [R.S.C. Order XXXI. rule 12], which provides that the Court may, upon the application of a party to an action, make an order for the inspection of any property which is the subject of the action, there is no power to make an order for the inspection of premises of which the defendant is tenant in common with other persons who are not parties to the action. *Coomes* v. *Hayward*, 82 L. J. K.B. 117; [1913] 1 K.B. 150; 107 L. T. 715—D.

f. Receiver.

See also Vol. XI. 407, 1794.

Ex parte Application.] — The Court ought not to appoint a receiver *ex parte* except under extraordinary circumstances. *Connolly Brothers, Lim., In re; Wood* v. *Connolly Brothers, Lim.*, 80 L. J. Ch. 409; [1911] 1 Ch. 731; 104 L. T. 693—C.A.

Partnership Action — Receiver and Manager Appointed by the Court — Expenses Properly Incurred—Right of Indemnity.]—A receiver and manager appointed by the Court can look only to the assets in the control of the Court for his indemnity for expenses properly incurred. He is not entitled to be indemnified personally by the parties at whose instance, or with whose consent, he was appointed. *Boehm* v. *Goodall*, 80 L. J. Ch. 86; [1911] 1 Ch. 155; 103 L. T. 717; 55 S. J. 108; 27 T. L. R. 106—Warrington, J.

VIII. TRIAL.

See also Vol. XI. 418, 1795.

Jury—Exemption—Employment by Inland Revenue Commissioners — Foreign Banker — Collection of Income Tax on Foreign Dividends.] —A member of a firm of foreign bankers, which carries on business in London and is employed by the Inland Revenue Commissioners in the collection of income tax on foreign dividends and is paid by poundage, is not employed by the Inland Revenue Commissioners within the meaning of section 9 of the Juries Act, 1870, and the schedule to that Act, and is not on that ground exempt from jury service. *Van Druten, Ex parte*, 30 T. L. R. 198—Bankes, J.

Mode of Trial—Direction for Trial by Judge —Subsequent Application for Trial with Jury —Order XIV.]—Where on a summons under Order XIV. an order is made giving the defendant unconditional leave to defend, with a direction that the action shall be tried by a Judge, and the defendant leaves that order unappealed against, the defendant cannot subsequently, on an application under Order XXXVI. rule 6, obtain an order for a trial with a jury. *Wolfe* v. *De Braam* (81 L. T. 533) considered. *Kelsey* v. *Donne*, 81 L. J. K.B. 503; [1912] 2 K.B. 482; 105 L. T. 856—C.A.

Right to Trial by Jury—Action in Admiralty Division against Pilot — Transfer to King's Bench Division.] — The plaintiffs, as the owners of a causeway abutting on the Thames, claimed to recover the amount of damage done to the causeway through, as they alleged, the negligent navigation of a steamship which at the time was compulsorily in charge of the defendant as a Trinity House pilot. The plaintiffs brought an action *in personam* in the Admiralty Division against the defendant, and they also brought an action *in rem* against the owners of the steamship. The defendant took out two summonses asking respectively that the action against him might be tried with a jury and might be transferred to the King's Bench Division. The Judge dismissed both summonses on the ground that there being an action *in rem* against the ship which would, according to the usual practice, be tried by a Judge with assessors, it would not be convenient that the personal action should be tried before another tribunal:—*Held*, that the action should be tried in the King's Bench Division by a Judge with a jury. *Metropolitan Asylums Board* v. *Sparrow*, 29 T. L. R. 450 —C.A.

Commercial List — City of London Special Jury—Interlocutory Applications.]—Where a cause is to be tried with a special jury of the City of London it should be transferred to the Commercial List, and all interlocutory applications after its transfer should be made to the Judge in charge of such list. *Barnes* v. *Lawson*, 16 Com. Cas. 74—Scrutton, J.

General Verdict—Power of Judge to Put Further Question.]—When a jury have given a general verdict the Judge is not entitled to put a further question to them for the purpose of effect being given to their answer. *Arnold* v. *Jeffreys*, 83 L. J. K.B. 329; [1914] 1 K.B. 512; 110 L. T. 253—D.

Stranger in Jury Room — Validity of Verdict.]—The presence of a stranger in the room where a jury are considering their verdict, even although he may not in any way interfere with their deliberations, invalidates the verdict. *Goby* v. *Wetherill*, 84 L. J. K.B. 1455; [1915] 2 K.B. 674; 113 L. T. 502; 79 J. P. 346; 31 T. L. R. 402—D.

Disagreement of Jury—Entering Judgment for Either Party on the Evidence — Slight Evidence—No Evidence—Possibility of Adducing Additional Evidence at a Re-trial.]—At the conclusion of a plaintiff's case the defendants applied for judgment on the ground that there was no evidence to go to the jury. The

Judge refused to enter judgment, saying that there was some evidence, though very weak. The case was left to the jury, and they disagreed. The defendants again applied for judgment, but the Judge again refused to enter judgment, saying that he could not alter his previous opinion that there was some evidence, though it was very weak :—*Held*, that the Judge had power to alter his opinion and enter judgment for the defendants if he would have been justified in directing the jury to find a verdict for the defendants. *Skeate* v. *Slaters, Lim.*, 83 L. J. K.B. 676; [1914] 2 K.B. 429; 110 L. T. 604; 30 T. L. R. 290—C.A.

Semble, under Order LVIII. rule 4 the Court of Appeal has power to enter judgment for the defendant where a verdict has been found for the plaintiff, if the evidence on which that verdict was found was so weak and insufficient that the Court of Appeal would not have allowed the verdict to stand. But this power should only be exercised where the Court of Appeal is satisfied that it has all the necessary materials before it and that no evidence could be given at a re-trial which would in the Court of Appeal support a verdict for the plaintiff. *Ib.*

Per Buckley, L.J. : Where a case has been tried and the jury have disagreed, if upon the whole of the evidence of the case the Court of Appeal are of opinion that no twelve reasonable men could give a verdict for the plaintiff, the Court of Appeal has power and is bound to enter judgment for the defendant. *Ib.*

Millar v. *Toulmin* (55 L. J. Q.B. 445; 17 Q.B. D. 603), *Allcock* v. *Hall* (60 L. J. Q.B. 416; [1891] 1 Q.B. 444), and *Paquin, Lim.* v. *Beauclerk* (75 L. J. K.B. 395; [1906] A.C. 148) approved. *Peters* v. *Perry & Co.* (10 T. L. R. 366) explained. *Ib.*

Action for Joint Tort—Separate Defences—Improper Severance of Damages—Unity of Verdict and Judgment.]—Where an action has been brought against several defendants for an alleged joint tort for which all are found liable, then, notwithstanding that they have severed in their defences, only one joint verdict can be found and one joint judgment can be entered against them all. *Greenlands, Lim.* v. *Wilmshurst*, 83 L. J. K.B. 1; [1913] 3 K.B. 507; 109 L. T. 487; 57 S. J. 740; 29 T. L. R. 685—C.A.

A trade protection association existed for the purpose of providing for its subscribers in answer to their enquiries confidential information as to the credit and financial position of persons with whom they contemplated dealing, its work being carried on under the supervision of a committee of the subscribers, by a secretary, a solicitor, and various local correspondents, and its surplus income from subscriptions being accumulated in the hands of its trustees and not distributed among the subscribers. The plaintiffs brought an action for libel against the association and one of its correspondents in respect of a communication sent to a subscriber in answer to his enquiry. The defendants delivered separate defences, each pleading (*inter alia*) that the communication was published on a privileged occasion without malice. The jury found express malice against the correspondent, and they returned separate verdicts against the correspondent for 750*l.* damages and against the association for 1,000*l.* damages. The Judge held that the occasion was not privileged and gave judgment against the defendants for the above amounts respectively. The association appealed :—*Held*, by Vaughan Williams, L.J., and Hamilton, L.J., that the occasion was not privileged, but that the damages had been improperly severed, and further that they were excessive as against the association, and therefore that judgment should not be entered for the plaintiffs, but that there must be a new trial of the action :—*Held*, by Bray, J., that the occasion was privileged, that the malice of the correspondent could not be attributed to the association, and that judgment should be entered for the association; but, if this view were wrong, that for the reasons given by the other members of the Court there should be a new trial. *Macintosh* v. *Dun* (77 L. J. P.C. 113; [1908] A.C. 390) followed by Vaughan Williams, L.J., and Hamilton, L.J., but distinguished by Bray, J. *Ib.*

Special Jury — Certificate "immediately after the verdict"—Certificate Three Months after Trial—Validity.]—The certificate which may be granted under the County Juries Act, 1825, s. 34, by the Judge trying an action that it is "a cause proper to be tried by a special jury" can only be granted immediately in sequence of time after the verdict, unless there are some special circumstances which prevent the certificate being then applied for or granted, in which case the certificate must be obtained at the first reasonable opportunity. The Judge may, however, expressly reserve his decision and grant the certificate at a later date, when he has made up his mind, *nunc pro tunc*. *Forsdike* v. *Stone* (37 L. J. C.P. 301; L. R. 3 C.P. 607) followed. *Barker* v. *Lewis & Peat*, 82 L. J. K.B. 843; [1913] 3 K.B. 34; 108 L. T. 941; 57 S. J. 577; 29 T. L. R. 565—C.A.

Hearing in Camera. —*See Scott* v. *Scott*, *ante*, col. 632.

IX. NEW TRIAL.

See also Vol. XI. 502, 1799.

Motion for New Trial—"Misdirection and non-direction.]—A notice of motion for a new trial, grounded upon misdirection and non-direction of the Judge at the trial of the action, should state specifically the particulars as to misdirection and non-direction upon which the moving party intends to rely. *Pfeiffer* v. *Midland Railway* (18 Q.B. D. 243) followed. *Hughes* v. *Dublin United Tramways Co.*, [1911] 2 Ir. R. 114—K.B. D.

—— **Fresh Evidence—Character of Evidence Required.**]—In order to justify the grant of a new trial on the ground that fresh evidence has been discovered, the evidence must be of such a character as to justify the Court in saying that the verdict cannot in the interest of justice be relied on, because it was based on

mistake, surprise, or fraud. *Warham* v. *Selfridge & Co.*, 30 T. L. R. 344—C.A.

The plaintiff, describing herself as a spinster, brought an action against the defendant for breach of promise of marriage. The defence was a denial of the promise. At the trial the plaintiff obtained a verdict for damages. The defendant applied for a new trial on the ground of the discovery of fresh evidence, which was not available at the time of the trial, to the effect that the plaintiff was a married woman at the time of the alleged promise. The defendant, with the leave of the Court, filed in support of the application affidavits made by two persons, who deposed that the plaintiff had told them at material times that she was a married woman and had referred to a particular man as her husband and had corresponded with them in her married name, and that they had received wedding cards in the names of the plaintiff and her said husband. The plaintiff made an affidavit in reply, in which she said that, though wedding cards had been sent out by the man mentioned, she had never in fact been married:—*Held* (Pickford, L.J., dissenting), that the discovery of the fresh evidence entitled the defendant to a new trial on the issue whether the plaintiff was a married woman at the date of the promise of marriage. *Robinson* v. *Smith*, 84 L. J. K.B. 783; [1915] 1 K.B. 711; 59 S. J. 269; 31 T. L. R. 191—C.A.

Action against Borough Council—Juryman a Member.]—In a County Court action against a borough council one of the jurymen was a member of the council. The jury returned a verdict for the defendants. The Judge refused a new trial on the ground that no injustice had been done:—*Held*, on appeal, that as the case had been in part decided by one of the defendants, there must be a new trial. *Atkins* v. *Fulham Borough Council*, 31 T. L. R. 564—D.

X. JUDGMENTS AND ORDERS.

a. Generally.

See also Vol. XI. 547, 1804.

No Proceeding for a Year—Notice of Intention "to proceed"—Signing Judgment.]—To sign judgment is not "to proceed" in a cause or matter within the meaning of the Rules of the Supreme Court, 1883, Order LXIV. rule 13, and therefore the fact that a year has elapsed since the last proceeding in an action does not make it necessary for the party desiring to sign judgment in the action to give a month's notice to the other party of his intention to do so. *Staffordshire Joint-Stock Bank* v. *Weaver* ([1884] W. N. 78; Bitt. Ch. Cas. 243) overruled. *Deighton* v. *Cockle*, 81 L. J. K.B. 497; [1912] 1 K.B. 206; 105 L. T. 802—C.A.

Action for Joint Tort—Separate Defences—Improper Severance of Damages—Unity of Verdict and Judgment.]—Where an action has been brought against several defendants for an alleged joint tort for which all are found liable, then, notwithstanding that they have severed in their defences, only one joint verdict can be found and one joint judgment can be entered against them all. *Greenlands, Lim.* v. *Wilmshurst*, 83 L. J. K.B. 1; [1913] 3 K.B. 507; 109 L. T. 487; 57 S. J. 740; 29 T. L. R. 685—C.A.

A trade protection association existed for the purpose of providing for its subscribers in answer to their enquiries confidential information as to the credit and financial position of persons with whom they contemplated dealing, its work being carried on under the supervision of a committee of the subscribers, by a secretary, a solicitor, and various local correspondents, and its surplus income from subscriptions being accumulated in the hands of its trustees and not distributed among the subscribers. The plaintiffs brought an action for libel against the association and one of its correspondents in respect of a communication sent to a subscriber in answer to his enquiry. The defendants delivered separate defences, each pleading (*inter alia*) that the communication was published on a privileged occasion without malice. The jury found express malice against the correspondent, and they returned separate verdicts against the correspondent for 750*l.* damages and against the association for 1,000*l.* damages. The Judge held that the occasion was not privileged and gave judgment against the defendants for the above amounts respectively. The association appealed:—*Held*, by Vaughan Williams, L.J., and Hamilton, L.J., that the occasion was not privileged, but that the damages had been improperly severed, and further that they were excessive as against the association, and therefore that judgment should not be entered for the plaintiffs, but that there must be a new trial of the action. *Held*, by Bray, J., that the occasion was privileged, that the malice of the correspondent could not be attributed to the association, and that judgment should be entered for the association; but, if this view were wrong, that for the reasons given by the other members of the Court there should be a new trial. *Macintosh* v. *Dun* (77 L. J. P.C. 113; [1908] A.C. 390) followed by Vaughan Williams, L.J., and Hamilton, L.J., but distinguished by Bray, J. *Ib.*

Judgment on Admissions "either on the pleadings or otherwise"—Admission by Letter.]—The words "or otherwise" in Order XXXII. rule 6 of the Rules of the Supreme Court are of general application, and are not to be read as though they restricted admissions to admissions made "otherwise under this Order." So that where in a letter written by the defendant's solicitors to the plaintiffs' solicitors there was a clear admission of fact in the face of which it was impossible for the defendant to succeed in the action,—*Held*, that the plaintiffs were entitled to immediate judgment. *Ellis* v. *Allen*, 83 L. J. Ch. 590; [1914] 1 Ch. 904; 110 L. T. 479—Sargant, J.

Judgment—Consent—Ordinary Judgment.]—Where on the trial of an action counsel for the defendant states that he consents to judgment for the plaintiff, it ought to be

entered as an ordinary and not a consent judgment. *Swiss Bankverein* v. *Greaves*, 32 T. L. R. 127—Bailhache, J.

Action against Two Defendants—Judgment for Defendants — Appeal as to Judgment for One Defendant — Schedule of Evidence Used at Hearing.]—Order LXII. rule 14c provides that if a judgment or order in a witness action is appealed from there shall be a schedule of the evidence used at the hearing. That schedule of evidence ought to contain the evidence used at the hearing, nothing more and nothing less, and not merely the evidence relative to the point under appeal. The proper course in settling the schedule of evidence is to enter not only the documentary evidence, but also the names of the witnesses. The object of the new rules of Order LXII. was to put into a separate document, where there is an appeal, the evidence which was formerly entered in the body of the order. Form of orders discussed. *Brinsmead* v. *Brinsmead (No. 2)*, 82 L. J. Ch. 305; [1913] 1 Ch. 492; 108 L. T. 601; 30 R. P. C. 489; 57 S. J. 478—Warrington, J.

Disagreement of Jury—Formal Order Refusing to Enter Judgment — Appeal.] — The jury at the trial of the action having disagreed, the Court, on the application of the defendants, made a formal order refusing to enter judgment so as to enable the defendants, if they thought proper, to take the case to the Court of Appeal. *Skeate* v. *Slaters, Lim.*, 29 T. L. R. 289—A. T. Lawrence, J.

Drawing up Orders — Delay.] — Under the new rule 14 (*a*) of Order LXII. of the Rules of the Supreme Court, it is the duty of the Registrar, if the order has not been drawn up at the end of a period of fourteen days from the date of the judgment, to report to the Judge so soon as the fourteen days have elapsed since the order was made that the order has not yet been drawn up and entered. *Empire Guarantee and Insurance Co., In re*, 56 S. J. 444—Swinfen Eady, J.

b. Declaratory Orders.

See also Vol. XI. 568, 1805.

The Court will not make a declaratory order in favour of a plaintiff who has asked for a declaration of right merely as a foundation for substantive relief to which he is not entitled. *Dysart (Earl)* v. *Hammerton*, 83 L. J. Ch. 530; [1914] 1 Ch. 822; 110 L. T. 879; 78 J. P. 297; 12 L. G. R. 653; 58 S. J. 378; 30 T. L. R. 379—C.A.

Application of Order XXV. rule 5 to Crown.]—Order XXV. rule 5 of the Rules of the Supreme Court lays down no limit to the class of cases to which it applies, and the Court cannot hold that a case in which the Crown is a defendant is impliedly excepted. *Burghes* v. *Att.-Gen.*, 80 L. J. Ch. 506; [1911] 2 Ch. 139; 105 L. T. 193; 55 S. J. 520; 27 T. L. R. 433—Warrington, J.

c. Setting Aside and Impeaching.

See also Vol. XI. 587, 1808.

Judgment Obtained by Default.] — The Court, in setting aside a judgment obtained through default by the defendant in pleading and in allowing the defendant to defend the action, has no power to impose upon him the condition that he shall not plead the Gaming Act. *Pooley* v. *O'Connor*, 28 T. L. R. 460—C.A.

Assignment of Judgment — Delay.] — The plaintiff brought an action against the defendant on two cheques given for a gambling debt. The defendant did not appear at the trial and plaintiff obtained judgment, but no proceedings were taken to enforce it. Later a money-lender obtained a judgment against the plaintiff, and the judgment debt due from the defendant to the plaintiff was assigned to him. Subsequently, one year after the judgment had been obtained against the defendant, he applied to have it set aside:—*Held*, that the money-lender was in the position of a *bona fide* holder for value with regard to the judgment debt due from the defendant, and there was no reason to exercise the discretion of the Court by setting it aside. *Harley* v. *Samson*, 30 T. L. R. 450—Scrutton, J.

Writ for Liquidated Amount—Reduction of Amount by Part Payment — Judgment in Default of Appearance for Original Amount—Mistake of Plaintiff—No Application by Plaintiff to Reduce Amount.]—A sum indorsed on a writ as a liquidated demand was reduced by part payment after the writ was issued, but judgment was nevertheless entered in default of appearance for the original amount, owing to a mistake of the plaintiff. Subsequently the plaintiff issued a bankruptcy notice founded on his judgment, which, however, gave credit for the sum paid in deduction, but he took no steps to correct his judgment and opposed a suggestion that it should be reduced to the proper amount. Upon application by the defendant,—*Held*, that the judgment must be set aside, it being the duty of a creditor, if he obtains a wrong judgment, and not the duty of the debtor, to have it set right. *Muir* v. *Jenks*, 82 L. J. K.B. 703; [1913] 2 K.B. 412; 108 L. T. 747; 57 S. J. 476—C.A.

Service of Writ on Limited Company by Posting.]—The plaintiffs, who could lawfully have effected service of a writ against the defendant company by posting the same in a prepaid cover properly addressed, for greater security registered the same; and in consequence of such registration the letter was not in fact delivered until the day following the ordinary course of post. The plaintiffs *bona fide* believed that the letter had been delivered in the ordinary course of post, and acting on such belief signed judgment in default of appearance immediately after the expiration of the period allowed for entering an appearance:—*Held*, on motion by the defendants to set aside the judgment, that, notwithstanding section 26 of the Interpretation Act, 1889,

where the writ had not in fact been delivered in the ordinary course of post, the defendants were entitled to have the judgment set aside on the ground that it had been signed prematurely. *Rylands Glass Engineering Co.* v. *Phœnix Co., Lim.*, [1911] 2 Ir. R. 532—K.B. D.

d. Varying and Amending.

See also Vol. XI. 596, 1809.

Error in Order.]—The Court has jurisdiction to correct an error in an order arising from an accidental slip on the part of the person who obtained the order and seeks to have it corrected, although there was no error in the sense that the order as made did not carry out the intention of the Court. *McCaughey* v. *Stringer*, [1914] 1 Ir. R. 73—M.R.

Judgment against Married Woman in Default of Appearance — Adoption of Ordinary Form by Inadvertence—Omission of Reference to Separate Property — Error Arising from Accidental Slip or Omission — Application to Correct.]—The plaintiffs, having brought an action in the High Court against the defendant, a married woman sued in respect of her separate estate, recovered judgment against her in default of appearance. Through the inadvertence of a clerk of the plaintiffs' then solicitors, the judgment was signed and entered in the ordinary form, instead of in the form appropriate to judgment against a married woman in such a case, which includes, in addition to the words of the ordinary form, a statement to the effect that the sum recovered is to be payable out of the separate property of the defendant and not otherwise. After the lapse of ten years, the plaintiffs applied to amend the judgment under Order XXVIII. rule 11, which provides *(inter alia)* that errors in judgments arising from any accidental slip or omission may at any time be corrected :—*Held*, by Vaughan Williams, L.J., and Buckley, L.J., that the case did not come within the rule, and that the Court had not power to make the amendment. *Held*, by Kennedy, L.J., that the case came within the rule, but that in the circumstances the Court in the exercise of its discretion should refuse to allow the amendment. *Oxley* v. *Link*, 83 L. J. K.B. 602; [1914] 2 K.B. 734; 110 L. T. 248—C.A.

e. Examination of Judgment Debtor.

By rule 32 of Order XLII. of the Rules of the Supreme Court, 1883, "when a judgment or order is for the recovery or payment of money . . . the Court or Judge may make an order for the attendance and the examination of such debtor"; and by rule 33, "In case of any judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the Court or a Judge, and the Court or Judge may make such order thereon for the attendance and examination of any party or otherwise as may be just." The plaintiff obtained against the defendant two judgments, which remained largely unsatisfied, and under an order made under Order XLII. the defendant was examined as to her means. On a subsequent application by the plaintiff for the appointment of a receiver of certain effects of the defendant an interim injunction was granted restraining the defendant from dealing with them. Subsequently a receiver was appointed and he ascertained that certain articles had been removed from the defendant's residence. It appeared that some of the articles had been removed while the interim injunction was in force, and that a picture had been sold, but the plaintiff could not ascertain what had become of the other articles :—*Held*, that the plaintiff was entitled to a further order under rule 32 for the examination of the defendant as to whether she had any means of satisfying the judgments; and (Buckley, L.J., dissenting) that the plaintiff was also entitled to an order under rule 33 for the examination of the defendant as to the execution and enforcement of the injunction and as to the defendant's dealings with certain property subject to the injunction, inasmuch as the object of rule 33 was to make orders under rule 32 more efficacious. *Sturges* v. *Warwick (Countess)*, 58 S. J. 196; 30 T. L. R. 112—C.A.

f. Enforcing Performance.

See also Vol. XI. 630, 1810.

Application by Personal Representative for Liberty to Issue Execution.]—Where a judgment creditor dies after judgment, an application by his personal representative for leave to issue execution should be made *ex parte*. The practice as to when applications under Order XLII. rule 24 *(a)* [corresponding to English Order XLII. rule 23 *(a)*] should be *ex parte* and when on notice, stated. *Meehan* v. *Tynan*, [1915] 2 Ir. R. 52—K.B. D.

By Execution.]—*See* EXECUTION.

XI. MOTIONS AND RULES.

See also Vol. XI. 665, 1812.

Notice of Motion—Service before Appearance—Address for Service.]—Leave having been obtained to serve a notice of motion on a defendant before appearance, a copy of the notice of motion was left at her address :—*Held*, sufficient notice of motion. *Jarvis* v. *Hemmings (No. 2)*, 56 S. J. 271—Warrington, J.

—— Time between Service and Hearing — "Two clear days" — Sunday Excluded.] — Sunday is not to be reckoned in computing the "two clear days" required by Order LII. rule 5 to elapse between service of notice of motion and the day named for hearing. *Brammall* v. *Mutual Industrial Corporation*, 84 L. J. Ch. 474; 112 L. T. 1071; 59 S. J. 382—Astbury, J.

—— Chancery System of Linked Judges — Non-appearance of Defendant—Name of Judge to Whom Motion Assigned.] — A notice of

motion which states that the Court will be moved before Mr. Justice A. is sufficient, although the Court is in fact moved before Mr. Justice B., the Judge before whom, owing to the system of linked Judges adopted in the Chancery Division, the motions in actions assigned to Mr. Justice A. are made, notwithstanding that the respondent to the motion does not appear; and an order can properly be made on such a motion by Mr. Justice B. in accordance with its terms. *Romney, Lim., In re; Stuart* v. *The Company*, 60 S. J. 141—Sargant, J.

Originating Motion Placed in Non-witness List—Hearing Fee.]—Where, to suit the convenience of the Court, an originating motion is directed to be placed in the non-witness list, no hearing fee ought to be demanded. *Watson & Co.'s Application, In re*, 28 R. P. C. 167; 55 S. J. 292—Parker, J.

Costs of Abandoned Motion — Notice.] — Although it is usual for a defendant to give notice to the other side that he claims the costs of an abandoned motion, there is nothing in the Rules to prevent such costs being given where no notice has been served. *Hinde* v. *Power*, [1913] W. N. 184—Eve, J.

XII. SUMMONSES.

See also Vol. XI. 685, 1812.

Service on Foreigner out of Jurisdiction — Summons to Set Aside.]—Leave for service out of the jurisdiction of a summons, order, or notice under the provisions of rule 8A of Order XI. of the Rules of the Supreme Court, 1883, will only be granted in the circumstances in which such leave would be granted in the case of a writ of summons under rules 1 and 8 of the Order. The manner of service will therefore depend on whether the country in which it is to be effected is or is not a country to which the provisions of Order XI. have been applied by the Lord Chancellor. *Aktiebolaget Robertsfors and Société Anonyme des Papeteries, In re*, 80 L. J. K.B. 13; [1910] 2 K.B. 727; 103 L. T. 503—D.

Originating Summons—Trade Union—Fund for Specific Purpose—Failure of Specific Purpose — Resulting Trust.] — An application to the Court for the declaration of a resulting trust on the failure for illegality of the specific trusts of a particular instrument cannot be made by originating summons, either by virtue of Order LIV.A, rule 1, or of Order LV. rule 3. *Amalgamated Society of Railway Servants, In re; Addison* v. *Pilcher*, 80 L. J. Ch. 19; [1910] 2 Ch. 547; 103 L. T. 627; 54 S. J. 874; 27 T. L. R. 12—Swinfen Eady, J.

—— **Foreclosure.**]—An action commenced by the issue of an originating summons against a mortgagor asking for foreclosure of a mortgage of personal estate is not an action "founded on contract, or alleged breach of contract" within Order XI. rule 1 (*c*), and the summons cannot be served out of the jurisdiction. *Hughes* v. *Oxenham*, 82 L. J. Ch. 155; [1913] 1 Ch. 254; 108 L. T. 316; 57 S. J. 158—C.A.

—— **Costs.**] — Costs of an originating summons to determine title to real estate ordered to be paid by the unsuccessful respondent. *Halston, In re: Ewen* v. *Halston*, 81 L. J. Ch. 265; [1912] 1 Ch. 435; 106 L. T. 182—Eve, J.

Compromise—Consent Order—Compromise Varying the Rights of the Parties—Attempt to Enforce — Independent Proceedings Necessary.]—Where an order had been made by consent in 1909 and shares of income apportioned under such order, but owing to a fall in interest one of the parties desired that the other should give up possession of certain properties, part of the subject-matter of the order, to the trustees, in order that her interest might be made up to the amount given her by such order, or that a receiver of such properties should be appointed,—*Held*, that such an application could not be made by a summons in the original action, but that independent proceedings must be taken. *Salt* v. *Cooper* (50 L. J. Ch. 529; 16 Ch. D. 544) explained. *Hearn, In re: De Bertodano* v. *Hearn*, 108 L. T. 452; 57 S. J. 405—Sargant, J. Affirmed, 108 L. T. 737; 57 S. J. 443—C.A.

Order in Chambers—Order not Passed and Entered — Adjournment to Judge — Jurisdiction.]—An order made by the Master upon a summons in chambers does not become finally effective till it has been passed and entered, and, until then, the Judge (or, *semble*, the Master) has power at any time to direct the matter to be adjourned to the Judge, who will deal with the summons upon all the evidence then before him, and, if the circumstances require, make a different order. *Dictum* of Malins, V.C., in *Bartlett, In re; Newman* v. *Hook* (50 L. J. Ch. 205; 16 Ch. D. 516), distinguished. *Thomas, In re; Bartley* v. *Thomas*, 80 L. J. Ch. 617; [1911] 2 Ch. 389; 105 L. T. 59; 55 S. J. 567—Warrington, J.

XIII. FUNDS AND SECURITIES IN COURT.

See also Vol. XI. 738, 1815.

Administration Proceedings—Declaration.] —If in the course of administration proceedings a Judge has made a declaration of rights, and money in Court is carried over to a separate account in accordance with such declaration, the right to the money cannot be impeached so long as the declaration remains standing, but the same grounds—for example, fraud or the discovery of facts that could not with reasonable diligence have been discovered before—that would suffice to have the declaration set aside would suffice also to have the title to the account altered. If there is no declaration of title by the Court, and the money is carried over in the action to administer the trust funds for convenience of administration only, then the Court can at any time before final distribution rectify and adjust such administration order in such a way as to ensure full and complete justice in the final distribution of the fund. *Cloutte* v. *Storey*, 80 L. J. Ch. 193; [1911] 1 Ch. 18; 103 L. T. 617—C.A.

Payment Out on Erroneous Affidavit—Possible Beneficiary not Party to Petition—Claim for Compensation against Consolidated Fund.] —Where the Court, acting upon a mistake as to fact, but not upon any fraud, or forgery, has ordered the payment out of a fund in Court to a wrong person, and the Paymaster-General has acted upon this order, it will not afterwards discharge the order so made, and order payment out to the person properly entitled, so as to enable this person (on non-payment of the fund by the Paymaster-General in accordance with the second order) to claim that the Consolidated Fund is liable (by virtue of section 5 of the Court of Chancery (Funds) Act, 1872, and section 2 of the Supreme Court of Judicature (Funds, &c.) Act, 1883) to make good to him the amount so ordered to be paid to him by the Court. *Williams, In re*, 80 L. J. Ch. 8; [1910] 2 Ch. 481; 103 L. T. 390; 54 S. J. 736; 26 T. L. R. 688—Swinfen Eady, J.

But *quære*, as to whether, in cases in which the original order had been obtained by fraud, or forgery, the Court would not so act. *Ib.*

Payment Out—Dormant Fund—Absence of Beneficiaries.]—It is contrary to the practice of the High Court to pay out a dormant fund to a party legally entitled to it without the beneficiaries being before the Court. This rule applies notwithstanding that the person applying for payment is a judicial factor appointed under Scotch law. *Gordon* v. *Smith*, 108 L. T. 951; 57 S. J. 595—Neville, J.

Order for Repayment—Enquiry as to Unclaimed Certificates — Jurisdiction to Exclude Holders of Bonds not Claiming within Limited Time.] — Where great length of time has elapsed from the date of the judgment declaring that funds in the hands of trustees ought to be returned to and divided between the holders of certificates for rateable proportions in respect of bonds, and a residuum of bondholders had omitted to establish their claims, —*Held*, that the Court has jurisdiction to make an order determining the class entitled to the benefit of its order and giving to those asserting their claims all that is left of the fund. *Wilson* v. *Church*, 106 L. T. 31—Eve, J.

XIV. TIME.

Order LXIV. rule 3—Bill of Exchange—Expiration of Time on Sunday—Writ Issued on Following Monday.] — The time for payment of a promissory note, including the days of grace, expired on Sunday, September 22, 1906. The writ in an action against the defendants as the makers of the promissory note was issued on Monday, September 23, 1912 :—*Held*, that Order LXIV. rule 3, which provided that "where the time for doing any act or taking any proceeding expires on a Sunday . . . and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time for doing or taking the same, be held to be duly done or taken if done or taken on the day on which the office shall next be open," had no operation on the Statute of Limitations, and that therefore the writ which was issued on Monday, September 23, 1912, could not be considered as having been issued on Sunday, September 22, 1912. *Gelmini* v. *Moriggia*, 82 L. J. K.B. 949; [1913] 2 K.B. 549; 109 L. T. 77; 29 T. L. R. 486—Channell, J.

XV. PLEADING.

See also Vol. XI. 810, 1816.

a. Generally.

Action by Lunatic, not so Found, by Next Friend—Issue of Sanity of Plaintiff Raised by Defence.] — An action being brought by a person of unsound mind, not so found by inquisition, by her next friend, to recover documents in the hands of the defendants, and the defendants by their defence alleging that the plaintiff was not of unsound mind, and that they held the documents on her behalf :—*Held*, that the issue of the sanity of the plaintiff, or the authority of her representatives, could not be raised on the pleadings. *Richmond* v. *Branson*, 83 L. J. Ch. 749; [1914] 1 Ch. 968; 110 L. T. 763; 58 S. J. 455—Warrington, J.

b. Amending and Striking out Pleadings.

Amendment of Pleading Setting up Defence of Public Authorities Protection Act—Delay.] —Circumstances in which the Court refused the defendants leave to amend their points of defence by pleading the Public Authorities Protection Act where the application for leave to amend was made at a very late stage of the proceedings, and where costs would not have been an entire compensation to the plaintiff if leave were granted. *Aronson* v. *Liverpool Corporation*, 77 J. P. 176; 29 T. L. R. 325—Pickford, J.

Striking out — Interlocutory Application — Power of Court to make Order.]—Where it is clear that an action against a trade union and others is one which, as against the trade union, is prohibited by section 4, sub-section 1 of the Trade Disputes Act, 1906, the Court may, on an interlocutory application under Order XXV. rule 4, strike out the name of the trade union from the writ and pleadings on the ground that they disclose no reasonable cause of action against the trade union :—So *held* by Vaughan Williams, L.J., and Kennedy, L.J.; Farwell, L.J., dissenting. *Vacher* v. *London Society of Compositors*, 81 L. J. K.B. 1014; [1912] 3 K.B. 547; 106 L. T. 778; 56 S. J. 442; 28 T. L. R. 366—C.A.

—— **Supplemental Action — Striking out Pleading as Embarrassing.**]—Pleading that an action be treated as supplemental to another action is unintelligible and will be struck out as embarrassing. *Nitrate Securities Trust* v. *Williams*, 106 L. T. 730—Neville, J.

—— **Statement of Claim — Principles.**] — Order XXV. rule 4, enabling the Court to strike out a statement of claim as disclosing no reasonable cause of action, was not in-

tended to take the place of a demurrer, and it ought not to be applied to an action involving serious investigation of ancient law and questions of general importance. *Dyson* v. *Att.-Gen.*, 80 L. J. K.B. 531; [1911] 1 K.B. 410; 103 L. T. 707; 55 S. J. 168; 27 T. L. R. 143—C.A.

—— **Libel—Whether Words Capable of Defamatory Meaning.**]—On an application to strike out a statement of claim in a libel action on the ground that it discloses no reasonable cause of action, the Court will not strike it out on the ground that the words are incapable of a defamatory meaning, but will leave the question whether they are capable of such a meaning to be dealt with by the Judge at the trial. *Moore* v. *Lawson*, 31 T. L. R. 418—C.A.

—— **Inconsistent Pleas—Payment into Court Admitting and Denying Liability.**]—A defendant, having by one paragraph of his defence paid money into Court admitting liability, and by another paragraph of his defence paid money into Court denying liability, and the plaintiff in the action making more than a single claim:—*Held*, that one of the paragraphs must be struck out and that the defence must specifically state with regard to which claim of the plaintiff the money was paid into Court. *Chapman* v. *Westerby*, 58 S. J. 340—Warrington, J.

—— **Paragraphs of Defence as Embarrassing.**]—In an action by the plaintiffs to obtain a declaration of the validity of a notice served by them upon the defendant under section 5 of the City of London (Spitalfields Market) Act, 1902, of their intention to purchase his interest in Spitalfields Market, the Court, on the plaintiffs' application, struck out, as embarrassing, certain paragraphs of the defence which referred to a previous litigation as to the market and alleged that the plaintiffs' conduct had been unfair and improper, and that by their conduct in that action the plaintiffs had disentitled themselves to enforce the notice served by them. *London Corporation* v. *Horner*, 111 L. T. 512; 78 J. P. 229; 12 L. G. R. 832—Neville, J.

XVI. PROCEEDINGS UNDER COURTS (EMERGENCY POWERS) ACT, 1914.

Judgment—Proceeding to Execution—Application for Leave—Discretion.]—The plaintiff, who was a money-lender, obtained judgment against the defendant, a lieutenant in the Army, for the amount of a loan, but not for the interest. The defendant was heir to certain estates, but he had mortgaged his reversionary interests and had practically no assets beyond his pay as an officer, and having been wounded was in hospital, and so could not raise money by insuring his life. The Judge in chambers, in these circumstances, refused leave under the Courts (Emergency Powers) Act, 1914, s. 1, sub-s. 2, to proceed to execution:—*Held*, that the above enactment gave the Judge an absolute discretion, and it had been rightly exercised. *Stirling* v. *Norton*, 31 T. L. R. 293—C.A.

Order for Payment — Leave to Enforce — Application to Court of Appeal—Enquiry as to Facts—Reference to Master.]—By rule 2 (1) made under section 1, sub-section 1 of the Courts (Emergency Powers) Act, 1914, the Court to which an application is made under section 1, sub-section 1 of the Act for leave to enforce an order for the payment of money shall be the Court by which the order has been made or in which it is being sought:—*Held*, that where the Court to which the application must be made is the Court of Appeal, that Court will refer the facts to a Master for enquiry and report and will act on such report. *Evans* v. *Main Colliery Co.*, 31 T. L. R. 127—C.A.

Mortgage — Personal Property — Transfer into Name of Mortgagee — Realisation of Security — "Mortgagee in possession."] — The exception "by way of sale by a mortgagee in possession" from the provisions of section 1, sub-section 1 (*b*) of the Courts (Emergency Powers) Act, 1914, applies to a mortgagee of debentures of a company which have been transferred into the name of the mortgagee. A mortgagee of such a security may accordingly realise his security by sale without any application to the Court under the Act. *Ziman* v. *Komata Reef Gold Mining Co.*, 84 L. J. K.B. 1162; [1915] 2 K.B. 163; 113 L. T. 17; 31 T. L. R. 274—C.A.

Stock Exchange — Power of Committee — Interest—Scrip—Whether "security."]—The defendant on July 30, 1914, instructed the plaintiff, who was a broker on the London Stock Exchange, to buy certain shares, and the plaintiff bought the shares from a firm of jobbers. Before that date the mid-August account day had been fixed by the Stock Exchange Committee for August 13, but on July 31 it was postponed to August 27. On August 6 a proclamation of a moratorium came into force, and subsequently the mid-August account day was postponed to November 18. In November the defendant refused to take up the shares and the plaintiff sold the shares against him and brought an action to recover the difference in price together with interest from August 13:—*Held*, that the plaintiff was entitled to sell without applying to the Court under the Courts (Emergency Powers) Act, 1914, as the scrip which the plaintiff received from the jobber was not a security within section 1, sub-section 1 (*b*) of that Act; that the Stock Exchange Committee had no power to postpone the date for the completion of the contract, but that the case came within the moratorium so as to make interest payable, and the plaintiff was entitled to recover the amount claimed. *Barnard* v. *Foster*, 84 L. J. K.B. 1244; [1915] 2 K.B. 288; 31 T. L. R. 307—Sankey, J. Affirmed, 32 T. L. R. 88—C.A.

Winding-up Petition — Discretion.] — The Courts (Emergency Powers) Act, 1914, does not confer on the Court a discretion to dismiss a petition for the winding up of a company or to order it to stand over. *Globe Trust, In re*, 84 L. J. Ch. 903; 113 L. T. 80; 59 S. J. 529; 31 T. L. R. 280—Astbury, J.

—— **Judgment Creditor—War—"Proceed to execution on, or otherwise to the enforcement of, any judgment."**]—A petition by a judgment creditor to wind up a company is not a proceeding "to execution on, or otherwise to the enforcement of" the judgment within section 1, sub-section 1 (*a*) of the Courts (Emergency Powers) Act, 1914, and a winding-up order may therefore be made without leave from the Court in which the judgment was obtained. *Company* (0,022 *of* 1915), *In re; Company* (0,023 *of* 1915), *In re*, 84 L. J. Ch. 382; [1915] 1 Ch. 520; 112 L. T. 1100; [1915] H. B. R. 65; 59 S. J. 302; 31 T. L. R. 241—C.A.

Bankruptcy Petition—Proceeding to Execution on, or otherwise to the Enforcement of, any Judgment.]—During the continuance of the present war a judgment creditor can present a bankruptcy petition founded upon his judgment debt without obtaining the leave of the Court by which judgment was given. Sub-section 1 of section 1 of the Courts (Emergency Powers) Act, 1914, does not apply to bankruptcy petitions. *Silber, In re* (*No.* 1), 84 L. J. K.B. 971; [1915] 2 K.B. 317; [1915] H. B. R. 95; 113 L. T. 763; 59 S. J. 271—C.A.

—— **Debtor a Subject of Enemy State—Insolvency Due to War.**]—By reason of section 1, sub-section 7 of the Courts (Emergency Powers) Act, 1914, the Court has no power, under section 1, sub-section 3 of the same Act, to stay a bankruptcy petition against a debtor who is a subject of a State at war with His Majesty. *Radeke, In re; Jacobs, ex parte*, 84 L. J. K.B. 2111; [1915] H. B. R. 185; 31 T. L. R. 584—D.

Non-payment of Rent — Right of Re-entry — Power to Defer Execution — "Absolute discretion."]—On an application for judgment for possession of property held by virtue of a lease under a power of re-entry in the lease for non-payment of rent the Master and Judge refused to stay execution under the Courts (Emergency Powers) Act, 1914, s. 1. The lessee appealed:—*Held*, that as the matter was in the "absolute discretion" of the Court under section 1, sub-section 2 of the Act, and the Master and Judge had exercised their discretion, the Court of Appeal would not interfere with their decision. *Lyric Theatre, Lim.* v. *L. T., Lim.*, 84 L. J. K.B. 712; 31 T. L. R. 88—C.A.

—— **Ejectment for Non-payment of Rent — Leave to Issue Execution.**] — An action of ejectment for non-payment of rent comes within section 1, sub-section 1 of the Courts (Emergency Powers) Act, 1914. *Perry* v. *Fitzgerald*, [1915] 2 Ir. R. 11—K.B. D.

Costs of Summons.] — On a summons to issue execution under the Courts (Emergency Powers) Act, 1914, where the defendant does not appear, the costs of the summons will be allowed, subject to the Judicature Rules regulating and limiting costs. In ordinary cases, where there are no circumstances to influence judicial discretion otherwise, the full costs in default of appearance are *ll.* 10*s.*, and half costs 15*s.* Where the debtor appears and obtains the benefit of terms under the statute, unless there are particular circumstances influencing the Judge to order otherwise, the parties abide their own costs. Costs of counsel will only be allowed in exceptional cases. The normal practice as to costs as above laid down does not interfere with the discretion of the Judge in particular circumstances to refuse or increase costs. *Watson & Co.* v. *Joyce*, [1915] 2 Ir. R. 123—K.B. D.

PREMIUMS.

On Insuring.]—*See* INSURANCE; SHIPPING (INSURANCE).

PREROGATIVE.

See WAR.

PRESCRIPTION.

See EASEMENT.

PRESUMPTION.

See EVIDENCE.

Of Fault.]—*See* SHIPPING.

PRINCIPAL AND ACCESSORY.

See CRIMINAL LAW.

PRINCIPAL AND AGENT.

A. CREATION OF RELATIONSHIP.

See also Vol. XI. 931, 1823.

Whether Agreement made as Agent or as Principal.]—Where an agreement in writing gave an option to purchase certain real estate at the price and on the terms set out in the agreement, and went on to agree to pay to the person to whom the option was given a commission on the sale of the property on the terms mentioned,—*Held*, that an option to purchase having been given in unequivocal terms, the subsequent clause as to payment of commission did not convert the agreement into a contract of agency under which the agent had no right to purchase as principal. *Livingstone* v. *Ross* (70 L. J. P.C. 58; [1901] A.C. 327) distinguished. *Kelly* v. *Enderton*, 82 L. J. P.C. 57; [1913] A.C. 191; 107 L. T. 781—P.C.

B. DEL CREDERE AGENT.

Liability for Performance of Contract.] — The liability of a *del credere* agent for sale does not extend so as to entitle the seller, while the buyer is solvent and a dispute is pending as to what sum is due from the buyer to the seller in respect of the price, to call upon the agent to pay the price or otherwise perform the contract. *Gabriel* v. *Churchill & Sim*, 84 L. J. K.B. 233; [1914] 3 K.B. 1272; 111 L. T. 933; 19 Com. Cas. 411; 58 S. J. 740; 30 T. L. R. 658—C.A.

Judgment of Pickford, J. (83 L. J. K.B. 491; [1914] 1 K.B. 449), affirmed. *Ib.*

C. RIGHTS AND LIABILITIES OF PRINCIPAL AND AGENT.

1. Right of Agent to Commission and Remuneration.

See also Vol. XI. 951, 1826.

Introducing Purchaser—Principal Finding Purchaser.]—A contract by which a principal agrees to pay a commission to an agent if the latter introduces a purchaser of the principal's property is, in the absence of specific agreement to the contrary, subject to an implied term that the principal shall be at liberty to sell the property to a purchaser found by himself, and if the principal by so doing prevents the agent from introducing a purchaser, the agent is not entitled to commission. *Brinson* v. *Davies*, 105 L. T. 134; 55 S. J. 501; 27 T. L. R. 442—D.

Purchaser Introduced by Agent—Sale without Agent's Knowledge.]—If the relation of buyer and seller is really brought about by the act of the agent, the latter is entitled to commission, although the actual sale has not been effected by him. *Burchell* v. *Gowrie and Blockhouse Collieries*, 80 L. J. P.C. 41; [1910] A.C. 614; 103 L. T. 325—P.C.

No duty lies upon an agent to communicate to his principal proposals which the principal had in effect told him could not be accepted. If the agent introduces a purchaser whose offer the agent advises his principal not to accept, and the principal behind the agent's back sells to such purchaser, the agent is entitled to commission. *Ib.*

House Agent—Instructions to Find Tenant or Purchaser—Introduction of Tenant—Subsequent Purchase by Tenant—Right to Commission on Sale—Efficient Cause in Bringing about Sale.]—A house agent was instructed by a principal to find a tenant for a house at a rent of 120*l.* a year or a purchaser for 2,500*l.* The agent failed to find a purchaser, but found a tenant at the rent of 110*l.* a year for three years. The agent was paid commission on this letting. At the end of the three years the tenant's wife bought the house for 1,900*l.* In an action in the County Court by the agent against the principal to recover commission on the sale, the County Court Judge found that, though the agent introduced the property to the tenant and his wife, that introduction was not the effective cause of the subsequent sale, and he accordingly gave judgment for the defendant:—*Held*, that the proper test in an action by a house agent to recover commission was that which was laid down by Collins, M.R., in *Millar, Son & Co.* v. *Radford* (19 T. L. R. 575)—namely, whether the introduction was an efficient cause in bringing about the letting or the sale; and that, the County Court Judge having answered that question in the negative on evidence which justified such an answer, his finding was conclusive against the agent's claim. *Nightingale* v. *Parsons*, 83 L. J. K.B. 742; [1914] 2 K.B. 621; 110 L. T. 806—C.A.

"Half-commission man" — Seat in Stock Broker's Office — Contract of Employment — Termination of Service—Subsequent Orders—Prior Orders to Carry over.]—The plaintiff was a "half-commission man" and the defendants were stockbrokers and members of the London Stock Exchange, and an agreement was made between the parties that the plaintiff should have a share of the commission on orders introduced by the plaintiff and executed by the defendants. The plaintiff had a seat in the defendants' office, and was paid by commission, and not by salary, for helping to carry out the business in the office. The plaintiff, having left the defendants' service, brought an action against them to recover a share of the commission earned by them on transactions which they as brokers had entered into, after he had left their service, on behalf of persons whom he had introduced to them during that service:—*Held*, that the agreement was one which gave rise to the relationship of employment, and that, as there was no evidence that the parties had agreed that commission was to be paid for an indefinite period after the employment should cease, the plaintiff was not entitled to commission on orders given after the termination of his employment, but that where during his employment orders had been given to open and carry over stocks the plaintiff was entitled to commission on those transactions until they were closed. *Bickley* v. *Browning*, *Todd & Co.*, 30 T. L. R. 134—Pickford, J.

Agreement with Firm as Agents and Business Managers—Dissolution of Firm.]—The defendant in August, 1911, gave a commission note to S. and R., who were in partnership as theatrical agents, authorising them to act as her agents and business managers for five years, with the option of a further five years, and agreeing to pay a commission of 10 per cent. on all salaried work undertaken by her. S. and R. dissolved partnership in July, 1912:—*Held*, that the commission note did not entitle them to claim commission in respect of engagements on salaries obtained by the defendant after the dissolution of their partnership. *Sales* v. *Crispi*, 29 T. L. R. 491—Horridge, J.

Commission Payable on Receipt of Money—Default of Contractors—Liability for Commission.]—By a contract between the plaintiffs and the defendants it was provided that if the plaintiffs procured for the defendants a contract to supply certain motor lorries to the French Government, the defendants were to pay the plaintiffs a commission immediately after the defendants had received payment from the French Government. The lorries were to be supplied from Turin, the defendants not being the makers. The contract was procured by the plaintiffs for the defendants, but the latter were unable to get the lorries and the French Government cancelled the contracts and paid the defendants nothing. In an action to recover the commission,—*Held*, that as the defendants had put themselves forward as being able to supply the lorries, the non-receipt of the money was caused by the default of the defendants, and the commission was payable. *Vulcan Car Agency* v. *Fiat Motors, Lim.*, 32 T. L. R. 73—Rowlatt, J.

2. Duties Arising from the Fiduciary Relationship.

See also Vol. XI. 971, 1836.

Private Enquiry Agent—Liability for Disclosures by Servant—Warranty of Secrecy.]—A private enquiry agent, although he advertises that secrecy is an essential of his business, does not impliedly warrant the secrecy of persons who have at one time been in, but have afterwards left, his service. Whether there is such a warranty in the case of a servant while in the service of the enquiry agent, *quære*. *Easton* v. *Hitchcock*, 81 L. J. K.B. 395; [1912] 1 K.B. 535; 106 L. T. 126; 56 S. J. 254; 28 T. L. R. 208—D.

Purchase by Agent at Undervalue of Charge on Principal's Estate.]—Where an agent purchases at an undervalue a charge on the estate of his principal, and while in receipt of the rents charges his principal with interest on the face value of the charge, the Court, in the absence of evidence that the principal after full disclosure of the circumstances consented to the agent retaining the full benefit of the transaction for his own use, will, in treating him as trustee for his principal, hold that the extra interest retained should be applied towards the extinguishment of the charge; and lapse of time, even though it may possibly have caused the loss of material evidence, will not shift the burden of proof, originally resting on the agent, to the principal. *Patten* v. *Hamilton*, [1911] 1 Ir. R. 46—C.A.

Notes of Searches in Public Records—Property in Notes — Use of Notes — Confidentiality.]—A professional searcher of records, who was employed to make searches in public records of entries relating to persons of a certain name, searched the records and made notes, of which he supplied a transcript to his employer. He was paid according to the amount of the work done. The work lasted for several years, and after it was completed the employer brought an action against the searcher claiming delivery of his original notes on the ground that he, the pursuer, had paid for them, and that they were his property. Alternatively, and on the assumption that the notes were the property of the defender, he claimed interdict against the defender communicating the notes to any person without the pursuer's consent. He averred that the employment was confidential; and it was proved that on one occasion the defender had used the notes to facilitate researches which he was making for another client:—*Held*, first, that, in the absence of express stipulation to the contrary, the notes remained the property of the searcher; and secondly, that there was no evidence of any such actual or apprehended invasion of a legal right as to justify the Court in granting an interdict. *Horsfall, Ex parte* (6 L. J. (o.s.) K.B. 48; 7 B. & C. 528), distinguished. *Crawford (Earl)* v. *Paton*, [1911] S. C. 1017—Ct. of Sess.

3. Liability of Agent to Account.

See also Vol. XI. 978, 1837.

Purchase by Agent at Undervalue of Charge on Principal's Estate.]—*See Patton* v. *Hamilton*, *ante*, col. 1196.

Purchase of Land in Name of Former Clerk to Parish Council — Declaration that Land Held for Parish Council.] — The plaintiff parish council resolved in June, 1911, to purchase twelve acres of land, partly for allotments and partly for a recreation ground. According to the plaintiffs, the defendant suggested that a private person could probably effect the purchase on better terms than the council, and that thereupon it was arranged that the defendant should attend the sale and purchase the land at a price not exceeding 800*l.* The defendant purchased the land for 400*l.*, and it was conveyed to him, but as he refused to convey it to the council, the plaintiffs now claimed a declaration that he held the land as trustee for them :—*Held*, that the plaintiffs were entitled to the declaration asked for, but that the plaintiffs must undertake with all convenient speed to get the necessary consent to pay the defendant the purchase price and expenses. *Longfield Parish Council* v. *Robson*, 29 T. L. R. 357—Warrington, J.

Insurance Brokerage—"Net" Premiums—Discount and Special Rebate Received by Insurance Broker — Right of Principal to Recover Amount.] — The plaintiffs employed the defendants, who were insurance brokers, to effect marine insurances, and the defendants rendered to the plaintiffs an account which stated that the premiums payable by the plaintiffs were at a "net" rate, whereas the amount paid by the defendants to the underwriters was the gross amount of premium less 5 per cent. commission, and less a further discount of 10 per cent. In the case of two large insurances the defendants got a special rebate of 25 per cent. from the insurance companies. The plaintiffs brought an action against the defendants to recover the 5 per cent. commission, the 10 per cent. brokerage, and the 25 per cent. special rebate. According to the plaintiffs, when "net" premiums were quoted they were only subject to a deduction of 5 per cent. :—*Held*, that, though in an ordinary case the defendants would be entitled to retain the commission of 5 per cent., yet that if a broker represented to his principal that the premiums charged to the principal were subject only to a deduction of 5 per cent. commission, the broker was not entitled to retain an additional 10 per cent. as discount, and that the same rule applied to the 25 per cent. special rebate, and that as an agent could not retain a commission which he had obtained by acting dishonestly towards his principal the plaintiffs were entitled to recover the full amount claimed. *Green* v. *Tughan*, 30 T. L. R. 64—Pickford, J.

London and Country Stockbroker—Order for Purchase of Shares—Contract Made by Town Broker for Sale to Country Broker at Price Including Commission — Effect of Non-disclosure to Client.]—Where a client has employed a country broker to purchase shares through a London broker, it is a question of fact in each case whether the London broker has acted as a broker and bought for his client—in which case he has complied with his mandate—though in accordance with the practice of the Stock Exchange he sends forward a "net price," or whether he has acted as a principal selling to his client not at the jobber's price plus a regular or reasonable remuneration for himself, but at an arbitrary price obtained by adding anything he liked to the jobber's price. *Blaker* v. *Hawes*, 109 L. T. 320; 29 T. L. R. 609—Scrutton, J.

4. Right of Agent to Close Account.

Broker — Death of Client — Taking over of Client's Shares by Broker—Proper Valuation —Liability to Account.]—Where there is a running account between a broker and his client, and the client dies, the account may be closed by the broker at once, whether he is a member of the Stock Exchange or not; if he be unable to sell the shares, he may take them over himself at a proper valuation, provided that he does not thereby prejudice his client's estate. *Finlay, In re; Wilson & Co.* v. *Finlay*, 82 L. J. Ch. 295; [1913] 1 Ch. 565; 108 L. T. 699; 57 S. J. 444; 29 T. L. R. 436—C.A.

Per Buckley, L.J.: The legal personal representative of the client could, however, bring an action to set aside the transaction and to redeem. *Ib.*

5. Right of Agent to Indemnity against Loss.

See also Vol. XI. 1006, 1838.

Agent Defending Action — Solicitor and Client Costs.]—Where an agent duly carries out the orders of his principal, and is in consequence made the defendant in an action, and the action is dismissed for want of prosecution, the indemnity implied by law includes the costs of properly defending the action taxed as between solicitor and client. *Williams* v. *Lister & Co.*, 109 L. T. 699—C.A.

Employee of Company — Costs Incurred in Defending Libel Action.]—A mining engineer was employed by a company, on certain terms as to remuneration and travelling and other expenses, to visit and report on property of the company abroad. While carrying out this commission he discovered matters relating to the conduct of a director which he had not been employed to investigate, but which, having discovered them, it was his duty to report to the company. He made such a report and incurred large costs in defending successfully a libel action brought against him in consequence by the director. One of the company's articles of association provided that its officers and servants should be indemnified by it against loss, and that all costs, losses, and expenses which any officer or servant

might incur or become liable to by reason of acts or deeds done by him as such officer or servant be paid out of the company's funds. Sargant, J., *held*, distinguishing *The James Seddon* (35 L. J. Adm. 117; L. R. 1 A. & E. 62), that the engineer as a servant of the company was not entitled either at common law or under the articles of association to be indemnified by the company in respect of the costs: —*Held*, by the Court of Appeal on the facts, that the engineer was an agent of the company and not a mere servant. On well-settled principles he was entitled as such agent to be indemnified against all liability reasonably occasioned by his employment. *Famatina Development Corporation, In re*, 84 L. J. Ch. 48; [1914] 2 Ch. 271; 30 T. L. R. 696—C.A.

Stock Exchange — Country Broker and Client—Order for Purchase of Shares—Contract Effected by Country Broker through London Broker—Form of Bought Note Sent by London Broker to Country Broker—"Net" Price.]—The plaintiff, a country stockbroker, was employed by the defendant to make purchases for him of stocks and shares, subject to the rules, regulations, and customs of the Stock Exchange through which the transaction took place. The plaintiff bought certain shares through members of the London and Glasgow Stock Exchanges, who in each case, having bought from jobbers on their respective Exchanges in the orthodox fashion, sent bought notes to the plaintiff setting out the sum due to them, which sum included not only the price at which they themselves had bought from the jobbers, but also a sum to cover their commission, and was so understood by the plaintiff. The amount of such commission, however, was not disclosed to the plaintiff, but it was in every case reasonable. The word "net" was sometimes, although not in every case, added to the price charged by the London and Glasgow brokers. The method adopted by the brokers was in accordance with the practice of their respective Exchanges, and also in accordance with the rules of the Glasgow Stock Exchange. The bought notes which the plaintiff received were not communicated to the defendant, but the plaintiff sent him in each case a bought note in which the price of the shares was set out at the price charged by the London and Glasgow brokers, and a further sum was added and shewn as the plaintiff's commission. The plaintiff sued the defendant for indemnity in respect of payments he had made in carrying out these transactions. The defence was that the plaintiff had not acted in accordance with his mandate, inasmuch as the London and Glasgow brokers had acted as principals and not as brokers, and that the plaintiff was therefore not entitled to indemnity:—*Held*, that on the true view of the facts the London and Glasgow brokers had acted as brokers and not as principals, and the plaintiff had acted in accordance with his mandate; and therefore the plaintiff was entitled to recover. *Johnson* v. *Kearley* (77 L. J. K.B. 904; [1908] 2 K.B. 514) distinguished. *Aston* v. *Kelsey*, 82 L. J. K.B. 817; [1913] 3 K.B. 314; 108 L. T. 750; 18 Com. Cas. 257; 29 T. L. R. 530—C.A.

Broker and Principal—Payment of Differences — Gaming and Wagering Contract.] — Where a person speculates on the Stock Exchange, but the stockbroker through whom he speculates enters into *bona fide* contracts with a jobber in respect of which he is liable to the jobber, the stockbroker can sue the client for an indemnity, notwithstanding that the client merely intended to deal in differences, and this fact was known to the stockbroker. *Franklin* v. *Dawson*, 29 T. L. R. 479—Bailhache, J.

Stockbroker and Client — General Lien.] — The principle that every agent who is required to undertake liabilities or make payments for his principal is entitled to be indemnified for moneys expended or loss incurred on his principal's behalf out of property belonging to his principal which has come into his hands in his character of agent, and to retain such property until his claim is satisfied, is applicable to transactions carried out by a stockbroker on the Edinburgh Stock Exchange. *Hope* v. *Glendinning*, 80 L. J. P.C. 193; [1911] A.C. 419—H.L. (Sc.)

D. RIGHTS AND LIABILITIES OF PRINCIPAL AND THIRD PARTIES.

1. Rights of Principal against Third Party.

a. Fraud of Agent.

See also Vol. XI. 1021, 1843.

Limitation of Authority—Excess of Limit by Agent—Liability of Principal—Authority to Raise Specified Sum on Shares—Blank Transfer of Shares Entrusted to Agent — Smaller Sum Raised by Agent — Right of Sender to Retain Shares against Principal—Estoppel.] —The plaintiffs, who were the registered holders of shares in a limited company, gave to an agent an authority to obtain for them a loan of not less than 250*l.* upon the shares, and handed to him the documents of title to the shares, including a blank transfer, signed by them. The agent handed the documents of title, including the blank transfer, to the defendant as security for a loan of 100*l.* from the defendant to himself, the defendant taking them in good faith and without express notice or knowledge of the limitation of the agent's authority. The agent not having repaid the sum borrowed by him, the defendant caused the blank transfer to be filled up with his own name, and by means of that and the other documents of title obtained the certificate for the shares. The plaintiffs brought an action against the defendant for the return of the shares:—*Held*, that the mere fact that the transfer was in blank and not filled up with the name of any transferee did not put the defendant, on taking it, upon his enquiry as to the extent of the agent's authority; that as the plaintiffs had entrusted the agent, with the intention that he should deal with them on their behalf, with documents which apparently represented the entire interest in the shares, they were estopped from setting up the limitation of the agent's authority as against the defendant, who had no notice of the limitation;

and that the plaintiffs were not entitled to recover the shares from the defendant. *Fry* v. *Smellie*, 81 L. J. K.B. 1003; [1912] 3 K.B. 282; 106 L. T. 404—C.A.

France v. *Clark* (53 L. J. Ch. 585; 26 Ch. D. 257) distinguished. *Brocklesby* v. *Temperance Permanent Building Society* (64 L. J. Ch. 433; [1895] A.C. 173) and *Rimmer* v. *Webster* (71 L. J. Ch. 561; [1902] 2 Ch. 163) applied. *Ib.*

—— Mortgage by Agent of Principal's and His Own Securities to a Greater Amount—Sale of Principal's Securities to Realise Greater Amount—Remedy of Principal against Securities of Agent.]—A principal authorised his agent to mortgage certain securities belonging to him to a certain limited amount. The agent, however, mortgaged these securities, together with certain other securities belonging to himself, for a greater amount. The principal's securities having been sold by the mortgagee to repay himself the greater amount, —*Held*, that, by a process analogous to marshalling, the principal was now entitled to have handed over to him so much of the securities belonging to the agent as was necessary to secure him the difference between the amount for which he had authorised the agent to mortgage his securities and the greater amount for which those securities had actually been sold. *Burge, Woodall & Co., In re; Skyrme, ex parte*, 81 L. J. K.B. 721; [1912] 1 K.B. 393; 106 L. T. 47; 20 Manson, 11—Phillimore, J.

Share Certificates—Transfers Indorsed on Certificates — Transfers Signed in Blank by Registered Shareholder — Certificates Left by Purchaser in Possession of Broker — Knowledge of Purchaser as to State of Certificates —Fraudulent Pledge of Certificates by Broker —Purchaser Estopped from Claiming Shares.]—The plaintiff purchased through stockbrokers, and paid for, a number of ordinary shares in the Canadian Pacific Railway. The certificates delivered by the vendor to the brokers bore on the back transfers signed in blank by the vendor as the registered holder. The plaintiff left the certificates in the possession of his brokers, and on their advice consented to the shares remaining registered in the name of the vendor. The plaintiff knew that certificates, indorsed as these were, could be transferred to and registered in the name of another person without any act on the part of the plaintiff. The brokers subsequently, without the knowledge or consent of the plaintiff, deposited the certificates with the defendant bank as security for advances made by the bank to them, and the shares were registered, at the request of the brokers, in the names of the bank's nominees. The brokers subsequently defaulted, owing a sum to the defendant bank largely in excess of the value of the shares. The plaintiff brought this action against the defendant bank to recover the shares so deposited by the brokers with them:—*Held*, that the plaintiff was estopped from claiming the certificates from the defendant bank, who had taken them in good faith and for value. *Fuller* v. *Glyn, Mills, Currie & Co.*, 83 L. J. K.B. 764; [1914] 2 K.B. 168; 110 L. T. 318; 19 Com. Cas. 186; 58 S. J. 235; 30 T. L. R. 162—Pickford, J.

Knowledge of Agent — Whether to be Imputed to Principal.]—The proprietrix of certain property handed the title deeds thereof to her solicitor, a nephew, at whose death it was discovered that he had utilised the title deeds to obtain money for himself by means of a forged bond [mortgage] over the property. Previously the proprietrix had received a demand for payment of income tax on "interest," and, not knowing to what such a demand could refer, she asked another nephew, a brother of the solicitor, to make enquiries, in the course of which he learnt that his brother had obtained money for himself on the security of his aunt's title deeds. He refrained from communicating this to his aunt till after his brother's death, when she heard of the bond for the first time and at once repudiated her signature. In an action by her against the bondholders for reduction of the bond as a forgery and for delivery of the title deeds, the defenders maintained that she had adopted the forged deed as her own, or at least was barred by her actings from pleading that she had not adopted it:—*Held*, that the knowledge of the nephew employed to make enquiries, which he had refrained from communicating, could not be imputed to the pursuer so as to bar her from subsequently repudiating the forgery. *Dictum* of Lord Halsbury in *Blackburn* v. *Vigors* (57 L. J. Q.B. 114; 12 App. Cas. 531) commented on and explained. *Muir's Executors* v. *Craig's Trustees*, [1913] S. C. 349—Ct. of Sess.

b. Payment to Agent when a Discharge.

See also Vol. XI. 1024, 1844.

Limitation of Agent's Authority to Receive Payment in Cash from Customer—Ambiguous Notice to Customer of Limitation of Authority.]—Where limitations are placed on the authority of an agent or traveller, the extent of those limitations must be brought home to the customer's mind if he is to be bound by them. *International Sponge Importers, Lim.* v. *Watt*, 81 L. J. P.C. 12; [1911] A.C. 279; 16 Com. Cas. 224; 55 S. J. 422; 27 T. L. R. 364—H.L. (Sc.)

The appellants employed a traveller for the sale of their goods. The statements of account intimated to customers that cheques were to be crossed. In some cases a special crossing with the names of the bank and of the payees was requested. The traveller in some cases received payment in the form of cheques payable to himself and in another case in the form of notes and gold. He fraudulently appropriated the money so paid. In an action by the appellants for the money so paid to the traveller by the respondents,—*Held*, that the respondents were not liable to pay the money the second time, as they had not, when they made the original payments, been informed that neither cash nor any payment save in the prescribed form would be accepted. *Ib.*

2. Liability of Principal to Third Party.

a. On Contracts.

See also Vol. XI. 1029, 1845.

Underwriting—No Notice of Determination of Agent's Authority—Estoppel.]—An underwriter employed A. as his agent to underwrite for him by a written authority which expired on December 31, 1909. Prior to this date the underwriter had paid many losses on policies effected through A., but neither at the end of 1909 nor at any time had he ever given any notice to those with whom he had done such underwriting business that A.'s authority to act for him had been determined, nor had he given any notice of the fact at Lloyd's. In an action by the plaintiffs in respect of certain policies ostensibly underwritten by the defendant, through the agency of A., after December 31, 1909.—*Held*, that the defendant was estopped from denying A.'s authority to act on his behalf. *Willis, Faber & Co.* v. *Joyce*, 104 L. T. 576; 16 Com. Cas. 190; 11 Asp. M.C. 601; 55 S. J. 443; 27 T. L. R. 388—Scrutton, J.

Authority of Agent—Limitation—Prohibition of Power to Borrow—Money Borrowed by Agent from Third Party—Knowledge by Third Party of Limitation of Authority — Money Applied in Paying Existing Debts of Principal —Right of Third Party to Recover from Principal.]—The defendant company by their articles of association had themselves authority to borrow money, but by an agreement between them and M., their managing director, the latter had no authority to pledge their credit or expose them to any pecuniary liability except so far as he might from time to time be authorised by them. The plaintiffs, on the application of M., advanced to him a sum of money with the intention that it should be a loan to the defendant company. At the time when they advanced the money the plaintiffs knew that M. had no authority to pledge the credit of the defendant company. M. applied the money in paying existing legal debts of the defendant company. The defendant company had no knowledge of the transaction and did not subsequently ratify it:—*Held* (Vaughan Williams, L.J., dissenting), that the plaintiffs were entitled to recover the money from the defendant company as money had and received by the latter to the use of the plaintiffs. Observations of Collins, M.R., and Romer, L.J., in *Bannatyne* v. *MacIver* (75 L. J. K.B. 120; [1906] 1 K.B. 103) discussed. *Reversion Fund and Insurance Co.* v. *Maison Cosway, Lim.*, 82 L. J. K.B. 512; [1913] 1 K.B. 364; 108 L. T. 87; 20 Manson, 194; 57 S. J. 144—C.A.

Existence of Agency — Hotel Manager — Licence in Name of Manager—Purchase of Spirits by Manager in his Own Name—Credit Given by Seller to Manager—Subsequent Discovery by Seller of Owner of Hotel—Liability of Owner—Evidence of Agency.]—The defendants, the owners of an hotel, appointed as their manager a person who was the licensee of the premises and whose name appeared as such over the door. The manager ordered in his own name a quantity of whisky from the plaintiffs, who gave credit to the manager not knowing that he was only manager or that the defendants were the owners of the hotel, and the whisky was delivered at the hotel:—*Held*, that the plaintiffs, on subsequently discovering that the defendants were the owners of the hotel, were not entitled to recover the price of the whisky from them, inasmuch as there was no evidence that the manager was in fact the agent of the defendants for the purpose of ordering the whisky on their behalf. *Kinahan* v. *Parry*, 80 L. J. K.B. 276; [1911] 1 K.B. 459; 103 L. T. 867—C.A.

Whether Agent Acting as Principal or Agent —Set-off of Debt Due by Agent to Third Party.]—A ordered coals from B, who transmitted the order to a colliery company, who delivered the coals to A, accompanied by invoices and accounts addressed to A, which bore that the coals were sold by the company. In reply to enquiries from A, who wanted to know why the company had supplied the coals, B, who had on previous occasions sold coal to A, assured him that he, B, was the seller. A, satisfied with B's statement, did not ask any explanation from the company, accepted the coals, made no reply to letters from the company asking for payment, and ordered more coals from B, which were also supplied by the company, together with invoices and accounts in similar terms. In an action by the company against A for the price of the coals, the defender maintained that he had no contract with the company, but had throughout dealt with B as principal, and that his only liability was to B, against whom he had a contra account which he desired to set off against the price of the coals:—*Held*, that A was liable to the company for the whole price. *Cooke* v. *Eshelby* (56 L. J. Q.B. 505; 12 App. Cas. 271) and *Cornish* v. *Alington* (28 L. J. Ex. 262; 4 H. & N. 549) followed. *Wester Moffat Colliery Co.* v. *Jeffrey*, [1911] S. C. 346—Ct. of Sess.

b. Other Acts of Agent.

i. *Generally.*

See also Vol. XI. 1055, 1853.

Liability of Principal in Respect of Antecedently Acquired Knowledge of Agent.]—Every act of an agent within the scope of his employment is the act of his principal; and consequently all knowledge acquired by the agent, when acting within the scope of his authority, is the knowledge of his principal; but knowledge acquired by the agent antecedently to his becoming agent to the principal ought not to be imputed to the latter, and the recollection or forgetfulness of the agent of matters known to him previous to that relation ought not to affect the liability of the principal, except in cases where the principal purchases the previously obtained knowledge of the agent in relation to a particular subject-matter, or where, from his position and relationship to the principal, the agent is the agent of his principal "to know or to inquire." *Dresser*

v. *Norwood* (34 L. J. C.P. 48; 17 C. B. (N.S.) 466) distinguished. *Taylor* v. *Yorkshire Insurance Co.*, [1913] 2 Ir. R. 1—K.B. D.

ii. *Fraud.*

See also Vol. XI. 1055, 1855.

Circumstances in which it was *held* that the defendants were liable for the fraud of their agent on accounts furnished by him shewing a balance due to the plaintiffs. *Malone* v. *Belfast Banking Co.*, [1912] 2 Ir. R. 187—C.A.

Solicitor — Managing Clerk Acting within Scope of Authority.]—The appellant, who was the owner of a mortgage and of freehold cottages, consulted the managing clerk of the respondent, a solicitor, as to her investments. The managing clerk, having advised her to call in the mortgage and sell the property, induced her to execute two deeds, and then misappropriated the proceeds of the mortgage and the purchase money of the property:—*Held*, that the respondent was liable for the loss sustained by the appellant. *Lloyd* v. *Grace, Smith & Co.*, 81 L. J. K.B. 1140; [1912] A.C. 716; 107 L. T. 531; 56 S. J. 723; 28 T. L. R. 547—H.L. (E.)

Barwick v. *English Joint-Stock Bank* (36 L. J. Ex. 147; L. R. 2 Ex. 259) discussed and explained. *Dicta* of Bowen, L.J., in *British Mutual Banking Co.* v. *Charnwood Forest Railway* (56 L. J. Q.B. 449; 18 Q.B. D. 714), and of Lord Davey in *Ruben* v. *Great Fingall Consolidated, Lim.* (75 L. J. K.B. 843; [1906] A.C. 439), disapproved by Lord Macnaghten and Lord Shaw. *Ib.*

Decision of the Court of Appeal (80 L. J. K.B. 959; [1911] 2 K.B. 489) reversed. *Ib.*

iii. *Negligence.*

See also Vol. XI. 1065, 1859.

Accident—Control of Carriage—Permission of Owner.]—Where the owner of an equipage—whether a carriage and horses or a motor—is riding in it and is thus in actual possession of it, he has the right to control the manner in which it is to be driven, unless he has contracted himself out of the right or has abandoned it. *Samson* v. *Aitchison*, 82 L. J. P.C. 1; [1912] A.C. 844; 107 L. T. 106; 28 T. L. R. 559—P.C.

When, however, the owner, being in actual possession, simply hands over the reins or the wheel, he does not thereby give up the possession of the equipage, or his right to control its course, and is liable in damages for the negligence of the driver. *Ib.*

iv. *In other Cases.*

See also Vol. XI. 1068, 1860.

Sewage Disposal.] — The defendants employed a contractor to empty and remove the contents of the cesspools in their district, but made no provision for the disposal of the contents of the cesspools when taken out by the contractor. The contractor deposited sewage upon the land of the plaintiffs without their consent, and thereby caused a serious nuisance:—*Held*, that the defendants were liable for the act of the contractor, as they had failed to take precautions for the proper disposal of the sewage. *Robinson* v. *Beaconsfield Urban Council*, 80 L. J. Ch. 647; [1911] 2 Ch. 188; 105 L. T. 121; 75 J. P. 353; 9 L. G. R. 789; 27 T. L. R. 478—C.A.

Illegal Sale of Lunatic's Furniture by Relieving Officer — Liability of Guardians for Wrongful Act—Evidence of Ratification.]—In carrying out their statutory duties towards paupers the acts of guardians of a poor law union are purely ministerial, whether performed by themselves or through the medium of their officers; and they are not liable in damages in an action at the suit of a pauper who alleges that he has sustained an injury through the wrongful act of their officers. But if in such an action there be evidence that a relieving officer, intending to act on behalf of the guardians, has done an illegal act amounting to an independent tort for the benefit of the guardians by which the guardians have benefited, a jury may find a verdict against the guardians for damage so suffered on the ground that the guardians have adopted and ratified the act of their relieving officer. *Barns* v. *St. Mary, Islington, Guardians*, 10 L. G. R. 113; 76 J. P. 11—Bucknill, J.

3. Effect of Factors Act.

See also Vol. XI. 1069, 1862.

Pledge in Paris to Agent of Defendant in London—Agent not Acting in Good Faith—Title of Defendant.]—The plaintiffs, who were dealers in precious stones and who carried on business in Paris, handed certain valuable pearls to one A in Paris, he having stated to them that he knew of a special merchant who wanted them, and would be likely to give a good price. A signed a receipt in these terms: "Entrusted by [the plaintiffs] the following goods to be sold for cash, which I promise to return on the first demand, and not to give them to any one without their written authority. . . . In case of loss I will repay the full value of the goods. The house reserve to themselves the right of delivering the goods." A pawned the goods at a Government pawnbroking establishment, and subsequently pledged them with M., who was the defendant's representative in Paris, who sent them to the defendant in London. The plaintiffs brought an action to recover the pearls or their value from the defendant, in the course of which Bray, J., found as facts (*a*) that A from the outset of the transaction intended to misappropriate the pearls; and (*b*) that M. had not acted in good faith. Bray, J., *held*, first, that whether the case depended on English or French law the defendant obtained no title to the pearls, as his agent M. had not acted in good faith; and secondly, that A had obtained the pearls from the plaintiffs by larceny or by a trick in English law, or *vol* in French law, and therefore he did not obtain possession of the pearls with the plaintiffs' consent; and thirdly, that A was not a mercantile agent within the meaning of the Factors

Acts :—*Held*, that as M. was either the agent of the defendant, or a joint speculator with him, and as M. had not acted in good faith, the plaintiffs were entitled to recover. *Mehta* v. *Sutton*, 109 L. T. 529; 58 S. J. 29; 30 T. L. R. 17—C.A.

"Mercantile agent" — Picture Dealer — Sale.]—Where goods are bought from a person who carries on a business in which there is in the customary course authority to sell—for example, the business of a picture dealer—the buyer, provided he acts in good faith and without notice of any limitation of the authority of the person selling, obtains a good title to the goods under section 2 of the Factors Act, 1889, notwithstanding that the goods were in fact entrusted to the person selling on the condition that no offer should be accepted until the real owner was referred to or unless a particular price was obtained. *Turner* v. *Sampson*, 27 T. L. R. 200—Channell, J.

Delivery Orders—Documents of Title—Bill of Lading for Cargo—Delivery Orders Created and Issued by Owners of Goods for Part of Cargo — Transfer of a Document of Title — Delivery Order not for Specific Goods.]—The defendants, having sold to F. & Co. a quantity of mowra seed, gave F. & Co. two delivery orders for 2,640 bags of mowra seed, and F. & Co. gave the defendants a cheque in payment therefor. The 2,640 bags formed part of a larger consignment of 6,400 bags of mowra seed in respect of which the defendants held a bill of lading. F. & Co. having sold a quantity of mowra seed to the plaintiffs indorsed the two delivery orders and gave them to the plaintiffs, who took them in good faith and paid F. & Co. therefor. As the cheque given by F. & Co. to the defendants was dishonoured, the defendants refused to deliver the 2,640 bags of mowra seed to the plaintiffs :—*Held*, that the two delivery orders were valid documents of title to the 2,640 bags of mowra seed notwithstanding that they were not given in respect of specific goods, and notwithstanding that the 2,640 bags formed part of a larger consignment in respect of which the defendants held a bill of lading; and that the two delivery orders had been "transferred" to F. & Co. by the defendants within the meaning of section 10 of the Factors Act, 1889, and section 47 of the Sale of Goods Act, 1893, although they had been created and issued by the defendants, and F. & Co. having transferred the delivery orders to the plaintiffs, who took them in good faith and for valuable consideration, the defendants' right of lien as unpaid vendors was defeated. *Ant. Jurgens Margarinefabrieken* v. *Dreyfus & Co.*, 83 L. J. K.B. 1344; [1914] 3 K.B. 40; 111 L. T. 248; 19 Com. Cas. 333—Pickford, J.

E. RIGHTS AND LIABILITIES OF AGENTS AND THIRD PARTIES.

1. Action by Agent.

See also Vol. XI. 1084, 1865.

Sale of Goods—C.i.f. Contract—Payment by Acceptances to Seller's or Authorised Agent's Draft—Payment of Foreign Seller by Agent—Delivery by Agent of Shipping Documents and Draft to Buyers—Refusal of Buyers to Accept Agent's Draft—Right of Agent to Maintain Action for Amount of Draft.]—K., who carried on business at Riga, entered into a contract through the agency of J. & Co. to sell certain timber to the defendants c.i.f. London. Payment was to be "by approved acceptances to seller's or authorised agent's draft." The contract was signed by J. & Co. as agents for K. In accordance with the practice of the Riga timber trade K. sent the bill of lading for the goods to J. & Co., and at the same time drew upon J. & Co. for the price. J. & Co. accepted the draft on May 24, 1911, and paid it in due course on May 30, 1911. On May 25, 1911, J. & Co. sent the shipping documents to the defendants, together with a draft for the price of the goods drawn upon the defendants, and asked them to accept and return the draft. The defendants kept the shipping documents and took delivery of the goods, but refused to accept the draft, as the goods were not in accordance with the contract, and claimed to reject the goods. It was admitted that the goods were not in accordance with contract, and they were sold by order of the Court for about one-third of their invoice price. An action was thereupon brought against the defendants by K. for the price of the goods and by J. & Co. to recover the amount of the draft which the defendants had failed to accept :—*Held*, that as J. & Co. were merely agents and not parties to the contract of purchase they were not entitled, in the absence of a contract personally with them by the defendants that the draft would be accepted, to maintain an action against the defendants for the amount of the draft, and that the fact that J. & Co. had themselves paid K. did not make any difference, inasmuch as that fact could not be relied upon by the defendants as an answer to an action against them by K. on the contract. *Barton Thompson & Co.* v. *Vigers* (19 Com. Cas. 175) distinguished. *Jordeson & Co.* v. *London Hardwood Co.*, 110 L. T. 666; 19 Com. Cas. 161—Pickford, J.

2. Liability of Agent.

a. On Contracts.

See also Vol. XI. 1087, 1866.

Contract made by Agent for Foreign Principal—Presumption as to Liability of Agent — Authority of Agent to Pledge Credit of Foreign Principal.] — Where an agent in England contracts on behalf of a foreign principal, he is presumed to contract personally unless a contrary intention plainly appears from evidence contained in the document itself or in the surrounding circumstances. If there is no such evidence, the presumption prevails that the agent has no authority to pledge the credit of the foreign principal in such a way as to establish privity between such principal and the other party, and that he is personally liable on the contract. *Harper* v. *Keller, Bryant & Co.*, 84 L. J. K.B. 1696; 113 L. T. 175; 20 Com. Cas. 291; 31 T. L. R. 284—Sankey, J.

"Del credere" Agent — Liability for Performance of Contract.]—Where a contract of sale is entered into through an agent who takes a *del credere* commission, and an ascertained sum is due in respect of that contract from the buyer to the seller, which sum the buyer fails to pay, either through insolvency or for some reason which makes it impossible for the seller to recover the amount, the *del credere* agent is bound to answer for that default to the seller by reason of his *del credere* commission; but the *del credere* agent is not personally responsible for the due performance of the contract so as to entitle the seller to call upon him to litigate any disputes arising under the contract between the seller and the buyer. *Gabriel* v. *Churchill & Sim*, 84 L. J. K.B. 233; [1914] 3 K.B. 1272; 19 Com. Cas. 411; 111 L. T. 933; 58 S. J. 740; 30 T. L. R. 658—C.A.

Judgment against Company—Agreement by Chairman—Personal Liability.] —The plaintiffs recovered judgment against a company, and the chairman of the company signed a document stating that in consideration of the plaintiffs suspending proceedings against the company he agreed "on behalf of" the company to pay 75*l.* in three days, and the balance, including costs, in three months :—*Held*, that this agreement was made by the chairman as agent for the company, and that he was not personally liable upon it. *Avery, Lim.* v. *Charlesworth*, 30 T. L. R. 215—A. T. Lawrence, J. Affirmed, 31 T. L. R. 52—C.A.

Order by Brokers for Ship's Stores—Liability for Price.]—A ship chandler received an order from a firm of "steamship owners and brokers" in these terms : "Please supply the s.s. *Silvia* with the following stores." He delivered the goods under the erroneous belief that the firm were the owners of the vessel, and sought to hold them liable for the price :—*Held*, that the firm were not liable, in respect that they were acting as agents for the owners, and—since the latter could be discovered by reference to the register of shipping—as agents for a disclosed principal. *Armour* v. *Duff & Co.*, [1912] S. C. 120—Ct. of Sess.

b. For Assumption of Authority.

See also Vol. XI. 1104, 1869.

Damage for Breach of Warranty—Breach without Resulting Loss.] — A tradesman entered into a contract with the secretary of a company, which purported to bind the company. The contract was for the execution of certain work, and, after the work had been executed, the tradesman, having ascertained, as he averred, that the contract did not in fact bind the company, brought an action against the secretary for damages for breach of his warranty of authority to make the contract. In this action he averred that the company had no assets :—*Held*, that as it appeared from this averment that the pursuer would have been in no better position had the contract bound the company, he had suffered no loss from, and therefore could not recover damages for, the defender's breach of warranty; and action dismissed. *Irving* v. *Burns*, [1915] S. C. 260—Ct. of Sess.

PRINCIPAL AND SURETY.

I. NATURE OF CONTRACT.

See also Vol. XI. 1130, 1873.

Contract of Guarantee — Construction.] — The respondent agreed with the appellants that if they would advance to the Mills Company a lakh and a half of rupees he would within two weeks procure a loan of eleven lakhs as the first mortgage of the mills block property and thereout repay the sum advanced :—*Held*, that this was a substantial undertaking by the respondent to procure a loan and thereout repay the advance. The liability assumed was not contingent upon a first mortgage being procured. *Vissanji* v. *Shapurji Burjorji Bharoocha*, L. R. 39 Ind. App. 152—P.C.

Guarantee of Payment for Goods up to Certain Value—Extent of Obligation.]—A contract of guarantee was in the following terms : "I do hereby undertake to guarantee to you the due payment for all such goods as you may from time to time sell and deliver to M. or his order up to the value of two hundred pounds" :—*Held*, that this put upon the guarantor a liability for 200*l.* only of the amount which the debtor should owe the creditor for goods so supplied, and not a liability for the whole amount of such debt subject to a limitation that he should not be called upon to pay more than 200*l.*; and, accordingly, that the guarantor was entitled to deduct from the amount of his liability the proportion of the value of a security, held by the creditor, which 200*l.* bore to the total amount of the debt due. *Harmer & Co.* v. *Gibb*, [1911] S. C. 1341—Ct. of Sess.

Bank Overdraft Guaranteed—Surety's Right of Indemnity—Will—Bequest Forgiving Debts —Gift not Extending to Moneys Paid under Guarantee.] — A testator bequeathed to his nephew 2,000*l.* and forgave him "all debts owing to me from him up to the time of my decease and all interest and arrears thereon, and I bequeath to him the same and all documents which I shall hold by way of security for the same." Apart from this bequest the nephew received other interests under the will. At the time of the testator's death the nephew was indebted to his bank in a sum exceeding 4,000*l.*, and the bank held a continuing and

subsisting guarantee from the testator guaranteeing all sums due by the nephew up to and not exceeding 4,000*l*. After the death of the testator the bank demanded payment of the 4,000*l*. from his executors:—*Held*, that the gift in the will of all debts owing from the nephew to the testator up to the time of the testator's death did not extend to any moneys which the testator's estate might be called upon to pay to the bank under the guarantee, and that the executors were entitled to retain the beneficial interest of the nephew under the will to make good those sums together with interest. The right of the testator as surety to come into equity for the purpose of getting an indemnity from the nephew against the liability to the bank, before anything had been paid under the guarantee, was not a debt. *Mitchell, In re; Freelove* v. *Mitchell*, 82 L. J. Ch. 121; [1913] 1 Ch. 201; 108 L. T. 34; 57 S. J. 213—Parker, J.

—— **Signature Obtained by Means of a Fraudulent Misrepresentation—Advances made by Bankers on Faith of Guarantee—Loss Sustained by Bankers thereby—Liability—Negligence—Plea of Non est Factum—Proximate Cause of Loss.**]—The defendant signed a document purporting to be a continuing guarantee up to a certain amount by him to cover the payment by R. of all moneys due from him to the plaintiffs on the general balance of his account with them. The signature of the defendant had been obtained by the fraudulent misrepresentation of R. that it was merely an insurance paper of a kind the defendant had signed before. The defendant did not read the document, neither did he know the nature of it. Subsequently R. forged the signature of an attesting witness, and handed the document thus completed to the plaintiffs. In an action brought by the plaintiffs against the defendant as guarantor of R.'s current banking account, the jury found (*inter alia*) that the defendant was negligent in signing the document:—*Held*, that the fact that the jury had found the defendant was negligent did not raise such an estoppel as would prevent him from setting up the defence *non est factum*, and that the proximate cause of the loss sustained by the plaintiffs was not the negligence of the defendant, but was the fraudulent act of R. *Carlisle and Cumberland Banking Co.* v. *Bragg*, 80 L. J. K.B. 472; [1911] 1 K.B. 489; 104 L. T. 121—C.A.

Guarantee of Loan to Infant—Liability of Guarantor.]—The plaintiff sued the defendants, father and son, on a promissory note given in respect of a loan to the son, who was under age when the money was advanced to him. The father joined in the promissory note in order to facilitate the transaction, understanding that the debt would be paid when the son came of age. It appeared that in all probability the plaintiff knew that the son was under age:—*Held*, that the true meaning of the transaction was that the father acted as principal borrower, and therefore, although by the Infants' Relief Act the son was not liable, the father was liable as principal. *Wauthier* v. *Wilson*, 28 T. L. R. 239—C.A.

Representations as to Credit of Another—Necessity for Writing.]—A tradesman who had executed work under a contract with a company which proved to have no assets, sued the secretary of the company for damages for misrepresentations made by him whereby the pursuer was induced to enter into the contract. The misrepresentations alleged were—first, that the pursuer's money would be all right; secondly, that the company had plenty of money; thirdly, that 3,000*l*. of the capital of the company had been subscribed; and fourthly, that the directors would provide additional security:—*Held*, that the first three of these misrepresentations fell within the category of representations contained in section 6 of the Mercantile Law Amendment Act, Scotland, 1856, which provides (*inter alia*) that "all representations and assurances as to the . . . credit, ability, trade, or dealings of any person, made or granted to the effect or for the purpose of enabling such person to obtain credit, money, goods . . . shall be in writing," subscribed by the guarantor or his agent; and that as the misrepresentations were not in writing they could not be founded on; that the fourth misrepresentation did not fall within that category, but did not afford a ground of action against the defender, as it was not averred that he knew it to be false. *Irving* v. *Burns*, [1915] S. C. 260—Ct. of Sess.

Promise to Answer for Debt of Another—Necessity for Writing—Interest in Consideration for Promise—Debt of Trading Company — Guarantee by Debenture-holder.] — The holder of a debenture issued by a trading company creating a charge upon all its property, with the object of protecting his security by helping the company to continue carrying on its business, orally promised a manufacturer, in consideration of his supplying the company with goods, to pay the debt of the company in respect of such goods if the company made default:—*Held*, that the promise, not being in writing, could not be enforced by action; for it was a simple promise to answer for the debt of another within section 4 of the Statute of Frauds, and was not taken out of the statute by reason of the promisor having an interest in the consideration for the promise. *Harburg Indiarubber Comb Co.* v. *Martin* (71 L. J. K.B. 529; [1902] 1 K.B. 778) considered. *Davys* v. *Buswell*, 82 L. J. K.B. 499; [1913] 2 K.B. 47; 108 L. T. 244—C.A.

Indemnity—Covenant to Assign "Spes successionis"—Right of Set-off by the Person Giving the Indemnity against the Covenantor.]—If C gives an indemnity to A, and B covenants to assign his *spes successionis* to the benefit of that indemnity to D, when the *spes successionis* is realised, B immediately becomes a trustee for D, and C cannot claim to set off a debt due to him from B before satisfying the demands of D. *Poulter, In re; Poulter* v. *Poulter*, 56 S. J. 291—Neville, J.

II. DISCHARGE OF SURETY.

See also Vol. XI. 1206, 1876.

Fidelity Guarantee — Non-disclosure of Material Fact—Absence of Fraud.]—The plain-

tiffs, having in their employment a clerk whose duties involved the collecting of money, obtained from the defendant a suretyship bond for securing the faithful discharge of his duties by the clerk. The clerk, to the knowledge of the plaintiffs, had previously been guilty of dishonesty in their service. The plaintiffs, without any fraud on their part, omitted to disclose to the defendant the fact of the clerk's previous dishonesty, and the defendant had no knowledge of it. In an action to enforce the bond,—*Held*, that the effect of this non-disclosure was to vitiate the contract and to release the surety. *London General Omnibus Co.* v. *Holloway*, 81 L. J. K.B. 603; [1912] 2 K.B. 72; 106 L. T. 502—C.A.

Bank—Bank's Duty to Surety—Disclosure of Principal's Indebtedness.]—H., whose bank account was overdrawn to the extent of about 300*l.*, and who was also indebted to the bank to the amount of about 1,100*l.* in respect of certain accommodation bills, requested G., an acquaintance who had no knowledge of his financial position and in particular of his indebtedness to the bank, to guarantee his account to the extent of 300*l.* The latter expressed to the bank agent his willingness to undertake a guarantee to that amount, and was informed by the agent that a guarantee of 300*l.* might not assist the principal debtor, as that sum would be taken up by the bank. The agent, however, did not make any disclosure of the principal's further indebtedness of 1,100*l.* under the bills, and G., believing an overdraft of 300*l.* to be the sole debt, granted a guarantee for 500*l.* The principal having failed to discharge his debt to the bank, G. resisted an action for payment under the guarantee, on the ground that he had been persuaded to undertake it under essential error induced by the failure of the bank agent to discharge his duty of disclosing the existence of the principal's indebtedness under the bills: —*Held*, that there was no such duty of disclosure, and decree for payment granted. *Royal Bank of Scotland* v. *Greenshields*, [1914] S. C. 259—Ct. of Sess.

Observations, *per* the Lord President and Lord Mackenzie on the circumstances in which a bank agent might have a duty to disclose to an intending guarantor the state of the principal's indebtedness to the bank. *Ib.*

Creditor's Suspicion that Debtor Guilty of Forgery—Obligation to Inform Surety.]—In security for advances to be made by a bank to a customer, the customer's father-in-law in 1899 guaranteed payment of the premiums on certain policies of insurance assigned to the bank, and payment of interest on an account for advances to the customer. In December, 1906, circumstances came to the knowledge of the manager of the bank which afforded ground for the strongest suspicion, short of actual proof, that the customer had forged a bill for 3,000*l.* That information was not communicated to the surety, and the bank continued to deal with the customer (though without making any further advances to him) until November, 1907, when his estates were sequestrated. He was shortly afterwards convicted on his own confession of several acts of forgery, but it was never ascertained whether or not he had forged the bill for 3,000*l.* The liability of the surety under the guarantee was no greater in November, 1907, than it had been in December, 1906. The surety having repudiated liability under the guarantee, on the ground that the bank should have communicated their suspicions to him in December, 1906,—*Held*, that, in the circumstances, there was no duty on the bank to communicate their suspicions, and that the surety was not freed from his liability. *Bank of Scotland* v. *Morrison*, [1911] S. C. 593—Ct. of Sess.

Guarantee of Bank Overdraft to Agent of Guarantor — Alleged Misappropriation of Money by Agent—Suspicions of Bank—Non-communication to Guarantor — Release of Guarantor.]—The defendant guaranteed the payment of all sums due on any account from C. to a bank up to 5,000*l.* C. was at that time the agent of the defendant's estate and the guarantee was given in order to raise money to be expended for the benefit of the estate. C., however, without the knowledge of the defendant, opened another account with the bank by means of the guarantee, the money so advanced by the bank on the security of the guarantee being used by C. for other purposes than those of the defendant's estates. The defendant alleged that the bank knew or ought to have known that C. was misappropriating the money, and that as they did not communicate their suspicions to him he was discharged from his guarantee:—*Held*, that the defendant had not proved that the bank had suspicions that C. was defrauding him, and that therefore he was not discharged from his guarantee. *Held*, further, that even if the bank were suspicious that C. was defrauding the defendant they were under no duty to communicate their suspicions to the defendant. *National Provincial Bank of England* v. *Glanusk (Baron)*, 82 L. J. K.B. 1033; [1913] 3 K.B. 335; 109 L. T. 103; 29 T. L. R. 593—Horridge, J.

Bank of Scotland v. *Morrison* ([1911] S. C. 593) followed. *Ib.*

Recall of Guarantee by One Surety—Giving Time to Debtor.]—A letter of guarantee granted in favour of a bank in security of advances made by it to a limited company, empowered the bank to give time to the debtor without affecting the liability of the sureties, and provided that the guarantee should continue in force until recalled. *Semble*, that the recall of the guarantee by a surety, while preventing further advances to the debtor on the credit of the revoking surety, would not in every case debar the bank from giving time to the debtor after the date of the recall. *Hamilton's Executor* v. *Bank of Scotland*, [1913] S. C. 743—Ct. of Sess.

Co-defendants—Judgment—Time Given to One Judgment Debtor.]—The doctrine that if a creditor agrees to give time to the principal debtor without the surety's consent the surety is discharged does not apply after judgment has been obtained against them both jointly as co-defendants. After judgment both defen-

dants are in an equal position so far as the judgment creditor is concerned, and he can issue a bankruptcy notice against the surety, in spite of such an agreement, if the judgment is unsatisfied. *Jenkins* v. *Robertson* (23 L. J. Ch. 816; 2 Drew. 351) followed. *E. W. A., In re* (70 L. J. K.B. 810; [1901] 2 K.B. 642), distinguished. *Debtor* (*No. 14 of* 1913), *In re*, 82 L. J. K.B. 907; [1913] 3 K.B. 11; 109 L. T. 323; 20 Manson, 119; 57 S. J. 579—D.

III. RIGHTS OF SURETY.

See also Vol. XI. 1280, 1881.

Co-sureties — Right of Contribution — Debt Payable by Instalments—Payment of Instalment by One Co-surety.]—A surety who has paid more than his share of the common liability is entitled to compel contribution from his co-sureties, but the right of contribution does not arise until the surety has paid more than his proportion or share of the common liability—that is to say, more than he can ever be called upon to pay—and he cannot, therefore, sue his co-sureties for a rateable proportion of what he has paid the moment he has paid any part of the debt. *Lawson* v. *Wright* (1 Cox, 275) and *Snowdon, In re; Snowdon, ex parte* (50 L. J. Ch. 540; 17 Ch. D. 44; 29 W. R. 654), discussed. *Stirling* v. *Burdett*, 81 L. J. Ch. 49; [1911] 2 Ch. 418; 105 L. T. 573—Warrington, J.

PRINTS AND ENGRAVINGS.

See COPYRIGHT.

PRIVILEGE.

In Libel and Slander.]—*See* DEFAMATION.

PRIVILEGED COMMUNICATIONS.

See DEFAMATION.

PRIVY COUNCIL.

Appeals from Colonies.]—*See* COLONY.

PRIZE COURT.

See WAR.

PROBATE.

Of Wills.]—*See* WILLS.

PROMISSORY NOTES.

See BILLS OF EXCHANGE.

PROMOTER.

See COMPANY.

PROOF OF DEBTS.

In Bankruptcy.]—*See* BANKRUPTCY.

In Administration.] — *See* EXECUTOR AND ADMINISTRATOR.

In Winding-up.]—*See* COMPANY.

PROSPECTUS.

See COMPANY.

PROVIDENT SOCIETY.

See FRIENDLY SOCIETY; INDUSTRIAL SOCIETY.

PROXY.

See COMPANY.

PUBLIC AUTHORITIES PROTECTION.

I. COSTS.

See also Vol. XI. 1890.

District Auditor — "Action" — "Public duty or authority"—"Civil proceeding commenced by writ."]—R., as an auditor of the Local Government Board, had made certain surcharges in respect of rates collected by F. C. The Metropolitan borough of B. having applied to the King's Bench Division for a writ of *certiorari* quashing the surcharges, that Court on December 2, 1912, made the order asked for, but on June 17, 1913, the Court of Appeal set aside that order, made an order allowing the surcharges, and ordered the costs of that appeal and in the King's Bench Division to be paid by the respondents on the present appeal—the Metropolitan borough of B. and F. C. to the present appellant R. The present appeal asked for payment of solicitor and client costs of R., other than those in the Court of Appeal, on the ground that he was entitled to solicitor and client costs under section 1 of the Public Authorities Protection Act, 1893. For the appellant it was argued that the proceedings were within the purview of section 1 of that Act. On appeal from an order of Bailhache, J., dismissing an application by the appellant R. to review and vary a Taxing Master's certificate,—*Held*, that the proceedings in the King's Bench Division were not an action within section 1 of the Public Authorities Protection Act, 1893. The appellant had not obtained a judgment in the proper sense of the term, and the proceedings, although in a civil Court, were not an action, and the appellant was not entitled to solicitor and client costs as an incident of the proceedings. *Roberts* v. *Battersea Borough Council*, 110 L. T. 566; 78 J. P. 265; 12 L. G. R. 898—C.A.

County Council becoming Defenders in Action of Right of Way.]—The provisions of section 1 (*b*) of the Public Authorities Protection Act, 1893, for the taxation as between solicitor and client of costs awarded to a public authority, are not applicable to the case of a district committee of a county council, who, in order to vindicate a public right of way, had made themselves defenders to, and had successfully defended, an action of interdict brought against a private individual. *M'Robert* v. *Reid*, [1914] S. C. 633—Ct. of Sess.

II. LIMITATION OF ACTIONS.

See also Vol. XI. 1894.

Action for Personal Injuries — Motor Car Owned by Corporation—Returning to Garage after Performing Business of Corporation — Act Done in Execution of any Public Duty or Authority.]—A motor car, the property of a corporation, was used to convey their engineer on his visits to the various pumping stations for the purpose of his inspecting the same on behalf of the corporation, and on the day in question the engineer made his round of inspection as usual. It was the day in the week on which a clerk from the treasury department also went round for the purpose of paying weekly wages. As the motor car was returning, after the round was done, to the garage, the plaintiff's wife was knocked down while attempting to cross a high road and injured. The writ in the action was not issued within six months from the date of the accident. At the trial the jury awarded the plaintiffs damages:—*Held*, that judgment in accordance with the verdict had rightly been entered for the plaintiffs, as the act done was not in the exercise of any public duty or authority within the meaning of section 1 of the Public Authorities Protection Act, 1893, and the section had no application to a matter merely incidental to the performance of a statutory duty by the corporation. *Clerke* v. *St. Helens Corporation*, 85 L. J. K.B. 17; 113 L. T. 681; 79 J. P. 529; 13 L. G. R. 1150; 59 S. J. 509—C.A.

Claim against Municipal Corporation and Borough Treasurer—Borrowing Powers—Overdraft from Bank for General Purposes—Ultra Vires.]—An overdraft obtained by the defendant corporation from a bank for general purposes in respect of borrowing powers granted for specific purposes, *held* to be *ultra vires* and illegal. *Held* also, that the application of money due to the consolidated loans fund in repayment of such overdraft was *ultra vires* and illegal; and that the borrowing of money from the bank for the purpose of the corporation's electricity accounts otherwise than in the exercise of borrowing powers with the sanction of the Local Government Board was *ultra vires* and illegal. *Semble*, in such a case the Public Authorities Protection Act, 1893, would apply in favour of the corporation and the borough treasurer in respect of acts completed more than six months before action. *Att.-Gen.* v. *West Ham Corporation*, 80 L. J. Ch. 105; [1910] 2 Ch. 560; 103 L. T. 394; 74 J. P. 406; 9 L. G. R. 433; 26 T. L. R. 683—Neville, J.

Municipal Corporation—Statutory Power to Sell Coke—Negligence in Delivery—Action by Purchaser against Corporation—"Act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority."]—The defendant corporation, being the gas authority for their district, under a local Act which gave them power to sell coke and other residual products of the manufacture of gas, sold a ton of coke to the plaintiff. A servant of the defendants, in the act of delivering the coke at the plaintiff's premises, negligently broke the plaintiff's shop window. The plaintiff having commenced an action in respect of this damage more than six months after the act complained of, the defendants claimed the benefit of the Public Authorities Protection Act, 1893, s. 1 (*a*):—*Held*, that, as the defendants were not under any statutory duty to sell the coke to the

plaintiff, and their obligation to do so rested solely on a voluntary contract on their part, the act of delivering the coke by their servant was not an "act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority," within the meaning of section 1 of the Public Authorities Protection Act, 1893; and that therefore that Act did not apply. *Myers* v. *Bradford Corporation*, 84 L. J. K.B. 306; [1915] 1 K.B. 417; 112 L. T. 206; 79 J. P. 130; 13 L. G. R. 1; 59 S. J. 57; 31 T. L. R. 44—C.A. Affirmed, 85 L. J. K.B. 146; 60 S. J. 74; 32 T. L. R. 113—H.L. (E.)

Claim to Land.] — Whether the Public Authorities Protection Act, 1893, applies to a case where a claim to land is in question, *quære*. *Cross* v. *Rix*, 77 J. P. 84; 29 T. L. R. 85—D.

Master and Servant—Compensation—Limitation.]—The limitation of six months imposed upon the commencement of any action, prosecution, or other proceeding by the Public Authorities Protection Act, 1893, s. 1, has no application to proceedings for compensation under the Workmen's Compensation Act, 1906. *Fry* v. *Cheltenham Corporation*, 81 L. J. K.B. 41; 105 L. T. 495; 76 J. P. 89; 10 L. G. R. 1; 56 S. J. 33; 28 T. L. R. 16; [1912] W.C. Rep. 103.

Superannuation Scheme—Dismissal of Servant—Claim for Recovery of Contributions Paid—Public or Private Statute.]—The plaintiff, who was a servant of the borough council of S., for some years paid contributions by way of weekly deductions from his wages, under a superannuation scheme established by virtue of a private Act of Parliament. The plaintiff was dismissed from his employment, and more than six months after such dismissal brought an action against the borough council to recover the amount of the contributions paid by him. The defendants set up the defence that they were protected by section 1 of the Public Authorities Protection Act, 1893:—*Held*, that the defendants were protected by the Act, the words of section 1 including a private as well as a public statute. *Bennett* v. *Stepney Corporation*, 107 L. T. 383; 76 J. P. 473; 10 L. G. R. 954—D.

Non-repair of Sewer.]—The Public Authorities Protection Act, 1895, affords no bar to an action where the duty of the Commissioners to repair the road is a continuing duty; the default of the borough council to repair the sewer, and so render the performance of that duty by the Commissioners possible, being a continuing wrong. *Hart* v. *Marylebone Borough Council*, 76 J. P. 257; 10 L. G. R. 502—A. T. Lawrence, J.

Pollution of Stream—Sewer.]—The periodical inundation of sewage from a sewer out of repair is a continuing cause of action, and the right to damages is not limited by the Public Authorities Protection Act, 1893, s. 1, to damages in respect of the floodings within six months before action. *Att.-Gen.* v. *Lewes Corporation*, 81 L. J. Ch. 40; [1911] 2 Ch. 495; 105 L. T. 697; 76 J. P. 1; 10 L. G. R. 26; 55 S. J. 703; 27 T. L. R. 581—Swinfen Eady, J.

Prerogative Writ of Mandamus.] — The six months limitation of time enacted by the Public Authorities Protection Act, 1893, does not apply to the prerogative writ of *mandamus*. *Rex* v. *Hertford Union; Pollard, Ex parte*. 111 L. T. 716; 78 J. P. 405; 12 L. G. R. 863 —*per* Avory, J.

PUBLIC DOCUMENT.

See EVIDENCE.

PUBLIC HEALTH.

See LOCAL GOVERNMENT; METROPOLIS.

PUBLIC HOUSE.

See INTOXICATING LIQUORS.

PUBLIC MEETING.

See WAY.

PUBLIC POLICY.

See CONTRACT.

PUBLIC TRUSTEE.

See TRUST AND TRUSTEE.

PUBLIC WORSHIP.

See ECCLESIASTICAL LAW.

QUARTER SESSIONS.

See JUSTICE OF THE PEACE.

QUEBEC.

See COLONY.

QUEENSLAND.

See COLONY.

QUIET ENJOYMENT.

See LANDLORD AND TENANT.

RAG FLOCK.

"Rags."]—By section 1, sub-section 1 of the Rag Flock Act, 1911, any person using for certain purposes flock manufactured from rags which do not conform to a prescribed standard of cleanliness is liable to a penalty:—*Held*, that the word "rags" is not limited to rags which have been polluted through contact with a human being or an animal so as not to conform to that standard, but refers to rags which are polluted from any cause so as not to conform thereto. *Cooper* v. *Swift*, 83 L. J. K.B. 630; [1914] 1 K.B. 253; 110 L. T. 79; 78 J. P. 57; 12 L. G. R. 115; 23 Cox C.C. 759—D.

Standard of Cleanliness — Re-stuffing Mattress—Unclean Flock—"Making" Bedding.]—By section 1, sub-section 1 of the Rag Flock Act, 1911, "It shall not be lawful for any person to sell or have in his possession for sale flock manufactured from rags or to use for the purpose of making any article of upholstery, cushions, or bedding flock manufactured from rags or to have in his possession flock manufactured from rags, intended to be used for any such purpose, unless the flock conforms to such standard of cleanliness as may be prescribed by regulations to be made by the Local Government Board, and, if any person sells or uses or has in his possession flock in contravention of this Act, he shall be liable" to a penalty. And by the Rag Flock Regulations, 1912, article 1, flock is to be deemed to conform to the standard of cleanliness for the purposes of sub-section 1 of section 1 of the Act when the amount of soluble chlorine, in the form of chlorides, removed by washing from a specified quantity of flock does not exceed a certain stated proportion. The appellant, a mattress maker, had undertaken in his spare time, and at his own house, to re-make a mattress, belonging to his sister, which had been in use for a considerable time, for which she was to pay him a shilling. He opened the seams, and removed the flock with the intention of putting it back into the same covering, the object of the re-stuffing being to secure a more even distribution of the flock in order to add to the comfort of the mattress. The flock was found upon analysis to contain soluble chlorine in the form of chlorides greatly in excess of the maximum allowed by the regulation. Upon a summons charging the appellant with having in his possession rag flock intended to be used for the purpose of making bedding, which flock did not conform to the standard of cleanliness prescribed by the regulations, the magistrate convicted the appellant:—*Held*, that the re-stuffing or re-making of the mattress with the same flock was not a "making" of bedding within the meaning of section 1, sub-section 1, and that the appellant was therefore improperly convicted. *Gamble* v. *Jordan*, 82 L. J. K.B. 743; [1913] 3 K.B. 149; 108 L. T. 1022; 77 J. P. 269; 11 L. G. R. 989; 23 Cox C.C. 451; 29 T. L. R. 539—D.

Stuffing New Cover with Old Flock.]—The Rag Flock Act, 1911, s. 1, sub-s. 1, prohibits the use for the purpose of making bedding of rag flock unless such flock conforms to the standard of cleanliness prescribed by the Local Government Board. The respondent was remaking two mattresses for a customer by removing the flock from the covers and replacing it in new covers. The flock did not conform to the requisite standard of cleanliness:—*Held*, that removing flock from an old cover and replacing it in a new cover constituted a "making of an article of bedding" within the meaning of section 1, sub-section 1 of the Rag Flock Act, 1911. *Gamble* v. *Jordan* (82 L. J. K.B. 743; [1913] 3 K.B. 149) distinguished. *Guildford Corporation* v. *Brown*, 84 L. J. K.B. 289; [1915] 1 K.B. 256; 112 L. T. 415; 79 J. P. 143; 31 T. L. R. 92—D.

Sale of Second-hand Mattresses Containing Rag Flock.]—The Rag Flock Act, 1911, does not apply to the sale of a second-hand mattress or pillows containing rag flock by a person who does not manufacture them, even although the rag flock contained therein does not conform to the standard of cleanliness required by the regulations made by the Local Government Board. *Cooper* v. *Cook's Depositories*, 84 L. J. K.B. 382; [1915] 1 K.B. 344; 112 L. T. 431; 79 J. P. 159; 13 L. G. R. 368; 31 T. L. R. 82—D.

RAILWAY.

A. CAPITAL STOCK.

Dividends — Half-yearly or Yearly Calculation.] — A railway company, in exercise of powers conferred by a private Act of 1888, created certain preferred and deferred ordinary stocks, the terms of the Act providing that a non-cumulative dividend of 3 per cent. should be payable out of the available profits of each half-year to the preferred stockholders and that the balance of such profits should go to the deferred stockholders. By the Railway Companies (Accounts and Returns) Act, 1911, every railway company was relieved of any obligation to prepare or submit to their shareholders or auditors accounts or balance sheets oftener than once a year :—*Held*, that the later Act did not relieve the railway company of the duty of calculating the dividends due to the preferred and deferred stockholders on the basis of the profits of each half-year. *North British Railway* v. *Wingate*, [1913] S. C. 1092—Ct. of Sess.

B. POWERS AND DUTIES IN CONSTRUCTING AND WORKING.

See also Vol. XI. 1393, 1906.

Right of Way—Power of Railway Company to Grant.]—A railway company can dedicate a way to the public over their property, including their railway line, provided it is not incompatible with the use of their property for the objects and obligations for which they hold it. *Arnold* v. *Morgan*, 80 L. J. K.B. 955; [1911] 2 K.B. 314; 103 L. T. 763; 75 J. P. 105; 9 L. G. R. 917—D.

—— Closure of Highway — Re-dedication — User Incompatible with Railway — Ultra Vires.]—A railway company cannot grant to the public a perpetual right of way over and across their lines of rails or over land which is required or intended and would naturally come to be used for lines of rails. *Great Central Railway* v. *Balby-with-Hexthorpe Urban Council; Att.-Gen.* v. *Great Central Railway*, 81 L. J. Ch. 596; [1912] 2 Ch. 110; 106 L. T. 413; 76 J. P. 205; 10 L. G. R. 687; 56 S. J. 343; 28 T. L. R. 268—Joyce, J.

Semble, where a public highway has been closed by Act of Parliament in order that a railway company may lay lines of rails across it, mere evidence of trespass and user by the public will not be enough to establish re-dedication of a right of way, even in cases where such re-dedication would not be *ultra vires* the company. *Ib.*

Extinguishment of Public Right of Way—Construction of Special Act — Compulsory Powers—Land Taken by Agreement—Public Rights not Extinguished.]—The special Act of a railway company (which incorporated the Lands Clauses Consolidation Acts) empowered the company to enter upon, take, use, and appropriate to the purposes of their undertaking certain land which was the soil of a public highway. Section 37 of the Act provided that "all rights of way over any of the lands which shall under the compulsory powers of this Act be purchased or acquired shall be and the same are hereby extinguished." The soil of the highway was purchased from its owners by agreement without serving any notice to treat :—*Held*, that the land so taken by agreement was not taken under the compulsory powers of the Act, and that the public rights of way over it were not extinguished by the section. *Ib.*

Bridge over Railway—Liability of Railway Company to Maintain—Heavy Motor Traffic—Standard of Maintenance.]—Where a railway company has constructed a bridge to carry a highway over a railway it is bound to maintain that bridge in a condition of safety for the passage of all traffic which may be reasonably expected in the circumstances of the present day to traverse the highway. If heavy motor traffic may be expected on the highway the railway company is bound to keep the bridge strong enough to carry that traffic, and the company is not relieved from that obligation by the possession of a power under the Locomotives Acts and the Motor Car Acts to exclude the traffic while the bridge is insufficient. *Att.-Gen.* v. *Great Northern Railway*, 83 L. J. Ch. 763; 12 L. G. R. 1196; 58 S. J. 595; 30 T. L. R. 557—Warrington, J.

Special Constables Appointed under Private Act—Servants of Company—Arrest on Suspicion of Felony — Liability of Company.] — Special constables appointed under the provisions of the Great Eastern Railway (General Powers) Act, 1900, s. 50, on the nomination of the railway company, and employed and paid by the company, are the servants of the

company, but have under the section the peculiar protection which constables have in the exercise of their duties. If, therefore, they make an arrest on suspicion of felony without reasonable grounds for suspecting that the person arrested was guilty of felony, an action for damages for false imprisonment will lie against the company. *Lambert* v. *Great Eastern Railway*, 79 L. J. K.B. 32; [1909] 2 K.B. 776; 101 L. T. 408; 73 J. P. 445; 22 Cox C.C. 165; 53 S. J. 732; 25 T. L. R. 734 —C.A.

The employment of police constables (whether in plain clothes or not makes no difference) is within the scope and duties of railway companies. *Goff* v. *Great Northern Railway* (30 L. J. Q.B. 148; 3 E. & E. 672) and *Edwards* v. *Midland Railway* (50 L. J. Q.B. 281; 6 Q.B. D. 287) approved. *Ib.*

C. LAYING WATER MAINS UNDER RAILWAY COMPANY'S LAND.

Acquisition of Easement, whether Necessary.]—By section 61, sub-section 1 of the Metropolitan Water Board (Various Powers) Act, 1907, "it shall be lawful for the Board to exercise at any place or places within their limits of supply the like powers with respect to the laying of mains and pipes as are exercisable by local authorities under the provisions of the Public Health Act 1875 with respect to the laying of mains and pipes within their respective districts for the purpose of water supply. . . ." By section 96, sub-section 6, ". . . the Board shall not without the consent in writing of the railway companies under their common seal purchase or acquire any of the lands or property of the railway companies but the Board may acquire and the railway companies shall if required grant to the Board an easement or right of constructing and maintaining works on through in under over or along such lands and property and the sum to be paid for the acquisition of such easement or right shall be settled in the manner provided by the Lands Clauses Consolidation Act 1845 . . .":—*Held*, that the Board were entitled, under the powers conferred upon them by the above enactments, to lay a main under land belonging to the railway company without purchasing or acquiring an easement in respect of such land. *Metropolitan Water Board and London, Brighton, and South Coast Railway, In re*, 84 L. J. K.B. 1216; [1915] 2 K.B. 297; 113 L. T. 30; 79 J. P. 337; 13 L. G. R. 576—C.A.

Decision of Shearman, J. (83 L. J. K.B. 1491; [1914] 3 K.B. 787), affirmed. *Ib.*

D. LIGHT RAILWAY.

Light Railway — Application for Order by Local Authority—Several Lengths of Railway Included in Application—Application Granted by Commissioners with Refusal of Two Lengths — Appeal by Local Authority to Board of Trade—Power of Board of Trade to Remit Case to Commissioners for Further Consideration.]—Certain local authorities applied to the Light Railway Commissioners under the Light Railways Act, 1896, for an order authorising the construction of a light railway. There were twenty-three different lengths of railway set out in the application. The Commissioners granted the application except as regards two lengths of railway. The local authorities appealed to the Board of Trade, under section 7, sub-section 6 of the Act of 1896, against the decision of the Commissioners as regards those two lengths of railway, and the Board of Trade remitted the application to the Commissioners for further consideration so far as it related to those two lengths of railway:—*Held*, (Phillimore, L.J., dissenting), that, as the right of appeal to the Board of Trade given by section 7, sub-section 6 of the Light Railways Act, 1906, was limited to cases where the Commissioners had refused the application, and as in the present case the application had been granted, although the order did not extend to the whole of the lines applied for, the local authorities had no right of appeal to the Board of Trade, and the Board of Trade had no power to remit the application to the Commissioners for further consideration. *Rex* v. *Board of Trade*; *Rex* v. *Light Railway Commissioners*; *Great Central Railway and Midland and North-Eastern Railways Joint Committee, Ex parte*, 84 L. J. K.B. 2043; [1915] 3 K.B. 536; 113 L. T. 711; 79 J. P. 531; 13 L. G. R. 832; 31 T. L. R. 493 —C.A.

Decision of the Divisional Court (84 L. J. K.B. 325; [1915] 1 K.B. 162) reversed. *Ib.*

E. MANAGEMENT OF BUSINESS.

1. Running Powers.

See also Vol. XI. 1486, 1921.

Amalgamation.] — The appellant company by a special Act passed in 1865 acquired running powers over the respondent company's line between M. and W. By a special Act passed in 1897 the D. Co., whose line crossed the respondent company's line between M. and W., were empowered to form a junction with the respondents' line and to enter into agreements as to traffic, and by an agreement made in 1898 they acquired limited running powers over a small portion of the respondents' line from the junction to a colliery. By a special Act passed in 1906, which incorporated the sections in the Railways Clauses Act, 1863, relating to amalgamations, the undertaking of the D. Co. was transferred to the appellant company, who thereupon claimed a right to bring all descriptions of traffic on to and over the respondents' line between M. and W. at the junction formed by the D. Co.:—*Held*, that the appellant company had acquired no greater rights under the amalgamation than those previously possessed by the D. Co. *Great Central Railway* v. *Midland Railway*, 83 L. J. Ch. 221; [1914] A.C. 1; 110 L. T. 481; 58 S. J. 65; 30 T. L. R. 33—H.L. (E.)

Judgment of the Court of Appeal (81 L. J. Ch. 121; [1912] 1 Ch. 206) affirmed. *Ib.*

Substitution of Electric for Steam Traction —Protection of Company Exercising Running Powers—Supply of Electric Power by Owning Company—Basis of Payment.]—The M. Railway obtained statutory powers to substitute electric for steam power in the working of

their railway, and a clause was inserted in the special Act of Parliament conferring such powers for the protection of the G. W. Railway (who under an agreement subsequently confirmed by statute exercised running powers over part of the M. Railway), whereby it was enacted that nothing therein contained should prejudice the rights and powers of the G. W. Co. to work any traffic over the railway of the M. Co., and that the powers conferred by the Act should not be exercised so as to make the working of such traffic by the G. W. Co. less easy or convenient than before; and, further, that in the event of the M. Co. requiring the G. W. Co. to substitute electric for steam traction, either company should be entitled to refer to arbitration such requirement and how the cost or any part thereof should be borne. The M. Co. subsequently required the G. W. Co. to substitute electric traction for steam locomotives, and by a subsequent arrangement with the G. W. Co., supplied electric traction to certain of the G. W. Co.'s trains running over their railway. A difference having arisen between the two companies as to the principle upon which payment to the M. Co. for the supply of such electric power should be based, the same was referred to the Railway and Canal Commissioners :—*Held*, that the basis of payment should be the saving to the G. W. Co.—that is to say, what it would have cost the G. W. Co. to have performed the service by steam locomotives at the particular time in respect of which the payment was to be made; and not the actual cost of electrical haulage along with an extra amount by way of remuneration to the M. Co. *Great Western Railway and Metropolitan Railway, In re*, 14 Ry. & Can. Traff. Cas. 176—Ry. Com.

2. Working Agreements.

See also Vol. XI. 1488, 1923.

Obligation by Lessees to "use their best endeavours" to Develop Traffic of Lessors.]—The defendant company undertook to "use their best endeavours" to develop the through and local traffic of the applicants :—*Held*, that the defendants had thereby assumed a *quasi*-fiduciary position to the applicants—a position similar to that of a bailiff or agent—and that they were bound to treat the applicants at least as well as they treated themselves in the matter of traffic. *Sheffield District Railway* v. *Great Central Railway*, 14 Ry. & Can. Traff. Cas. 299; 27 T. L. R. 451—Ry. Com.

Contract to Develop Fully—Alleged Breach.]—The applicants and the defendants, two railway companies, made an agreement that the defendant should work the applicants' line and should do so in such a way as to develop the traffic fully and in good faith. The working was to be left entirely to the defendants, and the receipts were to be divided in certain proportions. The applicants alleged that the defendants, though exercising an honest management, had failed to perform their obligations under the agreement, and the applicants asked for an order requiring them to do so :—*Held*, that the agreement meant that the defendants were to work the line as if it was part of their own system, and were to have a wide discretion within the limits of honest management, and that on the evidence they had not exceeded their discretion and had committed no breach of contract, and therefore the application failed. *Mold and Denbigh Junction Railway* v. *London and North-Western Railway*, 32 T. L. R. 55—Ry. Com.

3. Damage by Fire from Locomotive.

Damage to Agricultural Crops—Particulars of Damage — Statement in Particulars of Amount Claimed.]—Where damage is caused to agricultural land or to agricultural crops by fire arising from sparks or cinders emitted from a locomotive used on a railway, the particulars of damage which, under section 3 of the Railway Fires Act, 1905, must be sent to the railway company within fourteen days of the occurrence of the damage, as a condition precedent to the Act applying, must contain a statement of the amount claimed in respect of the damage. *Martin* v. *Great Eastern Railway*, 81 L. J. K.B. 825; [1912] 2 K.B. 406; 106 L. T. 884—Channell, J.

4. Obligation to Provide Look-out Men on Line.

Accident to Platelayer—Obligation to "provide" Look-out during "repairing" of Permanent Way—"Danger likely to arise."]—The Prevention of Accidents Rules passed by the Board of Trade on August 8, 1902, in virtue of the Railway Employment (Prevention of Accidents) Act, 1900, provide that "With the object of protecting men working singly or in gangs on or near lines of railway in use for traffic for the purpose of relaying or repairing the permanent way of such lines, railway companies shall, after the coming into operation of these rules, in all cases where any danger is likely to arise, provide persons or apparatus for the purpose of keeping a good look-out or for giving warning against any train or engine approaching such men so working; and the person employed for such purpose shall be expressly instructed to act for such purpose, and shall be provided with all appliances necessary to give effect to such look-out." The foreman of a gang of platlayers, who were engaged in substituting new wooden wedges for old ones in the rail chairs, was killed by a light engine, which came up at an unexpected moment. At the point where the accident took place there was nothing to obstruct the view of the engine driver or of the platelayers. No look-out man had been posted. In an action of damages, brought by the representatives of the foreman against the company, the pursuers contended that the defenders were liable, because, first, they had failed to give the foreman notice of the running of the light engine; secondly, they were in breach of the Board of Trade's regulations in that they had not supplied the gang with a special look-out man; and thirdly, that the accident was partly due to the fact that the fireman employed on the engine was not the usual fireman, but an unqualified person : —*Held*, first, that the defenders were under

no obligation to give notice of the running of the light engine; secondly, that while the work on which the gang were engaged was "repairing" the case was not one in which any "danger" was "likely to arise" in the sense of the regulations, and that accordingly a look-out man was unnecessary; but thirdly, that in any event the company were not bound to supply a special look-out man, and had complied with the regulations by delegating, by their own regulations, to foremen the duty of providing from their gangs look-out men where they apprehended danger; and fourthly, that, the substituted fireman having been taken on to the engine by the driver without the knowledge or consent of the locomotive superintendent, the company were not liable for the result of any fault he might have committed. *Held* accordingly, that, as the accident was due to the fault of the foreman himself or of fellow servants, the company were not liable. *Ferguson* v. *North British Railway*, [1915] S. C. 566—Ct. of Sess.

F. Carriage of Passengers.

See also Vol. III. 7, 2173.

Action by Passenger for Personal Injuries—Condition Relieving from Liability — Special Contract.]—A carrier may stipulate that he shall be free from liability to a passenger for injury caused by negligence, but the burden is on him to shew that the passenger assented to the special terms imposed. *Grand Trunk Railway* v. *Robinson*, 84 L. J. P.C. 194; [1915] A.C. 740; 113 L. T. 350; 31 T. L. R. 395—P.C.

Where a passenger who is to be carried at a reduced fare upon special conditions has allowed terms to be made for him by an agent, it is sufficient for the carrier to prove that the passenger was content to accept the risk without enquiring what the terms agreed upon by his agent were. *Ib.*

G. Carriage of Goods.

See also Vol. III. 74, 2183.

Delay in Delivery—Delay Due to Strike of Railway Company's Servants.]—In calculating what is a reasonable time within which goods which have been entrusted to a railway company for carriage must be delivered, regard must be had to all the circumstances existing at the time, and those include the existence of a strike on the part of the railway company's own servants, provided it is not established that such strike has been brought about by any default on the part of the railway company. *Hick* v. *Raymond* (62 L. J. Q.B. 98; [1893] A.C. 22) applied. *Sims* v. *Midland Railway*, 82 L. J. K.B. 67; [1913] 1 K.B. 103; 107 L. T. 700; 18 Com. Cas. 44; 29 T. L. R. 81—D.

Perishable Goods—Sale by Railway Company — Agents of Necessity.] — *Per* Scrutton, J.: In the case of carriage by land as well as in the case of sea carriage the power of the carrier to sell the goods which have been entrusted to him for carriage depends upon two things—first, that a real necessity for the sale exists, and, secondly, that it is practically impossible to obtain the instructions of the owner as to what should be done. *Ib.*

Consignment of Goods at "owner's risk" —Carriage to be by Passenger Train—Substitution of Goods Train—Delay—Liability of Railway Company.]—The plaintiff delivered to the defendants a consignment of cherries to be carried by passenger train or other similar service upon the terms that, in consideration of being charged a lower rate than the defendants' ordinary rate for the carriage of fruit, he would relieve the defendants from all liability for (*inter alia*) delay except upon proof that such delay arose from wilful misconduct on the part of the defendants' servants. The cherries were duly despatched by passenger train, but in the course of the journey they were transferred to a goods train, with the result that they were delayed and became deteriorated as a consequence. In an action by the plaintiff against the defendants, —*Held*, that the carriage of the fruit by passenger train was of the essence of the contract; that after its transference from a passenger train to a goods train it was no longer being carried under the contract made with the plaintiff, and that consequently the defendants were not entitled to the advantage of the conditions of the consignment note relieving them from liability except upon proof of wilful misconduct. *Gunyon* v. *South-Eastern and Chatham Railway*, 84 L. J. K.B. 1212; [1915] 2 K.B. 370; 113 L. T. 282; 31 T. L. R. 344—D.

Equal Charges — Newspapers Carried by Passenger Trains.]—In an action under section 90 of the Railways Clauses Act, 1845, complaining of inequality of charge in respect of newspapers carried by the defendants by passenger trains from Dublin, as compared with newspapers carried from Belfast, the rate was a flat rate, irrespective of distance, for carriage over the whole of the defendants' railway, and the train times and average length that the respective papers were carried were different:—*Held*, first, that though there was no statutory charge prescribed, and though the defendants were not bound to carry papers by passenger trains, still, as they professed to do so, section 90 applied to preferential treatment in respect of such papers; secondly, any cause of action under section 90 was confined to the portion of the line between Dublin and Belfast; thirdly, the circumstances of the traffic from Dublin and from Belfast were not the same, and the action therefore failed. *Semble*, a flat rate irrespective of distance is not within the section. Whether the mere circumstance that the points of departure were different necessarily and as a matter of law would take the case out of the section, *quære*. *Stone* v. *Midland Railway* (73 L. J. K.B. 392; [1904] 1 K.B. 669) discussed and distinguished. *Denaby Main Colliery Co.* v. *Manchester, Sheffield, and Lincolnshire Railway* (55 L. J. Q.B. 181; 11 App. Cas. 97) considered. *Independent Newspapers, Lim.* v. *Great Northern Railway (Ireland)*, [1913] 2 Ir. R. 255—Gibson, J.

Consignment at "Owner's risk"—"Non-delivery of any package or consignment"—Appreciable Part of Consignment not Delivered—Non-delivery of Consignment—Damages.]—A consignment note embodying a contract of carriage between the plaintiff and the defendants provided (*inter alia*) for the carriage of the plaintiff's goods on the defendant's railway at reduced rates at "owner's risk," but that nothing therein should exempt the defendants from any liability they might otherwise incur in case of "non-delivery of any package or consignment fully and properly addressed" except where they proved that the non-delivery had not been caused by negligence or misconduct on the part of the defendants or their servants. The plaintiff consigned by the defendants' railway three consignments of carcasses. An appreciable part of each consignment was not delivered. The plaintiff claimed damages for the non-delivery, and the defendants failed to disprove negligence or misconduct:—*Held*, by the Court of Appeal (Buckley, L.J., and Pickford, L.J.; Phillimore, L.J., dissenting), that on the construction of the consignment note the expression "non-delivery" of a consignment was not confined to the case in which there had been non-delivery of every part of a consignment, but included the case in which there had been non-delivery of any appreciable part of it; and therefore that there had been non-delivery of the consignments in question, and that the plaintiff was entitled to damages. *Wills* v. *Great Western Railway*, 84 L. J. K.B. 449; [1915] 1 K.B. 199; 112 L. T. 368; 59 S. J. 89; 31 T. L. R. 60—C.A.

Decision of the Divisional Court (83 L. J. K.B. 418; [1914] 1 K.B. 263) affirmed. *Ib.*

"Wilful misconduct"—Overloaded Waggon — Failure of Railway Servants to Gauge Load.]—A railway company contracted to convey the plant of a switchback railway at a specially reduced rate, one of the conditions of the contract being that the proprietor of the goods should relieve the company of all liability except for damage arising from the "wilful misconduct" of the company's servants. One of the company's regulations directed that all loads must be gauged "when there is any reason to doubt that they are not within the dimensions" specified for the lines over which they have to travel. The stationmaster at the station of departure did not gauge the load, but merely judged the height of it with his eye and concluded that it did not exceed the dimensions. In this, however, he was mistaken, and part of the load in the course of transit came in contact with the smoke board of a bridge beneath which the train was passing, and was damaged:—*Held* (Lord Johnston dissenting), that the damage was due to "wilful misconduct" of the stationmaster, for which the company was liable. *Bastable* v. *North British Railway*, [1912] S. C. 555—Ct. of Sess.

Per The Lord President: "Wilful misconduct" is not something more than, and opposed to, "negligence," and *dicta* to the contrary effect in *Graham* v. *Belfast and Northern Counties Railway* ([1901] 2 Ir. R. 13) and *Lewis* v. *Great Western Railway* (47 L. J. Q.B. 131; 3 Q.B. D. 195) doubted. *Ib.*

—— **Special Contract — Limitation of Liability.**]—The defendants, a railway company, contracted with the plaintiff to carry certain theatrical scenery and properties, the defendants being relieved from all liability for damage except upon proof that it arose from wilful misconduct on the part of the defendants' servants. The goods were loaded on the railway truck by the plaintiff's servants, and the defendants' porters were then told to cover it with a tarpaulin. There was rain and snow next day, and when the goods reached their destination they had been damaged by wet. In an action by the plaintiff against the defendants for damages, the defendants' servants gave evidence that they had covered the truck with a tarpaulin and had fastened it securely, but the jury found for the plaintiff:—*Held*, that even assuming that the evidence of the defendants' servants was untrue, the evidence was consistent with an ordinary case of negligence, and there was no evidence of wilful misconduct within the meaning of the contract, and therefore the defendants were entitled to succeed. *Norris* v. *Great Central Railway*, 85 L. J. K.B. 285*n.*: 32 T. L. R. 120—D.

Railway Company's Steamer—Special Contract for Carriage of Goods — Whether Just and Reasonable.]—A railway company which owns steam vessels, and which by its private Act has adopted Part IV. of the Railways Clauses Act, 1863 (relating to steam vessels), is bound by the provisions of section 7 of the Railway and Canal Traffic Act, 1854. A special contract made by such railway company for the carriage of goods must therefore, whether the carriage is partly by its railway and partly by its steamers, or wholly by its steamers, be just and reasonable, within the meaning of section 7. A special contract for the carriage of goods by sea which exempts the railway company from all liability for damage due to the negligence of its servants is not just and reasonable where there is no alternative rate offered to the consignor upon which the goods might be carried. *Jenkins* v. *Great Central Railway*, 81 L. J. K.B. 24; [1912] 1 K.B. 1; 106 L. T. 565; 17 Com. Cas. 32; 12 Asp. M.C. 154; 28 T. L. R. 61—Lord Coleridge, J.

—— **Damage to Goods during Land Transit — Condition Exempting Railway Company from Liability for Loss by Negligence during Sea Transit — Alternative Rates — Condition not Just and Reasonable.**] — Goods of the plaintiffs were delivered to the defendants for conveyance from Antwerp to North Woolwich. The goods were conveyed from Antwerp to Parkeston Quay, Harwich, by the defendants' steamship, and from Harwich to North Woolwich by the defendants' railway. During the journey from Harwich to North Woolwich the goods were damaged by being wetted by rain owing to the negligence of the defendants' servants. The plaintiffs had a standing contract with the defendants by which their goods were to be carried from Antwerp to North

Woolwich at a reduced rate at owners' risk. For the goods in question the defendants gave a bill of lading stating that the goods were to be delivered to the plaintiffs at North Woolwich, and containing the words "Owners' risk" and a clause exempting the defendants from liability for loss or damage due to the negligence of their servants. There was a higher rate at which the goods might have been carried, but even if that higher rate had been paid the bill of lading would have contained the same negligence clause. In an action by the plaintiffs claiming in respect of the damage to the goods :—*Held*, that, as the plaintiffs had not an option offered to them, so far as the sea portion of the transit was concerned, of having the goods carried by the defendants with the ordinary liability of common carriers, the contract as a whole was not just and reasonable within section 7 of the Railway and Canal Traffic Act, 1854, and therefore that the defendants were not protected from liability, and that the plaintiffs were entitled to recover. *Western Electric Co.* v. *Great Eastern Railway*, 83 L. J. K.B. 1326; [1914] 3 K.B. 554; 111 L. T. 29: 19 Com. Cas. 301; 30 T. L. R. 416—C.A.

Decision of the Divisional Court (82 L. J. K.B. 746; [1913] 3 K.B. 15) affirmed. *Ib.*

Special Contract — Damage — Evidence of Company's Liability.] — The plaintiffs requested the defendants, a railway company, to send a van for a milling machine weighing 18 cwt. and having a steel base one inch thick and to take it to a station and forward it by rail. The defendants sent a van for the machine, and the plaintiffs' servant handed to the carman a form of consignment note, which contained no restrictions exempting the defendants from any liability for damage to the machine during transit. The carman requested the plaintiffs' servant to write O.R. (owner's risk) upon the note tendered by him and to sign his initials. This he did. The machine was then taken away in the defendants' van, and was afterwards found damaged at the station, the base being cracked. The evidence was that this must have been caused by a blow while the machine was in the defendants' custody :—*Held*, that though the plaintiffs took the ordinary risks of transit the defendants remained liable for negligence, and that as there was *prima facie* evidence of negligence the onus lay on the defendants to prove that there was no negligence, and that therefore the plaintiffs were entitled to damages. *United Machine Tool Co.* v. *Great Western Railway*, 30 T. L. R. 312—D.

Carriage of Animals.]—*See* ANIMALS.

H. RAILWAY COMMISSION.

1. REASONABLE FACILITIES FOR TRAFFIC.

See also Vol. XI. 1514, 1925.

Passenger Accommodation at Station—Level Crossing.]—Passengers going from one of the platforms at Leek station to the main buildings and station yard or *vice versa* had to cross the railway either by a level crossing situate about 130 yards from the entrance to the station, and over which shunting operations from time to time took place, or by means of a public bridge carrying a main road across the railway, the carriageway on such bridge being twenty-five feet wide and without a footpath on the station side. Upon an application for an order directing the railway company to afford reasonable facilities for receiving, forwarding, and delivering traffic at their said station :—*Held*, that the applicants had failed to shew that the shunting operations caused any substantial obstacle to the free use by passengers of the level crossing or that there was any appreciable danger to passengers crossing by either way, and that, although the station was not a convenient one, and could be made more convenient at same considerable expense, nothing less than reasonable proof (which was not forthcoming) that the obligation cast upon the railway company had not been fulfilled could authorise the Commissioners to interfere with the discretion of the railway company as to the arrangement of its stations. *Leek Urban Council* v. *North Staffordshire Railway*, 15 Ry. & Can. Traff. Cas. 105—Ry. Com.

Carriage of Goods in Trader's Trucks — Shortage of Railway Company's Trucks — Obligation of Company to Carry.]—Conveyance by a railway company of a trader's merchandise in his own trucks or vans is not in general one of the "reasonable facilities" which under section 2 of the Railway and Canal Traffic Act, 1854, every railway company is bound to afford for the receiving, forwarding, and delivering of traffic upon the railway; but it does become such a reasonable facility wherever a sufficient number of suitable trucks or vans is not provided by the railway company. *Spillers & Bakers, Lim.* v. *Great Western Railway*, 80 L. J. K.B. 401; [1911] 1 K.B. 386; 103 L. T. 685; 14 Ry. & Can. Traff. Cas. 52; 55 S. J. 75; 27 T. L. R. 97—C.A.

The Great Western Railway Company (Rates and Charges) Order Confirmation Act, 1891, sched., s. 2 (*b*), in providing that the rate authorised for conveyance of the merchandise there referred to shall be reduced as therein mentioned where "the company do not provide trucks," means that the rate shall be reduced where the company do not maintain and offer for use trucks suitable for the service required, not that the rate shall be reduced where the company do maintain and offer for use suitable trucks, but the trader uses not the company's trucks, but his own. *Ib.*

Obligation of Railway to Receive Traders' Waggons—Substitution of Traders' Waggons for Waggons Owned by Railway Company—Obligation of Company to Supply Waggons.]—Certain traders having applied to the Railway and Canal Commissioners for an order enjoining certain railway companies (*inter alia*) to give the same facilities for the use of traders' waggons as of the companies' waggons and to desist from refusing to carry traffic in traders' waggons, and the Commissioners having ordered a proof or enquiry into facts,

the defendant companies appealed on the ground that the applicants sought only for a declaration of legal right to have their waggons conveyed on the defendants' railways, and that the Commissioners had no jurisdiction to entertain the same :—*Held*, that, inasmuch as the real question raised by the applicants was whether their waggons should be received on the railways as a reasonable facility, the Commissioners had jurisdiction. *Watson* v. *Caledonian Railway*, 14 Ry. & Can. Traff. Cas. 185; [1910] S. C. 1066—Ct. of Sess.

Practice.] — In applying section 2 of the Railway and Canal Traffice Act, 1854, the Commissioners will only consider a demand for reasonable facilities with reference to the circumstances of each concrete case and will not declare an abstract right, so that they will refuse to make an order that a trader shall be entitled as a reasonable facility to put such waggons on a railway company's lines as he considers necessary for the proper working of his traffic, irrespective of what number of waggons the railway company tender for that purpose. *Watson* v. *Caledonian Railway*, 14 Ry & Can. Traff. Cas. 185—Ry. Com.

Such an order would enable the trader to displace the whole of the railway company's waggons and substitute waggons of his own, a claim which, in view of the practice in Scotland, whereby more than half of the waggons required for the coal trade are supplied by the railway companies, would not be entertained by the Court. The case of *Spillers & Bakers* v. *Great Western Railway* (*supra*) distinguished as being a case concerning ordinary merchandise which it had never been the practice to carry in traders' waggons, and as not applying to the circumstances of mineral traffic. *Ib.*

Decision of Railway Commissioners — Appeal.]—The Court of Appeal will not, except under extraordinary circumstances, review the decision of the Railway Commissioners as to what in their view are "reasonable facilities." *Per* Farwell, L.J. : It is within the power of the Railway Commissioners, in exercising their discretion, to refuse to order, as a "reasonable facility," a railway company to receive coal traffic upon running lines where there are no exchange sidings. *Great Central Railway* v. *Lancashire and Yorkshire Railway*, 14 Ry. & Can. Traff. Cas. 131—C.A.

Railway Lines Taken over by Government for His Majesty's Service—Competency of Complaint against Railway Company for Want of Reasonable Facilities.]—Where the possession and control of the railroad and plant of a railway company have been taken by the Government under a warrant issued by a Secretary of State under section 16 of the Regulation of the Forces Act, 1871, which empowers the taking of possession of all the railroads in Great Britain, in the event of an emergency arising, for His Majesty's service, an Order in Council having declared that an emergency had arisen, an application may still be made by a trader to the Railway and Canal Commission Court, under section 2 of the Railway and Canal Traffic Act, 1854, complaining that reasonable facilities have not been afforded to him, inasmuch as it does not necessarily follow that the complete control of the railway has been taken by the Government from the railway company, as the Government may delegate to the railway company the right to exercise the actual control over the working of the railway in so far as it does not interfere with the paramount right vested in the Government to use the railway for His Majesty's service. On such application the burden lies upon the railway company of shewing that it is not within their power to give such facilities, inasmuch as *prima facie* the railway company are still under the obligation of giving reasonable facilities. *Denaby and Cadeby Main Collieries* v. *Great Central Railway*, 84 L. J. K.B. 2201; 113 L. T. 191; 31 T. L. R. 386—Ry Com.

2. Rates and Charges.

See also Vol. XI. 1520, 1942.

Classification of Merchandise—Amendment by Board of Trade — Motor Car Chassis, whether a "Carriage."]—A motor chassis is a "carriage" within the meaning of Part III. of the schedule annexed to the Railway Rates and Charges Order Confirmation Acts, 1891. 1892, only when it is consigned to the railway companies for conveyance, having been propelled to their premises by its own mechanical power or drawn thither on its own wheels by a locomotive. *London and North-Western Railway* v. *Society of Motor Manufacturers*, 14 Ry. and Can. Traff. Cas. 294; 27 T. L. R. 518—Ry. Com.

—— Goods Misdescribed in Order to be Sent at Lower Rate—Penalty.]—An electric stator forming part of a single-phase alternator generator was sent by the appellants by rail from Birmingham to Bedford. It was in two parts and packed in two cases, and was described as "two cases bearers." The rate applicable to the carriage of bearers at owner's risk was 9*s.* 2*d.*, and for machinery and generators at company's risk was 22*s.* 9*d.*, but there was no rate in respect of electrical machinery or generators in parts at owner's risk. The railway company accepted the stator and charged on it at 9*s.* 2*d.* as if the description given by the appellants was accurate. The appellants were summoned under section 99 of the Railways Clauses Consolidation Act, 1845, for giving a false account of the goods so consigned with intent to avoid the payment of tolls in respect thereof, and the Justices convicted the appellants :—*Held*, that the conviction was right. *General Electric Co.* v. *Evans*, 105 L. T. 199; 75 J. P. 406—D.

Classification of Rates—"Dangerous goods" —Liquid Metal Polish.]—Goods which are not included in any part of the statutory classification and which are declared by a railway company, acting *bona fide*, to be dangerous goods, are "dangerous goods" within the meaning of Part IV. of the statutory schedule to the Railway Charges Acts. The Court, on the

application of the railway company, made a declaration that liquid metal polish having a flash-point of over 73 degrees Fahrenheit (Abel close test) in securely closed tins in cases was "dangerous goods" within Part IV. of the statutory schedule. *North-Eastern Railway* v. *Reckitt*, 109 L. T. 327; 29 T. L. R. 573; 15 Ry. & Can. Traff. Cas. 137—Ry. Com.

Notice of Increase—Requisite Form—Setting out New Rates in Rate Book.]—Certain railway companies advertised that they intended to increase their rates. The advertisement stated generally that subject to the statutory *maxima* existing rates of not more than 1*s.* would be increased by ½*d.*, rates of between 1*s.* and 2*s.* would be increased by 1*d.* and so forth. Traders objected that the notices were not in the form required by statute, and that as the contemplated increases in rates were not set out individually in the rate book the new rates would be illegal and could not be enforced:—*Held*, that the notices of increase were sufficient, and that it was not necessary to set out the new rates individually in the rate book. *British Portland Cement Manufacturers, Lim.* v. *Great Eastern Railway*, 111 L. T. 586; 30 T. L. R. 523; 15 Ry. & Can. Traff. Cas. 213—Ry. Com.

Increase of Rates — Local and Through Rates—Joinder of Several Railway Companies as Defendants to One Application.] — The applicants made an application to the Railway and Canal Commission Court complaining of the increase of the rates of the railway companies who carried their goods, and they joined ten railway companies as defendants to one application. Some of the rates complained of were local rates and some were through rates. One railway company against whom the rates complained of were local rates applied to the Registrar to be struck out of the application. The Registrar dismissed the application and awarded the applicants the costs of the application:—*Held*, on the appeal of the railway company, that there was nothing in the Rules of the Railway and Canal Commission Court which imposed a limit as to the number of persons who might be joined as defendants in any application, and that therefore the applicants were not precluded from joining the ten railway companies as defendants to one application, and the railway company was not entitled to be struck out of the proceedings. *Smith, Stone & Knight, Lim.* v. *London and North-Western Railway*, 83 L. J. K.B. 1690; [1914] 3 K.B. 1195; 111 L. T. 1117; 15 Ry. & Can. Traff. Cas. 321; 30 T. L. R. 645—Ry. Com.

—— Classification of Traffic—Article not Included in Original Classification — Alteration in Description of Article—Transfer of Article to Higher Class.]—The applicants had consigned certain traffic under the description of "bundles of water pipes," which was carried by the railway companies originally at Class C or at Class 1 rates, according to the weight consigned. The articles in question were coils of pipe which became known as radiators, after the classification set out in the railway companies Rates and Charges Order Acts was made. The railway companies subsequently placed the said traffic in Class 2 of their classification, and, except as to certain stations, charged upon all consignments of such traffic Class 2 rates on the ground that the applicants originally had not properly declared and described the articles consigned by them:—*Held*, that as radiators were omitted from the classification the proper course was to apply to the Board of Trade, and that the Railway Commissioners were not the tribunal to decide as to how the articles in question should be classified. *Held*, also, that there had been an increase in the rates which upon the evidence had not been justified. *Beeston Foundry Co.* v. *Midland Railway*, 14 Ry. & Can. Traff. Cas. 119—Ry. Com.

—— Disintegration of Rates.] — A trader is entitled to an order for a disintegration of rates provided that he is *bona fide* interested in the traffic and desires the information for the purpose of facilitating his business, although it may be in the nature of discovery. *Smith, Stone & Knight* v. *London and North-Western Railway*, 15 Ry. & Can. Traff. Cas. 327—Ry. Com.

—— Special Act — Previous Sanction by the Commissioners — Practice — Representation of Limited Company by Traffic Manager.]—Section 30 of the South-Eastern and London, Chatham and Dover Railway Companies Act. 1899, enacts that: "The fares (including those for season tickets and, where such now exist, the cheap fares on certain days in the week), rates and charges existing on the first day of May, 1899, shall not be increased by either of the two companies, or by the managing committee, without the sanction to such increase being first obtained of the Railway and Canal Commissioners, who shall have jurisdiction in like manner as if the Railway and Canal Traffic Acts were applicable to the matter to hear all parties concerned, and to determine whether any, and, if so, what, increase of such fares, rates, and charges, shall thenceforth be made." Upon an application pursuant to the above Act by the two companies and their managing committee for an order sanctioning certain increases in the rates for merchandise traffic, and upon the applicants shewing that the cost of working their goods traffic had materially increased:—*Held*, that the said increases should be sanctioned subject to the condition that any person thereby affected should be at liberty thereafter to apply to the Court to vary or withdraw such sanction. *South-Eastern and London, Chatham and Dover Railway, Ex parte*, 15 Ry. & Can. Traff. Cas. 154—Ry. Com.

—— Amalgamation of Railway Companies—Necessity of Previous Sanction by the Commissioners under Special Act—Material Comparative Dates.]—Under two Amalgamation Acts passed in 1900, the Waterford, Limerick and Western and the Waterford and Central Ireland railway companies were amalgamated with, and became part of, the undertaking of the Great Southern and Western railway company; and by the said Acts it was enacted

that the actual rates charged on June 30, 1900, on any railway theretofore worked or owned by either of the companies so amalgamated with the Great Southern and Western company, or by the last-named company, or partly on the railways of the first-named companies and partly on the railways of the last-named company, should not be increased directly or indirectly without the consent of the Railway Commissioners. It was also enacted by section 57 of the Fishguard and Rosslare Railway and Harbours Act, 1899, that all through bookings which at the passing thereof were in operation *via* the port of Waterford between certain points should continue, and that the through fares, rates and charges in force on December 31, 1898, *via* the port of Waterford should not be raised, except with the consent of the Board of Trade or the Railway Commissioners. Upon applications pursuant to the above Acts for orders sanctioning increases equal to an average of 4 per cent. of all local rates, for goods and merchandise traffic, and for perishable traffic carried by passenger train, and also sanctioning similar increases of through rates *via* Waterford, various tables in support were put in evidence comparing receipts, working expenses, and other figures for the year 1892 (when the scale of maximum rates was fixed) and 1897 on the one hand, and the year 1912 on the other; but, with certain exceptions, no comparison was instituted between the period immediately succeeding the said amalgamation in 1900 and the date of the applications. The result shewn by the above tables was that the percentage of working expenses had increased as between the years 1892 and 1912, but certain tables comparing the year 1901 (the year succeeding amalgamation) and 1912, which were subsequently prepared at the request of the Court, shewed that such percentage had considerably decreased as between the last-mentioned years :—*Held*, that the year 1892, which was prior to the amalgamation, could not be accepted as the proper year for comparison, and that the year succeeding the amalgamation, unless abnormal, should be adopted: the question to be considered being how, if at all, the circumstances had altered since the date when the Legislature said that the actual rates then in force were not to be increased without the consent of the Court; and also that in view of the decrease of the percentage of working expenses to receipts, and also of the net increase in the train mile and tonnage receipts as between the year succeeding the amalgamations and the period preceding the application, the applicants had failed to justify the proposed increases of rates, and that the sanction of the Court thereto should be refused. *Great Southern and Western Railway, Ex parte*, 15 Ry. & Can. Traff. Cas. 282—Ry. Com.

—— Classification of Traffic—Article not Included therein — Alteration in Description of Article—Transfer of Article to Higher Class.]—The applicants for a period of thirty years prior to 1912 had consigned steel "strips" (one-eighth of an inch in thickness and not exceeding twelve inches in width) by rail from Sheffield to London and other places. Such strips were despatched either unpacked, or packed in cases or casks, and were described as "Bessemer undamageable" or "undamageable steel hoops." They were carried, whether packed or unpacked, at Class C rates, amounting, in the case of two-ton lots from Sheffield to London, to 13*s*. 4*d*. per ton. In 1891 "strips not packed" were placed in Class C of the general railway classification, while packed strips remained unclassified. From 1908 an exceptional rate was quoted in the rate books for steel strips packed, from Sheffield to London, at 18*s*. 4*d*. per ton, but such rate was not charged to the applicants' traffic, which continued to be described as traffic. In 1910 strips iron and steel, "except otherwise herein provided"—that is, packed—were introduced into Class 2 of the general railway classification, but the applicants continued to pay the old rate on their traffic, under its usual description. In 1912 the railway companies required the applicants to describe such traffic, where packed, as "steel strips," and charged for its carriage from Sheffield to London the Class 2 or an exceptional rate of 18*s*. 4*d*. per ton. The railway companies contended that "steel strips packed" being unclassified they were entitled, under section 20 of their Rates and Charges Order, 1891, to charge Class 3 or any lower rates, and stated that this would have been done had the applicants truly declared the contents of the cases or casks containing their steel strips. Upon a complaint by the applicants that the defendant railway companies had increased the rates for their traffic and that such increase was unreasonable :—*Held*, that on the evidence the railway companies did in fact know of the contents of the cases and casks consigned by the applicants, and that in charging for such traffic Class 2 rates in lieu of Class C rates they had increased the rates; and also that the fact that other traders had paid the higher rates on similar traffic did not in itself justify the increases complained of, although the defendants would have laid the foundation for argument if they had proved that the volume of traffic upon which the higher charge was paid was really substantial as compared with that upon which the lower rate was paid. *Beesley* v. *Midland Railway*, 15 Ry. & Can. Traff. Cas. 306—Ry. Com.

Held, further, that the above decision should not prejudge an application to the Board of Trade for the classification of the traffic in question. *Ib.*

Justification of Increase—Method of Proof —Increase in Ratio of Working Expenses.]—Upon a complaint by an association of traders that a railway company who had from the year 1897 until July 1, 1907, carried coal on the basis of 20½ cwt. to the ton, had since the latter date charged the same rates for the carriage of coal, but on the basis of 20 cwt. to the ton (the approximate effect whereof was to increase by 2½ per cent. every rate for the carriage of coal), and that such increase was unreasonable :—*Held*, that the railway company, having shewn an increase in the ratio of working expenses to receipts at least

equal to the increase in rates, and having called evidence to the effect that such increase was due to an increase in the cost of working and not to a decrease in receipts, to which evidence no cross-examination had been directed, had justified the increase complained of. *Coal Merchants' Society* v. *Midland Railway*, 14 Ry. & Can. Traff. Cas. 100—Ry. Com.

Computation of Weight no Longer Allowed —Knowledge by Railway Company of Indirect Advantage to Trader.]—From 1893 onwards the applicants' soap was carried by the Midland Railway Co. at a computed weight of 1 cwt. 10 lb., which was made up of 1 cwt. or two ½ cwts. of soap along with the boxes in which the soap was packed. This computation being less than the actual weight resulted in a gain to the applicants in 1906 of 6 to 8½ lb. per cwt., making a difference of 1,400*l.* in the annual payment of the applicants to the railway company. On April 1, 1907, the railway company refused to carry the applicants' soap except at the actual weight of each consignment. Upon a complaint that the railway company had indirectly increased the rates charged to the applicants,—*Held*, that there was no evidence that there was any agreement on the part of the railway company that the system of carrying at a computed weight should be continued, and that even if it was assumed that the railway knew that they were carrying at less than the actual weight, thus giving an advantage to the applicants, it was *prima facie* reasonable for them to charge according to actual weight and so put the applicants on the same footing as other traders. *Watson* v. *Midland Railway*, 14 Ry. & Can. Traff. Cas. 18—C.A.

Held, further, that the Court of Appeal was bound by the finding of the Railway Commissioners that the action of the railway company in abolishing the system of computation was reasonable. *Ib.*

Through Rate — Fixed by Agreement — Apportionment—Application to Re-apportion Rate — Jurisdiction of Railway Commissioners.]—Where there is an existing through rate fixed by agreement between two railway companies, and also an agreed apportionment between them which has not been cancelled or challenged, the Railway and Canal Commissioners have no jurisdiction to entertain an application by one of the companies for a re-apportionment of the agreed rate or of a through rate of the same amount proposed by the applicants. The duty and power of apportionment of the Commissioners under section 25 of the Railway and Canal Traffic Act, 1888, are only incidental to the giving of reasonable facilities for the conveyance of traffic from one point to another. *Manchester Ship Canal Co.* v. *London and North-Western Railway*, 80 L. J. K.B. 676; [1911] 1 K.B. 657; 104 L. T. 81; 14 Ry. & Can. Traff. Cas. 141—C.A.

—— **Existing Rate by Alternative Route — Lower Mileage Rate—Public Interest.**]—Section 25, sub-section 5 of the Railway and Canal Traffic Act, 1888, enacts: "If an objection be made to the granting of the (through) rate or to the route, the Commissioners shall consider whether the granting of a rate is a due and reasonable facility in the interest of the public." Section 25, sub-section 9 of the same Act enacts: "It shall not be lawful for the Commissioners in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route." The railways or parts of the railways of the South Yorkshire Joint Railway Committee, the Lancashire and Yorkshire Railway Co., the Dearne Valley Railway Co., and the Hull and Barnsley Railway Co. formed a continuous route from the D. colliery to the A. dock, Hull. The Lancashire and Yorkshire Railway Co. were joint owners of the South Yorkshire Railway and had a controlling interest in the Dearne Valley Railway, and were authorised by statute to fix and quote through rates over the former railway. A through rate for coal between the above points was already in operation by means of another route owned as to part by the Great Central and as to part by the Hull and Barnsley Railway Cos.; such last mentioned route was four miles shorter than the proposed route, and the owning companies worked the traffic over their own railway respectively. The existing rate was governed by the rate charged by another company, who owned a third competitive route to Hull (but not to the A. dock), twenty-two miles shorter than the existing Great Central and Hull and Barnsley route. The annual coal traffic between the points in question was 80,000 to 90,000 tons. Upon an application by the Lancashire and Yorkshire and Dearne Valley companies for a through rate for coal between the above points of the same amount as the existing through rate:—*Held*, that the proposed through rate was a reasonable facility, and that it must be granted subject to the condition that the defendants, in view of the circumstances of the case, should be allowed the same tonnage apportionment thereof as they received out of the existing rate over the alternative route of which they were part owners. *Lancashire and Yorkshire Railway* v. *Hull and Barnsley Railway Co.*, 15 Ry. & Can. Traff. Cas. 59—Ry. Com.

Held, further, that, inasmuch as the defendants were not carrying throughout the entire alternative route, section 25, sub-section 9 of the Railway and Canal Traffic Act, 1888, did not apply to the application. *Ib.*

—— **Apportionment of Through Land and Sea Rates.**]—Through land and sea rates are not to be apportioned according to mileage. *Great Southern and Western Railway* v. *City of Cork Steam Packet Co.*, 15 Ry. & Can. Traff. Cas. 67—Ry. Com.

—— **Congested Route — Alternative Route — Apportionment—Special Expense in Working.**]—Upon an application by (1) the Dearne

Valley Railway Co. and (2) the Lancashire and Yorkshire Railway Co., for through rates for shipment coal from certain collieries on their respective railways to Grimsby Dock over part of their own railways and part of the railways of the Great Northern and Great Central Railway Cos., the Great Northern Railway Co. objected to the route proposed in the first case, and called evidence to the effect that there was an alternative available route and that the proposed route passed over an extremely congested part of their system, where much difficulty was experienced in working the existing traffic. The traffic in question had been accepted by them over the proposed route for about two and a half years, but they had since refused to receive it. The Great Central Railway Co. objected to the proposed apportionment of both rates, on the ground that the amount allocated to them for terminals at Grimsby (3*d.* per ton), which sum was stated to be the usual charge agreed to by all railway companies, was insufficient, inasmuch as it was less than the special expense incurred by them in working there :—*Held*, that the route proposed in the first case was reasonable, and that it was not sufficient to shew that the receiving of the traffic in question would render a difficult task more difficult, unless such traffic would amount to an obstruction—that is to say, that it would create such disorganisation and delay as would produce inconvenience and loss to traders interested in traffic already using, or entitled to use, the accommodation at the point in question; and also that it is material to consider whether the route proposed is the only available route, or whether there are one or more other routes available. *Dearne Valley Railway* v. *Great Northern Railway*, 15 Ry. & Can. Traff. Cas. 202—Ry. Com.

Held, further, as to the apportionment, that, although it may be shewn that an arrangement between railway companies is very widely accepted, it is not open to the Court to reject evidence as to the proper terminal at any port of shipment. *Ib.*

—— **Application by Owner of Private Siding — Guarantee as to Amount of Traffic — Through Rate already in Existence — Public Interest.**]—The applicants were the owners of a private siding at W. communicating with the railway of the C. L. Committee, and they asked for through rates for slack between certain collieries and their siding. Through rates for slack carried in four-ton lots and upwards were already in existence between the said points. The route proposed by the applicants was approximately ten miles shorter than that by which the traffic was ordinarily being carried, but the existing through rates applied to traffic consigned by either route. The applicants offered to guarantee to send at least 600 tons of slack per week. The rates proposed by them were in each case 1*s.* 2*d.* per ton as compared with the existing rate of 1*s.* 11*d.* No evidence was given that the proposed rates were in the public interest :—*Held*, that the Court was not at liberty to assume without evidence that the proposed rates would be in the interests of the public; that section 25 of the Railway and Canal Traffic Act, 1888, was not intended to have the effect of reducing rates, but only to enforce the granting of facilities; and that, therefore, in the absence of evidence that the existing through rates were unreasonable, there was no ground for fixing any other rate. *Brunner, Mond & Co.* v. *Cheshire Lines Committee*, 14 Ry. & Can. Traff. Cas. 124; 25 T. L. R. 618—Ry. Com.

A trader interested may apply for a through rate to a private siding. *Ib.*

—— **London Docks.**]—The Court refused to grant a through rate between the applicants' Victoria and Albert Docks in London and certain places in the provinces, being of opinion that it was inexpedient to disturb the present rates or charges to these docks. *Port of London Authority* v. *Midland Railway* (*No.* 2), 106 L. T. 652; 28 T. L. R. 236; 15 Ry. & Can. Traff. Cas. 23—Ry. Com.

——**Complaint of Undue Preference — Appliance—Company a Party to Rate—No Relief Claimed.**]—Where a complaint of undue preference in regard to a through rate is made to the Railway and Canal Commission, the applicants are entitled to join as respondents any railway company which is a party to the through rate, even though the applicants do not ask for any relief as against such company. *Read, Holliday & Sons, Lim.* v. *Great Central Railway*, [1915] 3 K.B. 616; 31 T. L. R. 537—C.A.

Group Rates—Application by Port of London Authority to Fix Through Rates—Application for Leave to Intervene by other Railway Companies.]—On an application by the Port of London Authority against the Midland Railway under section 31, sub-section 1 of the Port of London Act, 1908, to fix certain through rates from the Royal Victoria Dock and the Albert Dock to various inland towns, the London and North-Western Railway and the Great Northern Railway asked for leave to intervene on the ground that they were directly concerned in the group rates applicable to rail-borne traffic to and from the docks, and further on the ground that their rights under various agreements made between them and the several dock companies, the predecessors in title of the Port of London Authority, would be prejudicially affected if the application of the Port of London Authority were granted :—*Held*, first, that the Railway and Canal Commission Court had jurisdiction to allow the intervention claimed; and secondly, that in the circumstances it was just and expedient that the intervention should be allowed. *Port of London Authority* v. *Midland Railway* (*No.* 1), 81 L. J. K.B. 600; [1912] 2 K.B. 1; 105 L. T. 558; 15 Ry. & Can. Traff. Cas. 23—Ry. Com.

Siding Rebate — Non-provision of Station Accommodation—Non-statutory Agreement—Similar Rates for Station and Non-station Traffic.]—By an agreement made in 1879 the defendant railway company undertook to allow to the applicants, who were traders at N., a rebate of 3*d.* per ton, in respect of the appli-

cants performing their own loading and unloading, on all goods delivered to or received by the railway company from the applicants, and the applicants agreed to pay an extra toll of 6*d.* for all goods carried over the Q. line of railway. By another agreement of 1892, made between the defendant railway company and the corporation of N., the railway company agreed not to make any charge in respect of the said Q. railway so long as the rates paid for traffic using that railway were the same as the rates paid for similar traffic to or from their goods station at N. The whole of the applicants' traffic used the said Q. railway and also a yard of the defendants adjoining the applicants' siding, and the rates paid in respect thereof had, subject to the rebate of 3*d.* per ton given by the agreement of 1879, always been the same as these charged for similar traffic using the defendants' good station, although nearly the whole of the applicants' traffic was loaded and unloaded on their own premises. The applicants had, since the agreement made by the corporation in 1892, ceased to pay the toll of 6*d.* per ton in respect of the Q. railway. Upon an application to determine the amount of rebate to be allowed off the rates paid by the applicants in respect of their having provided their own station accommodation,—*Held*, that on the evidence it was the intention of the parties when making the agreement of 1879 that, subject to the rebate of 3d. per ton, the applicants should pay the same rates as those charged for similar traffic using the defendants' goods station, on the basis that the accommodation in connection with the applicants' siding afforded at the railway company's yard was as valuable as that afforded to similar traffic at the station. *Held*, also, that the rates referred to in the corporation agreement of 1892 were rates which included station accommodation. *Newcastle Grain Co.* v. *North-Eastern Railway*, 14 Ry. & Can. Traff. Cas. 275—Ry. Com.

—— Terminal Station—Non-statutory Agreement—"Mileage" Charges.]—By an agreement made on April 13, 1864, the benefit whereof had since 1891 been vested in the applicants, the Vale of N. Railway Co., which in 1866 was amalgamated with the defendant railway company, agreed to construct certain sidings in front of certain warehouses, afterwards and at the date of the application leased to the applicants, and to work the traffic from the principal siding free of charge. Clause 6 of the said agreement was as follows: "The said warehouses shall in computing the amount of mileage to be paid to the said company be considered a terminal station in regard to all goods, wares, merchandises or other things conveyed thereto or therefrom on the said main line and no extra charge shall be made in consequence of the trucks, waggons, or carriages going to or from the said warehouses instead of to or from any ordinary terminus or station of the said company." The said sidings were duly constructed, and the same rates had always been charged for the traffic to and from such sidings as for similar traffic of other traders using the terminal station of the defendant railway company at S.:—*Held*, that the effect of the agreement was that the railway company were only entitled to charge the applicants in respect of the traffic to and from the said sidings a mileage rate calculated by the distance traversed both on the railway company's own line and on such sidings, and that the agreement being silent as to terminal charges the applicants were entitled to a rebate off the rates charged them in respect of their siding traffic. *Weaver & Co., Lim.* v. *Great Western Railway Co.*, 15 Ry. & Can. Traff. Cas. 1—C.A.

Similar Rates for Siding and Station Traffic Inference as to Inclusion of Terminal Charges in Station Rate—Measure of Rebate—Special Services.]—The applicants, who were metal manufacturers, were the owners of private sidings communicating with the railway of the defendant company. The same rates were charged by the defendants for the applicants' siding traffic as for similar traffic of other traders using the defendants' goods station at B. The defendants alleged that the station rate included no terminals owing to the existence of canal competition, and alternatively claimed that they were entitled to charge for special services rendered at and in connection with the applicants' siding. A siding rate book kept by the defendants stated that in the rates in question no charge was made for terminal accommodation or services:—*Held*, that, notwithstanding the statement in the siding rate book that no terminal charges were included in the station rates, it could not be assumed that the defendants were performing services and giving accommodation at their station for nothing, and that, therefore, some terminal charges were presumably included in their station rates, and, further, that, in view of the rates for both siding and station traffic being the same, it must be inferred that the siding rates included the same elements of charge as the station rates, thereby entitling the applicants to a rebate corresponding to the amount of such terminal charges. And that such rebate might be and was on the evidence counterbalanced in part by the charges which the defendants were entitled to make for services rendered by them in connection with the applicants' sidings, and that the proper method to ascertain the net rebate (if any) due to the applicants was to consider from a business point of view what was the money value of the accommodation provided and the services rendered at the station, and to deduct from that sum the value of the services rendered at the siding; the difference (if any) giving the rebate. *Muntz's Metal Co.* v. *London and North-Western Railway*, 14 Ry. & Can. Traff. Cas. 284—Ry. Com.

Special Services at Private Siding—Implied Request to Perform "Conveyance," when Terminated.]—The applicants had private sidings with certain railways for the supply of coal to their gasworks situate in several places in B.:—*Held*, that, owing to the lack of accommodation at one of the works and the difficulty of working the line to another, the railway company were required to perform, and there-

fore entitled to charge for, special services in addition to those incidental to conveyance. A request that such special services be performed need not be express, but can be implied from the necessities of the traffic. "Conveyance," properly so-called, does not terminate until the siding points are reached, but it must be a question of fact in each case whether the service rendered is incident to conveyance. *Birmingham Corporation* v. *Midland Railway*, 101 L. T. 920; 14 Ry. & Can. Traff. Cas. 24; 26 T. L. R. 46—Ry. Com.

Charge for "Sorting."]—The applicants dispatched a considerable outward traffic from their works. The outgoing trucks were placed on the applicants' siding in whatever order they happened to be ready, irrespective of their destination. It was necessary for the railway company before attaching them to the train proceeding to their destination to first take them to their own sidings and there sort them or arrange them according to their respective points of destination so that they might be attached to the proper train:—*Held*, that the trader must tender his traffic upon his siding in a condition reasonably fit for conveyance, and that this service of "sorting"—as distinguished from "marshalling" or the arranging the order of the trucks on a particular train—was not incident to conveyance, but was a special service for which the railway company were entitled to charge under section 5, sub-section 1 of the schedule to the Railway Rates and Charges Order Confirmation Act, 1891-2. *Ib.*

Charge for Use of Trucks — Distance not Exceeding Twenty Miles—Two Railways.]—Section 9 of the schedule to the London and North-Western Railway Company's Rates and Charges Order Act, 1891, authorises the company "to charge for the use of trucks provided by them for the conveyance of merchandise when the provision of trucks is not included in the maximum rates for conveyance any sums not exceeding the following (*inter alia*), "for distances not exceeding twenty miles, 4½*d.* per ton":—*Held*, that this rate of 4½*d.* per ton applied to the total transit and that the railway company were not entitled to charge a further rate in respect of the transit over another company's railway where the entire journey did not exceed twenty miles. *Ib.*

Weighing of Loaded Coal Waggons by Railway Company — Reasonable Charge for such Service—Notice to Discontinue.]—Section 5 of the schedule to the Railway Rates and Charges Orders Confirmation Acts, 1891-2, enacts that for certain services (which include "weighing merchandise": sub-section 3), when rendered to the trader "at his request or for his convenience," the railway company may charge a reasonable sum by way of addition to the tonnage rate. A railway company weighed coal, which had been loaded into waggons from the ship's side, and thus enabled a coal trader to furnish the particulars required by statute for his consignment note, it being practically impossible for the trader to weigh it himself before conveyance:—*Held*, that this was a service which was not included in the charge for terminal accommodation, but was performed in fact for the trader's convenience, and must at law be taken to be done at his request (*aliter*, where the railway company weighs goods to check the weights declared by the trader); that such service was therefore chargeable under the above section, and that a notice from the trader to the railway company stating that such service was not incurred at his request or for his convenience was inoperative, so long as he availed himself of it. *Great Southern and Western Railway* v. *Wallace*, 15 Ry. & Can. Traff. Cas. 75—Ry. Com.

Free Time for Detention of Railway Company's Waggons.]—*Held*, further, that under the circumstances the free time allowed to the trader for the use of the railway company's waggons before conveyance should be a period of one clear day after the day on which the coal in the waggons had been weighed and the note of such weighing was available for the consignor or his agent. *Ib.*

Private Waggons — Necessity of Repair — Siding and Shunting Charges—Jurisdiction of County Court.]—The respondent, who was a coal merchant, owned railway waggons which ran over the appellants' railway, and when they fell out of repair they were shunted on to a siding of the appellants and the respondent sent a man to repair them. The appellants brought a County Court action against the respondent for siding and shunting charges in respect of the waggons shunted on to their sidings for repair. The respondent had had notice of the company's charges for these services. The Judge held that he had no jurisdiction and that the matter should go before an arbitrator:—*Held*, on appeal, that the Judge had jurisdiction. *London and North-Western Railway* v. *Duerden*, 85 L. J. K.B. 176; 113 L. T. 285; 31 T. L. R. 367—D.

Demurrage on Waggons — Siding Rent — Rates — Traders' Waggons — Reasonable Facility.]—On an application with regard to differences which had arisen under section 5 of the Railway Rates and Charges Act, 1892, between railway companies and traders in respect of claims by the railway companies for the undue detention of waggons and waggon sheets, the Railway and Canal Commissioners *held* that the railway companies were entitled to claim in respect of the detention before conveyance of their waggons and sheets after the expiry of one day from the time the waggons or sheets were supplied; that they were entitled to claim for the detention of waggons and sheets after conveyance, in the case of shipment and siding traffic, after the expiry of four days from the time of arrival of the waggons or sheets at the port or siding, and in the case of station traffic after the expiry of four days from the notice of arrival of the waggons or sheets at the station; that in the case of coal for shipment an extra day should be allowed before conveyance free of demurrage. *Held*, further, that a trader cannot be called upon to pay for delay in conveyance which has been occasioned

by fog, snow, frost, or causes of a similar character, or by some error on the part of the railway company's servants. The accounts as rendered by the railway company to the trader should charge him with what the company is entitled to recover, and no more, as they have the means of knowing through their servants when this delay has occurred during the period of conveyance. The question whether it is a reasonable facility that goods should be conveyed in traders' trucks is one of fact, and necessarily depends on the circumstances of the case. In considering that question the Railway Commissioners are not confined to the convenience of the traders in a particular case, but may take into consideration the interests of the railway company as well as those of the trader, the comparative cost and convenience, and the effect of the facility sought on other traders and the public using the line. *Caledonian Railway* v. *Lanarkshire Coalmasters' Association*, 27 T. L. R. 221—Ry. Com.

—— Detention of Trucks—Right of Action for Damages—Reasonableness of Charges—Arbitration—"Difference."] —The London and North-Western Railway Company (Rates and Charges) Order Confirmation Act, 1891, s. 5, empowered the company to charge a trader a reasonable sum by way of addition to the tonnage rate for the detention of trucks beyond such period as should be reasonably necessary for enabling the consignee to take delivery of the goods, and provided that any difference arising under the section should be determined by an arbitrator:—*Held*, that the only case in which an action can be brought before arbitration for the recovery of such charges is a case where the defendant has agreed to the demand, but has refused to pay. Where this cannot be established the case must be treated as one in which a "difference" has arisen, and must be determined by an arbitrator in accordance with the provisions of section 5. *Held*, further, that where there has been an agreement by the defendant to pay the charges demanded, the Court has no jurisdiction to enquire into their reasonableness. *London and North-Western Railway* v. *Jones*, 84 L. J. K.B. 1268; [1915] 2 K.B. 35; 113 L. T. 724—D.

London and North-Western Railway v. *Donellan* (67 L. J. Q.B. 681; [1898] 2 Q.B. 7) and *Midland Railway* v. *Loseby* (68 L. J. Q.B. 326; [1899] A.C. 133) followed. *London and North-Western and Great Western Joint Railways* v. *Billington, Lim.* (68 L. J. Q.B. 162; [1899] A.C. 79), considered. *Ib.*

—— Detention of Railway Company's Waggons.]—Where corn was conveyed in a railway company's waggons a period of two clear days (terminating at 6 P.M. on the second day, or if a Saturday at 1 P.M.) after the notice of arrival at the station, exclusive of the day of arrival and of holidays, was held to be a reasonable time with which delivery should be taken, after which demurrage should accrue at the rate of 1*s.* 6*d.* a day per waggon and 3*d.* a day per sheet. The time allowed for unloading coal is not a precedent for other traffic. *North Eastern Railway* v. *Ferens*, 15 Ry. & Can. Traff. Cas. 17—Ry. Com.

—— Reasonable Free Time for Use of Waggons before and after Conveyance.]—The applicants' coal was loaded at North Wall, Dublin, from the ship's side into waggons of the defendant railway company upon the sidings of another railway company. The loaded waggons were weighed on the said sidings, and the weigh notes given to the applicants. Considerable detention having taken place in the dispatch of the said waggons to their destinations, the defendant railway company made a charge for demurrage, to which the applicants objected. Delay also took place in unloading the said waggons at their points of destination, which were situated in sparsely populated districts where the consignees were small farmers and small tradesmen living at remote distances from the railway, and the defendants had in such cases also made a charge for demurrage, to which objection was taken:—*Held*, that a period of one clear day after the day on which the coal had been loaded in Dublin—the loading to be regarded as completed when the loaded waggons were weighed and the weigh notes given to the applicants—was a reasonable free time for the use of the waggons before conveyance, and that a period of three days reckoned from 6 A.M. of the day after receipt of notice by the consignee of arrival of the waggons was a reasonable free time to take delivery and unload the traffic, Sundays, Feast Days, and the usual public holidays excepted; and, further, that at the expiration of the above periods a charge of 1*s.* 6*d.* per waggon per day was reasonable. *Wallace* v. *Midland Great Western Railway*, 15 Ry. & Can. Traff. Cas. 70—Ry. Com.

Undue Preference—Goods Carried by Railway Partly by Land and Partly by Sea—Competition with other Carriers by Sea—Through Rates—Rebates not Entered in Rate Book—Statement in Rate Book of Sea Proportion of Through Rate.] —The applicants were carriers by sea from Dublin to Manchester, the goods being forwarded to and from various inland towns in England by the defendants' railway. The defendants also carried goods by their own steamers from Dublin to Holyhead, and thence by their railway to the same inland towns in England at through rates which were fixed by agreement between the carriers at the English and Irish Traffic Conference. The applicants when they commenced business in 1897 carried goods to certain inland towns at rates lower than the defendants' through rates. The defendants, in order to meet the competition of the applicants, granted rebates, which were not entered in the defendants' rate books, to their customers in respect of the traffic from Dublin to those inland towns, with the result that the railway portion of the through rate—namely, the portion from Holyhead to the various inland towns—was, relatively to distance, lower per ton per mile than the rate from the Manchester Docks to those inland towns. The defendants, in order to comply with subsection 5 of section 33 of the Railway and

Canal Traffic Act, 1888, which requires a railway company that carries partly by land and partly by sea to state in their rate books kept at the port used by the railway company the proportion of the through rate appropriated to carriage by sea, entered the following note in their rate book kept at Dublin : "The sea proportion of rates in this book between Dublin and English stations is represented by a mileage share as for seventy miles of the throughout distance"; but no entry was made in the rate book kept at the port of Holyhead :—*Held*, that the defendants had committed a breach of section 14 of the Regulation of Railways Act, 1873, in not entering in their rate books the rates actually charged; that the fact that the defendants had in effect reduced their rates in order to meet the competition of the applicants did not amount to an undue preference of themselves, even though the charge per mile from Manchester was higher than the charge per mile from Holyhead, because a local rate cannot be compared with a portion of a through rate for the purpose of establishing a case of undue preference; that the statement in the rate book kept at Dublin as to the sea proportion of the through rate was a sufficient compliance with sub-section 5 of section 33 of the Railway and Canal Traffic Act, 1888, and that it was not necessary that the entry should also be made in the rate book kept at Holyhead. *Dublin and Manchester Steamship Co.* v. *London and North-Western Railway*, 83 L. J. K.B. 571; [1914] 2 K.B. 192; 108 L. T. 122; 28 T. L. R. 511; 15 Ry. & Can. Traff. Cas. 88—Ry. Com.

—— **Rebate not Published in Rate Book — Guarantee as to Amount of Traffic.**]—Where trustees for the control of a river navigation grant a rebate off their published rates for dock services to a firm of carriers on condition of their guaranteeing to bring a minimum annual quantity of traffic into the trustees' docks, although such carriers had for a considerable number of years brought in an amount of traffic largely in excess of the guarantee, and where no opportunity is given to competitive carriers to give a similar guarantee, the grant of such rebate amounts to an undue preference and cannot be justified. *Anderton Co.* v. *River Weaver Trustees*, 14 Ry. & Can. Traff. Cas. 136—Ry. Com.

—— **Special Agreement for Purchase by Railway Company of Private Railways — Consideration Partly Cash, Partly Services either Gratuitous or at Rates Lower than those Charged to other Persons — Public Policy — Ultra Vires — "Difference in treatment" — Justification by Agreement.**]—The S. Co. were in 1866 the owners of two ironworks and three collieries which were connected by about 4½ miles of private railways and sidings. The defendants were authorised by an Act passed in 1865 to acquire these private railways "by compulsion or agreement." An agreement was entered into in 1866 whereby the defendants purchased the private railways and sidings from the S. Co. By this agreement the defendants, besides paying 29,788*l.* as consideration money, covenanted as part of the consideration to perform on the purchased property the work previously done by the vendors in part gratuitously and in part at certain specified rates per ton, which rates were very much lower than those charged to other persons. The applicants complained that the work done by the defendants for the S. Co. under the agreement constituted an undue preference of that company. The Railway and Canal Commissioners held that, although a mere inequality in charge raised a presumption of undue preference, yet that presumption might be rebutted, and that in the present case the agreement of purchase, which was admitted to be fair and *bona fide* at the time it was made, explained and accounted for the difference of treatment, and that there was therefore, under the circumstances, no undue preference of the S. Co. :—*Held*, that the agreement was not invalid either on the ground of public policy or as being *ultra vires*, and that, the question of the validity of the agreement being the only point upon which an appeal lay, the decision of the Commissioners (78 L. J. K.B. 214; [1909] 1 K.B. 486) could not be disturbed. *Holywell Iron Co.* v. *Midland Railway*, 79 L. J. K.B. 460; [1910] 1 K.B. 296; 101 L. T. 695; 14 Ry. & Can. Traff. Cas. 1; 26 T. L. R. 110—C.A.

—— **Sea Competition—Rates Justified.**]—The applicants complained of an undue preference alleged to be shewn by the defendants to certain trade competitors of the applicants at and in the neighbourhood of Swansea, in that the same rates were charged both to the applicants and to such competitors for the conveyance of goods to certain common points of destination notwithstanding that the applicants were considerably nearer such destination. The defendants alleged that the rates complained of were justified on the ground of competition by sea :—*Held*, that such rates were justified where actual effective sea communication existed, but that in the case of the rates from Swansea to Derby, Crewe, and Leeds, an undue preference had been proved. *Muntz's Metal Co.* v. *London and North-Western Railway*, 14 Ry. & Can. Traff. Cas. 284—Ry. Com.

—— **Higher Rate—Justification.**]—Where a railway company charged higher rates to one of the applicants' gasworks than they did to another,—*Held*, that the higher rate was justified by there being no railway competition at that works. *Birmingham Corporation* v. *Midland Railway*, 101 L. T. 920; 14 Ry. & Can. Traff. Cas. 24; 26 T. L. R. 46—Ry. Com.

With regard to the reasonableness of times and charges, the point to be considered is the character of the act to be performed, and if such act is incidental to the production and tender of the goods it must be paid for, but if it is after such production it is covered by the conveyance rates. *North British Railway* v. *Coltness Iron Co.*, 14 Ry. & Can. Traff. Cas. 246—Ry. Com.

What is a reasonable time for demurrage and siding-rent cases considered. *Ib.*

"Detention" in section 5, sub-section 4 of the schedule to the Rates and Charges Order Acts, 1892, means "detention not due to the performance of acts which the railway com-

pany has to perform as carriers, nor to the performance of acts necessary to enable the consignor or consignee to give or take delivery —such giving and taking delivery not being the same as loading or unloading." *Ib.*

A railway company ought not to render accounts to a trader containing charges for all detentions, no matter how caused, thereby leaving him with the onus of pointing out any error, but should only charge him in respect of those detentions for which the railway company are entitled to recover. *Ib.*

A trader is not entitled to average the times during which waggons are detained by him, nor to add together the free time allowed both before and after conveyance, inasmuch as he is not entitled to keep a waggon for the whole of the free time, his duty being to discharge it with all reasonable dispatch. *Ib.*

—— **Waggon Hire.**]—The applicants complained of an alleged undue preference given to certain trade competitors, in that the applicants were charged higher rates for waggon hire than their competitors in respect of similar traffic :—*Held*, that waggon hire was an independent service, and the alleged difference in treatment, having been proved, must be redressed. *Chance & Hunt* v. *Great Western Railway*, 15 Ry. & Can. Traff. Cas. 241—Ry. Com.

Agreement Binding Tenants of Railway Company to Consign by One of Two Competing Lines.]—The applicants' line and the G. N. line each formed with the defendants' line a continuous line of railway from certain collieries to stations on the defendants' line, and were in competition with each other. The through rates by each were equal, but the apportionment as to the traffic coming over the G. N. line was the more favourable to the defendants. The G. N. Co. handled traffic in as convenient a manner as did the applicants. The defendants let land at the above stations for use as coal wharves, imposing and enforcing on each of their tenants as part of the terms of letting a condition that, the rates being equal, traffic consigned to these wharves should travel over the G. N. route :—*Held*, that this did not constitute an undue and unreasonable preference of or advantage to the G. N. Co., and did not deprive the applicants of reasonable facilities for conveying their traffic within the meaning of section 2 of the Railway and Canal Traffic Act, 1854. *London and North-Western Railway* v. *South-Eastern Railway*, 80 L. J. K.B. 484; [1911] 1 K.B. 534; 104 L. T. 349; 14 Ry. & Can. Traff. Cas. 165; 27 T. L. R. 172—Ry. Com.

Agreement Fixing Rates — Competitors.]—The respondents, a railway company, in accordance with a practice of long standing, performed certain services gratuitously for traders at Hull. The applicants, who were traders at Selby and were competitors of the Hull traders, made an agreement with the respondents, by which they obtained from the respondents a siding, and the rates for traffic to and from the siding were ascertained. At the time of the agreement the applicants knew of the practice at Hull. On an application for an order that the respondents should desist from giving an undue preference to the Hull traders,—*Held*, that, in view of the agreement, the complaint was not as to rates, but as to treatment, and that on the facts there was no undue preference. *Olympia Oil and Cake Co.* v. *North-Eastern Railway*, 15 Ry. & Can. Traff. Cas. 166; 30 T. L. R. 236—Ry. Com.

Discovery — Interrogatories.]—The applicants alleged an undue preference by the defendants of the town of G. The defendants denied that there was any undue preference. They said that if the rates from G. were lower, it was owing to the existence of water competition at G., and they further said that the rates charged were necessary in the interests of the public. On an application by the applicants for particulars and discovery, and for leave to administer interrogatories enquiring whether traders in G. had not from time to time before the application sent goods over the defendants' lines, and whether the rates charged to them were not the rates now complained of,—*Held*, that an order should be made for particulars of public interest and the discovery of communications and complaints in regard to the rates, but that an order for interrogatories should not be made until the applicants gave specific instances of the undue preference of which they complained. *Clayton & Shuttleworth* v. *Great Central Railway*, 29 T. L. R. 111—Ry. Com.

Discovery by Applicants before Delivery of Particulars of Application.]—Upon a complaint that the defendant railway company were unduly preferring certain trade competitors of the applicants by carrying their goods at lower rates than those charged to the applicants, an order was made by the Registrar that the applicants should be precluded at the hearing from giving evidence of specific consignments by themselves and their said competitors unless six weeks before the hearing they delivered to the defendants particulars identifying such specific consignments. Before any such particulars were delivered, a second order was made by the Registrar that the railway company should file an affidavit, stating what documents were or had been in their possession as from a certain date relating to the consignment of the said competitors' traffic to certain places mentioned in the application :—*Held*, that the application for discovery by the applicants was premature, and that they first ought to make their case by alleging specific instances in respect of which they claimed relief, in support of which they then could have discovery. *General Electric Co.* v. *Great Western Railway*, 15 Ry. & Can. Traff. Cas. 53—C.A.

—— **Measure of Damages.**]—Where applicants have proved a case of undue preference the damages they are entitled to recover from the railway company are such damages as they have actually sustained. *Prima facie*, these are the excess charges which the applicants have actually paid, but the railway company may shew that these do not represent the actual damage arising directly from the wrong

done. *Chanee & Hunt* v. *Great Western Railway*, 15 Ry. & Can. Traff. Cas. 241; 29 T. L. R. 483—Ry. Com.

3. Application under Cheap Trains Act.

Application for Additional Workmen's Trains.]—In considering an application under the Cheap Trains Act, 1883, for an order that additional workmen's trains should be run, the Railway and Canal Commissioners have to take into account, not only what the workmen can afford to pay, but also the circumstances of the railway company, the cost of running, and the cost of the construction and maintenance of the line and stations. *London County Council* v. *Great Eastern Railway*, 14 Ry. & Can. Traff. Cas. 224; 9 L. G. R. 1071; 75 J. P. 301; 27 T. L. R. 317—Ry. Com.

4. Other Matters.

Reference to Registrar.]—The Railway Commission Court has no express jurisdiction to order a reference to the Registrar to determine any question of fact—for example, as to what is "similar traffic." *Chanee & Hunt* v. *Great Western Railway*, 15 Ry. & Can. Traff. Cas. 241—Ry. Com.

Upon a reference to the Registrar there is strictly no right of appeal from his findings to the Railway Commissioners, such an enquiry being in the nature of an enquiry by the Court itself. The remedy is either to appeal to the Court of Appeal or to apply to the Commissioners under section 18, sub-section 2 of the Railway and Canal Traffic Act, 1888, to review or rescind, or vary the order directing the reference. *Ib.*

Power of Registrar to Award Costs on Interlocutory Applications.]—The Registrar of the Railway and Canal Commission Court has power to award costs on an interlocutory application, as the delegation to the Registrar by the Commissioners under rule 53 of the Railway and Commission Rules, 1889, of their authority to deal with interlocutory applications was an absolute delegation, and carried with it the same power as that conferred upon the Commissioners themselves of dealing with the costs of any interlocutory application. *Smith, Stone & Knight, Lim.* v. *London and North-Western Railway*, 83 L. J. K.B. 1690; [1914] 3 K.B. 1195; 111 L. T. 1117; 15 Ry. & Can. Traff. Cas. 321; 30 T. L. R. 645—Ry. Com.

I. SALE OF AND EXECUTION AGAINST.

See also Vol. XI. 1968.

Sale of Whole Permanent Way Material—Ultra Vires.]—A railway company, which had constructed its line under statutory powers, *held* not entitled to sell the rails, bridges, and other materials forming its whole permanent way, although it was financially impossible for it to continue to work the undertaking. *Ellice* v. *Invergarry and Fort Augustus Railway*, [1913] S. C. 849—Ct. of Sess.

Semble, that different considerations would arise in the case of a company which proposed only to sell the materials of an unremunerative branch line which was no longer in use. *Ib.*

Receiver and Manager of Undertaking — Application by Assignee of Judgment Creditor.]—Under section 4 of the Railway Companies Act, 1867, a person to whom a judgment against a railway company has been assigned may, without joining his assignor, apply for the appointment of a receiver and manager of the company's undertaking. *Freshwater, Yarmouth, and Newport Railway, In re*, 57 S. J. 593; 29 T. L. R. 568—Eve, J.

RAPE.

See CRIMINAL LAW.

RATES AND RATING.

I. POOR RATES AND RATES IN GENERAL.

A. Persons and Property Liable.

1. Owners and Occupiers in General.

See also Vol. XI. 1562, 1973.

Liability of Owner—Dwelling House wholly Let Out in Apartments not Separately Rated —Enactment Applicable "in all boroughs"—Parliamentary Borough Coming into Existence Subsequently to Enactment.]—The provision in section 7 of the Representation of the People

Act, 1867, that "Where the dwelling house or tenement shall be wholly let out in apartments or lodgings not separately rated, the owner . . . shall be rated in respect thereof," is not limited in its application to boroughs in existence at the date of the passing of the Act, but extends also to boroughs from time to time coming into existence after that date. Consequently, where a dwelling house is wholly let out in apartments not separately rated, even though such dwelling house be situated in a Parliamentary borough which did not become such until after 1867, the owner is rateable in respect thereof under the above provision of the Act of 1867, and he is accordingly liable to the full amount of the rate without being entitled to any commission or allowance under the Poor Rate Assessment and Collection Act, 1869, or otherwise. *Rex* v. *Roberts; Battersea Borough Council, Ex parte*, 83 L. J. K.B. 146; [1914] 1 K.B. 369; 109 L. T. 466; 77 J. P. 403; 11 L. G. R. 913; 57 S. J. 644—C.A.

West Ham Churchwardens v. *Fourth City Mutual Building and Investment Society* (61 L. J. M.C. 128; [1892] 1 Q.B. 654) considered and observations disapproved. *White* v. *Islington Borough Council* (78 L. J. K.B. 168; [1909] 1 K.B. 133), observations explained. *Ib.*

"Dwelling house or tenement . . . wholly let out in apartments or lodgings"—One Room in House Let as Office or Workshop—Remainder Let to Separate Tenants as Dwellings—Payment of Rates by Owner Subject to Allowance—Surcharge of Allowance.]—Two houses in a Parliamentary borough were let out in different rooms which were not separately rated at the date of the passing of the Representation of the People Act, 1867. In one house a room was used as a workshop, and in the other one was used as an office; the remaining rooms in each house were let to separate tenants and used as dwellings:—*Held*, that neither house was "wholly let out in apartments or lodgings" within the exception clause to section 7 of the Representation of the People Act, 1867, so that the owners of such houses were not liable to be rated instead of the occupiers; and consequently that the local authority were entitled under section 3 of the Poor Rate Assessment and Collection Act, 1869, to make agreements with the owners to receive the rates in respect of such houses from them subject to an abatement, the owners agreeing to become liable for the payment of the rates assessed in respect of the hereditaments, whether occupied or not. *Rex* v. *Roberts; Stepney Borough Council, Ex parte*, 84 L. J. K.B. 1577; [1915] 3 K.B. 313; 13 L. G. R. 1172; 31 T. L. R. 485—C.A. Affirming, 112 L. T. 164; 79 J. P. 94—D.

Flats Separately Rated.]—Certain blocks of flats, each of which was self-contained and had its front door opening on to a common staircase, were owned by the appellants, whose servants cleaned and lighted the staircase and worked the lifts. The tenant of each of the flats was entered on the valuation list as the rateable occupier of his flat:—*Held*, following *Western* v. *Kensington Assessment Committee* (76 L. J. K.B. 790; [1907] 2 K.B. 323), that the flats were houses or buildings let out in separate tenements within the footnote to Schedule III. of the Valuation (Metropolis) Act, 1869, and therefore that the assessment committee could allow a larger proportionate deduction from the gross value to ascertain the rateable value than the maximum fixed by Schedule III. *Consolidated London Properties* v. *Marylebone Assessment Committee*, 76 J. P. 478; 10 L. G. R. 1058—D.

Rateability of Tenant of House in Respect of Wall Used by Landlord as an Advertising Station.]—The respondent occupied a house at a rack rent, but by the terms of his agreement the use of the outside wall on one side was retained by his landlord to let as an advertisement or bill-posting station, and the respondent was to give free access to the garden of the premises to men sent to post bills or advertisements. The rent or payment for such use of the wall was received by the landlord, and the respondent received no remuneration in respect of it, and had no option or interest in the letting of the wall. The respondent's name having been inserted in the rate book as the person liable under section 4 of the Advertising Stations (Rating) Act, 1889, liable to be rated in respect of the advertising station,—*Held*, that as the whole of the premises were occupied by the respondent for purposes other than advertising, he was rightly rated under section 4 as the occupier of the premises, including the side wall, although the advertising station increased the value of the premises, and the landlord received the profits derived from it. *Lewisham Corporation* v. *Avey*, 76 J. P. 343; 10 L. G. R. 553—D.

Demise of Vaults at Docks—Wine Merchants—Retention of Control by Lessors—Liability of Lessees to be Rated.]—The Mersey Docks and Harbour Board in pursuance of their statutory powers demised to a firm of wine merchants certain vaults, together with a portion of the quay floor at their docks, to be used as a bonded warehouse. Upon the demised premises there was certain machinery which was used for the working of cranes and lifts belonging to the board, the working of which made it necessary that employees of the board should go down into the vaults several times a day and stay there for considerable periods, and the lease accordingly provided that the demised premises should be so worked by the lessees as not to cause any interference with or obstruction to the general working of the dock estate, and that the servants of the board should at all reasonable times have free access thereto for the purposes of such general working:—*Held*, that the terms of the lease and the nature of the demise were consistent only with exclusive occupation being given to the lessees for the purposes of their business, with such a control by the board as should prevent their duties and obligations from being interfered with, and that the granting by the board of such an exclusive occupation was not *ultra vires*. *Young* v. *Liverpool Assessment Com-*

mittee, 80 L. J. K.B. 778; [1911] 2 K.B. 195; 104 L. T. 676; 75 J. P. 233; 9 L. G. R. 366—D.

2. Crown, Government, and Public Property.

See also Vol. XI. 1593, 1980.

Premises Acquired by County Association for Purposes of Territorial Forces—Premises Occupied by Officer for Purposes of his Duties.]—Premises *bona fide* acquired by a county association under the Territorial and Reserve Forces Act, 1907, for the purposes of the Territorial Forces, are premises acquired by the Crown for Crown purposes, and as long as an officer, by arrangement with the county association, resides therein for the purpose of his duties under the Act of 1907, such premises are, as being used for Crown purposes, exempt from rating. Where, in such circumstances, the name of the officer in actual occupation of the premises has in fact been inserted in the rate book, the objection that the premises are exempt from rateability may be taken before the Justices on an application for a distress warrant. *Wixon* v. *Thomas; Lambert* v. *Same: Burrows* v. *Same*, 80 L. J. K.B. 104; [1911] 1 K.B. 43; 103 L. T. 730; 75 J. P. 58; 8 L. G. R. 1042; 27 T. L. R. 35—D.

—— Sergeant-Instructors—Official Residences.]—It is *intra vires* a county association formed under the Territorial and Reserve Forces Act, 1909, to hire houses for the purposes of official residences for non-commissioned officers in the regular army who are acting as sergeant-instructors; and the sergeant-instructors residing in such houses will not be liable to be rated in respect of them. Decision of the Divisional Court in *Wixon* v. *Thomas;* (80 L. J. K.B. 104; [1911] 1 K.B. 43) approved and followed. *Wixon* v. *Thomas; Lambert* v. *Thomas; Burrows* v. *Thomas*, 81 L. J. K.B. 686; [1912] 1 K.B. 690; 106 L. T. 312; 76 J. P. 153; 10 L. G. R. 267; 28 T. L. R. 232—C.A.

Buildings Held by Statutory Body and Occupied for Public Purposes.]—A statutory body of commissioners created for the purpose of holding buildings in Glasgow, which were used for certain public purposes—namely, Justiciary Courts, Sheriff Courts, and Justice of the Peace Courts,—*Held*, to be exempt from assessment both for owners' and occupiers' rates, except with regard to certain portions of the buildings which were let to the county council and for which rents were paid; and that in respect of these portions, seeing that they were held as mere investments, the commissioners were liable for the owner's rates. *Coomber* v. *Berks (Justices)* (53 L. J. Q.B. 239; 9 App. Cas. 61) followed. *Glasgow Court House Commissioners* v. *Glasgow Parish Council*, [1913] S. C. 194—Ct. of Sess.

Public Parks Dedicated by Statute to Public Use.]—Public parks owned and maintained by a corporation and yielding no profit fall to be entered in the valuation roll not at a merely nominal figure, but at the rent which a hypothetical tenant might be expected to give for them in their actual condition, irrespective of any limitations on their use in the hands of their present proprietors. *Edinburgh Parish Council* v. *Edinburgh Assessor* ([1910] S. C. 823) overruled. *Lambeth Overseers* v. *London County Council* (66 L. J. Q.B. 806; [1897] A.C. 625) distinguished. *Glasgow Parish Council* v. *Glasgow Assessor*, [1912] S. C. 818—Ct. of Sess.

Houses and offices in, and used by officials of, the public park are to be treated with the park as a *unum quid*. *Ib.*

Public Buildings in Public Parks—Museums—Official Residence of Superintendent.]—The public parks of Glasgow were severally entered in the valuation roll at a nominal value of 1*l.* each per annum, as being dedicated by statute to public uses, and included in that nominal value, as adjuncts of the parks in which they were situated, were—first, certain municipal museums, art galleries, and a winter palace; secondly, a house used as the official residence of the superintendent of all the city parks:—*Held*, first, that the museums, art galleries, and winter palace fell to be separately entered at their fair annual value in respect that, though no charges for admission were actually made, the corporation was entitled to levy reasonable charges; and secondly, that the superintendent's residence did not fall to be separately entered, but was properly to be regarded as a *unum quid* with the park in which it stood, and included in the relative nominal value of 1*l.* per annum. *Glasgow and Govan Parish Councils* v. *Glasgow Assessor*, [1911] S. C. 988—Ct. of Sess.

Method of Valuation — Comparison of Rentals.]—The proper method of valuing a large building centrally situated in Glasgow, the property of, and occupied as offices by, the Glasgow Parish Council:—*Held*, to be by a comparison with the rentals of premises of a similar character in the neighbourhood; and that the mere fact that the owners and occupiers were a statutory body, in whose place it might not be possible to find a similar tenant, was not a reason for adopting the "contractor's principle" of valuation. *Glasgow Parish Council* v. *Glasgow (Assessor)*, [1914] S. C. 651—Ct. of Sess.

Observed, that the "contractor's principle" can only legitimately be adopted if the method of comparison is wholly inapplicable or for the purpose of checking a valuation otherwise arrived at. *Ib.*

3. Sewers and Sewage Works.

See also Vol. XI. 1602, 1983.

Sewers.]—Sewers owned and occupied by a statutory body of commissioners fall to be entered in the valuation roll at the yearly rent which a hypothetical statutory tenant would give for them. That rent is represented by a sum made up by taking 3¼ per cent. on their total capital cost and adding thereto, in addition to landlord's rates and the average annual charge which would fall on a landlord for

maintenance, such a percentage on the cost of the sewers (as distinct from land and wayleaves) as, paid annually into a sinking fund, would provide for their complete renewal in one hundred years. In calculating the capital cost of sewers constructed by commissioners under their statutory powers, lands purchased by them are to be taken at the full prices paid, and there also fall to be included (*diss.* Lord Salvesen) the legal and engineering expenses incurred in acquiring the lands, but not the Parliamentary expenses of obtaining the Act nor (*diss.* Lord Cullen) sums paid as compensation for disturbance. The capital cost of existing sewers acquired and utilised is to be taken as the additional sum which would have had to be expended on new sewers by the commissioners had the existing sewers not been available. *Water of Leith Sewerage Commissioners* v. *Midlothian (Assessor)*, [1914] S. C. 664—Ct. of Sess.

Quære (*per* Lord Johnston), whether a hypothetical sinking fund is an item which ought to enter into the valuation of subjects of such a permanent nature as public sewers. *Ib.*

Sewers Partly Above and Partly Below Ground — Payment for Right of Entry.] — Sewers, whether overground or underground, are rateable wherever the occupation of them is "valuable" within the meaning of the decisions on the law of rating. *Dictum* of Lord Herschell, L.C., in *London County Council* v. *Erith Overseers* (63 L. J. M.C. 9; [1893] A.C. 562) criticised. *West Kent Main Sewerage Board* v. *Dartford Assessment Committee*, 80 L. J. K.B. 805; [1911] A.C. 171; 104 L. T. 357; 9 L. G. R. 511; 75 J. P. 305; 55 S. J. 363—H.L. (E.)

Sewage Farm—Evidence of Possible Alternative and Cheaper Scheme of Sewage Disposal.]—On an appeal to quarter sessions by the occupier of a sewage farm against a poor rate on the ground that the farm was overassessed, the appellant contended that the possibility of substituting another and cheaper system of sewage disposal, as compared to the existing system, should be taken into consideration, and that the cost and capital value of the existing land and works was no evidence of their rateable value. He produced evidence that the bacterial system was now in greater favour than the broad irrigation system in use at the farm, and would afford a great saving by needing a much smaller area of land, and by being carried out by gravitation instead of by pumping. But he admitted that the sewerage board had never formulated the suggested alternative scheme and that the figures produced were founded upon approximate estimates only. The quarter sessions were of opinion that the evidence as to the alternative scheme was too uncertain for them to act on, and dismissed the appeal:—*Held*, that although evidence as to the non-existent alternative scheme was not inadmissible, the quarter sessions, having heard and considered that evidence, were not bound by it, but could properly come to the conclusion that it was too uncertain for them to act upon it as shewing the true amount value of the hereditament. *Hall* v. *Seisdon Union*, 77 J. P. 17; 11 L. G. R. 48—D.

4. Places of Divine Worship.

See also Vol. XI. 1612, 1984.

Disused Wesleyan Chapel.]—The owners of a building, which had formerly been a Wesleyan Chapel, claimed exemption from a provisional apportionment of the estimated expenses of making up the adjoining street, on the ground that it was a place appropriated to public religious worship, and for the time being by law exempt from poor rates, within the terms of section 16 of the Private Street Works Act, 1892. The building had never been rated to the poor rate, and for the past five years had been used as a Sunday school and for religious services, preachings, and class meetings on week nights. A debating society met there once a week, and a Rechabite society once a month; a political meeting had been held there, as well as "at homes" in connection with chapel work, for admission to which sixpence was charged, and public entertainments, including a dramatic representation, for which charges to the public of one shilling and of sixpence were made:—*Held*, that, having regard to the purposes for which it had been used for the past five years, the building was not used as a chapel "exclusively appropriated to public religious worship" so as to be exempt from poor rates under section 1 of the Poor Rate Exemption Act, 1833, and consequently to be exempt from private street works expenses under section 16 of the Private Street Works Act, 1892, notwithstanding that it had not in fact been rated to the poor rate. *Walton-le-Dale Urban Council* v. *Greenwood*, 105 L. T. 547; 75 J. P. 541; 9 L. G. R. 1148—D.

5. Cemeteries.

See also Vol. XI. 1612, 1984.

Cemetery Owned by Public Authority under Statutory Powers.]—A cemetery was owned and carried on by a local authority under statutory powers. Under the statute they had power to sell lairs and to receive fees in respect of interments, but the expenditure on the cemetery as a rule exceeded the income:—*Held*, that the cemetery had an annual letable value in respect that the possession of it enabled the local authority to discharge a statutory duty, and accordingly that it should be entered in the valuation roll at that value and not at a merely nominal figure. *Edinburgh Parish Council* v. *Edinburgh Magistrates*, [1912] S. C. 793—Ct. of Sess.

6. Canals.

See also Vol. XI. 1626, 1986.

Subjacent Coal Mines—Expenses of Prevention of Subsidence — Parochial Principle — Distribution of Expenses.] — A canal passed through eighty-nine parishes and fourteen unions, and in many of the parishes over subjacent coal mines. 6,809 yards of the

canal were situated in the township of I., where there were very considerable coal workings which, from time to time, caused subsidences in the canal, towing paths, bridges, locks, and culverts. In making the poor rate and valuation list on which it was based for the parish of I., the overseers and assessment committee estimated the gross rental and rateable value by assessing the portion of the canal and towing path in the township as a separate hereditament and allowing certain deductions for the expense of maintenance, but they refused to recognise as a deduction permitted by section 1 of the Parochial Assessments Act, 1836, the expenditure actually incurred by the company in the maintenance and dredging of the canal, the maintenance of locks and bridges in the township and repairs and prevention of damage caused by subsidences :—*Held*, that the above expenses claimed by the canal company as deductions in the township of I. must be distributed over their whole system, and could not be as a whole debited to I., where the expenditure had taken place. *Leeds and Liverpool Canal* v. *Wigan Union*, 11 L. G. R. 634—D.

7. Waterworks.

See also Vol. XI. 1632, 1987.

Gathering Ground for Reservoirs—Acquisition to Prevent Pollution of Water—Acts of Occupation by Owner—Control—Plantations and Nurseries on Gathering Ground.] — The corporation of L. owned certain land which was occupied by their reservoirs and works, and received into the reservoirs the water which flowed from an adjoining gathering ground. In order to prevent pollution of the water flowing from it to their waterworks, the corporation purchased the gathering ground, which consisted of agricultural land and moorland. They thereupon demolished certain farmhouses on the land, abolished certain rights of pasturage and turf cutting, and limited the user of the land to purposes of sporting and afforestation. They planted a portion of the land with trees, converted another portion into nurseries, and let the sporting rights over the land to a lessee for a term of years, but did not exercise any other acts of occupation :—*Held*, that the corporation were in rateable occupation of the whole of the land in question —the moorland, plantations, and nurseries— as a gathering ground, the use of the land by them as a gathering ground for their commercial gain, and the use thereof as a game preserve as above described being sufficient to turn their possession into beneficial occupation, so as to render them rateable in respect of it. *Liverpool Corporation* v. *Chorley Assessment Committee*, 82 L. J. K.B. 555; [1913] A.C. 197; 108 L. T. 82; 77 J. P. 185; 11 L. G. R. 182; 57 S. J. 263; 29 T. L. R. 246—H.L. (E.) Order of Court of Appeal (81 L. J. K.B. 426; [1912] 1 K.B. 270) affirmed. *Ib.*

Land near River — Intake from River — Special Fitness of Land — Increased Value — Determination of Hypothetical Rent.] — In assessing the rateable value of the property of a waterworks company, consisting of a piece of land near a river with a pumping station and reservoirs thereon, an intake from the river and an aqueduct connecting it with the land, regard should be had not only to the cost of the land and premises, but also to the enhanced value arising from their special fitness for the purpose for which they are used, and in addition to a percentage on the cost a percentage on that enhanced value should also be included. No additional value should, however, be attributed to the premises by reason of the fact that the waterworks company makes an annual statutory payment to the conservators of the river for the right to take the water. *New River Co.* v. *Hertford Union* (71 L. J. K.B. 827; [1902] 2 K.B. 597) followed. *Metropolitan Water Board* v. *Chertsey Union*, 84 L. J. K.B. 1823; 113 L. T. 216; 79 J. P. 360; 13 L. G. R. 692—C.A. Reversed, 32 T. L. R. 168—H.L. (E.)

—— Consideration of Rate of Interest at which Occupier could Borrow Money.]—In assessing the rateable value of the property of an owner there is no principle of law which restricts the percentage to be taken on the value of the property to that of the interest at which the owner can borrow money, though the latter rate is a fact which may be considered in arriving at the former. *Ib.*

8. Licensed Premises.

Increased Licence Duty—Onus of Proof as to Value.]—The appellant, who was proprietor and occupier of licensed premises, claimed reduction of the former valuation on account of the increased licence duty imposed by the Finance (1909-10) Act, 1910 :—*Held*, that the increase in the duty established a *prima facie* case for reduction of the valuation, thus throwing upon the rating authority the onus of proving that the annual letting value had not been diminished. *Deards* v. *Edinburgh Assessor*, [1911] S. C. 918—Ct. of Sess.

Distillery — Increased Licence Duty.] — *Held*, that the increased licence duty imposed by the Finance (1909-10) Act, 1910, did not fall to be taken into account in valuing a distillery, the circumstances of a distillery being different from those of public-house premises. *North British Distillery Co.* v. *Edinburgh Assessor*, [1911] S. C. 927—Ct. of Sess.

Licensed Grocer's Premises.] — The principle laid down in *Deards* v. *Edinburgh Assessor* ([1911] S. C. 918) in the case of a public house—namely, that the increased licence duty imposed by the Finance (1909-10) Act, 1910, established a *prima facie* case for reduction of the valuation, *re-affirmed* and applied to a licensed grocer's shop, and the valuation reduced by half the amount of the increase of the duty. *Moyes* v. *Perth Assessor*, [1912] S. C. 761—Ct. of Sess.

Statutory Curtailment of Hours of Business.]—The curtailment of the hours during which business premises may be open introduced by the Temperance (Scotland) Act, 1913, —*Held*, not *per se* to establish a *prima facie* case for the reduction of the valuation of a

public house or throw upon the rating authority the onus of proving that the annual letting value of the premises had not been diminished. *Deards* v. *Edinburgh Assessor* ([1911] S. C. 918) distinguished. *Maxwell* v. *Galashiels Assessor*, [1915] S. C. 765—Ct. of Sess.

9. Golf Course.

Land Leased by Local Authority for Golf Course — Lands Yielding no Profit.] — The magistrates of a burgh, acting under statutory powers, obtained a forty years' lease of a piece of ground at a rent of 52*l.*, which they laid out and maintained as a golf course for the use of the inhabitants of the burgh. They levied charges for playing golf thereon, but these did not cover the cost of upkeep :—*Held*, that the subjects fell to be entered in the valuation roll at their fair annual value, and not at a merely nominal figure. *Edinburgh Parish Council* v. *Leith Magistrates*, [1912] S. C. 812—Ct. of Sess.

10. Bathing Staging.

Occupation — Bathing Staging Erected on Foreshore.]—The respondent was summoned to shew cause why he should not pay a general rate in respect of certain property described in the rate book as "Foreshore used for bathing and entertainment purposes near the Oval, Cliftonville." By a lease the appellant corporation gave the respondent certain rights over the foreshore for the purposes of bathing, and also gave him the right to erect a permanent staging for that purpose on the foreshore. On this staging the respondent had dressing boxes, &c. The Justices dismissed the summons, being of opinion that the respondent was not in occupation of the foreshore, but only had a monopoly for bathing and letting chairs for hire on that portion :—*Held*, that the respondent was in occupation, not only of the staging, but also of the foreshore upon which the staging stood, and that the description in the rate book was sufficient. *Margate Corporation* v. *Pettman*, 106 L. T. 104; 76 J. P. 145; 10 L. G. R. 147; 28 T. L. R. 192—D.

11. Railways.

See also Vol. XI. 1656, 1990.

Traffic Agreement between Two Railway Companies—Value of Line Apart from Agreement.]—By an agreement between the plaintiffs and the M. Railway, the traffic which would otherwise have passed over a portion of the appellant's line in a parish in the respondent union was transferred to the M. Railway : —*Held*, that in assessing the value of the appellant's line in the respondent union the quarter sessions were not precluded from considering the value of the line apart from the special bargains between the two companies. *London and North-Western Railway* v. *Thrapston Union*, 107 L. T. 788; 77 J. P. 25; 10 L. G. R. 1067; 29 T. L. R. 21—D.

Link Line of Railway — Line Worked at Loss — Consideration of Extraneous Circumstances.]—The East London Railway was a line without terminal stations, forming a link between the lines of several railway companies by whom it was leased under the East London Railway Act, 1882, at a rent which was calculated on the gross receipts, but was not to be less than 30,000*l.* per annum. For the last three years the working of the line had resulted in a net loss apart from the rent payable under the lease :—*Held*, confirming the decision of the Divisional Court, that, in fixing the rateable value of the line for the purpose of the quinquennial valuation list, quarter sessions were justified in taking into consideration extraneous circumstances such as the position, connections, and accommodations of the line, and in refusing to value it at a nominal sum. *East London Railway Joint Committee* v. *Greenwich Assessment Committee; Same* v. *Bermondsey Assessment Committee; Same* v. *Stepney Assessment Committee*, 82 L. J. K.B. 297; [1913] 1 K.B. 612; 107 L. T. 805; 77 J. P. 153; 11 L. G. R. 265; 29 T. L. R. 171 —C.A.

Great Central Railway v. *Banbury Assessment Committee* (78 L. J. K.B. 225; [1909] A.C. 78) explained. *North and South-Western Junction Railway* v. *Brentford Assessment Committee* (58 L. J. M.C. 95; 13 App. Cas. 592) applied. *Ib.*

—— Joint Line—Feeder—No Profits—Contributive Value — Basis of Assessment.] — The appellants were two railway companies, and they jointly owned a railway partly situated in the parishes of Hammersmith and Kensington. The appellants earned no profit on the line, but it had a contributive value as a feeder to their systems. On an appeal against the valuation of the line in these parishes quarter sessions held that they were not entitled to take into account the contributive value of the line, that neither of the appellant companies was a competitor for the occupation of the line, that no other competitor would give a rent sufficient to support the assessment appealed against, and that the line must be assessed solely with regard to the earnings within the parishes, and they reduced the assessment to a nominal figure :—*Held*, that in the absence of special circumstances the line was rateable on the annual value based upon the actual profits earned by it, and not on the value due to its increasing the profits on other parts of the appellants' system, and that as there was nothing in the facts to require any special method of valuation the assessment by quarter sessions must be affirmed. *Great Western and Metropolitan Railways* v. *Hammersmith Assessment Committee; Same* v. *Kensington Assessment Committee*, 85 L. J. K.B. 63; 59 S. J. 744; 31 T. L. R. 608—H.L. (E.) Reversing, 112 L. T. 10; 79 J. P. 57; 12 L. G. R. 1179 —C.A.

Coal in Owners' Waggons — One Route Loaded—Returning Empty by Another—Inclusive Charge — Gross Earnings.] — By the G. N. Railway Co. (Rates and Charges) Order Confirmation Act, 1891, where merchandise is conveyed in a traders' truck the company shall not make any charge in respect of the return

of the truck empty, provided that it is returned direct to the consignor. A portion of the gross receipts earned by the appellants in a certain parish was earned in respect of coal hauled through the parish in owners' waggons, and the waggons when empty had to be hauled back to the place from which they had been consigned without further payment. Most of the waggons when empty were hauled back by a different route, not passing through the parish in question. Quarter sessions on an appeal decided that the charges which the appellants made for the conveyance of coal in owners' waggons were made for the joint service of hauling the waggons when full and hauling them back when empty, and that the amount of the actual gross earnings of the appellants' railway in the parish from coal carried in owners' waggons was to be arrived at by making a deduction in respect of the return of the waggons:—*Held*, that the quarter sessions were right. *Great Northern Railway* v. *Hunslet Union*, 105 L. T. 544; 75 J. P. 460; 9 L. G. R. 1202—D.

12. Harbours.

See also Vol. XI. 1646, 1988.

Dredged Channel in Open Sea.]—A channel dredged by harbour commissioners outside the entrance to their harbour, and below sea-water mark, *held* not to be land and heritage owned and occupied by the commissioners within the meaning of the Lands Valuation (Scotland) Act, 1854. *Leith Docks Commissioners* v. *Leith Magistrates*, [1911] S. C. 1139—Ct. of Sess.

13. Docks and Wharves.

See also Vol. XI. 1647, 1989.

Expenses Incurred in Respect of Property Outside the Premises Rated — Shipbuilding Yard.]—The tenants of a shipbuilding yard adjoining a tidal navigable river incurred an annual expenditure in dredging the river outside the premises in their own occupation in order that yachts and boats should have access from the river to their wharves and jetties:—*Held*, that such expenditure was not an "expense necessary to maintain" the premises "in a state to command such rent" within the meaning of section 1 of the Parochial Assessments Act, 1836, and therefore could not be allowed as a deduction under that section in arriving at the rateable value of such premises. *White* v. *South Stoneham Union*, 84 L. J. K.B. 273; [1915] 1 K.B. 103; 112 L. T. 155; 79 J. P. 79; 13 L. G. R. 53—D.

14. Statutory Exemptions.

See also Vol. XI. 1696, 1996.

Exemption "from all taxes and assessments whatsoever" — New Rate Subsequently Authorised—Rate for Same Purposes as Old Rate — General Rate — Consolidated Rate — Police Rate.] — Section 51 of the statute 7 Geo. 3. c. 37 provided that certain lands in the City of London reclaimed from the river Thames under the provisions of that Act should vest in the owners of the adjoining land "free from all taxes and assessments whatsoever." The consolidated rate was created by the City of London Sewers Act, 1848, and the police rate by the City of London Police Act, 1839. Both rates are, under section 15 of the City of London (Union of Parishes) Act, 1907, levied and collected as one rate, termed the general rate. But this is only done for convenience of collection, and the two rates must be looked at separately:—*Held*, that the consolidated rate and also the police rate were substantially new assessments, and that therefore the rates were not within the exemption created by the statute 7 Geo. 3. c. 37, s. 51, as the exemption created by that statute only applied to taxes and assessments in existence when that Act was passed or others substituted for them. *Sion College* v. *London Corporation* (70 L. J. K.B. 369; [1901] 1 K.B. 617) applied. *Associated Newspapers, Lim.* v. *London Corporation (No. 2)*, 84 L. J. K.B. 1913; [1915] 3 K.B. 128; 113 L. T. 587; 79 J. P. 537; 13 L. G. R. 1011; 59 S. J. 545; 31 T. L. R. 432—C.A.

Decision of the Divisional Court (83 L. J. K.B. 988; [1914] 2 K.B. 822) affirmed as to the consolidated rate, but reversed as to the police rate. *Ib.*

B. Proceedings.

1. Distress.

See also Vol. XI. 1699, 1997.

Previous Payment in Respect of Non-existent Rate—Fraudulent Representation of Assistant Overseer.] — The overseers of the parish of H. had made a poor rate and a special sanitary rate on June 16, 1910, for the half-year ending the following September 30. Their assistant overseer, one S., fraudulently represented to the L. T. & S. Railway Co., who were ratepayers, that the rates had in fact been made on April 7, 1910, and induced them to send him on April 28 a cheque in payment, drawn to his order for 496*l.* 7*s.* 6*d.*, which he indorsed and paid into his private banking account. On April 30 S. drew a cheque on his private account for 472*l.* 3*s.* 2*d.*, which he paid (in order to cover his previous defalcations) to the credit of several accounts kept by the overseers at the bank. On August 15, 1911, demands for the amounts due under the rates of June 16, 1910, were served on the railway company, which they refused to pay. Upon the overseers applying for distress warrants, the Justices being of opinion that the overseers had received the proceeds or greater part of the proceeds of the cheque for 496*l.* 7*s.* 6*d.*, considered that they ought not to issue distress warrants, and dismissed the summonses:—*Held*, that the distress warrants ought to have been issued, for there was no evidence that the railway company had paid the rates made on June 16, 1910, as there were no such rates in existence when they paid the 496*l.* 7*s.* 6*d.* to S. on April 28; that the payment was not an effective payment of rates in advance to S., as assistant overseer, on account of rates for the half-year ending September 30;

and the payment of 472*l.* 3*s.* 2*d.* by S. to the overseers on April 30 was not a payment under the rate of June 16, but one he ought to have made in respect of an earlier rate. *Per* Avory, J. : An effective payment to an assistant overseer would be a sufficient answer without tracing the money as having been paid by the assistant overseer to the overseers themselves, seeing that, though not the servant of the overseers, he is the statutory officer appointed to demand and collect rates. *Hornchurch Union* v. *London, Tilbury, and Southend Railway*, 107 L. T. 293; 76 J. P. 385; 10 L. G. R. 731—D.

Application for Distress Warrant—Claim to Statutory Exemption—Jurisdiction of Justices to Give Effect to Exemption.] — Where an application is made to Justices for a distress warrant for non-payment of rates, the Justices have jurisdiction to entertain a defence raised by the defendant that he ought not to be rated at all by reason of some statutory exemption, or that if rated at all he ought not to be rated for the full rateable value, even though the facts necessary to raise such defence are not admitted or are disputed. So *held* by Bray, J., and Atkin, J.; Avory, J., dissenting. *Whenman* v. *Clark*, 84 L. J. K.B. 825; [1915] 1 K.B. 548; 112 L. T. 730; 79 J. P. 252; 13 L. G. R. 347—D.

Section 289 of the Thames Conservancy Act, 1894, provides that " all lands buildings . . . for the time being vested in the Conservators in respect of the Thames above London Bridge shall be exempt from all parochial charges rates taxes assessments impositions and payments whatsoever " :—*Held*, that a house and grounds on the banks of the Thames in the parish of Hampton Wick, transferred to the Conservators of the river Thames by the Corporation of London in 1857, which house had been let, and the rent of which had been applied by the Conservators for one or other of the purposes of the river Thames, were vested in the Conservators in respect of the Thames above London Bridge, and were, under section 289, exempt from parochial charges irrespective of any purpose for which the premises were occupied. *Held*, further, that parochial rates did not include the general district rate. *Ib.*

2. Appeal against Rates.

See also Vol. XI. 1714, 2001.

Appeal to Quarter Sessions — Gross Estimated Rental—Finality of Figure Appearing in Rate Book and Valuation List.]—The gross estimated rental of a rateable hereditament as it appears in the rate book and valuation list in accordance with the Parochial Assessment Act, 1836, s. 1, and schedule, and the Union Assessment Committee Act, 1862, ss. 14, 15, and schedule, is final as against the rating authority, so that it is not competent to the Court of quarter sessions, upon the ratepayer's appeal from the assessment and rate, to admit evidence tendered by the rating authority to shew that the gross estimated rental has been understated. The decision in *Horton* v. *Walsall Union* (67 L. J. Q.B. 804; [1898] 2 Q.B. 237), laying down the above rule, approved and applied. *Hendon Paper Works Co.* v. *Sunderland Assessment Committee*, 84 L. J. K.B. 476; [1915] 1 K.B. 763; 112 L. T. 146; 79 J. P. 113; 13 L. G. R. 97 —C.A.

Semble, a ratepayer, who has come to an agreement with the assessment committee for the insertion in the valuation list of a conventional figure for the gross estimated rental, may by his conduct estop himself from relying on the rule laid down in *Horton* v. *Walsall Union* (67 L. J. Q.B. 804; [1898] 2 Q.B. 237). *Ib.*

—— Appeal after Approval of Valuation List —Under-assessment of a Third Party—Notice of Objection to List—Notice Given to Third Party More than Twenty-eight Days after Deposit of List — Condition Precedent to Hearing of Appeal.] — On an appeal by a ratepayer to quarter sessions under section 1 of the Union Assessment Committee Amendment Act, 1864, against a poor rate, after the approval of the valuation list in conformity with which the poor rate is made, on the ground of the unfairness or incorrectness in the valuation of hereditaments in respect of which some third person is liable to be rated, the notice of objection to such list, the giving of which is a condition precedent to the hearing of such appeal, may be given by the appellant to such third person as well as to the assessment committee at any time, the provision in section 18 of the Union Assessment Committee Act, 1862, requiring that the notice of objection to the list shall be given to such third person within twenty-eight days of the deposit of the list, not being incorporated in section 1 of the Act of 1864. *Rex* v. *Bristol (Recorder)*; *Bristol Waterworks Co., Ex parte*, 82 L. J. K.B. 851; [1913] 3 K.B. 104; 109 L. T. 237; 77 J. P. 360; 11 L. G. R. 1023 —D.

Quære, whether section 1 of the Act of 1864 imposes as a condition precedent to the hearing of the appeal the giving of notice of objection to the valuation list to any persons other than to the assessment committee. *Ib.*

Warrant of Distress and Levy—Appeal to Quarter Sessions — Appeal against " Order " of Court of Summary Jurisdiction.]—An appeal to quarter sessions under section 7 of the Poor Relief Act, 1743, by a person against whom a warrant of distress has been issued for non-payment of poor rate, which has been followed by a levy, is not an appeal against an " order " of a Court of summary jurisdiction, and therefore the procedure as to the entering into recognisances prescribed by section 31, sub-section 3 of the Summary Jurisdiction Act, 1879, is not applicable. *Rex* v. *Lincolnshire Justices*, 81 L. J. K.B. 967; [1912] 2 K.B. 413; 107 L. T. 170; 76 J. P. 311; 10 L. G. R. 703; 23 Cox C.C. 102—D.

II. COUNTY RATES.

See also Vol. XI. 1738, 2006.

" Monies . . . to be paid in like manner as the money required . . . for the relief of the

poor" — Exemption — Hereditaments "free from all taxes and assessments whatsoever."] —By a statute, 7 Geo. 3. c. 37, it was provided that certain lands in the City of London, reclaimed from the river Thames under the Act, should be "free from all taxes and assessments whatsoever," and it has been decided that this exemption extended to the poor rate. By the County Rates Act, 1852, s. 26, the "guardians shall raise the monies required . . . to be paid in like manner as the money required by such guardians for the relief of the poor":—*Held*, that the rate under the Act of 1852 was only payable in respect of hereditaments which were rateable to the relief of the poor, and therefore that the exemption under the Act of George 3 extended to such rate, notwithstanding that by subsequent legislation part of such rate was made applicable to purposes other than the relief of the poor, which were not in the contemplation of the Legislature at the time when the exemption was granted. *London Corporation* v. *Associated Newspapers, Lim. (No. 1)*, 84 L. J. K.B. 1053; [1915] A.C. 674; 113 L. T. 1; 79 J. P. 273; 13 L. G. R. 673; 31 T. L. R. 266—H.L. (E.)

The Valuation (Metropolis) Act, 1869, was not intended to alter rights or the incidence of the county rate, but only to affect the machinery of collection. *Ib.*

Decision of the Court of Appeal (83 L. J. K.B. 979; [1914] 2 K.B. 603) affirmed. *Ib.*

Appeal — Hereditaments in the City — To what Court of Quarter Sessions Appeal Lies.] —By a precept issued by the London County Council, the Common Council of the City of London were required to pay a certain sum as the amount of the contribution payable by the City for general county purposes assessed and charged on the City in respect of a county rate. This rate was based upon the rateable value of hereditaments without deducting the value of those which were exempted from taxes and assessments by virtue of the provisions of 7 Geo. 3. c. 37:—*Held*, that an appeal by the Common Council from such rate lay to the Quarter Sessions for the County of London and not to the Quarter Sessions for the City of London. *Rex* v. *London County Justices; Rex* v. *City of London Justices*, 81 L. J. K.B. 932; [1912] 2 K.B. 556; 107 L. T. 196; 76 J. P. 380; 10 L. G. R. 535 —D.

—— Next Quarter Sessions after "cause of appeal" Arises—Repayment of Proportion of Rate Paid Prior to Giving of Notice of Appeal.]—A county rate which affected the parish of B. was made by the appellants in March, 1910. The first instalment was payable by the respondents as overseers of the parish of B. in two equal portions on May 21 and August 20, 1910. The second instalment was payable by the respondents in two equal portions on November 19, 1910, and February 18, 1911. A railway company on September 2, 1910, gave notice of appeal against their assessment to the poor rate in the parish of B. In April, 1911, as the result of that appeal, the assessment of the railway company was reduced, and the respondents repaid to the railway company and other objectors, whose assessments had also been reduced, the amounts by which the precepts for the poor rate as issued exceeded the poundage rate on the valuation list as reduced, which repayments amounted to the sum of 121*l.* 6*s.* in respect of over-assessment to the county rate as regards the instalments payable by August 20, 1910, and 107*l.* 5*s.* as regards the instalments payable by February 18, 1911. The respondents, on September 27, 1910, gave notice of appeal to the next quarter sessions against the county rate basis and also against the county rate made in March, 1910, on the ground that such rate was made on a county rate basis which was unfair, unequal, and incorrect:—*Held*, that the grievance of the respondents in respect of which they had a right of appeal, if it existed at all, arose either when the county rate was made in March, 1910, or when the assessment of the railway company was reduced in April, 1911, and that therefore the respondents had not appealed to the next quarter sessions after the cause of appeal arose, and that the quarter sessions had no jurisdiction to entertain the appeal. *Held*, also, that quarter sessions have no power under section 23 of the County Rates Act, 1852, when a rate or assessment has been set aside, decreased, or lowered, to order the repayment of a proportion of the moneys paid by a person, parish, township, or place in respect of the rate prior to the giving of the notice of appeal. *Glamorgan County Council* v. *Barry Overseers*, 81 L. J. K.B. 836; [1912] 2 K.B. 603; 108 L. T. 118; 76 J. P. 307; 10 L. G. R. 477 —D.

RECEIVER.

See COMPANY: EXECUTION.

RECOGNIZANCE.

See CRIMINAL LAW; JUSTICE OF THE PEACE.

REDEMPTION.

Of Mortgage.]—*See* MORTGAGE.

REFERENCE.

See ARBITRATION.

REMOTENESS.

See PERPETUITY.

REMOVAL OF PAUPERS.

See POOR LAW.

RENT.

See LANDLORD AND TENANT; DISTRESS.

REPAIRS.

Generally.]—*See* LANDLORD AND TENANT.

REPUTED OWNERSHIP.

See BANKRUPTCY.

RES JUDICATA.

See ESTOPPEL.

RESTITUTION OF CONJUGAL RIGHTS.

See HUSBAND AND WIFE.

RESTRAINT OF TRADE.

See CONTRACT.

RESTRAINT ON ANTICIPATION.

See HUSBAND AND WIFE.

RESTRICTIVE COVENANTS.

See LANDLORD AND TENANT; VENDOR AND PURCHASER.

RESULTING TRUST.

See TRUST AND TRUSTEE.

RETAINER.

Of Solicitor.]—*See* SOLICITOR.

Of Debt by Executor.]—*See* EXECUTOR AND ADMINISTRATOR.

RETURNING OFFICER.

See ELECTION LAW.

REVENUE.

A. Taxes and Duties.

B. Customs and Excise.

C. Stamps.

D. Commissioners.

A. TAXES AND DUTIES.

I. INCOME AND PROPERTY TAX.

a. Lands, Tenements, and Hereditaments.

See also Vol. XII. 139, 1223.

Schedule A—Additional First Assessment—Final Determination — Basis — Poor Law Valuation.] — Where an appeal against an original assessment to income tax (Schedule A) has been withdrawn by the appellant without any evidence being offered, there is no such final determination of the assessment by the Commissioners as would, under section 57, sub-section 10 of the Taxes Management Act, 1880, preclude them from making an additional first assessment under section 52 of the Act. In making an assessment to income tax (Schedule A) the Commissioners are entitled to have regard to the poor rate assessment without allowing themselves to be controlled by it. The fact that a brewer's assessment to income tax (Schedule D) is too high cannot be taken into consideration in deciding whether an additional first assessment under Schedule A, on a tied public house owned by him, has been properly made. *Gundry* v. *Dunham*, 32 T. L. R. 142—C.A.

Literary or Scientific Institution.] — The Juridical Society of Edinburgh, which was composed of persons who were, or intended to become, advocates or writers to the signet, maintained a library chiefly of law books, and published from time to time a style book of legal forms. It also held debates on legal questions, attendance at which was optional: —*Held*, that the society's premises were not exempt from income tax under the Income Tax Act, 1842, Sched. A, rule No. VI., in respect that the society was not a literary or scientific institution, but an association whose main objects were professional. *Farmer* v. *Edinburgh Juridical Society*, [1914] S. C. 731; 6 Tax Cas. 467—Ct. of Sess.

Exemption—Charitable Trustees—Property Occupied by Trustees—"Rents and profits."] —The exemptions from income tax under Schedule A of the Income Tax Act, 1842, given by section 61, No. VI., in favour of trustees for charitable purposes, does not extend to lands, tenements, or hereditaments in the actual occupation of such trustees, but is confined to cases where the trustees let their property to a tenant and receive rents and profits in respect of such letting. *Maughan* v. *Free Church of Scotland* (20 Ct. of Sess. (4th Series), 759; 30 Sc. L. R. 666; 3 Tax Cas. 207) approved of. Decision of Divisional Court (80 L. J. K.B. 788) reversed. *Rex* v. *Income Tax Commissioners; Essex Hall, Ex parte*, 80 L. J. K.B. 1035; [1911] 2 K.B. 434; 104 L. T. 764; 27 T. L. R. 466; 5 Tax Cas. 636—C.A.

b. Annual Profits from Trade, &c.

1. *Property and Persons Liable.*

See also Vol. XII. 147, 1225.

Trade Exercised "within the United Kingdom" — Agent having "receipt of any profits."] — A French company, having its head office in Paris and owning phosphate mines in Algeria, employed a firm of Scottish merchants as their sole agents for the sale of their phosphates in the United Kingdom. Contracts of sale were concluded by the agents in the United Kingdom, but no stock was held in this country, and the goods were shipped from Algeria, delivery taking place before they were landed in this country. By the terms of the contracts payment was "by cash in London," and in practice it was made by cheques on London, payable in some cases to the company and in others to the agents, and always sent (indorsed when necessary) by the agents to the company in Paris, by whom they were cashed. The agents were paid by commission, which was remitted to them by the company, and the name of the company did not appear in any directory, or

on any business premises in this country. The Income Tax Commissioners having found that the company carried on business in the United Kingdom, and that the agents were liable in payment of income tax on the assessed profits, —*Held* (Lord Dundas dissenting), that the company did not exercise any trade within the United Kingdom under section 2, Schedule D of the Income Tax Act, 1853, and that in any event the agents were not in receipt of the profits arising on sales in the United Kingdom within section 41 of the Income Tax Act, 1842. *Crookston* v. *Inland Revenue*, [1911] S. C. 217; 5 Tax Cas. 602—Ct. of Sess.

The appellants carried on business as merchants and commission agents in the United Kingdom, and sold goods on behalf of a firm of manufacturers at Verviers, Belgium. There was no written agency agreement. Offers received by appellants were submitted to the manufacturers for approval, and, if approved, were accepted by the appellants on behalf of the manufacturers. The goods were consigned to the appellants for delivery to customers in the United Kingdom. The appellants received payment for the goods and discharged the accounts on behalf of the manufacturers. The appellants sent sale accounts to the manufacturers monthly and rendered a quarterly statement for expenses and commission. They were paid by commission on business done and were liable for one-half of the bad debts :—*Held*, that the manufacturers were exercising a trade within the United Kingdom, and that the decision of the Commissioners in assessing the appellants, as agents, in respect of the profits derived by the manufacturers from the exercise of such trade was right. *Macpherson* v. *Inland Revenue*, [1912] S. C. 1315; 6 Tax Cas. 107—Ct. of Sess.

"Person residing in the United Kingdom" —Company Registered Abroad—Right to Exercise Control in the United Kingdom.]—A finding by the Commissioners of Income Tax that a company which is registered abroad is resident in the United Kingdom for the purposes of assessment to income tax, on the ground that the control and directing powers of the company are in England, is, if there is evidence to support it, conclusive. *American Thread Co.* v. *Joyce*, 108 L. T. 353; 6 Tax Cas. 162; 57 S. J. 321; 29 T. L. R. 266—H.L. (E.)

A company resides, for the purposes of income-tax assessment, at the place where its real business is carried on—that is, where the control and management of the company is exercised—notwithstanding that the details of its trade may not be ordinarily dealt with there. *Ib.*

The appellants were a shipping company registered in New Zealand with limited liability. The registered office of the company was in Christchurch, New Zealand, where business was transacted by a New Zealand directorate. There was a separate board of directors in London, and at the London office were kept the general books of the company, comprising all their accounts. General meetings were held yearly in London and Christchurch, but the accounts were prepared and examined in London and dividends were declared there. Registers of shareholders were kept in both countries. The New Zealand board managed the local business in New Zealand and negotiated independently the most important of the freight contracts, but it was found in the Case that with this exception all contracts of importance were entered into in London, where all important questions of policy were decided, the New Zealand directorate acting in effect as district managers of the London Board :—*Held*, following *De Beers Consolidated Mines* v. *Howe* (75 L. J. K.B. 858; [1906] A.C. 455), that the company was for income tax purposes resident in the United Kingdom. *New Zealand Shipping Co.* v. *Stephens*, 52 S. J. 13; 24 T. L. R. 172; 5 Tax Cas. 553—C.A.

—— **Business Abroad—Temporary Visits to United Kingdom.**]—A merchant carrying on business in Madras resided there, with his wife, during the whole of the year of assessment, not visiting the United Kingdom at all. His usual residence was in Madras, but, in nearly every year prior to the year of assessment, he had visited the United Kingdom, residing latterly with his wife and family in a house purchased in his wife's name out of moneys belonging to her and himself and owned by her. During the year of assessment some of his children resided in this house :—*Held*, that during the year of assessment he was not chargeable with Income Tax as a person residing in the United Kingdom. *Turnbull* v. *Foster*, 7 Fraser, 1; 42 Sc. L. R. 15; 6 Tax Cas. 206—Ct. of Ex. Scotland.

Residence of Foreigner—Yacht Anchored in Tidal Waters.]—A citizen of the United States had for the last twenty years lived on board his own yacht, which was anchored in tidal navigable waters within the port of Colchester in the county of Essex, obtaining provisions and necessaries from the nearest village. The yacht had always been kept fully manned and ready to go to sea at any moment :—*Held*, that the owner was a "person residing in the United Kingdom" within the Income Tax Act, 1853, s. 2, Sched. D, and was assessable to income tax accordingly. *Young, In re* (1 Tax Cas. 57; 12 Sc. L. R. 602), distinguished. *Brown* v. *Burt*, 81 L. J. K.B. 17; 105 L. T. 420; 27 T. L. R. 572; 5 Tax Cas. 667—C.A.

Sums "received in Great Britain in the current year"—Interest Re-invested Abroad in Purchase of Bonds—Bonds Transmitted to this Country—Sale of Bonds in this Country in Subsequent Year.]—The interest derived in 1907 from the American investments of a Scottish insurance company was re-invested in American bearer bonds, and the bonds were transmitted to this country in the same year. The bonds were afterwards sold, and the proceeds were received at the head office in August and October, 1908 :—*Held*, that the sums realised on the sale of the bonds, being sums "received in Great Britain" in respect of interest on foreign securities, were chargeable with income tax for the year in which the proceeds of the sales were received, although the interest had in fact been earned

prior to that year. *Scottish Provident Institution* v. *Inland Revenue*, [1912] S. C. 452; 6 Tax Cas. 34—Ct. of Sess.

Profits from Foreign Possessions—Place of Assessment—Jurisdiction of Commissioners.]—Section 108 of the Income Tax Act, 1842, dealing with profits arising from foreign possessions, is to be read as a proviso upon section 106, qualifying and excluding that section in the cases to which it applies, and therefore a person residing nearer to London than to any of the other ports mentioned in the section is assessable in London only in respect of profits arising from foreign possessions, and the Income Tax Commissioners acting for his place of residence have no jurisdiction. Decision of the Court of Appeal, *sub nom. Rex* v. *Kensington Income Tax Commissioners; Aramayo, Ex parte* (83 L. J. K.B. 1439; [1914] 3 K.B. 429), affirmed. *Kensington Income Tax Commissioners* v. *Aramayo*, 84 L. J. K.B. 2169; 59 S. J. 715; 31 T. L. R. 606—H.L. (E.)

Insurance Company—Investments Abroad—Interest not Remitted to United Kingdom.]—An insurance company, which had its head office in England, carried on an extensive fire insurance business in the United States, Canada, and Australia, and had investments in those countries, partly in order to comply with the law of those countries as to fire-insurance business, and partly as a profitable investment of capital. The interest and dividends on these investments were not remitted to England, but were used in the countries where they accrued to meet claims under policies in those countries:—*Held*, that the company was properly charged with income tax on such interest and dividends as being part of the profits and gains of their business under Case I. in Schedule D of the Income Tax Act, 1842. *Liverpool, London, and Globe Insurance Co.* v. *Bennett*, 82 L. J. K.B. 1221; [1913] A.C. 610; 109 L. T. 483; 6 Tax Cas. 327; 20 Manson, 295; 57 S. J. 739; 29 T. L. R. 757—H.L. (E.)

Judgment of the Court of Appeal (81 L. J. K.B. 639; [1912] 2 K.B. 41) affirmed. *Ib.*

Company Resident in England — Trade Carried on Abroad—Management.]—A company registered in England carried on business abroad. The business was entirely under the management and control of a local board of directors. The board of directors in England only met to receive reports and accounts, declare dividends, issue balance sheets, and exercise financial control over the company:—*Held*, that in so doing they did not take part in, or exercise control over, the carrying on of the business abroad, and that the profits of the business arose from foreign possessions, and fell to be taxed under Case V. of section 100, Sched. (D.) of the Income Tax Act, 1842, the business being carried on wholly outside the United Kingdom. *Mitchell* v. *Egyptian Hotels, Lim.*, 84 L. J. K.B. 1772; [1915] A.C. 1022; 6 Tax Cas. 542; 59 S. J. 649; 31 T. L. R. 546—H.L. (E.)

Decision of the Court of Appeal (83 L. J. K.B. 1510; [1914] 3 K.B. 118) affirmed; Earl Loreburn and Lord Parmoor dissenting. *Ib.*

Interest on Poor Rate Deposited in Bank—Claim for Exemption—"Yearly interest or other annual payment."]—Poor rates collected by overseers were paid by them into an account at a bank, and by a long-standing arrangement the bank, upon the footing that the account would continue to be kept there and would always be in credit, allowed interest on the daily balances without deducting income tax:—*Held*, that the interest allowed by the bank was not "yearly interest or other annual payment" within section 105 of the Income Tax Act, 1842, and that therefore the overseers were not exempted from being assessed to income tax in respect thereof under section 100, Schedule (D.). *Garston (Overseers)* v. *Carlisle*, 84 L. J. K.B. 2016; [1915] 3 K.B. 381; 13 L. G. R. 969—Rowlatt, J.

Foreign Trust Estate—Beneficiaries in the United Kingdom—Infants not Entitled to a Vested Interest—Remittances to Guardian for Maintenance and Education — Uncontrolled Discretion of Trustees.]—An American testator left property in America to American trustees upon trust to accumulate it for his grandchildren, who were minors, until they should respectively attain the age of twenty-five years, when each child was given a life interest in its share. The trustees were directed, out of the income of the share of the trust estate held in trust for each child, to make such provision as they in their uncontrolled discretion might think necessary or advisable for the suitable maintenance and education of such child. The children resided in England with their mother, who was their guardian, and the trustees from time to time remitted money to her for their maintenance and education:—*Held*, that the trust estate was a "foreign possession," in respect of which the remittances were received, and that they were therefore assessable to income tax under the Income Tax Act, 1842, s. 100, Sched. (D.), Case 5, and the Income Tax Act, 1853, s. 2, Sched. (D.), and that the guardian was chargeable on behalf of the infants under section 41 of the Income Tax Act, 1842. *Drummond* v. *Collins*, 84 L. J. K.B. 1690; [1915] A.C. 1011; 113 L. T. 665; 59 S. J. 577; 31 T. L. R. 482; 6 Tax Cas. 525—H.L. (E.)

Decision of the Court of Appeal (83 L. J. K.B. 729; [1914] 2 K.B. 643) affirmed. *Ib.*

Profits of a Railway—Guaranteed Interest by South African Republic—Line Taken by British Government—Payment of Arrears of Interest.]—In 1895 the South African Republic granted a concession for the construction of a railway, and guaranteed to a company, which was formed to take over the railway, payment of interest at the rate of 4 per cent. on its share capital. During the South African War the British military authorities seized and worked the railway, and ultimately the British Government gave notice to expropriate the railway under the terms of the concession, and undertook to pay all arrears of interest due under the guarantee. They accordingly paid 97,506*l.* 16*s.* 11*d.* as "guaranteed interest on share capital at 4 per cent. per annum from January 1st, 1899, to

November 14th, 1903," together with other sums becoming due by reason of the expropriation :—*Held*, that the sum of 97,506*l.* 16*s.* 11*d.* in question was not part of a sum paid by the British Government as the price of the company's undertaking, that it must be treated as the gross revenue earned by the Company as a trading company from January 1, 1901, to November 14, 1903, and that after deducting certain expenses of the company during the same period, the benefit of the three years' average must be applied, and income tax was payable on one-third of the balance only. *Pretoria-Pietersburg Railway* v. *Elwood*, 98 L. T. 741; 6 Tax Cas. 508—C.A.

"Profits or gains"—Golf Club—Fees Paid by Non-members. —A golf club, in accordance with the terms of the lease of its grounds, admitted non-members, upon payment of fees prescribed by the lessors, to play golf on the links and make use of the club house. The Income Tax Commissioners decided that the club was liable to be assessed to income tax in respect of these fees, less such proportion of the annual outlay in maintaining and keeping up the links and club house as the same contributions bore to the entire annual income of the club :—*Held*, that the club was assessable to income tax under Schedule D of the Income Tax Act, 1842, in respect of the "profits or gains" derived from the payment of fees by non-members; but that the method adopted by the Commissioners for arriving at the taxable profits was wrong, and the case must, in default of agreement, be remitted to them to ascertain the same. *Carlisle and Silloth Golf Club* v. *Smith*, 82 L. J. K.B. 837; [1913] 3 K.B. 75; 108 L. T. 785; 11 L. G. R. 710; 6 Tax Cas. 198; 57 S. J. 532; 29 T. L. R. 508—C.A.

Decision of Hamilton, J. (81 L. J. K.B. 581; [1912] 2 K.B. 177), affirmed. *Ib.*

—— **Negotiation Fee Paid to Agent on Sale of Estate under Irish Lands Purchase Acts.**]—The agent of an estate intended to be sold to the tenants under the provisions of the Irish Land Act, 1903, was employed by the vendors to negotiate the sales, under an agreement by which he was to receive out of the purchase money a commission of 3 per cent. on the amount of the same, and this agreement was sanctioned by the Estates Commissioners. The estate was sold and the amount of the commission paid out of the purchase money :—*Held*, that the commission was part of the annual gains and profits of the agent arising from his vocation as agent in respect of which he was assessable to income tax. *Humphrey* v. *Peare*, [1913] 2 Ir. R. 462; 6 Tax Cas. 201—K.B. D.

—— **Waterworks—Supply of Water by Rural Authority to Parishes in their Area—Profits in some, Losses in other Parishes—No Deduction of Losses from Profits — Separate Undertakings.**]—A rural sanitary authority, in pursuance of the powers granted to them by the Public Health Act, 1875, undertook the supply of water to various parishes within their area. The water thus supplied was purchased by the authority in bulk from the W. Corporation. The working of the water supply in some of the parishes resulted in a profit and in other of the parishes in a loss. Separate accounts were kept by the authority in regard to each of the parishes. Any deficiency resulting from the working of the water supply in a parish in any year was met by a special expenses rate levied upon all the ratepayers in that parish, and any surplus that might arise from the working of the water supply in any parish was carried forward to the credit of that parish in accordance with the provisions of the Public Health Act, 1875. The surveyor of taxes assessed the authority under No. III. of Schedule (A.), section 60 of the Income Tax Act, 1842, to income tax in respect of the profits made in each of the parishes in which a profit was made :—*Held*, that the waterworks carried on by the authority were not a single undertaking, but that the supply of water to each of the parishes was a separate concern; and *held*, therefore, that the surveyor had rightly assessed the authority to income tax in respect of the profits made in each of the parishes in which a profit was made. *Wakefield Rural Council* v. *Hall*, 81 L. J. K.B. 1201; [1912] 3 K.B. 328; 107 L. T. 138; 76 J. P. 437; 10 L. G. R. 1002; 6 Tax Cas. 181; 28 T. L. R. 589—C.A.

—— **Supply of Water—Rate—District Council.**]—A rural district council was bound by Act of Parliament to supply water to any ratepayers within its rural district who might make application therefor, and was empowered to collect a special rate from consumers of water so supplied :—*Held*, following *Glasgow Corporation Water Commissioners* v. *Miller* (23 Sc. L. R. 285) and *Dublin Corporation* v. *M'Adam* (20 L. R. Ir. 497), that the relation between the district council representing the general body of ratepayers and the consumers of water respectively is that of vendor and purchaser, and that the profit made by the district council is a profit within the meaning of the Income Tax Acts, and as such is liable to tax. *Mullingar Rural Council* v. *Rowles*, [1913] 2 Ir. R. 44; 6 Tax Cas. 85—K.B. D. (Ir.)

—— **Profit on Purchase and Re-sale of Property.**]—The memorandum of association of a limited company, a rubber syndicate, set forth that the objects of the company were (*inter alia*)—first, the acquisition and development of a rubber estate in the Malay Peninsula; secondly, the acquisition and development of rubber estates there or elsewhere, and the carrying on of the business of manufacturing and trading in rubber; and thirdly, the sale of the whole or any part of the business undertaking and property of the company. The company acquired two estates and expended money on their development; but before the estates reached the stage of producing rubber the company, finding its capital inadequate fully to develop the estates, sold its whole undertaking to a new company at a price which exceeded by 9,000*l.* the whole sums spent by the selling company in acquiring and developing the estates :—*Held*, that the business of the company not being the buying and selling of rubber estates, but the production

of and trading in rubber, this sum of 9,000*l.* could not be regarded as income assessable for income tax. *Californian Copper Syndicate* v. *Inland Revenue* (6 F. 894) distinguished. *Assets Co.* v. *Inland Revenue* (24 R. 578) and *Stevens* v. *Hudson's Bay Co.* (25 T. L. R. 709) followed. *Tebrau (Johore) Rubber Syndicate* v. *Farmer*, [1910] S. C. 906; 5 Tax Cas. 658—Ct. of Sess.

—— **Realisation Company — Conversion of Securities.**]—Where the owner of an investment realises it, and obtains a higher price than he originally gave for it, the enhanced price is not "profit" within the meaning of the Income Tax Acts (Victoria); but where a company was formed to hold and nurse the assets of certain banks which were in liquidation, and to sell the securities at a profit when an occasion presented itself,—*Held*, that such company was a trading company, and that the surplus realised by it from selling the assets at enhanced prices was taxable as profit under section 9 of the Income Tax Act, 1903 (Victoria). *Californian Copper Syndicate* v. *Harris* (6 Fraser, 894; 5 Tax Cas. 159) approved and followed. *Commissioner of Taxes* v. *Melbourne Trust*, 84 L. J. P.C. 21; [1914] A.C. 1001; 111 L. T. 1040; 30 T. L. R. 685—P.C.

—— **River Conservancy Board — Statutory Contributions to Board's Income by Companies Interested in Navigation of River.**]—The Humber Conservancy Board were invested by statute with the duty of maintaining and improving the navigation of the Humber. Their receipts, applied to the above purposes, consisted in the first place of certain shipping and registration dues, and some rents, fees, &c., upon which they paid income tax, and in the second place of certain contributions, paid annually to the board under compulsion of statute, by certain railway and canal companies interested in the navigation of the Humber:—*Held*, that these contributions must be treated as part of the board's income, and were assessable to income tax either as representing the annual value of an inland navigation within section 60, Schedule A, No. III. rule 3 of the Income Tax Act, 1842, or as annual profits or gains under Schedule D, Sixth Case. *Humber Conservancy Board* v. *Bater*, 83 L. J. K.B. 1745; [1914] 3 K.B. 449; 111 L. T. 856; 6 Tax Cas. 555—Scrutton, J.

Exemption Forbidden by Statute — Subsequent Act Authorising Annuity Free from all Taxes — Super-tax.] — By section 187 of the Income Tax Act, 1842, any future Act conferring an exemption from taxes shall not exempt any person from the duties granted by the Act of 1842. By section 1 of an Act of 1871 (34 Vict. c. 1) the Crown was empowered to grant to Princess Louise an annuity of 6,000*l.* "free from all taxes, assessment, and charges." By section 66 of the Finance (1909-10) Act, 1910, a super-tax was imposed on incomes over 5,000*l.*:—*Held*, that the Acts of 1842 and 1871 being inconsistent, the later Act must prevail, and that therefore the annuity was exempt from income tax. *Argyll (Duke)* v. *Inland Revenue Commissioners*, 109 L. T. 893; 30 T. L. R. 48—Scrutton, J.

Relief—Earned Income—Business Carried on by Trustees for Minor Beneficiaries.] — Testamentary trustees carried on a business forming part of the residue of the trust estate for behoof of two daughters of the testator who were minors. These daughters were the sole beneficiaries interested in the residue of the estate, and the whole profits of the business were paid over each year to or on behalf of these daughters. By the terms of the trust deed each of these daughters, on attaining majority, was entitled to one-half of the free trust estate, but during their minorities they had no absolute right to any part of the income of the trust, although the trustees were authorised to apply any part of the income of the prospective share of each for her maintenance or education. As neither of the daughters had an income exceeding 2,000*l.* per annum, a claim was made on their behalf for relief from income tax with regard to the profits of the business in respect that these profits were "earned income" within section 19 of the Finance Act, 1907:—*Held*, that the beneficiaries were not entitled to the relief sought in respect that the income was not earned by them. *Inland Revenue* v. *Shiels's Trustees*, [1915] S. C. 159; 6 Tax Cas. 348—Ct. of Sess.

2. *Mode of Assessment.*

See also Vol. XII. 157, 1238.

Profits of Trade — Single-ship Company — Loss of Ship and Acquisition of New Ship—Computation of Average Profits—Commencement of Business.] — The appellants were registered in 1901 as a limited company to acquire and trade with a certain steamship, and, in the event of its loss, to acquire and trade with another, but were in no event to own more than one steamship at any one time. The steamship first acquired was lost in April, 1906, and with the insurance moneys the appellants purchased another ship and traded with it from October, 1906:—*Held*, that the appellants were carrying on one business from the beginning in 1901, and that they did not commence a fresh business when they commenced to trade with the second ship so acquired, and consequently that they were to be assessed on the average of their profits for the three years preceding the assessment, and not on the profits of one year. *Merchiston Steamship Co.* v. *Turner*, 80 L. J. K.B. 145; [1910] 2 K.B. 923; 102 L. T. 363; 11 Asp. M.C. 487—Bray, J.

Trade Commenced in Year Preceding Year of Assessment—First Balance Sheet Struck during Year of Assessment — Competency of Considering Profits Earned during Year of Assessment.]—A company commenced business on September 13, 1911, and its first balance sheet was struck at November 20, 1912, thus covering a period of 434 days' trading. The Inland Revenue assessed the company for income tax for the year April 5,

1912, to April 5, 1913, on the basis of the profits disclosed for this period of 434 days, by taking 365-434ths of that sum as representing one year's profits. The company contended that it was incompetent to take into consideration any profits earned after the commencement of the year of assessment, and accordingly that the year's profits, on which they fell to be assessed, must be estimated on the basis of the profits actually earned by them during the period September 13, 1911, to April 5, 1912 :—*Held* (Lord Johnston *diss.*), that the method adopted by the Inland Revenue was right. *Glensloy Steamship Co.* v. *Inland Revenue*, [1914] S. C. 549; 6 Tax Cas. 453—Ct. of Sess.

Average Profits and Gains—Patent—Royalties — Cessation of Payments.] — Section 25, sub-section 1 of the Finance Act, 1907, provides that "In estimating, under any schedule of the Income Tax Acts, the amount of the profits and gains arising from any trade, manufacture, adventure, concern, profession, or vocation, no deduction shall be made on account of any royalty, or other sum, paid in respect of the user of a patent, but the person paying the royalty or sum shall be authorised, on making the payment, to deduct and retain thereout the amount of the rate of income tax chargeable during the period through which the royalty or sum was accruing due." Previously to January 1, 1907, the appellants had paid royalties for the use of certain patents which, in consequence of arrangements made between the appellants and the owners of the patents, ceased to be payable after that date. The question was how the trade profits of the appellants during the year 1907 to 1908 ought to be estimated, having regard to the above sub-section :—*Held*, that the operation of the first part of the sub-section was dependent upon that of the latter part, and that, inasmuch as the latter part could have no operation under the circumstances, the appellants were in the same position as before the enactment, and were therefore entitled to deduct the royalties paid by them during the three years of average for the purpose of estimating their profits during the year of assessment. *Lanston Monotype Corporation* v. *Anderson*, 80 L. J. K.B. 1351; [1911] 2 K.B. 1019; 105 L. T. 398; 5 Tax Cas. 675—C.A.

Balance of Profits and Gains—Fire Insurance Company — Prepaid Unearned Premiums —Estimate.]—In the assessment to income tax of fire insurance companies there is no rule of law by which to frame an estimate of the balance of profits and gains after allowing for the unexpired risks when the accounts are made up; it is a question of facts and figures in each case whether the assessment is fair both to the Crown and to the subject. *General Accident, Fire, and Life Assurance Corporation* v. *M'Gowan* (77 L. J. P.C. 38; [1908] A.C. 207) discussed and explained. *Sun Insurance Office* v. *Clark*, 81 L. J. K.B. 488; [1912] A.C. 443; 106 L. T. 438; 6 Tax Cas. 59; 56 S. J. 378; 28 T. L. R. 303—H.L. (E.)

In the case of the appellants the Commissioners of Taxes for the City of London were of opinion that 40 per cent. of the premiums income carried forward in each year was a reasonable and proper allowance or deduction by way of unearned premiums, and did not form part of the profits and gains for the year. Bray, J., affirmed the view of the Commissioners, which was in favour of the appellants, but his decision was reversed by the Court of Appeal. The House reversed the decision of the Court of Appeal, and restored that of Bray, J. *Ib.*

Trading Profits—Ascertainment—Purchase of Going Concern — Entries in Purchaser's Books made for Book-keeping Purposes.] — A limited company was formed to take over as a going company the manufacturing business then being carried on by a company in liquidation. The consideration was 25,000*l.* in cash and an obligation to relieve the sellers of certain contingent liabilities which could only emerge and be ascertained at a future date. For the purpose of keeping their books the new company allocated the purchase price of 25,000*l.* as follows : 19,375*l.* to buildings, plant, &c. (arrived at arbitrarily by taking one-third of the values standing in the books of the old company), and the remainder, 5,625*l.* to stock-in-trade. They at the same time valued the stock-in-trade on an ordinary stock-taking basis, which brought out the value at 12,798*l.* 1*s.* 4*d.* They used this valuation for their trading and profit and loss accounts, and squared these with the opening entry of 5,625*l.* by treating the difference—namely, 7,193*l.* 1*s.* 4*d.*—as a "stock suspense account" to provide for the contingent liabilities they had undertaken under the contract of purchase. When the first balance sheet for a complete year of trading was made up by the company, the Inland Revenue claimed income tax on their profits calculated on the basis of taking the sum of 5,625*l.* as the opening value of the stock. The company maintained that the figure that should be taken was the true value of the stock—namely, 12,798*l.* 1*s.* 4*d.* :—*Held*, that the Inland Revenue was not entitled to take the purely book-keeping entry of 5,625*l.* as conclusive evidence of the true value of the stock, but was bound to ascertain the true value and assess for income tax on that basis. *Craig (Kilmarnock), Lim.* v. *Inland Revenue*, [1914] S. C. 338—Ct. of Sess.

Deductions—Brewery Company—Balance of Profits or Gains — "Tied" Houses Let to Tenants — Compensation Levy — Landlord's Share.]—A brewery company, upon being assessed under Schedule D of the Income Tax Act, 1853, in respect of the profits of their trade, claimed to deduct from the amount of those profits the sum expended by them as landlords of certain "tied" houses in respect of the proportion of the compensation levy imposed upon them by section 3 of the Licensing Act, 1904. The tied houses were owned by the company and were let to tenants upon the terms that the tenants should only deal with the company in the way of their business, and should buy all the beer consumed on the premises from the company, the tenants paying a lower rent in consideration therefor. It was found as a fact that the profits of the

company were greatly increased by the employment of the houses, and that they were necessary in order to enable the company to carry on their business profitably :—*Held* (the House of Lords being equally divided in opinion on the question), that the respondents were entitled to the deduction claimed. *Smith* v. *Lion Brewery Co.*, 80 L. J. K.B. 566; [1911] A.C. 150; 104 L. T. 321; 75 J. P. 273; 55 S. J. 269; 27 T. L. R. 261; 5 Tax Cas. 568—H.L. (E.)

—— **Expenses of Tied Houses—Disbursements or Expenses Wholly or Exclusively Laid Out and Expended for the Purposes of Trade or Business.**]—Where a trader acquires a particular interest in property wholly and exclusively for the purpose of using that interest to secure a better market for the commodities which it is his trade to sell, the expenses which he properly and reasonably incurs in connection with that property are " expenses wholly or exclusively laid out for the purposes of such trade " or business, within the meaning of the Income Tax Acts. Therefore, where the owners of a brewery business acquired, by purchase or lease, licensed houses, the tenants of which were bound by an agreement to purchase from the company all the liquor which they sold by retail, all expenses properly incurred in respect of such houses, in order to promote the sale of the goods supplied by the company, may be taken into account in estimating the balance of the profits and gains on the brewery business. *Russell* v. *Town and County Bank, Lim.* (58 L. J. P.C. 8; 13 App. Cas. 418), and *Smith* v. *Lion Brewery Co.* (80 L. J. K.B. 566; [1911] A.C. 150), principle applied. *Brickwood & Co.* v. *Reynolds* (67 L. J. Q.B. 26; [1898] 1 Q.B. 95) commented on. *Usher's Wiltshire Brewery* v. *Bruce*, 84 L. J. K.B. 417; [1915] A.C. 433; 112 L. T. 651; 6 Tax Cas. 399; 59 S. J. 144; 31 T. L. R. 104—H.L. (E.)

Decision of the Court of Appeal (83 L. J. K.B. 1038; [1914] 2 K.B. 891) reversed. *Ib.*

—— **Profits of a Brewery Company.**] — A brewery company, in the course of, and for the purpose of, their business, acquired licensed houses which were let to tenants subject to the usual tie covenants. The company claimed that in the computation of their profits as brewers for assessment under Schedule D the following expenses incurred in connection with these tied houses should be allowed : (1) Compensation levy on tied houses; (2) Premiums paid by the company for insuring tied houses against fire; (3) The differences between the assessment to Income Tax, Schedule A, in respect of freehold tied houses or rents of leasehold houses on the one hand, and the rents received from the tied tenants on the other hand; (4) Replacement of fixtures and fittings of tied houses; (5) Repairs to tied houses. Having regard to the findings in the case, counsel for the Crown consented to an order reducing the assessment by the amount of the deductions claimed. *Youngs, Crawshay & Youngs, Lim.* v. *Brooke*, 6 Tax Cas. 393—Hamilton, J.

—— **Profits of Trade — Interest Payable on Short Loans.**] — A company carrying on a financial and banking business at home and abroad borrowed money from its foreign bankers, by whom it was allowed a large overdraft, and paid interest on the amount so borrowed, and also from time to time on the amount of the overdraft :—*Held*, that in assessing for income tax the profits and gains of its business, the company was entitled to deduct the amount of interest paid to the bankers on the loan and the periodical amounts of the overdraft. *Farmer* v. *Scottish North American Trust, Lim.*, 81 L. J. P.C. 81; [1912] A.C. 118; 105 L. T. 833; 28 T. L. R. 142; 5 Tax Cas. 693—H.L. (Sc.)

—— **Payment to Secure Controlling Interest in Rival Firm.**]—S. & L., a firm of tube manufacturers, entered into an agreement with W., another firm of tube manufacturers, whereby, in return for the right to nominate a majority of the directors of W., S. & L. undertook to pay to W. each half-year such sum as might be necessary to make up any deficit in the dividend on W.'s preference shares. In pursuance of this agreement, in the year 1904 S. & L. made payments to W. of sums amounting to 841*l.* In estimating their profits for that year for income tax purposes, S. & L. claimed to deduct from the profits this sum of 841*l.* The Income Tax Commissioners held that S. & L. had expended this sum for the purposes of their trade and that they might sell their goods at a better price, and allowed the deduction :—*Held*, that the deduction had been rightly allowed. *Moore* v. *Stewarts & Lloyds, Lim.*, 8 F. 1129; 6 Tax Cas. 501—Ct. of Sess.

—— **Voluntary Levies Wholly Expended for Purpose of Trade—Levy Paid to Coal Owners' Association—Deduction of Levy by Individual Member of Association.**] — The funds of a coal owners' association were derived from voluntary subscriptions or levies collected by the association from its individual members, and were expended (*inter alia*) on the following objects—namely, first, expenses of the Conciliation Board; secondly, subscriptions to the Mining Association of Great Britain; and thirdly, experiments on the explosive properties of coal dust made at the request of the Government :—*Held*, that an individual member of the association, in stating the profits of his business for the purpose of income tax, was entitled to deduct that proportion of the levy paid by him to the association which related to the first of the above objects, but not the proportions relating to the second or third, in respect that a payment towards the first of these objects was, whereas a payment to either of the latter was not, one which, had it been made by the individual member directly, could have properly been deducted by him as money wholly expended for the purpose of his trade. *Lochgelly Iron and Coal Co.* v. *Inland Revenue*, [1913] S. C. 810; 6 Tax Cas. 267—Ct. of Sess.

—— **Voluntary Association of Traders for Maintaining Prices — Contributions Paid by Member to Association.**] — A firm of iron-

founders, members of a trade association whose object under its rules and regulations was to keep up and raise the prices of the products sold by its members, claimed the right to deduct from the return of the profits of their business for the purpose of income tax their contributions to the association, as being moneys wholly and exclusively expended by them for the purposes of their trade :—*Held*, that, in order to establish that the contributions were moneys so expended, it was not sufficient for the firm to prove that they had paid the contributions to the association, and to produce the rules and regulations of the association, but that they must produce to the Special Commissioners the accounts of the association in order that the Special Commissioners might ascertain from them how the contributions had, in fact, been expended. *Grahamston Iron Co.* v. *Inland Revenue*, [1915] S. C. 536—Ct. of Sess.

—— **Expense of Promoting Parliamentary Bill for Construction of Railway to Increase Traffic Facilities.**]—Coalmasters owning mines in a certain district, having failed to obtain satisfactory railway facilities from the only railway company owning lines in that district, promoted two Parliamentary Bills for authority to construct a line to serve the coal-field. The Bills were opposed by the railway company, and, upon that company giving a parliamentary obligation to provide the facilities required by the promoters, the Bills were by consent thrown out. In estimating profits for income tax purposes one of the coalmasters claimed as a deduction the expenses incurred by him in connection with the promotion of these bills :—*Held* (Lord Johnston dissenting), that these expenses did not fall to be deducted; *per* the Lord President, in respect that they were capital, and not revenue, expenditure; *per* Lord Skerrington, in respect that they were not "money wholly and exclusively laid out or expended for the purposes of" the coalmaster's trade. *Moore & Co.* v. *Inland Revenue*, [1915] S. C. 91; 6 Tax Cas. 345—Ct. of Sess.

—— **Retirement of Law Reporter—Grant of Gratuity — "Money wholly and exclusively laid out" for Purposes of Trade—Finding of Fact.**]—The question whether a gratuity paid by the Incorporated Council of Law Reporting to one of their reporters upon his retirement is allowable as a deduction in calculating the profits of the council for the purposes of income tax as being "money wholly and exclusively laid out or expended for the purposes of" their trade is a question of fact for the Income Tax Commissioners to decide, and no appeal lies from their decision. *Smith* v. *Incorporated Council of Law Reporting*, 83 L. J. K.B. 1721; [1914] 3 K.B. 674; 111 L. T. 848; 6 Tax Cas. 477; 30 T. L. R. 588—Scrutton, J.

—— **Land Owned and Used by Trader for Purposes of Trade — Annual Value.**] — Schedule D and section 100 of the Income Tax Act, 1842, provide by Case I. rule 1, and Cases I. and II. rules 1 and 2, that the duty to be charged in respect of any trade shall be computed on a sum not less than the full amount of the balance of profits and gains of such trade upon a fair and just average of three years, ending either on such day of the year immediately preceding the year of assessment on which the accounts of the trade shall have been usually made up or on April 5 preceding the year of assessment; that in estimating such balance of profits and gains no sum shall be set against or deducted from such profits and gains for any disbursements or expenses whatever not being money wholly and exclusively laid out or expended for the purposes of such trade; and that the computation of the duty to be charged in respect of any trade shall be made exclusive of the profits or gains arising from lands, tenements, or hereditaments occupied for the purpose of such trade. Section 9 of the Finance Act, 1898, in effect provides that where in estimating the amount of annual profits or gains arising from any trade chargeable to income tax under Schedule D any sum is deducted on account of the annual value of the premises used for the purposes of such trade, the sum so deducted shall not exceed the amount of the assessment of the premises for the purposes of income tax under Schedule A to the Income Tax Act, 1842, as reduced for the purpose of collection under section 35 of the Finance Act, 1894. A trading company were the owners of certain freehold and leasehold property which they used exclusively for the purposes of their business. They were assessed by the Commissioners under Schedule D of the Income Tax Acts for the year ending April 5, 1912, the annual value of the freeholds and leaseholds as represented by the assessment under Schedule A in each of the three previous years being deducted from the profits of each of the said years before striking the average. The amount assessed for this property under Schedule A for the year of assessment (the year ending April 5, 1912) was larger than in the previous years, and the company claimed that the average profits for the three previous years should be ascertained without the deduction of the amount of the assessment under Schedule A in each of these years, and that from the amount of such average profits the amount of the assessment under Schedule A for the year of assessment should be deducted : —*Held*, that the method of assessment adopted by the Commissioners was the right method, and that the contention of the company was erroneous. *Russell* v. *Town and County Bank* (58 L. J. P.C. 8; 13 App. Cas. 418) followed. *General Hydraulic Power Co.* v. *Hancock*, 83 L. J. K.B. 906; [1914] 2 K.B. 21; 111 L. T. 251; 6 Tax Cas. 445; 30 T. L. R. 203—Scrutton, J.

—— **Value of Standing Timber Cut during Year.**] — A company occupying land, and carrying on the business of saw millers and timber merchants is not entitled in its assessment for income tax to deduct from the gross proceeds of its business the value of the standing timber cut during the year of assessment. *Kauri Timber Co.* v. *Commissioner of Taxes*, 83 L. J. P.C. 6; [1913] A.C. 771; 109 L. T. 22; 29 T. L. R. 671—P.C.

—— **Mining Company — Main Shaft.**] — A mining company claimed to be allowed as a deduction the cost of deepening a main shaft, the bodies of ore accessible from the original level having been practically worked out :— *Held*, that there was no evidence on which the opinion of the Commissioners, that the expenditure was proper working costs, could be supported, and that the deduction could not be allowed. *Bonner* v. *Basset Mines*, 108 L. T. 764; 6 Tax Cas. 146—Horridge, J.

—— **Profits Earned by Letting Furnished House — Expense of Renting House Elsewhere.**]—A lady made a profit by letting her furnished house for two months, and when assessed for income tax thereon claimed to deduct the rent of another house which she had taken to reside in during that period :— *Held*, that this rent was not an expense necessarily incurred in earning the profit, and accordingly that the deduction should be disallowed. *Wylie* v. *Inland Revenue*, [1913] S. C. 16; 6 Tax Cas. 128—Ct. of Sess.

—— **Wear and Tear — Unexhausted Deductions—Purchase of Old Company by New Company—Right of New Company to Unexhausted Deductions.**] — A new company having purchased as a going concern the business of an old company was assessed for income tax on the average profits of the old company for the three years preceding the purchase. The amount of deductions for wear and tear to which the old company was entitled during these three years had not been given effect to in full owing to the fact that they exceeded the amount of the taxable income of the old company during that time :—*Held*, that the new company was entitled to deduct from its taxable income the balance of the deductions allowable to the old company. *Scottish Shire Line* v. *Inland Revenue*, [1912] S. C. 1108; 6 Tax Cas. 91—Ct. of Sess.

—— **Firm of Shipbuilders — Channel from Works to Sea—Duty to Dredge on Harbour Authority — Neglect of Such Duty — Channel Rendered Useless thereby — Construction of Deep Water Berth — Expenditure by Shipbuilders — Capital Expenditure or Income Expenditure.**] — The respondents, a firm of shipbuilders and engineers, began business at Barrow-in-Furness in 1896. Access from their works to the sea was by a channel. The Furness Railway Co. were the harbour authority, and as such had all statutory powers for dredging and keeping this channel clear at a certain width and depth. Subsequent to 1896 the harbour authority so neglected maintaining the channel that it began to silt up until it was becoming no longer possible for such vessels as could with safety get from and into the respondents' works in 1896 to continue to do so. The harbour authority admitted their liability to maintain the channel, but found themselves unable to perform their obligation. The respondents and the harbour authority thereupon agreed to complete a lesser and cheaper scheme which would not completely restore the channel to its condition in 1896, but would make it sufficiently navigable. This scheme was the construction of a deep water berth. The work was carried out in 1913, and was paid for by the respondents and the harbour authority, the respondents contributing to the expense thereby incurred 97,431*l*. The harbour authority undertook the future maintenance of the work. Had this expenditure not been incurred by the respondents they would not have been able to deliver a battleship to the British Government. The expenditure enabled them to earn the profits to which they were assessed to income tax. On the ground that this sum of 97,431*l*. was income expenditure the respondents claimed to deduct it from their gross profits of the year 1912, before ascertaining the profits for that year, which were to be used in calculating the average profits for three years upon which they were chargeable for the year ending April 5, 1914 :—*Held*, that the expenditure was capital expenditure, and that the respondents' claim must therefore be disallowed. *Ounsworth* v. *Vickers, Lim.*, 84 L. J. K.B. 2036; [1915] 3 K.B. 267; 31 T. L. R. 530—Rowlatt, J.

—— **Stallions Kept for Breeding Purposes—Diminished Value by Reason of Age—"Plant"—"Diminished value by reason of wear and tear."**]—By section 12 of the Customs and Inland Revenue Act, 1878, the Income Tax Commissioners "shall, in assessing the profits or gains of any trade, . . . allow such deduction as they may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern, . . ." The appellant had two stallions in his stud farm which earned fees by serving the mares of other owners. In ascertaining the amount of profits assessable to income tax the appellant claimed as a deduction the annual amount of depreciation in the value of the stallions owing to their increase in age :—*Held*, that the fact that at the end of each year the stallions were of less value, inasmuch as they were one year nearer the end of their lives, did not entitle the appellant, under section 12 of the Customs and Inland Revenue Act, 1878, to the deduction claimed in respect of the diminished value of plant by reason of wear and tear during the year. *Derby (Earl)* v. *Aylmer*, 84 L. J. K.B. 2160; [1915] 3 K.B. 374; 31 T. L. R. 528—Rowlatt, J.

—— **Premiums—Life Insurance—Double Endowment Assurance.**]—A policy of insurance whereby an insurance company agrees, in consideration of the payment of annual premiums by the assured, to pay 100*l*. to his legal personal representatives if he dies before a specified date, or to pay 200*l*. to the assured himself if he survives that date, is an "insurance on his life" within the meaning of section 54 of the Income Tax Act, 1853; and the assured is therefore entitled to deduct the whole amount of the annual premium from his profits and gains in respect of which he is liable to be assessed to income tax under Schedule D. *Dictum* of Channell, J., in *Prudential Assurance Co.* v. *Inland Revenue Commissioners* (73 L. J. K.B. 734; [1904]

2 K.B. 658, 663, 664), that the events against which an insurance could be effected must necessarily be "adverse," disapproved. *Gould* v. *Curtis*, 82 L. J. K.B. 802; [1913] 3 K.B. 84; 108 L. T. 779; 6 Tax Cas. 293; 57 S. J. 461; 29 T. L. R. 469—C.A.

Decision of Hamilton, J. (81 L. J. K.B. 634; [1912] 1 K.B. 635), affirmed. *Ib.*

—— **Mortgage—Sinking Fund.**]—A company was empowered by Act of Parliament to raise money upon mortgage for the purpose of carrying out a Government contract, but was required by the same Act to establish a sinking fund for the extinction of the mortgage debt. A sum was to be set aside for payment into the sinking fund out of each quarterly payment received under the contract or out of other moneys belonging to the company:—*Held*, following the decision in *Mersey Docks and Harbour Board* v. *Lucas* (53 L. J. Q.B. 4; 8 App. Cas. 891), that the sums thus set aside are not allowable as a deduction in arriving at the company's assessable profits. *City of Dublin Steam Packet Co.* v. *O'Brien*. 6 Tax Cas. 101—K.B. D. (Ir.)

Failure to make Proper Return — "Discovery" by Surveyor—Person Charged—Dispute of Liability—Remedy.]—By section 52 of the Taxes Management Act, 1880, "If the surveyor discovers that any properties or profits chargeable to the duties [of income tax] have been omitted from such first assessments, or that any person so chargeable has not made a full and proper or any return, or has not been charged to the said duties . . . then . . . as regards the duties chargeable under Schedule D of the Income Tax Acts, the Additional Commissioners shall at any time after the said first assessments have been signed and allowed, but within four months after the expiration of the year to which such first assessments relate, make an assessment on any such person in an additional first assessment in such sum as according to their judgment ought to be charged on such person, subject to objection by the surveyor and to appeal":—*Held*, that the word "discovers" in the above enactment is satisfied if the surveyor honestly arrives at the conclusion, based upon the material before him, that the person sought to be charged has not made a full and proper return under Schedule D, and the section is not limited in its operation to a person who in fact and in law is chargeable to the duties. *Rex* v. *Bloomsbury Income Tax Commissioners; Hooper, Ex parte*, 85 L. J. K.B. 129; [1915] 3 K.B. 768; 31 T. L. R. 565—D.

If there is before the surveyor information on which he could and did honestly believe the person to be liable to the duties, then, although the surveyor may be mistaken in his "discovery," the only remedy is an appeal under section 57, sub-section 3 of the Act to the General Commissioners, subject to a Case stated by them, and the person charged cannot obtain a writ of prohibition to the Commissioners from acting or proceeding upon the assessment. *Ib.*

3. *When Deductible.*

See also Vol. XII. 163, 1248.

Deduction at Source after Resolution of Committee of House of Commons, but before Passing of Act.]—On a motion for an interlocutory injunction to restrain the Bank of England from deducting income tax from a dividend payable to the plaintiff on his Irish Land Stock before the Act imposing such tax has been passed, but after the passing of a resolution of the Ways and Means Committee of the House of Commons which specified the rate at which such tax would be levied, on the defendants undertaking to pay the amount of the tax into Court to abide the order of the Court no order was made on the motion. *Bowles* v. *Bank of England* (*No.* 1), 56 S. J. 651—Parker, J.

A resolution of the Committee of the House of Commons for Ways and Means, either alone or when adopted by the House, does not authorise the Crown to levy on the subject an income tax assented to by such resolution, but not yet imposed by Act of Parliament. *Bowles* v. *Bank of England* (*No.* 2), 82 L. J. Ch. 124; [1913] 1 Ch. 57; 108 L. T. 95; 6 Tax Cas. 136; 57 S. J. 43; 29 T. L. R. 42—Parker, J.

Although section 30 of the Customs and Inland Revenue Act, 1890, keeps alive the machinery of the Income Tax Acts and enables the officials charged with the collection of income tax to carry out all the preliminary work necessary for the collection and assessment of any income tax which may be imposed for any financial year, it does not authorise any assessment or collection of income tax not yet imposed by Act of Parliament. *Held*, accordingly, that the Bank of England were not entitled to deduct any sum in respect of income tax from dividends due on Government stock before income tax for the current financial year had been imposed by Act of Parliament. *Ib.*

Profits and Gains Brought into Charge — Undertakings of Corporation — Interest on Loans.—A person assessed to income tax can retain the tax which he has deducted from the interest paid to a creditor only if the interest is effectively charged upon, and is lawfully payable out of, the taxable income. *Sugden* v. *Leeds Corporation*, 83 L. J. K.B. 840; [1914] A.C. 483; 108 L. T. 578; 77 J. P. 225; 11 L. G. R. 662; 6 Tax Cas. 211; 57 S. J. 425; 29 T. L. R. 402—H.L. (E.)

The respondents were a municipal corporation under the Municipal Corporations Act, 1882, and in accordance with the provisions of that statute they provided a "borough fund," in aid of which they were empowered to make a "borough rate." They were also an urban sanitary authority, and their expenses as such were payable out of a "consolidated fund" maintained by a "consolidated rate" levied under statutory authority, but not upon the same basis as the borough rate. As a municipal corporation they were the owners of certain undertakings in respect of which they had received loans, the interest on which was charged on the proceeds of the undertakings, which were paid into the borough fund, and

they paid income tax on such receipts. As a sanitary authority they were the owners of other undertakings, the proceeds of which were paid into the consolidated fund in a similar manner. The proceeds of these latter undertakings were not sufficient to pay the interest due on the loans raised in respect of them, and the respondents transferred a sum from the borough fund to meet the deficiency:—*Held*, that, as it was not lawful to pay such charges out of that fund, the respondents were bound to account for the income tax which they had deducted from the interest or dividends so paid, and that their position was not affected by the provisions of the Leeds Corporation (General Powers) Act, 1901. *Ib.*

London County Council v. *Att.-Gen.* (70 L. J. K.B. 77; [1901] A.C. 26) and *Att.-Gen.* v. *London County Council* (76 L. J. K.B. 454; [1907] A.C. 131) discussed and explained. *Ib.*

Covenant to Pay Annuity.] — By his marriage settlement the husband covenanted that if during the widowhood of his wife the income of his wife's trust fund in any year should not amount to the clear annual sum of 2,000*l.* his executors should in every such year pay to his widow such a sum as would make up the income to 2,000*l.*:—*Held*, that the executors were entitled to deduct income tax on the amount by which the income of the wife's trust fund fell short of 2,000*l.* *Cooper's Estate, In re*, 55 S. J. 522—Eve, J.

Purchase of Tramway Undertaking by Local Authority—Purchase Price Raised by Loan—Sinking Fund—Lease of Tramway to Another Local Authority—Rent to be Sufficient to Pay Half-yearly Instalment of Interest and Capital of Loan.] — A local authority purchased a tramway undertaking, having raised the purchase money by means of a loan, which was repayable by half-yearly instalments of principal and interest extending over a period of thirty years, and then let the undertaking to another local authority under an agreement which provided that the rent should be such a sum as should enable the lessor authority to repay the principal and interest of the loan by half-yearly instalments within thirty years. The lessee authority claimed to be entitled to deduct income tax from the whole of the amount of the half-yearly rent paid by them under the agreement, while the lessor contended that the rent should be such a sum as would be sufficient, after deducting income tax, to pay the actual interest and instalment of the capital of the loan:—*Held*, that upon the true construction of the agreement, and having regard to section 40 of the Income Tax Act, 1853, the lessee authority was entitled to deduct the income tax from the rent. *Surbiton Urban Council* v. *Callender's Cable Co.* (8 L. G. R. 214; 74 J. P. 88) followed. *Poole Corporation* v. *Bournemouth Corporation*, 103 L. T. 828; 75 J. P. 13—Neville, J.

Corporation—Improvement Expenses—Apportionment on Owners of Property—Interest on Unpaid Balance—Deduction of Income Tax —"Yearly interest of money."]—The plaintiffs as the urban sanitary authority of a borough in the exercise of their powers under section 150 of the Public Health Act, 1875, and under their local Act, had duly paved and otherwise dealt with various streets in the borough. The expenses of such paving and other works had from time to time been apportioned amongst the owners of property fronting on such streets, one of whom was the defendant. Pursuant to section 32 of their local Act, they allowed him time for the payment of his share of these expenses and they fixed the rate of interest payable thereon at 5 per cent. per annum. The defendant from time to time paid to the plaintiffs various sums on account, which they credited in the first place to the interest due and in the second place towards repayment of principal, but the accounts of the plaintiffs shewed that these payments had not been made at regular times nor in fixed amounts. The defendant, upon paying off the balance due in respect of principal and interest, claimed to be entitled to deduct income tax from the interest as being yearly interest of money within the meaning of section 40 of the Income Tax Act, 1853:—*Held*, that the interest which the plaintiffs received was not such as would make the words "yearly interest of money" in section 40 of the Income Tax Act, 1853, applicable to it, and that the defendant had failed to discharge the burden of shewing that he had a right to make the deduction claimed. *Gateshead Corporation* v. *Lumsden*, 83 L. J. K.B. 1121; [1914] 2 K.B. 883; 111 L. T. 26; 78 J. P. 283; 12 L. G. R. 701; 58 S. J. 453—C.A.

Lease of Minerals — Royalties with Minimum Rent—Lessees not in Actual Occupation —Deduction of Income Tax from Minimum Rent—Assessment of Lessor.]—The appellant demised to a coal company all the minerals under a certain piece of land at a royalty to be measured by the quantity of mineral gotten, but the lease provided for the payment of a minimum yearly rent of 60*l.*, with a provision for distress. The surface was let for agricultural purposes to another tenant, who was assessed to the income tax in respect thereof. No work was done by the company on these minerals, and they were not assessed in respect of them. Before paying the 60*l.* to the appellant, the company deducted the income tax thereon, claiming a right to do so either under section 102 of the Income Tax Act, 1842, or under section 24, sub-section 3 of the Customs and Inland Revenue Act, 1888. The appellant was assessed to income tax in respect of this 60*l.*:—*Held*, that the company were not entitled to deduct the tax, and that the appellant was properly assessed under section 60, Schedule A. No. II. rule 6 of the Act of 1842, in respect of profits arising from lands or hereditaments not in his actual possession or occupation. *Hill* v. *Gregory*, 81 L. J. K.B. 730; [1912] 2 K.B. 61; 106 L. T. 603; 6 Tax Cas. 39—Hamilton, J.

4. *Repayment.*

See also Vol. XII. 166, 1251.

Schedules C and D—Married Woman Living with Husband — Interest on Shares and Foreign Bonds—Deduction of Income Tax at

Source—Right to Repayment.]—Section 45 of the Income Tax Act, 1842, which enacts that the profits of a married woman living with her husband shall be deemed his profits and shall be charged in his name, only applies to the case of the direct assessment to Income Tax of the taxpayer, and not to the case of deduction at source. Hence, where a married woman living with her husband held to her separate use shares in a limited company and also foreign bonds from the dividends on which income tax was deducted at source by virtue of section 54 of the Income Tax Act, 1842, and section 2 of the Income Tax (Foreign Dividends) Act, 1842, the married woman had no right to repayment of the tax from the Treasury. *Purdie* v. *Regem*, 83 L. J. K.B. 1182; [1914] 3 K.B. 112; 111 L. T. 531; 30 T. L. R. 553—Rowlatt J.

5. Appeal from Assessment.

See also Vol. XII. 168, 1251.

Application to Amend Assessment and for Relief—"Appeal"—Power of Commissioners to State Case.]—An application to Commissioners under section 134 of the Income Tax Act, 1842, for an amendment of an assessment to Income Tax (Schedule D) and for relief on the ground of loss of the profits on which the computation of duty was made is not an "appeal," and consequently the Commissioners have no power to state a Case for the opinion of the High Court under section 59, sub-section 1 of the Taxes Management Act, 1880. *Furtado* v. *City of London Brewery Co.*, 83 L. J. K.B. 255; [1914] 1 K.B. 709; 110 L. T. 241; 6 Tax Cas. 382; 58 S. J. 270; 30 T. L. R. 177—C.A.

c. Public Office or Employment of Profit.

See also Vol. XII. 168, 1251.

Employment Abroad by English Company—Remuneration Partly Paid in England—Employment under "department."] — "Public offices and employments of profit" in the United Kingdom within section 146, Schedule E, rule 3 of the Income Tax Act, 1842, are public offices or employments which are exercised in the United Kingdom. Therefore, a person who is in the employment of an English limited company whose head office is in England, but who exercises his employment wholly outside the United Kingdom, does not come within that rule, nor is he employed in a "department" in the sense in which that term is used in section 147 of the Income Tax Act, 1842, so as to make his office one exercised constructively at the head office of the company in Great Britain. Such a person is therefore not taxable under Schedule E, rule 3, in respect of his employment so exercised abroad. *Pickles* v. *Foster*, 82 L. J. K.B. 121; [1913] 1 K.B. 174; 108 L. T. 106; 20 Manson, 106; 6 Tax Cas. 131; 29 T. L. R. 112—Horridge, J.

Additional First Assessment — Notice — Manager of Company—Place of Abode.]—The provision of section 80 of the Income Tax Act, 1842, that so soon as the assessments for any parish or place are allowed and signed the Commissioners shall give notice thereof and of the day for hearing appeals therefrom in the manner therein provided, is extended to assessments under Schedule E by section 188, and applies to an additional first assessment made by the Commissioners under the powers conferred on them by section 52 of the Taxes Management Act, 1880. By section 16 (*e*) of the latter Act, "All notices or forms required or allowed to be served on any person may be either delivered to such person or left at the usual or last known place of abode of such person." The plaintiff was employed as the manager of a limited company which had its office in the City of London. The plaintiff resided at Wealdstone, and very rarely attended at the company's office. Income tax notices were sent to the plaintiff directed to the office of the company, but none of them ever reached him. A distress having subsequently been levied upon goods at the plaintiff's private residence for non-payment of the income tax. —*Held*, that there is no rule of law that the manager of a company must be taken to have a statutory abode at the office of the company by which he is employed, that under the circumstances the office of the company was not the plaintiff's "usual or last known place of abode," and that the distress was therefore a wrongful one. *Berry* v. *Farrow*, 83 L. J. K.B. 487; [1914] 1 K.B. 632; 110 L. T. 104; 30 T. L. R. 129—Bankes, J.

II. SUPER-TAX.

Special Commissioners—Power to Demand Returns for Assessments before Super-tax Imposed for the Year.] — The super-tax on incomes over 5,000*l.* a year first imposed by the Finance (1909-10) Act, 1910, for the year commencing April 6, 1909, is additional income tax, and one of the "duties of income tax" within the meaning of section 30 of the Customs and Inland Revenue Act, 1890. *Bowles* v. *Att.-Gen.*, 81 L. J. Ch. 155; [1912] 1 Ch. 123; 105 L. T. 870; 76 J. P. 57; 56 S. J. 176; 28 T. L. R. 137; 5 Tax Cas. 685—Parker, J.

The Commissioners of Income Tax for Special Purposes are therefore legally entitled to demand returns for the purposes of assessment of the super-tax, even though no Act has been passed imposing such tax for the current year. But *quære* whether they could assess and demand payment of the super-tax before it is actually imposed. *Ib.*

Although by section 66 of the Finance (1909-1910) Act, 1910, super-tax was only imposed for the year beginning April 6, 1909, it is shewn conclusively by section 72, sub-section 3, that the Act is not intended to regulate the collection of super-tax for that single year only, but also its collection for subsequent financial years. *Ib.*

Super-tax was imposed for the year beginning April 6, 1910, by section 3 of the Finance Act, 1910. The Revenue Act, 1911, which was passed on March 31, 1911, although containing provisions as to super-tax, did not impose any such tax for the year beginning April 6, 1911. Before any Act imposing super-

tax for that year has been passed the Commissioners of Income Tax caused to be sent to the plaintiff a demand for a return of his income under section 72, sub-section 2 of the Finance (1909-10) Act, 1910, for the purpose of assessing the tax. The plaintiff contended that in the circumstances the defendants had no power to demand the return :—*Held*, that the Commissioners had power to demand the return. *Ib.*

Trade Profits—Three Years' Average—Sale of Business—Discontinuance.]—In making an assessment to super-tax under section 66 of the Finance (1909-10) Act, 1910, the Commissioners should consider the amount of the profits derived from his trade by the person to be charged during the year preceding the assessment, taking the average of his profits for the three years preceding, and not the actual profits made in that year. *Bartlett* v. *Inland Revenue Commissioners*, 84 L. J. K.B. 106; [1914] 3 K.B. 686; 111 L. T. 852—Scrutton, J.

The fact that he has sold his business within the year to a company does not amount to a discontinuance within section 24, sub-section 3 of the Finance Act, 1907. *Ib.*

Where, upon an appeal against an assessment to super-tax, the appellant does not dispute that the amount of his profits for the particular year, ascertained upon a three years' average, is correctly stated in an assessment to income tax made upon him under Schedule D, the Special Commissioners are entitled to adopt such assessment in arriving at the assessment to super-tax, and are not bound to take evidence upon the point. *Ib.*

Assessment by General Commissioners—How far Binding on Special Commissioners in Assessing Super-tax.]—The Special Commissioners for Income Tax must, if required, themselves estimate the total income of the taxpayer for super-tax, and are not bound under section 66, sub-section 2 of the Finance (1909-10) Act, 1910, to accept as conclusive on them an assessment made under Schedule (D) of the Income Tax Act, 1842, by the General Commissioners. *Inland Revenue Commissioners* v. *Brooks*, 84 L. J. K.B. 404; [1915] A.C. 478; 112 L. T. 523; 59 S. J. 160; 31 T. L. R. 89—H.L. (E.)

Decision of the Court of Appeal (83 L. J. K.B. 431; [1914] 1 K.B. 579) affirmed. *Ib.*

Principle of Assessment on Partner in Firm.]—The Income Tax Commissioners, in estimating the total income of a partner in a firm during a certain year for the purposes of super-tax, under section 66, sub-section 2 of the Finance (1909-10) Act, 1910, having ascertained the profits of the firm for the previous year, in accordance with the provisions of the Income Tax Acts, upon the average of three years preceding the year of assessment, calculated on this basis the share to which the partner was entitled during the year in question :—*Held*, that the Commissioners had estimated the share to which the partner was entitled during the year in question in the partnership profits upon the correct principle, and that the partner was not at liberty to shew the actual income from the profits of the firm which he had received during the year. *Gaunt* v. *Inland Revenue Commissioners*, 82 L. J. K.B. 1131; [1913] 3 K.B. 395; 109 L. T. 555—Horridge, J.

Deductions—Farming Losses—Losses not Claimed as Deductions from Income Tax.]—A taxpayer, in making a return of his income of the previous year for the purposes of the super-tax, was *held* entitled to claim as deductions losses sustained in husbandry, although those losses had not been claimed as deductions from his income tax, and although his claim was not made within six months after the year of assessment. *Hill* v. *Inland Revenue*, [1912] S. C. 1246—Ct. of Sess.

III. INHABITED-HOUSE DUTY.

See also Vol. XII. 171, 1255.

House "divided into, and let in, different tenements."]—A house is "divided into, and let in, different tenements" within the meaning of section 13 of the Customs and Inland Revenue Act, 1878, and is entitled to the relief from assessment to inhabited-house duty thereby given, when rooms, or groups of rooms in it, are separated from the rest of the house and let for some purpose not common to the rest of the house, even though the tenants of the separate tenements use some other parts of the house in common. *Farmer* v. *Cotton's Trustees*, 84 L. J. P.C. 137; [1915] A.C. 922; 113 L. T. 657; 59 S. J. 611; 31 T. L. R. 478—H.L. (Sc.)

Judgment of the Court of Session in Scotland, *sub nom. Cotton's Trustees* v. *Inland Revenue* ([1913] S. C. 1126) affirmed (Lord Sumner dissenting). *Ib.*

Public School — Residential Buildings — Separate Class Rooms.]—Buildings belonging to a public school, and consisting of class rooms, library, carpenter's shop, gymnasium, lavatories, &c., which were not used for residential purposes at all, and had no internal communication with any buildings occupied for residential purposes, and were used by all the boys of the school, of whom only a small proportion resided in the residential buildings, —*Held*, not to be "offices belonging to and occupied with any dwelling-house," within Rule II. of Schedule (B) of the House Tax Act, 1808, and therefore not liable to be assessed with the residential buildings to inhabited-house duty under the House Tax Act, 1851. *Westminster School* v. *Reith*, 84 L. J. K.B. 168; [1915] A.C. 259; 112 L. T. 91; 6 Tax Cas. 486; 59 S. J. 57; 31 T. L. R. 31—H.L. (E.)

Decision of the Court of Appeal (82 L. J. K.B. 861; [1913] 3 K.B. 129) reversed (Lord Parmoor dissenting). *Ib.*

—— **"Charity school."**] — Ackworth School was established in 1779 by subscriptions collected from members of the Society of Friends, for the education of children who were members of the society in Great Britain whose parents were not in affluence. The

rules of the school provided that when the school was not full there should be eligible for admission at the discretion of the controlling committee, children from beyond the limits of Great Britain being members of the society, failing whom, children closely connected with the society, or failing whom, children not in the membership of the society. The object of the school was to train up the children in the principles and practices of the Christian religion as professed by the Society of Friends, and to impart to them a sound English education. The school was supported by substantial fees paid by the parents of the children, by the income arising from its invested property, by annual subscriptions and other donations and legacies, and was under the direction of a general meeting appointed by the society. To assist those members of the society who were unable to provide the whole of the fees, bursaries were granted in some cases. Bursaries were restricted to members of the society, excepting that the committee might grant certain bursaries to children closely connected with the society. The religious views of the society were taught, but no effort was made to bring into the society the children of parents who were not members of the society. At the end of 1910 the school was full on both sides, there being 181 boys and 122 girls—303 in all. 12,000*l.* out of rather less than 14,000*l.*, the income received by the school during 1910, was derived from fees. The school was recognised as an efficient secondary school by the Board of Education, but never received any grants therefrom :—*Held*, upon these facts, that (*a*) the school was not a "public school" within the meaning of section 61, No. 6. of Schedule A of the Income Tax Act, 1842, and as such exempt from payment of income tax; and (*b*), that it was not a "charity school" within the meaning of Case IV. of the exemptions to Schedule B of the House Tax Act, 1808. *Ackworth School* v. *Betts*, 84 L. J. K.B. 2112—Rowlatt, J.

IV. LAND TAX.

See also Vol. XII. 179, 1264.

Redemption of Land Tax — Land Abutting on Highway—Exoneration ad Medium Filum —Presumption.]—Where a parcel of land is described, or shewn on a plan, as bounded by a highway it is to be presumed that it is intended that the parcel should go up to the actual boundary on that side—that is, under ordinary circumstances, *ad medium filum viæ*. Therefore, where the land tax has been redeemed on lands or houses which abut upon a public street or highway, the exoneration extends to the middle line of such street or highway, in the absence of an express statement to the contrary. *Land Tax Commissioners* v. *Central London Railway*, 82 L. J. Ch. 274; [1913] A.C. 364; 108 L. T. 690; 77 J. P. 289; 11 L. G. R. 693; 57 S. J. 403; 29 T. L. R. 395—H.L. (E.)

Decision of the Court of Appeal (81 L. J. Ch. 20; [1911] 2 Ch. 467) affirmed. *Ib.*

V. TAXATION OF LAND VALUES.

1. Valuation.

Form 4—Owner and Occupier—Validity.]—A notice to the owner of land to make a return under section 26, sub-section 2 of the Finance (1909-10) Act, 1910, within less than the thirty days there specified is invalid, and imposes no obligation on the owner to do so. A notice is not invalid under section 26, sub-section 2, merely because it requires the return to be made to an officer of the Commissioners without giving the owner an option to make it to the Commissioners. *Dyson* v. *Att.-Gen.*, 81 L. J. K.B. 217; [1912] 1 Ch. 158; 105 L. T. 753; 28 T. L. R. 72—C.A.

Requisition (*i*) in form 4 requiring any person who is both owner and occupier to state "the annual value—*i.e.* the sum for which the property is worth to be let to a yearly tenant, the owner keeping it in repair," is unauthorised by section 26, sub-section 2, and renders the whole form invalid. *Ib.*

Form 8 — Validity.] — Section 31 of the Finance (1909-10) Act, 1910, is directed to enabling the Inland Revenue Commissioners to ascertain the names of persons who pay rent or who as agents for others receive rent in respect of any land. The Commissioners may in respect of any specific land require from a person who pays rent for such land the name and address of the person to whom he pays it, and from a person who as agent for another receives any rent in respect of such land the name and address of the person on whose behalf he receives such rent, but the enquiries must be in respect of a specific parcel of land. A form asking for such information in respect of unspecified land is meaningless, and makes a demand that the form should be filled up unauthorised and void. *Burghes* v. *Att.-Gen.*, 81 L. J. Ch. 105; [1912] 1 Ch. 173; 105 L. T. 758; 28 T. L. R. 72—C.A.

It is not *ultra vires* on the part of the Commissioners to require returns under section 31 to be sent to an appointed local officer instead of to themselves. *Ib.*

Per Farwell, L.J. : A requisition to make a return under section 31 within less than thirty days from its receipt is not within the powers of the Commissioners, and is a nullity. *Ib.*

Decision of Warrington, J. (80 L. J. Ch. 506; [1911] 2 Ch. 139), affirmed. *Ib.*

Form 5 — Legality.] — On a claim by the plaintiff for a declaration that Form 5 issued by the Commissioners of Inland Revenue under section 20 of the Finance (1909-10) Act, 1910, was illegal, unauthorised, and *ultra vires*, and that he was under no obligation to comply with the requisitions contained therein, the Commissioners, being of opinion that Form 5 could not be supported, consented to an order being made following the form made in *Dyson* v. *Att.-Gen.* (81 L. J. Ch. 217; [1912] 1 Ch. 158). *Mowbray (Lord)* v. *Att.-Gen.*, 29 T. L. R. 115—Phillimore, J.

Provisional Valuation—Settled Land—Duty of Trustees to Check Valuations—Remainder-

men.] — A person equitably entitled in remainder to certain land let upon long leases, the first of which would expire in 1977, applied to the Court that the trustees of the settlement should be directed to take the necessary steps for checking the provisional valuations of the settled land made by the Inland Revenue Commissioners under section 26 of the Finance (1909-10) Act, 1910. The tenant for life objected to this expense being incurred, and the trustees stated that in their discretion they considered it unnecessary: —*Held*, that as the trustees in their discretion did not think it necessary to check the provisional valuations the Court would not interfere with their discretion. *Knollys' Trusts, In re; Saunders* v. *Haslam*, 81 L. J. Ch. 572; [1912] 2 Ch. 357; 107 L. T. 335; 56 S. J. 632—C.A.

Per Cozens-Hardy, M.R.: There may be cases which would justify trustees in incurring expenditure in checking valuations under the Act either after obtaining or without the direction of the Court. *Ib.*

Provisional Valuation — Costs of Checking Valuation—Duty of Trustees.]—The Finance (1909-10) Act, 1910, imposes no duty on trustees of settled land to check the provisional valuations of the land which have been made by the Commissioners for the purposes of duty and served upon the trustees as "owners" in accordance with the Act; and the Court will not order the trustees to incur this expense, but in particular cases, such as the case of a building estate, the Court will give the trustees liberty to take such steps as may be advisable and reasonable to test the valuations made under the Act. *Smith-Bosanquet's Settled Estates, In re*, 107 L. T. 191—Parker, J.

—— Appeal to Referee—Order to Pay Costs—Unascertained Amount—Power to make Order a Rule of Court.]—By section 33, sub-section 1 of the Finance (1909-10) Act, 1910, any person aggrieved may appeal against any determination by the Commissioners of the total value or site value of any land. By sub-section 2 the appeal is to be referred to a referee appointed under the Act. By sub-section 3 the referee is to determine any matter referred to him in consultation with the Commissioners and the appellant, and may order that "any expenses incurred by the appellant be paid by the Commissioners . . . Any order of the referee as to expenses may be made a rule of the High Court." Upon the hearing of an appeal under the above section, the referee by his award directed that the appellant's costs of the appeal should be borne by the Commissioners, but did not assess the amount of the costs. On a motion to make the award a rule of Court,—*Held*, that a referee can make a valid order as to costs although he does not fix the amount, inasmuch as the costs can be taxed by a Master, and that the award ought therefore to be made a rule of Court. *Matthews* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 1552; [1914] 3 K.B. 192; 110 L. T. 931—Scrutton, J.

Appeal to Referee—Order as to Payment of Expenses—Unascertained Amount—Power to make Award a Rule of Court.]—By section 33, sub-section 1 of the Finance (1909-10) Act, 1910, a person aggrieved may appeal against any determination by the Commissioners of the total value or site value of any land. By sub-section 2 an appeal under the section is to be referred to a referee appointed under the Act. By sub-section 3: "The referee shall determine any matter referred to him in consultation with the Commissioners and the appellant . . . and may, if he thinks fit, order that any expenses incurred by the appellant be paid by the Commissioners, and that any such expenses incurred by the Commissioners be paid by the appellant. Any order of the referee as to expenses may be made a rule of the High Court." Upon an appeal under the section the referee made the following order: "I order that any expenses incurred by the Commissioners be paid by the appellant." Upon an application to make the order a rule of Court,—*Held*, that the decision of the referee was bad, as it did not assess the amount of the expenses, and that there was no power to make it a rule of Court. *Simpson* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 1318; [1914] 2 K.B. 842; 110 L. T. 909; 30 T. L. R. 436—Scrutton, J.

See also cases under INCREMENT VALUE DUTY (*infra*).

2. INCREMENT VALUE DUTY.

Gross Value — Total Value — Inclusion of Value of Unexhausted Manures and Tillages —Full Site Value—Inclusion of Value of Grass Growing on Land—Structures—Road—Assessable Site Value—Exclusion of Value of Unexhausted Manures and Tillages—Exclusion of Value of Grass Sown by Tenant.] — In valuing land under the provisions of the Finance (1909-10) Act, 1910, "in its then condition" on April 30, 1909, any sums attributable to the value of unexhausted manure or tillages must be included, under sub-section 1 of section 25, in the gross value and the total value of the land, but deductions cannot be made under sub-section 4 (*d*) of section 25 in respect of such increased value in arriving at the assessable site value of the land. In valuing land in its then condition all unsevered vegetable growths, whether natural or artificial, transitory or permanent, emblements or not emblements, must be included in the gross value of land under sub-section 1 of section 25; but the value of the grass growing on the land must be deducted under sub-section 2 of section 25 from the gross value of the land in arriving at the full site value of the land. *Inland Revenue Commissioners* v. *Smyth*, 83 L. J. K.B. 913; [1914] 3 K.B. 406; 110 L. T. 819; 58 S. J. 400; 30 T. L. R. 357—Scrutton, J.

A structure, the value of which must be deducted, under sub-section 2 of section 25, from the gross value of land in order to arrive at the full site value of the land, is something artificially erected, constructed, put together, of a certain degree of size and permanence, which is still maintained as an

artificial erection, or which, though not so maintained, has not become indistinguishable in bounds from the natural earth surrounding. What degree of size and permanence is necessary in order that an artificial erection may be a structure within the meaning of the section, is a question of fact in every case. *Ib.*

The value of the grass growing on land laid down in grass by the tenant, but in respect of which the tenant is not entitled to claim compensation from the landlord, cannot be deducted, under sub-section 4 (*d*) of section 25, from the total value of the land as being a matter personal to the occupier, in arriving at the assessable site value of the land. *Ib.*

Site Value — No Deduction in Respect of Sea Walls—" Buildings "—" Structures "—" Building land."]—A farm consisting of a farmhouse and about 150 acres of agricultural land, almost the whole of which lay below the level of highest spring tides, was protected from the sea by two sea walls or banks made of rammed earth covered with turf. One of them was probably of Roman origin. The other was constructed in 1808. The farm lay seven miles from the nearest station and twelve from the nearest market town. Upon a valuation under the Finance (1909-10) Act, 1910,—*Held*, that the walls were not " buildings," and if " structures " were not " structures used in connection with " buildings, within section 25, sub-section 2 of the Act; that they had not been made " by or on behalf of or solely in the interest of any person interested in the land for the purpose of improving the value of the land as building land " within section 25, sub-section 4 (*b*) of the Act; that they had not " actually improved the value of the land as building land " within section 25, sub-section 4 (*e*) of the Act; and that no deduction could be allowed in respect of them in arriving at assessable site value. " Building land," within section 25 of the Act, does not mean any land upon which houses can be built, but land which has a greater value for building purposes than as agricultural land. *Waite's Executors* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 1617; [1914] 3 K.B. 196; 111 L. T. 505; 58 S. J. 634; 30 T. L. R. 568—C.A.

Assessable Site Value of Land — Minus Quantity.]—The assessable site value of land under section 25, sub-section 4 of the Finance (1909-10) Act, 1910, may be a minus quantity. *Inland Revenue Commissioners* v. *Herbert*, 82 L. J. P.C. 119; [1913] A.C. 326; [1913] S. C. (H.L.) 34; 108 L. T. 850; 11 L. G. R. 865; 57 S. J. 516; 29 T. L. R. 502—H.L. (Sc.)

Decision of Court of Session ([1912] S. C. 948) reversed. *Ib.*

Site Value—Sale of Fee-simple—Method of Calculation.]—In 1910 the appellant sold the fee-simple of a dwelling house, subject to tithe of the capital value of 33*l.*, for 750*l.* The " full site value " on April 30, 1909, was 228*l.*, and there was no change in the value between that date and the date of the sale. The " gross value " at the date of the sale was found to be 658*l.*, and the proper deduction under section 25, sub-section 4 (*b*) of the Finance (1909-10) Act, 1910, in respect of roads was found to be 90*l.* The " original site value " was 105*l.* :—*Held*, by the Lord Chancellor and Lord Shaw, that the site value on the occasion of the sale was to be arrived at under sections 2 and 25 of the Act by deducting from the purchase price of 750*l.* the sum of 430*l.*, being the difference between the gross value and the full site value, and also the 90*l.* in respect of roads, and that the appellant was properly assessable to increment value duty on the difference between this amount (230*l.*) and 105*l.*, the original site value. *Lumsden* v. *Inland Revenue Commissioners*, 84 L. J. K.B. 45; [1914] A.C. 877; 111 L. T. 993; 58 S. J. 738; 30 T. L. R. 673—H.L. (E.)

Decision of the Court of Appeal (82 L. J. K.B. 1275; [1913] 3 K.B. 809) affirmed; Lord Moulton and Lord Parmoor dissenting. *Ib.*

Explanation (*per* Lord Johnston and Lord Cullen) of the method by which, according to the decisions in *Lumsden* v. *Inland Revenue Commissioners* (84 L. J. K.B. 45; [1914] A.C. 877) and *Inland Revenue Commissioners* v. *Walker* (84 L. J. P.C. 115; [1915] A.C. 509), a valuer must ascertain the site value of land on the occasion of a transfer. *Congregation of Jews* v. *Inland Revenue*, [1915] S. C. 997—Ct. of Sess.

The manner or method of calculating the increment value duty imposed by the Finance (1909-10) Act, 1910, in a Special Case stated further considered. *Lumsden* v. *Inland Revenue Commissioners* (82 L. J. K.B. 1275; [1913] 3 K.B. 809) followed and approved. *Inland Revenue Commissioners* v. *Hewitt*, 109 L. T. 896—Scrutton, J.

—— **Deductions — Deduction in Respect of Goodwill and Matters Personal to Parties.**]—For the purpose of ascertaining the difference between the gross value and the full site value of a house or land on the occasion of a sale, under the Finance (1909-10) Act, 1910, the gross value as well as the full site value on the occasion of the transfer must be determined by a process of valuation; and the gross value cannot be taken to be the consideration for the sale, with the addition of the capitalised value of the burdens subject to which the property in question was sold. For the purpose of the other deductions to be made under section 25 of the Act the total value must be ascertained by valuation, and cannot be taken as the consideration for the sale. *Lumsden* v. *Inland Revenue Commissioners* (84 L. J. K.B. 45; [1914] A.C. 877) followed. *Inland Revenue Commissioners* v. *Walker*, 84 L. J. P.C. 115; [1915] A.C. 509; 112 L. T. 611—H.L. (Sc.)

A deduction from total value, as being an expenditure attributable to goodwill, or some other matter personal to the parties interested, can only be allowed under section 25, sub-section 4 of the Act, if the amount has been included as part of the total value. *Ib.*

Judgment of the Court of Session in Scotland ([1913] S. C. 719; 50 Sc. L. R. 470) reversed. *Ib.*

Sale of Fee-simple—Special Need of Particular Purchaser—Pressure on Seller to Sell—Sale in "open market"—Willing Seller.]—In valuing land for increment value duty under section 25, sub-section 1 of the Finance (1909-10) Act, 1910, "if sold in the open market" means if sold upon a sale open to every possible purchaser, though not necessarily a sale by auction only or without reserve, so that the special need of a particular purchaser must be taken into consideration; and "a willing seller" means a free agent who cannot be compulsorily required to sell. *Inland Revenue Commissioners* v. *Clay* (or *Buchanan*), 83 L. J. K.B. 1425; [1914] 3 K.B. 466; 111 L. T. 484; 58 S. J. 610; 30 T. L. R. 573—C.A.

In 1908 water commissioners obtained powers by a Provisional Order to purchase by agreement any lands lying within the catchment area of their reservoir. In 1911, in exercise of these powers, they purchased certain lands within that area for 5,000*l*. In 1913 the original total value of these lands under the Finance (1909-10) Act, 1910, as at April 30, 1909, was fixed by a referee at 3,379*l*., a figure which was but little, if at all, above the agricultural value:—*Held* (Lord Cullen dissenting), that the referee was bound to take into consideration the special value of the lands to the commissioners and the probability in 1909 that the commissioners would shortly be forced to purchase them to preserve the purity of their water supply; and in respect that he had failed to give sufficient weight to these considerations, valuation increased to 4,629*l*. *Inland Revenue Commissioners* v. *Clay & Buchanan* (83 L. J. K.B. 581, 1425; [1914] 1 K.B. 339; [1914] 3 K.B. 466) approved. *Glass* v. *Inland Revenue*, [1915] S. C. 449—Ct. of Sess.

In an appeal to a referee against a valuation of lands under the Finance (1909-10) Act, 1910, the referee, acting on instructions from the reference committee, refused to allow a proof of facts which, it was alleged, would shew that the lands were of a special value to a particular purchaser. The Court remitted to the referee to take a proof, and on his adhering to his former valuation themselves fixed the value of the lands at an increased figure. *Ib.*

Assessable Site Value — Walls Sheltering Sheep — "Buildings" — "Other structures . . . which are appurtenant to or used in connection with any such buildings"—Divestment.]—A farm was divided into fields, and bounded by substantially built stone walls from five to six feet in height, and the walls also served as shelter to stock on the farm:—*Held*, that they were not "buildings" or "other structures . . . appurtenant to or used in connection with" farm buildings, within section 25, sub-section 2 of the Finance (1909-10) Act, 1910, and, consequently, that the assessable site value of the land was not to be fixed as if the land were divested of these walls. *Morrison* v. *Inland Revenue Commissioners*, 84 L. J. K.B. 1166; [1915] 1 K.B. 716; 112 L. T. 1044; 31 T. L. R. 176—Rowlatt, J.

—— Appeal from Referee on Question of Costs.]—The Court will not entertain an appeal against the referee on a question of costs. *Ib.*

—— Deductions—"Value . . . directly attributable to works executed, or expenditure of a capital nature"—"Value . . . directly attributable to the appropriation of any land . . . for the purpose of streets," &c.—Appropriation of Land and Construction of Roads thereon on Building Estate—Claim for Deduction.]—The assessable site value of land for the purposes of the Finance (1909-10) Act, 1910, means "the total value after deducting— . . . (*b*) Any part of the total value which is . . . directly attributable to works executed, or expenditure of a capital nature . . . incurred . . . by . . . any person interested in the land for the purpose of improving the value of the land as building land, . . . and (*c*) Any part of the total value which is . . . directly attributable to the appropriation of any land . . . by any person interested in the land for the purpose of streets, . . .":—*Held*, that in the case of a building estate, the value attributable under (*c*) does not refer exclusively to the value attributable to the appropriation of land outside the estate, but includes the value attributable to the appropriation of land to roads on the estate. *Held*, also, that where the land had been appropriated and the roads made up, and a landowner claims under both (*b*) and (*c*), the deduction may be in one sum without specifying the amount under each separately, but that a specific claim must be made under each clause if a case under each is to be put forward. If in doubt under which to claim, the landowner may claim under each alternatively. *Held*, further, that the part of the total value attributable under (*c*) is not the part at the time of the dedication, but the part of the total value—that is, the amount after certain deductions, which it would have fetched in the open market—attributable under (*c*) in the same market. *Inland Revenue Commissioners* v. *Whidborne's Executors*, 84 L. J. K.B. 1202; [1915] 2 K.B. 350; 112 L. T. 1023—Rowlatt, J.

Agricultural Land—Market Value for Agricultural Purposes only—Value of Land for Sporting Purposes.]—Section 7 of the Finance (1909-10) Act, 1910, enacts that "Increment value duty shall not be charged in respect of agricultural land while that land has no higher value than its market value at the time for agricultural purposes only: Provided that any value of the land for sporting purposes, . . . shall be treated as value for agricultural purposes only, except where the value for any such purpose exceeds the agricultural value of the land":—*Held*, that, in ascertaining the value of agricultural land as on April 30, 1909, pursuant to section 26, sub-section 1 of the Act, the value of the land for agricultural purposes only should not include the value of the land for sporting purposes. *Inland Revenue Commissioners* v. *Hunter*, 84 L. J. K.B. 135; [1914] 3 K.B. 423; 110 L. T. 825; 58 S. J. 400; 30 T. L. R. 363—Scrutton, J.

Substituted Site Value — Mortgage of Interest in Land before April 30, 1909—Site

Value at Time of Mortgage—Basis of Calculation.] — By section 2, sub-section 3 of the Finance (1909-10) Act, 1910, where the site value of land at the time of any transfer on sale of any interest in land taking place at any time within twenty years before April 30, 1909, exceeds the original site value as ascertained in accordance with the Act, the former site value shall, for the purposes of increment value duty, on application being made, be substituted for the original site value; and the sub-section, by reference to sub-section 2, provides that the former site value shall be the value of the fee-simple, calculated on the basis of the consideration for the above-mentioned transfer, but subject "to the like deductions as are made, under the general provisions of this Part of this Act as to valuation, for the purpose of arriving at the site value of land from the total value." Section 2, sub-section 3, extends the above provisions as to a transfer on sale of an interest in land to the case of a mortgage thereof, the amount secured by the mortgage being substituted for the consideration for the transfer :—*Held*, that in the latter case it is the actual amount secured by the mortgage which is to be substituted for the original site value, and not the value of the fee-simple at the date of the mortgage. *Hayllar* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 203; [1914] 1 K.B. 528; 110 L. T. 218; 30 T. L. R. 172—C.A.

Hence, where trustees in 1898 advanced 1,600*l.* trust moneys on mortgage on two houses let at rack rents, the value of the same being then 2,400*l.*, the amount to be substituted for the original site value was 1,600*l.* and could not be increased by the estimated value of the equity of redemption. *Ib.*

Lease of Minerals — Term "not exceeding fourteen years."]—Under section 22 of the Finance (1909-10) Act, 1910, increment value duty is payable in respect of a lease of minerals, although the lease is for a term not exceeding fourteen years. *Inland Revenue Commissioners* v. *Sheffield and South Yorkshire Navigation Co.*, 84 L. J. K.B. 922; [1915] 1 K.B. 725; 112 L. T. 1073—Rowlatt, J.

Duty Payable out of Capital. —*Semble*, increment value duty and reversion duty chargeable under the Act are payable out of capital. *Smith-Bosanquet's Settled Estates, In re*, 107 L. T. 191—Parker, J.

Whether Increment Value Duty a Stamp Duty.]—Increment value duty, being a debt due to the Crown by sellers, is not a stamp duty on a conveyance within section 168 of the Public Health (Scotland) Act, 1897, which provides that "all bonds . . . conveyances, instruments . . . made or granted by or to or in favour of the local authority under this Act shall be exempt from all stamp duties." *Inland Revenue* v. *Miller*, [1915] S. C. 469—Ct. of Sess.

Semble, that the exemption granted by section 168 applies to a conveyance to Glasgow Corporation of a piece of ground purchased by them for purposes of public recreation under powers conferred by their Police Order Confirmation Act 1901. *Ib.*

Appeal from Referee — Oral Evidence on Appeal.] — The fact that on the hearing of the appeal from the referee the Court heard oral evidence is not to be taken as binding the Court to such a course in future. *Inland Revenue Commissioners* v. *Clay; Inland Revenue Commissioners* v. *Buchanan*, 83 L. J. K.B. 581; [1914] 1 K.B. 339; 110 L. T. 311—Scrutton, J.

3. Reversion Duty.

Surrender of Lease — Basis for Ascertaining Total Value of Land at the Time of Original Grant of Lease—Ramsden Estate—Tenancy at Will—Right to Lease.]—The provisions in section 13, sub-section 2 of the Finance (1909-10) Act, 1910, with reference to the ascertainment of the total value of land at the time of the original grant of a lease are exclusive, and provide the only method in which the total value of the land at the time of the original grant of the lease is to be ascertained, and therefore other evidence as to the real value of the land at the time of the granting of the lease cannot be given. *Ramsden* v. *Inland Revenue Commissioners*, 82 L. J. K.B. 1290; [1913] 3 K.B. 580*n.*; 109 L. T. 105—Horridge, J.

Property on the R. estate, Huddersfield, was, before 1860, largely held on tenancy by "tenant right." A person desiring to obtain land on "tenant right" applied to the agent for the estate for permission to build upon the land selected, and upon approval by the agent of the plot and plans for building, and upon agreement as to the rent to be paid, was allowed to enter upon the land on the understanding that he would build thereon. His name was then entered upon the tenant roll of the estate. If a tenant wished to sell his house he purported to surrender the property to the landlord, and the name of the purchaser was then entered on the tenant roll; if he died, the name of the next-of-kin or legatee was substituted on the tenant roll. The rent payable by a tenant by "tenant right" was about one-half of what he would have paid if the land had been taken on a renewable lease. No lease was granted to a tenant by "tenant right," but he had an expectation that he would not be disturbed so long as the rent was paid. In 1849 M. applied for permission to become a tenant by "tenant right" of a piece of land, and was allowed to enter into possession of the land on the understanding that he would build thereon. He in fact expended about 350*l.* in the erection of a house. The rent of the plot was fixed at 1*l.* 7*s.* per annum. In 1867 the then owner of the R. estate granted a lease, at a ground rent of 1*l.* 16*s.* 8*d.*, of this piece of land for 99 years to C., as being the person then entitled to the "tenant right" granted to M. In October, 1910, this lease was surrendered in pursuance of an agreement by the present owner of the estate to grant a new lease of the land for 999 years at an increased ground rent. The Inland Revenue Commissioners, in assessing the reversion duty payable by the lessor under section 13 of the Finance (1909-10) Act, 1910, on such surrender, valued the total value of the land at the time of the original grant of

the lease at 40*l.* 6*s.* 8*d.*, being twenty-two years' purchase of 1*l.* 16*s.* 8*d.*, the rent reserved by the lease. The lessor claimed that the value of the undertaking to build given by M. when he entered into possession ought also to be taken into account:—*Held*, that tenants by "tenant right" had no higher right in their property than that of a tenant from year to year, and that the undertaking by M. in 1849 to erect buildings on the land was not connected in any way with the grant of the lease to C. in 1867, and could not therefore be taken into account in ascertaining the total value of the land at the time of the granting of the lease in 1867, even assuming that the rent of 1*l.* 16*s.* 8*d.* reserved by the lease was a nominal rent. *Held*, further, that the surrender by C. of his "tenant right" in the property in 1867 on the granting of the lease could not be taken into account as a "payment" within sub-section 2 of section 13 of the Act of 1910, as he had no legal right in the property beyond that of a tenant from year to year. *Ramsden* v. *Dyson* (L. R. 1 H.L. 129) considered. *Ib.*

Grant of New Lease at Same Rent for Longer Term—"Total value"—"Compensation payable by lessor."]—Two long leases of property were surrendered to the lessor, who thereupon granted a new lease of the premises comprised in the two old leases to the lessee at the same rent for a slightly longer term. The Crown claimed reversion duty under section 13 of the Finance (1909-10) Act, 1910, as amended by section 3 of the Revenue Act, 1911, on the difference between the total value at the determination of the old leases and the total value at the commencement thereof:—*Held*, that in ascertaining the total value at the determination of the old leases the value of the grant of the new leases could not be deducted as being "compensation payable by such lessor at the determination of the lease" under section 13, sub-section 2 of the Finance (1909-10) Act, 1910. *Inland Revenue Commissioners* v. *Anglesey (Marquess)*, 82 L. J. K.B. 811; [1913] 3 K.B. 62; 108 L. T. 769; 57 S. J. 517; 29 T. L. R. 495—C.A.

Agreement to Grant New Lease on Performance of Conditions—Determination of Old Lease.]—On April 5, 1910, an agreement was made between the tenant of certain premises, who held under a lease which had still a number of years to run, and the lessor, whereby the latter agreed to give the tenant a new lease for a longer term as from March 25, 1910, on the performance by the tenant of certain conditions. On April 29, 1910, the date when the Finance (1909-10) Act, 1910, came into operation, those conditions had not been performed by the tenant, and it was not till June 23, 1910, that the new lease was executed:—*Held*, that as the conditions of the agreement of April 5, 1910, had not been performed by April 29, 1910, the tenant was not then entitled, under the doctrine of *Walsh* v. *Lonsdale* (52 L. J. Ch. 2; 21 Ch. D. 9), to be treated in equity as having the new lease; and that as the time at which the surrender by operation of law determined the old lease—namely, the date of the grant of the new lease—was subsequent to the coming into operation of the Finance (1909-10) Act, 1910, the lessor was liable under section 13 of that Act to reversion duty on the value accruing to him by reason of the determination of the old lease. *Inland Revenue Commissioners* v. *Derby (Earl)*, 84 L. J. K.B. 248; [1914] 3 K.B. 1186; 109 L. T. 827—Horridge, J.

Total Value of Land at the Time of Original Grant of Lease—"Payments made in consideration of the lease"—"Nominal rent"—"Undertaking to erect buildings."]—Under section 13, sub-section 2 of the Finance (1909-10) Act, 1910, the value of the benefit accruing to a lessor on the determination of a lease upon which reversion duty is payable by the lessor shall be deemed to be the amount by which the total value of the land at the time the lease determines exceeds "the total value of the land at the time of the original grant of the lease, to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property)":—*Held*, that an expenditure on land by the erection of houses made by a prospective lessee under an agreement in order that he might obtain a lease of the land and houses is not a "payment made in consideration of the lease" within the meaning of section 13, sub-section 2 of the Finance (1909-10) Act, 1910, and cannot therefore be taken into account. *Held*, further, that "nominal rent" means rent which is a mere token of an acknowledgment of the relation of landlord and tenant, and that therefore the value of a covenant or undertaking to erect buildings could not be taken into account in estimating the total value of the land at the time of the original grant of the lease where a rent of 24*l.* a year was reserved by the lease, even although such rent was not the full rent of the land. *Stepney and Bow Educational Foundation (Governors)* v. *Inland Revenue Commissioners*, 82 L. J. K.B. 1300; [1913] 3 K.B. 570; 109 L. T. 165; 29 T. L. R. 631—Horridge, J.

Grant of Lease in Consideration of Surrender of Old Lease and Payment of Money—Basis for Ascertaining Total Value of Land at the Time of Original Grant of Lease—To be Ascertained "on the basis of the rent reserved and payments made in consideration of the lease."]—For the purpose of ascertaining the benefit accruing to a lessor on the determination of a lease, in respect of which he is assessed to reversion duty, it is necessary, under section 13, sub-section 2 of the Finance (1909-10) Act, 1910, to ascertain the total value of the land at the time of the original grant of the lease "on the basis of the rent reserved and payments made in consideration of the lease." The lessors were accustomed to grant a lease of certain premises for forty years at a nominal rent, and at the expiration of fourteen years to grant a new lease for forty years in consideration of the surrender of the existing lease, payment of the

same rent, and of a sum of money :—*Held*, that in ascertaining the above total value recourse must be had to the definition of total value in section 25, sub-section 3 of the Act —that is, its value in the open market—but that the calculation must be on the basis of the rent reserved and payments made in consideration of the grant of the lease, as directed by section 13, sub-section 2, and that accordingly, in the above circumstances, the total value must be ascertained on the basis of the rent and of that for which the payment was made—namely, the exchange for a term of twenty-six years at that rent of a forty years' term at the same rent. *Held* also, that the surrender of the existing lease was not a payment made within the meaning of section 13, sub-section 2, and could not therefore form a part of the basis for the above calculation. *Inland Revenue Commissioners* v. *St. John's College, Oxford*, 84 L. J. K.B. 1426; [1915] 2 K.B. 621; 112 L. T. 1039—Rowlatt, J.

Expenditure by Lessee on Property Demised —"Payments made in consideration of the lease."]—The Finance (1909-10) Act, 1910, by section 13, sub-section 1, imposes a reversion duty on a lessor on the value of the benefit accruing to him on the determination of a lease. By sub-section 2 the value of the benefit accruing to the lessor is to be deemed to be the amount (if any) by which the total value of the land at the time when the lease determines exceeds "the total value of the land at the time of the original grant of the lease, to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property)" :—*Held*, that "payments made in consideration of the lease" could not be restricted to payments made directly to the lessor, but that money expended by the lessee on the property demised prior to the granting of the lease must be taken into account. *Inland Revenue Commissioners* v. *Camden (Marquis)*, 84 L. J. K.B. 145; [1915] A.C. 241; 111 L. T. 1033; 58 S. J. 782; 30 T. L. R. 681—H.L. (E.)

Decision of the Court of Appeal (83 L. J. K.B. 509; [1914] 1 K.B. 641) affirmed. *Ib.*

Benefit Accruing to Lessor on Determination of Lease—Value of Licence.]—In estimating the value of the benefit accruing to a lessor by reason of the determination of a lease, for the purpose of assessment to reversion duty under section 13 of the Finance (1909-10) Act, 1910, the increased value of the land owing to the existence of a licence for the sale of intoxicating liquors attached to a house erected thereon ought to be taken into account. *Fitzwilliam (Earl)* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 1076; [1914] A.C. 753; 111 L. T. 385; 58 S. J. 493; 30 T. L. R. 459—H.L. (E.)

Decision of the Court of Appeal (82 L. J. K.B. 777; [1913] 2 K.B. 593) affirmed. *Ib.*

Exemptions—Reversion "purchased" before April 30, 1909 — Reversion Conveyed to Trustees of Marriage Settlement—Meaning of "purchased."]—The word "purchased" is used in section 14, sub-section 1 of the Finance (1909-10) Act, 1910, in the ordinary commercial sense of "bought," and a reversion on a lease conveyed to trustees of an ante-nuptial settlement in consideration of marriage is not, therefore, "purchased" within the meaning of that sub-section :—So *held*, *per* Cozens-Hardy, M.R., and Kennedy, L.J.; Buckley, L.J., dissenting. *Inland Revenue Commissioners* v. *Gribble*, 82 L. J. K.B. 900; [1913] 3 K.B. 212; 108 L. T. 887; 57 S. J. 476; 29 T. L. R. 481—C.A.

4. Undeveloped Land Duty.

Building Land—Lease Made before April 30, 1909, and Current on April 29, 1910—Power to Resume Possession for Building or other Purposes — Liability before Determination of Lease.]—The Finance (1909-10) Act, 1910, by section 16 imposes a duty on the owners of "undeveloped land" as therein defined. By section 17, sub-section 5, the duty is not chargeable upon agricultural land at the passing of the Act held under a tenancy originally created by a lease made before April 30, 1909, during the continuance of such tenancy : "Provided that where the landlord has power to determine the tenancy . . . the tenancy . . . shall not be deemed for the purposes of this provision to continue after the earliest date after the commencement of this Act at which it is possible to determine the tenancy under that power." Land, which was admitted to be undeveloped land within the meaning of the Act, was let for seven years from September 29, 1904, under a lease made in 1906, and current on April 29, 1910, the date of the passing of the Act. The lease reserved to the lessors power, upon giving one month's notice to the tenant, "to enter upon and resume possession for building or other purposes of any part or parts of the said land." The lessors had no intention or wish to resume possession for building or any other purpose before the determination of the lease :—*Held*, that the land was not liable to duty before the determination of the lease under section 17 of the Act, as the right to resume possession never arose, for the power could only be exercised in an event which had not happened—namely, an intention or wish on the part of the lessors to resume possession for building or other purposes inconsistent with the use of the land as agricultural land under the lease. *Inland Revenue Commissioners* v. *Southend-on-Sea Estates Co.*, 84 L. J. K.B. 154; [1915] A.C. 428; 112 L. T. 89; 59 S. J. 24; 31 T. L. R. 30—H.L. (E.)

Decision of the Court of Appeal (83 L. J. K.B. 611; [1914] 1 K.B. 515) affirmed. *Ib.*

"Land . . . developed by the erection of dwelling houses"—"Dwelling house."]—By section 16, sub-section 1 of the Finance (1909-10) Act, 1910, undeveloped land duty is charged on undeveloped land, and by sub-section 2 land is deemed to be undeveloped if it has not been (*inter alia*) "developed by the erection of dwelling houses" :—*Held*, that "dwelling house" includes the house, out-

buildings, curtilage, and the open spaces included therein other than gardens or pleasure grounds. *Held*, further, that land is developed land which is essential to the use of the use of the dwelling house as such by the class of persons who might, from the business point of view of a person dealing in houses, be expected to live in it. *Inland Revenue Commissioners* v. *Devonshire (Duke)*, 83 L. J. K.B. 706; [1914] 2 K.B. 627; 110 L. T. 659; 30 T. L. R. 209—Scrutton, J.

By section 17, sub-section 4, the duty is not to be charged on land, not exceeding one acre in extent, occupied together with a dwelling house:—*Held*, that land developed as above as essential to the use of the dwelling house, if one acre or less in extent, is included in the one acre so exempt, but that if it exceeds one acre in extent the excess is still developed land. *Ib.*

Business of Land Development — Sale of Land—Payment by Instalments—Purchaser in Possession before Execution of Conveyance Assessment of Vendor to Duty—"Recoverable from the owner for the time being"—Vendor not the Owner—Referee's Jurisdiction—Right of Appeal.] — Section 19 of the Finance (1909-10) Act, 1910, provides that undeveloped land duty shall be assessed by the Commissioners of Inland Revenue, and shall be recoverable from the owner of the land for the time being. By section 41, "The expression 'owner' means the person entitled in possession to the rents and profits of the land in virtue of any estate of freehold." A. carried on the business of a "land developer" by purchasing land, cutting it up into plots, and selling them to various purchasers under agreements which provided for payment of the purchase money by instalments and for the execution of conveyances on payment of the balance thereof. On the signing of the agreements the purchasers took possession of the plots. The Commissioners assessed A. for undeveloped land duty in respect of certain of these plots, but the purchasers, although in possession under their agreements, had not completed their purchases, nor received their conveyances. A. appealed to a referee on the ground that he was not the owner of the land, and was not therefore liable to pay the duty. The referee decided that the appellant was the owner, and therefore liable. The appellant appealed from this decision to the High Court:—*Held*, by Scrutton, J., that a person who has been assessed for undeveloped land duty is entitled under section 33 of the Finance (1909-10) Act, 1910, to appeal against such assessment to a referee, and to appeal from his decision to the High Court, on the question whether he is the owner of the land in respect of which he has been assessed to duty. And *held*, by the Court of Appeal (affirming the decision of Scrutton, J., on this point), that at the date of the assessment A. was not the owner of the land in question within section 41 of the Act, and had been wrongly assessed to this duty in respect thereof. *Allen* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 649; [1914] 2 K.B. 327; 110 L. T. 446; 58 S. J. 318—C.A.

Land Developer—Land Held for Sale—Land "used bona fide for any business."]—Where a person carried on the business of a land developer, utilising his land in connection with his business by its development with a view to sale in accordance with the demands of the market for the time being, and with the aid of a system of advertisement designed to attract purchasers,—*Held*, that the land was not being "used *bona fide* for any business, trade, or industry" within the meaning of section 16, sub-section 2 of the Finance (1909-10) Act, 1910, and was chargeable with undeveloped land duty. *Brake* v. *Inland Revenue Commissioners*, 84 L. J. K.B. 759; [1915] 1 K.B. 731; 112 L. T. 944; 31 T. L. R. 177—Rowlatt, J.

5. Mineral Rights Duty.

"Minerals"—Felsite Whinstone—Granite.] —All substances obtained from the crust of the earth, other than the surface soil, by mining, quarrying, or open working, are "minerals" within the Finance (1909-10) Act, 1910, with the exception of those substances expressly excepted in the Act. Accordingly, felsite whinstone and granite, not being among the excepted substances, are minerals and subject to mineral rights duty. *Anstruther's Trustees* v. *Inland Revenue*, [1912] S. C. 1165—Ct. of Sess.

Land and Minerals in Different Occupation — Minerals a Separate Parcel — Failure to Estimate Capital Value of Minerals in Form 4 — Right to make Further Return as to Minerals—Provisional Valuation—Substituted Capital Value.]—In 1910 the trustees of a marriage settlement, dated June 3, 1863, were owners in fee-simple of Appleton Farm, subject to a lease to P. for fourteen years, dated October 6, 1906, in which the minerals were reserved to the trustees. On September 13, 1910, they were served with a notice dated September 10, 1910, requiring them to make a return on "Form 4—Land" within thirty days for the purposes of valuation under the Finance (1909-10) Act, 1910. In Form 4 as served on them the property to which it applied was described as "House Premises and Land" called Appleton Farm in the occupation of P. In reply to questions under heading (*t*) the trustees stated that they were the owners and proprietors of the minerals under the farm, which were unworked. At the foot of this heading was a note: "Minerals not comprised in a mining lease or being worked are to be treated as having no value as minerals unless the proprietor of the minerals fills up space (*w*) below." The enquiry under heading (*w*) was as to the nature and estimated capital value of the minerals, and the trustees left it unanswered. A provisional valuation had been made of the farm but not of the minerals thereunder, as the Inland Revenue Commissioners claimed to treat them as having had no value on April 30, 1909, by virtue of section 23, sub-section 2 of the Act owing to the failure to answer (*w*):—*Held*, that the minerals ought to be treated as a separate parcel of land; that the copy of Form 4 served on the trustees, which dealt with the land in

the occupation of P., was not a proper mode of requiring a return of particulars relating to the minerals; and that the return by the trustees on this form was not the return of the proprietors of the minerals referred to in section 23, sub-section 2 of the Act. *Held*, therefore, that the plaintiffs were entitled to make a return in respect of the minerals on a proper form in pursuance of a further notice from the Commissioners. *Foran* v. *Att.-Gen.*, 84 L. J. Ch. 456; [1915] 1 Ch. 703; 113 L. T. 23; 59 S. J. 349; 31 T. L .R. 285 —C.A.

Semble, that in a case where the original capital value of minerals can be treated as *nil* under section 23, sub-section 2, the proprietor of the minerals is not precluded in a proper case from applying for a substituted capital value. *Ib.*

Mining Lease—Rental Value—Rent "paid by working lessee in last working year"—Arrears of Rent—No Deduction for Super-tax.]—By a mining lease dated May 25, 1908, a lessor demised certain veins of coal to a company for forty-two years from 1906 at a fixed yearly rent of 500*l.*, payable quarterly. On October 2, 1908, the lessor received from the company arrears of rent for three quarters which had become due in 1907. No other payment of rent was made to the lessor during the year October 1, 1908, to September 30, 1909, which was the "last working year" for the purpose of this case within the meaning of the Finance (1909-10) Act, 1910, s. 20, sub-s. 2: *Held*, that, although these arrears were due in respect of a period antecedent to October 1, 1908, they were rent "paid by the working lessee in the last working year" in respect of the right to work minerals within the meaning of the Finance (1909-10) Act, 1910, s. 20, and the lessor was therefore assessable to mineral rights duty in respect thereof. *Held*, further, that in ascertaining the rental value of the mineral rights no deduction could be allowed in respect of super-tax which is chargeable under section 66—payable by the lessor in respect of the rent as part of his total income. *Beaufort (Duke)* v. *Inland Revenue Commissioners; Anglesey (Marquess)* v. *Same*, 82 L. J. K.B. 865; [1913] 3 K.B. 48; 108 L. T. 902; 29 T. L. R. 534—C.A.

Decision of Hamilton, J. (81 L. J. K.B. 588; [1912] 2 K.B. 281), affirmed. *Ib.*

Landlord's Property Tax.]—A lessor is not assessable to mineral rights duty under the Finance (1909-10) Act, 1910, s. 20, on a sum deducted by the lessee from the rent in respect of landlord's property tax, but only on the gross amount of the rent less the sum so deducted. *Ib.*

Lease of Minerals Underlying Copyholder's Lands by Lords of Manor—Copyholder's Right to Support—Grant to Lessee of Lords of Manor of Right to Work—Supporting Minerals by Copyholder—"Right to work minerals."]—The lords of a manor leased to a colliery company the right to work minerals lying under copyhold lands of the manor subject to the copyholder's right to support. By a certain indenture the copyholder "demised" to the colliery company at a "rent" calculated on the amount of minerals brought to surface the right to "work get and carry away" the minerals which afforded support to his land without leaving it any support:—*Held*, that the right granted by the copyholder was not a right to work minerals within the meaning of section 20, sub-sections 1 and 2 (*a*) of the Finance (1909-10) Act, 1910, but a right to let down the surface, and that the copyholder was not therefore liable to pay mineral rights duty in respect of the right granted. *Inland Revenue Commissioners* v. *Joicey (No. 2)*, 82 L. J. K.B. 784; [1913] 2 K.B. 580; 108 L. T. 738; 57 S. J. 557; 29 T. L. R. 537 —C.A.

"Access to or conveyance of the minerals."]—The appellant leased certain lands to a coal company for mining purposes, and the rent payable by the company under the lease included (*inter alia*) certain rents by way of percentage calculated upon the amount of coal brought upon and carried over the appellant's land from mines not on her land and described in the lease as "foreign" mines. The appellant received from the company as rent for one year under the lease, 4,966*l.*, which included two sums of 436*l.* 7*s.* 11*d.* and 351*l.* 9*s.* 4*d.* paid to her in respect of coal not worked under the mining lease, but respectively brought from "foreign" mines to bank on the appellant's land and carried over her land. She was assessed for mineral rights duty under section 20 of the Finance (1909-10) Act, 1910, on these two sums in respect of mineral wayleaves:—*Held*, that mineral rights duty was payable under section 20 of the Act of 1910 in respect of minerals, which, although not her property, were carried over her land as wayleaves. *Storey* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 251; [1914] 1 K.B. 87; 109 L. T. 559; 58 S. J. 121; 30 T. L. R. 39—Scrutton, J.

Commissioners' Right of Appeal to High Court—"Any person aggrieved"—Rules as to Appeals by Subject—Casus Omissus.]—By the Finance (1909-10) Act, 1910, s. 33, sub-s. 4, "Any person aggrieved by the decision of the referee may appeal against the decision to the High Court within the time and in the manner and on the conditions directed by Rules of Court." The Revenue Act, 1911, s. 7, declares that the Commissioners of Inland Revenue have, under section 33, sub-section 4 of the Finance (1909-10) Act, 1910, a "right of appeal to the High Court against the decision as persons aggrieved within the meaning of that provision." Rules of Court were made on January 16, 1911, before the Revenue Act, 1911, came into operation. The respondent having been assessed to mineral rights duty, appealed to the referee, who held that he was not assessable to this duty. The Commissioners appealed by petition to the High Court, but the respondent took the preliminary objection that there was no machinery by which the Commissioners could appeal to the High Court because the Rules of January 16, 1911, did not provide for an appeal by the Commissioners:—*Held*, that, although the Rules were primarily intended to

deal with an appeal by the subject, they sufficiently laid down the time, manner, and conditions of an appeal by the Commissioners; that it was not necessary that the Rules should lay down all the conditions, but that when there was a *casus omissus* resort might be had to the general Rules of the Supreme Court. *Inland Revenue Commissioners* v. *Joicey* (*No.* 1), 82 L. J. K.B. 162; [1913] 1 K.B. 445; 108 L. T. 135; 29 T. L. R. 150—C.A.

VI. LEGACY DUTY.

See also Vol. XII. 210, 1266.

Persons Entitled in Succession—Contingent Class—No Gift over—Different Rates of Duty — Mode of Payment.] — A testator gave his residuary estate upon trusts for sale and conversion and to pay the income of the proceeds to three persons during their joint lives in equal shares with remainder (in the events that happened), both as to income and capital, to all their children living at the death of the survivor of them who should attain twenty-one, or being female marry. The will contained no gift over in the event of the life tenants dying without issue who would take a vested interest. At the death of the testator the life tenants were all under thirty years of age and unmarried. The life tenants were chargeable with legacy duty at 10 per cent. upon their interests, and their issue would also be chargeable at the same rate. The next-of-kin of the testator who were entitled in default of the contingent class of issue consisted of several persons who would be chargeable with legacy duty at 1 per cent. and 5 per cent. respectively: —*Held*, that different persons being entitled in succession, and the rates of payment being different, the case fell within the latter part of section 12 of the Legacy Duty Act, 1796, and that section 17 of that Act did not apply. Accordingly, the executors should pay duty calculated at 10 per cent. on the value of the life interest out of income, by instalments spread over four years. Should the life tenants die during that period the instalments would cease, and the ultimate duty be payable by the remaindermen at the proper rate. *Duppa, In re; Fowler* v. *Duppa*, 81 L. J. Ch. 737; [1912] 2 Ch. 445; 107 L. T. 522; 56 S. J. 721—Swinfen Eady, J.

Free of "Legacy duty"—Specific Legacy —Property Abroad—French Mutation Duty—Penalties for Non-payment — Incidence.] — A testator domiciled in England bequeathed to a legatee "free of legacy duty" certain specific chattels which were in France:—*Held*, that the words "legacy duty" did not include the French duty known as *droits de mutation par décès*, or "mutation duty," but were confined to legacy duty in the strict sense. Such "mutation duty" is not a charge and expense of the executors payable out of the general estate, and penalties imposed by the French law for delay in paying the mutation duty are equivalent to an additional mutation duty. *Scott, In re: Scott* v. *Scott* (*No.* 1), 84 L. J. Ch. 366; [1915] 1 Ch. 592; 112 L. T. 1057; 31 T. L. R. 227—C.A.

It is not the duty of the executors at the expense of the general estate to deliver chattels specifically bequeathed to the legatees. *Perry* v. *Meddowcroft* (12 L. J. Ch. 104; 4 Beav. 197) doubted. *Ib.*

Decision of Warrington, J. (83 L. J. Ch. 694; [1914] 1 Ch. 847), affirmed. *Ib.*

— Estate Duty — New Duty Imposed after Death of Testatrix—Incidence of Duties.]—A gift "free of all duty" can properly be extended so as to include new duties imposed between the date of the will and the death of the testator. But this principle has no application where a new duty has been imposed or an exemption has been abolished after the date when the will comes into operation. A testatrix bequeathed a sum of 6,000*l.* "free of all duty" upon trust for her niece for life, and after her death for her children, with an ultimate trust, in the event of no child attaining a vested interest, to certain charities. The testatrix died in January, 1913. The niece was still living and unmarried:—*Held*, that the legacy duty was payable out of the general estate, but that the estate duty payable on the death of the niece, by virtue of the Finance Act, 1914, s. 14, would be payable out of the legacy itself. *Snape, In re; Elam* v. *Phillips*, 84 L. J. Ch. 803; [1915] 2 Ch. 179; 113 L. T. 439; 59 S. J. 562—Eve, J.

Turnbull, In re; Skipper v. *Wade* (74 L. J. Ch. 438; [1905] 1 Ch. 726), applied. *Ib.*

Settlement on Successive Persons — Erroneous Payment of Duty out of Corpus—Rectification of Error.] — A testator, having by his will appointed three executors, gave a sum of money to special trustees on trust for M. S. for life with a power of appointment to M. S. over a portion of the sum and a direction that the remainder should on her death be paid by the special trustees to the executors so that the same should sink into his residuary estate. He devised his residue to one of his executors for life with remainder to another executor absolutely. By sections 8, 12, and 13 of the Legacy Duty Act, 1796, the legacy should have been paid by the executors to the special trustees without deduction of legacy duty and the latter should have paid the legacy duty on the interest of M. S. out of the income in four annual instalments. The executors properly paid the settlement estate duty, and also in error, with the approval of the special trustees, paid the legacy duty, and handed over to the special trustees the balance of the legacy:—*Held*, that in the circumstances the fact of the payment of the legacy duty having been made by the executors instead of the special trustees was immaterial, and that, notwithstanding that two of the executors had an interest in the *corpus* of the legacy, the sum which had been overpaid to M. S. by reason of the error should be retained by the special trustees out of the future payments of her income. *Ainsworth, In re; Finch* v. *Smith*, 84 L. J. Ch. 701; [1915] 2 Ch. 96; 113 L. T. 368; 31 T. L. R. 392—Joyce, J.

VII. SUCCESSION DUTY.

See also Vol. XII. 244, 1270.

Legacies Free of Legacy Duty — Whether Succession Duty Included.]—After giving cer-

tain pecuniary legacies, the testator devised a freehold farm to F. and directed "all said legacies to be paid free of legacy duty":—*Held*, not to apply to the devise of the farm so as to cover succession duty. *Ellard* v. *Phelan*, [1914] 1 Ir. R. 76—Ross, J.

Settled Land—Liability to Pay Interest—Capital Moneys Derived from Land Applied in Discharge of Incumbrances on Heirlooms—Jointure—"Free from all deductions."]—In 1889 estates were settled in strict settlement and heirlooms were settled upon trusts to correspond as nearly as might be to the uses of the freeholds. Under that settlement the seventh Earl of Egmont became tenant for life and the eighth became tenant for life in remainder. The seventh earl died in 1897. Under a power contained in the settlement the eighth earl granted to his wife a jointure "free from all deductions." He died in 1910. Estate duty and succession duty on the heirlooms were not paid in 1897, and the Crown now claimed the duties and interest thereon. The trustees had in their hands investments representing capital moneys and rents accrued during the lives of the eighth and the present earl:—*Held*, that the settlement must be treated as one settlement of the estates and of the heirlooms; that the interest must be paid out of the income of the estate accrued during the lives of the tenants for life; that capital moneys raised from other parts of the settled property might be applied in discharging incumbrances on the heirlooms; and that according to the true construction of the settlement and grant the succession duty on the jointure must be paid out of the capital moneys. *Egmont's (Earl) Settled Estates, In re: Lefroy* v. *Egmont*, 81 L. J. Ch. 250; [1912] 1 Ch. 251; 105 L. T. 292—Warrington, J.

VIII. ESTATE DUTY.

1 When Payable.

See also Vol. XII. 274, 1278.

Advowson—Proceeds of Sale—Chargeability to Duty.]—By section 15, sub-section 4 of the Finance Act, 1894, "Estate duty shall not be payable in respect of any advowson or church patronage which would have been free from succession duty under section twenty-four of the Succession Duty Act, 1853." By section 24 of the Succession Duty Act, 1853, "A successor shall not be chargeable with duty in respect of any advowson or church patronage comprised in his succession, unless the same . . . shall be disposed of by or in concert with him for money or money's worth, in which case he shall be chargeable with duty upon the amount or value of the money or money's worth, for which the same . . . shall be so disposed of at the time of such disposal." A testator, who died in 1898, by his will left property, including two advowsons, to three of the defendants as trustees, to the use of his son C. for life, with remainder to the use of his grandson W., the other defendant, for life, with remainders over. C. died in 1901, and in 1905 W. attained the age of twenty-one, and in 1909, under the powers vested in him by the Settled Land Acts, 1882 and 1890, sold the two advowsons. Upon an information by the Attorney-General claiming a declaration that the defendants, upon the death of either the testator or his son, became liable to pay estate duty and settlement estate duty in respect of the advowsons,—*Held*, that upon the true construction of the above enactments these duties were not payable. *Att.-Gen.* v. *Peek*, 82 L. J. K.B. 767; [1913] 2 K.B. 487; 108 L. T. 744—C.A.

Decision of Hamilton, J. (81 L. J. K.B. 574; [1912] 2 K.B. 192), affirmed. *Ib.*

Bona Fide Bargain and Conveyance.]—Estate duty will not be payable under section 59 of the Finance Act, 1910, in respect of property which has been the subject of a *bona fide* bargain and conveyance, even if the consideration be less than the full value of the property. *Weir and Pitt's Contract, In re*, 55 S. J. 536—Warrington, J.

Deed of Gift—"Entire exclusion of the donor"—Benefit to Donor "by contract or otherwise."]—By the effect of the Customs and Inland Revenue Acts, 1881 and 1889, and the Finance Act, 1894, estate duty is payable on property taken under any gift of which *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor or of any benefit to him by contract or otherwise:—*Held*, where the donor of all his property was allowed to continue to reside with the donee in the house, part of the gift, until his death, that nevertheless estate duty was not payable unless the proper inference as a matter of fact to be drawn from the residence and the circumstances was that the possession and enjoyment of the donee were not assumed *bona fide*, and that the whole transaction was a sham and a device to avoid the payment of duty. *Att.-Gen.* v. *Seccombe*, 80 L. J. K.B. 913; [1911] 2 K.B. 688; 105 L. T. 18—Hamilton, J.

The words "or otherwise" in section 11, sub-section 1 of the Customs and Inland Revenue Act, 1889, refer to any transaction legally enforceable which, although not in form a contract, may confer a benefit—as, for example, a lien. *Ib.*

English Domicil—Personalty Outside United Kingdom—General Executors—Foreign Executors of Property Outside—General Executors Liable for Duties.]—A testatrix domiciled in England, after appointing two Englishmen "general executors and trustees" of her will, appointed three Americans executors and trustees of her property in America:—*Held*, that estate duty and settlement estate duty were payable upon the testatrix's American personalty, and that the English executors were liable for the duties thereon to the extent to which assets of the testatrix came or would but for their neglect or default come to their hands. *Manchester (Duchess), In re; Duncannon (Viscount)* v. *Manchester (Duke)*, 81 L. J. Ch. 329; [1912] 1 Ch. 540; 106 L. T.

332; 56 S. J. 429; 28 T. L. R. 241, 260—Swinfen Eady, J.

Objects of National Interest — Heirlooms.]—*Held*, that no part of the testator's general personal estate should be set aside or retained to provide for estate duty or other duty in respect of certain heirlooms settled by his will which had been certified to be of national, scientific, historic, or artistic interest. *Leconfield, In re* (20 T. L. R. 347), followed. *Swaythling (Lord), In re; Samuel* v. *Swaythling*, 57 S. J. 173; 29 T. L. R. 88—Neville, J.

Exemption of Works of Art from Duty till Sale—Enjoyment in Kind.]—In construing section 20 of the Finance Act, 1896, as amended by section 63 of the Finance (1909-10) Act, 1910, no distinction can be drawn between enjoyment in kind for a moment of time and enjoyment in kind for a period of years, and accordingly a legatee of exempted articles under the section had "enjoyed them in kind," although only for the moment of time during which they passed from the executor's agent, through her agent, to the purchaser from her, and such legatee was accordingly accountable, and liable to pay the duty on the exempted articles. *Scott, In re; Scott* v. *Scott* (*No.* 3), 60 S. J. 157—Neville, J.

"Property passing on the death of the deceased" — Partnership — Sale of Share of Deceased Partner—Goodwill.]—By an indenture of partnership entered into between a father and his two sons, the defendants, it was provided that on the death of the father his share of the partnership should accrue to the defendants, subject to their paying to his legal personal representatives the value of the share, but with a provision that in ascertaining the value of the share no valuation of or allowance for goodwill should be made. The defendants covenanted that they would devote all their time to the business necessary for its proper conduct, it being provided that the father need not give more time to it than he thought fit. They also agreed not to undertake any other business. The partnership was constituted subject to the payment of certain existing liabilities. The father died, and his share having been valued in accordance with the above provisions, the defendants paid the amount of the valuation to the personal representatives of the deceased, and estate duty was duly paid thereon:—*Held*, that no further estate duty was payable on the value of the goodwill under section 1 or 2, sub-section 1 (*b*), (*c*), or (*d*) of the Finance Act, 1894, on the ground that on the evidence the value of the goodwill was small, that the defendants had given full consideration in money or money's worth for it within the meaning of section 3, sub-section 1 of the Act in undertaking the obligations and covenants of the partnership, and that the partnership transaction was a commercial one and did not contain any donative element. *Att.-Gen.* v. *Boden*, 81 L. J. K.B. 704; [1912] 1 K.B. 539; 105 L. T. 247—Hamilton, J.

"Full consideration in money or money's worth"—Jurisdiction of Court.]—The question whether full consideration in money or money's worth has been given within the meaning of section 3 of the Act is for the Court and not for the Commissioners of Inland Revenue. *Ib.*

Property Reverting to "Disponer" — Disposition—Husband's Life Interest in Marriage Contract Fund Forfeited to Wife in Consequence of Decree of Divorce, Reverting to him on her Death.]—In consequence of the dissolution of a marriage by decree of divorce on the ground of the husband's adultery, the income of a fund—which under the marriage contract was settled by the husband's father on him, and after his death on his wife for their liferent alimentary uses respectively—was paid to the wife until her death, after which event it again became payable to the husband:—*Held* (Lord Johnston dissenting), that estate and succession duties were payable on the property passing to the husband on the wife's death, the exemptions created by section 15, sub-section 1 of the Finance Act, 1896, in the case of estate duty where property reverts to the "disponer" and by section 12 of the Succession Duty Act, 1853, in the case of succession duty where a person takes a succession under a "disposition" granted by himself, being inapplicable, in respect that the wife had acquired the income as a legal consequence of the decree of divorce and not by a "disposition" from her husband. *Lord Advocate* v. *Montgomery's Trustees*, [1914] S. C. 414—Ct. of Sess.

Exemption from Duty — Settled Property — Covenant to Settle After-acquired Property — Probate Duty.]—The property exempted from estate duty by section 21, sub-section 1 of the Finance Act, 1894, is limited to property settled at the date when the liability to probate duty arose, and must be property in the settlement of which the will or disposition of the person on whose estate the probate duty is paid or payable forms an integral part. It is not sufficient to bring a case within the sub-section to shew that the property is settled by some other instrument at the date when probate duty becomes payable, still less to shew that it is subject to a covenant to settle. Before any right to exemption can be established, it is necessary to find a will or disposition by the person on whose property probate duty is paid or payable constituting part of the settlement. *Torrington (Viscountess), In re*, 83 L. J. Ch. 8; [1913] 2 Ch. 623; 109 L. T. 541; 57 S. J. 730; 29 T. L. R. 742—Eve, J.

2. Amount on which Payable.

See also Vol. XII. 1293.

Recoupment — Covenant to Settle Sum — Debt Unpaid at Death—Settlement Registered in Victoria—English and Australian Assets—Duty on Registration — Right to Resort to Victorian Assets — Right of Deduction from Debt.] — D. in 1890 covenanted to pay 20,000*l.* to the trustees of his marriage settlement, to be held as to one moiety upon trust for himself for life, remainder to his wife for life, and as to the other moiety upon trust

for his wife for life with remainder to himself for life, with remainder as to the whole fund to the children of the marriage, and died in 1911 without having paid the 20,000*l.* which with an arrear of interest was still owing to the trustees. He left estate in England and Australia, apart from assets in Victoria, of more than 45,000*l.* His executors registered the marriage settlement in Victoria, thereby reducing the duties payable in the colony by the duties which would have been payable there on the 20,000*l.* debt and rendering the covenant in the settlement enforceable against the testator's Victorian assets. They also paid estate duty on the testator's estate without deducting the 20,000*l.* debt, but with a deduction in respect of the duties paid in Australia. The executors claimed to deduct from the 20,000*l.* as against the settlement trustees : (*a*) A rateable part of the estate duty paid in England on the 20,000*l.*; (*b*) the registration duty paid in Victoria :—*Held*, following *Gray, In re; Gray* v. *Gray* (65 L. J. Ch. 462; [1896] 1 Ch. 620), that, the 20,000*l.* being an unpaid debt to the trustees at D.'s death, they were not liable for any part of the estate duty in respect of it, and that although the executors had acted properly in registering the settlement in Victoria, yet in so doing they were not agents for the trustees, who had no need to resort to the Victorian assets, and were not liable to pay part of their debtor's probate duty, and neither amount could be deducted from the 20,000*l.*, which must be paid in full. *Dowling, In re; Dowling* v. *Fenwick*, 108 L. T. 671—Eve, J.

3. By whom Payable.

See also Vol. XII. 1296.

Deductions Allowable as Incumbrances — "Incumbrances created by a disposition made by the deceased"—"Disposition taking effect out of the interest of the deceased"—Provisions for Widow and Children.]—By his will A directed his trustees to pay an annuity out of his estate to B, and also, should B request them to do so, to burden the estate with provisions for B's wife and family. On the death of B the fee of the estate was directed to be conveyed to C. After A's death his trustees paid the annuity to B during his life, and also, at B's request, burdened the estate with bonds of provision for his widow and children. On B's death the estate was conveyed to C, who in adjusting estate duty with the Inland Revenue sought to make deductions in respect of the provisions to B's widow and children. The Inland Revenue refused to allow the deductions, and C paid duty on the whole estate. A question having arisen as to C's right to recover from the widow and children the estate duty paid in respect of their provisions,—*Held*, that as these circumstances were not "created by a disposition made by" B in the sense of section 7, sub-section 1 (*a*) of the Finance Act, 1894, and did not take effect "out of the interest of B" in the sense of section 22, sub-section 2 (*b*), they were deductible; and, accordingly, that C could not recover from the beneficiaries this estate duty which he ought not to have paid. *Colquhoun's Trustees* v. *Abereromby*, [1913] S. C. 874—Ct. of Sess.

4. Incidence and Payment.

See also Vol. XII. 1298.

Appointment of Specified Amounts.]—The donee of a power of appointment, which was to take effect after her death, appointed specific sums to certain persons and made an appointment of the residue. In certain cases the appointment was of a "net" sum "clear of all expenses of raising the same." All the appointments except two were of a sum together with 4 per cent. interest from the appointor's death. The appointor died in 1913 :—*Held*, that the estate duty was payable out of the residuary sum appointed, and that all the fixed sums bore interest at 4 per cent. from the appointor's death. *Grant, In re; Nevinson* v. *United Kingdom Temperance and General Provident Institution*, 85 L. J. Ch. 31; 112 L. T. 1126; 59 S. J. 316; 31 T. L. R. 235—Sargant, J.

English Domicil—Foreign Articles.]—All foreign articles of a testator domiciled in England pass under his will to his executor as such, and, in the absence of directions to pay the duty out of the legacy, it is payable by him out of the residuary personal estate. *Hadley, In re; Johnson* v. *Hadley* (78 L. J. Ch. 254; [1909] 1 Ch. 20), followed. *Scott, In re; Seott* v. *Scott* (*No.* 3), 60 S. J. 157—Neville, J.

Covenant to Pay Sum to Trustees of Daughter — Equitable Charge on Specific Realty — Trustees not Bound to Resort to Security in First Instance.]—A sum of money was covenanted to be paid to the marriage settlement trustees of the settlor's daughter within six months of his death, and an equitable charge to secure payment was given on specific real estate, but the trustees were not to be bound to resort in the first instance to this security, but might demand payment from the executors, which course they adopted. There was ample personal estate, which as part of a mixed fund was in trust for payment of debts and legacies, &c., and the executors paid estate duty on it without deducting the covenanted sum. They claimed to recover under section 14, sub-section 1 of the Finance Act, 1894, a proportion of the duty from the sum payable under the covenant as being a sum charged on property not passing to the executors as such :—*Held*, that the Court must follow the decision of the Court of Session in *Alexander's Trustees* v. *Alexander's Trustees* ([1910] S. C. 637), and that the trustees were bound to pay the proper rateable part of the duty in respect of the property comprised in their security. *Dixon Hartland, In re; Banks* v. *Hartland*, 80 L. J. Ch. 305; [1911] 1 Ch. 459; 104 L. T. 490; 55 S. J. 312—Swinfen Eady, J.

Devise "free of any incumbrances."] — A testator by his will made in 1908 devised a messuage and premises "free of any incumbrances." At the date of his death in 1912 the title deeds of the premises were on deposit

at a bank as part of the security for an overdraft :—*Held*, that the words "free of any incumbrances" were inserted in the will for the purpose of relieving the property from any charge whatsoever, and that the payment of estate duty and succession duty was thrown upon the general residue. *Nesfield, In re; Barber* v. *Cooper*, 110 L. T. 970; 59 S. J. 44—Joyce, J.

Donatio Mortis Causa—"Property which does not pass to the executor as such."]—A *donatio mortis causa* is "property which does not pass to the executor as such" within section 9, sub-section 1 of the Finance Act, 1894. *Hudson, In re; Speneer* v. *Turner*, 80 L. J. Ch. 129; [1911] 1 Ch. 206; 103 L. T. 718—Warrington, J.

Quære, whether the subject-matter of a *donatio mortis causa* is property of which the deceased was competent to dispose at his death within the meaning of the Finance Act, 1894. *Ib.*

—— **"Testamentary expenses."**] — Estate duty on a *donatio mortis eausa* is not a testamentary expense." *Porte* v. *Williams* (80 L. J. Ch. 127) followed. Accordingly, estate duty leviable in respect of a *donatio mortis eausa* must be borne by the donee, notwithstanding a direction for payment of "testamentary expenses" out of the estate of the donor. *Ib.*

Fund Appointed by Deed-poll—Specific Sum Dealt with by Will of Tenant for Life—Residue Dealt with by Will of Appointor—Estate Duty Payable on Death of Appointor—Apportionment between Two Parts of Fund.]—By a deed-poll an appointor appointed the income of a fund to himself during his lifetime, and after his death to his wife, if she should survive him, and after the death of the survivor of them, 10,000*l*., part of the fund, as his wife should by will appoint, the remainder of the fund to fall into his residuary estate to be disposed of by his will. He disposed of his residuary estate by his will, and died in 1908, and the estate duty was paid on the whole of the fund. The wife appointed the 10,000*l*. by her will:—*Held*, on the death of the wife that the estate duty payable on the death of the appointor should be apportioned between the two parts of the fund. *Berry* v. *Gaukroger* (72 L. J. Ch. 319, 435; [1903] 2 Ch. 116) applied. *Charlesworth, In re; Tew* v. *Briggs*, 81 L. J. Ch. 267; [1912] 1 Ch. 319; 105 L. T. 817; 56 S. J. 108—Joyce, J.

Legacies and Annuities "free from legacy duty respectively"—"Testamentary expenses"—"Clear money."]—A testator devised his residuary real estate upon trust for sale, and to stand possessed of the "clear money" to arise from such sale upon the trusts thereinafter declared of his residuary personal estate. The testator then gave a number of pecuniary legacies, some of which were settled as therein mentioned, and also directed payment of various annuities. The testator declared that he intended to give all the legacies and annuities thereby bequeathed, and directed that the same "shall be paid or appropriated free from legacy duty respectively." The testator bequeathed his residuary personal estate, including the "clear money" to arise from the sale of his real estate (with certain exceptions) upon trust for sale and conversion, and to pay his funeral and testamentary expenses, debts, and legacies, and the annuities thereinbefore directed to be paid, and the duties on the legacies and annuities, as well as all settlement estate duty, and to stand possessed of all the residue as therein mentioned:—*Held*, that all the pecuniary legacies (settled and unsettled) and the annuities were given free of estate duty. *Speneer Cooper, In re; Poë* v. *Spencer Cooper* ([1908] 1 Ch. 130), discussed. *Palmer, In re; Leventhorpe* v. *Palmer*, 106 L. T. 319—C.A.

Reversionary Interest in Settled Fund—Residuary Estate—Payment—"Testamentary expenses."]—Where a testator dies possessed of the reversionary interest in a settled fund, estate duty on this reversionary interest under section 1 of the Finance Act, 1894, is payable out of his residuary estate, either immediately or, by virtue of section 7, sub-section 6, when the reversion falls into possession. *Dixon, In re; Penfold* v. *Dixon* (71 L. J. Ch. 96; [1902] 1 Ch. 248), overruled. *Avery, In re; Pinsent* v. *Avery*, 82 L. J. Ch. 434; [1913] 1 Ch. 208; 108 L. T. 1; 57 S. J. 112—C.A.

Settlement of Land—Trust for Sale—Land not Sold—Land Notionally Converted—Exercise of General Power of Appointment by Will—"Property passing to executor as such."]—By a marriage settlement made in 1881 a settlor conveyed land to trustees upon trust for sale, and to hold the proceeds of sale upon trust for such person or persons as the settlor should by deed or will appoint. By her will the settlor appointed that the property which remained unconverted at her death should be conveyed and transferred to the trustees of her will upon trust for sale, with power to postpone conversion and upon trust to pay the income to her husband for life with remainders over, and she made him residuary legatee:—*Held*, that the appointed property being at the settlor's death notionally converted into personalty, it passed, by virtue of the exercise of the general power of appointment, as personalty to the executors (as such), and that the estate duty upon it was therefore payable out of the settlor's residuary personal estate. *O'Grady, In re; O'Grady* v. *Wilmot*, 84 L. J. Ch. 496; [1915] 1 Ch. 613; 112 L. T. 615; 59 S. J. 332—C.A.

Decision of Eve, J. (84 L. J. Ch. 181; [1915] 1 Ch. 39), reversed. *Ib.*

Will—Power of Appointment—Power only Partially Exercised—"Testamentary expenses" of Appointor—Estate Duty on Portion of Fund not Appointed.]—A testatrix with a general power of appointment over a certain fund, which she declined to exercise, except to a very small and partial extent, directed by her will that her executors should pay her funeral and testamentary expenses out of the residue of her estate:—*Held*, that the estate duty in respect of the unappointed fund was not a "testamentary expense" of

the testatrix, and that her executors, having paid it, were entitled to repayment out of the fund. *Porte* v. *Williams*, 80 L. J. Ch. 127; [1911] 1 Ch. 188; 103 L. T. 798; 55 S. J. 45—Joyce, J.

Special Power of Appointment—Portions—Estate Duty—"Everything passing under this my will" to be Free of Duty — Portions Appointed under Power Pass under Will.]—By his marriage settlement a settlor, in exercise of a power of appointment, appointed certain estates to trustees for a term of years upon trust to raise, for the portion or portions of any children of the marriage, a sum of 20,000*l.* to be divided between them as he should by deed or will appoint, or, in default of appointment, equally. By his will the settlor, who had five children, appointed the 20,000*l.* to his three daughters in equal shares, and after bequeathing certain legacies free of estate and legacy duty by clause 8, bequeathed various moneys and securities upon trust to pay his funeral and testamentary expenses, "including estate duty on everything passing under this my will":—*Held*, that, upon the true construction of the will the appointed portions passed under the will, so that the estate duty payable upon the portions fund was payable out of the property disposed of under clause 8 of the will. *Bath's (Marquis) Settlement, In re; Thynne* v. *Shaw-Stewart*, 111 L. T. 153; 58 S. J. 578—Joyce, J.

Direction to Pay "all death duties" out of Residue—Covenant by Testator to Pay Money to Daughter's Marriage Settlement Trustees—Mortgage to Secure Money—Death Duties on Settled Money Rateable Part of Estate Duty.]—Where by his will a testator directs his trustees to pay "all death duties" out of his residue, he must be presumed to mean thereby all duties in fact payable by the trustees of the will without any statutory right in the trustees to recover them from any other persons. *Briggs, In re; Richardson* v. *Bantoft*, 83 L. J. Ch. 874; [1914] 2 Ch. 413; 111 L. T. 939; 58 S. J. 722—Astbury, J.

So, where a testator had in his lifetime mortgaged an estate to the trustees of his daughter's marriage settlement to secure a sum which he had covenanted to pay to them on or before his death, and the sum was not paid in his lifetime, a direction in his will to his trustees to pay "all death duties" out of his residue will not include the rateable part of the estate duty in respect of the sum secured by the mortgage recoverable by the trustees of the will from the trustees of the marriage settlement under section 14, sub-section 1 of the Finance Act, 1894. This rateable part and the settlement estate duty and the succession duty must therefore be paid by the settlement trustees out of the settled fund. *Ib.*

"Free of all duty" — Estate Duty — New Duty Imposed after Death of Testatrix — Incidence.]—A testatrix bequeathed a sum of 6,000*l.*, "free of all duty," upon trust for her niece for life, and after her death for her children, with an ultimate trust, in the event of no child of the niece attaining a vested interest, to certain charitable institutions. The testatrix died in January, 1913. The niece was still living and unmarried:—*Held*, that the legacy duty in respect of the said sum was payable out of the general estate, but that the estate duty payable on the death of the niece would be payable out of the legacy itself. *Turnbull, In re; Skipper* v. *Wade* (74 L. J. Ch. 438; [1905] 1 Ch. 726) applied. *Snape, In re; Elam* v. *Phillips*, 84 L. J. Ch. 803; [1915] 2 Ch. 179; 113 L. T. 439; 59 S. J. 562—Eve, J.

—— Legacies in "this my will."] —*See Trinder, In re, post*, col. 1804.

5. Mode of Assessment.

See also Vol. XII. 1306.

Real and Personal Estate—Settled Lands—Aggregation.] — Section 12, sub-section 2 of the Finance Act, 1900, cannot be construed (as contended by the Commissioners of Inland Revenue) as if the words "if the Finance Act, 1894, had been passed prior to the death of the disponer" were substituted for the words "if the disponer had died after the said Part"—that is, Part I. of the Finance Act, 1894, only interposing after the words "the said Part," "and in the event of all parties having estates and interests under the settlement dying before the Finance Act, 1894, came into operation." Therefore, where freehold lands were subject to the following limitations which took effect—namely, to A for life, remainder to B, the disponer, for life, remainder to C, and B died in 1863, A died in 1864, and C died in 1911, possessed of the estate,—*Held*, that for the purpose of assessing the rate of duty payable in respect of C's estate there was no aggregation. *Edgeworth* v. *Inland Revenue Commissioners*, [1912] 2 Ir. R. 606—K.B. D.

Settled Property Passing on Death — Disponer Entitled in Reversion — Hypothetical Date of Death—Aggregation.]—Section 1 of the Finance Act, 1894, provides that estate duty shall be payable in the case of every person dying after August 1, 1894, upon all property passing on the death of such person. By section 5, sub-section 3, in the case of settled property, where the interest of any person under a settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death. Section 12, sub-section 2 of the Finance Act, 1900, provides that where settled property passes or is deemed to pass on the death of a person dying after April 9, 1900, under a disposition made by a person dying before August 2, 1894, and such property would, if the disponer had died after August 1, 1894, have been liable to estate duty upon his death, the aggregation of such property with other property passing upon the first-mentioned death, shall not operate to enhance the rate of duty payable either upon the settled property or upon any other property so passing by more than ½ per cent. in excess of the rate at which duty would have been payable if such settled property had been treated as an estate by

itself. By section 16 of the Finance Act, 1907, in the case of a person dying after April 19, 1907, any settled property which would, under section 12 of the Finance Act, 1900, be aggregated with other property so as to enhance the rate of duty to the limited extent provided in that section, shall, for the purposes of the Finance Act, 1894, instead of being so aggregated, be treated as an estate by itself. In 1864, by a marriage settlement, a sum of money, to which the wife was entitled in reversion subject to the successive life interests of her father and mother, was assigned by her to trustees on trust to pay the income to the husband and wife for their lives, and after the death of the survivor to stand possessed of the trust funds for the children of the marriage as the husband and wife or the survivor should by deed or will appoint. The wife died in 1876. Her mother and father died respectively in 1884 and 1888. The husband died in 1910, having by his will appointed the trust funds on trust for certain of the children of the marriage. On his death the Crown claimed that for the purpose of ascertaining the rate of estate duty which then became payable the trust funds ought to be aggregated with other property passing on his death in respect of which estate duty then became payable :— *Held*, that the claim of the Crown failed. If the wife had died after August 1, 1894, estate duty would on her death have been payable in respect of the trust funds, because as her mother and father died before that date the trust funds would have been an interest in possession before her death and liable at her death to payment of estate duty, and therefore, by reason of section 12, sub-section 2 of the Finance Act, 1900, and section 16 of the Finance Act, 1907, the trust funds ought not to be aggregated with the other property passing on her husband's death. *Att.-Gen.* v. *Thynne*, 83 L. J. K.B. 592; [1914] 1 K.B. 351; 110 L. T. 203; 30 T. L. R. 182—Scrutton, J.

6. Charge For.

Tenant in Tail who has not Barred Entail — Payment of Duty by Person Having a Limited Interest in Property — Right to Charge. — A tenant in tail who has not barred the entail is a person having a limited interest in the property within section 9, sub-section 6 of the Finance Act, 1894; and he or his estate, on paying the estate duty in respect of the property, is therefore entitled to a charge on the property for the amount paid. *Dictum* of Lord Macnaghten in *Lord Advocate* v. *Moray (Countess)* (74 L. J. P.C. 122; [1905] A.C. 531) followed. *Anson, In re; Buller* v. *Anson*, 84 L. J. Ch. 347; [1915] 1 Ch. 52; 111 L. T. 1065; 30 T. L. R. 694—Sargant, J.

IX. SETTLEMENT ESTATE DUTY.

See also Vol. XII. 1310.

Obligation by Father to Pay Sum to Son's Marriage Contract Trustees — Liability for Settlement Estate Duty.] — When a father becomes a party to the marriage settlement of a child and covenants to pay at his death a certain sum to the marriage contract trustees, the settlement estate duty on that sum falls to be borne by the marriage contract trustees and not by the father's executors. (*Diss.* the Lord President.) *Maryon-Wilson, In re* (69 L. J. Ch. 310; [1900] 1 Ch. 565), followed. *Dundas' Trustees* v. *Dundas' Trustees*, [1912] S. C. 375—Ct. of Sess.

Property Passing under Disposition on Death —Property Deemed to Pass.]—A settlor by the terms of a settlement transferred certain shares and sums of stock to trustees in trust for his son for life, with remainders over. He died within three years of the making of the settlement. Upon his death it was admitted that the settled property was property "passing on the death of the deceased" within the meaning of section 2, sub-section 1 of the Finance Act, 1894, and that estate duty was therefore payable in respect of it. The Crown also claimed "settlement estate duty" :— *Held*, that as the son took an immediate life interest from the date of the settlement the property did not "pass" under the settlement on the death of the settlor, and was therefore not liable to settlement estate duty under section 5, sub-section 1 (*a*) of the Act. *Att.-Gen.* v. *Milne*, 83 L. J. K.B. 1083; [1914] A.C. 765; 111 L. T. 343; 58 S. J. 577; 30 T. L. R. 476—H.L. (E.)

Judgment of the Court of Appeal (82 L. J. K.B. 773; [1913] 2 K.B. 606) affirmed (Lord Dunedin dissenting). *Ib.*

See also Att.-Gen. v. *Peek*, *ante*, col. 1322; and *Briggs, In re*, *ante*, col. 1329.

X. CORPORATION DUTY.

See also Vol. XII. 278, 1318.

Issue of Debenture Stock by Corporation— Debenture Stock Redeemable at Future Date — Cumulative Sinking Fund Invested in Names of Trustees—Property Vested in Body Corporate—Equity of Redemption.]—A corporation issued debenture stock redeemable at their option at the end of thirty years or in any event at the end of sixty years. The corporation covenanted with trustees for the debenture stockholders to set aside every half-year a sum of 7,500*l.*, so long as the stock remained unredeemed, and to invest these half-yearly sums in such investments as the corporation should think fit, the income thereof to be accumulated by similarly investing the same and the income thereof from time to time. The fund so created was to be applied by the corporation in or towards the redemption of the debenture stock as and when it became redeemable. Accordingly the corporation set aside these half-yearly sums, which were regularly invested in the purchase of stock in the names of the trustees; and the interest on these funds was similarly invested from time to time in the names of the trustees : *Held*, that the equity of redemption in the sinking fund subject to the charge in favour of the debenture stockholders belonged to the corporation, and that the income thereof ought to be brought into account for the purpose of assessing corporation duty under the Customs and Inland Revenue Act, 1885, s. 11, the amount expended by the corporation in paying the interest on the debenture stock being

brought in by way of deduction on the other side of the account. *Att.-Gen.* v. *London Corporation*, 82 L. J. K.B. 698; [1913] 2 K.B. 497; 108 L. T. 661; 6 Tax Cas. 313; 29 T. L. R. 494—C.A.

Exemption — Charitable Purposes.] — A Grand Lodge of Masons claimed exemption under sub-section (3) of section 11 of the Act 48 & 49 Vict. c. 51, in respect of the income of certain funds devoted to the relief of necessitous masons, or their dependants, at the discretion of the administering bodies. Every mason by whom, or by whose dependants, benefit was received from the funds had to some degree contributed thereto through his lodge, but the funds were largely derived from other sources than such contributions, and the great proportion of each individual mason's contributions to his lodge did not go to these funds:—*Held*, that the exemption applied. *Incorporation of Tailors in Glasgow* v. *Inland Revenue Commissioners* (2 Tax Cas. 297) and *Linen and Woollen Drapers Institution, In re* (58 L. T. 949), distinguished. *Grand Lodge of Masons* v. *Inland Revenue Commissioners*, [1912] S. C. 1064; 6 Tax Cas. 116—Ct. of Sess.

B. CUSTOMS AND EXCISE.

I. IN PARTICULAR CASES.

1. Armorial Bearings.

Use by City Guild—"Corporation."]—The Worshipful Company of Plumbers is not a corporation within section 19, sub-section 1 of the Revenue Act, 1869, and is therefore not entitled to use armorial bearings without having taken out a proper licence. The exception given by the section is not to a corporation or Royal borough as such, but is given to persons who are officers or mayors of such corporations or boroughs. *Plumbers Co.* v. *London County Council*, 108 L. T. 655; 77 J. P. 302; 11 L. G. R. 480; 23 Cox C.C. 355; 29 T. L. R. 424—D.

Use by Member of College of Armorial Bearings of College — Use for Business Purposes of Member.]—The respondent, a member of the Royal College of Veterinary Surgeons, used on his business notepaper the armorial bearings of the college. The respondent had not taken out a licence for the use of armorial bearings, but the college had taken out a licence:—*Held*, that the respondent was not entitled to use the armorial bearings of the college in the way he had without taking out a licence, and that therefore he was liable to the penalty imposed by section 27 of the Revenue Act, 1869. *London County Council* v. *Kirk*, 81 L. J. K.B. 278; [1912] 1 K.B. 345; 106 L. T. 572; 10 L. G. R. 225; 76 J. P. 122; 22 Cox C.C. 733; 28 T. L. R. 182—D.

2. Carriages and Carts.

See also Vol. XII. 282, 1320.

Milk Van Used for other than Exempted Purpose — User by Servant without Consent or Knowledge of Owner—Liability of Owner.] —The appellants were the owners and occupiers of, but did not reside on, a farm, which was managed for them by a bailiff under the superintendence of a steward who resided some considerable distance away. Part of the business of the farm was the conveyance of milk to a railway station, and for this purpose the appellants had at the farm a four-wheel van which was usually driven to and from the station by a milkman. The van had the appellants' names painted on the side, and it was constructed or adapted for use for the conveyance of milk churns in the course of the appellants' business as dairy farmers. On one occasion, without the knowledge of the appellants or of the steward, and for his own purposes, the bailiff used the milk van, after carrying milk to the station, for bringing back his wife and others from a place of entertainment. In respect of this user the appellants were convicted of keeping and using the milk van without having a licence therefor:—*Held*, that the milk van was kept by the appellants, that they were responsible for its user by the bailiff on the day in question, and that as such user was not for the conveyance of goods or burden in the course of trade or husbandry within section 4, sub-section 3 of the Customs and Inland Revenue Act, 1888, the conviction was right. *Strutt* v. *Clift*, 80 L. J. K.B. 114; [1911] 1 K.B. 1; 103 L. T. 722; 74 J. P. 471; 8 L. G. R. 989; 27 T. L. R. 14—D.

"Carriage"—Vehicle Constructed and Used Solely for Conveyance of Goods of Burden — Capable of Use for other Purposes — "Burden."] — The appellant, a farmer and rope maker, on the occasion in question used a two-wheeled cart for the purpose of driving his wife and son to market in order that they might serve at two stalls he held there, at which he sold ropes and farm produce. He also used it at other times to convey ropes to customers, and sheep and farm produce to market. The Justices found that the cart had been constructed to the appellant's order, and had been used solely for the conveyance of goods or burden in the course of trade or husbandry within the meaning of the exempting words contained in section 4, sub-section 3 of the Customs and Inland Revenue Act, 1888, and that the wife and son were "burden" within the meaning of that sub-section; but that as it was capable of being used for purposes other than the above, such as the conveyance of persons, or dogs or game for sport, it was not exempt under the sub-section from liability to excise duty as a "carriage" under section 4, sub-section 1:—*Held*, allowing the appeal, that there was evidence upon which the Justices could find that the wife and son were "burden," and that, in the above circumstances, the fact that the cart was capable of being used for such other purposes did not render it liable to duty, the test being, not its capacity for use for such other purposes, but whether it was constructed and used solely for the conveyance of goods or burden in the course of trade or husbandry. *Cook* v. *Hobbs*, 80 L. J. K.B. 110; [1911]

1 K.B. 14; 103 L. T. 566; 75 J. P. 14; 9 L. G. R. 143—D.

The respondent kept a vehicle of the description known as a dogcart with four wheels. It had seating accommodation for four persons, and was fitted with rubber tyres and smart lamps. It was used by him for the purpose of his business—a shoe manufacturer's agent—to carry his samples. The interior fittings had been removed, steel plates had been put on the bottom and on the springs to strengthen the vehicle, and the two back seats removed to take seven specially made cases to carry the samples:—*Held*, that there was evidence on which the magistrate could find that the vehicle was adopted for use solely for the conveyance of goods within section 4 of the Customs and Inland Revenue Act, 1888. *Collman* v. *Stokes*, 103 L. T. 592; 74 J. P. 473; 9 L. G. R. 150—D.

Exemption of Vehicles Constructed and Used for Trade or Husbandry—Adaptation.]—Section 4, sub-section 3 of the Customs and Inland Revenue Act, 1888, exempts from carriage duty "a waggon, cart, or other such vehicle, which is constructed or adapted for use, and is used, solely for the conveyance of any goods or burden in the course of trade or husbandry." Upon proceedings against the respondent for keeping a carriage without a licence the Justices found as facts that an old four-wheeled waggonette, built to contain six persons and drawn by one horse, had been altered by the respondent for use on his farm in the following particulars. The interior upholstery had been removed, the wheels had been strengthened and widened and stronger springs supplied. The respondent's name was painted on the side in white letters. It was used for the general work of the farm—that is, to take workpeople to and from work, potatoes to the railway station, bran to the farm, chop and corn to the horses in winter time, and to fetch potato sacks from the railway station. It was never used as a private carriage and never carried passengers other than the respondent's workpeople. The Justices dismissed the information:—*Held*, that the waggonette had been adapted or reconstructed with a view to its being used only for the exempted purposes. It had been made fit for the main and substantial purpose for which it was used, and fell within the exemption notwithstanding the possibility that it might be capable of being used for other purposes. But, *per* Rowlatt, J. (dissenting): Where the vehicle is still internally a waggonette, though not upholstered and though its wheels and springs are in a measure strengthened, it cannot, in the face of that fact, be found that it is adapted solely for the purpose of carrying goods in the course of trade or husbandry. *Minty* v. *Glew*, 110 L. T. 340; 78 J. P. 69; 12 L. G. R. 121; 24 Cox C.C. 73—D.

Keeping Carriage — Hackney Carriage in Reserve.] — A person who keeps a hackney carriage in reserve to be used to replace any other hackney carriage which may break down, but has not in fact used it, does not "keep" a carriage within the meaning of section 27 of the Customs and Inland Revenue Act, 1869, until he does use it. *London County Council* v. *Fairbank*, 80 L. J. K.B. 1032; [1911] 2 K.B. 32; 105 L. T. 46; 75 J. P. 356; 9 L. G. R. 549—D.

3. Gold and Silver Plate.

See also Vol. XII. 287, 1324.

Liability to Assay — Imported Gold and Silver Articles Inlaid with Enamel.]—An imported article which is liable to assaying and marking as a manufacture of gold or silver under the Plate (Offences) Act, 1738, and section 59 of the Customs Act, 1842, does not cease to be so because it is used as the base or foundation of enamel work, however great be the artistic merit of such work compared with the value of the metal. Even if enamel be a "jewel" articles enamelled on gold or silver are not within the exemption of gold or silver wherein jewels are set contained in section 2 of the Act of 1738; nor, in view of the practice of the Goldsmiths' Company to assay and mark articles in the rough, leaving them to be enamelled or otherwise decorated afterwards, are enamelled articles within the exemption in section 6 of articles not admitting of assaying or marking without damage. *Fabergé* v. *Goldsmiths' Co.*, 80 L. J. Ch. 97; [1911] 1 Ch. 286; 103 L. T. 555—Parker, J.

Gold Watches Set in China.]—Gold watches set in gold chains and jewelled do not fall within the exemption in either section. *Ib.*

4. Male Servants.

See also Vol. XII. 285, 1322.

"Male servant"—Driver of Motor Car—Employment for Trade Purposes only.]—In order to determine whether a person comes within the definition of a "male servant" in section 19, sub-section 3 of the Revenue Act, 1869, which imposes a duty on the employment of male servants, the true test is whether such person is employed to perform services of a menial, domestic, or personal nature. A person employed in a capacity which does not involve the performance of such services is not a "male servant" within the meaning of the sub-section. *Whiteley, Lim.* v. *Burns* (77 L. J. K.B. 467; [1908] 1 K.B. 705), *Marchant* v. *London County Council* (79 L. J. K.B. 718; [1910] 2 K.B. 379), *London County Council* v. *Allen* (82 L. J. K.B. 432; [1913] 1 K.B. 9), and *Wolfenden* v. *Mason* (110 L. T. 31) discussed. *London County Council* v. *Perry*, 84 L. J. K.B. 1518; [1915] 2 K.B. 193; 113 L. T. 85; 79 J. P. 312; 13 L. G. R. 746; 31 T. L. R. 281—D.

"Coachman" — Servant Employed by County Council to Drive Children to School.]—The respondent, a carman and contractor, supplied to the respondent County Council, under contract for reward, drivers to drive their vehicles, drawn by horses also supplied by him, conveying children to and from their schools:—*Held*, that the driver of such a

vehicle is not a "coachman" within the meaning of section 19, sub-section 3 of the Revenue Act, 1869, and consequently is not a "male servant" in respect of whom a licence must be taken out under section 18. *London County Council* v. *Allen*, 82 L. J. K.B. 432; [1913] 1 K.B. 9; 107 L. T. 853; 77 J. P. 48; 10 L. G. R. 1089; 23 Cox C.C. 266; 29 T. L. R. 30—D.

Cooks Employed in Club—Club Subsidised by Government.]—Male cooks were employed in a club for Civil servants which was managed by a committee of the members. The expenses of the club were partially defrayed by an annual grant by the Government:—*Held*, that the cooks were not in the service of the Crown, but were in the service of the committee of the club, and that they were "male servants" within section 10 of the Revenue Act, 1869, for whom licences had to be taken out. *London County Council* v. *Houndle*, 105 L. T. 211; 75 J. P. 442; 9 L. G. R. 958; 27 T. L. R. 465—D.

Groom—Man Employed at Stud Farm and to be Generally Useful—Employment in Trade or Business.]—The respondent, a farmer and breeder of horses, advertised for a "groom, single, to live in, able to ride and drive and make himself generally useful," and engaged a man on those terms. Upon proceedings against him for employing a male servant without licence, Justices, having heard the evidence adduced before them as to the man's daily occupations and employment, found as a fact that the man was employed by the respondent in the capacity of a groom and a general servant, and that the major part of his duty was attending to horses kept by the respondent in connection with his business as a farmer and horse breeder:—*Held* (Ridley, J., *dissentiente*), that the man was not a groom within the meaning of section 19, sub-section 3 of the Revenue Act, 1869, and that the respondent was therefore not liable to pay in respect of him the duty imposed by section 18 of the Act on "male servants" as defined by section 19, sub-section 3. *Wolfenden* v. *Mason*, 110 L. T. 31; 78 J. P. 13; 11 L. G. R. 1243; 23 Cox C.C. 722—D.

Jobbing Gardener.]—The respondent employed A. as a jobbing gardener for four days a week. A. was at liberty to work for another employer in the same capacity on those days that he was not employed by the respondent, and he was entitled to send a qualified substitute to do the respondent's work when he was unable to attend himself. A. worked greenhouses of his own, and frequently supplied the respondent with plants from them:—*Held*, that A. was not a "male servant" within the meaning of section 19, sub-section 3 of the Revenue Act, 1869. *Braddell* v. *Baker*, 104 L. T. 673; 9 L. G. R. 245; 75 J. P. 185; 27 T. L. R. 182—D.

Section 5 of the Inland Revenue Act, 1876, which enacts that a servant employed in certain capacities shall not be deemed to be otherwise employed because he is occasionally or partially employed to do something else, only applies to a person who is not taxable, but who happens to do duties which, if they were his ordinary duties, would render him taxable. *Bedford (Duke)* v. *London County Council*, 104 L. T. 889; 75 J. P. 317; 9 L. G. R. 617; 55 S. J. 423—D.

5. TOBACCO.

Excess of Moisture—One Ounce Sample—"Any tobacco."]—By section 4 of the Customs and Inland Revenue Act, 1887, as amended by section 3, sub-section 2 of the Finance Act, 1904, if any manufacturer of tobacco shall have in his possession any tobacco which on being dried at a temperature of 212 degrees Fahr. shall be decreased in weight by more than 32 per cent., he shall incur an excise penalty. The respondents, manufacturers of tobacco, were charged under section 4. From a tub in their possession containing about 120 lb. of tobacco a Customs officer took samples weighing in all about one ounce, which on being subjected to the above test decreased in weight more than 32 per cent. The magistrate found that the samples taken did not fairly represent the condition of the bulk, the tub, and that neither the tobacco in the tub nor any substantial portion of it contained more moisture than was lawful, and dismissed the information:—*Held*, that the respondents ought to have been convicted, as section 4 does not deal only with the bulk from which samples are taken, but that the words "any tobacco" mean any substantial portion having regard to the ordinary sale of tobacco. *Hale* v. *Morris & Sons, Lim.*, 83 L. J. K.B. 162; [1914] 1 K.B. 313; 109 L. T. 875; 78 J. P. 17; 23 Cox C.C. 666; 30 T. L. R. 9—D.

II. PENALTIES.

See also Vol. XII. 292, 1327.

Fine—Claim by Corporation under Charters—Subsequent Legislation.] — By section 33, sub-section 1 of the Inland Revenue Regulation Act, 1890, "All fines, penalties, and forfeitures incurred under any Act relating to inland revenue which are not otherwise legally appropriated, shall be applied to the use of Her Majesty":—*Held*, that the defendant corporation were precluded, by reason of the terms of this enactment, from claiming Revenue fines to which they might otherwise have been entitled under their charters. *Att.-Gen.* v. *Exeter Corporation*, 80 L. J. K.B. 636; [1911] 1 K.B. 1092; 104 L. T. 212; 75 J. P. 280; 27 T. L. R. 249; 5 Tax Cas. 629—Hamilton, J.

For Selling Intoxicating Liquor without Licence.]—*See ante*, cols. 771-773.

C. STAMPS.

I. AGREEMENTS.

See also Vol. XII. 306, 1329.

Sale of Old Company to New Company—Consideration in Shares of Old Company Partly or Wholly Paid up—Date of Assess-

ment of Value.]—When a company purchases the undertaking of another company in consideration of partly and wholly paid-up shares of the former, the stamp duty on transfer must be assessed on the value of the shares not at the date of the provisional agreement, before the new company had come into existence, but at the date of the adoption of that agreement, and evidence is admissible to shew that the real value was not identical with the face value or the value attributed to the share consideration by the purchasing company. *Commissioner of Stamp Duties* v. *Broken Hill South Extended, Lim.*, 80 L. J. P.C. 130; [1911] A.C. 439; 104 L. T. 755; 18 Manson, 357—P.C.

Agreement for Sale—Sub-sales of Portions of Property — Conveyances Direct to Sub-Purchasers—Remaining Portion Conveyed to Purchaser.]—By an agreement for sale the vendor agreed to sell certain property to the appellant for a sum of 45,000*l.*, the appellant assuming liability for certain charges amounting to 997*l.* 5*s.* 9*d.* The appellant, not having obtained a conveyance, contracted by several agreements of sub-sale to sell certain portions of the property to sub-purchasers, and the vendor conveyed the portions of the property, the subject of such agreements, to the respective sub-purchasers. Each conveyance to a sub-purchaser was stamped with *ad valorem* conveyance duty on the purchase money paid under each of the conveyances. The total consideration stated in the conveyances to sub-purchasers amounted to more than 45,000*l.* The remaining portion of the property sold was conveyed by the vendor to the appellant. The conveyance recited that the whole of the purchase money of 45,000*l.* had already been paid to the vendor by or under the direction of the appellant upon the execution of conveyances to sub-purchasers, and the appellant covenanted to pay certain charges amounting to 997*l.* 5*s.* 9*d.* :—*Held*, that the conveyance was liable to stamp duty on so much of the original purchase money, 45,997*l.* 5*s.* 9*d.*, of the property sold as, having regard to the relative values of the property sub-sold and not sub-sold, was apportionable to that portion of the property conveyed by the conveyance. *Maples* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 1647; [1914] 3 K.B. 303; 111 L. T. 764—Scrutton, J.

II. BOND, COVENANT, OR INSTRUMENT.

See also Vol. XII. 330, 1331.

Security for Contingent Payment—Payment Half-yearly—Amount of Duty.]—The appellants agreed by deed that, provided a sufficient number of stockholders in a railway company would consent to take guaranteed stock in exchange for their ordinary stock (the number so consenting being at the time unknown), they would pay 4 per cent. interest on such guaranteed stock, payable half-yearly, if the profits of the railway company were insufficient to pay that amount of interest. If all the stockholders so consented and the railway company made no profits at all, the amount payable under the above deed would be 120,000*l.* per annum. The respondents charged the above deed under the heading in the First Schedule to the Stamp Act, 1891, "Bond, Covenant, or Instrument of any kind whatsoever. (1) Being the only or principal or primary security for any annuity . . . or for any sum or sums of money at stated periods, . . . For . . . any . . . indefinite period," with *ad valorem* stamp duty on 120,000*l.* :—*Held*, that they were entitled to charge on this sum, although its payment depended on a contingency, and it was payable half-yearly, and not yearly. *Underground Electric Railways* v. *Inland Revenue Commissioners*, 84 L. J. K.B. 115; [1914] 3 K.B. 210; 111 L. T. 759—Scrutton, J.

III. CAPITAL OF COMPANY.

See also Vol. XII. 1333.

Increase of Nominal Share Capital.] — By the Caledonian Railway Co.'s private Act, 1890, a holder of the ordinary stock of that railway could require the company to convert the whole or any part of such stock into preferred converted ordinary stock and deferred converted ordinary stock, and to issue to him an amount of preferred and deferred converted ordinary stock each equal to the amount of ordinary stock so converted. By the Caledonian Railway Act, 1898, the Act of 1890 was made to apply to all the ordinary stock of the company issued under any past or future Act of Parliament. By the Caledonian Railway Act, 1899, the company was authorised to raise 906,000*l.* additional capital by the issue at their option of new ordinary shares or stock, or new preference shares or stock. The railway company delivered the statement required by section 113 of the Stamp Act, 1891, as to 906,000*l.*, but the Crown claimed that as this could, under the provisions of the company's private Acts, be converted into stock or shares of the nominal value of 1,812,000*l.*, the latter was the amount of nominal capital authorised, and that consequently stamp duty was payable on that amount :—*Held*, that 1,812,000*l.* was the increased amount of the nominal share capital authorised within the meaning of section 113 of the Stamp Act, 1891, and that stamp duty was payable on that basis. *Att.-Gen.* v. *Caledonian Railway*, 105 L. T. 184; 27 T. L. R. 559—C.A.

IV. CONVEYANCE OR TRANSFER.

See also Vol. XII. 335, 1336.

Sale of Foreign Business — Assignment of Book Debts — Debtors Resident Abroad — "Property locally situate out of the United Kingdom."] — An English limited company entered into an agreement in England for the purchase of a business carried on at Buenos Aires, together with its assets, which included book debts owing to the vendor of the business by persons resident in the Argentine :—*Held*, that a personal right to a debt had no local situation, and therefore that these book debts did not come within the exemption from *ad valorem* conveyance duty in section 59, sub-

section 1 of the Stamp Act, 1891, in favour of "property locally situate out of the United Kingdom." *Danubian Sugar Factories, Lim.* v. *Inland Revenue Commissioners* (70 L. J. K.B. 211; [1901] 1 K.B. 245) followed. *Velazquez, Lim.* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 1108; [1914] 3 K.B. 458; 111 L. T. 417; 58 S. J. 554; 30 T. L. R. 539—C.A.

Sub-sales of Portions of Property — Conveyances Direct to Sub-purchasers—Remaining Portion Conveyed to Purchaser.] — By an agreement for sale the vendor agreed to sell certain property to the appellant for a sum of 45,000*l.*, the appellant assuming liability for certain charges amounting to 997*l.* 5*s.* 9*d.* The appellant, not having obtained a conveyance, contracted by several agreements of sub-sale to sell certain portions of the property to sub-purchasers, and the vendor conveyed the portions of the property, the subject of such agreements, to the respective sub-purchasers. Each conveyance to a sub-purchaser was stamped with *ad valorem* conveyance duty on the purchase money paid under each of the conveyances. The total consideration stated in the conveyances to sub-purchasers amounted to more than 45,000*l.* The remaining portion of the property sold was conveyed by the vendor to the appellant. The conveyance recited that the whole of the purchase money of 45,000*l.* had already been paid to the vendor by or under the direction of the appellant upon the execution of conveyances to sub-purchasers, and the appellant covenanted to pay certain charges amounting to 997*l.* 5*s.* 9*d.* :—*Held*, that the conveyance was liable to stamp duty on so much of the original purchase money, 45,997*l.* 5*s.* 9*d.*, of the property sold as, having regard to the relative values of the property sub-sold and not sub-sold, was apportionable to that portion of the property conveyed by the conveyance. *Maples* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 1647; [1914] 3 K.B. 303; 111 L. T. 764—Scrutton, J.

Patent Rights in Foreign Countries—"Property locally situate out of the United Kingdom."] — Patent rights in foreign countries and the colonies are not "property locally situate out of the United Kingdom" within the exception in section 59, sub-section 1 of the Stamp Act, 1891, and therefore a memorandum agreement of sale of such rights made in this country is liable to an *ad valorem* conveyance duty. *Smelting Co. of Australia* v. *Inland Revenue Commissioners* (66 L. J. Q.B. 137; [1897] 1 Q.B. 175) has not been overruled by *Inland Revenue Commissioners* v. *Muller & Co.'s Margarine, Lim.* (70 L. J. K.B. 677; [1901] A.C. 217). *Urban* v. *Inland Revenue Commissioners*, 29 T. L. R. 141—Horridge, J. Affirmed, 29 T. L. R. 476—C.A.

Consideration Less than Full Value—Subsequent Purchaser.] — When property has been conveyed for a consideration less than its full value, the fact that stamp duty has only been paid in respect of the consideration mentioned in the conveyance, and not (as required by section 74 of the Finance Act, 1910) in respect of the value of the property, will not affect a subsequent purchaser for value. *Weir and Pitt's Contract, In re*, 55 S. J. 536—Warrington, J.

V. DEBENTURE. *See* VIII. MARKETABLE SECURITY (*infra*).

VI. DEED.

See also Vol. XII. 344, 1344.

Minute of Acceptance of Office by Trustees.] —A minute of acceptance of office by trustees was engrossed upon a trust disposition and settlement and signed by the trustees before two witnesses :—*Held*, that this was not a "deed" within the meaning of Schedule I. to the Stamp Act, 1891, and was not chargeable with a stamp duty of 10*s.* or with any stamp duty. *Henderson's Trustees* v. *Inland Revenue Commissioners*, [1913] S. C. 987—Ct. of Sess.

VII. LEASE.

See also Vol. XII. 348, 1345.

Demise to Lessee for Ninety-nine Years if A, B, and C, or any of them, shall so long live—Definite or Indefinite Term.]—A lease for ninety-nine years if A, B, and C, or any one of them, shall so long happen to live, is not, for the purposes of the Stamp Act, 1891, a lease for an indefinite term. Such a lease requires to be stamped as a lease for the definite term of ninety-nine years. *Mount-Edgcumbe (Earl)* v. *Inland Revenue Commissioners*, 80 L. J. K.B. 503; [1911] 2 K.B. 24; 105 L. T. 62; 27 T. L. R. 298—Hamilton, J.

VIII. MARKETABLE SECURITY.

See also Vol. XII. 357, 1345.

Debenture — Mortgage of Steamships to Trustees for Debenture-holders—Also Usual Debenture Trust Deed — Issue of Debenture Charging the Steamships — Exemption from Duty—"Instruments for the . . . disposition . . . of any . . . interest . . . in any ship."] —A company gave legal mortgages, duly registered, of three steamships to trustees for debenture-holders as a security for sums to be borrowed on the issue of debentures. The trustees also executed a debenture trust deed in the usual form. Debentures were then issued, in each of which the company covenanted to pay the registered holder thereof the amount for which it was issued, and did "hereby charge" with the payment of such sum the three steamships :—*Held*, that the substance of the transaction was the creation of negotiable securities, and that a debenture, one of the above-mentioned issue, although incidentally it gave the holder the benefit of the registered charge under the trust deed, was not an instrument for the sale, transfer, or other disposition of any interest in any ship within the second of the "General Exemptions from all Stamp Duties" in the First Schedule to the Stamp Act, 1891, but was liable to duty under the head of "Market-

able Security " in the same schedule. *Quære*, whether the second exemption has any application to an " equitable interest." *Deddington Steamship Co.* v. *Inland Revenue Commissioners*, 81 L. J. K.B. 75; [1911] 2 K.B. 1001; 105 L. T. 482; 18 Manson, 373—C.A.

IX. SETTLEMENT.

See also Vol. XII. 370, 1355.

Policies of Life Insurance—Re-settlement—Pre-existing Deed of Covenant to Pay Premiums—Provision for Keeping up Policies—Assessment on Full Amount.]—In the year 1892 three persons—a father, son, and grandson—executed a settlement of certain freehold estates under which, subject to a joint overriding power of appointment given to them, they took successive life interests. By a deed of even date with the settlement certain policies effected by the grandson on his own life were assigned by him to trustees to be held upon the trusts of the settlement, and the son covenanted with the trustees that he would, during his life, if he survived his father, pay the premiums on the policies, and also that his executors or administrators would pay the same so long as his father should live, if he should die in the lifetime of his father. In 1894 a further re-settlement was made by the same parties, and an instrument was executed which contained no new provisions for keeping up the policies, but the son's covenants in the deed of 1892 remained applicable to them:—*Held*, that the deed of covenant of 1892 was a deed under which the policies were fortified by the son's covenants, which were operative from the date of such deed until the death of the grandson; that the instrument of 1894 was a " settlement " of the policy moneys within section 104, subsection 1 of the Stamp Act, 1891, and therefore chargeable with *ad valorem* duty; that, although there was no provision in that settlement for keeping up the policies, the provision in the deed of covenant of 1892 was a provision made for keeping up the policies within the meaning of sub-section 2 (*a*) of section 104, and that consequently the instrument of 1894 did not come within the proviso in that sub-section, and the *ad valorem* duty was assessable on the full amount of the policies and not merely on their value at the date of the instrument. *Northumberland (Duke)* v. *Inland Revenue Commissioners*, 81 L. J. K.B. 240; [1911] 2 K.B. 1011; 105 L. T. 485—C.A.

Decision of Hamilton, J., on the last point (80 L. J. K.B. 866; [1911] 2 K.B. 343) reversed. *Ib.*

X. OFFENCES.

Selling Forged Stamps — Obliterated Stamps.]—By section 13 of the Stamp Duties Management Act, 1891, " Every person who does, or causes or procures to be done . . . any of the acts following; that is to say . . . (8) Knowingly sells or exposes for sale or utters or uses any forged stamp, or any stamp which has been fraudulently printed or impressed from a genuine die . . . shall be guilty of felony . . ." :—*Held*, that the word " stamp " in the above section is used in its ordinary meaning, and includes a stamp which, at the time of the sale, has been obliterated. *Rex* v. *Lowden*, 83 L. J. K.B. 114; [1914] 1 K.B. 144; 109 L. T. 832; 78 J. P. 111; 23 Cox C.C. 643; 58 S J. 157; 30 T. L. R. 70—C.C.A.

XI. UNSTAMPED DOCUMENTS.

Admissibility as Evidence.]—*See* EVIDENCE.

D. COMMISSIONERS.

I. PROCEEDINGS BEFORE.

See also Vol. XII. 374, 1359.

Right of Surveyors of Taxes to be Present.]—Rule for *certiorari* to quash an order made by Commissioners of Income Tax, and rule for a *mandamus* to them to hear and determine an appeal according to law, made absolute, the Attorney-General admitting that the Surveyor of Taxes, who had claimed, and been conceded, the right by the Commissioners to be present with them while they were considering their decision, had no such right under section 57, sub-section 7 of the Taxes Management Act, 1880. *Rex* v. *Brixton Income Tax Commissioners*, 6 Tax Cas. 195; 29 T. L. R. 712—D.

Mandamus to Commissioners to Hear Evidence.]—*See Rex* v. *Offlow Income Tax Commissioners*, *ante*, col. 947.

II. COLLECTORS OF TAXES.

See also Vol. XII. 372, 1358.

Security—Demand of Increase—Power of Board of Inland Revenue.]—Section 74 of the Taxes Management Act, 1880, which provides that the Board of Inland Revenue may call for security from a collector of taxes whenever it thinks fit, entitles the Board at any time during a collector's term of office to demand increased security if the Board thinks it desirable to do so. *Maxwell* v. *Nathan*, 31 T. L. R. 288—Bailhache, J.

Distress for Non-payment of Inhabited-house Duty—Goods of Third Person—Exemption—Implement of Trade.]—The appellant's husband had not paid income tax under Schedule A of the Income Tax Act, 1842, nor inhabited-house duty after demand by the collector. The latter, purporting to act under section 86 of the Taxes Management Act, 1880, levied a distress on the husband's premises, and seized a piano therein belonging to the appellant, a teacher of music who used the piano in her business:—*Held*, that, even assuming the piano to be an implement of trade, it was not exempt from distress under section 4 of the Law of Distress Amendment Act, 1888, which applies to distress for rent only, and does not affect the rights of the Crown, which is not mentioned therein; that there is no common law exemption of such implements from distress for these taxes, and that under section 86 of the Act of 1880 the goods of third persons on the taxpayer's premises are liable to distress for these taxes, because they are charged

on the land. *Juson* v. *Dixon* (1 M. & S. 601) applied. *MacGregor* v. *Clamp*, 83 L. J. K.B. 240; [1914] 1 K.B. 288; 109 L. T. 954; 78 J. P. 125; 58 S. J. 139; 30 T. L. R. 128 —D.

REVISING BARRISTER.

See ELECTION LAW.

REVOCATION.

Of Appointment.]—*See* POWERS.

Of Will.]—*See* WILL.

RIOT.

Damage by Riot—County Authority Liable to Pay Compensation.] — Where damage caused by riot occurs within a police district, being part of a county maintaining a separate police force, the authority liable to pay compensation in respect of such damage under the Riot (Damages) Act, 1886, ss. 3 (1) and 4 (1), is the county council, by virtue of the Local Government Act, 1888, ss. 3 (i), (xiv.), and 9, sub-s. 1. *Glamorgan Coal Co.* v. *Glamorgan Quarter Sessions and County Council Joint Committee*, 84 L. J. K.B. 362; [1915] 1 K.B. 384; 112 L. T. 219; 79 J. P. 164; 13 L. G. R. 462—Bankes, J.

Payment for Extra Police. —*See* POLICE.

RIPARIAN OWNER.

See SEASHORE.

RIVER.

See WATER.

RIVERS POLLUTION.

See WATER.

SAILOR AND SEAMAN.

See SHIPPING.

SALE.

By Auction. —*See* AUCTION AND AUCTIONEER.

Bill of.]—*See* BILLS OF SALE.

Of Food.] — *See* LOCAL GOVERNMENT; METROPOLIS.

Of Goods.]—*See infra.*

Of Land.]—*See* VENDOR AND PURCHASER.

SALE OF GOODS.

A. THE CONTRACT.

1. CONSTRUCTION.

See also Vol. XII. 384, 1364.

Goods on Approval—Right of Rejection.]—The defendants asked the plaintiffs to supply on approval a machine for making brushes, and agreed to pay carriage both ways if they rejected the machine within twenty-one days, and to pay for the machine, together with carriage one way, if they retained it. The plaintiffs on June 8 dispatched the machine on these terms, and the defendants on June 29 wrote rejecting the machine on the ground that though it was satisfactory they anticipated trouble with their hands in working it. In an action for the purchase price,—

Held, that the contract meant that the defendants had a right of rejection for reasons other than defects in the machine, and the plaintiffs were not entitled to recover. *Berry & Co.* v. *Star Brush Co.*, 31 T. L. R. 157—D.

Sale of Coal—Delivery by Ship—"Cost of stevedoring to be paid by" Consignees—Consignees to Discharge Ship, Steamer Contributing to Cost of Same.—In a contract under which coals to be delivered by ship were sold to the Government of New South Wales the words "Cost of stevedoring to be paid by the Government" mean "so far as such cost is not provided by the ship in the way of tackle or steam or in money." In a contract of sale to the Government of New South Wales of coal to be delivered by ship the Government guaranteed to discharge the several vessels at not less than 500 tons per day, strike or no strike, "the cost of stevedoring to be paid by the Government and vessels to have free wharfage"; and it was also provided by the charterparty under which the coals were carried, but which created no privity as between the consignor and the Government, "Consignees to effect discharge of steamer irrespective of strike or labour trouble, steamer paying 1*s.* per ton towards cost of same":—*Held*, that, upon the construction of the contract of sale, the Government were entitled to retain the shilling per ton as against the consignor. *White* v. *Williams*, 82 L. J. P.C. 11; [1912] A.C. 814; 107 L. T. 99; 12 Asp. M.C. 208; 17 Com. Cas. 309; 28 T. L. R. 521—P.C.

Contract for Supply of Sleepers — Passing by Sellers to be Final—Conformity with Terms of Contract.—The appellants having committed a breach of contract made by their agents with the respondent in regard to delivery to a railway of teakwood sleepers reasonably fit for its purposes, relied in defence to an action for damages on a provision contained therein that the passing by the appellants at the port of shipment "is as usual final as regards both measurement and quality," and pleaded that the sleepers in question had been so passed in the impartial and honest exercise of their judgment by two experts employed by them for that purpose:—*Held*, that the passing relied on was not within the meaning of the contract. There had been no decision by the experts that the sleepers were in conformity with the contract, but merely that they were fit to be sent out as their employers' manufacture. *Bombay Burmah Trading Corporation* v. *Aga Mahomed Khaleel Shirazee*, L. R. 38 Ind. App. 169—P.C.

Sale of Floating Dock — Price Inclusive of Towage, Insurance, &c.—Sellers' Obligation as to Policies.—A floating dock was sold to the plaintiffs for 19,000*l.*, "which price includes cost of towing from Avonmouth to Brindisi, cost of insurance, and all fittings, strengthenings and towing gear, ropes, &c., necessary for the voyage. . . . Before the dock leaves, vendors agree to hand to purchasers Lloyd's policies of insurance for 16,500*l.* This insurance will be duly indorsed over to them, and they shall receive the full benefit of such policies":—*Held*, that under this contract the sellers were bound to give valid policies to the purchasers. *Cantiere Meccanico Brindisino* v. *Constant*, 17 Com. Cas. 182; 12 Asp. M.C. 186—Scrutton, J. Affirmed, 17 Com. Cas. 332—C.A.

Marine Insurance against "all risks"—Extent of Required.—By a contract in writing the defendants sold certain goods to the plaintiffs, and as the plaintiffs stipulated for "complete insurance against all risks" the defendants inserted in the margin of the contract the following words: "Insurance to be effected by us all risks." The defendants took out a policy covering the goods from Piræus to Antwerp for "850*l.* on 102 casks citrons (in brine). So valued. To pay average as customary." The policy contained an f.p.a. clause and the usual memorandum. There were clauses attached to the policy, including one which covered "all risks by land or water (if by sea, at current additional premium)" and a "held covered clause," which provided (*inter alia*) that in the case of circumstances which might cause a variation and (or) entire alteration in the risk as contemplated in the policy, a payment in respect thereof should be made by the assured. The citrons on their arrival at Antwerp were found to be considerably damaged, owing to their having been stowed on deck instead of under deck. In an action by the plaintiffs against the defendants for failing to insure the goods against all risks,—*Held*, on the true construction of the contract, that the defendants were only bound to cover all risks in the sense of the entire *quantum* of damage, and not to procure a policy covering the plaintiffs against all causes of accident. *Vincentelli* v. *Rowlett*, 105 L. T. 411; 16 Com. Cas. 310; 12 Asp. M.C. 34—Hamilton, J.

2. The Consideration.

a. Price.

See also Vol. XII. 396, 1364.

Hire-purchase Agreement — Instalments — Appropriation of Instalments as between Capital and Interest.—An agreement for the hire-purchase of certain furniture had indorsed on it an inventory of the furniture hired, with cash prices annexed, the summation of which amounted to 7,543*l.* The agreement stipulated for payment by the hirer of annual sums of varying amount, the total of which was 8,649*l.*, and further provided that the hirer might at any time become the purchaser of the furniture "by payment in cash of the hereon indorsed price, under deduction of the whole sums previously paid by the hirer to the owners." The hirer, who had in the course of several years paid in terms of the agreement sums amounting in all to 4,966*l.*, desiring to become the purchaser of the furniture, tendered to the owners the sum of 2,577*l.*, being the difference between the sums so paid and 7,543*l.*, the "indorsed price":—*Held*, that in view of the fact that in a contract of hire-purchase the instalments are calculated so as to provide for interest on so much of the

capital as remains unpaid, the expression "whole sums previously paid" must refer to the portion of the sums paid attributable to capital, to the exclusion of the portion attributable to interest; and, accordingly, that the pursuer was not entitled to become the purchaser of the furniture on payment of the sum tendered. *Taylor* v. *Wylie & Lochhead*, [1912] S. C. 978—Ct. of Sess.

b. Payment.

See also Vol. XII. 398, 1365.

C.i.f. Contract — Terms "Net cash" — Buyer's Right of Inspection before Payment — Payment against Shipping Documents.] — A contract in writing provided for the sale of goods during successive years to be shipped to a port stated. The buyer was to pay for the goods at a given price and the goods were to be shipped to ports mentioned, "Terms net cash":—*Held*, that the seller was entitled to payment against shipping documents on delivery of the goods, or within a reasonable time, and need not wait until the goods had been landed, inspected, and accepted. *Clemens Horst Co.* v. *Biddell*, 81 L. J. K.B. 42; [1912] A.C. 18; 105 L. T. 563; 17 Com. Cas. 55; 12 Asp. M.C. 80; 56 S. J. 50; 28 T. L. R. 42—H.L. (E.)

—— Payment by Cash against Documents — Seller not the Shipper of Goods — Tender of Documents after Loss of Goods — Validity of Tender — Appropriation of Goods to Contract — "War risk for buyer's account."]—When goods are sold by contract on c.i.f. terms, the contract of the seller is performed by delivery to the buyer, within a reasonable time from the agreed date of shipment, of documents, ordinarily the bill of lading, invoice, and policy of insurance, which will entitle the buyer on the arrival of the ship to obtain the delivery of the goods shipped in accordance with the contract, or, in case of loss, will entitle him to recover on the policy the value of the goods if lost by a peril agreed in the contract to be covered, and in any case will give him a rightful claim against the ship in respect of any misdelivery or wrongful treatment of the goods. It is therefore immaterial whether, before the tender of the documents, the property in the goods is in the seller or buyer or a third person. The seller, however, must be in a position to pass the property in the goods by the bill of lading, if the goods are in existence, but he need not have appropriated the particular goods in the particular bill of lading to the particular buyer until the moment of tender. *Groom, Lim.* v. *Barber*, 84 L. J. K.B. 318; [1915] 1 K.B. 316; 112 L. T. 301; 20 Com. Cas. 71; 12 Asp. M.C. 594; 59 S. J. 129; 31 T. L. R. 66—Atkin, J.

—— Declaration of War — Tender of German Shipping Documents — Obligation of Buyer.]—Under two c.i.f. contracts (made respectively between two English firms) the sellers sold to the buyers a quantity of horse beans, to be shipped from a port in China to Naples. Payment was to be in net cash in London on arrival of the goods at port of discharge in exchange for bill of lading and policy of insurance, but was to be made in no case later than three months from the date of the bill of lading; or upon the posting of the vessel at Lloyd's as a total loss. The sellers respectively shipped the beans on a German steamer for conveyance to Naples. War subsequently broke out between England and Germany, and the vessels entered ports of refuge and remained there. Three months after the date of the bill of lading the respective sellers tendered to the buyers the shipping documents—namely, in the one case the German bill of lading and an English policy, and in the other case the German bill of lading and a German policy. The buyers refused to accept the documents or to pay for the goods:—*Held*, that the tender of the documents was not, under the circumstances, a good tender; that the buyers were entitled to reject it, and that the sellers could not therefore claim payment against the documents. *Esposito* v. *Bowden* (27 L. J. Q.B. 17; 7 E. & B. 763) and *Janson* v. *Driefontein Consolidated Mines* (71 L. J. K.B. 857; [1902] A.C. 484) considered. *Karberg & Co.* v. *Blythe, Green, Jourdain & Co.*; *Schneider & Co.* v. *Burgett & Newsam*, 84 L. J. K.B. 1673; [1915] 2 K.B. 379; 113 L. T. 185; 21 Com. Cas. 1; 31 T. L. R. 351—Scrutton, J.

—— Amount of Marine Insurance to be Effected Specified — Additional Honour Policies Effected by Sellers for Own Benefit — Payment by Underwriters — Right of Sellers or Buyers to Insurance Money.]—A contract for the sale of a cargo of Australian wheat, "including freight and insurance," contained a clause, "Sellers to give policies of insurance for 2 per cent. over the invoice amount, and any amount over this to be sellers' account in case of total loss only." The bills of lading passed from the original sellers, the plaintiffs, through the hands of various intermediate buyers and sellers to the ultimate purchasers, the defendants. Insurance policies on the cargo had been duly taken out by the plaintiffs, and passed, as part of the shipping documents attached to the bills of lading, to the defendants, and on the vessel being wrecked (but not becoming a total loss) payment thereunder was duly made by the underwriters. In addition to these policies the plaintiffs had effected "increased value" policies on the cargo, which were only honour policies, intending them to be for their own benefit only, and these were not handed over with the shipping documents:—*Held* (even assuming privity of contract between the plaintiffs and defendants), that the latter policies were not included under the obligation to insure annexed to the contract, and that the plaintiffs and not the defendants were entitled to the proceeds thereof. *Strass* v. *Spillers & Bakers, Lim.*, 80 L. J. K.B. 1218; [1911] 2 K.B. 759; 104 L. T. 284; 16 Com. Cas. 166; 11 Asp. M.C. 590—Hamilton, J.

—— Right of Buyer to Reject — Bill of Lading — Transhipment of Goods — Through Bill of Lading — Tender of One Bill of Lading.]—By a contract dated May 5, 1909, L. & Co. sold

to C. & S. a quantity of hemp on cost, freight, and insurance terms. Shipment was to be made from a recognised shipping port in the Philippine Islands by steamer or steamers, direct or indirect, to London between October 1 and December 31, 1909. Payment was to be made by cash in exchange for shipping documents. The original seller shipped the hemp at Manila to Hong-Kong on December 28 under a bill of lading to shipper's order at Hong-Kong, and sent a copy to the buyers in London attached to the seller's draft. He intended to tranship the goods at Hong-Kong and to make a contract there for their conveyance to London, but was unable to make such a contract till March 25, 1910, when the goods were shipped from Hong-Kong under a fresh bill of lading. The sellers subsequently tendered to the buyers as shipping documents the Hong-Kong bill of lading, and a policy of insurance covering the goods from Manila to London, the Manila bill of lading not being then in London. The buyers having rejected the goods on the ground that there had not been a good tender under the contract, the matter was referred to arbitration, and the umpire found that by mercantile usage it is the duty of the seller to provide by a contract of affreightment for the carriage of the goods from the port of shipment to the port of destination named in the contract, and held that the buyers were not bound to accept the goods:—*Held*, that the decision of the umpire was correct, whether it proceeded upon the ground that no contract for the carriage of the goods to London was made within the stipulated period, or upon the ground that the shipping documents tendered to the buyers, which did not include the Manila bill of lading, were not a good tender within the meaning of the contract. *Landauer* v. *Craven*, 81 L. J. K.B. 650; [1912] 2 K.B. 94; 106 L. T. 298; 12 Asp. M.C. 182; 17 Com. Cas. 193; 56 S. J. 274—Scrutton, J.

B. STATUTE OF FRAUDS.

See also Vol. XII. 407, 1366.

Contract not in Writing Signed by the Party to be Charged—Contract not to be Performed within Space of One Year—Acceptance and Actual Receipt of Part of Goods by Purchaser.]—A contract for the sale of goods which is not in writing signed by the party to be charged therewith, and which is not to be performed within the space of one year from the making thereof, is unenforceable under section 4 of the Statute of Frauds, notwithstanding that it comes within section 4 of the Sale of Goods Act, 1893, by reason of the acceptance and actual receipt by the buyer of part of the goods so sold. *Prested Miners Gas Indicating Electric Lamp* v. *Garner*, 80 L. J. K.B. 819; [1911] 1 K.B. 425; 103 L. T. 750; 27 T. L. R. 139—C.A.

Sale of Goods Exceeding 10*l.* in Value—Rick of Hay on Vendor's Land—Oral Agreement to Purchase—Constructive Delivery and Receipt.]—The plaintiff verbally agreed to purchase from the defendant a rick of hay standing upon the defendant's land for 100*l.* By the terms of the contract the plaintiff was to be at liberty to send his men to tie and press the hay, and the defendant was to cart it to the nearest railway station. On the following day the defendant telegraphed to the plaintiff, "Don't send press; am writing," and followed this by a letter, in which he said that he had sold the hay to some one else, and asked the plaintiff "to be kind enough to give up possession." In an action by the plaintiff for damages for breach of contract,—*Held*, that the contract was one to which the principle of constructive delivery and receipt under section 4 of the Sale of Goods Act, 1893, applied; that the defendant's telegram and letter afforded evidence of such constructive delivery and receipt; and that the plaintiff was therefore entitled to damages. *Nicholls* v. *White*, 103 L. T. 800—D.

C. WHEN PROPERTY PASSES.

See also Vol. XII. 443, 1368.

Goods Sent on Approbation—Refusal to Give Seller's Price—Delivery of Goods to Third Person—Effect of Judgment without Satisfaction against Person to whom Goods Sent on Approbation.]—Goods were sent on approbation by the plaintiffs to B. B. refused to give the price asked by the plaintiffs and offered a less sum. While B.'s offer was being considered the goods were left in his hands. The plaintiffs declined to accept B.'s offer and requested the return of the goods. By this time B. had sold the goods to the defendant. The plaintiffs sued B. in respect of the goods, and his solicitor consented to judgment for 75*l.* Nothing having been recovered under the judgment against B., the plaintiffs sued the defendants to recover possession of the goods or damages for their detention:—*Held*, that by the form of the judgment obtained against B. the plaintiff had taken judgment for the price of the goods, that that judgment amounted to an affirmance of B.'s property in the goods, and therefore that the plaintiffs were now precluded from suing the defendants in respect of the goods. *Brinsmead* v. *Harrison* (L. R. 6 C.P. 584) held inapplicable. *Bradley & Cohn* v. *Ramsay*, 106 L. T. 771; 28 T. L. R. 388—C.A.

Sale or Return—Sub-transfer on Sale or Return—"Act adopting the transaction."]—Where a person who has received goods on sale or return delivers them to another person on sale or return he thereby does an "act adopting the transaction" within the meaning of section 18, rule 4 (*a*) of the Sale of Goods Act, 1893, so that the property in the goods passes to him. *Kirkham* v. *Attenborough* (66 L. J. Q.B. 149; [1897] 1 Q.B. 201) applied. *Genn* v. *Winkel*, 107 L. T. 434; 17 Com. Cas. 323; 56 S. J. 612; 28 T. L. R. 483—C.A.

Intention—Evidence.]—The junior partner in a London firm of diamond merchants, when the firm was in financial embarrassment, made an oral offer to the plaintiffs, who were diamond merchants abroad, to buy from them a certain parcel of diamonds at 180 francs per carat and

to give a six months' bill. The offer was accepted on behalf of the plaintiffs, and the diamonds were sent by post to the purchaser's firm together with the bill for acceptance and an invoice marked "Settled by acceptance." The bill was never accepted, the senior partner repudiated the transaction, and a month later the junior partner committed suicide. Afterwards the senior partner executed a deed of assignment, and eventually a trustee in bankruptcy was appointed. The plaintiffs then brought an action against the trustee for the return of the diamonds. The defence was that the property in them had passed to the firm and therefore to the trustee. It was admitted that all similar dealings in diamonds were carried through on the credit of acceptances. The jury found that it was the intention of the parties that the property should not pass to the London firm until they had accepted the bill by signing it:—*Held*, that there was evidence on which the jury could properly so find, and that therefore the plaintiffs were entitled to the return of the diamonds and were not limited to proving in the bankruptcy. *Saks* v. *Tilley*, 32 T. L. R. 148—C.A.

Sale Obtained by Fraud—Pledge by Fraudulent Buyer—Action by Seller against Pledgee—Detinue—Burden of Proof—Larceny by a Trick.]—The plaintiffs, who were jewellers, delivered a pearl necklace to B. on a false representation by him that he had a customer for it. The delivery was on the terms of an approbation note "on sale or return, net cash." B. pledged the necklace with the defendant, who was a pawnbroker. Subsequently, on B.'s suggestion, the plaintiffs invoiced the necklace to him and received from him bills of exchange in payment of the price. The bills having been dishonoured, the plaintiffs sued the defendant for the return of the necklace or payment of its value:—*Held*, that, even if B. obtained the necklace by larceny by a trick, or if the effect of the sale or return transaction was to leave the property in the necklace in the plaintiffs until B. paid cash for it, yet the effect of the subsequent transaction of sale gave B. a title to the necklace, though a voidable title, and that notwithstanding the proviso in section 23 of the Sale of Goods Act, 1893, the burden of proof was on the plaintiffs to shew that the defendant took the necklace in bad faith or with notice of B.'s fraud. *Whitehorn* v. *Davison*, 80 L. J. K.B. 425; [1911] 1 K.B. 463; 104 L. T. 234—C.A.

Hire and Purchase — Agreement to Buy — Option — Pledge — Conversion — Measure of Damages.]—By section 25, sub-section 2 of the Sale of Goods Act, 1893, "Where a person having . . . agreed to buy goods obtains, with the consent of the seller, possession of the goods . . . the delivery or transfer by that person . . . of the goods . . . under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner." The owners of a motor taxicab let it to a motor company for twenty-four months at 15*l*. 12*s*. 2*d*. per month. The agreement provided that the hirers should pay 50*l*. on account of hire in advance, and should not re-let, sell, or part with the possession of the cab without the previous written consent of the owners. If the hirers should before the expiration of the period of twelve calendar months be desirous of purchasing the cab, they were to be at liberty to do so by making the amount of the hire paid equal to the sum of 42*l*. 11*s*. 6*d*. If they committed any breach of the clause of the agreement as to parting with the possession of the cab without the written consent of the owners, the latter were authorised to take possession of the cab and terminate the agreement. The hirers subsequently, without the consent of the owners, pledged the cab and certain other goods with the defendant under an agreement which provided that the goods were deposited as security for the payment of a sum of money advanced to them by the defendant. At the date of the agreement there was due to the plaintiffs from the company a sum of 58*l*. 9*s*. in respect of the hire of the cab, but the defendant received the cab in good faith and without notice of any right on the part of the plaintiffs. The defendant having refused to return the cab to the plaintiffs, they brought an action claiming the return of the cab or its value, and damages for its detention:—*Held*, that the hiring agreement did not impose upon the hirers an obligation to buy the cab, but merely gave them an option to buy it, and that they were therefore not persons who had "agreed to buy" goods within the meaning of section 25, sub-section 2 of the Sale of Goods Act, 1893, and could not confer upon the defendant a valid title to the cab. *Held*, further, that as the defendant had an interest in the cab the plaintiffs were not entitled to recover its full value, but only the sum of 58*l*. 9*s*., the amount of their own interest in it. *Helby* v. *Matthews* (64 L. J. Q.B. 465; [1895] A.C. 471) and *Lee* v. *Butler* (62 L. J. Q.B. 591; [1893] 2 Q.B. 318) considered. *Belsize Motor Supply Co.* v. *Cox*, 83 L. J. K.B. 261; [1914] 1 K.B. 244; 110 L. T. 151—Channell, J.

Fixtures—Hire-purchase Agreement—Equitable Interest in Land—Subsequent Equitable Mortgage without Notice — Appointment of Receiver for Equitable Mortgagees—Right of Vendor of Fixtures to Remove—Priorities.]—Under a hire-purchase agreement of November 11, 1910, contractors agreed to supply and erect on the freehold premises of a manufacturing firm a patent machine at the price of 237*l*. payable by annual instalments. In the event of default in payment of any instalment or any breach of the agreement the whole unpaid balance of principal and interest was immediately to become due, and the basis of the contract was that the machine should remain the sole and exclusive property of the contractors until the whole sum of 237*l*. had been paid, and that in the event of any default the contractors might enter on the premises and remove the machine. The machine was affixed to the freehold. In January, 1911, an in-

corporated company took over the assets and liabilities of the firm including their interest under the agreement. In December, 1911, the company issued first mortgage debentures charging all its undertaking and property as a floating charge. The debenture-holders had no notice of the agreement. Default was made in payment of instalments under the agreement, which by arrangement with the company were secured by promissory notes. The last note for 50*l*. payable on October 21, 1912, was not met. On October 18, 1912, three days before, a receiver and manager was appointed in an action by the debenture-holders to enforce their security, and he took possession of the premises. Upon summons by the contractors for leave to enter and remove the machine,—*Held*, that the contractors took under the agreement an equitable interest in land which had priority over the subsequent equitable mortgage of the debenture-holders, and that the contractors could therefore enter and remove the machine notwithstanding the appointment of the receiver. *Allen & Sons, Lim., In re* (76 L. J. Ch. 362; [1907] 1 Ch. 575), approved. *Morrison, Jones & Taylor, Lim., In re; Cookes* v. *The Company*, 83 L. J. Ch. 129; [1914] 1 Ch. 50; 109 L. T. 722; 58 S. J. 80; 30 T. L. R. 59—C.A.

Delivery Order—Document of Title—Delivery Order Created and Issued by Owner of Goods — Whether a "transfer" — Delivery Order not for Specific Goods.]—A delivery order was given by the defendants to F. for 2,640 bags of mowra seed, which formed part of a consignment of 6,400 bags. F. gave the defendants a cheque therefor and indorsed the delivery order to the plaintiffs, who took it in good faith and for valuable consideration. F.'s cheque having been dishonoured, the defendants refused to give delivery of the seed to the plaintiffs:—*Held*, first, that the delivery order was a document of title to the goods which had been "transferred" by the defendants to F. within the meaning of section 10 of the Factors Act, 1889, and section 47 of the Sale of Goods Act, 1893, and having been transferred by F. to the plaintiffs, who took it in good faith and for valuable consideration, the defendants' right of lien as unpaid vendors was defeated; and secondly, that the delivery order was valid notwithstanding that it related to goods which were not specific. *Capital and Counties Bank* v. *Warriner* (1 Com. Cas. 314) followed. *Ant. Jurgens Margarinefabrieken* v. *Dreyfus & Co.*, 83 L. J. K.B. 1344; [1914] 3 K.B. 40; 111 L. T. 248; 19 Com. Cas. 333—Pickford, J.

D. WARRANTIES.

See also Vol. XII. 474, 1377.

Representation that Goods are Suitable for Special Purpose.]—A purchaser buying goods on the recommendation of the vendor that they are suited to a special purpose, has a remedy by action for breach of contract, and not for tort, in negligently giving bad advice, if the goods prove unsuitable. *Rowe* v. *Crossley*, 108 L. T. 11; 57 S. J. 144—C.A.

Fitness for Purpose—Right to Reject—Rejection in Time—Measure of Damages.]—In January, 1907, M., who had contracted to supply a pump to a district council, ordered a pump for this purpose from B., and the pump was fitted up in May, 1907. It was a term of both contracts that the pump should lift a certain quantity of water per minute, and should be capable of being worked by a boy. Shortly after the pump was fitted up the district council complained to M. that this requirement was not satisfied by the pump, and he communicated with B., who replied that if the pump were properly fitted up it would be all right. In June, 1907, B. himself examined the pump, and reported to M. that he had put it right. Further complaints, however, were made by the district council, and in July and September M. sent workmen to examine the pump. Ultimately the district council, in December, 1908, rejected the pump, on the ground that it did not satisfy the requirement of being workable by a boy. M. refused to accept this rejection, and in January, 1909, sued the council for the price. Shortly after the raising of this action M. was informed for the first time by B. that a boy could not raise with the pump the specified quantity of water per minute, and that he had not understood that the pump must satisfy this requirement. Thereupon M., who had throughout intimated to B. that he would not pay for the pump until the district council had settled with him for it, at once intimated to B. that he rejected the pump as being disconform to contract, and that he proposed to settle the action with the council on the basis that the pump was not conform to contract:—*Held*, in actions between M. and B.—first, that in the circumstances M. had not accepted the pump; and secondly, that—as the delay in rejecting it was due to the representations of B. (on which M., not being skilled in pumps, was entitled to rely) to the effect that the pump was conform to contract—B. could not plead that the rejection was not in time. *Held*, further, that M. was entitled to recover as damages from B. (*inter alia*) the amount of the expenses incurred by him in the action against the district council. *Munro* v. *Bennet*, [1911] S. C. 337—Ct. of Sess.

Sale of Horse under Warranty—Rejection.]—A horse was sold with a warranty that it was a good worker and sound in wind, and the purchasers bargained that they should have a week's trial:—*Held*, that the contract was one of sale under warranty and not one of sale on approbation, and accordingly that the purchasers were entitled to reject the horse within the week if it was disconform to the warranty, but not otherwise. *Cranston* v. *Mallow & Lien*, [1912] S. C. 112—Ct. of Sess.

Horse Purchased for Stud Purposes—Verbal Representation by Seller of Soundness — Express Warranty.]—The plaintiff, requiring a stallion for stud purposes, inspected a horse the property of the defendant, a horse dealer. The plaintiff swore that while he was looking at the horse the defendant said to him: "You need not look for anything; the horse is perfectly sound. If there was anything the

matter I would tell you." When the horse was delivered it was found to be affected by an incurable and hereditary disease of the eyes which rendered it totally unfit for the stud. In an action brought on an express warranty that the horse was sound and free from hereditary disease, the defendant denied that he spoke the above words or anything to that effect, or gave any warranty. The Judge, in charging the jury, said, "The question you have to try is, Did the defendant at the time of the sale represent to the plaintiff, in order that the plaintiff might purchase the horse, that the horse was fit for stud purposes and was sound?" And, after referring to the conflicting evidence, "There was direct contradiction—which of them do you believe? . . . Did the plaintiff act on that representation in the purchase of the horse?" And he left in writing to the jury (*inter alia*) the question, "Did the defendant at the time of the sale represent to the plaintiff, in order that the plaintiff might purchase the horse, that the horse was fit for stud purposes, and did the plaintiff act on that representation in the purchase of the horse?" The jury answered in the affirmative:—*Held*, that the words deposed to by the plaintiff as having been used by the defendant constituted an express warranty of the soundness of the horse: and that although the words "warrant" or "warranty" did not appear in the question submitted to the jury, that question, especially taken in connection with the Judge's charge, presented for the consideration of the jury all the elements of what constituted a warranty, and that their answer to it in the affirmative, shewing that they believed the plaintiff's evidence, was a clear finding of an express warranty. *Schawel* v. *Reade*, [1913] 2 Ir. R. 64—H.L. (Ir.)

Goods not According to Description — Resale — Breach of Condition — Non-warranty Clause.]—The appellants purchased from the respondents seed which was described as "common English sainfoin." It was subsequently discovered to be "giant sainfoin," which is different and of inferior quality. The appellants re-sold part of the seed and paid the purchasers from them the difference between the value of the seed sold and that of common English sainfoin. In the sold note the respondents declined to give any "warranty express or implied as to growth, description, or any other matters." In an action against the original sellers,—*Held*, that the appellants were entitled to be repaid by the respondents the amount of such difference as for a breach of warranty. Decision of the Court of Appeal (79 L. J. K.B. 1013; [1910] 2 K.B. 1003) reversed. *Wallis* v. *Pratt*, 80 L. J. K.B. 1058; [1911] A.C. 394; 105 L. T. 146; 55 S. J. 496; 27 T. L. R. 431—H.L. (E.)

Sale of Meat Unfit for Human Food—Conviction of Purchaser under the Public Health (London) Act, 1891—Breach of Implied Warranty—Liability of Vendor Salesman—Market Custom — Usage Overriding Law.] — By section 55 of the Sale of Goods Act, 1893, it is provided that evidence of a trade usage, if it be such as to bind both parties to a contract, may set aside ordinary rights and liabilities which might arise under the contract by implication of law. So where a butcher sought to make a market salesman liable for selling him bad meat, and pleaded that he had made known the purpose for which the meat was bought, and had relied upon the skill and judgment of the seller, it was held that these conditions would *prima facie* give the purchaser a remedy under section 14 of the same Act, but that the salesman was entitled to set up the defence that there was an implied usage amongst traders in the market to give no warranty in the sale of meat. *Cointat* v. *Myham*, 84 L. J. K.B. 2253; 110 L. T. 749; 78 J. P. 193; 12 L. G. R. 274; 30 T. L. R. 282—C.A.

Appeal from judgment of Lord Coleridge, J. (82 L. J. K.B. 551; [1913] 2 K.B. 220), allowed. *Ib.*

"Delivery as required"—Successive Instalments—Construction of Contract—"Merchantable quality."]—The expression "merchantable quality" in section 14, sub-section 2 of the Sale of Goods Act, 1893, means goods saleable at the time the delivery is made, and not goods which can only be made saleable if some labour is expended on them. *Jackson* v. *Rotax Motor and Cycle Co.*, 80 L. J. K.B. 38; [1910] 2 K.B. 937; 103 L. T. 411—C.A.

In October, 1908, the defendants, an English company who sell motor accessories, gave an order to the plaintiff, a manufacturer in Paris, for a large number of motor horns of different sizes and of different prices, "delivery as required." The goods were delivered in nineteen cases at various dates in May and June, 1909, the last delivery being on June 24. On the same day the defendants inspected the goods, and as the result of their inspection rejected them all (except those contained in one case which they had already re-sold) mainly on the ground that the goods were not merchantable. In an action by the plaintiff to recover the price of the goods,—*Held*, that, according to the true construction of the contract, it was to be treated as a separate contract in respect of each consignment; and that (subject to the exception of *de minimis*) the buyer had a right to insist that all the goods comprised in each consignment should be of merchantable quality, and if they were not, then to reject the whole consignment. *Tarling* v. *O'Riordan* (2 L. R. Ir. 82) followed. *Ib.*

E. PERFORMANCE OF CONTRACT.

1. Time of Delivery.

See also Vol. XII. 529, 1390.

Delay in Delivery—Failure of Commercial Object of Contract—Right of Buyers to Refuse to Accept Delivery.—By a contract in writing 200 tons of cotton seed were sold for shipment from Bombay and certain other Indian ports to Hull *via* Suez Canal during August and September, 1910, at 6*l.* 15*s.* per ton net, free delivered in sound and merchantable condition to buyers' craft alongside. Shipment was to

be by steamer or steamers, direct or indirect, with or without transhipment; and the bill of lading was to be proof of date of shipment in the absence of evidence to the contrary. Particulars of shipment were to be given within six days after the receipt of the shipping documents in this country. It was further provided that if the seed on arrival proved to be not as warranted, or was damaged or out of condition, it was to be taken with an allowance. The contract was to be void as to any portion shipped that might not arrive by the ship or ships declared against the contract. By notice in writing dated September 6, 1910, the sellers declared a shipment under the contract of 1,600 bags of cotton seed by the *Othello* under a bill of lading dated August 16, 1910. The *Othello*, which was a general ship, left Bombay with the cotton seed on board on August 18, 1910, intending to call at Karachi for further cargo. On August 22, 1910, when near Karachi, she stranded, and was not refloated till November 27, 1910. About 1,646 tons of her original cargo, including the cotton seed, were landed and stored at Karachi, and she returned to Bombay for repairs. On February 12, 1911, the *Othello* again left Bombay, having on board 1,540 tons of new cargo to replace a somewhat larger quantity of manganese ore originally shipped at Bombay, but jettisoned on the stranding off Karachi. Included in these 1,540 tons of new cargo was a further quantity of cotton seed which, being shipped in February, was available for and was used by the owners thereof to fulfil contracts made by other parties for January-February shipment. On the arrival of the *Othello* at Karachi on the second occasion she loaded the cargo, including the cotton seed in question, which had been left there, and on February 20 she sailed for Hull, where her cargo, including the cotton seed, was discharged on March 27, 1911, the cotton seed being carried under the original bill of lading. The buyers having declined to accept the declaration of shipment as a proper declaration in fulfilment of the contract, the dispute was referred to arbitration. No evidence was given in the arbitration to shew that the stranding of the *Othello* was due to negligence. The arbitrators found that there was no undue delay in the refloating of the vessel after the stranding, or in the execution of the repairs, and that the voyage was not unduly delayed by the loading of the further cargo at Bombay; that cotton seed purchased for August or September shipment would be seed of the old crop, and on arrival in the ordinary course would go into consumption before the new crop would be available; that when the new crop first comes on the market the value of seed of the old crop is at a discount as compared with the price of seed of the new crop; and, so far as the question was for them, the arbitrators found as a fact that the delay in delivery beyond the normal time for a voyage from Bombay to Hull was not due to any act or default of the sellers. They further found that the buyers had been prejudiced by the fact (but not further or otherwise) that the seed, being seed of the old crop, arrived at a time when it had to compete on the market with seed of the new crop. On these findings,—*Held*, that there had been no cancellation of the original shipment in August, 1910, so as to make the re-loading at Karachi in February, 1911, a new shipment, and as such not within the time stipulated for by the contract; that the loading of further cargo at Bombay in February, 1911, did not constitute a new voyage so as to vitiate the tender made by the sellers; that the mere fact that the seed when it arrived at Hull was exposed to a more highly competitive market than that which it was expected would be found was not sufficient to warrant a finding of fact that the commercial object of the contract was defeated; that therefore the sellers were entitled to call upon the buyers to accept delivery of the seed; but, *semble*, that, on the construction of the contract, the buyers would be entitled to damages for the delay in the delivery of the seed if it could be shewn that the delay had been caused by the negligent navigation of the *Othello*. *Carver & Sassoon, In re*, 17 Com. Cas. 59—D.

Contract to Build Ship—Date of Completion—Delay—Force Majeure.]—The defendants, an English firm of shipbuilders, contracted to build a ship for the plaintiff, a Roumanian merchant, and to deliver the same on or before a certain date. The contract contained a provision that if the ship was not delivered at the stipulated time the defendants should pay to the plaintiff as liquidated damages 10*l.* for each day of delay. There was also a clause to the effect that in calculating days of delay there should be excepted "only the cause of *force majeure* and/or strikes of workmen of the building yard where the vessel is being built or the workshops where the machinery is being made or at the works where steel is being manufactured for the steamer or any works of any sub-contractor." The plaintiffs were one hundred and seventy-five days late in delivering the ship. They attributed this delay to the following causes: First, the indirect effect of the coal strike of 1912, which, by causing general dislocation of trade, delayed the completion of other steamers on turn for building before the one under this contract; secondly, the breakdown of certain machinery, resulting from accidents, and not from the fault of any of the defendants' workmen; thirdly, bad weather, which prevented the work from proceeding; and fourthly, absence from work of their employees for the purpose of attending the funeral of the manager of the shipyard, visiting football matches, and taking certain holidays:—*Held*, that the indirect effect of the coal strike and the breakdown of machinery were causes of delay covered by the words "*force majeure*" in the exception clause, and that the defendants were entitled to an allowance in respect thereof. *Held* also, that bad weather and absence from work of employees were not such causes of delay. *Matsoukis* v. *Priestman & Co.*, 84 L. J. K.B. 967; [1915] 1 K.B. 681; 113 L. T. 48; 20 Com. Cas. 252—Bailhache, J.

"Shipment made or to be made, and bill or bills of lading dated or to be dated during

December or January "—Whether Stipulation as to Date of Bill of Lading a Condition.]—A contract for the sale of beans, made in the form adopted by the London Corn Trade Association, contained the clause, "Shipment made or to be made, and bill or bills of lading dated or to be dated during December, 1909, and/or January, 1910." It also contained the clause: "Bill of lading to be considered proof of date of shipment in the absence of evidence to the contrary":—*Held*, that the stipulation that the bills of lading were to be dated during December, 1909, and/or January, 1910, was a condition of the contract, and therefore that the buyers were entitled to reject the beans where they were shipped in January, 1910, but the bill of lading tendered was dated February, 1910. *General Trading Co. and Van Stolk's Commissiehandel, In re*, 16 Com. Cas. 95—A. T. Lawrence, J.

2. Quantity of Goods.

See also Vol. XII. 539, 1392.

Trivial Excess over Quantity Contracted for—Right to Reject Whole.]—On a sale of goods, delivery to the buyer of a quantity larger than that contracted for, where the excess is so small that reasonable business men would not regard it as a matter of importance, and where payment for the excess is not demanded by the seller, does not entitle the buyer to reject the whole of the goods under the provisions of section 30, sub-section 2 of the Sale of Goods Act, 1893. *Shipton, Anderson & Co.* v. *Weil Brothers & Co.*, 81 L. J. K.B. 910; [1912] 1 K.B. 574; 106 L. T. 372; 17 Com. Cas. 153; 28 T. L. R. 269—Lush, J.

3. Other Points as to Delivery.

See also Vol. XII. 550, 1394.

F.o.b. Contract—Transit—Route Involving Sea Transit—Notice by Seller to Buyer to Enable Buyer to Insure.]—By section 32, sub-section 3 of the Sale of Goods Act, 1893: "Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so the goods shall be deemed to be at his risk, during such sea transit":—*Held*, by the Court of Appeal (Buckley, L.J., and Hamilton, L.J.; Vaughan Williams, L.J., dissenting), that the seller is not bound to give notice to the buyer under the above sub-section where the buyer already has sufficient information to enable him to insure the goods in the ordinary way, and that the buyer's information is not necessarily insufficient for this purpose merely because he does not know the name of the particular vessel on which the goods are shipped; and, further, that where the contract itself contains sufficient information to enable the buyer to insure, it constitutes notice within the meaning of the sub-section. *Held*, also, by Vaughan Williams, L.J., and Buckley, L.J. (Hamilton, L.J., dissenting), that the above sub-section applies to an ordinary f.o.b. contract for the sale of goods. *Wimble* v. *Rosenberg*, 82 L. J. K.B. 1251; [1913] 3 K.B. 743; 109 L. T. 294; 18 Com. Cas. 302; 12 Asp. M.C. 373; 57 S. J. 784; 29 T. L. R. 752—C.A.

Re-sale—Appropriation of Shipment to Contract—Knowledge of Sellers of Loss of Ship and Cargo at Time of Making Tender of Appropriation—Validity of Tender.]—By a contract in writing dated May 30, 1912, 6,000 tons of soya beans were sold by the respondents to the appellants for shipment from an Oriental port or ports during December, 1912, and/or January, 1913, by steamer direct or indirect via Suez Canal or Cape to Hull. Clause 3 provided that particulars of shipment with dates of bill or bills of lading, approximate weight, marks (if any), and numbers of bags were to be declared by original sellers not later than forty days from the date of last bill of lading. In case of re-sales, copy of original appropriation should be accepted by buyers and passed on without delay. Clause 10 provided that the contract was to be void as regards any portion shipped that might not arrive by the ship or ships declared against the contract. The respondents on September 9, 1912, purchased from the E. A. Co. under a similar contract an identical quantity of 6,000 tons of soya beans for shipment in December, 1912, and/or January, 1913. On February, 1913, the respondents received from the E. A. Co. a declaration and appropriation of a cargo of 6,400 tons of beans which had been shipped by the E. A. Co. per the steamship *Canterbury*. Later, on February 4, 1913, the respondents declared and appropriated this shipment to their contract with the appellants. The *Canterbury*, having started on her voyage, was wrecked, and founded on February 4, 1913, and the cargo was totally lost. The loss was not known to the E. A. Co. at the time of their declaration and appropriation, but the loss was known to the respondents at the time of their tender of declaration and appropriation to the appellants. The appellants contended that they were not bound to accept the tender per the steamship *Canterbury*, and the dispute was accordingly referred to arbitration:—*Held*, that a valid declaration and appropriation under the contract could only be made by the respondents, the sellers, in respect of goods which had been shipped and which were believed by them to be in existence at the date of the declaration, even though there had been a prior valid appropriation of the goods to them; that clause 10 of the contract only applied to absolve the seller when there had been a valid declaration; and that, as there had been no valid declaration and appropriation as between the respondents and appellants, inasmuch as the respondents knew of the loss of the ship at the time when they made their declaration and appropriation, clause 10 did not apply so as to render the contract void. *Olympia Oil and Cake Co. and Produce Brokers Co., In re* (No. 1), 84 L. J. K.B. 281; [1915] 1 K.B. 233; 111 L. T. 1107; 19 Com. Cas. 359—D.

C.i.f. Contract—Failure of Vendors to Insure—Safe Arrival of Goods—Right of Purchasers to Reject.]—The plaintiffs agreed to sell to the defendants twenty cases of French walnuts, c.i.f. Hull, on the terms thirty days net. The walnuts were shipped under a bill of lading, which was sent, together with the invoice, to the defendants. The plaintiffs did not, however, tender to the defendants a policy of insurance, and they had not in fact effected an insurance on the goods to Hull. The walnuts were delayed in transit, but ultimately arrived at Hull some time after the date at which, in the ordinary course, they would have arrived. The defendants having refused to accept them, the plaintiffs brought an action to recover the agreed price of the goods:—*Held*, that as no policy of insurance had been effected by the plaintiffs upon the goods to Hull, they had not been delivered in accordance with the contract, and the defendants were therefore entitled to judgment. *Orient Co.* v. *Brekke*, 82 L. J. K.B. 427; [1913] 1 K.B. 531; 108 L. T. 507; 18 Com. Cas. 101—D.

Delivery by Instalments—Delivery of First Instalments—Part Payment of Price thereof—Vendor's Claim to Lien on Remainder of Goods.]—The defendants contracted to buy a quantity of onions from the plaintiff. After the arrival of the first shipment the defendants paid certain sums on account thereof, and the plaintiff refused to deliver the second and third shipments until after the balance of the price of the first shipment had been paid. In an action by the plaintiff against the defendant to recover the balance of the price of the first shipment, the defendants counterclaimed for damages for non-delivery of the remainder of the goods:—*Held*, that the plaintiff was entitled to recover on his claim, but that he had no lien on the undelivered goods under sections 39 and 42 of the Sale of Goods Act, 1893, as the property in them had not passed to the defendants, and in the circumstances he was not entitled to refuse delivery, and that consequently the defendants were entitled to recover on the counterclaim. *Steinberger* v. *Atkinson & Co.*, 31 T. L. R. 110—Atkin, J.

Sale of Floating Dock—Price Inclusive of Towage, Insurance, &c.—Sellers' Obligation as to Policies.]—A floating dock was sold to the plaintiffs for 19,000*l.*, "which price includes cost of towing from Avonmouth to Brindisi, cost of insurance, and all fittings, strengthenings and towing gear, ropes, &c., necessary for the voyage. . . . Before the dock leaves, vendors agree to hand to purchasers Lloyd's policies of insurance for 16,500*l.* This insurance will be duly indorsed over to them, and they shall receive the full benefit of such policies":—*Held*, that under this contract the sellers were bound to give valid policies to the purchasers. *Cantiere Meccanico Brindisino* v. *Constant*, 12 Asp. M.C. 186; 17 Com. Cas. 182—Scrutton, J. Affirmed, 17 Com. Cas. 332—C.A.

Seller's Option to Cancel in Case of Prohibition of Export Preventing Shipment of Wheat to this Country—Partial Prohibition of Export—Non-delivery by Sellers—Effect of Partial Prohibition.]—A contract dated July 27, 1914, for the sale of 200 sacks of flour provided that "in case of prohibition of export, blockade, or hostilities preventing shipment or delivery of wheat to this country, the sellers shall have the option of cancelling this contract." On July 31, 1914, the export of wheat and flour was prohibited from twenty-one countries, including Russia, Egypt, and Roumania; but there was no similar prohibition from the United States, Canada, and the British East Indies, which were the principal sources of supply of wheat imported into this country. The price of wheat rose considerably in consequence of the prohibition. The sellers failed to deliver 112 sacks of flour, and claimed to cancel the contract:—*Held*, that in order that the clause in the contract should be brought into operation it was not necessary that there should be a total prevention of delivery of wheat to this country through prohibitions of export; it was sufficient if there was such a prohibition of export as caused one or more substantial sources of supply to be shut up, or which caused a source of supply to be shut up whereby a considerable rise in the price of wheat in this country was occasioned; and that as there was a prohibition of export of wheat from Russia, which was a considerable source of supply, and as the effect of the prohibitions had been to cause a considerable rise in the price of wheat, the sellers were entitled under the clause to cancel the contract. *Ford & Sons, Lim.* v. *Leetham & Sons, Lim.*, 84 L. J. K.B. 2101; 21 Com. Cas. 55; 31 T. L. R. 522—Bailhache, J.

F. DISCHARGE AND BREACH OF CONTRACT.

1. Impossibility of Performance.

See also Vol. XII. 553, 1396.

Sale and Purchase of Sugar—Embargo on Export—Outbreak of War—Impossibility of Performance of Contract—Sugar Association's Rules—Right to Proceed to Arbitration.]—The plaintiff entered into two contracts for the purchase of a quantity of beetroot sugar f.o.b. at Hamburg. The contracts were made subject to the rules, regulations, and by-laws of the Sugar Association of London, and were registered with the London Produce Clearing House, Lim. Under those rules and regulations both vendors and purchasers of sugar register their contracts with the London Produce Clearing House, Lim., and a novation follows under which the Clearing House becomes the purchasers from the sellers and the sellers to the purchasers. The defendants Tolme and Runge entered into contracts by which they had sold a quantity of sugar to the Clearing House for delivery in August and that sugar had been appropriated by the Clearing House to the plaintiff's contract. The sugar in question had arrived at the shipping port of Hamburg and was free of all Customs formalities required prior to export, and was lying there stored in warehouse. On July 31, 1914, the German Government placed an embargo on the export of sugar. On the same day Tolme and Runge made a tender of the

sugar and asked for shipping instructions. On August 4, 1914, war broke out between Great Britain and Germany. On August 7 the plaintiff refused to accept the tender, alleging that the original contracts were void and incapable of performance. The defendants claimed arbitration under rule 491 (*b*) of the Sugar Association's rules, which provided: "For the purposes of the war clause a contract against which a tender has been made shall be deemed a closed contract. Should the state of war prevent shipment or warehousing and/or passing of documents, then any party to the contract shall be entitled to appeal to the council for a decision which shall be binding on all concerned." The plaintiff then issued a writ claiming a declaration that the contracts were void and incapable of performance by reason of the embargo, or were illegal by reason of the war and the proclamation against trading with the enemy, and he further claimed an injunction to restrain the defendants from proceeding to arbitration:—*Held*, that the plaintiff was not entitled to either the declaration or the injunction asked for as the tender of the sugar by Tolme and Runge on July 31 was a good tender notwithstanding the embargo, and that thereupon it was the duty of the buyer to give practicable shipping or storing instructions; that the contract was to be deemed a closed contract under rule 491 (*b*), the object of which was to provide for a substituted fulfilment of the contract in the event of war making its fulfilment as originally intended impossible; and that there was nothing illegal in the parties contracting that a third party should give a binding decision in such an event, nor was there any illegality in the plaintiff taking steps to protect his property abroad as distinguished from taking steps to trade with the enemy. *Jager* v. *Tolme*, 31 T. L. R. 381—Sankey, J.

The plaintiffs entered into contracts for the purchase of 6,250 tons of German beetroot sugar for delivery in August, 1914, f.o.b. Hamburg. The contracts were made subject to the rules of the Sugar Association of London and of the London Produce Clearing House, Lim. Under those rules both vendors and purchasers of sugar register their contracts with the London Produce Clearing House, Lim., and when registered the contracts take effect as if the respective parties had contracted with the London Produce Clearing House, the Clearing House becoming by novation a buyer from every seller and a seller to every buyer. The defendants had also entered into contracts for the sale of a quantity of sugar, and the Clearing House allocated those contracts in performance of the contracts of purchase entered into by the plaintiffs. Tenders of the sugars to the plaintiffs were made on July 30 and 31, 1914, by the Clearing House, by giving to the plaintiffs notice that the sugars were ready for shipment at Hamburg, and giving particulars of the number of bags, marks, country of origin, and prices. The sugar in question had arrived in the free haven of Hamburg free of all Customs formalities. The plaintiffs on July 30 and 31 gave shipping instructions as regards 2,000 tons, but no instructions as to delivery were given with regard to the balance. The plaintiffs, as they were entitled to do under the rules, required that the tendered sugar should be re-sampled, analysed, and re-weighed, and these things had to be done by the sellers. On July 31 the German Government placed an embargo on the export of sugar from Germany, and on August 4 war was declared between Great Britain and Germany. In these circumstances the sugar could not be shipped in accordance with the shipping instructions. The plaintiffs claimed declarations that the contracts were incapable of performance and void by reason of the embargo, that they were discharged from further performance of the contracts, that the contracts were dissolved by reason of the war, and that they were under no liability to pay for the sugar:—*Held*, that the property in the sugar did not pass to the plaintiffs on tender of the sugar, but that, whether it did or not, the plaintiffs were entitled to the declarations which they claimed, as the contracts were incapable of performance and the further performance of the contracts was illegal as involving trading with the enemy; that rule 491*b* of the Sugar Association Rules, upon which the defendants relied, had no application; and that the plaintiffs were not bound to exercise to their own detriment the option which they had in order that the defendants might escape without loss. *Grey & Co.* v. *Tolme* (*No.* 2), 31 T. L. R. 551—Bailhache, J.

Requisition by Government — Liability of Sellers.]—By a contract of sale, dated September 2, 1914, the sellers sold to the buyers a parcel of wheat lying in warehouse on the terms "cash within seven days against transfer order." On September 4 the sellers were informed by the Admiralty that the wheat had been requisitioned by the Government, and on September 8 they received a written requisition. The buyers thereupon claimed damages from the sellers for non-delivery of the wheat, and the matter was referred to arbitration. Upon a Case stated,—*Held*, first, that, upon the true construction of the contract, the property in the wheat had not passed to the buyers; and secondly, that as the sale was a sale of specific goods, and delivery had been prevented by a lawful act of State—namely, the requisitioning of the goods—the sellers were excused from carrying out their contract. *Shipton, Anderson & Co.* v. *Harrison Brothers & Co.*, 84 L. J. K.B. 2137; [1915] 3 K.B. 676; 31 T. L. R. 598—D.

Sale of Ore—Suspensory Clause—War—Stoppage of Mine — Sellers' Right of Suspension.]—By certain contracts, made in March and November, 1914, for the sale by the defendants to the plaintiffs of a quantity of iron ore from a particular mine, it was provided that in the event of war, restraint of princes, or other occurrences beyond the personal control of the buyers or sellers, affecting the mine or the ships by which the ore was to be conveyed, the contract should, at the option of the party affected, be suspended. In consequence of the loss of the German market, owing to the war, the mine could not be

worked at a profit, and it was therefore closed. There was also a great shortage of shipping, with a resulting rise of freights, and the Government requisitioned the class of vessel used for shipping the ore. For these reasons the defendants in February, 1915, gave notice to suspend delivery. In an action by the plaintiffs for a declaration that the defendants were not entitled to suspend the operation of the contracts,—*Held*, that in the circumstances the war was the effective cause of the stoppage of the mine, and the defendants were entitled, under the terms of the contract, to give notice suspending it, and therefore the plaintiffs were not entitled to the declaration claimed. *Ebbw Vale Steel, Iron and Coal Co. v. Macleod & Co.*, 31 T. L. R. 604—Bailhache, J.

2. Illegality.

Declaration of War — Tender of German Shipping Documents—Obligation of Buyer.]—Under two c.i.f. contracts (made respectively between two English firms) the sellers sold to the buyers a quantity of horse beans, to be shipped from a port in China to Naples. Payment was to be in net cash in London on arrival of the goods at port of discharge in exchange for bill of lading and policy of insurance, but was to be made in no case later than three months from the date of the bill of lading, or upon the posting of the vessel at Lloyd's as a total loss. The sellers respectively shipped the beans on a German steamer for conveyance to Naples. War subsequently broke out between England and Germany, and the vessels entered ports of refuge and remained there. Three months after the date of the bill of lading the respective sellers tendered to the buyers the shipping documents —namely, in the one case the German bill of lading and an English policy, and in the other case the German bill of lading and a German policy. The buyers refused to accept the documents or to pay for the goods :—*Held*, that the tender of the documents was not, under the circumstances, a good tender; that the buyers were entitled to reject it, and that the sellers could not therefore claim payment against the documents. *Esposito* v. *Bowden* (27 L. J. Q.B. 17; 7 E. & B. 763) and *Janson* v. *Driefontein Consolidated Mines* (71 L. J. K.B. 857; [1902] A.C. 484) considered. *Karberg & Co.* v. *Blythe, Green, Jourdain & Co.; Schneider & Co.* v. *Burgett & Newsam*, 84 L. J. K.B. 1673; [1915] 2 K.B. 379; 113 L. T. 185; 31 T. L. R. 351—Scrutton, J.

C.i.f. Contract — "Payment net cash in Liverpool in exchange for shipping documents" —Goods Carried in Enemy Ship—Tender of Documents after Outbreak of War—Right of Buyers to Refuse to Accept Documents.]—By a contract dated May 11, 1914, the claimants sold to the respondents "about 300 barrels June and/or July shipment Chilean honey per steamer . . . cost, freight, and insurance to Hamburg. . . . Payment: net cash in Liverpool in exchange for shipping documents on presentation of same." Both the claimants and respondents were English firms of merchants carrying on business at Liverpool. The honey was shipped by the claimants on June 28, 1914, at Penco on board the German steamship *Menes*, and by the bill of lading was to be carried from Penco to Hamburg, and there delivered to the claimants or their assigns. The bill of lading contained a condition that "all questions arising under this bill are to be governed by the law of the German Empire and to be decided in Hamburg." War was declared between Great Britain and Germany on August 4, 1914, and on August 5 a Royal proclamation was issued warning all persons carrying on business in the British dominions against trading in goods destined for persons resident, carrying on business, or being in the German Empire. On the same day a tender of the shipping documents was made on behalf of the claimants to the respondents, who, however, refused to accept the documents. The *Menes* had not arrived at Hamburg at the date of the tender of documents :—*Held*, that the respondents were entitled to refuse to carry out the contract, because to carry out the contract would be a direct violation of the proclamation, and therefore illegal. *Duncan, Fox & Co.* v. *Schrempft & Bonke*, 84 L. J. K.B. 2206; [1915] 3 K.B. 355; 113 L. T. 600; 20 Com. Cas. 337; 59 S. J. 578; 31 T. L. R. 491—C.A.

3. Fraud.

See also Vol. XII. 557, 1398.

Error as to Substance of Articles Sold — Modern Imitations of Antique Furniture.]—A dealer in modern and antique furniture sold to a customer ten ribbon-backed chairs, which he described in a receipt for part payment of the price as a "set of antique mahogany chairs," but which proved not to be genuine antiques, but to be modern imitations. The price stipulated was a fair price for the articles actually sold. The seller gave no history of the chairs or guarantee that they were antique, but he made certain representations, held not to be fraudulent, which induced the buyer to believe that he was buying a set of old chairs :—*Held*, that there had been such misrepresentation as to the substance of the articles sold as to entitle the buyer to rescind the contract. *Edgar* v. *Hector*, [1912] S. C. 348—Ct. of Sess.

4. Refusal to Perform.

See also Vol. XII. 559, 1399.

Buyer Prevented from Fulfilling Contract by Failure of Seller to do his Part — Claim by Buyer for Damages.]—The plaintiff contracted with a mining company to remove waste rock then lying in the waste dump at the mine within a period of two years, provided that it did not exceed 50,000 tons, the company to provide a crusher, and the rock so crushed to be put on rails and made available for sale. The crusher provided was capable only of crushing three tons per hour, and as the company never did anything to put it in a condition to do more, the work, owing to the incapacity of the crusher, had to be stopped. The plaintiff claimed damages :—*Held*, that

as it appeared from the written contract that both parties had agreed that something should be done which could not effectually be done unless both concurred in doing it, although there were not express words to that effect in the contract, it must be construed as meaning that each party had agreed to do all that was necessary to be done on his part for the carrying out of the work. The defendants had failed to provide an adequate crusher, and had therefore failed to carry out their part of the contract. *Mackay* v. *Dick* (6 App. Cas. 251) followed. *Kleinert* v. *Abbosso Gold Mining Co.*, 58 S. J. 45—P.C.

G. RIGHTS OF UNPAID VENDOR.

1. Lien.

See also Vol. XII. 592, 1402.

Assent to Sub-sale.]—The plaintiffs, through one T. who was acting for them in the matter, bought three old boilers, which belonged to and were in the possession of a paper company. While the boilers still remained on the premises of the paper company T. sold them to H. for 60*l.*, on the terms that 20*l.* should be paid before the removal of the first boiler and the balance of 40*l.* by December, 1909; and in October, 1909, T., by letter, informed the paper company of the sale to H. Subsequently H. sold the boilers, which still physically were in the paper company's possession, to the defendants, and paid 10*l.* on account to T., but paid no more. There was no acknowledgment by the paper company to H. that they held the boilers on his behalf:—*Held*, that the plaintiffs were not precluded from setting up their right of lien as unpaid sellers by the fact that they had through T. informed the paper company of the sale to H. *Poulton* v. *Anglo-American Oil Co.*, 27 T. L. R. 216—C.A.

Delivery Order — Document of Title — Delivery Order Created and Issued by Owner of Goods — Whether a "transfer" — Delivery Order not for Specific Goods.] — A delivery order was given by the defendants to F. for 2,640 bags of mowra seed, which formed part of a consignment of 6,400 bags. F. gave the defendants a cheque therefor and indorsed the delivery order to the plaintiffs, who took it in good faith and for valuable consideration. F.'s cheque having been dishonoured, the defendants refused to give delivery of the seed to the plaintiffs:—*Held*, first, that the delivery order was a document of title to the goods which have been "transferred" by the defendants to F. within the meaning of section 10 of the Factors Act, 1889, and section 47 of the Sale of Goods Act, 1893, and having been transferred by F. to the plaintiffs, who took it in good faith and for valuable consideration, the defendants' right of lien as unpaid vendors was defeated; and secondly, that the delivery order was valid notwithstanding that it related to goods which were not specific. *Capital and Counties Bank* v. *Warriner* (1 Com. Cas. 314) followed. *Ant. Jurgens Margarinefabrieken* v. *Dreyfus & Co.*, 83 L. J. K.B. 1344; [1914] 3 K.B. 40; 111 L. T. 248; 19 Com. Cas. 333—Pickford, J.

Delivery by Instalments—Delivery of First Instalments—Part Payment of Price thereof —Vendor's Claim to Lien on Remainder of Goods.]—The defendants contracted to buy a quantity of onions from the plaintiff. After the arrival of the first shipment the defendants paid certain sums on account thereof, and the plaintiff refused to deliver the second and third shipments until after the balance of the price of the first shipment had been paid. In an action by the plaintiff against the defendant to recover the balance of the price of the first shipment, the defendants counterclaimed for damages for non-delivery of the remainder of the goods:—*Held*, that the plaintiff was entitled to recover on his claim, but that he had no lien on the undelivered goods under sections 39 and 42 of the Sale of Goods Act, 1893, as the property in them had not passed to the defendants, and in the circumstances he was not entitled to refuse delivery, and that consequently the defendants were entitled to recover on the counterclaim. *Steinberger* v. *Atkinson & Co.*, 31 T. L. R. 110—Atkin, J.

2. Stoppage in Transitu.

See also Vol. XII. 606, 1403.

Duration of Transit—Constructive Delivery by Railway Company to Carters.]—Under a contract for the sale of two lifeboats the vendors were bound to deliver the boats at the purchasers' yard. The boats were dispatched by the vendors by rail, and arrived at a railway station adjacent to the purchasers' yard. Two days later a firm of carters, who were accustomed to cart goods consigned to the purchasers from that station to their yard, but who had no special instructions with regard to these particular boats, obtained delivery of one of the boats and carted it to the purchasers' yard. The carters were not able to take the other boat at the same time, but were to return for it later in the day. Before their return the railway company learned that the purchasers had suspended payment, and on the carters' return they refused to allow the second boat to be removed as they had decided to retain it in virtue of a lien to which they were entitled (under a general contract with the purchasers) over all goods of the latter in their possession for any balance due to the railway company. Thereafter on the same day the vendors notified the railway company to stop the boat *in transitu*. Subsequently, however, the railway company delivered the boat to the liquidator on the purchasers' estate without the price having been paid to the vendors. In an action by the vendors against the railway company for damages for delivering this boat in breach of the notice of stoppage, the defenders maintained that the boat was not *in transitu* when the notice was given in respect that the delivery of the first boat operated as constructive delivery of both, or otherwise that the defenders ceased to hold the second boat as carriers when they gave notice of their intention to enforce their lien:—*Held*, that the boat was in course of transit when the notice was given, and that the defenders were liable to the pursuers in damages. *Mechan*

v. *North-Eastern Railway*. [1911] S. C. 1348—Ct. of Sess.

Goods Purchased for Shipment Abroad—Transit in Stages—Goods Intercepted by Purchaser—Right of Unpaid Vendors.]—A purchaser of goods consigned them to a destination abroad, the transit being in several stages. At the end of one of such stages he intercepted the goods, and they thereafter remained in the custody of the carriers, who charged him warehouse rent in respect of them. The unpaid vendors having claimed to stop the goods *in transitu*.—*Held*, that the original transit had been terminated by the purchaser, and that the right of the vendors to stop the goods *in transitu* was therefore lost. *Reddall* v. *Union Castle Mail Steamship Co.*, 84 L. J. K.B. 360; 112 L. T. 910; 20 Com. Cas. 86—Bailhache, J.

SALMON.

See FISH AND FISHERY.

SALVAGE.

See SHIPPING.

SANITARY LAW.

See LOCAL GOVERNMENT; METROPOLIS.

SCHOOL.

I. MASTERS OF SCHOOLS.

See also Vol. XII. 629, 1406.

Schoolmaster's Duty to Boys.]—The duty of a schoolmaster in relation to his pupils is that of a careful father. *Shepherd* v. *Essex County Council*, 29 T. L. R. 303—Darling, J.

Contract of Teacher with Managers—Notice of Determination by Local Education Authority — Dismissal on "Educational grounds" — Appeal to Board of Education—Jurisdiction.]—A local education authority, acting upon reports by Government inspectors of schools, instructed the managers of a non-provided elementary school to serve notice of dismissal on the head master on educational grounds, and the managers having refused to do so the authority served the notice themselves. The head master having applied for an injunction to restrain the local authority from acting upon the notice pending the result of an appeal by the managers to the Board of Education under the Education Act, 1902, s. 7, sub-s. 3:—*Held*, that, as the plaintiff did not deny that his dismissal was on educational grounds, but only questioned the sufficiency of the grounds, there was no case for the interference of the Court, and he was not entitled to an injunction. *Mitchell* v. *East Sussex County Council*, 109 L. T. 778; 78 J. P. 41; 12 L. G. R. 1; 58 S. J. 66—C.A.

Resignation of Teacher — Salary during Vacation.]—A teacher at the science, art, and technical schools of the local education authority of a county borough had in January, 1909, been appointed by the education committee at a yearly salary payable, and paid, monthly; and his engagement was subject to three months' notice, which could be given at any time by either party. The annual session of the schools closed at the end of July. Owing to a reorganisation of the staff the teacher was asked to send in his resignation. He did so on March 22, 1909, adding to the notice of resignation that it was to take effect on August 31, 1909. The education committee, however, gave a counter-notice to terminate his services on July 31, 1909, when the holidays began:—*Held*, that the teacher could not maintain an action for a month's salary for the month ending August 31. *Hann* v. *Plymouth Corporation*, 9 L. G. R. 61—D.

Dismissal of Teacher — Teacher's Statutory Right — Managers' Power of Dismissal — "Grounds connected with the giving of religious instruction" — Teacher's Religious Belief.]—The managers of an elementary Church of England school not provided by the local education authority gave notice to a school teacher to determine her employment under section 7, sub-section 1 (*c*) of the Education Act, 1902, "on grounds connected with the giving of religious instruction in the school." It was not alleged that any objection could be taken to the religious instruction given by the teacher, but it was alleged that she had ceased to be a member of the Church of England and was now a member of the Wesleyan Church:—*Held*, that it was necessary, in order that the dismissal might be valid under the section, not merely that the managers should think in their own minds that the ground of dismissal was one connected with the giving of religious instruction, but that the ground must be in fact such a ground. The alleged reason was not a ground connected with the giving of religious instruction, and the statute carefully avoids an enquiry into

the religious belief of the teacher on the occasion of his appointment or dismissal. The Court therefore granted an injunction restraining the managers of the school from acting or purporting to act upon the notice purporting to dismiss the teacher from her employment. *Smith* v. *Macnally*, 81 L. J. Ch. 483; [1912] 1 Ch. 816; 106 L. T. 945; 76 J. P. 466; 10 L. G. R. 434; 56 S. J. 397; 28 T. L. R. 332—Warrington, J

A teacher in an elementary non-provided school has a statutory right to the position which he has acquired under the Education Act, 1902, unless and until the requirements of that Act with regard to his dismissal have been complied with. *Ib.*

Head Master—Managers—Validity of Appointment—Foundation Manager—Declaration of Membership of Church of England—Qualification — Churchwarden.] — The managing body of a non-provided elementary Church of England school was constituted by a Final Order under section 11 of the Education Act, 1902, which provided that the foundation managers should possess certain qualifications, and that no person should "be entitled to act as a foundation manager" until he had signed a declaration that he was a member of the Church of England. At a date when the managing body gave notice of dismissal to the head master three foundation managers, though in fact members of the Church of England, had not signed any such declaration. It was also alleged that these three persons had been invalidly appointed by persons not qualified so to do, and that their appointment was void. Schedule I. Part B, clause 3 of the Education Act, 1902, provides that "the proceedings of a body of managers shall not be invalidated . . . by any defect in the election, appointment, or qualification of any manager":—*Held*, first, that the words of the Final Order were not an absolute prohibition against any foundation manager acting until he has signed the required declaration; secondly, that Schedule I. B, clause 3, precluded the raising in this action of any objection as to the qualification of any manager, whether in respect of this declaration, or the validity of his appointment, or the authority of those who appointed him, and that such objections did not invalidate the proceedings of the managing body. *Meyers* v. *Hennell*, 81 L. J. Ch. 794; [1912] 2 Ch. 256; 106 L. T. 1016; 76 J. P. 321; 56 S. J. 538; 28 T. L. R. 424—Eve, J.

Semble, a non-resident parishioner is eligible, but cannot be compelled to serve, as churchwarden. *Ib.*

Power of Head Master to Expel Pupil—Expulsion of Pupil—Right of Action by Parent of Pupil against Head Master.] — A scheme framed under the Endowed Schools Act, 1869, gave the head master of a school the power of expelling boys for any adequate cause to be judged by him. A boy having been expelled from the school by the head master for what the latter considered to be an adequate cause, the boy's father sued the head master, claiming damages for breach of implied contract:—*Held*, that the action failed inasmuch as the plaintiff was bound by the scheme and the head master had *bona fide* exercised the power of expulsion given thereby. *Wood* v. *Prestwich*, 104 L. T. 388; 75 J. P. 285; 55 S. J. 292; 27 T. L. R. 268—D.

Liability of Teacher—Order to Pupil to Poke Fire in Teachers' Room — Negligent Act of Teacher.]—A teacher in a provided elementary school not being well, and desiring some hot refreshment, told one of her pupils, a girl fourteen years of age, who was wearing a print pinafore, to go to the teachers' private room and poke the fire and draw out the damper. The pupil did as she was told, and as she was doing so her clothing was set on fire and she was burned and injured. The pupil had passed through courses of instruction in cookery and laundry work, and her parents on going to work had often left her to look after the house and the fire and to take charge of the children. The pupil brought an action for damages for personal injuries against both the teacher and the education authority:—*Held*, that the act of the teacher in sending the pupil to render the above-mentioned services was negligent, and that she was liable; and, further, that the negligent act of the teacher had been done within the scope of her employment as a servant of the education authority, and that the authority were also liable. *Smith* v. *Martin*, 80 L. J. K.B. 1256; [1911] 2 K.B. 775; 105 L. T. 281; 75 J. P. 433; 9 L. G. R. 780; 55 S. J. 535; 27 T. L. R. 468—C.A.

Head Mistress's Right to Salary when Absent through Illness.] — The plaintiff, a married woman, was the head mistress of one of the defendants' schools. By the terms of her employment she was entitled in case of absence through illness to full pay for a month, after which time the defendants were entitled to take into consideration the circumstances of the case as to whether she was entitled to anything further:—*Held*, first, that "absence through illness" was not confined to a period of absence during actual illness, but included the period of convalescence and also absence occasioned by approaching illness; but secondly, that the absence of the plaintiff for a period of three months before her child was born because in the defendants' view it was not desirable that the elder school children should see the plaintiff in her then condition, was not absence through illness, and as such absence was due to the defendants' request they were liable for her salary during that period. *Davies* v. *Ebbw Vale Urban Council*, 77 J. P. 533; 9 L. G. R. 1226; 27 T. L. R. 543—Channell, J.

II. ATTENDANCE OF CHILDREN.

See also Vol. XII. 644, 1408.

By-law—Non-attendance of Child at School—Reasonable Excuse.]—A by-law made by a local education authority under section 74 of the Elementary Education Act, 1870, as amended by the Education Acts, 1876 to 1902, provided that "the parent of every child of not less than five years or more than fourteen years shall cause such child to attend school unless there be a reasonable excuse for non-

attendance." The by-laws also provided that the following reason (*inter alia*) should be a "reasonable excuse"—namely, that the child is under efficient instruction in some other manner. On the prosecution of a parent for not causing a child of thirteen to attend school, it was proved that the child, who had attended Lamphey Council School, but had been removed owing to the punishment inflicted on the child, was being educated by a private teacher. The Justices dismissed the summons, holding as a fact that the education the child was receiving was efficient, the list of subjects taught by the private teacher being in their opinion almost the same as those taught at Lamphey School:—*Held*, that the Justices were entitled to find as a fact that the education the child was receiving was efficient, without deciding that it was as efficient as the child would have received in a public elementary school, or without regard to the standard of education (if any) corresponding to the age of the child prescribed by the minutes of the Board of Education. *Bevan* v. *Shears*, 80 L. J. K.B. 1325; [1911] 2 K.B. 936; 105 L. T. 795; 75 J. P. 478; 9 L. G. R. 1066; 27 T. L. R. 516—D.

—— Distance of School from Child's Residence — "Nearest road."] — A by-law made under the Elementary Education Acts provided that the parent of every child of not less than five, nor more than fourteen years of age, should cause such child to attend school unless there should be a reasonable excuse for non-attendance. It further enumerated certain "reasonable excuses," one of which was that there was no public elementary school open which the child could attend "within three miles, measured according to the nearest road, from the residence of such child":—*Held*, that the expression "nearest road" in the by-law was not confined to a highway or road along which traffic could pass, but included any route or track by which persons could get from place to place. *Hares* v. *Curtin*, 82 L. J. K.B. 707; [1913] 2 K.B. 328; 108 L. T. 974; 23 Cox C.C. 411—D.

Verminous Condition of Child.] — The fact that school authorities have excluded from school a child by reason of its verminous condition—such condition being capable of remedy by simple means—does not constitute a reasonable excuse for the non-attendance of such child at the school. *Walker* v. *Cummings*, 107 L. T. 304; 76 J. P. 375; 10 L. G. R. 728; 23 Cox C.C. 157; 28 T. L. R. 442—D.

Child not Sent to School on Account of Verminous Condition of other Children.] — Certain children under the care of the appellant were not sent to school by her on the ground that certain of the other children at the school had been suffering from ringworm and that another child was suffering from verminous head. In proceedings against her for failing to send the children to school she tendered the evidence of a doctor to shew the alleged dirty and verminous condition of children at the school, but the Justices refused to hear such evidence, and convicted the appellant:—*Held*, that the Justices ought to have heard the evidence of the doctor, and that the case must be remitted to them to hear it. *Symes* v. *Brown*, 109 L. T. 232; 77 J. P. 345; 11 L. G. R. 1171; 23 Cox C.C. 519; 29 T. L. R. 473—D.

Compulsory Attendance—Public Elementary School—Instruction in Cookery.]—The respondent's daughter was selected by the local education authority for special instruction in cookery. There being no facilities for teaching cookery in the L. school, which she ordinarily attended, she was required to attend a cookery centre at F. school, which was less than two miles from her residence. On a day when to his knowledge she was so required to attend the cookery centre, the respondent sent his child to L. school, to which she was refused admission. He was charged with having neglected to cause her to attend school on that day contrary to the by-laws of the local education authority:—*Held*, that by reason of the above facts and the provisions of sections 7 (sub-section 4) and 97 of the Elementary Education Act, 1870, and the Code, instruction in cookery was instruction in elementary education in the case of the respondent's child, and compulsory, and that the cookery centre at F. school was part of the L. school for instruction in that subject, and that the respondent had neglected to cause his child to attend school accordingly. *Bunt* v. *Kent*, 83 L. J. K.B. 343; [1914] 1 K.B. 207; 110 L. T. 72; 78 J. P. 39; 12 L. G. R. 34; 23 Cox C.C. 751; 30 T. L. R. 77—D.

Duty of Parent to Cause Child to Attend School—Neglect of Duty by Parent—Reasonable Excuse—Beneficial Employment.]—A by-law made by a local education authority under section 74 of the Elementary Education Act, 1870, for the purpose of requiring parents to cause their children to attend school, contained a proviso exempting a child, qualified in certain other respects, from attendance if the child was shewn to the satisfaction of the local education authority to be in beneficial employment. On the hearing of an information preferred by the local education authority under the by-law against a parent for not causing his child to attend school it was proved that the child was qualified in other respects for exemption under the by-law, and the parent stated that the child was in beneficial employment. After hearing the evidence the Justices dismissed the information on the ground that the local education authority had failed to shew that the child was not in beneficial employment, and that in their opinion the child was beneficially employed:—*Held*, that the question whether the child was or was not in beneficial employment was solely for the local education authority and could not be decided by the Justices, the onus of proof of such beneficial employment being on the parent of the child. *Holloway* v. *Crow*, 80 L. J. K.B. 153; [1911] 1 K.B. 636; 104 L. T 73; 75 J. P. 77; 9 L. G. R. 89; 27 T. L. R. 140—D.

Evidence of Insufficiency of Instruction Provided at Private School.]—Upon the hearing of a school attendance summons under section 11 of the Elementary Education Act,

1876, against the parent of a child who was attending a private school, evidence was admitted that the school consisted of a single room in close proximity to a factory, the noise of which was audible in the room; that the equipment of the school was not efficient or in accordance with the modern requirements of the Board of Education; that the ventilation was inadequate, and that there was no playground. There was also evidence that the children had been examined by an inspector of schools in reading and writing (including composition) and arithmetic, that the child in question was capable of receiving elementary instruction properly imparted, and had made little or no progress during the two years since she last attended a public elementary school: —*Held*, that, assuming the first-mentioned evidence as to the equipment, &c., of the school to have been irrelevant, the Court would not interfere with the finding of the magistrate; that the child was not being provided with efficient elementary instruction, as it appeared that he had applied his mind to that question, and there was nothing to shew that his finding was influenced by the irrelevant matter; and the attendance order made by the magistrate was accordingly confirmed. *Shiers* v. *Stevenson*, 105 L. T. 522; 75 J. P. 441; 9 L. G. R. 1137—D.

Non-compliance—Summons Adjourned—Evidence that Education of Children Inefficient when Summons Finally Heard.]—The parent of two children was summoned under section 12 of the Elementary Education Act, 1876, for non-compliance with an attendance order. The summonses were first heard on September 10, 1910, and were then adjourned for six months. On March 11, 1911, the parent was summoned under section 24 of the Elementary Education Act, 1873, to produce the children, but he did not do so, and the summonses were further adjourned until March 25. A week before that date the children were examined by the Director of Education, and were found by him to have been inefficiently educated. The evidence of this examination was admitted by the Justices at the hearing on March 25, on the ground that, as the education of the children was defective at that date, the inference could be drawn that it was defective when the summons was issued. The Justices convicted the parent:—*Held*, first, that the evidence as to the result of the examination of the children in March, 1911, was relevant, and in the circumstances was properly admitted; and secondly, that, although different Justices were sitting on the various days when the summonses were heard, the proceedings were regular, inasmuch as there was a complete re-hearing on each occasion. *Rex* v. *Walton; Dutton, Ex parte*, 9 L. G. R. 1231; 75 J. P. 558; 27 T. L. R. 569—D.

Defective or Epileptic Child — Effect of Medical Certificate.] — A medical certificate that a child is mentally defective is sufficient evidence of that fact within section 6 of the Education (Administrative Provisions) Act, 1909, and in the absence of evidence by the child's parent that the certificate is incorrect, or cross-examination of the medical practitioner giving the certificate, the Court must act upon the certificate and is not entitled by putting questions to form its own opinion as to the capacity of the child. *Rex* v. *de Grey; Fitzgerald, Ex parte*, 109 L. T. 871; 77 J. P. 463; 23 Cox C.C. 657—D.

Period of Education — Child Defective but Capable of Earning Living — Obligation of Parent—Reasonable Excuse.]—Section 11 of the Elementary Education (Defective and Epileptic) Children Act, 1899, enacts that a defective or epileptic boy or girl shall be deemed to be a child till the age of 16 years, and the period of compulsory education shall in the case of such a child extend to sixteen years, and such child shall not be entitled to total or partial exemption from the obligation to attend school:—*Held*, that the parent of a defective boy of fourteen years of age summoned for disobedience to an order, made when the boy was fourteen, that he should still attend a defective children's school till he was sixteen, was bound to obey the order, notwithstanding the circumstance that the boy had been certified by a factory surgeon as fit for work and was working as a piecer at a cotton mill for wages. *Rennie* v. *Boardman*, 111 L. T. 713; 78 J. P. 420; 12 L. G. R. 1093—D.

The parent's excuses (1) that it had not been previously ascertained, in accordance with section 1 of the Act and before the boy had attained the age of fourteen years, that he was, by reason of mental or physical defect, incapable of receiving instruction at the ordinary public elementary schools, (2) that the parent had only consented to the boy attending the defective children's school until he was fourteen years of age, and (3) that at the date of the order the boy was living apart from him at a place outside the jurisdiction of the education authority who had obtained it were not reasonable excuses. *Ib.*

III. ACCIDENTS TO SCHOLARS.

See also Vol. XII. 635, 1411.

Conveyance of Children to and from School —Accident to Child—Vehicle Provided with Consent of Education Authority—Liability of Education Authority.]—The school attendance officer of an education authority entered, with the consent of the authority, into a contract with a jobmaster for the conveyance of certain children to and from school. The appellant attended the school, but was not one of the children entitled to be conveyed to or from the school. She was nevertheless allowed by the attendance officer to be carried home from school in the vehicle, and while being so conveyed she sustained personal injuries, owing, as the jury found, to the negligence of the driver and the non-provision of a conductor for the vehicle. The jury also found that the appellant was carried by consent of the education authority:—*Held*, that the education authority were liable to the appellant on the ground that having provided a vehicle it was their duty to see to the safety of the children using it. *Shrimpton* v. *Hertfordshire County Council*, 104 L. T. 145; 75 J. P. 201; 9 L. G. R.

397; 55 S. J. 270; 27 T. L. R. 251—H.L. (E.) And see *Jackson* v. *London County Council*, *ante*, col. 1069.

Injury to Pupil at Technical Institute by Circular Saw.]—A local education authority provided and maintained a technical institute for the instruction of pupils at evening classes under a competent instructor, whose permission was required to be obtained by the pupils prior to the use by them of mechanical appliances. A pupil, nineteen years of age, with the permission of the instructor used a circular saw driven by electric power, and in so doing injured his hand. He had been shewn by the instructor how to use the saw, and had been in the habit of using it, and knew that it was dangerous. It was admitted that there was no recognised method of guarding or protecting such saws :—*Held*, that it was not the duty of the authority to provide a guard or protection for the saw, and that they were not guilty of negligence so as to be liable for the injury. *Smerkinich* v. *Newport Corporation*, 76 J. P. 454; 10 L. G. R. 959—D.

"Volenti non fit injuria."]—Apart from any question of negligence, inasmuch as the pupil knew and appreciated the risk he incurred in working the circular saw, and nevertheless asked for and obtained the permission of the instructor to use it, the doctrine *Volenti non fit injuria* was applicable. *Ib.*

Negligent Act of Teacher.] — A girl of thirteen was a pupil at a school of an education authority and under the care and instruction of one of the teachers. This teacher sent her to poke the fire and draw the damper in a room in which she and other teachers had their meals. In carrying out the teacher's order the girl's clothes caught fire and she was seriously injured :—*Held*, in an action for damages for negligence against the teacher and the education authority in which the jury had found a verdict for the plaintiff, that the teacher was liable in damages, and, further, that the negligent act of the teacher had been done within the scope of her employment as a servant of the education authority, who were therefore also liable. *Smith* v. *Martin*, 80 L. J. K.B. 1256; [1911] 2 K.B. 775; 105 L. T. 281; 9 L. G. R. 780; 75 J. P. 433; 55 S. J. 535; 27 T. L. R. 468—C.A.

IV. LOCAL EDUCATION AUTHORITY.

See also Vol. XII. 1415.

a. Duties and Liabilities.

Provision of Furniture and School Apparatus — Efficiency of School.] — Two new schools were provided by persons other than the local education authority as public elementary schools under the provisions of section 8 of the Education Act, 1902, and were approved as necessary by the Board of Education. The promoters of one school supplied that school with furniture which the local education authority regarded as unsuitable and which was subsequently removed, while no furniture at all was supplied by the promoters to the other school. The local education authority supplied both schools with the desks and cupboards and other school furniture necessary to enable the schools to be carried on as public elementary schools. The sums paid for this purpose were surcharged by the Local Government Board auditor :—*Held* (Sir Samuel Evans, P., dissenting), that the obligation imposed upon a local education authority by section 7, sub-section 1 of the Education Act, 1902, to " maintain and keep efficient all public elementary schools within their area " included the obligation of providing these schools with desks, cupboards, and other school furniture necessary to enable them to be carried on as public elementary schools, inasmuch as the only duty imposed on the persons who provided the schools was to provide the school building, and not the necessary equipment. *Rex* v. *Easton; Oulton, Ex parte*, 82 L. J. K.B. 618; [1913] 2 K.B. 60; 108 L. T. 471; 77 J. P. 177; 11 L. G. R. 279; 57 S. J. 225; 29 T. L. R 200—C.A.

Decision of the Divisional Court (81 L. J. K.B. 828; [1912] 2 K.B. 161) affirmed. *Ib.*

National School—Site for School—General Educational Purpose—Education in Principles of Established Church — General Intention Coupled with Special Mode—Failure of Special Mode — Cy-près Doctrine — Scheme — Undenominational Education.] — A site conveyed under the School Sites Act, 1841, may be used for the secular education of poor persons as well as for their education in religious and useful knowledge. But the Act does not permit the dedication of the land for educational purposes in the sense that the site and the buildings erected thereon may be let at a rack rent and the rental value applied to those educational purposes :—So *held* by Cozens-Hardy, M.R., and Fletcher Moulton, L.J. (Buckley, L.J., dissenting). *Att.-Gen.* v. *Price*, 81 L. J. Ch. 317; [1912] 1 Ch. 667; 106 L. T. 694; 76 J. P. 209; 10 L. G. R. 416; 28 T. L. R. 283—C.A.

Appeal compromised. Form of Scheme approved. *Price* v. *Att.-Gen.*, 83 L. J. Ch. 415; [1914] A.C. 20; 109 L. T. 757; 78 J. P. 153; 12 L. G. R. 85—H.L. (E.)

By deed dated December 31, 1867, a donor conveyed a site under the School Sites Act, 1841, to trustees to be used for a school " for the education of children and adults or children only of the labouring, manufacturing, and other poorer classes " in a certain district, and directed that the school to be erected on the site should be conducted in connection with the National Society as a Church of England School. School buildings were erected on the site and the trustees carried on a Church school there for many years. Ultimately they were compelled to close the school for financial reasons. Swinfen Eady, J., having directed that a scheme should be settled for the management and regulation of the charity, the Attorney-General submitted a scheme under

which, upon the failure of the trustees to carry on a Church school on the site, the property might be used by the local education authority for undenominational education upon the terms that the authority paid for all wear and tear caused by their use of the school and subscribed to its maintenance. The trustees contended that this provision was directly contrary to the terms of the deed, and that they should rather be allowed to let the school buildings at a rack rent and apply the rent for Church educational purposes :—*Held*, by the Court of Appeal (Buckley, L.J., dissenting), that the grantor had shewn a general underlying educational intention coupled with a special mode of giving effect to this intention by means of a Church school, and that, the special mode having failed, the Court ought to apply the *cy-près* doctrine by settling a scheme giving effect to the general educational intention, and which would therefore authorise the use of the school for undenominational education. *Ib.*

Medical Operation—Education Authority—Extent of Liability.] — Where an education authority under the Education Acts, 1907 and 1909, enters into an agreement with a medical association in regard to the performance of operations on school children, the education authority are not liable for the negligence (if any) of the persons performing the operation, provided that they engage competent professional persons to perform it. *Davis* v. *London County Council*, 30 T. L. R. 275—Lush, J.

Negligent Act of Teacher — Liability of Local Education Authority.] — A teacher in a provided elementary school not being well, and desiring some hot refreshment, told one of her pupils, a girl fourteen years of age, who was wearing a print pinafore, to go to the teachers' private room and poke the fire and draw out the damper. The pupil did as she was told, and as she was doing so her clothing was set on fire and she was burned and injured. The pupil had passed through courses of instruction in cookery and laundry work, and her parents on going to work had often left her to look after the house and the fire and to take charge of the children. The pupil brought an action for damages for personal injuries against both the teacher and the education authority :—*Held*, that the act of the teacher in sending the pupil to render the above-mentioned services was negligent, and that she was liable ; and, further, that the negligent act of the teacher had been done within the scope of her employment as a servant of the education authority, and that the authority were also liable. *Smith* v. *Martin*, 80 L. J. K.B. 1256; [1911] 2 K.B. 775; 105 L. T. 281; 75 J. P. 433; 9 L. G. R. 780; 55 S. J. 535; 27 T. L. R. 468—C.A.

As to Teachers and Children.] — *See* 1. Masters of Schools, and 2. Accidents to Scholars, *ante*.

b. Non-provided Schools.

See also Vol. XII. 1418.

"Maintain and keep efficient"—Salaries of Teachers—Local Education Authority—Discrimination between Provided and Non-provided Schools—Jurisdiction of Board of Education.]—It is the duty of a local education authority to "maintain and keep efficient" all public elementary schools in their district, subject, in the case of non-provided schools, to the conditions specified in section 7, subsection 1 of the Education Act, 1902, and to the jurisdiction of the Board of Education to determine finally any question arising between the local education authority and the managers of a non-provided school. The duty to "maintain and keep efficient" a non-provided school is such a question, and lies within the jurisdiction of the Board. The Board is in the nature of an arbitral tribunal, and the Courts of law have no jurisdiction to hear appeals from its decisions, whether of law or of fact. The Board have no jurisdiction to decide abstract questions of law, but only to determine actual concrete differences as they may arise between the local authority and the managers. But if the Board fail to act judicially, or to determine the question which they are required by the Act to determine, then there is a remedy by *mandamus* or *certiorari*. *Board of Education* v. *Rice*, 80 L. J. K.B. 796; [1911] A.C. 179; 104 L. T. 689; 75 J. P. 393; 9 L. G. R. 652; 55 S. J. 440; 27 T. L. R. 378—H.L. (E.)

As a matter of law it is not true to say that a local authority are not entitled to differentiate between schools in respect of the scale of salaries. But if there be such discrimination, it is cogent evidence, in the absence of special circumstances, of an intention to starve the less favoured schools, and the Board must scrutinise such differentiation so as to prevent any lowering of efficiency in the schools for which less is done. *Ib.*

Managers—Local Education Authority.]—The managers in a non-provided school under the Education Act, 1902, are an independent body, and all that is given to the local education authority is a defined statutory power of interference with them. Although the managers can call on the authority to maintain the school and keep it efficient, the obligation of the authority carries with it no full power of management. The relationship between the two bodies is not that of principal and agent, but one of co-ordinate authorities, between which powers are distributed. *Gillow* v. *Durham County Council*, 82 L. J. K.B. 206; [1913] A.C. 54; 107 L. T. 689; 77 J. P. 105; 11 L. G. R. 1; 57 S. J. 76; 29 T. L. R. 76—H.L. (E.)

The managers of a non-provided public elementary school are, under sections 7, subsection 7 of the Education Act, 1902, entitled to appoint a caretaker and cleaner of the school and have their salaries paid by the local education authority. *Ib.*

Decision of the Court of Appeal (81 L. J. K.B. 1; [1911] 2 K.B. 1074) reversed and that

of Hamilton, J. (80 L. J. K.B. 380; [1911] 1 K.B. 222), restored. *Ib.*

SCOTLAND.

See also Vol. XII. 1425.

Education Department—Powers of—Right to Reverse Powers through Vice-president.]—The powers conferred upon the Scotch Education Department by section 21 of the Education (Scotland) Act, 1908, relating to the dismissal of school teachers by school boards may, in accordance with the settled practice of the Department, be exercised by the Vice-president without the knowledge or concurrence of the other members of the Department. *Dalziel School Board* v. *Scotch Education Department*, [1915] S. C. 234—Ct. of Sess.

Statement on Record by Government Department.]—A statement made on record by the Education Department, and indorsed by their counsel at the Bar, that a decision of the Department was the decision of the Vice-president, fell to be accepted by the Court without proof, in the absence of a specific averment to the contrary by the party challenging the decision. *Ib.*

Heritable Office—Principal Usher in Scotland—Fees from Grantees of Dignities of the United Kingdom.]—A title, dignity, or honour of the United Kingdom, created and conferred since 1707,—*Held*, not to be a title, dignity, or honour within the meaning of the charters and patents granted to the predecessors of the respondents as sole and principal ushers in Scotland, or within the statutes of the Scottish Parliament; and therefore that the respondents were not entitled to exact fees in respect of the creation of titles and dignities of the United Kingdom. *Lord Advocate* v. *Walker Trustees*, [1912] A.C. 95; 106 L. T. 194; 28 T. L. R. 101—H.L. (Sc.)

Land — Real Burden — Building Restriction — Construction — Validity.] — Land was conveyed to J. C. W., the respondent's predecessor in title, by a deed which contained the following clause: "under the declaration that it shall not be lawful to the said J. C. W. or his foresaids to sell or feu any part of the ground occupied as the lawn between the ground feued by me to W. M."—the appellant's predecessor in title—"and the present mansion house of E. Park excepting" under certain conditions as to building on the land therein set out, "which restriction shall also be a real burden affecting the said lands, and shall operate as a servitude in favour of the said W. M. and his foresaids in all time coming":—*Held*, that the clause did not operate to prevent any singular successor from building as he pleased on any part of the ground, and that in any case it was not sufficiently precise to create a real burden. *Anderson* v. *Dickie*, 84 L. J. P.C. 219—H.L. (Sc.)

Decision of the Court of Session in Scotland ([1914] S. C. 706) affirmed. *Ib.*

Succession — Provision to Widow of "life rent and enjoyment" of House—Life Rent or Occupancy—Incidence of Burdens.]—A testator by his will directed his trustees to give to his widow the "life rent, use, and enjoyment" of his house, to pay her an annuity, to set aside a certain sum to provide for the same, to distribute the residue of his estate between his widow and his brothers, and, on the death of his widow, to divide the price of the house and the annuity fund, with any surplus revenue accrued thereon, among his brothers. On the death of the testator the widow entered into possession of the house:—*Held*, that the widow had a "life rent" and not a mere occupancy, and was liable to pay all rates and burdens on the property falling on the proprietor, and could not claim a right to be repaid by the trustees out of the testator's estate. *Cathcart's Trustees* v. *Allardice* (2 F. 326) disapproved. *Mackenzie* v. *Johnstone*, [1912] A.C. 743; 107 L. T. 473—H.L. (Sc.)

Street—Private Street—"Obstruction"—Road Belonging to Railway Company Subject to Public Right—"Road forming part of any railway."]—By the Burgh Police (Scotland) Act, 1892, s. 4, sub-s. 31, "'Street' shall include any road, highway, . . . thoroughfare, and public passage or other place within the burgh used either by carts or foot passengers, and not being or forming part of any harbour, railway, or canal station. . . ." By the Burgh Police (Scotland) Act, 1903, which refers to the Burgh Police Act of 1892 as the "principal Act," section 103, sub-section 6, "'Private street' shall, in the principal Act and in this Act, mean any street other than a public street." By section 104, sub-section 2 (*d*), ". . . Where any private street or part of such street has not . . . been sufficiently levelled, paved . . . and flagged to the satisfaction of the council, it shall be lawful for the council to cause any such street or part thereof . . . to be freed from obstructions and to be properly levelled, paved . . ." In an action by the appellants, a railway company, against the respondents for a declaration that a strip of ground acquired by the company was not subject to any of the provisions of the Burgh Police (Scotland) Acts, 1892 to 1903, it appeared that the ground formed half of a road or street and had been purchased in 1889 by the company for "extraordinary purposes" under section 38 of the Railways Clauses Consolidation (Scotland) Act, 1845. The company made no use of the ground until 1908, and it was never metalled or made up as a road, but it was admitted that it had been used by the public as a right of way for all purposes since the year 1841. In 1908 the company laid down a double line of rails on the ground which were an obstruction to the public right of way:—*Held*, that in the circumstances the road could not be taken to be "part of a railway" within the meaning of section 4 of the Act of 1892, but must be

regarded as a "private street," and the rails were liable to be removed as "obstructions" within the meaning of section 104 of the Act of 1903. *Glasgow and South-Western Railway* v. *Ayr (Provost)*, [1912] A.C. 520—H.L. (Sc.)

Superior and Vassal — Railway — Lands Purchased by Railway Company under Compulsory Powers—Statutory Title—Conveyance not Registered within Six Months—Right of Superior to Demand Casualty.]—A company acquiring land under the provisions of the Lands Clauses Consolidation (Scotland) Act, 1845, holds by a statutory tenure, independent of the immediate superior of the vendor; but where the conveyance is not in the form prescribed by the Act, and has not been registered within sixty days from the last date thereof, in accordance with section 80 of the Act, it operates only as a common law disposition, and the company may be liable to pay a casualty at the suit of the superior. The date of delivery is not the last date of the conveyance within the meaning of the section. *Caledonian Railway* v. *Heriot's Trust (Governors)*, 84 L. J. P.C. 171; [1915] A.C. 1046—H.L. (Sc.)

Judgment of the Court of Session ([1914] S. C. 601) affirmed on different grounds. *Ib.*

Trust — Liability of Trustees — Breach of Trust—Action by Assumed Trustees to Recover Loss to Trust Estate Caused by Negligence of Original Trustee—Mora—Contributory Negligence—Right of Pursuers to Represent Beneficiaries — Interest — Rate of Interest.] — A testator, who died in 1858, by his trust disposition and settlement gave to his son, on his attaining the age of twenty-five, an option to purchase his dwelling house. In 1870 the son, who acted as agent in the trust, being then about to attain the age of twenty-five, announced to the trustees his intention to exercise this option, and the trustees signed and delivered to him a disposition of the house in his favour, which was duly recorded. The trustees took no steps either in 1870 or for seventeen years afterwards to obtain payment of the purchase money, and the money never was paid. In 1887, the testator's widow being then the sole surviving trustee, the pursuers were assumed as trustees, and they endeavoured to make the son account for the trust estate, but subsequently ceased their efforts owing to the refusal of the widow to allow her son to be sued. In 1902, on the death of the widow, the assumed trustees brought an action of accounting against the son, but the action proved abortive by reason of his bankruptcy and death. Between 1887 and 1902 the son was in a position to make good the purchase money. In 1909 the assumed trustees brought an action against the beneficiaries of a deceased trustee to recover the purchase money alleged to have been lost to the trust estate through his negligence as trustee. The defenders pleaded *mora* as a bar to the action:—*Held*, that the plea of *mora* was not sustainable against the pursuers suing as trustees on behalf of the beneficiaries, and that the defenders were jointly and severally liable, to the extent of which they were respectively *lucrati* from the estate of the deceased trustee, for the price of the house, with interest thereon at the rate of 3½ per cent. per annum from the death of the widow. *Schulze* v. *Tod* or *Lee's Trustees* v. *Dun*, [1913] A.C. 213; [1913] S. C. (H.L.) 12—H.L. (Sc.)

Will — Holograph Letter — Preference between Bequests Expressed—General Direction to Pay Debts—Legacy of Capital Sum.] —A testator by a holograph letter, which by the law of Scotland is a testamentary writing, instructed his solicitor to pay to the appellant A., a single lady, on the first of each month after his death, the sum of 12*l.* 10*s.*, being at the rate of 150*l.* a year. "But in lieu of this I would prefer that as soon as you conveniently can, that the sum of 3,000*l.* should be taken from my life insurance funds and paid over to her." The testator's trust disposition contained a general direction for payment of debts, and the insurance funds, after paying off the charges upon them, amounted to 1,900*l.*:—*Held*, first, that the trustees were bound to pay over the capital sum of 3,000*l.* to A., and had no option to decide whether she was to receive the monthly allowance or the capital sum; and secondly, that the direction that 3,000*l.* should be taken from the testator's insurance funds and paid to A. in the circumstances marked the legacy as demonstrative and not specific. *Dawson* v. *Reid*, 113 L. T. 52—H.L. (Sc.)

SEA AND SEASHORE.

See also Vol. XII. 656, 1439.

Accretions Caused by Recession of Line of Ordinary High Water—Ownership of.]—The decision of the House of Lords in *Rex* v. *Yarborough* (2 Bligh, N.S. 147) conclusively determines that where land is added to the seashore by the gradual and imperceptible action of natural causes, the owner of the land adjoining the accretions acquires in them a good title against the Crown, notwithstanding the existence of marks or bounds, or other evidence by which the former, or a former, line of ordinary high water can be ascertained. The real question in every such case of accretion is whether during the process of accretion the progress of the accretion can be ascertained. *Att.-Gen.* v. *M'Carthy*, [1911] 2 Ir. R. 260—K.B. D.

Riparian Proprietor—Foreshore—Accretion — Reclamation — Easement — Possession for Less than Period of Prescription.] — Land abutting on the seashore, though specifically measured in title deeds, is not excluded from the operation of the rule by which the increment caused by natural and gradual accretion from the sea is added to riparian lands; but where an addition to lands is caused artificially by the execution of works of reclamation the doctrine of natural accretion does not apply.

Att.-Gen. for Nigeria v. *Holt & Co.; Same* v. *MacIver & Co.*, 84 L. J. P.C. 98; [1915] A.C. 599; 112 L. T. 955—P.C.

Where works on the foreshore, intended to protect the adjacent lands from the invasion of the sea, have been carried out by the occupier with the knowledge and assent of the Crown, the foreshore rights originally attaching to such land before the reclamation are not thereby destroyed. There may be an easement to store goods on the land of another person, but there can be no easement over a tenement which the owner of the dominant tenement claims as his own. A transfer of the *dominium* of lands cannot be effected by possession for a period short of the full requisite period of prescription, without the presumption of a lost grant. *Ib.*

Removing Shingle from Foreshore—Information by Surveyor of District Council.]—An information was laid under the Harbours Act, 1814, by the appellant "as surveyor for and on behalf of the urban district council of S." against the respondent for unlawfully taking shingle from a portion of the shores of the port from which, by an order of the Board of Trade, the taking or removing of shingle was prohibited. Section 21 of the Harbours Act, 1814, gives one moiety of the penalty to the Crown and the other to the informer. The Justices being of opinion that the district council could not, being a corporation, sue for the penalty as common informer, dismissed the information as not well laid :—*Held*, that the appellant was the party before the Court as informer, and that the information was well laid. *Lake* v. *Smith*, 106 L. T. 41; 10 L. G. R. 218; 76 J. P. 71; 22 Cox C.C. 641—D.

Regulations as to Selling Articles on Foreshore.]—*See Cassell* v. *Jones*, *ante*, col. 922.

Public Assemblages on Foreshore.]—*See Slee* v. *Meadows*, *ante*, col. 923.

Alleged Nuisance by Seaside Encampment.]—*See Att.-Gen.* v. *Kerr*, *ante*, col. 890.

SEAMAN.

See SHIPPING.

SECURED CREDITOR.

See BANKRUPTCY.

SECURITY FOR COSTS.

Of Appeal.]—*See* APPEAL.

Appeals from County Court.]—*See* COUNTY COURT.

In other Cases.]—*See* PRACTICE.

SEDUCTION.

See MASTER AND SERVANT.

SEPARATION DEED.

See HUSBAND AND WIFE.

SEQUESTRATION.

See CONTEMPT OF COURT; EXECUTION.

SERVANT.

See MASTER AND SERVANT; WORKMEN'S COMPENSATION.

SERVICE OF PROCESS.

See PRACTICE.

SESSIONS.

See JUSTICE OF THE PEACE.

SET-OFF.

Of Costs.]—*See* COSTS.

Sale by Auction—Prior Agreement with Auctioneer as to Disposal of Proceeds of Sale—Subsequent Agreement by Seller with Purchaser to Set off Price of Goods Purchased against Debt—Refusal of Purchaser to Pay Price to Auctioneer—Action by Auctioneer to Recover Whole of Purchase Price—Equitable Defence of Set-off—Right of Purchaser to Surplus only of Total Amount Realised by Sale.]—The plaintiffs, who were auctioneers, were employed by F. to sell certain cattle for him by auction. Prior to the sale F. had given orders to certain of his creditors directing the plaintiffs to pay these creditors out of the proceeds of the intended sale, and the plaintiffs agreed to act upon these orders. Pending the sale F. had also become indebted to the plaintiffs for money lent and paid and for services rendered upon the terms that they should repay themselves out of the proceeds of

the sale. The sale was held upon the condition (*inter alia*) that the price of any cattle bought was to be paid to the plaintiffs. Whilst the sale was proceeding an arrangement was entered into between F. and the defendant, to whom F. was indebted to a considerable extent, that the price of any cattle bought by the defendant might be set off against F.'s debt to the defendant, but this arrangement was not communicated to the plaintiffs either during, or directly after, the sale. The defendant bought a number of cattle at the sale, the purchase price of which exceeded the amount of F.'s debt to him, and being known to the plaintiffs was allowed to remove the cattle without having paid for them. Excluding the amount of the defendant's purchases, the plaintiffs received sufficient money to satisfy their lien for commission and charges in respect of the sale, but not sufficient to pay F.'s creditors or their own debt; but, including the amount of the defendant's purchases, the sale realised sufficient to satisfy all claims, leaving a small surplus. The defendant having refused to pay the plaintiffs the price of the cattle which he had bought, upon the ground that he was entitled to rely on the arrangement with F. as to set-off, the plaintiff brought an action to recover the whole of the price of the cattle bought by the defendant. Before action the defendant tendered and subsequently paid to the plaintiffs the difference between the amount of F.'s debt to him and the price of the cattle which he had bought :—*Held*, that the defendant was not entitled, under the circumstances, to set up as an equitable defence to the plaintiffs' claim the arrangement as to set-off made between him and F., inasmuch as such arrangement could not defeat the previous agreement between F. and the plaintiffs as to the disposition of the proceeds of the sale, on the faith of which agreement the plaintiffs had acted, and that the defendant was only entitled to be paid by the plaintiffs the surplus remaining after deducting from the total amount realised by the sale the debts owing to the other creditors, as well as what was owing to the plaintiffs in respect of F.'s debt to them and their commission and charges for conducting the sale, this surplus being the only amount which the plaintiffs would have been bound to pay over to F. *Manley* v. *Berkett*, 81 L. J. K.B. 1232; [1912] 2 K.B. 329—Bankes, J.

SETTLED LAND.

I. SETTLEMENTS.

See also Vol. XII. 721, 1446.

Will — Subsisting Annuities — Disentailing Deed—Re-settlement.]—A testator who died in 1892 devised certain freehold estates to the use of his son A. for life, and from and after the decease of A. to the use of his first and other sons successively, according to their respective seniorities in tail male with divers remainders over. He also charged his settled estates with the payment of certain annuities, some of which were still subsisting at the date of this summons. A. died in 1912, and his eldest son B. thereupon became tenant in tail in possession of the settled estates. In April, 1914, B. executed a disentailing deed which was duly enrolled, limiting the settled estates to his own use in fee-simple. Some days later he executed a settlement on his marriage of a part of the estates originally settled by the will to the use of himself for life, with remainders over :—*Held*, that, notwithstanding that there was no term limited to secure the annuities under the will nor any trust for their payment, the subsistence of the annuities gave rise to a compound settlement of the estates comprised in the re-settlement, consisting of the will, the disentailing deed, and the re-settlement. *Trafford's Settled Estates, In re*, 84 L. J. Ch. 351; [1915] 1 Ch. 9; 112 L. T. 107—Warrington, J.

Ailesbury (*Marquis*) *and Iveagh* (*Lord*), *In re* (62 L. J. Ch. 713; [1893] 2 Ch. 345), and *Phillimore, In re; Phillimore* v. *Milnes* (73 L. J. Ch. 671; [1904] 2 Ch. 460), applied. *Ib.*

II. TENANT FOR LIFE.

1. Who is or has the Powers of.

See also Vol. XII. 1453.

Trust for Accumulation of Income.] — A testator devised his real estate to his trustees to the use that they should receive the rents, profits, and annual income thereof until A. attained the age of twenty-seven years, paying to A. thereout during such time the annual sum of 400*l.*, and to accumulate the surplus, which should devolve upon the same uses as the property itself, and, subject thereto, to the use of A. during his life, with remainder over. A. had attained the age of twenty-four years at the date of the testator's death in 1910 :—*Held*, that A. was a tenant for life, or a person having the powers of a tenant for life, of the estate within the meaning of section 58, sub-section 1 (vi.) of the Settled Land Act, 1882. *Llewellyn, In re; Llewellyn* v.

Llewellyn, 80 L. J. Ch. 259; [1911] 1 Ch. 451; 104 L. T. 279; 55 S. J. 254—Joyce, J.

Martyn, In re; Coode v. *Martyn* (69 L. J. Ch. 733), and *Woodhouse, In re; Annesley* v. *Woodhouse* ([1898] 1 Ir. R. 69), followed. *Strangways, In re; Hickley* v. *Strangways* (56 L. J. Ch. 195; 34 Ch. D. 423), distinguished. *Ib.*

Trust to Pay Costs of Management out of Rents—Trust to Pay Residue of Income to Wife during Widowhood—"Forfeiture."]—A testator devised his real estate upon trust out of the rents and profits and until the death or marriage again of his wife to pay certain annuities and the expenses of management of his estate, and upon trust to pay the ultimate residue of the rents and profits to his wife during widowhood:—*Held*, that the widow was a person having the powers of a tenant for life under the Settled Land Act, 1882, s. 58, sub-s. 1, clause ix. *Semble*, she was also within clause vi. of the same sub-section. *Sumner's Settled Estates, In re*, 80 L. J. Ch. 257; [1911] 1 Ch. 315; 103 L. T. 897; 55 S. J. 155; 27 T. L. R. 173—Eve, J.

The *semble* in the headnote to *Llanover (Baroness). In re; Herbert* v. *Ram* ([1907] 1 Ch. 635), questioned. *Ib.*

Executory Gift Over—Infants.]—A testator by his will devised certain freehold property upon trust for his daughter for life, and after her death for her children who being sons should attain twenty-one, or being daughters should attain that age or marry. The daughter died in July, 1910, leaving four children, the eldest of whom attained twenty-one in February, 1909:—*Held*, that the eldest child was entitled to the entirety of the rents until the next child attained a vested interest, and therefore was a person having the powers of a tenant for life under the Settled Land Act, 1882, s. 58, sub-s. 1 (ii.). *Walmsley's Settled Estates, In re*, 105 L. T. 332; 55 S. J. 600—Eve, J.

Devise to Trustees—Direction to Accumulate Rents for Twenty-one Years — After that Period to Daughter for Life.]—A testator devised real estate to trustees upon trust to let and manage the same and to accumulate the rents and profits for twenty-one years after his death, such accumulations to be held upon trust for investment in real estate, and upon the expiration of the twenty-one years his real estate was to be held upon trust for his daughter for life with remainders over:—*Held*, that the daughter was a person having the powers of a tenant for life within the meaning of the Settled Land Act, 1882, s. 58, sub-s. 1 (vi.). *Llewellyn, In re; Llewellyn* v. *Llewellyn* (80 L. J. Ch. 259; [1911] 1 Ch. 451) followed. *Martyn, In re; Coode* v. *Martyn* (69 L. J. Ch. 733), questioned. *Beauchamp's Trusts, In re; Cadge* v. *Barker-Hahlo*, 83 L. J. Ch. 440; [1914] 1 Ch. 676; 110 L. T. 814; 58 S. J. 320—Eve, J.

Executors Entitled to Income Pur Autre Vie.]—The executors of a deceased person, and certain other persons, were together entitled to the income of real estate until the death of the survivor of those persons:—*Held*, that the executors and the other persons had together the powers of a tenant for life under section 58, sub-section 1 of the Settled Land Act, 1882. *Vine* v. *Raleigh* (65 L. J. Ch. 103; [1896] 1 Ch. 37) followed. *Jemmett and Guest's Contract, In re* (76 L. J. Ch. 367; [1907] 1 Ch. 629), distinguished. *Johnson, In re; Johnson* v. *Johnson*, 83 L. J. Ch. 758; [1914] 2 Ch. 134; 58 S. J. 611—Warrington, J.

Execution of Disentailing Deed.]—A tenant in tail in possession of settled lands who executes a disentailing deed and becomes tenant in fee-simple in possession ceases to have the powers of a tenant for life in possession in respect of the settled lands. *Trafford's Settled Estates, In re*, 84 L. J. Ch. 351; [1915] 1 Ch. 9; 112 L. T. 107—Warrington, J.

2. Rights and Duties of.

See also Vol. XII. 1458.

Disentailing Deed—Re-settlement—Powers of a Tenant for Life.]—A disentailing deed executed by a tenant in tail in possession of settled land is not for the purposes of section 50 of the Settled Land Act, 1882, an assignment of his estate or interest as tenant in tail under the settlement. *Trafford's Settled Estates, In re*, 84 L. J. Ch. 351; [1915] 1 Ch. 9; 112 L. T. 107—Warrington, J.

Unsuccessful Litigation by Tenant for Life—Absence of Approval by Court—Subsequent Application for Approval—Costs.]—When a tenant for life of settled estates has embarked on litigation in connection with the settled estates without previously obtaining the approval of the Court in accordance with the provisions of section 36 of the Settled Land Act, 1882, the Court, if afterwards applied to for such approval, will consider the application, not from the point of view of the result of the litigation, but from the point of view as to whether it would, or would not, have been likely to approve the litigation had application been made to it before the litigation was commenced. *Yorke, In re; Barlow* v. *Yorke*, 80 L. J. Ch. 253; [1911] 1 Ch. 370; 104 L. T. 134—Neville, J.

III. SALES.

1. In General.

See also Vol. XII. 728, 1465.

Assignment of Life Estate by First Tenant for Life to Second Tenant for Life—Merger—Power of Sale.]—Where the first tenant for life of settled lands has assigned his life estate to the second tenant for life under the settlement, so that the life estate of the former has become merged in that of the latter, the power of sale conferred on a tenant for life by the Settled Land Acts can be exercised by the second tenant for life, notwithstanding the provisions of section 50 of the Settled Land Act, 1882. Observations of Chitty, L.J., in *Mundy and Roper's Contract, In re* (68 L. J.

Ch., at p. 143; [1899] 1 Ch., at p. 296), and of Swinfen Eady, J., in *Barlow's Contract, In re* (72 L. J. Ch., at p. 216; [1903] 1 Ch., at p. 384), considered. *Bruen's Estate, In re*, [1911] 1 Ir. R. 76—Wylie, J.

Assignment of Interest of — Powers under Settled Land Act not Assignable—Consent of Assignee for Value to—Death of Assignee—Devise—Who Assignee for Value.]—A testator who was tenant for life in possession of settled real estate, with remainder to his eldest son for life, with remainders over, purchased such son's reversionary life estate from the son's trustees in bankruptcy and assigned it to a trustee upon trust to be dealt with as he should direct to prevent a merger of his own life estate. By his will the testator devised this reversionary life interest to be held upon the trusts and limitations declared by his will of his real estates, which he devised to trustees during the life of his second son without impeachment of waste, upon trust to pay such annual sum for the benefit of such son as they should in their discretion think proper, so long as he should be under the age of twenty-five years, with all the powers vested in trustees by section 42 of the Conveyancing Act, 1881, during the minority of an infant, and until he should attain twenty-five to accumulate the residue of such income; and upon further trust that when such son should attain twenty-five, if no act should have been done whereby the equitable life estate thereinafter given to him would have become vested in some other person, to permit him to receive the income during his life or until some act should be done whereby such life estate or some part thereof would, if belonging absolutely to him, have become vested in some other person; and on the failure in his lifetime of the trust declared in his favour the trustees were to continue in possession during the rest of his life and apply the income for his support and the support of the other persons therein mentioned in such manner as they should think proper. After the death of the testator his eldest son, as tenant for life, retaining his power of sale under section 50, sub-section 1 of the Settled Land Act, 1882, contracted to sell part of the settled real estates, with the consent of the trustees of the will as assignees for value within the meaning of section 50, sub-section 3 of that Act. The purchasers, however, contended the trustees were not assignees for value:—*Held*, that the trustees of the will were assignees for value within the meaning of section 50, sub-section 3 of the Act, whose consent was necessary and sufficient for the exercise of the power of sale preserved to the tenant for life by section 50, sub-section 1 of that Act; that section 50, sub-section 3 ought not to be confined to the actual assignee for value; but must be intended to extend to those who claimed under him, and that the trustees of the will were entitled to consent on the ground that they were for the moment, and might be during the whole existence of the assigned estate, entitled to the whole of the assignees's interest in it for the purpose of giving effect to the assignee's intention as shewn by his will, being invested during such period with full powers of management both under the Act and otherwise. *Mountgarret and Moore's Contract, In re*, 84 L. J. Ch. 398; [1915] 1 Ch. 443; 112 L. T. 939; 59 S. J. 382; 31 T. L. R. 189—Astbury, J.

Conflicting Powers of Sale of Trustees and Tenant for Life—Consent of Tenant for Life.]—Where the Settled Land Act, 1882, s. 56, requires the consent of the tenant for life to the exercise by trustees of their power of sale, a purchaser from the trustees is entitled to evidence that the tenant for life has in fact consented, but cannot insist on the concurrence of the tenant for life in the conveyance. *Pope and Easte's Contract, In re*, 80 L. J. Ch. 692; [1911] 2 Ch. 442; 105 L. T. 370—Neville, J.

Trust to Retain or Sell — Discretionary Power to Postpone—Tenant for Life—Power or Trust for Sale.]—A devise and bequest of real and personal property to trustees upon trust either to retain the whole or any part thereof or at such time and in such manner as the trustees should think fit to sell the same and invest the proceeds (which, with any part of the real and personal property for the time being remaining uninvested, were all thereinafter referred to as "the trust estate"), with a discretionary power to postpone the sale, the income until sale to be applied upon the same trusts as were declared of the income of the trust estate, and there being no subsequent gifts or expressions in the will which shewed any intention that the real estate should remain and be dealt with as such, amount to a trust or direction to sell within the meaning of section 63 of the Settled Land Act, 1882. *Johnson, In re; Cowley* v. *Public Trustee*, 84 L. J. Ch. 393; [1915] 1 Ch. 435; 112 L. T. 935; 59 S. J. 333—Astbury, J.

The first part of the trust ought to be read as amounting to a trust to sell subject to a power to retain, and the power to retain must be construed as being a power to postpone which was expressly given in a later clause of the same will in the ordinary terms. *Ib.*

Hotchkys, In re; Freke v. *Calmady* (55 L. J. Ch. 546; 32 Ch. D. 408), distinguished. *Crips, In re; Crips* v. *Todd* (95 L. T. 865), applied. *Ib.*

2. Heirlooms.

See also Vol. XII. 741, 1470.

On an application by a tenant for life for leave to sell heirlooms, the Court has to consider not only the interests of the tenant for life, but also the interests of other persons; and it is for the tenant for life to shew that the sale would be for the benefit of those to come after him. Where, therefore, it was only shewn that the sale of heirlooms would be for the benefit of the tenant for life, the Court refused the application. *Sebright, In re; Sebright* v. *Brownlow*, 56 S. J. 240; 28 T. L. R. 191—Warrington, J.

On an application by a tenant for life for leave to sell heirlooms, the Court, taking into consideration the interests not only of the tenant for life but also of those to come after him, came to the conclusion that the purpose of the application was not merely to increase

the income of the tenant for life, and granted the application. *Sebright, In re; Sebright* v. *Brownlow (Earl)*, 31 T. L. R. 25—Warrington, J.

IV. LEASES.

1. In General.

See also Vol. XII. 745, 1472.

Equitable Tenant for Life—Stone Quarries—Covenant to Fill up—Compensation for Breach—Casual Profit—Capital or Income.]—C. T. D., who died in 1891, by his will appointed the plaintiffs executors and trustees, and devised his residuary real estate upon trust to pay the net rents and profits thereof, including the produce of mines and quarries, to or permit the same to be received by the defendant T. B. D., and after the death of the defendant upon the trusts in the will mentioned. The testator gave the trustees powers of managing real estate and of determining what part of the produce of mines and quarries should be applied as capital or income. By lease dated February 7, 1898, which lease was determined on June 12, 1912, the defendant as tenant for life under the Settled Land Act, 1882, demised to lesees a quarry, part of the real estate. The lessees covenanted that when part of the quarry was exhausted they would fill it up fit for agricultural purposes "under a penalty to be recovered as rent in arrear or as liquidated damages by the lessor of 150*l.* an acre." The lessees left 2 a. 3 r. 5 p. uncovered in breach of their covenant, and arranged to pay at the rate of 150*l.* per acre in respect of this land a sum amounting to 416*l.* 6*s.* 10*d.*, which sum had been paid to the defendant. On a summons by the trustees asking whether the defendant was entitled to retain all or any part of such sum or whether it should be held by them as capital,—*Held*, following *Lacon's Settlement, In re; Lacon* v. *Lacon* (80 L. J. Ch. 610; [1911] 2 Ch. 17), that the defendant was entitled to retain such sum. *Dealtry, In re; Davenport* v. *Dealtry*, 108 L. T. 832—Eve, J.

Forfeiture Clause—Non-residence—Validity of Condition.]—A gift by a husband of his house to trustees in trust to allow his wife to reside in it rent free, she paying for repairs, insurance, &c., "and from and after the decease or second marriage of my said wife or of her ceasing to reside at the said dwelling-house" the same to fall into residue, does not prevent the wife from evacuating the house and exercising her power of leasing as tenant for life under the Settled Land Acts, and receiving the rents received from such letting for her own use and benefit during her widowhood. *Freme, In re; Samuel* v. *Freme*, 56 S. J. 362—Neville, J.

Licensed Premises—Compensation Charges—Void Covenant in Lease—Best Rent not Reserved—Lease Void against Remaindermen.]—At the coming into operation of the Licensing Act, 1904, a public house comprised in a settlement had been leased to a brewery company for a term of fourteen years from 1902 at a rent of 150*l.* The Licensing Act, 1904, s. 3, imposed certain charges on licensed premises for a compensation fund and allowed a part of such charges to be deducted by the licence holder from his rent, notwithstanding any agreement to the contrary. The tenant for life objected to these deductions and ultimately agreed to grant a new lease at the same rent if the company would pay the whole of the charges. In 1906 he executed a fresh lease to the brewery company for a term of twenty-one years at the rent of 150*l.*, the company covenanting to pay the rent without deduction and to pay all charges, including all payments to the compensation fund under the Licensing Act, 1904. The company in fact paid these charges for many years, though not legally obliged to do so. In an action by the remaindermen against the company for a declaration that the lease was not binding upon them,—*Held*, first, that the rent agreed to be paid was 150*l.* plus the amount of the deductions under the Licensing Act, 1904; secondly, that the rent actually reserved was 150*l.* subject to deductions; and thirdly, that the lease was not a valid lease under the provisions of the Settled Land Act, 1882, on the grounds (*a*) that it did not reserve the best rent that could reasonably be obtained, and (*b*) that it contained no valid covenant for the payment of the rent actually agreed upon. *Pumford* v. *Butler & Co.*, 83 L. J. Ch. 858; [1914] 2 Ch. 353; 111 L. T. 408; 78 J. P. 457; 58 S. J. 655; 30 T. L. R. 556—Joyce, J.

2. Mining Leases.

See also Vol. XII. 750, 1474.

Power Contained in Settlement to Grant Leases—Lease Granted by Tenant for Life under the Powers Conferred by the Settled Land Acts—Rents of Mining Leases to be Set Aside as Capital Money—"Contrary intention."]—Under section 11 of the Settled Land Act, 1882, a portion of the rents of a mining lease are to be set aside as capital money unless a contrary intention appears in the settlement. If a contrary intention appears in the settlement section 11 is excluded, although the tenant for life grants the mining lease under the Act and not under the power contained in the settlement. *Rayer, In re; Rayer* v. *Rayer*, 82 L. J. Ch. 461; [1913] 2 Ch. 210; 109 L. T. 304; 57 S. J. 663—Neville, J.

Unopened Mines—Mining Leases—Tenant for Life and Remainderman—Proportion of Mining Rent to be Set Aside as Capital—"Contrary intention."]—A power in a will authorising trustees to let lands does not empower them to grant a lease of unopened mines. Where such a lease is granted under the provisions of the Settled Land Act, 1882, s. 11, a gift by the will to the tenant for life of rents and profits is not sufficient evidence of a contrary intention to the provisions of the section, and does not entitle him to receive the full mining rents, and he is therefore only entitled to one fourth part thereof. *Daniels*,

In re; Weeks v. *Daniels*, 81 L. J. Ch. 509; [1912] 2 Ch. 90; 106 L. T. 792; 56 S. J. 519—Swinfen Eady, J.

Setting Aside Part of Rent as Capital—Contrary Intention in Settlement—Tenant in Fee with Executory Gift over—Tenant for Life without Impeachment of Waste.]—A testator by his will gave to his wife his real and personal estate "absolutely in full confidence that she will make such use of it as I should have made myself and that at her death she will devise it to such one or more of my nieces as she may think fit" and in default to be divided equally among the surviving nieces. The widow granted mining leases under the Settled Land Act, 1882:—*Held*, that she was entitled to the whole of the rents and royalties, there being a sufficient expression of "a contrary intention" to exclude the application of section 11 of the Act. *Hanbury's Settled Estates, In re* (*No.* 2), 82 L. J. Ch. 428; [1913] 2 Ch. 357; 109 L. T. 358; 57 S. J. 646; 29 T. L. R. 621—Eve, J.

Opened or Unopened Mines—Right of Tenant for Life to Rents and Royalties under Leases—Leases Granted by Settlor—Leases Granted by Trustee of Settlement—Devise of Mines on Trust for Sale—Power of Postponement—Income till Sale to go as Income of Proceeds.]—An "opened" mine is a mine which is in course of being worked; and a mine may be being worked if a shaft has been sunk down to it and the mine is capable of being worked through the shaft whenever opportunity arises, though no coal has in fact been hewn. *Semble*, that mines which are part of seams other parts of which are being worked are "opened" mines, even if they have to be worked by following the seam by means of fresh pits. *Morgan, In re; Vachell* v. *Morgan*, 83 L. J. Ch. 573; [1914] 1 Ch. 910; 110 L. T. 903—Sargant, J.

A testator gave all his real and personal estate on trust for sale, conversion, and investment, and to hold the investments, as to two equal fourth parts, on trust to pay the income to two persons during their lives. He declared that the sale and conversion might be postponed for so long as his trustees should think proper, and that the rents, profits, and income arising from unconverted parts of the estate should be paid and applied in the same manner as the income of the proceeds of sale and conversion; and he gave his trustees full powers of leasing. The testator owned valuable mining property, part of which had been leased by him in his lifetime by a lease which was still subsisting at his death. The trustee afterwards granted leases of the remaining mining property. Some of it had not been worked during the testator's life, though it had been intended ultimately to work it by a pit sunk by the lessees of the part leased by the testator. The remaining part of the land leased by the trustee had been worked during the testator's life. The working had been discontinued, but he had intended to resume it:—*Held*, that the tenants for life were entitled to the full rents and royalties under all the leases. *Ib.*

V. CHARGES.

See also Vol. XII. 1476.

Costs and Expenses of Valuation—Reversion Duty—Increment Value Duty.]—A tenant for life of settled land may provide for the payment of increment value duty and reversion duty out of capital moneys. Where there are no capital moneys, he may charge the whole of the settled property with the payment of any increment value duty or reversion duty payable upon any part of the property. *Maryon-Wilson's Settled Estates, In re; Maryon-Wilson* v. *Du Cane*, 84 L. J. Ch. 121; [1915] 1 Ch. 29; 112 L. T. 111—Eve, J.

The expenses incurred in or about the ascertaining of the duties so far as they arise out of the exercise of any of the statutory powers conferred upon the tenant for life are expenses incidental to the exercise of those powers within section 21, sub-section (*x*) of the Settled Land Act, 1882, and payable out of capital. *Ib.*

By virtue of section 39 of the Finance (1909-10) Act, 1910, coupled with section 11 of the Settled Land Act, 1890, a tenant for life may charge the settled estates with any reasonable expenses incurred by him in connection with the original site valuation thereof. *Smith-Bosanquet's Settled Estates, In re* (107 L. T. 191), followed. *Ib.*

VI. TRUSTEES.

See also Vol. XII. 763, 1477.

General Power of Appointment—Appointment of Life Estate—Sale by Tenant for Life—No Antecedent Estate or Charge—Trustees with Power of Sale of Instrument Creating the Power—Power of Sale Exhausted—Trustees for Purposes of Settled Lands Act.]—A testator by his will appointed trustees with power to sell his freehold estates, and gave his widow, who was made tenant for life thereunder, a general power of appointment by will. By her will she appointed the real estate to the use of G. for life, with remainder over in strict settlement. There was no subsisting estate or charge antecedent to the life estate created under the general power. G. having agreed to sell the property in exercise of his powers as tenant for life,—*Held*, that the limitations created by the exercise of the general power of appointment were not limitations under the testator's will, that the settlement under that will was therefore spent and the power of sale conferred on the trustees exhausted, and that in order to make a title trustees of the widow's will for the purposes of the Settled Land Act must be appointed. *Gordon and Adams' Contract, In re; Pritchard's Settled Estate, In re*, 83 L. J. Ch. 172; [1914] 1 Ch. 110; 109 L. T. 725; 58 S. J. 67—C.A.

Decision of Eve, J. (82 L. J. Ch. 455; [1913] 1 Ch. 561), reversed. *Ib.*

Lands Settled Subject to an Annuity—Power of Sale in Trustees during Life of Tenant for Life—Sale by Tenant for Life under Land Purchase Acts—Death of Tenant for Life after

Purchase Money Advanced — Remaindermen Absolutely Entitled—Payment out of Residue — Appointment of Trustees for Purposes of Settled Land Acts.] — Lands settled subject only to an annuity (not secured by a term) were, in the events that happened, limited to F. for life, with remainder to P. absolutely. By the settlement, the trustees were given a power of sale during the life of F. F. sold the settled lands under the Land Purchase Acts, and died after the purchase money had been advanced. The final schedule had been settled on the assumption that the residue would be paid to the trustees of the settlement. The annuitant objected, claiming to be put on the final schedule on the ground that the settlement was at an end :—*Held*, first, that, as a matter of form, an order should be made continuing the proceedings in the name of P.; and secondly, that the moneys in Court being capital moneys arising from the sale of the settled lands, which had been carried through by the tenant for life under the Settled Land Acts, the Court had power to appoint trustees for the purposes of the Settled Land Acts and to pay the residue to them to be held upon the trusts of the settlement. *Semble*, on the death of F. the trustees of the settlement ceased to be trustees for the purposes of the Settled Land Acts. *Mundy and Roper's Contract, In re* (68 L. J. Ch. 135; [1899] 1 Ch. 275), and *Wimborne and Browne's Contract, In re* (73 L. J. Ch. 270; [1904] 1 Ch. 537), distinguished. *Collis's Estate, In re*, [1911] 1 Ir. R. 267—Wylie, J.

Sale by Tenant for Life—Compound Settlement — Conveyance of Land in England to Uses of Irish Settlement — Documents Comprised in Settlement and Prior to Commencement of Title — Trustees of Settlement Appointed by Irish Court—Purchaser's Right to Enquire into Source of Purchase Moneys of English Land.]—By a contract, made in 1911, for the sale of freehold hereditaments in England by a tenant for life acting under the powers of the Settled Land Acts it was provided that the title should commence with two mortgages of 1874. The settlement under which the vendor was tenant for life was a compound settlement, and comprised a series of documents commencing with a will of 1836 and ending with a re-settlement of 1902. Down to 1910 the lands subject to the settlement were all situate in Ireland. In that year the property contracted to be sold was conveyed to the uses of the compound settlement, the conveyances containing recitals that the present vendor, as tenant for life, had directed the application in the purchase of the property of capital moneys in the hands of the trustees arising from sales of settled estates in Ireland, and which by virtue of the compound settlement and the Settled Land Acts were liable to be so invested. The present trustees of the settlement for the purposes of the Settled Land Acts had been appointed by the High Court in Ireland in 1908. The present purchasers made requisitions for the production of the probate or office copy of the will of 1836; for the appointment of trustees of the compound settlement by the High Court in England; and for proof that the purchase moneys of the property now being sold had been duly acquired by the trustees by a proper sale of part of the settled estates. The vendor furnished an abstract of a disentailing deed of 1860, reciting the will of 1836, and informed the purchasers that the purchase moneys of the property on the purchase in 1910 had arisen from sales under the Irish Land Purchase Acts :—*Held*, that the requisition as to the will was precluded by section 3, sub-section 3 of the Conveyancing Act, 1881; that the purchase of land in England out of moneys subject to an Irish settlement did not make an appointment of trustees by the English Court necessary; and that the purchasers were not entitled to require more information as to the source of the purchase moneys than that afforded by the conveyance of 1910. *Arran (Earl) and Knowlsden, In re*, 81 L. J. Ch. 547; [1912] 2 Ch. 141; 106 L. T. 758—Warrington, J

Future and Conditional Trust for Sale — Tenant for Life and Sole Trustee—Trustee for Purposes of Act—Power to Give Receipts.]—A sole trustee with a conditional trust for sale, who is also tenant for life of the settled estates, is a trustee for the purposes of the Settled Land Acts, and is entitled to receive and give a good discharge for the purchase money of any part of the settled estate sold by him as tenant for life. *Johnson's Settled Estates, In re*, 57 S. J. 717—Eve, J.

VII. CAPITAL MONEY.

1. What is.

See also Vol. XII. 767, 1481.

Tenant for Life — Not Impeachable for Waste—Lease of Mansion House—Breach by Lessee of Covenant to Keep in Repair—Money Paid as Damages — Person Entitled.] — A tenant for life, not impeachable for waste, in 1888 granted, with the consent of the trustees of the settlement, a lease of the mansion house comprised in the settlement for twenty-one years, the lessee covenanting to keep the mansion house (which the lessor had put in repair) in good and substantial repair. The lessor died during the currency of the lease, and on its expiry the succeeding tenant for life, who also was not impeachable for waste, claimed and was paid a sum of money as damages for breach of the covenant :—*Held*, that section 53 of the Settled Land Act, 1882, had no application as the tenant for life was not exercising any power under the Settled Land Acts, but was only asserting his legal right under a covenant which ran with the land, and that the money must be taken to represent the damages which he had suffered, and was therefore not payable to the trustees of the settlement as capital money, but could be retained by him for his own benefit. *Noble* v. *Cass* (2 Sim. 343) applied. *Mitchell* v. *Armstrong* (17 T. L. R. 495) doubted by Kennedy, L.J. *Lacon's Settlement, In re; Lacon* v. *Lacon*, 80 L. J. Ch. 610; [1911] 2 Ch. 17; 104 L. T. 840; 55 S. J. 551; 27 T. L. R. 485—C.A.

2. Application and Investment of.

a. In General.

See also Vol. XII. 768, 1482.

Capital Money Arising from Sale of Leaseholds — Purchase of Annuity — Direction to Trustees to Pay Rates—Loss of Benefit—Condition Tending to Prevent Sale.]—A testator directed his trustees to permit his wife to occupy his leasehold house, they paying the rates, taxes, and outgoings in respect thereof. The widow having sold the unexpired term of the lease,—*Held*, that the purchase money must be invested in an annuity for the full term of the lease, which would be paid to the widow during her life and then fall into residue. *Held*, also, that the widow was not entitled to any compensation for the loss of the benefit given to her by the direction to pay rates, taxes, and outgoings. *Trenchard, In re; Ward* v. *Trenchard* (16 T. L. R. 525), dissented from. *Trenchard, In re; Trenchard* v. *Trenchard* (71 L. J. Ch. 178; [1902] 1 Ch. 378), considered and followed. *Simpson. In re; Clarke* v. *Simpson*, 82 L. J. Ch. 169; [1913] 1 Ch. 277; 108 L. T. 317; 57 S. J. 302—Swinfen Eady, J.

Heirlooms—Heirlooms Settled upon Corresponding Trusts to Land — Estate Duty — Succession Duty—Interest—Jointure—"Free from all deductions."] — Under a settlement made in 1889, whereby the Egmont estates and certain heirlooms were settled in strict settlement, the seventh Earl of Egmont became tenant for life and the eighth earl tenant for life in remainder. The seventh earl died in 1897, and no estate duty or succession duty was then paid upon the heirlooms. In 1897, the eighth earl, in exercise of a power contained in the settlement, granted to his wife during her life a yearly rentcharge "free from all deductions." Upon the death of the eighth earl in 1910, the Crown claimed payment of the duties which became payable on the death of the seventh earl, together with interest thereon. The trustees had in their hands investments representing capital moneys arising under the settlement, and also money representing rents accrued during the lives of the eighth and present earls:—*Held*, that as the tenants for life were liable to keep down interest on charges, the interest on both the succession duty and the estate duty on the heirlooms must be paid by the trustees out of the money representing income of the estate accruing during the lifetime of the two successive tenants for life; that capital money raised under the Settled Land Acts from other parts of the settled property might be expended in discharging incumbrances, including the estate and succession duty, on the heirlooms; and that according to the true construction of the settlement the succession duty on the jointure should not be deducted therefrom, but must be paid out of capital moneys. *Egmont's (Earl) Settled Estates, In re; Lefroy* v. *Egmont*, 81 L. J. Ch. 250; [1912] 1 Ch. 251; 105 L. T. 292—Warrington, J.

Freehold Ground Rents — Costs of Survey and Notices to Repair — "Action taken for protection of settled land"—Power of Court to Order Costs to be Borne by Capital.]—A testator settled an estate consisting of a large number of small houses let on long leases at ground rents amounting to 2,100*l.* a year. The trustees incurred an expenditure of 1,100*l.* in having a survey taken and notices of repair served on all the tenants, which notices had been complied with:—*Held*, that, notwithstanding a direction contained in the will directing that the costs of the management of the estate should be paid out of income, the Court, in the circumstances, had power to order the trustees' costs to be borne by the capital, as being costs of proceedings taken for the protection of the estate under the Settled Land Act, 1882, s. 36. *Tubbs, In re; Dykes* v. *Tubbs*, 84 L. J. Ch. 539; [1915] 2 Ch. 137; 113 L. T. 395; 59 S. J. 508—C.A.

Assignment of Life Interest — Surveyor's Costs—Tenant for Life Required to Exercise his Powers — Costs Incurred by Tenant for Life.] — A tenant for life assigned his life interest in settled estates to an insurance company, and it was provided that he should receive an annuity out of the estates, which annuity was to be forfeited if he refused or neglected to exercise his powers under the Settled Land Acts when reasonably requested to do so by the company. He also covenanted not to exercise his powers as tenant for life without the company's consent, and to do all things reasonably required by them in relation to the exercise of his powers. On being requested by the company to sell a part of the settled estate he consulted surveyors as to the sufficiency of the price offered, and claimed that their fees were payable out of capital moneys:—*Held*, that those fees were incurred by the tenant for life in relation to the proposed exercise of his power of sale and on account of his position as a trustee for all parties entitled under the settlement, and were payable out of capital moneys. *Held*, further, that when the company required the tenant for life to exercise his powers in the future he was entitled to obtain proper advice, but that he was not entitled to initiate a scheme for the exercise of his powers, and that if, when asked to exercise his powers, he was afforded, at the expense of the estate, reasonable information and advice, that fact would have an important bearing upon the question whether further costs were properly incurred by him. *Hope, In re; Tarleton* v. *Hope*, 28 T. L. R. 93—Warrington, J.

Costs of Proceedings for Recovery of—Proceedings Proposed to be Taken, but Subsequently Abandoned—Payment of Costs out of Capital.]—Section 36 of the Settled Land Act, 1882, empowering the Court to order payment out of capital of the costs of proceedings taken or proposed to be taken for the recovery of settled land, is not limited to proceedings proposed to be taken at the date when the order is made, but extends to proceedings formerly proposed to be taken, but never actually taken. *Wilkie's Settlement, In re; Wade* v. *Wilkie*,

83 L. J. Ch. 174; [1914] 1 Ch. 77; 109 L. T. 927; 58 S. J. 138—Sargant, J.

Costs were incurred, at the request of a tenant for life, in connection with proceedings for the recovery of land alleged to be subject to the settlement; but on the advice of counsel the proceedings were abandoned:—*Held*, that the Court could make an order for the payment of the costs out of capital under section 36. *Ib.*

Semble, that the order could have been made apart from the Act. *Ib.*

Payment of Costs — Petition for Faculty Compromised — Protection of Estate.] — The costs of the petitioner and the fees and expenses of the Chancellor of the diocese of a petition for a new faculty made to the Ecclesiastical Courts by the lord of the manor, which petition alleged a lost faculty and also that the lord had exercised certain privileges of seating accommodation and burial in the south aisle of his parish church since the year 1740, and which was compromised, the lord being granted certain rights of seating and of burial, and of erecting memorial tablets in such aisle, were held to be costs for the protection of the settled land within the meaning of section 36 of the Settled Land Act, 1882, and accordingly the Court could order such costs to be paid out of capital moneys. As to the costs of the vicar on such a petition, *quære*. *Mosley's Settled Estates, In re*, 56 S. J. 325—Neville, J.

"Incumbrance" — Repair of Highway.] — Whether a liability to repair a highway *ratione tenuræ* is an "incumbrance" within the meaning of section 21, sub-section (ii.) of the Settled Land Act, 1882, *quære*. *Stamford and Warrington (Earl), In re; Payne* v. *Grey (No. 2)*, 80 L. J. Ch. 361; [1911] 1 Ch. 648; 105 L. T. 12; 75 J. P. 346; 9 L. G. R. 719; 55 S. J. 483—Warrington, J.

A liability to repair a highway *ratione tenuræ* is not an "incumbrance" within the meaning of section 21, sub-section 2 of the Settled Land Act, 1882, and trustees of a settled estate are not justified in using capital moneys in their possession in order to free the estate from the liability. *Hodgson's Settled Estates, In re; Altamont (Countess)* v. *Forsyth*, 81 L. J. Ch. 376; [1912] 1 Ch. 784; 106 L. T. 456—Neville, J.

Section 22, sub-section 5 of Settled Land Act, 1882.]—Observed upon.—*See Monckton's Settlements, In re*, 83 L. J. Ch. 34; [1913] 2 Ch. 636; 109 L. T. 624; 57 S. J. 836—Sargant, J.

b. Improvements.

See also Vol. XII. 777, 1484.

Conversion of Land into Building Land—Erection of Estate Office.]—Where a settled estate is proposed to be developed as a building estate and it is found necessary to build an estate office on the estate for the purpose of the development, and the Court is satisfied that the erection of an estate office is necessary or proper in connection with the conversion of the land into building land or for securing the full benefit of such conversion, the Court will sanction the cost of the erection of the estate office out of capital moneys under the Settled Land Act, 1882, s. 25, sub-s. xvii. *De Crespigny Settled Estate, In re*, 83 L. J. Ch. 346; [1914] 1 Ch. 227; 110 L. T. 236; 58 S. J. 252—Astbury, J.

Coal Mines—Statutory Requirements—Payment out of Capital.]—The alterations in and additions to the plant and equipment of coal mines which are imposed upon mine owners by the Coal Mines Act, 1911, are improvements authorised by the Settled Land Act, 1882, s. 25 (xix.) and (xx.), and may therefore be paid for out of capital money arising under the Act. *Hanbury's Settled Estates, In re (No. 1)*, 82 L. J. Ch. 34; [1913] 1 Ch. 50; 107 L. T. 676; 57 S. J. 61—Eve, J.

Open Space—Golf Course and Club House.]—The construction of a golf club house and the laying out of a golf course *held* to be an improvement within the meaning of section 25, sub-section xvii. of the Settled Land Act, 1882, as being an "open space." *De la Warr's (Lord) Settled Estates, In re*, 27 T. L. R. 534—Eve, J.

Development of Estate—Golf Course—Disturbance of Agricultural Tenant—Compensation — Payment out of Capital Moneys.] — Capital money arising under the Settled Land Act, 1882, may not be expended in paying compensation to an agricultural tenant from year to year, under the Agricultural Holdings Act, 1908, on terminating his tenancy, even though it be necessary to terminate his tenancy in order to effect a duly authorised improvement consisting in a golf course under the first-named statute. *De la Warr's (Earl) Cooden Beach Estate, In re*, 82 L. J. Ch. 174; [1913] 1 Ch. 142; 107 L. T. 671; 57 S. J. 42; 29 T. L. R. 30—C.A.

"Annual rental"—Carriage Drive—"Private road" — Footpaths — Fencing.] — The words "annual rental" in sub-section iv. of section 13 of the Settled Land Act, 1890, mean the total amount of the rents payable by the several tenants to the landlord or his agent; so that, if any part of the land is temporarily vacant, one is entitled for the purpose of applying the sub-section to treat it as producing the rent which a tenant occupying it usually pays. Deductions from the gross rental should be made for property tax, but not for mortgage interest, tithes, land tax, drainage rates, or rentcharge. *Windham's Settled Estate, In re*, 81 L. J. Ch. 574; [1912] 2 Ch. 75; 106 L. T. 832—Warrington, J.

A carriage drive is a "private road" within section 25, sub-section viii. of the Settled Land Act, 1882, but a garden footpath is not. *Ib.*

Compensation to Agricultural Tenant Holding from Year to Year.]—Compensation payable to an agricultural tenant holding from year to year on the termination of his tenancy is not expenditure on an improvement within Settled Land Acts. *Cooden Beach Estate, In re*, 57 S. J. 42; 29 T. L. R. 30—C.A. Affirming, 107 L. T. 141—Joyce, J.

SETTLEMENT.

I. OBLIGATIONS TO SETTLE.

1. Articles.

See also Vol. XII. 810, 1493.

Tenant in Tail—Nature of Estate Settled—Post-nuptial Settlement — Usual Clauses in Settlement — Hotchpot Clause — Cross-remainders—Election.]—By marriage articles, B., the intended husband, being entitled as tenant in tail in remainder to three estates the M., W., and P. estates, covenanted to convey to trustees all real estate to which he was, or during the coverture should become, entitled in fee tail in possession or remainder for all such estate as he could convey therein. It was thereby declared that the trustees should stand seised of all such real estate on trust for B. for life with remainder to C., the intended wife, for life for her separate use without power of anticipation. And it was also declared that, after the said life estates, the trustees should stand seised of all such real estate with remainder to the child or children or remoter issue of the said intended marriage, or any or either of them, in such manner as B. should, by the settlement to be made, appoint. And it was further agreed that the settlement should contain all powers, provisions, clauses, and agreements as are usually inserted in marriage settlements as B. should by the settlement agree to. By post-nuptial settlement B., with the consent of the protector and the concurrence of C., disentailed the M. estate and conveyed it to the trustees of the articles, on trust after his own life estate to raise a jointure for C., and 2,000*l*. for portions for younger children as B. and C. should appoint, and, subject thereto, to the eldest son in tail. In execution of that power B. and C. jointly appointed the 2,000*l*. among three children, to be raised after the death of the husband, and in priority to the wife's jointure. By a subsequent disentailing deed B. disentailed the W. estate to his own use, and did not re-settle it. By his will he purported to leave it absolutely to C. B. died without disentailing the P. estate, and the next tenant in tail, the eldest son of the marriage, subsequently disentailed:—*Held*, first, that the articles settled a voidable estate in fee-simple in all the estates; that, as regards the M. estate, the effect of the disentailing deed and re-settlement was to capture the fee-simple of the estate for the trusts of the marriage articles, and that the settlement must be disregarded so far as it was inconsistent with the articles; secondly, that a hotchpot clause, and a clause providing for cross-remainders, should, in view of the provisions contained in the articles, be read into the articles; thirdly, that the attempt in the settlement to give the portions priority to the wife's life estate and to cut down her life estate to a jointure was void as being inconsistent with the articles; fourthly, that the W. estate was captured by the articles on the execution of the disentailing deed; fifthly, that the P. estate was not captured by the articles, the settlor having died without executing a disentailing deed, but that the eldest son who disentailed, if he elected to take under the settlement and articles, must bring in the P. estate as if he had disentailed it to the uses of the articles, and must also bring the value of his tenancy in tail in the M. estate into hotchpot. *Blake* v. *Blake*, [1913] 1 Ir. R. 343—Barton, J.

2. Covenants to Settle.

See also Vol. XII. 814, 1494.

Gift from Husband to Wife.]—There is no general rule that a covenant in a marriage settlement to settle after-acquired property cannot capture gifts from the husband to the wife. *Ellis's Settlement, In re* (78 L. J. Ch. 375; [1909] 1 Ch. 618), and *Plumptre's Settlement, In re* (79 L. J. Ch. 340; [1910] 1 Ch. 609), followed. *Kingan* v. *Matier*, [1905] 1 Ir. R. 272) not followed. *Leigh-White* v. *Ruttledge*, [1914] 1 Ir. R. 135—Barton, J.

A marriage settlement made in 1865 contained a covenant by the husband and wife separately to settle any sum or sums, stocks, or other personal estate exceeding in amount or value 200*l*. at any one time which should during the coverture "be given or bequeathed to, or in any manner vest in," the wife. In 1897 the husband, in consideration of natural love and affection, assigned absolutely to the wife a policy of insurance on his life for 6,000*l*. (with bonuses), and two mortgages for 500*l*. and 600*l*. respectively:—*Held*, these were captured by the covenant to settle. *Ib.*

Covenant to Settle any "interest in expectancy"—Prospective Interest under Limitation to Next-of-kin—Spes Successionis.]—By her will a testatrix gave a share of her residuary estate to her daughter W. for life, and directed that if W. died without issue the share was to go to W.'s next-of-kin as if she had not been married. The testatrix died in 1864, and in 1866 J., another daughter of the testatrix, married, and by her ante-nuptial settlement covenanted that any real or personal property of the value of 50*l*. or upwards to which she was then entitled "for any estate or interest whatsoever in possession reversion or expectancy" should be settled upon the

trusts of the settlement. W. died in 1912 leaving J., who was then a widow, her sole next-of-kin :—*Held*, following *Parsons, In re; Stockley* v. *Parsons* (59 L. J. Ch. 666; 45 Ch. D. 51), that at the date of her marriage settlement J.'s prospective interest in W.'s share was of the nature of a mere *spes successionis*; and *held*, further, that, whether or not it was an "expectancy" within the meaning of the covenant, the covenant by J. to settle "any estate or interest . . . in expectancy" to which she was then entitled was too vague to be enforced. *Mudge, In re*, 83 L. J. Ch. 243; [1914] 1 Ch. 115; 109 L. T. 781; 58 S. J. 117—C.A.

Decision of Neville, J. (82 L. J. Ch. 381; [1913] 2 Ch. 92), reversed. *Ib.*

Wife's After-acquired Property — Contemporaneous Assignment of Part — Trust for Settlor—Contingent Interest Falling into Possession during Coverture.] — By a marriage settlement the wife covenanted to settle any property to which she should become entitled during the coverture. The wife was at the date of the marriage contingently entitled to her two brothers' shares in their parents' settlement funds. One of the brothers having died before attaining the age of twenty-one, she became entitled in possession, during the coverture, to one-half of his share :—*Held*, that such one-half share came within the covenant. *Archer* v. *Kelly* (29 L. J. Ch. 911; 1 Dr. & S. 300) followed. *Williams' Settlement, In re; Williams* v. *Williams*, 80 L. J. Ch. 249; [1911] 1 Ch. 441; 104 L. T. 310; 55 S. J. 236—Eve, J.

Money Received Subject to Covenant—Non-assignment to Trustees—Investment in Bonds—Bonds Followed—Statute of Limitations.] —In November, 1879, a sum of money was given to a wife, which was bound by a covenant of herself and her husband in their marriage settlement to settle her after-acquired property. The money was paid into the husband's banking account, upon which the wife had power to draw, and a month later part of it was invested in two Cape of Good Hope Bonds, which remained at the bank, the interest on them being credited to the account. The husband died in 1909 and the bonds came into possession of his executors. It was admitted that part of the money was represented by the two bonds, that they were bought for and belonged to the wife, and that they were in the husband's possession at his death. The trusts of the settlement were still subsisting for the wife and children of the marriage. Upon action by the trustees of the settlement to recover the bonds against the executors, who pleaded the Statute of Limitations,—*Held*, that the money the instant it was received became in equity subject to the trusts of the settlement, and that the bonds were therefore trust property which could be claimed by the trustees. *Held* also, that trustees of a marriage settlement are entitled to specific performance of a covenant to create a trust which is for the benefit of persons within the marriage consideration. *Spickernell* v. *Hotham* (Kay, 669) examined and explained. *Pullan* v. *Koe*, 82 L. J. Ch. 37; [1913] 1 Ch. 9; 107 L. T. 811; 57 S. J. 97—Swinfen Eady, J.

Yearly Rentcharge—Release—Second Mortgage to Secure 10,000*l.* to Widow after Death of Husband.]—A marriage settlement dated in 1884 contained a covenant for the settlement of the after-acquired property of the wife. The husband covenanted to secure to her a yearly rentcharge of 500*l.*, which he charged upon certain property. He subsequently executed a deed for that purpose. Some years later the wife released to her husband the rentcharge, and the husband mortgaged the property to the wife to secure the payment to her of 10,000*l.* This mortgage was subject to a first mortgage of even date. By his will the husband devised the property upon trust for his wife for life, with remainder to such son of his as should first attain twenty-one. After the death of the husband the widow, in exercise of her power as tenant for life, sold the property. The first mortgage was then paid off :—*Held*, that the widow was entitled to the 10,000*l.* with interest, and that the 10,000*l.* was not subject to the covenant to settle after-acquired property. *Churchill* v. *Denny* (44 L. J. Ch. 578; L. R. 20 Eq. 534) referred to. *Biscoe, In re; Biscoe* v. *Biscoe*, 111 L. T. 902—Joyce, J.

"May be entitled"—Residuary Interest under Subsequent Will.]—By an ante-nuptial agreement the husband agreed that he would forthwith execute a settlement "of all my share, property or interest, as well vested or accruing, to which I may be entitled under any will or settlement." The settlement was never made, but many years after the agreement had been executed the husband became entitled to residue under the will of his father :—*Held*, that such residue was not caught by the words of the agreement. *Ridley's Agreement, In re; Ridley* v. *Ridley*, 55 S. J. 838—Swinfen Eady, J.

Life Policy—Value.]—A marriage settlement contained a covenant to settle all real and personal property (if any) not thereinbefore settled to which the wife after the intended marriage or at any time during her then intended coverture should be or become entitled, either in possession, reversion, remainder, or otherwise, except jewels, &c., and except also any legacy or other property acquired at one and the same time not exceeding in amount or value the sum of 200*l.* The husband three years after the marriage effected an endowment policy for 500*l.* on his own life. He paid the premiums and died in 1909, and his wife received the money. There was one son surviving :—*Held*, that the value of the policy must be ascertained at the time it was effected, when it was not worth 200*l.*, and that the policy moneys were not caught by the covenant. *Harcourt, In re; White* v. *Harcourt*, 105 L. T. 747; 56 S. J. 72—Swinfen Eady, J.

Obligation to "make up" the Capital Held by Trustees to a Certain Sum — Whether Trustees Entitled to Receive Capital Sum Free of Death Duties.]—A father was a party

to his son's marriage contract, which provided that a sum of 30,000*l.* should be vested in the trustees, to be made up as follows: First, by an immediate payment by the father of 20,000*l.*; secondly, by the appointment of the son to a share of a fund life-rented by the father, valued at the date of the contract at 6,250*l.*, but whose actual value could not be ascertained until the termination of the life-rent; and thirdly, by an obligation undertaken by the father binding his executors to pay to the trustees the sum of 3,750*l.*, or such other sum more or less as should "make up the sum of 30,000*l.* to be received by the trustees":—*Held*, that the father's obligation did not bind his estate to make good the total sum of 30,000*l.* free of all Government duties. *Dundas' Trustees* v. *Dundas' Trustees*, [1912] S. C. 375—Ct. of Sess.

Effect of Divorce—Property Coming to Wife after Decree Nisi but before Decree Absolute.]—A husband and wife by a marriage settlement covenanted to settle any property of the value of 200*l.* or upwards which the wife, or the husband in her right, should at any time become possessed of during the then intended coverture. A decree *nisi* for the dissolution of the marriage was pronounced; but pending the decree being made absolute the wife became entitled under the will of her mother to property exceeding the value of 200*l.*:—*Held*, that the property came to the wife during the coverture and so was affected by the covenant in the settlement. *Sinclair* v. *Fell*, 82 L. J. Ch. 105; [1913] 1 Ch. 155; 108 L. T. 152; 57 S. J. 145; 29 T. L. R. 103—Warrington, J.

Hulse v. *Hulse* (40 L. J. P. 51; L. R. 2 P. & D. 259) and *Norman* v. *Villars* (46 L. J. Q.B. 579; 2 Ex. D. 359) applied. *Pearson's Trusts, In re* (26 L. T. 393; 20 W. R. 522), was in effect overruled by *Norman* v. *Villars* (*supra*). *Ib.*

II. EXECUTED SETTLEMENTS.

1. Property Settled.

See also Vol. XII. 917, 1506.

Power of Appointment—Trust for Children in Default of Appointment—Forfeiture of Life Interest by Bankruptcy — Destination of Income until Appointment.] — Under a marriage settlement trust funds were settled upon the husband for life or until bankruptcy and subject thereto as he should appoint, and in default of appointment to the children of the marriage. The husband became bankrupt and had made no appointment. There were three children of the marriage, one of whom had issue:—*Held*, that a trust to accumulate income could not be read into the settlement, and therefore that until an appointment by the husband the income during the residue of his life went to the children of the marriage. *Master's Settlement, In re*, 80 L. J. Ch. 190; [1911] 1 Ch. 321; 103 L. T. 899; 55 S. J. 170—Eve, J.

Declaration of Trust—Farms—"Live and dead stock"—Whether Stud of Racehorses Included.]—A settlor, who had resettled his estates, made by a subsequent deed a declaration of trust that the trustees should be entitled to "the whole of the live and dead stock" to be found at his death on certain farms, and he afterwards removed to these farms a stud of thoroughbred racehorses. At the time of his death certain thoroughbred stock was on the farms:—*Held*, that the racehorses did not pass under the deed, as it must be construed as relating only to stock found in the ordinary way on the farms carried on as agricultural holdings. *Cadogan Settled Estates, In re; Richmond and Gordon (Duke)* v. *Cadogan*, 31 T. L. R. 536—Eve, J.

2. Limitations and Interests Created by.

a. For Children.

See also Vol. XII. 956, 1511.

Settlement of Fund — Hotchpot Clause — After-acquired Property Clause — Trusts by Reference to those of Settled Fund—Treating Funds as Distinct for Purposes of Hotchpot Clause.]—By a marriage settlement a sum of 15,000*l.* belonging to the wife was settled on trust for the wife during the joint lives of herself and the husband and for the survivor for life, and on the death of the survivor on trust for the children of the marriage as the husband and wife or the survivor should appoint, and in default of appointment on trust for the children at twenty-one or marriage provided that no child who should take any part of "the said trust premises" under any appointment should be entitled to any share of the unappointed part without bringing the appointed part into hotchpot. In a later part of the settlement there was a provision for the bringing into settlement of the wife's other or after-acquired property, which was to be held on the trusts of the 15,000*l.* There was no express indication whether for the purposes of the hotchpot clause the 15,000*l.* and the property coming in under the after-acquired property clause were to be considered as one fund. There was a provision excepting from the after-acquired property clause property which, if taken by the wife, would go in satisfaction of the 15,000*l.* under the provisions of the instrument under which she took that sum. The husband and wife appointed the 15,000*l.* to a daughter on her marriage. A considerable amount of property had become subject to the settlement under the after-acquired property clause, and of this no appointment had been made:—*Held*, on the construction of the settlement, that the parties considered the funds to be distinct; that, apart from this, the Court could not treat them as amalgamated for the purposes of the hotchpot clause, since to do so would modify the trusts of the 15,000*l.*; and that the daughter was not bound to bring the 15,000*l.* into account in the division of the unappointed property. *Cavendish Settlement, In re; Grosvenor* v. *Butler* (No. 2), 81 L. J. Ch. 400; [1912] 1 Ch. 794; 106 L. T. 510; 56 S. J. 399—Parker, J.

Bristol (Marquis) Settlement, In re; Grey (Earl) v. *Grey* (66 L. J. Ch. 446; [1897] 1 Ch. 946), followed. *Perkins, In re; Perkins*

v. *Bagot* (67 L. T. 743; 41 W. R. 170), distinguished. *Ib.*

Treating Original Settled Funds as Augmented by After-acquired Property for Purposes of Hotchpot Clause.]—By a marriage settlement certain funds were settled, subject to the life interests of the husband and wife, in trust for the children of the marriage as the husband and wife should jointly appoint, and in default as the survivor should appoint, and in default in trust for the children of the marriage in equal shares at twenty-one or marriage, provided that no child who should take any part "of the said trust funds" under any appointment should be entitled to any share of the unappointed part without bringing the appointed part into hotchpot. The settlement contained a covenant to settle all after-acquired property to which the wife might become entitled, and the same was to be held upon such trusts, intents, and purposes, and subject to such of the powers, provisos, agreements, and declarations as had been declared by the settlement concerning the wife's fund. There were seven children of the marriage. In 1899 a joint appointment was made in favour of five of the seven children. Subsequently to this appointment a considerable sum of money became subject to the settlement under the after-acquired property clause, and both husband and wife died without having appointed this money and without having revoked or altered the appointment of 1899:—*Held*, that the settled funds and the after-acquired property fund must be treated as amalgamated and the hotchpot clause as applicable to both, and that the five appointees must bring their appointed shares into hotchpot before sharing in the unappointed money. *Fraser Settlement, In re; Ind* v. *Fraser*, 82 L. J. Ch. 406; [1913] 2 Ch. 224; 108 L. T. 960; 57 S. J. 462—Sargant, J.

Perkins, In re; Bagot v. *Perkins* (62 L. J. Ch. 531; [1893] 1 Ch. 283), followed. *North, In re; Meates* v. *Bishop* (76 L. T. 186), *Bristol (Marquis) Settlement, In re; Grey (Earl)* v. *Grey* (66 L. J. Ch. 446; [1897] 1 Ch. 946), *Cavendish Settlement, In re; Grosvenor* v. *Butler* (81 L. J. Ch. 400; [1912] 1 Ch. 794), and *Wood, In re; Wodehouse* v. *Wood* (82 L. J. Ch. 203; [1913] 1 Ch. 303), distinguished. *Ib.*

Limited Owners with Powers of Tenant for Life—Executors of Deceased Owner.]—A testator gave his real and personal estate to trustees on trust to pay the income arising therefrom in equal shares to his children, and in the event of a child dying without issue, to divide his or her share of the income between the surviving children and the children of deceased children, who were to have their parents' shares. On the death of the last survivor of the children he directed the trustees to divide his estate in equal shares between his grandchildren or their descendants. A child of the testator dying leaving issue,—*Held*, that the child's share was payable to her executors till the death of the last surviving child. Also *held*, that the surviving children and the executors of the deceased child had the powers of a tenant for life with regard to the real estate. *Johnson, In re; Johnson* v. *Johnson*, 83 L. J. Ch. 758; [1914] 2 Ch. 134; 58 S. J. 611—Warrington, J.

"Eldest son" — Exclusion of — Who Intended—Younger Son becomes Tenant for Life.] — The estate of an eldest son who attained the age of twenty-one years, but died a bachelor and intestate, in the lifetime of his father, and without having executed any disentailing assurance of the family property, was *held* entitled to share in the funds of the personalty settlement which were held by the trustees, in default of appointment, "upon the trusts following (that is to say), if there shall be but one child of the said intended marriage (other than such eldest or only son as aforesaid), in trust for that one child to be an interest vested in such child being a son at the age of twenty-one years or being a daughter at the age of twenty-one years or day of marriage which shall first happen. And if there shall be two or more children of the said intended marriage other than such eldest or only son as aforesaid then in trust for such two or more children in equal shares." *Cavendish Settlement, In re; Grosvenor* v. *Butler* (*No.* 1), 56 S. J. 344—Parker, J.

Younger Children — Estate Tail Barred by Eldest Son—Portions—Younger Son becoming Eldest Son — Exclusion.] — By a marriage settlement real estate was limited to uses under which W. became tenant for life with remainder to his first and other sons in strict settlement. By a settlement of personalty made on the same day it was declared that after the death of W. and his intended wife the trustees should stand possessed of the trust funds in trust for the children of the marriage "other than an eldest or only son or other son who before attaining the age of twenty-one years shall be or become the heir male or heir male apparent or" W., as W. and his wife should appoint. W.'s eldest son, who attained twenty-one, disentailed and resettled the estate and died before coming into the estate, so that a younger son, who attained twenty-one before the eldest son died, eventually succeeded to the estate:—*Held*, that the younger son was not excluded from a share in the settled personalty. *Wrottesley's Settlement, In re; Wrottesley* v. *Fowler*, 80 L. J. Ch. 457; [1911] 1 Ch. 708; 104 L. T. 281—Parker, J.

b. Life Interests.

See also Vol. XII. 992, 1518.

Successive Life Interests—Income Declined by First Life Tenant—Claim to Receive Income after Death of Second Life Tenant—Consideration — Voluntary Renunciation — Right to Retract Refusal.]—A tenant for life of a fund settled by will who has voluntarily declined to receive the income in order that it may be enjoyed by a second tenant for life, and at the death of the second life tenant claims to retract her refusal and to be paid the income, is entitled to do so when her previous refusal has not changed the position of the parties; she has received no consideration for

temporarily relinquishing her interest, the fund has not been dealt with, and nobody is injured by her previous action. *Young, In re; Fraser v. Young*, 82 L. J. Ch. 171; [1913] 1 Ch. 272; 108 L. T. 292; 57 S. J. 265; 29 T. L. R. 224—Swinfen Eady, J.

c. Estates in Realty.

See also Vol. XII. 998, 1520.

Rule in Shelley's Case—Deed—Gift to A and his Heir-at-Law—Heir-at-Law to take Life Estate—Resulting Use in Favour of Settlor.] —The rule in *Shelley's Case* (1 Co. Rep. 93*b*) does not apply to a grant by deed to A and his heir-at-law. *Davison's Settlement, In re; Davison* v. *Munby*, 83 L. J. Ch. 148; [1913] 2 Ch. 498; 109 L. T. 666; 58 S. J. 50—Warrington, J.

Legal Interests in Settled Realty—Omission of Words of Inheritance — No Evidence of Intention Dehors the Deed.] — By marriage settlement executed in 1843, reciting (*inter alia*) that the intended husband had agreed to make a suitable provision for the issue of the marriage and that he was to receive with his intended wife a marriage portion, certain lands, held under lease for ever, were (with others held for estates *pur autre vie*) conveyed to trustees and the survivor of them and the heirs of the survivor upon trust to permit the principal settlor to receive the rents and profits of the portion of the said lands conveyed by him for his life, then to permit the husband to receive the rents and profits of the whole for his life, then, subject to a jointure for the wife in case she survived, upon trust to permit the issue male, if any, of the intended marriage to receive the rents and profits in such shares as the husband, or the wife in case she survived him, should appoint, and in default of appointment, to permit the first and every other son and sons of the husband to receive the rents and profits in tail male according to seniority, and, in default of issue male, upon trust to permit the issue female, if any, of the intended marriage to receive the rents and profits in such shares as the husband or the wife, in case she survived him, should appoint, and, in default of appointment, to permit the issue female, if any, to receive the rents and profits as tenants in common and not as joint tenants, and, in default of all such issue, then upon trust to permit the right heirs of the husband to receive the rents and profits for ever. There was only one child issue of the marriage, a daughter, who duly entered into possession under the settlement, and subsequently sold the lands under the Land Purchase Acts. On a question arising as to the nature of the interest taken by the vendor :—*Held*, that from the provisions of the settlement it was clearly the intention of the parties that, in default of appointment, the issue female should take estates in fee-simple, and that the settlement should be treated as rectified accordingly, and the residue of the purchase money paid out to the vendor. *Davis's Estate, In re*, [1912] 1 Ir. R. 516—Wylie, J.

Conveyance to Trustee of Equitable Interest in Freeholds, Copyholds, and Personalty Liable to be Laid out in Land—No Words of Limitation in Settlement.]—The rule that in an executed document the same words of limitation are necessary to convey an equitable estate in fee-simple as are necessary to convey a legal estate in fee-simple does not, having regard to the provisions of section 71 of the Fines and Recoveries Act, 1833, apply to personalty subject to a trust for investment in land; and the law was not altered in this respect by section 22, sub-section 5 of the Settled Land Act, 1882. Observations on that sub-section. *Monckton's Settlement, In re; Monckton* v. *Monckton*, 83 L. J. Ch. 34; [1913] 2 Ch. 636; 109 L. T. 624; 57 S. J. 836—Sargant, J.

By a settlement of 1908 a contingent equitable estate in fee-simple in freeholds, copyholds, and investments, and moneys held on the same trusts as capital moneys arising under the Settled Land Act, 1882, from the freeholds, was conveyed to a sole trustee without words of limitation, the *habendum* being obviously defective; though words of limitation occurred in the declaration of the beneficial interests. The trustee died in 1913 :—*Held*, that, as regarded the freeholds and, in the absence of any special custom, the copyholds, the trustee took a life estate only, and the limitations of the settlement had therefore determined. *Irwin, In re; Irwin* v. *Parkes* (73 L. J. Ch. 832; [1904] 2 Ch. 752), followed. *Ib.*

But *held* that, as regarded the investments and moneys, the trusts of the settlement were still subsisting. *Ib.*

Equitable Fee-simple — Intention — Personalty.] — Although an equitable fee-simple does not pass as a rule without proper words of limitation, the intention of the whole deed must be taken into consideration, and accordingly, where the personalty was passed absolutely by the gift in the deed, the Court held that an intention had been shewn to pass the equitable fee-simple in the realty. *Nutt's Settlement, In re; McLaughlin* v. *McLaughlin*, 84 L. J. Ch. 877; [1915] 2 Ch 431; 59 S. J. 717—Neville, J.

Equitable Interests in Estate pur Autre Vie —Implication of Cross-remainders—Settlement Created by Deed.]—Where by a settlement created by deed, even where the trusts are executed, equitable interests in a term *pur autre vie* are limited to several persons as tenants in common in *quasi*-tail, cross-remainders in *quasi*-tail will be implied among them, if an intention to limit such interests sufficiently appears on the face of the instrument. *Battersby's Estate, In re*, [1911] 1 Ir. R. 453—Wylie, J.

e. Portions. *See* Portions.

III. ACTION BY MARRIED WOMAN IN RESPECT OF SETTLED PROPERTY.

Property Assigned to Trustees for Use of Wife — Detention by Husband — Action by Wife in Her Own Name — Non-joinder of

Trustees as Plaintiffs.]—A married woman can maintain an action in detinue in her own name against her husband, in respect of property assigned by him under a marriage settlement to trustees to hold for her use during her life, without the joinder of the trustees as plaintiffs. *Healey* v. *Healey*, 84 L. J. K.B. 1454; [1915] 1 K.B. 938; 113 L. T. 694—Shearman, J.

IV. VARIATION ON DIVORCE OR DISSOLUTION OF MARRIAGE.

See HUSBAND AND WIFE.

SETTLEMENT ESTATE DUTY.

See REVENUE.

SETTLEMENT OF PAUPERS.

See POOR LAW.

SETTLEMENTS, FRAUDULENT AND VOID.

See BANKRUPTCY.

SEWERS AND DRAINS.

See LOCAL GOVERNMENT; METROPOLIS.

SEXTON.

See ECCLESIASTICAL LAW.

SHELLEY'S CASE, RULE IN.

See SETTLEMENT.

SHERIFF.

See EXECUTION.

SHIPPING.

(Including MARINE INSURANCE.)

A. SHIPPING.

B. MARINE INSURANCE.

A. SHIPPING.

I. REGISTRATION.

See also Vol. XIII. 28, 1985.

Ship "constructively lost."]—A ship which is a "constructive total loss" within the meaning of the expression in marine insurance is "constructively lost" within the meaning of section 21 of the Merchant Shipping Act, 1894, and by the operation of that section as amended by the Merchant Shipping Act, 1906, it ceases to be a registered ship. *Manchester Ship Canal Co.* v. *Horlock*, 83 L. J. Ch. 637; [1914] 2 Ch. 199; 111 L. T. 260; 12 Asp. M.C. 516; 58 S. J. 533; 30 T. L. R. 500—C.A.

II. OWNERS.

See also Vol. XIII. 40, 1986.

Fishing Boat—Dispute between Seaman and Owner — Determination by Deputy Superintendent of a Marine Office.] — A deputy superintendent duly appointed has the same power of hearing and determining a dispute between the owner of a fishing boat and a seaman of the boat, under section 387, subsection 1 of the Merchant Shipping Act, 1894, with regard to the matters therein specified, as are thereby conferred on a superintendent. *Mayhew* v. *Tripp*, 83 L. J. K.B. 778; [1914] 2 K.B. 455; 110 L. T. 1002; 12 Asp. M.C. 505—D.

III. MASTER.

See also Vol. XIII. 80, 1990.

Neglect of Duty — Omission to do Lawful Act Proper for Preserving Ship from Immediate Loss — Improper Look-out.] — The "neglect of duty" referred to in section 220 of the Merchant Shipping Act, 1894, does not refer to the negligent performance of duty, but to the omission to perform the duty at all. *Deacon* v. *Evans*, 80 L. J. K.B. 385; [1911] 1 K.B. 571; 104 L. T. 99; 75 J. P. 162; 11 Asp. M.C. 550—D.

The master of a ship placed himself as look-out in a position from which any vessel within the half-mile area immediately in front of the stem was invisible to him, and through negligence or some other unexplained cause failed to notice the presence of another ship within a four and a half miles area immediately beyond the said half-mile area, with the result that the ships collided:—*Held*, that the master had not by neglect of duty omitted to do a lawful act—namely, place a look-out man in such a position as to be able to see at least one point on either side of the bow—proper and requisite to be done by him for preserving the ship from immediate loss, damage, or destruction within the meaning of section 220 of the Merchant Shipping Act, 1894. *Ib.*

River Thames—"Master"—"Shall be on the bridge."]—Article 14 of the Thames By-laws, 1898, which provides that "the master of every steam vessel navigating the river shall be . . . on the bridge," must be construed with regard to the definition of "master" in

article 4 as "the owner, master or other person . . . having or taking the command, charge or management of the vessel." And when a vessel is in charge of a compulsory pilot, article 14 does not forbid the voluntary but temporary absence of the master of the vessel from the bridge, when another competent officer is stationed there, and there are no special circumstances of difficulty, and no special matters within his knowledge of which he ought to be ready to inform the pilot. *The Umsinga*, 80 L. J. P. 90; [1911] P. 234; 27 T. L. R. 439—Evans, P.

Fine Imposed on Master — "Expense caused . . . by the absence of the seaman" — Deduction of Fine from Wages Due to Seaman.]—A Chinaman serving as a seaman on a British ship deserted from the ship and entered the Commonwealth of Australia, leaving behind on board certain effects and wages due to him. The master of the ship was fined under section 9 of the Immigration Restriction Acts, 1901-1905, for permitting a prohibited immigrant to enter the Commonwealth:—*Held*, that the fine and the cost of the cable home to the owners of the ship in respect thereof were not "expenses caused to the master or owner of the ship by the absence of the seaman" within section 28, sub-section 1 (*b*) of the Merchant Shipping Act, 1906, or "expenses caused by the desertion to the master or owner of the ship" within section 232 of the Merchant Shipping Act, 1894, and that therefore the master was not entitled to be re-imbursed out of the wages and effects of the Chinaman the amount of such fine and the cost of the cable home. *Halliday* v. *Taffs*, 80 L. J. K.B. 388; [1911] 1 K.B. 594; 104 L. T. 188; 11 Asp. M.C. 574; 75 J. P. 165; 27 T. L. R. 186—D.

Re-imbursement of "the expenses caused by the desertion to the master."]—The expenses which the master of a ship is entitled, under section 232 of the Merchant Shipping Act, 1894, and section 28 of the Merchant Shipping Act, 1906, to be re-imbursed out of the wages or effects of a seaman who has deserted are confined to the expenses that are directly caused to the master or owner of the ship by the desertion, such as the excess of wages paid to a substitute engaged in place of the deserter at a higher rate of wages than that stipulated to be paid to the deserter, and other expenses due to the desertion, but they do not include damages for the detention of the ship by reason of the desertion. *Deacon* v. *Quayle; Neate* v. *Wilson*, 81 L. J. K.B. 409; [1912] 1 K.B. 445; 106 L. T. 269; 76 J. P. 79; 12 Asp. M.C. 125—D.

In determining whether any excess of wages has been paid by the master to the substitutes engaged in place of the deserters, an account, extending over the whole voyage, of the wages actually paid by the master as compared with the wages the master would have had to pay but for the desertion is not required to be taken, but merely an account extending over the period during which wages were paid to the substitutes engaged in place of the deserters, so that a master is entitled to be re-imbursed the excess of wages paid to the substitutes notwithstanding that there has been a saving of expenses through the non-engagement of substitutes for a certain period of time after the desertion. *Ib.*

IV. SEAMEN.

1. Wages.

See also Vol. XIII. 106, 1993.

Foreign-going Ship — Voyage "to end at such port in the United Kingdom or Continent of Europe (within home trade limits) as may be required by the master"—Complete Discharge of Cargo at Port within Home Trade Limits—Arrival of Ship at Port in United Kingdom — Bunkering for Another Voyage — Ship Required by Master to go to Another Port within Home Trade Limits.]—By an agreement a crew was engaged on a voyage within specified limits of time and space, which was "to end at such port in the United Kingdom or Continent of Europe within home trade limits as may be required by the master." Within the prescribed limits the ship arrived at Rotterdam, a port within home trade limits, where she finished discharging her cargo. The ship then proceeded to the Tyne, where she took on board 1,300 tons of bunker coals for another voyage. One of the seamen then claimed his discharge and wages on the ground that the voyage had ended there. The master refused to discharge the seaman upon the ground that the voyage was not completed, and subsequently required the crew to take the ship to Glasgow:—*Held*, that the fact that the ship took on board bunker coal to be used upon a subsequent voyage was not of itself sufficient to bring the voyage to an end, and that consequently the seaman was not entitled to his discharge in the Tyne. *Haylett* v. *Thompson*, 80 L. J. K.B. 267; [1911] 1 K.B. 311; 103 L. T. 509; 74 J. P. 480; 11 Asp. M.C. 512—D.

Signed Agreement for Wages—Oral Agreement for Payment of Extra Monthly Sum — Whether Extra Sum Recoverable.]—The plaintiff, who was a ship's steward, signed an agreement under sections 113 and 114 of the Merchant Shipping Act, 1894, by which his wages were to be 10*l.* per month. For one or two voyages he was also allowed a commission of 5 per cent. upon the profits made by the bar of which he was in charge. The superintendent steward thereafter arranged with him that, instead of receiving a commission of 5 per cent. on the bar profits, he should be paid, in addition to his wages, a fixed sum of 5*l.* per month. This arrangement was not inserted in the agreement signed by the plaintiff. In an action by the plaintiff claiming 10*l.*, being the amount of such extra payment of 5*l.* for two months, the jury found that there was an agreement under which the plaintiff was to be paid the extra sum of 5*l.* per month:—*Held*, that as the jury found that the 5*l.* per month was due contractually, it was part of the plaintiff's wages and ought to have appeared in the agreement signed by him; and that as it did not so appear he was not entitled to recover. *Thompson* v. *Nelson, Lim.*,

82 L. J. K.B. 657; [1913] 2 K.B. 523; 108 L. T. 847; 12 Asp. M.C. 351; 29 T. L. R. 422—D.

Termination of Service by Reason of Wreck.]—An Atlantic liner left Southampton on September 20 on a voyage to New York, and shortly afterwards came into collision with another vessel. In consequence of the damage thereby caused to her she returned on the next day under her own steam to Southampton, and discharged her passengers and cargo, and after receiving temporary repairs there she proceeded to Belfast, and was there thoroughly repaired, and on November 29 she was able to proceed to sea. The owners having on September 22 discharged the crew and tendered them three days' wages, two members of the crew commenced proceedings against the owners claiming, under section 162 of the Merchant Shipping Act, 1894, one month's wages as compensation for the damage caused to them by being improperly discharged. The plaintiffs had on September 16 signed articles by which they were to serve on board the ship for a voyage from Southampton to New York or other Atlantic ports trading as might be required until the ship returned to a final port of discharge in the United Kingdom for any period not exceeding twelve months, at monthly wages, and they had joined the ship on September 20. The defendants relied on section 158, which provides that "Where the service of a seaman terminates before the date contemplated in the agreement by reason of the wreck or loss of the ship . . . he shall be entitled to wages up to the time of such termination, but not for any longer period.": —*Held* (Kennedy, L.J., dissenting), that, inasmuch as the ship had by the damage caused to her by the collision been rendered incapable of continuing her voyage, the service of the plaintiffs had been terminated by reason of the wreck of the ship, and therefore the defendants were entitled to judgment. *The Olympic*, 82 L. J. P. 41; [1913] P. 92; 108 L. T. 592; 12 Asp. M.C. 318; 57 S. J. 388; 29 T. L. R. 335—C.A.

Suing for Wages in Court of Summary Jurisdiction — Decision "shall be final" — Appeal by Special Case.]—By section 164 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), it is provided that "a seaman or apprentice to the sea service, or a person duly authorised on his behalf, may, as soon as any wages due to him, not exceeding fifty pounds, become payable, sue for the same before a court of summary jurisdiction in or near the place at which his service has terminated, or at which he has been discharged, or at which any person on whom the claim is made is or resides, and the order made by the court in the matter shall be final." Certain seamen made claims upon the appellants, who were shipowners, for extra wages which had been promised to them by the captain of one of the ships of the appellants during the time that the ship was journeying from a foreign port to Southampton, and the Justices of Southampton allowed the claims. Upon the application of the respondents, however, the Justices agreed to state a Special Case for the consideration of the High Court:—*Held*, following the case of *Westminster Corporation* v. *Gordon Hotels* (77 L. J. K.B. 520; [1908] A.C. 142), that the judgment given by the Justices was final, and that there was no power to state a Case. *Wills* v. *McSherry*, 83 L. J. K.B. 596; [1914] 1 K.B. 616; 110 L. T. 65; 78 J. P. 120; 12 Asp. M.C. 426—D.

Declaration of War During Voyage—War Risk — Refusal to Continue Voyage — Additional Remuneration — Implied Authority of Master to Bind Owners.]—If circumstances arise during a voyage which were not in the contemplation either of the owners of the vessel or of the crew at the time the agreement of service was entered into—such as a declaration of war—and as a result the crew have reasonable cause for apprehending danger to life and limb, they are entitled to demand extra remuneration as a condition of continuing the voyage, and the master of the vessel has, in order to retain the services of the crew, implied authority from the owners to enter into an agreement on their behalf with the crew for the payment of such additional remuneration. *Liston* v. "*Carpathian*" (*Owners*), 84 L. J. K.B. 1135; [1915] 2 K.B. 42; 112 L. T. 994; 20 Com. Cas. 224; 31 T. L. R. 226—Lord Coleridge, J.

Detention of Ship in Enemy Port on Outbreak of Hostilities — "Loss" of Ship — Termination of Services of Seaman.] — By article 1 of the Hague Convention (No. VI.), 1907, where a merchant ship is in an enemy port at the outbreak of hostilities, "it is desirable" that it should be allowed to leave. By article 2, a ship unable to avail itself of this opportunity or not allowed to leave may not be confiscated, but may be detained by the enemy without compensation until the close of the war, or may be requisitioned by the enemy on payment of compensation. The defendant's ship was detained at Hamburg and not requisitioned on the outbreak of the war with Germany, and the crew interned:—*Held*, by the Court of Appeal (Swinfen Eady, L.J., and Bankes, L.J.; Phillimore, L.J., dissenting), affirming the decision of Rowlatt, J., that the service with the defendant of the plaintiff's husband, one of the crew, was not terminated by reason of the "loss" of the ship within the meaning of section 158 of the Merchant Shipping Act, 1894, and that consequently the plaintiff, a person in whose favour an allotment note had been made by her husband, was entitled to recover from the defendant the sum allotted thereby out of her husband's wages in respect of the period succeeding the detention of the ship. *Beal* v. *Horlock*, 84 L. J. K.B. 2240; [1915] 3 K.B. 627; 59 S. J. 716; 31 T. L. R. 619—C.A.

Overtime—Right to Extra Wages.]—A seaman is bound to give his full services in return for the wages agreed to be paid in his articles, and he cannot recover for overtime. *Harrison* v. *Dodd*, 111 L. T. 47; 78 J. P. 206; 12 Asp. M.C. 503; 30 T. L. R. 376—D.

Deductions from Seamen's Wages.] — *See Halliday* v. *Taffs* and *Deacon* v. *Quayle*, *ante*, col. 1419.

2. Distressed Seaman.

Maintenance — Disease Due to Seaman's Misconduct — Medical Expenses — Passage Money to Return Port — Liability of Shipowner.] — Where a seaman belonging to a British ship, who was without means, was left behind at a port of the United Kingdom suffering from venereal disease, and the expenses of his maintenance and surgical and medical attendance and of his conveyance to a return port were defrayed by his Majesty's Consul at the port,—*Held*, that the owners of the ship were liable under the Merchant Shipping Act, 1906, for the expenses of his maintenance in the sense of board and lodging, and for his conveyance home, but not for medical or surgical expenses. *Board of Trade* v. *Anglo-American Oil Co.*, 80 L. J. K.B. 835; [1911] 2 K.B. 225; 104 L. T. 497; 16 Com. Cas. 151; 11 Asp. M.C. 599; 29 T. L. R. 344—Scrutton, J.

3. Desertion, Misconduct, and Forfeiture.

Attempting to Persuade Seaman to Refuse to Join "his ship" — Seaman Engaged, but Articles not Signed.] — C. was engaged at Whitby by the agent of the British steamship *Japanese Prince* to serve on board that steamer as a seaman, and was ordered to go to Middlesbrough to join the ship, the railway fare being advanced by the owners. C. went on board the steamer at Middlesbrough and his discharge book was taken and kept by an officer of the steamer. The next day C. was ordered to go to the Board of Trade offices to sign articles, and left the steamer with that object. Before C. signed the articles the appellant approached him and advised him not to go to sea on board the *Japanese Prince*. C. subsequently signed the articles, but in consequence of the appellant's advice did not proceed to sea, but remained on shore, leaving his discharge book and kit on board the *Japanese Prince*:—*Held*, that the *Japanese Prince* was C.'s ship notwithstanding that he had not signed the articles, and that therefore the appellant had been properly convicted under section 236, subsection 1 of the Merchant Shipping Act, 1894, of attempting "to persuade a seaman or apprentice to neglect or refuse to join or proceed to sea in . . . his ship." *Vickerson* v. *Crowe*, 83 L. J. K.B. 469; [1914] 1 K.B. 462; 110 L. T. 425; 78 J. P. 88; 12 Asp. M.C. 446; 24 Cox C.C. 122; 30 T. L. R. 111—D.

4. Determination of Disputes between Owner and Seaman.

Fishing Boat — Determination by Deputy-superintendent of a Marine Office.]—A deputy-superintendent, duly appointed, has the same power of hearing and determining a dispute between the owner of a fishing boat and a seaman of the boat, under section 387, subsection 1 of the Merchant Shipping Act, 1894, with regard to the matters therein specified, as are thereby conferred on a superintendent. *Mayhew* v. *Tripp*, 83 L. J. K.B. 778; [1914] 2 K.B. 455; 110 L. T. 1002; 12 Asp. M.C. 505—D.

V. PILOT AND PILOTAGE.

See also Vol. XIII. 141, 2005.

Ship Navigating within Compulsory Pilotage District—Ship Stopping Outside Port within Compulsory Pilotage District for Orders — Orders taken to her by Boat Coming out of Port—"Making use of any port in the district."]—Under section 11 of the Pilotage Act, 1913, "Every ship (other than an excepted ship) while navigating in a pilotage district in which pilotage is compulsory for the purpose of . . . making use of any port in the district . . . shall be either—(*a*) under the pilotage of a licensed pilot of the district; or (*b*) under the pilotage of a master or mate possessing a pilotage certificate for the district who is *bona fide* acting as master or mate of the ship." A ship, which was not an excepted ship, in the performance of her charterparty had to proceed to Dover to receive orders as to her port of discharge. She passed Dungeness and proceeded to Dover, where she stopped for half an hour about a quarter of a mile outside the end of the Admiralty Pier, when a boat came out of the port with orders for her to proceed to Hamburg, to which port she immediately proceeded. The London pilotage district extends to Dungeness, and the port of Dover is within that district. Neither the master nor the mate of the vessel held a pilotage certificate for the district:—*Held*, that the ship, by stopping outside the port of Dover for orders, was making use of that port within the meaning of section 11 of the Pilotage Act, 1913, and was therefore bound, while navigating in the London pilotage district for which pilotage is compulsory for the purpose of making use of a port in that district, to be under the pilotage of a licensed pilot of the district. *Cannell* v. *Lawther, Latta & Co.*, 83 L. J. K.B. 1832; [1914] 3 K.B. 1135; 20 Com. Cas. 29; 12 Asp. M.C. 578; 30 T. L. R. 680—Bailhache, J.

Delegation by Master of his Duty to Unpaid Pilot — Contributory Negligence.] — A pilot allowed to be in control of the plaintiff's ship by her master for his own convenience negligently ran her ashore off Barry, in the Bristol Channel. The pilot was a volunteer in the sense that he was not to be paid for piloting the ship until she reached Flatholm, which is beyond Barry. In an action brought by the shipowners against the pilot,—*Held*, that although the pilot was negligent, the master had no right to give up control of the vessel to an unpaid pilot, and was guilty of contributory negligence in so doing, and the owners therefore could not succeed in their action. *The Bonvilston*, 30 T. L. R. 311—Bargrave Deane, J.

Pilot Admitting Liability in Damages to Several Claimants for Neglect—Limitation of Liability to a Maximum Sum — Aggregate Claims Exceeding Maximum Sum—Action by one of Claimants — Defence — Payment into Court of Part of Maximum Sum Proportionate to Claim.]—Where a Trinity House pilot has admitted his liability to different claimants in damages for neglect as a pilot, but has not paid them—his liability being limited by sec-

tion 620 of the Merchant Shipping Act, 1894, to a certain maximum sum, which was less than the aggregate of the claims—it is not a defence to an action for the damages by one of the claimants that the defendant has paid into Court a sum of money sufficient to meet the proportionate part of the claim, which on a division of the above maximum sum amongst all the claimants according to the amount of their claims respectively would be due to the plaintiffs. The Court has no power to receive and distribute the fund rateably, and the plaintiffs are entitled to judgment, up to the maximum, for the full amount of their claim. *Deering* v. *Targett*, 82 L. J. K.B. 85; [1913] 1 K.B. 129; 107 L. T. 709; 12 Asp. M.C. 273; 57 S. J. 113; 29 T. L. R. 100—D.

When Compulsory.]—*See post*. COLLISION.

VI. CHARTERPARTY.

1. THE CONTRACT.

a. Parties.

See also Vol. XIII. 230, 2012.

Unseaworthy Ship—Liability of Owners—Master Servant of Owners.]—The plaintiffs shipped a cargo of cement on board a ketch for carriage from Northfleet to Fowey on the terms of a bill of lading dated June 17, 1913, which incorporated the conditions of a charterparty dated June 11, 1913. Both documents were executed by the master of the ketch, and contained no reference to the owners. In the course of the voyage the ketch sank, owing to its unseaworthy condition. The ketch belonged to two co-owners, of whom the defendant was the registered managing owner. There was no written document in existence containing the terms on which the ketch was worked, but it appeared from the evidence that it was worked on a system of thirds, under which the master kept two-thirds of the gross freights, and paid the crew and the costs of provisions and other expenses. The owners received the remaining one-third of the gross freights, subject to the deduction of harbour dues, towage, and brokerage, and they paid for the upkeep, repair, and insurance of the ship. The master engaged the crew, and he usually arranged the freights without consulting the owners beforehand. He could only be dismissed at the end of a voyage :—*Held*, that the master was not a bailee or hirer of the ship, but was the agent or servant of the owners, and that the defendant was therefore liable to the plaintiffs for the loss of the cargo of cement. *Burnard* v. *Aaron* (31 L. J. C.P. 334; 9 Jur. N.S. 470) distinguished. *Steel* v. *Lester* (47 L. J. C.P. 43; 3 C.P. D. 121) followed. *Associated Portland Cement Manufacturers* v. *Ashton*, 84 L. J. K.B. 519; [1915] 2 K.B. 1; 112 L. T. 486; 20 Com. Cas. 165—C.A.

Decision of Pickford, J. (110 L. T. 776), reversed. *Ib.*

Sale of Ship before Execution of Contract—Both Sellers and Buyers of Ship Ready and Willing to Perform Charterparty—Refusal of Charterers to Load—Damages.]—By a charterparty of the kind known as a berth contract made between the claimants, owners of a ship, and the charterers, it was agreed that the ship should proceed to a certain port of loading and there load a complete cargo to be delivered at a certain port of discharge. Before the ship reached the port of loading the claimants sold her to a company with the benefit of the berth contract, and the purchasers declared that they accepted the execution of that contract. Notice was given on behalf of the claimants to the charterers that the sale had taken place, and that the buyers would carry out the terms of the berth contract with the charterers. The ship was tendered by the buyers at the port of loading to the charterers, but they refused to load on the ground that by the sale of the ship the claimants had put it out of their power to perform the berth contract, and that by the assignment of it their rights under it ceased. The claimants demanded damages from the charterers for refusing to load. The matter came before an umpire, who found as a fact that the ship was duly tendered under the berth contract, that the claimants and the purchasers were always ready and willing to fulfil that contract, and that the charterers had been guilty of a breach of contract, for which he assessed the damages :—*Held*, by Court of Appeal, that the findings of the umpire meant that the claimants were in fact able, and were also ready and willing, to fulfil the berth contract, not merely through the buyers of the ship, but personally; and that the charterers were not therefore entitled to refuse to load, and were liable in damages to the claimants for such refusal. *Sorrentino* v. *Buerger*, 84 L. J. K.B. 1937; [1915] 3 K.B. 367; 21 Com. Cas. 33—C.A.

Judgment of Atkin, J. (84 L. J. K.B. 725; [1915] 1 K.B. 307), affirmed. *Ib.*

Sub-charterparty — Loss of Freight by Collision — Bill of Lading Signed by Sub-charterers—Right of Sub-charterers to Sue for Bill of Lading Freight.]—The plaintiffs were the sub-charterers of the *Ruggiero de Flores*, which was damaged in a collision due to the negligent navigation of the defendants' ship. The owners of the *Ruggiero de Flores* recovered from the defendants a sum which included an amount for chartered freight. The present plaintiffs, who were not parties to the collision action, now claimed to recover from the defendants the difference between the charterparty freight and the bill of lading freight, which the *Ruggiero de Flores* was in course of earning at the time the collision took place. By the charterparty and sub-charterparty, which were practically in identical terms, the captain was to be under the orders of the charterers (or sub-charterers) as regards employment, agency, and other arrangements, but the charterers (or sub-charterers) were to indemnify the owners from all consequences or liabilities that might arise from the captain signing bills of lading. The cargo was shipped by the plaintiffs, and the mate's receipts were handed to the plaintiffs, who signed the bills of lading and gave the captain orders to deliver the cargo at a particular port, where, if the collision had not occurred, it would have been taken delivery of

by the plaintiffs' agent :—*Held*, that the plaintiffs had sufficient interest in and possession of the cargo to enable them to bring the action. *The Okehampton*, 83 L. J. P. 5; [1913] P. 173; 110 L. T. 130; 12 Asp. M.C. 428; 18 Com. Cas. 320; 29 T. L. R. 731—C.A.

b. Generally.

i. *Form and Construction.*

See also Vol. XIII. 236, 2013.

Safe Port.]—A charterparty provided that a ship should "trade between any safe ports between Hamburg and Brest and the United Kingdom." The ship was ordered by the charterers to go to Craster, a port in the United Kingdom which was perfectly safe to make provided the sea were smooth, but which might become dangerous if a change of wind altered the conditions. At the time the vessel was ordered to Craster the sea was smooth :—*Held*, that the port was not a safe port within the meaning of the charterparty. *Johnston* v. *Saxon Queen Steamship Co.*, 108 L. T. 564; 12 Asp. M.C. 305—Rowlatt, J.

The term "port" in a charterparty is to be taken in a commercial sense and has not the same meaning as that given to it by pilotage and revenue Acts. In the case of King's Lynn it means the dock at that place. The expression "safe port" in a charterparty means a port to which a vessel can get laden as she is and at which she can lay and discharge, always afloat. *Hall Brothers Steamship Co.* v. *Paul, Lim.*, 111 L. T. 811; 12 Asp. M.C. 543; 19 Com. Cas. 384; 30 T. L. R. 598—Sankey, J.

Charterer to Pay all "dues"—Ship to Pay all "port charges" — Custom of Port of Santos.]—A charterparty contained the following clause : "The charterer paying all dues and duties on the cargo, and the steamer all port charges, pilotages, &c., as customary," and also provided that on arrival at Santos the steamer should discharge on the quay. At Santos a dock company has authority to enforce a tariff, being entitled (*inter alia*) to make a charge "for the use of the quay for loading and discharging goods and any merchandise." The plaintiffs' vessel having been discharged on to the quay, the charterers' agents at the port of Santos charged against the ship in accounts rendered the particular charge for cargo so delivered. In an action by the shipowners to recover the amount deducted, —*Held*, that the charge was not a "due" on the cargo, but a port charge falling on the steamer. *Societa Anonima Ungherese di Armamenti Marittimo* v. *Hamburg South American Steamship Co.*, 106 L. T. 957; 12 Asp. M.C. 228; 17 Com. Cas. 216—Hamilton, J.

"Consignees to effect discharge of cargo steamer paying 1s. per ton"—Sale of Cargo by Consignee—"Cost of stevedoring to be paid by" Purchaser — Right to Sum Payable by Steamer.] — The appellant had chartered a steamer to load a cargo of coal for Sydney. The charterparty contained the following clause : "Consignees to effect the discharge of the cargo, strike or no strike, steamer paying 1*s.* per ton of 20 cwt." Before the ship arrived the appellant sold the cargo to the Government of New South Wales on the terms (*inter alia*), "The Government to guarantee to discharge the vessel at not less than 500 tons per day, strike or no strike. The cost of stevedoring to be paid by the Government" :—*Held*, that the Government were entitled to retain the 1*s.* per ton payable as against the appellant. *White* v. *Williams*, 82 L. J. P.C. 11; [1912] A.C. 814; 107 L. T. 99; 17 Com. Cas. 309; 28 T. L. R. 521—P.C.

"Six or seven consecutive voyages during 1910."]—The plaintiffs chartered a ship under a charterparty which contained the following terms : "This charter to remain in force for six or seven consecutive voyages (in charterer's option) during 1910 . . . Steamers have liberty to load homeward cargoes to U.K. or Continent. Steamers to have liberty to dry dock." On the ship's arrival at the loading port for the first voyage the charterers were unable to load her owing to a strike, and, although she arrived on January 3, there would have been no cargo available until January 11. The ship accordingly did not load at that port, but proceeded to South Wales, where she loaded a cargo, which was carried to Italy, whence she returned to load under her original charter. The consequence was that she did not get home from her sixth voyage until after January 6, 1911, when the charterers purported to exercise their option to load for seven voyages :—*Held*, that the words "during 1910" were words of description and protection for both parties, the one being only bound to load, and the other only bound to supply, the steamer during 1910. *Pope* v. *Bavidge* (10 Ex. 73) not followed. *Dunford* v. *Compania Maritima Union*, 104 L. T. 811; 16 Com. Cas. 181; 12 Asp. M.C. 32; 55 S. J. 424—Scrutton, J.

Cargo when Signed for to be at Ship's Risk until Shipped on Board.] — A clause in a charterparty provided as follows : "The cargo to be ordered by the captain as required, and when signed for to be at ship's risk until shipped on board . . . but in all other respects, the act of God, perils of the sea . . . are always mutually excepted." The cargo, which consisted of sleepers, was brought alongside the vessel in rafts. A number of the sleepers were lost after being signed for on behalf of the shipowner and before they were shipped on board through perils enumerated in the exceptions :—*Held*, that the expression "at ship's risk" meant that the sleepers were at the absolute risk of the shipowner during the period between their being signed for and their being shipped on board, the excepted perils not applying to that period owing to their being prefaced by the words "but in all other respects." *Dampskibsselskabet "Skjoldborg"* v. *Calder*, 106 L. T. 263; 17 Com. Cas. 97; 12 Asp. M.C. 156—Bray, J.

War Risks—Contract to Insure—By whom to be Effected.]—On September 17, 1912, the defendants chartered a Dutch steamer from the plaintiffs under a five years' time charterparty containing the clause, "War risk, if any re-

quired, for charterers' account. It is understood and agreed that value for war risk at all times to be based on values stated in owners' annual policy." By further clauses the plaintiffs were to provide and pay for the ordinary insurance and nothing in the charterparty was to be construed as a demise of the steamer, and the owners were to remain responsible for navigation, insurance, crew, and all other matters, as when trading for their own account. The defendants did not insure the steamer against war risks, and on September 21, 1914, she was sunk at sea by a German cruiser when she was on a voyage under the charter from Portland, Oregon, with a cargo of wheat for Ireland. In an action by the plaintiffs against the defendants for failure to insure against war risks,—*Held*, that the words "war risks, if any required, for charterers' account" meant that the charterers were to bear the cost of insurance against war risks if such insurance was reasonably requisite, but the insurance was to be effected by the owners and not by the charterers, and therefore the plaintiffs' action failed. *Holland Gulf Stoomvaart Maatschappij* v. *Watson, Munro & Co.*, 32 T. L. R. 169—C.A. Reversing, 113 L. T. 178; 59 S. J. 458—Bailhache, J.

"Commandeering."] —The plaintiffs, who were coal merchants, chartered from the defendant a Greek steamer for the purpose of carrying coal, the charter providing that "Should steamer be commandeered by the Greek Government this charter shall be cancelled." When the steamer was at Marseilles, the Greek Government, in consequence of mobilisation, issued directions to all Greek steamers at Marseilles laden with coal to proceed immediately to the Piræus. The defendant thereupon gave notice to the plaintiffs that the steamer had been commandeered and that the charter had come to an end. Owing to a question of repairs the steamer did not leave Marseilles immediately, and she was ultimately released and never left Marseilles. In an action by the plaintiffs against the defendant for a declaration that the charterparty remained valid and binding upon him,—*Held*, that in the circumstances the steamer had been "commandeered" within the meaning of that word in the charterparty, as the Greek Government had issued directions that she should make the voyage home for Government purposes, and therefore the charterparty was cancelled. *Capel & Co.* v. *Souledi*, 32 T. L. R. 59—Atkin, J.

"Penalty for non-performance of this agreement, proved damages not exceeding estimated amount of freight" — Penalty not Limitation of Liability — Right to Sue for Damages Actually Sustained.]—By a charterparty dated June 5, 1914, the defendants agreed to provide the plaintiffs with a ship for three consecutive voyages from Goole to Oporto, to carry cargoes of coal at a fixed rate of freight per ton, the first voyage to begin in January, 1915. Clause 15 was as follows: "Penalty for non-performance of this agreement, proved damages not exceeding the estimated amount of freight." In January, 1915, the defendants refused to carry out the charter, with the result that the plaintiff was only able to secure vessels for the second and third voyages, but at increased freights. The plaintiff sued the defendants for breach of contract, claiming as damages the amount of freight, which he would have had to pay for the first voyage if he had been in time to secure a vessel, and the amount of the excess freights over chartered freight which he had to pay for the second and third voyages, together with extra insurance and rail freight caused by the defendants' breach of contract: *Held*, that the clause was a penalty clause and not a limitation of liability, and that the plaintiff could effect to claim the actual damage sustained by him, although exceeding the amount fixed by the clause. *Harrison* v. *Wright* (13 East, 343) followed. *Jureidini* v. *National British and Irish Millers Insurance Co.* (84 L. J. K.B. 640; [1915] A.C. 499) considered. *Wall* v. *Rederiaktiebolaget Luggude*, 84 L. J. K.B. 1663; [1915] 3 K.B. 66; 31 T. L. R. 487—Bailhache, J.

ii. *Hire—Payment and Duration of.*

See also Vol. XIII. 2015.

Date Specified for Termination of Hire—Retention of Vessel beyond Date Specified—Time Essence of Contract.]—By the terms of a charterparty a vessel was chartered from May 15-31, 1912, until October 15-31, 1912, at the rate of 615*l.* per current month, "hire to continue from the time specified for terminating the charter until her re-delivery to owners (unless lost) at a port on east coast of United Kingdom between the 15th and 31st October, 1912." On October 18, 1912, the vessed was at West Hartlepool, and upon that day she was despatched by the charterers on a voyage from which, to the knowledge of the charterers, it was impossible that she could return in time to be re-delivered to the owners by October 31. She was in fact re-delivered on November 20. The current rate obtainable for the vessel on October 31 was 900*l.* per month, and the owner sought to recover from the charterers damages for twenty days' detention of the ship calculated at the difference between the current rate and the chartered rate for the period in question: —*Held*, that the clause in the charterparty set out above indicated an intention on the part of the parties to make the time specified in the charter for the re-delivery of the vessel of the essence of the contract, and that as she was not re-delivered by October 31, the charterers had committed a breach of contract for which they were liable in damages at the rate claimed. *Watson Steamship Co.* v. *Merryweather*, 108 L. T. 1031; 18 Com. Cas. 294; 12 Asp. M.C. 353—Atkin, J.

Loss of Time through Deficiency of Men, Repairs, &c., Preventing Working of Vessel for more than Forty-eight Running Hours—Payment of Hire to Cease until Ship in Efficient State to Resume Service—Deduction of Hire during the First Forty-eight Hours.]—A clause in a charterparty provided that "In the event of loss of time through deficiency of men or stores, repairs, breakdown of machin-

ery, pumps, pipes, or boilers (whether partial or otherwise), collision or stranding, or damage preventing the efficient working of the vessel for more than forty-eight running hours, the payment of hire shall cease until she again be in an efficient state to resume her service." Time was lost from causes mentioned in the above clause for more than forty-eight hours :—*Held*, that the charterers were entitled to a cesser of hire for the whole of the time so lost, and not merely for the excess of that time over the first forty-eight hours. *Meade-King, Robinson & Co.* v. *Jacobs & Co.*, 84 L. J. K.B. 1133; [1915] 2 K.B. 640; 113 L. T. 298; 20 Com. Cas. 288; 31 T. L. R. 316—C.A.

Decision of Bailhache, J. (83 L. J. K.B. 1219; [1914] 3 K.B. 156), affirmed. *Ib.*

Time Charter — "Mutual exemptions" — Strike.]—In a time charterparty it was provided that "the owners and charterers shall be mutually absolved from liability in carrying out this contract in so far as they may be hindered or prevented . . . through strikes of any kind." The charterers ordered the ship to a port at which they knew a strike was prevailing, and where she stayed for about two months unable to load coal. The appellants claimed exemption from hire during this period :—*Held* (Lord Shaw dissenting), that the hire was payable inasmuch as the exemption only applied where a party to the contract was prevented from performing his part of the contract, which in the charterers' case was simply to pay the hire. *Held* also (Lord Shaw concurring on this point), that the charterers were not so prevented, as they might have taken the ship to a port where there was no strike. *Brown* v. *Turner, Brightman & Co.*, 81 L. J. K.B. 387; [1912] A.C. 12; 105 L. T. 562; 12 Asp. M.C. 79; 17 Com. Cas. 171—H.L. (E.)

Option, when Exercisable — Shipowner's Right to Call on Charterers to Exercise Option.]—Under an ordinary cancelling clause in a charterparty the shipowner cannot require the charterer to exercise his option whether he will load or not before the ship has arrived at the port of loading, although the ship may be manifestly behind time or although the date for arrival may be actually past. *Moel Tryvan Steamship Co.* v. *Weir*, 79 L. J. K.B. 898; [1910] 2 K.B. 844; 103 L. T. 161; 15 Com. Cas. 307; 11 Asp. M.C. 469—C.A.

Strike Clause—Charter to be Null and Void if Stoppage Lasts more than Six Days—Termination of Strike before Expiration of Six Days—Effect of Strike Continuing beyond the Six Days.]—A steamer was chartered to carry a cargo of coal from the Penarth Docks to Buenos Aires. The charterparty provided that "any time lost through riots, strikes, lockouts, or any disputes between masters and men occasioning a stoppage of pitmen, trimmers, or other hands connected with the working of the delivery of the coal for which the steamer is stemmed . . . or any cause beyond the control of the charterers not to be computed as part of the loading time. . . . In the event of any stoppage or stoppages arising from any of these causes continuing for the period of six running days from the time of the vessel being ready to load this charter shall become null and void." The steamer was ready to load in Penarth Dock on April 4, 1912, at 1 P.M. At that time the great national strike of colliers of 1912 was in full force, so that no coal arrived at Penarth Dock for shipment. The strike came to an end on April 9, but as certain repairing and clearing-up work had first to be done at the collieries as a consequence of the strike no coal arrived at Penarth Docks for shipment by the steamer until the morning of April 11, more than six days after she was ready to load. The charterers claimed the right to cancel the charter as the stoppage had continued for six running days from the time the vessel was ready to load :—*Held*, that the charterers were entitled to cancel the charter, as the stoppage was a stoppage due to the strike, notwithstanding that it had continued two days beyond the time at which the strike itself had come to an end. *Gordon Steamship Co.* v. *Moxey*, 108 L. T. 808; 18 Com. Cas. 170; 12 Asp. M.C. 339—Bailhache, J.

Excepted Perils—Restraint of Princes—Detention of Greek Ship in Black Sea by Greco-Turkish War — Frustration of Adventure — Right of Charterers to Refuse to Load.]—The Greek steamer *Andriana* belonging to the plaintiff, was chartered by the defendants to proceed to a port in the sea of Azoff and there load a cargo of grain for the United Kingdom. Arrests and restraints of princes, rulers, and people were excepted by the charterparty. The *Andriana* arrived at Temriuk, her loading port, on October 1, 1912, and received some cargo. In view of the imminent probability of war the Turkish Government arrested all Greek vessels arriving in the Dardanelles after September 30, 1912, and war was declared between Greece and Turkey on October 18. The charterers on October 7 declined to continue loading as the ship was not in a position to carry out the charter, and on October 21 they purported to cancel the charter, but the plaintiff refused to accept that notice. The *Andriana's* lay days did not expire till October 22. The Turkish Government allowed laden Greek vessels to pass through the Dardanelles from October 16 to October 24, and unexpectedly they gave permission a second time for laden Greek vessels to pass through from November 12 to 19. As the *Andriana*, however, was not loaded she was unable to take advantage of that permission, and she was detained in the Black Sea till the close of the war. The plaintiff sued the defendants for breach of charterparty in not loading, and claimed damages for the detention of the ship during that period :—*Held*, that, inasmuch as on October 21, when the defendants purported to cancel the contract, an excepted peril—namely, restraint of princes—prevented the charter from being carried out by the vessel proceeding on her voyage, which restraint was likely to continue so long as to destroy the object of the commercial adventure, the defendants had not committed a breach of charterparty in not loading a cargo in the ship. The fact

that unexpectedly the restraint was removed for a short time did not impose upon the defendants the duty of foreseeing that unexpected event and proceeding in the performance of an adventure which seemed hopelessly destroyed. The defendants were entitled to act upon reasonable commercial probabilities at the time they had to decide what to do. *Embiricos* v. *Reid & Co.*, 83 L. J. K.B. 1348; [1914] 3 K.B. 45; 111 L. T. 291; 19 Com. Cas. 263; 12 Asp. M.C. 513; 30 T. L. R. 451—Scrutton, J.

2. Exemptions from Liability.

See also Vol. XIII. 273, 2027.

Liability of Shipowner for "damage to cargo occasioned . . . by improper opening of valves"—Valve Properly Opened, but Improperly Left Open.]—The plaintiffs chartered the defendants' steamship for the carriage of a cargo of grain from Sulina to London. The charterparty and bill of lading contained a clause exempting the defendants from liability for damage to the plaintiffs' cargo arising from ". . . perils, dangers and accidents of the sea or other waters of what nature and kind soever; . . . and all other accidents of navigation, and all losses and damages caused thereby . . . even when occasioned by negligence, default or error in judgment of the pilot, master, mariners or other servants of the shipowners." The clause also provided that "nothing herein contained shall exempt the shipowner from liability to pay for damage to cargo occasioned . . . by improper opening of valves, sluices and ports, or by causes other than those above excepted . . ." Whilst the defendants' steamship was lying at her moorings, loading the plaintiffs' cargo of grain under the charterparty and bill of lading, the circulating pump discharge valve in the side of the ship was properly opened by the defendants' engineers in order to prevent water freezing in the pipes. The engineers also opened the condenser doors for the purpose of draining water out of the pipes. The engineers, however, negligently omitted to close the condenser doors and the discharge valve when, owing to the loading, the discharge valve came near the water line. As the result, a quantity of sea water entered the ship and damaged the cargo. In an action for the damage caused thereby,—*Held*, that the words "damage to cargo occasioned . . . by the improper opening of valves," being in a commercial document, must be read in a business sense, and that so read they included the damage to cargo occasioned by the valve being improperly left open, and that therefore the defendants were liable. *Mendl* v. *Ropner*, 82 L. J. K.B. 75; [1913] 1 K.B. 27; 107 L. T. 699; 18 Com. Cas. 29; 12 Asp. M.C. 268; 57 S. J. 130; 29 T. L. R. 37—Bray, J.

Restraint of Princes—Detention of Greek Ship in Black Sea by Greco-Turkish War—Frustration of Adventure—Right of Charterers to Refuse to Load.]—The Greek steamer *Andriana*, belonging to the plaintiff, was chartered by the defendants to proceed to a port in the sea of Azoff and there load a cargo of grain for the United Kingdom. Arrests and restraints of princes, rules, and people were excepted by the charterparty. The *Andriana* arrived at Temriuk, her loading port, on October 1, 1912, and received some cargo. In view of the imminent probability of war the Turkish Government arrested all Greek vessels arriving in the Dardanelles after September 30, 1912, and war was declared between Greece and Turkey on October 18. The charterers on October 7 declined to continue loading as the ship was not in a position to carry out the charter, and on October 21 they purported to cancel the charter, but the plaintiff refused to accept that notice. The *Andriana's* lay days did not expire till October 22. The Turkish Government allowed laden Greek vessels to pass through the Dardanelles from October 16 to October 24, and unexpectedly they gave permission a second time for laden Greek vessels to pass through from November 12 to 19. As the *Andriana*, however, was not loaded she was unable to take advantage of that permission, and she was detained in the Black Sea till the close of the war. The plaintiff sued the defendants for breach of charterparty in not loading, and claimed damages for the detention of the ship during that period:—*Held*, that, inasmuch as on October 21, when the defendants purported to cancel the contract, an excepted peril—namely, restraint of princes—prevented the charter from being carried out by the vessel proceeding on her voyage, which restraint was likely to continue so long as to destroy the object of the commercial adventure, the defendants had not committed a breach of charterparty in not loading a cargo in the ship. The fact that unexpectedly the restraint was removed for a short time did not impose upon the defendants the duty of foreseeing that unexpected event and proceeding in the performance of an adventure which seemed hopelessly destroyed. The defendants were entitled to act upon reasonable commercial probabilities at the time they had to decide what to do. *Embiricos* v. *Reid & Co.*, 83 L. J. K.B. 1348; [1914] 3 K.B. 45; 111 L. T. 291; 12 Asp. M.C. 513; 19 Com. Cas. 263; 30 T. L. R. 451—Scrutton, J.

Requisition of Steamer by Admiralty as Troopship—Alterations to Structure—Implied Condition that Ship should be fit to Carry Oil—Claim by Shipowners of Termination of Contract owing to Requisition. — A tank steamer was chartered for a period of five years for the carriage of oil. The charterers were to have the liberty of sub-letting the steamer on Admiralty or other service without prejudice to the charterparty. The charterparty also contained an exceptions clause which included restraint of princes. During the continuance of the charterparty the steamer was requisitioned by the Admiralty for the carriage of troops, and certain structural alterations were made in her for that purpose. The shipowners claimed that the charterparty had been terminated or suspended by a restraint of princes and by a breach of the implied condition that the steamer should be fit to carry oil, which formed the basis of the contract; and that the requisitioning of

the steamer did not amount to a sub-letting :—*Held*, that there was no implied condition enforceable by the shipowners that the charterparty should be terminated when the steamer ceased to be fit to carry oil, and that the requisitioning of the steamer by the Admiralty during the continuance of the charterparty did not amount to a breach of the charterparty by the charterers, and that therefore the shipowners were not entitled to terminate the contract. *Tamplin Steamship Co.* v. *Anglo-Mexican Petroleum Products Co.*, 84 L. J. K.B. 2095; [1915] 3 K.B. 668; 31 T. L. R. 540—Atkin, J.

3. Provisions as to Bills of Lading and other Documents.

See also Vol. XIII. 278, 2029.

Effect of Bill of Lading — Cargo of Pit Props — Freight Payable "per intaken piled fathom"—Cargo Measured before Shipment by Different Method—Cargo Re-measured at Port of Discharge by Shipowners—Liability of Charterers for Cost of Re-measurement.]—A charterparty provided for the loading and delivery of a full and complete cargo of pit props, freight being payable at a rate "per intaken piled fathom." It also provided that bills of lading should be prepared on the form indorsed on the charterparty and should be signed by the master "measure unknown." The bill of lading presented by the shippers to the master for signature shewed that a certain quantity of fathoms measured on a different basis from that required by the charterparty had been shipped. The master signed the bill of lading, under protest, "measure unknown." The shipowners, on the discharge of the cargo in this country, had the timber piled, checked, and measured by independent persons according to the basis required by the charterparty, and then brought this action against the charterers to recover the expenses incurred by them in so doing :—*Held*, that the charterers were under an implied, if not an express obligation to have the timber measured according to the basis required by the charterparty, and to tender bills of lading to the master for signature containing a statement of such measurement; and that as the charterers had failed to fulfil that obligation they were liable to pay the reasonable expenses incurred by the shipowners in having the timber measured according to the basis required by the charterparty. *Merryweather & Co.* v. *Pearson & Co.*, 83 L. J. K.B. 1678; [1914] 3 K.B. 587; 111 L. T. 584; 12 Asp. M.C. 540; 19 Com. Cas. 402—Bailhache, J.

4. Performance.

See also Vol. XIII. 286, 2031.

Unseaworthiness of Ship—Deviation—Contract of Carriage.] — The appellants were owners of the *Wearside*. The respondents were the indorsees of a bill of lading which incorporated all the conditions, provisos, and exceptions in the charterparty. The charterparty authorised the vessel to deviate for the purpose of saving life and property, the master or owners to have an absolute lien on the cargo for all freight, dead freight, demurrage, and average. The charterers failed to provide a full cargo, and the master, obtaining additional cargo, so overloaded the ship as to make her unseaworthy; and in order to save crew and cargo the vessel was obliged to take refuge in the port of Halifax. The owners paid for repairs and compensated the owners of jettisoned cargo :—*Held*, that the deviation was justifiable, that the deviation and overloading did not put an end to the contract of affreightment, and that the owners had not lost their rights under the charterparty. *Steel & Co.* v. *Scott & Co.* (59 L. J. P.C. 1; 14 App. Cas. 601) distinguished. *Kish* v. *Taylor*, 81 L. J. K.B. 1027; [1912] A.C. 604; 106 L. T. 900; 12 Asp. M.C. 217; 17 Com. Cas. 355; 56 S. J. 518; 28 T. L. R. 425—H.L. (E.)

Decision of the Court of Appeal (80 L. J. K.B. 601; [1911] 1 K.B. 625) reversed, and that of Walton, J. (79 L. J. K.B. 1113; [1910] 2 K.B. 309), restored. *Ib.*

"Consignees to effect discharge of cargo steamer paying 1s. per ton"—Sale of Cargo by Consignee — "Cost of stevedoring to be paid by" Purchaser—Right to Sum Payable by Steamer.]—The appellant had chartered a steamer to load a cargo of coal for Sydney. The charterparty contained the following clause : "Consignees to effect the discharge of the cargo, strike or no strike, steamer paying 1*s.* per ton of 20 cwt." Before the ship arrived the appellant sold the cargo to the Government of New South Wales on the terms (*inter alia*), "The Government to guarantee to discharge the vessel at not less than 500 tons per day, strike or no strike. The cost of stevedoring to be paid by the Government" :—*Held*, that the Government were entitled to retain the 1*s.* per ton payable as against the appellant. *White* v. *Williams*, 82 L. J. P.C. 11; [1912] A.C. 814; 107 L. T. 99; 12 Asp. M.C. 208; 17 Com. Cas. 309; 28 T. L. R. 521—P.C.

Bills of Lading — Assignment — Cesser of Shipowner's Liability—Submission to Arbitration.]—The plaintiffs, who were the owners of the steamship *Den of Mains*, chartered her by charterparty dated April 26, 1911, to the defendants M. & Co., to load a cargo of beans at Vladivostock, and to proceed to a port in the United Kingdom and there deliver the cargo "agreeably to bills of lading." On June 10 a cargo of about 6,000 tons was loaded, and bills of lading made out to the order of M. & Co. or their assigns were signed by the master and handed to M. & Co.'s representative. M. & Co. had, by a contract dated April 27, 1911, sold the cargo to the defendants the B. Co. on the terms of a "basis delivered" contract, by clause 10 of which the contract was to be void as regarded any portion shipped which might not arrive. On June 12 the defendants M. & Co., under the contract of April 27, declared to the B. Co. that the beans had been shipped by steamship *Den of Mains*. On arrival of the vessel at Liverpool, the port of discharge, M. & Co. handed to the B. Co. the

bills of lading indorsed against a payment. When the discharge had been completed it was alleged that there was a shortage of 171 bags, and, the B. Co. having paid only in respect of the quantity actually delivered, M. & Co. instructed them to make a corresponding deduction from the freight, but the plaintiffs refused to acknowledge the claim for short delivery. A dispute having thus arisen, M. & Co. gave notice that they demanded an arbitration under a clause in the charterparty which provided for arbitration "by arbitrators, one to be appointed by each of the parties to this agreement, if necessary the arbitrators to appoint a third," and formally required the plaintiffs within seven clear days to appoint their arbitrator. The plaintiffs did not appoint an arbitrator, and the defendants after the expiry of the seven days gave notice of the appointment of a gentleman to act as sole arbitrator. On a summons for directions taken out by the plaintiffs,—*Held*, first, that there was nothing in the contract or the circumstances of the case to satisfy the Court that it was the intention of the shipowners and charterers that the responsibility of the former under the charterparty had ceased; and secondly, that the submission to arbitration came within section 6 of the Arbitration Act, 1889. "*Den of Airlie*" *Steamship Co.* v. *Mitsui*, 106 L. T. 451; 17 Com. Cas. 116; 12 Asp. M.C. 169—C.A.

Requisition of Ship by Admiralty—Rights of Owners and Charterers.]—A steamer was chartered from the owners for five years from December, 1912, for the carriage of petroleum and crude oil or its products, the charterers having liberty to sublet the steamer on Admiralty or other service without prejudice to the charterparty, the charterers, however, remaining responsible. A clause in the charterparty included restraints of princes. In February, 1915, the British Government requisitioned the steamer for Admiralty transport service, and she was then fitted up and used for the transport of troops. Disputes having arisen between the parties as to their rights under the charterparty, and having been submitted to arbitration,—*Held*, on a Case stated by the arbitrator, that the charterparty was not put an end to or suspended by the requisition, and the charterers and not the shipowners were entitled to the compensation offered by the Government. *Tamplin Steamship Co.* v. *Anglo-Mexican Petroleum Products Co.*, 84 L. J. K.B. 2095; [1915] 3 K.B. 668; 31 T. L. R. 540—Atkin, J.

VII. BILLS OF LADING.

1 Construction.

See also Vol. XIII. 306, 2035.

Craft Transit—"Vessel"—Barge—Unseaworthiness—Ambiguity.]—A bill of lading provided for the shipment of certain goods from London to Gloversville, in the United States of America, and contained a clause of exceptions which included damage from rain, frost, decay, pilferage, wastage, &c. It also contained exceptions in respect of damage or loss from boilers, &c., and "unseaworthiness, submerging or sinking of ship or admission of water into the vessel . . . unseaworthiness or unfitness of the vessel at commencement of, or before, or at any time during the voyage, perils of the sea, rivers, navigation or land transit of whatever nature or kind, and all damage, loss or injury arising from the perils or things above mentioned." At the end of the bill of lading were the words "All the above exceptions and conditions shall apply from the time when the goods come into the possession or custody of the carriers or their agents in warehouse or wharf in course of land or water transit or in any other situation." In a claim for damages by the shippers in respect of injury caused by the unseaworthiness of a barge in which the cargo was carried,—*Held*, that the word "vessel" in the bill of lading applied to the barge, and that, as a matter of construction, the last clause also had application to the barge, and the provision about unseaworthiness effectually protected the shipowners. *Weiner* v. *Wilsons and Furness-Leyland Line*, 102 L. T. 716; 54 S. J. 543—Hamilton, J. Affirmed, 103, L. T. 168; 15 Com. Cas. 294; 11 Asp. M.C. 413—C.A.

Incorporation of Terms of Charterparty—Goods "at charterers' risk"—Shipowners not Responsible for Leakage and Breakage—Negligence of Shipowners' Servants—Liability of Shipowners.]—By a bill of lading 900 barrels of tar were shipped on the defendants' steamship, in substitution for a timber cargo that was to have been loaded. The bill of lading, which was a timber bill of lading, contained a clause that the shipowners were not responsible for leakage and breakage, and the further clause "all other conditions and exceptions as per charterparty." The charterparty provided that the steamer was to be provided with a deckload at full freight "at charterers' risk," and it contained exceptions in favour of the shipowners in respect of accidents of navigation even when occasioned by the negligence of the shipowners' servants. The barrels of tar were carried on deck, and owing to a quantity of heavy timber being improperly stowed on the top of them, a large number were crushed and broken. In an action to recover damages in respect thereof,—*Held*, that the words "at charterers' risk" in the charterparty were not incorporated in the bill of lading; that the exception in the bill of lading that the shipowners were not to be accountable "for leakage and breakage" did not protect the shipowners where the leakage or breakage was due to the negligence of their servants; and that the shipowners were liable for the damage that had been occasioned to the barrels of tar. *The Modena*, 16 Com. Cas. 292; 27 T. L. R. 529—D.

—— **Custom of Port—Inconsistency with Terms of Bill of Lading.**]—A steamer loaded a cargo of barley in sacks at a North Pacific port, under a charterparty which stipulated for discharge at a "safe port or ports in the

United Kingdom . . . Vessel to discharge afloat with dispatch, according to the custom at port of discharge for steamers except as otherwise provided; cargo to be delivered at ship's tackles." The bills of lading acknowledged receipt of a certain number of sacks said to contain a certain weight of barley "to be delivered in the like good order and condition. . . . Freight for the said goods payable as per endorsement on charterparty, with average accustomed general average, if any, and all other conditions and exceptions as per charterparty." The consignees, to whom the bills of lading had been indorsed, ordered the ship to Leith, and claimed to take delivery of the cargo there in the sacks as shipped. The shipowners maintained that they were entitled to deliver it according to the custom of the port of Leith with regard to grain cargoes from North Pacific ports, whereby the cargo was bulked by the receivers' men in the hold, from which it was hoisted in tubs to the deck and poured into sacks of uniform size, the sacks being weighed on deck before being slung ashore. The consignees maintained that this custom was not binding on them in respect that it was unknown to them, and, further, that it was inconsistent with the terms of the bills of lading which implied that delivery was to be made in the original sacks, and with the terms of the charterparty which provided for delivery at the ship's tackles :—*Held*, that the consignees were bound by the custom of the port of Leith in respect, first, that the custom was imported into the bills of lading by the reference to the charterparty, and, secondly, that, as it had been made an express term of the contract it was immaterial whether it was known to the consignees or not; that it overrode the implication in the bills of lading that the cargo was to be delivered in the original sacks; and fourthly, that it was not inconsistent with the provision that the cargo should be delivered at the ship's tackles. *Strathlorne Steamship Co.* v. *Baird & Sons, Lim.*, [1915] S. C. 956—Ct. of Sess.

—— **Arbitration Clause.**]—A charterparty for the carriage of a cargo of timber stipulating for the discharge of the cargo with customary dispatch and for payment of demurrage in the event of the ship being longer detained, contained a clause that "any dispute or claim arising out of any of the conditions of this charterparty shall be adjusted at port where it occurs, and same shall be settled by arbitration." The bill of lading given for the cargo contained the words "all other terms and conditions and exceptions of charter to be as per charterparty." The shipowners having brought an action for demurrage against the holders of the bill of lading to whom the cargo had been consigned,—*Held*, that the arbitration clause of the charterparty was not incorporated in the bill of lading so as to entitle the defendants to have the action stayed, inasmuch as it only applied to the way of settling disputes between the parties to the charterparty and to disputes arising out of the conditions of the charterparty, but not to disputes arising out of the bill of lading. *The Portsmouth*, 81 L. J. P. 17; [1912] A.C. 1; 105 L. T. 257; 12 Asp. M.C. 23; 55 S. J. 615—H.L. (E.)

Decision of the Court of Appeal (80 L. J. P. 36; [1911] P. 54) affirmed. *Ib.*

Express Contract of Liability for Unseaworthiness—Ship Unseaworthy—Limitation of Time for Making Claims—Whether Limitation Applied in Case of Unseaworthiness — Transhipment of Goods.]—The indorsees of bills of lading sued the shipowners for breach of contract, and for damages for injury to the goods carried. The goods were shipped at Wellington, New Zealand, upon the *Clan Maclaren*. At Port Pirie some of the goods were transhipped into the *Geelong*. The *Clan Maclaren* arrived on April 13, 1912, and the *Geelong* on April 23. The goods were damaged owing to the unseaworthiness of the *Clan Maclaren*. Clause 3 of the bill of lading provided for the possible transhipment of goods. Clause 12 provided, "No claim that may arise in respect of goods shipped by this steamer will be recoverable unless made at the port of delivery within seven days from the date of steamer's arrival there." Clause 14 provided, "the shipowners shall be responsible for loss or damage arising from any unseaworthiness of the vessel when she sails on the voyage." No claim was made by the plaintiffs till more than seven days after the arrival of either vessel. Bailhache, J., held that as the *Clan Maclaren* was unseaworthy clause 12 of the bill of lading, which limited the time for making claims, had no application :—*Held*, that, as there was an express condition in the bill of lading making the shipowners liable for damage resulting from unseaworthiness, clause 12 applied. But *held* by Pickford, L.J., and Bankes, L.J., that the clause was not clear and unambiguous, and did not protect the shipowners as regards the goods transhipped from the *Clan Maclaren* to the *Geelong*. *Tattersall* v. *National Steamship Co.* (53 L. J. Q.B. 332; 12 Q.B. D. 297) and *Morris* v. *Oceanic Steam Navigation Co.* (16 T. L. R. 533) considered. *Bank of Australasia* v. *Clan Line Steamers*, 84 L. J. K.B. 1250; 113 L. T. 261; 21 Com. Cas. 13—C.A.

2 Effect of.

See also Vol. XIII. 314, 2039.

Conveyance Involving Transhipment—Unseaworthy Barge—Liability of Person Providing Barge.]—Where the owner of goods contracts with a steamship company under a through bill of lading for their conveyance and delivery, including transhipment by barge at a port *en route*, a company which contracts with the steamship company to supply a barge to tranship the goods commits a tort against the owners of the goods by supplying an unseaworthy barge and is liable to them for damages. *The Termagant*, 19 Com. Cas. 239; 30 T. L.R. 377—Bargrave Deane, J.

"Shipped in apparent good order and condition"—"Contents unknown"—Goods Shipped in Damaged Condition—Estoppel—Liability of Shipowners to Indorsees of Bill of Lading.]—Sugar in bags was shipped at a port in Mexico

for carriage to London. When put on board, the bags were in such a state that the mate made the following note on the receipt given by him: "Very wet and stained by contents." The bill of lading stated that the bags were "shipped in apparent good order and condition," and also contained the words "weight, contents . . . unknown." The sugar was in fact externally damaged before shipment by both fresh and sea water, and was not damaged by an excepted peril after shipment. In an action by indorsees of the bill of lading in respect of the damage to the sugar, held that the shipowners were estopped by the terms of the bill of lading from proving in accordance with the fact that the goods were in bad condition when shipped, and that as the sugar, which was stated in the bill of lading to have been shipped in apparent good order and condition, had been delivered damaged by an external cause not due to an excepted peril, the shipowners were liable for the difference between the value of sound sugar and the sugar as delivered. *Compania Naviera Vascongada* v. *Churchill & Sim* (75 L. J. K.B. 94; [1906] 1 K.B. 237) followed. *Martineaus* v. *Royal Mail Steam Packet Co.*, 106 L. T. 638; 12 Asp. M.C. 190; 17 Com. Cas. 176; 56 S. J. 445; 28 T. L. R. 364—Scrutton, J.

Exemptions — Short Delivery of Cargo — Unidentified Residue—Rights of Consignee.] — Where in discharging the cargo of a ship there is a shortage of delivery, and also a residue of unidentified goods, the shipowner cannot compel the consignees to take the unidentified goods as a *pro tanto* fulfilment of the contract to deliver. *Sandeman* v. *Tyzack and Branfoot Steamship Co.*, 83 L. J. P.C. 23; [1913] A.C. 680; 109 L. T. 580; 57 S. J. 752; 29 T. L. R. 694—H.L. (Sc.)

On the arrival of a ship laden with bales of jute at her port of discharge fourteen bales were found to be missing, and there were eleven bales which could not be identified as forming part of any of the consignments shipped. In an action by the shipowners for freight,—*Held*, that the consignees were entitled to set off the value of the fourteen bales not delivered, and could not be compelled to allocate amongst themselves the eleven bales unidentified in reduction of such short delivery, and that the shipowners were not protected by a clause in the bills of lading by which the ship was not to be liable "for inaccuracies, obliteration, or absence of marks, numbers, or description of goods shipped." *Ib.*

Spence v. *Union Marine Insurance Co.* (37 L. J. C.P. 169; L. R. 3 C.P. 427) distinguished. *Dictum* of Lord Russell of Killowen in *Smurthwaite* v. *Hannay* (63 L. J. Q.B. 737; [1894] A.C. 494) commented on. *Ib.*

Judgment of the Court of Session ([1913] S. C. 19) reversed. *Ib.*

Production of Bill of Lading.] — Observations on the rights and duties of the shipowner, the master, and the consignee in the event of the consignee being unable to produce the bills of lading for the cargo at the port of discharge. *Carlberg* v. *Wemyss Coal Co.*, [1915] S. C. 616—Ct. of Sess.

Non-delivery at Port of Loading.] — The plaintiffs bought from the defendants under a c.i.f. contract, for delivery in London, 100 tons of block gambier, which the defendants declared per their steamship Selandia sailing from Singapore. The block gambier had been shipped under a bill of lading making it deliverable in Copenhagen. On the arrival of the vessel in London the defendants, not having received the bill of lading, gave the plaintiffs delivery orders against payment, but when these were presented delivery was refused, and the vessel took the goods on to Copenhagen. More than a month later the goods were delivered to the plaintiffs in London. Meanwhile, the plaintiffs had suffered loss by a fall in the market. The plaintiffs also bought under a c.i.f. contract, for delivery in London, a parcel of pepper from C. M. & Co., who had bought it from the defendants and who declared it per the same vessel sailing on the same voyage. The bill of lading provided for delivery at Copenhagen, and it was indorsed by the defendants "To be delivered in London" and was then handed to the plaintiffs against payment. Delivery in London was refused, and the pepper was carried on to Copenhagen and thence back to London. Meantime, there had been a fall in the market with a resulting loss to the plaintiffs. The conditions in both bills of lading provided that the ship might carry the goods beyond their destination, and that the shipowners were not to be responsible for loss arising from late or wrong delivery or overcarriage. In an action by the plaintiffs to recover from the defendants the amount of the loss,—*Held*, that as in the case of the block gambier the defendants did not deliver a bill of lading answering the requirements of the contract they could not in that case rely upon the conditions in the bill of lading, and as in the case both of the block gambier and the pepper the conditions did not apply where the vessel had actually been in the port of destination of the goods for the purpose of delivering cargo, the defendants were liable for the loss. *Sargant* v. *East Asiatic Co.*, 32 T. L. R. 119—Bailhache, J.

3. Exemptions from Liability.

a. Seaworthiness, Warranty.

See also Vol. XIII. 325, 2041.

Exception from Liability for Latent Defect—Incorporation in Bill of Lading of Australian Sea Carriage of Goods Act, 1904.]—A bill of lading contained a stipulation that "any latent defects in the hull and tackle shall not be considered unseaworthiness, provided the same did not result from want of due diligence of the owner . . . or manager." By a "clause paramount" it was provided that the bill of lading was "to be read and construed as if every clause therein contained which is rendered illegal or null or void by the [Australian] Sea Carriage of Goods Act, 1904, had never been inserted therein." By that Act it is provided that in every bill of lading a warranty

of seaworthiness shall be implied, and that any clause in a bill of lading, whereby any obligation to exercise due diligence and to properly equip the ship, to make her seaworthy, and to make the ship's hold fit for cargo, is lessened or avoided, shall be null and void: *Held*, that the incorporation of that Act in the bill of lading did not render the stipulations as to latent defects null and void; and that it was open to the shipowners, sued for damages to the cargo arising from unseaworthiness due to defects in the ship, to establish as a defence that the defects were latent and did not result from want of due diligence on their part. *Charlton & Bayshaw* v. *Law & Co.*, [1913] S. C. 317—Ct. of Sess.

Through Bill of Lading—Goods to be Transhipped at Ship's Expense and Shipper's Risk — Damage to Goods during Transhipment through Unseaworthiness of Lighter—Negligence—Liability of Shipowner.]—Goods were shipped at New York, under a through bill of lading, for conveyance to a port in Sweden *via* Hull. By the bill of lading the goods were to be delivered in good order and condition at Hull, "to be thence transhipped at ship's expense and shipper's risk to the port of N," the carrier to "have liberty to convey goods in craft and or lighters to and from the steamer at the risk of the owners of the goods." The goods arrived safely at Hull, and were there put on board a lighter in order to be transhipped into a vessel bound for N. in Sweden. The lighter was unseaworthy and sank in the dock, and the goods were damaged:—*Held*, that the shipowners were guilty of negligence, and were not protected by the clause in the bill of lading. *Wilson, Sons & Co.* v. "*Galileo*" (*Cargo Owners*); *The Galileo*, 83 L. J. P. 102; [1915] A.C. 199; 111 L. T. 656; 12 Asp. M.C. 534; 19 Com. Cas. 459; 30 T. L. R. 612—H.L. (E.)

Judgment of the Court of Appeal (83 L. J. P. 27; [1914] P. 9) affirmed. *Ib.*

b. Fire.

Exclusive of Section 502 of Merchant Shipping Act.]—A bill of lading provided that the goods were to be delivered "in the like good order and condition subject to the clauses and conditions expressed in this bill of lading, which constitutes the contract of freight between the shipowners, shippers, and consignees." It also provided that "the shipowners and/or charterers are not responsible for any loss, detention, or damage to the goods or the consequences thereof, or expenses occasioned by any of the following causes, viz.: . . fire on board, in hulk, in craft, or on shore; explosions, heat, defects in hull, tackle, engines, boilers, machinery, or their appurtenances, or accidents arising therefrom; perils of the seas . . . and all accidents of navigation . . .; nor for any act, neglect, or default of the pilot, master, crew, stevedores, engineers, or agents of the shipowners . . . or by unseaworthiness of the ship at the commencement of or at any period of the voyage, provided all reasonable means have been taken to provide against such unseaworthiness, or by any other cause whatever":—*Held*, that the parties had by the terms of the bill of lading excluded the operation of section 502 of the Merchant Shipping Act, 1894, and that it was intended that the shipowners should be liable for loss of goods by fire if they had failed to take reasonable means to provide against unseaworthiness. *Virginia Carolina Chemical Co.* v. *Norfolk and North American Steam Shipping Co.* (*No.* 1), 81 L. J. K.B. 129; [1912] 1 K.B. 229; 105 L. T. 810; 12 Asp. M.C. 82; 17 Com. Cas. 6; 28 T. L. R. 85—C.A. Questions of fact directed to be tried, 82 L. J. K.B. 389; [1913] A.C. 52—H.L. (E.)

The Court of Appeal having decided as a preliminary question of law that section 502 of the Merchant Shipping Act, 1892, which exempts the owner of a British sea-going ship from liability for loss or damage to goods by fire where the loss or damage happens without his actual fault or privity, applies to protect the shipowner, even although there has been a breach by him of the warranty of seaworthiness, but that the parties to a contract for carriage of goods by sea may, by the terms of their contract, exclude the operation of this section, and that on the construction of a bill of lading the parties had excluded the operation of the section, the House of Lords, on appeal thereto from the Court of Appeal's decision, directed that the facts should be ascertained before the preliminary question of law could be decided. On the re-hearing,—*Held*, that the vessel in question was not unseaworthy when she started on her voyage, and that the fire which caused the damage to the plaintiff's goods was occasioned by an act of negligence on the part of one of the ship's engineers, for which act of negligence the shipowners were exempt from liability by the terms of the bill of lading. *Virginia Carolina Chemical Co.* v. *Norfolk and North American Steam Shipping Co.* (*No.* 2), 107 L. T. 320; 17 Com. Cas. 277; 56 S. J. 722; 28 T. L. R. 513—Hamilton, J.

The plaintiffs shipped goods on board the defendants' vessel. The bill of lading provided that the goods were "to be delivered subject to the exceptions and conditions herein mentioned, in the like good order and condition." Among the exceptions thus referred to were the following: "1. Fire on board, in hulk or craft, or on shore, stranding and all accidents, loss and damage whatsoever from defects in hull, tackle, apparatus . . . or from perils of the seas . . . or from any act, neglect or default whatsoever of the pilot, master, officers, engineers, crew, stevedores, servants, or agents of the owners and/or charterers, ashore or afloat, in the management, loading, stowing, discharging, or navigation of the ship, or other craft, or otherwise, the owners and/or charterers being in no way liable for any consequences of the causes before mentioned." "11. It is agreed that the maintenance by the shipowners of the vessel's class (or, in the alternative, failing a class, the exercise by the shipowners and/or charterers or their agents of reasonable care and diligence in connection with the upkeep of the ship) shall be considered a fulfilment of every duty, warranty, or obligation, and whether before or after the

commencement of the said voyage." The plaintiffs' goods were lost without the actual fault or privity of the defendants by reason of fire on board the ship. The ship was unseaworthy at the commencement of the voyage owing to the insufficient packing and bad stowage of a quantity of metallic sodium which was taken on board. The fire was caused by sea water coming in contact with the sodium :—*Held*, that there was nothing in the terms of the bill of lading which shewed an agreement by the parties to exclude the operation of section 502 of the Merchant Shipping Act, 1894, which exempts the owner of a British seagoing ship from liability for the loss of goods happening without his actual fault or privity by reason of fire on board the ship. *Ingram & Royle, Lim.* v. *Services Maritimes du Tréport* (*No.* 1), 83 L. J. K.B. 382; [1914] 1 K.B. 545; 109 L. T. 733; 19 Com. Cas. 105; 12 Asp. M.C. 387; 58 S. J. 172; 30 T. L. R. 79—C.A.

Virginia Carolina Chemical Co. v. *Norfolk and North American Steam Shipping Co.* (81 L. J. K.B. 129; [1912] 1 K.B. 229; appeal compromised in H.L., 82 L. J. K.B. 389; [1913] A.C. 52) distinguished. *Ib.*

Judgment of Scrutton, J. (82 L. J. K.B. 374; [1913] 1 K.B. 538), reversed. *Ib.*

c. Restraints of Princes.

Goods Shipped on Board Vessel with Foul Bill of Health—Decree of French Government as to Fumigation of Ship.]—By a decree of the French Government in force since 1906 it was enacted that a process for the destruction of rats on board ships, and known as *dératisation*, by means of sulphur fumigation, should be compulsorily effected upon any vessel coming from a port considered to be contaminated by plague and seeking to obtain admission to the port of Marseilles. In 1914, under a bill of lading which contained the exceptions of "restraints of princes" and "any circumstances beyond the shipowner's control," and gave the ship liberty to call at any ports in the course of the voyage, the shipowners received from the plaintiff a quantity of lemons at Naples for carriage to London. The ship had come from Mombasa with a foul bill of health to Naples, where, after loading her cargo, she proceeded to Marseilles. There, owing to the fact that Mombasa was a plague-contaminated port, the ship was, in accordance with the decree, subjected by the authorities to the process of *dératisation*, with the result that the lemons were damaged. In an action by the plaintiffs for the loss,—*Held*, (1) that the shipowners were not exempt from liability under the exceptions in the bill of lading; and (2) that, owing to the fact that the ship and cargo would inevitably have to undergo the process of *dératisation* at Marseilles, with resulting damage to the lemons, the ship was not reasonably fit at Naples for the carriage thereof, and was therefore unseaworthy. *Ciampa* v. *British India Steam Navigation Co.*, 84 L. J. K.B. 1653; [1915] 2 K.B. 774; 20 Com. Cas. 247—Rowlatt, J.

Danger from Minefields—Safe Port—Parcel of Beans—Prohibition of Export.]—The plaintiffs were the holders of a bill of lading dated before the war, and containing the exception "restraint of princes," and relating to a parcel of soya beans which formed part of the cargo of a steamship belonging to the defendants. By the terms of the bill of lading the vessel was to call at Port Said for orders, and to deliver the beans at the port there ordered, or so near thereto as she might safely get. Orders were duly given for Amsterdam in October, 1914. The vessel had other cargo for Hull, and on her arrival there the defendants, owing to danger from minefields, declined to let her go on to Amsterdam, claiming that they had performed their bill of lading obligations, and on non-payment of the freight they lightered and warehoused the beans. Meantime the authorities ordered the beans to be detained pending enquiry, and ultimately they prohibited their export. In an action by the plaintiffs for failure to carry the beans to Amsterdam, the defendants counterclaimed for freight and lighterage and warehouse charges :—*Held*, that though the passage from Hull to Amsterdam was not so attended with danger from minefields as to make Amsterdam not a safe port, and the defendants broke their contract by not sending the vessel there, yet as the exception "restraint of princes" excused their failure to carry to Amsterdam, they were immune from resultant damages, but they could not recover the freight and lighterage and warehouse charges. *Semble*, that the words "so near thereto as she may safely get" in the bill of lading did not cover the port of Hull. *East Asiatic Co.* v. *Tronto S.S. Co.*, 31 T. L. R. 543—Bailhache, J.

d. Other Exceptions.

See also Vol. XIII. 338, 2052.

Ship not Liable "for inaccuracies, obliteration, or absence of marks," &c.] — On the arrival of a ship laden with bales of jute at her port of discharge fourteen bales were found to be missing, and there were eleven bales which could not be identified as forming part of any of the consignments shipped. In an action by the shipowners for freight,—*Held*, that the consignees were entitled to set off the value of the fourteen bales not delivered, and could not be compelled to allocate amongst themselves the eleven bales unidentified in reduction of such short delivery, and that the shipowners were not protected by a clause in the bills of lading by which the ship was not to be liable "for inaccuracies, obliteration, or absence of marks, numbers, or description of goods shipped." *Sandeman* v. *Tyzack and Branfoot Steamship Co.*, 83 L. J. P.C. 23; [1913] A.C. 680; 109 L. T. 580; 57 S. J. 752; 29 T. L. R. 694—H.L. (Sc.)

Spence v. *Union Marine Insurance Co.* (37 L. J. C.P. 69; L. R. 3 C.P. 427) distinguished. *Dictum* of Lord Russell of Killowen in *Smurthwaite* v. *Hannay* (63 L. J. Q.B. 737; [1894] A.C. 494) commented on. *Ib.*

Judgment of the Court of Session ([1913] S. C. 19) reversed. *Ib.*

Strikes — Clause Exempting Shipowners from Liability in Certain Circumstances.]—The *A.*, owned by the O.S. Co., Lim., and

managed by A. H. & Co., left Adelaide on April 10 last, bound to London and Liverpool with a general cargo including 2,794 sacks of flour belonging to plaintiffs, and including fruit and meat in her refrigerating chambers. Plaintiffs' flour was for delivery in London. The *A.* arrived at Gravesend at 9.38 A.M. on May 24 (Friday before Whit-Sunday), and at the time there was a strike throughout the Port of London which would or might have prevented the discharge in London of the cargo in the *A.* The strike also would or might have prevented the loading of coal on the *A.* necessary for the working of her refrigerator. The vessel, which had only 100 tons of coal on board, equal to one day's consumption for refrigerator and steaming purposes, required an immediate further supply of coal. There was no way of ascertaining how long the strike would last, and in fact the strike continued till the month of August. Under these circumstances the *A.* proceeded at once to the Hook of Holland, arriving there on May 25, where she took a sufficient quantity of coal on board. Learning that the strike still continued, she proceeded on May 26 towards Liverpool, where she arrived on May 28, and discharged her cargo, including plaintiffs' cargo and other London cargo. A. H. & Co., by their agents, J. S. & Sons, of London, notified all the owners of London cargo by circular of May 25 that it was being discharged at Liverpool, and offering delivery there. Plaintiffs declined to take delivery elsewhere than in London. Plaintiffs' cargo was brought freight free to London at the beginning of July by the steamship *P.*, another steamer managed by A. H. & Co., and was delivered to plaintiffs in London. As a result of the discharging of the plaintiffs' cargo at Liverpool instead of London, transhipment expenses and dock dues at Liverpool amounting to 30*l.* 15*s.* 7*d.* were paid by the defendants to the Mersey Docks and Harbour Board, and were charged to the plaintiffs by the defendants. Of this the plaintiffs had paid 30*l.* under protest, and now sought to recover the said sum. The important clause of the bill of lading, leaving out the immaterial words, was to this effect: "If the master reasonably anticipates that delivery will be impeded at the port of delivery by strikes, the master may at any point of the transit, at the risk and expense of the owner of the goods, tranship or land or otherwise dispose of the cargo, or any part thereof, and the same may be re-shipped or forwarded, or he may proceed on the voyage with the whole or part of the goods, and discharge the same on the return voyage, or forward them to their destination from another port always subject to the conditions of the forwarding conveyance. . . . If the discharge of the cargo be or threatens to be impeded by absence from whatever cause of facilities of discharge, the master to have liberty at ship's expense, but shipper's risk, to put the whole of the cargo into hulk, lighter. . . . Transhipment of cargo for ports where the ship does not call or for shipowner's purposes to be at shipowner's expense":—*Held*, that the plaintiffs were entitled to succeed, as in the events which happened the expenses were not thrown upon the owners of the goods. *Wiles* v. *Ocean Steamship Co.*, 107 L. T. 825; 12 Asp. M.C. 277; 57 S. J. 213—Bray, J.

Bill of Lading Incorporating Charterparty—Negligence Clause—Loss of Cargo by Negligence of Master and Crew—Liability of Shipowners.]—Where cargo-owners shipped goods under a charterparty in pursuance of a contract which stipulated that the charterparty should be in a particular form, and the bill of lading contained the words "all other conditions as per charterparty," the bill of lading was held to incorporate the charterparty, which contained a negligence clause exempting the shipowners from liability for negligence. The shipowners were accordingly held not liable for the jettison of cargo made necessary by the negligence of the master and crew. *The Draupner*, 79 L. J. P. 88; [1910] A.C. 450; 103 L. T. 87; 11 Asp. M.C. 436; 26 T. L. R. 571—H.L. (E.)

"Shipped in apparent good order and condition" — "Contents unknown" — Goods Shipped in Damaged Condition—Estoppel—Liability of Shipowners to Indorsees of Bill of Lading.]—Sugar in bags was shipped at a port in Mexico for carriage to London. When put on board, the bags were in such a state that the mate made the following note on the receipt given by him: "Very wet and stained by contents." The bill of lading stated that the bags were "shipped in apparent good order and condition," and also contained the words "weight, contents . . . unknown." The sugar was in fact externally damaged before shipment by both fresh and sea water, and was not damaged by an exeepted peril after shipment. In an action by indorsees of the bill of lading in respect of the damage to the sugar, held that the shipowners were estopped by the terms of the bill of lading from proving in accordance with the fact that the goods were in bad condition when shipped, and that the sugar, which was stated in the bill of lading to have been shipped in apparent good order and condition, had been delivered damaged by an external cause not due to an exeepted peril, the shipowners were liable for the difference between the value of sound sugar and the sugar as delivered. *Compania Naviera Vascongada* v. *Churchill & Sim* ([1906] 1 K.B. 237) followed. *Martineaus* v. *Royal Mail Steam Packet Co.*, 106 L. T. 638; 17 Com. Cas. 176; 12 Asp. M.C. 190; 56 S. J. 445; 28 T. L. R. 364—Scrutton, J.

"Neglect, default, or error of judgment in the navigation or management of the vessel" —Damage to Cargo by Delay.]—A cargo of fruit was shipped in the defendants' vessel from Gandia to London under bills of lading by which the defendants were not liable for the master's neglect, default, or error in judgment in the navigation or management of the vessel, and which gave liberty to proceed to and stay at any port (although in a contrary direction to or out of the route of the port of discharge) "for loading or discharging cargo or passengers or for any purpose whatsoever." On the voyage, in December, 1914, the master put into Corunna and remained there twenty-

three days, as he feared his bunker coals would not be sufficient and as he was not willing to brave the weather at that season or to face the dangers which he anticipated on the voyage between the north-west of Spain and London. The fruit was damaged by the delay in transit, and the plaintiffs, as indorsees of the bills of lading to whom the property had passed, and as consignees and owners of their respective parcels, claimed damages from the defendants:—*Held*, that the default of the master in putting into and remaining at Corunna was not a neglect, default, or error of judgment in the navigation of the vessel within the exceptions in the bills of lading, that the deviation to and the delay at Corunna were not covered by the liberty given to proceed to ports outside the route of the voyage for the purposes specified, that the defendants were not protected by the exceptions, and that the plaintiffs were entitled to damages. *The Renée Hyaffil*, 32 T. L. R. 83—Evans, P.

4. Indorsement, Assignment and Transfer.

Wrongful Delivery to Consignee — Indorsement of Bill of Lading by Consignee to Bank —Title Subsequently Accruing—Trover.]—A contract provided for the sale of certain oil to P. & Co. on the terms of cash against documents, P. & Co.'s name being inserted in the bill of lading at their request as shippers, and the bill of lading provided for the oil to be delivered to them or to their order. The draft attached to the bill of lading was then sold by the sellers to certain bill brokers, who subsequently sold the same on exchange to a bank at Amsterdam. On the arrival of the oil in London, P. & C. obtained from the defendants, who were the agents of the shipping company by whose vessel the oil was carried, delivery of the oil, without delivery of the bill of lading, on an indemnity being given by P. & Co. P. & Co. then approached the plaintiffs, who, as London correspondents of the Amsterdam bank, were holding the bill of lading as against the draft, and arranged with them to advance the money to take up the draft on condition that the plaintiffs should retain the bill of lading, which P. & Co. thereupon indorsed. In an action for trover,—*Held*, that the plaintiffs were entitled to succeed, as, although P. & Co. were not entitled to the possession of the bill of lading, the plaintiffs took over the rights of the Amsterdam bank on crediting them with the amount of the draft, which rights were perfected by the indorsement by P. & Co. of the bill of lading. *London Joint-Stock Bank* v. *British Amsterdam Maritime Agency*, 104 L. T. 143; 16 Com. Cas. 102; 11 Asp. M.C. 571—Channell, J.

VIII. FREIGHT.

See also Vol. XIII. 380, 2058.

Lump Sum Freight — Loss by Excepted Peril—Delivery of Part of Cargo—Right of Shipowner to Recover Freight.]—By a charterparty a ship of the respondents was to proceed to a named port and there load a full and complete cargo of pit props, and then proceed to a port in the United Kingdom and deliver the same to the appellants on being paid as freight a lump sum of 1,600*l.*, to be paid in cash on unloading and right delivery of the cargo. The charterparty contained an exception of "perils of the seas." The ship duly loaded her cargo, and proceeded to the port of discharge, but was wrecked outside that port by perils of the seas, and became a total loss. About three-quarters of the cargo was saved and delivered to the appellants:—*Held*, that the shipowners were entitled to the full freight. *Thomas* v. *Harrowing Steamship Co.*, 83 L. J. K.B. 1662; [1915] A.C. 58; 111 L. T. 653; 12 Asp. M.C. 532; 19 Com. Cas. 454; 30 T. L. R. 611—H.L. (E.)

Judgment of the Court of Appeal (82 L. J. K.B. 636; [1913] 2 K.B. 171) affirmed. *Ib.*

Dead Freight—Liability of Bill of Lading Holders.]—A bill of lading was in the following terms: "Shipped . . . being marked and numbered as in the margin . . . unto order, he or they paying freight for the said goods and performing all other conditions and exceptions as per charterparty . . . per the rate of freight as per charterparty per ton of 2,240 lb. gross weight delivered in full; sixpence less if ordered to a direct port on signing last bill of lading." The charterparty provided (*inter alia*) as follows: "Freight twelve shillings and sixpence sterling per ton . . . all per ton of 2,240 lb. English gross weight delivered . . . charterers to have the option of shipping other lawful merchandise . . . in which case freight to be paid on steamer's dead weight capacity for wheat or maize in bags at the rates above agreed on for heavy grain . . . but steamer not to earn more freight than she would if loaded with a full cargo of wheat or maize in bags." The vessel left port half loaded owing to the fact that the charterer could provide no further cargo:—*Held*, that, on the true construction of the bill of lading and charterparty, the plaintiffs were only entitled to payment at the rate of 12*s.* per ton gross weight delivered, and could not support a claim in respect of dead freight. *Red "R" Steamship Co.* v. *Allatini*, 103 L. T. 86; 15 Com. Cas. 290; 11 Asp. M.C. 434; 26 T. L. R. 621—H.L. (E.)

Held, also, that the defendants were entitled to 5 per cent. interest on the sum deposited with the dock company. *Ib.*

Authority to Collect — Assignment.] — The master of a steamer gave to the plaintiffs, who were the agents of the steamer at the port where she discharged her cargo, a document in the following terms: "I hereby authorize Messrs. H. G. Harper & Co., Cardiff, to collect the freight due to my steamer the s.s. *Casablanca* on the cargo of timber from Riga *ex* my steamer." The plaintiffs in consideration of receiving that document made disbursements on behalf of the steamer. The freight on the cargo, which was timber, could not be ascertained till after it was measured, but the cargo was delivered to the various consignees, leaving the amount of freight payable to be ascertained after the steamer had left the port. The plaintiffs sued the receivers of a parcel of timber for the

freight due in respect of such parcel without joining the owners of the steamer as plaintiffs, alleging that such freight had been assigned to them:—*Held*, that the document given by the master of the steamer to the plaintiffs was a mere authority to collect the freight on behalf of the owners of the steamer, and was neither a legal nor an equitable assignment of the freight; that if it was an assignment at all it was only an equitable assignment, and that therefore the plaintiffs were not entitled to sue for the freight in their own name. *Harper & Co.* v. *Bland & Co.*, 84 L. J. K.B. 738; 112 L. T. 724; 20 Com. Cas. 143; 31 T. L. R. 116—Bailhache, J.

Lien for Unsatisfied Freight — Cargo — Debenture-holders' Action — Receiver and Manager—Powers of Receiver.]—The respondent was in a debenture-holders' action appointed receiver and manager of Ind, Coope & Co., and as such carried on the company's business. He wrote to the company's agents at Malta an order for the delivery of beer and signed the letter "Ind, Coope & Co. By Arthur F. Whinney, Receiver and Manager." The beer was sent under a bill of lading which provided that the shipowner should have a lien for the freight and charges, not only on the goods sent, but also "for any previously unsatisfied freight and other charges due either from shippers or consignees to the shipowner." The Malta agents claimed not only the freight for the particular cargo, but also the unsatisfied freight and charges on previous consignments. It had for years been the practice of Ind, Coope & Co. to ship their goods under bills of lading containing the stipulation as to previously unsatisfied freight:—*Held* (Lord Shaw and Lord Mersey dissenting), that as a bill of lading primarily affects only the particular cargo shipped, and as the respondent was both shipper and consignee, the respondent was not bound by the stipulations as to previous freight. By Lord Atkinson: The respondent had no power without leave of the Court to create such a lien. *Moss Steamship Co.* v. *Whinney*, 81 L. J. K.B. 674; [1912] A.C. 254; 105 L. T. 305; 12 Asp. M.C. 25; 16 Com. Cas. 247; 55 S. J. 631; 27 T. L. R. 513—H.L. (E.)

Decision of the Court of Appeal (79 L. J. K.B. 1038; [1910] 2 K.B. 813) affirmed. *Ib.*

IX. DEMURRAGE.

1. Time and Calculation of Days.

See also Vol. XIII. 457, 2072.

"Working day"—"Surf day"—Custom of the Port of Iquique—Effect of Custom in Construction of Charterparty.]—A cargo of lumber was shipped on board the plaintiff's ship for delivery at the port of Iquique under a bill of lading which provided that the charterers or assigns should pay freight "and all other conditions as per charterparty." The charterparty, which provided for a certain number of lay days for loading and discharging the ship, contained a clause that discharge was to be given with "despatch according to the custom of the port of discharge (but not less than thirty mille per working day) at such safe wharf, dock or place as the charterers or their agents shall designate," and for each and every day's detention by default of the charterers or their agents a certain sum was to be paid. In an action by the plaintiffs against the assigns of the bill of lading to recover demurrage for delay in the discharge of the cargo at Iquique the defendants, in respect of certain days for which demurrage was claimed, pleaded in effect that according to the custom of the port of Iquique these days, when entered by the captain of the port in the register of the port as "surf days," were not included in the term "working day"; that the plaintiffs at the time the charterparty was made or at the time of the loading of the ship either knew or ought to have known that there was a well-established custom of the port of Iquique that "surf days"—that is, days on which the operation of unloading was not only dangerous to life and property, but was commercially impracticable—were not reckoned as working days, and that this custom applied also to half surf days, which were only reckoned as half working days, and that on days or part days which appeared as surf or half surf days in the port register, or in the alternative days or part days which were in fact surf days, persons who had engaged to take delivery were not bound to do so; and that the charterparty, according to the customary interpretation put upon one in that form, incorporated every custom of the port of discharge, and where the port of discharge was Iquique the custom of that port as regards surf days; that at that port the words "working day" in the charterparty meant what they would mean at the port of Iquique according to the custom of that port, and that all parties to the charterparty were bound by the custom:—*Held*, upon the facts stated in the pleadings, and assuming them to be true, that, as the custom was not too vague and unreasonable so that it could not be applied for the purpose of construing the charterparty, it was a valid custom which excluded "surf days" from "working days," and that the plaintiffs, therefore, were not entitled to recover demurrage in respect of "surf days." *British and Mexican Shipping Co.* v. *Lockett*, 80 L. J. K.B. 462; [1911] 1 K.B. 264; 103 L. T. 868; 11 Asp. M.C. 565; 16 Com. Cas. 75—C.A.

Rate but no Time Specified—Obligation of Ship to Wait after Expiration of Time Limited for Loading.]—In cases where the charterparty contains a clause limiting the rate of loading and discharging cargo, but not limiting the number of days the ship may be kept on demurrage, the latter will be limited by law to what is reasonable in the circumstances, as circumstances may happen to exist or emerge. View of Lord Trayner in *Lilly* v. *Stevenson* (22 Rettie, 278, at p. 286) followed. *Wilson* v. *Otto Thoresen's Linie*, 79 L. J. K.B. 1048; [1910] 2 K.B. 405; 103 L. T. 112; 15 Com. Cas. 262; 11 Asp. M.C. 491; 54 S. J. 655; 26 T. L. R. 546—Bray, J.

Colliery Guarantee — Incorporation in Charterparty—Exceptions—"Any other cause

beyond my control "—"Ejusdem generis."]—By a charterparty the plaintiff chartered the defendants' ship the *Aldgate* to proceed to Hull (Alexandra Docks) and "there take on board as tendered in the usual manner according to the custom of the place as per colliery guarantee" a full and complete cargo of coals. The *Aldgate* was "to be loaded in 120 hours on condition of usual colliery guarantee." The colliery guarantee given by the plaintiff contained the following clause: "Sundays, Saturdays, bank holidays, cavilling days, and colliery holidays excepted. Time not to count until after the said steamer is wholly unballasted and ready in dock to receive her entire cargo. Strikes of pitmen or workmen, frosts or storms, and delays at spouts caused by stormy weather, and any accidents stopping the working, leading, or shipping of the said cargo, also restrictions or suspensions of labour, lock-outs, delay on the part of the railway company either in supplying waggons or leading the coals, or any other cause beyond my control, such stoppage occurring any time between the present date and actual completion of loading always excepted." The *Aldgate* arrived in the Alexandra Dock, Hull, and gave notice of readiness to load by 9 A.M. on July 23, 1907; and her lay hours would then begin to run subject to any exceptions in the colliery guarantee, and would expire on July 30 at 9 A.M. Owing, however, to the large number of ships which were waiting to load in turn before the *Aldgate*, she did not get to a berth under a tip until midnight, August 1, and she completed loading her cargo on August 7. The delay arose in part from the inability of the railway to deal with the traffic. In a claim by the owners of the *Aldgate* for demurrage, —*Held*, that the *Aldgate* was an arrived ship when she arrived in the dock and gave her notice of readiness to load on July 23 at 9 A.M., and that the lay hours then commenced to run; that the exception in the colliery guarantee of "any other cause beyond my control" must be read *ejusdem generis* with the words that preceded them, and that the exception did not prevent the lay hours running against the plaintiff. *Thorman* v. *Dowgate Steamship Co.*, 79 L. J. K.B. 287; [1910] 1 K.B. 410; 102 L. T. 242; 15 Com. Cas. 67; 11 Asp. M.C. 481—Hamilton, J.

Monsen v. *Macfarlane, McCrindell & Co.* (65 L. J. Q.B. 57; [1895] 2 Q.B. 562) and *Richardsons and Samuel & Co., In re* (66 L. J. Q.B. 868; [1898] 1 Q.B. 261), followed. *Larsen* v. *Sylvester & Co.* (77 L. J. K.B. 993; [1908] A.C. 295) and s.s. *Knutsford, Lim.* v. *Tillmanns & Co.* (77 L. J. K.B. 977; [1908] A.C. 406) discussed. *Ib.*

Time to Count—"Strikes . . . or any cause beyond the control of the charterer"—Deficiency of Railway Waggons for Taking Delivery of Cargo.]—A printed clause in a charterparty provided as follows: "The steamer to be loaded in usual turn, with customary despatch, at Goole, and discharged in thirty-six running hours, commencing first high water on or after arrival at or off the berth, unless berthed before, but time, unless used, not to commence between 6 P.M. and 6 A.M. . . ." On the margin the following clause was written: "When steamer loads at Hull seventy-two running hours will be allowed for loading and discharging, which time is to commence when steamer is at or off loading berth, but should steamer be prevented from entering the loading dock owing to congestion time to commence from the first high water after arrival off the dock":—*Held*, that when the steamer loaded at Hull the words in the printed clause "time . . . not to commence between 6 P.M. and 6 A.M." did not apply, and that the time commenced to count from the time the steamer got to the loading berth. The charterparty also contained the following exception clause: "Strikes of workmen, lock outs, pay days, idle days or cavilling days, or riots, or frost, rain or floods, or any accident or any cause whatsoever beyond the control of the charterer which may prevent or delay her loading or unloading excepted." At the port of discharge there was a delay of seventeen hours owing to a deficiency of railway waggons, this being due to the abnormal demands upon the railway company at the material time. On a claim for demurrage in respect of the seventeen hours.—*Held*, that the words in the exception clause, "or any cause whatsoever," were sufficiently wide to exclude the *ejusdem generis* rule of construction; that in the circumstances the charterers came within the exceptions clause, and were therefore not liable for demurrage. *France, Fenwick & Co.* v. *Spackman*, 108 L. T. 371; 18 Com. Cas. 52; 12 Asp. M.C. 289—Bailhache, J.

Despatch Money — "All time saved in loading"—Sunday.]—A charterparty provided that the ship should load at a certain rate per running day "(Sundays . . . excepted)," and for demurrage, and contained a clause that the owners should pay as despatch money "10*l.* per day for all time saved in loading." The charterer was entitled to ten and a half lay days, but only occupied five days in loading. A Sunday intervened between the expiration of these five days and that of the lay days:—*Held*, that in calculating the number of days in respect of which despatch money was payable, the Sunday must be included, so that the charterer was entitled to payment of despatch money for six and a half days. *Mawson Shipping Co.* v. *Beyer*, 83 L. J. K.B. 290; [1914] 1 K.B. 304; 109 L. T. 973; 19 Com. Cas. 59; 12 Asp. M.C. 423—Bailhache, J.

Laing v. *Hollway* (47 L. J. Q.B. 512; 3 Q.B. D. 437) and *Royal Mail Steam Packet Co. and River Plate Steamship Co., In re* (79 L. J. K.B. 673; [1910] 1 K.B. 600), followed. *Ib.*

2. PLACE.

Ship to Go to Wharf "or so near thereunto as she may safely get"—Wharf Occupied by Another Vessel—Strike at Port—Ship Ordered by Harbour Master to Another Place in Port—Delay at that Place—Possibility of Discharge into Lighters—Ship whether Arrived.]—By a charterparty it was agreed between the plaintiffs, the owners of the steamship *Fox*,

and the defendant, the charterer, that the steamship should load a cargo of flour at Hull and should proceed with all convenient speed "to London as ordered or so near thereunto as she may safely get," and there deliver the same, cargo to be discharged in two weather working days, and if longer delayed demurrage to be paid at the rate of 7*l.* a day. The charterparty contained no clause exempting the plaintiffs from liability for loss resulting from strikes. The defendant ordered the steamship to go to Keen's Wharf at London. On May 25, 1912, she arrived opposite Keen's Wharf, but could not get alongside the wharf owing to another vessel being berthed there. She then went, pursuant to the order of the harbour master, to a place called East Lane Tier, about a quarter of a mile from the wharf where she lay. On June 12, 1912, no part of her cargo having yet been discharged, she went, pursuant to the order of the defendant's agent, to Chatham, where by June 14, 1912, she completed discharging her cargo. During the whole of the time the *Fox* was at London the other vessel had remained at Keen's Wharf, and a general dock strike had been in existence at the Port of London. The evidence shewed that, notwithstanding the strike, the cargo of the *Fox* could have been discharged into lighters at East Lane Tier by her crew or by the defendant's men, but that that was not a usual place of discharge, and that it was not customary to discharge cargoes of flour into lighters. The plaintiffs brought an action against the defendant in the County Court, claiming seventeen days' demurrage from May 28, 1912, to June 14, 1912. The County Court Judge gave judgment for the defendant. The Divisional Court reversed this decision and gave judgment for the plaintiffs. The defendant appealed. The Court of Appeal, by a majority, reversed the judgment of the Divisional Court, and restored that of the County Court Judge, Buckley L.J., and Scrutton, J., held that by the contract the plaintiffs were bound in the first instance to wait a reasonable time for the berth at Keen's Wharf to become vacant; that, if the plaintiffs had waited a reasonable time for that berth to become vacant, they would have been entitled to call upon the defendant to take delivery of the cargo at an alternative place so near thereunto as she could safely get, provided they gave them notice of the alternative place selected and called upon them to take delivery there; that they had never called upon the defendant to take delivery at East Lane Tier; that therefore the *Fox* was never an arrived ship; and that the plaintiffs could not recover. Kennedy, L.J., held that in the circumstances the obstacle to the *Fox* getting a berth at Keen's Wharf was of so permanent a character that the alternative destination of a place so near thereunto as she could safely get at once came into force in favour of the plaintiffs; that no formal notice by the plaintiffs of a claim to be on demurrage at the alternative place was required; that East Lane Tier was a place where the cargo of the vessel could reasonably have been discharged by means of lighters and was a place as near to the wharf as she could safely get; that the *Fox* on reaching East Lane Tier was an arrived ship; and that the plaintiffs were entitled to recover. *The Fox*, 83 L. J. P. 89; 30 T. L. R. 576—C.A.

Decision of the Divisional Court (30 T. L. R. 58) reversed. *Ib.*

3. Loading and Discharging: Rules of Port.

See also Vol. XIII. 470, 2083.

Reasonableness—Custom—Port of Novorossisk—Distinction between Law and Custom.]—A custom is a reasonable and universal rule of action in a locality, followed, not because it is believed to be the general law of the land or because the parties following it have made particular agreements to observe it, but because "it is in effect the common law within that place to which it extends." Alleged custom of the port of Novorossisk considered. *Anglo-Hellenic Steamship Co.* v. *Dreyfus*, 108 L. T. 36; 12 Asp. M.C. 291; 57 S. J. 246; 29 T. L. R. 197—Scrutton, J.

"Customary steamship despatch as fast as the steamer can deliver"—Stevedore to be Named by Charterers—Custom for Discharge by Harbour Authority—Negligent Delay—Liability of Charterers.]—By the terms of a charterparty a cargo of pits props was to be discharged with the customary steamship despatch as fast as the steamer could deliver during the ordinary working hours of the port, but according to the custom thereof, certain days excepted. The cargo was to be taken from alongside the steamer at charterers' risk and expense as customary. There was a proviso for demurrage at a certain rate per ton should the steamer be detained beyond the time stipulated. Discharging was to be effected by the charterers' stevedore, the steamer paying for it at a fixed rate. The steamer was sent to a proper dock in the port, and to a proper quay in this dock, and was there discharged by the harbour authority, as this was the custom in the port in the case of such cargoes, and she was not discharged by a stevedore named by the charterers. The harbour authority discharged negligently, causing detention of the steamer. In an action by the shipowners against the charterers for demurrage,—*Held*, that the charterers were not liable, because the words of the charterparty as to discharge did not amount to a contract to discharge in a specified time, so as to create a liability independently of the rest of the contract; and because the harbour authority was not the agent of the charterers, or no more their agent than the shipowners' agent, and therefore the charterers were not responsible for the harbour authority's negligence. *Dicta* in *Weir & Co.* v. *Richardson* (3 Com. Cas. 20) followed. *The Kingsland*, 80 L. J. P. 33; [1911] P. 17; 105 L. T. 143; 16 Com. Cas. 18; 12 Asp. M.C. 38; 27 T. L. R. 75—D.

Custom of Port of Iquique.]—*See British and Mexican Shipping Co.* v. *Lockett*, *ante*, col. 1452.

4. Causes of Delay.

a. Strikes.

See also Vol. XIII. 480, 2090.

Strike Clause—"Workmen essential to the discharge of the cargo"—"Loading" and "Discharge."] —A charterparty contained a strike clause providing that if the cargo cannot be discharged by reason of a strike or lock-out of any class of workmen essential to the discharge of the cargo, the days of discharging shall not count during the continuance of such strike or lock-out." On the arrival of the ship at the port of discharge a strike of carters was in existence, in consequence of which the docks had become congested, and this condition of affairs rendered it impossible for the consignee to accept delivery of the cargo, there being neither space for the cargo in the docks, nor means of taking it away when tendered over the ship's rail:—*Held*, that the carters in these circumstances were not a "class of workmen essential to the discharge" within the meaning of the clause. *Held*, also, that "discharge" is a joint act, necessitating co-operation on the part of the ship and the receiver of the cargo, and that the obligation of the ship under this term is fulfilled when its crew or its stevedore's men are in a position to offer, and do offer, delivery to the consignee over the ship's side. *Langham Steamship Co.* v. *Gallagher*, [1911] 2 Ir. R. 348; 12 Asp. M.C. 109—K.B. D.

Loading Delayed by Strike.] —A charterparty for the carriage of a cargo of coal which stipulated for the completion of the loading within a certain period, contained a clause exempting the charterers from liability for time lost through strikes, or any unavoidable accidents beyond their control "preventing or delaying the working, leading, or shipping of the said cargo." In an action for demurrage against the charterers they pleaded this clause of exception, averring that the delay had been caused by a strike. It was proved, first, that a strike of coal trimmers had caused the colliery company, with whom the charterers had contracted for delivery of the coals, to restrict their output and they did not deliver the coals in time for the loading which, but for the strike, they would probably have done; but secondly, that the contract between the charterers and the colliery company contained no clause binding the company to deliver the coals in time for the loading; and thirdly, that it would not have been impossible for them to deliver the coals in time had they been bound to do so:—*Held*, that the charterers were liable for demurrage in respect that—even if the strike were the direct cause of the delay, which was not proved—the failure of the charterers to contract for the timeous delivery of the coal was a failure to take reasonable measures to prevent avoidable delay, which excluded them from the benefit of the exception in the charterparty. *Dampskibsselskabet Danmark* v. *Poulsen & Co.*, [1913] S. C. 1043—Ct. of Sess.

Delay by Strike—Construction of Clause Relating to Time Allowed for Discharging.]—A charterparty contained the following clause: "Time to commence when steamer is ready to unload and written notice given, whether in berth or not. In case of strikes, look-outs, civil commotions, or any other causes or accidents beyond the control of the consignees which prevents or delays the discharging, such time is not to count unless the steamer is already on demurrage":—*Held*, that the clause did not mean that time was not to count at all if a strike delayed the discharging, but that time should not count to the extent of any delay caused by a strike. *London and Northern Steamship Co.* v. *Central Argentine Railway*, 108 L. T. 527; 12 Asp. M.C. 303—Scrutton, J.

By a charterparty, time for discharging was to commence "when steamer is ready to unload and written notice given whether in berth or not. In case of strikes . . . which prevent or delay the discharging such time is not to count unless the steamer is already in demurrage." The ship arrived at her port of discharge on January 12, and gave notice that she was ready to discharge. At that time a strike was going on, and no work was done till January 27, when work was partially resumed. On February 15 the strike ended. Between January 27 and February 15 six and a quarter normal days' work was done. The ship did not get a discharging berth on March 23:—*Held*, first, that "such time" in the charterparty meant the time for which the discharging was actually prevented or delayed by a strike, and did not apply to a delay in getting a berth in consequence of a strike; and secondly, that the period between January 27 and February 15 should be excluded, except six and a quarter days. *London and Northern Steamship Co.* v. *Central Argentine Railway* (108 L. T. 527) approved. *Central Argentine Railway* v. *Marwood*, 84 L. J. K.B. 1593; [1915] A.C. 981—H.L. (E.)

Exemption of any "claim for damages" for Delay "by reason of" Strike—Congestion at Port Following on Termination of Strike.] —A charterparty which allowed ten days on demurrage beyond the lay days at a certain rate, contained a clause providing that the days for discharging should not count during the continuance of a strike, and also providing that in case of delay "by reason of" a strike "no claim for damages" should lie. The ship was detained at the port of discharge for four days beyond the lay days, not owing to the continuance of a strike, but owing to congestion following on the termination of a strike. In an action for demurrage for these four days,—*Held*, first (following *Leonis S.S. Co.* v. *Rank* (No. 2) (13 Com. Cas. 295), that the detention was a "delay by reason of" a strike, which excluded claims for damages; and secondly, that claims for damages for delay were not limited to claims for detention beyond the demurrage period, but included claims for demurrage. *Moor Line, Lim.* v. *Distillers Co.*, [1912] S. C. 514—Ct. of Sess.

Per Lord Salvesen: Demurrage is agreed damages to be paid for delay of the ship in loading or unloading beyond an agreed period; the distinction between demurrage and damages

for detention being that one is liquidated damages and the other unliquidated. *Ib.*

Discharge "with customary steamship dispatch according to the custom of the port"—Exception of Strike of "workmen essential to the discharge"—Strike of Workmen in Charterers' Yard.]—A firm of wood merchants chartered a ship to bring a cargo of pit props from St. Petersburg to Granton. The charterparty did not stipulate for lay days, but provided that the ship should be discharged "with customary steamship dispatch . . . according to the custom of the" port; with the proviso that if the cargo could not be discharged by reason of a strike of any class of workmen "essential to the . . . discharge of the cargo" the time for discharging should not count during the continuance of such strike. It was the custom of the port of Granton for cargo to be discharged direct into railway waggons, and it was the charterers' practice to have the loaded waggons brought into their woodyard, which was near the dock, in order that the props might be sorted before being sent to purchasers. When the ship arrived at Granton a strike of workmen in the charterers' yard was in progress, and, although there was no scarcity of labour at the quay, the railway company, knowing that the waggons would be detained in the yard, refused to supply them except for conveyance of cargo direct from the quay to purchasers. Part of the cargo was so dealt with, but the discharge of the remainder was delayed, and the ship was detained for eleven days beyond the normal period for discharge. In an action against charterers for demurrage,—*Held*, first, that they had failed to discharge with "customary dispatch" in respect that the delay was due to circumstances affecting, not the discharge—which was complete when the cargo was transferred to the railway waggons, of which there was an ample supply—but only the subsequent disposal of the cargo: and secondly, that they could not rely on the strike clause in the charterparty, as the strike was not of "workmen essential to the discharge." *Dampskibsselskabet Svendborg* v. *Lore & Stewart, Lim.*, [1915] S. C. 543—Ct. of Sess.

b. Other Causes.

See also Vol. XIII. 482, 2093.

Delay in Berthing—Port Regulations as to Unloading—Ejusdem Generis.—A ship of the plaintiffs was chartered by the defendants under a charterparty dated August 25, 1909, to carry coal to the port of S. Clause 8 of the charterparty provided that the cargo was "to be taken from alongside by consignees at port of discharge . . . at the average rate of 500 tons per day . . . provided steamer can deliver it at this rate; if longer detained consignees to pay steamer demurrage. . . . Time to commence when steamer is ready to unload and written notice given, whether in berth or not. In case of strikes, lockouts, civil commotions, or any other causes or accidents beyond the control of the consignees which prevent or delay the discharging, such time is not to count. . . ." On September 22, 1909, the steamer moored inside the port, and a written notice of readiness to unload was given. At that time all the berths in the port were occupied, and none became vacant till September 25, when the ship was berthed alongside a wharf. At this port there had been a regulation since 1907 that shore labourers should not work at a ship until she was in berth alongside a wharf. Shore labourers were required by the ship to bring the cargo to the ship's rail and by the consignees to take the cargo from there, and therefore no unloading commenced till September 25. The plaintiffs claimed demurrage in respect of the delay:—*Held*, that, in view of the provision in the charterparty that time for demurrage was to commence when the steamer was ready to unload and written notice given, "whether in berth or not," the steamer must be regarded as ready to unload on September 22; that the words in the earlier part of clause 8 of the charterparty—"provided steamer can deliver at this rate"—had no reference to a delay due to a lack of shore labour; and that the delay in unloading was not due to a cause *ejusdem generis* with "strikes." And *held*, therefore, that the plaintiffs were entitled to demurrage in respect of the delay. *Northfield Steamship Co.* v. *Union des Gaz*, 81 L. J. K.B. 281; [1912] 1 K.B. 434; 105 L. T. 853; 17 Com. Cas. 74; 12 Asp. M.C. 87; 28 T. L. R. 148—C.A.

"Detention by cranes"—"Other unavoidable cause"—Delay in Getting Berth.]—A demurrage clause in a charterparty excepted from the time specified for loading a number of causes of delay, including strikes, floods, riots, storms, accidents to machinery, "detention by cranes," "or any other unavoidable cause":—*Held*, first, that delay caused by failure to get a berth, and consequently the use of a crane, owing to congestion of shipping at the port of loading, was not a "detention by crane" within the meaning of the charterparty; and secondly, that such delay was not covered by the words "or any other unavoidable cause," these words referring to causes *ejusdem generis* with the enumerated causes, and not to delays arising naturally in the ordinary routine of working the port. *Abchurch Steamship Co.* v. *Stinnes*, [1911] S. C. 1010—Ct. of Sess.

"Stoppage at collieries"—Temporary Restriction of Output of Colliery—Causes which "prevent or delay the loading."]—A charterparty stipulated that a vessel should load a cargo of coals in sixty running hours, time not to count in cases of "delays through stoppages at collieries with which steamer is booked to load," or "any accidents or cause beyond control of the charterers which may prevent or delay the loading." A colliery company, who were supplying to the charterers a certain class of coal which was to form part of the cargo, having temporarily restricted the output of their pits for the purpose of economic working and thereby diminished the supply of that class of coal, failed to deliver coal alongside the vessel in sufficient quantities to allow loading to proceed continuously, and the consequent delay caused the vessel to exceed her stipulated

loading time :—*Held*, that the charterers were not relieved from a claim for demurrage by the clause of exemption in the charterparty in respect, first, that the restricted output of the coal in question was not a "stoppage at collieries" in the sense of the charterparty, and, secondly, that it did not "prevent or delay the loading," but delayed the provision of the cargo, and that the obligation on the charterers to provide a cargo was an absolute duty unless expressly excepted. "*Arden*" *Steamship Co.* v. *Mathwin*, [1912] S. C. 211—Ct. of Sess.

Deck Cargo—Damage to Vessel by Shifting—Time Occupied by Repairs—"Damage preventing working of vessel"—Liability of Shipowner.]—The owners of a steamship chartered her to the charterers by a charterparty which contained the following clause : "In the event of loss of time from deficiency of men or stores breakdown of machinery collision docking stranding or other accident or damage preventing the working of the vessel for more than twenty-four consecutive hours the time lost shall be allowed to the charterers including first twenty-four hours . . . but should the vessel be driven into port or to anchorage by stress of weather or from accident to the cargo such detention or loss of time shall be at the charterers' expense." The vessel was loaded with a cargo of lumber, including a deck cargo. While on her voyage she encountered heavy weather, and the stowage of the deck cargo shifted and caused damage to the vessel. It was thereupon decided to put into port, where it became necessary to discharge the deck cargo and do certain repairs to the vessel, with the result that she was detained for a period of thirty-three days seventeen hours, of which nine days and twelve hours were occupied by the repairs. Upon a claim by the owners in respect of the detention,—*Held*, that the time occupied in repairing the damage to the vessel could not be included in the time lost under the last words of the above clause, that during the time occupied by such repairs the vessel was off hire, and that an allowance must be made to the charterers in respect of the period of nine days and twelve hours as being time lost from "damage preventing the working of the vessel." *Burrell* v. *Green & Co.*, 84 L. J. K.B. 192; [1915] 1 K.B. 391; 112 L. T. 105; 20 Com. Cas. 84; 12 Asp. M.C. 589—C.A.

Arrival of Ship before Bills of Lading—Refusal of Master to Discharge until Bills of Lading Produced—Offer of Bank Guarantee.]—A ship carrying pit props from a port in Sweden to a port in the Firth of Forth arrived, as often happened in the trade, before the bills of lading, which were sent by post. Contrary to the usual practice in such cases, the master, acting on the charterer's instructions, refused to discharge the cargo without production of the bills, although the consignees were ready to take delivery, and offered to give a bank guarantee indemnifying him from all liability. After a delay of some twenty-four hours the ship began to discharge the cargo, under an arrangement between the agents of the charterer and a railway company, into the hands of the railway company as wharfingers, and continued to do so until the arrival of the bills of lading, when she delivered the remainder of the cargo to the consignees. The bills of lading provided : "the captain to deliver all cargo on ship's railing, and the same to be taken from there by the consignee notwithstanding any custom of the port to the contrary. The goods to be received as fast as the steamer can deliver day and night, or the same will be landed or put into lighters at the risk and expense of the consignee." In an action by the charterer against the vendees of the cargo for demurrage in respect of the detention of the ship prior to the commencement of the discharge :—*Held*, that the defenders were not liable—*per* the Lord President, on the ground that there was no unqualified obligation on the part of the consignees, either at common law or under the contract, to produce the bills of lading as soon as the ship was ready to discharge, and that the detention of the ship was due to the unreasonable conduct of the pursuer, and not to the fault of the consignees; *per* Lord Skerrington, on the ground that as the bills of lading did not specify any period within which the cargo must be discharged, the obligation on the consignees was to use the utmost dispatch practicable in the circumstances, which had been done. Lord Johnston was of opinion that, although the consignees were not entitled to delivery of the cargo until the bills of lading were produced, the circumstances of the detention of the ship were such as could not justify more than nominal damages. *Carlberg* v. *Wemyss Coal Co.*, [1915] S. C. 616—Ct. of Sess.

Observations on the rights and duties of the shipowner, the master, and the consignee in the event of the consignee being unable to produce the bills of lading for the cargo at the port of discharge. *Ib.*

5. Rate of Payment.

See also Vol. XIII. 491, 2100.

Detention beyond Lay Days for more than a Reasonable Time—Damages—Basis of Assessment.]—It was provided by demurrage clauses in two charterparties that cargo should be discharged from vessels at a specified rate; but if the vessels were "longer detained" demurrage at a named rate was payable :—*Held*, that it could not be implied that that clause was applicable to, and damages at the demurrage rate payable for, a reasonable period of detention only, but that damages were payable at the demurrage rate over the whole period of detention. *Western Steamship Co.* v. *Amaral Sutherland & Co.*, 82 L. J. K.B. 1180; [1913] 3 K.B. 366; 109 L. T. 217; 12 Asp. M.C. 358; 19 Com. Cas. 1; 58 S. J. 14; 29 T. L. R. 660—Bray, J. New trial ordered, 83 L. J. K.B. 1201; [1914] 3 K.B. 55; 111 L. T. 113; 12 Asp. M.C. 493; 19 Com. Cas. 272; 30 T. L. R. 492—C.A.

X. CARGO.

1. Loading.

See also Vol. XIII. 2103.

Notice of Readiness to Load—Coal Cargo—Right to Cancel—Stoppage at Colliery Con-

tinuing for Five Days from Time of Steamer being Ready to Load.]—By a charterparty dated February 29, 1912, the *Adalands* was to proceed to Hull and there load a complete cargo of coal. No particular colliery was specified. Clause 5 provided that the cargo was to be loaded in seventy-two running hours, "time to count when notice of readiness to receive the entire cargo is given to the staithman or colliery agent or handed in to his office between the hours of 6 A.M. and noon. The loading date to be not before 6 A.M. on the 7th April, but seven clear days' written notice of definite loading date to be given by owners. . . ." Clause 6 provided that "the parties hereto mutually exempt each other from all liability (except under the strike rules) arising from or for time lost through riots, strikes, lock-outs of workmen, or disputes between masters and men, or by reason of accidents to mines or machinery, obstructions on railways or in harbours (not including congestion of ships or traffic), or by reason of frosts, floods, fogs, storms, and any unavoidable accidents and hindrances beyond their control, either preventing or delaying the working, loading, or shipping of the said cargo, occurring on or after the date of this charter until the expiration of the loading time. . . . In the event of any stoppage or stoppages arising from any of these causes (other than a 'strike' as defined in the strike rules) continuing for the period of five days from the time of the steamer being ready to load at the colliery or collieries for which she is stemmed, this charter shall become null and void, provided, however, that no cargo shall have been shipped on board the vessel previous to such stoppage or stoppages." The shipowners notified the charterers that the vessel would be ready to load on April 22, 1912. On April 16, 1912, the charterers refused to load as they said they could not get coal from a particular colliery owing to a stoppage at the colliery such as was contemplated by clause 6. On April 19, 1912, the shipowners notified the charterers that the vessel was in Hull roads on that date ready for loading and at their disposal. The charterers not having loaded any cargo on the *Adalands* the shipowners claimed damages:—*Held*, first, that the five days mentioned in clause 6 must be counted from April 22, although the vessel was in fact ready to load on April 19; and secondly, that the word "stoppage" in clause 6 meant an entire stoppage of work, and that as the charterers had failed on the evidence to shew that there was an entire stoppage which prevented any loading for five days from April 22, they were liable in damages for refusing to load. *Aktieselskabet Adalands* v. *Whitaker*, 18 Com. Cas. 229—Pickford, J.

Detention of Vessel at Port of Loading—Right of Charterer to Refuse to Load.]—The principle which entitles a charterer to refuse to load a vessel if he has reasonable ground for believing that she will not be able to proceed to her destination with the cargo on board within a commercially reasonable time owing to the existence of a war cannot be applied to a case where a vessel may be delayed in starting on her voyage through a strike in this country, which, however, does not prevent the loading of the cargo. *Ropner & Co.* v. *Ronnebeck*, 84 L. J. K.B. 392; 112 L. T. 723; 20 Com. Cas. 95—Bailhache, J.

Ready to Load—Maize Cargo—Bunker Coal Stored on Deck.]—*Held*, on the evidence, that a steamship was ready to load a cargo of maize, notwithstanding that she had, when tendered to the charterers, a large quantity of coal stored on deck between the bulwarks and the raised coamings, which coal had formed part of the outward cargo and was bought by the shipowner as bunker coal for the homeward voyage. *London Traders' Shipping Co.* v. *General Mercantile Shipping Co.*, 30 T. L. R. 492—C.A.

Decision of Scrutton, J. (29 T. L. R. 504) affirmed. *Ib.*

Rights and Obligations of Harbour Authority—Duty to Provide Labour for Loading Cargo or Permitting Shipowner to Employ Labour—"Trade dispute."]—A ship belonging to a Belfast firm, after its arrival at Ayr harbour for the purpose of loading a cargo, was detained there owing to the refusal of the harbour employees to work the ship. These employees were members of a Scottish trade union, and their refusal to do the work was due to the existence of a strike of the shipowners' workmen at Belfast. The shipowners offered to supply their own labour to load the ship, but the harbour trustees refused the offer on the ground that they would not permit outsiders to work their cranes. The local secretary of the Scottish trade union had threatened a general strike in the harbour if outside labour was imported. In an action of damages for the detention of the ship, brought by the shipowners against the harbour trustees, the defenders maintained that they were not in the circumstances bound to load the ship or to allow it to be loaded by outside labour in respect, first, that they had a reasonable discretion in the matter, and, secondly, that, if there was a duty resting on them, performance was, in the circumstances, excused by reason of its impossibility. They also maintained that, as they were acting in furtherance or contemplation of a trade dispute in Belfast or otherwise with their own employees they were relieved of liability under section 3 of the Trade Disputes Act, 1906:—*Held*, that, while the defenders were not, in view of the terms of their private Acts, bound to supply labour, they were bound, if they did not do so, to allow shipowners to employ their own labour; and, as this was not in the circumstances impossible, they were liable to the pursuers in damages. *Held* also, that section 3 of the Trade Disputes Act, 1906, did not apply. *Milligan & Co.* v. *Ayr Harbour Trustees*, [1915] S. C. 937—Ct. of Sess.

2. Loss by Fire.

Damage to Goods—Fire—Exceptions—Warranty of Seaworthiness—Liability of Shipowner.]—Section 502 of the Merchant Shipping Act, 1894, which protects the owner of

a British sea-going ship from liability to make good any loss or damage to goods by reason of fire on board the ship happening without his actual fault or privity, applies whenever there has been damage to goods by fire without the shipowner's fault or privity, irrespective of whether there has been a breach by him of the warranty of seaworthiness. *Virginia Carolina Chemical Co.* v. *Norfolk and North American Steam Shipping Co.* (*No.* 1), 81 L. J. K.B. 129; [1912] 1 K.B. 229; 105 L. T. 810; 12 Asp. M.C. 82; 17 Com. Cas. 6; 28 T. L. R. 85—C.A. Appeal compromised, 82 L. J. K.B. 389; [1913] A.C. 52—H.L. (E.)

The Court of Appeal having decided as a preliminary question of law that section 502 of the Merchant Shipping Act, 1892, which exempts the owner of a British sea-going ship from liability for loss or damage to goods by fire where the loss or damage happens without his actual fault or privity, applies to protect the shipowner, even although there has been a breach by him of the warranty of seaworthiness, but that the parties to a contract for carriage of goods by sea may, by the terms of their contract, exclude the operation of this section, and that on the construction of a bill of lading the parties had excluded the operation of the section, the House of Lords, on appeal thereto from the Court of Appeal's decision, directed that the facts should be ascertained before the preliminary question of law could be decided. On the re-hearing,—*Held*, that the vessel in question was not unseaworthy when she started on her voyage, and that the fire which caused the damage to the plaintiff's goods was occasioned by an act of negligence on the part of one of the ship's engineers, for which act of negligence the shipowners were exempt from liability by the terms of the bill of lading. *Virginia Carolina Chemical Co.* v. *Norfolk and North America Steam Shipping Co.* (*No.* 2), 107 L. T. 320; 12 Asp. M.C. 233; 17 Com. Cas. 277; 56 S. J. 722; 28 T. L. R. 513—Hamilton. J. *See* preceding case.

Statutory Protection in Case of Fire on Board — Agreement to Exclude Operation of Statute — Terms of Bill of Lading.] — The plaintiffs shipped goods on board the defendants' vessel. The bill of lading provided that the goods were "to be delivered subject to the exceptions and conditions herein mentioned, in the like good order and condition." Among the exceptions thus referred to were the following: "1. Fire on board, in hulk or craft or on shore, stranding and all accidents, loss and damage whatsoever from defects in hull, tackle, apparatus . . . or from perils of the seas . . . or from any act, neglect or default whatsoever of the pilot, master, officers, engineers, crew, stevedores, servants, or agents of the owners and/or charterers, ashore or afloat, in the management, loading, stowing, discharging, or navigation of the ship, or other craft, or otherwise, the owners and/or charterers being in no way liable for any consequences of the causes before mentioned." "11. It is agreed that the maintenance by the shipowners of the vessel's class (or, in the alternative, failing a class, the exercise by the shipowners and/or charterers or their agents of reasonable care and diligence in connection with the upkeep of the ship) shall be considered a fulfilment of every duty, warranty, or obligation, and whether before or after the commencement of the said voyage." The plaintiffs' goods were lost without the actual fault or privity of the defendants by reason of fire on board the ship. The ship was unseaworthy at the commencement of the voyage owing to the insufficient packing and bad stowage of a quantity of metallic sodium which was taken on board. The fire was caused by sea water coming in contact with the sodium:—*Held*, that there was nothing in the terms of the bill of lading which shewed an agreement by the parties to exclude the operation of section 502 of the Merchant Shipping Act, 1894, which exempts the owner of a British seagoing ship from liability for the loss of goods happening without his actual fault or privity by reason of fire on board the ship. *Ingram & Royle, Lim.* v. *Services Martimes du Tréport* (*No.* 1), 83 L. J. K.B. 382; [1914] 1 K.B. 545; 109 L. T. 733; 19 Com. Cas. 105; 12 Asp. M.C. 387; 58 S. J. 172; 30 T. L. R. 79—C.A.

Virginia Carolina Chemical Co. v. *Norfolk and North American Steam Shipping Co.* (81 L. J. K.B. 129; [1912] 1 K.B. 229; appeal compromised in H.L., 82 L. J. K.B. 389; [1913] A.C. 52) distinguished. *Ib.*

Judgment of Scrutton, J. (82 L. J. K.B. 374; [1913] 1 K.B. 538), reversed. *Ib.*

Fire Caused by Unseaworthiness — Loss without Actual Fault or Privity of Owner — Burden of Proof.] — By section 502 of the Merchant Shipping Act, 1894: "The owner of a British sea-going ship . . . shall not be liable to make good . . . any loss or damage happening without his actual fault or privity . . . where any goods, merchandise, or other things whatsoever taken in or put on board his ship are lost or damaged by reason of fire on board the ship." A ship carrying a cargo of oil was unseaworthy at the commencement of her voyage by reason of defects in her boilers. She encountered bad weather, and was driven on shore in consequence of want of steam power caused by the condition of the boilers. The oil escaped from the tanks, caught fire, and was lost:—*Held*, that under the above section the onus was on the shipowners of proving the absence of actual fault or privity on their part, and, in the case of a company, the onus was on the registered managing owner of shewing that he did not know, and ought not to have known, of the unseaworthy condition of the ship. *Lennard's Carrying Co.* v. *Asiatic Petroleum Co.*, 84 L. J. K.B. 1281; [1915] A.C. 705; 20 Com. Cas. 283; 113 L. T. 195; 59 S. J. 411; 31 T. L. R. 294—H.L. (E.)

Decision of the Court of Appeal (83 L. J. K.B. 861; [1914] 1 K.B. 419) affirmed. *Ib.*

3. Delivery and Discharge.

See also Vol. XIII. 527, 2105.

Shipowners Responsible to Charterers for Full Delivery of Cargo—Stevedores to be Em-

ployed by Charterers, though Shipowners to be Responsible for Proper Stowage—Theft of Cargo by Stevedores—Shipowners not Responsible for Short Delivery or for Damages Occasioned by the Theft. —By a charterparty shipowners were made responsible for full and complete delivery of the cargo and also for its proper stowage by the stevedores, but the stevedores were to be employed by the charterers. When loading the ship for a voyage to Brazil the stevedores stole part of the cargo, and owing to their theft the charterers were unable to make full delivery at the Brazilian port. As the cargo actually delivered did not correspond with that shewn on the ship's manifest, the Brazilian Government imposed fines on the local agent of the charterers. The charterers reimbursed their agent, and also paid damages to the owners of the goods which were stolen; and they now sought to recover the amounts of the fines and damages so paid by them from the shipowners:—*Held*, that the clause in the charterparty which made the shipowners responsible for full and complete delivery of the cargo did not apply where the loss of cargo had been occasioned by the felonious acts of the charterers' own servants, and that therefore the shipowners were not liable for either the fines or the damages. *Query*, whether, if the charterers had been protected by their bill of lading from any obligation in consequence of the theft to pay damages to the owners of the goods, they could nevertheless under the charterparty have compelled the shipowners to make good the loss. *Royal Mail Steam Packet Co.* v. *Macintyre*, 16 Com. Cas. 231—D.

Goods to be Taken from Alongside by Consignees as Soon as Vessel Ready to Discharge — Right of Shipowners to Land and Store Goods — Freight Payable before Delivery — Consignees not Ready to Take Delivery — Storage of Goods by Shipowners in Warehouse —Right of Consignees to Delivery on Depositing Freight with Warehousemen.] — Goods were shipped at Antwerp for delivery at Southampton under a bill of lading which provided that freight was payable before delivery and that the goods were "to be taken from alongside by the consignees as soon as the vessel is ready to discharge and to receive same as fast as the steamer can deliver . . . and wherever the steamer is to discharge, or otherwise they may be landed, put into lighters, or stored by the steamer's agents . . . at the expense of the consignees." At Southampton the consignees were not ready to take delivery when the steamer discharged, nor did they then pay the freight: whereupon the shipowners stored the goods in a warehouse, having previously given to the warehousemen a general notice that all goods landed by the shipowners were landed for ship's purposes, and were to be held for the shipowners, without whose instructions, accompanied by their release for freight, the goods were not to be delivered. No amount of freight was mentioned by the shipowners in their notice to the warehousemen:—*Held*, that the storage by the shipowners of the goods in the warehouse was not a warehousing of them under the provisions of the Merchant Shipping Act, 1894, and therefore that the consignees were not entitled to obtain delivery of the goods by depositing with the warehousemen the amount of the freight under section 495, sub-section 2 of the Act. *Dennis* v. *Cork Steamship Co.*, 82 L. J. K.B. 660; [1913] 2 K.B. 393; 108 L. T. 726; 18 Com. Cas. 177; 12 Asp. M.C. 337; 29 T. L. R. 489—Scrutton, J.

Short Delivery of Cargo — Unidentified Residue — Rights of Consignee.] — Where in discharging the cargo of a ship there is a shortage of delivery, and also a residue of unidentified goods, the shipowner cannot compel the consignees to take the unidentified goods as a *pro tanto* fulfilment of the contract to deliver. *Sandeman* v. *Tyzack and Branfoot Steamship Co.*, 83 L. J. P.C. 23; [1913] A.C. 680; 109 L. T. 580; 12 Asp. M.C. 437; 57 S. J. 752; 29 T. L. R. 694—H.L. (Sc.)

Discharge by Shipowners—Damage to Bags Containing Cargo — Liability for Repairs.] — Where an obligation rests upon shipowners to discharge the cargo, in the absence of any stipulation to the contrary, the cost of repairing bags in which the cargo is carried, in order that it may be delivered in proper condition, falls upon the shipowners and not upon the charterers. *Leach* v. *Royal Mail Steam Packet Co.*, 104 L. T. 319; 16 Com. Cas. 143; 11 Asp. M.C. 587—Channell, J.

—— "Workmen essential to the discharge of the cargo"—"Loading" and "Discharge."] —A charterparty contained a strike clause providing that "if the cargo cannot be discharged by reason of a strike or lock-out of any class of workmen essential to the discharge of the cargo, the days of discharging shall not count during the continuance of such strike or lock-out." On the arrival of the ship at the port of discharge a strike of carters was in existence, in consequence of which the docks had become congested; and this condition of affairs rendered it impossible for the consignee to accept delivery of the cargo, there being neither space for the cargo in the docks, nor means of taking it away when tendered over the ship's rail:—*Held*, that the carters in these circumstances were not a "class of workmen essential to the discharge" within the meaning of the clause. *Held*, also, that "discharge" is a joint act, necessitating co-operation on the part of the ship and the receiver of the cargo, and that the obligation of the ship under this term is fulfilled when its crew or its stevedore's men are in a position to offer, and do offer, delivery to the consignee over the ship's side. *Langham Steamship Co.* v. *Gallagher*, [1911] 2 Ir. R. 348; 12 Asp. M.C. 109—K.B. D.

Liability for Damage to Ship through Negligent Discharge.]—A charterparty provided as follows: "Cargo to be loaded, stowed and discharged free of expense to steamer, with use of steamer's winch and winchmen if required":—*Held*, that this clause had not the effect of transferring the duty of discharging the cargo from the shipowner, on whom

it rests at common law, to the charterer, so as to render the latter responsible for damage received by the ship in the course of discharge. *Ballantyne & Co.* v. *Paton & Hendry*, [1912] S. C. 246—Ct. of Sess.

Through Bill of Lading—Liability of Each Carrier for his Own Stage of Transit—Shipowner's Duty—Burden of Proof.]—Under a through bill of lading for the carriage of flour from Minneapolis, U.S.A., to Glasgow, signed by an agent "on behalf of carriers severally, but not jointly," each of whom was to be responsible only for his own stage of the transit and to mark the condition of the goods as received by him, and certify such condition and any deficiency or injury done to the goods to his successor, a small proportion of the flour was at New York, when it was loaded in the rain and much wetted, found to be "caked," and a large quantity found to be similarly injured on arrival at Glasgow:—*Held*, that the shipowner was liable for the damage done to the flour between New York and Glasgow. The burden of proof lies upon the shipowner, who, if he accepts goods as in apparent good order and condition, takes the responsibility of delivering them in the same condition, unless he shews that the damage (if any) was done before he received the goods or was caused by perils excepted in his part of the contract. *Crawford* v. *Allan Line Steamship Co.*, 81 L. J. P.C. 113; [1912] A.C. 130; 105 L. T. 964; 17 Com. Cas. 135; 12 Asp. M.C. 100; 28 T. L. R. 168—H.L. (Sc.)

Decision of the Court of Session ([1911] S. C. 791) reversed, and that of the Lord Ordinary restored. *Ib.*

Custom of Port—Custom Limited to Particular Cargoes from Particular Ports.]—A steamer loaded a cargo of barley in sacks at a North Pacific port, under a charterparty which provided for discharge at a safe port or ports in the United Kingdom "according to the custom at port of discharge for steamers." The steamer was ordered to discharge at the port of Leith, where the consigners demanded delivery of the barley in the original sacks. The shipowners, however, claimed the right to discharge the cargo according to a custom which they alleged prevailed at that port with regard to cargoes of grain shipped on steamers from North Pacific ports, whereby the grain was bulked in the hold, from which it was hoisted in tubs to the deck and poured into sacks of a uniform size:—*Held*, on the evidence, that the alleged custom had been proved and was binding on the consignees. *Strathlorne Steamship Co.* v. *Baird & Sons, Lim.*, [1915] S. C. 957—Ct. of Sess.

—— Port of Hull—Wheat in Bags—Loose Grain in Hold—Discharge—Distribution among Several Consignees.]—A cargo of wheat in bags was shipped on the plaintiffs' steamer from Australian ports to Hull by several consignors, in parcels, for several consignees, including both the defendant companies, and on the arrival of the steamer at Hull some of the wheat had escaped from the bags and could not be identified as having come from any particular parcel. The plaintiffs, in the course of discharge, caused any slack bags to be filled with the loose grain and delivered to each of the consignees his proper number of bags provisionally and subject to account, and at the close of the discharge ascertained the proportion which the total weight of the bags discharged bore to the total bill of lading weights, and in the case of any consignee who had received less than his proper proportion, made up the deficiency as far as possible out of the loose grain. In case of dispute the shipowner made out a *pro rata* statement, shewing all the proportions to be delivered. Although each of the defendant companies had received its proper number of bags the first defendant company alleged the delivery to them to be five tons short, and the delivery to the second defendant company to be the same amount in excess, of their proper respective quantities. In an action by the plaintiffs against the first defendant company for freight and in the alternative against the second defendant company for the return of wheat delivered to the second instead of to the first defendant company, the first defendant company counter-claimed against their co-defendants for wheat delivered to, and wrongly retained by, the latter. The Judge found, upon the evidence, that the plaintiffs, in making delivery as above described, had acted in accordance with a custom of the Port of Hull, and that by this custom any consignee who had provisionally received more than his proper share had received the excess to the use of those consignees who were still in deficiency and was under an obligation to deliver it to such consignees on demand. He also found that the *pro rata* statement was binding on all consignees. He accordingly gave judgment for the plaintiffs against the first defendant company and for the first defendant company on their counterclaim against their co-defendants:—*Held*, on appeal, that the Judge's decision must be affirmed, *per* Avory, J., on the grounds that there was evidence to support the Judge's finding as to the custom and that it was neither unreasonable nor uncertain and was therefore valid in law, and that any consignee having knowledge of the custom was under an implied contract to redeliver to any other such an amount as the proportional distribution required; and *per* Lush, J., on the ground that, whether there was sufficient evidence of a clear and uniform custom or not, the second defendant company had full cognizance of the method of dealing with wheat at the Port of Hull, and as they allowed loose grain which was the joint property of all the consignees to be placed in their bags, the law would raise an implied promise on their part that they would redeliver to consignees whose weight was short such a quantity as was shewn by the *pro rata* statement to be the proper quantity to be delivered. *Peninsular and Oriental Steam Navigation Co.* v. *Leetham & Sons, Lim.*, 32 T. L. R. 153—D.

Landing Charges—London Clause—Ship Discharging at Riverside Wharf.]—On the construction of a bill of lading.—*Held*, that the London clause and the landing charges exigible thereunder by the ship only applied when she discharged her cargo in a dock, and

did not apply when she discharged at a riverside wharf. *Produce Brokers Co.* v. *Furness, Withy & Co.*, 106 L. T. 636; 12 Asp. M.C. 188; 17 Com. Cas. 165; 28 T. L. R. 329—Scrutton, J.

XI. AVERAGE.

See also Vol. XIII. 580, 2112.

Unseaworthiness — Burden of Proof.]—Though it is a principle of law that the onus of proving unseaworthiness lies upon those who allege it, effect must be given to such presumptions of fact, arising from the age of the vessel, the low classing or non-classing, the non-survey of the ship, the refusal to insure, admitted defects, and bad record of the vessel, as tend to shift the burden of proof. *Lindsay* v. *Klein*, 80 L. J. P.C. 161; [1911] A.C. 194; 104 L. T. 261; 11 Asp. M.C. 563—H.L. (Sc.)

Shipowners sued cargo owners for a contribution in general average:—*Held*, that the cargo owners were not liable, for in the circumstances the onus was on the shipowners of shewing that the ship was seaworthy at the commencement of the voyage, and they had failed to discharge that onus. *Ib.*

Sacrifice and Expenditure — Ship Entering Dock in Interests of Ship and Cargo—Ship Intentionally Striking Pier—Damage to Property of Third Person — Contribution from Cargo Owner.]—The plaintiffs' vessel, having been seriously damaged by stranding, was being towed to a place where she could be put on the ground for the greater safety of the ship and cargo. Before reaching that place, however, she was found to be leaking badly, and the master and pilot decided to take her into a dock close by, to enter which she had to pass between two piers. Both the master and pilot contemplated that she would necessarily strike one of the piers and do damage. She in fact struck the pier harder than was anticipated, and damaged both herself and the pier to a considerable extent. To enter the dock under those circumstances was held to be a reasonable and prudent thing to do in the interests of ship and cargo. The shipowners brought an action against the owners of the cargo to recover contribution in general average in respect of the damage to the ship, and also in respect of the damage done to the pier:—*Held*, that the taking of the ship into the dock was a general average act, that the damage done to the ship in so entering was a general average sacrifice, and that the expense incurred in making good the damage done to the pier, notwithstanding that the expenditure was incurred in making good the damage done to the property of a third person, was a general average expenditure, inasmuch as it was an expense which was foreseen as the natural consequence of the general average act, and that therefore the shipowners could recover contribution in respect of such general average loss from the cargo owner. *Austin Friars Steamship Co.* v. *Spillers & Bakers, Lim.*, 84 L. J. K.B. 544; [1915] 1 K.B. 833; 20 Com. Cas. 100; 59 S. J. 205; 31 T. L. R. 147—Bailhache, J. Affirmed, 84 L. J. K.B. 1958; [1915] 3 K.B. 586; 20 Com. Cas. 342; 31 T. L. R. 535—C.A.

Held, further, that the common law rule that there is no contribution between joint tortfeasors does not apply in general average, the implied obligation on the part of the cargo owner and shipowner to bear between them in their respective proportions the consequence of every necessary and prudent act for the preservation of ship and cargo, even though that involves the committing of a trespass, being derived from the old Rhodian laws. *Ib.*

XII. SALVAGE.

1. Generally.

See also Vol. XIII. 593, 2118.

No Real and Sensible Danger — Onus of Proof.]—Before there can be a claim for salvage services, there must be an element of real and sensible danger or a reasonable apprehension of it on the part of the vessel against which the salvage is claimed; if there is an entire absence of this element, the claim of the salvor must fail. The onus of proving salvage services rests upon those who allege them. *The Calyx*, 27 T. L. R. 166—Evans, P.

Damage to Vessel Rendering Salvage Services.]—In salvage operations, the vessel asking for assistance has a duty cast upon her to accommodate, as far as possible, her own movements to those of the salving vessel, and to render assistance in the common enterprise. "*Hatfield*" (*Owners*) v. "*Glasgow*" (*Owners*). *The Glasgow*, 84 L. J. P. 161; 112 L. T. 703—H.L. (E.)

2. Salvage or Towage.

See also Vol. XIII. 611, 2121.

Tug and Tow—Claim that Towage Altered to Salvage.]—In an action of salvage by a tug, engaged in performing a towage service, where the owners, master, and crew of the tug have not discharged the burden of proving that the alteration of the tug's services from towage to salvage was not due either to the inefficiency of the tug or to the negligence of her master and crew, neither the owners nor the master nor the crew can recover a salvage award, although negligence has not been pleaded by the defendants. *The Maréchal Suchet*, 80 L. J. P. 51; [1911] P. 1; 103 L. T. 848; 11 Asp. M.C. 553; 26 T. L. R. 660—Evans, P.

The tug *G.* was engaged to tow a sailing ship, which during the towage stranded and was got off by services in which the *G.*, and other tugs belonging to the same owners as the *G.*, were employed, as well as tugs of other owners and two lifeboats, all of whom claimed salvage. Under the towage contract the owners of the *G.* had stipulated in effect that they should not be responsible for any damage occurring to vessels while in tow of the tug, and that they should not be answerable for any damage by collision or otherwise to any vessel while in tow, whether from any accident or by any negligence of their servants

or defect or imperfection in the tug or the machinery, and that the owners of the vessel should undertake all liability for the same. The owners of the ship in their defence to consolidated actions of salvage by the owners, masters, and crews of the tugs and other vessels, while admitting services rendered by the *G.* and other tugs of the same owners, denied any liability for salvage to these owners in respect thereof on the ground that the stranding was caused by inefficiency of the *G.*, but they did not allege any negligence of her master or crew; they also counterclaimed against the owners of the *G.* for any salvage due from themselves in respect of services by other vessels. The Court found in effect that the stranding was owing either to inefficiency of the *G.*, or to negligence of her master and crew, or to both combined. At the trial it was admitted by the owners of the *G.* that if they were not entitled to salvage in respect of the *G.*, then they would not be entitled to it in respect of their other tugs; but it was contended that in any case the masters and crews of all their tugs were entitled to salvage, and especially of the tugs other than the *G.*, as their services had been expressly engaged by the defendants :—*Held*, that, owing to the facts of the stranding, there was a burden on the owners of the *G.*, when claiming as salvors, to prove both that they had performed the obligations of their contract, and that the towage was altered into salvage by circumstances which could not reasonably be expected or by inevitable accident; that they had not discharged this burden, and therefore could not recover salvage. *Held*, that the master and crew of the tug *G.* could not recover salvage as it was left uncertain whether the stranding was caused by their negligence. *Held*, that, as regards the other tugs belonging to the same owners as the *G.*, their masters and crews were entitled to salvage for engaged services. *Held*, that the defendants could not recover on their counterclaim, as their plea that the stranding was owing to inefficiency of the tug was not established, but left in doubt; and that the terms of the contract afforded a defence to the counterclaim. *Ib.*

The ship stranded (as stated above) on the West Shingles Sand at the mouth of the Thames, and her crew having been taken off in heavy weather, thirteen hands on a volunteer lifeboat from Walton boarded her, and did a little discharging and took out a small anchor and kept off some small boats sent, as they alleged, to pillage the ship, and they remained on board when the crew returned about a day afterwards, though told they were not wanted, and did a little work :—*Held*, that the lifeboat's services did not amount to salvage. *Ib.*

Towage Contract—"No claim to be made for salvage"—Salvage Services Rendered after Termination of Towage Contract.]—By an agreement made between the plaintiffs, the owners of a tug, and the defendants, the owners of the *Glenmorven*, which had lost her rudder and had been taken into Vigo, the plaintiffs agreed to tow the *Glenmorven* from Vigo to the Tyne for 400*l.* The agreement contained these clauses : "No cure, no pay; no claim to be made for salvage." The plaintiffs' tug proceeded to tow the *Glenmorven*, but bad weather and other difficulties being experienced the master and the crew of the *Glenmorven* declined to proceed further, with the result, as the Judge found, that the contract of towage came to an end. Thereafter the tug rendered services in the nature of salvage to the *Glenmorven* :—*Held*, that the plaintiffs were entitled to recover in respect of the salvage services. *The Glenmorven*, 82 L. J. P. 113; [1913] P. 141; 29 T. L. R. 412—Evans, P.

Salvage of Tow by Tug—Contract between Shipowners and Tug Owners—Term of No Salvage Charges—Whether Cargo Owners Liable for Salvage Services.]—When a vessel containing cargo is being towed under a towage contract made between the owners of the tug and the owners of the vessel in tow, on the terms of "no cure, no pay; no salvage charges," and when, before the towage has come to an end, the vessel in tow is in danger and salvage services are rendered by the tug to the vessel and cargo, the tug-owners are entitled to recover against the owners of the cargo for salvage services. *The Leon Blum*, [1915] P. 90; 31 T. L. R. 2—Evans, P. Affirmed, 85 L. J. P. 1; [1915] P. 290; 59 S. J. 692; 31 T. L. R. 582—C.A.

3. Salvage or Pilotage.

See also Vol. XIII. 614, 2121.

Compulsory Pilot.]—It is desirable to keep pilots to their duties as pilots as far as one reasonably can, and not to countenance the idea that it is easy for a pilot to convert himself by reason of some additional risk into a salvor, and not to encourage pilots to become searchers after salvage. The defendants' steamship, which had lost her propeller near the *Royal Sovereign* lightship and had drifted ashore in Rye Bay and had some bumping, afterwards slipped off and lay to her anchors while a lifeboat stood by her. When the weather had moderated, she was taken in tow by two tugs. Off Dungeness the plaintiff, a compulsory pilot, boarded her and took charge of her to Gravesend. The plaintiff was told that the vessel had bumped badly and he feared leakage, but there was no leakage; and there was nothing in the weather, after he came on board, to increase the risk. During the towing from Dungeness there was some sheering, and the tow rope of one of the tugs parted, and a third tug was also engaged, and at Gravesend one of the tow ropes fouled the steamship's anchor, but she was moored safely to the buoys. The plaintiff claimed salvage. The defendants admitted that the lifeboat and the three tugs had rendered salvage services, but said that the plaintiff's services were pilotage services and denied his right to salvage :—*Held*, that nothing was required to be done or was in fact done by the plaintiff more than ought to be done by a pilot doing his ordinary pilotage work for pilotage reward, and that his claim to salvage must be disallowed, but without costs. *The Bedeburn*,

83 L. J. P. 109; [1914] P. 146; 111 L. T. 464; 12 Asp. M.C. 530; 30 T. L. R. 513—Evans, P.

4. Who are Entitled to Salvage.

See also Vol. XIII. 621, 2121.

King's Ship—Right of Commander, Officers, and Crew to Reward.]—Salvage remuneration awarded to the commander, officers, and crew of a King's ship in respect of services rendered by them to the defendants' steamship. *The Domira*, 30 T. L. R. 521—C.A.

Decision of Evans, P. (29 T. L. R. 557), affirmed. *Ib.*

Ship Requisitioned by Admiralty — Claim for Salvage Services — Whether Consent of Admiralty Necessary.]—By section 557 of the Merchant Shipping Act, 1894, "no claim for salvage services by the commander or crew or part of the crew of any of her Majesty's ships shall be finally adjudicated upon, unless the consent of the Admiralty to the prosecution of that claim is proved":—*Held*, that where a ship which has been requisitioned by the Admiralty renders salvage services, no claim for such services can be allowed in the absence of the consent of the Admiralty to the prosecution of the claim, inasmuch as such a ship, being in the sole employment of the Crown, is in the same position as a King's ship, although she is not the property of, or demised to, the Crown. *The Sarpen*, 31 T. L. R. 576—Bargrave Deane, J.

See also Salvage or Towage and Salvage or Pilotage *(supra)*.

5. Award.

See also Vol. XIII. 631, 2124.

Loss of Fishing Profits—Damages Incurred.]—In awarding salvage remuneration to fishing vessels for services rendered to another vessel, loss of the estimated fishing profits caused by the services cannot be allowed as such, though the Court will take into account the fact of the loss in making its award. Actual damages incurred were awarded by the Court as items of salvage remuneration. *The Fairport*, 81 L. J. P. 108; [1912] P. 168; 106 L. T. 382; 12 Asp. M.C. 165—Bargrave Deane, J.

Freight under Charter—Inclusion in Value of Property Salved.]—A vessel belonging to the plaintiffs rendered salvage services to a vessel belonging to the defendants when the latter was bound to the Tyne to carry out a charter. By reason of the services the defendants vessel was able to earn her freight under the charter:—*Held*, in a salvage action, that the freight ought to be taken into account in arriving at the value of the property salved. *The Kaffir Prince*, 31 T. L. R. 296—Evans, P.

Appeal as to Amount—Grounds for Varying Amount.]—The steamship *P.* having broken down in the Red Sea in consequence of the disablement of her propeller, an agreement was entered into between her master and the master of the steamship *A.* for towage of the former steamship by the latter to Suez, the remuneration to be subsequently arranged. The *A.* accordingly towed the *P.* to Suez, a distance of 825 miles, at an average speed of 6½ knots per hour, the towing having been interrupted for about six hours by the parting of the hawsers. The value of the *P.* was 40,000*l.* and of her cargo and freight 229,705*l.*, and the value of the *A.* was 36,250*l.* and of her cargo and freight 51,750*l.* It was found that in the part of the Red Sea where the salvage services were rendered there was a current setting towards rocky shoals to the eastward, and that for that and other reasons the *P.* was in a position of some danger. The Judge having awarded the owners of the *A.* 10,000*l.*,—*Held*, that the amount of the award was excessive, and that it should be reduced to 6,000*l.* *The Port Hunter*, 80 L. J. P. 1; [1910] P. 343; 103 L. T. 550; 11 Asp. M.C. 492; 26 T. L. R. 610—C.A.

The principles to be applied in assessing the amount of a salvage award considered. *Ib.*

6. Practice.

See also Vol. XIII. 666, 2130.

Several Sets of Salvors — Consolidated Action—Tender—Apportionment.]—In a consolidated salvage action where there is more than one set of plaintiffs claiming remuneration, the defendants, when making a tender in satisfaction of the claim, ought, if their servants were present and are able to give full information to them as to the merits of the salvage services, to apportion the amount tendered between the various sets of salvors. *The Burnock*, 110 L. T. 778; 12 Asp. M.C. 490; 30 T. L. R. 274—Bargrave Deane, J.

Salvage Action—Affidavit of Value.]—The affidavit of value in a salvage action ought not to be made on information and belief, but ought to be made by a person having actual knowledge of the value. *The Orangemoor*, 31 T. L. R. 190—Bargrave Deane, J.

XIII. TOWAGE.

See also Vol. XIII. 679, 2132.

Tug and Tow—Collision with Tow—Negligence of Tug—Contract making Crew of Tug Servants of Owners of Tow.]—A collision took place between the plaintiffs' vessel and a barge in tow owing to the negligent navigation of the tug. By the contract between the tug owners and the barge owners the master and crew of the tug became the servants of the barge owners during the towage. The tug master was employed and paid by the tug owners and was subject to dismissal by them alone. The sole control of the navigation of the tug and tow was with the tug:—*Held*, in an action by the plaintiffs against the tug owners and the barge owners, that, notwithstanding the terms of the contract, the master and crew of the tug were in fact the servants of the tug owners, and that therefore in law the tug owners, and not the barge owners, were responsible for the negligence of the master and crew of the tug. *The Adriatic and The Wellington*, 30 T. L. R. 699—Evans, P.

Condition Exempting Tug Owner from Liability for "Defect" in "Towing gear"—Defect Existing at Date of Contract—Defect in Attachments of Towing Hooks—Damage to Vessel Towed—Obligation of Tug Owners under Towage Contract — Effect of Exemption.]—By a verbal agreement of towage the defendants, who were tug owners, agreed to tow the plaintiff's steamer from Birkenhead to a dock at Liverpool, subject to the conditions that the tug owners were not to be responsible for any damage to the ship arising from (*inter alia*) "towing gear (including consequence of defect therein or damage thereto) and whether occasioned by the negligence, default, or error in judgment of the pilot, master, officers, engineers, crew or other servants of the tug owners." During the course of the towage, near the entrance to the dock, the towing gear of the tug carried away, the consequence being that the steamer struck a jetty at the entrance to the dock and was damaged. An action having been brought by the plaintiffs against the defendants for damages for alleged breach of the contract, there were findings of fact that the accident was due to the weakness of the rivets by which the angle bar to which the towing hooks of the tug were attached was fastened to the bulkhead; that at the time of the contract the tug was inefficient on this ground; that the inefficiency could have been ascertained by reasonable care and skill by the defendants; and that they had made no proper inspection of the tug before the contract was entered into:—*Held*, by the Court of Appeal (affirming the judgment of The President), that, apart from the conditions, the obligation of the defendants under the contract was to supply a tug as fit for the purposes for which it was hired as skill and care could make it; that the conditions did not in this instance exempt the defendants from that obligation, inasmuch as they were limited to defects in the towing gear arising during the period of the towage, and did not extend to defects existing at the commencement of the towage; and further (Vaughan Williams, L.J., dissenting on this point), that the expression "towing gear" in the conditions did not include the rivets in which the defect had existed; and consequently that, having regard to the findings of fact, the defendants were liable. *The West Cock*, 80 L. J. P. 97; [1911] P. 208; 104 L. T. 736; 12 Asp. M.C. 75; 55 S. J. 329; 27 T. L. R. 301—C.A.

Quære, whether the obligation of the tug owner under the contract of towage amounts to an absolute warranty of the fitness and efficiency of the tug for the intended purpose. *Ib.*

Damage to Cargo—Tug and Tow—Implied Term — Indemnity.] — The plaintiffs, the owners of cargo on a barge, recovered judgment against the defendants, the owners of the tug towing the barge, for loss of their cargo owing to a collision in which the barge was sunk. The defendants had brought in the barge owners as third parties, alleging that it was an implied term of the contract of towage that the barge owners should indemnify them against such a liability. By the terms of the contract the defendants (the Manchester Ship Canal Co.) were "not to be responsible or liable for damage or injury to any ship vessel or craft, or the persons or goods on board any ship vessel or craft, of which the company may undertake the towage or docking . . . or which may be piloted by any of their servants, . . . or for any loss sustained or liability incurred by any one by reason of such damage or injury, or for any loss or liability incurred in consequence of any such ship vessel or craft colliding with or otherwise damaging any other vessel or thing, or for any loss or liability of any kind whatsoever arising from the towing docking or piloting, whatever may be the cause or causes of such damage injury loss or liability or under whatever circumstances such damage injury loss or liability may have happened or accrued, even though arising from or occasioned by the act omission incapacity negligence or default whether wilful or not of the company's servants or agents or any other persons, or any defects, imperfection or insufficiency of power in or any delay stoppage or slackness of speed of any tug or vessel her machinery or equipment engaged in towing or docking any ship vessel or craft, whether such defect imperfection or insufficiency of power be in existence at the beginning of or during the said towing or docking":—*Held*, that no such term was to be implied in the contract, and that the defendants were not entitled to an indemnity from the third parties. *The Devonshire and The St. Winifred*, 82 L. J. P. 61; [1913] P. 13; 108 L. T. 427; 12 Asp. M.C. 314; 29 T. L. R. 86—Evans, P.

Negligence of Tug — Towage Contract — Indemnity.] — When the plaintiffs' tug was towing the defendants' barge a collision took place between the barge and a steamship, and in an action by the owners of the steamship against the present plaintiffs and defendants the tug was found alone to blame and damages were awarded against the tug owners. The towage contract provided that "the tug owners will not be responsible for the acts or defaults of the master or crew of the tug, or of any of their servants or agents . . . nor for any damages, injuries, losses, or delay from whatsoever cause arising that may occur either to the vessel or vessels towed . . . or to any other ship or vessel . . . and the tug owners shall be held harmless and indemnified by the hirer against all damages, injuries, losses, and delay, and against all claims in respect thereof, even though the same be caused or have arisen directly or indirectly from any unseaworthiness, defects . . . or otherwise howsoever":—*Held*, that the above indemnity covered negligence and the plaintiffs were entitled to be indemnified by the defendants in respect of the damages and costs awarded against them in the collision action and of their own costs in that action. *The Wellington*, 85 L. J. P. 12; 32 T. L. R. 49—Evans, P.

"No claim for salvage"—Abandonment of Ship by Crew — Termination of Contract — Quantum Meruit — Salvage Reward.] — The plaintiffs, tug owners, contracted that their tug with another tug should tow the defendants' steamship, which had lost her rudder but could use her engines, and had her master

and crew on board, from a Spanish port to the Tyne, for the sum of 400*l.*; "no cure, no pay; no claim to be made for salvage." The vessels met with bad weather and the plaintiffs' tug did but little towing, and when eight days out in the Bay of Biscay the master and crew of the steamship abandoned her and left in the other tug for a neighbouring port. The plaintiffs' tug then towed the abandoned steamship to Falmouth, and thence with the assistance of the other tug to the Tyne :—*Held*, that, owing to the abandonment, the contract came to an end by the fault of the defendants; and that the plaintiffs were entitled to a *quantum meruit* for their services till the abandonment, and to salvage reward for their subsequent services. *The Glenmorven*, 82 L. J. P. 113; [1913] P. 141; 29 T. L. R. 412—Evans, P.

XIV. COLLISION.

1. Negligence.

See also Vol. XIII. 685, 2138.

Collision Caused by Fault of Two Independent Third Parties.] — Two steamships came into collision at a narrow part of the river Clyde through no fault on the part of either of them. The collision was caused by one of the ships sheering across the river in her endeavours to avoid running down a tug with a string of barges in tow, which had emerged without warning from a dock in a shipbuilding yard and had steamed across the channel. In the dock in question a large cruiser was being fitted out at the time, and she had been moored by the shipbuilders in such a way that her stern projected for a considerable distance into the navigable channel of the river, in contravention of the by-laws of the Clyde Navigation Trustees. The owners of the two steamships brought actions against—first, the owners of the tug, and, secondly, the shipbuilders, claiming damages against the defenders, jointly and severally, for the injuries suffered in the collision :—*Held*, that, although the primary cause of the collision was the negligent navigation of the tug, yet, had the cruiser not been moored in this unauthorised position, the collision might have been avoided, and that consequently the shipbuilders were liable jointly and severally with the owners of the tug. *Ellerman Lines* v. *Clyde Navigation Trustees*, [1911] S. C. 122—Ct. of Sess.

Good Seamanship — Dangerous Bend in River—Vessel Proceeding against Tide—Duty to Wait.]—A collision occurred at a dangerous bend in a river, where a heavily laden steamship coming up on the flood tide had to make a sharp turn in the channel while she was caught by an eddy or cross stream, making it difficult to turn. The up-coming steamship when caught by the eddy failed to answer her helm, her tow rope to her tug broke, and she struck a steamship, coming down at speed, which met her in the bend :—*Held*, that the vessel coming down at speed against the tide was under a duty of good seamanship, whether it was the practice or not, to reduce her speed and wait so as not to meet the other vessel in the bend, and, having failed to do so, was alone to blame for the collision. *The Ezardian*, 80 L. J. P. 81; [1911] P. 92; 104 L. T. 400; 11 Asp. M.C. 602—Bargrave Deane, J.

Launch — Negligence of Vessel near the Launch — Election between Two Risks.] — A large vessel was about to be launched on the Mersey. The appellants' ketch lay near the launching place in a position of danger, from which, although repeatedly requested by the managers of the launch to do so, she refused to move, or to slip her anchor. To postpone the launch would have been attended with danger to life and property, as well as to the launch. The launch was effected; a collision followed, and both vessels were injured :—*Held*, on the facts, affirming the decision of the Court of Appeal (80 L. J. P. 121; [1911] P. 261), that the owners of the ketch were alone to blame, as the managers of the launch had elected to run the smaller of two risks. *The Highland Loch*, 81 L. J. P. 30; [1912] A.C. 312; 106 L. T. 81; 12 Asp. M.C. 106; 28 T. L. R. 213—H.L. (E.)

2. Presumption of Fault.

See also Vol. XIII. 707, 2140.

Moving and Stationary Vessels — Onus of Proving Fault—Compulsory Pilot.]—A ship proceeding up the Clyde on a dark foggy night in charge of a compulsory pilot collided with a vessel lying moored at a wharf. The owners of the latter vessel brought an action of damages against the owners of the colliding vessel in which, besides making specific averments of fault against the defenders, they maintained that the fact that their vessel had been run into while stationary raised a presumption of fault against the colliding vessel, and that the defenders could not obtain the protection of section 633 of the Merchant Shipping Act, 1894, except by proof of some specific fault on the part of the compulsory pilot :—*Held*, that the pursuers had failed to prove that the collision had been caused by the fault of the defenders or those for whom they were responsible. *Stephen* v. *Allan Line Steamship Co.*, [1911] S. C. 836—Ct. of Sess.

Observations—first, on the presumption of fault on the part of a moving vessel that has collided with a stationary vessel; and secondly, on the necessity of averring and proving specific fault on the part of a pilot before obtaining the protection of section 633 of the Merchant Shipping Act, 1894. *Ib.*

Retrospective Application of Maritime Conventions Act, 1911.]—The Maritime Conventions Act, 1911, applies to any action of damage by collision, if proceedings were not taken until after the passing of the statute, although the collision occurred before the statute passed; and in such a case the statutory presumption of fault under the Merchant Shipping Act, 1894, s. 419, sub-s. 4, has no application. *The Enterprise*, 82 L. J. P. 1; [1912] P. 207; 107 L. T. 271; 12 Asp. M.C. 240; 28 T. L. R. 598—Bargrave Deane, J.

3. Liability.

See also Vol. XIII. 717, 2142.

Action in Rem — Extent of Liability — Appearance—Personal Action—Decree.]—In an Admiralty action *in rem* for damage, if the defendants, although foreigners, appear, the action becomes a personal action, and the defendants become liable to the full extent of the damage proved, subject to the statutory limitation of shipowners' liability; and accordingly, if judgment goes against them, they are not entitled to a special decree confining their liability to the value of their ship and freight and the costs of the action. *The Dupleix*, 81 L. J. P. 9; [1912] P. 8; 106 L. T. 347; 12 Asp. M.C. 122; 27 T. L. R. 577—Evans, P.

Doctrine in *The Dictator* (61 L. J. P. 73; [1892] P. 304) as to the effect of appearance to an action *in rem*, which was approved by the Court of Appeal in *The Gemma* (68 L. J. P. 110; [1899] P. 285), followed. *Ib.*

4. Damages.

See also Vol. XIII. 726, 2142.

Collision in River—Launch and Dredger—Contributory Negligence of Plaintiff—Consequential Damages—Common Law or Admiralty Action.] — An action of damage for collision in a river brought by the owner of a launch against the owners of a dredger with wings employed in dredging the river, is a common law and not an Admiralty action, so that the plaintiff, if his negligence has contributed to the collision, cannot recover damages in respect either of the collision or of subsequent damage arising to the launch without negligence in consequence of the collision. *The Blow Boat*, 82 L. J. P. 24; [1912] P. 217—Bargrave Deane, J.

Negligence—Wrongful Act Causing Death—Damage to Plaintiff Flowing from Death—Loss of King's Ship and Crew—Pensions Payable by Admiralty to Relatives of Drowned Seamen—Claim by Admiralty to Capitalised Amount of Pensions.]—In an action of damage by collision brought by the Lords of the Admiralty against the owners of a steamship which had through the negligence of those on board run into a submarine and sunk her with sixteen hands, one of the items of the plaintiffs' claim was for the capitalised amount of certain pensions and allowances payable by the Admiralty to relatives of the crew who were drowned:—*Held*, that the claim failed on the ground that at common law no civil action could be brought in respect of the death of a human being. *The Amerika*, 83 L. J. P. 157; [1914] P. 167; 111 L. T. 623; 12 Asp. M.C. 536; 58 S. J. 654; 30 T. L. R. 569—C.A.

Semble, pensions paid as a matter of grace, and not under a legal obligation, are not recoverable as damages. *Ib.*

Workmen's Compensation — Indemnity — Foreign Defendants — Service of Notice — "Damage done by any ship"—"British ship"—"May . . . be served."]—One of the crew employed on the plaintiffs' lightship obtained an award under the Workmen's Compensation Act, 1906, for injury by nervous shock due to fright at seeing the defendants' ship coming into his vessel, the subsequent collision being due to the negligence of defendants' servants. The plaintiffs claimed from the defendants in the collision action an indemnity against the award for the injury as damage done by their ship; but the plaintiffs had not served notice of claim for indemnity under section 6, sub-section 2 of the Workmen's Compensation Act, 1906, and the Workmen's Compensation Rules, 19-24, on the ground that there was no provision for such service, as the defendants were foreigners resident abroad:—*Held*, that the plaintiffs could not recover any indemnity, because, even assuming that the member of the crew was entitled to an award, the fright was not "damage done by any ship" within section 7 of the Admiralty Court Act, 1861, and the claim was too remote; and that the defendants, not having been served with notice of claim for indemnity under section 6, sub-section 2 of the Workmen's Compensation Act, 1906, were not bound by, or liable in respect of, the award. *Semble*, in determining whether a ship is a "British ship . . . of which the owner . . . resides . . . in the United Kingdom," within the meaning of section 7, sub-section 1 of the Workmen's Compensation Act, 1906, it is not material to consider whether the ship is to be recognised as a "British ship" under section 2, sub-section 2 of the Merchant Shipping Act, 1894. *Semble*, in section 7, sub-section 1 (*a*) of the Workmen's Compensation Act, 1906, "The notice of accident . . . may . . . be served on the master of the ship," the words "may be served" are not to be read as "shall be served." *The Rigel*, 81 L. J. P. 86; [1912] P. 99; [1912] W.C. Rep. 351; 106 L. T. 648; 12 Asp. M.C. 192; 28 T. L. R. 251—Bargrave Deane, J.

Two Vessels to Blame—Right of Contribution between Them — "Damage or loss" — Damages Paid to Owners of Third Vessel.]—The effect of the provisions of section 1 of the Maritime Conventions Act, 1911, is that where two vessels are to blame for a collision, in which damage has been caused to an innocent third vessel, the owners of one of the vessels in fault can recover from the owners of the other of those vessels, as part of the "damage or loss" caused to them, the proportionate part of any sum recovered against them by way of damages by the owners of the third vessel. *The Cairnbahn* (*No.* 1), 83 L. J. P. 11; [1914] P. 25; 110 L. T. 230; 12 Asp. M.C. 455; 30 T. L. R. 82—C.A.

Two Wrongdoing Vessels — Right, as between Two Defendant Ships, of One of Them to Add Costs Paid to Plaintiff.]—An Admiralty action was brought by the owners of two barges against the owners of the steamship *Cairnbahn*, and subsequently the owners of the steam tug *Nunthorpe*, which was towing the barges, were added as defendants. The owners of the *Cairnbahn* likewise brought an action against the owners of the *Nunthorpe*.

Both actions were tried together. Judgment was given for the plaintiffs in the first action for the full amount of damages against the *Cairnbahn* alone owing to there being a contract of towage between the tug and the barges. In the second action the Judge held that both the *Cairnbahn* and the *Nunthorpe* were to blame, and ordered the two vessels in default to suffer the damages in moieties. He found that it was unreasonable for the owners of the *Cairnbahn* to defend the first action, and held that therefore they were not entitled for the purpose of the division into moieties to add to the damages the costs payable by them to the owners of the barges. He also laid down an Admiralty rule of practice disentitling the owners of the *Cairnbahn* to add the costs :—*Held*, by the Court of Appeal, without pronouncing upon the Admiralty rule of practice so laid down, that as the Judge had found that it was unreasonable for the owners of the *Cairnbahn* to defend the action brought against them by the owners of the barges, his decision as to the costs must be affirmed. *The Cairnbahn* (*No.* 2), 30 T. L. R. 309—C.A.

Appeal from decision of Evans, P. (29 T. L. R. 559), dismissed. *Ib.*

Value of Vessel—Vessel Sunk while under Charter to be Still in Force for Five Years.]—The plaintiffs' vessel, the *Helvetia*, was sunk by collision with the defendants' vessel in July, 1912. The *Helvetia* had a charterparty, dated 1909, which was to be in force from the spring of 1911 until 1917, unless the charterers cancelled it for any particular season :—*Held*, that the value of the *Helvetia* must be ascertained, as at the date in 1917 when the charterparty would expire, taking into account all the contingencies and the special terms of the charterparty. *The Empress of Britain*, 29 T. L. R. 423—Evans, P.

Steam Trawler Sunk — Claim for Loss of Future Fishing.] — The plaintiff's steam trawler was sunk by collision between it and the defendants' steamship, the latter vessel being alone to blame :—*Held*, that a claim by the plaintiffs for loss of fishing till they got a new vessel to replace the one that was sunk was not maintainable. *The Anselma de Larrinaga*, 29 T. L. R. 587—Bargrave Deane, J.

Sinking of Dredger — Loss of Use — Period for Computation of Damages.] — The plaintiffs' dredger was sunk by the defendants' steamship in the entrance to the Swansea Channel on February 4, 1912. She was raised on September 2, 1912, and was ready for use on February 6, 1913. It was impossible, until after she had been raised, to dredge where she was sunk, and a bank was formed by the sand silting down on her. After she was raised the plaintiffs hired another dredger :—*Held*, that the plaintiffs were entitled to damages, not merely for the period during which they had hired another dredger, but also for the period during which they had lost the use of their own dredger by reason of the fact that she was sunk. *The Tugela*, 30 T. L. R. 101—Evans, P.

Tug and Tow—Collision between Tow and Third Ship—Tug and Third Ship to Blame—Tow not to Blame—Action by Tow against Third Ship—Whole or Half Damage.]—There was no general rule in force in the Court of Admiralty which prevented an innocent ship injured in consequence of a collision with her, for which two other vessels were to blame, from recovering the whole of the damage sustained by her from both or either of the delinquent ships. *The Devonshire*, 81 L. J. P. 94; [1912] A.C. 634; 107 L. T. 179; 12 Asp. M.C. 210; 57 S. J. 10; 28 T. L. R. 551—H.L. (E.)

Where, as the result of a collision between a barge in tow of a tug and a third vessel, the barge sustains damage and the tug and third vessel are found to blame and the barge not to blame, the Admiralty rule as to division of loss does not apply, and the owners of the barge are entitled to recover from the owners of the third vessel the whole of the damage sustained by the barge. *The Milan* (31 L. J. P. 105; Lush. 388) explained and distinguished. *Ib.*

Remoteness — Primary and Substantial Cause—Loss of Use of Vessel—Strike of Workmen — Delay of Repairs.] — The plaintiffs' steamship was damaged by a collision for which the defendants were liable. Ship repairers contracted to do their utmost to repair the steamship in eighteen weather working days, but refused to guarantee a time owing to possible difficulties in regard to weather and labour troubles. A strike of workmen occurred which delayed the repairs for about nine weeks beyond the eighteen days. The plaintiffs claimed damages for loss of use of the vessel during the strike, and the defendants contended that these damages were too remote to be recovered. The defendants did not allege that the strike was illegal :—*Held*, that the defendants' negligence was the primary and substantial cause of the loss of use of the vessel during the whole time she was laid up for repairs; that strikes occur in the ordinary course of business, and that this strike was not such an independent act of third persons as to put an end to the continuity and efficiency of the former cause; and that these damages were the direct and immediate consequence of the defendants' negligence, and flowed from it directly and naturally, or in the usual and ordinary course of things, and were accordingly recoverable. *H.M.S. London*, 83 L. J. P. 74; [1914] P. 72; 109 L. T. 960; 12 Asp. M.C. 405; 30 T. L. R. 196—Evans, P.

Semble, that loss or damage which is clearly the direct and immediate consequence of a wrongful act is always proximate, and it is not necessary to enquire whether it also flows from the act directly and naturally, or in the usual and ordinary course of things. *Ib.*

Effect on Charterparty Hire—Bailees—Claim for Bill of Lading Freight.]—The steamship *R.* was let under charterparty by her owners to charterers, and was sub-chartered to the plaintiffs on the same terms except as regards dates, and while on a voyage carrying cargo under bills of lading was sunk by a collision with the defendants' steamship, for which the defendants were liable. The owners of the *R.*

had recovered damages in another action against the defendants for the hire which they would have earned under the charterparty, and had lost owing to the collision. The plaintiffs in this action claimed to recover from the defendants the freight under bills of lading for the voyage on which the *R.* was engaged at the time of the collision, after deducting both the hire under the sub-charter for the remainder of the voyage and the expenses which would have been incurred at the port of discharge. Bargrave Deane, J., on the Registrar's report, held that the meaning of the charterparty and sub-charter was that the owners of the steamship, though they permitted her to be used by the plaintiffs for the voyage, did not give up possession of her, but were the carriers of the cargo and were alone in a position to sue for the freight, and therefore the plaintiffs' claim must be disallowed: —*Held*, by the Court of Appeal, on the facts disclosed by a further report of the Registrar, that the bills of lading having been signed by the plaintiffs on their own behalf they had a sufficient interest to entitle them to bring the action. *The Okehampton*, 83 L. J. P. 5; [1913] P. 173; 110 L. T. 130; 18 Com. Cas. 320; 12 Asp. M.C. 428; 29 T. L. R. 731—C.A.

5. Division of Loss.

See also Vol. XIII. 735, 2149.

Both Ships to Blame—Damage to Cargo on one Ship—Action by Cargo Owners against other Ship—Amount of Damage Recoverable.] —Where a collision has taken place between two vessels for which both are to blame, the innocent owner of the cargo on one of the vessels which has sustained damage from the collision is entitled to recover from the owner of the other vessel one-half, but only one-half, of the amount of the damages sustained. *The Drumlanrig*, 80 L. J. P. 9; [1911] A.C. 16; 103 L. T. 773; 11 Asp. M.C. 520; 55 S. J. 138; 27 T. L. R. 146—H.L. (E.)

Making Good Damage in Proportion to Fault — Initial Fault — Costs.] — The defendants' steamship, coming down the coast in the North Sea and blowing her whistle for fog, heard on her starboard bow another steamship blowing her whistle for fog, and each vessel, after blowing and answering fog signals once or twice, changed her signal into two short blasts, but neither vessel stopped her engines, as she ought to have done. The plaintiffs' steamship, going up the coast and not blowing her whistle for fog, and being very nearly ahead, but a little on the port bow of the defendants' steamship, heard the other two steamships exchanging the signals of two short blasts, and was thereby misled into hard-a-starboarding her helm and putting her engines from slow to full speed ahead, instead of stopping her engines, as she ought to have done; and she came into collision with the defendants' steamship. The initial fault for the collision lay with the defendants' steamship in not stopping her engines on hearing the whistle of the steamship which she did not strike. Both plaintiffs' and defendants' steamships were disobeying the rules by going at an excessive speed:—*Held*, that both vessels were to blame; and that (on the principle of making good the damage in proportion to fault, under the Maritime Conventions Act, 1911) the defendants, as the initial fault lay with their vessel, should pay 60 per cent. of the total damage caused by the collision, and the plaintiffs should pay the other 40 per cent.; and that, as both vessels were very nearly equally to blame, there should be no order as to costs. *The Rosalia*, 81 L. J. P. 79; [1912] P. 109; 106 L. T. 351; 12 Asp. M.C. 166; 28 T. L. R. 287—Bargrave Deane, J.

Apportionment of Liability—Degree of Fault —Fault Causing or Contributing to Collision —Maritime Conventions Act, 1911.]—At the trial of an action of damage by collision the Judge found that both vessels were to blame, but that one was much more to blame than the other, and under section 1, sub-section 1 of the Maritime Conventions Act, 1911, he apportioned the liability at four-fifths and one-fifth. The Court of Appeal, being of opinion that there was no evidence on which the blame could be with any certainty apportioned, directed that the liability should be apportioned equally. *The Peter Benoit*, 84 L. J. P. 87; 31 T. L. R. 227—C.A. Affirmed, 85 L. J. P. 12; 60 S. J. 88; 32 T. L. R. 124—H.L. (E.)

Per Pickford, L.J., and Bankes, L.J.: In construing section 1, sub-section 1 of the Maritime Conventions Act, 1911, the fault to the degree of which the liability is to be apportioned must be read as meaning fault causing or contributing to the collision. *Ib.*

Decision of Bargrave Deane, J. (30 T. L. R. 277), varied. *Ib.*

Right of Contribution—"Damage or loss" —Damages Paid to Owners of Third Vessel.] —The effect of the provisions of section 1 of the Maritime Conventions Act, 1911, is that where two vessels are to blame for a collision, in which damage has been caused to an innocent third vessel, the owners of one of the vessels in fault can recover from the owners of the other of those vessels, as part of the "damage or loss" caused to them, the proportionate part of any sum recovered against them by way of damages by the owners of the third vessel. *The Cairnbahn* (*No.* 1), 83 L. J. P. 11; [1914] P. 25; 110 L. T. 230; 12 Asp. M.C. 455; 30 T. L. R. 82—C.A.

Right, as between Two Defendant Ships, of One of them to Add Costs Paid to Plaintiff.]— An Admiralty action was brought by the owners of two barges against the owners of the steamship *Cairnbahn*, and subsequently the owners of the steam tug *Nunthorpe*, which was towing the barges, were added as defendants. The owners of the *Cairnbahn* likewise brought an action against the owners of the *Nunthorpe*. Both actions were tried together. Judgment was given for the plaintiffs in the first action for the full amount of damages against the *Cairnbahn* alone owing to there being a contract of towage between the tug and the barges. In the second action the Judge held that both the *Cairnbahn* and the *Nunthorpe* were to blame, and ordered the two

vessels in default to suffer the damages in moieties. He found that it was unreasonable for the owners of the *Cairnbahn* to defend the first action, and held that therefore they were not entitled for the purpose of the division into moieties to add to the damages the costs payable by them to the owners of the barges. He also laid down an Admiralty rule of practice disentitling the owners of the *Cairnbahn* to add the costs:—*Held*, by the Court of Appeal, without pronouncing upon the Admiralty rule of practice so laid down, that as the Judge had found that it was unreasonable for the owners of the *Cairnbahn* to defend the action brought against them by the owners of the barges, his decision as to the costs must be affirmed. *The Cairnbahn (No. 2)*, 30 T. L. R. 309—C.A.

Appeal from decision of Evans, P. (29 T. L. R. 559), dismissed. *Ib.*

Collision of Steamship and Barge in Tow—Steamship and Tug in Fault—Rule as to Division of Loss—Damage to Barge—Damage to Cargo on Barge.]—The first plaintiffs were the owners of a tug and also bailees for hire of a barge in tow of the tug; and the second plaintiffs were the owners of cargo laden on the barge. A collision occurred between the defendants' steamship and the barge while in tow of the tug, for which the steamship was held to be three-fourths liable, and the tug one-fourth:—*Held*, that under the Maritime Conventions Act, 1911, ss. 1, 9, sub-s. 4, the barge must be deemed to be in fault, as she was damaged partly by the fault of the servants of her owners, and the fact that those servants navigated from the tug and not from the barge did not affect the liability, and the first plaintiffs could only recover from the defendants three-fourths of the damage to the barge; secondly, that the doctrine of *The Milan* (31 L. J. P. 105; Lush. 388), except as to the proportions of the division of loss, was incorporated in section 1 of the Maritime Conventions Act, 1911, and the second plaintiffs could recover only three-fourths of the damage to cargo from the defendants. *The Devonshire* (81 L. J. P. 94; [1912] A.C. 634) distinguished. *The Umona*, 83 L. J. P. 106; [1914] P. 141; 111 L. T. 415; 12 Asp. M.C. 527; 30 T. L. R. 498—Evans, P.

Consequential Damage — Negligence of Plaintiff—Rule of Common Law or Admiralty—Costs.]—In an action brought against the town council of the borough of Sandwich to recover the amount of the original and consequential damage sustained by the plaintiff's steam launch as the result of a collision between the launch and the defendants' dredger, it appeared that both the plaintiff and the defendants had been guilty of negligence in respect of the original collision, but that blame could not be thrown upon any one in particular in respect of the consequential damage:—*Held*, that the principles of the common law as to contributory negligence, and not the Admiralty rule as to both to blame, applied, so that, instead of the loss, arising out of the collision and the consequential damage, being divided between the plaintiff and the defendants, the plaintiff's action was barred by his contributory negligence in respect of the original collision, and therefore judgment must be entered in favour of the defendants with "public authority" costs. *The Blow Boat*, 82 L. J. P. 24; [1912] P. 217—Bargrave Deane, J.

Costs — Both Vessels to Blame — Different Degrees of Fault.]—Where in a collision action it is found that each vessel has been to blame, although in different degrees, the Court will, unless in special circumstances, apply in cases under the Maritime Conventions Act, 1911, the old practice of making each vessel pay her own costs. *The Bravo*, 108 L. T. 430; 12 Asp. M.C. 311; 29 T. L. R. 122—Evans, P.

6. Limitation of Liability.

See also Vol. XIII. 740, 2151.

Hopper Barge—"Ship."]—A hopper barge, with a rudder and other gear, used for dredging purposes, but with no means of propulsion, and towed to sea and back by a tug, is a "ship" within section 742, and her owners can limit their liability under section 503 of the Merchant Shipping Act, 1894. *The Mac* (51 L. J. P. 81; 7 P. D. 126) followed. *The Mudlark*, 80 L. J. P. 117; [1911] P. 116; 27 T. L. R. 385—Bargrave Deane, J.

Loss Occurring through "actual fault or privity" of Owner — Manager.]—A collision occurred between the *Fanny* and the *Lily Green* due to the former breaking adrift from her moorings; and in a collision action the *Fanny* was held solely to blame. The plaintiff, the owner of the *Fanny*, now sought to limit his liability under section 503 of the Merchant Shipping Act, 1894. Bargrave Deane, J., held that the plaintiff, who was an old man of eighty years of age and had been confined to his house for eight years, was not entitled to limit his liability, on the ground that he was in fault in having appointed an incompetent person as manager. On appeal, *held* that there was no evidence that the manager appointed by the plaintiff was incompetent, and that the plaintiff was entitled to limit his liability. *The Fanny*, 56 S. J. 289; 28 T. L. R. 217—C.A.

Pass of Commissioners of Customs — "For the time . . . therein limited."]—By section 23 of the Merchant Shipping Act, 1894, "Where it appears to the Commissioners of Customs . . . that by reason of special circumstances it would be desirable that permission should be granted to any British ship to pass, without being previously registered from any port in Her Majesty's dominions to any other port within Her Majesty's dominions, the Commissioners . . . may grant a pass accordingly, and that pass shall, for the time and within the limits therein mentioned, have the same effect as a certificate of registry." The Commissioners, purporting to act under this section, granted a pass to the plaintiffs' vessel "to make one voyage as a British unregistered vessel from the port of London to Immingham." While sailing under this pass,

the vessel by her bad navigation caused three vessels, which belonged to some of the defendants, to come into collision, whereby all three sustained damage. The plaintiffs claimed to limit their liability in respect of this bad navigation of their vessel. Some of the defendants alleged that the pass was invalid, as no time was mentioned therein in accordance with the section, so that the vessel could not be recognised as a British ship, and the plaintiffs could not limit their liability :—*Held*, that the pass was valid, having been granted "for the time . . . therein mentioned" within the terms of the section—namely, for the time of the voyage—and that the plaintiffs were entitled to limit their liability. *The Wills No.* 66, 83 L. J. P. 162; 30 T. L. R. 676—Bargrave Deane, J.

7. Tug and Tow.

See also Vol. XIII. 754, 2156.

Negligence of Tug—Non-liability of Tow.]—In a case of a collision between a barge in tow of a tug, in which the tug was admittedly to blame,—*Held* (Lord Robson dissenting), as purely a question of fact, that the barge was not to blame, as she was entitled to expect that the tug would be reasonably and carefully navigated and to act upon that belief. *Hopper Barge "W. H. No. 1" and The Knight Errant*, 80 L. J. P. 22; [1911] A.C. 30; 103 L. T. 677; 11 Asp. M.C. 497—H.L. (E.)

Collision between Tow and Third Ship—Tug and Third Ship to Blame—Tow not to Blame—Action by Tow against Third Ship—Whole or Half Damage.]—There was no general rule in force in the Court of Admiralty which prevented an innocent ship injured in consequence of a collision with her, for which two other vessels were to blame, from recovering the whole of the damage sustained by her from both or either of the delinquent ships. *The Devonshire*, 81 L. J. P. 94; [1912] A.C. 634; 107 L. T. 179; 12 Asp. M.C. 210; 57 S. J. 10; 28 T. L. R. 551—H.L. (E.)

Where, as the result of a collision between a barge in tow of a tug and a third vessel, the barge sustains damage and the tug and third vessel are found to blame and the barge not to blame, the Admiralty rule as to division of loss does not apply, and the owners of the barge are entitled to recover from the owners of the third vessel the whole of the damage sustained by the barge. *The Milan* (31 L. J. P. 105; Lush. 388) explained and distinguished. *Ib.*

8. Compulsory Pilotage.

See also Vol. XIII. 763, 2158.

Payment of Salary in Addition to Pilotage Fees—Fault of Pilot—Responsibility of Shipowner.]—In a compulsory pilotage district the fact that a pilot duly licensed for that district is paid a salary or bonus by the owners of a line of steamships as one of their appropriated pilots, in addition to his ordinary pilotage fees, does not make the pilot the servant of the shipowners so as to make them responsible for the negligent navigation by him of one of their vessels. *The Campania*, 30 T. L. R. 608—Bargrave Deane, J.

Duty of Master and Crew to Render Assistance to Pilot—Right to Interfere—Extent of Right.] — A collision occurred in the river Humber between a Swedish steamship in charge of an English pilot under compulsion of law and an English steamship. Both vessels were going full speed in fog. At the trial of an action brought in respect of the collision the Judge found both vessels to blame, and he also held that the owners of the Swedish vessel could not avail themselves of the defence of compulsory pilotage on the ground that in his opinion the pilot had not received from the officers and crew all the assistance which he was entitled to. The facts relating to this matter were as follows : The master and the chief officer, who were Swedes, but could speak English, were on the bridge with the pilot. The look-out man was a Swede, and could only speak Swedish. He had already made several reports to the bridge since the pilot had been in charge, and shortly before he saw the other vessel looming through the fog he reported a long blast on the starboard bow. The pilot took no notice of the report. The master and the chief officer heard what was reported, but neither of them repeated or interpreted it to the pilot. Nor did they point out to him that he was disregarding the international rules by going full speed in fog and not stopping his engines on hearing a fog signal forward of the beam : —*Held*, by the Court of Appeal, that the above facts did not shew a failure on the part of the officers of the Swedish vessel to render the pilot all the assistance which he was entitled to, and therefore the owners were not precluded from availing themselves of the defence of compulsory pilotage. *The Ape*, 84 L. J. P. 81; 31 T. L. R. 244—C.A.

Decision of Bargrave Deane, J. (83 L. J. P. 86; [1914] P. 94), reversed. *Ib.*

Pilot's Misapprehension — Master's Look-out—Warning—Omission of Sound Signals—Reminder.]—A compulsory pilot was navigating a vessel for a white light and a green light nearly ahead, as if they were both on a vessel under way. Two minutes before the collision the master on the bridge appreciated the fact that the white light was that of a vessel at anchor, but did not warn the pilot of his misapprehension, and the vessels came into collision. The helm of the vessel was starboarded three times for the other vessel, but the pilot did not order the whistle to be blown in accordance with article 28 of the Collision Regulations, and the master did not remind him of it :—*Held*, that, though the pilot was in fault for the collision, the defence of compulsory pilotage failed—first, because, if the master's look-out had been careful, he would have known that the other vessel was at anchor long before he did, and when he knew it in time to avoid the collision he ought to have warned the pilot; and secondly, because the master ought to have reminded the pilot of the fact that he had not ordered any sound signal when starboarding, and if sound

signals had been given, this would probably have led to some signal in reply, which would very likely have avoided the collision. *The Elysia*, 81 L. J. P. 104; [1912] P. 152; 106 L. T. 896; 12 Asp. M.C. 198; 28 T. L. R. 376—Evans, P.

When Compulsory.]—Although section 32, sub-section 2 of the Pilotage Act, 1913, provides that "a ship whilst being navigated within any closed dock . . . in a pilotage district shall notwithstanding anything in this Act be deemed to be navigating in a district in which pilotage is not compulsory," yet the effect of section 59, which provides that "any enactment, order, . . . or provision with reference to pilotage affecting any pilotage district in particular . . . shall remain in force . . . until provision is made by Pilotage Order . . . superseding any such enactment . . . or provision," is that any local Act requiring compulsory pilotage remains in force until it has been superseded in accordance with section 59. *The Port Hunter*, 31 T. L. R. 181—Bargrave Deane, J.

—— Collision when Pilot in Charge of Ship Outside Compulsory Pilotage Area.]—By section 633 of the Merchant Shipping Act, 1894, the owner or master of a ship is not answerable "for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of that ship within any district where the employment of a qualified pilot is compulsory by law":—*Held*, that the exemption only applied if the accident took place in the defined and fixed area within which pilotage was compulsory. "*Beechgrove*" *Steamship Co.* v. *Aktieselskabet Fjord of Kristiania*, 85 L. J. P.C. 1; 32 T. L. R. 44—H.L. (Sc.)

Therefore, where a vessel, inward bound, took on board a pilot at the usual and proper place, but outside the limits of the river Clyde as defined by the Clyde Navigation Consolidation Act, 1858, within which pilotage was compulsory under the Act, and came into collision with another vessel before she had come within those limits.—*Held*, that she could not set up the defence of compulsory pilotage, notwithstanding that the pilot was, under the by-laws made in virtue of powers conferred by the Act, in sole charge of the vessel at the time of the collision. *General Steam Navigation Co.* v. *British Colonial Steam Navigation Co.* (37 L. J. Ex. 194; L. R. 3 Ex. 330; 38 L. J. Ex. 97; L. R. 4 Ex. 238) and *The Charlton* (8 Asp. M.C. 29) disapproved. *Ib.*

Decision of the First Division of the Court of Session in Scotland ([1915] S. C. 281; 52 Sc. L. R. 244) reversed. *Ib.*

Ship Navigating within Compulsory Pilotage District—Ship Stopping Outside Port within Compulsory Pilotage District for Orders—Orders Taken to her by Boat Coming Out of Port—"Making use of any port in the district."]—Under section 11 of the Pilotage Act, 1913, "Every ship (other than an excepted ship) while navigating in a pilotage district in which pilotage is compulsory for the purpose of . . . making use of any port in the district . . . shall be either—(*a*) under the pilotage of a licensed pilot of the district; or (*b*) under the pilotage of a master or mate possessing a pilotage certificate for the district who is *bona fide* acting as master or mate of the ship." A ship, which was not an excepted ship, in the performance of her charterparty had to proceed to Dover to receive orders as to her port of discharge. She passed Dungeness, and proceeded to Dover, where she stopped for half an hour about a quarter of a mile outside the end of the Admiralty Pier, when a boat came out of the port with orders for her to proceed to Hamburg, to which port she immediately proceeded. The London pilotage district extends to Dungeness, and the port of Dover is within that district. Neither the master nor the mate of the vessel held a pilotage certificate for the district:—*Held*, that the ship, by stopping outside the port of Dover for orders, was making use of that port within the meaning of section 11 of the Pilotage Act, 1913, and was therefore bound, while navigating in the London pilotage district for which pilotage is compulsory for the purpose of making use of a port in that district, to be under the pilotage of a licensed pilot of the district. *Cannell* v. *Lawther, Latta & Co.*, 83 L. J. K.B. 1832; [1914] 3 K.B. 1135; 112 L. T. 84; 20 Com. Cas. 29; 12 Asp. M.C. 578; 30 T. L. R. 680—Bailhache, J.

Port of London.]—The master of a steamship belonging to the Port of London and outward bound from that port on a voyage with a cargo and passengers is bound to employ a licensed Trinity House pilot while the steamship is within the limits of that port; and consequently, if the steamship while within the Port of London in charge of such a pilot collides with and damages another vessel through the negligence of the pilot her owners are not liable. *The Hankow* (48 L. J. P. 29; 4 P. D. 197) approved. *The Umsinga*, 81 L. J. P. 65; [1912] P. 120; 106 L. T. 722; 12 Asp. M.C. 174; 56 S. J. 270; 28 T. L. R. 212—C.A.

Trinity House—Extra Coals—"Navigating in ballast"—"Stores."]—A steamship which sails for a loading port for a long voyage thence to a port of discharge, and which has in her only three-eighths of the tonnage of her dead-weight carrying capacity, this being made up partly by her tanks being partially filled with water ballast and partly by extra coals for her long voyage, carried in her bunkers and in part of her cargo space, is "navigating in ballast" within the Trinity House By-law approved by Order in Council of July 25, 1861; and is thereby exempted from compulsory pilotage within the pilotage jurisdiction of the Trinity House. *The Tongariro*, 82 L. J. P. 22; [1912] P. 297; 107 L. T. 28; 12 Asp. M.C. 235; 28 T. L. R. 336—Bargrave Deane, J.

Semble, the extra coals of the steamship are "stores" within the meaning of the clearance certificate. *Ib.*

Putting into the Humber—Bunker Coals—"Stores."]—The owners of a steamship which

puts into the Humber for bunker coals and there, owing to the fault of her pilot, comes into collision with another vessel, cannot escape liability on the ground of compulsory pilotage, as bunker coals are "stores" within the meaning of section 24 of the River Humber Pilotage Act, 1832, which exempts from compulsory pilotage "any ship or vessel putting into the river Humber for the purpose of shelter, or of obtaining stores or provisions only." *The Nicolay Belozwetow*, 82 L. J. P. 37; [1913] P. 1; 107 L. T. 862; 12 Asp. M.C. 279; 29 T. L. R. 160—Evans, P.

The provisions in the Manchester, Sheffield, and Lincolnshire Railway Act, 1849, are subsidiary to those of the River Humber Pilotage Act, 1832, and the obligations of, and exemptions from, compulsory pilotage apply to Grimsby Docks as they did to Grimsby Roads before the Act of 1849 was passed. *Ib.*

Defence on Merits and on Compulsory Pilotage — Failure of Defence on Merits.]—The *A.*, which was lying at anchor, was run into during a fog by the *O.* and damaged. In an action against the owners of the *O.* in respect of the damage the defendants pleaded that the collision, so far as they were concerned, was due to inevitable accident; they also pleaded the defence of compulsory pilotage. At the trial the defendants failed on the issue of inevitable accident, but succeeded on the defence of compulsory pilotage:—*Held*, that in the circumstances judgment should be entered for the defendants without costs. *The Ophelia*, 29 T. L. R. 656—Bargrave Deane, J. Affirmed, 30 T. L. R. 61—C.A.

9. The Regulations.

(Cases arranged under the several Articles of the Regulations of 1897.)

PRELIMINARY.

Scope of the Rules: Definitions.

See also Vol. XIII. 787, 2167.

Drifter—"Under way."]—A steam drifter, shooting her nets and sailing with a little mizen sail at about one knot an hour, and with steam up, but unable to go ahead or astern without fouling her propeller, is "under way" within the Preliminary Note to the Sea Regulations, 1897. She is "under steam" and therefore not a sailing vessel within that Note. *The Pitgaveney*, 79 L. J. P. 65; [1910] P. 215; 103 L. T. 47; 11 Asp. M.C. 429; 26 T. L. R. 473—Evans, P.

Article 9.

Fishing Boats.

See also Vol. XIII. 794, 2169.

Trawler—Proper Lights—Interval between Two Shoots of the Trawl — Trawler Going Ahead.]—The plaintiffs' trawling smack was carrying the proper lights for a sailing trawler with her trawl down, and having got her trawl up she hoisted her foresail, with the result that before again shooting her trawl she was making one and a half to two knots. A collision took place, during this interval, between the trawler and the defendants' steamer:—*Held*, that both vessels were to blame, as the trawler ought to have had her sailing lights up, and the steamer ought to have kept out of the way in view of the lights which the trawler was exhibiting. *The Skrim*, 30 T. L. R. 555—Bargrave Deane, J.

Drifter—"Vessel fishing with drift nets."]—A steam drifter shooting her nets and sailing with a little mizen sail at about one knot an hour and with steam up, but unable to go ahead or astern without fouling her propeller, is "under way" within the Preliminary Note to the Fishing Regulations, 1897. She is a "vessel fishing with drift nets" with nets partly in the water, within article 9 (*b*), and is bound to carry always in the proper positions the two white lights therein prescribed, and when she alters her heading the position of the lights should be changed accordingly, and no practice of fishermen for such a vessel while shooting her nets to carry her lights otherwise is any excuse. *The Pitgaveney*, 79 L. J. P. 65; [1910] P. 215; 103 L. T. 47; 11 Asp. M.C. 429; 26 T. L. R. 473—Evans, P.

Practice of Fishermen—Incumbered Fishing Vessel—"Special circumstances" Necessitating Departure from Rules — Statutory Presumption of Fault—Possibility of Contribution to Collision.]—The plaintiffs' sailing drifter was sailing at night in a strong breeze towards her fishing grounds, making about four knots, when she came into collision with the defendants' steam drifter. The steam drifter was shooting her nets and sailing with a little mizen sail at about one knot an hour, with steam up, but unable to go ahead or astern without fouling her propeller, and was carrying the two white lights prescribed by article 9 (*b*), but with the lower light not in the direction of the nets, but away from them, in contravention of the article, though intending after shooting to bring her head round to the nets, when the lower light would be in the right direction:—*Held*, that the steam drifter was an incumbered fishing vessel, and was relieved by "special circumstances" rendering a departure from the Rules necessary under article 27, from the duty to keep out of the way of a sailing vessel under article 20; and that the sailing drifter ought to have kept out of the way, and had a very bad or no look-out, and was alone to blame; for though the steam drifter had committed a breach of article 9 (*b*) by the position of her lights, and was therefore subject to the statutory presumption of fault under section 419 of the Merchant Shipping Act, 1894, this breach could not by any possibility have contributed to the collision. *The Tweedsdale* (58 L. J. P. 41; 14 P. D. 164) and *The Englishman* (47 L. J. P. 9; 3 P. D. 18) followed. *Ib.*

Article 15.

Fog Signals.

See also Vol. XIII. 798, 2173.

Duty to Give Sound Siganals—Tug Fast but not Towing.]—When a tug is accompanying

a steamship in a fog with the intention of towing her, and a towing rope is out between them, but there has been no towing, the tug is not a "vessel . . . towing," and the steamship is not a "vessel towed," so as to be bound to give fog signals accordingly under article 15, paragraph (*e*) of the Sea Regulations, 1897. *The Sargasso*, 82 L. J. P. 9; [1912] P. 192; 107 L. T. 204; 12 Asp. M.C. 202; 28 T. L. R. 444—Evans, P.

In such circumstances, if, which is doubtful, the tug is to be considered as a separate steam vessel from the steamship, so that each might sound a prolonged blast under article 15 (*a*), yet from the point of view of safe navigation and warning to others it is less confusing for the steamship to give the prolonged blast under that article, unaccompanied by any such signal from the tug. *Ib.*

In such circumstances, if the tug is ordered round from one bow of the steamship to the other she may properly blow a prolonged blast, even if there is no obligation on her to do so under article 15 (*a*). *Ib.*

Apportionment of Blame.]—In a fog collision, when one steamship was only to blame for excessive speed, and the other for bad look-out, excessive speed, and in other respects, the blame was apportioned one-third to the first vessel, and two-thirds to the second; and no costs were given. *Ib.*

Excessive Speed.]—When a fog is so thick that steamships can only see each other at one hundred yards, the speed of a steamship is excessive if it is such that she cannot stop in about her own length, and if she could have proceeded and have had steerage way at a lower speed than she had. *Ib.*

One Vessel at Anchor—Onus of Proof.]—Where in a fog there has been a collision between two vessels, one of which was at anchor, the vessel at anchor has not the onus of proving that her sound signals were audible in the approaching vessel. If the vessel at anchor sounded the regular signals, it is for the other vessel to shew some reason or excuse for the accident. *The Valdes*, 31 T. L. R. 144—Evans, P.

ARTICLE 16.

Speed in Fogs.

See also Vol. XIII. 799, 2175.

Breach of Article 16.]—A collision took place in a dense fog between the *Children's Hope*, a steam drifter, and the *Ariadne*, a steam trawler. The *Children's Hope* was stemming the ebb tide waiting for the fog to clear before going up the Humber to Grimsby. In order to stem the tide, which was running with the force of two or three knots, her engines were kept working slowly ahead, and she was duly sounding her whistle for fog. In these circumstances the whistle of the steam trawler *Ariadne* was heard on the port bow. The *Children's Hope* blew her whistle, but did not stop her engines, her excuse for not doing so being that there was a sailing vessel at anchor about a hundred yards astern of her, and that the tide would have taken her on to that vessel had she stopped. Shortly afterwards the *Ariadne*, which was outward bound, loomed in sight about two ship's lengths off, and almost at once her stem struck the port bow of the *Children's Hope*, doing damage. It was admitted that the *Ariadne* was to blame, but it was contended that the *Children's Hope* was also to blame for a breach of article 16 of the International Regulations in not stopping her engines on hearing the whistle of the *Ariadne* forward of her beam:—*Held*, that there were no circumstances justifying the non-observance by the *Children's Hope* of the provisions of article 16, and therefore that she was also to blame for collision. *The Ariadne*, 27 T. L. R. 304—D.

"Moderate speed" What is—"Navigate with caution."]—As a rule those in charge of a steam vessel in a fog, in order to go at a "moderate speed" within article 16 of the Sea Regulations, 1910, ought not to go so fast that the vessel cannot be pulled up within the distance which they can see. *The Counsellor*, 82 L. J. P. 72; [1913] P. 70—Bargrave Deane, J.

To alter the helm of a steam vessel on hearing the first whistle of another steam vessel ahead in a fog at sea, before doing anything to ascertain the position of the other vessel, is not to "navigate with caution" within article 16 of the Sea Regulations, 1910. *Ib.*

ARTICLE 17.

Steering and Sailing Rules.

See also Vol. XIII. 804, 2179.

Watching Compass Bearing of Approaching Vessel.]—According to the defendants' case, those on board their steamship, while on a course for a lightship in the North Sea, observed first one white light, and afterwards a second white light, on the plaintiffs' steamship a long distance off and (as they alleged) right ahead, and taking the vessel to be a fisherman they afterwards starboarded to get on to their course for another lightship; when they had starboarded about two points, the plaintiffs' vessel blew a long blast, being then (as they alleged) two to two and a half points on their starboard bow and distant about a half to a quarter of a mile; and in spite of subsequent manœuvres a collision occurred, the plaintiffs' vessel just before the collision showing a dim red light. Those on the defendants' steamship had not watched the compass bearing from their vessel of the plaintiffs' steamship, and, as the Court found, until they altered their course the plaintiffs' steamship was on their port bow. The plaintiffs' steamship carried only one mast-head light, and what the second light was in fact was not ascertained, but the Court found that her red light was in a faulty condition:—*Held*, that the defendants' vessel was to blame for bad look-out, and because those on board had not obeyed the Preliminary to

article 17 of the Sea Regulations by "carefully watching the compass bearing of the approaching vessel," which would have shewn that the plaintiffs' vessel was broadening on their port bow, and that there must be risk of collision if they starboarded; and that the plaintiffs' vessel was also to blame for the faulty red light. *The President Lincoln*, 81 L. J. P. 5; [1911] P. 248; 105 L. T. 442; 12 Asp. M.C. 41—Bargrave Deane, J.

ARTICLE 19.

Steamships Crossing.

See also Vol. XIII. 810, 2180.

Fog—Rules Applicable.]—Article 19 of the Regulations for Preventing Collisions at Sea does not apply in cases where the two vessels are not visible to each other by reason of fog. In cases of fog, only the fog rules apply, the other rules being only applicable where the vessels are in sight of each other. *The King*, 27 T. L. R. 524—Bargrave Deane, J.

Steam Vessel Coming Out of Dock—Rules of Good Seamanship.]—Article 19 of the Sea Regulations applies in the case of a steam vessel coming out of dock, unless the circumstances are such as to displace its application. In the beginning, when a steam vessel is manœuvring out of dock, and another vessel is very close, it is impossible to apply article 19, and then the rules of good seamanship will govern the case. In coming out of dock, a vessel ought to navigate with the greatest possible caution. *The Llanelly*, 83 L. J. P. 37; [1914] P. 40; 110 L. T. 269; 12 Asp. M.C. 485; 30 T. L. R. 154—D.

A steamship was coming out of a lock of a dock in the river Mersey, shewing her masthead and red lights to vessels coming up, and those on board saw the masthead and green lights of a steamer lower down the river coming up against the ebb tide, and also two other steamers coming up outside of her; the nearest steamer blew two short blasts and starboarded, and the outcoming steamer, which could have remained in the bell mouth, blew one short blast and proceeded at such speed as she could to cross ahead of the three other steamers; the nearest steamer repeated her two short blasts, and afterwards, when she got to close quarters, reversed her engines, but came into collision with the outcoming steamer:—*Held*, that the outcoming steamer ought to have remained in the bell mouth till the nearest steamer had passed, and was three-fourths to blame for the collision; but that, reversing the decision of the Court below, the nearest steamer, when put in a difficult position did, by repeating her two short blasts, determine upon a course which might bring her into collision, and ought to have reversed her engines before continuing to starboard, and was one-fourth to blame. *Ib.*

Steam Trawler with Trawl Down—Triplex Light Shewn—Crossing Steamers—Duty as to Keeping out of Way.]—A steam trawler with her trawl down, and in this sense an incumbered vessel, and also exhibiting the proper light—the triplex light—prescribed by article 9 (*d*) of the Sea Regulations for a vessel so engaged, is under no obligation to obey the provisions of article 19 and to keep out of the way of a crossing steam vessel which is approaching her on her starboard side. *The Tweedsdale* (58 L. J. P. 41; 14 P. D. 164) and *The Upton Castle* (75 L. J. P. 77; [1906] P. 147) approved. *The Craigellachie* (77 L. J. P. 145; [1909] P. 1) dissented from. *The Grovehurst*, 79 L. J. P. 124; [1910] P. 316; 103 L. T. 239; 11 Asp. M.C. 440—C.A.

Steam Trawler "engaged in trawling"—Steamship Crossing—Effect of Exhibition of Triplex Light—Giving Way.]—By article 9 (*d*) 1 of the Regulations for Preventing Collisions at Sea, the exhibition of a triplex light is rendered compulsory on a steam vessel "engaged in trawling," and an intimation is thereby given to a crossing steam vessel that, as the trawler, by being incumbered, is unable to comply with article 19 of the same Regulations, and keep out of the way, the steam vessel must given way—*The Grovehurst* (79 L. J. P. 124; [1910] P. 316)—but that the trawler will, under article 21, keep her course and speed. *The Ragnhild*, 81 L. J. P. 1; [1911] P. 254; 105 L. T. 446; 12 Asp. M.C. 44—Bargrave Deane, J.

Where, therefore, a steam trawler was (as the Court found) duly exhibiting the triplex light, and those in charge did not stop on seeing a crossing steam vessel causing imminent risk by suddenly porting when close to, and a collision occurred,—*Held*, that the crossing steam vessel was alone to blame, for, in the circumstances, as a matter of seamanship, and, under the rules, as a matter of law, those in charge of the trawler were justified in keeping their course and speed. *Ib.*

Buoyed Channel—Suction—Fresh Evidence on Appeal.]—A collision took place off Cowes in the Isle of Wight, between a large ocean liner, in charge of a duly licensed pilot, and a cruiser of the Royal Navy. At the time of the collision the liner was proceeding from Southampton Water towards Spithead through the eastern buoyed channel to the south of the Ryde Middle Bank; and the cruiser was proceeding from the Solent towards Spithead through the same channel on a course somewhat to the southward of and converging towards that of the liner, which thus had the cruiser on her starboard side. Cross-actions of damage for collision having been brought,—*Held*, by Sir Samuel Evans, P., upon the evidence, that the vessels were crossing vessels, and that the liner, having the cruiser on her starboard side, should therefore by article 19 have kept out of the way of the latter; that the cruiser was not to blame; that the cause of the collision was the faulty navigation of the liner, which, however, was due solely to the negligence of her pilot and not to that of persons for whom her owners were responsible; and therefore that both actions failed. Appeals having been entered in both cases,—*Held*, by the Court of Appeal, which had allowed the owners of the liner to bring evidence that had not been available at the trial as to the

finding on the sea bottom of wreckage from the cruiser, for the purpose of shewing that the place of collision was different from that fixed by the President, that, notwithstanding this fresh evidence, the conclusions of the President were correct, and that the appeals should be dismissed. *The Olympic and H.M.S. Hawke*, 83 L. J. P. 113; [1913] P. 214—C.A. See s.c. in H.L. *infra*.

Per Kennedy, L.J.: In certain special circumstances, although two steam vessels are visibly approaching one another on converging courses, the crossing rule, article 19, will not be held to regulate their respective duties towards each other. Such circumstances have been held to exist when the vessels were in a river—*The Velocity* (39 L. J. Adm. 20; L. R. 3 P.C. 44; 6 Moore P.C. (N.S.) 263); and though they could rarely, if ever, exist in the case of steam vessels on converging courses in the open sea, there seems to be no reason for confining them to the navigation of a river. *Ib.*

The effect of suction or interaction in bringing about a collision between two vessels proceeding along a shallow channel at high speed considered. *Ib.*

Concurrent Findings of Fact in Court Below — Additional Evidence on Appeal.] — Where there have been concurrent findings of fact in the Courts below the House of Lords will not, in ordinary cases, review those findings. But in a case in which additional evidence, which had not been before the Court of first instance, and tended to shew that the witnesses on both sides were mistaken as to a material fact, was admitted in the Court of Appeal, and, after the hearing in the Court of Appeal, the parties agreed that certain other evidence which had been before that Court was inaccurate in some particulars, the House of Lords allowed the whole case to be re-opened. *The Pekin* (66 L. J. P.C. 97; [1897] A.C. 532) distinguished and explained. *The Olympic and H.M.S. Hawke*, 84 L. J. P. 49; [1915] A.C. 385; 112 L. T. 49; 12 Asp. M.C. 580; 31 T. L. R. 54—H.L. E.)

Decision of the Court of Appeal (83 L. J. P. 113; [1913] P. 214) affirmed on the facts. *Ib.*

ARTICLE 20.

Steamship and Sailing Ship.

See also Vol. XIII. 811, 2181.

Drifter — "Steam vessel proceeding." — A steam drifter, shooting her nets and sailing with a little mizen sail at about one knot an hour, and with steam up, but unable to go ahead or astern without fouling her propeller, is "under way" within the Preliminary Note to the Sea Regulations, 1897. If she was not an incumbered vessel, and if no departure from the Rules was necessary under article 27, she would be "a steam vessel proceeding" within article 20, and would have to keep out of the way of a sailing vessel. *The Pitgaveney*, 79 L. J. P. 65; [1910] P. 215; 103 L. T. 47; 11 Asp. M.C. 429; 26 T. L. R. 473—Evans, P.

ARTICLE 21.

Keep her Course and Speed.

See also Vol. XIII. 814, 2183.

Single Ship and Squadron of Warships—Single Foreign Ship.]—A Spanish steamship belonging to the plaintiffs was proceeding in the North Sea on a course of N.21°W., and a squadron of five British cruisers steering N.27°E. were approaching abaft her port beam, three cruisers being in line and one smaller cruiser being on each side of the leading cruiser. The Board of Trade Notice, 1897, in effect warns single ships to keep out of the way of, and avoid passing through, a squadron of warships, but the plaintiffs' officers, being Spaniards, had not heard of this notice. The Spanish steamship hoisted the Spanish ensign in compliment to the cruiser, and kept her course and speed until just before the collision, purporting to act under article 21 of the Sea Regulations; and the second cruiser in line came into collision with her, the defendant, the navigating officer in charge of the cruiser, being negligent among other respects in not manœuvring to keep out of the way until too late. The Spanish steamship was charged with negligence in not keeping out of the way of the squadron and in not obeying the Board of Trade Notice. The plaintiffs' master and the defendant both testified at the trial that by the regulations which applied it was the duty of the Spanish steamship to keep her course and speed, and of the cruiser to keep out of the way:—*Held*, that in the circumstances the Spanish steamship was not negligent in keeping her course and speed under article 21 of the Sea Regulations; that, as regards the Board of Trade Notice, the plaintiffs' officers, being Spaniards and not having heard of the notice, were not negligent as regards it, and that, the defendant knowing that the other vessel was Spanish, the defendant was alone to blame. *H.M.S. King Alfred*, 83 L. J. P. 61; [1914] P. 84; 109 L. T. 956; 12 Asp. M.C. 401; 30 T. L. R. 102—Evans, P.

Steamships Approaching or Leaving Dock Entrance — Application of Collision Regulations — Crossing Rule.] — The appellants' steamship, which was bound to Barry Roads, Bristol Channel, for orders, expecting to receive them from the signal station, but failing to do so proceeded in an easterly direction across the entrance to the Barry Docks, keeping so close to the dock entrance as seriously to obstruct the entrance to the dock. Whilst so doing she came into collision with the respondents' steamship, which was coming out of the dock from between its breakwaters. The latter vessel had put her helm a-port as soon as she could safely do so, and had given one short blast, but the appellants' vessel, instead of keeping her course and speed and not obstructing the dock entrance, kept in the way by which alone the other vessel could pass out. Upon these facts the Judge in the Court below held that the appellants' vessel was alone to blame upon two grounds—first, that she had no right to be so close in to the

entrance of the docks as to obstruct it; and secondly, that she had improperly neglected to keep her course and speed by reversing her engines in the path which she ought to and might reasonably have known the respondents' vessel was going to take; and was therefore to blame under the crossing rule—article 21 of the Regulations for Preventing Collisions at Sea, 1897 :—*Held*, by the Court of Appeal (Lord Alverstone, C.J., and Kennedy, L.J.; Buckley, L.J., dissenting), that, assuming that the crossing rule applied, yet by reason of the appellants' vessel being so close in to the dock entrance the respondents' vessel was exonerated from blame under article 27 for not stopping and reversing her engines sooner, because if she had done so there was risk of the vessel being put upon the breakwater. *Held* also, by Kennedy, L.J., that in the peculiar circumstances of the case—the narrowness of the dock entrance, the neighbourhood of the breakwater, the setting of the tide, and the closeness of the appellants' vessel—no blame, either in respect of seamanship or as a breach of article 23, could justly be imputed to the respondents' vessel for not stopping and reversing earlier than she did. *The Hazlemere*, 80 L. J. P. 25; [1911] P. 69; 103 L. T. 890; 11 Asp. M.C. 536—C.A.

Lord Alverstone, C.J., expressed no opinion on the question how far the Regulations for Preventing Collisions at Sea, 1897, would apply in the case of a vessel coming out of dock under circumstances similar to those in which the respondents' vessel was placed. *Ib.*

Steam Trawler Trawling—Incumbered Fishing Vessel — Not Stopping Engines.]—The plaintiffs' steam trawler, trawling in the North Sea and shewing (as the Court found) her proper trawling lights, was approached on the starboard bow by the defendants' steamship, crossing her course and shewing masthead and red lights. The steamship starboarded and brought the vessels green to green, and so continued until just before the collision, when she ported and opened her red light again, and her starboard bow struck the starboard side of the trawler right aft at a fine angle. The trawler kept her course and speed, and did not stop her engines :—*Held*, that the steamship, whose duty it was to keep out of the way as she was crossing the course of an incumbered fishing vessel, was to blame for bad look-out and bad seamanship, and that the trawler, whose duty it was to keep her course and speed except perhaps at the last moment, was not to blame for not stopping her engines, both as a matter of seamanship and in respect of her obligations as an incumbered fishing vessel under article 21 of the Sea Regulations. *The Ragnhild*, 81 L. J. P. 1; [1911] P. 254; 105 L. T. 446; 12 Asp. M.C. 44—Bargrave Deane, J.

Crossing Ships—Duty to Give Way—Duty to Keep Course and Speed — Duty to Take Action to Avert Collision—Test to be Applied.]—A steam vessel on a course of N.26°W. sighted the masthead and then the green light of a steam vessel, which was on a course of S.74°E., about two points on the port bow, about six miles off. The vessels ultimately collided. The steam vessel on the N.26°W. course, whose duty it was to keep her course and speed under article 21, obeyed the article until shortly before the collision, when she slowed her engines and sounded a long warning blast, and shortly afterwards put her engines full speed astern and sounded three short blasts on her whistle. The steam vessel on the S.74°E. course, whose duty it was to keep out of the way under article 19 and avoid crossing ahead under article 22, starboarded and alleged she heard a short blast from the vessel on the N.26°W. course, when she put her engines full speed astern and sounded three short blasts on her whistle, keeping her starboard helm up to the collision. In an action for damages,—*Held*, that the vessel on the N.26°W. course, which, while admittedly keeping her course, eased her speed, was not to blame for doing so; for, it being difficult to decide when the precise moment has arrived at which the giving-way vessel should take action, the officer in charge must be allowed some latitude, and when it is shewn that he is carefully watching the other vessel and endeavouring to do his best to act at the right moment, he ought not to be held to blame even if it afterwards appears that he waited too long or acted too soon. *Held*, further, that the vessel on the S.74°E. course was to blame for attempting to cross ahead of the other vessel and for not indicating her course on her whistle when she starboarded and when she first reversed her engines. *The Huntsman*, 104 L. T. 464; 11 Asp. M.C. 606—Bargrave Deane, J.

ARTICLE 25.

Narrow Channel; Starboard Side Rule.

See also Vol. XIII. 822, 2188.

Firth of Clyde.]—The Firth of Clyde, above a line drawn from the Cloch lighthouse to the Gantocks beacon, is a narrow channel in the sense of article 25 of the Regulations for Preventing Collisions at Sea, 1897. *Clyde Navigation Trustees* v. *Wilhelmsen*, [1915] S. C. 392—Ct. of Sess.

ARTICLE 26.

Sailing Ship and Fishing Craft.

See also Vol. XIII. 2190.

Drifter — "Sailing vessel fishing with nets."]—A steam drifter, shooting her nets and sailing with a little mizen sail at about one knot an hour, and with steam up, but unable to go ahead or astern without fouling her propeller, is "under way" within the Preliminary Note to the Sea Regulations, 1897. She is "under steam," and therefore not a "sailing vessel" within the Preliminary Note, and she is not "a sailing vessel fishing with nets" within article 26 of the Regulations so as to bind other sailing vessels to keep out of the way under that article. *The Pitgaveney*, 79 L. J. P. 65; [1910] P. 215; 103 L. T. 47; 11 Asp. M.C. 429; 26 T. L. R. 473—Evans, P.

ARTICLE 28.

Sound Signals.

See also Vol. XIII. 2191.

Vessels in Sight of One Another—"Course authorised or required by these Rules."]—The duty which article 28 of the Regulations for Preventing Collisions at Sea imposes upon steam vessels in sight of one another to give appropriate sound signals "in taking any course authorised or required by these rules" is not limited to the case of a course which at the trial of a collision action is found by the Court to have been authorised or required by the Rules. It applies to the case of any course taken by a vessel purporting to act under any of the Rules with the intention of avoiding immediate danger. *The Hero*, 80 L. J. P. 66; [1911] P. 128; 105 L. T. 87; 27 T. L. R. 398—C.A. Affirmed, 81 L. J. P. 27; [1912] A.C. 300; 106 L. T. 82; 12 Asp. M.C. 108; 56 S. J. 269; 28 T. L. R. 216—H.L. (E.)

Crossing Vessels—In Sight of One Another—Keep-on Vessel—"Directing . . . course."]—A collision occurred between two steamships which approached on crossing courses from a long distance. The giving-way vessel neglected to alter her course to port or to slacken her speed or stop or reverse, and on a course of S.W.$\frac{1}{4}$W. magnetic approached without about a quarter of a mile of the other vessel (which was on a course of N.E. by E.$\frac{1}{2}$E. magnetic) so as to bear one and a half points on her port bow and cause risk of collision. The giving-way vessel at about this distance hard-a-starboarded, but gave no signal. The keep-on vessel ported, and then almost as one order put her engines full speed astern and hard-a-ported, but gave no signal: —*Held*, that the giving-way vessel was alone to blame; and that the keep-on vessel was not to blame for not signalling, as in one sense when she ported and hard-a-ported she was hardly "directing" her "course" within article 28, but was trying to run away from a vessel which had placed her in a difficulty, and her omission to signal in such circumstances could not be so strictly regarded as if she had been "directing" her "course" in the ordinary way of navigation; and that, without holding that such a vessel would be excused from signalling if that would make it easier for the other vessel to avoid collision, in the circumstances the omission of the keep-on vessel to signal did not contribute to the casualty. *The Tempus*, 83 L. J. P. 33; [1913] P. 166; 109 L. T. 669; 12 Asp. M.C. 396; 29 T. L. R. 543—Evans, P.

Alteration of Course—Sounding Whistle—Second Vessel Coming in Sight.] — In weather more or less foggy, the steamship *M.*, proceeding to an anchorage, had to starboard her helm to clear a vessel at anchor. There was no other vessel in sight at the time, but directly afterwards the steam barge *B.* came in sight. The *M.* gave no signal when she directed her course to port under starboard helm:—*Held*, that while it was only necessary under article 28 of the Rules for Preventing Collisions at Sea for the *M.* to sound her whistle when directing her course to port or starboard with reference to a moving vessel, and therefore she was not wrong in omitting to sound her whistle when she starboarded for the anchored vessel, she ought to have sounded it when the *B.* came in sight, to indicate that her course was being directed to port. *The Megantic*, 31 T. L. R. 190—Bargrave Deane, J.

Tug Blowing Regulation Towing Signals—No Signal by Tow.]—The steamship M., in tow of two tugs, and with no steam on her main engines, was proceeding up the Humber and was about to turn in the river when she was run into by the steamship *A.* It was a dark night and the weather was hazy. The *M.'s* head tug was blowing the regulation towing signals, but no whistle signals were being sounded on the *M.* herself, who had only got steam on her donkey boiler to work the winches:—*Held*, that the rules of good seamanship did not require the *M.* to sound her whistle, as to do so would be misleading to other vessels, as it might lead them into the belief that she had steam on her main engines; and, further, as she and her tugs had not commenced to turn, although they were preparing to do so, it would have been wrong for the turning signal to have been given. *The Marmion*, 29 T. L. R. 646—Bargrave Deane, J.

Failure to Hear Fog Signals—Evidence of Defective Look-out.]—Where in an action of damage by collision in a fog the Judge at the trial found that there had been a defective look-out on the part of one of the vessels because those on board failed to hear fog signals sounded by the other vessel, the Court of Appeal refused to interfere with such finding. *The Curran*, 79 L. J. P. 83; [1910] P. 184; 102 L. T. 640; 11 Asp. M.C. 449—C.A.

10. LOCAL RULES.

a. Manchester Ship Canal.

Fog—Vessel Moored—Signal.]—There is no rule in the Manchester Ship Canal that a vessel moored alongside one of the lie-bys in a fog shall give any signal to indicate her presence as a warning to other vessels; and the rules of good seamanship do not require her to give a signal in the absence of circumstances shewing that those on board knew, or ought to have known, that another vessel was approaching to moor there. *The City of Liverpool*, 29 T. L. R. 139—Evans, P.

b. Mersey.

See also Vol. XIII. 829, 2194.

Vessel Coming out of Dock into River.]—The regulations for preventing collisions at sea apply in the Mersey, but where one of two steam vessels "crossing so as to involve risk of collision" is a vessel coming out of dock, it is impossible to apply article 19 before a certain time in the course of her manœuvres,

and the two vessels must navigate in accordance with the rules of good seamanship (article 29). *Semble*, it depends on the distance the one vessel has got from the dock and on the distance the other vessel is from her when there becomes "risk of collision," whether article 19 is applicable or not. *The Sunlight* (73 L. J. P. 25; [1904] P. 100) considered. *The Llanelly*, 83 L. J. P. 37; [1914] P. 40; 110 L. T. 269; 12 Asp. M.C. 485; 30 T. L. R. 154—D.

Vessel Turning in River.] — The Mersey Rules, which consist of the International Regulations with some modifications and alterations, are deficient in not providing a rule, such as exists in the Thames, prescribing the signal to be given by a vessel turning in the river. A mere repetition of the helm signal, indicating that the vessel is under a particular helm, is not a sufficient indication to other vessels that she is turning round under that helm. *The Adriatic*, 30 T. L. R. 593—Evans, P.

Vessel being Overtaken — Close Waters — Rule as to Keeping Course and Speed—Duty of Following Vessel.]—The rule as to keeping course and speed, while a perfectly good rule in open waters, cannot always be applied in close waters such as the Mersey, and each case must depend on its own circumstances. In a river like the Mersey a following vessel must watch the vessel ahead and observe what course she is taking with regard to other vessels. *The Wooda*, 31 T. L. R. 222—Bargrave Deane, J.

c. Tees.

Limits of River Tees.] — Although by the Tees Conservancy by-laws the river is defined to mean the parts of the river Tees within the jurisdiction of the Commissioners, and the jurisdiction of the Commissioners extends far beyond the Fairway buoy, the river Tees itself does not extend so far as the Fairway buoy. *The Peter Benoit*, 84 L. J. P. 87; 31 T. L. R. 227—C.A. Affirmed, 85 L. J. P. 12; 60 S. J. 88; 32 T. L. R. 124—H.L. (E.)

Speed Over the Ground—Strict Observance.] —Although rule 27 of the Tees by-laws provides that "whenever there is a fog no steam vessel shall be navigated in any part of the river at a higher rate of speed than three statute miles per hour *over the ground*," the larger type of vessels which now call at Middlesbrough may find a difficulty in obeying the rule at certain states of the tide, and, having regard to the duty to other vessels to keep steerage way, if a vessel has a right to be under way at all and her speed is not greater than is right under the circumstances, the Court may consider that the vessel is not to blame for the non-observance of the rule. The port authority might well consider whether the rule should prescribe speed *through the water* instead of over the ground. *The Dettingen*, 30 T. L. R. 589—Evans, P.

d. Thames.

See also Vol. XIII. 830, 2195.

Bend in River — Vessel Approaching with Tide—Duty to Blow Warning Blasts—Vessel Rounding Bend against Tide—Speed—Good Seamanship.] — A tug towing the plaintiffs' barge and going with the tide, having stopped just before, approached a sharp bend in Bow Creek, river Thames, without blowing a warning blast to any vessel which might be coming down, as was alleged to be the practice, and the barge came into collision with defendants' tug, which came round the bend at some speed towing another barge:—*Held*, that, although she had stopped just before and apart from any question of practice, it was the duty under the rules of good seamanship for the tug towing the plaintiffs' barge to blow a warning blast or blasts on approaching the bend, and not having done so she was to blame for the collision; and that the defendants' tug, which rounded the bend against the tide, was also to blame for going too fast under the circumstances. *The Kennet*, 81 L. J. P. 82; [1912] P. 114; 105 L. T. 880; 12 Asp. M.C. 120—D.

Steamship Aground in the Thames — Signals.]—A vessel proceeding up the Thames grounded. She sounded four short blasts on her whistle to signify that she was not under command, but, before she could put up the lights required by article 30 of the Thames Rules she was run into by a steamship which had been coming up the river about a quarter of a mile astern of her. In a damage action,—*Held*, that the steamship which got aground was not to blame for not putting up the lights required by article 30, as that rule was not applicable and there was not sufficient time in which to put them up before the collision, and she had sounded a four-blast signal signifying that she was not under command; and further, that the overtaking ship was alone to blame for not keeping out of the way and for bad look-out. *The Bromsgrove*, 82 L. J. P. 2; [1912] P. 182; 106 L. T. 815—Bargrave Deane, J.

Observations on the want of a signal to be made by vessels temporarily aground in the Thames. *Ib.*

Sound Signals—"Steam vessel . . . turning round."]—When a steam vessel is turning round in the river Thames, after having given the appropriate signal of four short blasts under rule 40 of the Thames By-Laws, that signal supersedes for the time other signals as to the orders given to the engines, so that she is not required while going ahead and astern to give a signal of three short blasts under rule 42 when her engines are put full speed astern *The Harberton*, 83 L. J. P. 20; [1913] P. 149; 108 L. T. 735; 12 Asp. M.C. 342; 29 T. L. R. 490—Evans, P.

The defendants' steam vessel, being about to turn round at night time in the river Thames, sounded the appropriate signals of four short blasts followed by one short blast, in accordance with rule 23 of the Port

of London River By-laws, 1914, to indicate that she was going to turn with her head to starboard, and these signals were repeated when the lights of the plaintiffs' steam vessel were seen coming down the river. In the course of turning the engines of the defendants' vessel were put full speed astern, and she moved bodily astern about 370 feet, but she did not sound the three short blasts signals, under rule 27, to indicate that her engines were working astern. The two vessels came into collision:—*Held*, that the turning signal was not sufficient indication, particularly at night, that a vessel was moving bodily astern to a substantial extent, and that while the plaintiffs' vessel was to blame for bad look-out and failure to stop and reverse her engines, the defendants' vessel was also to blame, as the neglect to sound the three short blasts was the primary cause of the collision. *The Harberton* (83 L. J. P. 20; [1913] P. 149) distinguished. *The Ancona*, 84 L. J. P. 183; [1915] P. 200—Bargrave Deane, J.

"Master"—"Shall be on the bridge."]—Article 14 of the Thames By-laws, 1898, which provides that "the master of every steam vessel navigating the river shall be . . . on the bridge," must be construed with regard to the definition of "master" in article 4 as "the owner, master or other person . . . having or taking the command, charge or management of the vessel." And when a vessel is in charge of a compulsory pilot, article 14 does not forbid the voluntary but temporary absence of the master of the vessel from the bridge, when another competent officer is stationed there, and there are no special circumstances of difficulty, and no special matters within his knowledge of which he ought to be ready to inform the pilot. *The Umsinga*, 80 L. J. P. 90; [1911] P. 234; 27 T. L. R. 439—Evans, P.

Steam Vessel Running Aground—Anchor Lights—Whistle Signals.]—As regards the Thames Rules, 1898—article 30 (by which a vessel of a certain size when at anchor, and a similar vessel if aground in or near a fairway, is required to exhibit two white lights) applies to vessels anchored or on the ground permanently near the fairway, and not to a vessel which is temporarily aground. Article 40 (which directs that, when a steam vessel in other than certain circumstances is turning round or for any reason is not under command and cannot get out of the way of an approaching vessel, she shall signify the same by four blasts) applies to a steamer with gear out of order or engines broken down or something of that sort, and not to a steamer which has temporarily run aground. *The Bromsgrove*, 82 L. J. P. 2; [1912] P. 182; 106 L. T. 815; 12 Asp. M.C. 196—Bargrave Deane, J.

Semble, vessels in the Thames are not bound to carry anchor lights ready lighted on deck in case they run aground, and therefore anchor lights cannot be put up in a moment on a vessel which runs aground. *Ib.*

Meeting Vessels.]—Article 17 of the Thames By-laws is not confined to the case of steam vessels meeting steam vessels rounding the points mentioned in the article. It applies to the case of a steam vessel meeting a sailing vessel. *The Ursula Fiseher*, 29 T. L. R. 529—Evans, P.

Custom in Thames to Keep to North Side Going up and Vice Versa—Port to Port Rule.]—On August 30, 1912, there was no rule in the Thames that steamships should keep to the north side going up, and the only rule was that if there was a risk of collision ships should go port to port—if there was no risk there was no rule to prohibit starboard to starboard. "*Karamea*" (*Owners*) v. "*Marie Gartz*" (*Owners*), 30 T. L. R. 702—H.L. (E.)

Decision of the Court of Appeal (30 T. L. R. 88) affirmed (Lord Parmoor dissenting on the facts). *Ib.*

Ambiguity of River Rule — "Light or lights"—"Vessel of 150 feet or upwards."]—The part of article 30 of the Thames Rules, 1898, which provides, "A vessel of 150 feet or upwards aground in or near a fairway shall carry the above light or lights," is not ambiguous as regards a vessel of above 150 feet, and such a vessel must carry the two lights. And, as the Thames rule applies to her, article 11 of the Collision Regulations, 1910, which would interfere with that rule, does not apply to her. *The Bitinia*, 82 L. J. P. 5; 29 T. L. R. 99—C.A. Affirming, [1912] P. 186; 107 L. T. 208; 12 Asp. M.C. 237—Bargrave Deane, J.

11. Practice.

a. Time within which Action must be Brought.

Extension of Time.]—Circumstances in which the Court, in the exercise of its discretion, allowed an action for damages to a ship to proceed although more than two years had elapsed from the date of the collision. *The Cambric*, 29 T. L. R. 69—Evans, P.

Action for Loss of Life—Limitation of Time—Claim against Vessel.]—The time for bringing an action for damages for loss of life under the Fatal Accidents Act, 1846, limited by section 3 of that Act to one year, is extended to two years under section 8 of the Maritime Conventions Act, 1911, when the action is to enforce a claim or lien against a vessel or her owners. *The Caliph*, 82 L. J. P. 27; [1912] P. 213; 107 L. T. 274; 12 Asp. M.C. 244; 28 T. L. R. 597—Bargrave Deane, J.

b. Pleadings.

General Allegation of Negligence—Application for Particulars—Failure to Give Particulars—Application Struck out.]—A vessel at anchor was run into and damaged by a vessel in motion. In an action for damage, the owners of the vessel at anchor delivered a statement of claim in which they alleged that those on the vessel colliding with them did not take proper and seamanlike measures to keep clear. A summons for particulars of the measures which should have been taken was

dismissed by the Registrar. The defendants appealed to the Judge in chambers. On appeal,—*Held*, that as the plaintiffs could give no particulars the allegation should be struck out, the Judge at the trial having power to deal with any negligence proved but not pleaded. *The Kanawha*, 108 L. T. 433; 12 Asp. M.C. 317—Bargrave Deane, J.

Preliminary Act—Contents.]—The intention of paragraph 11 of the preliminary act in a collision case is that the combinations of lights, subsequent to those described in paragraph 10 as first seen, should be stated; so that, after stating in paragraph 10 that the masthead and both side lights of a steam vessel were first seen, the party should state in paragraph 11 that afterwards the masthead and red lights only were seen, and then the masthead and green only, if this was the case; and in such circumstances it is not proper to answer in paragraph 11 that no other lights were seen. *The Monica*, 81 L. J. P. 92; [1912] P. 147; 106 L. T. 349; 12 Asp. M.C. 164; 28 T. L. R. 154—Evans, P.

—— Equivalent to Admissions of Fact.]—*Per* Fletcher Moulton, L.J.: Statements in a preliminary act are not mere pleading allegations, but amount to admissions of fact which the party making them ought not to be allowed to depart from except under most special circumstances. *The Seacombe; The Devonshire*, 81 L. J. P. 36; [1912] P. 21; 106 L. T. 241; 56 S. J. 140; 28 T. L. R. 107—C.A.

In damage actions resulting from collisions in rivers in which the colliding vessels are on a fixed course as opposed to a course which has to be constantly changed, either the magnetic or the true course, and not the compass course, should be pleaded in the preliminary act. *The Rievaulx Abbey*, 102 L. T. 864; 11 Asp. M.C. 427—Evans, P.

—— Action for Damage—"Vessel"—Landing Stage—Repeal of Rule—Effect of Repeal on Practice under Rule.]—A floating landing stage permanently fixed to a river side except in so far as it is capable of rising and falling with the tide is not a "vessel" within the meaning of the Rules of the Supreme Court, 1883, Order XIX. rule 28; and therefore, in an action for damage by collision between a steamship and such a landing stage, the parties cannot, under that rule, be ordered to file preliminary acts. *The Craighall*, 79 L. J. P. 73; [1910] P. 207; 103 L. T. 236; 11 Asp. M.C. 419—C.A.

Even assuming that under the Rules of the High Court of Admiralty, 1859, a practice existed according to which preliminary acts might be ordered in cases of collision other than collision between vessels, inasmuch as these Rules have been repealed by the Rules of the Supreme Court, 1883, Introduction and Appendix O (22), that practice has also been repealed and has not been continued in force by Order LXXII. rule 2 of the Rules of 1883. Observations in *Busfield, In re; Whaley* v. *Busfield* (55 L. J. Ch. 467; 32 Ch. D. 123), applied. *Ib.*

c. Mode of Trial.

Action for Loss of Life—Action in Rem—Admission of Liability—Trial by Judge and Jury—Discretion.]—An action *in rem* having been brought against a ship to recover damages for loss of life caused by a collision at sea, the owners filed an admission of liability, praying a reference to the Registrar and Merchants to assess the damages. The plaintiffs took out a summons for an order giving them leave to enter interlocutory judgment and to have the damages assessed by a sheriff's jury. The Judge made an order that the action should be tried by a Judge with a jury in the Admiralty Division:—*Held*, that the order was within the discretion of the Judge, and was one with which the Court of Appeal ought not to interfere. *The Kwasind*, 84 L. J. P. 102—C.A.

d. Bail.

Excessive Bail—Bail Fees.]—Where excessive bail had been demanded by the plaintiffs in a collision action, the Court, on the application of the defendants, ordered the plaintiffs to pay the fees in respect of the bail in excess of the proper amount of bail that should have been demanded. *The Princess Marie José*, 109 L. T. 326; 12 Asp. M.C. 360; 29 T. L. R. 678—Bargrave Deane, J.

e. Discovery.

Inspection of Books before Trial—Collision—Sunken Lightship—Value of Lightship.]—The plaintiffs' lightship having been sunk in collision with the defendants' steamship, the plaintiffs brought an action *in rem* against the defendants for damage. The defendants admitted liability, and the only question was as to the amount of the damage. The action was referred to the District Registrar for trial. While the reference was pending, the defendants, with a view to ascertaining the value of the lightship at the date of the collision, took out a summons under Order XXXI. rule 18 (1) for inspection of the plaintiffs' books shewing the initial cost and annual depreciation in value of the lightship. The plaintiffs resisted the application on the ground that it would be inconsistent with the practice in the Admiralty Division to allow inspection of the books before they were produced at the reference. The District Registrar refused the application, and his decision was affirmed by Bargrave Deane, J.:—*Held*, by the Court of Appeal, that the defendants were entitled to the inspection asked for. *The Pacuare*, 81 L. J. P. 143; [1912] P. 179; 107 L. T. 252; 12 Asp. M.C. 222—C.A.

f. Costs.

See also Vol. XIII. 855, 2201.

Denial of Negligence—Alternative Defence of Compulsory Pilotage—Single Issue—Discretion of Court.]—In an action of damage by collision the defendants pleaded that the collision was an inevitable accident, and alternatively that if it was caused or contributed to by any negligence on board their vessel the negligence was that of a compulsory pilot. The Court of first instance held that the collision was due to the negligence of the

pilot, and that the defendants ought not to pay costs; but that in the circumstances of the case there ought to be no costs. The defendants, by leave, appealed on the question of costs, and contended that they were entitled to have the action dismissed with costs:—*Held*, that the Court could not lay down any general rule beyond that already laid down—that if there is but one issue in the action the successful party is *prima facie* entitled to costs, and that the Judge must consider the special circumstances of each case and exercise his discretion accordingly; that as the defendants had denied negligence on the part of any one there was not a single issue in the case: and that the Judge in the Court of first instance had exercised his discretion, which the Court of Appeal could not review. *The Ophelia*, 83 L. J. P. 65; [1914] P. 46; 110 L. T. 329; 12 Asp. M.C. 434; 30 T. L. R. 61—C.A.

XV. PASSENGER SHIPS.

See also Vol. XIII. 866, 2202.

Steamer Plying on Voyage with Passengers on Inland Waters — Certificate of Survey — "Vessel used in navigation."] — By section 271, sub-section 1 (*b*) of the Merchant Shipping Act, 1894, every passenger steamer carrying more than twelve passengers "shall not ply or proceed to sea or on any voyage or excursion with any passengers on board" without a Board of Trade certificate as to survey. By section 267 a passenger steamer is a steamship. By section 742 a ship includes a "vessel used in navigation not propelled by oars." A launch, which carried more than twelve passengers and was not propelled by oars, plied for hire along a river and a canal up to, but not beyond, some lock gates, and back again. Along the same water sea-going vessels were taken to points beyond the lock gates:—*Held*, that as the launch was used in waters upon which, in ordinary parlance, navigation could reasonably be said to take place, it was a "vessel used in navigation" and a "ship" within section 742, and therefore was subject to the provisions requiring a certificate under section 271, sub-section 1 (*b*). *Reg.* v. *Southport (Mayor) and Morris* (62 L. J. M.C. 47; [1893] 1 Q.B. 359, *sub nom. Southport Corporation* v. *Morriss*) considered. *Weeks* v. *Ross*, 82 L. J. K.B. 925; [1913] 2 K.B. 229; 108 L. T. 423; 77 J. P. 182; 12 Asp. M.C. 307; 23 Cox C.C. 337; 29 T. L. R. 369—D.

Passenger's Contract Ticket — Form Approved by Board of Trade—Addition of Clause not Approved by Board of Trade—Exemption of Shipowner from Liability for Negligence.] —The defendants issued in respect of a passage across the Atlantic a steerage passenger's contract ticket, which contained on the face thereof all that was contained in the form of steerage passenger's contract ticket then recently approved by the Board of Trade. That form, which was in substance an unqualified contract of carriage from the port of embarkation to the port of arrival in a particular ship, included a direction that a contract ticket should not contain on the face thereof any condition, stipulation, or exception not contained in that form. The contract ticket issued by the defendants also contained the following additions, which had not been approved by the Board of Trade: At the foot of the ticket were printed the words "See back," and on the back were printed, under the heading "Notice to Passengers," certain conditions, one of which purported to exempt the defendants from liability for loss or damage even though caused by negligence of the defendants' servants. The ship in which the passenger was being carried came into collision with an iceberg and foundered in consequence of the negligence of the defendants' servants, and the passenger was drowned. In an action under the Fatal Accidents Act, 1846, to recover damages in respect of the death of the passenger,—*Held* (Buckley, L.J., dissenting), that the contract ticket was not in a form approved by the Board of Trade within the meaning of section 320, sub-section 2 of the Merchant Shipping Act, 1894, and that that sub-section precluded the defendants from relying on the condition exempting them from liability. *Ryan* v. *Oceanic Steam Navigation Co.; O'Connell* v. *Same; Scanlon* v. *Same; O'Brien* v. *Same*, 83 L. J. K.B. 1553; [1914] 3 K.B. 731; 110 L. T. 641; 12 Asp. M.C. 466; 58 S. J. 303; 30 T. L. R. 302—C.A.

XVI. MARINE OFFICE SUPERINTENDENT.

Determination of Disputes.] — A deputy-superintendent, duly appointed, has the same power of hearing and determining a dispute between the owner of a fishing boat and a seaman of the boat, under section 387, sub-section 1 of the Merchant Shipping Act, 1894, with regard to the matters therein specified, as are thereby conferred on a superintendent. *Mayhew* v. *Tripp*, 83 L. J. K.B. 778; [1914] 2 K.B. 455; 110 L. T. 1002; 12 Asp. M.C. 505—D.

XVII. PORTS, HARBOURS AND DOCKS.

1. Ports.

See also Vol. XIII. 882, 2208.

Port of London — Registration of Craft — Sailing Barge — "All lighters, barges, and other like craft."]—A sailing barge trading regularly between London and a place outside the limits of the Port of London as described in the Fifth Schedule to the Port of London Act, 1908, is a "barge" within the words "all lighters, barges, and other like craft" in section 11, sub-section 2 (*f*) of that Act, and must therefore, under that section and the Port of London (Registration of River Craft) By-laws, 1910, be registered with the Port of London Authority as a "barge," notwithstanding that it has also been registered as a "ship" under the Merchant Shipping Act, 1894. *Smeed, Dean & Co.* v. *Port of London Authority*, 82 L. J. K.B. 323; [1913] 1 K.B. 226; 108 L. T. 171; 12 Asp. M.C. 297; 57 S. J. 172; 29 T. L. R. 122—C.A.

Judgment of Hamilton. J. (81 L. J. K.B. 1034; [1912] 2 K.B. 585), affirmed. *Ib.*

Port Rates—Exemption—"Goods imported for transhipment only"—Goods Imported for Conveyance by Sea to any other Port Coastwise—Goods Transhipped in Port of London for Rochester.]—Goods imported from beyond the seas into the Port of London for transhipment only, and which are duly certified as intended for transhipment, and which are in fact transhipped into sailing barges and conveyed down the river Thames to the Port of Rochester on the Medway, are, under section 13 of the Port of London Act, 1908, and section 9 of the Port of London (Port Rates on Goods) Order, 1910, exempt from the port rates imposed by the Port of London Authority, inasmuch as they are goods imported from beyond the seas for the purpose of being conveyed by sea only to another port coastwise, the definition of "coastwise" in subsection 5 of section 13 of the Port of London Act, 1908, not being imported into section 9 of the Provisional Order, 1910, and the term "conveyed by sea only" being used in contradistinction to conveyance by land and not in contradistinction to conveyance by river. *British Oil and Cake Mills* v. *Port of London Authority*, 83 L. J. K.B. 1777; [1914] 3 K.B. 1201; 111 L. T. 1019; 12 Asp. M.C. 548; 19 Com. Cas. 420; 30 T. L. R. 667—C.A. Affirmed, 84 L. J. K.B. 1849; [1915] A.C. 993; 59 S. J. 577; 31 T. L. R. 511—H.L. (E.)

—— Exemption—"Goods imported for transhipment only"—Oil Imported in Bulk by Particular Steamer—Oil Certified for Transhipment—Oil Mixed with other Oil—Identification of Oil—Goods "shipped again as soon as practicable."]—Under section 13 of the Port of London Act, 1908, and section 9 of the Port of London (Port Rates on Goods) Order, 1910, "goods imported for transhipment only" into the Port of London are exempt from port rates levied by the Port Authority. The expression "goods imported for transhipment only" is defined in section 9 of the Provisional Order, 1910, as meaning goods imported from beyond the seas or coastwise for the purpose of being conveyed by sea only to any other port, which are certified and proved within a certain period of the report of the ship at the Custom House to have been intended for transhipment, and which shall have been shipped again as soon as practicable for conveyance by sea to some other port. The certificate stating that the goods are intended for transhipment must contain particulars of the description, quantity, destination, route, and mode of conveyance of such goods. The certificate stating that the goods have been shipped again as soon as practicable must contain such particulars as the Port Authority may require. The plaintiffs imported oil in bulk from abroad in ocean tank steamers. That portion of the oil which was intended for transhipment to various ports was discharged into tanks in London, some of the oil being discharged into a tank that was empty, some of the oil into a tank containing oil brought by previous steamers, and also intended for transhipment, while some of the oil intended for transhipment was discharged into a tank containing oil intended for distribution in the London district and not intended for transhipment. The plaintiffs delivered to the defendants inwards port rates exemption certificates stating that the oil was intended for transhipment, and giving the particulars required by statute as to the tons of oil intended to be transhipped and its destination. One of the certificates, under the head of "Name of Export Steamer," gave the names of three steamers bracketed together, as it was not known which of the steamers would be available. The plaintiffs delivered to the defendants outwards port rates exemption certificates in respect of the oil transhipped and claimed exemption from port rates thereon. The defendants refused to admit the right of the plaintiffs to exemption in respect of the oil intended for transhipment upon the ground that the oil lost its identity upon being discharged into the tanks; that it was impossible to identify the oil transhipped with the oil set out in the inwards certificate; that the name of the export steamer was not sufficiently stated, and that the oil had not been transhipped as soon as practicable:—*Held*, that the oil intended for transhipment did not cease to be entitled to exemption through being discharged into tanks containing other oil, even though it was mixed with oil not intended for transhipment, provided that the plaintiffs could show that the quantity of oil intended for transhipment had in fact been transhipped, and that it was not necessary to set out specifically the name of the export vessel in the inwards certificate. *Held*, further, that in order to comply with the words "shipped again as soon as practicable" in section 9 of the Provisional Order, 1910, the transhipment must be carried out as soon as practicable, having regard to the ordinary course of navigation and the facilities of procuring a ship, and that the words did not refer to the convenience of the merchant's business. *Anglo-American Oil Co.* v. *Port of London Authority*, 83 L. J. K.B. 125; [1914] 1 K.B. 14; 109 L. T. 862; 19 Com. Cas. 23; 12 Asp. M.C. 419; 30 T. L. R. 14—Pickford, J.

2. Harbours and Docks.

See also Vol. XIII. 903, 2210, 2218.

Duty of Harbour Trustees—Buoying Navigable Channel—Liability for Buoy being Displaced—Notice Disclaiming Responsibility.]—The trustees of a natural harbour, where pilotage was not compulsory, placed a buoy to mark a shoal close to the navigable channel. Owing to the insufficient weight of the sinker, the buoy was liable to be dragged out of position by vessels using the harbour, and in consequence of this risk it was the practice of the harbour master to verify the position of the buoy each morning. The trustees exhibited a notice on shore to the effect that "masters of vessels . . . making use of the buoys and moorings . . . do so at their own risk." A ship entering the harbour at night, with the leave of the harbour master and in charge of a local pilot, grounded on the shoal, owing to the buoy having been displaced after its position had been checked the previous morning. It was not proved that the pilot

knew either that the buoy was liable to be displaced, or that it had in fact been displaced on that occasion. In an action of damages by the shipowners against the trustees,—*Held*, first, that, although the trustees of a natural harbour were under no obligation to mark the navigable channel by means of buoys, yet, if they chose to do so, they were bound to exercise reasonable care to insure that the buoys should be kept in position, and that, in the circumstances, the trustees had failed in this duty; secondly, that the notice disclaiming responsibility did not relieve them of their liability for this failure; and thirdly, that while the pursuer's claim would have been barred if the pilot had been guilty of contributory fault, the pilot, in the circumstances, was not to blame in respect that, even if he had known that the buoy was occasionally displaced, he was entitled to assume, in the absence of express warning, that it was in its proper place, and damages awarded. *Aktieselskabet Dampskibet Forto* v. *Orkney Harbour Commissioners*, [1915] S. C. 743—Ct. of Sess.

Observations (*per* Lord Salvesen) on the duties of harbour trustees with regard to making the navigation of a natural harbour reasonably safe. *Ib.*

Duty to Provide Labour for Loading Cargo.]—*See Milligan & Co.* v. *Ayr Harbour Trustees*, *ante*, col. 1464.

Dockyard Port—Navigable Water—Rights of Public—Rights Incidental to Navigation—Right to Moor Coal Hulk—Dockyard Port of Portland.]—A coal merchant has not, as incidental to the right which he possesses in common with all other members of the public of navigating in a public navigable water, a right to moor permanently in such water a coal hulk for the purpose of supplying coal to steamers navigating there. *Denaby and Cadeby Main Collieries* v. *Anson*, 80 L. J. K.B. 320; [1911] 1 K.B. 171; 103 L. T. 349; 11 Asp. M.C. 471; 54 S. J. 748; 26 T. L. R. 667—C.A.

Where such navigable water is a "dockyard port" within the meaning of the Dockyard Ports Regulation Act, 1865, as to which an Order in Council has been made under the Act placing merchants and other private vessels under the direction of a harbour master, and conferring no right to moor a coal hulk in the harbour, a coal merchant who moors such a hulk in the harbour is bound to remove it on being required to do so by the harbour master. *Rex* v. *Russell* (5 L. J. (o.s.) M.C. 80; 6 B. & C. 566) discussed. *Ib.*

Preferential Right to Occupy Berth — Wrongful Action of Other Ship in Occupying Berth—Damages.]—A shipping company had by agreement with a dock company a preferential right to occupy a certain berth on Wednesday and Saturday in each week and were to use no other berth in the particular port. The agreement (*inter alia*) provided that in the event of any accident beyond the control of the dock company causing loss or delay to the shipping company the latter's remedy was to be the right to use some other berth, and that the dock company should not be liable to make good or pay compensation for any such loss or delay. On Saturday, October 28, 1911, when the shipping company's steamer, the *Portia*, arrived, the particular berth where she should have gone was occupied by a Dutch company's steamer which had proceeded to and remained at that berth against the orders of the dock company. By reason of shortness of water the Dutch steamer could not be removed to allow the *Portia* to occupy the berth. The *Portia*, by the directions of the dock company, went into an inner dock, and was detained there several days owing to shortness of water, and in consequence she lost a complete round voyage. The shipping company sued the dock company for damages for the delay caused to the *Portia*, and the dock company sued the Dutch company to recover any damages they might be called upon to pay to the shipping company:—*Held*, first, that the dock company were liable in damages to the shipping company inasmuch as by the agreement the dock company had contracted to use, and they had not in fact used, their best endeavours to ensure that the shipping company should have the use of the berth on the particular day, and further that the wrongful occupation of the berth by the Dutch steamer was not an "accident beyond the control of the dock company" within the meaning of the expression in the agreement, as they had not done their utmost to prevent the Dutch steamer occupying the berth; secondly, that the Dutch company having committed a trespass were liable to the dock company in damages, but as the *Portia* did not go into the inner dock on the orders of the Dutch company's captain, that company was not liable in respect of the whole of the detention of the *Portia*; and thirdly, that the Dutch company were not liable to the dock company in respect of the latter's costs in defending the action against them by the shipping company, inasmuch as it was not reasonable for the dock company to defend that action. *South Wales and Liverpool Steamship Co.* v. *Nevill's Dock Co.*, 108 L. T. 568; 18 Com. Cas. 124; 12 Asp. M.C. 328; 29 T. L. R. 301—Scrutton, J.

"Dock dues" — Construction of Charterparty.]—A charterparty provided that, "if the cargo or any part thereof is discharged in one of the docks in the River Thames, each consignee is to pay two-thirds of the dock dues payable in respect of the space occupied by his portion of the cargo to be discharged in such dock":—*Held*, that this provision meant that all proper charges which could be and were imposed by the dock authority in respect of entrance into and use of the dock by the vessel were included in the words "dock dues," and therefore these words included payments charged by the Port of London Authority as and for rent. *The Katherine*, 30 T. L. R. 52—D.

Cnarges — Warehouse Rates and Rents — Prize Cargoes—Proposed Higher Rates—Right to Differentiate.]—By the Bristol Docks Acts the Bristol Corporation acquired certain docks and were empowered to charge reasonable

warehouse rates and rents, the Act of 1881 providing by section 8 that all rates on the same description of articles should be charged without partiality and without regard to the person to whom they belonged. The Acts incorporated the Harbours, Docks, and Piers Clauses Act, 1847, which by section 30 makes it illegal for the Corporation to differentiate their warehouse rates and rents as between various owners or persons interested in cargoes:—*Held*, that each of the above provisions precluded the Corporation from charging higher warehouse rates and rents in the case of prize grain cargoes taken into store under the order of the Board of Trade or the Admiralty Marshal than in respect of the same description of goods belonging to other persons. *The Clarissa Radcliffe*, 31 T. L. R. 98—Evans, P.

Weighing and Measuring Goods—Rights of Port of London Authority in Surrey Commercial Dock.]—Section 81 of the Harbours, Docks, and Piers Clauses Act, 1847, provides that "Where under the special Act the undertakers shall have the appointment of meters and weighers, the undertakers may appoint and license a sufficient number of persons to be meters and weighers within the limits of the harbour, dock, and pier, and remove any such persons at their pleasure, and may make regulations for their government, and fix reasonable rates to be paid, or other remuneration to be made to them for weighing and measuring goods." Section 82 provides that "When a sufficient number of meters and weighers have been appointed by the undertakers, under the powers of this and the special Act, the master of any vessel, or the owner of any goods shipped, unshipped, or delivered within or upon the harbour or dock or pier, shall not employ any person other than a weigher or meter licensed by the undertakers, or appointed by the Commissioners of Her Majesty's Customs, to weigh or measure the same," under a penalty not exceeding five pounds, and it was also declared that the weighing or measurement of any such goods by a person other than a meter or weigher duly licensed or appointed should be deemed illegal. Under the terms of the special Act contained in section 115 of the Surrey Commercial Dock Act, 1864, and section 3 of the Port of London Act, 1908, the plaintiffs have the right to appoint and license meters and weighers within the limits of the Surrey Commercial Docks. The Surrey Commercial Dock Co. and the plaintiffs have had persons described as grain weighers, some on their permanent staff and some temporarily employed, who in fact weigh grain, but no special regulations for their government have been made, and the weighers have been usually employed when the dock performs the operation of discharging. No special rate has been fixed and published by the Port Authority, as required by section 113 of the Surrey Commercial Dock Act, 1864, for weighing a cargo not worked by the plaintiffs. In 1904 the T. Line of steamers entered into an agreement with the Surrey Commercial Dock Co. for the hire of berths and quay space at the Surrey Commercial Docks. Under that agreement they brought into the Surrey Docks hopper elevators which were used in discharging grain from vessels in the docks, and which also weighed the grain. In 1908 the defendants, who had acquired the T. Line, entered into an agreement with the Surrey Commercial Dock Co. by which the berths and quay space in the Surrey Docks were let to them for three years. Under that agreement the defendants were entitled to use their elevators for discharging and weighing cargoes of grain from vessels in the docks. The Surrey Commercial Docks were transferred to the plaintiffs, the Port of London Authority, in 1909. On the expiration of the above-mentioned agreement at the end of 1910 a dispute arose, the plaintiffs claiming that they had the sole right of discharging ships in the Surrey Commercial Docks. The plaintiffs eventually brought this action, in which they claimed a declaration that they had the sole right of weighing and measuring goods shipped, unshipped, or delivered in the Surrey Commercial Docks and of providing the machines for weighing, and also an injunction to restrain the defendants from weighing and measuring any goods shipped, unshipped, or delivered within the docks, and from using their elevators in the docks:—*Held*, that the plaintiffs on fixing, with the proper formalities, rates to be paid for weighing have the sole right of weighing and measuring goods shipped or unshipped in the Surrey Commercial Docks, but that they have not the sole right of providing weighing machines for such weighing. *Port of London Authority* v. *Cairn Line*, 82 L. J. K.B. 340; [1913] 1 K.B. 497; 108 L. T. 217; 18 Com. Cas. 72; 12 Asp. M.C. 293; 29 T. L. R. 229—Scrutton, J.

Unevenness of Block Caps—Damage to Ship — Exemption in Contract from Liability for Damage—Liability of Dock Owner.]—A contract for the use of a graving dock by a ship embodied the graving dock regulations of the defendants, the owners of the dock. Clause 9 of the regulations provided that "The owner of a vessel using the graving dock must do so at his own risk, it being hereby expressly provided that the company are not to be responsible for any accident, or damage, to a vessel going into, or out of, or whilst in the graving dock, whatever may be the nature of such accident, or damage, or howsoever arising." The regulations also provided that the defendants would supply block caps, subject to the usual charges. The ship sustained bottom damage while in the graving dock, owing to the unevenness of the block caps supplied by the defendants:—*Held*, that by reason of clause 9 the defendants were exempt from liability for the damage sustained by the ship. *Travers & Sons, Lim.* v. *Cooper* (83 L. J. K.B. 1787; [1915] 1 K.B. 73) followed. *Pyman Steamship Co.* v. *Hull and Barnsley Railway*, 84 L. J. K.B. 1235; [1915] 2 K.B. 729; 112 L. T. 1103; 20 Com. Cas. 259; 31 T. L. R. 243—C.A.

Judgment of Bailhache, J. (83 L. J. K.B. 1321; [1914] 2 K.B. 788), affirmed. *Ib.*

Overhang—Too Few Blocks—Unusual Construction — Duty of Shipowners.] — While in

the defendants' dry dock the plaintiffs' steamship, which had a forward overhang of about 62 ft., fell to port and damaged her side owing to there being an insufficient number of blocks at the forward end. In an action by the plaintiffs against the defendants for negligence the defendants contended that the blocks would have been sufficient for a normally constructed vessel of the same size, but that the vessel was of unusual construction and the plaintiffs ought to have warned them of the hidden danger:—*Held*, that the overhang of the vessel did not make her a vessel of unusual construction, and the plaintiffs were entitled to succeed. *Semble*, if a vessel is of unusual construction it is the duty of the shipowners to inform the dock owners, and it is not the duty of the dock owners to make enquiries. *The Lancastrian*, 32 T. L. R. 117—Evans, P.

XVIII. WRECKS.

Damage to Oyster Beds — Owner Placing Wrecked Vessel Ashore — Harbour Master — Negligent Orders—Liability of Conservators.]—A vessel, wrecked in a navigable river, was raised by her owner (one of the defendants) and was placed on an oyster fishery ashore, doing damage to the oysters. The harbour master, servant of the other defendants, the conservators of the river, was in charge of the operations, the defendant owner obeying his orders, and the harbour master was negligent in giving such orders, as he ought to have known of the oyster fishery. Notice that the wrecked vessel was on the fishery was given to the defendant owner, who was in possession of the vessel, and to the harbour master; but the vessel remained there for a considerable time under repair, doing further damage. In an action by the plaintiff, lessee of the oyster fishery, to recover damages for negligence,—*Held*, that the conservators were liable for the whole of the damage, as the harbour master was negligent in placing the wrecked vessel on the oyster beds, and it was his duty to have had her moved from there; but that the owner was not liable, as he placed her there by the orders of the harbour master, who had authority to give such orders, and that he had no right without further orders from the harbour master, whose responsibility still continued, either to remove the wrecked vessel from there or to place her elsewhere. *The Bien*, 80 L. J. P. 59; [1911] P. 40; 104 L. T. 42; 11 Asp. M.C. 558; 27 T. L. R. 9—Bargrave Deane, J.

Sunken Vessel—Obstruction to Navigation of Mersey—Right of Mersey Docks Board to Destroy Vessel—Conditions Precedent.]—Section 11 of the Mersey Docks Act, 1874, as amended by section 29 of the Mersey Docks and Harbour Board Act, 1889, enables the Mersey Docks and Harbour Board to raise, destroy, or remove any wrecks of vessels, or any vessels sunk or stranded in any dock or elsewhere within the port of Liverpool which are "in the judgment of the marine surveyor . . . of the Board . . . such judgment being recorded in writing signed by him and deposited with the secretary of the Board," an obstruction to safe and convenient navigation:—*Held*, that it is not a condition precedent to the exercise by the Board of their statutory power to raise, destroy, or remove a sunken or stranded vessel that the judgment of the marine surveyor that the vessel is an obstruction to safe navigation should first have been recorded in writing and deposited with the secretary of the Board. It is sufficient to enable the Board to exercise their powers that the marine surveyor honestly comes to the conclusion that the vessel must be raised, destroyed, or removed, and that within a reasonable time after the forming of his judgment to that effect he puts it in writing and deposits it with the secretary of the Board. *Jones* v. *Mersey Docks and Harbour Board*, 108 L. T. 722; 18 Com. Cas. 163; 12 Asp. M.C. 335; 29 T. L. R. 468—Scrutton, J.

Expenses of Removal—One Vessel Sunk by Negligence of the Other—Obstruction to Navigation—Liability of Owners of Wrongdoing Vessel.]—By the negligent navigation of the defendants' steamship a barge was sunk in the deep-water channel of a port for which the plaintiffs were the harbour authority, and was abandoned by its owners, and constituted an obstruction to the channel, and a public nuisance. The plaintiffs, in exercise of their statutory duties, incurred expenses in dispersing the wreck and otherwise, and claimed to recover these expenses from the defendants:—*Held*, that, both by reason of their breach of duty or negligence and by reason of a public nuisance occasioned by their wrongdoing, the defendants were liable to repay to the plaintiffs the amount of the expenses incurred by them. *The Ella*, 84 L. J. P. 97; [1915] P. 111; 30 T. L. R. 566—Evans, P.

—— Obstruction in Canal—Expense caused to Canal Owners—Action against Purchaser of Wreck — Amount Recoverable.] — Owing chiefly to negligence of the defendants' servants a steamship of the defendants came into collision with another steamship and sank in the plaintiffs' canal. The plaintiffs employed tugs to assist vessels past the wreck, and after removing it sold it to a purchaser, who refused to carry out his bargain. The plaintiffs then sued the purchaser and obtained judgment with costs. In an action by the plaintiffs against the defendants to recover the expenses incurred through the sinking of the defendants' steamship:—*Held*, that as the plaintiffs had acted reasonably in employing the tugs and in suing the purchaser, there must be included in the expenses which they were entitled to recover the expense of employing the tugs and such costs of the action against the purchaser as had been necessarily incurred, though they had not been allowed on taxation. *The Solway Prince*, 31 T. L. R. 56—Evans, P.

XIX. ADMIRALTY LAW AND PRACTICE.

See also Vol. XIII. 921, 2222.

Admiralty Jurisdiction — "Goods carried into any port in England"—Bill of Lading—

Arbitration Clause.]—A case of gold coin belonging to the plaintiffs was shipped on board the defendants' German steamship at Hamburg for delivery at a port in South America. The bill of lading gave leave for the vessel to call at other ports, which included Southampton; and also, by clause 14, provided that disputes "concerning the interpretation" of the document were to be decided in Hamburg according to German law. The vessel called at Southampton on the outward voyage, failed to deliver the case on arrival in South America, and called again at Southampton on her return voyage, when the plaintiffs arrested her and brought their action *in rem* in the Admiralty Division. The defendants alleged that the claim was covered by the exceptions in the bill of lading:—*Held*, first, that the case was "carried into" a port in England within the meaning of section 6 of the Admiralty Court Act, 1861, and that the Admiralty Division had jurisdiction in the action; but secondly, that the action involved a dispute "concerning the interpretation" of the bill of lading under clause 14, and must therefore be stayed under section 4 of the Arbitration Act, 1889. *The Cap Blanco*, 83 L. J. P. 23; [1913] P. 130; 109 L. T. 672; 12 Asp. M.C. 399; 29 T. L. R. 557—Evans, P. Appeal withdrawn, see 83 L. J. P. 23—C.A.

County Court—Jurisdiction—"Collision."]—The County Courts Admiralty Jurisdiction Act, 1868, s. 3, provides that County Courts having Admiralty jurisdiction shall have jurisdiction as to any claim for "damage by collision":—*Held*, that this jurisdiction is confined to collision between ships, and does not extend to damage by a ship to a floating gas buoy, which is not a ship. *The Normandy* (73 L. J. P. 55; [1904] P. 187) followed. *The Upcerne*, 81 L. J. P. 110; [1912] P. 160; 107 L. T. 860; 12 Asp. M.C. 281; 28 T. L. R. 370—D.

Appeal from County Court — Extension of Time for Depositing Security — Mistake of Solicitors—Discretion.]—Under section 27 of the County Courts Admiralty Jurisdiction Act, 1868, it is not "sufficient cause" to entitle the Court to allow an appeal to be prosecuted that the appellants' solicitors have, under a mistaken impression that it was unnecessary, omitted to deposit security for the appeal within the proper time. *The Gratia* (*No.* 1), 28 T. L. R. 49—D.

—— Filing of Notice of Appeal before Service on Adverse Solicitor.]—In an appeal to the Admiralty Division from a County Court the appellants filed their notice of motion in the Registry before serving the respondents' solicitor with a copy of the notice. On the appeal coming on, the preliminary objection was taken by the respondents that the Court could not entertain the appeal on the ground that the appellants had not complied with the provisions of Order LII. rule 10 of the Rules of the Supreme Court, which require that a copy of the notice of motion shall be served on the adverse solicitor before the original is filed in the Registry:—*Held*, that even if Order LII. rule 10 applied, the case was one in which the Court should, in the exercise of its discretion, hear the appeal on the ground that sufficient notice had been given to the respondents. Whether the words "in Admiralty actions" in Order LII. rule 10 are intended to include appeals dealt with by Order LIX. *quære*. *The Gratia* (*No.* 2), 28 T. L. R. 474—D.

Liverpool Court of Passage — Admiralty Divisional Court.]—An appeal from a judgment given by the Liverpool Court of Passage in an Admiralty action lies to the Divisional Court of the Probate, Divorce, and Admiralty Division. *The Wild Rose and The J. M. Stubbs*, 32 T. L. R. 164—D.

Warrant against Freight whether Issuable Separately—Freight Already Paid—Access to Cargo — Service of Writ and Warrant.]—A warrant cannot issue against freight separately from ship or cargo, or against the proceeds of the freight already paid to the owners of the ship by the owners or consignees of cargo; and there is no power in an action *in rem* to issue either the writ of summons or the warrant to arrest cargo and freight unless there is access to the cargo, except that in the case where access is refused service may be effected on the custodian. *The Kaleten*, 30 T. L. R. 572—Evans, P.

B. MARINE INSURANCE.

I. POLICIES.

1. Stamping and Requirements.

See also Vol. XIII. 1028, 2233.

"Open cover" — Loss — Refusal to Sign Policy—New Contract on New Consideration—Contract for Sea Insurance not Expressed in Policy—Action for Payment—Penalty for Payment on Contract not Expressed in Policy—Stamp.]—The plaintiffs, a marine insurance company, re-insured certain risks by means of an "open cover" with the defendant, an underwriter at Lloyd's. They became liable for a loss, and put forward a policy in respect thereof for the defendant to sign. He refused to do so on the ground that the plaintiffs had not made all the declarations which they should have done. But he agreed orally that if an independent person, having examined the plaintiff's books, certified that all the declarations had been made, he would sign the policy and pay the loss. The certificate did so certify, but the defendant refused to pay, and the action was brought for breach of the oral agreement to do so. The defendant contended—first, that if he paid he would be guilty of an offence and be liable to a penalty under section 97 of the Stamp Act, 1891, in that he would be paying a sum of money upon a loss relative to sea insurance, which insurance was not expressed in a policy of sea insurance duly stamped; and secondly, that the oral agreement was a contract of sea insurance and invalid under section 93 because not expressed in a policy of sea

insurance :—*Held*, that these contentions were correct, and that the plaintiffs could not recover. *Genforsikrings Aktieselskabet* v. *Da Costa*, 80 L. J. K.B. 236; [1911] 1 K.B. 137; 103 L. T. 767; 16 Com. Cas. 1; 11 Asp. M.C. 548; 27 T. L. R. 43—Hamilton, J.

Stamp Objection—Costs.]—Consideration of the question of costs where a stamp objection is successfully taken by the defendant. *Ib.*

2. Re-Insurance.

See also Vol. XIII. 1036, 2234.

Construction — Loss under Two of Three Existing Policies — Intention of Assured — Right to Recover.] — The plaintiffs executed three policies of insurance on the ship *Kynance* dated May 6 and 11, and August 4, 1910. The first two policies related to her voyage from Newcastle, N.S.W., to the west coast of South America, and the third policy related to the homeward voyage from the west coast. The risk under the third policy was "to commence from expiration of previous policy." On August 9, 1910, the plaintiffs re-insured the ship with the defendant for a voyage "at and from Valparaiso and/or any port or ports, place or places on the west coast of South America" to the United Kingdom, Continent, or United States. The ship was lost on the west coast in circumstances which, while rendering the plaintiffs liable under the first two policies, brought the loss within the general words of the re-insurance policy. The defendant contended that the general words must be limited by the intention of the plaintiffs as shewn by the instructions given by them to their brokers when effecting the re-insurance, and that the plaintiffs only intended by the re-insurance to cover their risk under the policy of August 4, 1910:—*Held*, on the facts, that it was not the intention of the plaintiffs to cover the risk under the policy of August 4, 1910, only; but that in any event it was not open to the plaintiffs under section 26, sub-section 3 of the Marine Insurance Act, 1906, or otherwise, to narrow down the natural and *prima facie* meaning of the contract contained in the re-insurance policy, so as to make it cover the risk under one only of the three original policies, to each of which it was equally applicable, by proof of such an intention on the part of the plaintiffs uncommunicated to the defendant. *Reliance Marine Insurance Co.* v. *Duder*, 81 L. J. K.B. 870; [1913] 1 K.B. 265; 106 L. T. 936; 12 Asp. M.C. 223; 17 Com. Cas. 227; 28 T. L. R. 469—C.A.

The meaning of the Marine Insurance Act, 1906, s. 26, sub-s. 3, discussed. *Ib.*

Commencement of Risk — Intention of Assured—Right of Assured to Recover.]—A ship was insured by certain policies issued by the plaintiffs, who were underwriters at Lloyd's, for a voyage "from Newcastle, N.S.W., to port or ports, place or places of call, and/or discharge backwards and forwards and forwards and backwards in any order or rotation on the West Coast of South America" at a premium of 70*s.* per cent., cargo screened coal or held covered. The ship was valued at 12,000*l.*, and the risk was to continue for thirty days after arrival at final port of discharge, or until sailing on next voyage, whichever might first occur. The ship was also insured by a Lloyd's policy issued by the plaintiffs for a voyage "at and from Valparaiso and/or port or ports and/or place or places in any order or rotation on the West Coast of South America" to the United Kingdom or Continent of Europe, or the United States, at a premium of 80*s.* per cent., "warranted nitrate or held covered at a premium to be arranged." The ship was valued in this policy at 10,000*l.*, and the risk was to commence from the expiration of the previous policy. The plaintiffs then re-insured the ship with the defendant for a voyage "at and from Valparaiso and/or port or ports and/or place or places in any order or rotation on the West Coast of South America" to the United Kingdom, Continent of Europe, or the United States against the risk of total and/or constructive total loss of the vessel only, at a premium of 40*s.* per cent., "being a re-insurance applying to policy or policies underwritten by Lloyd's underwriters subject to the same clauses and conditions as original policy or policies, and to pay as may be paid thereon." The ship was "valued at 10,000*l.* or as in original policy or policies," and the policy contained the clause "warranted nitrate or held covered at a premium to be arranged." The vessel was chartered to load a cargo of coal at Newcastle, N.S.W., and under the charterparty the charterers directed her to discharge the cargo at Valparaiso, and bills of lading were issued making it deliverable at that port. She was then to proceed under a second charterparty to Tocopilla to load a nitrate cargo for a European port. When the vessel reached Valparaiso it was agreed between the owners and the charterers under the first charterparty that instead of delivering the whole of the cargo of coal at Valparaiso she should proceed with 800 or 900 tons of coal still on board and deliver same to charterers at Tocopilla. This arrangement relieved the captain from the necessity of taking ballast on board for the voyage from Valparaiso to Tocopilla. On the voyage to the latter port the vessel stranded and became a total loss. The plaintiffs had paid the owners of the ship for a loss under the policies on the first voyage. In an action on the policy of re-insurance,—*Held*, that the policy of re-insurance, inasmuch as it was in respect of a named cargo and of a named value, was intended to cover the homeward voyage from Valparaiso to the United Kingdom and not to cover the cross-voyage from Newcastle to the West Coast of South America, and that therefore the defendant was not liable, it having been held by Mr. Justice Scrutton in *Kynance Co.* v. *Young* (27 T. L. R. 306; 16 Com. Cas. 123) that the vessel was lost on the cross-voyage. *Held*, further, that evidence extrinsic to the policy—namely, of the slip, the plaintiffs' books, and the evidence of the defendant—was admissible to identify the policy which was being re-insured, and to shew that the policy was intended to be a policy on the

homeward voyage, the intention to insure a particular voyage having been communicated to the defendant. *Janson* v. *Poole*, 84 L. J. K.B. 1543; 20 Com. Cas. 232; 31 T. L. R. 336—Sankey, J.

Steamers not yet Built—From what Time Policy Runs—Ratification of Policy.]—A slip was initialled by M. on behalf of his names in January, 1911, for the insurance of the steamers *Olympic* and *Titanic* for twelve months from delivery by the builders, and the plaintiffs, acting on the instructions of M., obtained the re-insurance of part of the risk under that slip. The *Olympic* was delivered on May 18, 1911. In January, 1912, a fresh slip was initialled by M. on behalf of his names to cover the steamers for twelve months from the expiration of the original policy or slip. In April, 1912, the *Titanic* was delivered and M. insured a policy on her, thinking that he was doing so under the slip of January, 1911, while the brokers for the shipowners thought that he was acting under the slip of January, 1912, and M. requested the defendants to issue the re-insurance policy. On April 15, 1912, the *Titanic* was lost, and later the defendants issued the re-insurance policy, which was expressed to re-insure the risk taken by M.'s names under the slip of January, 1911, and not under that of January, 1912. In an action by the plaintiffs against the defendants on the re-insurance policy,—*Held*, that when one slip included more than one steamer, the policy ran from the time when the first steamer came on the risk, and the original slip of January, 1911, remained in force till May 18, 1912, that the original policy of April, 1912, was issued under the slip of January, 1911, and not under that of January, 1912, that the re-insurance slip was a contract to issue a policy in the usual form covered by the slip, and that the re-insurance policy should be rectified so as to enable the plaintiffs to claim under it, and that the plaintiffs were entitled to recover. *Emanuel & Co.* v. *Weir & Co.*, 30 T. L. R. 518—Bailhache, J.

Policy "subject to same clauses and conditions as original policy . . . and to pay as may be paid thereon"—Two Slips.]—In January, 1911, a firm of D. & W. initialled a slip agreeing to insure the *Olympic* and *Titanic* for twelve months from delivery. Shortly afterwards D. & W. re-insured part of this risk with the plaintiffs. In December, 1911, the defendant initialled a slip for re-insuring a portion of the plaintiff's risk for "twelve months from expiration or delivery, clauses and conditions as original." In January, 1912, the *Titanic* not having yet been delivered, D. & W. initialled another slip in the following terms: "*Olympic*, *Titanic*, twelve months from expiry." No intimation was given to D. & W. or to the plaintiffs' agent that this was intended to be anything else but what it purported to be—namely, a renewal for a further twelve months after the expiry of the first twelve months; but before a policy was issued an intimation was sent to some of the underwriters explaining that the insurance, so far as concerned the *Titanic*, would commence from the delivery of the ship; no such notice was, however, sent to D. & W. or to the plaintiffs' agent. A policy was issued by D. & W. on April 3, 1912, insuring the *Titanic* for 2,500*l.* from April 2, 1912; by a policy dated April 10, 1912, the plaintiffs re-insured D. & W.'s risk to the extent of 400*l.*; and on April 11, 1912, the defendant underwrote a policy re-insuring the plaintiffs' risk to the amount of 80*l.* This policy contained the following clause: "Being a re-insurance for account the Scottish National Insurance Company (Limited) subject to the same clauses and conditions as original policy or policies and to pay as may be paid thereon." The *Titanic* having been lost on April 15, 1912, the plaintiffs paid D. & W. under the policy of April 10, and now sought to recover from the defendant under the policy underwritten by him on April 11, 1912. The defendant contended that the policy of April 10 was not the original policy mentioned in the policy of April 11, and that there was no original policy, and, further, that the initialling of the second slip had the effect of cancelling the slip of January, 1911:—*Held*, that D. & W. were always under a contract of insurance of the *Titanic* for the first twelve months by virtue of the slip they initialled in January, 1911; that the plaintiffs agreed to re-insure D. & W. up to 400*l.* in January, 1911, and remained under this liability; that the defendant agreed to re-insure the plaintiffs against their liability to the amount of 80*l.* by initialling the slip of December, 1911, and that he signed the policy of April 11, 1912, in pursuance of that contract, and therefore that he was liable to the plaintiffs. *Scottish National Insurance Co.* v. *Poole*, 107 L. T. 687; 18 Com. Cas. 9; 12 Asp. M.C. 266; 57 S. J. 45; 29 T. L. R. 16—Bray, J.

Re-insurance against Total or Constructive Loss only—"To follow hull underwriters in event of a compromised or arranged loss being settled"—Claim for Constructive Total Loss or Alternatively for Partial Loss Compromised by Hull Underwriters.]—The defendants re-insured the plaintiff by a policy which contained the following clause: "Being a re-insurance and to pay as per original policy or policies, but the insurance is against the risk of the total or constructive total loss of the steamer only, but to follow hull underwriters in event of a compromised or arranged loss being settled." An action was brought by the owner of the insured ship against the hull underwriters claiming for a constructive total loss and in the alternative for a partial loss, and that action was compromised, nothing being said as to whether the underwriters were settling the claim as for a constructive total loss or as for a partial loss. In an action on the re-insurance policy,—*Held*, that the plaintiff was entitled to recover, inasmuch as there having been a claim for a constructive total loss against the hull underwriters which had been compromised, there was, within the meaning of the clause in the re-insurance policy, "a compromised or arranged loss," notwithstanding that there had also been an alternative claim against the hull underwriters for a partial loss. *Street* v. *Royal Exchange Assurance*, 111 L. T. 235;

12 Asp. M.C. 496; 19 Com. Cas. 339; 30 T. L. R. 495—C.A.

Constructive Total Loss — Compromise of Claim under Original Policy—Right of Re-insurers to Benefit of Compromise.] — The plaintiffs, who had insured the *Katina* against total and/or constructive total loss only, re-insured the risk with the defendants. The re-insurance policies did not contain the usual clause "to pay as may be paid thereon." During the currency of the policies the *Katina* stranded, and her owners gave notice of abandonment, alleging that she was a constructive total loss. The plaintiffs declined to accept the notice of abandonment, whereupon the owners sued them, but that action was compromised by the plaintiffs paying to the owners 66 per cent. only of the loss. The defendants were asked to agree to this compromise, but they declined to do so, alleging that there was no constructive total loss in fact. In an action by the plaintiffs against the defendants on the re-insurance policies it was found, as a fact, that the *Katina* was a constructive total loss: —*Held*, that a contract of re-insurance is a contract of indemnity only; and that therefore, as the defendants were entitled to the benefit of the compromise made by the plaintiffs with the owners, the plaintiffs could only recover from the defendants 66 per cent. of the loss; the plaintiffs, however, were entitled to add to their claim against the defendants the costs of obtaining the compromise with the owners. *Uzielli & Co.* v. *Boston Marine Insurance Co.* (54 L. J. Q.B. 142; 15 Q.B. D. 11) considered. *British Dominions General Insurance Co.* v. *Duder*, 84 L. J. K.B. 1401; [1915] 2 K.B. 394; 113 L. T. 210; 20 Com. Cas. 270; 12 Asp. M.C. 575; 31 T. L. R. 361—C.A.

Judgment of Bailhache, J. (83 L. J. K.B. 1528; [1914] 3 K.B. 835), reversed. *Ib.*

Non-disclosure of Material Fact — Policy "subject without notice to the same clauses and conditions as the original policy" — Liability of Re-insurer.] — The plaintiffs insured the hull of a steamship on a time policy for 500*l.* at a premium of 6 per cent. The policy contained a clause that the ship had the option to navigate the Canadian lakes, and an additional premium of 3 per cent. was paid in respect thereof. The defendants re-insured 250*l.* on the risk at the same premium of 6 per cent., but no mention was made at the time the re-insurance was effected of the option to navigate the lakes or the additional premium. The defendants' policy was stated to be "subject without notice to the same clauses and conditions as the original policy." While in the lakes the ship sustained damage in respect of which the plaintiffs paid 117*l.* 13*s.* on their original policy. The plaintiffs claimed 58*l.* 16*s.* 6*d.*, the proportion due from the defendants, but the defendants repudiated liability on the ground that a material fact had been concealed from them, and their policy of re-insurance was thereby rendered invalid: —*Held*, that although the option to navigate the lakes was a material fact that ordinarily should have been disclosed when the re-insurance was effected, the defendants had agreed to be bound by the terms of the original policy without notice, and were therefore liable. *Property Insurance Co.* v. *National Protector Insurance Co.*, 108 L. T. 104; 18 Com. Cas. 119; 12 Asp. M.C. 287; 57 S. J. 284—Scrutton, J.

II. DURATION OF RISK.

See also Vol. XIII. 1048, 2237.

Policy Covering Voyage "to port or ports place or places of call and/or discharge"—One Port of Discharge Named in Charterparty — Total Loss while Vessel Proceeding to Second Port with Part of Original Cargo—Right of Assured to Recover.]—By a policy of insurance the plaintiffs insured their ship for a voyage from Newcastle (N.S.W.) "to port or ports, place or places of call and/or discharge backwards and forwards and forwards and backwards in any order or rotation on the West Coast of South America, and while in port for 30 days after arrival, however employed, or until sailing on next voyage, whichever may first occur." The vessel was chartered to load a cargo of coal at Newcastle (N.S.W.), and under the charterparty the charterers directed her to discharge the cargo at Valparaiso, and bills of landing were issued making it deliverable at that port. She was then, under a second charterparty, to proceed to Tocopilla to load a nitrate cargo for a European port. When the vessel reached Valparaiso it was agreed between the plaintiffs and the charterers under the first charterparty that, instead of delivering the whole of the cargo of coal at Valparaiso, she should proceed with 800 or 900 tons of the coal still on board and deliver same to the charterers at Tocopilla. This arrangement also relieved the captain from the necessity of taking ballast on board for the voyage from Valparaiso to Tocopilla. On the voyage to the latter port the vessel stranded, and became a total loss:—*Held*, that it was competent for the plaintiffs and charterers to vary the mode of performing the charterparty by discharging the cargo of coal at two ports, instead of one, and that the loss was covered by the policy. "*Kynance*" *Co.* v. *Young*, 104 L. T. 397; 16 Com. Cas. 123; 11 Asp. M.C. 596; 27 T. L. R. 306—Scrutton, J.

Policy Covering Transit — Steel Casting — Conclusion of Transit — Damage — Action on Policy.]—The plaintiffs, a Hamburg shipping company, ordered a new cast-steel stern frame for a steamer and had a policy of marine insurance effected on it with the defendant and other underwriters at Lloyd's. The policy was expressed to be "against all risks, especially including breakage and damage done and received through loading and discharging, irrespective of percentage." It was further provided by clauses attached to the policy that it should include "all risks of craft and/or raft and/or of any special lighterage without recourse against lighterman . . . of fire, transhipment, landing, warehousing, and reshipment if incurred, and whilst waiting shipment and/or reshipment, and all other risks and losses by land and water from the time of leaving the warehouse at point of departure until safely delivered into warehouse or other

place for which the goods have been entered or in which it is intended they shall be lodged, whether previously discharged or landed elsewhere within the port or place of destination or not." The casting was shipped from West Hartlepool to Hamburg and discharged on the quay on June 14. At that time the steamer on which the stern frame was to be fitted was at Port Said, but she was expected at Hamburg. Arrangements were made on June 27 with the Vulcan Works Co. to fit the frame, and this company transported it in a lighter to their quay. While it was being lifted from the lighter to their quay it struck the quay wall and was so damaged as to be useless. The plaintiffs claimed that there had been a total loss by a peril insured against :—*Held*, that the casting was not in transit at the time when the loss occurred, and therefore the plaintiffs could not recover on the policy. *Deutsch-Australische Dampfschiffs-Gesellschaft* v. *Sturge*, 109 L. T. 905; 12 Asp. M.C. 453; 30 T. L. R. 137—Pickford, J.

III. NATURE OF RISK.

1. Perils of the Sea.

a. Injury Consequential on.

See also Vol. XIII. 1073, 2239.

Percolating Water.]—Opium was placed in a wooden hulk which was in a rotten condition and which was moored in a river. The opium, on which a time policy against marine risks had been effected, was damaged by sea water percolating through some copper sheathing which covered up a weak place in the hulk :—*Held*, that the opium was not covered by the policy, the damage, though proximately due to sea water, not being due in any sense to a peril of the sea. *Sassoon & Co.* v. *Western Assurance Co.*, 81 L. J. P.C. 231; [1912] A.C. 561; 106 L. T. 929; 12 Asp. M.C. 206; 17 Com. Cas. 274—P.C.

Perils "of the seas . . . and all other perils, losses, and misfortunes" — Institute Time Clauses Attached to Policy—"In port and at sea, in docks" — Inchmaree Clause — Ship Loading in Dock — Accident through Breaking of Machinery of Floating Crane.] — A steamer was insured by a time policy against perils "of the seas" and "all other perils, losses, and misfortunes." The policy included "the conditions of the Institute Time Clauses as attached." Clause 3 of the attached clauses provided as follows : "In port and at sea, in docks and graving docks . . . in all places, and on all occasions, services, and trades whatsoever and wheresoever. . . ." Clause 7 provided as follows : "This insurance also specially to cover . . . loss of, or damage to hull or machinery . . . through any latent defect in the machinery or hull." The steamer while lying in dock was taking on board a boiler weighing thirty tons from a floating crane. The boiler as it descended caught upon the coamings of the hatch, and the pin of the shackle attached to the rope by which the boiler was being lowered broke and the boiler fell into the lower hold and damaged the ship :—*Held* (Phillimore, L.J., *dubitante*), that the loss was not covered by the general words in the body of the policy, as it was not due to a peril, loss, or misfortune of a marine character, or of a character incident to a ship as such; nor by clause 3 of the attached clauses, as that clause could not be read as enlarging the class of risks covered by the policy; nor by clause 7 of the attached clauses, as that clause could not be read into the ordinary Lloyd's peril clause in the policy so as to make the general words in that clause applicable to clause 7. *Stott (Baltic) Steamers, Lim.* v. *Marten*, 83 L. J. K.B. 1847; [1914] 3 K.B. 1262; 111 L. T. 1027; 12 Asp. M.C. 555; 19 Com Cas. 438; 30 T. L. R. 686—C.A. Affirmed, 85 L. J. K.B. 97; 60 S. J. 57; 32 T. L. R. 85—H.L. (E.)

b. Collision.

See also Vol. XIII. 1082, 2241.

Collision Clause of Lloyd's Policy — Construction—"Collision with any other ship or vessel"—Fouling Nets of Fishing Vessel.]—The collision clause attached to the usual form of Lloyd's policy provides that if the insured ship "shall come into collision with any other ship or vessel" and the assured shall in consequence thereof become liable to pay and shall pay by way of damages to any other person any sum not exceeding the value of the insured ship, the company will pay the assured a certain proportion of such sum. The respondents' steamer ran foul of the nets belonging to and attached to a fishing vessel about a mile distant. The hull of the steamship did not at any time come into contact with the hull of the fishing vessel :—*Held*, that there had not been, under the circumstances, a collision between the steamship and "any other ship or vessel" within the meaning of the collision clause. *Bennett Steamship Co.* v. *Hull Mutual Steamship Protecting Society*, 83 L. J. K.B. 1179; [1914] 3 K.B. 57; 111 L. T. 489; 12 Asp. M.C. 522; 19 Com. Cas. 353; 30 T. L. R. 515—C.A.

Decision of Pickford, J. (82 L. J. K.B. 1003; [1913] 3 K.B. 372), affirmed. *Ib.*

Institute Time Collision Clause—Collision between Insured Vessel and another Vessel — Subsequent Collision between the other Vessel and Third Vessel — Second Collision Caused by Forces set in Operation by the Negligent Navigation of Insured Vessel — Liability of Underwriters for Damage Caused by Second Collision.] — A policy of marine insurance on the plaintiffs' vessel, the *Cornwood*, which was underwritten by the defendants, contained the running-down clause of the Institute Time Clauses, as follows : "It is further agreed that if the ship hereby insured shall come into collision with any other ship or vessel, and the assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the ship hereby insured, this company will pay the assured such proportions of three-

fourths of such sum or sums so paid as its subscription hereto bears to the value of the ship hereby insured." The *Cornwood*, while proceeding up the river Seine, desired to pass the *Rouen*, which was also proceeding up the Seine. The *Galatee* was at the same time coming down the river. The *Cornwood*, trying to avoid both ships, by negligent navigation drew too near the *Rouen* as she passed, with the result that the stem of the *Rouen* was drawn to the side of the *Cornwood*, and there was a slight collision. The *Cornwood* then ran into the bank, and the wash from her propeller operated upon the bow of the *Rouen*, increasing the swing that she already had to port as a result of the close proximity of the *Cornwood*, with the result that the *Rouen* was pushed across the river, where she came into collision with the *Galatee*, causing very serious damage to both vessels. The owners of the *Cornwood* were held liable in an action in the Admiralty Court for the damage caused both to the *Rouen* and to the *Galatee*. They now sued the underwriters to recover for such damage under the above clause in the policy: —*Held*, that, inasmuch as the collision between the *Rouen* and the *Galatee* was due to forces set in operation by the negligent navigation of the *Cornwood* causing the impact between the *Cornwood* and the *Rouen*, it was a consequence of that collision within the terms of the collision clause in the policy, and that therefore the owners of the *Cornwood* were entitled to recover from the underwriters under the policy three-fourths of the damages they had had to pay to the owners of the *Rouen* and the *Galatee*. *France, Fenwick & Co.* v. *Merchants Marine Insurance Co.*, 84 L. J. K.B. 1905; [1915] 3 K.B. 290; 113 L. T. 299; 20 Com. Cas. 227; 31 T. L. R. 321—C.A.

Decision of Bailhache, J. (84 L. J. K.B. 138; [1914] 3 K.B. 827), affirmed. *Ib.*

2. Restraint and Detention.

See also Vol. XIII. 1089, 2243.

Shipment of Goods in British Ship to Hamburg—Declaration of War by England against Germany — Abandonment of Voyage without Intervention of Force — Notice of Abandonment.]—A declaration of war is an act of State equivalent to a statute prohibiting intercourse with the enemy country, and amounts to a "restraint of princes" within the meaning of the peril of "takings at sea, arrests, restraints and detainments of all kings, princes and people of what nation, condition or quality soever," insured against in a policy of marine insurance. Actual physical force is not necessary to constitute such restraint provided that the State has power to enforce the prohibition, and the restraint may be exercised by the Government of a country of which the assured is a subject, provided that the restraint is not imposed for a violation of the law of that country. *Sanday & Co.* v. *British and Foreign Marine Insurance Co.*, 84 L. J. K.B. 1625; [1915] 2 K.B. 781; 113 L. T. 407; 20 Com. Cas. 305; 59 S. J. 456; 31 T. L. R. 374—C.A.

Decision of Astbury, J. (31 T. L. R. 194), affirmed. *Ib.*

The Marine Insurance Act, 1906, has not altered the common law doctrine that the constructive total loss of goods insured can be proved by the destruction of the contemplated adventure. *Ib.*

The plaintiffs, British subjects, sold on c.i.f. terms to some German firms at Hamburg some parcels of linseed and wheat, but the ownership of the goods was to remain in the plaintiffs until delivery at Hamburg. The goods were shipped in June and July, 1914, in British ships at Buenos Aires for Hamburg, and were insured with the defendants against the peril of "takings at sea, arrests, restraints and detainments of all kings, princes and people of what nation, condition or quality soever." War was declared by England against Germany on August 4, 1914, and trading with the enemy was immediately afterwards prohibited by proclamation. The vessels containing the shipments, instead of continuing the voyage to Hamburg, proceeded to English ports, and discharged their cargoes, the linseed and wheat being depreciated in value. In an action by the plaintiffs on the policy,—*Held* (Swinfen Eady, L.J., *dissentiente*), that the plaintiffs could recover for the constructive total loss of the goods by one of the perils insured against—namely, that of "restraint of princes," &c., within the meaning of the policy. *Dictum* of Martin, B., in *Finlay* v. *Liverpool and Great Western Steamship Co.* (23 L. T. 251, 254) considered. *Ib.*

3. Capture and Seizure.

See also Vol. XIII. 1104, 2243.

Cargo not Sent Forward to Port of Destination—Fear of Capture.]—The plaintiffs, merchants carrying on business in Russia, effected with the defendants a policy of insurance on cargo at and from San Francisco to Vladivostok. The policy, which was against total loss, was against war risk only—namely, the risk excepted by the clause "warranted free of capture, seizure and detention and the consequences thereof . . . and also from all consequences of hostilities or warlike operations, whether before or after declaration of war." The plaintiffs had arranged for three shipments. The first two shipments were made, but the vessels were captured by the Japanese Fleet during the war between Russia and Japan. When the vessel which was to carry the rest of the goods was about to sail, and when some of the cargo was on board, it became known that the Japanese Fleet was blockading Vladivostok and was capturing vessels, and the underwriters telegraphed that if the cargo was sent forward to Vladivostok they would contend that the plaintiffs had deliberately caused any loss which might be occasioned. Notice of abandonment was thereupon given to the underwriters, who, however, refused to accept it, and the cargo was discharged and sold. In an action upon the policy, the plaintiffs claimed the value of the cargo, giving credit for the amount realised by the sale:—*Held*, that under the circumstances there had been no loss of cargo by a peril insured against. *Kaeianoff* v. *China*

Traders Insurance Co., 83 L. J. K.B. 1393; [1914] 3 K.B. 1121; 111 L. T. 404; 12 Asp. M.C. 524; 19 Com. Cas. 371; 30 T. L. R. 546—C.A.

Decision of Pickford, J. (83 L. J. K.B. 58; [1913] 3 K.B. 407), affirmed. *Ib.*

Detention of Ship by Belligerent — Ship Subsequently Released—"Actual total loss" — "Constructive total loss" — "Unlikely to recover."] — A policy of insurance on the plaintiffs' s.s. *Polurrian* was expressed to be against "capture seizure and detention and the consequences thereof or any attempt thereat piracy excepted and also from all consequences of hostilities or warlike operations whether before or after declaration of war." On October 9, 1912, the *Polurrian* sailed from Newport for Constantinople with a cargo of coal. On October 17 war broke out between Turkey and Greece, and the Greeks declared all fuel to be contraband of war. When the *Polurrian* arrived off the entrance to the Dardanelles on October 25 she was stopped by Greek destroyers, taken to the Greek naval base at Lemnos, and there detained until November 28. The cargo of coal was taken out of her by the Greeks and used for coaling the Greek fleet. She was then ordered by the Greek admiral to proceed to the Piræus in order to be tried by a Prize Court, but was eventually released on December 8 without coming before a Prize Court. The Greeks alleged that the master of the *Polurrian* had admitted when the ship was seized that he knew of the war. The master denied that he knew of the war or had admitted that he knew of it to the Greeks. The plaintiffs gave notice of abandonment to the underwriters on October 26, and claimed for an actual or a constructive total loss, or in the alternative damages (*inter alia*) for the loss of the use of the ship during the six weeks as a particular average loss:—*Held*, by Pickford, J., that there had not been an actual total loss of the *Polurrian* within the meaning of section 57 of the Marine Insurance Act, 1906, nor a constructive total loss within the meaning of section 60, as the owners had not been irretrievably deprived of her, nor was it at any time unlikely that they would recover the ship. Further, the plaintiffs were not entitled to recover as a particular average loss the depreciated value of the ship by reason of her not being able to earn money during the time she was detained. On appeal on the question of "constructive total loss,"—*Held*, by the Court of Appeal, that although on October 26 recovery of the ship was "uncertain," it was not "unlikely" within section 60, sub-section 2 (*a*) of the Marine Insurance Act, 1906, and that the plaintiffs could not therefore recover for a "constructive total loss." *Polurrian Steamship Co.* v. *Young*, 84 L. J. K.B. 1025; [1915] 1 K.B. 922; 112 L. T. 1053; 20 Com. Cas. 152; 59 S. J. 285; 31 T. L. R. 211—C.A.

Where the insured has been deprived of the possession of his ship by a peril insured against, the test of "unlikelihood" of recovery is substituted by section 60, sub-section 2 (*a*) of the Marine Insurance Act, 1906, for the former test of "uncertainty" of recovery. *Ib.*

Decision of Pickford, J. (109 L. T. 901; 30 T. L. R. 126), affirmed. *Ib.*

Men-of-war—Goods on German Ship—Outbreak of War—Ship Putting into Neutral Port to Avoid Peril of Capture—Constructive Total Loss of Goods.] — The plaintiffs, who were English merchants, shipped goods at Calcutta on board the *Kattenturm*, a German ship, for carriage to Hamburg. The goods were insured by the plaintiffs with the defendants against (*inter alia*) the perils of "men-of-war . . . enemies . . . takings at sea, arrests, restraints, and detainments of all kings, princes, and peoples of what nation, condition, or quality soever . . . and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage, of the said goods and merchandise." The ship was in the Mediterranean when war broke out in August, 1914, between Great Britain and France and Germany. The master, on hearing of the outbreak of war and fearing that if he proceeded with the voyage his ship would be captured by British or French cruisers, put into Messina, and subsequently shifted to another neutral port, where he remained. The plaintiffs gave notice of abandonment to the defendants, alleging that there had been a constructive loss of the goods by a peril insured against:—*Held*, that the loss of the goods was due to the fact that the voyage was abandoned at Messina, but that at the time the master of the *Kattenturm* went into Messina the peril of capture had not begun to operate, he having gone into that port to avoid the commencement of the peril, and that therefore the loss of the goods was not due to a peril insured against. *Becker, Gray & Co.* v. *London Assurance Corporation*, 84 L. J. K.B. 1993; [1915] 3 K.B. 410; 21 Com. Cas. 43; 31 T. L. R. 538—Bailhache, J.

War Risks—Loss by German Submarine.] —The steamship *Oriole* was insured by the defendant company against ordinary marine perils, war risks being excluded, and she was insured by the defendant Janson against war risks. She left London for Havre in a seaworthy condition on January 29, 1915, and was last seen on January 30 off Dungeness. Two other steamers were torpedoed off Havre by a German submarine on January 30:—*Held*, on the evidence, that the *Oriole* had been lost by a war risk, and therefore the defendant Janson was liable on his policy, but the defendant company were not liable on their policy. *General Steam Navigation Co.* v. *Commercial Union Assurance Co.*; *Same* v. *Janson*, 31 T. L. R. 630—Bailhache, J.

4. Other Risks.

See also Vol. XIII. 1109, 2247.

"Inchmaree clause"—Damage to Hull or Machinery—Latent Defect.]—By a policy of marine insurance a ship was insured for twelve months from December 8, 1908, to December 8, 1909, against the ordinary

Lloyd's perils. The policy also contained the following clause: "This insurance also specially to cover . . . loss of or damage to hull . . . through any latent defect in the . . . hull . . . provided such loss or damage has not resulted from want of due negligence by the owners of the ship, or any of them, or by the manager." There was a defect in the ship's stern frame at the time she was built—namely, in 1906. The defect was covered up by the makers, and it remained undiscovered by reasonable inspection until after the commencement of the policy. During the currency of the policy the defect became visible owing to ordinary wear and tear, and the stern frame was condemned. The assured claimed to recover under the policy the cost of replacing the condemned stern frame:—*Held*, that there had been no loss of or damage to hull during the currency of the policy from perils insured against, and therefore that the assured were not entitled to recover. *Hutchins* v. *Royal Exchange Assurance*, 80 L. J. K.B. 1169; [1911] 2 K.B. 398; 105 L. T. 6; 16 Com. Cas. 242; 12 Asp. M.C. 21; 27 T. L. R. 482—C.A.

IV. INTEREST OF ASSURED.

See also Vol. XIII. 1110, 2252.

Measure of Insurable Interest.]—The measure of insurable interest in a marine policy of insurance covering a fluctuating subject-matter is the amount at risk at the time of loss and not necessarily the amount of loss. *Anstey* v. *Ocean Marine Insurance Co.*, 83 L. J. K.B. 218; 109 L. T. 854; 12 Asp. M.C. 409; 19 Com. Cas. 8; 58 S. J. 49; 30 T. L. R. 5—Pickford, J.

Policy on Captain's Effects on Board Ship—Risk of Damage or Loss by Fire—Total Loss by Fire of Portion of Effects on Board—Portion on Shore.]—The captain of a ship insured his effects against total loss of the vessel, including perils of the sea, fire, &c. Whilst he was on shore with certain clothing, his watch, &c., the vessel was totally lost through an explosion of dynamite, with the result that his effects on board were destroyed:—*Held*, that the policy covered the whole of his effects at the time of the loss and not merely the effects which were destroyed, and that the insurers were therefore only liable for such a proportionate sum of money as the value of the lost effects bore to the whole. *Ib.*

Freight—Valued Freight Policy—Constructive Total Loss of Ship—Freight Subsequently Earned—Clause in Hull Policy that Underwriters not Entitled to Freight—Clause in Freight Policy for Payment of Freight in Full on Total Loss, whether Absolute or Constructive.]—The plaintiff insured the hull and machinery of the s.s. *Ivy* by a policy to which the Institute Time Clauses—Hull, of 1910, were attached, and these included the following: "In the event of total or constructive total loss, no claim to be made by the underwriters for freight, whether notice of abandonment has been given or not." The plaintiff also took out a policy on freight valued at 950*l.*, and attached to that policy were the Institute Time Clauses—Freight, of 1910, No. 5 of which was as follows: "In the event of the total loss, whether absolute or constructive, of the steamer, the amount underwritten by this policy shall be paid in full, whether the steamer be fully or only partly loaded or in ballast, chartered or unchartered." During the currency of these policies the *Ivy* became a constructive total loss, but she was subsequently towed to her port of destination, where she discharged her cargo, and the plaintiff received from the consignees 630*l.* 12*s.* in respect of the carriage of the cargo so delivered. Thereafter the plaintiff sued the defendants as the underwriters on the freight policy, claiming payment "in full" under the freight policy—namely, 950*l.*:—*Held*, that as some freight had been earned by delivery of the cargo to the consignees, and that freight had been received and retained by the plaintiff, the defendants, as the freight underwriters, were only liable to the plaintiff for the amount insured, less the amount of freight so received by the plaintiff from the consignees of cargo. *Coker* v. *Bolton*, 82 L. J. K.B. 91; [1912] 3 K.B. 315; 107 L. T. 54; 12 Asp. M.C. 231; 17 Com. Cas. 313; 56 S. J. 751—Hamilton, J.

—— **"Chartered or as if chartered."**]—The plaintiffs effected with the defendants a policy of insurance upon freight on frozen meat and/or apples and/or other refrigerated produce valued at 15,000*l.*, "chartered or as if chartered" of the ship *Ayrshire*, "at and from any ports or places in any order or rotation in the United Kingdom to any ports or places in any order or rotation in Australia and/or Tasmania. . . ." The perils insured against included perils of the seas:—*Held*, that the words "chartered or as if chartered" could not extend to a reasonable anticipation on the part of the plaintiffs of earning freight upon a complete cargo where no contract to load cargo was in existence at the material date. *Scottish Shire Line* v. *London and Provincial Marine and General Insurance Co.*, 81 L. J. K.B. 1066; [1912] 3 K.B. 51; 107 L. T. 46; 17 Com. Cas. 240; 12 Asp. M.C. 253; 56 S. J. 551—Hamilton, J.

Insurance on Passage Money against Passenger Act—Accident to Ship—Passengers Forwarded to Destination by other Ships—Disbursements in Respect of Passage Money—Ship after Repairs Sails to Destination with other Passengers—Loss of Passage Money—Salvage.]—By a policy, underwritten by the defendant and other underwriters at Lloyd's, the plaintiffs were insured from any ports or places in the United Kingdom to any ports or places in Australia and/or New Zealand upon any kinds of goods and merchandise in the s.s. *Westmeath*. The goods and merchandise were "valued at 4,758*l.* on passage money, plus 50 per cent. (United Kingdom bookings to Australia) so valued; 992*l.* 13*s.* 3*d.* passage money plus 50 per cent. (United Kingdom bookings to New Zealand) so valued—5,750*l.* 13*s.* 3*d.* against Passenger Act as per clause attached." The clause attached provided that the policy was "to be held to cover any disbursements, &c., that may be made

by the assured arising from accident or loss on account of passengers . . . whether for maintenance or conveyance to intended destination . . . and whether such disbursements, &c., be compulsory or voluntary (provided same be reasonably incurred)." The s.s. *Westmeath* was carrying emigrants to Australia. She started on her voyage from Liverpool, but while in the Mersey she dragged her anchors and went ashore and sustained serious damage. The plaintiffs, in order to comply with the provisions of sections 328 and 331 of the Merchant Shipping Act, 1894, incurred considerable expense in respect of the maintenance of the passengers on shore, and they were eventually carried to their destination in other ships, and the plaintiffs paid the passage money in respect of their carriage. The s.s. *Westmeath* was repaired, and after being detained seventy to eighty days sailed to Australia with other passengers whose passage money exceeded the amount of the passage money of the passengers on the *Westmeath* when she went ashore. In an action by the plaintiffs for a loss under the policy in respect of the disbursements incurred by them,—*Held*, that the policy was an insurance upon the risk of disbursements with regard to the particular passengers on board the *Westmeath* when she first sailed, and that the passage money of the passengers who were eventually carried on the *Westmeath* upon different contracts could not be regarded as substituted for the passage money of the first lot of passengers, neither could it be regarded as a salvage in respect of the subject-matter insured, and that therefore the plaintiffs were entitled to recover. *New Zealand Shipping Co.* v. *Duke*, 83 L. J. K.B. 1300; [1914] 2 K.B. 682; 111 L. T. 37; 12 Asp. M.C. 507; 19 Com. Cas. 223; 30 T. L. R. 385—Pickford, J.

V. CONCEALMENT AND MISREPRESENTATION.

See also Vol. XIII. 1178, 2260.

Non-disclosure of Material Facts.]—Marine insurances were effected for a particular voyage on a sailing ship, and payment was resisted by the appellants—first, on the ground of breach of the warranty of seaworthiness; secondly, on the ground of the non-disclosure of material facts, (*a*) as to the captain of the vessel, and (*b*) as to the other insurances effected in connection with the ship. The captain had not been at sea, when he was engaged, for twenty-two years, having in the interval been occupied as a stevedore. He had lost his last ship and his certificate had been suspended. The hull was largely over-insured, and there were insurances on gross freight and disbursements. In some of these latter there was no insurable interest. The manager, who was a creditor of the ship, had for his own protection taken out "honour" policies, the amount of which would in the event of the ship's loss be paid in full:—*Held*, that the non-disclosure of the past history of the master of the ship was not a concealment of a material fact or a breach of warranty of seaworthiness; but that the concealment of the over-insurance and of the "honour" policies constituted such a concealment and made the policies voidable by the insurer. *Thames and Mersey Marine Insurance Co.* v. "*Gunford*" *Ship Co.*; *Southern Marine Insurance Association* v. "*Gunford*" *Ship Co.*, 80 L. J. P.C. 146; [1911] A.C. 529; 105 L. T. 312; 16 Com. Cas. 270; 12 Asp. M.C. 49; 55 S. J. 631; 27 T. L. R. 518—H.L. (Sc.)

The plaintiffs agreed with an Australian firm to have the *Ayrshire* at Hobart on or about March 20, 1910, ready to load a cargo of apples. This date was not made known by the plaintiffs to the defendants. The ship did not arrive till a much later date and lost the freight:—*Held*, that there had been a non-disclosure of a material circumstance by the assured, and that under section 18 of the Marine Insurance Act, 1906, the defendants were entitled to avoid the policy. *Scottish Shire Line* v. *London and Provincial Marine and General Insurance Co.*, 81 L. J. K.B. 1066; [1912] 3 K.B. 51; 107 L. T. 46; 17 Com. Cas. 240; 56 S. J. 551—Hamilton, J.

—— **Floating Dock—Ocean Voyage—"Seaworthiness admitted"—Dock not Specially Strengthened for Voyage—Underwriters Put upon Enquiry—Waiver.**]—The owners of a floating dock effected an insurance thereon "seaworthiness admitted" for an ocean voyage. They did not specially strengthen the dock for the voyage, honestly believing that no special strengthening was necessary, and they did not inform the underwriters that it had not been so strengthened. In consequence of not being so strengthened the dock was lost on the voyage. In an action on the policy the underwriters pleaded the non-disclosure of the fact that the dock had not been strengthened for the voyage:—*Held*, that in the circumstances the assured were not under an obligation to disclose this fact, but that the underwriters were put upon enquiry as to the construction or seaworthiness of the dock, and, not having made any enquiries, must be held to have waived the information. *Cantiere Meccanico Brindisino* v. *Janson*, 81 L. J. K.B. 1043; [1912] 3 K.B. 452; 107 L. T. 281; 17 Com. Cas. 332; 12 Asp. M.C. 246; 57 S. J. 62; 28 T. L. R. 564—C.A.

Assignment for Value without Notice—Defence of Concealment against Assignee—"Defence arising out of the contract."]—A firm of shipowners took out a policy of insurance on a certain ship with the defendants, but concealed a certain material fact from them. They assigned this policy to the plaintiffs for value and without notice, in pursuance of certain covenants. The ship was lost, and in an action by the plaintiffs, the assignees, to recover the policy moneys the defendants set up the defence of the concealment of the above material fact by the assignors:—*Held*, that it was an implied condition precedent to the liability of the defendants under the policy that no material facts should be concealed from them, and that breach of that condition was a breach of the contract, and that consequently the defence set up by the defendants was a defence within the meaning of section 50, sub-section 2 of the Marine Insurance

Act, 1906, under which the defendants were entitled to set up "any defence arising out of the contract" against assignees of the policy. *Pickersgill* v. *London and Provincial Marine and General Insurance Co.*, 82 L. J. K.B. 130; [1912] 3 K.B 614; 107 L. T. 305; 18 Com. Cas. 1; 12 Asp. M.C. 263; 57 S. J. 11; 28 T. L. R. 591—Hamilton, J.

Over-valuation of Cargo.] — The non-disclosure by the assured to the underwriters of the fact that the cargo had been largely over-valued *held* to avoid the policy. *Gooding* v. *White*, 29 T. L. R. 312—Pickford, J.

VI. "HELD COVERED" CLAUSE.

Misdescription of Interest Insured — "Interest insured"—Second-hand Machinery Described as Machinery—Honest Mistake or Misapprehension of Assured—"Held covered" Clause in Policy—Liability of Underwriters.] — A policy of marine insurance upon machinery, described as "machinery," against all risks, including breakage, contained the following clause: "In the event of . . . any incorrect definition of the interest insured it is agreed to hold the assured covered at a premium (if any) to be arranged." Some of the machinery was second-hand, but this fact was not disclosed to the underwriters, and was a material fact, but honestly not disclosed by the assured in the belief that it was immaterial:—*Held*, that the assured was protected by the "held covered" clause, and could recover under the policy for a breakage of the machinery during the voyage insured. *Held*, also, that "interest insured" referred to the subject-matter of the insurance, and not to the insurable interest of the assured. *Hewitt* v. *Wilson*, 84 L. J. K.B. 1337; [1915] 2 K.B. 739; 113 L. T. 304; 20 Com. Cas. 241; 31 T. L. R. 333—C.A.

Decision of Bailhache, J. (83 L. J. K.B. 1417; [1914] 3 K.B. 1131), affirmed. *Ib.*

VII. LOSSES.

See also Vol. XIII. 1224, 2263.

Policy against Risk of Capture, Seizure, and Detention—Detention of Ship by Belligerent—Ship Subsequently Released—"Actual total loss"—"Constructive total loss"—"Unlikely to recover."]—A policy of insurance on the plaintiffs' s.s. *Polurrian* was expressed to be against "capture seizure and detention and the consequences thereof or any attempt thereat piracy excepted and also from all consequences of hostilities or warlike operations whether before or after declaration of war." On October 9, 1912, the *Polurrian* sailed from Newport for Constantinople with a cargo of coal. On October 17 war broke out between Turkey and Greece, and the Greeks declared all fuel to be contraband of war. When the *Polurrian* arrived off the entrance to the Dardanelles on October 25 she was stopped by Greek destroyers, taken to the Greek naval base at Lemnos, and there detained until November 28. The cargo of coal was taken out of her by the Greeks and used for coaling the Greek fleet. She was then ordered by the Greek admiral to proceed to the Piræus in order to be tried by a Prize Court, but was eventually released on December 8 without coming before a Prize Court. The Greeks alleged that the master of the *Polurrian* had admitted when the ship was seized that he knew of the war. The master denied that he knew of the war or had admitted that he knew of it to the Greeks. The plaintiffs gave notice of abandonment to the underwriters on October 26, and claimed for an actual or a constructive total loss, or in the alternative damages (*inter alia*) for the loss of the use of the ship during the six weeks as a particular average loss:—*Held*, by Pickford, J., that there had not been an actual total loss of the *Polurrian* within the meaning of section 57 of the Marine Insurance Act, 1906, nor a constructive total loss within the meaning of section 60, as the owners had not been irretrievably deprived of her, nor was it at any time unlikely that they would recover the ship. Further, the plaintiffs were not entitled to recover as a particular average loss the depreciated value of the ship by reason of her not being able to earn money during the time she was detained. On appeal on the question of "constructive total loss,"—*Held*, by the Court of Appeal, that although on October 26 recovery of the ship was "uncertain," it was not "unlikely" within section 60, sub-section 2 (*a*) of the Marine Insurance Act, 1906, and that the plaintiffs could not therefore recover for a "constructive total loss." *Polurrian Steamship Co.* v. *Young*, 84 L. J. K.B. 1025; [1915] 1 K.B. 922; 20 Com. Cas. 152; 112 L. T. 1053; 59 S. J. 285; 31 T. L. R. 211—C.A.

Where the insured has been deprived of the possession of his ship by a peril insured against, the test of "unlikelihood" of recovery is substituted by section 60, sub-section 2 (*a*) of the Marine Insurance Act, 1906, for the former test of "uncertainty" of recovery. *Ib.*

Decision of Pickford, J. (109 L. T. 901; 30 T. L. R. 126), affirmed. *Ib.*

Cargo—Constructive Total Loss—War Risk — Contraband — Discharge Elsewhere than Port of Destination.]—The plaintiffs insured a cargo of timber on a voyage from a Baltic port to Garston by a policy dated October 29, 1914, which was subscribed by the defendant and was against war risk only as excluded by the f.c. and s. clause, including risk of mines, torpedoes, and bombs, but excluding all claims arising from delay. The vessel started on November 22, 1914, and on November 23 Germany declared that wood was contraband. On November 25 a German torpedo-boat stopped the vessel when outside the Falsterbo lightship, and the officer informed the master that no ships with contraband were allowed to pass the Sound, but he might go to a Swedish or Danish port in the Baltic, and the master thereupon went to Stephens Klint, a Danish port. On December 3 notice of abandonment was given by the plaintiffs to the defendant, but he refused to accept it. On December 11 the master left Stephens Klint and passed through the Sound, and having called at Elsinore and Christiansand

for orders, he proceeded in accordance with the orders to Grimstad in Norway, where he arrived on December 15 and discharged his cargo. The Norwegian Government placed no obstacle in the way of the cargo being re-shipped for England. In an action brought on the policy upon the ground that there had been a constructive total loss, there was evidence that up to and including December 3 all ships which had sailed before November 23 had an option to proceed to ports on the east coast of Sweden and there discharge, and that many such ships carrying wood had done so and their cargoes had been railed across Sweden and had reached England:—*Held*, that on December 3 the total loss of the venture was not unavoidable and the plaintiffs were not entitled to recover. *Wilson Brothers, Bobbin & Co.*, v. *Green*, 31 T. L. R. 605—Bray, J.

Time Policy—Total Loss—Ship Sent to Sea with Insufficient Crew—Privity of Managing Owner.]—The plaintiffs sued the defendants, claiming to recover upon a time policy on the steamship *Dunsley*, which was totally lost during the currency of the policy:—*Held*, that the *Dunsley* was unseaworthy when she was sent on the voyage in question, inasmuch as she was provided with an insufficient crew, and that as she was sent on the voyage in that condition with the privity of the plaintiffs' managing owner, and the loss was attributable to such unseaworthiness, section 39, sub-section 5 of the Marine Insurance Act, 1906, relieved the defendants from liability for the loss. *Thomas Shipping Co.* v. *London and Provincial Marine and General Insurance Co.*, 30 T. L. R. 595—C.A.

Decision of Pickford, J. (29 T. L. R. 736), affirmed. *Ib.*

Frozen Meat Cargo—"Warranted free from particular average and loss unless caused by stranding, sinking, burning, or collision of the ship or craft"—Cargo Condemned by Sanitary Authorities—Total Loss.]—A cargo of frozen meat was insured "at and from Port Chalmers to Glasgow. Risk commencing at the freezing works and includes a period of not exceeding 60 days after arrival of the vessel." Pasted on the face of the policy, which was also expressed to be subject to Institute Clauses attached "so far as they apply," was the following clause: "Warranted free from particular average and loss unless caused by the stranding, sinking, burning, or collision of the ship or craft (the collision to be of such a nature as may reasonably be supposed to have caused or led to the damage claimed for) . . . ; also partial loss arising from transhipment. Including all risks of craft, or otherwise to and from the vessel . . ." Attached to the fly-leaf of the policy was the following clause: "The insurance covers loss from defective condition of the meat from every cause (except improper dressing) which shall arise during the currency of the insurance." At the inception of the risk the meat was in good order and condition, but on arrival at Glasgow it was in such a condition that it was seized by the sanitary authorities and condemned as unfit for human consumption. This condition of the meat was not caused by improper dressing, but it arose on board the vessel and not from transhipment. The vessel was not stranded, sunk, burnt, or in collision, nor was any craft conveying the meat. In an action to recover for a total loss under the policy, evidence was given on behalf of the underwriter by a number of other underwriters to the effect that the clause, "Warranted free from particular average and loss, unless caused by stranding, sinking, burning, or collision of ship or craft," &c., had a well-recognised meaning—namely, that the policy was warranted free not only from particular average unless it was caused by stranding, sinking, burning, or collision of ship or craft, but was also free from loss of the subject-matter, total or partial, unless caused in the same way:—*Held*, upon the evidence that the words had acquired that recognised meaning, and that as the loss in question had not occurred by stranding, sinking, burning, or collision of the ship or craft, the defendant was not liable on the policy. *Otago Farmers' Co-operative Association* v. *Thompson*, 79 L. J. K.B. 692; [1910] 2 K.B. 145; 102 L. T. 711; 15 Com. Cas. 28; 11 Asp. M.C. 403—Hamilton, J.

Total Loss of Cargo—Constructive Total Loss of Vessel—Civil Code of Lower Canada, art. 2522.]—The appellants shipped on a barge a cargo on which they effected an insurance with the respondents against loss "by total loss of the vessel." The vessel was wrecked and the cargo totally lost:—*Held*, that the respondents were liable on the policy—although the jury had not found in so many words that the barge was a total loss—as the insurance was on the cargo, and it was not a matter for decision whether or not the barge was a constructive total loss within the meaning of the Civil Code of Lower Canada, art. 2522, which defines the "absolute or constructive" loss of "the thing insured." *Montreal Light, Heat, and Power Co.* v. *Sedgwick*, 80 L. J. P.C. 11; [1910] A.C. 598; 103 L. T. 234; 11 Asp. M.C. 437; 26 T. L. R. 657—P.C.

Constructive Total Loss—Freight Policy—Institute Time Clauses—Construction.]—The plaintiffs, the assured, were insured with the defendants under a time policy on freight per the steamship *Ivy*, valued at 950*l.*, "chartered or unchartered, on board or not on board, and (or) bunker out and freight only home." There were three separate printed sets of clauses attached, the principal one being the "Institute Time Clauses—Freight 1910," of which No. 5 was as follows: "In the event of total loss, whether absolute or constructive, of the steamer, the amount under-written by this policy shall be paid in full, whether the steamer be fully or only partly loaded, or in ballast, chartered or unchartered." During the course of the voyage the vessel became a constructive total loss, but was subsequently towed to a port where she discharged her cargo, and the plaintiff received payment of freight. In an action to recover the full amount of the policy,—*Held*, that the underwriters were entitled to credit for the amount of the freight received by the assured. *Coker*

v. *Bolton*, 82 L. J. K.B. 91; [1912] 3 K.B. 315; 107 L. T. 54; 17 Com. Cas. 313; 12 Asp. M.C. 231; 56 S. J. 751—Hamilton, J.

—— Cost of Repairs—Value of Wreck.]—In determining whether under section 60, subsection 2 of the Marine Insurance Act, 1906, there has been a constructive total loss of a vessel, the unrepaired value of the wreck ought not to be taken into account. *Maebeth & Co.* v. *Maritime Insurance Co.* (77 L. J. K.B. 498; [1908] A.C. 144) considered. *Hall* v. *Hayman*, 81 L. J. K.B. 509; [1912] 2 K.B. 5; 106 L. T. 142; 17 Com. Cas. 81; 12 Asp. M.C. 158; 56 S. J. 205; 28 T. L. R. 171—Bray, J.

VIII. ASSIGNMENT.

See also Vol. XIII. 1311, 2280.

Defence of Concealment of Material Facts by Original Assured—Innocent Assignee.]—Under section 50, sub-section 2 of the Marine Insurance Act, 1906, underwriters are entitled, as against an innocent assignee of a policy of marine insurance, to set up the defence of concealment of material facts on the part of the person by or on whose behalf the policy was effected. *Pickersgill* v. *London and Provincial General Insurance Co.*, 82 L. J. K.B. 130; [1912] 3 K.B. 614; 107 L. T. 305; 18 Com. Cas. 1; 57 S. J. 11; 28 T. L. R. 591—Hamilton, J.

IX. SUBROGATION.

See also Vol. XIII. 1313, 2281.

Valued Policy on Ship—Total Loss of Insured Vessel by Collision—Payment for Total Loss by Underwriters — Damages Paid by other Vessel on Higher Value of Ship than Insured Value—Right of Underwriters to be Subrogated to Insured in Respect of such Sum.—Underwriters insured the defendants' ship *Helvetia* for one year from May 20, 1912, for 45,000*l.* against ordinary sea perils. In the policy, which contained the usual running-down clause, the *Helvetia* was valued at 45,000*l.* At the date of the policy the *Helvetia* was under a charter for seven St. Lawrence seasons, which charter would not expire till November, 1917. During the currency of the policy the *Helvetia* collided with the *Empress of Britain* and was totally lost. In an Admiralty action both ships were held to blame, the *Helvetia* for seven-twelfths of the damage and the *Empress of Britain* for five-twelfths. The Registrar assessed the value of the *Helvetia* as at November 15, 1912, at 65,000*l.*, and the loss of the hire up to the same period at 2,000*l.* On appeal the President held that the value of the ship and the loss of the hire must be assessed as at November, 1917, and remitted the case to the Registrar. The parties then compromised and agreed on a lump sum of 67,000*l.* in respect of both items. The owners of the *Empress of Britain* accordingly paid to the defendants five-twelfths of 67,000*l.* The underwriters, having paid 45,000*l.* for a total loss of the *Helvetia*, claimed to be subrogated to such part of the payment received by the defendants from the owners of the *Empress of Britain* as represented five-twelfths of the value of the *Helvetia*, which they alleged to be worth 65,000*l.*—namely, to the sum of 26,900*l.*—and to recover the excess of that sum over 19,600*l.* which the underwriters were admittedly liable to pay to the defendants under the running-down clause. The defendants contended that the underwriters were only entitled to be subrogated in respect of five-twelfths of 45,000*l.*, the insured value of the *Helvetia* :—*Held*, that the underwriters were entitled to recover to the extent to which they had paid in respect of the subject-matter insured any sums which the defendants had received in respect of the loss of the same subject-matter, though that sum was based upon a larger value than the insured values. *Held*, further, that as the underwriters only insured the ship for one year they were not concerned with the value of the ship in 1917, and that as on the evidence the value of the ship at the time of the loss must be taken to be 65,000*l.*, in respect of which the defendants had received from the owners of the *Empress of Britain* 26,900*l.*, the underwriters were entitled to be subrogated to the defendants to the full amount of 26,900*l.* and to recover from the defendants the difference between that sum and the 19,600*l.* payable under the running-down clause. *Thames and Mersey Marine Insurance Co.* v. *British and Chilian Steamship Co.*, 84 L. J. K.B. 1087; [1915] 2 K.B. 214; 113 L. T. 173; 20 Com. Cas. 265; 31 T. L. R. 275—Scrutton, J. Varied, 32 T. L. R. 89—C.A.

X. INSURANCE BROKERS.

See also Vol. XIII. 1336, 2285.

Lien on Policy for Unpaid Premiums—Lien On Proceeds of Policy—Estoppel.]—The plaintiffs chartered the *Volturno* to R. S. & Co. under a time charter which provided that the charterers were to insure the hull, &c., in the owners' name for 40,000*l.* all risks and 20,000*l.* total loss only. R. S. & Co. instructed the defendants, who were insurance brokers, to effect those policies and also policies on disbursements and freight of the *Volturno*. The defendants, at the request of R. S. & Co., wrote to the plaintiffs informing them of the insurances for 40,000*l.* and 20,000*l.*, and added, "We have received instructions from R. S. & Co. to hold the above policies to your order, which we hereby undertake to do, subject to our lien on same for unpaid premiums, if any" :—*Held*, that the defendants were estopped from setting up against the plaintiffs a general lien for premiums due from R. S. & Co. in respect of policies on the *Volturno* other than those for 40,000*l.* and 20,000*l.* Whether a lien on documents gives a lien on proceeds collected under them, *quære*. *Fairfield Shipbuilding Co.* v. *Gardner, Mountain & Co.*, 104 L. T. 288; 11 Asp. M.C. 594; 27 T. L. R. 281—Scrutton, J.

Relation of Broker and Underwriter—Disclosure of Material Facts.] — Under ordinary

circumstances a broker effecting a contract of insurance with an underwriter owes no duty to the latter in respect of erroneous but honest statements made by him. The material facts which have to be disclosed to an underwriter are as to the subject-matter of the insurance —the ship and the perils to which she is exposed. Knowing these facts, the underwriter must form his own judgment of the premium, and other people's judgment is quite immaterial. If the underwriter wants to know who the assured is he must ask the question; there is otherwise no duty to disclose the name. *Glasgow Assurance Corporation* v. *Symondson*, 104 L. T. 254; 16 Com. Cas. 109; 11 Asp. M.C. 583; 27 T. L. R. 245—Scrutton, J.

SHOP HOURS ACT.

See MASTER AND SERVANT.

SLANDER.

See DEFAMATION.

SMALL HOLDINGS.

See LOCAL GOVERNMENT.

SMOKE.

See LOCAL GOVERNMENT: METROPOLIS.

SOCIETY.

Building.]—*See* BUILDING SOCIETY.

Friendly.]—*See* FRIENDLY SOCIETY.

Industrial.]—*See* INDUSTRIAL SOCIETY.

SOLICITOR.

A. WHO MAY BE.

Admission of Women — Disability at Common Law—Inveterate Usage.]—Prior to the passing of the Solicitors Act, 1843, a woman was under a disability at common law which prevented her becoming a solicitor, and nothing in the Solicitors Act, 1843, operated to remove that disability. Consequently the Law Society is entitled to refuse to admit a woman to the examinations held by them under the Solicitors Act, 1877, s. 6. *Bebb* v. *Law Society*, 83 L. J. Ch. 363; [1914] 1 Ch. 286; 110 L. T. 353; 58 S. J. 153; 30 T. L. R. 179—C.A.

B. OFFICIAL SOLICITOR.

Instructions by Court—Functions of Official Solicitor.]—When the Court refers a matter to the official solicitor, the instructions, if not inserted in the order, ought to be embodied in some document, or at least be reduced into writing. The functions of the official solicitor

with regard to instituting legal proceedings considered. *Caton, In re; Vincent* v. *Vatcher*, 55 S. J. 313—Eve, J.

C. CERTIFICATE.

See also Vol. XIII. 1406, 2292.

Refusal of Annual Certificate—Discretion—Malice.]—In order to entitle a solicitor to maintain an action against the Law Society for damages for refusing to grant him an annual certificate at the expiration of a period of suspension from practice ordered by the Court, it is not sufficient to shew that they have exercised their discretion wrongly, but it must also be shewn that they were actuated by malice in so refusing the certificate. *Newson* v. *Law Society*, 57 S. J. 80—C.A.

Country Certificate only — City Address on Writ—Action Postponed.]—In a case in which during the course of the trial it appeared that the plaintiff's solicitor held a country certificate only, although his address on the writ was given as "Lombard street, E.C.," the Judge, though holding that the solicitor was committing an offence, declined to dismiss the action, but ordered the case to stand over so that the plaintiff might be able to consult another solicitor. *Richards* v. *Bostock*, 31 T. L. R. 70—Astbury, J.

D. COVENANT NOT TO PRACTISE WITHIN DEFINED AREA.

Agreement for Service—Restraint of Trade —Reasonable Restriction—"Carry on the profession of a solicitor."] — A covenant by a solicitor not to carry on the profession of a solicitor within a certain area does not prevent him from acting on behalf of persons resident within the area at his office outside that area, or from writing on behalf of clients professional letters to persons resident within the area, or from acting on behalf of a mortgagee resident outside the area in taking a mortgage of property situate within the area. *Edmundson* v. *Render* (74 L. J. Ch. 585; [1905] 2 Ch. 320) explained and distinguished. *Woodbridge* v. *Bellamy*, 80 L. J. Ch. 265; [1911] 1 Ch. 326; 103 L. T. 852; 55 S. J. 204 —C.A.

The defendant had entered the employment of the plaintiff, a solicitor, under an agreement which prohibited him from practising or acting as a solicitor, solicitor's clerk, or conveyancer within a certain area during, and for a certain time after leaving, the employment. The defendant, after the employment was determined, did one act which was the act of a solicitor within the area, and wrote several solicitor's letters to persons within the area :—*Held*, that the covenant must be construed to mean substantially acting as a solicitor, and that there had been no breach of the agreement, and that an injunction ought not to be granted. *Freeman* v. *Fox*, 55 S. J. 650—Warrington, J.

E. DUTY AND AUTHORITY OF.

I. Retainer.

See also Vol. XIII. 1409, 2294.

Repudiation by Client — Subsequent Adoption.]—A retainer to solicitors "to take such steps as you may be advised against W. T. and his co-trustees, in order to protect the assets of the N.O.A.P. Trust," is a retainer to bring an action that the trust may be dissolved and its affairs wound up by the Court. *Stevens* v. *Taverner*, 57 S. J. 114—Warrington, J.

Conflict of Evidence between Solicitor and Client.]—On all questions as to the retainer of a solicitor where there is a conflict as to the authority between the solicitor and the client, without further evidence, weight must be given to the affidavit against, rather than to the affidavit of, the solicitor. Rule laid down by Turner, V.C., in *Crossley* v. *Crowther* (9 Hare, 384) followed. *Paine (a Solicitor), In re*, 28 T. L. R. 201—Warrington, J.

II. Authority.

See also Vol. XIII. 1422, 2294.

Limit of Authority after Judgment — Authority to Compromise — Assent to Execution by Defendant of Deed of Assignment for Benefit of Creditors.] — A solicitor who has been retained by a plaintiff to take the necessary proceedings to recover compensation from a defendant has no authority after judgment has been obtained to assent to the execution by the defendant of a deed of assignment to a trustee for the benefit of his creditors. Where a solicitor so assented,—*Held*, that the plaintiff was not precluded from commencing bankruptcy proceedings against the defendant, alleging the deed of assignment as the act of bankruptcy. *Debtor (No. 1 of* 1914), *In re; Debtor, ex parte*, 83 L. J. K.B. 1176; [1914] 2 K.B. 758; 110 L. T. 944; 21 Manson, 155; 58 S. J. 416—D.

Implied Authority to Issue Execution after Judgment.]—After judgment in an action for a money demand the solicitor for the plaintiff has implied authority to issue execution on the judgment, without any further or express instructions from his client, who is bound by and liable for the proceedings, though tortious. *Sandford* v. *Porter*, [1912] 2 Ir. R. 551—C.A.

Pleadings — Issue in Action — Striking out Paragraphs of Defence—Lunacy—Receiver.] —Where an action is commenced by a person who is described in the writ as "a person of unsound mind not so found by inquisition" by a next friend, it is not competent for the defendant to the action to put in issue at the trial of the action the question whether the plaintiff is of unsound mind or not. *Richmond* v. *Branson*, 83 L. J. Ch. 749; [1914] 1 Ch. 968; 110 L. T. 763; 58 S. J. 455—Warrington, J.

The authority of the solicitor to start proceedings is not a question which can be raised

as a relevant issue in the action at the trial. *Ib.*

Service on Solicitor — Continuance of Authority—Married Woman—Receiver—Income Restrained from Anticipation—Costs.]—At the trial of an action the plaintiff, who was a married woman, did not appear, and judgment was entered for the defendants with costs, which were to be payable out of her separate estate. The only property to which the plaintiff was entitled was the income under her marriage settlement, which she was restrained from anticipating. The defendants' solicitors thereafter wrote to the plaintiff's solicitors informing them that the Taxing Master's certificate had been obtained, and enquiring whether they had any instructions as to payment of the costs. The plaintiff's solicitors replied that they had no instructions in the matter, and that they did not know the plaintiff's whereabouts. Subsequently, and after the time for appealing from the judgment had expired, the defendants served notice on the plaintiff's solicitors that they intended to apply for payment of the defendants' costs out of the income due to the plaintiff under her marriage settlement, and for the appointment of a receiver of her income up to the amount of the costs :—*Held*, first, that the notice of motion was properly served on the plaintiff's solicitors, who were the solicitors on the record; and secondly, that the order asked for should be made. *Bagley* v. *Maple*. 27 T. L. R. 284—Scrutton, J.

III. Duty and Relations as to Clients.

See also Vol. XIII. 1433, 2297.

Confidential Relationship—Employment by Plaintiff—Subsequent Employment by Defendants—Members of Same Firm—Injunction.]—There is no general rule of law that a solicitor who has acted in a particular matter for one party shall not subsequently act in the same matter for that party's opponent. It depends in each case on whether real mischief or real prejudice is likely to result from this being allowed. And an injunction to restrain the solicitor from so acting will only be granted when a risk exists or may be reasonably anticipated that the solicitor will give the new client assistance against his old client by means of knowledge acquired by him when acting as solicitor for the old client. *Cholmondeley* (*Earl*) v. *Clinton* (*Lord*) (19 Ves. 261; G. Cooper, 80) explained. The decision of Hall, V.C., in *Little* v. *Kingswood and Parkfield Collieries Co.* (51 L. J. Ch. 498; 20 Ch. D. 733) not followed. *Rakusen* v. *Ellis, Munday & Clarke*, 81 L. J. Ch. 409; [1912] 1 Ch. 831; 106 L. T. 556; 28 T. L. R. 326—C.A.

Where, therefore, one of two partners had acted exclusively for the old client, and the other partner was acting exclusively for the new client, and the former partner undertook not to communicate to his partner confidential information obtained from the old client, the Court discharged an injunction granted by Warrington, J., restraining the firm of solicitors from acting for the new client. *Ib.*

Mixing Client's Money with Solicitor's in Banking Account.]—Observations as to the practice of a solicitor mixing up the money of a client with his own money. *B. (a Solicitor), In re; Law Society, ex parte*, 28 T. L. R. 59—D.

Costs—Statute-barred Debts—Acknowledgments—No Full Disclosure to Client—No Independent Advice.]—A client owed a solicitor certain sums of money for costs. He had incurred these debts between 1889 and 1912, when he died. The solicitor then obtained from his executrix, his widow, a payment on account and two documents acknowledging the indebtedness, but he did not inform her that the debts were, as to a large portion of them, statute-barred, nor did he insist on her seeking independent advice. In April, 1913, the executrix brought an action against the solicitor for an account, in which she contended that the debts incurred prior to April, 1907, were statute-barred, and that, in consequence, the defendant could not recover them. The official referee held that the payment on account and the documents above mentioned were acknowledgments of the debts sufficient to take them out of the operation of the Statute of Limitations, and entered judgment for the defendant :—*Held*, on appeal, that the payment on account and the documents having been obtained by the solicitor without a full explanation of the state of affairs and without any suggestion of independent advice in the matter, the relation of solicitor and client precluded them from being relied upon as acknowledgments so as to take the debts out of the operation of the statute. *Huguenin* v. *Baseley* (14 Ves. 273) and *Liles* v. *Terry* (65 L. J. Q.B. 34; [1895] 2 Q.B. 679) applied. *Lloyd* v. *Coote & Ball*, 84 L. J. K.B. 567; [1915] 1 K.B. 242; 112 L. T. 344—D.

Affidavit for Probate.]—The inclusion of a statute-barred debt in the affidavit for probate did not constitute, as between the parties, an acknowledgment of the debt sufficient to take it out of the Statute of Limitations. *Beaven, In re; Davies, Banks & Co.* v. *Beaven* (81 L. J. Ch. 113; [1912] 1 Ch. 196), followed. *Ib.*

Transactions between Law Agent and Wife of Client — Wife Acting without Separate Advice—Loss of Moneys Advanced by Wife—Claim against Law Agent for Damages.]—A law agent acted for a client who was a partner in a firm, and also made the firm advances personally. He was, besides being a solicitor, the agent for the branch bank where the firm's banking account was kept, and in that capacity made advances to the firm and overdrafts. He also acted as solicitor for his client's wife, who had property of her own. To assist her husband the wife made advances to the firm, and became surety in various transactions, in which money was advanced to her husband either by way of overdraft from the bank or from the law agent personally. During these transactions the wife had no separate advice. The firm became insolvent, and the wife, having lost all her

money, brought an action against the law agent, alleging negligence on his part as her solicitor. The Lord Ordinary took the view that the case was the common one of a wife with separate means being induced by her husband to assist him to keep the business afloat. There was no evidence of any unfair dealing on the part of the defendant, and therefore he gave judgment for him. The First Division of the Court of Session (the Lord President, Lord Kinnear, and Lord Mackenzie; Lord Johnston dissenting) affirmed the Lord Ordinary. The House dismissed the plaintiff's appeal. Decision of First Division of the Court of Session ([1911] S. C. 1248) affirmed. *Learoyd* or *Dick* v. *Alston's Trustees*, [1913] A.C. 529; [1913] S. C. (H.L.) 57; 57 S. J. 684—H.L. (Sc.)

Advice by Solicitor on Choice of Investment —Liability for Loss on Investment.]—A young unmarried woman consulted a friend, who was a solicitor, with regard to the investment of her savings amounting to 200*l.*, and he suggested to her that she might invest that sum in heritable property, either by purchasing property or by lending on bond. She decided on the former method, and he then brought to her notice, and eventually purchased for her, a heritable property belonging to a client of his own, which was burdened with bonds for which she became personally liable. The nature of the transaction was explained to her before the purchase was concluded. The solicitor acted for both parties to the sale. The investment, which at first yielded excellent returns, eventually, owing to depreciation in the value of the property, resulted in a heavy loss, and the client brought an action for damages against the solicitor for improperly advising her to make an investment of so risky a character:—*Held*, that in the circumstances there had been no failure of professional duty on the part of the solicitor towards his client, and that the action therefore failed. *Stewart* v. *M'Lean, Baird & Neilson*, [1915] S. C. 13—Ct. of Sess.

F. LIABILITY OF SOLICITOR.

I. As Principal to Third Parties.

See also Vol. XIII. 1442, 2300.

Solicitor Ordering Photographs on Behalf of Client—Personal Responsibility.]—Where, in a cash transaction, a solicitor orders goods on behalf of a client, unless it is to be assumed that the solicitor has no authority to pledge his client's credit, the solicitor is not personally liable for the payment thereof unless he specifically agrees to be responsible, or unless there is a custom that he should be responsible. A firm of solicitors ordered of the plaintiff, on behalf of their client (without disclosing his name), some photographs to be taken for use at a trial in Court. The plaintiff delivered the photographs to the solicitors, and debited them with the price in his books:—*Held*, that the solicitors were not personally responsible for payment. *Wakefield* v. *Duckworth*, 84 L. J. K.B. 335; [1915] 1 K.B. 218; 112 L. T. 130; 59 S. J. 91; 31 T. L. R. 40 —D.

II. To Account.

See also Vol. XIII. 1447, 2300.

Receipt of Money for Client — Demand of Principal — Liability for Interest.] — Where money has been received by a solicitor to pay over to his client on a particular date, although the solicitor is not chargeable with interest from that date, yet when a demand for payment of the principal has been made the solicitor must pay interest as from the date of the demand. *Barclay* v. *Harris*, 85 L. J. K.B. 115; 112 L. T. 1134; 31 T. L. R. 213—Shearman, J.

III. When Acting without Authority.

See also Vol. XIII. 1450, 2301.

Solicitor Believing He had Authority.] — Circumstances in which a solicitor having entered an appearance and taken other steps in a litigation on behalf of certain defendants for whom he had in fact no authority to act, although he *bona fide* believed that he had authority, was ordered to pay their costs of setting aside the appearance and all subsequent proceedings as between solicitor and client, and the plaintiff's costs of the application as between party and party. *Porter* v. *Fraser*, 29 T. L. R. 91—Neville, J.

Entering Appearance for Non-existing Company—Warranty of Authority—Personal Liability of Solicitor for Plaintiff's Costs of Action.]—The plaintiff issued a writ against Liberal Opinion, Lim., claiming damages for libel, and obtained a verdict for damages and costs. An appearance for the company had been entered by D., a solicitor, and proceedings conducted on their behalf by D. or his firm, who were under the erroneous belief that the company had been duly incorporated, and who received instructions from persons purporting to act as directors. In the course of the proceedings the plaintiff's solicitors wrote to D., calling his attention to the fact that they had searched Somerset House and could not find any such company as Liberal Opinion, Lim., to which D. replied by recommending them to continue their searches. At the commencement of the trial it was stated that the company was registered under the Industrial Provident Societies Act, 1893, but it was afterwards ascertained and became known to both D. and the plaintiff that the registration had not in fact been completed, so that there was no such corporation in existence. At the conclusion of the trial the plaintiff applied to the Judge for an order making D. or his firm, the company's solicitors, personally responsible for the plaintiff's costs of the action. Darling, J., refused the application, and the plaintiff appealed. The plaintiff had signed judgment for damages and costs against Liberal Opinion, Lim.:—*Held* (reversing Darling, J.), that D., having entered appearance for a non-existing corporation, was responsible for the plaintiff's costs of the action, and that the fact that the plaintiff had signed judgment in the only way in which it could be signed—that is, against

the non-existing corporation—did not alter the position. *Simmons* v. *Liberal Opinion, Lim.; Dunn, In re*, 80 L. J. K.B. 617; [1911] 1 K.B. 966; 104 L. T. 264; 55 S. J. 315; 27 T. L. R. 278—C.A.

IV. Improper Proceedings and Misconduct.

See also Vol. XIII. 1459, 2302.

Solicitor Commencing Action on Behalf of Infant — Next Friend an Infant — Setting Aside Writ—Liability for Costs.]—A solicitor commenced an action on behalf of an infant by a next friend, who was himself an infant: —*Held*, that the action must be set aside, and that the defendants (other than those inducing the appointment) were entitled to damages to be paid by the plaintiff's solicitors, such damages being the costs they had incurred in defending the action, including the costs of the application, as between solicitor and client. *Fernée* v. *Gorlitz*, 84 L. J. Ch. 404; [1915] 1 Ch. 177; 112 L. T. 283—Eve, J.

Champertous Agreement with Client — Speculative Action — Personal Liability of Solicitor for Costs.]—A solicitor acting for a client in reference to a claim against a bank wrote to the client as follows: "Inasmuch as you have agreed to pay me 25 per cent. of whatever you may succeed in recovering . . . I agree that such percentage shall cover all my costs and expenses in any action . . . taken in respect of your claim, and in the event of your failing to recover anything I undertake to make no claim against you for my costs or charges." A writ was issued against the bank, but from a very early period in the action the solicitor knew that there was no substance in the claim. Eventually the client withdrew her claim and judgment was entered for the bank, with costs. The costs not being paid by the client, the bank sought to make the solicitor personally liable: —*Held*, that the agreement between the solicitor and the client was champertous and illegal; that the solicitor had been guilty of misconduct as a solicitor; and that he must pay the bank's costs in the action inasmuch as these would not have been incurred but for his conduct. *Danzey* v. *Metropolitan Bank*, 28 T. L. R. 327—Darling, J.

Attempt to Obtain Information from Books of a Company—Offer of Remuneration to Company's Servant.]—A solicitor who endeavours to obtain information as to unclaimed stocks and dividends of a company by an offer to remunerate a subordinate servant of that company, in return for the information desired is guilty of professional misconduct. *C. (a Solicitor), In re; Law Society, ex parte*, 56 S. J. 93—D.

Professional Misconduct—What Amounts to —Abetting the Publication of False Information Purporting to come from Convict under Sentence of Death.]—The jurisdiction of the Court to punish a solicitor for misconduct is not confined to cases in which he may have been acting in the course of his professional practice; it has power to punish him if he has been guilty of dishonourable conduct which makes him unfit to be a member of an honourable profession and an officer of the Court, or which would be sufficient to prevent his admission as a solicitor. The respondent, in the capacity of legal adviser to a convict under sentence of death, was permitted to visit the convict in prison. In abuse of the privilege thus extended to him he aided and abetted the editor of a newspaper to disseminate in his journal false information in the form of a letter purporting to emanate from and to be written by the convict although, as the respondent knew, no such letter in fact existed; and he further published or permitted to be published other false statements relating to the same matter knowing them to be false:—*Held*, that the respondent had been guilty of professional misconduct within the meaning of the Solicitors Act, 1888. *Solicitor, In re; Law Society, ex parte*, 55 S. J. 670; 27 T. L. R. 535—D.

—— **Partnership with Unqualified Persons— "Touting" amongst Prisoners.**]—A solicitor purported to act for, and subsequently to employ, unqualified persons. He allowed them to carry on a business in his name, in the course of which they solicited money from the friends of prisoners, and obtained permission to see prisoners awaiting trial, with offers of legal assistance. The solicitor exercised no supervision over them, but received various sums as his share of profits:—*Held*, that the solicitor was guilty of professional misconduct. *D. (a Solicitor), In re; Law Society, ex parte*, 56 S. J. 93—D.

—— **Finding of Law Society — Standard of Professional Conduct.**]—If it is shewn that a solicitor, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, the Law Society will be justified in finding that he has been guilty of misconduct within the meaning of section 13 of the Solicitors Act, 1888, and the standard of professional conducted adopted by the society will be that of the Court. *G. (a Solicitor), In re; Law Society, ex parte*, 81 L. J. K.B. 245; [1912] 1 K.B. 302; 105 L. T. 874; 56 S. J. 92; 28 T. L. R. 50—D.

Definition of professional misconduct in *Allinson* v. *General Medical Council* (63 L. J. Q.B. 534, at p. 540; [1894] 1 Q.B. 750, at p. 763) adapted. *Ib.*

—— **Solicitor's Interest in Debt-collecting Business—Champertous Arrangement.**]—The Law Society found that the respondent by his interest in and connection with a debt-collecting association had been guilty of professional misconduct:—*Held*, that this finding was right, but that as the respondent, on becoming aware that his connection with the association was unprofessional, at once severed his connection with it, it was sufficient to order him to pay the costs of the proceedings. *Solicitor, In re, Law Society, ex parte*, 29 T. L. R. 354—D.

—— **Using Testimonials from Judges in Order to Obtain Business.**]—A committee of the Incorporated Law Society reported that A., a solicitor practising in Dublin and Belfast, with a view of obtaining business from an insurance company, some of which business would in all probability take place in the Courts of the Recorders of Dublin and Belfast, wrote to the manager of the company, inclosing copies of testimonials from the Recorders of those cities testifying to A's professional ability. These testimonials had been obtained by A for the purpose of an application by him for an appointment. The testimonial from the Recorder of Dublin contained the statement, "He [A] now practises before me regularly." In the testimonial from the Recorder of Belfast it was stated that A had acted as his registrar for a number of years, and had resigned, to his regret, and that he continued to act as his solicitor:—*Held*, that the use by A of these testimonials for the purpose of obtaining business, which business might lead him to practise before the Recorders of Dublin and Belfast, amounted to professional misconduct. *Solicitor, In re*, [1915] 1 Ir. R. 152—L.C.

The nature of proceedings before the committee considered. *Ib.*

V. In Other Cases.

See also Vol. XIII. 1485, 2304.

Undertaking to Refund Costs — Money Received by Client—Solicitor Ordered to Repay.]—An order dismissing an action with costs directed the money paid into Court by the plaintiff as security to be paid to the defendant's solicitors on account of their costs, they undertaking to refund if directed by the Court of Appeal. The schedule to the order directed payment to the defendant personally. The defendant changed his solicitors, and received the money out of Court by virtue of the schedule. The appeal was afterwards allowed with costs, but no costs of trial on either side:—*Held*, that the solicitors could be ordered upon motion to refund the money so received by their late client, in pursuance of their undertaking. *Dotesio* v. *Biss* (*No. 2*), 56 S. J. 736—C.A.

G. SUMMARY JURISDICTION.

See also Vol. XIII. 1490, 2304.

Undertaking not Given in Legal Proceedings nor to Client — Enforceability — Disciplinary Jurisdiction of Court.]—An undertaking given by a solicitor in his capacity as such is enforceable under the summary disciplinary jurisdiction of the Court, although such undertaking was not given in any legal proceedings nor to the solicitor's own client, and although no discreditable conduct on the part of the solicitor is suggested. *Peart* v. *Bushell* (2 Sim 38) not followed. *United Mining and Finance Corporation* v. *Becher*, 79 L. J. K.B. 1006; [1910] 2 K.B. 296; 103 L. T. 65—Hamilton, J. Appeal compromised, 80 L. J. K.B. 686; [1911] 1 K.B. 840—C.A.

Officer of the Court—Person Acting as Solicitor—Estoppel.]—A person who, though not a solicitor, has gained possession of a sum of money that has been ordered to be paid into Court by intervening in the business of a solicitor, but without representing himself to be a solicitor, cannot be ordered to pay the money into Court under the summary jurisdiction that the Court exercises over its own officers. *Hulm & Lewis, In re* (61 L. J. Q.B. 502; [1892] 2 Q.B. 261), distinguished. *Hurst and Middleton, Lim., In re; Middleton* v. *The Company*, 82 L. J. Ch. 114; [1912] 2 Ch. 520; 107 L. T. 502; 56 S. J. 652; 28 T. L. R. 500—C.A.

Committal for Contempt of Court—Notice of Motion, how Intituled—Solicitor and Clerk.]—It is not necessary in the heading of a notice of motion to commit a solicitor and his clerk for contempt of Court in interfering with the administration of justice at the hearing of certain proceedings before a Taxing Master to head the motion in the matter of the clerk as well as in the matter of the taxation. The case of *O'Shea* v. *O'Shea* (59 L. J. P. 47; 15 P. D. 59) is not an authority for the contrary proposition. *Semble*, that the Court could give immediate leave to amend the notice if necessary by adding the name of the clerk to the title under Order XXVIII. rule 12. *Law* (or *Harnett & Co.*), *In re*, 58 S. J. 656—Sargant, J.

In Respect of Professional Misconduct.]—*See* cases sub tit. Improper Proceedings and Misconduct (*supra*).

H. COSTS.

I. Agreement as to.

See also Vol. XIII. 1528, 2309.

Agreement to take Percentage of Sum Recovered—Non-contentious Proceeding—Champerty.]—An agreement between a client and solicitor whereby the latter is to be remunerated by a percentage of a sum to be recovered in a matter that is not a suit, action, or contentious proceeding, though not champertous, will be strictly regarded by the Court, which, in considering its propriety, will have regard to whether the client had independent advice, and fully understood the purport of the agreement. *Hoggart's Settlement, In re*, 56 S. J. 415—Joyce, J.

Bill of Exchange for Agreed Costs—Payment to be Delayed for Two Years—Bill Dishonoured—Right to Delivery of Bill of Costs — Examination of Agreement — Practice — "Fair and reasonable."]—Where a client has entered into an agreement with his solicitor as to the amount to be paid in respect of costs, without obtaining delivery of a bill of costs, and he subsequently establishes a *prima facie* case to shew that the agreement is unreasonable, the Court will order delivery of the bill of costs and an examination of the agreement under the Attorneys and Solicitors Act, 1870, s. 4, and the Solicitors' Remuneration Act, 1881, s. 8, even though the solicitor has obtained from his client the acceptance of a

bill of exchange for the amount of the agreed costs and is suing on the dishonoured bill. *Ray* v. *Newton*, 82 L. J. K.B. 125; [1913] 1 K.B. 249; 108 L. T. 313; 57 S. J. 130—C.A.

Champertous Agreement.]—*See Danzey* v. *Metropolitan Bank*, *ante*, col. 1553.

II. Bill of Costs.

a. Delivery of Bill.

See also Vol. XIII. 539, 2310.

Agreement in Writing — Summons to Set Aside.]—One C., who had embezzled a large sum of his employers' money, and who had been prosecuted, gave a retainer to a solicitor in the following terms: "I retain and request you to defend me in the criminal proceedings instituted against me by P. & Co., and I agree that you shall receive the net proceeds of sale of my furniture to cover the law charges and disbursements of my defence." The furniture, when sold, realised, after deducting expenses, the sum of 436*l.*, which sum the solicitor received. Subsequently civil proceedings were brought against C. by P. & Co. to recover the sum he had embezzled, and C. gave the following retainer to the solicitor: "I request and retain you to act for me as my solicitor in the above action at the inclusive fee of one hundred guineas, such fee to cover all disbursements until final judgment." The solicitor signed a statement at the foot accepting the retainer at the figure stated, which he acknowledged to have received. He had previously collected and retained in his possession a sum of 100*l.*, which another person owed to C. At the trial C. pleaded guilty, and was sentenced to a term of penal servitude. Before his conviction C. conveyed all his property to the liquidator of P. & Co. An administrator of C.'s property was subsequently appointed by the Home Secretary, and more than twelve months after C.'s conviction he took out a summons to set aside the two agreements, and for delivery by the solicitor of a bill of costs. The solicitor contended that the matter was closed by payment more than twelve months previously, and that it therefore could not now be re-opened:—*Held*, that the retainer with regard to the criminal proceedings was not an agreement within section 4 of the Attorneys and Solicitors Act, 1870, and that the solicitor must deliver a bill of costs relating to that transaction; that the retainer with regard to the civil proceedings was an agreement within section 4 of the Act of 1870, but that there must be an enquiry by the Master as to whether or not there had been payment under it. *Jackson, In re*, 84 L. J. K.B. 548; [1915] 1 K.B. 371; 112 L. T. 395; 59 S. J. 272; 31 T. L. R. 109—D.

Order for Payment of Costs — Enforcement by Action—Motion for Attachment for Non-delivery of Bill of Costs.]—Upon an application in the Chancery Division for an attachment against the defendant, a solicitor, for non-delivery of his bill of costs for taxation, the Court made a peremptory order for delivery of the bill of costs, and ordered the defendant to pay the taxed costs of the application. The costs having been taxed,—*Held* (Vaughan Williams, L.J., dissenting), that an action lay in the King's Bench Division on the order to recover the amount of the taxed costs. *Seldon* v. *Wilde*, 80 L. J. K.B. 282; [1911] 1 K.B. 701; 104 L. T. 194—C.A.

b. Contents of Bill.

See also Vol. XIII. 1550, 2311.

Bill Including both Party and Party Items already Taxed and also Solicitor and Client Items—Right of Client to Taxation of Solicitor and Client Items only—Fee on Taxation—Whether Chargeable in Respect of Items already Taxed.]—The bill of costs delivered by his solicitor to the successful party in an action should contain not only the solicitor and client items, but also the party and party items, even though these latter items have already been taxed and paid by the opposite party; and the Court ought not to limit the order for taxation of such a bill to the solicitor and client items only, merely on the ground that the party and party items have already been taxed as between party and party. *Osborn & Osborn, In re*, 83 L. J. K.B. 70; [1913] 3 K.B. 862; 109 L. T. 505—C.A.

Per Vaughan Williams, L.J.: On taxation of a bill of costs delivered by a solicitor to his client which contains both solicitor and client items and taxed party and party items, the present practice of charging a taxing fee in respect of the whole bill should be discontinued, and a fee ought only to be charged in respect of the solicitor and client items and such of the party and party items as require to be taxed a second time. *Ib.*

"Cash account" — Alleged Insufficient Identity — Liability on Solicitor to Furnish Particulars when Vouching Account.] — A solicitor acted for a client in the administration of her father's estate and business. He also acted as her personal solicitor and professionally in other family matters with which she was concerned. In a cash account which the solicitor delivered several items appeared as "cash" merely. The client claimed that a further and better "cash account" should be rendered, alleging that the items in question were insufficient to enable her to identify the payments so as to appropriate them to the different accounts, but the application was refused by the Judge in chambers:—*Held*, that as it was the practice of the taxing officers to accept cash accounts in this form, subject to their being properly vouched at a later date, and it was shewn that justice could thus be done between the parties, the refusal of the application was a matter of discretion, and the Court would not interfere with the order made by the Judge at chambers. *Harman, In re*, 59 S. J. 351—C.A.

Disbursements not Paid before Delivery of Bill.]—A solicitor delivered to his client his bill of costs, together with an accompanying letter. The bill included certain items of disbursements in respect of counsel's fees and printers' charges, which had not then been paid by the solicitor, and these items were not set out under a separate heading in the bill,

but included among the other items in order of date. The letter stated that the unpaid items consisted of counsel's fees and printers' charges, of which it gave the respective totals : —*Held*, that, even assuming that the letter could be read as part of it, the bill did not "set out such unpaid items of disbursements under a separate heading in the bill" within the meaning of Order LXV. rule 27 (29*a*). *Hildesheim, In re*, 84 L. J. K.B. 1; [1914] 3 K.B. 841; 111 L. T. 749; 58 S. J. 687—C.A.

c. Taxation.

1. *Jurisdiction.*

See also Vol. XIII. 1553, 2313.

Winding-up of Company—Order for Taxation.]—Where the Court, in the winding-up of a company, has made an order against a firm of solicitors, without objection by them, for the delivery of a bill of costs against the company for a period antecedent to the winding-up, and the bill as delivered shews a balance due from the solicitors to the company, the Court can make an order for the taxation of the bill in the winding-up proceedings, and the solicitors have no right to insist that the bill should be taxed under the Solicitors Act, 1843, or not at all. *Palace Restaurants, Lim., In re*, 83 L. J. Ch. 427; [1914] 1 Ch. 492; 110 L. T. 534; 21 Manson, 109; 58 S. J. 268; 30 T. L. R. 248—C.A.

Non-contentious Business—Manchester District Registry.]—The proper officer to whom a solicitor's bill of costs for non-contentious business should in a proceeding in the Manchester District Registry be referred is not the District Registrar, but a Master of the Supreme Court. *Stead* v. *Smith*, 81 L. J. K.B. 68; [1911] A.C. 688; 105 L. T. 120; 55 S. J. 616—H.L. (E.)

2. *Practice.*

See also Vol. XIII. 1576, 2316.

Disbursements—Disbursements not Paid by Solicitor before Delivery of Bill—Payment after Commencement of Proceedings for Taxation but before any Item Dealt with—Payment whether "before the commencement of the taxation" — Accompanying Letter Read as Part of Bill—Items whether "set out . . . under a separate heading in the bill."]—A client having obtained an order for the taxation of his solicitor's bill, the Taxing Master appointed a certain date for the taxation to proceed. On that date the parties attended before the Taxing Master, who was asked on behalf of the client to disallow certain items of disbursements included in the bill on the ground that they had not been paid by the solicitor before the delivery of the bill. The Taxing Master on the application of the solicitor adjourned the appointment to the following day to give the solicitor an opportunity of paying these items before he proceeded to tax the bill. At the time of the adjournment the Taxing Master had not dealt with any item in the bill by way of taxation. The solicitor duly paid the items before the Taxing Master proceeded with the taxation on the following day :—*Held*, that the items of disbursements had been paid "before the commencement of the taxation" within the meaning of the proviso to Order LXV. rule 27 (29*a*). *Hildesheim, In re*, 84 L. J. K.B. 1; [1914] 3 K.B. 841; 111 L. T. 749; 58 S. J. 687—C.A.

In Order LXV. rule 27 (29*a*), which provides for the allowance on taxation in certain cases of items of disbursements which have not been actually paid by the solicitor before the delivery of the bill of costs, the words in the proviso to the sub-rule "so set out in the bill" refer back to the requirement in the body of the sub-rule that the bill of costs "shall set out such unpaid items of disbursements under a separate heading in the bill," and consequently in a case coming under the proviso, just as in a case coming under the body of the sub-rule, that requirement must be complied with. *Ib.*

Bankruptcy of Client — Undertaking by Solicitor not to Prove.]—When a client who has obtained an order to tax his solicitor's bill of costs becomes bankrupt, his assignees, if the solicitor undertakes not to prove in the bankruptcy for the costs, cannot continue the taxation without giving an undertaking to pay the taxed amount of the bill. *Merrick, In re; Joyce, ex parte*, [1911] 1 Ir. R. 279—C.A.

Application to Tax after Payment—Special Circumstances.]—The fact that a solicitor's bill of costs contains charges open to criticism amounts to "special circumstances" within the meaning of section 41 of the Solicitors Act, 1843, so as to entitle an interested party to an order for taxation after payment of the bill. *N. (a Solicitor), In re*, 56 S. J. 520—Joyce, J.

Reference after Twelve Months—Company—Voluntary Liquidation.]—A company went into voluntary liquidation. A bill of costs was delivered by their solicitors to the company less than twelve months before the liquidation. The liquidator took out a summons to tax more than twelve months after delivery of the bill :—*Held*, that since delivery twelve months had not expired within the meaning of section 37 of the Solicitors Act, 1843, the date of the winding-up, not the issue of the summons, being the material date. *Foss, Bilbrough, Plaskitt & Foss, In re*, 81 L. J. Ch. 558; [1912] 2 Ch. 161; 106 L. T. 835; 56 S. J. 574—Neville, J.

Taxation under General Jurisdiction of Court.]—An order for taxation of solicitor's costs in the voluntary liquidation of a company, as in a compulsory liquidation, should be made under the general jurisdiction of the Court independently of the Solicitors Act, 1843. No submission to pay is required, and as a general rule the solicitor may add the costs of the taxation to his claim. The practice laid down by Kekewich, J., in *Liverpool Household Stores Association, In re* ([1889] W. N. 48), followed. *Ib.*

3. *What Sums Allowed.*

a. Solicitors' Remuneration Act.

See also Vol. XIII. 1617, 2321.

Same Solicitor Acting for Both Vendor and Purchaser — Right to Full Scale Fee.] — Solicitors, acting for a vendor of lands sold by public auction, subsequently acted for the purchaser also. The sale having been completed, they served the purchaser with a bill of costs, in which they charged him with the scale fee provided by Schedule I. Part I. of the General Order, 1884, under the Solicitors' Remuneration Act, 1881. Objections to the bill of costs were lodged by the purchaser, on the ground that the solicitors "could not properly and necessarily, and having regard to their duty as solicitors for both vendor and purchaser, perform all the work prescribed by Schedule I. Part I. so as to entitle them to the scale remuneration." The Taxing Master disallowed the objections, finding that "the solicitors for the purchaser did all the work required under the schedule on his behalf." On a summons to review,—*Held*, that, in view of the Taxing Master's finding of fact, no sufficient grounds had been shewn for reviewing his decision. *Best & Best, In re*, [1915] 1 Ir. R. 58—Barton, J.

Sale under Lands Clauses Act — Costs of Purchaser's Solicitor.] — The scale in Schedule I. Part I. of the Irish General Order of 1884, made under the Solicitors' Remuneration Act, 1881, does not apply to the costs of the solicitor for the purchaser in sales under the Lands Clauses Consolidation Act. *Stewart, In re* (41 Ch. D. 494), distinguished. *Fitzgerald, In re* (*No.* 2), [1915] 1 Ir. R. 185—Barton, J.

Mortgage to Bank—Amount not Named in Mortgage — "Completed mortgage."] — The scale fixed by Schedule I. Part I. under rule 2 (*a*) of the General Order made in pursuance of the Solicitors' Remuneration Act, 1881, applies to an equitable mortgage, even though such mortgage be not under seal and contain an agreement to execute a further and legal mortgage, so long as the work contemplated by the scale has been done by the solicitor. *Baker, In re*, 81 L. J. Ch. 805; [1912] 2 Ch. 405; 106 L. T. 1012—Parker, J.

Although a mortgage given to secure money which may or may not be advanced at the option of the lender, and which is uncertain in amount, is not within the scale because the transaction is not "completed," yet an agreement for a loan for a definite amount payable *in præsenti* upon certain securities is a "completed" transaction within the meaning of the word as used in the scale and Order, if in fact, within a reasonable time after the date of the actual signing of the memorandum of charge, the sums are actually advanced; and the mere fact that the memorandum of charge does not specify the definite amount which was agreed upon and is to be secured does not alter this. The Court is entitled to look at the substance of the transaction, and is not tied down by the form which the security takes. *Ib.*

Attempted Sale—Scale or Item Charges.] — Where property is put up for sale and is not sold, the vendor's solicitor is entitled to charge for the work done by items and not by scale. *Stead, In re; Smith* v. *Stead*, 82 L. J. Ch. 143; [1913] 1 Ch. 240; 108 L. T. 28; 57 S. J. 187—Neville, J.

Rule 2 of Part I. Schedule I. to the General Order under the Solicitors' Remuneration Act, 1881, is applicable only where one or more attempted sales are followed by a completed sale of the property. *Ib.*

b. In other Cases.

See also Vol. XIII. 1637, 2325.

Local Authority — Legality of Charges — Province of Taxing Master — Province of Auditor.]—Disbursements made upon the instructions of an urban council by their solicitors, the reasonableness of the amount of the charges not being disputed, cannot be disallowed upon a taxation as between solicitor and client under the Solicitors Act, 1843. *Porter, Amphlett & Jones, In re*, 81 L. J. Ch. 544; [1912] 2 Ch. 98; 107 L. T. 40; 56 S. J. 521—Swinfen Eady, J.

The legality of the expenditure as between the council and their ratepayers is a question for the auditor under the provisions of the Public Health Act, 1875, ss. 247, 249. *Ib.*

Mortgagee — Charges in Anticipation of Future Work—Explanatory Bill.]—The solicitor to a mortgagee whose security included costs, charges, and expenses of or incidental thereto, delivered to the mortgagor a bill containing an item of two guineas in anticipation of future work. This was subsequently increased to four guineas, and an explanatory bill was delivered to account for the four guineas so charged. On taxation the Taxing Master refused to allow the second two guineas charged in anticipation, and, treating the explanatory bill as a bill delivered to be taxed, disallowed it:—*Held*, that the four guineas was properly charged in anticipation, and that the bill was explanatory only, and not to be taxed. With regard to certain attendances in chambers the amounts certified by the Master were in some cases higher and in some lower than the amounts charged by the solicitors. The Taxing Master reduced the items higher than the amounts certified, but refused to allow the items which were lower to be increased:—*Held*, that the solicitors ought to be allowed the aggregate amount of the charges made, that aggregate being less than the aggregate allowed by the Master. *Paice & Cross, In re*, 58 S. J. 593—Joyce, J.

Costs of certain attendances at meetings of the mortgagor's creditors, and of advice as to the application of the proceeds of sale of part of the mortgage security, were disallowed by the Taxing Master:—*Held*, that in the circumstances such costs were properly incurred, and were payable by the mortgagor. *Ib.*

Solicitor Sole Executor—Insolvent Estate—Administration Action — Profit Costs.] — A solicitor who is sole executor and trustee of a will is not entitled, if the estate is found to be insolvent, to his costs of defending an administration action in person, nor to any other costs, except his out-of-pocket expenses, even though the will contained a clause empowering him to make professional charges, and the order in the action on further consideration directed the costs of the defendant to be taxed as between solicitor and client, and retained by him out of the balance due from him. *Shuttleworth, In re; Lilley* v. *Moore*, 55 S. J. 366—Joyce, J.

Shorthand Writer Jointly Employed — Notes.]—A claim against three insurance companies in respect of a loss by fire having been referred to arbitration, the conduct of the defence was entrusted to one of the companies, called the leading company, and the two other companies concurred with the leading company in appointing R. & Co., who were the solicitors of the leading company, to be the solicitors for all the defendants in the arbitration. It was agreed between counsel and solicitors on both sides, with the acquiescence of the arbitrator, that the parties should jointly employ a shorthand writer to take a note of the proceedings for the use of both and to furnish a transcript to the arbitrator day by day, and that they should share the expense. R. & Co. were never authorised by either of the companies other than the leading company to take or order a shorthand note of the proceedings; neither did R. & Co. ever explain to their clients that the costs of a shorthand note were costs which they might not be entitled to recover from the other side if they were successful. The hearing of the arbitration lasted for twenty-one days, and ultimately the arbitrator made an award in favour of the claimants with costs. The arbitrator never gave any direction, neither did the parties ever in terms agree, that the costs of the shorthand notes should be costs in the cause. On the taxation of R. & Co.'s bill of costs as between solicitor and client at the instance of one of the companies other than the leading company, the Taxing Master disallowed the shorthand writer's charges:—*Held* (by Buckley, L.J., and Kennedy, L.J.; Vaughan Williams, L.J., dissenting), that the disallowance was right. *Roney & Co., In re*, 83 L. J. K.B. 451; [1914] 2 K.B. 529; 110 L. T. 411—C.A.

4. *Costs of Taxation.*

See also Vol. XIII. 1644, 2327.

Taxing Master's Special Certificate—Statutory Discretion of the Court.]—The discretion given to the Court under section 37 of the Solicitors Act, 1843, respecting the payment of the costs of a taxation when the Taxing Master has certified specially any circumstances relating to the bill or the taxation may be exercised in favour of the solicitor or of the client. There is nothing in the section which makes that discretion exercisable only in favour of the client. *Richards, In re*, 81 L. J. Ch. 165; [1912] 1 Ch. 49; 105 L. T. 750; 56 S. J. 74—Parker, J.

Palpable Error in Solicitor's Rule — One-sixth Rule—Taxing off more than One-sixth.] —A solicitor in his delivered bill of costs by a slip failed to credit a certain sum in respect of returned counsel's fees to his clients. In a cash account delivered with the bill the sum was duly credited to the clients, and on comparing the bill with the cash account the mistake at once became apparent. The result of the mistake was that upon taxation more than one-sixth part of the bill was taxed off. The Taxing Master certified specially the circumstances, and stated that if he had been at liberty to strike out the sum in question the amount taxed off would have been less than one-sixth, and the costs of the taxation would have been payable by the clients and not by the solicitor. The solicitor on the special circumstances certified applied to the Court to vary the certificate:—*Held*, that the costs of the taxation should be borne by the clients, but that as he was asking for relief in respect of a blunder that had occasioned the extra costs of the application to the Court, the solicitor would have to bear the costs of that application as between solicitor and client. *Ib.*

5. *Reviewing Taxation.*

See also Vol. XIII. 1652, 2329.

Taxation as between Solicitor and Client—"Party."]—In taxation as between solicitor and client, a solicitor or a firm of solicitors may be entitled to be regarded as a "party" within Order LXV. rule 27, regulations 39 and 41, and may be entitled to a review of taxation in his or their own interests—as, for instance, where he or they have a lien for costs on a fund. *Clarke's Settlement, In re*, 55 S. J. 293—Joyce, J.

Drawing Case for Opinion of Counsel not in Conveyancing Matter and Previous to Litigation—Schedule of Documents Handed Over to New Solicitor upon Withdrawal of Retainer to Old Solicitor—Perusal of Particulars.]—A client took out a summons to review taxation of a solicitor's bill of costs. The following were among the items in dispute: first, drawing case for the opinion of counsel at 2*s.* per folio (the matter was not in conveyancing business, and was previous to an action); secondly, making a schedule of the documents which were handed over to a new solicitor upon the occasion of withdrawal of retainer to the old solicitor; thirdly, perusal of particulars at a charge of 6*s.* 8*d.* The particulars were particulars of defence, and if they had been treated as part of the defence, a charge for perusal of 4*d.* per folio would have come to much less than 6*s.* 8*d.*:—*Held*, first, that drawing a case for the opinion of counsel not being in a conveyancing matter, and not being in an action, was "other business" within the meaning of section 2 of the Solicitors' Remuneration Act, 1881. *Stanford* v. *Roberts* (53 L. J. Ch. 338; 26 Ch. D. 155) explained and followed. *Morgan & Co., In re*, 84 L. J. Ch. 249; [1915] 1 Ch. 182; 112 L. T. 239; 59 S. J. 289—Neville, J.

Held, secondly, that the charge for the schedule of documents was rightly allowed, as

it was for the benefit of the new solicitor and not of the old solicitor. *Catlin, In re* (18 Beav. 508), distinguished. *Ib.*

Held, thirdly, that particulars were a separate "pleading" within the meaning of Appendix N to Rules of the Supreme Court, and a charge of 6*s.* 8*d.* for perusal was rightly allowed. *Ib.*

III. Modes of Receiving.

a. Charging Orders.

See also Vol. XIII. 1654, 2329.

Property Recovered or Preserved.]—Where in a creditor's action an order was made directing a sum of 64*l.* due from executors to the estate to be set off against their costs and the balance of their costs to be paid out of the estate, the Court refused to make afterwards a charging order in favour of the executors' solicitor for the 64*l.* costs, the subject of the set-off, since the set-off under the circumstances amounted to payment in the presence of the solicitors. *Cockrell's Estate, In re; Pinkey* v. *Cockrell*, 81 L. J. Ch. 152; [1912] 1 Ch. 23; 105 L. T. 662—C.A.

Decision of Neville, J. (80 L. J. Ch. 606; [1911] 2 Ch. 318), affirmed. *Ib.*

The solicitor of the executors opposed an application by the creditor plaintiff for the approval of a conditional contract for sale of part of the estate and obtained an order for sale by the executors instead, with the result that the net purchase money realised was less than the amount which would have been obtained under the conditional contract. *Quære* (*per* Cozens-Hardy, M.R., and Farwell, L.J.), whether any property had been recovered or preserved by the solicitor within the meaning of the Solicitors Act, 1860, s. 28. *Ib.*

Set-off to Prejudice of Lien.]—The defendant having obtained in this action judgment with costs against the plaintiff, and the plaintiff having subsequently recovered judgment with costs in an action for rent against the defendant, on which execution was issued and a return of *nulla bona* made, the defendant's solicitor, who had obtained for the defendant the said judgment with costs, applied for a charging order on such costs under section 3 of the Legal Practitioners (Ireland) Act, 1876 [corresponding to section 28 of the Solicitors Act, 1860]:—*Held*, first, that such costs were "property recovered" within the statute, in respect of which an order of charge could be made; and secondly, that a set-off in respect of the costs of the plaintiff's judgment to the prejudice of the solicitor's lien should not be allowed. *Johnston* v. *McKenzie*, [1911] 2 Ir. R. 118—K.B. D.

b. Lien.

See also Vol. XIII. 1674, 2333.

Common-law Lien—Company—Winding-up—Money Recovered for Company—Costs Incurred before and after Winding-up—Costs of Establishing Retainer against Liquidators.]—A solicitor has a lien on a fund recovered by his exertions in the winding-up of a company as against the liquidators for his costs of recovering it incurred prior to the winding-up as well as during the winding-up, and also for the costs of establishing his retainer against the liquidators. *Meter Cabs, Lim., In re*, 81 L. J. Ch. 82; [1911] 2 Ch. 557; 105 L. T. 572; 19 Manson, 92; 56 S. J. 36—Swinfen Eady, J.

Client a Debtor to Estate—Set-off of Costs—Property Recovered or Preserved.]—Where in a creditor's action an order was made directing a sum of 64*l.* due from executors to the estate to be set off against their costs and the balance of their costs to be paid out of the estate, the Court refused to make afterwards a charging order in favour of the executors' solicitor for the 64*l.* costs, the subject of the set-off, since the set-off under the circumstances amounted to payment in the presence of the solicitors. *Cockrell's Estate, In re; Pinkey* v. *Cockrell*, 81 L. J. Ch. 152; [1912] 1 Ch. 23; 105 L. T. 662—C.A

Decision of Neville, J. (80 L. J. Ch. 606; [1911] 2 Ch. 318), affirmed. *Ib.*

The solicitors of the executors opposed an application by the creditor plaintiff for the approval of a conditional contract for sale of part of the estate and obtained an order for sale by the executors instead, with the result that the net purchase money realised was less than the amount which would have been obtained under the conditional contract. *Quære* (*per* Cozens-Hardy, M.R., and Farwell, L.J.), whether any property had been recovered or preserved by the solicitor within the meaning of the Solicitors Act, 1860, s. 28. *Ib.*

Lien on Trust Deed—Trust Deed to Secure Debentures—Investigating Title and Preparing Trust Deed—New Trustees and Debentureholders—Construction of Trust Deed—Costs and Expenses Incurred in or about the Execution of the Trusts or otherwise in Relation to the Trust Deed.]—Solicitors investigated title and prepared a trust deed to secure certain debentures on the instructions of the intended original trustees of the deed, the company that issued the debentures being represented by separate solicitors. Clause 11 of the trust deed provided that the trust moneys should be applied in the first place in payment of the costs and expenses incurred in or about the execution of the trusts or otherwise in relation to the trust deed. The prospectus of the company contained a statement to the effect that "the vendor would pay all expenses of every kind up to and including the completion of the purchase." Other trustees were subsequently substituted in place of those who had given instructions for the preparation of the deed:—*Held*, first, that the solicitors who had prepared the deed were entitled to a lien on the deed for their unpaid costs of investigating the title and of preparing the deed as against both the existing trustees and the beneficiaries under the deed, and this notwithstanding the statement in the prospectus and the subsequent change of trustees; and secondly, that in any case the costs in question were payable

as a first charge under the express provision in clause 11 of the trust deed. *Dee Estates, Lim., In re; Wright* v. *Dee Estates, Lim.*, 80 L. J. Ch. 461; [1911] 2 Ch. 85; 104 L. T. 903; 18 Manson, 247; 55 S. J. 424—C.A.

c. Recovery and Payment.

See also Vol. XIII. 1720, 2338.

Action on Bill—Delivery One Month before Action—Posting of Bill—"Sent by the post."]—By section 37 of the Solicitors Act, 1843, "no attorney or solicitor . . . shall commence or maintain any action or suit for the recovery of any fees, charges, or disbursements for any business done by such attorney or solicitor, until the expiration of one month after such attorney or solicitor . . . shall have delivered unto the party to be charged therewith, or sent by the post to or left for him at his counting house, office or business, dwelling-house, or last known place of abode, a bill of such fees, charges, and disbursements" signed by such attorney or solicitor or inclosed in or accompanied by a letter signed in like manner referring to such bill:—*Held* (Buckley, L.J., dissenting), that, on the true construction of the section, if a solicitor sends his bill by post the posting must take place at such time that in the ordinary course of post the bill should have reached its destination one clear calendar month before the date on which the action is commenced. *Browne* v. *Black*, 81 L. J. K.B. 458; [1912] 1 K.B. 316; 105 L. T. 982; 56 S. J. 144; 28 T. L. R 119—C.A.

Decision of the Divisional Court (80 L. J. K.B. 758; [1911] 1 K.B. 975) affirmed. *Ib.*

Sum Deposited by Client with Solicitor—Direction to Pay out of that Sum Costs to be Incurred in Certain Proceedings—Solicitor Uncertificated at Time of Proceedings—Right of Solicitor to Retain Sum Deposited in Respect of Costs of these Proceedings.] — A client having deposited with his solicitor a sum of 125*l.* for a purpose which turned out to be unnecessary, subsequently instructed the solicitor to take certain legal proceedings, and gave him a direction to pay out of that sum his own costs and his disbursements for counsel's fees in connection with these proceedings. The solicitor took the proceedings and incurred such costs and disbursements in connection therewith. The proceedings were taken during a time when the solicitor was not qualified to practise by reason of his being uncertificated. Subsequently in an action brought against him by the solicitor in respect of another matter, the client sought to set off 125*l.* to the extent of these costs and disbursements, on the grounds that the direction given by him to the solicitor was limited to costs and disbursements which could be recovered by the solicitor as such, and that the costs and disbursements in question having been incurred while the solicitor was disqualified, were not recoverable by the solicitor by virtue of section 12 of the Solicitors Act, 1874, and would have to be disallowed on taxation:—*Held*, by the Court of Appeal (reversing the decision of Channell, J.), that the client was entitled to the set-off which he claimed. *Browne* v. *Barber*, 82 L. J. K.B. 1006; [1913] 2 K.B. 553; 108 L. T. 744—C.A.

County Court Proceedings—Bill of Costs not Taxed—Right to Sue Client.]—By section 118 of the County Courts Act, 1888, a solicitor is not entitled to recover from his client any costs and charges "unless they shall have been allowed on taxation":—*Held*, that the section has not the effect of making taxation a condition precedent to the right of a solicitor to sue his client upon a bill of costs, although the period within which the client may claim taxation may not have elapsed. *Cubison* v. *Mayo* (65 L. J. Q.B. 267; [1896] 1 Q.B. 246) explained. *Bell* v. *Girdlestone*, 82 L. J. K.B. 696; [1913] 2 K.B. 225; 108 L. T. 648—D.

Payment—What is.]—Moneys advanced by a company that afterwards went into voluntary liquidation to their solicitors were retained by the latter in satisfaction of a bill of costs:—*Held*, that the retention did not amount to payment within section 41 of the Solicitors Act, 1843, there being no settlement of account. *Foss, Bilbrough, Plaskitt & Foss, In re*, 81 L. J. Ch. 558; [912] 2 Ch. 161; 106 L. T. 835; 56 S. J. 574—Neville, J.

I. UNQUALIFIED PRACTITIONERS.

See also Vol. XIII. 1752, 2341.

Summary Jurisdiction.] — The summary jurisdiction of the Court over solicitors as officers of the Court does not extend to unqualified persons who in the particular matter do not act in such a way as to get money by holding themselves out as being solicitors. *Hurst & Middleton, In re*, 82 L. J. Ch. 114; [1912] 2 Ch. 520; 107 L. T. 502; 56 S. J. 652; 28 T. L. R. 500—C.A.

Contempt of Court.]—Where an unqualified person acted in obtaining a decree *nisi* for divorce made absolute, and asked for and obtained from the petitioner a larger sum than was really payable as the necessary fee, the Court, holding that he had been guilty of contempt of Court, made an order that he should be committed to prison for six weeks and pay the costs of the proceedings against him for attachment. *Davies* v. *Davies; Watts, In re*, 57 S. J. 534; 29 T. L. R. 513—Bargrave Deane, J.

Solicitor Permitting his Name to be Used for Profit of Unqualified Person.]—An agreement between a solicitor and his managing clerk, who was not a solicitor, that the clerk should be paid a weekly salary of 3*l.* 10*s.* and a bonus of 25 per cent. on the profits received by the solicitor in respect of business introduced by the clerk, contained the following clause: "In the event of the termination of your engagement . . . the said bonus of 25 per cent. is to be continued to be paid to you notwithstanding such termination, less three pounds ten shillings per week":—*Held* that, inasmuch as it must be inferred from the above clause that the business was in fact the business of the clerk, the agreement was

one under which the solicitor was to permit his name to be used for the profit of an unqualified person, and was therefore illegal under section 32 of the Solicitors Act, 1843. *Harper* v. *Eyjolfsson*, 83 L. J. K.B. 774; [1914] 2 K.B. 411; 110 L. T. 540; 30 T. L. R. 246—D.

SOVEREIGNS AND STATES.

See INTERNATIONAL LAW.

SPECIAL CASE STATED BY JUSTICES.

See JUSTICE OF THE PEACE.

SPECIAL INDORSEMENTS.

See PRACTICE.

SPECIFICATION OF PATENTS.

See PATENT.

SPECIFIC PERFORMANCE.

See also Vol. XIII. 1760, 2341.

Agreement for Sale of a Lease—Conditions—No Final Agreement.]—By certain letters the plaintiff offered to purchase certain leasehold premises, the offer being subject to the conditions that the plaintiff's solicitors should approve the title to and covenants contained in the lease, the title from the freeholder, and the form of contract, and that the plaintiff should approve her surveyors' report, and this offer was accepted by the defendant, the vendor. On the receipt of the report, the conditions not having been performed, the plaintiff endeavoured to obtain a contribution from the defendant towards some improvements, whereupon the defendant withdrew. The plaintiff sought specific performance:—*Held*, that there was no final agreement of which specific performance could be enforced against the defendant. *Winn* v. *Bull* (47 L. J. Ch. 139; 7 Ch. D. 29) followed. *Von Hatzfeldt-Wildenburg (Princess)* v. *Alexander*, 81 L. J. Ch. 184; [1912] 1 Ch. 284; 105 L. T. 434—Parker, J.

Sale of Land—Conflict of Interest and of Duty.]—In an action for specific performance brought by the appellant—the vendor—against the respondents it was contended that the appellant, who was one of the commissioners, had an indirect interest in the sale through his father, a neighbouring landowner, and that such interest conflicted with his duty. It was also contended that he had abandoned the bargain by writing that if the transaction was not carried through by a stated time he should hold himself free to dispose of the land as he pleased. Both objections overruled and specific performance decreed. *Laughton* v. *Port Erin Commissioners*, 80 L. J. P.C. 73; [1910] A.C. 565; 103 L. T. 148—P.C.

—— **Contract for Sale of Lease—Whether Time of the Essence.**]—By section 55 of the Indian Contract Act, 1872, "When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract." The defendant, who was the assignee of a reclamation lease of certain land near Bombay, agreed in writing to sell his leasehold interest to the plaintiff, it being provided that the title was to be made marketable and that the conveyance was to be prepared and received within two months from the date of the contract. The plaintiff's solicitors made certain requisitions on title, one of which was for a certificate that all the covenants in the lease had been fulfilled. This requisition was made more than two months after the date of the contract. The defendant's solicitors did not comply with the requisition, but asserted his right to put an end to the contract on the ground that time was of its essence. The requisition was a proper one, apart from the question as to the date at which it was made. In an action for specific performance,—*Held*, that the above section did not lay down any principle differing from the law of England in regard to contracts for the sale of real estate, and that there was nothing in the contract or in its subject-matter to displace the presumption that for the purposes of specific performance time was not of the essence of the bargain, and that therefore the plaintiff was entitled to a decree. *Jamshed Khodaram Irani* v. *Burjorji Dhunjibhai*, 32 T. L. R. 156—P.C.

Principles on which a Court of Equity will decree specific performance considered. *Ib.*

Contract to Leave a Legacy by Will—Consideration for Marriage.]—The father of an intended bride, when asked by the husband to make a settlement, wrote: "I have made a will leaving V. (the bride) a legacy of 5,000*l.*, and I do not intend to alter it. I shall leave

the allowance of 150*l.* as it is." The will was afterwards revoked:—*Held*, that the letter followed by the marriage constituted an enforceable contract as to the 5,000*l.*, but not as to the 150*l.*, and that B. was entitled to prove against the estate of the father for the 5,000*l.* by way of damages. *Broadwood, In re; Edwards* v. *Broadwood*, 56 S. J. 703—C.A.

Contract—Option—Withdrawal by Conduct—Communication by Third Parties—Relation Back of Acceptance—Prior Equity.]—The defendant made the plaintiff an offer, to remain open for seven days, of the lease of the defendant's premises. The defendant the next day agreed to let the premises to R. The plaintiff purported to exercise the option within the seven days, and claimed specific performance of the alleged contract as from the date of the defendant's offer:—*Held*, that, there being sufficient evidence of notice received by the plaintiff of acts inconsistent with the granting of the lease by the defendant to the plaintiff, the offer of the defendant had been withdrawn and was not a continuing offer to the date of acceptance by the defendant, but that, if it had been, R. having no notice before he entered into the agreement to take the lease of the plaintiff's rights, R. would have a prior equity, and the plaintiff would not have been entitled to specific performance. *Cartwright* v. *Hoogstoel*, 105 L. T. 628—Eve, J.

Uncertainty—Part Performance—Action for Damages.]—*Per* Buckley, L.J.: A contract which is void for uncertainty is not rendered certain by part performance, but where a contract is complete in itself, in that a defined act is to be done upon reasonable terms, evidence is admissible as to what terms are reasonable, and the conduct of the parties may be the best evidence upon this point. Passage in *Fry on Specific Performance* (3rd ed.), p. 174, considered. *Waring & Gillow* v. *Thompson*, 29 T. L. R. 154—C.A.

Decree with Compensation — Deficiency in Subject-matter — Misrepresentation.] — In exercising jurisdiction over specific performance, a Court of equity will look at the substance and not merely the letter of the contract. Therefore if a vendor sues, and is in a position to convey substantially what the purchaser has contracted for, the Court will decree specific performance, with compensation for any small and immaterial deficiency; and if a purchaser is suing he may elect to take all that he can get, and to have a proportionate abatement from the purchase money in respect of a deficiency in the subject-matter described in the contract. But this right does not apply to a representation about the subject-matter made, not in the contract, but collaterally to it. Decision of the Court of Appeal of New Zealand (33 N.Z. L. R. 774) affirmed *Rutherford* v. *Acton-Adams*, 84 L. J. P.C. 238; [1915] A.C. 866—P.C.

Action on Contract — Costs.] — Where a decree for specific performance, with enquiry as to title, is granted in an action in which questions of contract only, and not of title, are raised, the purchaser will be ordered to pay the costs of the action and enquiry upon title being shewn. *Banfield* v. *Picard*, 55 S. J. 649—Joyce, J.

Motion for Judgment by Vendor — Conveyance — Stamping — Increment Value Duty — Minutes.] — The minutes of judgment in a vendor's action for specific performance should contain a reference to the fact that the conveyance has been duly stamped with the increment value duty stamp in accordance with section 4, sub-section 3 of the Finance (1909-10) Act, 1910. The form at page 2171 of the 7th edition of *Seton on Judgments and Orders* should be amplified by adding after the words "duly executed by him" the words "and duly stamped so as to comply with section 4, sub-section 3 of the Finance (1909-10) Act, 1910." *Dawnay* v. *Chessum*, 60 S. J. 59—Sargant, J.

See also VENDOR AND PURCHASER.

STAGE PLAYS.

See COPYRIGHT.

STAMPS.

See REVENUE.

STANNARIES.

See MINES.

STATEMENT OF CLAIM.

See PRACTICE.

STATUTE.

See also Vol. XIII. 1880, 2352.

Marginal Notes.]—In some private Acts of Parliament the marginal notes may form part of the Act. *Woking Urban Council (Basingstoke Canal) Act, 1911, In re*, 83 L. J. Ch. 201; [1914] 1 Ch. 300; 110 L. T. 49; 78 J. P. 81; 12 L. G. R. 214; 30 T. L. R. 135—*per* Phillimore, L.J.

Interpretation—Clause from Public Act Incorporated in Private Act — Effect of Subsequent Repeal of Public Act.]—Where a clause

from a public Act has been incorporated with and forms part of a private Act, that part of the private Act is not repealed by the mere repeal subsequently of the public Act. *Jenkins* v. *Great Central Railway*, 81 L. J. K.B. 24; [1912] 1 K.B. 1; 106 L. T. 565; 17 Com. Cas. 32; 12 Asp. M.C. 154; 28 T. L. R. 61—Lord Coleridge, J.

Repealing Statute — Reference to Parties under Repealed Statute.]—Whether a repealing statute can be construed by reference to the practice which prevailed under the statute which it repeals, *quære*. *Thomson* v. *Bent Colliery Co.*, [1912] S. C. 242—Ct. of Sess.

Implied Repeal of Statute by Conflicting Provisions of Later Act.]—*See Luby* v. *Warwickshire Miners Association*, *post*, col. 1627.

Effect of Private Act on Mortmain Act.]—A private Act will not set aside the provisions of the Mortmain and Charitable Uses Acts, 1888 and 1891, unless language is used in the private Act which makes the application of those Acts impossible. *Verrall, In re*, 60 S. J. 141—Astbury, J.

Permanent and Temporary Provisions — Effect of Affirmative Continuance.]—The mere affirmative continuance for a definite period of a previous statute which contains both permanent and temporary provisions does not at the expiration of the specified period operate as an abrogation of the permanent provisions of the previous statute. *Houghton* v. *Fear*, 82 L. J. K.B. 650; [1913] 2 K.B. 343; 109 L. T. 177; 77 J. P. 376; 11 L. G. R. 731; 23 Cox C.C. 494; 29 T. L. R. 410—D.

When Repugnant.]—Where two statutes passed in the same year appear to be repugnant that which was passed latest must prevail. *Rex* v. *Middlesex Justices* (1 L. J. M.C. 5; 2 B. & Ad. 818) approved. *British Columbia Electric Railway* v. *Stewart; Point Grey Corporation* v. *Stewart*, 83 L. J. P.C. 53; [1913] A.C. 816; 109 L. T. 771—P.C.

Usage.]—As against a plain statutory enactment no usage, however long continued, can prevail. *Lord Advocate* v. *Walker Trustees*, [1912] A.C. 95; 106 L. T. 194; 28 T. L. R. 101—H.L. (Sc.)

Two Statutes to be Read Together as One —Construction.]—Two water mains had been laid under a private Act which did not contain a clause providing that nothing in the Act should exempt the defendants from liability for nuisance. The other two were laid under a later Act which did contain this clause, and further provided that the two Acts should be construed together as one Act:—*Held*, that, as the Acts were to be read together, the privilege which existed under the earlier Act was taken away, and that consequently the defendants had not statutory authority protecting them in the case of any of the above mains, and were consequently liable to the plaintiffs as for a nuisance. *Charing Cross, West End, and City Electricity Supply Co.* v. *London Hydraulic Power Co.*, 83 L. J. K.B. 1352; [1914] 3 K.B. 772; 111 L. T. 198; 78 J. P. 305; 2 L. G. R. 807; 58 S. J. 577; 30 T. L. R. 441—C.A.

Decision of Scrutton, J. (83 L. J. K.B. 116; [1913] 3 K.B. 442), affirmed. *Ib.*

Agreement by Tenant for Life to Grant a Perpetual Easement in Consideration of a Perpetual Rentcharge — Confirmation of Agreement by Private Act—Power of Tenant for Life to Vary the Agreement and to Grant a Perpetual Easement.]—Under a settlement dated July 7, 1888, P. P. C. was in 1900 tenant for life in possession of a settled estate in the Isle of Thanet and was then a bachelor, and G. P. C. was then tenant for life in remainder. By an agreement dated April 20, 1900, and made between P. P. C. and G. P. C. of the one part and the W. and B. Water Co. of the other part the company was authorised to make an adit or tunnel under the settled estate, to be completed by December 31, 1914, or such later date as the grantors should appoint, and it was agreed that upon completion the grantors should by deed grant to the company the right in perpetuity to maintain and use the adit and that the company should pay to the grantors in perpetuity a rent of 1*s.* a yard per annum and should supply a certain quantity of water free to farms on the estate. The grantors were defined as P. P. C. and G. P. C. and their successors in title under the settlement. By the W. and B. Water Act, 1900, the company was (*inter alia*) authorised to make the said adit, and by section 42 the said agreement was confirmed and made binding on the parties thereto and was set out in a schedule to the Act, but the settlement was not otherwise referred to nor any special powers conferred upon the grantors. The adit was not completed by the agreed date, which had been extended to June 30, 1915. It was now proposed that the completion should be postponed till December 31, 1930, and that the company should in consideration of the extension of time pay an increased rental and supply an increased amount of free water to the estate. P. P. C. was now married and had three daughters:—*Held*, that, though when an agreement confirmed by a private Act confers powers on a grantor outside any statutory powers special reference to such powers ought to be made in the Act, the confirmation of the agreement sufficiently expressed the intention of Parliament to confer such powers, and that P. P. C. and G. P. C. jointly could further extend the time for completion of the works and grant a perpetual easement in consideration of a perpetual rentcharge which could be increased beyond the amount specified in the agreement. *Westgate and Birchington Water Co.* v. *Powell-Cotton*, 113 L. T. 689—Eve, J.

Construction of Local and Personal Act—Statutory Contract between Railway and Navigation Companies — Clauses in Part for the Protection of the Public.]—By a Light Railway Order of the Light Railway Commissioners, confirmed by the Board of Trade under the Light Railways Act, 1896, a company incorporated by that Order was authorised to construct a light railway which was to be carried over a canal, then vested in a naviga-

tion company, by an opening or swing bridge. Section 29 of the Order commenced "For the protection of the Navigation Company the following provisions shall have effect"; then followed a number of sub-sections which provided, among other things, (3) that the Light Railway Co. should carry the railway over the canal by an opening or swing bridge at a defined height with opening space of a defined width; (4) make provision for opening the bridge for the passage of barges, boats, or other vessels at all times by night and day; (5) maintain the waterway at a certain depth; (8) exhibit proper lights every night, and provide and work proper signals to inform and warn persons using the canal during foggy weather when the bridge was closed; and (16) "The company and Navigation Company may agree for any variation or alteration of the works in this section provided for or of the manner in which the same shall be executed." The undertaking of the Light Railway Co. was afterwards vested in the North-Eastern and Lancashire and Yorkshire Railway Companies as part of their joint undertaking. The joint companies had agreed with the Navigation Co. that the swing bridge should be altered into a fixed bridge. The Attorney-General brought this action, at the relation of the owner of a number of keels and boats using the canal, to restrain the companies from making the alterations:—*Held*, that as some of the provisions of section 29 were clearly for the benefit of the public, the fact that it was stated to be inserted for the protection of the Navigation Co. did not make it a mere contract between the companies which they could vary at pleasure, and the Attorney-General was entitled to bring the action for the protection of the public. *Held*, also, that the proposed alteration was not an alteration of works within the meaning of sub-section 16, and the injunction must be granted. *Att.-Gen.* v. *North-Eastern Railway*, 84 L. J. Ch. 657; [1915] 1 Ch. 905; 113 L. T. 25; 79 J. P. 500; 13 L. G. R. 1130—C.A.

Action Abolished — Jurisdiction in such Actions Restored—New Action after Restoration of Jurisdiction — Res Judicata.] — The principle stated by Tindal, C.J., in *Key* (or *Kay*) v. *Goodwin* (8 L. J. (o.s.) C.P. 212; 6 Bing. 576), that the effect of repealing a statute is to obliterate it as completely as if it had never been passed, must be taken with the qualification that it does not deprive persons of vested rights acquired by them in actions duly determined under the repealed law. *Lemm* v. *Mitchell*, 81 L. J. P.C. 173; [1912] A.C. 400; 106 L. T. 359; 28 T. L. R. 282—P.C.

In 1907 the respondent brought an action in Hong-Kong against the appellant for criminal conversation. That action was dismissed upon the ground that by the effect of certain Ordinances such actions had been abolished in Hong-Kong. In 1908 a new Ordinance was promulgated restoring the jurisdiction of the Hong-Kong Courts in such actions, and that Ordinance had a retroactive effect to the extent of enabling actions to be brought in respect of criminal conversation during the period when the right of action had ceased to exist in the colony. After the promulgation of the Ordinance the respondent commenced a fresh action against the appellant in respect of precisely the same acts of misconduct as he had alleged in his former action. The appellant pleaded *res judicata*, but the Hong-Kong Court overruled the plea upon the ground that there had been no judgment on the merits of the case: —*Held*, reversing the decision of the Hong-Kong Court, that the judgment in the first action was a final determination of the rights of the parties, and that there was nothing in the Ordinance of 1908 to shew any intention on the part of the Legislature not merely to alter the law, but to alter it so as to deprive the appellant of the subsisting judgment in his favour. *Ib.*

Statutory Powers — Harbour and Ferry Trustees—Ultra Vires—Interdict—Ratepayers of Harbour—Title to Sue.]—By the Dundee Harbour and Tay Ferries Consolidation Act, 1911, the appellants were constituted a body of trustees, to be elected in part by the shipowners and harbour ratepayers of Dundee, and the Act vested in them the harbour of Dundee, and the exclusive right of working and using ferries within limits defined by the Act. They made a practice of letting out steam vessels which were not actually required for the purposes of the ferries, but were kept in reserve in case of an accident, for excursions on the river Tay beyond the limits of the harbour and ferries, as defined by the statute. The profits of such excursion traffic were brought into their general account:—*Held*, that the appellants could be restrained by interdict from so doing, such excursion traffic not being within their statutory powers, or reasonably incidental to the purposes thereof, and that the respondents, who were shipowners and harbour ratepayers in Dundee, had a good title to maintain proceedings in respect of such *ultra vires* actings. *Dundee Harbour Trustees* v. *Nicol*, 84 L. J. P.C. 74; [1915] A.C. 550; 112 L. T. 697; 31 T. L. R. 118—H.L. (Sc.)

Decision of the Court of Session in Scotland ([1914] S. C. 374) affirmed. *Ib.*

—— Water Company—Agreement for Construction of Mains—Distribution of Water in Statutory Area—Delegation of Powers—Ultra Vires.] — The plaintiffs, a water company incorporated by statute, agreed with the defendants that the latter should, within the statutory area, construct mains and works, collect water rates, and distribute water, which was to be supplied in bulk at a fixed charge by the plaintiff company:—*Held*, that this agreement was not a delegation of statutory powers; it was therefore valid, and *intra vires* the company. *Ticehurst and District Water and Gas Co.* v. *Gas and Waterworks Supply and Construction Co.*, 55 S. J. 459—Warrington, J.

Claim Illegal or Unenforceable by Statute—Defence not Raised—Duty of Court.]—If the Court is satisfied that a transaction is illegal or unenforceable by statute, it must take the objection itself although the parties may not wish to raise the point. *Société des Hôtels*

Réunis v. *Hawker*, 29 T. L. R. 578—Scrutton, J.

STATUTE OF FRAUDS.

Validity of Contract within.]—*See* CONTRACT.

STATUTE OF LIMITATIONS.

See LIMITATIONS, STATUTE OF.

STAYING PROCEEDINGS.

See APPEAL; ARBITRATION; PRACTICE.

STEALING.

See CRIMINAL LAW.

STOCK EXCHANGE.

See also Vol. XIII. 2375.

Stockbroker and Client—General Lien.]—Stockbrokers who have received transfers of stock or shares for delivery to a customer have by the law of Scotland a general lien on these transfers for the balance due to them by the customer. *Hope* v. *Glendinning*, 80 L. J. P.C. 193; [1911] A.C. 419—H.L. (Sc.)

The appellants, stockbrokers in Edinburgh, claimed to retain in their hands an uncompleted transfer of shares purchased and paid for by the respondent until a claim by the appellants arising out of a subsequent transaction between them and the respondent was satisfied:—*Held*, that the appellants as stockbrokers had a general lien on the transfer in question until the claim against the respondent was satisfied. *Ib.*

Contract for Half Commission — Monthly Minimum — Closing of Exchange — Effect on Contract.] — By an agreement between the plaintiff and the defendants the latter agreed to pay to the plaintiff half commission on all business introduced by him, subject to a certain minimum. During the currency of the agreement the Stock Exchange was closed for some months owing to the war. In an action on the agreement the plaintiff contended that the agreement in effect entitled him to a salary, whether the Stock Exchange was closed or not:—*Held*, that it was an implied term of the agreement that to entitle the plaintiff to remuneration the Stock Exchange should remain open, and the plaintiff was not entitled to recover. *Berthoud* v. *Schweder & Co.*, 31 T. L. R. 404—Ridley, J.

Custom — Broker's Commission over and above Contango—Right of "Half-commission man."] — There is no custom of the Stock Exchange whereby a "half-commission man" can claim a half-share of the small extra charge for expenses made by the broker over and above the ordinary continuation charge or contango which is receivable by the "jobber." *Von Taysen* v. *Baer, Ellissen & Co.*, 56 S. J. 224—Parker, J.

Powers of Committee—Purchase of Shares — Postponement of Date for Completion — "Security"—Right to Realise—Emergency Powers.] — By rule 20 of the Rules of the Stock Exchange, the committee may, subject to certain conditions, "dispense with the strict enforcement of any of the Rules or Regulations":—*Held*, that the rule does not empower the committee to pass a resolution postponing the date for the completion of a contract for the purchase of shares. *Barnard* v. *Foster*, 84 L. J. K.B. 1244; [1915] 2 K.B. 288—Sankey, J. Affirmed, 32 T. L. R. 88—C.A.

On July 30, 1914, the defendant instructed the plaintiff, a broker on the Stock Exchange, to buy certain shares. The plaintiff accordingly bought the shares from a firm of jobbers. The committee of the Stock Exchange had fixed the August account days for August 13 and August 27, and on July 31 they passed a resolution that bargains open for the ordinary mid-August account should be settled at the date fixed for the end-August account—namely, August 27. On August 6 a moratorium proclamation came into force, and the committee subsequently, by resolution, further postponed the mid-August account day to November 18. The defendant, having refused to take up the shares on that date, the plaintiff sold them, and brought an action to recover the difference in price:—*Held*, that the scrip for the shares which the plaintiff received from the jobbers was not a "security" within the meaning of section 1, sub-section 1 (*b*) of the Courts (Emergency Powers) Act, 1914, as it never at any time belonged to the defendant, and that the plaintiff was therefore entitled to sell the shares without first applying to the Court under the provisions of that sub-section. *Ib.*

Pledge of Customer's Securities by Broker with his Own—Right of Customer to Surplus.] —*See Burge, Woodall & Co., In re; Skyrme, ex parte, ante*, col. 104.

Country Broker and Client—Commission not Disclosed.]—*See Blaker* v. *Hawes, ante*, col. 1198.

STOCKS AND SHARES.

See COMPANY.

STOPPAGE IN TRANSITU.

See SALE OF GOODS.

STRAITS SETTLEMENT.

See COLONY.

STREET.

See LOCAL GOVERNMENT; METROPOLIS.

SUBMISSION.

See ARBITRATION.

SUBSTITUTED SERVICE.

See PRACTICE.

SUCCESSION DUTY.

See REVENUE.

SUICIDE.

See CRIMINAL LAW.

SUMMARY JURISDICTION.

See JUSTICE OF THE PEACE.

SUMMONS.

Debtor's.]—*See* BANKRUPTCY.

Magistrates.]—*See* JUSTICE OF THE PEACE.

SUNDAY.

See also Vol. XIII. 1966, 2394.

Sunday Trading—Prosecution—Consent of Chief Officer of Police—"Chief officer of police"—Representative of Chief Constable.]—A representative of a chief constable, appointed to act during the chief constable's absence on holiday, is not the "chief officer of police" within the meaning of section 1 of the Sunday Observation Prosecution Act, 1871, for the purpose of authorising a prosecution for Sunday trading under the Sunday Observance Act, 1677, although the latter himself is such officer. *Rex* v. *Halkett; Butinck, Ex parte*, 79 L. J. K.B. 12; [1910] 1 K.B. 50; 101 L. T. 603; 74 J. P. 12; 22 Cox C.C. 202—D.

—— **Refreshment-house Licence—"Meat"—Sale of Ice Cream.**]—A refreshment-house Excise licence does not exempt the holder of the licence from the provisions of the Sunday Observance Act, 1677. *Amorette* v. *James*, 84 L. J. K.B. 563; [1915] 1 K.B. 124; 112 L. T. 167; 79 L. J. 116; 13 L. G. R. 598; 59 S. J. 162; 31 T. L. R. 22—D.

A refreshment-house keeper, the holder of an Excise licence, in the ordinary way of his business supplied some ice cream to customers on a Sunday, and was charged before the Justices, under section 1 of the Sunday Observance Act, 1677, with unlawfully exercising his ordinary calling on the Lord's Day, and was convicted, his only contention being that the licence exempted him from the provisions of the Act. On appeal, on a Case stated, he further contended that the selling of the ice cream was the selling of "meat" within the meaning of section 3 of the Act, and therefore not prohibited by the statute: —*Held*, first, that the licence did not exempt him from the provisions of the Act; and secondly, that the point as to ice cream being "meat" within the meaning of section 3 of the Act not having been taken before the Justices, and there being no evidence before them that ice cream was "food," must be left open for future decision. *Ib.*

—— **Aiding and Abetting—Purchase of Cigarettes—Mens Rea.**]—The purchase of cigarettes from the proprietors of an eating house on a Sunday does not *per se* amount to the offence of aiding and abetting the vendor in the offence, under the Sunday Observance Act; 1677, of the vendor exercising his ordinary calling on the Lord's Day. Whether it would amount to such an offence if the purchaser knew that the vendor was exercising his ordinary calling on a Sunday, *quære*. *Chivers*

v. *Hand*, 84 L. J. K.B. 304; 112 L. T. 221; 79 J. P. 88; 13 L. G. R. 537; 31 T. L. R. 19—D.

A person who enters a shop on a Sunday and buys goods there, with the knowledge that the shopkeeper is exercising his ordinary calling, commits the offence of aiding and abetting the shopkeeper in the exercise of his ordinary calling on a Sunday, contrary to section 1 of the Sunday Observance Act, 1677. *Fairburn* v. *Evans*, 32 T. L. R. 166—D.

SUPER-TAX.

See REVENUE.

SURETY.

See PRINCIPAL AND SURETY.

SURGEON.

See MEDICINE.

SURRENDER.

Of Leases.]—*See* LANDLORD AND TENANT.

SURVEYOR.

Fees, by whom Paid.] —*See* VENDOR AND PURCHASER.

TAXATION OF COSTS.

Between Party and Party.]—*See* COSTS.

Between Solicitor and Client.] — *See* SOLICITOR.

TAXES.

See REVENUE.

TELEGRAPH AND TELEPHONE.

See also Vol. XIV. 1, 2041.

Negligence by Sub-postmaster in Transmission of Telegram — Liability of Sub-postmaster.]—A sub-postmaster, in transmitting a telegram, acts as a public officer and in the discharge of a public duty, and if he is guilty of negligence in the transmission of the telegram, causing loss to the sender, he is liable to the sender for the loss so sustained. *Rowning* v. *Goodchild* (2 W. Bl. 906) applied and followed. *Hamilton* v. *Clancy*, [1914] 2 Ir. R. 514—K.B. D.

Erection of Telegraph Posts — Road not Taken over by Local Authority — Consent Required—"Body having control of street."] —A street or road which, although open for public use, has not been taken over by the urban district council, is not under the control of the council, as successors of the Surveyors of Highways, under section 12 of the Telegraph Act, 1863, and therefore the council is not the body whose consent can be required by the Postmaster-General to the erection of telegraph poles and wires thereon. *Semble*, the owner of the soil is the person "having the control" of a public road not yet taken over by the local authority. *Postmaster-General* v. *Hendon Urban Council*, 83 L. J. K.B. 618; [1914] 1 K.B. 564; 110 L. T. 213; 78 J. P. 145; 12 L. G. R. 437; 15 Ry. & Can. Traff. Cas. 185—C.A.

Decision of the Railway and Canal Commissioners (82 L. J. K.B. 1081; [1913] 3 K.B. 451) affirmed. *Ib.*

—— **Objection of Public Authority—Alternative Site on Private Land.**]—Where a local authority had *bona fide* exercised their discretion in refusing their consent to the placing of a distributing telegraph pole on a narrow pavement (about one-fifth of which would have been confiscated for that purpose), and where a suitable site on private ground was available at a rental of 1*l.* per annum:—*Held*, that the local authority had not withheld their consent unreasonably. *Postmaster-General* v. *Darlington Corporation*, 15 Ry. & Can. Traff. Cas. 333—Ry. Com.

"Pleasure ground" — "Garden."] — Section 21 of the Telegraph Act, 1863, permits a telegraph company, within the limits of a town having a certain population, and with the consent of the street authority, to place and maintain a telegraph across any land not being laid out as building land, or not being a garden or pleasure ground, provided that twenty-one days' previous notice is published by the company stating that they have obtained such consent, and describing the intended course of such telegraph:—*Held*, that a pleasure ground, to come within the meaning of the section, should have some equipment of a more or less permanent character that would be of service to persons frequenting it for the purpose of recreation; and that a yard used

by the plaintiff mainly for the purpose of his business, and without such equipment, but in which his children were in the habit of playing, was not such a pleasure ground. *Held* also, that the exception in the section is only made in respect of land which is not a pleasure ground or garden, and not in respect of buildings, and that a garden on the roof of a building was not within the exception. *Stevens* v. *National Telephone Co.*, [1914] 1 Ir. R. 9—Ross, J.

Consent to Erection.]—The consent of the street authority must be obtained before the erection of the telegraph. A subsequent consent is not sufficient. *Ib.*

Pole Erected with Ten Yards of Dwelling House in a Town.]—Section 22 of the same Act, which prohibits a telegraph company from placing a telegraph post within ten yards of a dwelling house except as therein provided, applies only to rural districts, or to cases where telegraph posts are put upon property of one person with his consent, but at a distance of less than ten yards from the house of another person. *Ib.*

Overhead or Underground Wires—Overhead Wire along Public Road—Objection of Local Authority.]—An urban district council having refused their consent to the placing of an overhead telegraph wire on poles for a distance of a quarter of a mile along a road in their district, and the County Court Judge for the district having found that their refusal was reasonable, the Postmaster-General applied to the Railway Commissioners. The district council had expended 6,000*l.* in altering their own overhead wires to underground wires, and in laying new underground wires. In 1907 the Postmaster-General had applied for the consent of the district council to lay underground wires in the road in question, which had been granted, and the wires had been laid accordingly:—*Held*, that, under the circumstances of the case, the wire should be laid underground on the district council undertaking to do the work of excavation, laying the pipes, and filling the trenches for 50*l.* *Postmaster-General* v. *Tottenham Urban Council*, 14 Ry. & Can. Traff. Cas. 154; 8 L. G. R. 791; 74 J. P. 431—Ry. Com.

A corporation of a county borough, on being applied to by the Postmaster-General under section 3 of the Telegraph Act, 1878, for their consent to the erection of certain telephone wires on poles in and along certain public roads within the borough, refused their consent. The difference was referred under section 4 of the Telegraph Act, 1878, to the County Court Judge of the district, who decided that such wires should be erected overhead, as proposed by the Postmaster-General. The corporation thereupon applied to the Railway Commissioners. The substantial objections of the corporation were: First, that overhead wires lowered the value of house property in the roads where they were erected; secondly, that they disfigured such roads; thirdly, that they were dangerous in times of storm; fourthly, that their vibration was a nuisance; and fifthly, that they obstructed traffic. The cost of laying the wires underground was about 355 per cent. more than erecting them on the overhead system. The Post Office had expended 65,000*l.* in laying underground lines in Croydon as compared with 1,800*l.* for overhead lines:—*Held*, that the overhead wires as proposed by the Postmaster-General should be allowed, but that if the corporation should within one month give notice that they would bear the extra cost of laying any line underground in any street such line should be placed underground accordingly. *Quære*, whether the corporation were empowered to apply public funds for that purpose. *Postmaster-General* v. *Croydon Corporation*, 14 Ry. & Can. Traff. Cas. 158; 8 L. G. R. 1005; 74 J. P. 424—Ry. Com.

Practice—Right to Begin at Hearing before Railway Commissioners.]—Proceedings before the Commissioners under section 4 of the Telegraph Act, 1878, are not in the nature of an appeal, but are in the nature of an original application by the Postmaster-General, who is entitled to begin. *Ib.*

Injunction against Removal of Telephone Poles.]—A telephone company had telephone poles in the borough of H., under a licence from the corporation. In January, 1912, their undertaking was to be taken over by the Post Office and all plant then in use would be paid for. In October, 1910, the corporation gave the company notice to remove the poles and establish an underground system. This was not done, and the corporation arranged with the Postmaster-General to establish such a service on January 1, 1912. The corporation were willing to allow the poles to be kept up till December 27, 1911, but required their removal before December 31. If they remained up till December 31, 300*l.* would have to be paid for them; if removed before December 27 the Government would not have to pay for them. The corporation claimed a right to remove the poles:—*Held*, that an injunction should be granted till the trial of the action or until further order restraining the corporation from removing or interfering with the poles. *Dickens* v. *National Telephone Co.*; *National Telephone Co.* v. *Hythe Corporation*, 75 J. P. 557—Swinfen Eady, J.

Widening Street — Alteration of Character of Highway—Notice to Postmaster-General to Remove Telephone Pole from Roadway to Footpath — Negligence by Latter in Doing Work — Injury to Third Party — Liability of Highway Authority—New Street.]—A highway authority was engaged in widening a roadway, which they did by setting back the kerb of the footpath. They gave notice to the Postmaster-General, not purporting to be given under the Telegraph Act, 1863, to remove a telephone pole from the roadway. He did so, and filled in the hole negligently. After the pole was removed the highway authority re-opened the street to the public, and the plaintiffs' steam waggon, sinking into the filled-in hole, was injured:—*Held*, that the highway authority was liable, because by altering the character of the highway they

were making a new road, and ought to have seen that it was safe before opening it to the public. *Held*, also, that the Postmaster-General was liable because, having done work which he was not compellable to do, he had done it negligently. *Steel* v. *Dartford Local Board* (60 L. J. Q.B. 256) distinguished. *Thompson* v. *Bradford Corporation*, 84 L. J. K.B. 1440; [1915] 3 K.B. 13; 113 L. T. 506; 79 J. P. 364; 13 L. G. R. 884; 59 S. J. 495—D.

Transfer of National Telephone Company's Property to Postmaster-General — Value of Undertaking.]—By the agreement by which the Postmaster-General acquired, as from December 31, 1911, the undertaking of the National Telephone Company it was (*inter alia*) provided that "the value on December 31, 1911, of all plant, land, buildings, stores, and furniture purchased by the Postmaster-General . . . shall be the then value (exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatever) of such plant, land, buildings, stores, and furniture, having regard to its suitability for the purposes of the Postmaster-General's telephonic service, and in determining the value of any plant no advantage arising from the construction of such plant, by leave of the Postmaster-General, upon any railway or canal over which the Postmaster-General possesses exclusive rights of way for telegraphic lines shall be taken into account":—*Held*, that the value of the plant taken over by the Postmaster-General was to be arrived at by taking the cost of construction, less depreciation, and that every expense which was necessary to construct the plant was an element to be considered, including in such expense (*inter alia*) the reasonable costs of obtaining subscribers' agreements which were in force at the date of the transfer, and also (Sir James Woodhouse dissenting) the cost of raising capital necessary to construct the plant. *Held*, further, that the method of depreciation applicable was to take the value as reduced in the ratio which the age bore to the life of the plant, and that the mode of computing the life of the plant was to take its physical life as reduced somewhat in respect of defects and obsolescence of certain classes of the plant. *National Telephone Co.* v. *Postmaster-General* (*No.* 1), 29 T. L. R. 190—Ry. Com. Compromised on appeal, 29 T. L. R. 624—C.A.

Reference under Telegraph (Arbitration) Act, 1909—Right of Appeal—Jurisdiction—Decision of Railway and Canal Commission.]—An appeal on questions of law lies to the Court of Appeal from decisions arrived at by the Railway and Canal Commission acting under the Telegraph (Arbitration) Act, 1909, to determine "any difference between the Postmaster-General and any body or person under the Telegraph Acts, 1863 to 1908, or under any license or agreement relating to telegraphs (including telephones)":—So *held* (Buckley, L.J., dissenting). *National Telephone Co.* v. *Postmaster-General* (*No.* 2), 82 L. J. K.B. 1197; [1913] A.C. 546; 109 L. T. 562; 57 S. J. 661; 15 Ry. & Can Traff. Cas. 109; 29 T. L. R. 637—H.L. (E.)

TENANT FOR LIFE AND REMAINDERMAN.

Capital and Income—Debentures—Default in Payment of Principal and Interest—Deficient Security — Debentures Guaranteed by Company in Liquidation—Scheme of Arrangement in Winding-up — Postponement of Payment in Respect of Principal — Payment of Interest in Meanwhile out of Guarantor Company's Assets.]—By his will, a testator bequeathed his residuary estate to trustees upon trust for sale and conversion, and settled the net proceeds in trust for tenants for life and remaindermen as therein mentioned, and he gave his trustees power to postpone conversion of any part of his estate, and declared that in the meanwhile the interest arising from the retained investments, whether they were of a permanent or wasting nature, was to be applied as income. The testator died on July 13, 1910, possessed of debentures in various companies which had made default in payment of principal and interest. The debentures were all guaranteed as to both principal and interest by the L. G. Co., which was in liquidation. On July 28, 1910, the Court sanctioned a scheme of arrangement in the winding-up under which payment of claims of creditors (including holders of guaranteed debentures) in respect of principal moneys was to be postponed till December 31, 1918, interest thereon to be made up in the meanwhile to 3 per cent. per annum out of the guarantor company's assets:—*Held*, that these payments out of the guarantor company's assets must be treated as income of the settled fund and be paid to the tenants for life. *Atkinson, In re; Barbers' Co.* v. *Grose Smith* (73 L. J. Ch 585; [1904] 2 Ch. 160), distinguished. *Pennington, In re; Pennington* v. *Pennington*, 83 L. J. Ch. 54; [1914] 1 Ch. 203; 109 L. T. 814; 20 Manson, 411; 30 T. L. R. 106—C.A.

—— **Distribution by Company of Money and Shares.**]—The testator at the date of his death held certain shares in the A company. In 1905 that company sold and transferred its assets to the C company; and in 1909 it was resolved at an extraordinary general meeting to wind up the A company, and the liquidation was still proceeding. Since the testator's death the trustees of his will had received various sums and various distributions of shares of the C company in respect of the shares of the A company held by the trustees. The A company had power to distribute excess of capital as dividends:—*Held*, that all distributions down to the winding-up of the A company were income, and that all payments received since the liquidation were capital. *Palmer, In re; Palmer* v. *Cassel*, 56 S. J. 363; 28 T. L. R. 301—Eve, J.

—— **Shares Subject to Trusts of Will—Apportionment of Reserve Fund Representing Undivided Profits—Issue of New Shares to Old Shareholders — Exercise of Option — Bonus Dividend Applied in Payment.**] — Where a company under a scheme for apportioning part of their reserve fund, which represented un-

divided profits, resolved to pay a bonus dividend out of the reserve fund to the shareholders in proportion to the number of their shares, so that each shareholder would get one fully paid new share for each share held by him, and the shareholders could elect to take up the allotment of the new shares or not, such new shares taken up by the trustees of a deceased testator were *held* to be capital, and not income of his estate. The rule in *Bouch* v. *Sproule* (56 L. J. Ch. 1037; 12 App. Cas. 385) applied. *Evans, In re; Jones* v. *Evans*, 82 L. J. Ch. 12; 57 S. J. 60—Neville, J.

—— **Special Dividend — Issue of New Shares.**]—Trust money was invested in a company. The company passed an extraordinary resolution for the division of a special bonus amounting to 33⅓ per cent. of the paid-up capital, and two days later the company sent to the trustees a conditional allotment letter which conferred on them the right to receive cash for 483*l.* 6*s.* 8*d.*, or to apply for 48⅓ shares of 10*l.* each fully paid. The dividend was described as a bonus dividend free of tax. The value of the allotted shares was about 20*l.* apiece, and the trustees elected to apply for the forty-eight shares and to sell to the company the one-third share. On an application to determine whether the bonus dividend was to be treated as capital or income,—*Held*, that the tenants for life were entitled to a charge on the new shares for 483*l.* 6*s.* 8*d.*, and that so far as the shares represented an excess over that sum they were to be treated as capital. *Northage, In re* (60 L. J. Ch. 488), followed. *Hume Nisbet's Settlement, In re*, 55 S. J. 536; 27 T. L. R. 461—Eve, J.

—— **Cumulative Preference Shares—No Dividend Paid during Life of Tenant for Life—Possible Future Dividends—Right to Claim.**]—The legal personal representatives of a deceased tenant for life of cumulative preference shares have no right in or claim against the shares after the death of the tenant for life in respect of a possible dividend to be paid out of future profits of the company, if any, which would be applicable to make up a deficiency in dividend during the life of the tenant for life. *Sale, In re; Nisbet* v. *Philp*, 83 L. J. Ch. 180; [1913] 2 Ch. 697; 109 L. T. 707; 58 S. J. 220—Astbury, J.

—— **Income of Unauthorised Securities — Residuary Estate—Trust of Sale and Conversion—Power to Postponement Conversion and Retain Investments.**]—A testator gave all his real and personal estate upon trust for sale and conversion, with power to postpone such conversion so long as the trustees should deem proper, and with power to permit the personal estate invested at the testator's death in or upon any stocks, funds, or securities whatsoever yielding income to continue in the same state of investment so long as the trustees deemed fit. The testator directed that after payment of debts, funeral, testamentary expenses, and duties the trustees should stand possessed of the residue of the moneys produced by conversion upon trust as to one moiety to invest and pay the net income to his wife for life, with a reduction upon re-marriage, and after her death or re-marriage upon the trusts declared of the second moiety; and the second moiety was to be held upon trust for investment and to pay the income to the testator's daughter for life, with remainder to their children. At the time of his death the testator held shares in land companies in British Columbia, which were not investments authorised by the will. These companies bought land as a speculation, and paid large but uncertain dividends:—*Held*, that the power of retention being for the benefit of the tenants for life and not for the convenience of conversion, the tenants for life were entitled to the whole income of the shares in the land companies. *Chaytor, In re; Chaytor* v. *Horn* (74 L. J. Ch. 106; [1905] 1 Ch. 233), distinguished. *Inman, In re; Inman* v. *Inman*, 84 L. J. Ch. 309; [1915] 1 Ch. 187; 112 L. T. 240; 59 S. J. 161—Neville, J.

—— **Bonus on Settled Shares.**]—A testator, by his will, settled shares in an American railway company. Some years after the testator's death the company, which had obtained the necessary powers to increase its capital, paid a bonus of 50 per cent. to its stockholders out of accumulated profits, the payment being made in the form of a 40 per cent. dividend payable in stock and a 10 per cent. cash dividend:—*Held*, that the trustees of the will should deal with the 40 per cent. stock dividend as an accretion to the capital of the testator's estate, and with the 10 per cent. cash dividend as income arising from the estate. *Carson* v. *Carson*, [1915] 1 Ir. R. 321—M.R.

Adjustment of Accounts—Settled Shares of Residue—Payment by Executors for Liabilities—Administration Occupying more than One Year — Rate of Interest — Interest on Estate Duty.]—A testator gave his residuary real and personal estate on trust for sale and conversion, and the payment thereout of his debts, funeral and testamentary expenses, legacies and annuities, and the duties on those given free of duty. He settled shares in the residue on his daughters for life, and after their deaths for their appointees or children. He empowered his trustees to postpone the sale or conversion of any part of his estate, and directed that the income from his estate, howsoever invested, should, as from his death, be treated as income and no part thereof be added to capital. The estate was a very large one, and the payments and appropriations in respect of the debts, funeral and testamentary expenses, duties, legacies, and annuities, were not completed till five years after the testator's death:—*Held*, that the direction in the will did not exclude the application of the rule laid down in *Allhusen* v. *Whittell* (36 L. J. Ch. 929; L. R. 4 Eq. 295). *Held*, also, that the tenants for life ought to be deprived only of the income of such a sum as with the income on it would discharge the liabilities, and not of the income of the whole fund required to discharge them; that this process of calculation ought not to be limited to the first year after the testator's death, but ought to be applied

also in the case of liabilities discharged after the expiration of that year; that the income ought to be calculated on the average rate of interest earned by the estate in each year; and that the total amount paid for capital and interest in respect of estate duty ought to be treated as being the liability to be discharged and to be apportioned between capital and income accordingly. *McEuen, In re; McEuen* v. *Phelps* (83 L. J. Ch. 66; [1913] 2 Ch. 704), followed. *Wills, In re; Wills* v. *Hamilton*, 84 L. J. Ch. 580; [1915] 1 Ch. 769; 113 L. T. 138; 59 S. J. 477—Sargant, J.

—— **Mortgagee in Possession — Rents and Profits of Mortgaged Properties — Arrears of Interest Due at Death of Testator — Rents Accruing since Testator's Death.**] — At the death of a mortgagee who had gone into possession of the mortgaged properties there were unsatisfied certain arrears of interest on the moneys secured. By his will the mortgagee gave the proceeds of sale of his residuary estate to trustees upon trust for certain persons for life and then to others in remainder. The trustees, being in possession of the mortgaged properties, had received certain rents from them which accrued since the testator's death :—*Held*, that these rents must be applied first in discharging the arrears of interest due at the death of the testator, and that the balance up to, but not exceeding, the interest accrued due since the testator's death should be distributed as income, and that any excess should be applied as capital. *Coaks, In re; Coaks* v. *Bayley*, 80 L. J. Ch. 136; [1911] 1 Ch. 171; 103 L. T. 799—Warrington, J.

Power to Postpone Conversion—Estate pur Autre Vie — Wasting Property — Policies of Assurance on Life of Cestui que Vie—Premiums Payable out of Capital.]—A testator by his will and codicils gave his residuary real and personal estate to trustees upon trust in their discretion, or at the discretion of his wife, for sale and to invest the proceeds and pay the income to his wife for life or during widowhood, with certain remainders over. The will contained a wide power to postpone conversion. At his death he was possessed (*inter alia*) of an estate *pur autre vie* of the annual value of about 244*l.* in property held on the trusts of a will, and of two policies of assurance on the life of the *cestui que vie*, the annual premiums on which amounted to about 60*l.* There was a difficulty in selling the life interest :—*Held*, that the trustees were entitled to retain the life interest, and that the widow was entitled to the whole income thereof. *Held*, further, that the trustees had power to postpone realisation of the policies and that the premiums thereon were payable out of capital and not out of income. *Bennett In re; Jones* v. *Bennett* (65 L. J. Ch. 422; [1896] 1 Ch. 778), applied. *Sherry, In re; Sherry* v. *Sherry*, 83 L. J. Ch. 126; [1913] 2 Ch. 508; 109 L. T. 474—Warrington, J.

—— **Consent of Tenant for Life—Direction to Re-invest in Specified Securities with Like Consent—Postponement of Sale—Income from Unauthorised Securities during Postponement —Right of Tenant for Life to Postpone during Lifetime.**]—When a testator directs a sale and conversion of his estate, with a power of postponing such sale, and a trust to re-invest in specified securities, and at the same time directs that the consent of the tenant for life must be obtained to such sale, postponement, or re-investment—then the effect is that the tenant for life has practically an option for sale, which he may postpone for as long as he chooses, and meanwhile he is entitled to enjoy the income from the existing estate, even that from unauthorised securities, in specie. *Rogers, In re; Public Trustee* v. *Rogers*, 84 L. J. Ch. 837; [1915] 2 Ch. 437; 60 S. J. 27—Neville, J.

—— **Bequest of Farming Business—Right of Tenant for Life to Take Profits of Business in Specie.**] —A testator bequeathed to his trustees all his interest in W. Farm, with all his farming stock, plant, and crops upon trust to sell and convert and stand possessed of the proceeds upon the trusts declared concerning his residuary estate, and gave them power to carry on his farming business for such period as they might deem beneficial for his estate, and for that purpose to retain and employ in such business a sufficient amount of his capital not otherwise employed in it, without being accountable for any loss arising from such carrying on. He bequeathed his residuary estate to his trustees upon trust to convert and invest the proceeds, and to pay the income of his residuary trust estate to his wife during her widowhood, and after her death or remarriage upon certain trusts. The testator died in May, 1913, and the trustees decided to carry on the business for a time, but did not employ any further capital in the business. The widow died in August, 1914. The farm consisted of between 700 and 800 acres, and was value at the testator's death at 4,746*l.* 4*s.* In the period between the testator's death and that of his widow a large profit was made, amounting to 2,718*l.* 10*s.* 2*d.*, but the widow received nothing during her life. Her executors claimed that her estate was entitled to the whole profit, while the residuary legatees claimed that her estate was entitled only to 4 per cent. per annum on the value of the farm :—*Held*, that in such cases the Court must look carefully at the words of the will for indications of the testator's intention as to the income of the unconverted property; that in this case the decision in *Lambert* v. *Lambert* (27 L. T. 597) applied; that there was in the will sufficient indication that the widow should take the profits of the farming business in *specie*; and that her estate was entitled to the whole of the profits. *Slater, In re; Slater* v. *Jonas*, 113 L. T. 691—Eve, J.

Trust for Sale — Power of Postponement during such Period as Trustees Think Fit— "Trust premises constituting or representing" Estate—Appropriation of Share in, to Each Child — Settlement of Shares — Right of Tenants for Life to Income of Unauthorised Investments.]—A testator gave all his real and personal estate on trust for sale and conversion at such times and in such manner as his trustees should think fit, and so that they should have the fullest power and discretion to

postpone the sale and conversion of the whole or any part of the property during such period as they should think proper, without being responsible for loss. The residue of the sale moneys was to be invested in investments thereby authorised, and the trustees were to "divide the said trust premises constituting or representing my residuary estate" into as many equal shares as the testator should have children, and appropriate to each child one share, the income of which was to be paid to the child for life; and on his or her death to hold the share on trusts for his or her children. The testator left six children. His estate included some leaseholds, and a large number of investments of a character not authorised by the will:—*Held*, that the unauthorised securities while not realised were securities "constituting or representing" part of the testator's residuary estate, the income of which he had directed to be paid to the tenants for life; and that although the trustees had not a power to retain the unauthorised securities permanently, but only a power to postpone their conversion, the tenants for life were entitled to the whole of the income arising from them. *Thomas, In re; Wood* v. *Thomas* (60 L. J. Ch. 781; [1891] 3 Ch. 482), followed. *Godfree, In re; Godfree* v. *Godfree*, 83 L. J. Ch. 734; [1914] 2 Ch. 110—Warrington, J.

—— **Gift of Proportion of Income to Tenant for Life—Unauthorised Investments Retained—Calculation of Income—Leasehold Sub-demised at Annual Loss—Incidence of Loss as between Capital and Income.**]—A tenant for life was entitled to three-fifths of the income of a testator's estate, and, under the powers of the will, unauthorised securities—some productive, others non-productive—were retained for a favourable opportunity for realisation. A leasehold forming part of the estate was sub-let at an annual loss:—*Held*, that the unauthorised securities must be aggregated, and the income therefrom must be taken as being at the rate of 4 per cent. on the aggregate estimated value. *Held*, further, that the loss on the leasehold was an outgoing of the estate and chargeable against the income. *Dictum* of Kindersley, V.C., in *Allen* v. *Embleton* (27 L. J. Ch. 297; 4 Drew. 226) followed. *Owen, In re; Slater* v. *Owen*, 81 L. J. Ch. 337; [1912] 1 Ch. 519; 106 L. T. 671; 56 S. J. 381—Neville, J.

Settlement—Jointure Rentcharge—No Covenant to Pay—Apportionment.]—Real estate was settled in 1890 on trusts which included a jointure rentcharge to the settlor's wife, and in 1900 there was a re-settlement subject to the charges under the earlier settlement. Neither settlement contained a covenant on the part of the settlor to pay the rentcharge:—*Held*, that, as between the tenant for life and remainderman under the will of the settlor exercising a power in the re-settlement, the rentcharge must be borne wholly out of income, and not apportioned as between income and *corpus* of the settled estate. *Popham, In re; Buller* v. *Popham*, 111 L. T. 524; 58 S. J. 673—Joyce, J.

Settlement of Personalty—Power to Invest in Land—Rents and Profits to be Payable as Income of Personalty—Purchase of Timber Estate—Periodical Cutting of Trees—Right of Tenant for Life to Net Proceeds of Sale of Timber.]—By a marriage settlement personalty belonging to the wife was settled on usual trusts, and the trustees were empowered to invest the property in the purchase of real estate. Real estate so purchased was to be conveyed to the trustees on trust for sale, and in the meantime the "rents and profits" were to be paid and applied to the person and in the manner to whom and in which the income of the property would have been payable or applicable if the investment had not been made. The trustees, in pursuance of the power, purchased an estate in Buckinghamshire, comprising a large quantity of beech wood, which in Buckinghamshire is timber. The trustees, in accordance with the course of management usual in the neighbourhood, had from time to time cut a considerable number of the older trees in order to leave room for the growth of the younger ones:—*Held*, on the construction of the settlement, that the net proceeds of sale of the trees, after paying all costs of replanting and repairing fences, belonged to the tenant for life as "profits." *Dashwood* v. *Magniac* (60 L. J. Ch. 210, 809; [1891] 3 Ch. 306) applied. *Trevor-Battye's Settlement, In re; Bull* v. *Trevor-Battye*, 81 L. J. Ch. 646; [1912] 2 Ch. 339; 107 L. T. 12; 56 S. J. 615—Parker, J.

—— **Power to Trustees to Pay for Repairs out of Capital or Income—"Rents dividends and interest and other produce" to be Deemed Income—Lease by Testator—Breach of Covenant—Damages—Capital or Income.**]—By his will the testator devised and bequeathed to his trustees all the real and personal estate of which he might die possessed upon the usual trusts for sale and conversion, with power to postpone and to hold the proceeds after payment thereout of certain sums upon trust to divide the same into certain shares, some of which he settled, and he empowered his trustees to manage and order all the affairs thereof as regards letting and repairs and to make out of the income or capital any outlay which they might consider necessary for improvements or repairs. He then provided that for the purposes of enjoyment and transmission under the trusts therein contained his real and personal estates should be considered as money from the time of his decease, and the "rents dividends and interests and other produce" thereof respectively to accrue after his decease, and until the actual sale, conversion, and getting in thereof, should be deemed the actual income thereof. At his death the testator was possessed of a certain theatre subject to a lease granted by him which contained the usual lessee's covenants to repair. The lessee did not perform his obligations under the lease, and the trustees brought an action against him for damages for breach of covenant and recovered judgment for a considerable sum of money by way of damages. The money so recovered was represented in part by a sum of 900*l.* in the trustee's hands:—*Held*, upon the construction of the

will, that the 900*l.* must be treated as *corpus* of the testator's residuary estate. *Lacon's Settlement, In re; Lacon* v. *Lacon* (80 L. J. Ch. 302, 610; [1911] 1 Ch. 351; [1911] 2 Ch. 17), considered. *Pyke, In re; Birnstingl* v. *Birnstingl*, 81 L. J. Ch. 495; [1912] 1 Ch. 770; 106 L. T. 751; 56 S. J. 380—Warrington, J.

Management — Freehold Ground Rents — Repairing Leases—Cost of Survey and Notices to Repair — Tenant for Life and Remainderman.]—By a settlement of freehold property contained in a testator's will a power of management was given to the trustees, with power to pay the costs of management out of rents and profits. The property consisted of six hundred and fifty houses let on repairing leases for ninety-nine years at very small ground rents. The trustees employed a surveyor to report on the state of the property, and as a result served notices to repair on a large number of the tenants. The costs of so doing amounted to about half the annual income of the settled estate :—*Held* (affirming the decision of Neville, J.), that these expenses were costs of management, and payable therefore out of income under the provision in the will. But *held*, that the Court had power under section 36 of the Settled Land Act, 1882, to direct their payment out of capital, if it thought fit, and that in the special circumstances of the case it would do so. *Tubbs, In re; Dyke* v. *Tubbs*, 84 L. J. Ch. 539; [1915] 2 Ch. 137; 113 L. T. 395; 59 S. J. 508—C.A.

Trust Legacy—Investment on Insufficient Security—Death of Tenant for Life—Arrears of Interest—Interim Distribution of Rents—Realisation of Security—Distribution of Proceeds of Sale — Hotchpot.] — A trust legacy was invested on mortgage which proved to be insufficient, and at the death of the tenant for life there were large arrears of interest. By an order the rents were apportioned in the proportion of the arrears due to the tenant for life at her death and the arrears since due to the remaindermen without prejudice to any readjustment when the security was realised. The security was subsequently realised, and the purchase money was placed on deposit :—*Held*, that the rents paid under the order must be brought into hotchpot, and the aggregate of those rents and the purchase money should be distributed between the representatives of the tenant for life and the remaindermen in the proportion which the arrears of rent due at the death of the tenant for life bore to the aggregate of the principal money and arrears due to the remaindermen. *Southwell, In re; Carter* v. *Hungerford*, 85 L. J. Ch. 70; 113 L. T. 311—Eve, J.

Profits of Business Payable to Tenant for Life—Cost of Repairs to Machinery. —Depreciation.] — A testator gave his trustees authority to carry on his business, and bequeathed to his widow during her life "the profits arising from my business" :—*Held*, that the trustees had properly charged against the profits before paying them to the widow a yearly sum for depreciation of the machinery used in the business in addition to the cost of repairs. *Crabtree, In re; Thomas* v. *Crabtree*, 106 L. T. 49—C.A.

Gift of Successive Legal Interests in Chattels—Loss of Chattels by Default of First Taker — Death of First Taker — Remedy of Ulterior Taker against Estate — First Taker Trustee or Bailee for Ulterior Taker—"Actio personalis moritur cum persona" — Measure of Damages.] — Where successive legal interest in chattels are created the first taker is, subject to his own life interest, in the position of a trustee or bailee of the chattels for the subsequent takers, and bound, through his legal personal representatives, to deliver over the possession of the goods on his own death. If a chattel has been lost through his default, his representatives cannot set up his tort in answer to the claim of the ulterior taker, and the rule "*Actio personalis moritur cum persona*" has no application to the case. *Swan, In re; Witham* v. *Swan*, 84 L. J. Ch. 590; [1915] 1 Ch. 829; 113 L. T. 42; 31 T. L. R. 266—Sargant, J.

The ulterior taker, having been entitled to receive the specific article, is entitled to compensation for the loss from the first taker's estate in the shape of money sufficient to enable him to replace that article, and not merely to the selling value of the article or the middle price between that amount and the amount required to replace it, the principle applicable being that applicable to the case of trust property lost through a sale by the trustee in breach of trust. *Ib.*

THAMES.

Thames Conservancy.]—*See* WATER.

Collision on.]—*See* SHIPPING.

THEATRE.

See also Vol. XIV. 29, 2050.

Engagement of Operatic Singer—Singer not Allowed to Perform—Damages.]—The plaintiff, an operatic singer, was engaged by the defendant to sing at four performances in London for a certain sum, half to be paid in advance. This sum in advance was duly paid to the plaintiff. At the final rehearsal the defendant was not satisfied with the plaintiff's performance and refused to allow him to appear, and for this the plaintiff claimed damages. The County Court Judge held that the plaintiff was entitled to treat the contract as determined and to claim the unpaid half of the contract sum, and further that he was entitled to damages in consequence of not being allowed to perform after being advertised to appear. On appeal by the defendant, —*Held*, that the County Court Judge was

wrong in taking the view that, inasmuch as the plaintiff was not allowed to perform, he was entitled to damages for breach of contract, and that the Judge ought to have considered whether, upon the facts in regard to the one stage rehearsal which the plaintiff attended, the defendant was justified in coming to the conclusion at which he arrived and not allowing him to perform. *Zamco* v. *Hammerstein*, 29 T. L. R. 217—D.

Engagement of Music-hall Artist for Week —Whether Salary Due before Completion of Week.]—A music-hall artist was engaged to perform for one week at 180*l.* per week. Clause 8 of the agreement provided that "in case the artiste shall, except through illness . . . or accident . . . fail to perform at any performance the artiste shall pay to the management as and for liquidated damages a sum equal to the sum which the artiste would have received for such performance . . ." Clause 12 provided that "the artiste shall not assign, mortgage, or charge the artiste's salary nor permit the same to be taken in execution. No salary shall be paid for days upon which the theatre is closed by reason of national mourning. . . . No salary shall be payable for any performance at which the artiste may not appear through illness or his own default. . . ." Clause 16 provided (*inter alia*) that "if the artiste shall commit any breach of any of the terms and conditions of this contract or of the rules, the management . . . may forthwith determine this contract, and the artiste shall have no claim upon them for salary other than a proportion for performances played, expenses, costs, or otherwise":—*Held*, that the agreement provided for a salary for the week, and that unless some of the events, mentioned in the foregoing clauses, happened, no portion of the salary became due to the artist until the end of the week and until he had fully completed all the performances contemplated. *Mapleson* v. *Sears*, 105 L. T. 639; 56 S. J. 54; 28 T. L. R. 30—D.

Alteration of Contract—Subsequent Arrangement—Music-hall Contract.]—Before the war the defendant agreed to perform twice every evening as a comedian at the plaintiffs' music hall for one week beginning on October 12, 1914, at a salary of 150*l.* The contract provided that "in case the artist shall, except through illness . . . or accident . . . fail to perform at any performance, he should pay to the management as and for liquidated damages a sum equal to the sum which the artist would have received for such performance, in addition to costs and expenses incurred by the management through the default of the artist." After the outbreak of war an arrangement was come to between the managements of the various music halls and the artistes, including the defendant, that the gross receipts of the halls during the war should be divided into two equal parts, of which the management should take one part and the performers at the hall the other part, sharing that part in the proportion of their respective salaries. The defendant having failed to perform at the plaintiffs' hall, they brought an action for damages against him:—*Held*, that in order to ascertain the measure of damages the sum fixed in the contract had to be altered in view of the subsequent arrangement, and that the plaintiffs were entitled to recover such proportion of the artistes' share in the receipts which would probably have been received if the defendant had performed his agreement, as the defendant would have been entitled to. *Golder's Green Amusement and Development Co.* v. *Relph*, 31 T. L. R. 343—Bailhache, J.

Stage Performances — Specified Dates — Artist's Right to Transfer—New Dates—How to be Fixed.]—The plaintiff, who was a music-hall artist, and the defendants, who were music-hall proprietors, made a contract under which the plaintiff was to perform at certain of the halls on specified dates, and the contract contained a clause stating that "the dates mentioned in this contract may be transferred by [the plaintiff] provided two months' notice is given by artist, other dates to be given in lieu of dates transferred." The plaintiff gave notice to transfer a number of dates, and the defendants then claimed that they were entitled to fix the dates on which the plaintiff was to perform. In an action by the plaintiff against the defendants for breach of the contract,—*Held*, that under the above clause neither party was entitled to fix the dates, but that while the artist had a right to transfer dates the new dates were to be fixed by agreement, each party to act reasonably. *Terry* v. *Moss's Empires, Lim.*, 32 T. L. R. 92—C.A.

Licence — Royal Albert Hall.]—Although the corporation of the Albert Hall possess powers under their Royal charters of 1867 and 1887 sufficiently wide to render the public performance of stage plays in a portion of their building known as the Royal Albert Hall Theatre *intra vires*, such charters do not amount to letters patent to keep that place for the public performance of such plays within the meaning of section 2 of the Theatres Act, 1843, so as to obviate the necessity for obtaining a theatre licence for the theatre. *Royal Albert Hall* v. *London County Council*, 104 L. T. 894; 75 J. P. 337; 9 L. G. R. 626; 27 T. L. R. 362—D.

Music-hall Sketch—Agreement by Artist—Exclusive Services—Reproduction of Performance on Cinematograph.]—The plaintiffs, who were music-hall proprietors, made an agreement with the defendant by which it was provided that the defendant should give the plaintiffs his exclusive services and that he should not permit any colourable imitation, representation, or version of his performance to be given within a certain radius. It was alleged by the plaintiffs that the defendant permitted the representation of one of his sketches on a cinematograph at certain picture palaces within the prescribed area, and they brought an action against him to restrain him from this alleged breach of the agreement:—*Held*, on the evidence, that the defendant had taken no part in the alleged reproduction of his performance, and that therefore he was

entitled to judgment. *London Theatre of Varieties* v. *Evans*, 31 T. L. R. 75—C.A.

Seat in Theatre — Forcible Removal of Visitor—Right to Damages.]—If a visitor to a theatre has paid for his seat, he has a right to retain the seat so long as he behaves himself and keeps within the regulations laid down by the management. (Phillimore, L.J., dissenting). *Wood* v. *Ledbitter* (14 L. J. Ex. 161; 13 M. & W. 838) discussed. *Hurst* v. *Picture Theatres, Lim.*, 83 L. J. K.B. 1837; [1915] 1 K.B. 1; 111 L. T. 972; 58 S. J. 739; 30 T. L. R. 642—C.A.

Decision of Channell, J. (30 T. L. R. 98), affirmed. *Ib.*

——Incident in Performance — Injury to Member of Audience—Warranty by Lessee.]—The plaintiff paid for a seat in a theatre, of which the defendant was lessee and manager. The performance of the play had been arranged for by the defendant with the director of a theatrical company, who was to provide the actors and the scenery and to receive a share of the receipts, the defendant taking the remainder. At one part of the play pistols with blank cartridges were fired, and one of the cartridges being too small acted as a bullet and wounded the plaintiff. The plaintiff brought a County Court action against the defendant for personal injuries, and the Judge held that in all circumstances the defendant warranted that all persons connected with the performance should exercise reasonable care, so as not to expose the audience to unreasonable danger, and he found that it had not been conducted with reasonable care, and he awarded the plaintiffs damages. *Per* Bailhache, J.: The defendant warranted that any dangerous incident in the play should be performed with due care and therefore the plaintiff was entitled to recover. *Per* Shearman, J.: If in fact a performance was not dangerous a plaintiff could not recover because of the negligent way in which a certain act was performed which was not dangerous when not negligently performed, and as the Judge applied a wrong rule of law there should be a new trial. *Cox* v. *Coulson*, 31 T. L. R. 390—D.

Obstruction Caused by Queue.]—*See* WAY.

Cinematograph Theatres.]—*See* CINEMATOGRAPH.

THELLUSSON'S ACT.

See ACCUMULATIONS.

THREATS.

To Infringe Patent.]—*See* PATENT.

TIME.

See also Vol. XIV. 44, 2053.

Computation of Term — Trust for Sale at Expiration of Twenty-one Years — Rule against Perpetuities.]—By a settlement dated May 13, 1892, freehold hereditaments were expressed to be assured unto and to the use of trustees, and it was declared that the trustees should stand possessed of the hereditaments during the term of twenty-one years from the date of the settlement upon trust to apply the rents and profits thereof as therein mentioned. The settlement then provided: "It is hereby declared that the said trustees or trustee shall at the expiration of the said term of twenty-one years sell the said hereditaments and premises either together or in parcels" and otherwise as therein mentioned:—*Held*, that the trust for sale did not infringe the rule against perpetuities and was a good trust. *Held*, further, that upon the true construction of the settlement the term of twenty-one years began at midnight on May 12, 1892, and expired at midnight on May 12, 1913. *English* v. *Cliff*, 83 L. J. Ch. 850; [1914] 2 Ch. 376; 111 L. T. 751; 58 S. J. 687; 30 T. L. R. 599—Warrington, J.

"Month."—A wrote to B offering to buy land of B at a certain price, specifying the date for completion, and that the purchase money should be paid as to a part down and as to the residue within two years, "and to be secured to your satisfaction." The offer further stated that for the space of a month B was to be at liberty to accept the offer, and if not accepted conditionally or otherwise within that time the offer was to be considered as withdrawn. The offer was dated September, but omitted the day:—*Held*, in an action for specific performance, that "month" meant "lunar month," and that the offer ran from the day on which the offer was in fact made. *Morrell* v. *Studd*, 83 L. J. Ch. 114; [1913] 2 Ch. 648; 109 L. T. 628; 58 S. J. 12—Astbury, J.

—— Lunar or Calendar—Primary Meaning — Construction — Controlled by Context or Surrounding Circumstances.]—In every contract, not being a contract relating to a mercantile transaction in the City of London, the word "month" *prima facie* means lunar month, but the context or the surrounding circumstances may shew that the word was not used to denote a lunar month, and it may then be construed as meaning a calendar month. *Helsham-Jones* v. *Hennen & Co.*, 84 L. J. Ch. 569; 112 L. T. 281; [1915] H. B. R. 167—Eve, J.

"Offender whose age does not exceed sixteen years."]—A person who at the time of committing the offence of carnally knowing a girl under the age of thirteen is under the age of sixteen, but who at the time he appears in Court to answer the indictment charging him with the offence is over the age of sixteen, is not a person "whose age does not exceed sixteen years" within the meaning of the proviso to section 4 of the Criminal Law

Amendment Act, 1885. In such a case, therefore, the Court has no power under that proviso to order the offender to be whipped. *Rex* v. *Cawthron*, 82 L. J. K.B. 981; [1913] 3 K.B. 168; 109 L. T. 412; 77 J. P. 460; 23 Cox C.C. 548; 29 T. L. R. 600—C.C.A.

Delivery of Bill One Month before Action.]—By section 37 of the Solicitors Act, 1843, "no attorney or solicitor . . . shall commence or maintain any action or suit for the recovery of any fees, charges, or disbursements for any business done by such attorney or solicitor, until the expiration of one month after such attorney or solicitor . . . shall have delivered unto the party to be charged therewith, or sent by the post to or left for him at his counting house, office of business, dwelling house, or last known place of abode, a bill of such fees, charges, and disbursements" signed by such attorney or solicitor or inclosed in or accompanied by a letter signed in like manner referring to such bill:—*Held* (Buckley, L.J., dissenting), that, on the true construction of the section, if a solicitor sends his bill by post the posting must take place at such time that in the ordinary course of post the bill should have reached its destination one clear calendar month before the date on which the action is commenced. *Browne* v. *Black*, 81 L. J. K.B. 458; [1912] 1 K.B. 316; 105 L. T. 982; 56 S. J. 144; 28 T. L. R. 119—C.A.

Decision of the Divisional Court (80 L. J. K.B. 758; [1911] 1 K.B. 975) affirmed. *Ib.*

TITHE.

See ECCLESIASTICAL LAW.

TOBACCO.

See REVENUE (Excise).

TOLLS.

See MARKETS AND FAIRS.

TORT.

Liability of Servants of the Crown.]—*See* CROWN.

TOTAL LOSS.

See SHIPPING (Insurance).

TOWAGE.

See SHIPPING.

TOWN PLANNING.

See LOCAL GOVERNMENT.

TRADE AND TRADE MARK.

A. TRADE.

1. IN GENERAL.

See also Vol. XIV. 2061.

Advertisements Calculated to Deceive.]—No person has a right to sell or offer for sale goods of another trader of an inferior class under conditions calculated to represent such goods as being goods of the same trader of a superior class. If he does so, he commits an actionable wrong, irrespective of motive or fraud, and may be restrained by injunction. *Spalding* v. *Gamage, Lim.* (*No.* 2), 84 L. J. Ch. 449; 113 L. T. 198; 32 R. P. C. 273; 31 T. L. R. 328—H.L. (E.)

Semble, that the right invaded is the property in the business or goodwill likely to be injured by the misrepresentation. The question whether the matter complained of amounts to a misrepresentation is for the Judge who tries the case, and the plaintiff is entitled to such damages as flow naturally from the unlawful action. *Ib.*

Decision of the Court of Appeal (110 L. T. 530) reversed. *Ib.*

Contracts in Restraint of Trade.] — *See* CONTRACT.

2. TRADE NAME.

See also Vol. XIV. 75, 2061.

Similarity — "Everybody's Magazine" — "Everybody's Weekly."]—The plaintiffs, an American company, were the proprietors and publishers of a shilling monthly magazine called *Everybody's Magazine*, which was first issued in 1899. Subsequently the defendants published a weekly penny paper called *Everybody's Weekly*. In an action by the plaintiffs to restrain the defendants from selling any periodical with the title "Everybody's,"—*Held*, that the action failed, as the two periodicals were not likely to compete with one another, and the Court could not restrain the use of a common and popular expression like "Everybody's." *Ridgway Co.* v. *Amalgamated Press*, 29 R. P. C. 130; 28 T. L. R. 149—Warrington, J.

Magazine of Fiction.]—The plaintiffs, the proprietors of a magazine called *Monthly Magazine of Fiction*, which they had published since 1885, sought to restrain the defendants from publishing a magazine which they called *Cassell's Magazine of Fiction and Popular Literature*:—*Held*, that the action failed, as the plaintiffs were not entitled to any monopoly in the words "Magazine of Fiction," which were purely descriptive. *Held*, further, that the use of the words by the defendants was not likely to lead to confusion in the minds of the public. *Stevens* v. *Cassell & Co.*, 30 R. P. C. 199; 29 T. L. R. 272—Neville, J.

Newspaper—Similarity of Names—Monopoly.]—There is in law no monopoly in the name of a newspaper. To entitle the proprietors of a newspaper to an injunction restraining the publication of another newspaper with a similar name, they must shew that the use of that name is calculated to lead to the belief that the defendants' newspaper is the plaintiffs', and that the use of such name is injurious to them. *Outram* v. *London Evening Newspapers Co.*, 28 R. P. C. 308; 55 S. J. 255; 27 T. L. R. 231—Warrington, J.

Transfer to Company of Right to Use Name —No Transfer of Goodwill—Restraining Company from Trading in Registered Name.]—The plaintiffs were incorporated in 1897 to carry on a business of caterers theretofore carried on by a firm named Kingston & Miller. One of the managing directors had a son, Thomas Kingston, who assisted in the management, and so became skilled in the business and well known to the customers. In 1911 Thomas Kingson left his employment in the business and promoted the defendant company, which was formed to carry on a business of the same character as that of the plaintiffs, and to secure and turn to account Thomas Kingston's services as an expert in the business. He was shortly afterwards appointed managing director:—*Held*, that the use of the name "Kingston" by the defendants was likely to mislead and deceive the public into the belief that the defendants were the same company as the plaintiffs; that even if Thomas Kingston could, by selling the goodwill of a business which he had carried on in his own name to a company, have conferred on it the right to use the name, he had nothing in the nature of a goodwill to transfer, and so could not give the defendants the right to use his name; and that the defendants must be restrained from using their registered name or any other so nearly resembling that of the defendants as to be calculated to deceive, and from carrying on a similar business under it. *Fine Cotton Spinners and Doublers Association* v. *Harwood, Cash & Co.* (76 L. J. Ch. 670; [1907] 2 Ch. 184) followed. *Kingston, Miller & Co.* v. *Kingston & Co.*, 81 L. J. Ch. 417; [1912] 1 Ch. 575; 106 L. T. 586; 29 R. P. C. 289; 56 S. J. 310; 28 T. L. R. 246—Warrington, J.

Right to Trade under One's Own Name—Similarity of Names—Confusion of Names and Goods.]—A man, so long as he acts honestly, may trade under his own name, even though the similarity of such name to the name under which another person has previously been trading may occasionally lead to confusion or lead to the goods of the one being mistaken for the goods of the other trader. *Actiengesellschaft Hommel's Hæmatogen* v. *Hommel*, 29 R. P. C. 378; 56 S. J. 399—Eve, J.

Similarity of Name — Imitation — Injunction.]—Injunction granted restraining the use by the defendants of the word "Lloyds" or any title or description including that name in connection with the business of capitalists or financiers or any similar business, or in connection with the word "Trust." *Lloyds Bank* v. *Lloyds Investment Trust Co.*, 29 R. P. C. 545; 28 T. L. R. 379—Neville, J.

Injunction granted restraining the defendants from carrying on business under the name of Lloyds, Southampton, Lim., or under any other name calculated to produce the belief that their business was the business of, or any branch or department of, Lloyds' business. *Lloyds & Dawson Brothers* v. *Lloyds, Southampton*, 29 R. P. C. 433; 28 T. L. R. 338—C.A. Reversing, 56 S. J. 361—Warrington, J.

Infringement — Passing off — Fraud.] — Where a parson manufactures and sells an article under a name that is not his own, but is the name under which another firm manufactures and sells a similar article, it will be presumed that his intention in adopting the said name is fraudulent, and an injunction will be granted to restrain him, even if no deception has in fact resulted. *Ash* v. *Invicta Manufacturing Co.*, 28 R. P. C. 252; 55 S. J. 348—Warrington, J. Reversed, 28 R. P. C. 597—C.A.

3. IMITATION OF GOODS.

Passing off—Substitution of Goods—Accidental and Inadvertent Substitution—"Trap" Orders—Delay in Delivery of Particulars of

Occasions Relied on.]—In 1906 M. E. P., a trading corporation, discontinued stocking and selling L.'s goods, and in their place offered goods of their own manufacture, the shop assistants being instructed at the time to explain to customers that only M. E. P.'s goods were sold, and to push their sale. In July, 1910, L. sent a number of their employees to M. E. P. shops with orders for L.'s goods. L. alleged that in several instances M. E. P. goods were supplied without any explanation being offered, or the notice of the customer being drawn to the substitution. In August, 1910, L. instituted an action for an injunction to restrain the passing off of M. E. P. goods for L.'s goods; but particulars of the instances alleged were not delivered to the defendants until December, 1910:—*Held*, that in so far as there had been any substitution of M. E. P.'s goods for L.'s goods it was inadvertent, and not part of a deliberate policy of fraud, and that, on the defendants undertaking that their goods should not be supplied in response to orders for the plaintiffs' goods without the consent of the purchaser thereto being first obtained, no injunction should be granted; and that, as the plaintiffs had been guilty of negligence in delivering particulars of the alleged "trap" orders, there should be no order as to costs. *Lever* v. *Masbro' Equitable Pioneers Society (No. 1)*, 105 L. T. 948; 29 R. P. C. 33; 56 S. J. 161—Joyce, J. Affirmed, 106 L. T. 472—C.A.

—— **Colourable Imitations—Selling Defendants' Goods as those of Plaintiffs—Use of Word "Patent."**]—The defendants made and sold pens of the same shape as those made by the plaintiffs, stamped them with the same numbers, and put them in boxes resembling the plaintiffs' boxes. The plaintiffs' goods were stamped with the word "Patent," though they were not patented:—*Held*, that the shapes of the pens were common to the trade, and that the boxes were not likely to deceive, and therefore the plaintiffs' case failed. *Held*, also, that had the plaintiffs made out a case, the use of the word "patent" was only a collateral misrepresentation, on which the defendants could not have relied. *Perry* v. *Hessin*, 29 R. P. C. 101; 56 S. J. 176—Eve, J. Affirmed, 29 R. P. C. 509; 56 S. J. 572—C.A.

—— **Circular—"Taylors' wine."**]—The defendants, who were wine merchants, issued a large number of circulars in which under the head of vintage ports was the following item: "Taylors, Vintage 1908, Bottling year 1910. Price, 27*s*." The wine so offered was not the plaintiffs' wine which was known in the trade as "Taylors'," but was the wine of one Alexander D. Taylor. The wine had been described as "Taylors'" in the circular by inadvertence. When the defendants' attention was called to the matter they agreed not to issue any further circular containing the mistake, but they refused to make a public apology. On a claim for an injunction at the instance of the plaintiffs,—*Held*, that it was no answer to the claim for an injunction for the defendants to say that they would not issue the circular again; they were bound to do something to remedy their previous act. *Yeatman* v. *Homberger*, 107 L. T. 742; 29 R. P. C. 645; 29 T. L. R. 26—C.A. Affirming, 56 S. J. 614—Eve, J.

—— **Malted Milk—Descriptive Designation.**]—*Held*, that the term "malted milk" was a descriptive designation, and that the plaintiffs, who manufactured and sold a preparation known as "Horlick's Malted Milk," were not entitled to restrain the defendant from manufacturing and selling a similar preparation under the name "Hedley's Malted Milk." *Horlick's Malted Milk Co.* v. *Summerskill*, 32 T. L. R. 63—Joyce, J.

—— **Brinsmead Pianos.**]—*Held*, that there being no evidence of dishonesty, the defendant Brinsmead could not be restrained at the instance of the plaintiffs from putting his own name on pianos made by him, although the fact of his doing so might bring him some advantage in connection with the sale of the pianos made by him, in consequence of his surname being the same as that of the plaintiff firm. *Brinsmead* v. *Brinsmead (No. 1)*, 30 R. P. C. 137; 57 S. J. 322; 29 T. L. R. 237—Warrington, J. Affirmed, 30 R. P. C. 493; 57 S. J. 716; 29 T. L. R. 706—C.A.

—— **Taxicabs.**]—Injunction granted restraining the defendant from so getting up his taxicabs as to pass them off as and for the taxicabs of the plaintiffs. *Du Cros* v. *Gold*, 30 R. P. C. 117; 29 T. L. R. 163—Swinfen Eady, J.

—— **Fireworks.**]—*See Brock & Co.* v. *Pain*, *post*, col. 1605.

—— **Revoked Patent.**]—The appellants had for many years used a distinctive device in connection with their goods, which had acquired a high reputation among their customers and had become associated with the goods. The appellants' predecessors had taken out a patent for this device, which was subsequently revoked:—*Held*, that the appellants were entitled to an injunction to restrain the respondents from selling goods with a device which was not sufficiently distinguished from that of the appellants and was likely to deceive, and that this right was not taken away by the revocation of the patent. *Edge* v. *Niccolls*, 80 L. J. Ch. 744; [1911] A.C. 693; 105 L. T. 459; 28 R. P. C. 582; 55 S. J. 737; 27 T. L. R. 555—H.L. (E.)

——**Exclusive Agent for Sale—Right to Maintain Action—Association of Goods with Agent—Distinctive Peculiarity in Get-up.**]—Where an exclusive agent for sale is injured in his business by goods being passed off as the goods for which he has the exclusive agency, he cannot maintain a passing-off action in the absence of evidence that the goods sold by him have in some way become associated with him in the market, as, for instance, by reason of some distinctive peculiarity in the get-up. *Dental Manufacturing Co.* v. *De Trey & Co.*, 81 L. J. K.B. 1162; [1912] 3 K.B. 76; 107 L. T. 111; 29 R. P. C. 617; 28 T. L. R. 498—C.A.

Semble, that, if he can produce such evidence, he may maintain an action. *Ib.*

B. TRADE MARK.

1. Action to Restrain Infringement.

See also Vol. XIV. 118, 2079.

Validity of Trade Mark—Passing off Goods.]—The plaintiffs, a firm of pyrotechnists, and their predecessors in business had for nearly fifty years—namely, since 1866 down to 1910—been making and selling fireworks under the description "Crystal Palace Fireworks," they having throughout that period the exclusive right of giving firework displays at the Crystal Palace. In 1891 they had registered as an old trade mark in connection with fireworks the words "Crystal Palace." They had also registered two other trade marks consisting of representations of the Crystal Palace. They used the term for all their goods of the firework class. It was not limited to the displays that they gave at the Crystal Palace. Their goods were asked for as "Crystal Palace Fireworks," and were supplied under that name. The plaintiffs having ceased to have the contract, the defendants, another firm of pyrotechnists, obtained in the year 1910 the right to give firework displays at the Crystal Palace, and thereupon they sought to describe their fireworks as "Crystal Palace Fireworks" with the addition of their own name:—*Held*, that the plaintiffs having for nearly fifty years applied the words "Crystal Palace" to their goods, it was irrelevant to consider whether they had still got the right to give displays of fireworks at the Crystal Palace; that the use of those words did not imply that they had; and that therefore they were entitled to a perpetual injunction to restrain the defendants. *Linoleum Manufacturing Co.* v. *Nairn* (47 L. J. Ch. 430; 7 Ch. D. 834) distinguished. *Brock & Co.* v. *Pain*, 105 L. T. 976; 28 R. P. C. 697—C.A.

2. Unauthorised Use of Royal Arms.

The object of section 68 of the Trade Marks Act, 1905, prohibiting the unauthorised user of the Royal Arms in connection with any trade or business in such manner as to be calculated to lead to the belief that the user is authorised, is to prevent the spreading of such a belief amongst the public generally, and not only amongst present or prospective customers, or any other particular persons. *Royal Warrant-Holders' Association* v. *Deane & Beal*, 81 L. J. Ch. 67; [1912] 1 Ch. 10; 105 L. T. 623; 28 R. P. C. 721; 56 S. J. 12; 28 T. L. R. 6—Warrington, J.

The defendants carried on business as engineers, manufacturers, and contractors in premises on the front of which there was, and had been for many years before the defendants acquired the business, a representation of the Royal Arms, with crest, supporters, and mottoes. No such words as "By Appointment," the use of which was imposed as a condition by some of the Departments granting authority to use the Royal Arms, appeared in connection with the representation; and the defendants, who had no authority to use the arms, and did not supply goods to any member of the Royal Family, did not use them on their stationery, or otherwise except on their premises:—*Held*, that the defendants were using the Royal Arms in connection with their business, and in such manner as to be calculated to lead to the belief that they had authority to use them; and that they must be restrained by injunction under section 68 from using them on their premises or otherwise. *Ib.*

The defendant had for a number of years carried on business as a victualler in Dublin and used in his advertisements and billheads the Royal Arms, with the words "By Appointment." He had no authority to use the Royal Arms. His predecessor in the business, from whom he had purchased it, had been granted in 1839 by the then Lord Lieutenant of Ireland a warrant to use the Vice-regal Arms, and this warrant had been handed to and was in the possession of the defendant. He had supplied meat to the late King Edward when he visited Ireland. The defendant had used the Royal Arms in connection with his business for a number of years without interference, and had acted under the *bona fide* belief that he was entitled to use them. He refused to discontinue such user although called upon by the plaintiffs before action to do so:—*Held*, in an action by the plaintiffs, an incorporated association authorised to use the Royal Arms and authorised by the Lord Chamberlain to bring the action, that the defendant was using the Royal Arms without the requisite authority, and that the plaintiffs were entitled to an injunction restraining such user. *Royal Warrant Holders' Association* v. *Sullivan*, [1914] 1 Ir. R. 236—Barton, J.

Evidence — Asking Witness Effect on His Mind of Display of Arms—Admissibility.]—The question, put to a witness who had frequently passed the defendants' premises, what was the conclusion in his mind arising from the exhibition of the arms, *held* admissible, on the analogy of the putting to a witness in a passing-off case of the question whether he was in fact deceived by the make-up of the defendants' goods. Observations of Farwell, J., in *Bourne* v. *Swan & Edgar, Lim.; Bourne's Trade Mark, In re* (72 L. J. Ch. 168; [1903] 1 Ch. 211), applied. *Royal Warrant Holders' Association* v. *Deane & Beal*, *supra*.

3. Registration.

a. What may be Registered.

i. *Generally.*

See also Vol. XIV. 146, 2083.

Essentials of Trade Mark—Word in Common Use — Word "Standard."]—The Canadian Trade Mark and Design Act, 1879, provides that the registration of a trade mark may be refused "if the so-called trade mark does not contain the essentials necessary to constitute a trade mark, properly speaking"; but it does not define the essentials of a trade mark:—*Held*, that the word "Standard" being a common English word, used to convey the notion that the goods to which it is applied are of high class or superior quality, cannot be properly registered as a trade mark. *Standard Ideal Co.* v. *Standard Sanitary Manufacturing*

Co., 80 L. J. P.C. 87; [1911] A.C. 78; 103 L. T. 440; 27 R. P. C. 789; 27 T. L. R. 63—P.C.

"Health"—Article of Food.]—The word "Health" cannot be registered as a trade mark as applicable to any article of food. *Thorne* v. *Sandow*, 106 L. T. 926; 29 R. P. C. 440; 28 T. L. R. 416—Neville, J.

Geographical Name — Name of Foreign Capital in Foreign Language—Word become Distinctive of Goods—Assignment of Owner of Business in Certain Countries. — Geographical names are not absolutely excluded, like laudatory epithets, from registration as trade marks under the Trade Marks Act, 1905. The word "Berna" had become distinctive for the goods of a British company which manufactured commercial motor vehicles. The business had originated in Switzerland, but it had been acquired by the company in 1908. In 1912, however, the company sold their business in foreign countries to a Swiss company, and in 1913 they sold their business in the United Kingdom, with the benefit of all trade names and trade marks, to another company, retaining their business in the British colonies and dependencies. "Berna" is the Italian and Spanish form of "Berne": —*Held*, that "Berna" was not absolutely prohibited from registration in connection with motor cars, and ought to be admitted to registration as being, on the evidence, properly distinctive of the company's goods. *Held*, also, that the word would not be misleading or deceptive as implying that the goods were made in Switzerland; and that it was no objection to its registration that the company had assigned to others their business in certain parts of the world, such assignments being recognised by section 22 of the Act. *Berna Commercial Motors, Lim., In re*, 84 L. J. Ch. 416; [1915] 1 Ch. 414; 112 L. T. 980; 32 R. P. C. 113; 59 S. J. 316—Sargant, J.

"Classic" — Laudatory Epithet — Word Adapted to Distinguish—Secondary Meaning —Infringement and Passing off.]—The plaintiffs were the publishers of Christmas and other greeting cards and stationery, and had registered the word "classic" as a trade mark for their goods. They brought an action against the defendants for infringement of the trade mark and passing off, and the defendants moved to expunge the trade mark from the register, and denied that their use of "classic" was calculated to pass off their cards as the plaintiffs' cards:—*Held*, that the word "classic" was a laudatory epithet, and not a word "having no direct reference to the character and quality of the goods" so as to be registrable under section 9, sub-section 4 of the Trade Marks Act, 1905; and further, that it was incapable of being treated as "adapted to distinguish" so as to be registrable under section 9, sub-section 5 of the Act, and that, even if it had been capable of becoming distinctive, it had not in fact become distinctive of the plaintiffs' goods by user. The claim for infringement therefore failed, and the word must be expunged from the Register of Trade Marks. *Held* also, that there was nothing in the get-up of the defendants' boxes of cards apart from the use of the word "classic" to support the plaintiffs' claim for passing off, and that in view of the finding that the word was not in fact distinctive of the plaintiffs' goods the claim in respect of passing off must also be dismissed. *Sharpe, Lim.* v. *Solomon, Lim.*; *Sharpe, Lim.'s Trade Mark, In re*, 84 L. J. Ch. 290; 112 L. T. 435; 32 R. P. C. 15; 31 T. L. R. 105—C.A.

Word Descriptive of Form and Character of Goods—"Ribbon"—Dentifrice.]—The word "Ribbon" held not to be a registrable trade mark for a dentifrice, inasmuch as the word as used by the applicants was descriptive of the form and character of the dentifrice in respect that it described the manner and form in which the dentifrice came out of the tube in which it was sold. *Colgate & Co.'s Trade Mark, In re*, 30 R. P. C. 262; 29 T. L. R. 326—Parker, J.

ii. *Fancy Words—Words Not in Common Use.*

See also Vol. XIV. 153, 2087.

Invented Word—"Parlograph"—Whether Indicative of Origin or Merely Denoting Particular Article.]—A German company applied for registration as a trade mark of the word "Parlograph" in respect of sound-recording and reproducing machines and parts and accessories thereof included in class 8. A pamphlet issued by the London agents of the German company was in evidence in which a sound-recording machine was described under the name "Parlograph." The Registrar of Trade Marks refused the application. On appeal to the Court,—*Held*, overruling the Registrar, that the word "Parlograph" was an invented word within the meaning of section 9, sub-section 3 of the Trade Marks Act, 1905, and, further, that it did not merely denote a particular article, but referred to the make or quality of the goods produced by the applicant company, and was a proper trade mark within the definition of a trade mark in section 3 of the Trade Marks Act, 1905. *Gramophone Co.'s Application, In re* (79 L. J. Ch. 658; [1910] 2 Ch. 423), distinguished. *Carl Lindstroem Aktiengesellschaft's Application, In re*, 83 L. J. Ch. 847; [1914] 2 Ch. 103; 111 L. T. 246; 31 R. P. C. 261; 58 S. J. 580; 30 T. L. R. 512—Sargant, J.

Invented Word—Prior Use of Word.]—An "invented word" need not be absolutely new in order to be registrable as a trade mark under the Trade Marks Act, 1905, s. 9. *Société le Ferment's Application, In re*, 81 L. J. Ch. 724; 107 L. T. 515; 29 R. P. C. 497; 28 T. L. R. 490—C.A.

The word "Lactobacilline" had been used by the applicants to describe their preparation of a lactic ferment for some years before they applied to register it as a trade mark. The Court, having come to the conclusion on the evidence that "Lactobacilline" was an invented word, allowed the applicants to register it notwithstanding their prior user of it. *Linotype Co.'s Trade Mark, In re* (69 L. J. Ch. 625; [1900] 2 Ch. 238), followed. *Ib.*

iii. *Distinctive Device, Word, Mark, &c.*

See also Vol. XIV. 158, 2087.

Surname—"Distinctive mark"—"Adapted to distinguish."] — The applicants applied to register the word "Boardman's" as a trade mark in respect of manufactured tobacco. A predecessor in trade of the applicants had from 1888 supplied a smoking mixture to a Mr. Boardman in Manchester, and from that time tobacco and cigarettes supplied by the applicants and their predecessors had been known as "Boardman's" in a limited area:—*Held*, that the evidence was insufficient to shew that the use of the word "Boardman's" had rendered it "distinctive" of the tobacco of the applicants so as to justify the Court in holding that it was "adapted to distinguish" their goods within section 9, sub-section 5 of the Trade Marks Act, 1905, and was therefore registrable as a "distinctive mark." *Lea's Trade Mark, In re*, 82 L. J. Ch. 241; [1913] 1 Ch. 446; 108 L. T. 353; 30 R. P. C. 216; 57 S. J. 373; 29 T. L. R. 334—C.A.

Per Farwell, L.J.: The name of a company, individual, or firm or a geographical name is not *prima facie*, and without more, distinctive. *Per* Hamilton, L.J.: The surname of a proprietor is adapted to distinguish his goods from those of persons who do not use or bear that name, but only to confuse them with the goods of other persons who bear that name. *Ib.*

Quære, whether if the Court decided that the mark was registrable and made an order to proceed with registration the Registrar and law officers could further contest the claim to register, if after advertisement no notice of opposition was given by any other person. *Ib.*

Decision of Joyce, J. (81 L. J. Ch. 489; [1912] 2 Ch. 32), affirmed. *Ib.*

On an application to register as a trade mark the word "Benz" written in a fanciful manner and encircled by a device partaking of the nature of a wreath,—*Held*, that the mark was not registrable under section 9, sub-section 1 of the Trade Marks Act, 1905, as "the name of a company, individual, or firm represented in a special or particular manner," or in the absence of an order of the Board of Trade or the Court as a distinctive mark under section 9, sub-section 5. *Benz & Co.'s Application, In re*, 108 L. T. 589; 30 R. P. C. 177; 57 S. J. 301; 29 T. L. R. 295—C.A.

—— **"Adapted to distinguish."**]—The applicants applied under section 9, sub-section 5 of the Trade Marks Act, 1905, to register the word "Pope" as a trade mark in respect of incandescent electric lamps. Since the inception of the business in this country in 1904, care had been taken to identify the word "Pope" with the electric globes or lamps manufactured and sold by the predecessors in business of the applicants, and afterwards by the applicants. Pope was the name of one of the directors of the applicants, who had been one of the founders of the original business. It was established that in the trade a lamp bearing the word "Pope" had come to mean a lamp manufactured by the applicants. There was no evidence to shew that among the public the name had obtained such a secondary meaning:—*Held*, first, that the name in its nature was not "adapted to distinguish" the goods of the applicants from those of other persons; and secondly, even supposing the word were adapted to distinguish, and that the evidence established that it had by user become distinctive, the Court in its discretion ought not to grant such an application as this, having regard to the intention of the Legislature with reference to the use of surnames as trade marks, as expressed in sub-sections 1 and 4 of section 9 of the Trade Marks Act, 1905. *Crosfield & Sons' Application, In re* (79 L. J. Ch. 211; [1910] 1 Ch. 130), applied. *Pope's Electric Lamp Co.'s Application, In re*, 80 L. J. Ch. 682; [1911] 2 Ch. 382; 105 L. T. 580; 28 R. P. C. 629; 27 T. L. R. 567—Warrington, J.

—— **Application to Register Surname—Order of Board of Trade Directing Registrar to Proceed—Effect of Order—Power of Court to Entertain Subsequent Application to Remove.**] —An order made under section 9, paragraph 5 of the Trade Marks Act, 1905, directing the Registrar of Trade Marks to proceed with the registration as a trade mark of a "name, signature, or word or words, other than" those falling within any of the preceding paragraphs, does not preclude the Court from entertaining, after the mark has been registered, an application under section 35 for its removal on any ground which would have been open to the applicant apart from that order. *Teofani & Co.'s Trade Mark, In re*, 82 L. J. Ch. 490; [1913] 2 Ch. 545; 109 L. T. 114; 30 R. P. C. 446; 57 S. J. 686; 29 T. L. R. 591, 674—C.A.

Decision of Warrington, J., on this point (82 L. J. Ch. 145; [1913] 1 Ch. 191) reversed. *Ib.*

—— **"Word."**] — A surname is a "word" within the meaning of section 9, paragraph 5 of the Trade Marks Act, 1905, and, subject to the conditions there set out, it is registrable as a trade mark if proved to be capable of distinguishing the goods of the person seeking to register it from those of other persons. The decision on this point of Warrington, J., in *Pope's Electric Lamp Co.'s Application, In re* (80 L. J. Ch. 682; [1911] 2 Ch. 382), and of Joyce, J., in *Lea, Lim., In re* (81 L. J. Ch. 489; [1912] 2 Ch. 32), reversed. *Ib.*

A surname ought only to be registered as a trade mark in exceptional cases, of which the word "Teofani" is an example. *Ib.*

Where the Board of Trade has determined that a particular name is not outside the category of registrable trade marks, and has directed the Registrar to proceed with the application for its registration and determine whether the name is a distinctive mark, the Court is precluded from afterwards saying that the name is outside the category of registrable trade marks. *Trade Mark No. 312065, In re*, 29 T. L. R. 117—Warrington, J.

Cadbury Bros., Lim., applied for an order of the Board of Trade to register the name of "Cadbury" under section 9, sub-section 5

of the Trade Marks Act, 1905, as a trade mark in respect of certain confectionery goods in class 42. In 1886 the firm had registered the name "Cadbury" as an old mark under section 64, sub-section 3 of the Patents, Designs, and Trade Marks Act, 1883, in respect of chocolate and cocoa. There was considerable evidence that the word "Cadbury" had become distinctive of the goods of the applicants:—*Held*, that the Registrar ought to proceed to registration. *Cadbury's Application, In re* (*No. 1*), 84 L. J. Ch. 242; [1915] 1 Ch. 331; 112 L. T. 235; 32 R. P. C. 9; 59 S. J. 161—Neville, J.

Condition of Disclaimer of Right to Exclusive Use of Part of Mark.]—Section 15 of the Trade Marks Act, 1905, represents a new departure in regard to the imposition, as a condition of the registration of a trade mark, of a disclaimer by the applicant of any part of the mark to the exclusive use of which he is not entitled. The section throws the onus of justifying a disclaimer on those who seek to have it inserted; and disclaimers, unnecessary from a legal point of view, should not be placed on the register, since they induce a disregard by the public of common law rights which may have been acquired to the use of the part disclaimed. *Baker & Co.'s Trade Mark, In re* (77 L. J. Ch. 473; [1908] 2 Ch. 86), followed. *Cadbury's Application, In re* (*No. 2*), 84 L. J. Ch. 827; [1915] 2 Ch. 307; 32 R. P. C. 456; 59 S. J. 598; 31 T. L. R. 523—Sargant, J.

Name of Company in Ordinary Handwriting —Representation in a "special or particular manner."]—The name of a company written in ordinary handwriting is not registrable as a trade mark, as it is not "represented in a special or particular manner" within the meaning of section 9, sub-section 1 of the Trade Marks Act, 1905. *Registrar of Trade Marks* v. *Du Cros, Lim.* (83 L. J. Ch. 1; [1913] A.C. 624), applied. *British Milk Products Co.'s Application, In re*, 84 L. J. Ch. 819; [1915] 2 Ch. 202; 32 R. P. C. 453—Sargant, J.

"Distinctive" Mark—Duty of Registrar—Initial Letters—Discretion.]—The proper time for considering whether a mark is registrable as a trade mark, or whether, having regard to the interests of the public, it ought to be accepted or rejected, is when the application for registration first comes before the Registrar under section 12 of the Trade Marks Act, 1905. The Registrar then has a discretion, to be exercised in a judicial spirit, as to whether the mark is "distinctive" within the meaning of section 9, sub-section 5 of the Act. *Registrar of Trade Marks* v. *Du Cros*, 83 L. J. Ch. 1; [1913] A.C. 624; 109 L. T. 687; 30 R. P. C. 660; 57 S. J. 728; 29 T. L. R. 772—H.L. (E.)

A mark consisting simply of the initials of the applicant, whether in block type or in script, should not generally be registered, not being sufficiently "distinctive." In order to determine whether a mark is "distinctive" it must be considered quite apart from the effects of registration. *Ib.*

Judgment of the Court of Appeal (81 L. J. Ch. 201; [1912] 1 Ch. 644) reversed in part and affirmed in part. *Ib.*

User—"Mark used or proposed to be used."]—Where applicants for registration of a trade mark were under a contractual obligation not until the year 1926 to sell their goods to any one in the United Kingdom save to the respondents who, under their own trade mark, traded in the United Kingdom in the goods supplied to them in Switzerland by the applicants,—*Held*, that in the circumstances the mark proposed to be registered was not "a mark used or proposed to be used upon or in connexion with goods . . ." within the meaning of section 3 of the Trade Marks Act, 1905, and that the application must be refused. *Neuchatel Asphalte Co.'s Application, In re*, 82 L. J. Ch. 414; [1913] 2 Ch. 291; 108 L. T. 966; 30 R. P. C. 349; 57 S. J. 611; 29 T. L. R. 505—Sargant, J.

Batt & Co.'s Trade Marks, In re (67 L. J. Ch. 576; [1898] 2 Ch. 432; in H.L., *sub nom. Batt & Co.* v. *Dunnett*, 68 L. J. Ch. 557; [1899] A.C. 428), followed. *Ib.*

The words "used or proposed to be used" in section 3 of the Trade Marks Act, 1905, mean "used or proposed to be used in the United Kingdom." *Ib.*

"Classic" — Laudatory Epithet — Word Adapted to Distinguish — Secondary Meaning — Infringement and Passing off.] — The plaintiffs were the publishers of Christmas and other greeting cards and stationery, and had registered the word "classic" as a trade mark for their goods. They brought an action against the defendants for infringement of the trade mark and passing off, and the defendants moved to expunge the trade mark from the register, and denied that their use of "classic" was calculated to pass off their cards as the plaintiffs' cards:—*Held*, that the word "classic" was a laudatory epithet, and not a word "having no direct reference to the character and quality of the goods" so as to be registrable under section 9, sub-section 4 of the Trade Marks Act, 1905; and further, that it was incapable of being treated as "adapted to distinguish" so as to be registrable under section 9, sub-section 5 of the Act, and that, even if it had been capable of becoming distinctive, it had not in fact become distinctive of the plaintiffs' goods by user. The claim for infringement therefore failed, and the word must be expunged from the Register of Trade Marks. *Held* also, that there was nothing in the get-up of the defendants' boxes of cards apart from the use of the word "classic" to support the plaintiffs' claim for passing off, and that in view of the finding that the word was not in fact distinctive of the plaintiffs' goods the claim in respect of passing off must also be dismissed. *Sharpe, Lim.* v. *Solomon, Lim.: Sharpe, Lim.'s Trade Mark, In re*, 84 L. J. Ch. 290; 112 L. T. 435; 32 R. P. C. 15; 31 T. L. R. 105—C.A.

Three Lines of Colour—Indefinite Length—Conditions Imposed upon User.]—A firm of

fire-hose manufacturers applied to the Registrar of Trade Marks for the registration in respect of canvas woven fire hose of a trade mark consisting of three lines of colour—two blue lines with a red line between them of about one-half inch in width. It was proposed that this mark should be woven into the hose and extend throughout its whole length. The Registrar refused to proceed with the registration on the grounds, first, that a coloured line woven into hose could not be a registrable trade mark; and secondly, that the mark was not distinctive. The applicants appealed to the Court :—*Held*, that the mark as shewn upon the application form —namely, three lines of colour—would not be adapted to distinguish the goods of the applicants from those of other persons. The applicants further proposed that the mark should be registered with the condition "that no protection shall be given by this registration to the mark except when used throughout the whole length of the fabric and substantially of the width shewn on the application form ": —*Held*, that, having regard to sections 12 and 39 of the Trade Marks Act, 1905, it was competent for the Registrar to accept and for the Court to direct him to accept an application subject to a condition which modified the exclusive right given to the proprietor of a trade mark by section 39, and, the applicants submitting to have the condition imposed upon them if the application was ultimately accepted, the Registrar was directed to proceed with the application. *Reddaway & Co.'s Application, In re*, 83 L. J. Ch. 705; [1914] 1 Ch. 856; 31 R. P. C. 147; 58 S. J. 415—Warrington, J.

Device of a Cat for Gin — Common to the Trade—Similarity of Marks—Not "calculated to deceive" — Evidence — Statutory Declarations.] — The applicants, spirit merchants, applied to register as a trade mark for gin a label bearing the device of a cat in boots sitting on a snowy ground, with the words "Cordial Old Tom Gin—Snowdrop Trade Mark." The application was opposed by another firm of spirit merchants, who had a registered trade mark for gin consisting of the device of a cat on a barrel, with the words "Old Tom" on the barrel, and underneath the words "Cordial Old Tom" :—*Held*, that the device of a cat was common to the trade, and that no exclusive right to it could be maintained; that the applicants' particular device of a cat was not "calculated to deceive"; and that their mark ought therefore to be registered. Decision of Neville, J. (31 R. P. C. 481), reversed. Comments on evidence by statutory declaration without cross-examination. *Bagots Hutton & Co.'s Trade Mark, In re*, 84 L. J. Ch. 918; 113 L. T. 67; 32 R. P. C. 333; 31 T. L. R. 373—C.A.

iv. *Similarity—Calculated to Deceive.*

See also Vol. XIV. 165, 2093.

Spanish Brand Name for Cigars Made in Holland "calculated to deceive."]—A brand name does not necessarily by itself indicate the country of origin of the goods which it denotes. Each case must be judged by its own special circumstances. *Van der Leeuw's Trade Mark, In re*, 81 L. J. Ch. 100; [1912] 1 Ch. 40; 105 L. T. 626; 28 R. P. C. 708; 56 S. J. 53; 28 T. L. R. 35—Parker, J.

Where there was nothing else in the label, nor anything in the get-up of the goods, which would suggest that the goods came from a Spanish-speaking country,—*Held*, that a Spanish brand name for cigars made in Holland was not calculated to deceive within the meaning of section 11 of the Trade Marks Act, 1905. *McGlennon's Application, In re* (25 R. P. C. 797), distinguished. *Ib.*

Similarity with Trade Mark already Registered.]—When an application to register a trade mark is opposed on the ground that it might lead to confusion with a trade mark already registered, the question is not whether there is a similarity between the two marks when placed side by side, but whether, when a person sees one mark apart from the other, he might take it for that other. *Sandow's Application, In re*, 31 R. P. C. 196; 30 T. L. R. 394—Sargant, J.

"Swankie"—Objection to Registration—Alleged Confusion with Word "Swan."]—On an objection to the registration of the word "swankie" as a trade mark for a detergent in class 47, the objectors being owners of trade marks in classes 47 and 48, consisting of the device of a swan in combination with the word "swan" :—*Held*, that the objection was not maintainable, as there was no serious danger of any confusion between the two words. *Crook's Trade Mark, In re*, 110 L. T. 474; 31 R. P. C. 79; 58 S. J. 250; 30 T. L. R. 245—Joyce, J.

"Schicht"—"Sunlight."]—The applicants, Austrian soap manufacturers, applied to register the German word "Schicht" as a trade mark. The owners of certain trade marks, which consisted of the word "Sunlight," used in connection with soap, opposed the application :—*Held*, that the application must be refused as the word "Schicht," stamped on soap, would be calculated to deceive persons into taking soap so labelled as and for Sunlight soap. *Schicht's Trade Mark, In re*, 29 R. P. C. 483; 28 T. L. R. 375—Warrington, J.

Spanish Brand Name on Cigars — Cigars Made in Holland—"Calculated to deceive."]—It cannot be laid down that the mere fact that a Spanish brand name is used on cigars, which are not made in a Spanish-speaking country, is "calculated to deceive" within the meaning of section 11 of the Trade Marks Act, 1905. *Van Der Leeuw's Trade Mark, In re*, 105 L. T. 626; 28 R. P. C. 708; 56 S. J. 53; 28 T. L. R. 35—Parker, J.

b. Practice.

i. *Generally.*

See also Vol. XIV. 177, 2095.

Statutory Declarations Filed Pursuant to the Trade-Marks Act—Affidavit.]—Statutory

declarations filed for use before the Registrar may in certain circumstances be used on a motion in the Chancery Division made under rule 39 of the Trade Mark Rules, 1906, in lieu of the usual affidavit evidence for the purpose of saving expense. *Cadbury, In re* (*No.* 1), 31 R. P. C. 500; 59 S. J. 58—Neville, J.

Appeal to Court — Service on Parties not Before the Comptroller.]—On an appeal to the Court from a refusal by the Comptroller to proceed with the registration of a trade mark the appellants may serve notice of the appeal on parties who were not before the Comptroller, but whom they know to be likely opponents, and, if such opponents appear, the Court may determine the appeal on reasons put forward by them, even although those reasons were not put before the Comptroller and he gave his decision on different grounds. *Neuchatel Asphalte Co.'s Application*, 82 L. J. Ch. 414; [1913] 2 Ch. 291; 108 L. T. 966; 30 R. P. C. 349; 57 S. J. 611; 29 T. L. R 505—Sargant, J.

ii. *Rectification of Register.*

See also Vol. XIV. 181, 2096.

Registration for Corsets—Subsequent Registration for Bandeaux—Removal of Subsequent Registration.]—The applicants registered the word "Zarna" in class 13 for metal used in corsets. The respondents subsequently, without any knowledge of the applicants' trade mark, registered the same word in class 30 for bandeaux without the knowledge of the applicants. The applicants moved to have the respondent's trade mark expunged:—*Held*, that the Court was not bound by the classification adopted in the registry, that the respondent's goods were of the same description as those of the applicants, both being articles of clothing, that the respondent's trade mark was calculated to deceive, and that it must be removed from the register. *Shreeve's Trade Mark, In re*, 31 R. P. C. 24; 30 T. L. R. 164—Eve, J.

Goodwill—Business Suspended—Lease and Trade Effects Sold—Trade Mark Abandoned.]—In 1893 E. P., who had commenced to manufacture preserves at premises at S. Road, Bermondsey, adopted for his trade name the invented style of Sidney Ord & Co. He registered in 1894, under the Trade Marks Act, 1888, a trade mark in which his trade name was a prominent feature, the essential particular of the mark being the written signature and the exclusive use of added matter except as consisting in the name being disclaimed. In 1908 J. M. was, under section 116 of the Lunacy Act, 1890, appointed, and continued under divers orders, receiver of the estate of E. P. The business, including the goodwill, was offered for sale in 1909, but was not then sold. E. P.'s family having objected to the sale of the goodwill, the business was closed, the plant, trade effects, and lease being sold in April, 1910. A circular was sent out stating that the business was being discontinued and the account books were burnt. The defendants sold marmalade which they stated was prepared by the manager of the late firm of Sidney Ord & Co. and under labels in which that name was very prominent. The action to restrain passing off by the defendants and their motion to rectify the register of trade marks by removing E. P.'s trade mark coming on for hearing together,—*Held*, assuming the plaintiff's right in the label and trade mark were subsisting, the defendants would have infringed the plaintiff's rights; that the plaintiff having ceased manufacturing marmalade for three years, no right of property existed in him which enabled him to restrain the defendants from passing off marmalade under labels or marks containing his assumed trade name. The right to use the trade mark came to an end when the plaintiff's business was discontinued, and it was not competent even if desired to keep the goodwill alive. The trade mark as a derelict trade mark not attached to the goods of the trader who registered it, and without any goodwill to support it, was a danger to the trading community which any trader who desired to adopt the name was as "an aggrieved person" under sections 22 and 35 of the Trade Marks Act, 1905, entitled to have removed from the register. *Pink* v. *Sharwood* (*No.* 2), 109 L. T. 594; 30 R. P. C. 725—Eve, J.

"Wincarnis" — "Carvino."] — The plaintiffs were the manufacturers of a medicated wine made from extract of meat and malt wine, which they sold under the name of "Wincarnis," which name was the plaintiffs' registered trade mark. Subsequently, the defendants, who were the manufacturers of another medicated wine made from wine and extract of meat, registered as their trade mark the name "Carvino." On an application by the plaintiffs to have the name "Carvino" removed from the register,—*Held*, refusing the motion, that the word "Carvino" alone, and without reference to get-up, was not calculated to deceive. *Coleman* v. *Smith*, 28 R. P. C. 645; 55 S. J. 649; 27 T. L. R. 533—Swinfen Eady, J. Varied, 81 L. J. Ch. 16; [1911] 2 Ch. 572; 28 T. L. R. 65—C.A.

Bona Fide User.]—Section 37 of the Trade Marks Act, 1905, only requires the *bona fide* user of the trade mark—namely, the registered mark—in connection with the goods for which it is registered; it does not in terms require the mark to be "used as a trade mark," and if the registered mark is *bona fide* impressed upon the goods there is a *bona fide* user of the mark in connection with goods within the meaning of the section although the house mark or other matter is added. *Andrew* v. *Kuehnrich*, 30 R. P. C. 93; 29 T. L. R. 181—Swinfen Eady, J. Reversed on the evidence, 30 R. P. C. 677; 29 T. L. R. 771—C.A.

The Court, notwithstanding the absence of the respondent, whom the appellant had been unable to serve with notice of the application, made an order under section 37 of the Trade Marks Act, 1905, removing a trade mark from the register on the ground that there had been no *bona fide* user thereof during the five years immediately preceding the application.

Smollen's Trade Mark, In re, 29 R. P. C. 158; 56 S. J. 240; 28 T. L. R. 196—Eve, J.

Terminations Alike — "Calculated to deceive"—Similarity in Sound of Words.]—The owners of trade marks "Zoegen" and "Ceregen," registered in 1908 and 1909 for medicinal foods for human use, moved to remove from the register the trade mark "Herogen," registered in April, 1912, in respect of a food in class 42, on the ground of similarity in sound of the respective words, the likeness of their terminations, and the liability to goods covered by the trade mark "Herogen" being passed off as their goods: —*Held*, that, the real question being as to whether the names were so alike phonetically as to be calculated to deceive, not whether a dishonest trader would so use the word as to bring about deception, the articles would be purchased in reliance upon the letters which preceded the common termination, and, these being sufficiently distinctive and the appellant's and respondents' goods appealing to different classes of customers, the application to expunge failed. *British Drug Houses' Trade Mark, In re*, 107 L. T. 756; 30 R. P. C. 73—Eve, J.

Infringement—Passing off.]—In 1850 the plaintiffs' predecessor began to sell a preparation which he called "Gripe Water," and in 1876 he registered a trade mark which contained those two words. The plaintiffs brought an action against the defendants, first, for infringement of the trade mark "Gripe Water"; and secondly, to restrain the sale of any goods except the plaintiffs' under that name, and the defendants moved to have the trade mark expunged from the register:—*Held*, that on the evidence the plaintiffs had failed to prove that the words "Gripe Water" now meant the plaintiffs' goods, and therefore they were not entitled to succeed in their claim for passing off, but that the defendants were not entitled to have the trade mark expunged from the register as at the time of registration it was in fact distinctive, and that the plaintiffs were entitled to an injunction to restrain infringement of the trade mark. *Woodward, Lim.* v. *Boulton Macro, Lim.; Woodward, Lim., In re*, 85 L. J. Ch. 27; 112 L. T. 1112; 32 R. P. C. 173; 31 T. L. R. 269—Eve, J.

Old Marks—Royal Device—Prince of Wales' Feathers—"Calculated to deceive"—"Person aggrieved."]—The respondents were the proprietors of three old marks in respect of tobacco, two of which were registered in 1876 and the third in 1891, which bore (*inter alia*) the device of the Prince of Wales' Feathers and the words "Prince of Wales' Smoking Mixture." At the date of registration of one of the marks its then owner did supply tobacco to Marlborough House, but since the accession of the present King no warrants had been granted by the Prince of Wales. All warrants granted by any prince determine on his death or accession. The Royal Warrant Holders' Association, a corporate body of persons holding Royal warrants, under authority to take proceedings, moved to expunge these marks from the register as being "calculated to deceive" by leading to the belief that the respondents held warrants from the Prince and supplied the smoking mixture to him:—*Held*, by Eve, J., that the applicants were not "persons aggrieved" within section 35 of the Trade Marks Act, 1905, and that the marks were not "calculated to deceive" within section 11 of the Act, and that if they were they were lawful marks when registered, and had been used continuously and honestly ever since registration and ought not to be removed from the register. *Held*, on appeal, without deciding whether or not the applicants were "persons aggrieved" within section 35 of the Act, that the marks were not "calculated to deceive" within section 11 of the Act. *Imperial Tobacco Co.'s Trade Marks, In re*, 84 L. J. Ch. 643; [1915] 2 Ch. 27; 112 L. T. 632; 32 R. P. C. 361; 59 S. J. 456; 31 T. L. R. 408—C.A.

Section 68 of the Act, which prohibits the use of devices calculated to lead to the belief that the person using them supplies goods to a member of the Royal Family, by expressly excepting trade marks then on the register containing such devices suggests that such marks may be good. *Ib.*

Decision of Eve, J. (31 T. L. R. 92), affirmed. *Ib.*

iii. *Opposition to Registration.*

See also Vol. XIV. 190, 2100.

Per Vaughan Williams, L.J.: Section 11 of the Trade Marks Act, 1905, is a general section, and enables any person who in fact has a trade mark in use, though not a registered one, to oppose registration of a trade mark which has a resemblance to his trade mark so great as to be calculated to deceive. *Andrew* v. *Kuehnrich*, 30 R. P. C. 677; 29 T. L. R. 771—C.A.

C. MERCHANDISE MARKS.

See also Vol. XIV. 202, 2102.

False Trade Description — Filling with Bass's Beer Bottles Embossed with Name of Another Brewery — Selling Beer as Bass's Beer.]—The appellant, who was a wine merchant, bottled Bass's beer into bottles embossed with the name of the F. Brewery Co., and sold the beer as Bass's beer, after affixing the ordinary Bass's labels to the bottles:—*Held*, that the appellant had under section 5, sub-section 1 (*c*) of the Merchandise Marks Act, 1887, applied a trade description which was a false trade description to the beer in the bottle, and had therefore committed an offence under the Merchandise Marks Act, 1887. *Stone* v. *Burn*, 80 L. J. K.B. 560; [1911] 1 K.B. 927; 103 L. T. 540; 74 J. P. 456; 27 T. L. R. 6—D.

—— **"British Tarragona Wine."**]—The respondents sold as "Fine British Tarragona Wine" a mixture of 85 per cent. of wine made in England and 15 per cent. of Mistella, a form of Tarragona wine made and used solely for the purpose of blending and not suitable for consumption by itself:—*Held*, a

false trade description within section 3, sub-section 1 of the Merchandise Marks Act, 1887. *Holmes* v. *Pipers, Lim.*, 83 L. J. K.B. 285; [1914] 1 K.B. 57; 109 L. T. 930; 78 J. P. 37; 12 L. G. R. 25; 23 Cox C.C. 689; 30 T. L. R. 28—D.

False Trade Description—False Name.]—In the prosecution of a trader charged with selling goods under a false trade description—namely, selling beer in bottles embossed with the name of another trader.—*Held*, that the use of a false name is not a species of the offence of using a false trade description, but is a separate offence; and that the complaint should have charged the accused with selling goods under a false name. *Held* also (Lord Skerrington *dissentiente*), that sub-sections (*b*) and (*c*) of section 3, sub-section 3 of the Merchandise Marks Act, 1887, are to be read disjunctively, the word "and" between them being equivalent to "or"; and, accordingly, that it is an offence to use a name which contravenes sub-section (*b*), although it does not also contravene sub-section (*c*). *Lipton* v. *Reg.* (32 L. R. Ir. 115) followed. *M'Callum* v. *Doughty*, [1915] S. C. (J.) 69—Ct. of Just.

"Norwegian Skipper Sardines"—"Trade description . . . lawfully and generally applied to goods."]—Section 18 of the Merchandise Marks Act, 1887, provides that "Where, at the passing of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufacture by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied: . . .":—*Held*, that, in order that a trade description may be generally applied to goods of a particular class or method of manufacture, it is not sufficient that the description should be applied to the goods by those who sell them; it is necessary that the description should be applied to the goods both by the sellers of the goods and the members of the public who purchase them, and that the members of the public should be aware of the meaning attaching to such trade description; and, further, that, in order that a trade description may be lawfully applied to goods, such user must be lawful in the widest sense of that word, and not merely that the user does not amount to an infringement of the criminal law. *Lemy* v. *Watson*, 84 L. J. K.B. 1999; [1915] 3 K.B. 731; 13 L. G. R. 1323; 32 R. P. C. 508; 31 T. L. R. 612—D.

The respondents sold Norwegian sprats or brisling in oil, packed in tins, under the name of "Norwegian Skipper Sardines," or "Skipper Sardines." The word "sardine" was introduced into this country from France to denote an immature pilchard processed in one of a variety of ways, usually in oil in tins. The sprat or brisling is a different fish from the pilchard, but such fish had been prepared in Norway and sold in England under the name of "Norwegian Sardines," and under no other name, some years previous to the passing of the Merchandise Marks Act, 1887. Those in the trade who dealt in them knew that the fish sold as Norwegian sardines were different from the French sardines, but the members of the public, who purchased the Norwegian sardines were not aware of that fact:—*Held*, that the respondents had applied a false trade description to the goods within the meaning of section 2 of the Merchandise Marks Act, 1887, and that they were not protected by section 18 of that Act, because they had not shewn that the term "Norwegian Skipper Sardines" was generally and lawfully applied in 1887 to Norwegian sprats or brisling packed in oil in tins. *Ib.*

D. DESIGNS.

See also Vol. XIV. 204, 2109.

Subject-matter—Validity—Drawing Shewing Principle of Construction.]—In an action for infringement brought by the proprietor of a design, registered under section 49 of the Patents and Designs Act, 1907, and consisting of a drawing of a cross-section of a vehicle wheel on the longitudinal central plane, shewing the hub and rim of the wheel of a motor car and the cross-sectional arrangement of three sets of spokes, the novelty claimed being in the disposition of a tyre rim in relation to the hub and in the cross-sectional arrangement of three sets of spokes, the infringement alleged was the application of the design, or of a fraudulent or obvious imitation thereof, to a motor-car wheel made and sold by the defendants. The Judge found the following facts: First, that the design was a conventional drawing, such as would be used by an engineer to indicate how the wheel was to be constructed *qua* the disposition of rim in relation to hub and *qua* the arrangement of the spokes, and did not purport to shew what would in fact be seen if the wheel were cut on the longitudinal central plane; secondly, that it would be easy for a competent mechanician to construct from the drawing a number of wheels whose configuration would have little in common, except the disposition of the rim in relation to the hub and the cross-sectional arrangement of the spokes; thirdly, that from every wheel so constructed a draughtsman with a competent knowledge of the conception of mechanical drawings, if asked to draw a cross-section on the longitudinal central plane shewing this disposition of rim in relation to hub and the cross-sectional arrangement of the spokes, would inevitably arrive at the plaintiff's drawing; and that in that sense it might be said that the design was visible to the eye after its application to vehicle wheels, though the eye would have to be an eye trained in mechanical matters; fourthly, that the drawing made on these lines from the defendants' alleged infringing wheel, if judged from appearance alone and without a view to the method of construction involved, shewed such substantial differences from the plaintiff's drawn design as to preclude it being an imitation of the plaintiff's design:—*Held*, upon these findings of fact, following *Moody* v. *Tree* (9 R. P. C. 333) and *Bayer's Design, In re* (24 R. P. C. 65; 25 R. P. C. 56), either that the registration was bad as an attempt to protect a mode of construction; or, in

the alternative, that there had been no infringement. *Pugh* v. *Riley Cycle Co.*, 81 L. J. Ch. 476; [1912] 1 Ch. 613; 106 L. T. 592; 29 R. P. C. 196; 28 T. L. R. 249—Parker, J.

Although a conception or suggestion as to a mode or principle of construction is not registrable, yet, as the mode or principle of construction of an article may affect its shape or configuration, the conception of such a mode or principle of construction may well lead to a conception as to the shape or configuration of the completed article, and a conception so arrived at may, if sufficiently definite, be registered under the Act. *Ib.*

Quære, whether the drawing is registrable where the conception thus arrived at is not a definite conception as to shape or configuration, but a conception only as to some general characteristic of shape or configuration necessitated by the mode or principle of construction, the definite shape or configuration being, consistently with such mode or principle, capable of variation within wide limits. *Ib.*

Alleged Infringement—Novelty and Originality.]—It is the duty of a Court of Justice to decide cases according to the truth and fact, and it is not bound to accept any fact as true merely because it is admitted between the parties to the action. Therefore where, in an action to restrain the infringement of a registered design, the defendant has admitted the novelty and originality of the plaintiff's design the Court is not precluded from enquiring whether the design is in fact novel and original, and, if it is of opinion that it is not so, giving judgment for the defendant on that ground. *Gramophone Co.* v. *Magazine Holder Co.*, 104 L. T. 259; 28 R. P. C. 221—H.L. (E.)

Per Earl of Halsbury: The principles by which the Court is guided in dealing with patent cases are not applicable to the cases of registered designs, and a design must be an exact reproduction of the registered design to come within the Act; a merely colourable alteration is sufficient to take it out of the Act. *Ib.*

Agreement to Advance Money to Meet Expenses Necessary to Prevent Infringement—Infringement Stopped—No Money Advanced—Failure of Consideration—Agreement Void.]—The plaintiff, while in the employ of the defendant company, registered a design for a patent wreath band, which design was subsequently infringed by another company. The plaintiff then entered into an agreement with his employers that, in consideration of their paying the necessary expenses to bring an action to stop this infringement, he should give them the sole right of sale, they paying him the same royalty as heretofore. No expenses were in fact incurred, but the plaintiff was subsequently discharged by the defendant company, and brought this action against them for an injunction to restrain them from continuing to use and sell his patent wreath band. The defendants pleaded the agreement:—*Held*, that as the defendants had not in fact been called upon to advance the money, the consideration for the agreement had wholly failed, and the agreement was accordingly void, and the plaintiff was entitled to the injunction asked for and to an enquiry as to damages. *Templeman* v. *Cocquerel*, 57 S. J. 405—Neville, J.

Infringement — Application to Take Place Abroad.]—It is an offence against section 60, sub-section 1 (*a*) of the Patents and Designs Act, 1907, to do anything in the United Kingdom with a view to enable a registered design to be applied for purposes of sale to any article in a class in which it is registered without the consent of the registered proprietor, although the intended application is to take place outside the United Kingdom. *Haddon & Co.* v. *Bannerman*, 81 L. J. Ch. 766; [1912] 2 Ch. 602; 107 L. T. 373; 29 R. P. C. 611; 56 S. J. 750—Warrington, J.

—— Judgment by Consent — Motion or Summons.]—In actions for the infringement of registered designs, or of patents, or of trade marks it is desirable that there should be some publicity given to the order of the Court. Accordingly, where defendants had consented to judgment in respect of an infringement of the plaintiffs' registered design:—*Held*, that the plaintiffs were entitled to the costs of moving for judgment in open Court, and not merely to such costs as would have been incurred had the application been made on summons in chambers. *Smith & Jones, Lim.* v. *Service, Reeve & Co.*, 83 L. J. Ch. 876; [1914] 2 Ch. 576; 111 L. T. 669; 31 R. P. C. 319; 58 S. J. 687; 30 T. L. R. 599—Sargant, J.

Gandy Belt Manufacturing Co. v. *Fleming, Birkby & Goodall, Lim.* (18 R. P. C. 276), and *Royal Warrant Holders' Association* v. *Kitson, Lim.* (26 R. P. C. 157), followed. *London Steam Dyeing Co.* v. *Digby* (57 L. J. Ch. 505; 36 W. R. 497) and *Allen* v. *Oakey* (62 L. T. 724) not followed. *Ib.*

TRADE UNION.

See also Vol. XIV. 207, 2110.

Objects of Union—Provision for Representation on Local Government Authorities—Ultra Vires—Exception of Boards of Guardians.]—Judgment in the form of that in *Osborne* v. *Amalgamated Society of Railway Servants* (78 L. J. Ch. 204; [1909] 1 Ch. 163; on app. 79 L. J. Ch. 87; [1910] A.C. 87), declaring illegal and restraining the inclusion in the objects of a trade union of provisions to secure Parliamentary representation extended to representation on municipal or other local government authorities, except boards of guardians. *Wilson* v. *Amalgamated Society of Engineers*, 80 L. J. Ch. 469; [1911] 2 Ch. 324; 104 L. T. 715; 55 S. J. 498; 27 T. L. R. 418—Parker, J.

Legality of Objects — Promotion of Parliamentary Representation—Unregistered Trade Union.]—The decision of the House of Lords

in *Amalgamated Society of Railway Servants* v. *Osborne* (79 L. J. Ch. 87; [1910] A.C. 87), to the effect that a rule which purports to confer on a trade union power to levy contributions from members for the purpose of promoting Parliamentary representation is *ultra vires* and illegal, applies equally whether the trade union is or is not registered under the Trade Union Acts, 1871 and 1876. *Wilson* v. *Scottish Typographical Association*. [1912] S. C. 534—Ct. of Sess.

Action for Enforcing Agreement to Provide Benefits — Action to Determine Validity of Proposed Alterations in Rules.]—An action at the instance of a member of an unregistered trade union for declarator that certain proposed alterations in the rules are *ultra vires*, and for interdict against misapplication of the funds of the union, is not a proceeding instituted with the object of directly enforcing an agreement to provide benefits to members in the sense of section 4, sub-section 3 (*a*) of the Trade Union Act, 1871. The Court has therefore jurisdiction to entertain such an action. *Ib.*

Alterations of Rules.]—Observations on the power of the members of a voluntary association to alter the constitution by a vote of the majority or by the votes of delegates. *Ib.*

Agreement to Provide Benefits — Enforcement—Provision of Sick Benefits to Dependant of Member.] — The rules of a trade union, which could be altered at the will of the general council, provided that, if a member became insane, his wife, family, or parent, if dependent upon him, should be eligible to receive sick benefit for one year. In an action at the instance of the wife of an insane member against the union for recovery of sick benefit, the defenders maintained, first, that, as the rules could be altered, the pursuer had no indefeasible *jus quæsitum tertio*, and so had no title to sue; and secondly, that, as this was an action to enforce an agreement to provide benefits to members, it could not be entertained by the Court :—*Held*, first, that, as the agreement embodied in the rules, though revocable, had not been revoked when the pursuer's claim arose, she had a good title to sue; and secondly, that, as the agreement was not one for the provision of benefits to a member, but to the dependant of a member, the jurisdiction of the Court was not excluded. *Love* v. *Amalgamated Society of Lithographic Printers*, [1912] S. C. 1078—Ct. of Sess.

Society Illegal at Common Law—Rules of Society — Benefit Funds of Society — Separability of Lawful from Unlawful Purposes.]—In an action by the widow of a member of the respondent society for sick and superannuation benefits to which her husband had become entitled,—*Held*, on various grounds, that the action was not maintainable—by the Lord Chancellor because it was an action, made unlawful by section 4 of the Trade Union Act, 1871, to enforce a contract for the benefit of members; by Lord Macnaghten, that some of the rules were unreasonable, oppressive, and destructive of individual liberty; by Lord Atkinson, that the action was a common law action, and that in such an action the society could not be sued in its registered name nor as represented by its trustees; and by Lord Shaw and Lord Robson, that the lawful and unlawful purposes of the society could not be separated from each other. *Russell* v. *Amalgamated Society of Carpenters and Joiners*, 81 L. J. K.B. 619; [1912] A.C. 421; 106 L. T. 433; 56 S. J. 342; 28 T. L. R. 276—H.L. (E.)

Decision of the Court of Appeal (79 L. J. K.B. 507; [1910] 1 K.B. 506) affirmed. *Ib.*

An action was brought by a member against the defendant trade union to recover an amount in name of sick benefit :—*Held*, that, apart from the provisions of the Trade Union Act, 1871, the trade union was an illegal association, as its rules were in restraint of trade, and that the action could not be maintained. *Thomas* v. *Portsmouth Ship Construction Association*, 28 T. L. R. 372—D.

Trade Dispute—Acts Done in Furtherance or Contemplation of.]—The plaintiff, who was a bandmaster, brought an action against the defendants, who were officials of a trade union, for inducing persons who had been engaged to perform at a concert to refuse to perform at the agreed rates. It was alleged that this was effected by threats of penalisation by the union and by the posting of pickets. The defendants relied on section 3 of the Trade Disputes Act, 1906, and the Judge told the jury that this defence was dishonest, and the jury found that the defendants' acts were not done in furtherance or contemplation of a trade dispute :—*Held*, on the facts, that the defendants' acts were done in contemplation or furtherance of a trade dispute, that the Judge's statement to the jury was irrelevant, and that the defendants were entitled to judgment. *Dallimore* v. *Williams*, 58 S. J. 470; 30 T. L. R. 432—C.A.

"Trade dispute."] — A "trade dispute" within the meaning of that expression in the Trade Disputes Act, 1906, is not confined to a dispute between an employer and his workmen or between the workmen themselves. A person may be entitled to the protection of the Trade Disputes Act, 1906, notwithstanding that the act done by him was not done entirely in furtherance of a trade dispute, or that in doing the act his mind was not altogether free from malice. *Ib.*

A dispute between an employer and other employers in the same line of business is not a "trade dispute" within the meaning of the Trade Disputes Act, 1906, and it does not become a trade dispute merely because the officials of a workmen's trade union choose to assist one side or the other. Therefore, where an employer refused to join an association of employers, which the officials of a workmen's trade union thought would be for the advantage of the workmen employed, and such officials thereupon induced his workmen, with whom he had no dispute whatever, to break their contracts and leave his employment, in order to force him to join the association,—*Held*, that the officials of the trade union were not protected by the provisions of the Trade Disputes Act, 1906, in an action for conspiracy. *Larkin* v. *Long*, 84 L. J.

P.C. 201; [1915] A.C. 814; 113 L. T. 337; 59 S. J. 455; 31 T. L. R. 405—H.L. (Ir.)

Decision of the Court of Appeal in Ireland ([1914] 2 Ir. R. 285) affirmed. *Ib.*

—— **Effect of Rules of Trade Union Containing Provision for Parliamentary Fund.**]—In an action by the plaintiffs for damages and for an injunction against the defendant trade union and the defendant T., who was an agent for the trade union, alleging that the defendants had wrongfully procured or induced the plaintiffs' employers to cease to employ them, the Judge dismissed the action on the ground that there was a trade dispute and that the defendant trade union was protected by section 4 of the Trade Disputes Act, 1906, and that as regards the defendant T. he was protected by section 3 of the Act. On appeal,—*Held*, that the Judge was right in dismissing the action. The fact that the rules of a trade union make provision for the formation of a Parliamentary fund in the manner held illegal in *Amalgamated Railway Servants' Society* v. *Osborne* (79 L. J. Ch. 87; [1910] A.C. 87) does not have the effect of taking the trade union out of the protection of the Trade Disputes Act, 1906. *Gaskell* v. *Lancashire and Cheshire Miners' Federation*, 56 S. J. 719; 28 T. L. R. 518—C.A.

—— **Registered Name—Right to be Sued in.**]—Section 4 of the Trade Disputes Act, 1906, does not prevent proceedings from being taken against a trade union by a member in respect of (*a*) misapplication of the funds of the union, and (*b*) illegal expulsion, such proceedings being founded in contract. *Parr* v. *Lancashire and Cheshire Miners' Federation*, 82 L. J. Ch. 193; [1913] 1 Ch. 366; 108 L. T. 446; 29 T. L. R. 235—Neville, J.

Certificate of Registration.]—Where one of the objects of a trade union is declared to be illegal, its certificate of registration under section 6 of the Trade Union Act, 1871, can still be relied on, unless and until it has been cancelled in accordance with the provisions of section 8 of the Trade Union Act Amendment Act, 1876. *Ib.*

Unregistered Trade Union — Representative Action.]—An unregistered trade union can be sued in a representative action, and where its president, vice-president, secretary, and treasurer are sued they may be taken sufficiently to represent the whole body for the purposes of the action. *Ib.*

—— **Alteration of Rules — Whether Ultra Vires.**]—By the rules of a trade union it was provided that a delegate meeting should not have power to alter any rule unless notice of the proposed alteration had been given:—*Held*, that this did not mean that a rule could not be altered unless notice of the identical alteration ultimately adopted had been given; it merely meant that notice of an intention to alter the rule must be given, and then the delegate meeting could by discussion alter it in the way they might there and then determine. *Amalgamated Society of Engineers* v. *Jones*, 29 T. L. R. 484—Bailhache, J.

Expulsion of Member—Action to Restore—Construction of Rules—Restraint of Trade—Right to Maintain Action.]—The plaintiff, formerly a member of a trade union society, was expelled therefrom by a resolution of the executive committee. He now brought this action alleging by his statement of claim that he had been unjustly expelled with a view to punish him for having successfully invoked the aid of the Courts to prevent the application of the funds of the society for illegal purposes, and claiming in substance by way of relief his restoration to membership of the society. The defendant society by way of defence contended that no cause of action was disclosed by the statement of claim, and pleaded the Trade Union Act, 1871, s. 4; and the point of law so raised was set down for hearing under Order XXV. rule 2. The rules of the society did not provide that when a strike was sanctioned by the executive committee every member was bound to strike, but provided that strike notices might be issued to the members for signature, and the strike was to go forward only if the notices were signed by two-thirds of the members, and there was nothing in the rules to prevent men who had struck from resuming work if they thought fit:—*Held*, that (assuming that the rules of the society were in restraint of trade so as to render it an illegal association at common law independently of the Trade Union Act, 1871) the action was still maintainable, since the relief claimed did not fall within the provisions of section 4, sub-section 3 (*a*). *Rigby* v. *Connol* (49 L. J. Ch. 328; 14 Ch. D. 482) and *Chamberlain's Wharf, Lim.* v. *Smith* (69 L. J. Ch. 783; [1900] 2 Ch. 605) considered. *Osborne* v. *Amalgamated Society of Railway Servants*, 80 L. J. Ch. 315; [1911] 1 Ch. 540; 104 L. T. 267; 27 T. L. R. 289—C.A.

Held also, that, on the true construction of the society's rules, they were not in restraint of trade so as to render the society illegal at common law. *Ib.*

A society is not to be found illegal by reason of difficulties in interpreting the rules, but by finding in sufficiently plain language that there are in the rules provisions so in restraint of trade as to render the society illegal at common law. *Ib.*

—— **Breach of Contract Contained in Rules—Claim for Damages — Right to Maintain Action.**]—A member of a trade union who has been illegally expelled by the committee under the rules of the association can maintain an action against the trade union for a declaration that he was still a member and for an injunction, such action not being barred by section 4 of the Trade Union Act, 1871, but he cannot recover damages for breach of the contract contained in the rules, since the committee who were responsible for breaking the contract were acting as agents for the plaintiff equally with his fellow members. Judgment of the Divisional Court (84 L. J. K.B. 557) varied on the question of damages. *Kelly* v. *National Society of Operative Printers' Assis-*

tants, 84 L. J. K.B. 2236; 59 S. J. 716; 31 T. L. R. 632—C.A.

—— **Unlawful Combination — Branches and Delegates.**]—A person whose entrance fee and contributions to a trade union have been acknowledged by a responsible official and who has received a card of membership, is entitled to be a member of the union, and cannot, in the absence of express rules, be expelled by an arbitrary resolution of the executive. *Luby* v. *Warwickshire Miners Association*, 81 L. J. Ch. 741; [1912] 2 Ch. 371; 107 L. T. 452; 56 S. J. 670; 28 T. L. R. 509—Neville, J.

Implied Repeal of Statute by Conflicting Provisions of Later Act.] — In view of the recognition of trade unions by numerous Acts of Parliament and by the Courts, they cannot, even where their organisation embraces affiliated branches and delegates, be considered "unlawful combinations" or "criminal associations" within the meaning of the Unlawful Societies Act, 1799, or the Seditious Meetings Act, 1817. The applicability to them of these statutes is impliedly repealed by the later Acts of the Legislature. *Ib.*

Funds — Purchase of Shares — Newspaper Company — Promotion of Policy of Political Party—Illegality of Purchase.]—The rules of a registered trade union provided that its objects were the support of members in cases of sickness, accident, and unemployment, the regulation of the relations between workmen, the assistance of other similar societies, and the formation of a fund for cases of distress, and that all moneys subscribed by members should be held by the trustees in trust for the members generally. In accordance with instructions from the general council of the union the trustees applied and paid for shares in a company formed to publish a newspaper for the purpose of promoting the policy of a political party called the Labour Party. In an action by a member against the union and the trustees,—*Held*, that the application of the funds of the union for the above purpose was unauthorised and *ultra vires*, and that the trustees must refund the money to the union. *Bennett* v. *National Amalgamated Society of Operative House and Ship Painters and Decorators*, 31 T. L. R. 203—Warrington, J.

The executive council of a registered trade union applied a portion of the funds of the union in subscribing for shares in a company formed for the purpose of publishing a political newspaper. The transaction was not really an investment, but a contribution towards the expenses of publishing the newspaper :—*Held*, following *Bennett* v. *National Amalgamated Society of Operative House and Ship Painters and Decorators* (31 T. L. R. 203), that this application of the funds was not within any of the objects of the trade union as defined by its rules, and that therefore the members of the council were personally liable to repay the amount to the union. *Carter* v. *United Society of Boilermakers*, 60 S. J. 44; 32 T. L. R. 40—Younger, J.

Payment by Union in Accordance with Rules to Member—Agreement by Member to Repay in Certain Events—Claim for Repayment—Agreement for Application of Funds to Provide Benefits to Members — Proceeding Instituted with Object of Directly Enforcing Agreement.] —The defendant, a member of a trade union, having met with a severe accident at his work, received from the trade union, in accordance with their rules, a sum of 100*l.*, and by a written agreement which by the rules he had to execute he agreed to repay that amount in the event of his returning to his trade. The agreement so executed recited the rules under which the payment was made and under which it was repayable, and after an acknowledgment by the defendant of the receipt of the 100*l.* and an agreement by him to repay it in the said event, empowered the plaintiffs, the officers of the trade union, to sue for it if it was not paid on the happening of that event. The defendant having returned to his trade, and the 100*l.* not having been repaid by him, the plaintiffs sued for its recovery :—*Held* (Vaughan Williams, L.J., and Buckley, L.J.; Kennedy, L.J., dissenting), that the agreement sought to be enforced was one for the application of the funds of a trade union to provide benefits to members within section 4, sub-section 3 (*a*) of the Trade Union Act, 1871; and that by virtue of that section the action was not maintainable. *Baker* v. *Ingall*, 81 L. J. K.B. 553; [1912] 3 K.B. 106; 105 L. T. 934; 56 S. J. 122; 28 T. L. R. 104—C.A.

Decision of the Divisional Court (80 L. J. K.B. 699; [1911] 2 K.B. 132) reversed. *Ib.*

The rules of a trade union provided that a member permanently disabled should receive the sum of 100*l.*, but that if he should resume work he must refund the 100*l.*, and that at the time of receiving the benefit he must sign an agreement to refund it should he resume work. A member of the union received a payment of 100*l.* in respect of permanent disablement, and, in accordance with these rules, he signed a memorandum of agreement undertaking to refund that sum if he resumed work. The union, averring that the injured man had resumed work, brought an action for recovery of the 100*l.*, and founded on the memorandum of agreement. The defender maintained that the action was rendered incompetent by section 4 of the Trade Union Act, 1871 :—*Held* (*diss.* Lord Johnston), that the action was competent in respect that the agreement sued on was not one of the agreements specified in section 4 of the Act, and, in particular, was not an agreement for the application of the funds of the union to provide benefits to members within the meaning of sub-section 3 (*a*) of that section. *Wilkie* v. *King*, [1911] S. C. 1310—Ct. of Sess.

Action of Tort—Competency.]—By section 4, sub-section 1 of the Trade Disputes Act, 1906, no action in respect of any tortious act alleged to have been committed by or on behalf of a trade union can be entertained by any Court, whether such tortious act was or was not committed in contemplation or furtherance of a trade dispute, and under Order XXV. rule 4, such an action may summarily be dismissed.

Vacher & Sons, Lim. v. *London Society of Compositors*, 82 L. J. K.B. 232; [1913] A.C. 107; 107 L. T. 722; 57 S. J. 75; 29 T. L. R. 73—H.L. (E.)

Decision of the Court of Appeal (81 L. J. K.B. 1014; [1912] 3 K.B. 547) affirmed. *Ib.*

Slander of Official—Loss to Union—Action by Official — Common Interest.] — An agreement by a trade union to indemnify any of its officers who take proceedings against a slanderer for slander is void on the ground of maintenance. The fact that the slanders complained of injure the trade union as well as the officer does not create a common interest which would justify the trade union in maintaining the action. A common cause is not a common interest. *Oram* v. *Hutt*, 83 L. J. Ch. 161; [1914] 1 Ch. 98; 110 L. T. 187; 78 J. P. 51; 58 S. J. 80; 30 T. L. R. 55—C.A.

Costs—Payment by Union—Ultra Vires—Maintenance.]—A trade union is not justified in defraying the costs of legal proceedings by its members whenever an indirect benefit may be expected to result from the proceedings. *Alabaster* v. *Harness* (64 L. J. Q.B. 76; [1894] 2 Q.B. 897; [1895] 1 Q.B. 339) considered and followed. *Ib.*

Decision of Swinfen Eady, J. (82 L. J. Ch. 152), affirmed. *Ib.*

Threat or Warning to Employer not to Employ Plaintiff.] — The plaintiff, a cigar maker in the employment of a company, sued the defendants, who were in the same employment, for damages and an injunction to restrain them from inducing her employers to cease to employ her. The plaintiff was a member of the Independent Cigar Makers' Union. The defendant B. and the other employees were members of the Cigar Makers' Mutual Association. When the plaintiff entered into the employment B. asked her if she belonged to the association. She replied that she did not. B. said, "You'll have to join next week or we won't work with you." A week later the plaintiff was asked if she had joined, and on her answering in the negative B. said, "You can't work here." The plaintiff replied, "You can't sack me. Mr. Phineas Phillips took me on; he alone can sack me." B. thereupon said, "Then we'll strike." The defendants then went to Mr. Phineas Phillips, who thereafter said to the plaintiff, "My workpeople refuse to work with you, and will go on strike if you don't join; you'll have to go." Mr. Phineas Phillips at the trial stated that B. said that the plaintiff had refused to join their union, and that their union instructed them that if she stayed they would not stay there. He said that he felt compelled to discharge her, as he did not care to see his employees go out. The County Court Judge held that there was no evidence of a threat to go to the jury, and nonsuited the plaintiff:—*Held*, that the County Court Judge was right in so holding. *Santen* v. *Busnach*, 57 S. J. 226; 29 T. L. R. 214—C.A.

Decision of the Divisional Court (28 T. L. R. 515) reversed. *Ib.*

Intimidation—Right of Police to Prefer Information—Liability of Persons Conniving at Acts of Intimidation.] — The appellants were charged on an information preferred by the respondent, a police superintendent, with having, with a view to compel one A. to abstain from working at the L. motor works where A. had a legal right to work, intimidated him by assembling in large numbers and throwing eggs at him when he was on his way from work. The evidence was that while A. was returning from the L. works some of the appellants, each of whom was wearing a white ribbon, and all of whom had recently been working at the L. works, but were no longer in such employment, threw eggs, two of which struck A. Some of the appellants were not proved to have thrown eggs, but they were with the appellants who did so. There were shouts of "Blacklegs" and "Dirty scabs." A. had not authorised the respondent to lay the information, but he stated that he would have proceeded if the police had not done so. The Justices convicted the appellants:—*Held*, first, that the respondent was entitled to lay the information; and secondly, that all the appellants were rightly convicted, notwithstanding that the evidence only shewed that two of them had thrown eggs at A. *Young* v. *Peck*, 107 L. T. 857; 77 J. P. 49; 23 Cox C.C. 270; 29 T. L. R. 31—D.

TRADING WITH THE ENEMY.

See WAR.

TRAMWAYS.

See also Vol. XIV. 211, 2124.

Lease—Contract for Repairs between Lessor and Contractor—Negligence of Contractor—Liability to Lessee—Damages—Derailment of Tramcar—Compensation Paid to Injured Passengers—Right of Lessee to Recover.]—The plaintiff company were the assignees of a lease of a tramway granted by the corporation of a borough. Under the lease the repairs of the tramway were to be executed by the corporation at the cost of the company, and an agreement was entered into between the corporation and the plaintiffs which provided that facilities should be afforded enabling the company to maintain the service of tramcars during the execution of the works, and that the corporation should insert in the contract to be entered into by them a provision imposing upon the contractor responsibility for all claims resulting from accident sustained by the company from the execution of the works. The corporation entered into an agreement with the defendant for the relaying of the track, by

which the defendant agreed to indemnify the corporation and to be responsible for all damage arising out of the execution of the work. The plaintiffs were not parties to this agreement. Owing to the negligent manner in which the work was carried out by the defendant's servants, one of the plaintiffs' tramcars, while passing along the tramway, was derailed and fell into the excavation, and several of the passengers were injured. In an action brought by the plaintiffs to recover from the defendant the sums paid as compensation to the injured passengers,—*Held*, that the defendant had injuriously affected both the proprietary rights of the plaintiff company as lessees of the tramway and also their rights of passage on the highway, and was therefore liable. *Held*, further, that the plaintiffs were entitled to recover the amounts paid by them as compensation to the passengers. *Birmingham City Tramways Co.* v. *Law*, 80 L. J. K.B. 80; [1910] 2 K.B. 965; 103 L. T. 41; 74 J. P. 355; 8 L. G. R. 667—A. T. Lawrence, J.

Compulsory Purchase of Undertaking by Local Authority — Previous Assignment of Undertaking by Promoters to Company—Consent of Board of Trade to Assignment.]—In 1895 the promoters of an undertaking for the construction of tramways in the borough of West Hartlepool obtained a provisional order which was confirmed by an Act passed in 1895. By that Act the defendant corporation had the option reserved to them of acquiring the undertaking after the expiration of fourteen years. In 1896 the promoters entered into an agreement with the Electric Traction (Pioneer) Co., Lim. to sell the undertaking to them; and a further agreement made in October, 1896, purported to sell the undertaking, with the concurrence of that company, to the plaintiff company. Neither of these agreements was formally approved by the Board of Trade in pursuance of a provision in the Confirmation Act, that no sale or assignment of the undertaking should be valid without the approval of that Board signified in writing by their secretary or assistant secretary. The tramway was completed in March, 1897, and in January, 1910, the defendant corporation gave notice to the promoters to sell the undertaking to them. The matter was referred to an arbitrator, who assessed the value at 12,963*l*. In an action by the company "and all others the promoters of the Hartlepool Electric Tramways Order, 1895," to recover the sum awarded, the corporation contended that they could make no valid payment to the original promoters, who had no legal title to the tramways constructed by the company, nor could they pay anything to the company, since the assignment to them had not been duly approved by the Board of Trade:—*Held*, that the assignment of the rights of the promoters, who had not constructed the tramways, did not require the approval of the Board of Trade, and that the Board had by certain documents, signed by an assistant secretary of the Board, sufficiently recognised the company as the transferees of the undertaking. *Hartlepool Electric Tramways Co.* v. *West Hartlepool Corporation*, 9 L. G. R. 1098; 75 J. P. 537—C.A.

Statutory Powers — Corporation Licence — Consent of the Board of Trade—Adjacent Districts.] — The Eccles Corporation, by the Eccles Corporation Act, 1901, were empowered to lay down, use, and maintain tramways within their district and to enter into agreements with owners of tramways in adjacent districts with regard to the construction, working, use, and management by the contracting parties of their respective tramways, subject to the approval of the Board of Trade. Under an agreement, approved by the Board of Trade, made between the Eccles and the Salford Corporations, the Eccles tramways were constructed by the Salford Corporation, and the latter were to be entitled to a lease thereof for thirty-five years. By the Salford Corporation Act, 1899, the corporation tramways, unless the subject or context otherwise required, were defined to include any tramways demised to or worked by the corporation, and the Salford Corporation had powers of entering into working agreements with regard to their tramways with adjacent tramway owners similar to those in the Eccles Act, save that there was no provision as to the approval of the Board of Trade. Whilst the agreement was current, the Salford Corporation, without the leave of the Eccles Corporation or of the Board of Trade, granted to the South Lancashire Tramway Co. a revocable licence to use a portion of the Eccles tramways adjoining the tramway company's system:—*Held*, that the Eccles tramways were not a portion of the Salford tramways within the definition clause of the Salford Act, because the subject or context did otherwise require, and that the licence was *ultra vires*, no consent of the Board of Trade having been obtained as required by the Eccles Act. *Salford Corporation* v. *Eccles Corporation*, 81 L. J. Ch. 561; [1912] A.C. 465; 106 L. T. 577; 76 J. P. 249; 10 L. G. R. 341; 56 S. J. 428; 28 T. L. R. 343—H.L. (E.)

Decision of the Court of Appeal (79 L. J. Ch 759; [1910] 2 Ch. 263) affirmed. *Ib.*

By-law Requiring Passenger to Leave Tramcar by the "hindermost" Platform — Car Stationary at Terminus.]—A by-law required passengers to leave the tramcars by the "hindermost" platform. When a car had arrived at and was stationary at the terminus, the respondent left the car by the platform which, during the journey just made by him on the car, had been the foremost platform:—*Held*, that the word "hindermost" must be construed with reference to the particular passenger and the journey on which he was engaged, and that "hindermost" with reference to the respondent meant hindermost with reference to the journey he had just taken, and that in leaving the car as he did he had offended against the by-law. *Monkman* v. *Stickney*, 82 L. J. K.B. 992; [1913] 2 K.B. 377; 109 L. T. 142; 77 J. P. 368; 11 L. G. R. 612; 23 Cox C.C. 474—D.

Passenger Travelling without Paying Requisite Fare—Proof of Fraud.]—Section 51 of the Tramways Act, 1870, enacts that any

person who, "having paid his fare for a certain distance, knowingly and wilfully proceeds in any" tramway car "beyond such distance, and does not pay the additional fare for the additional distance" shall be liable to a penalty :– *Held*, that a person cannot be convicted of an offence under this section unless it appears that he acted with a fraudulent intention. *Nimmo* v. *Lanarkshire Tramways Co.*, [1912] S. C. (J.) 23—Ct. of Just.

—— Passenger in Tramcar Suspected of Avoiding Payment of Fare—Ejected by Conductor—Action for Assault—Liability of Tramway Authority.]—The conductor of a tramcar belonging to the respondents, a tramway authority, in thinking that the appellant, a passenger in the car, was attempting to avoid payment of his fare, ejected him from the car with such force that he suffered injuries. The appellant brought an action in the County Court against the respondents, claiming damages for the assault committed on him by their servant. The respondents denied their liability on the ground that sections 51 and 52 of the Tramways Act, 1870, and their by-laws gave them power to detain and bring before a magistrate, who might impose a fine on a person who had committed the offence alleged against the appellant, but that they had no power to eject such a person from a car, and could not therefore delegate the power to eject him to their servant, who had acted outside the scope of his authority :—*Held*, on appeal, that the remedies given to the respondents by sections 51 and 52 of the Tramways Act, 1870, being in addition to, and not exclusive of, their common law right as owners of the tramcar to eject a trespasser from their property, using no more force than might be necessary for the purpose, the respondents had power to eject from one of their cars a person who refused to pay his fare; that they could delegate that power to a servant; that the tort of the conductor was consequently committed in the course of his service; and that the appellant was therefore entitled to recover his claim against the respondents. *Whittaker* v. *London County Council*, 84 L. J. K.B. 1446; [1915] 2 K.B. 676; 113 L. T. 544; 79 J. P. 437; 13 L. G. R. 950; 31 T. L. R. 412—D.

The plaintiff claimed damages against the L.C.C. for having been injured by one of their tramway conductors, who angrily threw him off a tramcar. At the trial the defendants, who called no evidence, submitted that, inasmuch as the powers of the Council were derived from their by-laws, which did not, in terms at any rate, give power to eject a passenger for non-payment of fare, the conductor, who presumably ejected the plaintiff for that reason (although in fact he was willing and able to pay his fare), had acted from private spite and malice, for the consequences of which they were not liable. Neither the plaintiff nor the defendants were able to trace the car nor identify the conductor. Ridley, J., nonsuited the plaintiff, and the Court of Appeal upheld his decision :—*Held*, that, under the by-laws, a passenger who does not pay, or shews no intention of paying, his fare can be treated as a trespasser and ejected with the use of reasonable force. That it was a question for the jury to decide what was the motive in this case which prompted the conductor to eject the plaintiff; and there must be a new trial. *Whittaker* v. *London County Council* (84 L. J. K.B. 1446; [1915] 2 K.B. 676) approved. *Hutchins* v. *London County Council*, 60 S. J. 156—H.L. (E.)

Workmen's Cars.]—Where a tramway company was bound by its private Act to run cars for workmen at reduced fares specified in the Act, *semble*, that the Act did not warrant the company in discriminating in the matter of fares between workmen and other passengers who were allowed to travel in cars for workmen. *Nimmo* v. *Lanarkshire Tramways Co.*, [1912] S. C. (J.) 23—Ct. of Just.

Tramcar—Upper Compartment Covered in —"Inside"—Specified Number of Passengers — Greater Number Conveyed in Car.] — By section 13 of the Railway Passenger Duty Act, 1842, "no stage carriage shall be allowed to carry at one time a greater number of passengers in the whole, or in the inside or on the outside thereof, than the same is constructed to carry according to the regulation of the Act; . . ." And by section 15 if a greater number of passengers is conveyed at any one time, in, upon, or about any stage carriage, a penalty is imposed upon the driver and conductor. By section 27 of the London County Council (Tramways and Improvements) Act, 1913, "Notwithstanding anything to the contrary contained in any Act . . . the Council may . . . on special occasions carry inside any carriage used by them on any tramways an additional number of passengers not exceeding one-third of the number of inside passengers which such carriage is licensed to contain." The respondent was the conductor of a tramcar which was constructed to carry passengers in two compartments, both of which were covered in. The car was constructed to carry in the lower compartment thirty passengers, and in the upper forty-four passengers. Upon an occasion, which was a "special occasion" within the meaning of section 27 of the Act of 1913, the number of passengers conveyed in the upper compartment was forty-eight. On an information charging the respondent with having conveyed in, upon, and about a stage carriage a greater number of passengers than the carriage was constructed to carry, the magistrate held that the word "inside" in section 27 of the Act of 1913 included both the lower and the upper compartments of the car, and dismissed the information :—*Held*, that under the two enactments "inside" must be treated as correlative with the lower compartment, and "outside" as correlative with the upper compartment, and that the respondent had therefore committed an offence under sections 13 and 15 of the Act of 1842. *Phesse* v. *Fisher*, 84 L. J. K.B. 277; [1915] 1 K.B. 572; 112 L. T. 462; 79 J. P. 174; 13 L. G. R. 269; 31 T. L. R. 65—D.

Rating.]—*See* LOCAL GOVERNMENT.

TRANSFER.

Of Negotiable Instruments.]—*See* BILL OF EXCHANGE; NEGOTIABLE INSTRUMENTS.

Of Personal Property.]—*See* BILL OF SALE.

Of Proceedings.]—*See* COUNTY COURT; PRACTICE.

Of Shares.]—*See* COMPANY.

TREASON.

See CRIMINAL LAW.

TRESPASS.

See also Vol. XIV. 224, 2142.

To Land — Justification — Necessity — Act Done in Preservation of Sporting Rights — Setting Fire to Heather—Reasonable Necessity —Actual Necessity.]—To justify a trespass on the ground that intervention was necessary in order to prevent destruction of property, it need not be shewn that if the intervention had not taken place the property would have been destroyed or injured; it is sufficient to shew that the intervention was in the circumstances, at the time when it took place, in fact reasonably necessary. *Cope* v. *Sharpe*, 81 L. J. K.B. 346; [1912] 1 K.B. 496; 106 L. T. 56; 56 S. J. 187; 28 T. L. R. 157—C.A.

The plaintiff, who was a landowner, let the shooting rights over a part of his land to a sporting tenant. A serious heath fire having broken out on that part of the plaintiff's land, the defendant, who was the bailiff and head gamekeeper of the sporting tenant, with the view of protecting his master's property, set fire to patches of heather between the main fire and a covert in which his master's pheasants were being preserved, in order that the main fire when it reached the bare patches so caused should have nothing to feed on and should thus die out. The fire was in fact extinguished independently of what the defendant so did. The plaintiff having brought an action against the defendant claiming damages for trespass and an injunction, the jury found in answer to questions left to them—first, that the method adopted by the defendant was not in fact necessary for the protection of his master's property; secondly, that it was reasonably necessary in the circumstances:—*Held* (Vaughan Williams, L.J., dissenting), that the meaning of the findings of the jury was not merely that the defendant *bona fide* believed what he did to be necessary, but that, although in the result it turned out to have been unnecessary, it was in fact, at the time when the defendant did it, reasonably necessary in the circumstances. *Ib.*

Decision of the Divisional Court (80 L. J. K.B. 1008; [1911] 2 K.B. 837) reversed. *Ib.*

—— **Adjoining Land—Incursion of Locusts—Right to Divert on to Neighbour's Land.**]—The owner or occupier of land has a right to repel a danger threatening his property and to trespass on his neighbour's land for that purpose, even though the result may be to transfer the danger and consequent mischief from his own to his neighbour's property. *Greyvensteyn* v. *Hattingh*, 80 L. J. P.C. 158; [1911] A.C. 355; 104 L. T. 360; 27 T. L. R. 358—P.C.

—— **Adjoining Premises — Excavations — Danger to Plaintiff's Wall—Underpinning by Defendants — Claim for Indemnity.**]—The plaintiff was the landlord of certain premises, and the defendants entered into a contract with the Commissioners of Works for the extension of adjoining premises. A clause in the contract provided that the defendants should indemnify the Commissioners against claims for damage, this clause not being limited to damage caused during the progress of the work. The defendants placed beneath the plaintiff's wall a mass of brickwork and concrete, some of which would require to be cut away in the event of the plaintiff desiring to make a cellar. During the excavations there was danger of one of the plaintiff's walls collapsing, and the architect representing the Commissioners ordered the defendants to underpin the wall. The defendants underpinned the wall without the plaintiff's consent, although the danger was not so imminent as to make it reasonably necessary to do the work without it. The plaintiff brought an action of trespass against the defendants, and the latter claimed an indemnity from the Commissioners as third parties:—*Held*, that the imminence of the danger did not affect the right of the plaintiff to complain of injury to his premises, and that the defendants had not justified the trespass and were liable to pay damages to the plaintiff, but that they were entitled to an indemnity from the Commissioners, as the contract provided that they were to proceed with the work in accordance with the instructions of the Commissioners' architect. *Kirby* v. *Chessum*, 79 J. P. 81; 12 L. G. R. 1136; 30 T. L. R. 660—C.A.

Decision of Avory, J. (30 T. L. R. 15), varied. *Ib.*

In Pursuit of Game.]—*See* GAME.

TRIAL.

See CRIMINAL LAW; PRACTICE.

TROVER.

Demand and Refusal to Return Goods after Issue of Writ—Evidence of Prior Conversion.]—The plaintiff's watch was stolen and pledged with a pawnbroker, and was afterwards sold as an unredeemed pledge by public auction by auctioneers at their City auction rooms on the first floor of a building in the City of London. It was subsequently bought by B., a *bona fide* purchaser, and was afterwards

sent to the defendant, a jeweller, from whom it had originally been bought by the plaintiff, for examination. On receipt of the watch from B., the defendant, who recognised the watch, wrote to him informing him that it had been stolen; he also informed the plaintiff of his discovery, and said that B. was willing to give up the watch on being paid the price he had given for it. The plaintiff then through his solicitor made a formal demand for the watch, and, on its being refused, the writ in the action, which had been issued early on the same day, was served on the defendant :—*Held* (Vaughan Williams, L.J., dissenting), without expressing any opinion on the question of market overt, that upon the facts of the case there was no evidence of a wrongful detention or conversion before the issue of the writ so as to enable the plaintiff to maintain the action. *Clayton* v. *Le Roy*, 81 L. J. K.B. 49; [1911] 2 K.B. 1031; 105 L. T. 430; 75 J. P. 521; 27 T. L. R. 479—C.A.

TRUCK ACTS.

See MASTER AND SERVANT.

TRUST AND TRUSTEE.

I. Generally.

I. GENERALLY.

A. CREATION AND DECLARATION OF TRUSTS.

See also Vol. XIV. 318, 2149.

Declaration of Trust — Appropriation of Trust Funds—Entries in Account Books—Intention to Create Charge—Equitable Charge—Non-communication to the Cestuis que Trust—Interest in Land — Writing Signed by the Party Enabled to Declare the Trust.] — In order to constitute a good declaration of trust the Court must be satisfied that the declaration of trust purported to be created is irrevocable. Where the declaration of trust is not communicated to any one, that raises a strong inference that it is not irrevocable. Where an interest in land is affected by the declaration of trust the same must be in writing signed by the party by law enabled to declare the trust in order to satisfy section 7 of the Statute of Frauds. *Cozens, In re; Green* v. *Brisley*, 82 L. J. Ch. 421; [1913] 2 Ch. 478; 109 L. T. 306; 57 S. J. 687—Neville, J.

A trustee appropriated trust funds. As appeared by his account books after his death, his custom was to insert the date and amount of the appropriation and put a note in the margin of the account indicating that the sum was advanced to himself. On some occasions he also inserted the letters "Ecc" (an abbreviation for "Ecclesbourne," the name of his house), or the words "advanced on equitable deposit." In some of the entries his name or initials were inserted, in others they were not. The entries were for the most part in pencil, and erasures and alterations had been made. It was contended that these entries constituted a good charge by way of declaration of trust of the deceased trustee's house to answer the sums so appropriated. For seventeen out of the twenty years during which the appropriations were taking place the deeds of the trustee's house Ecclesbourne were deposited or mortgaged with other persons. Neither the entries nor the fact of the appropriations were communicated to any one, and the only evidence was the entries in the books :—*Held*, that they did not constitute a valid declaration of trust. *Ib.*

The explanation of *Middleton* v. *Pollock; Elliott, Ex parte* (45 L. J. Ch. 293; 2 Ch. D. 104), given by Chitty, L.J., in *New, Prance, and Garrard's Trustee* v. *Hunting* (66 L. J. Q.B. 554; [1897] 2 Q.B. 19, at p. 32), approved of. *Ib.*

Secret Trust—Parol Evidence—Communication to Trustees.]—A testatrix, by her will, appointed the appellant L. and his daughter W. her executors and trustees, and, after leaving money for a charitable bequest, directed that her said trustees and executors should "expend all or any the residue of my estate in such manner as they know to be most in agreement with my desires." There was evidence that the testatrix had been for a long time on very intimate terms of friendship with L. and his family, and that she had told them on more than one occasion that

she intended to leave her property to L.'s daughters :—*Held*, that the evidence was not sufficient to establish a trust in favour of the daughters, and that the residue must go to the testatrix's next-of-kin. *Fleetwood, In re; Sidgreaves* v. *Brewer* (49 L. J. Ch. 514; 15 Ch. D. 594), doubted. *Le Page* v. *Gardom*, 84 L. J. Ch. 749; 113 L. T. 475; 59 S. J. 599—H.L. (E.)

Judgment of the Court of Appeal (*sub nom. Gardom, In re; Le Page* v. *Att.-Gen.* (83 L. J. Ch. 681; [1914] 1 Ch. 662), affirmed. *Ib.*

—— **Charitable Gift — Trust for Protection and Benefit of Animals.**] — A testatrix appointed C. W. to be one of her executors and trustees, and bequeathed the residue of her estate to him absolutely. It appeared, however, that the testatrix had in her lifetime stated to C. W. that she wished him to apply the residue for the protection and benefit of animals; and that as it would be difficult to draft a will giving him the latitude that she desired, the best method of carrying out her wishes would be to bequeath the residue to C.W. absolutely, leaving the spending thereof, both capital and income, in the way intimated to C. W.'s absolute discretion, relying upon his love of animals :—*Held*, that the bequest was not an absolute gift to C. W. beneficially, but was subject to a secret trust. *Wedgwood, In re; Allen* v. *Wedgwood*, 84 L. J. Ch. 107; [1915] 1 Ch. 113; 112 L. T. 66; 59 S. J. 73; 31 T. L. R. 43—C.A.

Decision of Warrington, J., on this point reversed. *Ib.*

B. RESULTING TRUSTS.

See also Vol. XIV. 416, 2156.

Subscriptions for Special Object—Unapplied Surplus—Appropriation of Payments—Resulting Trust for Subscribers.]—A fund was raised by subscription to aid the wounded in the Balkan War, and at the end of the war an unapplied surplus remained of the funds so subscribed, which was distributable among subscribers by way of resulting trust. The accounts shewed that the amount actually subscribed up to November 8, 1912, was the exact amount actually expended in aiding the wounded in the war. It was contended that the rule in *Clayton's Case* (1 Mer. 572, 608) applied so that those who had subscribed after November 8, 1912, were entitled to be paid back their subscriptions in full out of the surplus :—*Held*, that the principle of *Clayton's Case* (1 Mer. 572, 608) had no application to this case, and that subscribers were entitled to such proportion of their subscriptions as the total amount unexpended bore to the total amount subscribed. *British Red Cross Balkan Fund, In re; British Red Cross Society* v. *Johnson*, 84 L. J. Ch. 79; [1914] 2 Ch. 419; 111 L. T. 1069; 58 S. J. 755; 30 T. L. R. 662—Astbury, J.

—— **Property Settled by Father on Daughter's Marriage—No Trusts in Default of Issue—Bequest by Father on Trusts of Settlement—Failure of Trusts.**]—A father transferred a sum of stock to the trustees of his daughter's marriage settlement, to be held as part of "the trust estate hereby constituted." There was no declaration of ultimate trusts of the wife's fund in case of the husband dying before the wife and there being no child of the marriage, which events happened. The wife's father during the lifetime of the husband and wife made his will, declaring thereby that his trustees should stand possessed of one-fourth of his residuary estate, referred to in his will as his daughter's "share," upon trust to transfer the same to the trustees of her settlement, to be held by them upon trusts by that settlement declared concerning "the fortune brought into settlement by or on behalf of" his daughter :—*Held*, that as regarded the stock there was a resulting trust (subject to the life interest of the daughter) in favour of the father, but that the fourth share of his residuary estate had been completely severed from the father's estate and given to the daughter's trustees for her benefit, and that there was an ultimate resulting trust of this share in favour of the daughter. Principles of *Lassence* v. *Tierney* (1 Mac. & G. 551) applied. *Donnelly's Estate, In re* ([1913] 1 Ir. R. 177), distinguished. *Connell's Settlement, In re; Benett's Will Trusts, In re; Fair* v. *Connell*, 84 L. J. Ch. 601; [1915] 1 Ch. 867; 113 L. T. 234—Sargant, J.

C. THE TRUSTEE.

1. Appointment of New Trustees.

See also Vol. XIV. 551, 2164.

One Cestui que Trust in Disagreement with Trustees—Scheme for Maintenance Ordered by Court — Surviving Husband of Other Cestui que Trust—Appointment of his Solicitor as Co-trustee — Objection to — Court will not Declare Invalid.] — An appointment as new trustee by a surviving trustee of a member of the firm of solicitors who had acted for the trustees in a dispute between them and a *cestui que trust* is a valid appointment, and although the Court would not itself make such an appointment it will not order the removal of such trustee already appointed. When an administration order has not been made by the Court, but certain specific directions only have been given, such as for a scheme for maintenance, the sanction of the Court to an appointment of new trustees is not required. And the persons having the power of appointment can exercise that power in the ordinary way unless the order made is such that the exercise of the power by the persons entitled to exercise it will interfere with its being carried out by the Court. *Cotter, In re; Jennings* v. *Nye*, 84 L. J. Ch. 337; [1915] 1 Ch. 307; 112 L. T. 340; 59 S. J. 177—Astbury, J.

Stamford (Earl), In re; Payne v. *Stamford* (65 L. J. Ch. 134; [1896] 1 Ch. 288), applied. *Skeats, In re; Skeats* v. *Evans* (58 L. J. Ch. 656; 42 Ch. D. 522), *Hall, In re; Hall* v. *Hall* (54 L. J. Ch. 527), and *Att.-Gen.* v. *Clack* (1 Beav. 467), distinguished. *Ib.*

Sole Trustee Appointed by Settlor—Right of Beneficiaries to Appointment of a Second

Trustee—Power Reserved to Settlor to Appoint Additional Trustee.]—Where a sole trustee is originally appointed by a settlor or testator there is no absolute right in the beneficiaries to the appointment of a second trustee. Although in many cases the Court would desire to secure for the beneficiaries the protection afforded by a second trustee, there are cases in which the settlor or testator has deliberately elected to commit to a single individual the execution of the trust; and in such cases the Court ought to give effect to the intention of the settlor or testator. *Badger, In re; Badger* v. *Woolley*, 84 L. J. Ch. 567; 113 L. T. 150—Eve, J.

Appointment of Husband of Tenant for Life Restrained from Anticipation.]—The donee of the power of appointing new trustees of a will appointed the husband of a tenant for life entitled for her separate use without power of anticipation to be a trustee of the will together with a continuing trustee:—*Held*, that the appointment, if undesirable, was not invalid. *Coode, In re; Coode* v. *Foster*, 108 L. T. 94—Neville, J.

Reference to Chambers to Appoint New Trustees — Right to Nominate.] — An order directing a reference to chambers to appoint new trustees of a will suspends the power given by the will to appoint new trustees, but it does not disqualify the donee of the power from nominating fit and proper persons to be new trustees, and in the absence of misconduct the Court will appoint the persons nominated by the donee of the power in preference to those nominated by other parties. *Gadd, In re* (52 L. J. Ch. 396; 23 Ch. D. 134), followed. *Sales, In re; Sales* v. *Sales*, 55 S. J. 838—Eve, J.

2. Rights, Powers, Duties and Liabilities.

a. In General.

See also Vol. XIV. 604, 2166.

Discretion to Apportion between Charitable and Non-charitable Objects.]—When trustees have a discretion to apportion between charitable objects and definite and ascertainable objects non-charitable, the trust does not fail, and in default of apportionment by the trustees the Court will divide the fund equally between the objects charitable and non-charitable. *Gavacan, In re; O'Meara* v. *Att.-Gen.*, [1913] 1 Ir. R. 276—M.R.

Failure of Object—Direction for Gift Over — Duty of Trustees.] — An abbey was conveyed to trustees for the benefit of a society or community founded for the advancement of religion according to the principles of the Church of England, and the deed provided that if it should appear to the trustees impracticable to carry on the society, they should convey the property to the English Abbeys Restoration Fund. Subsequently all the members of the community, except two, acknowledged the supremacy of the Pope, and were admitted to the Roman Catholic Church. A meeting of the trustees resolved to give effect to the gift over, and two of them applied to the Court for directions as to whether they ought to join in executing the deed of conveyance:—*Held*, that in the circumstances they must join in executing the deed. *Malling Abbey Trusts, In re; Beaumont* v. *Dale*, 31 T. L. R. 397—C.A.

Decision of Eve, J. (30 T. L. R. 71), affirmed. *Ib.*

Different Wills—Maintenance of Legatee—Discretionary Power under Each Will—Right of Contribution.]—With respect to the exercise by trustees of discretionary powers in respect of the same legatee conferred by different wills, of which the trustees and trusts are different, there can be no right of equitable contribution between the several sets of trustees, there being no common obligation between them. *Smith* v. *Cock*, 80 L. J. P.C. 98; [1911] A.C. 317; 104 L. T. 1—P.C.

Under a testator's will the trustees had discretionary power to pay an annuity not exceeding a certain amount on trust for a daughter of the testator. There was a similar trust under the will of another daughter, on whose death the amount paid under the first trust was largely reduced. The two sets of trustees and the trusts in the two wills were distinct. In a suit (in which the common legatee took no part) for contribution by a beneficiary under the second will against the trustees of the first,—*Held*, that, there being no common obligation, there was no right of equitable contribution between the two sets of trustees. *Ib.*

Fire Insurance—Trust of Mansion House, Buildings, and Farms—Tenant for Life and Remaindermen—"Necessary expenses."]—A testator devised his mansion house, outbuildings, and farms in W. to three trustees upon trust "after payment thereout of all necessary expenses," to pay the balance of the rents and profits to his widow for life, and then to his son for life with remainders over. The widow and the son were two of the testator's executors and trustees. The premises were insured against fire at the testator's death for much less than their value. On an originating summons by the third trustee against the first tenant for life and remainder asking the direction of the Court as to adequately insuring the devised premises out of income,—*Held* (but without deciding anything as to whether the trustees ought to insure the premises at the expense of the testator's estate generally), that neither under the trusts of the will as coming under the head of "necessary expenses," nor as a statutory obligation under section 18, sub-section 1 of the Trustee Act, 1893, ought the trustees to maintain the fire insurance upon the premises devised in trust at the expense of the tenant for life. *McEacharn, In re; Gambles* v. *McEacharn*, 103 L. T. 900; 55 S. J. 204—Eve, J.

Covenant "as such trustees but not otherwise" — Extent of Liability.] — *Per* Buckley, L.J.: A covenant by trustees "as such trustees but not otherwise" to repay a loan is merely a covenant to repay the money out of any trust funds coming into their

hands, and does not impose any personal liability upon them. *Robinson's Settlement, In re; Gant* v. *Hobbs*, 81 L. J. Ch. 393; [1912] 1 Ch. 717; 106 L. T. 443; 28 T. L. R. 298—C.A.

Purchase of Trust Property by Wife of Trustee.]—There is no absolute rule of law that the purchase of trust property by the wife of a trustee is illegal. *Burrell* v. *Burrell's Trustees*, [1915] S. C. 333—Ct. of Sess.

Defaulting Trustee—Liability to Make Good Default before Taking Share in Fund—Share in Different Fund Held on Different Trusts under Same Instrument—Right to Retain.]—The principle—stated in *Doering* v. *Doering* (58 L. J. Ch. 553; 42 Ch. D. 203)—that a defaulting trustee and his assignees cannot take a share in a trust fund without making good to it the amount in respect of which he is in default does not apply to his interest in another fund under the same instrument in which the parties as against whom he is in default have no interest, and in regard to which he is not in default:—*Held*, therefore, that the assignees of a specific legacy bequeathed to a trustee were entitled to retain it in the administration of the estate although the trustee had misappropriated part of the residuary estate. *Towndrow, In re; Gratton* v. *Machen*, 80 L. J. Ch. 378; [1911] 1 Ch. 662; 104 L. T. 534—Parker, J.

—— **Legacy—Set-off.**]—Where a trustee misappropriated trust funds, and paid them into his own account at his bank:—*Held*, that his co-trustee, when he discovered the misappropriation, could follow the trust funds, and that he had a charge on the defaulting trustee's balance at his bank:—*Held*, also, that the co-trustee could retain or set off against the misappropriated trust money such part of the legacy as devolved by derivative title beneficially on the defaulting trustee. The principle of *Jacubs* v. *Rylance* (43 L. J. Ch. 280; L. R. 17 Eq. 341) or the principle of *Cherry* v. *Boultbee* (7 L. J. Ch. 178; 4 Myl. & Cr. 442) applied. *Dacre, In re; Whitaker* v. *Dacre*, [1915] 2 Ch. 480; 60 S. J. 44—Sargant, J.

b. Management.

See also Vol. XIV. 607, 2170.

Tenant for Life—Remainderman—Repairs—Leasehold and Freehold Properties—Liability of Corpus or Income for Repairs.]—The tenant for life is only liable to keep leasehold properties in such a state of repair as they were in when he became tenant for life on the death of the settlor, and accordingly the trustees of the property should, at the date of the death of the settlor, do all repairs necessary to put the property in a proper state of repair, to satisfy the covenants in the leases, and pay the same out of the *corpus* of the estate. Repairs to freeholds must be borne by the *corpus*. *Sutton, In re; Sutton* v. *Sutton*, 56 S. J. 650—Neville, J.

c. Power of Leasing.

See also Vol. XIV. 621, 2172.

Power to Grant Mining Leases—Unopened Mine.]—A testator gave power to the trustees of his will to let from year to year, or for a term of years, his real or leasehold property at such rent and subject to such conditions as they should think fit, and to accept the surrender of leases and tenancies, to expend money on improvements, and generally to manage the property according to their absolute discretion. There were opened and unopened mines on the estate:—*Held*, that the trustees had no power to grant leases of unopened mines. *Harter, In re; Harter* v. *Harter*, 57 S. J. 444—Warrington, J.

d. Powers of and Trusts for Sale.

See also Vol. XIV. 625, 2173.

Trust for Sale—Power to Postpone Conversion—Share Vested in Possession—Personal Property—Right of Beneficiary to Immediate Sale and Division.]—A testator gave the residue of his personal estate to trustees upon trust for sale and conversion, and to stand possessed of the proceeds of sale in certain shares for his sons and daughters. The will contained a power to the trustees in their uncontrolled discretion to postpone sale and conversion. Some of the shares were settled upon trusts which were still subsisting. Beneficiaries who were absolutely entitled to other shares in the estate requested the trustees to transfer to them, in satisfaction of their shares, certain of the shares in a limited company which represented the residue of the estate retained by the trustees. This request was opposed on the ground that it was desirable that the shares should be retained by the trustees in the exercicse of their discretion to postpone conversion until the ultimate division of the estate, so that in the interest of all the beneficiaries they might exercise the voting power in respect of these shares in the management of the company's affairs:—*Held*, that in the absence of special circumstances a person absolutely entitled to an undivided share of personal property vested in trustees may call for immediate payment or transfer of his share, and that the power to postpone conversion in the will did not entitle the trustees to refuse to transfer their shares to persons absolutely entitled. *Marshall, In re; Marshall* v. *Marshall*, 83 L. J. Ch. 307; [1914] 1 Ch. 192; 109 L. T. 835; 58 S. J. 118; —C.A.

—— **Unauthorised Investments—Leaseholds—"Absolute discretion" of Trustees—Appropriation in Specie—Approval by Parties—Leave of Court.**]—By an ante-nuptial settlement dated March 25, 1887, a husband assigned leasehold property to trustees upon trust to sell as and when they in their absolute discretion should think fit and to apply the income of the proceeds upon such trusts (after life interests) for his children as he should by deed or will appoint; the investment clause enabled the trustees to invest (*inter alia*) in leaseholds for a term of not less than sixty years unexpired at the date of the investment. There was no express power to retain the original investments, nor any express power of appropriation. The husband died in August, 1898, having by his

will appointed a one-seventh share of the settled property on trusts in favour of one of his sons for life, with remainders over. The residue he appointed among his other children. The trustees had retained the leaseholds on account of the difficulty in selling, and in 1913 proposed to appropriate three leasehold properties to satisfy the settled share. One of these leaseholds was for a term of forty-six years only, unexpired, and another was subject to a mortgage. The persons entitled in remainder in default of children of the son were all *sui juris* and approved of the proposed appropriation :—*Held*, that the Court had power to sanction the appropriation. *Cooke's Settlement, In re; Tarry* v. *Cooke*, 83 L. J. Ch. 76; [1913] 2 Ch. 661; 109 L. T. 705; 58 S. J. 67—Astbury, J.

Brooks, In re; Coles v. *Davis* (76 L. T. 771), followed. Observations of Buckley, J., in *Beverly, In re; Watson* v. *Watson* (70 L. J. Ch. 295), at p. 299; [1901] 1 Ch. 681, at p. 688), considered. *Ib.*

—— Appropriation of Shares — Unauthorised Investments.]—Where by a will the shares of the estate of the daughters of the testator are settled, and the trustees are given an absolute power to convert followed by a power to delay realisation, the trustees have not power to hold as part of the settled shares shares in a private company which are not investments authorised by the trust for investment contained in the will. *Beverly, In re; Watson* v. *Watson* (70 L. J. Ch. 295; [1901] 1 Ch. 681), followed. *Brooks, In re; Coles* v. *Davis* 76 L. T. 771), and *Fraser* v. *Murdoch* (6 App. Cas. 855) distinguished. *Craven, In re; Watson v. Craven*, 83 L. J. Ch. 403; [1914] 1 Ch. 358; 109 L. T. 846; 58 S. J. 138—Warrington, J.

—— Power to Postpone Sale—Share of Estate Vested in Beneficiary—Real and Leasehold Property—Right of Beneficiary to Immediate Sale and Payment of Share in Cash, or to Appropriation of Share in Specie.]—A testator by his will gave his real and personal estate to trustees upon trust to sell and, after payment of his debts and legacies, to hold the residue of the proceeds upon the trusts therein declared, provided that the trustees might in their absolute and uncontrolled discretion postpone the sale of the estate or any part thereof for such time as they should think fit without being answerable for loss; and he declared that until sale the income arising from such part of his residuary estate as should remain unsold should be paid upon the trusts and to the persons to whom the income arising from the investment of the proceeds of sale would have been payable; and he declared (*inter alia*) that the trustees should stand possessed of the moneys to arise from the sale of his residuary estate upon trust, subject to an annuity to his widow, for all his children who should attain the age of twenty-one, and if more than one in equal shares as tenants in common. The testator having died and one of his children having attained twenty-one and thus attained a vested interest in a share of the residue, the trustees took out an originating summons to determine whether, notwithstanding the discretionary power given to the trustees to postpone the sale of the estate, that beneficiary was entitled to require a sale of the estate and payment of his share in cash, or an appropriation of his share in *specie*. The estate consisted principally of freehold and leasehold property :—*Held*, that so long as the trustees in the *bona fide* exercise of their discretion deemed it advisable to postpone a sale, the beneficiary was not entitled to call for either a sale and payment of his share, or an appropriation of his share in *specie*. *Horsnaill, In re; Womersley* v. *Horsnaill* (78 L. J. Ch. 331; [1909] 1 Ch. 631), approved and followed. *Kipping, In re; Kipping* v. *Kipping*, 83 L. J. Ch. 218; [1914] 1 Ch. 62; 109 L. T. 919—C.A.

Sale — Trustees Described as "my said executors."]—A testator appointed A, B, C, and D to be executors and trustees of his will, and bequeathed the residue of his freehold and personal property "in trust to my executors aforesaid," and authorised and empowered "my said executors" to sell any real property which they might think advisable, and divide the residue in such proportions as they or the survivor or survivors of them might think fit among certain persons. A and B renounced the executorship and predeceased D; C renounced the executorship, and disclaimed by deed the trusts of the will. D, who alone acted in the trusts of the will, in exercise of his statutory power appointed the plaintiff and E (since deceased) trustees of the will in his place :—*Held*, that the expression "my said executors" was merely a compendious form of designating "executors and trustees," and that the power of sale could be exercised by the plaintiff, the trustee for the time being. *Robinson, In re; Sproule* v. *Sproule*, [1912] 1 Ir. R. 410—M.R.

e. Investment of Trust Funds.

See also Vol. XIV. 658, 2179.

Trust to Invest in "Public stocks" and on no Other Investment.] — A testator, by his will dated 1868, directed his trustees to invest the trust funds in "some or one of the public stocks of the Bank of England and on no other investment whatsoever" :—*Held*, that the trustees could only invest in public stocks, and that the expression "public stocks" was confined to public stocks forming part of the National Debt of this country. *Hewitt* v. *Price* (11 L. J. C.P. 292; 4 Man. & G. 355) followed. *Hill, In re; Fettes* v. *Hill*, 58 S. J. 399—Eve, J.

Power to Invest in Stocks of any British Colony or Dependency—Stocks Issued by Provinces of Canada—"Colony or dependency."] —A power for trustees to invest capital money in any stock or securities of "any British colony or dependency" does not justify an investment in stocks issued by individual provinces of the Dominion of Canada. *Maryon-Wilson's Estate, In re*, 81 L. J. Ch. 73; [1912] 1 Ch. 55; 105 L. T. 692; 28 T. L. R. 49—C.A.

Decision of Eve, J. (80 L. J. Ch. 467; [1911] 2 Ch. 58), affirmed. *Ib.*

Power to Invest in Preference Stock—Preference Shares.]—The testator empowered his trustees to invest the trust funds *(inter alia)* preference stock of any company in the United Kingdom :—*Held*, that this did not authorise the trustees to invest in fully paid-up preference shares. *Willis, In re; Spencer* v. *Willis*, 81 L. J. Ch. 8; [1911] 2 Ch. 563; 105 L. T. 295; 55 S. J. 598—Eve, J.

Power to Invest "as they should think desirable, but not in the British Funds"—Purchase of Freeholds.]—A will contained the following investment clause : " My trustees being at liberty to sell all my ships, houses, and other property of mine, and 'invest' same as they think most desirable, but not in the British funds, my trustees to be free from all liability in investing any of the money received for the sale of any of my property " :—*Held*, that the above clause authorised the trustees to invest the proceeds of sale in the purchase of freehold lands in England and Ireland. *O'Connor, In re; Grace* v. *Walsh*, [1913] 1 Ir. R. 69—M.R.

Power to Retain—" Meaning of " Investments "—Money on Deposit with Industrial Firm.]—A testator by his will declared that " any moneys liable to be invested under this my will may remain invested as at my death." The testator's estate included a sum of 2,900*l.* on deposit with an industrial firm in whose employment the testator had been for many years :—*Held*, that the money could not be treated as " invested," and consequently the trustees could not allow the same to remain on such deposit. *Sudlow, In re; Smith* v. *Sudlow*, 59 S. J. 162—Eve, J.

Investment on Authorised Security — Jurisdiction to Enquire into Propriety of Retaining Investments.] — The Court has jurisdiction under Order LV. rule 3, without directing the execution of trusts, to give directions as to particular things which are to be done in their administration, and can therefore direct an enquiry whether it is for the benefit of the *cestuis que trust* that investments on authorised securities made by the trustees should be continued, or whether they ought to be called in. *D'Epinoix's Settlement, In re; D'Epinoix* v. *Fettes*, 83 L. J. Ch. 656; [1914] 1 Ch. 890; 110 L. T. 808; 58 S. J. 454—Warrington, J.

Power to Invest on Leasehold Security — Advances on Under-leases.]—While a power to invest on leasehold securities may in some cases authorise trustees to advance money on under-leases, trustees proposing to make such an advance ought to consider very seriously whether the investment is a prudent one, in view of their inability to control the acts and defaults of the original lessee. *Ib.*

Discretion — Retention of Investments — Loss.]—Trustees who have a trust for sale and conversion with powers at their discretion to postpone conversion and to retain existing investments, are not under any duty to make or preserve evidence that they have exercised such discretion. The assumption is, if they postpone conversion and retain existing investments, that they have properly exercised their discretion. Observations on the duties of trustees with respect to the retention of investments. *Oddy, In re; Connell* v. *Oddy*, 104 L. T. 128—Joyce, J.

Purchase of Land by Trustees by Way of Investment — Absence of Express Power to Vary Investments — Implied Power.] — The power of investment ordinarily given to trustees of a settlement implies a power to vary investments; and trustees of a settlement with power to purchase freehold or leasehold property for the personal use or occupation of the tenant for life have an implied power to sell the same. *Cooper's Trusts, In re*, ([1873] W. N. 87), followed. *Pope and Easte's Contract, In re*, 80 L. J. Ch. 692; [1911] 2 Ch. 442; 105 L. T. 370—Neville, J.

Advance of Trust Money on Mortgage—Valuing Security—Right of Trustee to Assume that Valuer will Satisfy Himself of Necessary Facts.] — Section 8, sub-section 1 of the Trustee Act, 1893, justifies trustees who are proposing to advance trust money on mortgage in assuming that the valuer whose duty it is to advise them will satisfy himself of the facts as to the property on which it is proposed to make the advance which are necessary to the making of a satisfactory valuation, and relieves them of the liability to make enquiries themselves regarding the personality of the mortgagor and the details concerning the property. Observations of Parker, J., in *Shaw* v. *Cates* (78 L. J. Ch. 226; [1909] 1 Ch. 389) approved. *Solomon, In re; Nore* v. *Meyer*, 81 L. J. Ch. 169; [1912] 1 Ch. 261; 105 L. T. 951; 56 S. J. 109; 28 T. L. R. 84—Warrington, J. Appeal compromised, 82 L. J. Ch. 160; [1913] 1 Ch. 200; 108 L. T. 87—C.A.

—— **Property Let on Weekly Tenancies — Right to make Advance on.**]—There is no rule precluding trustees from lending trust money on the security of property let on weekly tenancies. The question is in every case one of the amount which may safely be advanced. *Ib.*

—— **Instructing and Employing Valuer "independently of any owner of the property."**]—If the relation of employer and employed exists between the trustee and the valuer, and between them only, in regard to the proposed advance, the valuer being entitled to look for his remuneration to the trustees and being responsible to him alone for the due performance of his duty as valuer, the valuer is " instructed and employed independently of any owner of the property " within the meaning of sub-section 1, and the trustee is not bound to enquire whether he has at any time advised or acted for the mortgagor. *Ib.*

—— **Duty of Valuer to Consider Proportion which may be Advanced Independently of " Two-thirds " Rule.**]—It is the duty of a valuer acting for trustees to consider not only the value of the property, but the proportion which in his opinion as an expert and a prac-

tical man the trustees would in each particular case be justified in advancing, independently of any supposed rule relating to two-thirds of the value; though if he advises that the trustees may safely advance two-thirds, and no more, they are justified in acting on his report. *Ib.*

—— **Making Advance "under the advice of the surveyor or valuer expressed in the report."**]—It is not necessary for a surveyor or valuer expressly to advise trustees to advance a particular sum. If he is instructed to survey a property and report on its value and the amount which the trustees can advance on it, and states in his report what he considers to be the value, and that the property forms a sufficient security for the proposed advance, the trustees in making the advance are making it "under the advice of the surveyor or valuer expressed in the report" within the meaning of the sub-section. *Ib.*

Mortgage — Trade Buildings — Valuation — Two-thirds or One-half — Old Valuation — Depreciation.]—There is no rule that in all cases where a portion of the premises, or even a chief portion, is used for business purposes, trustees are guilty of a breach of trust in advancing more than a moiety of the valuation. If the security is really a business plus the premises, the trustees are well advised in having nothing to do with it; and if they are so inseparable that the discontinuance of the business must or may depreciate the premises, then the trustees ought not to advance more than one-half. But where there is a freehold property situate in a busy thoroughfare adaptable for various kinds of business, there is no rule that trustees are limited to advancing only a moiety. *Palmer* v. *Emerson*, 80 L. J. Ch. 418; [1911] 1 Ch. 758; 104 L. T. 557; 55 S. J. 365; 27 T. L. 320—Eve, J.

—— **Breach of Trust—Acting Reasonably—Relief.**]—Section 8 of the Trustee Act, 1893, is a relieving section, and does not impose on trustees a statutory obligation to take a valuation. Accordingly, where trustees advanced money on mortgage without a valuation made for the purpose, but relied on a valuation made some two years previously, and the security proved insufficient,—*Held*, that the trustees had not committed a breach of trust; but even if they had, they ought to be excused under the Judicial Trustees Act, 1896, s. 3. *Ib.*

—— **Unauthorised Investment—Dual Position of Tenant for Life and Trustee—Restoration of Capital with Interest—Claim to Excess of Interest.**]—A tenant for life is not liable to make goods to the capital fund any excess of interest which he obtains from unauthorised investments, provided the capital fund is not diminished by reason of such investments; and this principle holds good even though the tenant for life may happen to be also a trustee. *Hoyles, In re; Row* v. *Jagg (No. 2)*, 81 L. J. Ch. 163; [1912] 1 Ch. 67; 105 L. T. 663; 56 S. J. 110—Swinfen Eady, J.

3. Indemnity.

See also Vol. XIV. 714, 2185.

Cestui que Trust Lease to Trustee—Assignment of Beneficial Interest with Trustee's Concurrence—Continuing Liability of Original Cestui que Trust.]—A *cestui que trust*, who is also the maker of the trust, is personally liable to indemnify the trustee against any loss accruing in the proper execution of the trust, and this liability continues after the *cestui que trust* has assigned his beneficial interest in the trust property to another person. *Matthews* v. *Ruggles Brise*, 80 L. J. Ch. 42; [1911] 1 Ch. 194; 103 L. T. 491—Swinfen Eady, J.

Two partners, C. and M., accepted a lease at the request of all the partners and in trust for the partnership. Subsequently the partners agreed to sell the partnership assets and liabilities to a company. By the agreement, the company covenanted to indemnify the partners and partnership against the liabilities and to take all reasonable steps to effect a novation to the company of these liabilities: and each of the partners covenanted to execute and do any necessary document or thing for vesting the assets of the partnership in the company. C. died and M. subsequently assigned to the company at their request the lease and also certain freehold property comprised in the agreement. Some years afterwards the company became insolvent, and the lessor sued the present plaintiffs, as executors of M., the surviving lessee, for arrears of rent and damages for breach of covenant. The plaintiffs settled the action by payment of a lump sum to cover their existing and future liabilities under the lease. They then sued C.'s executors for contribution in proportion to C.'s share in the partnership. The defendant's contended that the company's liability to indemnify the lessees had been in substitution for the partners' liability; and, alternatively, that M. had forfeited his right to contribution by failing to retain part of the freehold property by way of indemnity against future liability under the lease:—*Held*, that the plaintiffs were entitled to contribution, for there had been no novation of the lessee's right to indemnity in respect of the liability under the lease, and M. could not have retained part of the freehold property by way of indemnity without a breach of the agreement entered into by all the partners. *Ib.*

4. Liability of Trustees for Breach of Trust.

See also Vol. XIV. 746, 2191.

Solicitor Authorised to Receive Trust Money by Having Custody of Deed Containing Receipt—Misappropriation—Permitting Money to Remain in Solicitor's Hands for Unnecessary Time—Knowledge of Trustee of Receipt by Solicitor—Liability for Loss.]—Sub-section 3 of section 17 of the Trustee Act, 1893, does not render a trustee liable for permitting trust money to remain for an unnecessary time in the hands or under the control of a solicitor whom the trustee has appointed, under sub-section 1, as his agent to receive it, by per-

mitting him to have the custody of a deed containing a receipt, unless the trustee knows, or ought to have known, that the solicitor has received the money. *Sheppard, In re; De Brimont* v. *Harvey*, 80 L. J. Ch. 52; [1911] 1 Ch. 50; 103 L. T. 424; 55 S. J. 13—Parker, J.

A fund, of which H. and another were the trustees, was invested on a mortgage which was about to be paid off. Both trustees executed, and delivered to B., the solicitor to the trust, a deed of reconveyance containing a receipt for the mortgage money. The other trustee died three days later. During the following four months H. frequently asked B. whether he had received the money, and B. replied that he had not. B., without H.'s knowledge, was in fact selling the property in lots on the mortgagors' behalf, using the reconveyance, which he retained, to make out a title, and receiving from time to time and misappropriating the purchase money, so that the greater part of the fund was lost. B. had previously been solicitor to a second trust, the S. trust, of which H. was a trustee, and H.'s co-trustees, owing to their dissatisfaction with B.'s conduct in matters connected with that trust, had insisted on employing another solicitor in his place. It was not contended that the authority conferred on B. by the delivery of the reconveyance to him was revoked by the death of the other trustee of the mortgage money, or that it did not empower B. to receive that money in instalments:—*Held*, on that assumption, and treating H. as if he had been a sole trustee, that on the evidence he might reasonably continue to believe in B.'s honesty, notwithstanding the circumstances connected with the S. trust; that since H. had no means of checking B.'s statements regarding the non-receipt of the money except by asking to see the deeds, which were in B.'s possession, notice of the receipt of it by B. ought not to be imputed to him; that he was justified in not revoking B.'s authority to receive the money by withdrawing the reconveyance from B.'s custody; and that he had not been guilty of any breach of trust. *Ib.*

Mortgage Securities—Depreciation—Distribution of Trust Property — Appropriation of Valueless Security to Settled Share — No Valuation—Negligence—Breach of Trust.]—A trustee with an estate in possession divisible between two beneficiaries handed over the valuable portion to one beneficiary and retained the remainder without enquiring whether it was sufficient to satisfy the other share. The property retained was valueless:—*Held*, that the trustee ought to have enquired as to the value of the securities at the date of the distribution, and that, not having done so, he was liable for breach of trust and could not claim the protection of the Judicial Trustees Act, 1896, s. 3. *Brookes, In re; Brookes* v. *Taylor*, 83 L. J. Ch. 424; [1914] 1 Ch. 558; 110 L. T. 691; 58 S. J. 286—Astbury, J.

Unauthorised Investment—Payment of Interest by Trustee to Himself as Tenant for Life — Right of Tenant for Life to Retain Excess of Interest.]—A trustee, who was also tenant for life, invested the trust estate in unauthorised investments. No loss had resulted to the trust estate by reason of this proceeding:—*Held*, that the tenant for life (notwithstanding the fact that she was also trustee) was not bound to account to the trust estate for the excess received by her as interest from the unauthorised investments above and beyond the interest that she would anyhow have received had the trust estate been properly invested. *Hoyles, In re; Row* v. *Jagg* (*No.* 2), 81 L. J. Ch. 163; [1912] 1 Ch. 67; 105 L. T. 663; 56 S. J. 110—Swinfen Eady, J.

5. Liability for Agents Employed by Trustees.

See also Vol. XIV. 797, 2198.

Payment of Duty—Cheque Payable to Solicitor — Misappropriation — Will — Power to Employ Agents — Relief.] — By his will, the testator empowered his trustees and executors to employ agents to act for them, and declared that they should be indemnified out of the trust estate against the acts and omissions of such agents. One of the trustees, who was a solicitor, died, and the remaining trustee employed another solicitor to act for the estate. During the winding up of the estate the trustee gave the solicitor cheques payable to himself for payment of duties. The solicitor misappropriated the proceeds of the cheques. In an action to make the trustee liable for the sums so lost to the estate,—*Held*, that under the terms of the will the trustee was justified in believing that he might pay the duties through a solicitor, and that, as he had acted honestly and reasonably, he was entitled to relief under section 3 of the Judicial Trustees Act, 1896. *Mackay, In re; Griessemann* v. *Carr*, 80 L. J. Ch. 237; [1911] 1 Ch. 300; 103 L. T. 755—Parker, J.

D. THE CESTUI QUE TRUST.

See also Vol. XIV. 818, 2199.

Laches or Acquiescence of Beneficiary.] — An annuitant is not guilty of such *laches* as would disentitle her to recover arrears of her annuity merely on the ground that she has not actively enforced the performance of the duty of the trustees to pay her such annuity regularly. *Rix, In re; Rix* v. *Rix*, 56 S. J. 573—Neville, J.

Liability of Trustee.] — Trustees are appointed for the protection of their *cestuis que trust*, and so long as they remain trustees they are responsible for their dutes as such. *Ib.*

E. ACTIONS BY AND AGAINST TRUSTEES—STATUTE OF LIMITATIONS.

See also Vol. XIV. 862, 2204.

Personal Liability—Compromise on Advice of Law Agent—Duty to Make Annuities Real Burden on the Estate.] — A testator whose assets consisted of heritable and personal property used in his business by trust disposition and settlement disinherited the children of his first marriage and his daughter by his second

marriage, leaving them nothing whatever, and directed his trustees to pay to his wife an annuity of 300*l.* per annum during her life, and an annuity of 200*l.* to his son John and Helen his wife during their lives, and to convey to his son George the whole residue of his estate, "but always with and under the burden of the life rent to my said wife of my properties in Glasgow and Girvan and also under burden of the payment of the annuities to my said wife and to my son and his wife." The disinherited children upon the death of the testator threatened to take legal proceedings to set aside his disposition on the ground of want of capacity and undue influence, and also claimed to recover their *legitim* share of his assets. The trustees (one of whom was the appellant), acting on the advice of a law agent of high standing and acknowledged character in the profession, compromised the claims, and borrowed the sum required to carry out the compromise on the security of the heritable estate. They also allowed the son George to take possession of the business without making the annuities to the son John and his wife primary real burdens on the heritable subjects. After a few years the business failed, and there was not sufficient to pay the annuitants:—*Held*, that the appellant was not liable for breach of trust, for there was no proof that he and his co-trustees in agreeing to and carrying out the compromise had been guilty of negligence. *Eaton* v. *Buchanan*, [1911] A.C. 253—H.L. (Sc.)

Outstanding Debts — No Steps to Require Payment.]—Trustees directed by the will of a testator who died in May, 1896, to convert and invest his estate, having allowed a sum lent by the testator and a debt due in respect of the sale of part of the testator's assets to remain uncollected and without action brought until 1903, the debtor being a director of an important company and possessed of house and share property, *held* liable for the consequent loss, the Court not being satisfied that no loss had accrued to the testator's estate from the neglect by the trustees of their duty. *Dictum* of Sir J. Romilly, M.R., in *Clack* v. *Holland* (24 L. J. Ch. 13; 19 Beav. 262, 271), applied. *Greenwood, In re; Greenwood* v. *Firth*, 105 L. T. 509—Eve, J.

The concluding words of section 21, subsection 2 of the Trustee Act, 1893 (56 & 57 Vict. c. 53), involve the exercise of active discretion on the part of the trustees allowing time for payment and not the mere passive attitude of leaving matters alone. *Ib.*

Release by Beneficiary—Acting Reasonably —Relief.]—Loss which has arisen from carelessness or supineness of the trustee is altogether outside the sub-section. A beneficiary gave executors a receipt for a share of the estate "as shown by the executors' books" and accounts:—*Held*, that the receipt was not a release to them in respect of the balance of debts due to the testator's estate then remaining uncollected, and further, that, in the circumstances, the trustees, having allowed the matter of calling in the debts to drift for six years, had not acted reasonably and were not entitled to be relieved under section 3 of the Judicial Trustees Act, 1896. *Ib.*

Statute of Limitations.]—Where a policyholder surrendered his policy to the insurance company on the terms that the amount paid to him for the surrender should be invested in shares of the company,—*Held*, that this was a conversion within section 8, sub-section 1 of the Trustee Act, 1888, which would prevent the policy-holder, a director, from setting up the Statute of Limitations as a defence. *Irish Provident Assurance Co., In re*, [1913] 1 Ir. R. 352—Palles, C.B.

—— Payment on Erroneous Construction of Will—Acting on Advice of Solicitor—Relief from Liability.]—The defence afforded to a trustee by the Trustee Act, 1888, s. 8, in a case where he is sued in respect of a breach of trust committed more than six years before action brought, arises under clause (*b*) and not clause (*a*) of sub-section 1 of section 8 of the Act, and the proviso to clause (*b*) renders the defence of no avail where the interest of the person claiming in respect of the breach of trust only vested in possession less than six years before action brought. Cases to which clause (*a*) applies discussed. *Semble*, that the proviso to clause (*b*) also applies to clause (*a*). *Allsop, In re; Whittaker* v. *Bamford*, 83 L. J. Ch. 42; [1914] 1 Ch. 1; 109 L. T. 641; 58 S. J. 9; 30 T. L. R. 18—C.A.

The jurisdiction conferred on the Court by section 3 of the Judicial Trustees Act, 1896, enabling it to relieve a trustee from personal liability in respect of "any breach of trust" where the trustee "has acted honestly and reasonably and ought fairly to be excused" applies to the case of a trustee who has distributed an estate on an erroneous construction of a will. Where, therefore, by an innocent mistake the trustee of a small estate acted on the advice of his solicitor and distributed the income of a share of the estate instead of accumulating it owing to an erroneous construction of an obscure provision of a will, the Court exercised its discretion by relieving him from personal liability under the section. *Ib.*

Kay, In re; Mosley v. *Keyworth* (or *Kay*) (66 L. J. Ch. 759; [1897] 2 Ch. 518), applied. *Dictum* of Parker, J., in *Mackay, In re; Griessemann* v. *Carr* (80 L. J. Ch. 237, at p. 240; [1911] 1 Ch. 300, at p. 307), approved. The general principles laid down by Kekewich, J., in *Davis* v. *Hutchings* (76 L. J. Ch. 272; [1907] 1 Ch. 356), disapproved. *Ib.*

—— Money Paid by Trustee to Wrong Person Recovery by Beneficiary whose Money Paid Away—Lapse of Time.]—From 1886 to 1900 the trustee of an annuity paid it to a person who was thought by both to be, but who afterwards proved not to have been, entitled to it. The person who was entitled to it having established his title in 1909, and died, his executrix brought an action against the executor of the person who had been wrongly paid to recover the money. The trustee was not a party to the action:—*Held*, that the action being in substance a common law demand for money had and received, the

Limitation Act, 1623, applied, and the claim was barred by the lapse of six years. *Harris* v *Harris* (*No.* 2) (29 Beav. 110) explained. *Robinson, In re; McLaren* v. *Robinson*, 80 L. J. Ch. 381; [1911] 1 Ch. 502; 104 L. T. 331; 55 S. J. 271—Warrington, J.

F. FOLLOWING TRUST PROPERTY.

See also Vol. XIV. 895, 2207.

Company—Liquidation—Assets—Order to Purchase Stock.]—Where a lady sent money to a financial firm to be invested by them in an American concern, and, the stock being short, they paid her money into a special account at a bank, in the joint names of the directors of the firm, to await the time when the stock should be delivered; and subsequently a liquidator of the firm was appointed, and when the stock was delivered the bank applied the money in taking it up:—*Held*, that the payment into the bank was a clear method of providing for the purchase of the stock, and that the firm were trustees for the lady, who was accordingly entitled to the stock. *Chaplin, Milne, Grenfell & Co., In re* (*No.* 1), 59 S. J. 250—Neville, J.

Banking Account—Trust Funds Mixed with Private Moneys—Charge on Balance of Private General Account for Trust Funds.]—W. bought the business of the plaintiff company and agreed to get in certain debts of the business and pay them over to the plaintiff company. W. paid into his private general account a sum of 455*l.*, part of the debts which he had so collected. Two days after paying in this sum he had drawn all the money out of the account with the exception of a sum of 25*l.* 18*s.*, and applied it for his own purposes. Subsequently, he operated on the account in the ordinary way, paying in and drawing out from time to time. On his death there was a credit balance on the account of 358*l.*, which moneys were now in the hands of the defendant, who was a trustee of W.'s property under an administration order in bankruptcy. The plaintiff company claimed a charge on this amount:—*Held*, that, although W. was a trustee for the company of the 455*l.*, it was not possible for the mere fact of the payment by him of further moneys into this private general account to impart to him the intention of clothing such moneys with a trust in favour of the plaintiff company, and accordingly the only part of this balance of 358*l.* which could be taken by the plaintiff company was the sum of 25*l.* 18*s.*, that being the smallest amount to which the balance had fallen between the date of payment in of the 455*l.* and the death of the debtor, and being the only sum which could be earmarked as the proceeds of the book debts. *Hallett's Estate, In re; Knatchbull* v. *Hallett* (49 L. J. Ch. 415; 13 Ch. D. 696), distinguished. *Roscoe (Bolton), Lim.* v. *Winder*, 84 L. J. Ch. 286; [1915] 1 Ch. 62; 112 L. T. 121; [1915] H. B. R. 61; 59 S. J. 105—Sargant, J.

Where a trustee had misappropriated trust funds, and paid them into his own account at his bank, it was held that his co-trustee, when he discovered the misappropriation, could follow the trust funds, and had a charge on the balance of the defaulting trustee at his bank. *Hallett's Estate, In re; Knatchbull* v. *Hallett* (49 L. J. Ch. 415; 13 Ch. D. 696), applied. The co-trustee can retain or set off against the misappropriated trust money such part of the legacy as devolved by derivative title beneficially on the defaulting trustee. The principle of *Jacubs* v. *Rylance* (43 L. J. Ch. 280; L. R. 17 Eq. 341), or the principle of *Cherry* v. *Boultbee* (7 L. J. Ch. 178; 4 Myl. & Cr. 442), applied. *Dacre, In re; Whitaker* v. *Dacre*, [1915] 2 Ch. 480; 60 S. J. 44—Sargant, J.

G. PAYMENT INTO AND OUT OF COURT.

See also Vol. XIV. 922, 2208.

Doubt as to Persons Entitled—Payment into Court—Cost of Trustees on Payment out.]—Where trustees paid a fund into Court to which a certain testator was entitled who had left it to one H. D. absolutely, and H. D. was described in the probate of the testator's will as H. D., the widow of the testator, when, in fact, although the testator had gone through a form of marriage with H. D., his wife was still alive, and his wife and child both made claims to the fund and the trustees paid it into Court:—*Held*, on a summons for payment out, that they were to be allowed their costs of the summons. *Davies' Trusts, In re*, 59 S. J. 234—Neville, J.

Payment out to One Trustee—Original Sole Trustee—No Children of Marriage.]—A wife had been deserted by her husband in 1892, shortly after their marriage, and there were no children of the marriage. Funds in Court had been settled by the wife by the marriage settlement, and she petitioned that they should be paid out to her brother, who was the sole and an original trustee of the settlement:—*Held*, notwithstanding the general rule that funds in Court will not be paid out to a sole trustee, that in the circumstances of this case payment should be ordered to be made to the sole trustee, he undertaking in the event of there subsequently being any children born of the marriage to appoint another trustee of the settlement. *Reynault, In re* (16 Jur. 233), followed. *Leigh* v. *Pantin*, 84 L. J. Ch. 345; [1914] 2 Ch. 701; 112 L. T. 26—Sargant, J.

H. VESTING ORDERS.

See also Vol. XIV. 961, 2208.

Person Absolutely Entitled — Request in Writing to Trustee to Transfer Trust Funds—Service of Request.]—The Court will make a vesting order under section 35, sub-section 1 (ii.) (*d*) of the Trustee Act, 1893, where the trustee does not appear on the petition, provided an affidavit is filed stating that the petition has been served on the trustee, and also that the request, in writing, addressed and sent to him in accordance with the terms of such section, has not been returned by the Post Office. *Struve's Trusts, In re*, 56 S. J. 551—Parker, J.

II. PUBLIC TRUSTEE.

Scottish Marriage Contract.]—The provisions of the Public Trustee Act, 1906, do not extend so as to enable the Public Trustee to act as trustee of a Scottish or foreign settlement. *Hewitt's Settlement, In re; Hewitt* v. *Hewitt*, 84 L. J. Ch. 358; [1915] 1 Ch. 228; 112 L. T. 287; 59 S. J. 177; 31 T. L. R. 81—Eve, J.

Appointment of Public Trustee as Sole Trustee of Settlement.]—Under section 5 of the Public Trustee Act, 1906, the Court has express jurisdiction to appoint the Public Trustee sole trustee of a settlement, although the settlement provides that the number of trustees shall not at any time be less than three. *Semble*, under the combined effect of section 10 of the Trustee Act, 1893, and section 5 of the Public Trustee Act, 1906, the donee of the power in a settlement so framed could himself appoint the Public Trustee to be sole trustee. *Leslie's Hassop Estates, In re*, 80 L. J. Ch. 486; [1911] 1 Ch. 611; 104 L. T. 563; 55 S. J. 384; 27 T. L. R. 352—Eve, J.

Trustee for Purposes of Settled Land Acts.]—Where a donee of a power or the Court properly appoints the Public Trustee to be a sole trustee, the settlement in such a case must be read as authorising the payment of capital moneys to him as a sole trustee under section 39 of the Settled Land Act, 1882, and as intending the giving of notices to a sole trustee under section 45. *Ib.*

Real Estate—Powers.]—The scope of the Public Trustee Act, 1906, implies that the Public Trustee has full power to hold land and to take possession of personal property in all cases, and not only under section 3 of the Act. *Ib.*

Number of Trustees not to be Less than Three.]—*Semble*,—Under section 25 of the Trustee Act, 1893, the Court can appoint two trustees or even a sole trustee of a settlement, notwithstanding the settlor's direction as to the minimum number being three. *Ib.*

Consent to Act — Deed of Appointment — Operative Date.]—Rule 8, sub-rule 2 of the Public Trustee Rules, 1912, provides that no appointment of the Public Trustee to be trustee shall be made, except by a testator, unless and until the consent of the Public Trustee to act as such trustee shall have been obtained. Rule 10 provides that the consent of the Public Trustee must be in writing and under his official seal. The executrixes and trustees of a will executed a deed appointing the Public Trustee sole trustee in their place, but it was not their intention that a complete appointment should be made until certain events had happened. After the happening of these events the Public Trustee executed under his official seal a consent to act, and thereupon the date of appointment was dated, and on a later day the Public Trustee executed the deed of appointment:—*Held*, that as the deed of appointment did not become operative until the day when the Public Trustee completed it, his consent was executed before the appointment was made, and therefore the appointment was in accordance with the Rules. *Shaw, In re; Public Trustee* v. *Little*, 110 L. T. 924; 58 S. J. 414; 30 T. L. R. 418—C.A.

Charitable Funds — Appointment of Corporate Body as Custodian Trustee — Trust Exclusively for Religious or Charitable Purposes—Incorporated Body of Trustees—Power of Trustees of Funds to Appoint as Custodian Trustee—"Instrument" Empowering Incorporated Body to Undertake Trusts.]—The provisions of sub-sections 4 and 5 of section 2 of the Public Trustee Act, 1906, precluding the Public Trustee from accepting certain classes of trusts, including trusts exclusively for religious or charitable purposes, apply only to the Public Trustee, and not to a corporation appointed custodian trustee of such a trust under section 4, sub-section 3; nor is such an appointment open to objection on the ground that it will abridge or affect the powers or duties of the official trustees of charitable funds. *Cherry's Trusts, In re; Robinson* v. *Wesleyan Methodist Chapel Purposes Trustees*, 83 L. J. Ch. 142; [1914] 1 Ch. 83; 110 L. T. 16; 58 S. J. 48; 30 T. L. R. 30—Sargant, J.

The appointment of a custodian trustee of charitable funds may be made by trustees having the power of appointing new trustees of the funds; and the "instrument" within the meaning of rule 30 of the Public Trustee Rules, 1912, empowering a body of trustees incorporated under the Charitable Trustees Incorporation Act, 1872, to undertake trusts is their deed of trust and the certificate of incorporation. *Ib.*

Will — Retiring Trustee — Appointment of Public Trustee — Prohibiting Appointment — Expediency—Expense.]—In cases not involving any exceptional or disproportionate expenditure the mere fact that the appointment of the Public Trustee as a trustee involves the expense contemplated by the Public Trustee Act, 1906, in respect of his remuneration is not a material element in determining whether such appointment is "expedient" under section 5, sub-section 4 of that Act. *Firth, In re; Firth* v. *Loveridge*, 81 L. J. Ch. 539; [1912] 1 Ch. 806; 106 L. T. 865; 56 S. J. 467; 28 T. L. R. 378—Eve, J.

Judicial Trustee Retiring—Power of Court to Appoint Public Trustee.]—When a judicial trustee retires, he has no overriding power to appoint his successor, but the Court has jurisdiction to appoint the Public Trustee in his place, and in a proper case will do so. *Johnston, In re; Mills* v. *Johnston*, 105 L. T. 701—Neville, J.

Power to Administer — Small Estate Over 1,000*l.*—Reduced to Less than 500*l.* by Distribution.]—The gross capital value of the small estate referred to in section 3 of the Public Trustee Act, 1906, is to be ascertained at the date of the application to the Public Trustee to administer the estate, and not at

the date of the death of the testator or intestate. Accordingly the Public Trustee has power to administer an estate the gross capital value of which was more than 1,000*l.* at the death, but which was reduced below that sum by distribution. *Deveraux, In re; Toovey* v. *Public Trustee*, 80 L. J. Ch. 705; [1911] 2 Ch. 545; 105 L. T. 407; 55 S. J. 715; 27 T. L. R. 574—Eve, J.

Administration of Trusts.] — Section 3 applies throughout to the estates of deceased persons, and has no application to trusts created by settlements. *Ib.*

Income Fee as between Annuitant and Residuary Legatee.] — When the Public Trustee is appointed to administer the trusts of a will, which consist in paying a portion of the income of the trust funds to annuitants and the remainder to life tenants of the residue, the income fee payable to him in accordance with the Public Trustee Act, 1906, s. 9, must be duly apportioned as between the annuitants and the life tenants, and must not be thrown entirely upon residue. *Bentley, In re; Public Trustee* v. *Bentley*, 84 L. J. Ch. 54; [1914] 2 Ch. 456; 111 L. T. 1097—Astbury, J.

Two Settlements — Conflicting Interests — Power to Compromise.]—The Public Trustee has no more power than a private trustee, where he is in the position of having conflicting interests, to make a bargain with himself, and must accordingly come to the Court in the proper proceedings for sanction to such a bargain. *New Haw Estate Trust, In re*, 107 L. T. 191; 56 S. J. 538—Parker, J.

Audit of Trust Accounts—Summons by Way of Appeal from Direction as to Costs of Audit.] —Where funds had been properly invested and all reasonable information given to a certain beneficiary under a trust, who nevertheless demanded an audit of the accounts of the trust under section 13 of the Public Trustee Act, 1906,—*Held*, that the decision of the Public Trustee ordering such beneficiary to pay the costs of such an audit was quite right and must be upheld. *Utley, In re; Russell* v. *Cubitt*, 106 L. T. 858; 56 S. J. 518—Swinfen Eady, J.

Section 13 of the Public Trustee Act, 1906, does not give to beneficiaries general powers to obtain audits of the trust accounts at the expense of the trust estate. *Ib.*

Right of Appeal from Public Trustee — Exercise of Judicial Functions—Investigation and Audit of Trust Accounts—Jurisdiction to Direct Applicant to Pay Expenses.] — Section 10 of the Public Trustee Act, 1906, is not confined to the acts, omissions, or decisions of the Public Trustee under the preceding sections, but gives a right of appeal from his decision, at any rate in all cases where he exercises a judicial as opposed to an administrative function. *Oddy, In re*, 80 L. J. Ch. 404; [1911] 1 Ch. 532; 104 L. T. 338; 55 S. J. 348; 27 T. L. R. 312—Parker, J.

The Public Trustee ought not to be made a party to an appeal, though the Court which hears it may in matters of doubt ask him to state his reason for his decision. *Ib.*

In directing, under section 13, sub-section 5 of the Act, the expenses of an investigation and audit of the condition and accounts of a trust to be borne by the party who has applied for the investigation and audit under sub-section 1, the Public Trustee is exercising a judicial function, and an appeal therefore lies, and he ought to hear the parties, if they desire it, before giving the direction. *Ib.*

The jurisdiction to award costs against such an applicant ought to be exercised so as to control the right of application given by section 13 within reasonable bounds. Observations on this right. *Ib.*

TURBARY.

Rights of.]—*See* COMMON.

UMPIRE.

See ARBITRATION.

UNDUE INFLUENCE.

Parent and Child—Mortgage by Unmarried Daughter to Secure Parent's Debt—Presumption of Parental Influence—Onus of Proof.]—Transactions in the nature of bounty from child to parent are in equity always regarded with the greatest jealousy when taking place before the child is completely emancipated from the parental influence, and this principle is not confined to gifts or donations properly so-called, but extends to other benefits—for example, to a security executed in favour of the parent's creditor. In the case of a daughter who, having no means of subsistence of her own, continues, after coming of age, to live under her father's roof, the parental influence almost necessarily continues, and the mere fact that she has for some years been of full age does not put an end to the presumption that she is still acting under that influence. Where, therefore, the parent borrows money upon the security of a document executed by an unmarried daughter living under his roof it is incumbent upon the lender to ascertain and assure himself not only that she understood what she was doing, but also that she was not acting under parental influence. *London and Westminster Loan and Discount Co.* v. *Bilton*, 27 T. L. R. 184—Joyce, J. *And see* GIFT.

UNEMPLOYMENT.

See INSURANCE (NATIONAL).

VACCINATION.

Medical Officer — Superannuation.] — *See Lawson* v. *Marlborough Guardians*, *ante*, col. 1130.

VAGRANT.

See also Vol. XIV. 1091, 2215.

"Idle and disorderly person" — Street Collection for Strike Funds.]—Section 3 of the Vagrancy Act, 1824, which enacts that a person placing himself in a public place to beg or gather alms shall be deemed an idle and disorderly person, is directed against the class of persons who, at the time of the commission of the acts charged, have given up work and adopted begging as a mode of life and means of livelihood, and not against persons so gathering alms for another purpose. *Mathers* v. *Penfold*, 84 L. J. K.B. 627; [1915] 1 K.B. 514; 112 L. T. 726; 79 J. P. 225; 13 L. G. R. 359; 59 S. J. 235; 31 T. L. R. 108—D.

The appellant, a workman out of work through a strike, solicited contributions in the streets towards the strike fund of his union, from which he had, and might again have, benefit:—*Held*, that he was not "an idle and disorderly person" within section 3 of the Vagrancy Act, 1824. *Pointon* v. *Hill* (53 L. J. M.C. 62; 12 Q.B. D. 306) discussed and commented on. *Ib.*

Rogue and Vagabond — "Found" upon Premises for Unlawful Purpose.]—Section 4 of the Vagrancy Act, 1824, provides (*inter alia*) that every person "found in or upon any dwelling house . . . for any unlawful purpose" shall be deemed a rogue and vagabond:—*Held*, that to constitute the offence created by those words the accused must be discovered upon the premises doing the acts or things which of themselves constitute the unlawful purpose, but that actual apprehension upon the premises is not necessary. *Moran* v. *Jones*, 104 L. T. 921; 75 J. P. 411; 22 Cox C.C. 474; 27 T. L. R. 421—D.

Frequenting Public Street with Intent to Commit Felony—"Place adjacent"—Entrance Hall of Hotel.]—The entrance hall and staircase of an hotel which opened directly on to a public street,—*Held* to be a place adjacent to a street or highway within section 4 of the Vagrancy Act, 1824. *M'Intyre* v. *Morton*, [1912] S. C. (J.) 58—Ct. of Sess.

Male Person in a Public Place Persistently Soliciting for Immoral Purposes — Acts of Solicitation not Observed by Subject Thereof—"Solicits."] — On the prosecution under section 1, sub-section 1 (*b*) of the Vagrancy Act, 1898, of a male person for in a public place persistently soliciting for immoral purposes, the solicitation not being by words, but by actions, it is not necessary to prove that the subject of the alleged acts of solicitation was aware of them. *Horton* v. *Mead*, 82 L. J. K.B. 200; [1913] 1 K.B. 154; 108 L. T. 156; 77 J. P. 129; 23 Cox C.C. 279—D.

—— **Previous Conviction as Rogue and Vagabond—Jurisdiction of Court to Punish as Incorrigible Rogue.**]—Where a male person has been convicted under section 1, sub-section 1 (*b*) of the Vagrancy Act, 1898, of persistently soliciting for immoral purposes, having been at some former time adjudged to be a rogue and vagabond, he can be punished as an incorrigible rogue under the provisions of section 10 of the Vagrancy Act, 1824. *Rex* v. *Herion*, 82 L. J. K.B. 82; [1913] 1 K.B. 284; 108 L. T. 848; 77 J. P. 96; 23 Cox C.C. 387; 57 S. J. 130; 29 T. L. R. 93—C.C.A.

Living in Part on Earnings of Prostitution—Punishment of Whipping on Second Conviction—First Conviction not on Indictment.]—The conviction of an offence under the Vagrancy Act, 1898, preceding the "second or subsequent conviction . . . on indictment" under the same statute, referred to in section 7, sub-section 5 of the Criminal Law Amendment Act, 1912, need not be a conviction on indictment. *Rex* v. *Austin*, 82 L. J. K.B. 387; [1913] 1 K.B. 551; 108 L. T. 574; 77 J. P. 271; 23 Cox C.C. 346; 57 S. J. 287; 29 T. L. R. 245—C.C.A.

Therefore where a male person was convicted on indictment of trading on prostitution within section 1 of the Vagrancy Act, 1898, and it was also proved that he had been previously convicted under that Act by Courts of summary jurisdiction before the Criminal Law Amendment Act, 1912, had come into operation,—*Held*, that the Court had power under section 7, sub-section 5 of the Act of 1912, in addition to any term of imprisonment awarded, to order the offender to be once privately whipped. *Ib.*

Conviction by Court of Summary Jurisdiction of Rogue and Vagabond after Previous Conviction as Rogue and Vagabond—Commitment to Prison until Next General or Quarter Sessions — Jurisdiction of Court of Quarter Sessions to Sentence Prisoner as Incorrigible Rogue.]—A Court of quarter sessions has no jurisdiction to sentence, as an incorrigible rogue, a prisoner committed to prison by a Court of summary jurisdiction under section 5 of the Vagrancy Act, 1824, as amended by section 7 of the Penal Servitude Act, 1891, unless he has been convicted by the Court of summary jurisdiction of being an incorrigible rogue. *Rex* v. *Evans*, 84 L. J. K.B. 1603; [1915] 2 K.B. 762; 113 L. T. 508; 79 J. P. 415; 59 S. J. 496; 31 T. L. R. 410—C.C.A.

The appellant was convicted by a Court of summary jurisdiction of being a rogue and vagabond after a previous conviction as a rogue and vagabond, and was ordered to be imprisoned and kept to hard labour until the

next general quarter sessions of the peace. The Court of quarter sessions, after enquiring into the circumstances of the case, adjudged him to be an incorrigible rogue, and sentenced him to eleven months' imprisonment with hard labour. The appellant appealed against the sentence :—*Held*, that the Court of quarter sessions had no jurisdiction to adjudge him to be an incorrigible rogue or to sentence him therefor, and that their order sentencing him must be quashed. *Rex* v. *Johnson* (78 L. J. K.B. 290; [1909] 1 K.B. 439) followed. *Ib.*

—— **Non-Provision for Family — Sentence Reduced.**]—The appellant was sentenced to six months' imprisonment with hard labour and ordered to receive twelve lashes with the whip. The Court, being of opinion that the appellant had not much opportunity of providing for his family since his last release from prison, quashed that part of the sentence which ordered him to be whipped. *Rex* v. *Fidler*, 78 J. P. 142—C.C.A.

Failure to Maintain Children.] — *See Shaftesbury Union* v. *Brockway*, *Pallin* v. *Buckland*, and *Ashley* v. *Blaker*, *ante*, col. 1135.

Evidence of Wife against Husband — Admissibility.]—*See Director of Public Prosecutions* v. *Blady*, *ante*, col. 450.

VENDOR AND PURCHASER

A. THE CONTRACT AND MATTERS RELATING THERETO.

1. Construction.

See also Vol. XIV. 1100, 2218.

Agreement for Sale — Non-performance — Forfeiture—Penalty—Relief.]—An agreement for the sale of land provided that a portion of the purchase money should be paid on execution of the agreement and the balance by half-yearly instalments with interest, and further provided that "time is to be considered the essence of this agreement, and unless the payments are punctually made at the times and in the manner above mentioned these presents shall be null and void and of no effect, and the said party of the first part shall be at liberty to re-sell the land, and all payments made thereunder shall be absolutely forfeited to the party of the first part" :—*Held*, that this stipulation was of the nature of a penalty from which the purchaser was entitled to be relieved on payment of the balance of the purchase money due with interest. *Dagenham Thames Dock Co., In re; Hulse's Claim* (43 L. J. Ch. 261; L. R. 8 Ch. 1022), approved and followed. *Kilmer* v. *British Columbia Orchard Lands, Lim.*, 82 L. J. P.C. 77; [1913] A.C. 319; 108 L. T. 306; 57 S. J. 338; 29 T. L. R. 319—P.C.

2. Agreements for Sale—Statute of Frauds.

a. When Concluded.

See also Vol. XIV. 1110, 2219.

Letters—Introduction of New Terms—Contract Subject to Approval of Solicitor.] — If documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties it is a question of construction whether the execution of the further contract is a condition or term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. The fact that the reference to the more formal document is in words which according to their natural construction import a condition is generally conclusive against the reference being treated as the expression of a mere desire. *North* v. *Percival* (67 L. J. Ch. 321; [1898] 2 Ch. 128) doubted. *Von Hatzfeldt-Wildenburg (Princess)* v. *Alexander*, 81 L. J. Ch. 184; [1912] 1 Ch. 284; 105 L. T. 434—Parker, J.

Reference in Letters to Formal Contract—Complete Open Contract.]—Where the agents for the vendor of two warehouses, in a letter accepting an offer by intending purchasers, wrote as follows : "We shall be glad to meet you at your early convenience to receive a deposit on the sale to you, and to arrange for a formal contract, to be drawn out for signature by the solicitors,"—*Held*, that this was not a conditional acceptance, but a letter completing an open contract, of which specific performance could be enforced as against the purchaser. *Rouse* v. *Ginsberg*, 55 S. J. 632—Swinfen Eady, J.

Price — Sale by Auction — "Price which public will be asked to pay."]—By an agreement made between the appellant and the respondents the appellant was to have the right of purchasing certain lots of land to be selected by him, with the concurrence of the respondents, at prices to "be decided by our officials as soon as the surveys are completed . . . our prices . . . will be at least no higher

than the price which the public will be asked to pay." The lots were selected, and were offered to the appellant at the prices which similar lots had fetched at a sale by auction. The appellant refused to accept the lots at these prices, contending that "the price which the public was asked to pay" within the meaning of the agreement was the reserve price put on similar lots at the auction, not the price at which the lots were actually sold, and brought an action for specific performance or in the alternative for damages:—*Held*, that he was not entitled either to specific performance of the contract or to damages for a breach of it. *Frewen* v. *Hays*, 106 L. T. 515—P.C.

b. Statute of Frauds.

See also Vol. XIV. 1125, 2221.

Memorandum in Writing — Signature by Agent "thereunto lawfully authorised" — Solicitor—Signature Affixed "alio intuitu."]—A purchaser verbally agreed with G. to buy certain real estate. He paid a deposit and received a receipt therefore from G., but did not himself sign any document. G. was acting in this matter as agent for the vendor, a fact which subsequently he denied, and upon which he brought an action against the vendor. In this action, in which G. was found to have in fact been acting as agent for the vendor, the purchaser offered to give evidence on behalf of the vendor as to the interview with G. which resulted in the above-mentioned verbal agreement. For this purpose the purchaser prepared a statement and subsequently also some answers to specific questions asked by the vendor's solicitors. Neither the document containing the statement nor that containing the answers to the questions was signed by the purchaser, but each document was sent by his solicitors under cover of a letter signed by them to the vendor's solicitors. In an action for specific performance by the vendor against the purchaser,—*Held*, that the purchaser's solicitors were acting as agent for the purchaser in forwarding the two documents above mentioned, that they had authority to forward them under cover of a signed letter in the way they did, and that the two documents together with the two letters were a sufficient memorandum in writing to satisfy the Statute of Frauds. *Smith* v. *Webster* (45 L. J. Ch. 528; 3 Ch. D. 49) distinguished. *Jones* v. *Victoria Graving Dock Co.* (46 L. J. Q.B. 219; 2 Q.B. D. 314) and *Griffiths Cycle Corporation* v. *Humber & Co.* (68 L. J. Q.B. 959; [1899] 2 Q.B. 414) followed. *Daniels* v. *Trefusis*, 83 L. J. Ch. 579; [1914] 1 Ch. 788; 109 L. T. 922; 58 S. J. 271—Sargant, J.

Part Performance—Notice to Quit to Weekly Tenants.]—At a time when arrangements had been made for completion of the contract the purchaser requested the vendor to give notice to quit to two weekly tenants who were in occupation of part of the property contracted to be sold. The vendor complied with the request and the tenants gave up possession:—*Held*, that this constituted an act of part performance as unequivocally referable to the contract, as if the purchaser had taken possession of part of the property, and in itself prevented the purchaser from relying on the Statute of Frauds as a defence. *Ib.*

3. Particulars and Conditions of Sale.

See also Vol. XIV. 1166, 2222.

Whether Particulars Misleading—Sub-lease —Notice of.]—The advertisement of an intended sale of a public house described it as in the occupation of a tenant at a yearly rent, but did not specify the tenure by which the tenant held. An intending purchaser having seen the advertisement made an offer which was accepted, subject to conditions of sale, an agreement incorporating which she signed, and which stated explicitly that the tenant of the public house held under a lease which had ten years to run. There was a conflict of evidence as to whether the intending purchaser understood before signing the agreement that this lease was outstanding, and she sought to repudiate the purchase on the ground that she was misled by the advertisement into supposing that there was a yearly tenant in occupation of the public house. In an action by the plaintiff for the deposit fraud was not pleaded or alleged, but the jury found in answer to questions put to them that the purchaser was misled by the advertisement, and did not understand when signing the agreement that there was the lease of the public house outstanding:—*Held*, that there was no question for the jury and that a verdict should have been directed for the plaintiff; that the advertisement was not misleading; and that, applying the principle of *Carroll* v. *Keayes* (Ir. R. 8 Eq. 97), it was sufficient to put the purchaser on enquiry as to the tenure under which the occupier held; and that in the absence of fraud she was bound by the agreement which she signed specifying the actual tenure. *Clements* v. *Conroy*, [1911] 2 Ir. R. 500—C.A.

Semble, there is no conflict in principle between *Carroll* v. *Keayes* (*supra*) and *Caballero* v. *Henty* (43 L. J. Ch. 635; L. R. 9 Ch. 447). *Ib.*

—— Under-lease for Lease—Lease Dated Prior to Commencement of Title.]—A vendor contracted to sell a leasehold house and premises. It appeared from the abstract of title that the lease was an under-lease and that the property formed part of larger pieces of land comprised in certain head-leases. The purchaser objected that she would be liable to distress for rent for the whole premises comprised in the head-leases and also to eviction under the conditions of re-entry for breaches of covenant committed in respect of the remaining property, and she required the vendor to obtain a release at his own expense. The existence of the head-leases was disclosed in the under-lease which formed the root of title:—*Held*, that the objection was a good one, that the deposit must be returned, and the purchaser's costs of investigating the title paid by the vendor. *Darlington* v. *Hamilton* (23 L. J. Ch. 1000; Kay, 550) and *Creswell* v. *Davidson* (56 L. T. 811) followed. *Lloyds*

Bank and Lillington, In re, 81 L. J. Ch. 386; [1912] 1 Ch. 601; 106 L. T. 561; 56 S. J. 380—Warrington, J.

Agricultural Land — "Bush fruit" — Improvements—Written Consent of Landlord—Claim for Compensation by Tenant—Liability of Purchaser—Notice of Tenancy Agreement.] —Agricultural lands were put up for sale by public auction. The particulars described certain parts of the lands as "bush fruit." One of the conditions provided that the purchasers were to be deemed to have notice of, and to take subject to the terms of, all the existing tenancies. The purchaser of the lot under "bush fruit" did not inspect, or ask to inspect, the lease or agreement affecting the property, either previously to or at the sale. Before completion, the vendor, at the request of the purchaser, gave the tenant notice determining his tenancy. Subsequently it was discovered that the tenant had received the written consent of his landlord, the vendor's predecessor in title, to plant the land with "bush fruit," and he put in a claim for compensation under the Agricultural Holdings Act, 1908, s. 2, in respect of the improvement:—*Held*, that the claim for compensation must be borne by the purchaser. *Derby (Earl) and Ferguson's Contract, In re*, 81 L. J. Ch. 567; [1912] 1 Ch. 479; 105 L. T. 943; 56 S. J. 71—Joyce, J.

Lands Subject to Rentcharges—Sale in Lots by Tenant for Life—Power to Charge Moneys Paid on Foot of Apportioned Part of Rentcharge on Unsold Lot.]—A tenant for life put up for sale by private treaty lands, subject to a rentcharge, in six separate lots, subject to a condition that each lot would be sold subject to the entire rentcharge, but primarily liable for an apportioned part thereof, and that the purchaser of each lot should covenant for the payment of such apportioned part and for the indemnity of the other lots as regards such apportioned part only, and should charge all moneys payable on foot of such covenant on such lot, and that the vendor for the purpose of such condition should stand in the place of and be deemed to be the purchaser of any unsold lot or lots:—*Held*, that this was a valid condition on such a sale. *Biggs-Atkinson and Ryan's Contract, In re*, [1913] 1 Ir. R. 125—Barton, J.

4. Liability for Repairing Covenants.

Leasehold House — Sale by Mortgagee — Breaches of Covenant to Repair—No Express Notice of Breaches—Title—Production of Last Receipt for Rent—Liability of Vendor for Past Breaches of Covenant.] — A mortgagee by assignment of leasehold property contracted to sell the premises and all the residue of the term, and the contract provided that the purchaser should covenant to pay the rent and perform the covenants contained in the lease and to indemnify the mortgagee against the said rent and covenants. The lease contained covenants for repair, and there had been breaches of them. The purchaser had inspected the property, but had had no express notice of the breaches of covenant to repair, and at the date of the contract both he and the mortgagee were in fact unaware that there had been such breaches. There was no express agreement on the part of the mortgagee to give a good title:—*Held*, that the mortgagee as vendor was bound to make good such breaches, and that in the circumstances the production by the vendor of the receipt for rent last due was not, under section 3, sub-section 4 of the Conveyancing Act, 1881, in itself conclusive evidence of the due performance of the covenants of lease. *Taunton and West of England Perpetual Benefit Building Society and Roberts's Contract, In re*, 81 L. J. Ch. 690; [1912] 2 Ch. 381; 107 L. T. 378; 56 S. J. 688—Parker, J.

Barnett v. *Wheeler* (10 L. J. Ex. 102; 7 M. & W. 364) and *Highett and Bird's Contract, In re* (72 L. J. Ch. 220; [1903] 1 Ch. 287), as explained by Romer, L.J., in *Allen and Driscoll's Contract, In re* (73 L. J. Ch. 614; [1904] 2 Ch. 226), distinguished from the present case. *Ib.*

5. Conveyance.

See also Vol. XIV. 1203, 2225.

Contract for Sale of Land Free from Incumbrances—Improvement Charge on Land—Incidence of Liability to Pay.]—The improvement charge which, under section 61 of the London County Council (Improvements) Act, 1899, may be placed on lands the value of which has been increased by the improvement there referred to, does not become a charge on any land until the assessment for the charge has been approved by the County Council under sub-section 5 of the section and the amount defined by the assessment becomes a charge and incumbrance under sub-section 16. Where, therefore, after the date of a contract for the sale of land free from incumbrances, the County Council approved an assessment of an improvement charge on the land, of which both vendor and purchaser were ignorant, though notice of the Council's intention to impose a charge had been served before the contract,—*Held*, that the purchaser was not entitled to a conveyance free from the charge. *Stock* v. *Meakin* (69 L. J. Ch. 401; [1900] 1 Ch. 683) distinguished. *Farrer and Gilbert's Contract, In re*, 83 L. J. Ch. 177; [1914] 1 Ch. 125; 110 L. T. 23; 58 S. J. 98—Sargant, J

Covenant — Supply of Water — Farmhouse and Farm Buildings—Conversion of Farmhouse into Mansion — Severability of Covenant.] — A conveyance contained a covenant by the plaintiffs to supply water for a farmhouse and for the farm buildings. The defendant, who became owner of the farmhouse, converted it into a residential mansion:—*Held*, that the covenant was severable into a covenant to supply the farmhouse and a covenant to supply the farm buildings, and that though the obligation to supply the farmhouse had ceased, the obligation to supply the farm buildings remained. *Hadham Rural Council* v. *Crallan*, 83 L. J. Ch. 717; [1914] 2 Ch. 138; 111 L. T. 154; 78 J. P. 361; 12 L. G. R. 707; 58 S. J. 635; 30 T. L. R. 514—Neville, J.

Parcels — Plan — Falsa Demonstratio — "Things omitted or knowingly suffered" — Implied Covenant for Good Right to Convey.] —Where there are several descriptions of the parcels in a conveyance which, when evidence of surrounding facts is admitted, are not consistent one with the other, there is no general rule by which a Court can decide which description ought to prevail, and the order in which the conflicting descriptions occur is not conclusive. The respondent conveyed land to the appellant, and in the deed the parcels were described in four different ways: First, by the name which the premises bore; secondly, by their acreage; thirdly, by the names of the occupiers; and fourthly, by delineation and tint on a plan indorsed on the deed. The first three descriptions were all more or less inaccurate. On the plan a small strip of land was coloured which was not the property of the respondent. It had formerly been a part of the land of the respondent, but he or his predecessors in title had allowed a title by adverse possession to be acquired against him:—*Held*, that the plan, being a perfectly definite delimitation of the land expressed to be conveyed by the deed, must prevail, and that the purchaser was entitled to damages for breach of the implied covenant for a good right to convey, the extinction of the vendor's title to the strip of land being a "thing omitted or knowingly suffered" within section 7, subsection 1 of the Conveyancing Act, 1881. *Eastwood* v. *Ashton*, 84 L. J. Ch. 671; [1915] A.C. 900; 113 L. T. 562; 59 S. J. 560—H.L. (E.)

Judgment of the Court of Appeal (83 L. J. Ch. 263; [1914] 1 Ch. 68) reversed. *Ib.*

6. Restrictive Covenants.

See also Vol. XIV. 1219, 2230.

Restriction on User of Leased Premises—Restrictive Covenant Contained in Deed Relating to other Premises—Surrender of Lease—Acceptance by Landlord without Notice of Restrictive Covenant—Grant of New Lease to Lessee with Notice—Enforceability of Restrictive Covenant on Lessee.] — The defendant I. S. was the lessee of premises No. 137 High Street, East Ham, where he carried on the business of a pork butcher. The lease contained a covenant by him that he would not carry on in those premises any noisy or offensive trade other than that of a pork butcher. He was also the lessee of premises No. 170 High Street, East Ham, where he carried on the business of a general butcher. By a deed of assignment I. S. sold to the plaintiff his leasehold interest in No. 170, and the goodwill of the business carried on there, and covenanted to use his best endeavours to promote the said business and to secure to the plaintiff, his executors, administrators, and assigns, the full advantage of his, the vendor's, connection and custom in the said business, and also that he, his executors, administrators, or assigns, would not carry on or be concerned or interested in or assist any other person to carry on or be concerned or obtain any interest in the trade or business of a butcher within three miles of No. 170 High Street, East Ham, and also that he, his executors, administrators, or assigns, would not deal in fresh meat other than pork at No. 137 High Street. Subsequently I. S. determined to give up the business which he was carrying on at No. 137, and his son, the defendant, G. S., who was also a butcher and who was aware of the last-mentioned restrictive covenant contained in the deed of assignment, was minded to carry it on. I. S. surrendered his lease of No. 137 to the landlord, who granted a new lease to G. S., by the terms of which G. S. was entitled, so far as the landlord was concerned, to carry on in those premises the business of a general butcher. G. S. accordingly commenced to carry on at No. 137 the business of a general butcher. The plaintiff claimed damages against I. S. for breach of the covenants in the deed of assignment, and an injunction against G. S. to restrain him from dealing in fresh meat other than pork at No. 137:—*Held*, by Scrutton, J., that the plaintiff was entitled to damages against I. S. for breach of covenant and to an injunction against G. S. as claimed. *Held*, by the Court of Appeal, on an appeal by G. S., that the injunction must be set aside, on the ground that the landlord had no actual notice of the restrictive covenant, and there was nothing to justify the inference that he had constructive notice, and that G. S., being therefore in the position of a purchaser with notice from a previous purchaser without notice, was entitled to use the premises free from any restraint by reason of the restrictive covenant. *Wilkes* v. *Spooner*, 80 L. J. K.B. 1107; [1911] 2 K.B. 473; 104 L. T. 911; 55 S. J. 479; 27 T. L. R. 426—C.A.

Building Agreement — Covenant to Keep Windows Closed—Covenant to Run with Land—Flat—Notice to Tenant—Injunction.]—A builder, L., who had entered into an agreement with a landlord by which a lease of certain property was to be granted him on the completion of certain buildings thereon, covenanted with B., the owner of adjoining land, that the windows in the said buildings facing B.'s land should be obscured and fixed. A block of flats was erected and a lease granted to L., by whom it was subsequently mortgaged and the equity of redemption released. The defendant became tenant of one of the flats, and opened one of the fixed windows:—*Held*, that the covenant was a restrictive covenant, binding on the leasehold interest, of which the defendant had constructive notice, and could be enforced by injunction. *Abbey* v. *Gutteres*, 55 S. J. 364—Warrington, J.

Building Scheme — Building Stipulations — Right Reserved to Allow Departure therefrom —"Vendor."]—An owner of a building estate who has sold certain lots thereof subject to a building scheme and restrictive covenants or stipulations, one of which reserves the right to the "vendor" to allow a departure from the stipulations, may allow a departure therefrom to one claiming title from an original purchaser, notwithstanding that the person so claiming title and his predecessors in title have covenanted to observe the stipulations which

were set out verbatim in their conveyances; because one of the stipulations is that the "vendor" reserves the right to allow a departure therefrom. *Mayner* v. *Payne*, 83 L. J. Ch. 897; [1914] 2 Ch. 555; 111 L. T. 375; 58 S. J. 740—Neville, J.

"Vendor" in such a case, where no definition of the word is given, means the original vendor. *Ib.*

—— **Change in Character of Locality — Injunction.**]—In refusing to grant the equitable relief of specific performance of a restrictive covenant by way of injunction the Court is entitled to take into consideration the fact of a general change in the character of the neighbourhood irrespective of any particular acts or omissions of the plaintiff and his predecessors in title. Observations of James, L.J., in *German* v. *Chapman* (47 L. J. Ch. 250; 7 Ch. D. 271) and of Lindley, L.J., in *Knight* v. *Simmonds* (65 L. J. Ch. 583; [1896] 2 Ch. 294) considered and applied. *Sobey* v. *Sainsbury*, 83 L. J. Ch. 103; [1913] 2 Ch. 513; 109 L. T. 393; 57 S. J. 836—Sargant, J.

—— **Trade — Change in Character of Neighbourhood—Acquiescence—Fried-fish Shop.**]—Purchasers of land laid out upon a building scheme in 1862 covenanted to observe certain stipulations, one of which prohibited any trade or manufacture from being carried on upon the estate. Subsequent purchasers of other land on the estate purchased with notice of and subject to this covenant. One of them had permitted four houses upon land purchased by him to be turned into shops:—*Held*, that, in the circumstances, his executors were entitled to restrain a purchaser from him from carrying on the trade of a fried-fish vendor on his premises, in breach of the original covenant. To disentitle an owner to enforce a restrictive covenant it is not sufficient to establish a change in the character of the neighbourhood without positive evidence of personal acquiescence in the change on the part of the person seeking to enforce the covenant. *Pulleyne* v. *France*, 57 S. J. 173—C.A.

—— **Definite Scheme—House not to be Used as Shop—Alteration in Neighbourhood.**]—A covenant, which was inserted in a conveyance of a plot of land by the owner of a building estate in accordance with a definite scheme, provided that "No house shall be used as a shop," and a company which purchased the plot with notice of the covenant erected on the plot a building to be used as a club, the ground floor being composed of lock-up shops, which they had let or were intending to let to tradesmen. In an action by the owner of the unsold portions of the estate against the purchasers for a breach of the covenant the defendants contended that the plaintiff had caused a change in the character of the neighbourhood by permitting the erection of shops, and that the covenant merely meant that no dwelling house should be converted into a shop:—*Held*, that the defendants had failed to prove a change in the character of the neighbourhood, and that they had committed a breach of the covenant and the plaintiff was entitled to an injunction against them. *Ramuz* v. *Leigh-on-Sea Conservative and Unionist Club*, 31 T. L. R. 174—Eve, J.

Agreement for Restrictive Covenant in Conveyance Affecting Adjoining Property of Vendor—Adjoining Property Sold before Completion — Covenant not Enforceable.] — In a contract for the sale of land the purchaser agreed that she would covenant in the conveyance for herself, her heirs and assigns, with the vendor, his heirs and assigns, owners and occupiers of adjoining land belonging to the vendor, not to use the premises for any trade which might depreciate his adjoining property. Before the conveyance was executed the vendor died and his executors sold and conveyed away all his adjoining property. The contract did not form part of a building scheme. In the conveyance the purchaser, her heirs and assigns, covenanted with the vendor's executors not to use the premises so as to depreciate the value of the adjoining property:—*Held*, that the vendors having parted before the conveyance with all the adjoining land, the premises were not subject to the restrictive stipulation. Where there is a conveyance of land it expresses the final and concluded terms of the contract between the parties, and the terms cannot be altered or extended by reference to the antecedent contract of purchase. *Millbourn* v. *Lyons*, 83 L. J. Ch. 737; [1914] 2 Ch. 231; 111 L. T. 388; 58 S. J. 578—C.A.

Conveyance Subject to Easements—No Reservation on Reconveyance — Rights of Way and Drainage—Mistake—Rectification—Constructive Notice.]—The G. estate was offered in eight lots by public auction, subject to a stipulation that each lot was sold subject to all occupation ways and methods of drainage enjoyed by the vendors and their tenants. N. purchased the whole estate, and on June 1, 1910, agreed to sell lot 6, which another lot (3) adjoined, to H., upon the conditions read at the auction. The G. estate was conveyed to N. subject to easements. N. conveyed lot 3 to the plaintiffs in February, 1911. N. had previously, in November, 1910, conveyed lot 6 to the defendant H., who mortgaged it to C., the same solicitor acting for H. on his purchase and for H. and C. as to the mortgage. Rights of occupation way and drainage in fact existed over the part of the G. estate conveyed to H.:—*Held*, that, the conveyance to H. containing no reservation, the fact that lot 6 was sold subject to the privileges in favour of lot 3 would not, if N. had not parted with lot 3, have entitled the plaintiffs to rectification of H.'s conveyance without shewing mutual mistake, which was not proved. At any rate, there was no such right to rectification when N. had conveyed lot 3 by deed to which H. was not a party. *Slack* v. *Hancock*, 107 L. T. 14—Eve, J.

The inspection referred to in section 3, subsections 1 and 2 of the Conveyancing Act, 1882, does not extend to a personal examination of the property. *Ib.*

Building Plans to be Approved by Vendor's Surveyor — Liability for Surveyor's Fees —

Custom.]—Where a conveyance of land in the interests of the vendor restricts building by the purchaser and provides that the purchaser's building plans shall be approved by the vendor's surveyor, the surveyor's fees, in the absence of express stipulation, are payable by the vendor who employs him. The purchaser will not be made liable for such charges upon evidence of a general custom where such evidence is not incontestable and does not extend to the locality in which the property is situate. *Reading Industrial Co-operative Society* v. *Palmer*, 81 L. J. Ch. 454; [1912] 2 Ch. 42; 106 L. T. 626—Swinfen Eady, J.

Benefit of Restrictive Covenant — Covenant Running with Land—"Negative easement"—Covenant Enforceable in Equity.]—Purchasers of land sold in plots for building in 1880 entered into restrictive covenants with the tenant for life of a settled estate, who had the legal estate therein, and the trustees, who had only a power of sale. There was no general building scheme applicable to the estate as a whole, but similar covenants were entered into by purchasers of property in the same road:—*Held*, that the benefit of the covenant ran with the land in equity in the same manner as a negative easement, and that an adjoining owner was entitled to enforce the covenant against a purchaser and his tenant, although the original legal estate of the covenantee had ceased to exist. *Rogers* v. *Hosegood* (69 L. J. Ch. 652; [1900] 2 Ch. 388) applied. *Long* v. *Gray*, 58 S. J. 46—C.A.

Covenant not to Build on Land — Covenant on behalf of Covenanter and Assigns—Sale of Land by Covenantor—Mortgage by Purchaser—Notice of Covenant to Purchaser and Mortgagee—Covenantee Owning no Adjoining Land — Alleged Breach of Covenant — Right of Covenantee to Enforce Covenant against Purchaser and Mortgagee.]—A derivative owner of land, deriving title under a person who has entered into a restrictive covenant concerning the land, is not bound by the covenant even if he took with notice of its existence, if the covenantee has no land adjoining or affected by the observance or non-observance of the covenant. *London County Council* v. *Allen*, 83 L. J. K.B. 1695; [1914] 3 K.B. 642; 111 L. T. 610; 78 J. P. 419; 12 L. G. R. 1003—C.A.

In 1907, M.A., the owner of land in the Metropolis, as a condition of his obtaining permission from the London County Council to his laying out a new road on the land, entered into a covenant with the Council "for himself, his heirs and assigns, and other the persons claiming under him, and so far as practicable to bind the land and hereditaments herein mentioned into whosoever hands the same may come" that he or they would not erect or cause or permit to be erected any building, structure, or other erection upon a plot forming part of the land without the consent of the Council. In 1908 M. A. mortgaged the land, including the plot. In July, 1911, his wife, E. A., built three houses on the plot, the consent of the Council not having been obtained. In August, 1911, the mortgage was redeemed, and the mortgagee with the concurrence of M. A., conveyed the land including the plot to E. A. in fee. In October, 1911, E. A. mortgaged the land and houses to N. in fee. The Council did not own any land adjoining or in the neighbourhood of the land in question. The Council brought an action against M. A., E. A., and N. for alleged breach of the covenant. For the purposes of the case it was assumed that E. A. and N. had had notice of the covenant:—*Held*, that, while the plaintiffs were entitled to succeed as against the defendant M. A., the original covenantor, they were not entitled to succeed as against the defendants E. A. and N., who held on derivative titles, under M. A., inasmuch as they, the plaintiffs, had no land in the neighbourhood capable of enjoying the benefit of the covenant. *Ib.*

Decision of Neville, J. (83 L. J. Ch. 260; [1914] 1 Ch. 34), affirmed. *Ib.*

Principle of *Tulk* v. *Moxhay* (18 L. J. Ch. 83; 2 Ph. 774) discussed and explained. *London and South-Western Railway* v. *Gomm* (51 L. J. Ch. 530; 20 Ch. D. 562), *Formby* v. *Barker* (72 L. J. Ch. 716; [1903] 2 Ch. 539), *Nisbet and Potts' Contract, In re* (75 L. J. Ch. 238; [1906] 1 Ch. 386), and *Millbourn* v. *Lyons* (83 L. J. Ch. 737; [1914] 2 Ch. 231) applied. *Ib.*

7. Rescission.

See also Vol. XIV. 1239, 2243.

Misrepresentation.]—Where two parties are negotiating at arm's length a general communication, which is in fact untrue, made where there was no duty of disclosure on the party making it, is not such a misrepresentation as to be ground for the rescission of a contract. *Kelly* v. *Enderton*, 82 L. J. P.C. 57; [1913] A.C. 191; 107 L. T. 781—P.C.

Latent Defect — Watercourse under Property.]—A purchaser is not entitled to rescission on account of a defect in the property not so material as to be within the principle of *Flight* v. *Booth* (4 L. J. C.P. 66; 1 Bing. N. C. 370), although the vendor was aware of it and did not disclose it to him. *Carlish* v. *Salt* (75 L. J. Ch. 175; [1906] 1 Ch. 335) distinguished. *Shepherd* v. *Croft*, 80 L. J. Ch. 170; [1911] 1 Ch. 521; 103 L. T. 874—Parker, J.

The plaintiffs contracted to sell to the defendant a house and grounds possessing building advantages, the defendant purchasing primarily for residential purposes, but intending in certain eventualities to develop the property for building. A natural underground watercourse ran across the property, culverted or piped throughout its course by the owners through whose lands it passed; and when the property was inspected by the defendant's agents the piping was exposed at the bottom of a hole dug in the lawn of the house. They, however, did not observe it, and the plaintiffs, though aware of the existence of the watercourse, did not disclose it to the defendant. The contract provided that the property was to be sold subject to all drainage, sewer, and other easements affecting it, and also that no compensation was to be claimed in respect of any error or misstate-

ment that should be discovered; but the plaintiffs waived the latter provision:—*Held*, that the watercourse was not a drain or sewer vested in the local authority, nor an easement affecting the property; but that it was a latent defect, though not so material as that if specific performance were granted the defendant would not get substantially that for which she contracted; and that the plaintiffs were entitled to specific performance with a reduction of the purchase money. *Ib.*

Quære, whether the plaintiffs, if they had insisted on the provision excluding compensation, would have been entitled to specific performance without a reduction. *Ib.*

Damage Caused by Vendor to Subject-matter —Duty of Purchaser Repudiating.]—The purchaser of a boarding establishment in leasehold premises took possession by agreement before the date fixed for completion. A distress having been put in for rent due from the vendor, the purchaser gave the boarders notice to quit, and repudiated the contract:—*Held*, that this circumstance was not so damaging or destructive to the subject-matter as to entitle the purchaser to repudiate. *Per* Farwell, L.J.: The giving notice to quit was wrongful, as it was the purchaser's duty, even if entitled to repudiate, to take the best care of the subject-matter till the vendor had an opportunity of resuming control. *Dotesio* v. *Biss* (*No.* 1), 56 S. J. 612—C.A.

Deposit Paid to Stakeholder—No Clause in Contract Forfeiting Deposit — Judgment for Specific Performance—Default by Purchaser—Rescission and Payment of Deposit.]—A purchaser on signing the contract for sale paid a deposit to the vendor's solicitors as stakeholders. The contract did not contain a clause forfeiting the deposit on default by the purchaser. The purchaser failed to complete and the vendor obtained judgment for specific performance, which the purchaser failed to comply with:—*Held*, that the vendor was entitled to rescission of the contract and also to receive and retain the deposit. *Howe* v. *Smith* (53 L. J. Ch. 1055; 27 Ch. D. 89) followed. *Jackson* v. *De Kadieh* (39 L. J. N.C. 425; [1904] W. N. 168) not followed. *Hall* v. *Burnell*, 81 L. J. Ch. 46; [1911] 2 Ch. 551; 105 L. T. 409; 55 S. J. 737—Eve, J.

Time for Completion—Unreasonable Delay—Time not of Essence of Contract in Equity—Effect of Maxim.]—The maxim that in equity the time fixed for completion is not of the essence of a contract does not apply to cases in which the stipulation as to time cannot be disregarded without injustice to one or other of the parties, or where the conduct of either party has been such as to disentitle him to equitable relief; as where a vendor has been guilty of unnecessary delay in completion, and the purchaser has served him with a notice limiting a reasonable time at the expiration of which he will treat the contract as at an end. *Stickney* v. *Keeble* (*No.* 1), 84 L. J. Ch. 259; [1915] A.C. 386; 112 L. T. 664—H.L. (E.)

—— Judicature Act, 1873, s. 25, sub-s. 7.]—Section 25, sub-section 7 of the Judicature Act, 1873, does not apply to cases in which the Court is asked to disregard a stipulation as to time in an action for common law relief, if it be established that under the circumstances equity would not, prior to the Act, have granted specific performance or restrained the action. *Ib.*

Decision of the Court of Appeal (57 S. J. 389) reversed. *Ib.*

B. RIGHTS AND LIABILITIES ARISING FROM CONTRACT.

1. Purchase Money.

See also Vol. XIV. 1267, 2251.

Payment into Court to Meet Incumbrance—Amount Paid in Proving Insufficient — Liability of Purchase Money to Make Good Deficiency.]—Where, upon a sale of land which is subject to a charge of capital money—such as by a term of years to secure portions—payment into Court is made of a sum of money under section 5 of the Conveyancing Act, 1881, to provide for the charge, the charge does not become extinguished as against the purchase money receive by or on behalf of the vendors, but the purchase money remains liable to make up any deficiency that may arise owing to the money paid into Court proving inadequate to meet the charge in full when it falls due. *Wilberforce, In re; Wilberforce* v. *Wilberforce*, 84 L. J. Ch. 252; [1915] 1 Ch. 94; 111 L. T. 797; 58 S. J. 797—Sargant, J.

An order granting leave to pay money into Court under the section is not one that should be made by a Master, but should be obtained from the Judge. *Ib.*

2. Lien.

See also Vol. XIV. 1307, 2257.

Covenant to Maintain Vendor.]—A assigned by deed to her son a dwelling house and farm in consideration of natural love and affection, and of the covenants on the part of the son thereinafter contained. The deed contained a covenant by the son that he, his executors, administrators, or assigns, would maintain A and her daughter during their lives and permit them to occupy the dwelling house:—*Held*, that there was a lien on the lands for such maintenance which was binding as against a subsequent purchaser for value with notice. *Richardson* v. *M'Causland* (Beatty, 457) applied and followed. *Kelaghan* v. *Daly*, [1913] 2 Ir. R. 328—Boyd, J.

C. TITLE.

See also Vol. XIV. 1417, 2266.

Title Depending Partly on Statute of Limitations—Unwilling Purchaser—Rescission.]—A vendor sold land the title to which was to commence, by the conditions of sale, with a certain document. The abstract of title, when delivered, commenced with the document in question; but, instead of tracing the devolution of the land from this document to the purchaser

through an uninterrupted succession of documents, it traced it in this manner only to a particular point, and ultimately disclosed a possessory title in the vendor, commencing from this point, which, though good, was good only by virtue of the Real Property Limitation Acts:—*Held* (Fletcher Moulton, L.J., dissenting), that the title was one that the Court would force upon an unwilling purchaser in an action for specific performance. *Games* v. *Bonnor* (54 L. J. Ch. 517) and *Baker and Selmon's Contract, In re* (76 L. J. Ch. 235; [1907] 1 Ch. 238), applied. *Atkinson's and Horsell's Contract, In re*, 81 L. J. Ch. 588; [1912] 2 Ch. 1; 106 L. T. 548; 56 S. J. 324—C.A.

Quære, whether the purchaser would not have been entitled to rescind the contract at common law immediately on learning the facts of the case. *Ib.*

Decision of Swinfen Eady, J. (81 L. J. Ch. 133; [1912] 1 Ch. 2), affirmed. *Ib.*

Vendor not Bound to Get in Legal Estate—Conveyance as Beneficial Owner—Implied Covenants for Title—Rectification.]—A contract for sale of an under-lease stated facts shewing that the legal term was outstanding in X, and provided that the purchaser should not require the concurrence of X or on that account of any other person except the vendor in the conveyance to him, nor should the vendor be required to get in any estate which might be outstanding in X. The vendor having conveyed as beneficial owner without qualification and given a collateral indemnity against the outstanding estate,—*Held*, the vendor was entitled to rectification so as to exclude from the implied covenant for title any covenant that the vendor had power to assign the outstanding legal estate. *Fenner* v. *MeNab*, 107 L. T. 124—Neville, J.

Leasehold Property—Two Mortgages Created by Vendor's Predecessor in Title for same Term—Second Mortgage Paid off during Continuance of First Mortgage—Purchaser's Right to Demand Surrender by Second Mortgagee.]—A vendor's predecessor in title of leasehold property created two mortgages for all his unexpired term except the last day. The second mortgage was paid off during the continuance of the first mortgage, and a receipt was given by the second mortgagee:—*Held*, that the Satisfied Terms Act, 1845, did not apply, and that the purchaser was entitled to demand surrender by the second mortgagee before he completed. *Moore and Hulme's Contract, In re*, 81 L. J. Ch. 503; [1912] 2 Ch. 105; 106 L. T. 330; 56 S. J. 89—Joyce, J.

Legacies Charged on Land—Sale of Part of Land—Purchase-Money Less than Legacies—Purchase-Money Paid to Trustee—Conveyance Freed from Charge.]—Trustees contracted to sell certain land which together with other trust property was charged with the payment of certain legacies, the unpaid balance of which amounted to 16,000*l.* No mention of the charge was made in the contract. The whole of the purchase money (3,000*l.*) was proposed to be paid to the trustee of the settled legacies. The purchaser objected that a good title could be made without payment to the trustee of the settled legacies of the full balance of 16,000*l.* and interest:—*Held*, that on payment to the trustee of the 3,000*l.* the premises could be assured to the purchaser freed and discharged from the 16,000*l.* and interest. *Morrell and Chapman's Contract, In re*, 84 L. J. Ch. 191; [1915] 1 Ch. 162; 112 L. T. 545; 59 S. J. 147—Eve, J.

Business Premises—Contract Contained in Lease — Windows — Light Enjoyed under Agreements with Neighbouring Owners — Non-disclosure of Agreements Prior to Lease—Warranty as to Ancient Lights—Licence to Enter Premises—Agreements not Binding on Land—Specific Performance—Forcing Title on Purchaser.]—By a contract contained in a lease made in 1900, under which, in an event that happened, the lessee agreed to purchase the demised property, which consisted of certain shops and warehouses described on a plan, but there was no express mention of windows. By two agreements in identical terms made in 1890 between the lessor and adjoining owners he agreed that the user of certain windows, the light through which was admittedly material for his business, should be by licence, that the windows should not open outwards and should be glazed with opaque glass, and that the lessor, his heirs or assigns, would within one month after determination of the licence remove the windows and fill up the openings with like materials as the wall in which they were, and that in default the adjoining owners and all persons deriving title under them might at the expense of the lessor, his heirs or assigns, enter upon the premises, remove the windows, and fill up the openings. The agreements were determinable by notice given by the adjoining owners. No notice of these agreements was given to the lessee, the purchaser, who only discovered them on investigating the title, and, an action for specific performance having been brought against him by the representatives of the lessor, he objected to the title on the ground of material misdescription:—*Held*, reversing Astbury, J., that the plaintiffs were entitled to a decree for specific performance; that there was no warranty in the contract that the *de facto* windows were ancient lights; that the consent in writing which prevented the statutory period of prescription from beginning to run did not create an incumbrance on the property, and therefore there was no obligation to put it in the abstract; that the agreements would not bind the purchaser within the principle of *Tulk* v. *Moxhay* (18 L. J. Ch. 83; 2 Ph. 774), as they were positive in form and not negative, and involved the expenditure of money; and that, even if they implied a negative, that would not be sufficient to bring the case within *Tulk* v. *Moxhay* (18 L. J. Ch. 83; 2 Ph. 774); that the clause in the agreements giving a right of entry was a mere licence, passing no interest in land and not binding upon the purchaser after conveyance, and that if it amounted to an interest in the land it would be void as a perpetuity, and that specific performance should be ordered against the

purchaser, inasmuch as, in view of the decision of the Court, the position of the purchaser, after completion, with regard to the windows would not be one of any doubt. *Greenhalgh* v. *Brindley* (70 L. J. Ch. 740; [1901] 2 Ch. 324), approved and followed. *Bewley* v. *Atkinson* (49 L. J. Ch. 153; 13 Ch. D. 283) considered. *Smith* v. *Colbourne*, 84 L. J. Ch. 112; [1914] 2 Ch. 533; 111 L. T. 927; 58 S. J. 783—C.A.

Contract for Sale of Lease—Obligation to make a Good Title—Landlord's Right of Re-entry after Notice of Dilapidations.] — An assignor of a lease who by non-compliance with a dilapidation notice served upon him by his landlord has rendered the lease liable to forfeiture cannot make a good title under an open contract, although the assignee has tendered and the landlord has accepted rent subsequently to the date of the contract, but before completion has been effected. *Martin, In re; Dixon, ex parte*, 106 L. T. 381—Phillimore, J.

Registered Title Deeds—Sale According to Plan—Discrepancy in Area between Plan and Deeds.]—In a sale of land in Scotland the previous negotiations, whether oral or written, are admissible in evidence to prove what was in fact the subject of sale—not to alter the contract, but to identify its subject. There is no doctrine of law in Scotland that when an estate is sold under a general name, that name is held to designate the estate as described in the title deeds recorded in the Register of Sasines. The meaning of a descriptive name in a particular contract cannot be determined by a fixed rule of law without regard to the facts of the case. *Gordon-Cumming* v. *Houldsworth*, 80 L. J. P.C. 47; [1910] A.C. 537—H.L. (Sc.)

Where land was sold as shewn upon a plan, and there was no dispute on the validity of this contract, and there was a discrepancy between the area comprised in the plan and in that of the registered title,—*Held*, that the property sold was that which was delineated on the plan, not that of the registered title. *Ib.*

Settled Land—Contract for Sale—Document Prior in Date to Commencement of Title—Sale by Tenant for Life—Land in Ireland—Order of Court in Ireland Appointing Trustees—Purchase of Land in England—Capital Moneys—Purchaser's Right to Enquire into Source of.] —The vendor contracted to sell land in England under a contract fixing the commencement of title in 1874 and stating that he was selling as tenant for life under his statutory power under the Settled Land Acts. The settlement in question was a compound settlement created by several instruments, some of which, including a will made in 1836, were dated or made prior to the time fixed for the commencement of title, and the last of which was a re-settlement made in 1902. The vendor had, however, voluntarily furnished an abstract of all the earlier documents constituting the compound settlement except the will of 1836, which was recited in one of these documents dated in 1860. The compound settlement originally comprised land in Ireland alone, and by an order of the High Court of Justice in Ireland, made in 1908, the present trustees were appointed trustees of the compound settlement for the purposes of the Settled Land Acts. In 1910 the land in England, the subject of the contract, was conveyed to the trustees and their heirs to the uses, upon the trusts, and subject to the powers, charges, and provisions to, upon, and subject to which under the compound settlement the freehold lands therein comprised stood limited. The conveyance contained a statement to the effect that the purchase was made at the direction of the tenant for life out of capital moneys in the hands of the trustees arising under the compound settlement :—*Held*, that the purchasers were precluded by the Conveyancing and Law of Property Act, 1881, s. 3, sub-s. 3, from requiring production of the probate of the will of 1836 or an abstract or copy thereof. *Arran (Earl) and Knowlesden, In re*, 81 L. J. Ch. 547; [1912] 2 Ch. 141; 106 L. T. 758—Warrington, J.

Held, also, that under the order of the Court in Ireland the trustees were in the position of trustees of the settlement for the purposes of the Settled Land Acts in relation to the subsequently acquired land in England without being reappointed by the Court in England. *Ib.*

Held, also, that the purchasers were not entitled to go behind the statement in the conveyance or to require other evidence that the purchase moneys arose from the sale of land in Ireland subject to the compound settlement. *Ib.*

VESTED, CONTINGENT, AND FUTURE INTERESTS.

See WILL.

VETERINARY SURGEON.

See MEDICINE.

VEXATIOUS ACTIONS.

See PRACTICE (Staying Proceedings).

WAIVER.

Of Term in Contract.] — *See* *Morrell* v. *Studd*, *ante*, col. 330.

Of Breaches of Covenant.]—*See* *Stephens* v. *Junior Army and Navy Stores*, *ante*, col. 830; and *Seale* v. *Gimson*, *ante*, col. 1035.

Of Diplomatic Privilege.]—*See Republic of Bolivia Exploration Syndicate, Lim., In re, ante*, col. 736.

Of Objection as to Jurisdiction.] — *See Grimble & Co.* v. *Preston, ante*, LOCAL GOVERNMENT, col. 913.

Of Condition in Fire Policy.] — *See Toronto Railway* v. *National British and Irish Millers Insurance Co., ante*, col. 719.

WAR.

I. ALIEN ENEMIES. *See* ALIEN.

II. DEFENCE OF THE REALM, 1681.

III. TRADING WITH THE ENEMY, 1684.

IV. PRIZE OF WAR.

a. Rights as to.

i. Ships, 1693.

ii. Cargo, 1699.

b. Jurisdiction of Prize Court, 1710.

I. ALIEN ENEMIES. *See* ALIEN.

II. DEFENCE OF THE REALM.

King's Prerogative — Right to Requisition Land—Compensation.]—The Crown has power in time of war to requisition lands and buildings which are necessary for the defence of the realm without making any compensation therefor, both under the King's prerogative and also under the Defence of the Realm (Consolidation) Act, 1914, and the regulations made thereunder. *X's Petition of Right, In re*, 84 L. J. K.B. 1961; [1915] 3 K.B. 649; 113 L. T. 575; 59 S. J. 665; 31 T. L. R. 596—C.A.

High Treason—Aiding and Comforting the King's Enemies — Intent — Assisting German Subjects Resident in England to go to Germany for Military Service — Direction to Jury.] — The appellant, who was born in Germany but was a naturalised British subject since 1905, and German Consul at Sunderland, was indicted on a charge of high treason by adhering to, aiding, and comforting the King's enemies—namely, the subjects of the German Emperor. The overt acts alleged against him were that he incited and endeavoured to procure, and in fact procured, certain German subjects resident in England to leave this country and go to Germany and there enter the military service of the German Emperor, and assisted them with money to do so. His defence was based on two grounds—first, that, at the time he did the overt acts alleged against him, he did not know that a state of war existed between Great Britain and Germany; and secondly, that in doing such acts he had no traitorous intent. The learned Judge at the trial directed the jury that, if they were satisfied that at the time of doing the acts alleged against him, the appellant knew that a state of war existed between Great Britain and Germany, they must find him guilty, and further directed them that the belief of the appellant that the acts were lawful constituted no defence:—*Held*, on appeal, that, unless the jury were satisfied that the appellant in doing the acts alleged against him was intending to aid and comfort the King's enemies, they could not find him guilty, and that, as there was no direction to them by the learned Judge to that effect, the conviction must be quashed. *Rex* v. *Ahlers*, 84 L. J. K.B. 901; [1915] 1 K.B. 616; 112 L. T. 558; 79 J. P. 255; 31 T. L. R. 141—C.C.A.

Communicating Information to Enemy — Indictment—Averment—Intention of Assisting Enemy.]—An indictment under Regulations 18 and 48 of the Defence of the Realm (Consolidation) Regulations, 1914, for attempting to communicate naval and military information to the enemy, is not vitiated by inserting in each count the words "with the intention of assisting the enemy." *Rex* v. *Kuepferle*, 31 T. L. R. 461—C.C.A.

—— Attempt—Intention to Assist the Enemy — Count Charging Attempt — Averment of Intent in Same Count—Intent a Question for Jury — Truth or Falsity of Information — Materiality.]—By Regulation 18 of the Defence of the Realm (Consolidation) Regulations, 1914, made under the Defence of the Realm Consolidation Act, 1914, it was made an offence triable by court martial to attempt without lawful authority to communicate to the enemy military information which is calculated to be or might be useful to the enemy. By Regulation 57 a person found guilty of this offence is liable to penal servitude for life or any less punishment, "or, if the Court finds that the offence was committed with the intention of assisting the enemy, to suffer death or any less punishment." By section 1, sub-section 1 of the Defence of the Realm (Amendment) Act, 1915, the offence was made triable by a civil Court with a jury. The appellant was indicted for attempting to communicate military information to the enemy with the intention of assisting the enemy, the averment as to the intent being contained in the same count as the charge of the attempt. The presiding Judge left the question of intent to the jury, and directed them that it made no difference whether the information sent by the appellant was true or untrue, and the appellant was convicted by the jury of committing the offence with intent to assist the enemy:—*Held*, that the averment as to intent was rightly inserted in the count charging the attempt, that the question of intent was a question of fact and was rightly left to the jury, that it was immaterial whether the information communicated by the appellant was true or false, and that therefore the conviction must be affirmed. *Rex* v. *M.*, 32 T. L. R. 1—C.C.A.

Information Useful to Enemy—Communication—Validity of Regulation.]—The applicant, who was a newspaper reporter, dispatched from Portland to newspapers in London tele-

grams giving information as to the sinking of a German submarine, and the information would have been of service to the enemy. The applicant knew that the telegrams would go through the Press Bureau, and he supposed that the officials would strike out anything undesirable. The telegrams were stopped by the Press Bureau and the information never appeared in any of the newspapers. The applicant was convicted under regulation 18 of the regulations made under section 1, subsection 1 of the Defence of the Realm Consolidation Act, 1914. On an application for a *certiorari* to quash the conviction, on the ground that the regulation was *ultra vires* and that the conviction was bad,—*Held*, that the regulation was not *ultra vires* and that the Justices were justified in convicting. *Dyson, Ex parte*, 31 T. L. R. 425—D.

Outbreak of War — Effect on Contract — Restraints of Princes.] — By an agreement made in 1910, which was to be in force till 1916, the defendants agreed to carry cement for the plaintiffs by sea from the Thames to the Forth at a certain rate per ton, subject to an exception in the case of "perils of the seas, enemies, pirates, arrests, and restraints of princes, rulers, and peoples." The freight was fixed at a low rate in view of the fact that the defendants did a large trade in carrying coal by sea from the Forth to the Thames. After the outbreak of war many of the defendants' ship were requisitioned by the Government, the ports from which they usually carried coal were closed, restrictions causing delay were placed on ships going from the Thames to the Forth, and the voyage was dangerous. The defendants therefore contended that the contract was suspended and they declined to carry the cement at the agreed rate. They also contended that they were absolved from liability under the above exception and by section 1, sub-section 2 of the Defence of the Realm (Amendment), No. 2, Act, 1915:—*Held*, that as the Government had not prevented the voyage from being made at all the exception as to restraints of princes did not apply, that the exception as to perils of the seas only applied when a ship had been declared under the contract, that the return coal trade did not lie at the root of the contract, that the parties had not impliedly stipulated for the continuance of peace, and that the above enactment did not relieve the defendants from their obligation to carry out the contract as a whole, and therefore the contract was not suspended. *Associated Portland Cement Manufacturers* v. *Cory & Son, Lim.*, 31 T. L. R. 442—Rowlatt, J.

Proceedings Held in Camera—Jurisdiction of Magistrate. —The object of the Defence of the Realm Acts, and the Regulations issued thereunder, being to prevent the publication of anything prejudicial to the safety of the realm, the provision in Regulation 51A for the hearing in camera of any proceedings under that Regulation is not *ultra vires*; and, as proceedings under Regulation 51A are not a "trial" within the meaning of section 1, sub-section 5 of the Defence of the Realm Consolidation Act, 1914, a magistrate has power to exclude the public from such proceedings. *Norman, Ex parte*, 85 L. J. K.B. 203; 60 S. J. 90—D.

III. TRADING WITH THE ENEMY.

Sale of Goods—C.i.f. Contract—"Payment net cash in Liverpool in exchange for shipping documents"—Goods Carried in Enemy Ship—Tender of Documents after Outbreak of War—Right of Buyers to Refuse to Accept Documents.]—By a contract dated May 11, 1914, the claimants sold to the respondents "about 300 barrels June and/or July shipment Chilean honey per steamer . . . cost, freight, and insurance to Hamburg. . . . Payment: net cash in Liverpool in exchange for shipping documents on presentation of same." Both the claimants and respondents were English firms of merchants carrying on business at Liverpool. The honey was shipped by the claimants on June 28, 1914, at Penco on board the German steamship *Menes*, and by the bill of lading was to be carried from Penco to Hamburg and there delivered to the claimants or their assigns. The bill of lading contained a condition that "all questions arising under this bill of lading are to be governed by the law of the German Empire and to be decided in Hamburg." War was declared between Great Britain and Germany on August 4, 1914, and on August 5 a Royal proclamation was issued warning all persons carrying on business in the British dominions against trading in goods destined for persons resident, carrying on business, or being in the German Empire. On the same day a tender of the shipping documents was made on behalf of the claimants to the respondents, who, however, refused to accept the documents. The *Menes* had not arrived at Hamburg at the date of the tender of documents:—*Held*, that the respondents were entitled to refuse to carry out the contract, because to carry out the contract would be a direct violation of the proclamation, and therefore illegal. *Duncan, Fox & Co.* v. *Schrempft & Bonke*, 84 L. J. K.B. 2206; [1915] 3 K.B. 355; 113 L. T. 600; 20 Com. Cas. 337; 12 Asp. M.C. 591; 59 S. J. 578; 31 T. L. R. 491—C.A.

Decision of Atkin, J. (84 L. J. K.B. 730; [1915] 1 K.B. 365), affirmed. *Ib.*

Sale of Goods under Ante-bellum Contract—Shipment on Russian Vessel after Outbreak of War.]—*See The Parchim*, *post*, col. 1702.

Subjects of Allied State — Contract — Illegality.]—Before the war with Germany the plaintiffs, who were Belgians carrying on business in Antwerp and London, made with the defendant, who was a German carrying on business in Hamburg and before the war in London also, c.i.f. contracts by which the plaintiffs sold to the defendant certain hides. After the outbreak of war the defendant repudiated the contracts. In an action by the plaintiffs against the defendant for damages, —*Held*, that as the plaintiffs were subjects of a State allied with this country, the contracts, having been made with a person who was a subject of a State now at war with this country, became illegal on the outbreak of war, and after that date there could be no

breach of them, and therefore the plaintiffs were not entitled to recover. *Kreglinger & Co.* v. *Cohen*, 31 T. L. R. 592—Bray, J.

Branch Business in England — Action on Contracts made by Branch.]—By clause 6 of the proclamation of September 9, 1914, against trading with the enemy, "Where an enemy has a branch locally situated in British, allied, or neutral territory, not being neutral territory in Europe, transactions by or with such branch shall not be treated as transactions by or with an enemy." The plaintiffs, who were cotton-waste manufacturers and were German subjects resident in Germany and had their principal place of business there, but also had a branch in England, brought an action, after the outbreak of war between Great Britain and Germany, upon contracts entered into by the English branch before the war:—*Held*, that on the outbreak of war the contracts became illegal and the transactions sued on did not come within the above clause, and therefore the plaintiffs could not maintain the action. *Wolf* v. *Carr, Parker & Co.*, 31 T. L. R. 407—C.A.

Branch Office in Allied Territory—Claim by Branch Office.] — Certain parcels of goods seized as prize were claimed by the shippers, the Japanese branch office of a German company with its head office at Hamburg. The goods were consigned by the claimants from Japan to their order, Hamburg. Section 6 of the Trading with the Enemy Proclamation (No. 2) of September 9, 1914, provides that "where an enemy has a branch locally situated in British, allied, or neutral territory not being neutral territory in Europe, transactions by or with such branch shall not be treated as transactions by or with an enemy":—*Held*, that this proclamation did not protect the goods from condemnation; that the sole question was whether or not the goods were German goods; and that the goods must be regarded as the property of the German company, and not of the Japanese branch. *The Eumaeus*, 1 P. Cas. 605; 60 S. J. 122; 32 T. L. R. 125—Evans, P.

Marine Insurance—Insurers Alien Enemies — Branch Establishment in England — Right of Insured to Recover Loss under Policy.]—At common law the question whether a man is to be treated as an alien enemy for the purpose of his contracts, rights of suit, and the like, does not depend upon his nationality, or even upon his true domicil, but upon whether he carries on business in this country or not. If he does, it is not illegal, even during war, to have business dealings with him in this country in respect of the business which he carries on here. The same thing is true of a company which has a head office in Germany, but a branch office here, in respect of business transactions with such branch office. *Ingle, Lim.* v. *Mannheim Continental Insurance Co.*, 84 L. J. K.B. 491; [1915] 1 K.B. 227; 112 L. T. 510; 59 S. J. 59; 31 T. L. R. 41—Bailhache, J.

Paragraph 6 of the Trading with the Enemy Proclamation, No. 2, of September 9, 1914, provides that "where an enemy has a branch locally situated in British, . . . territory, . . . transactions by or with such branch shall not be treated as transactions by or with an enemy." The Trading with the Enemy Proclamation of October 8, 1914, par. 5, provides that, notwithstanding anything contained in the above-mentioned paragraph, "where an enemy has a branch locally situated in British, . . . territory, which carries on the business of insurance or re-insurance of whatever nature, transactions by or with such branch in respect of the business of insurance or re-insurance shall be considered as transactions by or with an enemy." The plaintiffs, British subjects, insured their goods by a policy dated July 31, 1914, with the Bradford office of the defendants against war risk only, and war was declared by Great Britain against Germany on August 4, 1914. The loss of the plaintiffs' goods occurred about the end of August, and the plaintiffs brought an action for the amount of their loss on September 22. The defendants were a company incorporated in Germany, but carried on business in England at their branch office, registered in accordance with the requirements of section 274 of the Companies (Consolidation) Act, 1908, where service of process might be accepted. On the hearing of a summons to transfer the action to the Commercial List, it was contended by the defendants that payment of the loss under the policy to the plaintiffs would be illegal:—*Held*, first, that payment was not illegal at common law; and secondly, that it was not a "transaction" within the meaning of, and prohibited by, the proclamation of October 8, 1914. *Ib.*

Partnership in Germany — English and German Partners—Dissolution Prior to Outbreak of War—Transfer of English Assets to English Partner—Claim by English Partner on Contracts made with Firm before the War —Costs.]—Where an English debt, in pursuance of a dissolution of a partnership business carried on in Germany, is transferred by the German partner to the English partner before the outbreak of war between the two countries, payment of the debt to the English partner is not prohibited by sections 6 or 7 of the Trading with the Enemy Amendment Act, 1914. The plaintiff, a British subject, carried on a business in Germany in partnership with a German subject until August 3, 1914, when the partnership was dissolved and the assets and liabilities of the business were transferred to the plaintiff, the intention being that the German partner should take over the German and Austrian assets and liabilities, and that the plaintiff should take over all the rest and continue to carry on the business in London, which he did. The result of the arrangement was that a balance of some 6,000*l.* in favour of the plaintiff, together with the goodwill of the business, was diverted from Germany to England. The plaintiff, as assignee, sued the defendants, an English firm, on a bill of exchange given by them to the German firm, and for goods sold and delivered by the German firm to the defendants, before the war between Great Britain and Germany:—*Held*, that he was entitled to recover, but, under the special circumstances of the case, without costs. *Wilson* v. *Rago-*

sine & Co., 84 L. J. K.B. 2185; 113 L. T. 47; 31 T. L. R. 264—Scrutton, J.

Debt Accruing Due before War—Payment to Third Person in England for Ultimate Benefit of Alien Enemy — Improvement of Alien Enemy's Prospect of Recovering Debt on Termination of War—Payment "for the benefit of an enemy."]—The plaintiff, a British subject in England, claimed payment for goods sold by him to the defendants, a London firm, before the outbreak of war. Part of the sum due was payable by the plaintiff to an alien enemy in Germany:—*Held*, that as the claim at common law was unexceptionable, the plaintiff was entitled to recover, as he consented to hold the amount recovered until a summons to vest it in the custodian appointed under the Trading with the Enemy Amendment Act, 1914, had been taken out, which would obviate the risk of its benefiting an alien enemy. *Held*, further, that the fact that such payment improved the present position of the alien enemy by giving him further security that he would ultimately recover the money, did not constitute it the offence of trading with the enemy within the meaning of section 1, sub-sections 1 and 2 of the Trading with the Enemy Act, 1914, as being a payment "for the benefit of an enemy" within paragraph 5 (1) of the Trading with the Enemy Proclamation (No. 2) of September 9, 1914. *Schmitz* v. *Van der Veen & Co.*, 84 L. J. K.B. 861; 112 L. T. 991; 31 T. L. R. 214—Rowlatt, J.

Payment by Partner to Neutral of Debt of Partnership Containing Enemy Partners — "Benefit of an enemy."] — The appellant, resident in this country, was a member of a firm which carried on business in Germany, with a branch in England represented by him. The other partners resided in Germany, all the partners being British subjects. At the outbreak of war between this country and Germany the partnership owed a Dutch firm in Holland a sum of money for goods supplied to the partnership in Germany before the war. The appellant proposed to the Dutch firm to enter into direct business relations with him, and they agreed to do so if the above debt were paid. The appellant thereupon paid it to a firm in London for transmission through their branch in Holland to the Dutch firm:—*Held*, that the appellant was guilty of trading with the enemy within the meaning of section 1, sub-sections 1 and 2 of the Trading with the Enemy Act, 1914, inasmuch as it was a payment "for the benefit of an enemy" within paragraph 5 (1) of the proclamation of September 9, 1914, the result of the payment being that the resources of the enemy were thereby either augmented or protected. *Held* further, that the payment to the firm in London was not a payment "by or on account of enemies to persons resident" in this country, within paragraph 7 of the proclamation. *Rex* v. *Kupfer*, 84 L. J. K.B. 1021; [1915] 2 K.B. 321; 112 L. T. 1138; 79 J. P. 270; 32 T. L. R. 223—C.C.A.

At the trial the jury were directed that the question for them was whether the appellant knew that the payment would in fact benefit enemies:—*Held*, that this was a correct direction. *Ib.*

Obtaining "goods, wares, or merchandise" from Germany — Lithographic Transfers — Goods the Property of Appellant.] — By the Proclamation against Trading with the Enemy, dated August 5, 1914, all persons resident, carrying on business, or being in the dominion of Great Britain and Ireland, were warned not to supply to or obtain from the German Empire any goods, wares, or merchandise, under penalties. The appellant O. carried on business in London as a lithographer, and the appellant C. was his manager. O. had arrangements with a firm in Germany, who printed lithographic designs for him, that they should supply him free of charge with lithographic transfers in proportion to the number of copies printed by them for him. These lithographic transfers were used for doing lithographic printing in this country. When war was declared between Great Britain and Germany in August, 1914, the appellant O. was entitled to more than 1,000 lithographic transfers free of charge from the German firm. He employed a man to go to Germany in order to obtain some of these transfers. He also sent C. to Holland to meet the representative of the German firm and to make arrangements for transfers to be sent to him. The appellant O. received a number of transfers from Germany, but he did not make any payments to the firm in Germany in respect of the trading account between them. The appellants were charged with conspiring unlawfully to trade with the enemy, and the appellant O. was charged with having unlawfully traded on certain dates and the appellant C. with having aided and abetted him:—*Held*, that the lithographic transfers were goods, wares, or merchandise within the meaning of the proclamation, and that the obtaining them in the circumstances mentioned above amounted to an obtaining of goods, wares, or merchandise from the German Empire within the meaning of the proclamation, notwithstanding that no payments were due to be made in connection therewith, and that the appellants had therefore been properly convicted. *Rex* v. *Oppenheimer*, 84 L. J. K.B. 1760; [1915] 2 K.B. 755; 113 L. T. 383; 79 J. P. 383; 59 S. J. 442; 31 T. L. R. 369—C.C.A.

Goods of English Company—Alien Enemy Shareholders — Condemnation.] — Goods belonging to an English company, of which all the directors are enemy subjects resident in an enemy State and of which all the shareholders are either enemy subjects or resident in an enemy State, are not enemy property, and if they are seized as prize they are not liable to condemnation. *The Poona*, 84 L. J. P. 150; 1 P. Cas. 275; 112 L. T. 782; 59 S. J. 511; 31 T. L. R. 411—Evans, P.

Meaning of "Enemy"—Belgian Company — Business Carried on in England.] — The plaintiff company was incorporated under Belgian law on April 1, 1898, and its registered office was in Antwerp, now, together with the greater part of Belgium, occupied

by the enemy. The chairman of the company was still in Antwerp, but three of its five directors, all Belgians, were carrying on its business in London. The company owned and worked copper mines in Portugal, the whole output of which was being sold in France and England. The company deposited money with the defendants, a bank in London, for the purposes of its business, on a current account. On July 26, 1915, the company drew a cheque for 100*l.* on the defendants, who refused to pay on the ground that the company was technically an "enemy," and said that they must make a return to the custodian of enemy property in England. The Trading with the Enemy Act of September 18, 1914, s. 1, makes it illegal to trade during the war with the "enemy," and by the Trading with the Enemy Proclamation (No. 2) of September 9, 1914, "enemy country" is defined as meaning the territories of the German and Austro-Hungarian Empires, and "enemy" is defined as meaning "any person or body of persons of whatever nationality resident or carrying on business in the enemy country. . . . In the case of incorporated bodies, enemy character attaches only to those incorporated in an enemy country." The Trading with the Enemy (Occupied Territory) Proclamation of February 16, 1915, provides: "The Proclamations for the time being in force relating to trading with the Enemy shall apply to . . . territory in hostile occupation as they apply to an enemy country." The Trading with the Enemy (Amendment) Act of November 27, 1914, s. 3, and the Trading with the Enemy (Amendment) Act of July 29, 1915, s. 2, require persons holding enemy property to make returns thereof to the custodian:—*Held*, by the Court of Appeal—first, that the company was not "*ex lex*," and could therefore sue; secondly, that it was not an "enemy" within the meaning of the proclamations of September 9, 1914, and February 16, 1915; thirdly, that it was not an "enemy" within the meaning of the Trading with the Enemy (Amendment) Act, 1914, s. 3, or the Trading with the Enemy (Amendment) Act, 1915, s. 2; and that its cheque must therefore be paid, and that no return ought to be made to the custodian. Decision of Younger, J., on the first and third points affirmed, and on the second point reversed. *Société Anonyme Belge des Mines d'Aljustrel* v. *Anglo-Belgian Agency*, 84 L. J. Ch. 849; [1915] 2 Ch. 409; 113 L. T. 581; 59 S. J. 679; 31 T. L. R. 624—C.A.

Shareholder in English Company — Proxies Tendered for Voting—Election of Directors—Branch of Enemy Corporation in London — Limited Licence.] — All intercourse between citizens of two belligerent States which can possibly tend to the advantage of the enemy State or the detriment of a citizen's own State, whether such intercourse is commercial or not, is inconsistent with the state of war between the two States, and therefore forbidden. *Robson* v. *Premier Oil and Pipe Line Co.*, 84 L. J. Ch. 629; [1915] 2 Ch. 124; 113 L. T. 523; 59 S. J. 475; 31 T. L. R. 420—C.A.

The employment of a British subject as proxy to exercise the voting power of an alien enemy in an English company is an intercourse between him and the alien enemy which is prohibited. *Ib.*

At a meeting of a company for the election of directors the chairman rejected votes tendered by proxy in respect of shares held by the London branch of a German banking corporation as security for advances:—*Held* (affirming decision of Sargant, J.), that the votes were rightly rejected as being for the purpose of obtaining a voice in the management of a British trading company, which might be to the detriment of British interests and the advantage of the enemy. *Held* also, that the rejection of votes was justifiable on the ground that the transaction was a commercial transaction. *Held*, further, that the London branch of the German bank was not authorised to exercise the right of voting by virtue of the provisions of clause 6 of the Trading with the Enemy Proclamation, 1914, No. 2. *Ib.*

Obligations of Citizens of Allied States — Bona Fides—Seizure—Sale—Condemnation.] —Before the war between Great Britain and her Allies on the one hand, and Germany and Austria on the other, a French company contracted to sell to a German company a quantity of silver lead, f.o.b. at Ergasteria in Greece, and chartered a Greek steamer to convey the lead to Newcastle. The war broke out while the loading was being carried out, and a week later the steamer sailed for Antwerp and Newcastle with the cargo on board. The French company diverted her to Swansea and there the silver lead was seized as prize and sold. The Crown admitted that at the time of seizure the property in the goods was still in the French company:—*Held*, that the facts shewed that the French company had been trading with the enemy after the outbreak of war, and though their action had been *bona fide*, yet as the citizens of States allied with Great Britain were under the same obligations with regard to trading with the enemy as the citizens of Great Britain, the silver lead was confiscable, and the proceeds obtained by its sale must be condemned as prize. *The Panariellos*, 84 L. J. P. 140; 1 P. Cas. 195; 112 L. T. 777; 59 S. J. 399; 31 T. L. R. 326—Evans, P.

Consent of Attorney-General to Prosecution —No Proof of Consent Given at Trial—Effect on Conviction.]—A conviction for an offence under section 1 of the Trading with the Enemy Act, 1914, shall not be quashed merely because formal proof of the consent of the Attorney-General to the prosecution has not been given at the trial. *Rex* v. *Metz*, 84 L. J. K.B. 1462; 113 L. T. 464; 79 J. P. 384; 59 S. J. 457; 31 T. L. R. 401—C.C.A.

Inciting to Trade with the Enemy.] — The appellant was indicted upon a charge of soliciting and inciting persons to trade with the enemy, contrary to the provisions of the Trading with the Enemy Act, 1914. Evidence was given to the effect that he made a proposition to a British firm in respect of a transaction which, if carried out without a licence being obtained from the Secretary of State or the Board of Trade, would have con-

stituted an offence against the Act. In the course of the negotiations nothing was said by the appellant as to the obtaining of a licence. The jury convicted the appellant :—*Held*, that the jury were entitled to come to the conclusion that there was no condition in the proposal made by the appellant that a licence should be obtained, and that consequently an offence had been committed. *Rex* v. *Spencer*, 84 L. J. K.B. 1457; 112 L. T. 479—C.C.A.

Proposal to Supply Goods to Enemy through Neutral Intermediary.]—*Held*, that an indictment charging a merchant with writing and posting a letter to a subject of a neutral State residing in the neutral country, requesting him to write and ask certain enemies if goods could be delivered to them through the neutral, was a relevant charge of proposing to supply goods to the enemy contrary to the proclamation and Trading with the Enemy Act, 1914, although the neutral was not the agent or representative of the enemies. *Held* further, that the posting of the letter was an overt act which might be sufficient to take the offence out of the stage of preparation into that of perpetration. *Lord Advocate* v. *Innes*, [1915] S. C. (J.) 40—Ct. of Just.

"Proposing" or "agreeing" to Trade with Enemy—Proposal and Agreement in Letter to Proposer's Own Agent. — An indictment alleged that two members of a Glasgow firm wrote to their agent at Rotterdam suggesting that these agents should deliver to a German firm a cargo of iron ore which was stored on the quay at Rotterdam awaiting the Glasgow firm's instructions, and that they thereafter wrote to their agents agreeing to certain proposed terms for delivering the ore to the German firm :—*Held*, that counts in the indictment charging the accused with "proposing" and "agreeing" to supply goods to the enemy in contravention of the proclamation against trading with the enemy and the Trading with the Enemy Acts, 1914, were relevant and were not open to the objection that the proposal and agreement were made to and with the firm's own agents and not to or with the enemy or his agents. *Held* further that subsequent counts in the indictment charging the accused with "supplying" the ore to the enemy were relevant, although they did not specify the *locus* where the offence had been committed, it being plain from the indictment as a whole that the *locus* was Rotterdam. Observed that if persons resident and carrying on business in Scotland supply goods to an enemy, they are subject to the jurisdiction of the Court in Scotland, no matter in what country such persons or goods may chance to be when the goods are supplied. *Lord Advocate* v. *Hetherington*, [1915] S. C. (J.) 79—Ct. of Just.

"Supplying" Goods to the Enemy.]—The offence of "supplying" goods to the enemy in contravention of the proclamation and Acts of 1914 dealing with trading with the enemy is not affected by any question as to the ownership of the goods supplied; and, accordingly, the offence may be committed even though the person supplying the goods is not the owner and has no right of disposal, and even though the property in the goods has already vested in the enemy at the date when they are supplied. The offence is not affected by the existence of any contractual obligation to make the supply, or by any conditions as to payments or otherwise adjected to the supply, or by the relation to the supplier of any intermediary through whom the supply is made. *Ib.*

Patent—Action for Infringement—Appeal by Co-plaintiff Companies—One Co-plaintiff Company an Alien Enemy — Separate Causes of Action—Suspension during War.]—An action for the infringement of a patent was brought by a German company and an English company suing as co-plaintiffs. The claim was for infringement by the defendants during six years, for two of which the patent was vested in the German company, and for four of which it was vested in the English company. The action was dismissed. Both plaintiffs gave notice of appeal. War was subsequently declared against Germany. All the members and directors of the English company except one were German subjects, and a controller of that company was appointed under the Trading with the Enemy Act, 1914. On the appeal coming on to be heard,—*Held*, that the German company could not be struck out as appellants, and that the appeal must therefore be suspended until after the conclusion of the war. *Actien Gesellschaft für Anilin Fabrikation* v. *Levinstein, Lim.*, 84 L. J. Ch. 842; 112 L. T. 963; 32 R. P. C. 140; 31 T. L. R. 225—C.A.

Vesting Order — German Bank's Running Account with English Bank—Disputed Credit Balance—Application by Creditor of German Bank for Order Vesting Bank Balance in Custodian.] — Where a German bank had a running account with an English bank and the English bank disputed that they had in their hands a balance belonging to the German bank, the Court refused an application under section 4 of the Trading with the Enemy Amendment Act, 1914, by a creditor of the German bank, for an order vesting the credit balance of the German bank in the custodian. Such an order would place the custodian in the position of an assignee of a disputed debt, and that result was not intended by the Act. *Bank für Handel und Industrie, In re*, 84 L. J. Ch. 435; [1915] 1 Ch. 848; 113 L. T. 228; 31 T. L. R. 311—Warrington, J.

—— Parties to Summons—Debtor to Enemy Respondent.]—A debtor to an enemy is not a person holding or managing property alleged to belong to the enemy within rule 2 (4) of the Trading with the Enemy (Vesting and Application of Property) Rules, 1915, and therefore is not a proper respondent to a summons taken out by a creditor of an enemy under section 4 of the Act. *Ib.*

Shares in Limited Company Held by Alien Enemies—Vested in Custodian of Enemy Property — Exercise of Shareholder's Rights by

Custodian — Winding up.] — An order made under the Trading with the Enemy Amendment Act, 1914, s. 4, vesting shares in an English limited company held by alien enemies in the custodian of enemy property confers on the custodian all the rights of a shareholder under the articles of association of the company, and he can consequently use the powers given to shareholders by the articles to wind up the company without making any further application to the Court. *Pharaon, In re*, 85 L. J. Ch. 68; 32 T. L. R. 47—C.A.

The custodian may apply to the Court, and the Court has jurisdiction to give directions as to whether it is proper for him to exercise his rights, but the rights themselves are not thereby affected. *Semble*, on such an application the company has no *locus standi*. *Ib.*

Alien Enemy — Internment of a Merchant Ship Belonging to — Ship Subsequently Requisitioned by Crown — Application by Creditors to Vest Ship in Custodian Trustee—Discretion of Court — "Vesting is expedient for the purposes of this Act."] — Where a German ship was seized as a prize by the Crown after the declaration of war with Germany, and was subsequently requisitioned by the Crown and was in the possession of the Admiralty, section 4 of the Trading with the Enemy Amendment Act, 1914, was held to be inapplicable, and that it was not expedient for the purposes of that Act under the circumstances of the case to make an order vesting property of such a nature as a ship in the custodian trustee. *Hemsoth, Lim., In re*, 113 L. T. 260—C.A.

—— Life Assurance Policies—Enemy Mortgagee—Application by Trustee in Bankruptcy of English Mortgagor.]—The trustee in bankruptcy of an English mortgagor who has mortgaged life assurance policies to an enemy mortgagee is not a person interested in property belonging to an enemy within section 4 of the Trading with the Enemy Amendment Act, 1914, and therefore is not entitled to apply to the Court for an order vesting the policies in the custodian. *Ruben, In re*, 84 L. J. Ch. 789; [1915] 2 Ch. 313; 113 L. T. 647; 59 S. J. 704; 31 T. L. R. 563—Younger, J.

IV. PRIZE OF WAR.

See also Vol. XIV. 1786.

a. Rights as to.

i. *Ships.*

English Company of Alien Shareholders.]—*Quære*, whether an English company, consisting entirely of aliens, can own a British ship. *The Tommi; The Rothersand*, 84 L. J. P. 35; [1914] P. 251; 1 P. Cas. 16; 112 L. T. 257; 59 S. J. 26; 31 T. L. R. 15—Evans, P. S. P. *The Poona*, 84 L. J. P. 150; 1 P. Cas. 275; 112 L. T. 782; 59 S. J. 511; 31 T. L. R. 411—Evans, P.

Deep-sea Fishing Vessel—Exemption from Capture.] — An enemy vessel, which is shewn by her size, equipment, and voyage to be a deep-sea fishing vessel engaged in a commercial enterprise which forms part of the trade of the enemy country, is not within the category of coast fishing vessels, so as to be exempt from capture, but is good prize. *The Berlin*, 84 L. J. P. 42; [1914] P. 265; 1 P. Cas. 29; 112 L. T. 259; 12 Asp. M.C. 607; 59 S. J. 59; 31 T. L. R. 38—Evans, P.

Enemy Limited Company — Appearance in Prize Court — Shareholders — Claimants for Disbursements and Services—Bounty of Crown —Mortgagees—Capture at Sea—"Ignorant of the outbreak of hostilities."]—A German merchant steamship, owned by a German limited company resident in Germany, left a British port some hours before war commenced between this country and Germany, and was captured at sea while still ignorant of the outbreak of hostilities. Article 3 of Convention VI. of the Second Hague Peace Conference, 1907, provides that enemy merchant ships which left their last port of departure before the commencement of the war, and are encountered on the high seas while still ignorant of the outbreak of hostilities, may not be confiscated, but are merely liable to be detained, &c. This Convention was signed by Great Britain, but, when signed by Germany, article 3 was reserved. As regards this vessel—first, on behalf of the Crown, a decree of condemnation as prize was claimed; secondly, on behalf of the owners, it was contended that they were entitled to appear against this claim in the Prize Court, though the affidavit filed on their behalf did not shew any special circumstances entitling them to appear; thirdly, on behalf of certain shareholders in the vessel, and other claimants who had paid disbursements or rendered services in respect of the vessel, it was contended that they had some rights in the Prize Court in respect of the vessel; and fourthly, on behalf of neutral mortgagees of the vessel, it was contended that the amount due under the mortgage should be paid out of the proceeds of the vessel when sold:—*Held*, first, that article 3 of the said Convention VI. did not apply in the circumstances, and that the vessel must be condemned as prize and not merely detained; secondly, that the German owners had no right to appear in the Prize Court, as no special circumstances were shewn entitling them to appear; thirdly, that the shareholders and claimants in respect of disbursements, &c., had no rights in the Prize Court in respect of the vessel, but could only apply to the bounty of the Crown; and fourthly, after a full review of the authorities, that the claim of the mortgagees must be rejected. *The Marie Glaeser*, 84 L. J. P. 8; [1914] P. 218; 1 P. Cas. 38; 112 L. T. 251; 12 Asp. M.C. 601; 59 S. J. 8; 31 T. L. R. 8—Evans, P.

Capture at Sea—Ignorance of Outbreak of War.]—Apart from international convention, enemy merchant ships, captured on the high seas in ignorance of the outbreak of hostilities, are liable to condemnation. Article 3 of Convention VI. of the Hague Conference, 1907, which provides for the detention, instead of confiscation, of enemy vessels which left their last port of departure before the commence-

ment of war and are encountered on the high seas while still ignorant of the outbreak of war, has no application to German vessels, the German Empire, when signing the convention, having refused its assent to this article. *The Perkeo*, 84 L. J. P. 149; 1 P. Cas. 136; 112 L. T. 251; 12 Asp. M.C. 600; 58 S. J. 852—Evans, P.

Hospital Ship — Suspicious Movements — Signalling Lights — Destruction of Ship's Papers.]—An enemy vessel, certified by the German Government as an auxiliary hospital ship, and adapted (although inadequately) as such, was encountered off the Dutch coast, near the Haaks lightship, by British warships. She was taken into port to be searched, and was afterwards seized as prize. She had on board 1,220 Very's lights, and rockets and flares suitable for signalling, of which no satisfactory account was given by her. When about to be boarded by an officer from one of the warships, a number of books and documents were thrown overboard, and subsequently others were burnt; and she had shortly before sent a wireless message in code to the German signalling station at Norddeich. She had made two unexplained voyages from the mouth of the Elbe to Heligoland. On the only occasion on which she went out to render assistance after a German naval disaster forty-eight hours elapsed before she arrived on the scene, the distance to be covered being sixty miles; and during the ten weeks that the war had lasted no sick, wounded, or shipwrecked person had been received on board. There was evidence that she had increased speed to evade search by a British submarine. According to her log, her full speed was at least two knots more than was sworn to by her witnesses, and there were other matters not satisfactorily explained:—*Held*, that the vessel was not adapted and used for the sole purpose of affording aid to the wounded, sick, and shipwrecked; that she was adapted and used as a signalling ship for military purposes; that therefore she had forfeited the protection afforded to hospital ships by Convention X. of the Hague Conference, 1907; and that she must be condemned as lawful prize. *The Ophelia*, 84 L. J. P. 131; [1915] P. 129; 1 P. Cas. 210; 31 T. L. R. 452—Evans, P.

The serious view taken by Prize Courts of the destruction of ship's papers, and the doctrines laid down with reference thereto, are specially applicable to vessels claiming to be hospital ships, whose papers should be perfectly innocent: and if the ship's papers are not preserved, the inference is strong that if produced they would afford evidence of guilty practices. *Ib.*

Enemy Yacht—Outbreak of War—Detention in British Port — Days of Grace — Condemnation — Sixth Hague Convention — Violation of its Provisions by the Enemy——Effect—Liability for Repairs—Dry Docking.]—The provisions of the Sixth Hague Convention, with regard to days of grace, are intended to protect vessels engaged in commerce, and do not afford protection to enemy yachts. Therefore a German yacht detained in a British port on the outbreak of war, according to the ordinary law by which enemy property seized in port is confiscable, is subject to condemnation. Claims in respect of repairs executed to the yacht before the detention, and in respect of dry docking, afterwards acceded to by the Crown as an act of grace. *Quære*, whether a belligerent Power which has violated many of the provisions of the Hague Convention can claim the protection of any of its provisions from other contracting parties. *The Germania*, 1 P. Cas. 573; 60 S. J. 76; 32 T. L. R. 68—Evans, P.

Submarine Signalling Apparatus—Lease to Shipowners—"Neutral goods."]—A submarine signalling apparatus, fixed partly in the fore hold and partly in the chart room of an enemy's ship, was claimed by a neutral company who, as they alleged, leased the apparatus to the owners of the ship on terms which provided that rent should be paid and that the apparatus should remain the sole and exclusive property of the company:—*Held*, that the apparatus was not "neutral goods" under enemy's flag within article 3 of the Declaration of Paris, 1856, as "goods" there meant merchandise, which this was not; and that this apparatus being a part of the ship must in the Prize Court be condemned with the ship. *The Schlesien*, 84 L. J. P. 33; 1 P. Cas. 13; 112 L. T. 353; 59 S. J. 163; 31 T. L. R. 89—Evans, P.

Ship in British Port — Commencement of Hostilities—Order in Council—Days of Grace — Less Favourable Treatment by Enemy — Detention.] — A German merchant steamship was lying in a British port when war was declared to exist between Great Britain and Germany, and was seized on behalf of the Crown by the Collector of Customs of the port as a droit of Admiralty. Article 1 of Convention VI. of the Second Hague Peace Conference, 1907, provided that when a belligerent merchant ship was at the commencement of hostilities in an enemy port, it was desirable that it should be allowed to depart freely, either immediately or after a reasonable number of days of grace; and article 2 provided that a merchant ship, which was not allowed to leave, might not be confiscated, but the belligerent might merely detain it on condition of restoring it after the war. By Order in Council, dated August 4, 1914, it was ordered that enemy merchant ships, which at the outbreak of hostilities were in any British port, should be allowed till August 14 for departing from such port, if information was obtained that the treatment of British merchant ships in an enemy port was not less favourable. This information was not obtained by the British Government, so that effect could not be given to article 1 of Convention VI. The Court was asked on behalf of the Procurator-General for an order for the detention of the ship:—*Held*, that an order should be made that the ship belonged at the time of seizure to enemies of the Crown, and had been properly seized by the officers of the Crown, and was to be detained by the Marshal till further order. *The Chile*, 84 L. J. P. 1: [1914] P. 212; 1 P. Cas. 1; 112 L. T. 248; 12 Asp. M.C. 598; 58 S. J. 852; 31 T. L. R. 3—Evans, P.

Sale before War — Enemy Flag — Invalid Transfer — Detention — British Ship.] — On August 1, 1914, a German company, owning two German sailing vessels, both at sea and bound for ports in the United Kingdom, offered by telegram to sell them to an English company, which telegraphed acceptance. The vessels arrived in the ports, and were seized by Customs officers after war had been declared on August 4 between Great Britain and Germany. The English company claimed the vessels as having become their property by a valid transfer:—*Held*, that the vessels were enemy property—first, because the nationality of a vessel is determined by the flag which she is entitled to fly, whether at sea or in port, and that the flag which these vessels were entitled to fly was German; and secondly, because the alleged transfer was not valid, but was incomplete in certain respects, and amounted in substance to a mere arrangement by the German company that the vessels should be called British ships; and that the claim must be dismissed and an order made for the detention of the two vessels. *The Tommi; The Rothersand*, 84 L. J. P. 35; [1914] P. 251; 1 P. Cas. 16; 112 L. T. 257; 59 S. J. 26; 31 T. L. R. 15—Evans, P.

Capture at Sea or in Port—Entry to Escape Capture — Whether Protected from Confiscation.]—*Held*, on the facts, that after the outbreak of hostilities the German steamer *Belgia* was captured at sea and not in port and was therefore liable to condemnation. *Quære*, whether a vessel entering a port to avoid possible capture is protected from confiscation by articles 1 and 2 of the Sixth Hague Convention. *The Belgia*, 1 P. Cas. 303; 59 S. J. 561; 31 T. L. R. 490—Evans, P.

—— "Port"—Detention or Condemnation.]—An enemy merchant ship was captured on August 5, 1914, at a place in the Firth of Forth, which was not within the limits of a "port" in the usual commercial sense, but was within the limits of the "port" of Leith for Customs purposes:—*Held*, that the word "port" in the Sixth Hague Convention, 1907, did not mean the fiscal port, but must be construed in its usual and limited popular or commercial sense as a place where ships are in the habit of coming for the purpose of loading or unloading, embarking or disembarking; and that the vessel, when captured, was not, within the meaning of article 2 of this Convention, at the commencement of hostilities in an enemy "port" and not allowed to leave, so as to be subject only to detention, but was encountered "at sea" within the meaning of article 3 of this Convention, of which this vessel could not claim the benefit, and that the vessel must therefore be condemned as prize. *The Marie Glaeser*, 84 L. J. P. 8; [1914] P. 218; 1 P. Cas. 38; 112 L. T. 251; 12 Asp. M.C. 601; 59 S. J. 8; 31 T. L. R. 8—Evans, P.

Requisition of Prize by Crown—Order for Delivery.]—Order XXIX. of the Prize Court Rules, which was authorised by an Order in Council dated March 23, 1915, and which provides that "Where it is made to appear to the Judge . . . that it is desired to requisition on behalf of His Majesty a ship in respect of which no final decree of condemnation has been made, he shall order that the ship shall be appraised, and that upon an undertaking being given in accordance with Rule 5 of this Order the ship shall be released and delivered to the Crown," does not violate the law of nations and is not *ultra vires*. *The Zamora*. 1 P. Cas. 309; 113 L. T. 649; 59 S. J. 614; 31 T. L. R. 513—Evans, P.

Practice—Enemy Shipowner—Resident in Enemy Country—Affidavit as to Appearance—Insufficiency.]—The writ in this cause was in the prescribed form, and had been issued by the Procurator-General, and was duly advertised. It was addressed to the owners and parties interested in the ship, and commanded them to cause an appearance to be entered for them. Counsel for the German owners, resident in Germany, contended that they were entitled to appear, but the affidavit as to appearance, which was made by a member of a London firm described as agents of the owners, did not state who were the owners of the vessel, or any special circumstances entitling them to appear:—*Held*, that the affidavit was wholly insufficient to entitle the enemy owners to appear. *The Chile*, 84 L. J. P. 1; [1914] P. 212; 1 P. Cas. 1; 112 L. T. 248; 12 Asp. M.C. 598; 58 S. J. 852; 31 T. L. R. 3—Evans, P.

—— Dock Owners—Liberty to Apply.]—Dock owners, to whom considerable sums had accrued, and were accruing, in respect of the ship, were given liberty to apply to the Court. *Ib.*

—— Right to Appear—Enemy Merchant Ship—Enemy Owner.]—Apart from the new practice of the Prize Court, an enemy shipowner who alleges no suspension of his hostile character has no right to appear in the Court to argue that his ship, though enemy property, is not subject to condemnation, but only to detention under a convention of the Hague Peace Conference, 1907. The future practice of the Prize Court shall be that any alien enemy, claiming any protection, privilege, or relief under any such convention, shall be entitled to appear as a claimant and argue his claim before the Court. He should state the grounds of his claim in his affidavit to lead appearance. *The Möwe*, 84 L. J. P. 57; [1915] P. 1; 1 P. Cas. 60; 112 L. T. 261; 59 S. J. 76; 31 T. L. R. 46—Evans, P. *See The Marie Glaeser*, *supra*.

—— Claim for Necessaries — Arrest — Subsequent Seizure as Prize.]—In a Prize Court the rights of the captor take precedence over claims for necessaries, even where the claimants for necessaries have arrested the vessel before she was seized as prize. *The Tergestea*, 59 S. J. 530; 31 T. L. R. 180—Evans, P.

—— Legal Evidence of Capture—Other Evidence.] — The commander of one of His Majesty's ships who cannot take a captured vessel into port, or put a prize crew on board, ought to enter the time and place of capture in the vessel's log, or make a declaration in

the presence of the vessel's master, so as to provide direct legal evidence thereof. But in the absence of such evidence the Court can act on other evidence or reliable information, and draw inferences therefrom under the Prize Court Rules, 1914, Order XV. rules 1, 2 (*e*). *The Berlin*, 84 L. J. P. 42; [1914] P. 265; 1 P. Cas. 29; 112 L. T. 259; 12 Asp. M.C. 607; 59 S. J. 59; 31 T. L. R. 38—Evans, P.

ii. *Cargo.*

Postal Packet—Parcel Post.]—Article 1 of the Hague Conventions, 1907, Number XI., while exempting postal correspondence from capture, does not apply to parcel post. *The Simla*, 1 P. Cas. 281; 59 S. J. 546—Evans, P.

Enemy Goods in British Ship—Liability to Capture.]—Enemy goods are not exempt from capture in a British port by reason of the fact that they are on board a British ship. *The Aldworth (Cargo ex)*, 59 S. J. 75; 31 T. L. R. 36—Evans, P.

Enemy Character — British Company — Enemy Directors and Shareholders.]—Goods consigned to a duly incorporated British company, to which the property has passed, are not confiscable as prize by reason of the fact that all the directors and shareholders of the company are enemy subjects, or domiciled in an enemy country. *Continental Tyre and Rubber Co.* v. *Daimler Co.*; *Same* v. *Tilling, Lim.* (84 L. J. K.B. 926; [1915] 1 K.B. 893), applied. *The Poona*, 84 L. J. P. 150; 1 P. Cas. 275; 112 L. T. 782; 59 S. J. 511; 31 T. L. R. 411—Evans, P.

Quære, whether a British company, composed entirely of alien enemies, can own a British ship. *Ib.*

Presumption as to Cargo on Enemy Vessel —Burden of Proof.]—According to prize law, goods on an enemy vessel consigned to an enemy port are *prima facie* enemy goods, and the onus is on claimants who allege that the goods belong to them, as neutrals, to satisfy the Court with clear evidence. *The Roland*, 84 L. J. P. 127; 1 P. Cas. 188; 31 T. L. R. 357—Evans, P.

Goods Afloat—Bona Fide Sale by Enemy to Neutral without Contemplation of War—Outbreak of War.]—Where the owner of goods afloat *bona fide* sells them without contemplation of war between his country and another country, and after completion war breaks out between those countries while the goods are still *in transitu*, but the country of the purchaser is neutral, the goods are not subject to capture as prize by that other country's ships of war. *The Southfield*, 1 P. Cas. 332; 113 L. T. 655; 59 S. J. 681; 31 T. L. R. 577—Evans, P.

Continuous Voyage—Absolute Contraband—Conditional Contraband — Ostensible Neutral Destination — Real Destination an Enemy Government — Condemnation.]—Four vessels belonging to Scandinavians started in October and November, 1914, on voyages from New York to Copenhagen with cargoes of lard, hog and meat products, oil stocks, wheat, and other goods. They were captured by the British on the voyage, and their cargoes were seized on the ground that they were conditional contraband which was alleged to be confiscable in the circumstances, with the exception of one cargo of rubber, which was seized as absolute contraband:—*Held*, that on the facts some of the goods were intended *bona fide* for Danish purchasers, but other goods were intended for the German Government, and that as the doctrine of "continuous transportation" applied to conditional as well as to absolute contraband and covered transport by land until the real, as distinguished from the ostensible, destination of the goods was reached, the goods intended for the German Government must be condemned. *The Kim (No. 2)*, *The Alfred Nobel*, *The Björnstjerne Björnson*, *The Fridland*, [1915] P. 215; 1 P. Cas. 405; 60 S. J. 9; 32 T. L. R. 10—Evans, P.

Contract of Sale c.i.f. — Shipment During Peace—War Intervening on Voyage—Seizure as Prize—Refusal of Documents—Test for Condemnation—Passing of Property or Loss by Seizure—Cargo in British Vessel not Excused.]—When goods are contracted to be sold, and are shipped without any anticipation of imminent war, and are taken as prize after war has intervened, the cardinal principle is that they are not subject to condemnation unless under the contract the property in the goods has at the time of seizure passed to the enemy. *The Miramichi*, 84 L. J. P. 105; [1915] P. 71; 1 P. Cas. 137; 112 L. T. 349; 59 S. J. 107; 31 T. L. R. 72—Evans, P.

Enemy cargo shipped without any anticipation of imminent war, and taken as prize in port or at sea after war has intervened, does not escape condemnation because it is in a British vessel. *Ib.*

Before any anticipation of imminent war, sellers made a c.i.f. contract of sale of wheat to buyers, and in fulfilment of the contract sub-contracted with a merchant to buy wheat shipped by him and received from him the bill of lading for it, which was indorsed generally. War intervened during the voyage. The sellers were neutrals, and the port of destination was neutral, but the buyers to whom the goods were to be delivered at the port of destination were enemies in the enemy country. The sellers' bankers, who were neutrals, had discounted the bill of exchange drawn by the sellers on the buyers, and had forwarded it and the bill of exchange and the certificates of insurance to a bank in the enemy country for tender of the latter documents against acceptance of the bill of exchange. The vessel was British and was diverted to a British port, where the wheat was seized by the Crown as prize. Shortly after the seizure the enemy buyers in the enemy country refused to take up the documents. The sellers claimed the wheat as their property. It was contended for the Crown that the test for condemnation was whether the enemy or the neutral would suffer the loss if the wheat was condemned, and that, as the sellers had a right of payment against the buyers and had only a *jus dis-*

ponendi as holders of a bill of lading not indorsed to them, they could not recover the wheat:—*Held*, disallowing the contention of the Crown, that as the goods were shipped without any anticipation of imminent war, the test for condemnation was as to whether the property in the wheat had at the time of seizure passed to the enemy, and that, as it had not at that time passed to the buyers and would not so pass until they took up the documents, the wheat remained the property of the sellers and must be restored to them. *Ib.*

Goods when Shipped to "selling agents"—Passing of Property.] — Where goods are shipped by the vendors to persons, described as "selling agents," who are paid by commission and to whom the bills of lading are indorsed, and the vendors do not reserve any right of disposal of the goods after shipment, the question whether the property in the goods has passed to the "selling agents" depends upon intention and is a question of fact. An American company shipped in July, 1914, at New York for Hamburg on a German steamer a consignment of pig lead under bills of lading which were made out to the order of the shippers at Hamburg and were indorsed to a German company or order and were sent forward to the German company. The goods were shipped under an arrangement between the American company and the German company which secured to the former the benefit of a previous agreement in which the German company were described as "selling agents," and a draft on demand for the provisional price, as arranged, was sent to an English company, which was connected with the arrangement. On August 5, 1914, the goods were seized as prize, and on presentation of the draft on August 8, 1914, the English company refused, owing to the war, to pay it. The German company were not accountable to the American company as principals for the sum actually received by them as agents from the purchasers to whom they sold the goods, but only for a sum to be fixed by a computation of sales of pig lead supplied by other producers:—*Held*, that on the facts the property in the goods had passed to the German company and therefore they were enemy goods. *The Kronprinzessin Cecilie*, 1 P. Cas. 623; 32 T. L. R. 139—Evans, P.

Ante-bellum Contract of Sale—Post-bellum Shipment—Passing of Property—Allied Ship—Trading with the Enemy—Freight.]—Under a contract of July 13, 1914, made between the sellers, a firm of German merchants at Hamburg, with a branch at Valparaiso, and the buyers, a Dutch firm at Veendam, Holland, a cargo of nitrate of soda was loaded at Taltal, Chili, in a Russian sailing ship, which had been chartered by the German firm to carry the cargo to Delfzil, Holland. Loading began in July, but was not completed until after the outbreak of war. The bills of lading, dated August 6, were made out to the order of the sellers. The ship sailed on August 29. On December 6 she arrived at Plymouth, where the cargo was seized as enemy property. The contract of sale provided that payment, to include cost and freight, was due ninety days after receipt of the first bill of lading, and was to be paid three days after maturity, or, in case of an earlier arrival of the ship, against acceptance of the documents. The buyers were to provide a banker's guarantee for 5,000*l.* for the due performance of the contract, the value of the cargo being 22,115*l.* Insurance, including war risk, was to be covered by the sellers, the buyers to accept the policy against payment of the premium. The buyers provided the banker's guarantee, and deposited the purchase price in the sellers' bank with instructions not to part with it until all the bills of lading had arrived. The bills of lading, which were made out in sets of three copies each, were forwarded to the sellers' house in Hamburg. The first copies arrived on September 9, and the third arrived by January 25, 1915; but they remained at the sellers' bank in Hamburg, and were not taken up until after the cargo had been seized. It was contended by the Dutch buyers that the property had passed to them:—*Held*, that the *prima facie* presumption—arising from the fact of the bills of lading being to the order of the sellers—that the sellers had reserved the right of disposal, was not rebutted by the requirement of the banker's guarantee; that the parties did not intend the property in the goods to pass to the buyers until the documents were accepted and the price paid; that if the property did not pass on shipment it could not pass while the goods were *in transitu* so as to defeat the rights of belligerents; and that at the time of seizure the property was in the enemy sellers, and the goods must be condemned. *Held*, further, that on the outbreak of war between Russia and Germany it became illegal for the Russian shipowners to continue to perform their contract with the German charterers; that, after August 4, when Germany became the common enemy of Russia and of Great Britain, a British Prize Court had power to deal with a Russian vessel engaged in illegal trading; and that strictly the vessel was liable to confiscation, and, although the Crown did not ask for this penalty, that a claim of the Russian shipowners for freight and expenses must be disallowed. *The Parchim*, 1 P. Cas. 579—Evans, P.

Commercial Intercourse between Subjects of an Allied and an Enemy State—Obligations of Allied Subjects—Bona Fides—Ally's Cargo Condemned.]—In May, 1914, a French company contracted to sell to a German firm at Frankfurt a quantity of silver lead f.o.b. Ergasteria, in Greece. In pursuance of the contract the French company chartered a steamer for a voyage to Antwerp and Newcastle to carry the lead to the purchasers from the German firm. Before the loading, which began on July 29, was finished, war broke out between Great Britain and her allies and Germany. On August 11 the vessel sailed. The French company then entered into negotiations with the London office of the German firm as regards the delivery of the lead, but on August 23 that office was closed by order of the Home Secretary, the negotiations fell through, and the French company diverted

the vessel to Swansea, where the cargo, the property in which admittedly remained in the French company, was seized as prize :—*Held*, that the facts shewed that after the outbreak of war the French company, although acting in good faith, had had commercial intercourse with the German firm which amounted to a trading with the enemy; and the subjects of an allied State being under the same obligations to Great Britain as regards intercourse with the enemy as British subjects, that the silver lead must be condemned. *The Panariellos*, 84 L. J. P. 140; 1 P. Cas. 195; 112 L. T. 777; 59 S. J. 399; 31 T. L. R. 326—Evans, P.

Submarine Signalling Apparatus—Lease to Shipowners — "Neutral goods."] — A submarine signalling apparatus, fixed partly in the fore hold and partly in the chart room of an enemy's ship, was claimed by a neutral company who, as they alleged, leased the apparatus to the owners of the ship on terms which provided that rent should be paid and that the apparatus should remain the sole and exclusive property of the company :—*Held*, that the apparatus was not "neutral goods" under enemy's flag within article 3 of the Declaration of Paris, 1856, as "goods" there meant merchandise, which this was not; and that this apparatus being a part of the ship must in the Prize Court be condemned with the ship. *The Schlesien*, 84 L. J. P. 33; 1 P. Cas. 13; 112 L. T. 353; 59 S. J. 163; 31 T. L. R. 89—Evans, P.

Cargo of Oil—Discharge into Tanks—Droits of Admiralty — Seizure "on land" or in "port"—Enemy National Character—German Company—International Combine—Notice of Detention—Ambiguity—Lawful Seizure.]—A cargo of oil was shipped on a British steamship at Port Arthur, Texas, for delivery at Hamburg. The oil was the property of a German incorporated company, which was an international combine, and most of its shares were held by incorporated companies of nations which were not enemies. During the voyage and after the outbreak of war with Germany the vessel, owing to a request of the Admiralty, was diverted eventually to London and was moored at a wharf. The oil was discharged into tanks belonging to the wharfingers, one hundred to one hundred and fifty yards away from the wharf, by means of the ship's pumps and connecting pipes. Notice by an officer of Customs that the whole cargo was "placed under detention" was delivered on board when most of the oil had been discharged, but the remaining oil was afterwards discharged into the tanks :—*Held*, first, that the whole cargo of oil should be condemned as droits of Admiralty, and that the case was within the jurisdiction of the Prize Courts; that the oil in the tanks was seizable even if it was strictly "on land" and not in "port," but that the tanks were oil warehouses and the oil therein was seized in "port"; secondly, that the German company, being incorporated and resident in Germany, was of an enemy national character, notwithstanding its international position; and thirdly, that the Customs notice that the cargo was placed under detention was a lawful seizure of the oil as droits of Admiralty, and the contention that the notice was too ambiguous was disallowed. *The Roumanian*, 84 L. J. P. 65; [1915] P. 26; 1 P. Cas. 75; 112 L. T. 464; 59 S. J. 206; 31 T. L. R. 111 Evans, P. Affirmed, 1 P. Cas. 536; 60 S. J. 58; 32 T. L. R. 98—P.C.

Enemy Owners — Alleged Ownership by Partnership—One Partner an Alien Enemy—Failure of British Partners to Sever Connection — Condemnation.] — Two consignments, consisting of zinc concentrates and leady concentrates, were shipped in a British steamship by the Australian Metal Co., Lim., a British company, at Port Pirie before the war to the order of the shippers or their assigns at Antwerp, the vessel having been chartered by the Metallgesellschaft, a German company. The goods were seized as prize at Brixham on September 23, 1914, and were claimed by Merton & Co., Lim., a British company, because they had accepted the shippers' drafts for the value of the goods, had taken up the shipping documents, and had paid the freight. In the alternative Merton & Co. and the Australian Metal Co. and Vivian & Co. (a British partnership) each claimed a one-fourth share in the leady concentrates, as three members of a pool, of which the other member was the Metallgesellschaft. The Compagnie des Minerais, a Belgian company, also claimed the zinc concentrates as the owners, if it should be held that the property in them had passed from Merton & Co. It was alleged by Merton & Co. that the zinc concentrates were intended to be sold to the Compagnie des Minerais, but that as this company had not paid for them the property belonged to Merton & Co. The Belgian company was formed mainly by the German company :—*Held*, on the facts, that the zinc concentrates belonged to the Metallgesellschaft, and must be condemned as enemy property. *Held* further, on the facts, that the Metallgesellschaft were the owners of the leady concentrates, although they had to account to the three other members of the pool for the ultimate profits, and that therefore the leady concentrates must be condemned, and that, even if the pool was a partnership consisting of three British partners and one enemy partner, the goods being the joint property of the four partners, nevertheless, as the three British partners had not taken steps to sever their connection with the enemy partner by reason of the outbreak of war, their shares in the goods must on this footing also suffer condemnation. *The Manningtry*, 1 P. Cas. 497; 60 S. J. 75; 32 T. L. R. 36—Evans, P.

Enemy Cargo—Claim of Pledgees—Accrual of Right to Sell.]—The pledgees of bills of lading of enemy cargo, which has been properly taken as prize, have no claim which is recognised in the Prize Court; and though the right to sell has accrued to the pledgees by default, until they do sell the general property in the goods remains in the pledgors, who have at any time the right to redeem. *The Odessa; The Cape Corso*, 84 L. J. P. 112;

[1915] P. 52; 1 P. Cas. 163; 112 L. T. 473; 59 S. J. 189; 31 T. L. R. 148—Evans, P. Affirmed, 1 P. Cas. 554; 32 T. L. R. 103—P.C.

—— **Consignment to British Port.**] — The rights of mortgagees of enemy goods captured as prize are not regarded in a Prize Court, even though the goods have been consigned to a British port, and the mortgagees are persons who have arranged to sell them on commission in this country. *The Odessa* (*supra*) followed. *The Linaria*, 59 S. J. 530; 31 T. L. R. 396—Evans, P.

—— **Pledge to Neutral Bankers—Documents of Title Held by British Agents—Effect of Outbreak of War—Right of Pledgors to Redeem.**]—The enemy owners of goods seized as prize, who have pledged them to neutral bankers before war, do not lose their right to redeem the goods by reason of the outbreak of war, although the documents of title to the goods may be held by British agents of the bankers, who are prohibited from commercial intercourse with the pledgors; and the bankers are merely in the position of pledgees whose claims cannot be recognised in the Prize Court. *The Eumaeus*, 1 P. Cas. 605; 60 S. J. 605; 32 T. L. R. 125—Evans, P.

—— **Default of Pledgors—Exercise of Power of Sale by Pledgees—Whether Goods Subject to Seizure.**] — Certain enemy subjects contracted before the war to sell to a British firm a quantity of vegetable tallow, and it was shipped in a British ship at Hankow for Liverpool before the war. The vendors pledged the goods before the war to Japanese bankers, who were indorsees and holders of the bills of lading at the time of the shipment of the goods and of their arrival at Liverpool, which took place after the declaration of war. The purchasers declined to take up the documents or to take delivery of the goods from enemy subjects, and thereupon the pledgees, having become, owing to the default of the pledgors, entitled to exercise their power of sale, contracted to sell the goods to a British firm. The goods were subsequently seized by the Customs officer at Liverpool on the ground that they were enemy property:—*Held*, that, whether or not the property in the goods had passed from the pledgees to the firm which purchased the goods from them, the right of the enemy pledgors to redeem the goods was lost when the pledgees contracted to sell them, and therefore the goods were not subject to seizure as enemy goods. *The Ningchow*, 1 P. Cas. 288; 31 T. L. R. 470—Evans, P.

Claim for Freight—Cargo in British Ship Condemned.] — When enemy cargo, loaded before war for carriage on a British ship, is seized and ordered to be discharged in a British port, and is condemned as prize, such a sum is to be allowed out of the prize to the shipowners for freight as is fair and reasonable in the circumstances. Regard is to be had to the agreed freight—though this is not conclusive—to the extent to which the voyage has been made, the labour and cost expended or any special charges incurred in respect of the cargo before seizure and discharge, and to the benefit to the cargo from carriage until seizure and discharge. No sum is to be allowed, unless in special circumstances, for inconvenience or delay to the ship as the result of her diversion or detention for the seizure and discharge of her enemy cargo. *The Juno*, 84 L. J. P. 154; 1 P. Cas. 151; 112 L. T. 471; 59 S. J. 251; 31 T. L. R. 131—Evans, P.

Certain parcels of German cargo were loaded shortly before the war on a British ship at Bristol for delivery at Amsterdam, and were destined for places in Germany. The ship proceeded to Swansea to load more cargo, and was kept there by her owners. After war had broken out between Great Britain and Germany these parcels were seized by the Customs officer at Swansea, and ordered to be discharged, and were condemned as prize. The shipowners claimed to receive out of the prize full freight and the expenses of discharging these parcels and of shifting the ship to a discharging berth for the purpose:—*Held*, that the claim to some freight and to the other expenses should be allowed, and a reference was ordered to ascertain the amount on the principles above stated. *Ib.*

—— **British Vessel — Shipowners' Right to Freight on Cargo — Seizure as Prize before Reaching Port of Destination — Subsequent Release.**]—In the Prize Court shipowners have a right to have some freight on cargo which has been seized as prize before reaching its port of destination, but which has been subsequently released. *The Friends* (Edw. Adm. 346) considered. *The Iolo*, 1 P. Cas. 291; 113 L. T. 604; 59 S. J. 545; 31 T. L. R. 474—Evans, P.

The *quantum* of freight is to be decided on the principles laid down in *The Juno* (*supra*). *The Corsican Prince* (84 L. J. P. 121; 1 P. Cas. 178) approved. *Ib.*

—— **Enemy Ship — Released Cargo.**] — A captor is not entitled to freight from the owners of cargo which has been brought before the Prize Court and released, unless the cargo has been carried to its port of destination according to the intent of the contracting parties. *The Roland*, 84 L. J. P. 127; 1 P. Cas. 188; 31 T. L. R. 357—Evans, P.

—— **Condemnation.**]—Where freight is paid on goods belonging to alien enemies with knowledge that the owners are alien enemies, and with the object of preserving the goods for their benefit, the persons making the payment have no right, in the event of the cargo being seized by the Crown and condemned as prize, to recover back the freight from the shipowners or to obtain from the Crown payment out of the proceeds of the cargo. *The Bilbster*, 1 P. Cas. 507*n.*; 60 S. J. 107; 32 T. L. R. 35—Evans, P.

—— **Contraband — Condemnation — Demurrage.**] — A cargo of iron ore destined for Krupp's works in Germany was shipped on September 16, 1914, by a Spanish firm in a Dutch steamer belonging to a Dutch company from Spain to Rotterdam. On September 19 the vessel when off the Isle of Wight was

turned into port by a British warship for the examination of her cargo. On September 21 iron ore was placed on the list of conditional contraband. The vessel arrived at Portsmouth for examination on September 26, and the cargo was seized as prize on October 4. The ship was afterwards sent to Middlesbrough and was released, and was ultimately sunk by the Germans. On an application by the Crown for the condemnation of the cargo the shipowners, who were neutrals, claimed freight and demurrage, but the Crown contended that as they were acting as agents for Krupp's forwarding and shipping agents they were not entitled thereto :—*Held*, that as the effective seizure took place after iron ore had been made contraband, it was liable to condemnation; that as the cargo was not contraband at the time when it was shipped and as on the facts the shipowners' *prima facie* claim to freight had not been displaced, they were entitled to freight; but that they were not entitled to demurrage, as the detention of the ship was a misfortune to which neutrals were liable in time of war. *The Katwyk*, 1 P. Cas. 282; 31 T. L. R. 448—Evans, P.

— Claim for Delay—Contribution to General Average Loss.]—By a contract made in 1913 an English company agreed to sell to a German company a quantity of chrome ore and in June, 1914, the ore was shipped from New Caledonia by a Norwegian sailing vessel, chartered by the German company, the bill of lading being made out in favour of the English company, or order, for delivery at Rotterdam. In the same month the buyers paid the sellers half the price plus a sum, advanced for the ship. The vessel put into Pernambuco in September, 1914, and there the master received instructions to go to a Swedish port *via* the North of Scotland. In October, 1914, chrome ore was declared to be absolute contraband by an Order in Council which adopted some of the terms of the Declaration of London without excepting article 43, which provides that if a vessel is encountered at sea while unaware of the declaration of contraband applying to her cargo the contraband cannot be condemned except on payment of compensation. In November, 1914, the vessel was boarded by British naval officers and taken by a prize crew to Glasgow. In proceedings for the condemnation of the cargo it was claimed both by the sellers and by a Swedish company, the latter alleging that it had been bought for them by the German company as their agents, and the shipowners made a claim for freight, loss by delay, and contribution from the cargo for a general average expense in putting into Pernambuco, but no claim was made by the German company. There was no evidence that up to the capture the vessel was aware of the declaration of contraband applying to her cargo :—*Held*, that the German company were not in fact agents for the Swedish company, and that at the time of capture the property in the goods had passed to the German company, and the goods must be condemned, and that no compensation could be awarded to the German company, as they had not claimed it and as they had taken part in a dishonest attempt to persuade the Court that they were only agents for a neutral company. *Held*, further, that though the shipowners were not entitled to make any claim for delay of the ship, yet they were entitled to freight, and inasmuch as a claim for general average by the ship against the cargo existed before capture, they were also entitled to a contribution from the cargo to general average loss on the assumption that they could make out a case of general average loss. *Semble*, article 43 of the Declaration of London was only intended for the protection of neutrals and does not prevent contraband belonging to the enemy from being liable to condemnation without compensation. *The Sorfareren*, 1 P. Cas. 589; 32 T. L. R. 108—Evans, P.

British Ship—Deviation from Voyage—Consequent Outlays—Claim by Owners.]—Where a British ship, on a voyage to a German port, has been diverted by the Admiralty on account of the war to a port in the United Kingdom, the owners are not entitled to compensation for outlays incurred by them in consequence of such diversion or for the additional cost of discharging the cargo at such port as compared with the cost of discharging it at the German port. *The Tredegar Hall*, 1 P. Cas. 492; 60 S. J. 45; 32 T. L. R. 9—Evans, P.

Claimant — Enemy Domicil — Trading in Neutral or British Territory.]—The fact that a person who is domiciled in an enemy country has a house of trade in a neutral country or in British territory will not enable him to avoid the disability, imposed by his enemy domicil, of being disentitled in the Prize Court to succeed in a claim with respect to goods seized as prize. *The Clan Grant*, 1 P. Cas. 272; 59 S. J. 430; 31 T. L. R. 321—Evans, P.

Goods Owned by Enemy with Neutral Domicil—Change of Domicil before Seizure—Condemnation.]—Two consignments of copper belonging to one H., a German subject carrying on trade in Chile, were shipped from that country to Liverpool, and were seized as prize. H. had left Chile before the seizure, and he appeared to have been in Switzerland not long after it :—*Held*, that although the country to which H. appeared to have betaken himself was, equally with Chile, a neutral country, yet he had, by leaving Chile, lost the neutral trade domicil which he had acquired by residence there, and that he had thereby revested himself with his original character as an enemy, and therefore the goods were liable to condemnation. *The Flamenco. The Orduna*, 1 P. Cas. 509; 60 S. J. 107; 32 T. L. R. 53—Evans, P.

Goods — Neutral Property — Requisition by Crown.]—By Order I. rule 2 of the Prize Court Rules, 1914, "Unless the contrary intention appears, the provisions of these Rules relative to ships shall extend and apply, *mutatis mutandis*, to goods." By Order XXIX. rule 1, where the Lords of the Admiralty desire to requisition a ship and there is no reason to believe that the ship is entitled to be released, the Judge shall order the ship to be

appraised and to be delivered to them, "Provided that no order shall be made by the Judge under this rule in respect of a ship which he considers there is good reason to believe to be neutral property." By rule 3, where a ship is required forthwith for the service of the Crown, a Judge can order it to be forthwith released to the Lords of the Admiralty without appraisement. Certain copper was shipped at New York by an American company on board a Norwegian vessel and was consigned to Sweden, and was bought afloat by Swedish subjects under a contract guaranteeing that it was for consumption in Norway and/or Sweden. While the vessel was at sea copper was declared absolutely contraband, and the copper in question was afterwards seized at sea and brought to Liverpool, and the Crown issued a writ in prize claiming that the goods were liable to confiscation. Subsequently an order was made *ex parte* by the Registrar instructing the Marshal to release the copper to the Lords of the Admiralty, who wished to requisition it. On an application to discharge the order,—*Held*, that though there was sufficient doubt as to whether the goods were entitled to be released to prevent the order from being bad on the ground that there was reason to believe that they were so entitled, yet as they were neutral property it was impossible for the Crown to requisition them, and therefore the order must be discharged. *The Antares*, 1 P. Cas. 261; 59 S. J. 384; 31 T. L. R. 290—Evans, P.

Neutral Commercial Domicil—Firm Established in Shanghai — British and German Partners.]—A firm carrying on business in Shanghai consisted of two British and two German partners, and was registered in the German Consulate at Shanghai as a German firm and was subject to German laws under treaty with China. Neither of the German partners lived in Shanghai, but the two British partners lived there. Certain goods, which were the property of the firm, were seized as prize, and they were claimed as the property of the firm and alternatively as the property of the respective partners. There was no sufficient evidence as to whether after the outbreak of war the British partners took proper steps in due time to dissociate themselves from the business:—*Held*, that in the circumstances none of the partners had acquired or could acquire a neutral commercial domicil in Shanghai, and the firm should be treated as if it were an enemy firm established in Germany, and that the German partners' shares in the goods must be condemned, but that as regards the British partners' shares the question must stand over for further evidence as to what steps they took after the commencement of the war to break off their connection with the business. *The Eumaeus*, 1 P. Cas. 605; 60 S. J. 122; 32 T. L. R. 125—Evans, P.

Time for Trial.]—Where cargoes consisting of a very great number of different small consignments had been seized as contraband, and the ships had been detained, to be condemned on the ground that they were carrying cargo, more than half of which would be found to be contraband, the full time under Order XV. rule 7 was allowed to the Crown to get ready their case. *The Kim* (*No.* 1), 59 S. J. 428—Evans, P.

Enemy Ship—Seizure of Cargo—No Claim by Consignee—Order for Sale.]—Where the consignees of certain goods in an enemy ship had not taken up the bills of lading and they refused to pay the expenses of detention, on which payment the Procurator-General was willing to release to them the goods, and where they, the consignees, made no claim to the goods, which were still incurring continuing charges for warehousing, an order was made under Prize Court Rules, Order XXVII. rule 2, for the goods to be sold and the proceeds of sale to be paid into Court, with liberty to any parties interested to apply for payment out of such proceeds of sale. *The Horst Martini*, 59 S. J. 221—Evans, P.

Want of Discharging Facilities—Detention of Ship—Condemnation of Cargo—Sale—Compensation to Shipowners.]—When the cargo in a British or allied ship is seized as prize and owing to the want of discharging facilities it remains warehoused in the ship until after it has been sold under an order for condemnation, the shipowners are not entitled in law to compensation for the detention of the ship, but the Court may authorise the Admiralty Marshal to give them a reasonable sum out of the proceeds of the cargo. *The Cumberland*, 31 T. L. R. 198—Evans, P.

b. Jurisdiction of Prize Court.

Cargo of Oil—Discharge into Tanks—Droits of Admiralty — Seizure "on land" or in "port" — Enemy National Character — German Company — International Combine — Notice of Detention — Ambiguity — Lawful Seizure.]—A cargo of oil was shipped on a British steamship at Port Arthur, Texas, for delivery at Hamburg. The oil was the property of a German incorporated company, which was an international combine, and most of its shares were held by incorporated companies of nations which were not enemies. During the voyage and after the outbreak of war with Germany the vessel, owing to a request of the Admiralty, was diverted eventually to London and was moored at a wharf. The oil was discharged into tanks belonging to the wharfingers, one hundred to one hundred and fifty yards away from the wharf, by means of the ship's pumps and connecting pipes. Notice by an officer of Customs that the whole cargo was "placed under detention" was delivered on board when most of the oil had been discharged, but the remaining oil was afterwards discharged into the tanks:—*Held*, first, that the whole cargo of oil should be condemned as droits of Admiralty, and that the case was within the jurisdiction of the Prize Court; that the oil in the tanks was seizable even if it was strictly "on land" and not in "port," but that the tanks were oil warehouses and the oil therein was seized in "port"; secondly, that the German company, being incorporated and resident in Germany, was of an enemy national character, notwith-

standing its international position; and thirdly, that the Customs notice that the cargo was placed under detention was a lawful seizure of the oil as droits of Admiralty, and the contention that the notice was too ambiguous was disallowed. *The Roumanian*, 84 L. J. P. 65; [1915] P. 26; 1 P. Cas. 75; 112 L. T. 464; 59 S. J. 206; 31 T. L. R. 111—Evans, P. Affirmed, 1 P. Cas. 536; 60 S. J. 58; 32 T. L. R. 98—P.C.

Freight—Release of Cargo Seized as Prize—Claim by Shipowner in Prize Court—Cargo Owner's Claim in King's Bench Division.]—The jurisdiction to determine questions as to the right of the shipowner to freight on cargo which has been seized as prize is in the Prize Court and not in a Court of common law, although the cargo has been released without being brought before the Prize Court for adjudication. *The Corsican Prince*, 84 L. J. P. 121; 1 P. Cas. 178; 112 L. T. 475; 59 S. J. 317; 31 T. L. R. 257—Evans, P.

—— Action for Freight in King's Bench Division—Subsequent Motion in Prize Court—Effect.]—A cargo of cotton, wheat, and phosphate rock, laden in a British vessel and consigned to Hamburg, was seized as prize. Before the condemnation suit in prize was tried the Procurator-General ascertained that the phosphate rock, which had been discharged and warehoused at Runcorn, was owned by the consignors, a neutral company, and this portion of the cargo was released. Under the charterparty the shipowners had a lien for freight, and to get possession of their phosphate the cargo owners, under protest, deposited 1,680*l.* with the wharfingers in accordance with the provisions of the Merchant Shipping Act, 1894. The shipowners brought an action in the King's Bench Division, claiming a declaration that they were entitled to the 1,680*l.* or to a sum *pro rata itineris*. Rowlatt, J., held that the voyage not having been completed, the shipowners were not entitled to full freight, and that, there being no agreement to accept delivery of the phosphate rock at Runcorn in discharge of the obligation to deliver at Hamburg, they were not entitled to freight *pro rata itineris*. Thereupon the shipowners moved in the Prize Court for a declaration that they were entitled to a sum in lien of freight to be assessed by the Registrar. The cargo owners contended that the matter was *res judicata*:—*Held*, that, as the claim arose out of a seizure in prize, the rights of the claimants must be determined in accordance with the principles of prize, and the matter was not *res judicata*, as the action in the King's Bench Division was upon a contract, and was decided according to common law principles, and not according to the equitable principles by which, in the Prize Court, a sum in lien of the full freight can be given; and that the shipowners were entitled to an order for a reference to the Registrar to assess the amount, if any, which should be allowed them in respect of freight for the carriage of the cargo to Runcorn. *The St. Helena*, 1 P. Cas. 618—Evans, P.

Power of Court to Review Decree—Rehearing.]—The Prize Court has power to review its decrees and to order a rehearing, but the power should be exercised with great caution. *The Oreoma*, 1 P. Cas. 402—Evans, P.

WARRANTY.

See SALE OF GOODS.

On Sale of Shares.]—*See* COMPANY.

As Defence to Adulteration.]—*See* LOCAL GOVERNMENT.

WASTE.

See LANDLORD AND TENANT.

WATER.

A. NAVIGABLE RIVERS.

See also Vol. XIV. 1880, 2302.

Non-tidal River—Mooring.]—The right to moor or drop anchor may be one of the incidents of the right to navigate a public river, but it can only be exercised as a reasonable incident in the course of such navigation. *Campbell's Trustees* v. *Sweeney*, [1911] S. C. 1319—Ct. of Sess.

In an action at the instance of the proprietor of the bank and bed of a non-tidal public navigable river to interdict a member of the public from keeping a raft moored to the bank or bed, and from attaching to the raft, or to the bank or bed, pleasure boats for the purpose of hiring out the same,—*Held*, that the act complained of was neither an act of navigation nor an incident of the defender's right of navigation, and that interdict should be granted. *Ib.*

Embankment to Protect Land against Floods—Injury to other Land.]—*See* LAND.

Navigation of the Thames.]—*See* SHIPPING.

B. CANALS.

See also Vol. XIV. 1909, 2310.

"Successors and assigns"—Ultra Vires Sale of Property—Dissolution of Company—"Canal undertaking"—Liability to Perform Statutory Obligations.] — Where a company is incorporated by statute for a public purpose with compulsory powers of acquiring land, and other statutory privileges and obligations, it cannot without the intervention and authority of Parliament transfer its undertaking or its powers or privileges to other persons. *Woking Urban Council (Basingstoke Canal) Act, 1911, In re*, 83 L. J. Ch. 201; [1914] 1 Ch. 300; 110 L. T. 49; 78 J. P. 81; 12 L. G. R. 214; 30 T. L. R. 135—C.A.

In 1777 the Act of 18 Geo. 3, c. 75 was passed incorporating a company and giving the company "their successors and assigns" power to acquire land and make a canal which was to be open to the public on payment of tolls, and also imposing on them the obligation to make and maintain bridges over the canal. The company carried on the undertaking until 1866, when they were ordered to be wound up. In 1874 the canal, lands, and property were conveyed to a purchaser with the approval of the Court, and in 1878 an order was made dissolving the company. Subsequently the canal, lands, and property frequently changed hands, and in 1908 they passed (with some small exceptions) into the hands of a limited company, which mortgaged the same to a mortgagee. The bridges having fallen into great disrepair the Woking Urban District Council obtained in 1911 the passing of the Woking Urban District Council (Basingstoke Canal) Act, 1911, under which power was given to them to repair the bridges and to recover the expenses so incurred and a share of the costs of preparing and obtaining the Act from "the company," which was defined as meaning the statutory company, "their successors and assigns." By sections 10 and 35 the "canal undertaking" was charged with these costs and expenses:—*Held*, that the conveyance of 1874 was *ultra vires* the statutory company, because it purported to pass that without which their statutory undertaking could not be carried on, and that on the dissolution of the statutory company the canal, lands, and property reverted to the persons who had originally conveyed the lands to that company, but that their rights had been since barred by the Statute of Limitations. *Held* also, that the words "successors and assigns" in the Act of 1777 were without meaning, and that prior to 1911 the limited company were under no obligation to repair the canal or bridges; and *held*, further, that the Act of 1911 had imposed no new obligation upon them or their mortgagee, and that, as they were not the owners of the "canal undertaking," no charge was imposed on the canal, lands, and property in their hands. *Bradford Navigation Co., In re* (39 L. J. Ch. 733; L. R. 5 Ch. 600), discussed. *Ib.*

Right of Support to Canal—Mines and Compulsory Powers—Notice to Stop Working.]—In an action by a mineral owner and his tenants for compensation in respect of a seam of oil shale which they alleged they had been stopped from working by the proprietors of the canal, under the powers of a private Act of 1817, to ensure the safety of the canal,—*Held*, upon the construction of the correspondence between the parties and of the private Act, that the defenders had not stopped the working of the seam. *Linlithgow (Marquis)* v. *North British Railway*, [1914] A.C. 820; [1914] S. C. (H.L.) 38—H.L. (Sc.)

Decision of the First Division of the Court of Session ([1912] S. C. 1327) reversed on this point, but affirmed on other grounds. *Ib.*

Right of Fishing in.]—*See* FISHERY.

Compulsory Purchase of Land.] — *See* LANDS CLAUSES ACT.

C. STREAMS, NON-NAVIGABLE RIVERS AND WATERCOURSES.

a. Generally.

See also Vol. XIV. 1944, 2316.

Artificial Channel — Temporary Purpose — Permissive Enjoyment — General Words — Interference.]—The plaintiff was the owner of land and buildings including a fellmonger's yard in the occupation of a tenant, bounded on the east side by a river. Between the river and the yard was an open conduit running parallel with the river down to a culvert by which it was carried to the defendant's mill lower down. The premises now owned by the plaintiff and the defendant had been in the ownership of the same person from 1779 until 1907, when the plaintiff purchased his present holding, while the mill was sold to the defendant's predecessor. According to the evidence, for a long period before 1907 the occupants of the fellmonger's yard had used the water in the conduit for the purposes of their business, but the repairs to the conduit had been carried out by the occupier of the mill, who had diverted the flow of water when necessary for that purpose. The conveyance to the plaintiff made no mention of any water right, but the mill was conveyed to the defendant's predecessors "with the full right and benefit of passage and running of water to the said mill and premises as is now and heretofore used and enjoyed therewith":—*Held*, that the plaintiff was entitled to a right of user of the conduit as enjoyed prior to the conveyance to him in 1907, such right, although permissive at the date of the grant, having become a legal right by virtue of the general words of the Conveyancing Act, 1881, s. 6. *Lewis* v. *Meredith*, 82 L. J. Ch. 255; [1913] 1 Ch. 571; 108 L. T. 549—Neville, J.

International Tea Co.'s Stores v. *Hobbs* (72 L. J. Ch. 543; [1903] 2 Ch. 165) followed and applied. *Burrows* v. *Lang* (70 L. J. Ch. 607; [1901] 2 Ch. 502) distinguished. *Ib.*

Higher and Lower Riparian Owners—Interference with Bed of River.] — The plaintiffs were the owners of a mill on the river T., and the defendant was an upper riparian

owner. In 1910 the defendant removed a large quantity of brickbats, stones, chalk, pieces of iron, &c., from the main branch of the river near to the cut leading to the plaintiffs' mill, and levelled the bed. The plaintiffs complained that these excavations lowered the main branch and diverted a great deal of water which otherwise would have flowed down to their mill, and they brought an action to restrain the defendant from interfering with the bed of the main river so as to divert the water from flowing down the cut to the plaintiffs' mill; and for a mandatory injunction to restore the river bed to the condition it was in before the alleged acts of interference; and for damages. At the trial, the County Court Judge left questions to the jury, which, with their answers, were as follows: (1) Was the bottom of the river at the spot in question the natural bed of the river?—Yes. (2) Were there any brickbats or other foreign matter there?—Yes, a very small quantity. (3) Was any portion of the bed of the river, exclusive of brickbats, &c., removed by the defendant's men on October 18, 1910?—Yes. (4) If so, did such removal lessen the flow of water down the Fishlake Cut to the plaintiffs' mill and interfere with the working of the mill?—Yes. On these findings the County Court Judge gave judgment for the plaintiffs, and granted an injunction and a mandatory injunction as claimed:—*Held*, that the questions left to the jury were the proper questions to be left, and that the County Court Judge was right in entering judgment for the plaintiffs. *Fear* v. *Vickers*, 55 S. J. 688; 27 T. L. R. 558—C.A.

Easement of Taking Surface Water—Covenant to Maintain and Keep all Works "now made and hereafter to be made" in Good and Sufficient Repair—Extent of Obligation.]—The plaintiffs granted to the defendants a perpetual easement of taking surface water from a certain area, and the defendants covenanted to "maintain and keep all their works now made and hereafter to be made in or upon any parts of the [plaintiff's] estate in good and sufficient repair and condition and in particular (but without restricting the general obligation hereinbefore in and by this clause imposed on the [Corporation]) shall at all times keep the dams of ponds B and C in good and sufficient repair and as free from leakage as reasonably may be":—*Held*, on the construction of the deed containing the above covenant, that the defendants were bound to maintain and keep in repair not only artificial watercourses made by them, but also natural channels existing at the date of the covenant and used by the defendants. *Evan-Thomas* v. *Neath Corporation*, 76 J. P. 397—Eve, J.

Compensation Water—Abandonment—Limitation on User of Water.]—By a section of a local Act, "the owners, lessees, and occupiers" of certain furnaces were permitted to take along an existing watercourse from a stream which was being acquired by the local authority, compensation water not exceeding a specified quantity in "any working day." At the time of the passing of the Act, a company held the furnaces on lease from the plaintiff, as tenant for life of certain settled lands, and carried on business there. The watercourse was some two miles long, and part of its course lay over lands other than the settled lands, and the company paid rent for wayleaves over these lands. In 1890 the company ceased to use the furnaces, and in 1895 they gave up the wayleaves. In 1898 the plaintiff assented to the dismantling of the company's works. In the meanwhile, the watercourse had been allowed to get into disrepair, and as from 1895 or 1896 water entering it from the stream escaped by breaches in it, and was lost before reaching the site of the furnaces. In 1909 the defendants diverted the stream so as to prevent any water entering the watercourse, and thereupon the plaintiff brought this action for a declaration as to his right to the water, and for an injunction against the defendants accordingly:—*Held*, on the construction of the section, that the right to water under it did not depend on the continuance of works at the furnaces, and that the plaintiff, as tenant for life of the site of the furnaces, was entitled to a supply of water to that site, as provided by the section. *Held*, also, that an abandonment of the right conferred by the section was not proved by shewing that no use had been made of the water during a period when it happened not to be wanted; but that no injunction could be granted at the present time, because the plaintiff had so far suffered no damage from the act of the defendants in diverting the stream. *Hanbury* v. *Llanfrechfa Upper Urban Council*, 9 L. G. R. 360; 75 J. P. 307—Neville, J.

Negligence in Stopping up Watercourse.]—*Held*, upon the facts, that the defendants were liable to the plaintiff in consequence of negligently stopping up a watercourse by reason of which the plaintiff's land was flooded. *Longton* v. *Winwick Asylum Committee*, 75 J. P. 348—Grantham, J. Appeal compromised, 76 J. P. 113—C.A.

b. Rivers Pollution.

See also Vol. XIV. 1984, 2325.

Sewage — Deposit of Sewage on Land of Riparian Owner—Permanent Injury—Right of Reversioner to Sue.] — Infringement of the rights of a riparian owner by the pollution of the water of a river opposite his property by sewage, and trespass on his land by the discharging, or allowing to escape, into the river, of sewage which is carried by the wind or current on to the land, constitute a permanent injury entitling the owner, though a reversioner, to maintain an action. *Jones* v. *Llanrwst Urban Council* (*No.* 1), 80 L. J. Ch. 145; [1911] 1 Ch. 393; 103 L. T. 751; 75 J. P. 68; 9 L. G. R. 222; 55 S. J. 125; 27 T. L. R. 133—Parker, J.

Statutory Rights of Drainage into Sewers—Claim of Private Person for Injunction.] — Statutory rights of drainage into the sewers of a local authority are not analogous to the prescriptive rights referred to in *Att.-Gen.* v.

Dorking Guardians (51 L. J. Ch. 585; 20 Ch. D. 595), and are not a defence to the claim of a private person for an injunction to restrain nuisance from sewage. *Ib.*

Sewers Vested in Local Authority — Flow into Thames — "Person causing or suffering . . . to flow."]—Two sewers were vested in a local authority, into which sewage matter from a number of private houses drained, and the sewage matter flowed through the sewers into the Thames. In each of these sewers the local authority had constructed a catchpit for the purpose, and largely with the effect, of purifying the sewage matter; but the sewers had not been constructed by them, nor had they done anything to any other part of the sewers, nor dealt in any other way with the sewage matter:—*Held*, that they had caused the sewage matter to flow into the Thames within the meaning of section 94, subsection 1 of the Thames Conservancy Act, 1894. *Rochford Rural Council* v. *Port of London Authority*, 83 L. J. K.B. 1066; [1914] 2 K.B. 916; 111 L. T. 207; 78 J. P. 329; 12 L. G. R. 979—D.

Reg. v. *Staines Local Board* (53 J. P. 358; 60 L. T. 261), *Thames Conservators* v. *Gravesend Corporation* (79 L. J. K.B. 331; [1910] K.B. 442), and *Waltham Holy Cross Urban Council* v. *Lea Conservancy Board* (74 J. P. 253; 103 L. T. 192) distinguished. *Held*, by Avory, J., that the above cases are no longer law. *Ib.*

Per Avory, J.: *Reg.* v. *Staines Local Board* (*supra*) and the decisions following thereon—*Thames Conservators* v. *Gravesend Corporation* (79 L. J. K.B. 331; [1910] 1 K.B. 442) and *Waltham Holy Cross Urban Council* v. *Lea Conservancy Board* (103 L. T. 192)—are inconsistent with the decisions of the Court of Appeal in *Kirkheaton District Local Board* v. *Ainley* (61 L. J. Q.B. 812; [1892] 2 Q.B. 274) and *Yorkshire* (*W. R.*) *Council* v. *Holmfirth Urban Sanitary Authority* (63 L. J. Q.B. 485; [1894] 2 Q.B. 842) and are therefore not binding. *Ib.*

Sewage Effluents — Sanitary Authority.] — The respondentts discharged sewage effluents from their sewage works into a natural stream, so far purified that they did not affect or deteriorate the purity or quality of the water in the stream, which was already polluted before it received the respondents' effluents, or render it fouler than it was before:—*Held*, that the respondents had not committed any offence under section 17 of the Public Health Act, 1875. *Att.-Gen.* v. *Birmingham, Tame, and Rea District Drainage Board*, 82 L. J. Ch. 45; [1912] A.C. 788; 107 L. T. 353; 76 J. P. 481—H.L. (E.)

Natural Stream—Intermittent Flow—Discharge of Crude Sewage — Conversion into Sewer — Vesting in Local Authority — Nuisance.]—Crude sewage was discharged by a local authority into the bed of a natural stream which flowed intermittently. The stream passed through the plaintiffs' land and discharged into a tidal river. Part of the stream was culverted over. The culvert, which had been constructed under private agreements with an owner of the plaintiffs' land prior to the passing of the Public Health Act, 1875, was in bad repair. The culvert permitted sewage to escape on to the plaintiffs' land, which was periodically overflowed and sewage deposited thereon:—*Held*, that the bed of the stream was a public nuisance and that the culvert had become a sewer and was vested under the Public Health Act, 1875, s. 13, in the local authority, who were liable in damages and must be restrained by injunction. *Att.-Gen.* v. *Lewes Corporation*, 81 L. J. Ch. 40; [1911] 2 Ch. 495; 105 L. T. 697; 76 J. P. 1; 10 L. G. R. 26; 55 S. J. 703; 27 T. L. R. 581—Swinfen Eady, J.

The cases of *Yorkshire* (*West Riding*) *Rivers Board* v. *Gaunt & Sons, Lim.* (67 J. P. 183) and *Yorkshire* (*West Riding*) *Rivers Board* v. *Preston & Sons* (69 J. P. 1) do not establish the proposition that a natural stream cannot become a sewer unless all flow to natural water is cut off. *Ib.*

Continuing Cause of Action.] — Periodical inundation from a sewer out of repair is a continuing cause of action. *Ib.*

Polluting Liquid Proceeding from Factory—Passage from Sewer to River—Sewer Vested in Local Sanitary Authority — Proceedings against Local Sanitary Authority.]—Proceedings can be taken against a local sanitary authority under section 4 of the Rivers Pollution Prevention Act, 1876, for causing or knowingly permitting any poisonous, noxious, or polluting liquid proceeding from a factory or manufacturing process, and carried through a sewer vested in such local sanitary authority, to fall or flow or be carried into a stream. *Yorkshire* (*W. R.*) *Rivers Board* v. *Linthwaite Urban Council* (*No.* 1), 84 L. J. K.B. 793; [1915] 2 K.B. 436; 112 L. T. 813; 79 J. P. 280; 13 L. G. R. 301; 59 S. J. 331; 31 T. L. R. 154—C.A.

Decision of the Divisional Court (83 L. J. K.B. 1420; [1914] 2 K.B. 13) reversed. *Ib.*

Local Authority Permitting Flow of Polluting Liquid from Factories—Vesting of Sewer in Local Authority—Sewer Made by Landowner for His Own Profit.]—In 1863 a piece of land adjacent to a river was laid out by the owner for the purpose of erecting woollen mills under ground leases granted by him, and he constructed a main sewer or drain for the purpose of carrying off the trade refuse from the mills (when erected) into the river. Subsequently six mills were erected on the land, and later on some hundred water closets in the mills for the use of the employees were connected with the sewer, with the result that a continuous flow of polluting liquid within the meaning of section 4 of the Rivers Pollution Prevention Act, 1876, passed into the river. There was no evidence that the landowner had laid out the land as an ordinary building estate, or that any dwelling houses were connected with the sewer except one, for the drainage of which house into the sewer the owner agreed in 1864 to pay, and did pay, to the owner of the sewer, a rental of 5*s.* a year. In 1891 the defendants, the local

sanitary authority for the district through which the sewer ran, entered into an agreement, for valuable consideration, with the then owners of the sewer, under which the defendants acquired a right to use the sewer for the drainage of some houses within their district, subject to the rights of user of the sewer by the mill owners and their employees. The plaintiffs, the sanitary authority under the Rivers Pollution Prevention Act, 1876, complained that the defendants caused and knowingly permitted to flow through the sewer into the river the aforesaid polluting liquid from the six mills, contrary to section 4 of the Act, and the County Court Judge granted an injunction forbidding a further commission of the offence :—*Held*, on appeal—first, that the sewer had been made by the landowner for his own profit within the meaning of section 13 of the Public Health Act, 1875, and consequently did not vest in the defendants; and secondly, that the defendants were not, by reason of the agreement of 1891, guilty of an offence under section 4 of the Act of 1876. *Yorkshire (W. R.) Rivers Board* v. *Linthwaite Urban Council (No. 2)*, 84 L. J. K.B. 1610; 79 J. P. 433; 13 L. G. R. 772—D.

Sykes v. *Sowerby Urban Council* (69 L. J. Q.B. 464, 468; [1900] 1 Q.B. 584, 589, 590), adopting the *dicta* of Stirling, J., in *Croysdale* v. *Sunbury-on-Thames Urban Council* (67 L. J. Ch. 585; [1898] 2 Ch. 155), followed. *Ib.*

Order in County Court Requiring District Council to Abstain from Committing Offence—Breach of Order—Application for Penalties—Whether Two Months' Notice in Writing Necessary.]—An order was made in the County Court under section 10 of the Rivers Pollution Act, 1876, declaring that an offence against the Act had been committed by the H. District Council, and requiring them to abstain from the commission of the offence. The Rivers Board subsequently applied for penalties for default by the H. District Council in complying with the order :—*Held*, that in such a case the two months' written notice of intention to take proceedings referred to in section 13 of the Act had no application. *Yorkshire (W. R.) Rivers Board* v. *Heckmondwike Urban Council*, 110 L. T. 692; 78 J. P. 190—D.

D. WATERWORKS COMPANIES.

1. General Powers.

See also Vol. XIV. 1997, 2333.

Breaking up Roads—Laying Water Pipe therein—Subsequent Subsidence of Street—Land Injuriously Affected—Compensation for Damage—Jurisdiction of Justices.]—The respondents, in the exercise of statutory powers, laid a water-pipe under a highway repairable by a county council. The work was properly executed under the superintendence of the surveyor to the council. Some months later, as the result of the pipe being so laid, damage was caused to the highway, part of which collapsed. The county council claimed compensation under section 28 of the Waterworks Clauses Act, 1847, which was incorporated in the respondents' special Act, for damage done in the execution of their statutory powers, and instituted proceedings to have the amount settled by two Justices :—*Held*, that the highway was "land injuriously affected by the erection of the works" within the meaning of the Lands Clauses Act, 1845, that section 85 of the Waterworks Clauses Act, 1847, did not apply, and that the Justices had no jurisdiction. *Harpur* v. *Swansea Corporation*, 82 L. J. K.B. 1208; [1913] A.C. 597; 109 L. T. 576; 77 J. P. 381; 11 L. G. R. 1096; 57 S. J. 773; 29 T. L. R. 737—H.L. (E.)

—Judgment of the Court of Appeal (81 L. J. K.B. 1103; [1912] 3 K.B. 493) affirmed. *Ib.*

Laying of Mains — Power to Lay Mains under Land of Railway Company — Acquisition of Easement, whether Necessary.] —By section 61, sub-section 1 of the Metropolitan Water Board (Various Powers) Act, 1907, "It shall be lawful for the Board to exercise at any place or places within their limits of supply the like powers with respect to the laying of mains and pipes as are exercisable by local authorities under the provisions of the Public Health Act, 1875, with respect to the laying of mains and pipes within their respective districts for the purpose of water supply. . . ." By section 96, sub-section 6, "The Board shall not without the consent in writing of the railway companies under their common seal purchase or acquire any of the lands or property of the railway companies, but the Board may acquire and the railway companies shall if required grant to the Board an easement or right of constructing and maintaining works on through in under over or along such lands and property and the sum to be paid for the acquisition of such easement or right shall be settled in the manner provided by the Lands Clauses Consolidation Act, 1845 . . .":—*Held*, that the Board were entitled, under the powers conferred upon them by the above enactments, to lay a main under land belonging to the railway company without purchasing or acquiring an easement in respect of such land. *Metropolitan Water Board and London, Brighton, and South Coast Railway, In re*, 84 L. J. K.B. 1216; [1915] 2 K.B. 297; 113 L. T. 30; 79 J. P. 337; 13 L. G. R. 576—C.A.

2. Liability.

See also Vol. XIV. 2004, 2337.

Unlawfully Cutting Off Supply—Liability of Water Company to Penalty.]—A water company supplied a number of houses with water by a single service pipe, and by agreement the owner of the houses was liable for the water rate. The company, in contravention of section 4 of the Water Companies (Regulation of Powers) Act, 1887, cut off the supply to those houses for non-payment of the water rate, and refused, on tender of the rate, to restore the supply until the owner complied with the company's regulations as to having a service pipe for each house :—*Held*, that the company were bound to restore the *status quo ante* before they were entitled to exercise the rights given

them by their regulations and their special Water Order, and therefore that they were liable to a penalty under section 5 of the Water Companies (Regulation of Powers) Act, 1887, for cutting off the supply. *South-West Suburban Water Co.* v. *Hardy*, 109 L. T. 169; 77 J. P. 283; 11 L. G. R. 1000; 23 Cox C.C. 485—D.

—— Owner and not Occupier Liable—Unoccupied Premises.] — *See* *Metropolitan Water Board* v. *Bibbey*, *post*, col. 1727.

Repair of Communication Pipe — Right of Consumer to Recover Cost of Repair Executed under Threat of Cutting off Supply—Onus of Proving Ownership of Pipe.]—The owner of a house under the annual value of 10*l.* received notice from the local waterworks company that unless he repaired within forty-eight hours a leak in the communication pipe by which water was supplied to the house his water supply would be withdrawn. Having complied with the notice, he sued the company in the County Court for the sum expended by him in carrying out the repairs as money paid under duress—that is, under the threat to cut off the water :—*Held*, that in the absence of any finding of fact as to whether the pipe was laid down by the water company, or how or under what statutory provisions (if any) it came to be laid at all, the consumer could not sustain a claim for the amount expended on its repair as money paid under duress. *Per* Phillimore, J., on the ground that the notice was a mere warning or advice not amounting to duress, the company not being bound to repair the pipe, and not being bound to supply water which would be wasted by reason of the leak in the pipe. *Per* Avory, J., on the ground that the onus was upon the plaintiff to satisfy the Court that the communication pipe was in fact the property of the company. *Colne Valley Water Co.* v. *Hall* (5 L. G. R. 260; 6 L. G. R. 115) explained. *Parnell* v. *Portsmouth Waterworks*, 8 L. G. R. 1029; 75 J. P. 99—D.

Negligence—Works Laid in Street—Damage to Passenger from Explosion of Gas—Right and Obligation of Consumer to Open up Streets to Repair Leakages.]—A foot passenger in a public street was injured by an explosion of gas in the basement of an adjoining shop. On investigation, it was found that under the kerb of the footway there was a hole full of water, that a communication pipe, supplying the owner of the shop with water, and crossing a gas main at right-angles, was leaking, and that the gas main was leaking at a rusty place near the leak in the water pipe. By consent, the owner of the shop was dismissed from the action :—*Held*, that there was no case to go to the jury in respect of the Water Board, though an application to dismiss them from the action on the close of the plaintiff's case was refused, on the ground that, as there was evidence which the gas company must meet, the case presented by the gas company might disclose a cause of action against the Water Board. The grounds for holding that there was no case for the Water Board to meet were—first, that the leaking water pipe was a communication pipe, and that therefore, under the Metropolitan Water Board (Charges) Act, 1907, the consumer was both entitled and under an obligation to break up the street in order to repair it, the fact that it was an old pipe being immaterial: and secondly, that, whether this was so or not, the Water Board were under no duty towards a third person to repair the pipe. As regards the gas company, the jury ultimately found a verdict in their favour. *Chapman* v. *Fylde Water Co.* (64 L. J. Q.B. 15; [1894] 2 Q.B. 599) distinguished. *Stacey* v. *Metropolitan Water Board*, 9 L. G. R. 174—Phillimore, J.

—— Stopcock Box on Service Pipe out of Repair—Injury to Foot Passenger—Liability of Water Board.]—The plaintiff, while walking along the pavement of a street within the district of the defendants, the Metropolitan Water Board, sustained personal injuries from catching her foot in a stopcock box which was in a defective condition owing to the absence of a lid. The stopcock box was placed in the pavement over a stopcock in a service pipe which led from a main belonging to the defendants to certain private premises. The service pipe had been laid down before the Metropolitan Water Board (Charges) Act, 1907, came into operation, but there was no evidence to shew by whom it had been laid down. The service pipe and the stopcock were the property of the owner of the premises to which the pipe led. In order to repair the stopcock box it would not have been necessary to break up the street :—*Held*, that the defendants were not liable for the injuries sustained by the plaintiff, inasmuch as section 8 of the above Act, which enacts that communication pipes and other necessary and proper apparatus for the supply of water to the owner or occupier of premises are to be provided, laid down, and maintained by such owner or occupier, applies to service pipes in existence at the date of the Act coming into force as well as to pipes thereafter to come into existence. *Chapman* v. *Fylde Waterworks Co.* (64 L. J. Q.B. 15; [1894] 2 Q.B. 599) distinguished. *Batt* v. *Metropolitan Water Board*, 80 L. J. K.B. 1354; [1911] 2 K.B. 965; 105 L. T. 496; 9 L. G. R. 1123; 75 J. P. 545; 55 S. J. 714; 27 T. L. R. 579—C.A.

—— Dangerous Meter-pit Cover — Injury to Foot Passenger — Liability of Owners and Occupiers of Premises Supplied—Liability of Water Board.] — The plaintiff was injured owing to the dangerous condition of a water meter-pit cover in the highway within the district of the Metropolitan Water Board :—*Held*, that the owners and occupiers of the premises, for the supply of water to which this cover was part of the apparatus, were *prima facie* liable, and that the Water Board was not liable, the former, under section 16, subsection 1 of the Metropolitan Water Board (Charges) Act, 1907, having to maintain such apparatus. *Batt* v. *Metropolitan Water Board* (80 L. J. K.B. 1354; [1911] 2 K.B. 965), a decision under section 8 of the Act, followed. *Mist* v. *Metropolitan Water Board*, 84 L. J. K.B. 2041; 113 L. T. 500; 79 J. P. 495; 13 L. G. R. 874—D.

3. Water Rates.

See also Vol. XIV. 2022, 2352.

Factory — "Domestic purposes" — "Trade purposes" — Water Supplied for Lavatories and Water Closets Used by Employees—Payment on Rateable Value.]—Under section 25 of the Metropolitan Water Board (Charges) Act, 1907, that authority is entitled to charge for water supplied to premises used as a factory as water used for domestic purposes, on the rateable value of the premises, even though the water closets and baths for which the water is supplied be intended for the use of persons employed in the factory. *Colley's Patents, Lim.* v. *Metropolitan Water Board*, 81 L. J. K.B. 126; [1912] A.C. 24; 105 L. T. 674; 9 L. G. R. 1159; 76 J. P. 33; 56 S. J. 51; 28 T. L. R. 48—H.L. (E.)

Decision of the Court of Appeal (80 L. J. K.B. 929; [1911] 2 K.B. 38) affirmed. *Ib.*

Supply for "domestic purposes"—Supply to Restaurant — Supply "for" "any trade, manufacture, or business."]—In detrmineing whether water is used for "domestic purposes" within the meaning of section 25 of the Metropolitan Water Board (Charges) Act, 1907, the nature of the user, whether domestic or not, and not the character of the premises in which or of the person by whom it is used must be looked at; and it is none the less used for "domestic purposes" where its use for those purposes is also ancillary to a trade or business. It is a trade use of water, so as to make it a "supply . . . for" the "purposes" of ". . . any trade manufacture or business" within the meaning of the section, and not an increase of its use for domestic purposes, caused by the trade, manufacture, or business, which is excepted by section 25 from the definition of "domestic purposes." *Metropolitan Water Board* v. *Avery*, 83 L. J. K.B. 178; [1914] A.C. 118; 109 L. T. 762; 78 J. P. 121; 12 L. G. R. 95; 58 S. J. 171; 30 T. L. R. 189—H.L. (E.)

The lessee of a public house, in addition to an ordinary public-house business, carried on a small catering business, supplying some twenty or thirty luncheons daily to non-resident customers, whereby there was an increased use of water for what are ordinarily known as domestic purposes, such as the washing of dishes, cooking, and scrubbing floors: —*Held*, that this extra water was used for "domestic purposes." *Colley's Patents, Lim.* v. *Metropolitan Water Board* (81 L. J. K.B. 126; [1912] A.C. 24) applied. *Ib.*

Decision of the Divisional Court (82 L. J. K.B. 562; [1913] 2 K.B. 257) and of the Court of Appeal affirmed. *Ib.*

Premises Used for Trade or Manufacturing Purpose—Restaurant—Supply by Meter only.]—Section 20 of the Metropolitan Water Board (Charges) Act, 1907, gives the Board an option to refuse to supply with water, otherwise than by meter, any house or building which or part of which is used for a trade or manufacturing purpose for which water is used; and the test under the section is the character of the premises to which the water is being supplied, not the purpose to which the water is actually being put:—*Held*, therefore, that the proprietor of a restaurant was not entitled to a supply of water for domestic purposes in the restaurant otherwise than by meter. *Metropolitan Water Board* v. *Avery* (83 L. J. K.B. 178; [1914] A.C. 118) and *Frederick* v. *Bognor Water Co.* (78 L. J. Ch. 40; [1909] 1 Ch. 149) distinguished. *Oddenino* v. *Metropolitan Water Board*, 84 L. J. Ch. 102; [1914] 2 Ch. 734; 112 L. T. 115; 79 J. P. 89; 13 L. G. R. 33; 59 S. J. 129; 31 T. L. R. 23—Sargant, J.

Workhouse—"Private dwelling house."]—By the Waterworks Clauses Act, 1847, s. 53, it is provided that "every owner or occupier of any dwelling house within the limits of the special Act shall" upon certain conditions "according to the provisions of this and the special Act, be entitled to demand and receive from the undertakers a sufficient supply of water for his domestic purposes." The Bristol Waterworks Act, 1862, incorporates the Waterworks Clauses Act, 1847, "except when otherwise specially provided by this Act," and provides by section 68 that "the company shall at the request of the owner or occupier furnish to every occupier of a private dwelling house . . . a sufficient supply of water for the domestic use of every such occupier" at certain annual rents as there set out. The appellants requested the respondents to supply them with water on the terms specified in this section for the domestic use of the officers and inmates of the workhouse:—*Held*, that section 53 of the general Act must be treated as controlled by section 68 of the special Act, and that, as a workhouse was not a "private dwelling house" within the meaning of the latter section, the respondents were not bound to supply water for the domestic use of the officers and inmates upon the terms prescribed, but were at liberty to make their own terms. *Bristol Guardians* v. *Bristol Waterworks Co.*, 83 L. J. Ch. 393; [1914] A.C. 379; 110 L. T. 846; 78 J. P. 217; 12 L. G. R. 261; 58 S. J. 318; 30 T. L. R. 296—H.L. (E.)

Judgment of the Court of Appeal (81 L. J. Ch. 608; [1912] 1 Ch. 846) affirmed. *Ib.*

Builder Requiring Supply for Building Purposes—"Require"—Use by Builder of Water Supplied to Building Owner by Meter—Right of Water Board to Charge Builder—Power of Water Board to Determine Percentage Rate of Charge.]—By an agreement between the Metropolitan Water Board and the Secretary of State for War the Board agreed to afford a supply of water by meter to certain barracks for domestic and non-domestic purposes. During the currency of this agreement, the defendants, who were a firm of builders, entered into a contract with the Secretary of State for War whereby the defendants undertook to carry out (*inter alia*) such building work at the barracks as the Secretary of State might demand during a period of three years. It was a term of this contract that water for the works under the contract might be obtained by the defendants free of charge from any available War Department source. In pursuance of this contract the defendants built two additional rooms at the barracks, and they took the water which they used for the purpose

of the work from the supply measured by meter and afforded to the barracks under the agreement between the Board and the Secretary of State. The Water Board sued the defendants in the County Court under section 17 of the Metropolitan Water Board (Charges) Act, 1907, to recover from them, as being builders who required a supply of water for the purpose of building, the sum of 14*s.*, such sum being calculated at the rate of 7*s.* per cent. on the probable total cost of the work:—*Held*, that the word "require" in section 17 meant "ask for" or "request," and not "have need of," and that, as the defendants had not asked for or requested a supply of water, the action was not maintainable. *Metropolitan Water Board* v. *Johnson*, 82 L. J. K.B. 1164; [1913] 3 K.B. 900; 109 L. T. 88; 77 J. P. 384; 11 L. G. R. 1106; 57 S. J. 625; 29 T. L. R. 603—C.A.

The Water Board, purporting to act in pursuance of the proviso to section 17—which empowers them, if they "so determine" instead of affording to such a builder the required supply by measure, to afford the same at a rate not exceeding 7*s.* per 100*l.* of the probable total cost after making such allowance as they may think reasonable for decorative or iron or steel work not requiring the use of water—had passed a resolution to the effect that all supplies of water for building purposes under section 17 should be afforded not by measure, but at such percentage rate, after making such reasonable allowance:—*Held*, that, as there was no evidence that the Board had taken into consideration the question whether in this particular case it would be reasonable to make any such allowance, the general resolution was not a determination within the meaning of the proviso. *Ib.*

Supply of Water by Agreement—Receiver Appointed by Mortgagees—Arrears of Water Rates—Liability of Receiver—"Owner"—Collector of Rent.]—The owner of certain blocks of buildings, containing a number of separate tenements, in 1903 made an agreement with the predecessors of the plaintiffs for the supply of water by meter to the buildings at certain rates. The tenements were each of an annual value less than 20*l.* No payment in respect of the water supplied was made after 1904. In August, 1906, the defendant was appointed receiver of the premises on behalf of mortgagees thereof, and he received the rents of all the tenements with the exception of four. The agreement for the supply of water was never terminated. The rents were actually collected by a collector who resided on the premises, and had, previously to the defendant's appointment as receiver, collected on behalf of the mortgagor. He handed the rents when collected to the defendant. The plaintiffs claimed to recover from the defendant personally the arrears of water rate under the provisions of the Waterworks Clauses Act, 1847, and the East London Waterworks Act, 1853:—*Held*, that the collector was to be deemed the "owner" of the tenements within section 72 of the Waterworks Clauses Act, 1847, and section 81 of the East London Waterworks Act, 1853, and not the defendant, who could not therefore be made personally liable in respect of the water rate. *Metropolitan Water Board* v. *Brooks*, 80 L. J. K.B. 495; [1911] 1 K.B. 289; 103 L. T. 739; 75 J. P. 41; 9 L. G. R. 442—C.A.

Post-Office Premises not on Valuation List and not Rated.]—The plaintiff, who was the occupier of premises used as a post-office within the district supplied with water by the defendants, which premises were not entered on the valuation list and were not rated, demanded a supply of water for domestic purposes, but did not strictly comply with all the regulations made by the defendants, and was unable to agree with the defendants as to the proper amount to be paid for the water supply:—*Held*, that the premises not being rated, the defendants could not insist on prepayment of water rate by the plaintiff as a condition precedent to their supplying the plaintiff with water, and that the plaintiff was entitled to a supply of water for domestic purposes as of right subject to his complying with the requirements of the defendants' rules and regulations, and on payment of the value of the water supplied, which value should, if necessary, be ascertained in chambers. *Postmaster-General* v. *Nenagh Urban Council*, [1913] 1 Ir. R. 238—Ross, J.

Supply Outside Borough but Within Limits of Supply—Provisions of General and Special Acts to be Read together.]—The plaintiff was the occupier of a house which was outside the limits of the borough of Plymouth, but was within the limits of water supply under the Plymouth Corporation Water and Markets Act, 1867, which Act incorporated the Waterworks Clauses Act, 1847, "except where expressly excepted or varied by this Act." The plaintiff was supplied by the defendants with water under the special Act, but having been compelled to pay a water rate in excess of the scale prescribed by section 22 of that Act, he sought to recover from the defendants the difference between the two rates, contending that by section 53 of the Waterworks Clauses Act, 1847, and section 22 of the special Act he was only liable to pay water rate in accordance with the scale laid down in the last-mentioned section:—*Held*, that the action failed, as section 15 of the special Act (relating to supply beyond the borough of Plymouth, but within the limits of supply) varied the provisions of the Act of 1847, and applied so as to entitle the plaintiff to a supply of water only on the terms to be agreed between him and the defendants. *Pitts* v. *Plymouth Corporation*, 81 L. J. K.B. 1240; [1912] 3 K.B. 301; 107 L. T. 526; 10 L. G. R. 312—D.

Rateable Value—Provisional Valuation List—"Valuation list in force."]—A provisional valuation list made under section 47 of the Valuation (Metropolis) Act, 1869, which is not finally settled by the assessment committee until after the beginning of a quarter, has not, for the purposes of a water rate payable in advance under the Waterworks Clauses Act, 1847, a retrospective operation, and does not supersede a previous valuation list from

the date of service of a copy of the list and notice on the occupier; but the rateable value of the premises to be assessed is, by section 13, sub-section 1 of the Metropolitan Water Board (Charges) Act, 1907, to be "determined by the valuation list in force at the commencement of the quarter for which the water rate accrues or (if there is no such list in force) by the last rate made for the relief of the poor." *Metropolitan Water Board* v. *Phillips*, 82 L. J. Ch. 89; [1913] A.C. 86; 107 L. T. 659; 77 J. P. 73; 10 L. G. R. 983; 57 S. J. 95; 29 T. L. R. 71—H.L. (E.)

Decision of the Court of Appeal (81 L. J. Ch. 649; [1912] 2 Ch. 546) reversed. *Ib.*

Action to Recover Water Rate — Period of Limitation.]—The six months' period of limitation prescribed by section 11 of the Summary Jurisdiction Act, 1848, for the institution of summary proceedings does not apply to an action brought in the County Court for the recovery of arrears of water rate. *Tottenham Local Board* v. *Rowell* (46 L. J. Ex. 432; 1 Ex. D. 514) commented on. *Metropolitan Water Board* v. *Bunn*, 82 L. J. K.B. 1024; [1913] 3 K.B. 181; 109 L. T. 132; 77 J. P. 353; 11 L. G. R. 891; 57 S. J. 625; 29 T. L. R. 588—C.A.

Non-payment of Water Rate — Owner and not Occupier Liable—Cutting off Supply—Unoccupied Premises.] — By section 4 of the Water Companies (Regulation of Powers) Act, 1887, a water company is prohibited from cutting off the water supply to a dwelling house or part of a dwelling house occupied as a separate tenement for non-payment of the water rate "where the owner and not the occupier is liable" for such payment:—*Held*, that if at the time the rate accrued due there was an occupier as well as an owner, and the latter was liable for the payment thereof, the prohibition applied, although at the time when the supply was cut off the occupier had gone out of possession and the premises were vacant. *Metropolitan Water Board* v. *Bibbey*, 80 L. J. K.B. 977; [1911] 2 K.B. 74; 104 L. T. 812; 75 J. P. 322; 9 L. G. R. 531—D.

4. Other Matters.

See also Vol. XIV. 2357.

New River Company—King's Clogg.]—The King's Clogg, now consisting of an annual sum of 400*l.*, is an obligation which has been transferred to, and is now an obligation of, the Metropolitan Water Board, by virtue of the Metropolis Water Act, 1902, and the same is under section 4 secured upon the water fund established by that Act. *Metropolitan Water Board* v. *Adair*, 55 S. J. 270; 27 T. L. R. 253—H.L. (E.)

Officer—Superannuation Allowance.]—The plaintiff, who in 1897 had been engaged as a draughtsman and surveyor by the chief engineer of the New River Co., and who continued to act as an engineer for that company and subsequently for the defendants till 1909, when his services were dispensed with,—*Held* to be an existing servant or officer of the defendants within the meaning of section 47, sub-section 10 of the Metropolis Water Act, 1902, and, as such, entitled to a superannuation allowance. *Webster* v. *Metropolitan Water Board*, 76 J. P. 474; 10 L. G. R. 1025—Avory, J.

—— Statutory Transfer of Officers and Servants of Company to Metropolitan Water Board at Same Rate of Pay whilst Performing the Same Duties—Continuation of Contract with Water Board—Right of Water Board to Determine Contract.] — Section 47, sub-section 1 of the Metropolis Water Act, 1902, provides that, as from the appointed day—that is, November 24, 1904, on which day the undertakings of various London water companies were taken over by and vested in the Metropolitan Water Board—any existing officer of any water company shall "become an officer or servant of the Water Board, and shall hold his office or situation by the same tenure and upon like terms and conditions under the Water Board as he would have held the same under the company if this Act had not been passed, and, while performing the same duties, shall receive not less salary, wages or pay than he would have been entitled to if this Act had not been passed." The plaintiff whilst employed by a London water company, whose undertaking was transferred to the defendants by the above statute, on a verbal agreement made in 1899, by which he received extra pay for overtime work and travelling expenses. The contract of service was subject to seven days' notice to terminate it. The arrangement, with one slight alteration in the amount of payment, was continued until November 24, 1904, the day appointed by the Act for the transfer of the company's servants to the Water Board, and thereafter between the plaintiff and defendants until November 16, 1906, on which day they gave him seven days' notice that at the expiration thereof they would discontinue payment of extra remuneration, and they accordingly at the expiration of the notice refused, and continued to refuse, to pay him the extra remuneration. In an action for arrears of extra pay from November 16, 1906,—*Held*, that the plaintiff's statutory right, while performing the same duties, to receive not less salary, wages, or pay than he would have been entitled to if the Act had not been passed was subject to the right of the defendants, his new employers, to determine the original contract of service; that the defendants, in giving the seven days' notice, were exercising a right which the water company could have exercised; and that therefore they were entitled to judgment. *Rowsell* v. *Metropolitan Water Board*, 84 L. J. K.B. 1869; 79 J. P. 267; 13 L. G. R. 654—D.

Semble, in a claim for compensation by an existing officer for direct pecuniary loss sustained by him by reason of the abolition or relinquishment of his office or otherwise in consequence of the Metropolis Water Act, 1902, the special procedure referred to in section 47, sub-section 5 of the Act must be adopted. *Ib.*

WAY.

A. HIGHWAYS.

1. Nature and Creation of.

See also Vol. XV. 3, 1860.

Whether Roads Highways.]—On the evidence, *held*, that certain occupation roads (subject to a public footpath over one of them) were not highways. *Fuller* v. *Chippenham Rural Council*, 79 J. P. 4—Astbury, J.

Held, on the facts, that certain portions of the roads were highways repairable by the inhabitants at large. *Att.-Gen.* v. *Godstone Rural Council*, 76 J. P. 188—Parker, J.

Whether a highway has or has not been dedicated to the public so as to become repairable by the inhabitants at large is a question of fact for the Justices, and if there is any evidence in support of their finding the Court will not set it aside. *Folkestone Corporation* v. *Brockman*, 83 L. J. K.B. 745; [1914] A.C. 338; 110 L. T. 834; 78 J. P. 273; 12 L. G. R. 334; 30 T. L. R. 297—H.L. (E.)

In 1827 the tenant for life of certain waste land, over which people had been allowed to wander without interference, made a road over such land, and, under the powers conferred by a private Act of Parliament, let plots of land adjoining the road upon building leases, and houses were erected upon such plots of land. The road was used in connection with the houses so erected, and to some extent by the inhabitants of the neighbourhood. There was a notice board on which the road was described as a "private road," and there were gates and bars across the road, and tolls were charged for the passage of horses and vehicular traffic, but there had never been any interference with the use of the road by foot passengers. There had been no formal dedication of the road under section 23 of the Highway Act, 1835, and it had never been repaired by the local authority. The Justices found that there had been no dedication of the road to the public before the Highway Act, 1835, came into operation, and that it was not a highway repairable by the inhabitants at large, but was a "street" within the meaning of the Private Street Works Act, 1892, and that the frontagers were liable for repairs:—*Held* (reversing the judgment of the Court of Appeal), that as there was evidence in support of this finding the Court had no power to set it aside. *Ib.*

Dedication—Evidence—Repairs—Liability of Parish.]—A road may be "made by and at the expense of" an individual within the meaning of section 23 of the Highway Act, 1835, if he has allowed the public by continuous user to acquire a right of way over his land, though he has never laid out and formally dedicated a road over the land in question; and if there be no evidence that the road was so made till after the passing of the Highway Act, 1835, the burden of repairing it cannot be cast on the inhabitants at large. *Leigh Urban Council* v. *King* (70 L. J. K.B. 313; [1901] 1 K.B. 747) and *Reg.* v. *Thomas* (7 E. & B. 399) disapproved. *Cababé* v. *Walton-upon-Thames Urban Council*, 83 L. J. K.B. 243; [1914] A.C. 102; 110 L. T. 674; 78 J. P. 129; 12 L. G. R. 104; 58 S. J. 270—H.L. (E.)

Judgment of the Court of Appeal (82 L. J. K.B. 133; [1913] 1 K.B. 481) affirmed. *Ib.*

—— **Unmetalled Strip—Intention to Dedicate Whole Width of Road—Evidence.**]—The appellant, who was the owner of land, proposed to develop it as a building estate, and deposited with the local authority a plan, as required by the local regulations, shewing a road of a certain width with a footpath on either side of it. Houses were built along one side of this road, and the half of the road nearest to the houses was made up and metalled, but the other half was left unmetalled. The whole length of it was fenced, and there was evidence that persons had used the road as they pleased both on foot and with vehicles. The owner of land adjoining the unmetalled half of the road claimed a right to pass on to it from his property both on foot and with vehicles:—*Held*, that there was evidence of an intention on the part of the appellant to dedicate the whole width of the road to the public, and that the adjoining owner had the right which he claimed. *Rowley* v. *Tottenham Urban Council*, 83 L. J. Ch. 411; [1914] A.C. 95; 110 L. T. 546; 78 J. P. 97; 12 L. G. R. 90; 58 S. J. 233; 30 T. L. R. 168—H.L. (E.)

Judgment of the Court of Appeal (82 L. J. Ch. 83; [1912] 2 Ch. 633) affirmed. *Ib.*

—— **Public User since 1820—Land in Lease—Dedication by Previous Owner—Presumption.**]—In an action by a landowner against a local authority claiming a declaration that there was no right of way over a footpath upon his land leading from Lucas Green to Bisley in the county of Surrey, it appeared that the owner in fee occupied the land up to 1822, when the land was leased to a tenant until 1842; and that from 1842 up to the commencement of the present action the land was held

by various tenants upon tenancy from year to year. Evidence of reputation was given as to user by the public prior to 1822, and as to subsequent user up to the commencement of the action :—*Held*, that the Court could presume dedication prior to 1822, and that the user while the land was on lease was material as supporting evidence of prior dedication by the owner; that such dedication had been established, and that therefore the plaintiff's claim failed. *Shearburn* v. *Chertsey Rural Council*, 78 J. P. 289; 12 L. G. R. 622—Astbury, J.

—— **Presumption—Onus of Proof—User.**]—The plaintiffs sought a declaration that a certain portion of a lane was a public highway repairable by the defendants. At each end of the portion in question the lane was admittedly a public highway for all purposes repairable by the inhabitants at large. The portion in question was admitted by the defendants only to be a public footpath :—*Held*, first, on the evidence, both positive and negative, that the portion of the lane in question was a public highway for all purposes and was repairable by the defendants. Applying the procedure as to the *onus probandi* at the trial of an indictment of the inhabitants of a parish for non-repair of a highway,—*Held*, secondly (*a*), that, although the onus of proving that the lane was a highway was on the plaintiffs, proof of user of such a nature that dedication might be reasonably inferred therefrom was sufficient, without proving that during the period of user there was a person capable of dedicating; it was for the defendants to prove that there was no such person, if they relied upon that fact; (*b*) that the mere fact that there was no evidence that the defendants had ever repaired the way, although relevant on the question whether the way was a public way or not, did not rebut the inference based on public user, and was not by itself evidence to displace their liability to repair; but if coupled with evidence that some one else was liable, it might have some weight; (*c*) that the plaintiffs need not give evidence of the inhabitants' liability to repair before 1835; (*d*) that section 23 of the Highway Act, 1835, should be regarded as having opened to the inhabitants, and thus to persons in the position of the present defendants, a new method of displacing their liability at common law, and not as having imposed on persons in the position of the present plaintiffs a new onus of proof; and therefore that it was for such defendants to prove that the way in question was a way to which the section applied, and not for such plaintiffs to prove that the section had no application, although it was possible that if the defendants once proved that the way in question was a way to which section 23 applied, the onus of proving that the formalities required to make the defendants liable had been observed might be shifted. *Held*, thirdly, that the decision of the Court was without prejudice to the question whether the part of the lane in question was or was not a highway unnecessary for public use within the provisions of the Highway Act. *Att.-Gen.* v. *Watford Rural Council*, 81 L. J. Ch. 281; [1912] 1 Ch. 417; 106 L. T. 27; 76 J. P. 74; 10 L. G. R. 364—Parker, J.

—— **Wayside Strip—Hedge.**]—The plaintiffs claimed that a certain highway extended over the whole width between two hedges. One of these hedges was a natural hedge :—*Held*, that at its origin it had no relation to the highway, and therefore that there was no presumption that all that lay between the two hedges had been dedicated for highway purposes. *Att.-Gen.* v. *Lindsay-Hogg*, 76 J. P. 450—Eve. J.

—— **Roadside Waste—Inclosure—Presumption—Right of Way.**]—When the lord of a manor incloses a strip of land by the side of a public highway, and within a few feet only from the metalled portion of the road, then, whatever the presumption may have been before, a presumption thereafter arises that what he leaves between the metal and his fence is dedicated to the public. *Copestake* v. *West Sussex County Council*, 80 L. J. Ch. 673; [1911] 2 Ch. 331; 105 L. T. 298; 75 J. P. 465; 9 L. G. R. 905—Parker, J.

Any presumption as to the extent of a public right of way ought to be drawn with reference to all the circumstances existing at the time when the question as to the extent of the public right arises, and it would not be right to raise a presumption from a state of circumstances proved to have existed thirty or fifty years ago, ignoring all that had happened since. *Ib.*

The expression "on the side or sides of any turnpike road" in section 118 of the Turnpike Roads Act, 1822, means not separated from the road by any existing fence. Common or waste land does not include land which has been inclosed from the road in part since the middle of the nineteenth century and in part from 1892. *Ib.*

—— **User of Street by Purchasers.**]—No presumption of dedication arises if an owner lays out such a street and grants the right of using it to purchasers of plots upon payment of a yearly sum for its upkeep until it shall be taken over by the local authority. The inference in such a case is that he does not intend it to become a highway until it has been taken over. The fact that the road has been cleansed, lighted, and patrolled by the authority makes no difference. *Kirby* v. *Paignton Urban Council*, 82 L. J. Ch. 198; [1913] 1 Ch. 337; 108 L. T. 205; 77 J. P. 169; 11 L. G. R. 305; 57 S. J. 266—Neville, J.

—— **Cul-de-sac.**] — User of a *cul-de-sac* by persons going up it for the purpose of knowingly committing a trespass on land beyond will not raise any presumption of dedication. *Ib.*

—— **Question of Intention — Presumption — Absolute Owner—Evidence.**]—A public right of way (if not created by statute) must have originated in dedication by the owner or owners of the land over which it passes. Dedication is a question of intention, but a person cannot dedicate what is not his own. It may be established by proof of definite

acts of dedication on the part of the owners, or it may be inferred from use and enjoyment on the part of the public. But the use and enjoyment from which it can be inferred must be use and enjoyment as of right known to the owner and acquiesced in by him. Again, this knowledge and recognition on the part of the owner may itself be inferred from the fact that the use and enjoyment has been so open and so notorious as of right as to give rise to the presumption that the owner must have been aware of and acquiesced in it; or during living memory the use and enjoyment has been such that had there been an absolute owner capable of dedicating the way, dedication would have been inferred; and if at the same time the circumstances are consistent with such use and enjoyment having been still more ancient, a jury may properly infer dedication by some owner before living memory. If, however, it be shewn that before a definite date the rights could not have existed, and since that date there has been no owner capable of dedicating the way, dedication cannot be inferred. *Webb* v. *Baldwin*, 75 J. P. 564—Parker, J.

—— **Strip at Side of Old Turnpike Road—Presumption of Dedication.**]—In respect of a strip of waste land between the metalled road and an ancient fence on one side thereof over which the public had walked for over forty years without restriction,—*Held*, that the presumption of dedication to the use of the public was not rebutted by evidence that the plaintiff as the lord of the manor had given permission for the erection thereon of telephone posts, had given permission to deposit stuff thereon, and had claimed to take trimmings therefrom. *East* v. *Berkshire County Council*, 106 L. T. 65; 76 J. P. 35—Neville, J.

—— **Dedication Subject to Gates.**] — *Per* Scrutton, J.: There may be a dedication of a road with a right to put a gate to keep beasts from straying. There may also be a dedication by a landowner with liberty to reserve gates for the convenience of his own farming operations. *Att.-Gen.* v. *Meyrick*, 79 J. P. 515—Scrutton, J.

—— **Footway in Street—Evidence of Dedication to Public—Obstruction.**]—In 1852 a plot of land in a street, a public highway repairable by the local authority, was demised by a lease for 999 years. Three cottages were erected on it, with a footway in front abutting on the street and paved with cobbles. Between twenty and forty years ago half the width of the cobble stones was taken up and flags were substituted, but by whom there was no evidence to shew. The other half in front of the cottages remained as it was. In 1890 the cottages were converted into shops. Up to about fifteen years ago the cobbled part was repaired by the leaseholder, and then flags were substituted for the remaining cobbles by the local authority, who had since repaired the whole footway. From 1890 the occupier of one of the shops had a show case standing on the footway in front of his shop, but the public continued to use the whole footway except so far as they were obstructed by the show case. The shopkeeper was prosecuted for obstructing the passage of the public over the footway, and the Justices found that the user of the footway by the public since 1852 until the cottages were turned into shops—a period of forty years—was a dedication of the land the subject of the lease to the public, and that such user had been so notorious as to lead to the presumption that the lessor had acquiesced in the dedication, and that the obstruction since 1890 was not sufficient to rebut the presumption of dedication. The shopkeeper was accordingly convicted. On appeal by Special Case,—*Held*, that the conviction must be affirmed. The question was one of fact for the Justices, who were entitled upon the statements in the Case to find that the early user of the footway by the public was evidence upon which they could presume dedication, and that the user subsequent to 1890, when the show case was first erected, did not rebut the evidence of dedication at an earlier date. *Openshaw* v. *Pickering*, 77 J. P. 27; 11 L. G. R. 142—D.

—— **Land under Administration of Court of Chancery and Chancery Division—Land under Building Lease—Cul-de-sac.**]—H. was the lessee under a lease granted in 1849 of a house erected under a building agreement of 1844. The garden of the house abutted upon a narrow roadway leading only to a *cul-de-sac*. H. extended the house to within twenty feet (the prescribed distance) from the centre of this roadway, and at the instance of the trustees of the estate refused to comply with the requirements of a notice of the London County Council under the London Building Acts to set back the extension so that the external fence or boundary of the forecourt between the house and the roadway should be at the prescribed distance from the centre of the roadway, on the ground that there had never been any dedication to the public as a highway. The *cul-de-sac* had been lighted by the local authority since 1876, and in 1891 had been partially paved and sewered by them under section 105 of the Metropolis Management Act, 1855. In 1894 a man had been prosecuted by the local authority, and convicted of causing an obstruction by allowing a van to stand in the *cul-de-sac* for an unreasonable length of time. From 1854 to the present time the estate had been under the administration, first of the Court of Chancery, and subsequently of the Chancery Division, and no consent to or order of the Court for the dedication of the roadway as a highway had been obtained or applied for:—*Held*, that since 1854 there could have been no dedication of the roadway without the sanction of the Court. That there could not in any case have been an effective dedication in the absence of evidence to shew—first, that such roadway and *cul-de-sac* were used by the public as distinguished from persons having business on the premises; secondly, that the freeholders ought to have anticipated that the roadway and *cul-de-sac* would be used by the public, and nevertheless did not take measures to prevent such user; or thirdly, that there was otherwise an intention to dedicate on the part

of the freeholders. *London County Council* v. *Hughes*, 104 L. T. 685; 9 L. G. R. 291; 75 J. P. 239—D.

—— **Cul-de-sac in City of London.**]—A court in the City of London, having a number of small houses and a warehouse erected around it, and having its only means of access by way of a passage leading through the ground floor of a building fronting a street, was included in an area taken, inclosed and cleared in 1878 by the then local authority for the purposes of the Artisans' and Labourers' Dwellings Improvement Act, 1875. The passage and the building through which it passed were not included in the area so taken, and the passage was subsequently used for private purposes only. The improvement scheme was ultimately abandoned, and in 1896 the area taken was sold in building lots. In an action by the owner of the building through which the passage led to restrain the owners and occupiers of building lots in rear, which included part of the site of the court, from removing a barrier erected to exclude them from the use of the passage,—*Held*, after consideration of the sufficiency of the evidence to raise the presumption of dedication, that the court had been, and the passage still remained, a highway, and that the defendants were entitled to remove the barrier. *Josselsohn* v. *Weiler*, 9 L. G. R. 1132; 75 J. P. 513—Scrutton, J.

Accommodation Passage Constructed for Removal of Refuse from Houses—No Evidence of Public User.]—In 1898 a passage intended as a means of access to the backs of houses which had just been built, for the removal of house refuse, &c., was constructed in pursuance of the by-laws of the local authority. It was a *cul-de-sac* six feet wide. The local authority kept it scavenged, but had never adopted it as a highway, though they had made it up and charged the expenses on the frontagers. It was used by some thirty or forty people a day, but there was no evidence of user of it by any member of the public as such :—*Held*, that the public had no right of way over the passage. *Vine* v. *Wenham*, 84 L. J. Ch. 913; 79 J. P. 423—Sargant, J.

Public Park—Dedication—Park Purposes—Widening Street — Improvement of Park.] — The Court will not readily infer dedication to the public. Where a corporation purchased fifty-three acres, forty of which were intended to be used as a public park, the Court would not infer dedication of the whole of the fifty-three acres simply because the remaining thirteen acres were not fenced off and were used by the public as part of the park. *Att.-Gen.* v. *Bradford Corporation*, 9 L. G. R. 1190; 75 J. P. 553; 55 S. J. 715—Eve, J.

2. User of.

a. Obstruction.

See also Vol. XV. 37, 1878.

Queues in Highway Outside Theatre.]—The owners of a theatre held three performances daily at 2.30, 6.20, and 9.10 P.M., and were in the habit of opening the doors of the theatre about a quarter of an hour before each performance. As a result, persons desiring to obtain seats in the theatre used to attend in large numbers before each performance and were then formed by the police into a *queue* extending past the plaintiffs' business premises in the same street. The police were paid by the defendants in respect of their extra services. In an action by the plaintiffs against the owners of the theatre claiming an injunction to restrain them from carrying on their theatre so as to cause a nuisance to the plaintiffs by an obstruction of the access to and egress from their business premises, Joyce, J., held that an obstruction had been caused by the defendants amounting to a nuisance, but in place of granting an injunction accepted an undertaking from them that they would open the doors of the theatre earlier at the two morning performances :—*Held*, by the Court of Appeal (Phillimore, L.J., dissenting), that there had been such an obstruction by the crowds at the two earlier performances as to amount to a nuisance, and that the defendants were responsible for the collection of the crowds and could be prevented at the suit of the plaintiffs, as persons specially affected, from carrying on their theatre so as to cause the nuisance. *Lyons* v. *Gulliver*, 83 L. J. Ch. 281; [1914] 1 Ch. 631; 110 L. T. 284; 78 J. P. 98; 12 L. G. R. 194; 58 S. J. 97; 30 T. L. R. 75—C.A.

Rex v. *Moore* (1 L. J. M.C. 30; 3 B. & Ad. 184), *Rex* v. *Carlile* (6 Car. & P. 636), *Walker* v. *Brewster* (37 L. J. Ch. 33; L. R. 5 Eq. 25), *Inchbald* v. *Robinson and Barrington* (L. R. 4 Ch. 388), *Barker* v. *Penley* (62 L. J. Ch. 623; [1893] 2 Ch. 447), and *Wagstaff* v. *Edison Bell Phonograph Corporation* (10 T. L. R. 80) discussed and followed. *Ib.*

Per Phillimore, L.J. : It is for the police to regulate the traffic, and a trader cannot be held responsible for crowds that assemble because of present attractions such as an inviting shop window or future attractions such as a theatrical performance. *Ib.*

Nuisance — Unlawful Erection of Stand in Highway — Obstruction of View — Right of Resident to Maintain Action.] — The defendants, a Metropolitan borough council, in accordance with a resolution duly passed, erected a stand in a certain highway named B. Place, for the convenience and at the expense of members of the council in order to enable them to view the funeral procession of King Edward 7 passing along E. Road. The plaintiff, who occupied certain premises in B. Place, was in the habit of letting windows in her house for the purpose of viewing public processions passing along E. Road. The stand which the defendants erected obstructed the view of the funeral procession from the plaintiff's house, so that the plaintiff was unable to let the windows in her house : —*Held*, that, as the stand was unlawfully erected by the defendants in a public highway and constitutes a public nuisance, the plaintiff could maintain an action for the special damage which she had sustained through the loss of view caused by the erection of the stand; and further, that the action was

properly brought against the defendants in their corporate capacity. *Campbell* v. *Paddington Borough Council*, 80 L. J. K.B. 739; [1911] 1 K.B. 869; 104 L. T. 394; 75 J. P. 277; 9 L. G. R. 387; 27 T. L. R. 232—D.

—— Quarry in Land Adjoining Road — Collapse of Fence and Road—Duty of Present Occupier to Restore — Remedy of Local Authority.] — Defendant owned and occupied land, being a worked-out quarry, immediately adjoining a public highway vested in an urban district council and repairable by the inhabitants at large. A prior owner of the land had, in 1865, made the excavation in order to quarry for limestone, and until then the surfaces of the road and the land had been on the same level. The excavation being a source of danger and obstruction to persons using the road, the excavator, to protect them and the road, built alongside the road a wall, the bottom of which rested on a ledge of limestone left ungotten for the purpose and served as a retaining wall for the subsoil of the road and as a fence wall above its surface. In February, 1913, part of the wall collapsed and fell into the quarry, and in consequence a considerable part of the subsoil of the road and of its surface fell in also, the road thus becoming impassable, a source of danger to persons attempting to use it, and a nuisance, liable under section 3 of the Quarry (Fencing) Act, 1887, to be dealt with summarily under the Public Health Act, 1875:—*Held*, first, that there was also a common law obligation on the possessor of the excavation to keep it fenced off whether it was made before or after his possession began, and whether he was or was not liable to his landlord, if any; and secondly, that in an action by the Attorney-General at the relation of the council, a mandatory order must be made on defendant to abate the nuisance by restoring the road to its condition prior to the subsidence and by rebuilding the wall or providing some other reasonable fence between the road and the quarry. *Greenwell* v. *Low Beechburn Colliery Co.* (66 L. J. Q.B. 643; [1897] 2 Q.B. 165) distinguished. *Att.-Gen.* v. *Roe*, 84 L. J. Ch. 322; [1915] 1 Ch. 235; 112 L. T. 581; 79 J. P. 263; 13 L. G. R. 335—Sargant, J.

—— Chalkpit — Intervening Strip of Land — Danger to Public—Compulsory Fencing—"In any situation fronting," &c.]—The words, "If in any situation fronting, adjoining, or abutting on any street or public footpath, any . . . excavation . . . or bank is . . . dangerous to the persons lawfully using the street or footpath," in section 30 of the Public Health Acts Amendment Act, 1907, cover the case of any excavation, or bank, that is sufficiently near to any street, or footpath, to cause danger to those who are lawfully using it, even although the excavation, or bank, does not itself actually front, adjoin, or abut on the street, or footpath. The owner of such excavation, or bank, may therefore be required by the local authority, under section 30, to erect a fence to prevent any danger to the persons using the highway. *Carshalton Urban Council* v. *Burrage*, 80 L. J. Ch. 500; [1911] 2 Ch. 133; 104 L. T. 306; 75 J. P. 250; 9 L. G. R. 1037; 27 T. L. R. 280—Neville, J.

—— Sale and Conveyance of Land to Local Authority for Tipping Refuse — Deposit of Refuse—Overflow of Rain Water from Deposit Creating Gullies in Highway.]—A sale of land to a local authority for the purpose of tipping refuse thereon by a vendor who retains adjoining land does not impliedly authorise the local authority to tip refuse in such a way as to cause a nuisance on the adjoining land when such tipping can be done without causing the nuisance. Whether, in the event of it being impossible to use the land for tipping without creating the nuisance, the local authority would be so authorised, *quære*. *Priest* v. *Manchester Corporation*, 84 L. J. K.B. 1734; 13 L. G. R. 665—Sankey, J.

An owner of land conveyed a portion thereof to a local authority for the purpose of tipping refuse thereon, the local authority purchasing the same under the powers given to them by the Public Health Act, 1875, and two local Acts. Subsequently the owner of the remaining portion sold it to a purchaser, who formed a street thereon and built houses abutting on the said street. The local authority, acting under their powers, from time to time deposited refuse on the land purchased by them, with the result that the deposit, gradually increasing in size and becoming impervious to rain water, caused the rain water, which previously to the deposit flowed in a direction away from the street, to be diverted and overflow into the street and form holes or gullies therein dangerous to passers-by. The plaintiff, lawfully passing through the street, fell into one of these gullies and sustained personal injuries:—*Held*, that the gully in the street was a nuisance caused by the defendants without justification, and that they were liable to the plaintiff in damages for the injuries sustained by him. *Woodman* v. *Pwllbach Colliery Co.* (111 L. T. 169; subsequently affirmed in H.L., 84 L. J. K.B. 874; [1915] A.C. 634) followed. *Ib.*

—— Premises Adjoining Highway—Highway Authority Creating Nuisance thereon — Non-liability of Frontager.]—On premises adjoining a highway, which were the property of and occupied by the defendant, there was a coal shoot formed by an opening at the bottom of the wall of the house, abutting on the pavement, which was part of the highway. In 1901 the local highway authority, acting under the provisions of the Private Street Works Act, 1892, raised the level of the pavement, and, in order to preserve access to the coal shoot left an opening in the pavement. This condition of the pavement remained until October, 1914, when the plaintiff, in passing along the pavement, put her foot into the hole, and suffered personal injuries, for which she brought her action against the defendant:—*Held*, that the action failed, inasmuch as, where a nuisance is created by a highway authority on a highway under their control, the owner or occupier of the land adjoining the highway is not liable for an accident

caused by the nuisance. *Robbins* v. *Jones* (33 L. J. C.P. 1; 15 C. B. (N.S.) 221) followed. *Barker* v. *Herbert* (80 L. J. K.B. 1329; [1911] 2 K.B. 633) discussed and distinguished. *Horridge* v. *Makinson*, 84 L. J. K.B. 1294; 113 L. T. 498; 79 J. P. 484; 13 L. G. R. 868; 31 T. L. R. 389—D.

Semble (*per* Bailhache, J.), there was no duty on the defendant to inspect the plans prepared by the local authority in 1901 in connection with the work of raising the level of the pavement. *Ib.*

Injury to Road by Traction Engine.]—The use of a traction engine which by reason of its excessive weight does substantial and abnormal damage to a public road, adequate for ordinary traffic, is a public nuisance, even though the engine be constructed in compliance with the provisions of the Locomotive Acts, 1861 and 1865. In such a case the duty cast upon a county council to repair such damage, and the liability of a district council to provide the funds for such repair, amounts to special damage, so as to make the owner of the traction engine civilly liable at the suit of both bodies, suing jointly, for the cost of repairing the road. *Semble*, such an action could be maintained by either body suing alone. *Cavan County Council* v. *Kane*, [1913] 2 Ir. R. 250—C.A.

Premises Abutting on Highway — Wall — Right of Owner to Access—Right to Display Advertisements and to Repair Wall.] — An owner of premises abutting on a highway has a right of access for all purposes to the wall of such premises, and may maintain an action against a person who obstructs that access in such a way as to conceal from the public advertisements displayed upon the wall, or to prevent the owner from repairing it. *Cobb* v. *Saxby*, 83 L. J. K.B. 1817; [1914] 3 K.B. 822; 111 L. T. 814—Rowlatt, J.

Meeting Held on Highway—"Lawful public meeting."]—A meeting held on a highway may be a "lawful public meeting" within section 1 of the Public Meeting Act, 1908. *Burden* v. *Rigler*, 80 L. J. K.B. 100; [1911] 1 K.B. 337; 103 L. T. 758; 75 J. P. 36; 9 L. G. R. 71; 27 T. L. R. 140—D.

—— Roadway not Dedicated to the Public.]—Injunction granted restraining the holding of a meeting at the junction of two roads on the plaintiffs' property which had not been dedicated to the public. *Hampstead Garden Suburb Trust* v. *Denbow*, 77 J. P. 318—Phillimore, J.

Right of Person Obstructed to Go on Adjoining Land.]—A level crossing over a railway formed part of an old road which had been set out in an inclosure award as a private road for the use of persons who had land abutting on the road, and certain other persons, including the defendants. By agreement between the plaintiff's predecessor in title and the railway company this level crossing was closed by the railway company. The defendants, finding that this obstruction existed, went over land belonging to the plaintiff, whereupon the plaintiff sued them for trespass:—*Held*, that the action failed, inasmuch as the plaintiff, being a party to the closing up of the right of way, could not complain of the defendants deviating on to his land in order to get past the obstruction. *Stacey* v. *Sherrin*, 29 T. L. R. 555—D.

Driver not Keeping to Near Side so as to Allow Free Passage on Off Side—Consent of Passing Driver to Pass on Near Side.] — The appellant, the driver of a waggon, was on the wrong or off side of the road, when a motor car approached from behind in order to pass. The driver of the waggon signalled to the motor car to pass him on the wrong or near side, which it did, without having been delayed or inconvenienced. No other traffic was on that part of the road at the time:—*Held*, that on the above facts no offence had been committed by the appellant under section 78 of the Highway Act, 1835, which enacts that any person who shall not keep his waggon, cart, or carriage on the near side of the road for the purpose of allowing a free passage for other waggons, carts, or carriages, shall be liable to a penalty. *Nuttall* v. *Pickering*, 82 L. J. K.B. 36; [1913] 1 K.B. 14; 107 L. T. 852; 77 J. P. 30; 10 L. G. R. 1075; 23 Cox C.C. 263—D.

—— Side Road Entering Main Road—Duties of Drivers.]—While it is the duty of vehicles approaching a main road from a side road to give way to vehicles on the main road, this rule does not absolve vehicles on the main road from the duty of approaching the entrance to the side road with caution. *Macandrew* v. *Tillard* ([1909] S. C. 78) commented on and explained. *Robertson* v. *Wilson*, [1912] S. C. 1276—Ct. of Sess.

Traffic Regulations — Urban Authority — Constable Stationed at Crossings to Direct Traffic—Implied Obligation on Part of Drivers of Vehicles to Obey Signal to Stop or Come on.]—Under section 21 of the Town Police Clauses Act, 1847, by which a penalty is imposed upon drivers of vehicles in streets for the breach of traffic regulations, the corporation of B. made a regulation that constables stationed at crossings of certain streets should direct drivers of vehicular traffic approaching any such crossing by word or signal to stop or come on; but the regulation did not go on to state that the driver should comply with the constable's direction or signal or that in disobeying it he should be guilty of an offence. The driver of a motor cab disregarded the direction of a constable to stop at a crossing and was convicted by Justices for a wilful breach of the regulation, and fined:—*Held*, that the driver had incurred a penalty under section 21 of the Act, since the regulation implied an obligation on his part to obey the direction or signal of the constable which he had wilfully disobeyed, and that the conviction must be affirmed. *Dudderidge* v. *Rawlings*, 108 L. T. 802; 77 J. P. 167; 11 L. G. R. 513; 23 Cox C.C. 366—D.

Animals on Highways.]—*See* ANIMALS.

b. User of Bicycles.

See also Vol. XV. 54, 1884.

Motor Bicycle—Lights—Red Light Behind Bicycle.] — The word "motor car" in Article II. paragraph 7 (i) of the Motor Cars (Use and Construction) Order, 1904, includes a "motor bicycle," and consequently a motor bicycle must carry a red light visible behind in addition to a white light visible in front: —So *held*, by Ridley, J., and Bailhache, J. (Scrutton, J., *dissentiente*). See now Motor Cars (Use and Construction) Amendment Order (No. II.), 1913. *Webster* v. *Terry*, 83 L. J. K.B. 272; [1914] 1 K.B. 51; 109 L. T. 982; 78 J. P. 34; 12 L. G. R. 242; 30 T. L. R. 23—D.

General Identification Mark—Use of Motor Cycle without Authority of Manufacturer—Obligation to Keep Record.]—By section 2, sub-section 4 (*b*) of the Motor Car Act, 1903, the council of any county in which the business premises of any manufacturer of motor cars are situated may, on payment of a certain annual fee, assign to the manufacturer "a general identification mark which may be used for any car on trial after completion, or on trial by an intending purchaser. . . ." By Article XII. of the Motor Car (Registration and Licensing) Order, 1903, "On every occasion on which the general identification mark is used on a motor car, the manufacturer or dealer shall keep a record of the distinguishing number placed on or annexed to the identification plates on that occasion, and of the name and address of the person driving the motor car on that occasion. . . ." The appellants, motor cycle manufacturers, had had a general identification mark assigned to them which was affixed to one of their motor cycles. One of their employees, without the appellants' authority, took the motor cycle to his home, and left it there for some days while he was away on a holiday. In his absence his brother, without the knowledge of the appellants, took out the cycle and used it with the mark upon it:—*Held*, that as the motor cycle was used on the occasion in question without the knowledge or authority of the appellants, they had not committed an offence under Article XII. in not keeping a record. *Phelon & Moore* v. *Keel*, 83 L. J. K.B. 1516; [1914] 3 K.B. 165; 111 L. T. 214; 78 J. P. 247; 12 L. G. R. 950; 24 Cox C.C. 234—D.

c. User of Locomotives.

i. *Generally.*

See also Vol. XV. 55, 1885.

Agricultural Locomotive—Licence—Exemption—Locomotive "employed solely for the purposes of" Farm — Carrying Produce to Market.]—By section 9, sub-section 1 of the Locomotives Act, 1898, "Every locomotive shall be licensed by a county council, provided that this enactment shall not apply to any agricultural locomotive." By sub-section 10 if any person uses a locomotive on any highway in a county in which the locomotive is not licensed, without payment of a specified fee, he is liable to a penalty. By section 17 the expression "agricultural locomotive" includes "any locomotive, the property of one or more owners or occupiers of agricultural land employed solely for the purposes of their farms, and not let out on hire." A motor traction engine belonging to the respondent was employed by him to carry produce from his farm to market for the purpose of sale. The market was in the County of London, where the engine was not licensed:—*Held*, that the engine was at the time being employed solely for the purposes of the respondents' farm, and was therefore an "agricultural locomotive" within the exemption in section 9, sub-section 1. *London County Council* v. *Lee*, 83 L. J. K.B. 1373; [1914] 3 K.B. 255; 111 L. T. 569; 78 J. P. 396; 12 L. G. R. 733; 24 Cox C.C. 388; 30 T. L. R. 525—D.

—— **Hauling Manure to Farm — Exemption from Licence.**]—A traction engine used for drawing to a farm waggons laden with night soil, which has been sold by the owner of the engine to the farmer for use as manure, is used for an agricultural purpose within section 17, sub-section 1 of the Locomotives Act, 1898, and therefore it is an agricultural locomotive within section 9, and a person using it on a highway does not require under the latter section to take out a licence from a county council, or if it is used in a county where it is not licensed to pay a fee to the council of that county. *Cole* v. *Harrop*, 79 J. P. 519; 13 L. G. R. 1223; 31 T. L. R. 599—D.

Requirement as to Two Independent Brakes.]—Upon an information under section 7 of the Locomotives on Highways Act, 1896, the appellant was convicted of having unlawfully caused a steam motor car, exceeding two tons in weight unladen, to be used on a highway without having a brake, independent of the engine, in good working order and of such efficiency that the application of it would cause two of its wheels on the same axle to be so held that they would be effectively prevented from revolving. At the hearing it was proved that the only means by which the wheels on the back axle could be prevented from revolving were either by reversing the engine or by applying a fly-wheel brake. If the engine were out of gear the fly-wheel brake could not act, nor could the engine be reversed so as to operate as a brake:—*Held*, that the motor car had no brake which was independent of the engine, and that the appellant was properly convicted. *Cannon* v. *Jefford*, 84 L. J. K.B. 1897; [1915] 3 K.B. 477; 113 L. T. 701; 79 J. P. 478; 13 L. G. R. 944; 31 T. L. R. 489—D.

Steam Roller — No Weight Plate Affixed thereon.]—A steam road roller is a locomotive within the meaning of section 12 of the Locomotive Act, 1861, and must therefore have its weight conspicuously and legibly affixed thereon. *Waters* v. *Eddison Rolling Car Co.*, 83 L. J. K.B. 1550; [1914] 3 K.B. 818; 111 L. T. 805; 78 J. P. 327; 12 L. G. R. 1232; 30 T. L. R. 587—D.

Locomotive Drawing Waggons — Weight Unloaded of "Waggon"—Threshing Machine —Straw Trusser.]—By section 2 of the Locomotives Act, 1898, "The weight unloaded of every waggon drawn or propelled by a locomotive shall be conspicuously and legibly affixed thereon, and every owner not having affixed such weight shall be liable for each offence, on summary conviction, to a fine not exceeding five pounds, . . ." By section 17, sub-section 1: "In this Act, unless the context otherwise requires, . . . The expression 'waggon' includes any truck, cart, carriage, or other vehicle":—*Held*, that a threshing machine and a straw trusser or presser affixed by bolts and screws to a framework, which was in turn attached to the wheels upon which the machines travelled, were waggons within the meaning of section 2 of the Act. *Held* also, that the word "waggon" in section 2 was not confined to vehicles designed to carry or capable of carrying loads. *Smith* v. *Pickering*, 84 L. J. K.B. 262; [1915] 1 K.B. 326; 112 L. T. 452; 79 J. P. 118; 13 L. G. R. 175; 31 T. L. R. 55—D.

Plough Trains—Number of Men in Attendance.]—A by-law made by a county council under section 6 of the Locomotives Act, 1898, provided that "a person in charge of a locomotive drawing two or more loaded or unloaded waggons shall not cause or suffer the locomotive to travel on any highway without having, first, a cord or other efficient means of communication extending from the rearmost waggon to such locomotive; and secondly, a person who shall (except during the time it is necessary for him to leave his position in order to comply with any statutory regulation or by-law relating to the use of locomotives on highways) travel in the rear of such waggons . . ." :—*Held*, that in the case of two plough trains, which are entitled to have only five men, the by-law was complied with by having the fifth man in the rear of the two trains. *Williams* v. *Wood*, 78 J. P. 221; 12 L. G. R. 646—D.

ii. *Motor Cars and other Light Locomotives.*

See also Vol. XV. 1889.

Registration—Licence—Motor Vehicles Used for Haulage—Combined Weight of Motor and Trailer.]—Where the procedure prescribed by Article IV. (5) of the Heavy Motor Car Order, 1904, as to the registration and re-registration of a heavy motor car used for haulage, has been complied with, no licence under section 9 of the Locomotives Act, 1898, is required. *Pilgrim* v. *Simmonds*, 105 L. T. 241: 9 L. G. R. 966; 75 J. P. 427; 22 Cox C.C. 579 —D.

Clause 5 of Article IV., which limits the weight of a registered heavy motor car to seven tons, deals only with the weight of the motor vehicle, and has no application to the weight of the trailer attached to it. Accordingly, notwithstanding the general provision of Article III. of the Order, which limits the weight of a heavy motor car to five tons, or (with the weight of a vehicle drawn by it) six and a half tons, it was held that a heavy motor car previously registered (as weighing only 2 tons 18 cwt.), and in use at the commencement of the regulations in the Order (March 1, 1905), and in fact weighing 6 tons 18 cwt., and used with a trailer weighing 2 tons 3 cwt., making 9 tons 1 cwt. in all, could be used on a highway without a licence under section 9 of the Locomotives Act, 1898. *Ib.*

Excise Licence Duty—Method of Calculating "Horse power."]—The Finance (1909-10) Act, 1910, lays down a scale for the Excise licence duty payable in respect of motor cars, depending upon the "horse power" of their engines, and requires such horse power to be calculated in accordance with regulations made by the Treasury for the purpose. In a prosecution for keeping a motor car without a proper licence, the magistrate found that the Treasury regulations as applied to the particular engine in question were erroneous, and that the horse power of the engine, according to which the duty had been paid, was in fact less than that calculated in accordance with such regulations, and be therefore dismissed the summons:—*Held*, that the statute does not refer to true horse power as the basis of the scale of duties, but to a horse power calculated according to the Treasury regulations, and that the person who kept the motor in question should have been convicted accordingly. *London County Council* v. *Turner*, 105 L. T. 380; 9 L. G. R. 1155; 75 J. P. 551; 22 Cox C.C. 593—D.

General Identification Mark—Use of Motor Cycle without Authority of Manufacturer — Obligation to Keep Record.] — By section 2, sub-section 4 (*b*) of the Motor Car Act, 1903, the council of any county in which the business premises of any manufacturer of motor cars are situated may, on payment of a certain annual fee, assign to the manufacturer "a general identification mark which may be used for any car on trial after completion, or on trial by an intending purchaser. . . ." By Article XII. of the Motor Car (Registration and Licensing) Order, 1903, "On every occasion on which the general identification mark is used on a motor car, the manufacturer or dealer shall keep a record of the distinguishing number placed on or annexed to the identification plates on that occasion, and of the name and address of the person driving the motor car on that occasion. . . ." The appellants, motor cycle manufacturers, had had a general identification mark assigned to them which was affixed to one of their motor cycles. One of their employees, without the appellants' authority, took the motor cycle to his home, and left it there for some days while he was away on a holiday. In his absence his brother, without the knowledge of the appellants, took out the cycle and used it with the mark upon it:—*Held*, that as the motor cycle was used on the occasion in question without the knowledge or authority of the appellants, they had not committed an offence under Article XII. in not keeping a record. *Phelon & Moore* v. *Keel*, 83 L. J. K.B. 1516; [1914] 3 K.B. 165; 111 L. T. 214;

78 J. P. 247; 12 L. G. R. 950; 24 Cox C.C. 234—D.

—— **Expiration of Right to Use—Notice of Expiration to User.**]—The right to use a general identification mark assigned on the registration of a motor car under section 2, sub-section 4 (*b*) of the Motor Car Act, 1903, expires twelve months later, and it is no defence to a charge of using a car on a public highway without being registered, after the expiration of the twelve months, that no notice was given to the accused of the expiration of that right. *Caldwell* v. *Hague*, 84 L. J. K.B. 543; 112 L. T. 502; 79 J. P. 152; 13 L. G. R. 297—D.

Allowing Motor Car to Stand on Highway—"Unnecessary obstruction"—Offence "in connection with the driving of a motor car."]—A conviction under Article IV. (2) of the Motor Cars (Use and Construction) Order, 1904, of the driver of a motor car for allowing such car to stand on a highway so as to cause an unnecessary obstruction thereof is not a conviction for an offence "in connection with the driving of a motor car" within section 4, sub-section 1 of the Motor Car Act, 1903, and that section therefore does not authorise the indorsement of the driver's licence with particulars of the conviction. *Rex* v. *Yorkshire (W. R.) Justices; Shackleton, Ex parte*, 79 L. J. K.B. 244; [1910] 1 K.B. 439; 102 L. T. 138; 74 J. P. 127; 8 L. G. R. 163; 22 Cox C.C. 280—D.

Speed Limit—Proof of Warning or Notice of Intended Prosecution.]—In a prosecution for a contravention of section 9 of the Motor Car Act, 1903 (which imposes a speed limit), the prosecution must prove that the warning or notice of the intended prosecution required by the section was given to the accused; and a conviction, without such proof, is bad. *Dickson* v. *Stevenson*, [1912] S. C. (J.) 1—Ct. of Just.

—— **Heavy Motor Car—Axle Weight—Car having One Axle Above and Another Below Specified Axle Weight.**]—Article VII. of the Heavy Motor Car (Scotland) Order, 1905 [corresponding to Article VII. of the Heavy Motor Car Order, 1904], provides that if a heavy motor car has all its wheels fitted with pneumatic tyres, the speed at which it may be driven on the highway shall not exceed "(*a*) Twelve miles an hour—where the registered axle weight of any axle does not exceed six tons; and (*b*) Eight miles an hour—where the registered axle weight of any axle exceeds six tons":—*Held* (*dub.* Lord Johnston), that the speed limit for a car of the class referred to of which the registered axle weight of the front axle was 2 tons 2 cwts., and that of the back axle over 6 tons, was eight, and not twelve miles an hour. *Auld* v. *Pearson*, [1914] S. C. (J.) 4—Ct. of Just.

—— **Exceeding Speed Limit—Sufficiency of Evidence.**]—The driver of a motor car was convicted of driving his car over a measured distance at a speed exceeding the speed limit, the only evidence being that of two constables, who had been stationed at either end of the measured distance, and who deposed, the one to the time at which the car entered, the other to the time at which it passed out of the measured distance. An objection to the sufficiency of the evidence on the ground that as each of these times was a fundamental fact in the charge, it could not be established by the uncorroborated testimony of a single witness, was *repelled* and the conviction *sustained*. *Scott* v. *Jameson*, [1914] S. C. (J.) 187—Ct. of Just.

—— **Speed Limit in Royal Parks—Offence against Park Regulation made Subsequent to Motor Car Act, 1903—Indorsement of Driver's Licence.**]—The offence of driving a motor car in a Royal park at a speed exceeding the limit fixed by a regulation made under the Parks Regulation Act, 1872 (35 & 36 Vict. c. 15), by a body therein authorised to make it, and in existence when the Motor Car Act, 1903, came into operation, is an offence within the purview of section 4 of that Act, although the regulation was made after the Act came into operation; and therefore on a third conviction for exceeding such speed limit the licence of the person convicted must be indorsed. *Rex* v. *Plowden; Braithwaite, Ex parte*, 78 L. J. K.B. 733; [1909] 2 K.B. 269; 100 L. T. 856; 73 J. P. 266; 7 L. G. R. 584; 22 Cox C.C. 114; 25 T. L. R. 430—D.

—— **Proof of Identity of Person Producing Licence with Person Named therein.**]—One of the purposes of a licence to drive a motor car issued under the Motor Car Act, 1903, is the identification of the person to whom it is issued, and the production thereof on due demand to a constable constitutes *prima facie* evidence that the particulars it contains refer to the person producing it, and that he is the person to whom it was issued. Secondary evidence of such particulars may be given although no notice to produce the licence at the hearing has been given. *Martin* v. *White*, 79 L. J. K.B. 553; [1910] 1 K.B. 665; 102 L. T. 23; 74 J. P. 106; 8 L. G. R. 218; 22 Cox C.C. 236; 26 T. L. R. 218—D.

—— **Proof of Previous Convictions—Identity of Particulars in Licences of Defendant and Person Previously Convicted.**]—Where a defendant, knowing that his identity was to be the subject-matter of an enquiry, intentionally absented himself therefrom, the identity of his name and address and the number and place of issue of his licence with those of a person previously convicted is evidence upon which the identity of the defendant with such person may be held to be established. *Ib.*

The words "proof of the identity" in section 18 of the Prevention of Crime Act, 1871, do not mean conclusive proof, but evidence upon which a tribunal may find that the identity has been proved. *Ib.*

Lights—Failure to have Back Identification Plate Illuminated—Defence of "taken all steps reasonably practicable to prevent the mark being obscured or rendered not easily distinguishable."]—The driver of a motor cycle on a public highway at a period between

one hour after sunset and one hour before sunrise was charged under Article XI. of the Motor (Registration and Licensing) Order, 1903, with failing to keep a lamp burning thereon so contrived as to illuminate every letter or figure on the motor cycle :—*Held*, that the driver of the motor cycle, being charged with an offence under the Motor Car Act, 1903, was entitled to avail himself of the defence provided by section 2, sub-section 4 of that Act, and to prove that he had taken all steps reasonably practicable to prevent the mark being obscured or rendered not easily distinguishable. *Printz* v. *Sewell*, 81 L. J. K.B. 905; [1912] 2 K.B. 511; 106 L. T. 880; 76 J. P. 295; 10 L. G. R. 665; 23 Cox C.C. 23; 28 T. L. R. 396—D.

—— **Indorsement of Licence—Lights—Failure to have Back Plate Illuminated—Offence in Connection with the Driving of a Motor Car.**]—A conviction for failing to have the back plate of a motor car illuminated during the period prescribed by Article XI. of the Motor Car (Registration and Licensing) Order, 1903, is a conviction for an offence in respect of which indorsement of the convicted person's licence is required by section 4 of the Motor Car Act, 1903. *Brown* v. *Crossley*, 80 L. J. K.B. 478; [1911] 1 K.B. 603; 104 L. T. 429; 75 J. P. 177; 9 L. G. R. 194; 22 Cox C.C. 402; 27 T. L. R. 194—D.

—— **No Proper Identification Mark—Size of Letters — Conviction — Indorsement on Licence.**]—The applicant was summoned for unlawfully using a motor car on a public highway on which the identification mark was not in conformity with the regulations made by the Local Government Board. The letters and figures of the identification were not of the size prescribed :—*Held*, that in respect of this offence the applicant's licence could be indorsed. *Rex* v. *Gill; McKim, Ex parte*, 100 L. T. 858; 73 J. P. 290; 7 L. G. R. 589; 22 Cox C.C. 118—D.

—— **Back Identification—Car Owned by Company—Plate not Illuminated—Conviction of Company of Aiding and Abetting the Driver —Intent.**]—Where a driver of a motor car is convicted in respect of the offence created by section 2 of the Motor Car Act, 1903, and Article XI. of the Motor Car (Registration and Licensing) Order, 1903, of driving the motor car on a public highway between one hour after sunset and one hour before sunrise without having the identification plate on the back of the car illuminated, the company owning such car may be convicted under section 5 of the Summary Jurisdiction Act, 1848, of aiding and abetting the driver of the car in the commission of the offence, inasmuch as the company must act through agents, and are therefore responsible for their agents sending out a car in an improper condition; and it is not necessary to prove a criminal intent on the part of the company. *Provincial Motor Cab Co.* v. *Dunning*, 78 L. J. K.B. 822; [1909] 2 K.B. 599; 101 L. T. 231; 73 J. P. 387; 7 L. G. R. 765; 22 Cox C.C. 159; 25 T. L. R. 646—D.

—— **Driving Without a Light—Indorsement of Licence—"Offence in connection with the driving of a motor car."**]—A conviction under the Motor Cars (Use and Construction) Order, 1904, for driving a motor car without a light is a conviction for "an offence in connection with the driving of a motor car" within the meaning of section 4 of the Motor Car Act, 1903, and the Justices are entitled under that section to cause particulars of the conviction to be indorsed upon any licence under the Act held by the person so convicted. *Symes, Ex parte*, 103 L. T. 428; 75 J. P. 33; 9 L. G. R. 154; 22 Cox C.C. 346; 27 T. L. R. 21—D.

—— **Use of Powerful Lamps — Offence "in connection with the driving of a motor car" — Indorsement of Licence.**]—By an Order of the Secretary of State made under the Defence of the Realm (Consolidation) Regulations, 1914, the use of powerful lamps on motor cars was prohibited. The appellant was convicted of an offence under this Order. At the time of the commission of the offence he was driving the car :—*Held*, that he had been convicted of an offence "in connection with the driving of a motor car" within the meaning of section 4, sub-section 1 of the Motor Car Act, 1903, and was therefore liable to have particulars of the conviction indorsed upon his licence. *Symes, Ex parte* (103 L. T. 428), and *Brown* v. *Crossley* (80 L. J. K.B. 478; [1911] 1 K.B. 603) followed. *White* v. *Jackson*, 84 L. J. K.B. 1900; 113 L. T. 783; 79 J. P. 447; 13 L. G. R. 1319; 31 T. L. R. 505—D.

Heavy Motor Car—User on Bridge—Notice that Bridge Insufficient to Carry Motor Car beyond Specified Weight — Notice Affixed in Accordance with Regulations of Local Government Board—Ultra Vires.]—Article XIV. of the Heavy Motor Car Order, 1904, as amended by the Heavy Motor Car (Amendment) Order, 1907, made by the Local Government Board, provides that "With respect to the use of a heavy motor car on a bridge forming part of a highway the following regulations . . . shall apply and have effect; . . . Where the person who is liable to the repair of the bridge states in a prescribed notice—(*a*) that the bridge is insufficient to carry a heavy motor car the registered axle-weight of any axle of which exceeds three tons, or the registered axle-weights of the several axles of which exceed in the aggregate five tons, or any greater weight specified in the prescribed notice . . . the owner of any such heavy motor car shall not cause or suffer the heavy motor car to be driven, and the person driving or in charge of the heavy motor car shall not drive the heavy motor car upon the bridge except with the consent of the person liable to the repair of the bridge" :—*Held*, that this article is *intra vires* the Local Government Board, and therefore, where such a notice has been affixed to a bridge by the person liable for its repair, any one who drives over the bridge a heavy motor car of a weight exceeding that mentioned in the notice is guilty of an offence. *Lloyd* v. *Ross*, 82 L. J. K.B. 578; [1913]

2 K.B. 332; 109 L. T. 71; 77 J. P. 341; 11 L. G. R. 503; 23 Cox C.C. 460; 29 T. L. R. 400—D.

Offence Committed by Driver of Car—Refusal of Owner to Give Information as to Identification of Driver—Conviction—Particular Offence Committed by Driver not Specified in Conviction of Owner.]—The applicant was summoned and convicted under section 1, sub-section 3 of the Motor Car Act, 1903, for having refused to give information which it was within his power to give and which might lead to the identification of the driver of his motor car, such driver having, it was alleged, committed an offence against section 1, sub-section 1 of the Act. Neither the summons nor the conviction of the applicant specified which of the four offences enumerated in sub-section 1 the driver was alleged to have committed :—*Held*, that on a charge against the owner of a motor car under section 1, sub-section 3, it is unnecessary to do more than allege generally that the driver has committed an offence under section 1, sub-section 1, and therefore that the conviction of the applicant was good although it did not particularise which of the four offences enumerated in section 1, sub-section 1, the driver had committed. *Beecham*, *Ex parte*, 82 L. J. K.B. 905; [1913] 3 K.B. 45; 109 L. T. 442; 23 Cox C.C. 571; 29 T. L. R. 586—D.

Several Offences.] — By section 1, sub-section 1 of the Motor Car Act, 1903, if any person drives a motor car on a public highway " recklessly or negligently, or at a speed or in a manner which is dangerous to the public " he is guilty of an offence :—*Held* (following *Rex* v. *Wells*, 68 J. P. 392), that driving recklessly, driving at a speed dangerous to the public, and driving in a manner dangerous to the public were separate offences. *Rex* v. *Cavan Justices*, [1914] 2 Ir. R. 150—K.B. D.

Suspension of Licence of Driver—Date from which Suspension Runs.] — The appellant having pleaded guilty on April 8, 1909, to the charge of having exceeded the speed limit fixed by the Motor Car Act, 1903, he was fined and his licence was ordered to be suspended for three months. The appellant appealed to quarter sessions and the appeal came on to be heard on July 10, 1909, when, on objection being taken that quarter sessions had no jurisdiction to hear the appeal inasmuch as the appellant had pleaded guilty, the appeal was struck out. On August 21, 1909, the appellant was stopped when driving a motor car, and thereupon he was charged and found guilty of driving without a licence :—*Held*, that the three months' suspension of the appellant's licence dated from April 8, 1909, and that the giving of the notice of appeal to quarter sessions did not have the effect of deferring the operation of the order of suspension of the licence. *Kidner* v. *Daniels*, 102 L. T. 132; 74 J. P. 127; 8 L. G. R. 159; 22 Cox C.C. 276—D.

Petroleum Spirit—Building in which Petroleum Spirit for the Purposes of Light Locomotives is Kept — " Storehouse."] — Where petroleum spirit is kept in the tank of a motor car which is placed for the night in a garage, the garage is a " storehouse " within the meaning of the Regulations dated July 31, 1907, made under the provisions of section 5 of the Locomotives on Highways Act, 1896 — that is, a " building . . . in which petroleum spirit for the purposes of light locomotives is kept in pursuance of these Regulations " :—So *held* by Scrutton, J., and Bailhache, J. (Ridley, J., *dissentiente*). *Appleyard* v. *Baugham*, 83 L. J. K.B. 193; [1914] 1 K.B. 258; 110 L. T. 34; 77 J. P. 448; 11 L. G. R. 1220; 23 Cox C.C. 730; 30 T. L. R. 13—D.

d. Extraordinary Traffic.

i. *What is.*

See also Vol. XV. 59, 1902.

Cost of Repairs.]—The defendant owned a stone quarry abutting on the main road. From June, 1912, to May, 1913, stone from the quarry was carried along the road in trucks drawn by a traction engine by the order of the defendant. The plaintiff local authority and others conveyed stone over the road in a similar manner, the quantity conveyed by the defendant being a little more than half the total traffic over the road. The road was fully adapted to traffic by traction engines and had been so used for a number of years. The output from the quarry had gradually increased from 7,284 tons in 1909 to 17,378 tons in 1912. Lush, J., held that traffic led along a road adapted to it, being such traffic as was to be expected in the ordinary course, could not be " extraordinary " within the meaning of section 23 of the Highways and Locomotives (Amendment) Act, 1878, as amended by the Locomotives Act of 1898 :—*Held*, that the traffic did not come within the expressions as to extraordinary traffic used by Bowen, L.J., in *Hill & Co.* v. *Thomas* (62 L. J. M.C. 161; [1893] 2 Q.B. 333), and was not extraordinary. *Ledbury Rural Council* v. *Somerset*, 84 L. J. K.B. 1297; 113 L. T. 71; 79 J. P. 327; 13 L. G. R. 701; 59 S. J. 476; 31 T. L. R. 295—C.A.

Judgment of Lush, J. (30 T. L. R. 534), affirmed. *Ib.*

Normal Increase of Traffic—Damage to Road.]—Whether traffic on a road is or is not " extraordinary traffic " within the meaning of section 23 of the Highways and Locomotives (Amendment) Act, 1878, is a question of fact to be decided on the evidence in the particular case. *Barnsley British Co-operative Society* v. *Worsborough Urban Council*, 85 L. J. K.B. 103; 60 S. J. 25; 32 T. L. R. 41—H.L. (E.)

Traffic due to the normal increase of traffic in consequence of the development of the district is not " extraordinary traffic " within the meaning of the section, and the continued user of a road for the purpose complained of prior to the date of the complaint may make the traffic complained of ordinary traffic. But if traffic on a particular road is ordinary traffic on that road, and in consequence of some

obstruction or alteration in that road the traffic is diverted to another road, it does not follow that it will still be ordinary traffic on the road to which it has been so diverted. *Ib.*

Judgment of the Court of Appeal (12 L. G. R. 1021; 78 J. P. 425) affirmed. *Ib.*

Haulage of Gravel.]—Prior to 1909 gravel from an old gravel pit had been carted in farm carts, holding from one and a half to two tons each, in sufficient quantity to supply the immediate wants of a district in which gravel hauling was not a recognised industry. The defendants subsequently became proprietors of the gravel pit and set up business as traders in gravel, and in the eight months between August 1, 1910, and March 31, 1911, hauled, by means of two traction engines, to each of which two or three trucks were attached, a weight of 21,950 tons, including the weight of the engines and trucks going and returning, over six and a half miles of a main road repairable by the county council, between the gravel pit and the county town. The comparable highways of the district carried traffic consisting of—first, ordinary agricultural traffic; secondly, light carts and carriages of residents in a thinly populated district, but within a few miles from a county town; thirdly, some motor car traffic; and fourthly, occasional threshing and steam ploughing machines, &c. This traffic, however, fell very much short of the traffic conducted by the defendants, both in volume and weight, and was not equal to half the strain on the road caused by the defendants' traffic:—*Held*, in an action by the county council against the defendants to recover extraordinary expenses incurred in repairing the main road in question, that as the traffic conducted by the defendants was such as substantially to alter and increase the burden imposed by ordinary traffic on the road, and cause damage and expense beyond what was common, it was extraordinary traffic, and the county council were entitled to recover extraordinary expenses incurred; but that, since the road would have carried ordinary traffic with little, if any, damage, a small allowance must be made for damage that would have been done to the road by so much traffic as was ordinary. *Cambridgeshire County Council* v. *Pepper*, 10 L. G. R. 759; 76 J. P. 393—Bray, J.

ii. *Parties Liable.*

See also Vol. XV. 62, 1902.

Person "by or in consequence of whose order" Traffic was Conducted—Liability of Contractor Supplying Bricks.]—S., a building owner, bought bricks for the erection of a house from L., a brickmaker, and insisted as a term of the contract that they should be delivered in trucks drawn by traction engines. L. accepted the order to deliver the bricks at the site by that mode of conveyance and contracted with E. to supply the engines and trucks, and E. selected the route to be taken from the brickfield to the site of the house. This traffic damaged part of the road over which it was conducted, and the local authority sued L. for damages suffered by reason of extraordinary traffic or excessive weight:—*Held*, that L. was liable in damages as the person "by or in consequence of whose order" the traffic was conducted. *Windlesham Urban Council* v. *Seward*, 77 J. P. 161; 11 L. G. R. 324—D.

iii. *Recovery of Expenses.*

See also Vol. XV. 64, 1904.

"Average expense of repairing highways in the neighbourhood."]—In order that an authority, which is liable to repair a highway, may recover, under section 23 of the Highways and Locomotives (Amendment) Act, 1878, as amended by section 12 of the Locomotives Act, 1898, from the person by or in consequence of whose order excessive weight or extraordinary traffic has been conducted along the highway, the amount of the expenses incurred by the authority in the repair of the highway by reason of the damage caused by the excessive weight or the extraordinary traffic, the authority must shew that the expenses incurred by them, by reason of such damage, are "extraordinary" expenses; and in order to determine what is "extraordinary" regard must be had not to the average expense of repairing the particular road which has been damaged, but to the average expense of repairing highways in the neighbourhood. *Billericay Rural Council* v. *Poplar Guardians*, 80 L. J. K.B. 1241; [1911] 2 K.B. 801; 105 L. T. 476; 75 J. P. 497; 9 L. G. R. 796; 55 S. J. 647—C.A.

In an action to recover, under section 23 of the Highways and Locomotives (Amendment) Act, 1878, extraordinary expenses incurred by an authority, in respect of the repair of a highway, by reason of damage caused by excessive weight or extraordinary traffic, in which action the authority alleges a certain sum to be an average expense of repairing highways in the neighbourhood, a defendant is entitled to an order for particulars not merely of the average expense of repairing the particular highway which has been damaged, but of the average expense of repairing highways in the neighbourhood which are comparable with the particular highway. *Billericay Rural Council* v. *Poplar Guardians* (80 L. J. K.B. 1241; [1911] 2 K.B. 801) explained. *Colchester Corporation* v. *Gepp* (No. 1), 81 L. J. K.B. 356; [1912] 1 K.B. 477; 106 L. T. 54; 76 J. P. 97; 10 L. G. R. 109; 56 S. J. 160—C.A.

In an action by the plaintiff corporation against the visiting committee of a county lunatic asylum to recover extraordinary expense caused by extraordinary traffic,—*Held*, that the plaintiffs were not estopped from recovering by reason of the fact that some members on the visiting committee were the plaintiffs' own representatives, or by reason of the fact that the site on which the asylum was built had been conveyed to the committee by the plaintiffs. *Held*, further, that the committee were liable as the persons in consequence of whose order the work was done. *Colchester Corporation* v. *Gepp* (No. 2), 76 J. P. 337; 10 L. G. R. 930—Channell, J.

Observations by Channell, J., as to the deductions to be made in arriving at the extra-

ordinary expenses for which the defendants were liable. *Ib.*

In an action by a highway authority to recover, under section 23 of the Highways and Locomotives (Amendment) Act, 1878, as amended by section 12 of the Locomotives Act, 1898, extraordinary expenses incurred in repairing a highway by reason of extraordinary traffic conducted thereon by order of the defendants,—*Held*, that the defendants were entitled to an order for particulars of the average expense of repairing similar highways in the neighbourhood during the past five years, stating the cost of labour, the establishment charges, and the nature and amount and cost of materials; but that they were not entitled to an order for particulars of the average expense of repairing the highway in question during the past five years, as these latter particulars seemed to be particulars of matters of defence rather than of the plaintiffs' claim. *Morpeth Rural Council* v. *Bullocks Hall Colliery Co.*, 82 L. J. K.B. 547; [1913] 2 K.B. 7; 108 L. T. 479; 77 J. P. 188; 11 L. G. R. 475; 57 S. J. 373; 29 T. L. R. 297—C.A.

Surveyor's Certificate.]—In issuing his certificate pursuant to section 23 of the Highways and Locomotives (Amendment) Act, 1878, as to the sum due in respect of extraordinary expenses, the surveyor need not certify the precise parts of the particular highway where the damage was done. *Ledbury Rural Council* v. *Colwall Park Quarries Co.*, 108 L. T. 1002; 77 J. P. 198; 11 L. G. R. 841—Scrutton, J.

A highway having been damaged by reason of extraordinary traffic carried thereon by the defendants,—*Held*, that the defendants were liable for the excess of the amount actually spent in repairing the damage done to the section of the road actually used by the defendants over the amount which would have been spent in repairing the damage to the same section by the other traffic which actually used it during the period complained of, taking all the circumstances into account. *Ib.*

In an action to recover the expense of repairing damage done to a road by extraordinary traffic, it is not essential that the surveyor's certificate should bear to have been framed, or should in fact have been framed, with regard to the average expense of repairing highways in the neighbourhood; but it is the duty of the road authority, before bringing the action, to have regard to such average expense. *Highland District Committee of Perth County Council* v. *Rattray*, [1913] S. C. 794—Ct. of Sess.

Per Lord Salvesen: A road authority is not barred from recovering damage done to a road by extraordinary traffic merely because the road is of less than the width prescribed by statute. *Ib.*

e. Other Offences on.

See also Vol. XV. 65, 1910.

Furious Driving — Person in Charge of Vehicle Asleep.]—The appellant was in sole charge of a horse and trap. While he was asleep the horse bolted and ran at a furious pace through a village. A policeman who was in the road might have been endangered as to life or limb:—*Held*, that the appellant was guilty of an offence under section 78 of the Highway Act, 1835. *Chatterton* v. *Parker*, 111 L. T. 380; 78 J. P. 339; 12 L. G. R. 1205; 24 Cox C.C. 312—D.

3. Repair of.

a. Obligation to Repair.

See also Vol. XV. 83, 1912.

Bridge over Canal—Statutory Obligation on Canal Company to Repair Bridge—Private Act—Repairs to Roadway on Bridge done by Local Authority—Action by Local Authority to Recover Expenses from Canal Company.]—Where under the provisions of a private Act a railway company, as the proprietors of a canal, are liable to repair a bridge which carries a highway across their canal, and the highway authority of the district have expended a sum of money in repairing the roadway on the bridge, the highway authority cannot maintain an action against the railway company to recover the sum so expended. *Macclesfield Corporation* v. *Great Central Railway*, 80 L. J. K.B. 884; [1911] 2 K.B. 528; 104 L. T. 728; 75 J. P. 369; 9 L. G. R. 682—C.A.

Highway Repairable Ratione Tenuræ — Power of Local Authority to take over Liability —"Take on themselves the repair."]—Under section 148 of the Public Health Act, 1875, which provides that an urban authority may, by agreement with a person liable to repair a road, "take on themselves the maintenance repair cleansing or watering" of the road—which provision is, by section 25 of the Local Government Act, 1894, made to apply to a rural district council—a rural district council may agree with a person who is liable to repair a road *ratione tenuræ* to "for ever take upon themselves the liability" for the maintenance and repair of the road, and the effect of the agreement will be to effectually free and for ever discharge the land which is subject to the liability, and the owner and occupier, from the liability. *Dictum* of Cockburn, C.J., in *Nutter* v. *Accrington Local Board of Health* (47 L. J. Q.B. 521, 524; 4 Q.B. D. 375, 379), explained and distinguished. *Stamford and Warrington (Earl), In re*; *Payne* v. *Grey* (*No. 2*), 80 L. J. Ch. 361; [1911] 1 Ch. 648; 105 L. T. 12; 75 J. P. 346; 9 L. G. R. 719; 55 S. J. 483; 27 T. L. R. 356—Warrington, J.

—— **"Incumbrance"—Settled Land Act.**]—Whether a liability to repair *ratione tenuræ* is an "incumbrance" within the meaning of section 21, sub-section (ii.) of the Settled Land Act, 1882, *quære*. *Ib.*

Public Roads—Evidence.]—Where there is no evidence of public user or of any presentment having ever been made in respect of a road, and where there is clear evidence of non-user in modern times, such road is not a public road the expense of repairing and

maintaining which a county council can lawfully provide for and charge upon the rates as a public work. *Rex* v. *Newell*, [1911] 2 Ir. R. 573—K.B. D.

The onus of shewing statutable authority for payments made by a public body lies on the body making such payments. *Ib.*

b. Liability for Damages.

See also Vol. XV. 107, 1919.

Making-up and Lighting Street—Alteration of Normal Condition of Road — Omission of Proper Precaution — Duty to Protect Public from Risk—Misfeasance or Nonfeasance.]—A highway authority, in making up a road, had, in doing so, omitted a precaution which, if taken, would have made the work done safe instead of dangerous:—*Held*, that they were guilty of misfeasance and not nonfeasance, because in carrying out the work, which was that of altering the normal condition of the road, the highway authority had been guilty of a breach of their duty to exercise their powers reasonably and to take care that the public was not exposed to unnecessary danger by the carrying out of the work of making up the road. *McClelland* v. *Manchester Corporation*, 81 L. J. K.B. 98; [1912] 1 K.B. 118; 105 L. T. 707; 76 J. P. 21; 9 L. G. R. 1209; 28 T. L. R. 21—Lush, J.

Portion Left Open for Use of Public to be Kept Reasonably Safe — Nonfeasance while Executing Repairs.] — A county council who were under an obligation to maintain and repair the public roads within their jurisdiction, were engaged in repairing a portion of one of such roads, and for this purpose employed a steam roller to roll down and level in the new metal. These repairing operations were confined to a portion half the width of the road, the other half being left open for public traffic. A man driving in a donkey cart along the half so left open, proceeding in the same direction as the engine, and overtaking it, was jerked from his seat by the wheel of his cart colliding with a large stone lying in the water table close to the grass margin on the side of the road opposite to the engine. The jerk threw the man into the road and under the wheels of the engine, where he received injuries from which he died. The stone (which had probably fallen off the fence bounding the road) had, to the knowledge of the council's workmen, been in that position for two or three days previous to the accident. In an action under Lord Campbell's Act, the jury found that the defendants were negligent in omitting to remove the stone, and that there was no contributory negligence on the part of the deceased:—*Held* (Kenny, J., dissenting), that the act of interfering with the road imposed an obligation on the county council to take care that the portion of the road left open for public use was reasonably fit and safe for such purpose, and that the council were liable in damages. *Ryan* v. *Tipperary County Council*, [1912] 2 Ir. R. 392—K.B. D.

Failure to Fill up Hole in Highway—Nonfeasance—No Obligation on Owner of Adjoining Land to Support Highway.]—In 1910 the female plaintiff brought an action against the defendants to recover damages for personal injuries sustained by her through falling into a hole in a public highway which was vested in the defendants. The highway in question, a footpath, adjoined a ballast yard, and at the time of the accident was composed of hoggin. At a point at which the footpath reached the entrance to the ballast yard it sloped to a depth of nine inches and then fell another three inches until it reached the level of the yard. The footpath had been taken over by the defendants in 1900, and in 1904 they had repaired it in such a way that any depression then existing would have been filled up. In 1907 the defendants purchased the ballast yard, and at that time there was in existence upon the footpath a hole similar in character to that which existed at the time of the accident. From the evidence given it appeared that the depression was due to the hoggin slipping down the slope into the yard, and that this process was assisted by the passing of persons down into the yard:—*Held*, upon the above facts, that there was no evidence which rendered the defendants liable either as the highway authority or as the owners of the ballast yard. In the former capacity they were not liable because they had been guilty of no misfeasance, and in the latter because they were under no obligation as owners of the yard to provide an artificial support to the footpath which would prevent it from slipping away. *Short* v. *Hammersmith Corporation*, 104 L. T. 70; 75 J. P. 82; 9 L. G. R. 204—D.

Premises Adjoining Highway — Authority Creating Nuisance thereon—Non-liability of Frontager.] — On premises adjoining a highway, which were the property of and occupied by the defendant, there was a coal shoot formed by an opening at the bottom of the wall of the house, abutting on the pavement, which was part of the highway. In 1901 the local highway authority, acting under the provisions of the Private Street Works Act, 1892, raised the level of the pavement and, in order to preserve access to the coal shoot, left an opening in the pavement. This condition of the pavement remained until October, 1914, when the plaintiff, in passing along the pavement, put her foot into the hole, and suffered personal injuries, for which she brought her action against the defendant:—*Held*, that the action failed, inasmuch as, where a nuisance is created by a highway authority on a highway under their control, the owner or occupier of the land adjoining the highway is not liable for an accident caused by the nuisance. *Robbins* v. *Jones* (33 L. J. C.P. 1; 15 C. B. (N.S.) 221) followed. *Barker* v. *Herbert* (80 L. J. K.B. 1329; [1911] 2 K.B. 633) discussed and distinguished. *Horridge* v. *Makinson*, 84 L. J. K.B. 1294; 113 L. T. 498; 79 J. P. 484; 13 L. G. R. 868; 31 T. L. R. 389—D.

Semble (*per* Bailhache, J.), there was no duty on the defendant to inspect the plans prepared by the local authority in 1901 in connection with the work of raising the level of the pavement. *Ib.*

"Grips" in Waste on Roadside Overgrown with Grass—Accident to Person Using Road—Liability of Highway Authority—Misfeasance or Nonfeasance.]—On the grass waste adjoining a highway, over which ran a light railway, a platform had been constructed for the use of passengers. Prior to 1888 gullies or "grips" were made in the waste for the surface drainage of the road by the highway authority, a county council. These grips became overgrown with grass, and the plaintiff, in passing to the platform, not seeing one of the grips, fell, and was injured:—*Held*, that allowing the grips to be overgrown with grass being a nonfeasance and not a misfeasance, an action would not lie against the county council. *Masters* v. *Hampshire County Council*, 84 L. J. K.B. 2194; 79 J. P. 493; 13 L. G. R. 879—D.

Widening Street — Notice to Postmaster-General to Remove Pole in Street as Widened —Negligence of Latter in Doing Work causing Damage to Third Person—Liability of Highway Authority.]—A highway authority were engaged in widening a street by setting back the kerb of the footpath. They gave notice, not purporting to be under section 15 of the Telegraph Act, 1863, to the Postmaster-General to remove a telephone pole standing in the road, and in doing so his workmen filled up the hole negligently, whereby the plaintiff's waggon was injured:—*Held*, that the highway authority were liable in damages on the ground that by altering the character of the highway they were making a new street, and ought, before opening it to the public for traffic, to have seen that it was reasonably safe for the purpose. *Thompson* v. *Bradford Corporation*, 84 L. J. K.B. 1440; [1915] 3 K.B. 13; 113 L. T. 506; 79 J. P. 364; 13 L. G. R. 884; 59 S. J. 495—D.

Held, also, that the Postmaster-General was liable on the ground that he had undertaken to do the work, although not compelled to do so, and had done it negligently. *Ib.*

B. BRIDGES.

See also Vol. XV. 178, 1924.

Trust for Repair of Bridge—Bridge Vested in Public Body — Extent of Obligation to Repair.]—Where a fund is devoted by a settlor to the repair of a public bridge it remains applicable for that purpose, notwithstanding that the Legislature has cast the burden of such repairs upon a public body. *Att.-Gen.* v. *Day* (69 L. J. Ch. 8; [1900] 1 Ch. 31) applied. A bridge, for the repair of which a settlor devoted certain funds, crossed the Severn. As the result of two private Acts and by agreement between the Justices and the Severn Commissioners a part of the bridge was made to open so as to allow traffic on the river to pass to and fro. By virtue of the joint operation of these statutes and the agreement, the Commissioners were bound to keep in repair the opening portion of the bridge:—*Held*, that, notwithstanding the obligation cast upon the Severn Commissioners, the funds left by the settlor were applicable to the repair of the opening portion of the bridge. *Hall's Charity, In re*, 10 L. G. R. 11; 76 J. P. 9; 28 T. L. R. 32—Warrington, J.

Highway Carried Across Canal by Bridges — Liability for Maintenance and Repair of Bridges — Standard of Repair — Statutory Liability.] — Where a statute authorises the doing of a particular thing, and provides what are to be the rights and obligations flowing from such action, it is to be considered as a code complete in itself, and no common law principle can be invoked to vary or add to the obligations imposed by the statute. *Sharpness New Docks and Gloucester and Birmingham Navigation Co.* v. *Att.-Gen.*, 84 L. J. K.B. 907; [1915] A.C. 654; 112 L. T. 826; 79 J. P. 305; 13 L. G. R. 563; 59 S. J. 381; 31 T. L. R. 254—H.L. (E.)

A company was empowered by statute to make a canal, and the statute enacted that the company should not make the canal across any common highway until they should have made bridges to carry the highway across the canal "of such dimensions, and in such manner, as the said Commissioners"—appointed under the statute—"shall adjudge proper; . . . and all such . . . bridges, . . . to be made shall, from time to time, be supported, maintained, and kept in sufficient repair, by the said Company." The bridges were made to the satisfaction of the commissioners as required by the statute, but the traffic on the highways had of late years become much heavier:—*Held*, that the canal company was only bound to keep the bridges in such a state of repair as was adjudged proper by the commissioners at the date when the bridges were first made, and not to keep them in a condition to bear heavier traffic. *Hertfordshire County Council* v. *Great Eastern Railway* (78 L. J. K.B. 1076; [1909] 2 K.B. 403) distinguished. *Ib.*

Decision of the Court of Appeal (83 L. J. K.B. 1762; [1914] 3 K.B. 1) reversed. *Ib.*

—— Statutory Obligation on Canal Company to Repair—Repair by Local Authority—Action to Recover Expenses.] — *See Macclesfield Corporation* v. *Great Central Railway*, *ante*, col. 1754.

Railway Bridge—Local Act—Swing Railway Bridge over Canal—Agreement between Railway and Navigation Companies to Convert into Fixed Bridge—Bridge Constructed under Section beginning "For the protection of the Navigation Company"—Benefit of the Public—Action by Attorney-General.]—By a Light Railway Order, confirmed under the Light Railways Act, 1896, a railway company was authorised to construct a swing bridge over a canal, and it was so constructed. Section 29 of the Order began: "For the protection of the Navigation Company the following provisions shall have effect." Subsection 3 of this section provided for the construction of the bridge as a swing bridge; sub-section 4 provided that the railway company should make provision free of charge for opening the bridge for the passage of vessels by day and night under a penalty. There were also other sub-sections imposing duties on the railway company with respect to the bridge. Sub-section 16 provided that

the railway company and the navigation company might agree "for any variation or alteration of works in this section provided for or of the manner in which the same shall be executed." The railway company and the navigation company proposed to convert the swing bridge into a fixed bridge. Upon action by the Attorney-General, at the relation of an owner of vessels using the canal, to restrain the proposed conversion as being an impediment to the navigation:—*Held*, that the heading to section 29 did not make that section a mere contract between the companies which they could vary as they pleased, as sub-sections 3 and 4 and other sub-sections were clearly for the benefit of the public; and that the Attorney-General could therefore sue on behalf of the public; that the proposed conversion was prohibited by section 29, and was not an alteration within sub-section 16, and that the injunction must be granted. *Davis & Sons, Lim.* v. *Taff Vale Railway* (64 L. J. Q.B. 488; [1895] A.C. 542) followed. *Att.-Gen.* v. *North-Eastern Railway*, 84 L. J. Ch. 657; [1915] 1 Ch. 905; 113 L. T. 25; 79 J. P. 500; 13 L. G. R. 1130—C.A.

Bridge over Railway — Liability of Railway Company to Maintain—Heavy Motor Traffic—Standard of Maintenance.]—A railway bridge was constructed under the powers of a statute which empowered a railway company to make a railway according to plans deposited. The bridge was properly and substantially built in accordance with the provisions of the statute. Under section 46 of the Railways Clauses Consolidation Act, 1845, there was an obligation on the company to "maintain" the bridge:—*Held*, that the company was liable to maintain the bridge in the same condition as to strength in relation to traffic as it was at the date of its completion, but that it was not liable to improve and strengthen the bridge to make it sufficient to bear the ordinary traffic of the district which might reasonably be expected to pass over it according to the standard of the present day. *Sharpness New Docks* v. *Att.-Gen.* (84 L. J. K.B. 907; [1915] A.C. 654) applied. *Att.-Gen.* v. *Great Northern Railway*, 84 L. J. Ch. 793; 13 L. G. R. 998; 59 S. J. 578; 31 T. L. R. 501—C.A.

Decision of Warrington, J. (83 L. J. Ch. 763), reversed. *Ib.*

C. FERRIES.

See also Vol. XV. 194, 1928.

Ancient Ferry—New Ferry—Substantially New Traffic Demanding New Facilities.]—The plaintiffs, who were possessed of an ancient ferry on the Thames, known as Twickenham Ferry, sought an injunction to restrain the defendants from carrying foot passengers for hire across the Thames over, upon, within, or near that ancient ferry:—*Held*, that the plaintiffs were not entitled to an injunction against the defendants, inasmuch as there had sprung up a substantially new traffic different in character from that served by the old ferry, and that the defendants' ferry was started *bona fide* to meet a genuine demand on the part of the public in connection with that new traffic. *Hammerton* v. *Dysart (Earl)*, 85 L. J. Ch. 33; 13 L. G. R. 1255; 59 S. J. 665; 31 T. L. R. 592—H.L. (E.)

Decision of the Court of Appeal (83 L. J. Ch. 530; [1914] 1 Ch. 822) reversed. *Ib.*

Disturbance — Ferry from Vill to Vill — Change of Circumstances — New Traffic.] — In an action claiming a declaration that the plaintiffs were entitled to and possessed of certain ferries, and an injunction restraining the defendant from disturbing the ferries,—*Held* (Lush, J., *dissentiente*), that on the evidence the plaintiffs had an exclusive right of ferry or a vill-to-vill ferry between the vill of Great Yarmouth and the vill or vills of Gorleston and Little Yarmouth, and that they were entitled to an injunction restraining the defendant from disturbing that right by carrying passengers and their goods within the limits of the vill-to-vill ferry. *Held*, further, that, even assuming that the ferry established was only a point-to-point ferry (as held by Lush, J.), that (Lush, J., *dissentiente*) the acts of the defendant constituted a disturbance of it, as he had—it being a question of fact—not established that he was serving a different traffic from that for the accommodation of which the right of ferry was granted, but only an increase and development of that traffic under altered circumstances. *Newton* v. *Cubitt*, 31 L. J. C.P. 246; 12 C. B. (N.S.) 32), and *Cowes Urban Council* v. *Southampton, Isle of Wight and South of England Royal Mail Steam Packet Co.* (74 L. J. K.B. 665; [1905] 2 K.B. 287) discussed. *General Estates Co.* v. *Beaver*, 84 L. J. K.B. 21; [1914] 3 K.B. 918; 111 L. T. 957; 79 J. P. 41; 12 L. G. R. 1146; 30 T. L. R. 634—C.A.

There is no rule of law preventing the existence of a right to a vill-to-vill ferry between one vill and two vills. *Ib.*

Judgment of Pickford, J. (82 L. J. K.B. 585; [1913] 2 K.B. 433), affirmed. *Ib.*

Statutory Powers — Harbour and Ferry Trustees—Ultra Vires—Interdict—Ratepayers of Harbour—Title to Sue.]—By the Dundee Harbour and Tay Ferries Consolidation Act, 1911, the appellants were constituted a body of trustees, to be elected in part by the shipowners and harbour ratepayers of Dundee, and the Act vested in them the harbour of Dundee, and the exclusive right of working and using ferries within limits defined by the Act. They made a practice of letting out steam vessels which were not actually required for the purposes of the ferries, but were kept in reserve in case of an accident, for excursions on the river Tay beyond the limits of the harbours and ferries, as defined by the statute. The profits of such excursion traffic were brought into their general account:—*Held*, that the appellants could be restrained by interdict from so doing, such excursion traffic not being within their statutory powers, or reasonably incidental to the purposes thereof, and that the respondents, who were shipowners and harbour ratepayers in Dundee, had a good title to maintain proceedings in respect of such *ultra vires* actings. *Dundee Harbour Trustees* v. *Nicol*, 84 L. J. P.C. 74;

[1915] A.C. 550; 112 L. T. 697; 31 T. L. R. 118—H.L. (Sc.)

Decision of the Court of Session in Scotland ([1914] S. C. 374) affirmed. *Ib.*

WEIGHTS AND MEASURES.

See also Vol. XV. 199, 1929.

Implied Representation as to Weight.]—If a specific weight of goods is demanded by a customer and he receives a quantity as in implement of his order, there is a representation by the seller that the weight demanded has been supplied, and it is not *per se* sufficient to displace such representation that on the wrapper in which the article is supplied there are printed words to the effect that the article is not sold by weight. *Galbraith's Stores, Lim.* v. *M'Intyre*, [1912] S. C. (J.) 66—Ct. of Just.

See also COALS.

WILD BIRDS.

See also Vol. XV. 210, 1935.

Possession—Recently Taken.]—The question whether wild birds were recently taken, within the meaning of section 3 of the Wild Birds Protection Act, 1880, is a question of fact for the magistrate. *Rex* v. *Hopkins; Lovejoy, Ex parte*, 104 L. T. 917; 75 J. P. 340; 22 Cox C.C. 465—D.

WILL.

I. TESTAMENTARY CAPACITY.

See also Vol. XV. 216, 1939.

Capacity—No Verbal or Written Instructions — Assent to Questions by Nods and Pressure of Hands—Costs.]—A testatrix, who was incapable of speaking or writing owing to an apoplectic stroke, only assented by nods of her head and several pressures of her hand in answer to questions put to her by the person drawing her will. She made a mark with a pen in lieu of a signature :—*Held*, that if the jury believed the document was in accordance with the wishes of the testatrix they could find in favour of it. Further *held*, while the opposing parties were entitled to have the will proved in solemn form, nevertheless they were not justified in fully contesting and must bear their own costs of the action. *Holtam, In the estate of*, 108 L. T. 732—Bargrave Deane, J.

Lunatic so Found—Lucid Intervals—Power to make a Will.]—The deceased was found a lunatic by inquisition in 1869. She suffered from delusions under which she became violent and even dangerous. Her disorder was an obsessional insanity, but her obsessions were recognised by herself as morbid, and did not prevent her from taking an intelligent interest in general topics. She kept up a correspondence with her relatives and friends, and in other respects was a shrewd, clever woman, and her memory was excellent. In 1905 a will was drawn up on the instructions of the deceased, and executed by her and attested by three doctors who were prepared to certify that she was perfectly intelligent and capable at the time. The Court granted probate of the will. *Walker, In the estate of; Watson* v. *Treasury Solicitor*, 28 T. L. R. 466—Bargrave Deane, J.

Undue Influence.]—A strong *prima facie* case in favour of a will is not displaced by mere proof of serious illness or antecedent intemperance, or by evidence that there were motive and opportunity for the defendants to exercise undue influence and that some of them benefited by the will to the exclusion of other relatives of equal or nearer degree. There must be clear evidence that the undue influence was in fact exercised, or that the testator's illness so affected his mental faculties as to make them unequal to the task of disposing of his property. *Bur Singh* v. *Uttam Singh*, L. R. 38 Ind. App. 13—P.C.

—— **Evidence of Statement by Deceased Person who was Alleged to have Exercised Undue Influence on Testator—Admissibility.**]—In a probate suit the defendant alleged that the will propounded by the executors had been obtained by the undue influence of one C., who died a few days before the execution of the will. C.'s estate was not represented in the suit :—*Held*, that evidence of a statement by C., not in the presence of the testator, was admissible so far as it went to the plea of undue influence. *Radford* v. *Risdon*, 56 S. J. 416; 28 T. L. R. 342—Evans, P.

II. TESTAMENTARY INSTRUMENTS, WHAT ENTITLED TO PROBATE, &c.

A. By Soldiers and Sailors.

See also Vol. XV. 260, 1944.

Will of Soldier in "actual military service" —Time of Determination of Service—Gift to Attesting Witness — Validity.]—As "actual military service" within the meaning of section 11 of the Wills Act, 1837, commences at the time of mobilisation, so that service does not cease until the full conclusion of the operations. Where, therefore, an officer in the Indian Army, who had taken part in military operations, made a will while remaining in the district with a force as escort to the party engaged in the delimitation of the frontier, —*Held*, that he was "in actual military service" within the meaning of section 11, although the operations were regarded by the India Office for the purpose of the grant of the war medal as having terminated two months previously. Section 15 of the Wills Act, 1837, applies only to wills made under the provisions of the Act itself, and does not extend to the wills of soldiers and sailors, which, by virtue of section 11, require no attestation. If, therefore, a soldier's or sailor's will is in fact attested, a gift of personal estate to an attesting witness is valid. *Emanuel* v. *Constable* (5 L. J. (o.s.) Ch. 191; 3 Russ. 436) applied. *Limond, In re; Limond* v. *Cunliffe*, 84 L. J. Ch. 833; [1915] 2 Ch. 240; 59 S. J. 613—Sargant, J.

—— **Holograph Document—Whether a Final Testamentary Disposition.**]—Where the executors of an officer, who had died from wounds received while in command of an anti-aircraft section, propounded a will and codicil together with a holograph document, which was found in the testator's writing-block after his death, and which, it was submitted, was a "soldier's will," the Court pronounced for the will and codicil and against the holograph document, on the ground that the latter consisted of two alternative drafts and was not intended to be a final testamentary disposition. *Broughton-*

Knight v. *Wilson*, 32 T. L. R. 146—Bargrave Deane, J.

"Mariner or seaman being at sea"—Female Typist Employed on Liner—Document Written on Shore in Contemplation of Sailing.]—The deceased, who had been for several years in the employment of a steamship company as a typist, was in the habit of travelling as a typist on the vessels of the company (large ocean liners) sailing between Liverpool and New York. She spent the periods between voyages working in the company's offices in Liverpool. Her testamentary dispositions were contained in three letters. None of these documents was signed or attested as required by the Wills Act, but all, though written from the deceased's lodgings in Liverpool, were written in contemplation of sailing. The deceased was afterwards lost in the sinking of one of the ships of the company:—*Held*, that every person employed in any branch of the Royal Navy or merchant service, from the highest to the lowest, is included when at sea, in the exceptions contained in section 11 of the Wills Act; that consequently the deceased came within the meaning of the term "mariner or seaman"; and that this term is not confined to the male sex. *Held* also, that the deceased was "at sea" within the meaning of the section at the time of making her will. *Hale, In the goods of*, [1915] 2 Ir. R. 362—Madden, J.

B. Where there are Several Instruments.

See also Vol. XV. 261, 1945.

Codicil Referring to Earlier Instead of Later Will—Revival.]—A testator made a will, and afterwards made another which contained the usual clause revoking all prior wills or testamentary dispositions. Subsequently he duly executed a codicil, which by mistake was endorsed on and referred to the earlier will:—*Held*, that all three documents must be admitted to probate. *Stedham, In the goods of* (50 L. J. P. 75; 6 P. D. 205), followed. *Carleton, In the goods of*, [1915] 2 Ir. R. 9—Madden, J.

C. Joint and Mutual Wills.

See also Vol. XV. 296, 1948.

"Mutual wills" — Revocability — Joint Tenancy — Severance — Last Will — Remedies for Breach of Agreement not to Revoke Will.]—An agreement between joint tenants to make wills and the execution of wills by such joint tenants, bequeathing property the subject of the joint tenancy on identical terms subject to the life interest of the survivor, sever the joint tenancy and create a tenancy in common. *Wilford's Estate, In re; Taylor* v. *Taylor* (48 L. J. Ch. 243; 11 Ch. D. 267) followed. *Walker* v. *Gaskill*, 83 L. J. P. 152; [1914] P. 192; 111 L. T. 941; 59 S. J. 45; 30 T. L. R. 637—Evans, P.

Wills of this description sometimes called "mutual wills," or more accurately joint wills, may form the subject of an agreement between testators that they should be irrevocable, but are not recognised as such by the Court of Probate, the function of which is to decide what is the last will of a testator, and there is no rule of law that any will is irrevocable. Such a rule would contravene the essential principle that a will is revocable either by operation of law, as on the marriage of the testator, or by his act. The liberty of making testaments cannot be renounced by any agreement. Although an agreement not to revoke a will may give rise to a claim for damages as on contract, or may be enforced by a declaration of trust, the Probate Division is not the proper forum in which to seek relief for its breach. *Hobson* v. *Blackburn* (1 Addams. Ecc. 274) followed. *Raine, In the goods of* (1 Sw. & Tr. 144), commented on. *Ib.*

D. When Lost.

See also Vol. XV. 311, 1951.

Circumstances in which the Court will grant probate of the contents of a lost will. *Spain, In re*, 31 T. L. R. 435—Horridge, J.

Cum Testamento Annexo.]—*See M'Quirk, In the goods of, post*, col. 1770.

III. EXECUTION AND ATTESTATION.

See also Vol. XV. 332, 1956.

No Attestation Clause—Absence of Evidence—Surrounding Circumstances—Presumption of Execution Defeated.]—In the absence of an attestation clause, and of conclusive evidence as to execution of a testamentary paper, the Court is entitled to have regard to the surrounding circumstances in connection with or *dehors* the document, the doctrine "*omnia presumuntur rite esse acta*" notwithstanding. *Peverett, In the goods of* (71 L. J. P. 114; [1902] P. 205), distinguished. *Strong* v. *Hadden*, 84 L. J. P. 188; [1915] P. 211; 112 L. T. 997; 31 T. L. R. 256—Evans, P.

Affidavit.]—An affidavit prepared without any reference to the person who is to swear it loses much of the weight and importance it would otherwise have. Where the surviving witness to a will had sixteen years before sworn an affidavit of due execution of the will, prepared under such circumstances, the Court nevertheless condemned the will upon his evidence that the will had not been in fact duly executed, and that he had sworn the affidavit on the former occasion without sufficiently adverting to its contents. *Goodisson* v. *Goodisson*, [1913] 1 Ir. R. 31—M.R.

IV. REVOCATION.

See also Vol. XV. 366, 1961.

Subsequent Will — Invalid Disposition — Inconsistency.]—An alternative inconsistent disposition which is not valid or effectual in itself does not revoke an earlier disposition of the same property. In 1889 a testator made a will disposing of his property and giving his widow authority in a certain event to adopt a son. In 1890 he made a second

will, which made an invalid disposition of his property and did not expressly revoke the previous will and did not refer to the clause giving his widow a contingent power of adoption. Shortly afterwards he died:—*Held*, that the second will did not impliedly revoke either the disposition in the first will or the power of adoption conferred by it. *Venkatanarayana Pillay* v. *Subammal*, 32 T. L. R. 118—P.C.

Revocation on False Assumption of Fact.]—The revocation of a bequest grounded on an assumption of fact which is false, takes effect, unless as a matter of construction the truth of the fact is the condition of the revocation. *Faris, In re; Goddard* v. *Overend*, [1911] 1 Ir. R. 469—M.R.

Bequest—Codicil.]—By her will made in 1875 the testatrix bequeathed her residuary estate upon trust for her sister for life and after the death of her sister upon trust for the defendant society absolutely. In 1901 the testatrix made a codicil in the following terms: "This is a codicil to my last will and testament. I bequeath to my executors as souvenirs my two rings. . . . And I hereby appoint as my residuary legatee" the plaintiff, "bequeathing to her all that is not specified in my will:—*Held*, that the gift to the defendant society was revoked by the codicil. *Pereira, In re; Worsley* v. *Society for Propagation of the Gospel*, 56 S. J. 614; 28 T. L. R. 479—Joyce, J.

Gift of Residue in Will—Gift in Codicil of Residue not Bequeathed by Will—Inconsistent Gifts.]—A testator by his will gave the residue of his estate to certain charities. By a codicil he made the following bequest: "The residue of my estate not bequeathed by the above will I give and bequeath to M. L. absolutely":—*Held*, that the codicil did not revoke the gift of the residue given by the will, but only gave to M. L. such portion (if any) of the residue as might ultimately turn out not to have been effectually disposed of by the will. *Stoodley, In re; Hooson* v. *Stoodley*, 84 L. J. Ch. 822; [1915] 2 Ch. 295; 59 S. J. 681—Eve, J.

V. PROBATE AND LETTERS OF ADMINISTRATION.

A. To whom Granted.

1. Executors.

See also Vol. XV. 467, 1970.

Two Wills—Property in England—Property Abroad—Property Governed by Second Will Brought to England.]—The Court granted probate of a will disposing of property abroad where some of the property that passed under that will was brought to England. *Stubbings* v. *Clunies-Ross*, 27 T. L. R. 361—Evans, J.

Executor also Next-of-Kin — Action by Executor to Revoke Probate—Knowledge of Executor at Time of Probate—Estoppel—Laches.]—An executor who is also next-of-kin of the testator is not, after taking probate of his will, under the same disability with regard to contesting its validity as a bare executor, and the fact of his having taken probate does not operate as an estoppel. *Williams* v. *Evans*, 80 L. J. P. 115; [1911] P. 175; 105 L. T. 79; 27 T. L. R. 506—Horridge, J.

Laches is a question of fact, and a reasonable delay on the part of an executor, who is also next-of-kin, in commencing proceedings to revoke the probate, especially if no assets have been distributed and his action has not led other persons to alter their position, does not necessarily constitute such negligence on his part as will justify a finding of *laches* against him or render it inequitable that he should be allowed to contest the will, although he may have known of the grounds for opposition at the time of taking probate. *Ib.*

Executor in Prison — Passing over.] — *See Drawmer's Estate, In re, infra*, Administrators.

2. Administrators.

See also Vol. XV. 479, 1972.

Criminal Conviction of Executor—Refusal to Renounce—Grant—Passing over.]—Where an executor, though "willing," is not "competent," to take probate, by reason of his being in prison, the Court under the provisions of section 73 of the Court of Probate Act, 1857, will pass over the executor on that ground and make a grant under the same section to such person as it may think fit. *Drawmer's Estate, In re*, 108 L. T. 732; 57 S. J. 534—Bargrave Deane, J.

Commorientes—Special Form of Oath as to Death.]—Application to vary the usual form of oath of death in an ordinary case of *commorientes* should be made in common form to a Registrar, and not by way of motion to the Court, unless there are special circumstances of doubt as to possible survivorship, which will be referred by the Registrar to the Court. *Roby, In the goods of*, 82 L. J. P. 21; [1913] P. 6; 107 L. T. 655; 57 S. J. 98; 29 T. L. R. 95—Bargrave Deane, J.

Grant of Administration notwithstanding Alleged Will.]—The Court has power to condemn a will upon motion. But where a party interested failed to appear on such motion, though served with a citation and personally served with notice of the motion, and not being professionally advised, appeared to be ignorant of her rights, the Court granted administration notwithstanding the alleged will. *Brennan* v. *Dillon* (Ir. R. 7 Eq. 215; 8 Eq. 94) approved. *Gilbert, In the goods of*, [1911] 2 Ir. R. 36—Madden, J.

Administrator and Receiver Pendente Lite—Validity of Will of Executor Disputed—Estates of Executor and his Testator.]—A testatrix was also executrix of the will of A B, but died without taking probate. Her executor had taken administration with the will annexed of A B. In a pending suit in which the will of the testatrix was disputed

an administrator and receiver pending suit was appointed with powers extending to the estate both of A B and the testatrix. *Fawcett, In the goods of* (58 L. J. P. 87; 14 P. D. 152), followed. *Shorter* v. *Shorter*, 80 L. J. P. 120; [1911] P. 184; 105 L. T. 382; 27 T. L. R. 522—Evans, P.

Receiver — Appointment by Chancery Division Pending Probate.]—The present practice is for the Chancery Division to entertain applications for the appointment of a receiver pending the grant of probate or letters of administration. *Wenge, In re*, 55 S. J. 553—Eve, J.

Accounting Party.]—Where an applicant for administration makes an *ex parte* statement, subsequently contradicted by medical testimony, as to the incapacity of another next-of-kin, his application will on this ground alone be refused. There must be *uberrima fides* on an *ex parte* application. The Court will not grant administration to one who is himself an accounting party. *Toole, In the goods of*, [1913] 2 Ir. R. 188—Madden, J.

Undertaking by Grantee to Return Letters of Administration to Registry—Insertion of Undertaking in Letters.]—In order to provide as far as possible against the loss or destruction of letters of administration, all letters of administration are in future to contain an undertaking by the grantee to bring them into the Registry when required. *Heathcote, In the goods of*, 82 L. J. P. 40; [1913] P. 42; 108 L. T. 122; 57 S. J. 266; 29 T. L. R. 268—Bargrave Deane, J.

Grant in Official Capacity—Successor in Office.]—A grant of administration is personal to the grantee, even if taken in an official capacity, and does not pass to his successor in office. *Ib.*

Sale of Real Estate by Administratrix—Will Appointing Executors Subsequently Discovered—Revocation of Grant—Title of Bona Fide Purchaser from Administratrix.]—The person clothed by the Court of Probate with the character of administrator of a deceased person's estate is the legal personal representative of the deceased, unless and until the grant of administration is revoked or determined, with power to dispose of the deceased's assets including the real estate, which is vested in him by virtue of section 1 of the Land Transfer Act, 1897. *Hewson* v. *Shelley*, 83 L. J. Ch. 607; [1914] 2 Ch. 13; 110 L. T. 785; 58 S. J. 397; 30 T. L. R. 402—C.A.

Letters of administration were taken out to a deceased person's estate in the belief that no will existed, and the administratrix sold realty belonging to the estate. Subsequently a will was found appointing executors, and it was admitted to probate and the letters of administration revoked:—*Held*, that the purchaser had a valid title to the realty as against the executors. *Per* Cozens-Hardy, M.R., and Buckley, L.J.: An order granting administration is a judicial act, and, even if it could be held void on the ground of want of jurisdiction, the title of a purchaser from the administrator would be protected under section 70 of the Conveyancing Act, 1881. *Ib.*

Graysbrook v. *Fox* (1 Plowd. 275), *Abram* v. *Cunningham* (2 Lev. 182), and *Ellis* v. *Ellis* (74 L. J. Ch. 296; [1905] 1 Ch. 613) overruled. *Ib.*

Decision of Astbury, J. (82 L. J. Ch. 551; [1913] 2 Ch. 384), reversed. *Ib.*

3. On Presumption of Death.

See also Vol. XV. 491, 1977.

Affidavit — Uncertain Date — Motion Unnecessary.]—No application on motion to presume death is necessary where the fact of death is clear and the only doubt is as to the precise date. The proper grant will go in common form on an affidavit swearing that the deceased died on the earliest or the latest possible date or on some day between the two. *Long Sutton, In the goods of*, 81 L. J. P. 28; [1912] P. 97; 106 L. T. 643; 56 S. J. 293—Evans, P.

4. Next-of-Kin.

See also Vol. XV. 493, 1979.

Discretion to Pass over Legally Entitled Grantee — Special Circumstances — Grant to Estate of Wife—Husband Convicted of Murder of Wife.]—The conviction of a husband for the wilful murder of his wife was held a special circumstance within the meaning of section 73 of the Court of Probate Act, 1857, justifying the exercise of the discretion of the Court to pass over his personal representative in giving to the next-of-kin of the intestate wife a grant to her estate. The doctrine that no person can enforce a right resulting from his own crime applies. *Crippen, In the goods of*, 80 L. J. P. 47; [1911] P. 108; 104 L. T. 224; 55 S. J. 273; 27 T. L. R. 258—Evans, P.

5. Cum Testamento Annexo.

See also Vol. XV. 499, 1981.

Lost Will—Grant upon Motion.]—Where the assets were small, and all parties interested consented, the Court granted administration with the will annexed, in respect of a lost will, upon motion. *M'Guirk, In the goods of*, [1912] 2 Ir. R. 426—Madden, J.

Grant to "Stranger"—"Special circumstances."]—With the consent of all parties interested in the estate, the Court made a grant under the Court of Probate Act, 1857, s. 73, of letters of administration, with the last will annexed, which appointed no executors, to two persons, otherwise strangers, named as executors in an earlier will of the deceased, which the Court found to have been revoked by the last will, and against which it pronounced. *Watkin, In the goods of; Whitlark* v. *White*, 84 L. J. P. 47; [1915] P. 24; 112 L. T. 736; 59 S. J. 220; 31 T. L. R. 100—Evans, P.

Will Appointing Executors — Subsequent Will — Revocation of Dispositions in First

Will—No Executors in Second Will—Grant to Executors of First Will — Special Circumstances.]—A testatrix in 1900 made a will in which she appointed two executors. In 1911 she made another will which revoked the dispositions of property in the first will. The second will contained no appointment of executors. The testatrix left a son and daughter and her second husband surviving her. The executors of the first will were willing that letters of administration of the second will should be granted to them. The Court declined to admit both wills to probate, but held that within section 73 of the Court of Probate Act, 1857, there were special circumstances making it convenient to grant letters of administration with the second will annexed to the executors of the first will, and made an order accordingly. *Watkin, In re; Whitlark* v. *White*, 31 T. L. R. 100—Evans, P.

Executors and Legatees Alien Enemies—General Grant to Attorney of Executors—Direction not to Distribute Estate without Leave.]—Where the executors and residuary legatees named in the will of a naturalised British subject were alien enemies, a general grant of administration, with the will annexed, under section 73 of the Court of Probate Act, 1857, was made to the attorney appointed by the executors before the outbreak of war, with directions not to distribute the estate without the leave of a registrar. *Koenigs, In the Estate of*, 59 S. J. 130—Bargrave Deane, J.

6. Creditors.

See also Vol. XV. 500, 1983.

No Known Next-of-Kin—Small Estate—Citation Dispensed with.]—Where the estate of an intestate was small and next-of-kin (if any) had been advertised and enquired for without result, and the deceased had himself stated that he had no relations, a grant was made to a creditor without citing the next-of-kin (if any) under section 73 of the Court of Probate Act, 1857. *Heerman, In the goods of*, 80 L. J. P. 7; [1910] P. 357; 103 L. T. 816; 55 S. J. 30; 27 T. L. R. 51—Bargrave Deane, J.

Small Estate — Notice — Citation.]—On the application of a creditor for administration of a small estate, the Court made the grant under section 73 of the Court of Probate Act, 1857, on proof of notice of the application to the widow, without requiring her to be cited. *Bishop, In the goods of*, 108 L. T. 928; 57 S. J. 611—Evans, P.

Renunciation of Probate by Executor—Alternative Capacity of Executor as Creditor—Grant de Bonis non.]—Rule 50 of the Non-contentious Probate Rules of 1862 is discretionary, and a grant may be made in another capacity to a person who has renounced. *Toscani, In the goods of*, 81 L. J. P. 15; [1912] P. 1; 105 L. T. 911; 56 S. J. 93; 28 T. L. R. 84—Bargrave Deane, J.

A was a creditor of the deceased. He was also sole executor of his will. A, as executor, renounced probate, and a grant of administration was made to B, a residuary legatee, with the will annexed. On the death of B leaving assets unadministered, A was permitted to take a grant with the will annexed *de bonis non* in his alternative capacity as creditor. *Ib.*

7. Public Trustee.

The Court has power to make a grant of administration to the Public Trustee, passing over the heir-at-law, widow, and next-of-kin of deceased. *Woolley, In the goods of*, 55 S. J. 220—Evans, P.

Where Alien Enemy Next-of-Kin.]—In the case of a deceased intestate, whose next-of-kin were alien enemies, it was held that the administrator proper to be appointed under the special circumstances of the case was the Public Trustee as custodian under the Trading with the Enemy (Amendment) Act, 1914, and not a person designated as executor by the deceased in an informal testamentary paper. *Schiff, In the goods of*, 84 L. J. P. 79; [1915] P. 86; 113 L. T. 189; 59 S. J. 303—Bargrave Deane, J.

Alien Enemy's Estate—Domicil Abroad.]—Under special circumstances the Court permitted a limited grant of administration to the estate of alien enemies domiciled abroad to pass, under section 73 of the Court of Probate Act, 1857, subject to restrictions as to the disposal of the residue, to a British subject domiciled in England who held a power of attorney from the next-of-kin. *Grundt, In the estate of; Oetl, In the estate of*, 84 L. J. P. 175; [1915] P. 126; 113 L. T. 189; 59 S. J. 510; 31 T. L. R. 437—Evans, P.

The Court nevertheless expressed the opinion that, as a general rule, it was in the public interest advisable that in such cases the grant should go to the Public Trustee in his capacity of custodian under the Trading with the Enemy Amendment Act, 1914. *Ib.*

8. Official Receiver and Trustee in Bankruptcy.

Bankruptcy of Person Entitled to Administer—Official Receiver—Citation—Sureties.]—The right to a grant of administration of an undischarged bankrupt vests under the Bankruptcy Act, 1883, in his trustee in bankruptcy without citing the bankrupt, and, if the official receiver is the trustee in bankruptcy, without sureties. The grant will be made under the Court of Probate Act, 1857, s. 73. *Bowron, In the goods of*, 84 L. J. P. 92; 112 L. T. 478; [1915] H. B. R. 78; 59 S. J. 108—Bargrave Deane, J.

Wife's Estate—Bankruptcy of Husband—Grant to Trustee in Bankruptcy.]—Where the husband of a deceased intestate was an undischarged bankrupt, a grant of administration to the wife's estate was, under section 73 of the Court of Probate Act, 1857, made to the husband's trustee in bankruptcy, without citation of or notice to the husband. *Bowron, In the Estate of*, 59 S. J. 108—Bargrave Deane, J.

9. Attorneys.

See also Vol. XV. 520, 1986.

Grant to Minister Plenipotentiary of Foreign Sovereign—Bond—Sureties.]—On an application for a grant of administration to the estate of a foreign Sovereign to be made to the minister plenipotentiary of the foreign State as attorney for the deceased Sovereign's successor, the Court made a grant to such attorney giving a bond, without sureties. *Siam (King) Estate, In re*, 107 L. T. 589; 57 S. J. 61; 29 T. L. R. 40—Bargrave Deane, J.

10. On Renunciation of Parties.

See also Vol. XV. 528, 1987.

Where A, the executor named in the will of the testator, renounced probate, and administration with the will annexed was granted to the testator's residuary legatee, who died intestate with no known relative, leaving the estate unadministered, the Court made a grant of administration *de bonis non* to A as a creditor, though he had renounced probate. *Toscani, In the goods of*, 81 L. J. P. 15; [1912] P. 1; 105 L. T. 911; 56 S. J. 93; 28 T. L. R. 84—Bargrave Deane, J.

11. Limited Grant.

See also Vol. XV. 531, 1989.

Circumstances in which the Court will make a limited grant of probate of a will. *Falkner's Estate, In re*, 59 S. J. 599; 31 T. L. R. 525—Bargrave Deane, J.

Grant during Incapacity of Surviving Executor.]—A testator appointed an executor and an executrix. The executor proved the will, liberty to prove being reserved to the executrix. The executor died leaving an executor. The executrix survived and became incapable of acting, and a grant *de bonis non* with the will annexed of the testator was made to a residuary legatee for the use and benefit of the executrix during her incapacity. The executrix died intestate, leaving assets of the testator unadministered. The residuary legatee applied for a grant *de bonis non* with the will annexed of the testator:—*Held*, that the grant for the use and benefit of the surviving executrix during her incapacity was equivalent to a grant of probate to her; that consequently the executor of the deceased executor did not represent the original testator; and that as the executrix had died intestate a grant *de bonis non* should be made to the residuary legatee. *Frengley, In the goods of*, [1915] 2 Ir. R. 1—Madden, J.

Alien Enemy's Estate—Domicil Abroad—Powers of Public Trustees.]—In the case of two alien enemies, domiciled in Hungary, who died intestate in this country, leaving personal estate in this country, their next-of-kin being resident in an enemy country, the Public Trustee expressed the view that he had no power to take a grant of administration of the estate of a person having a foreign domicil, and the Court, in the special circumstances of the case, made a limited grant, under section 73 of the Court of Probate Act, 1857, of letters of administration to an acquaintance of the deceased persons, who was a British subject resident and domiciled in England and was the holder of a power of attorney from their next-of-kin, the grant being made on the terms that the grantee should deliver the proceeds to the Public Trustee as the custodian of enemy property, but the Court intimated that in most cases of the administration of the estates of alien enemies the Public Trustee should take the grant, it being within his power to accept a grant in cases where persons died domiciled abroad. *Grundt, In the estate of; Oetl, In the estate of*, 84 L. J. P. 175; [1915] P. 126; 113 L. T. 189; 59 S. J. 510; 31 T. L. R. 437—Evans, P.

Limited Grant to Party Entitled to General Grant—Cæterorum Grant—Foreign Domicil—Concurrent Wills—Separate Executors.]—The Court has a discretion under rule 30 of the Non-contentious Rule of 1862 to depart from the practice of refusing a limited grant to a person entitled to a general grant. *Brentano, In the goods of*, 80 L. J. P. 80; [1911] P. 172; 105 L. T. 78; 27 T. L. R. 395—Evans, P.

A domiciled foreigner left two wills, one executed according to the form of his domicil, dealing with foreign assets and English personalty and appointing a foreign executor, and the other executed according to English form, dealing with English realty only and appointing English executors. The Court made separate grants—(*a*) to the English executors limited to the real estate, and (*b*) a *cæterorum* grant to the foreign executor save and except the realty. *Ib.*

B. Administration Bond.

See also Vol. XV. 553, 1992.

Public Trustee.]—By section 11, sub-section 4 of the Public Trustee Act, 1906, the Public Trustee is not required to give a bond of security. *Woolley, In the goods of*, 55 S. J. 220—Evans, P.

Assignment by Registrar—Jurisdiction.]—A Registrar in the Probate Division has jurisdiction, without the intervention of the Judge, to assign an administration bond under the provisions of section 83 of the Court of Probate Act, 1857, and it is the settled practice for assignments of this nature so to be made by the Registrar. *Cope* v. *Bennett*, 81 L. J. Ch. 182; [1911] 2 Ch. 488; 105 L. T. 541; 55 S. J. 521, 725—Swinfen Eady, J.

Assignee—Suing in Representative Capacity.]—The assignee of an administration bond who sues upon the bond, though bound to recover on behalf of himself, and all other persons interested in the estate, is not bound to state in the formal parts of his writ or pleadings that he is suing in a representative capacity. *Ib.*

c. Revocation and Alteration of Grant.

See also Vol. XV. 568, 1995.

Absence of Administrator — Goods Unadministered—Revocation of Grant—De Bonis non Grant — Small Estate.] — A grant of administration which cannot be brought in for cancellation, the administrator having taken it with him out of the jurisdiction, may nevertheless be revoked, and a new grant *de bonis non* may be issued without citing or giving notice to the administrator, where the goods unadministered are of small value, on the ground of avoidance of delay and expense. *Thomas, In the goods of*, 81 L. J. P. 91; [1912] P. 177; 107 L. T. 201—Evans, P.

d. Practice.

See also Vol. XV. 576, 1998.

Omission of Libellous and Malicious Statements—Absence of Dispositive Effect of Words Used.]—The Court will direct to be omitted from the probate and any copies thereof issuing from the registry, though not to be deleted from the will itself, passages and expressions of a malicious or libellous character which have no dispositive effect. *A. B., In the goods of*, or *White, In re*, 83 L. J. P. 67; [1914] P. 153; 111 L. T. 413; 58 S. J. 534; 30 T. L. R. 536—Bargrave Deane, J.

Discovery—Privilege—Briefs to Counsel in Previous Litigation against Testator—Solicitor of Testator in Previous Litigation a Party to Probate Action.]—Although the general principle obtaining in testamentary litigation is that all material acts of the testator should be disclosed, this does not extend to instructions to counsel on behalf of the testator in previous litigation, to which he was a party, where the instructions in question were not prepared at the instance of the testator himself, but by his solicitor. *Cooper, In re; Curtis* v. *Beaney*, 80 L. J. P. 87; [1911] P. 181; 105 L. T. 303; 27 T. L. R. 462—Bargrave Deane, J.

One of the plaintiffs, an executor in an action to propound a will, in which the capacity of the testatrix was in issue, had, as her solicitor in a former action against her, prepared briefs to counsel on her behalf to conduct her defence :—*Held*, notwithstanding a suggestion that the previous defence raised her incapacity, that the briefs in question were privileged from disclosure. *Ib.*

Costs — Will and Two Codicils Proved in Common Form by Executors—Third Codicil—Action by Beneficiary against Executors — Defence of Undue Execution—Codicil Admitted to Probate—Executors Condemned in Costs.]—In a probate action, where the plaintiff and a defendant, daughters of the testator, were practically the only persons interested in the residue under a will and two codicils thereto, the plaintiff propounded a third codicil, two years after probate of the will and earlier codicils had been granted. The executors of the will desired the plaintiff to propound the third codicil before they would consent to prove it, and in their defence pleaded that the codicil was not duly executed and that the testator did not know and approve of the contents thereof. The codicil was admitted to probate and the executors were condemned in costs. *Speke, In re; Speke* v. *Deakin*, 109 L. T. 719; 58 S. J. 99; 30 T. L. R. 73—Bargrave Deane, J.

Conduct of Parties Responsible for Will and Benefiting by it the Cause of Litigation—Power of Court to Order Costs of all Parties to be Paid out of Legacies of Responsible Parties, though Successful.]—It is a well-established principle that the vigilant suspicion of the Court is excited by the preparation and obtaining of a will by a party who is benefited by it. If on enquiry that suspicion is removed, those instrumental in bringing about that enquiry are not wholly in the wrong, although they fail in the litigation. In such a case the Court has power even after a trial by jury to order that the costs shall not follow the event, but that those of all parties shall in compliance with Order LXV. rule 14 (d) be defrayed out of that portion of the estate which by the will is bequeathed to the persons whose conduct has been the cause of the enquiry, although successful in the litigation. *Child* v. *Osment*, 83 L. J. P. 72; [1914] P. 129; 110 L. T. 990; 58 S. J. 596—Evans, P.

VI. CONSTRUCTION.

a. Admissibility of Extrinsic Evidence.

See also Vol. XV. 662, 2007.

Instructions.]—A testatrix bequeathed a part of her residuary estate to "The Royal Hospital for Women." There was no hospital of which that was the correct designation, but there were several institutions whose title was more or less similar thereto :—*Held*, that evidence of a conversation between the testatrix and her solicitor when he received instructions to prepare her will, in which the testatrix expressed an intention to benefit a particular institution, was not admissible to ascertain which hospital was entitled to the bequest. *Bateman, In re; Wallace* v. *Mawdsley*, 27 T. L. R. 313—Joyce, J.

Gift to Husband, Wife, and "their daughter"—Latent Ambiguity.]—A testatrix gave her residuary estate to be divided between her brother W., "his wife and their daughter." The brother and his wife had in fact several daughters, but it appeared that the testatrix had been on terms of special intimacy with one of them, P., and had by a previous will given to her one-half of the residuary estate :—*Held*, that evidence both of the special intimacy existing between the testatrix and P., and of the terms of the previous will, was admissible to shew which daughter of W. was intended, and that on the evidence the expression "their daughter" referred to P. :—*Held*, also, that W. and his wife took each a third share of the residue,

and not a moiety between them. *Jeffery, In re; Nussey* v. *Jeffery*, 83 L. J. Ch. 251; [1914] 1 Ch. 375; 110 L. T. 11; 58 S. J. 120—Warrington, J.

Dixon, In re; Byram v. *Tull* (42 Ch. D. 306), followed. *Jupp, In re; Jupp* v. *Buckwell* (57 L. J. Ch. 774; 39 Ch. D. 148), distinguished. *Ib.*

Misdescription of Devisee — Ambiguity — Person Dead at Date of Will.]—A testator devised real property to John William H., the son of Israel H. The said Israel H. had a son named John William H., who died in 1874 when ten days old, and seventeen years before the date of the will; he had another son, the defendant John Robert H., who was born in 1878:—*Held*, that extrinsic evidence was admissible to shew whom the testator intended to benefit, and that John Robert H. took under the devise. *Ely, In re; Tottenham* v. *Ely* (65 L. T. 452), not followed. *Halston, In re; Ewen* v. *Halston*, 81 L. J. Ch. 265; [1912] 1 Ch. 435; 106 L. T. 182; 56 S. J. 311—Eve, J.

B. Mistake or Misdescription.

See also Vol. XV. 681, 2011.

Legatee Accurately Named — Ambiguity — Rival Claimant.]—Where a legatee is accurately named in a will there is no rigid rule forbidding any further enquiry as to who is the person to take the benefit, but there is a strong presumption against any person claiming whose name is not that mentioned in the will, which can only be overcome by positive evidence of a cogent nature, clearly proving that the testator did not mean the person so named in the will to take the benefit. *National Society for Prevention of Cruelty to Children* v. *Scottish National Society for Prevention of Cruelty to Children*, 84 L. J. P.C. 29; [1915] A.C. 207; 111 L. T. 869; 58 S. J. 720; 30 T. L. R. 657—H.L. (Sc.)

A domiciled Scotsman by his will, made in Scots form, left legacies to various Scottish charities, and also a legacy to "The National Society for the Prevention of Cruelty to Children." There was a society of which that was the correct title, which had its headquarters in London, and confined its operations to England; there was also a "Scottish National Society for" the same object, which worked in Scotland, and that society claimed the legacy:—*Held*, that the English society was entitled to the legacy. *Ib.*

Judgment of the Court of Session ([1913] S. C. 412; 50 Sc. L. R. 271) reversed. *Ib.*

C. Changing Words.

See also Vol. XV. 703, 2016.

"Or" read as "and" — Gift Over — Repugnancy.]—Where a will contained an absolute devise with a gift over in case the devisee should die "intestate or childless or under the age of twenty-one (but not otherwise)" and the devisee survived the testator and attained twenty-one, but died a spinster intestate,—*Held*, that either the first or the second "or" must be read as "and," and that the gift over failed as being either void for repugnancy, or because the events referred to had not happened. *Crutchley, In re; Kidson* v. *Marsden*, 81 L. J. Ch. 644; [1912] 2 Ch. 335; 107 L. T. 194—Parker, J.

D. Particular Words.

See also Vol. XV. 732, 2017.

Gift of Equitable Fee-simple—Gift Over on Death "Unmarried and without lawful issue" —Construing "Unmarried" "Widower"—Extent of Gift Over—No Words of Limitation.]—A testator who died in 1828 devised freeholds to a trustee and his heirs upon trust for J. and his heirs, but in case of J.'s death unmarried and without lawful issue then upon trust for S. for her life, and after her death upon trust for all and every her children living at her death who should attain twenty-one or marry, with benefit of survivorship. J. married, but his wife predeceased him, and he died without having ever had any issue:—*Held*, that "unmarried" must be construed in its secondary sense of "widower," since otherwise the words "and without lawful issue" were superfluous; and that the gift over on J.'s death therefore took effect. *Sanders' Trusts, In re* (L. R. 1 Eq. 675) and *Chant, In re; Chant* v. *Lemon* (69 L. J. Ch. 601; [1900] 2 Ch. 345), followed. *Jones, In re; Last* v. *Dobson*, 84 L. J. Ch. 222; [1915] 1 Ch. 246; 112 L. T. 409; 59 S. J. 218—Sargant, J.

Will before Wills Act, 1837—Equitable Fee-simple Defeasible to Extent of Life Estates only.]—But *held* also that, the testator having died before the passing of the Wills Act, 1837, the children of S. *prima facie* took equitable life estates only; that since an equitable fee-simple exhausting the legal fee-simple given to the trustee had already been given by the will to J., there was no reason for cutting down that equitable estate in fee-simple to a greater extent than that of the giving of equitable life estates to the children of S.; and that on the death of the survivor of these children the property reverted to the estate of J., and passed under his will. *Gatenby* v. *Morgan* (45 L. J. Q.B. 597; 1 Q.B. D. 685) applied. *Ib.*

Gift Over on Death without Heirs to Person Capable of being Heir—"Heirs" not Read as "heirs of the body."]—A testator left a chattel farm to his son John, and directed that if he should die "without lawful aires" the farm should go to the testator's son Thomas or his "airs," he paying certain sums to John's widow and his brothers and sisters. John died without issue:—*Held*, that the context shewed that the words "without lawful aires" meant without next-of-kin, being children or descendants, and that the gift over to Thomas took effect. *Kirkpatrick* v. *King* (32 Ir. L. T. R. 41) distinguished. *Gray* v. *Gray*, [1915] 1 Ir. R. 261—Barton, J.

Gift of Annuities—Gift of Legacies "subject thereto."] — The meaning of the words "subject thereto" in a will must be discovered by an examination of the whole scheme of the will, and must not always be taken to mean subject to all that has gone before such words. *Colvile, In re; Colvile* v. *Martin*, 105 L. T. 622; 56 S. J. 33—Swinfen Eady, J.

"Become entitled as aforesaid."] — A testatrix by her will dated November 19, 1850, devised real estate to trustees upon trust to receive the rents and profits and pay them to her daughter for life and after her death to pay the rents and profits to the children of the daughter until the youngest attained twenty-one, and then to convey to the children as tenants in common. But in the event (which happened) of there being no child of the daughter who attained twenty-one, the testatrix directed that the trustees or trustee of the will for the time being should convey and assure the same to her three brothers A, B, and C as tenants in common. "But in case all or either of my said brothers shall depart this life before they or he become entitled as aforesaid, the trustees or trustee for the time being of my will shall convey and assure the share or shares of them or him so dying, to my nieces as tenants in common." The daughter died in 1910, A died in 1861, B in 1885, and C in 1887. A had two daughters, and B three. For the representatives of A, B, and C it was contended that they "became entitled" to a vested interest at the death of the testatrix:—*Held*, that the context shewed that "entitled as aforesaid" meant entitled to have the property conveyed to them, and that in the events that happened the property passed to the nieces and not to the representatives of the brothers. *Whiter, In re; Windsor* v. *Jones*, 105 L. T. 749; 56 S. J. 109—Swinfen Eady, J.

Apparent Ambiguity—Choice of Interpretation — Ejusdem Generis Rule — Sufficiency of Category.]—By his will the testator bequeathed "all my pictures (except portraits)" to the trustees of the National Gallery, "but the portraits of myself and all my family and other portraits . . . I give and bequeath . . . to my nephew":—*Held*, that "except portraits" meant the portraits thereafter excepted—namely, those given to his nephew and described as "the portrait of myself and all my family and other portraits," and that the words "other portraits" meant portraits of the same category as family portraits. *Layard, In re; Layard* v. *Bessborough*, 32 T. L. R. 122—Astbury, J.

E. Devisees and Legatees.

1. **Gifts Generally.**

Defendant Legatee Convicted of Manslaughter of Testator—Forfeiture of Right to Take under Will—Public Policy—Defendant Struck Out upon Interlocutory Proceedings.] —It is contrary to public policy that a person convicted of the manslaughter of a testator should be permitted to take an interest under that testator's will. *Hall, In re; Hall* v. *Knight*, 83 L. J. P. 1; [1914] P. 1; 109 L. T. 587; 58 S. J. 30; 30 T. L. R. 1—C.A.

The doctrine that no person can enforce a right directly resulting to him from his own crime laid down in *Cleaver* v. *Mutual Reserve Fund Life Association* (61 L. J. Q.B. 128; [1892] 1 Q.B. 147) applied. *Ib.*

If the facts are indisputable the Court can deal with a pure question of law on interlocutory proceedings. *Ib.*

2. **Gifts to what Persons.**

a. *Wife.*

See also Vol. XV. 743, 2020.

Gift to Wife "during her widowhood"—Condition—Bigamous Marriage.]—The plaintiff, whose husband disappeared in 1894 and was not heard of again till 1910, went through the ceremony of marriage with the testator in 1903. The testator believed himself to be lawfully married to the plaintiff, although he knew that there was a possible risk of her husband being alive, and they lived together as man and wife until his death in 1906. By his will the testator gave certain things to "my wife" and made other bequests to her "during her widowhood and after her decease or second marriage" to his daughters:—*Held*, upon the construction of the will and in the circumstances of the case, that the plaintiff, although not legally the testator's widow, was entitled to enjoy the property until she died or re-married, as if she were his widow. *Hammond, In re; Burniston* v. *White*, 80 L. J. Ch. 690; [1911] 2 Ch. 342; 105 L. T. 302; 55 S. J. 649; 27 T. L. R. 522—Parker, J.

Gift to Widow for Benefit of Children.]—A bequeathed his property to his wife in the following terms: "I leave and bequeath all my property, chattels, money, bank shares, and my life insurance, or whatever I am possessed of or entitled to, to my beloved wife to be disposed of as she may think best for the good of our children":—*Held*, that under this bequest, the wife became entitled beneficially to the whole of the property. *Berryman, In re; Berryman* v. *Berryman*, [1913] 1 Ir. R. 21—M.R.

b. *Children.*

See also Vol. XV. 749, 2022.

Parricide — Father's Estate — Whether Lunatic Entitled to Share.]—A lunatic who kills his father is entitled to benefit under his father's will, if his father has left a will, or to receive his proper share under his father's intestacy if his father has died intestate. *Houghton, In re; Houghton* v. *Houghton*, 84 L. J. Ch. 726; [1915] 2 Ch. 173; 113 L. T. 422; 59 S. J. 562; 31 T. L. R. 427—Joyce, J.

Issue of Deceased Son Living at Testator's Death—Child en Ventre sa Mère.]—A child of a testator's son *en ventre sa mère*, and born after his father's and the testator's death, is "living" at the time of the death of the

testator so as to make section 33 of the Wills Act, 1837, apply to a devise or bequest to the testator's deceased son. *Griffiths, In re; Griffiths* v. *Waghorne*, 80 L. J. Ch. 176; [1911] 1 Ch. 246; 104 L. T. 125—Joyce, J.

"Remaining children."] — The words "remaining children," unless another meaning can be inferred from the context, must be taken to mean the other children, or "the rest" of the children not otherwise dealt with, and cannot be construed, apart from other circumstances in the will to suggest such construction, to mean the surviving children. *Speak, In re; Speak* v. *Speak*, 56 S. J. 273—Parker, J.

"Younger children"—Eldest Son—Portions—Period of Distribution—Maintenance.]—By his will a grandfather devised an estate to his son W. for life, with remainder to his first and other grandsons (the sons of W.) successively, in tail male, with remainder, if no grandson attained twenty-one, to the testator's granddaughter or granddaughters, or such of them as should attain twenty-one or marry, and if more than one in equal shares as tenants in common in tail, with cross-remainders. The testator charged the estate in favour of grandchildren in these terms: "For the younger children of my said son W. or such of them as shall attain twenty-one, or being daughters shall marry before that age, that is to say, for one younger child the sum of 3,000*l.*, for two younger children the sum of 4,000*l.*, equally between them, and for three or more younger children the sum of 5,000*l.* in equal proportions." After the death of his grandfather and father, T., the first-born grandson, became tenant in tail male in possession of the estate, and died in 1910, under age and unmarried. There survived him one brother, who thereupon became the tenant in tail male in possession, and two sisters. None of them had attained twenty-one or married. The minors were wards of Court, and there was a sum of about 2,300*l.* in Court representing accumulations of interest on the portions charge of 5,000*l.* provided by the will which had been lodged by the receiver pursuant to order out of the rents and profits of the estate accruing since T. was in possession as tenant in tail male:—*Held*, first, that the accumulations of interest upon the younger children's portions charge, after providing for maintenance, belonged to the administratrix of T.; secondly, that T. had not qualified to receive a younger child's portion, because he had died before the period of distribution, and had been in the character of "eldest son" in possession of the estate; and that consequently no larger sum than 4,000*l.* could ever be raisable for the purpose of the younger children's portion. The Court also declared that the sum presumptively raisable on foot of the portions charge did not bear interest during the infancy or spinsterhood of the female minors, but only such annual allowance in lieu of interest as the Lord Chancellor might deem necessary for their reasonable maintenance. *Caldbeck* v. *Caldbeck*, [1911] 1 Ir. R. 144—Barton, J.

Illegitimate Children—Erroneous Belief of Testatrix as to Status of Children.]—A testatrix by her will dated January 3, 1911, gave her residue in trust for her brother for life and after his death in trust "for all or any of the children or child" of her brother, living at the death of the survivor of herself and her brother, and the children or child then living of any deceased child of his. The testatrix died on October 16, 1911, and her brother ten days later. Both at the date of the will and of the death of the testatrix her brother had six living illegitimate children by a woman to whom he was reputed to be married and who was accepted as his wife in the society in which they moved. She died in 1900. The six children were received as legitimate. The testatrix knew all of them and was fond of some, and believed all of them to be legitimate. The testatrix's brother married a lady in 1904, by whom he had two legitimate children:—*Held*, that, as the case could not be brought within either of the two classes of cases in which the *prima facie* meaning of "children"—that is, "legitimate children"—is departed from, as laid down in *Hill* v. *Crook* (42 L. J. Ch. 702; L. R. 6 H.L. 265) by Lord Cairns, the two legitimate children only took under the gift. *Pearce, In re; Alliance Assurance Co.* v. *Francis*, 83 L. J. Ch. 266; [1914] 1 Ch. 254; 110 L. T. 168; 58 S. J. 197—C.A.

Brown, In re; Penrose v. *Manning* (63 L. T. 159), approved. *Du Bochet, In re; Mansell* v. *Allen* (70 L. J. Ch. 647; [1901] 2 Ch. 441), disapproved. *Ib.*

Per Swinfen Eady, L.J.: There can be a class in which illegitimate children share with legitimate. *Ib.*

Gift to Brothers and Sisters—Substantial Gift to their Issue—One Legitimate Sister Only — One Illegitimate Sister — Rights of Issue of Illegitimate Sister.] — Where a testator made a bequest to his "brothers and sisters" with a substitutionary gift over to their issue, and he had, in fact, four brothers and two sisters, only one of whom was legitimate, and the other illegitimate,—*Held*, that the Court could not give adequate effect to the use of the plural term "sisters" without including the illegitimate sister as a *persona designata* under the will, and that her issue were accordingly entitled to share in the residuary estate. *Pearce, In re; Alliance Assurance Co.* v. *Francis* (83 L. J. Ch. 266; [1914] 1 Ch. 254), commented on and applied. *Embury, In re; Bowyer* v. *Page*, 111 L. T. 275; 58 S. J. 612—Sargant, J.

c. *Issue.*

See also Vol. XV. 786, 2025.

"Issue"—Prima Facie Meaning—Ambiguity—Rebuttal of Rule in Sibley v. Perry by Internal Evidence.]—The rule in *Sibley* v. *Perry* (7 Ves. 522) is only a rule which has determined a particular ambiguity in a particular way. Where there is internal evidence in the will sufficient for the Court to draw an inference that the narrow interpretation of the word "issue" by that rule to mean children

only is rebuttable, such inference should be drawn and the broader and *prima facie* meaning of the word "issue," as including all descendants thereby restored. *Embury, In re; Page* v. *Bowyer*, 109 L. T. 511; 58 S. J. 49—Sargant, J.

Gift to Issue—Per Stirpes—Determination of Stirpes.]—A testator gave property in trust for the issue of his deceased aunts, C. E. H. and H. M. M., living at his decease, and he added, "such issue to take *per stirpes* and not *per capita*." There were thirteen separate families of the issue:—*Held*, that the words "*per stirpes*" referred to the issue and not to the two aunts, and that consequently the property was devisible into thirteen shares, and not into two shares, and that one such share was to be in trust for each family of issue. *Robinson* v. *Shepherd* (4 De G. J. & S. 129) followed. *Gibson* v. *Fisher* (37 L. J. Ch. 67; L. R. 5 Eq. 51) not followed. *Dering, In re; Neall* v. *Beale*, 105 L. T. 404—Warrington, J.

Life Interest to Daughter and Surviving Husband—Remainder to "Issue" upon Death or Re-marriage of Husband.]—By his will dated October 31, 1883, a testator appointed trustees and gave to them his property of every kind with powers of management, and provided as follows: "And as to the rest, residue, and remainder of my property I direct the income thereof to be paid to and amongst my four children (naming them) in equal shares during their natural lives, and after the decease of any one or more of them leaving a husband or wife him or her surviving, then the share of such deceased child or children to be in trust for such husband or wife him or her surviving, for the term of each of their natural lives or until they remarry, and after their respective deaths or remarriage then to the issue (if any) of such deceased child, and in case of no such issue to go to or amongst my surviving children or child, or their, his, or her issue; and I further direct that all the benefits conferred by this my will shall be had and enjoyed without power of anticipation by the persons or person for the time being otherwise entitled for their lives or life as aforesaid." The testator died on August 22, 1889. One of the testator's children was married and had children living at the date of the will. The other three children were married after the date of the will. The bulk of the property subject to the trusts consisted of chattels real, and there was also some real estate:—*Held*, first, that in the devise "to the issue (if any) of such deceased child" the word "issue" was a word of purchase and not of limitation, both as regards the real and personal estate of the testator; secondly, that the word "issue" included all descendants, limited in each case to such of them as were living at the time when the gift in each case took effect; and thirdly, that as the class constituting "issue" might not be ascertainable within legal limits, the gift to such issue, as well as the gift over in default of issue, was void as infringing the rule against perpetuities. *Taylor's Trusts, In re; Taylor* v. *Blake*, [1912] 1 Ir. R. 1—Wylie, J.

Issue to Take Predeceasing Parent's Share—Whether Gift to Issue Subject to Conditions Affecting Parent's Share.]—A testator directed his trustees to hold a share of the residue of his estate for his eldest son in liferent and his issue, if any, in fee, declaring that, in the event of the death of that son without issue, the capital of his share should fall and belong to the testator's two other sons and his three daughters "equally among them and the survivors or survivor of them, the issue of any of them predeceasing being entitled equally among them, if more than one, to their deceased parent's share." The liferenter died without issue, predeceased by two of his sisters, who, however, left issue, some of whom, though surviving their parent, predeceased the liferenter:—*Held*, that, as the issue were called in place of their deceased parents and not as original legatees, the gift to them was subject to the same conditions as the gift to their parents; and, accordingly, that no vesting had taken place in the issue who predeceased the liferenter. *Martin* v. *Holgate* (35 L. J. Ch. 789; L. R. 1 H.L. 175) distinguished. *Addie's Trustees* v. *Jackson*, [1913] S. C. 681—Ct. of Sess.

d. *Cousins.*

See also Vol. XV. 808, 2027.

Meaning of "half-cousin."]—Under a bequest to "my cousins and half-cousins" where the testatrix left her surviving first cousins, first cousins once removed, first cousins twice removed, and second cousins,—*Held*, that first cousins, first cousins once removed, and second cousins were entitled. *Chester, In re; Servant* v. *Hills*, 84 L. J. Ch. 78; [1914] 2 Ch. 580—Sargant, J.

e. *Nephews and Nieces.*

See also Vol. XV. 810, 2027.

Words of Futurity—Gift to Nephews and Nieces—Gift to Children of Nephew or Niece who should Die in the Lifetime of the Tenant for Life under the Will—Niece Dead at Date of the Will, Leaving a Child.]—The child of a niece, dead at the date of the will, of a testator was held entitled to share under a trust "for all my nephews and nieces living at the decease of the said Sarah Waterfall (the tenant for life), as tenants in common in equal shares, provided always that if any of my said nephews and nieces shall die in the lifetime of the said Sarah Waterfall, leaving a child or children who shall survive her, and being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age, or marry under that age, then and in every such case the last-mentioned child or children shall take (and, if more than one, equally between them) the share which his, her, or their parent would have taken of and in the proceeds of my said estate if such parent had survived the said Sarah Waterfall." *Taylor, In re; Taylor* v. *White*, 56 S. J. 175—Swinfen Eady, J.

Gift to Named Persons on Attaining Twenty-one—Nephews and Nieces—Some

Attain Twenty-one, but Predecease Testatrix —Class—Lapse.]—A testatrix by her will gave the residue of her estate upon trust for all her nephews and nieces thereinafter named, "that is to say, W. B. and J. A., the two children of my sister, H. A., and A. P., W. B., C. L., A. D., and E. B., the five children of my brother, S. B., who being sons have attained or shall attain the age of twenty-one years, or being daughters have attained or shall attain that age or shall marry under that age, in equal shares as tenants in common." All the named nephews and nieces attained the age of twenty-one, but three predeceased the testatrix:—*Held*, that, the gift was not a class gift, but a gift to named persons, and the shares of those who predeceased the testatrix lapsed. *Bentley, In re; Podmore* v. *Smith*, 110 L. T. 623; 58 S. J. 362—Joyce, J.

Appointment of Named Nephews as Trustees — Named Nephews Including Nephews by Affinity—Residuary Gift to "my nephews and nieces."] — A testatrix appointed "her nephews" A, B, and C executors and trustees of her will, and devised and bequeathed the residue of her property to them upon trust to divide the same equally between "her nephews and nieces" living at the date of her death and the children then living of "her nephews and nieces" who should have predeceased her, such children to take equally between them the share only to which their parent would have been entitled. Of the three executors and trustees named A only was a nephew by consanguinity of the testatrix, B and C being nephews of a deceased husband:—*Held*, that only nephews and nieces by consanguinity of the testatrix and the children of such of them as had predeceased her shared in the residuary gift. *Green, In re; Bath* v. *Cannon*, 83 L. J. Ch. 248; [1914] 1 Ch. 134; 110 L. T. 58; 58 S. J. 185—Sargant, J.

f. *Heirs.*

See also Vol. XV. 835, 2032.

Devise of Realty—Remainder to "nearest male heir."]—A testator by his will devised real estate to H. M. for life, and after his decease "to my nearest male heir, and should there be two or more in equal degrees of consanguinity to me" then "unto the eldest of my male kindred for the term of his natural life, with remainder to the heirs of the body of my said eldest male relative." The testator died in 1897. The tenant for life died in 1910. At the time of the death of the testator, and at the time of the death of the tenant for life, a Mrs. W., a first cousin of the testator, was his heiress-at-law. At the time of the death of the testator, L. W., the son of a cousin, was his nearest male relative. He died without issue in 1901, and at the date of the death of the tenant for life the appellant, the son of a sister of L. W., was the nearest male relative of the testator:—*Held*, that, having regard to the whole will, "nearest male heir" was not to be given the strictly technical meaning of "heir male," that there was no intestacy, and, on the death of the tenant for life, the estate vested in the appellant, who was the only living male relative of the testator. *Lightfoot* v. *Maybery*, 83 L. J. Ch. 627; [1914] A.C. 782; 111 L. T. 300; 58 S. J. 609—H.L. (E.)

Judgment of the Court of Appeal (82 L. J. Ch. 240; [1913] 1 Ch. 376) reversed. *Ib.*

g. *Servants.*

See also Vol. XV. 854, 2032.

"Clerk" in a Certain Specified Employment—Claim by Pursers on Ships—Whether Entitled to Participate.]—By a clause in his will a testator bequeathed legacies free from duty to such of the persons as should at his death be in his employ, or the employ of any firm or company of which he was a member or director at his death. There followed the names of certain persons. The clause then contained the following: "A year's salary to each clerk not included in the above list who shall have been ten years in the employ of Elder, Dempster, and Co., or Elder, Dempster Shipping Limited." A half-year's salary or three months' salary was given to each clerk not mentioned or referred to above who should have been five years or one year respectively in the same employ. The question was, first, whether a purser was a "clerk" within the meaning of the clause in the will; and secondly, whether pursers engaged by Elder, Dempster & Co. as managers of various steam shipping liners were pursers in their employ within the meaning of that clause:—*Held*, that a purser was not a "clerk" within the meaning of the clause, he being a member of the crew of the ship on which he was employed in that capacity, and it was immaterial that he had certain clerical work to discharge on board such ship. *Jones, In re; Williams* v. *Att.-Gen.*, 106 L. T. 941—C.A.

Held, also, that the pursers in question were not in any case in the employ of Elder, Dempster & Co., for although that firm were not only managers of the various steam shipping lines, but also owned shares in the same, they were not "employers" of the pursers. *Ib.*

Bequest to Indoor and Outdoor Servants—"Amount of a year's wages"—Servants not Engaged at a Yearly Wage.]—Testator bequeathed to each of his servants (indoor and outdoor) who should have been in his service for five years previously to his death "the amount of one year's wages in addition to what may be then actually due to them for wages":—*Held*, that the bequest was not confined to servants engaged by the year or at a yearly wage, but extended also to servants who fulfilled the prescribed conditions, but were engaged at quarterly or weekly wages. *Blackwell* v. *Pennant* (22 L. J. Ch. 155; 9 Hare, 551) and *Ravensworth* (*Earl*), *In re; Ravensworth* v. *Tindale* (74 L. J. Ch. 353; [1905] 2 Ch. 1), distinguished. *Sheffield* (*Earl*), *In re; Ryde* v. *Bristow*, 80 L. J. Ch. 521; [1911] 2 Ch. 267; 105 L. T. 236—C.A.

Gift to "Domestic servants" — Service during Two Years—Companion—Housekeeper

— Certified Male Nurse.]— A testator bequeathed to each of his domestic servants who should have been in his service for two years prior to his death one year's wages free of duty. There had been in the testator's service for two years prior to his death a companion-housekeeper and a certified male nurse. The latter did not sleep in the house, and was absent from duty for four months during the two years :—*Held*, that the companion-housekeeper and male nurse were domestic servants and entitled to a year's wages. *Held* also, that the absence of the male nurse for four months being taken with the consent of the testator did not prevent the service being continuous. *Lawson, In re: Wardley* v. *Bringloe*, 83 L. J. Ch. 519; [1914] 1 Ch. 682; 110 L. T. 573; 58 S. J. 320; 30 T. L. R. 335—Eve, J.

Legacy to "Man servant"—One Person Answering the Description — Intention of Testator.]—A testator, who had in his employment a valet and a chauffeur, gave a legacy to his "man servant" if he should be in his employment at the date of his death. At the date of his death the testator had only the chauffeur in his employment :—*Held*, that the chauffeur was entitled to the legacy. *Bell, In re; Wright* v. *Scrivener*, 58 S. J. 517—Warrington, J.

h. *Persons Filling a Particular Description.*

See also Vol. XV. 858, 2033.

Executor—Subsequent Revocation by Codicil of Appointment as Executor—Implied Revocation of Legacy.]—A testatrix by her will appointed "my friends F. and C. to be the executors of this my will, to each of whom I give the legacy, or sum, of 500*l.*" By a codicil the testatrix declared, "I hereby revoke the appointment of C. as executor, and in his stead appoint the Public Trustee as executor of my will with F." :—*Held*, that the legacy in the will was to C. in the character of executor, and that C. was not entitled to take. *Walne* v. *Hill* ([1883] W. N. 171) followed. *Russell, In re: Public Trustee* v. *Campbell*, 56 S. J. 651—Joyce, J.

—— Residuary Gift to Sole Executor—"At his own disposal"—Beneficial Gift.]—A testatrix by her will, after appointing a sole executor and bequeathing legacies to several persons, including the executor by name, but declaring no trusts, provided as follows : "the remainder or residue of my property (if any) shall be at the discretion of my executor and at his own disposal" :—*Held*, that the executor took the residue beneficially. *Howell, In re: Buckingham, In re; Liggins* v. *Buckingham*, 84 L. J. Ch. 209; [1915] 1 Ch. 241; 112 L. T. 188—C.A.

Decision of Warrington, J. (83 L. J. Ch. 811; [1914] 2 Ch. 173), reversed. *Ib.*

Legacy to Trustees and Executors—Codicil—Appointment of New Trustee in Place of Original Appointment—Will to be Construed as if Name of New Trustee Originally Inserted.]—By her will the testatrix appointed the plaintiff and B. executors and trustees, and she gave to each of her trustees a legacy of 500*l.*, and also to each of her trustees for the time being 50*l.* per annum so long as any of the trusts therein contained should continue. By a codicil the testatrix revoked the appointment of B. as executor and trustee and the legacy of 500*l.* and the annual allowance, and appointed W. to be executor and trustee, and gave him a legacy of 50*l.* for his trouble. She further declared that her will should be construed as if the name of W. had been inserted instead of the name of B. :—*Held*, that W. was entitled to the legacy of 50*l.* and to the annuity of 50*l.*, but not to the legacy of 500*l.* *Mellor, In re; Dodgson* v. *Ashworth*, 56 S. J. 596; 28 T. L. R. 473—Eve, J.

Devise to Parish Priest—Gift to the Office and not for Personal Benefit — Trust.]—A testator, after devising a life estate to his wife in certain freeholds, provided as follows : "At my wife's demise I desire that the two houses become the property of the parish priest of U. on condition of paying 10*l.* yearly to my brother's son P., and also 1*l.* yearly for masses for the repose of the souls of the deceased members of my family." The devise of the freeholds to the parish priest was void under section 16 of the Charitable Donations and Bequests Act as the testator died within three months of the date of his will :—*Held*, that the parish of U. was a trustee for the testator's nephew P. in respect of the annuity of 10*l.*, and for the heir-at-law of the testator as to the rest of the property. *Corcoran* v. *O'Kane*, [1913] 1 Ir. R. 1—Barton, J.

Bequest to Home—Absorption of Home in a Larger Association.]—A testatrix by her will left a sum of money to a home for women and children. In the year in which the will was made the home referred to was absorbed into a larger institution, carrying on the same work :—*Held*, that the larger association took the bequest. *Wedgwood, In re; Sweet* v. *Cotton*, 83 L. J. Ch. 731; [1914] 2 Ch. 245; 111 L. T. 436; 58 S. J. 595; 30 T. L. R. 527—Joyce, J.

"Legatees."]—Bequest of the residue "to the several legatees other than charitable legatees hereinbefore named" :—*Held*, that "legatees" meant persons to whom a bequest of personalty was made, and did not include a devisee of a freehold farm. *Held*, also, that a legatee to whom a non-charitable legacy was given by a subsequent clause in the will was entitled to a share in the residue. *Ellard* v. *Phelan*, [1914] 1 Ir. R. 76—Ross, J.

"Relatives" of Deceased Person.] — A widow by her will left her residuary estate in trust for her son J. for life, and after his decease in trust for his children, and in case of no such issue (which event happened) in trust to pay the income to her daughters M. and B. and her grandson W. for their lives, in such shares as J. should appoint, and on their respective deaths the principal to be paid and transferred to such relatives of J.'s father, S. (the testatrix's late husband) as J.

should by will appoint. J. died without making any appointment, and was survived by W., who was the last surviving tenant for life :—*Held*, that on the death of W. the persons entitled to the testatrix's residuary estate were the statutory next-of-kin of S. living at the death of J. *Swan, In re; Reid* v. *Swan*, [1911] 1 Ir. R. 405—C.A.

Gift to Successors to Title.]—A testator having a title in the peerage of Scotland and in the peerage of the United Kingdom, left his property in England and Scotland without reservation or hindrance to his successors in the titles. One individual, both at the time of the will and of the death of the testator, was in fact next entitled to both titles :—*Held*, that the intention of the testator was to make an absolute gift of the property in each country to the person who should succeed him in either title. *Catheart (Earl), In re*, 56 S. J. 271—Warrington, J.

Contingent Gift of Chattels — Disentailing Assurance — Sale of Valuable Picture — Devolution.]—A testator made a specific bequest of chattels to his wife for life, and after her death "to the person who under this my will shall at her death become entitled to the possession of my mansion, . . . such person to take the same absolutely for his or her own benefit." After his death the widow and the eldest son executed a disentailing assurance as to the mansion, and thereby settled the property upon such trusts as they should jointly appoint, and in default of appointment upon the trusts subsisting prior to the execution of the disentailing assurance under which the son was tenant in tail in remainder :—*Held*, that it being impossible to say that the eldest son would become entitled to the mansion on the death of the widow, as he might die in her lifetime, the legacy of chattels was an ordinary contingent gift after the life of the widow to the person who under the limitations of the will should at her death become entitled to the possession of the mansion; and that the eldest son was not at present absolutely entitled in reversion to the chattels. *Caledon (Earl), In re; Alexander* v. *Caledon*, 84 L. J. Ch. 319; [1915] 1 Ch. 150; 112 L. T. 75—Joyce, J.

3. Gifts to a Class.

See also Vol. XV. 883, 2033.

Gift in Remainder—Gift to Next-of-Kin at Death of Tenant for Life without Issue—Time for Ascertaining Class—Artificial Class.]—A testatrix gave her residuary estate to her daughter for life with remainder to her issue, and in default of issue to trustees upon trust at their discretion to divide the same amongst such one or more of the persons who, at the time of the daughter's decease, should be the testatrix's next-of-kin according to the Statutes of Distribution. The daughter survived the testatrix, and died unmarried :—*Held*, that the class to take was an artificial class of next-of-kin, which was to be ascertained at the death of the daughter. *Helsby, In re; Neate* v. *Bozie*, 84 L. J. Ch. 682; 112 L. T. 539—Eve, J.

Description of a Class—Children or other Issue.]—A testator left certain residue of his estate "unto and equally between the children or other issue" of certain persons who should be living at the death of his wife, "all such children or other issue to take in equal shares *per capita*" :—*Held*, that if there were any children alive at the time of the death of the wife of the testator they took the property, to the exclusion of all others, *per capita;* but if there were no children then alive, the other issue took *per capita*. *Pearce, In re; Eastwood* v. *Pearce*, 56 S. J. 361—Warrington, J. Affirmed, 56 S. J. 686—C.A.

Gift to Nearest of Kin of Deceased Husband and of His First Wife—Nearest of Kin of Both Jointly, or of Each.]—A testatrix by her will gave certain leasehold property to her son for life and after his decease to his lawful issue equally. In the event of his death without leaving lawful issue, which event happened, she gave the property "unto the nearest of kin of my said late husband W. S. deceased and of S. S. his former wife deceased in equal shares and proportions." There was no issue of the union of W. S. and S. S., nor were they, so far as was known, relations of each other before marriage :—*Held*, that the gift was to a class consisting of the nearest of kin of W. S. and the nearest of kin of S. S. living at the death of the testatrix), and not to a class consisting of persons who were the nearest of kin of both of them jointly. *Pycroft* v. *Gregory* (4 Russ. 526) distinguished. *Soper In re; Naylor* v. *Kettle*, 81 L. J. Ch. 826; [1912] 2 Ch. 467; 107 L. T. 525—Parker, J.

Class, when Ascertained—Child who Predeceased Tenant for Life—Implied Gift.]—A gift upon trust for the daughter of the testatrix for life, and after her death "upon trust for her child, if only one, or her children in equal shares if more than one, and the issue of any deceased child or children, such issue being born in the lifetime" of the daughter, does not confer any interest on a daughter who died before the death of the tenant for life a spinster. *Shaw, In re; Williams* v. *Pledger*, 56 S. J. 380—Neville, J.

When Class Closes—Forfeiture.]—By a second codicil a testator narrowed down an absolute gift in the will to W. J. Curzon, which had been reduced to a life interest in the first codicil to a life interest forfeitable on bankruptcy, and after this interest had determined the property was to go upon the trusts "in the will contained," "and as an acceleration to such trusts"—that is, to all the children of the said W. J. Curzon who attained twenty-one. One child, the plaintiff, had attained that age :—*Held*, that the class was closed so soon as W. J. Curzon was adjudicated a bankrupt. *Curzon, In re; Martin* v. *Perry;* 56 S. J. 362—Neville, J.

—— **Life Interest—Remainder to Children—Attainment of Twenty-one — Divisibility of Fund.**]—A testator gave his residuary estate upon trust to pay one equal half part of the annual income to each of his two sons and

subject thereto as to the capital and income for their children who being sons should attain twenty-one, or being daughters should attain that age or marry, such children to take *per capita*. The testator died in 1895, and both of his sons survived him, each of them having two children, who were infants at the death of the testator. In 1899 one of the sons died, and in 1912 his eldest son attained twenty-one. The other son was alive, being over sixty years old at the date of this summons, and the other three children were still infants, and the question arose whether the class of children to take was closed when the eldest child attained twenty-one :—*Held*, that the class was not closed till the death of the son who was still alive and entitled to the annual income of one half of the fund, so that any child born in the lifetime of such surviving son would be entitled to a share, and therefore the child who had already attained twenty-one was not entitled to call for payment out of his share till the death of such son. Rule in *Andrews* v. *Partington* (3 Bro. C.C. 401) held not applicable. *Emmet* v. *Emmet* (49 L. J. Ch. 295; 13 Ch. D. 484) followed. *Faux, In re; Taylor* v. *Faux*, 84 L. J. Ch. 873; 113 L. T. 81; 59 S. J. 457; 31 T. L. R. 289—Astbury, J.

4. Gifts to Survivors.

See also Vol. XV. 937, 2037.

Cross-limitations — Gap — Implication — "Survivors or survivor" — Intestacy.]—A testator gave the proceeds of sale of his residuary personalty upon trust to pay the income to his three daughters F., S., and H. for their lives in equal shares, with a gift over of the share of any of them dying leaving issue to her children at twenty-one in equal shares. Then followed a direction that, in the event of any of the daughters dying without leaving issue, the "survivors or survivor" of them should take the share of such deceased daughter in such income for life, and then a gift, in case all the said daughters should die without leaving issue, to the testator's statutory next-of-kin. H. died first, a spinster, then F., leaving six children, who attained twenty-one; and lastly S. died without leaving issue :— *Held*, that, in order to imply cross-limitations to the children of F. on the shares of S. and H. in the events which had happened, it would have been necessary to construe "survivors or survivor" as "others or other," and that could not be done in a case where the only gift over was to the survivors as life tenants with no gift in remainder to their children or issue. No cross-limitations could therefore be implied, and there was an intestacy as to the shares of S. and H. *Mears, In re; Parker* v. *Mears*, 83 L. J. Ch. 450; [1914] 1 Ch. 694; 110 L. T. 686—Eve, J.

Life Interest—Remainder to Class—Gift over to "Survivors"—Survivorship Ascertained at Death of Tenant for Life.] — A testator gave his residuary estate to his widow for life and then to be divided equally between his children. After the *testimonium*, and before his signature, he added a clause directing that in case of the death of one or more of his children their equal share or shares were to be divided between the survivors :—*Held*, that the survivorship must be referred to the period of division—namely, the death of the tenant for life—and that a child who predeceased the tenant for life took nothing under the gift. *Cripps* v. *Wolcott* (4 Madd. 11) followed. *Poultney, In re; Poultney* v. *Poultney*, 81 L. J. Ch. 748; [1912] 2 Ch. 541; 107 L. T. 1; 56 S. J. 667—C.A.

"With benefit of survivorship in the same family."]—Gift, after an estate for life, to A, B, and C, who was the daughter of B, "in equal shares, with benefit of survivorship, in the same family." A and B died before the tenant for life :—*Held*, that the words "in the same family" confined the "benefit of survivorship" to B and her daughter C, and accordingly the estate of A took one-third and C took the remaining two-thirds. The principle of *Crawhall's Will Trusts, In re* (8 De G. M. & G. 480), applied. *Sadler, In re; Furniss* v. *Cooper*, 60 S. J. 89—Joyce, J.

5. Distribution per Stirpes or per Capita.

See also Vol. XV. 987, 2041.

Gift of Moiety "to the children of A and B"—Mode of Division.]—A testatrix gave a moiety of her residuary estate, subject to a life tenancy, "to be divided equally between the unmarried daughters of my brother-in-law" A and B "equally." At the date of her will and death A had three unmarried and two married daughters. B, to whom the testatrix gave a legacy of 500*l.* "in recognition of friendship and his many kindnesses," had one daughter only, aged about four years; and at the same date the testatrix was aged about sixty-three years, and the tenant for life about seventy-four years :—*Held*, that B himself, and not his unmarried daughters, was the second legatee; but that the division ought to be in equal fourth shares between him and the unmarried daughters of A, and not in moieties. *Walbran, In re; Milner* v. *Walbran* (75 L. J. Ch. 105; [1906] 1 Ch. 64), followed on the first point, but not followed on the second point. *Harper, In re; Plowman* v. *Harper*, 83 L. J. Ch. 157; [1914] 1 Ch. 70; 109 L. T. 925; 58 S. J. 120—Sargant, J.

Determination of Stirpes.]—*See Dering, In re, ante*, col. 1783.

6. Death without Having or Leaving Issue.

See also Vol. XV. 1012, 1092, 2042.

"Die without having had any male issue"—To what Period Referable.]—A Hindu made a will leaving all his property to his two sons and directed that "should either of these two sons die without having had (leaving) any male issue, the survivor of the said two sons is duly to take the whole of the property appertaining to the share of the deceased son." On the death of the testator in 1901 he left two sons surviving him. One of these sons died in 1903 leaving no male issue :—*Held*, that the other surviving son was entitled to the

whole of the estate conveyed by the above clause. *Chunilal Parvatishankar* v. *Bai Samrath*, 30 T. L. R. 407—P.C.

"Die without issue"—Vested Estate in Possession—Gift Over.]—A testator devised his real estate, which consisted of three farms, as to one moiety to his son and as to the other moiety to his widow and two daughters in equal shares. Later in the will he directed that if the son should "die without issue" prior to the death of his mother or his sisters the whole estate was to go to the widow and daughters. The son survived his mother and died in the lifetime of his sisters, leaving issue:—*Held*, that the words "die without issue" meant without leaving issue him surviving, and not an indefinite failure of issue, and that therefore the gift over did not take effect. *Crowder* v. *Stone* (7 L. J. (o.s.) Ch. 93; 3 Russ. 217) and *Jarman* v. *Vye* (35 L. J. Ch. 821; L. R. 2 Eq. 784) distinguished. *Dunn* v. *Morgan*, 84 L. J. Ch. 812; 113 L. T. 444—Eve, J.

7. Settled Shares and Substitutional and Alternative Gifts.

See also Vol. XV. 1050, 2045.

Legacy — Condition as to Priority — Subsequent Codicil — Settled Legacy Substituted.] — The rule of construction that, *prima facie*, a substituted legacy is subject to the same conditions as an original legacy, is not confined to cases where the only change introduced is one of amount, but may sometimes apply to cases where the legatee, under the substituted gift, is a different person from the original legatee. *Leacroft* v. *Maynard; Pearson* v. *Leacroft* (1 Ves. 279; 3 Bro. C.C. 233), followed. *Joseph, In re; Pain* v. *Joseph* (77 L. J. Ch. 832; [1908] 2 Ch. 507), distinguished. *Backhouse, In re; Salmon* v. *Backhouse*, 60 S. J. 121—Sargant, J.

Words of Futurity—Gift to Children of Sons and Daughters who "shall die in my lifetime"—Son Dead at Date of Will Leaving Children.]—A will contained a gift of residue in trust for all the children of the testator living at his death who should attain twenty-one, or being daughters should attain that age or marry, in equal shares, with a proviso "that if any child of me shall die in my lifetime leaving a child or children who shall survive me and being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then and in such case the last mentioned child or children shall take" their parent's share. To the knowledge of the testator one of his sons had died before the date of the will, leaving two children (to whom the testator had given a legacy in an earlier part of his will):—*Held*, that they were contingently entitled on attaining twenty-one or on marriage to share in the residue. *Williams, In re; Metcalf* v. *Williams*, 83 L. J. Ch. 570; [1914] 2 Ch. 61; 110 L. T. 923; 58 S. J. 470—C.A.

Decision of Sargant, J. (83 L. J. Ch. 255; [1914] 1 Ch. 219), affirmed. *Ib.*

Loring v. *Thomas* (30 L. J. Ch. 789; 1 Dr. & Sm. 497), *Barraclough* v. *Cooper* (77 L. J. Ch. 555*n.*; [1908] 2 Ch. 121*n.*), *Lambert, In re; Corns* v. *Harrison* (77 L. J. Ch. 553; [1908] 2 Ch. 117), and *Metcalfe, In re; Metcalfe* v. *Earle* (78 L. J. Ch. 303; [1909] 1 Ch. 424), followed. *Ib.*

Christopherson v. *Naylor* (1 Mer. 320), *Gorringe* v. *Mahlstedt* (76 L. J. Ch. 527; [1907] A.C. 225), *Musther, In re; Groves* v. *Musther* (59 L. J. Ch. 296; 43 Ch. D. 569), and *Cope, In re; Cross* v. *Cross* (77 L. J. Ch. 558; [1908] 2 Ch. 1), distinguished. *Ib.*

Gift of Income to Children in Equal Shares During their Lives—Substitution of Issue for Deceased Parent — Implication of Cross-remainders.] — A testator gave certain real estate on trust to pay the income arising therefrom to his children in equal shares during their lives, or to their issue in case any of them should die before the others of them, and from and after the decease of all his children on trust for sale and division of the proceeds between his grandchildren in equal shares *per stirpes*. He left three children, one of whom, F., had died without issue, and another, E., had died leaving one daughter:—*Held*, that cross-remainders must be implied between the children on the principle of *Armstrong* v. *Eldridge* (3 Bro. C.C. 215) and *Pearce* v. *Edmeades* (8 L. J. Ex. Eq. 61; 3 Y. & C. 246), the provision substituting issue for a deceased parent not affecting the application of the principle; and that the one-third share of the income to which F. had been entitled was therefore devisible, during the life of the surviving child of the testator, equally between that child and the daughter of E. *Tate, In re; Williamson* v. *Gilpin*, 83 L. J. Ch. 593; [1914] 2 Ch. 182; 109 L. T. 621; 58 S. J. 119—Sargant, J.

Gift to Brother or Sister Dying before Testatrix Leaving Issue Surviving Her—Bequest to Dead Person—Validity.]—A testatrix, under a general power to appoint a trust fund, subject to her husband's life interest, appointed it by will in 1881 to her brother and four sisters by name "or such of them as shall be living at the decease of the survivor of myself and my said husband, provided always that if my said brother and sisters or either of them shall die in my lifetime or in the lifetime of my said husband leaving issue who shall be living at the decease of "such survivor, "then the appointment . . . shall take effect as if my said brothers or sisters respectively had died immediately after the death of "such survivor. Testatrix died in 1900, and her husband in 1909, a sister, F., having died in 1893 leaving issue who survived both:—*Held*, that in her case the gift was one to a dead person, that it was an attempt to apply the language of the Wills Act, 1837, to a case where it was not applicable, and that the estate of F. was not entitled to share in the distribution. *Gresley, In re; Willoughby* v. *Drummond*, 80 L. J. Ch. 255; [1911] 1 Ch. 358; 104 L. T. 244—Swinfen Eady, J.

Gift to Brother and Nephew—Legatee Predeceasing Testatrix—Provision against Lapse—Gift to Take Effect as if Legatee had Survived Testatrix—Substitutionary Gift.]—A testatrix by her will made in 1897 gave her residuary estate to trustees upon trust for sale and conversion, and to pay four seventeenth parts of the proceeds to her brother B. absolutely, two seventeenth parts to her brother J. absolutely, one seventeenth part to her niece A. absolutely, two seventeenth parts to her nephew J. S. absolutely, and the remaining seventeenth parts to various other legatees. After providing for the event of any of the said four legatees dying in her lifetime without leaving issue, the will contained the following clause: "I declare that if any of them my said brothers B. and J., my niece A. and my said nephew J. S. shall die in my lifetime leaving issue, and any of such issue shall be living at my death the benefits hereinbefore given to him or her so dying shall not lapse but shall take effect as if his or her death had happened immediately after mine." The testatrix died on October 22, 1910. Both her brother J. and her nephew J. S. died in her lifetime, and each of them left issue who survived the testatrix:—*Held*, that the shares of J. and J. S. did not lapse as undisposed of, but went to their respective legal personal representatives as parts of their respective personal estates. *Greenwood, In re; Greenwood* v. *Sutcliffe*, 81 L. J. Ch. 298; [1912] 1 Ch. 392; 106 L. T. 424; 56 S. J. 443—Parker, J.

Clunies-Ross, In re; Stubbings v. *Clunies-Ross (infra)*, followed. *Gresley, In re; Willoughby* v. *Drummond* (80 L. J. Ch. 255; [1911] 1 Ch. 358), and *Scott, In re* (70 L. J. K.B. 66; [1901] 1 K.B. 228), distinguished. *Ib.*

Class—Children and Collaterals—Gift to Include Persons who Predecease Testator Leaving Issue at his Death—Niece Dying before Testator—Valid Gift to Personal Representatives.] — A testator bequeathed and devised his residuary estate to trustees upon trust to convert the same, and after making certain payments to divide the residue among all his children, both sons and daughters, and his niece, E. C. R., in equal shares as tenants in common, the said niece and children to form one class together taking in equal shares, and in case any one of the said residuary legatees might die in the testator's lifetime leaving any issue who should be living at the testator's death, then and in such case the gift of a share of residue in favour of such residuary legatee should take effect in the same manner as if such residuary legatee had survived the testator and died immediately after his death. The niece died in the lifetime of the testator, leaving issue who were living at the testator's death:—*Held*, that under the will there was a good gift of the share of the deceased niece to her legal personal representative as part of her estate. *Gresley, In re; Willoughby* v. *Drummond* (80 L. J. Ch. 255; [1911] 1 Ch. 358), not followed. *Clunies-Ross, In re; Stubbings* v. *Clunies-Ross*, 106 L. T. 96; 56 S. J. 252—Joyce, J.

8. **Gifts Over.**

See also Vol. XV. 1090, 2050.

Executory Devise over on a Contingency—Restricted to Time Prior to Period of Distribution.]—In a will, where there is a period of distribution, a gift over on death means death before the period of distribution. *Kerr's Estate, In re*, [1913] 1 Ir. R. 214—Ross, J.

"Other and others."]—Under a gift, in the event of a daughter dying without being married, to the other and others of the testator's daughters by name in equal shares, the words "other and others" will not be read as "survivor and survivors" unless the context requires it. *Stanley* v. *Bond*, [1913] 1 Ir. R. 170—M.R.

9. **Acceleration of Interests.**

See also Vol. XV. 1113, 2051.

Gift of Income of Fund to Widow until Re-marriage—Gift of Fund on Her Death—Re-marriage of Widow.]—A testator directed his executors to pay to his wife the income of a fund of 1,000*l.* so long as she remained unmarried, and on her re-marriage to pay her 300*l.* out of the fund. On the widow's death he directed "the money funded for her use" to be divided among the eldest sons of the testator's brother and sisters "then living," and mentioned in the will. The widow re-married:—*Held*, that, upon the determination of the widow's interest in the fund by her re-marriage, there was an acceleration of the subsequent interests, and also an acceleration of the time of ascertainment of the class of donees. *Johnson, In re* (68 L. T. 20), applied. *Crothers' Trusts, In re*, [1915] 1 Ir. R. 53—Barton, J.

Attestation by Legatee — Gift over.] — A testator made a bequest of chattels real to T. with a gift over in the event of his dying without issue to J. and K. T. attested the execution of the will, so that the bequest to him became void. He was alive and unmarried. There was no residuary gift in the will:—*Held*, that the gift over to J. and K. was not accelerated, and that it was only in the event of the death of T. without issue that they would be entitled to the chattels real. *Kearney* v. *Kearney*, [1911] 1 Ir. R. 137—C.A.

F. Bequests and Devises.

1. **Words of.**

a. *What Property will Pass by Particular Words and Description.*

i. Particular Words.

See also Vol. XV. 1120, 2052.

Large Emerald Ring.]—Where a testator bequeathed to a lady "a ring with a large emerald" and his jewellery included a single-stone emerald man's ring and a lady's ring containing a large emerald and two small diamonds,—*Held*, that the latter ring was the

one referred to by the will. *Scott, In re; Scott* v. *Scott* (*No.* 1), 30 T. L. R. 345—Warrington, J.

"Books"—Whether Manuscript Log-book Included.]—The manuscript log-book of H.M.S. *Victory held* to pass under a bequest to "one-half of all the rest of my books" to each of the testator's two sons. *Barratt, In re; Barratt* v. *Coates*, 31 T. L. R. 502—C.A.

Decision of Warrington, J. (31 T. L. R. 71), affirmed. *Ib.*

"Contents of house"—Objects of Art—Furniture—Decorations—Articles Removable by Tenant.]—A testator by his will, after defining "ordinary furniture" as including carpets, curtains, articles of ornament of an ordinary kind, household crockery, &c., but excluding sculptures, pictures, objects of art or antiques, whether furniture or otherwise, devised and bequeathed his real and personal estate to trustees upon trust for sale, and to pay to his wife a sum equal to 10 per cent. of the net proceeds of sale of such of the contents of his house as were not included in the expression "ordinary furniture." At the time of his death the testator had a leasehold house:—*Held*, that the expression "contents of my house" included everything that could, as between landlord and tenant, be removed by the testator from the house, including panellings, mantelpieces, painted ceilings, &c. *Oppenheim, In re; Oppenheim* v. *Oppenheim*, 111 L. T. 937; 58 S. J. 723—Joyce, J.

"All my furniture and household effects at present at Aubrey Lodge"—Motor Car in Outbuilding.]—Where a testator by his will gave all his furniture and household effects "at present at Aubrey Lodge" to A, and gave his books, family letters, and relics "at present at Aubrey Lodge" to B, and there was a motor car in an outbuilding at Aubrey Lodge which it was stated had been purchased subsequently to the date of the will,—*Held*, that the motor car passed under the gift to A. *Home, In re; Fermichough* v. *Wilkinson* ([1908] W. N. 223), followed. *Hall, In re; Watson* v. *Hall* (56 S. J. 615; 28 T. L. R. 480), distinguished. *Ashburnham, In re; Gaby* v. *Ashburnham*, 107 L. T. 601; 57 S. J. 28—Swinfen Eady, J.

"Household effects"—"Contents of dwelling house"—Cash—Jewellery.]—A testatrix by her will specifically devised certain jewellery and gave her residue on trust for her nephews and nieces and their children. By a codicil she devised her dwelling house, No. 13 Esplanade, and bequeathed all her "furniture, plate, linen, china, glass, books, pictures, and household effects of every description, and all other the contents of the said dwelling house except any articles I may have bequeathed by my said will" to her nephew W. At the testatrix's death the contents included (*a*) certain jewellery, (*b*) 40*l.* in Bank of England notes and cash, (*c*) other jewellery, and (*d*) 50*l.* in Bank of England notes had been deposited in the bank during testatrix's illness without her instructions, although she was subsequently told it had been done:—*Held*, first, that everything in the house passed by the bequest; secondly, that the jewellery deposited at the bank was notionally in the house; and thirdly, that the 50*l.* had become part of the testatrix's current account and did not pass. *Lea, In re; Wells* v. *Holt*, 104 L. T. 253—Swinfen Eady, J.

"House and land now in the occupation of R."—Extra Piece of Land.]—A gift by a testator of the net income from "a house and land known as No. 41 S—— Street, now in the occupation of R.":—*Held*, to include the income arising from a piece of land at the rear of No. 41, not originally occupied with the premises, but leased twelve years ago by the testator, together with No. 41, to R. *Fuller, In re; Arnold* v. *Chandler*, 59 S. J. 304—Neville, J.

Gift of "Carriages, horses, harness, and stable furniture and effects"—Motor Car.]—The testator by his will made the following bequest: "I give to my said wife absolutely all my carriages, horses, harness, and stable furniture and effects." At the time of his death the testator was the owner of a motor car, and there was evidence that about the time he purchased it he sold his horses and carriages except one horse and two carriages, having formerly kept three or four horses and several carriages:—*Held*, that, having regard to the collocation of the word "carriages," the testator only meant to give to his wife such carriages as were used in connection with horses, and therefore that the motor car did not pass by the bequest. *Hall, In re; Watson* v. *Hall*, 107 L. T. 196; 56 S. J. 615; 28 T. L. R. 480—Parker, J.

Works of Art—Tapestries Affixed to Walls of House.]—Tapestries affixed to the walls of a house by placing a silk damask hanging over a white cloth lining and by sewing the tapestries to the silk damask hanging will pass under a bequest of the testator's "works of art," and do not form part of the house so as to be a part of the residuary estate. *Scott, In re; Scott* v. *Scott* (*No.* 1), 30 T. L. R. 345—Warrington, J.

Meaning of "Money"—Legacy of "10 per cent. of my money."]—A testator gave 10 per cent. of his money in charity, and bequeathed the rest of his property to his children, share and share alike:—*Held*, that "money" included, besides money at the testator's call, Consols, stocks that could be immediately turned into cash, and arrears of rent of real and personal estate belonging to the testator, but not capital sums secured by mortgages. *O'Connor* v. *O'Connor*, [1911] 1 Ir. R. 263—C.A.

Bequest of "Moneys" at the Post-Office Savings Bank—Holding of Consols at same Bank—Consols not Included under "Money."]—A testatrix having referred to "any money which may at the time of my decease be standing to my credit at the . . . Post-Office Savings Bank," bequeathed "the residue of such moneys." The testatrix had a balance in cash and also a holding of Consols which

had been purchased for her through the Bank :—*Held*, that the Consols did not pass under the gift. *Adkins, In re; Solomon* v. *Catchpole* (98 L. T. 667), distinguished. *Mann, In re; Ford* v. *Ward*, 81 L. J. Ch. 217; [1912] 1 Ch. 388; 106 L. T. 64; 56 S. J. 272—Neville, J.

"Cash in house"—Post-Office Money Orders—"Consols"—Two-and-a-Half per Cent. Annuities—"Savings Bank deposits"—Local Loans Stock.]—By his will the testator provided as follows: "I leave to my wife . . . all cash in house. . . . I leave to my wife and my daughter M. F. W. in equal shares all cash in bank, consols, shares, and savings bank deposits. . . ." The testator never had any Two-and-a-Half per Cent. Consolidated Stock, but he had Two-and-a-Half per Cent. Annuities :—*Held*, first, that Post-Office money orders passed under the bequest of "cash in the house"; secondly, that the term "Consols" was not used in the strictly technical sense, but was used as meaning Government Stocks, and therefore that it covered the Two-and-a-Half per Cent. Annuities; and thirdly, that 300*l.* Local Loans Stock standing in the testator's name in the stock register of the Post-Office Savings Bank passed under the bequest "savings bank deposits." *Windsor, In re; Publie Trustee* v. *Windsor*, 108 L. T. 947; 57 S. J. 555; 29 T. L. R. 562—Warrington, J.

"Ready money"—Money on Deposit—Course of Business.]—Where the evidence shews that by the course of business between the testatrix and her banker, money on deposit at her bank was frequently drawn upon by the testatrix, and such drawings were always met in precisely the same manner as drawings upon her current account,—*Held*, that the gift in her will of "ready money standing in my name or to my credit at my bank" was effectual to pass such moneys on the deposit account. *Rodmell, In re; Safford* v. *Safford*, 108 L. T. 184; 57 S. J. 284—Farwell, L.J.

"The rest of the money of which I die possessed"—Freehold House Subject to Power of Appointment.]—A testatrix who had a general power of appointment over a freehold house, which she did not exercise, gave "the rest of the money of which I die possessed" to Truro Cathedral :—*Held*, that the freehold house did not pass under the bequest of "the rest of the money of which I die possessed." *Tribe, In re; Tribe* v. *Truro Cathedral (Dean and Chapter)*, 85 L. J. Ch. 79; 113 L. T. 313; 59 S. J. 509—Eve, J.

"The rest of my money"—"Anything belonging to me which I have not devised"—Reversionary Interest—Evidence as to State of Testator's Property—Admissibility.]—A testator, being entitled to a reversionary interest in a share of residue, by his will gave a pecuniary legacy to a charity, and proceeded: "The rest of my money I leave in equal shares to my brothers and sisters"; and after giving various other legacies, concluded: "Anything belonging to me which I have not devised I leave to my father and mother, if they are not living I leave them to my sisters":—*Held*, that the last-named bequest was not a true residuary bequest, and that the reversionary interest passed under the gift of "the rest of my money." *Capel, In re; Arbuthnot* v. *Capel*, 59 S. J. 177—Eve, J.

Bequest of 100 1*l.* Shares—Subsequent Conversion into 1,000 Shares of 2*s.* each—Ademption.]—A testator bequeathed "my 100 shares in the Palatine Rubber Syndicate." There was no such company, but there was a company called the Pataling Rubber Syndicate, in which the testator held at the date of his will 100 1*l.* shares, each of which was by special resolution of the company subsequently subdivided into ten shares of 2*s.* each :—*Held*, that the 1,000 shares of 2*s.* each passed under the bequest. *Greenberry, In re; Hops* v. *Daniell*, 55 S. J. 633—Eve, J.

"My one hundred and seventy pounds" Stock—Bonus Shares.]—A testatrix bequeathed to A., B., and C., "my one hundred and seventy pounds G. & Co. Ordinary Stock." Between the date of the will and of her death a bonus of one new share for each original share was distributed to the shareholders of G. & Co. and converted into stock. The result of this distribution was to reduce the stock in G. & Co. to half its original value, so that the holding of 340*l.* stock, consisting of her original shares and of the bonus, of which the testatrix died possessed, was worth no more than her original holding of 170*l.* stock would have been :—*Held*, that the 340*l.* stock passed under the bequest of "my one hundred and seventy pounds stock." *Faris, In re; Goddard* v. *Overend*, [1911] 1 Ir. R. 165—M.R.

Whether Interest Passes on Bequest of Charge.]—A testatrix made a bequest in the following terms: "As to the charge affecting the D. estate . . . of which only 1,000*l.* is disposable under the terms of my marriage settlement, I direct that my executor shall hold it in trust" for certain persons in certain shares, which she thereby declared. Under her marriage settlement she had power to dispose of a sum of 1,000*l.*, part of a charge of 1,500*l.* :—*Held*, that interest due to the testatrix at her death upon the charge did not pass to the legatees under the terms of the bequest. *Ib.*

A testatrix devised and bequeathed to G., E., and F. her two mortgages for 1,000*l.* and 900*l.* respectively then affecting certain estates, for their own use absolutely in equal shares, share and share alike :—*Held*, that interest due to the testatrix under the two mortgages at her death passed with the principal to the legatees. *Ib.*

Gift of all "Securities standing in my name at my decease"—Bearer Bonds Kept by Bankers—Entry under Testatrix's Name in Safe Custody Register of Bank.]—A testatrix made a specific bequest of "all the stocks, shares, debentures, debenture stock, and other securities which shall be standing in my name at my decease." She was possessed of two

bearer bonds which she had purchased some years previously through her bankers. The latter had since kept them on her behalf in an envelope bearing her name and a reference to the "safe custody register" of the bank, which contained an entry under her name relating to the bonds :—*Held*, that "securities standing in my name" meant moneys represented by securities taken in the testatrix's name, not documents kept under her name; and that the bonds therefore did not pass under the specific bequest. *Mayne, In re; Stoneman* v. *Woods*, 83 L. J. Ch. 815; [1914] 2 Ch. 115; 58 S. J. 579—Warrington, J.

"Shares" in Company—Shares in Trust and Debenture—"Investments in"—"Preference shares" — "500*l*. debentures" — Whether Debenture and Debenture Stock Passed to Specific Legatees.] — J. C. bequeathed his shares in J. W. & T. Connolly (South Africa), Lim., to various legatees; (2) to his trustees his investments in the Associated Omnibus Co., consisting of preference shares and ordinary shares; and (3) his investments in Barclay, Perkins, Lim., consisting of 500*l*. debentures and 500*l*. ordinary shares. The testator held 500 ordinary shares in J. W. & T. Connolly (South Africa), Lim., as trustee, and a debenture for 2,000*l*. He held 500*l*. in debentures and 500*l*. ordinary shares in the Associated Omnibus Co., Lim., and he also held 200*l*. mortgage debenture stock and twenty preference shares in Barclay, Perkins & Co., Lim. :—*Held*, that (1) the testator intended to deal with shares and not the debenture, and the debenture did not pass to the specific legatee. *Weeding, In re; Armstrong* v. *Wilkin* (65 L. J. Ch. 743; [1896] 2 Ch. 364), distinguished; and as to (2) and (3) that the bequests were sufficiently wide to include the debentures and debenture stock notwithstanding the appended inaccurate description. *Connolly, In re; Walton* v. *Connolly*, 110 L. T. 688—Eve, J.

"Current dividends"—Shares in Company—Apportionment.]—The will of a testator, who died on January 9, 1914, contained gifts of certain shares in a limited company, together with the then "current dividends" thereon. The dividend on the shares for the year ending on December 31, 1913, was, in accordance with the practice of the company, declared at the ordinary general meeting of the company held on February 10, 1914 :—*Held*, that the meaning of the words "current dividends" in this will was explained in a subsequent part of the clause containing the bequest, and that the dividend declared on February 10, 1914, was a "current dividend" passing with the specific gifts of the shares. *Raven, In re; Spencer* v. *Raven*, 111 L. T. 938—Joyce, J.

Bequest of Shares or of Money to Buy Shares.] — Where a testator bequeaths a certain number of shares in a private company, and the will provides that if the legatee should by the articles be restricted from taking the shares in any other way than by buying them, then the bequest shall be an alternative one of money for the purchase of a like holding, the fact that the legatee is so restricted operates to make the bequest the alternative one of money to buy the shares. *White, In re; Theobald* v. *White*, 82 L. J. Ch. 149; [1913] 1 Ch. 231; 108 L. T. 319; 57 S. J. 212—Neville, J.

"Business and plant" at D. Street—Book Debts — Bank Balance.] — A testator bequeathed his business and plant at D. Street to X., his brother, and Y., his manager, in equal parts, and the will proceeded : "I will that they pay Miss A. 10*l*. per week during her life" :—*Held*, that the effect of the bequest was to give the house, bank balance, and book debts to the legatees, and that they were bound to pay the 10*l*. per week out of the assets, but were not personally liable. *Hawkins, In re; Hawkins* v. *Argent*, 109 L. T. 969—Astbury, J.

Gift of "net profits in all my commercial undertakings" — Effect — Shares and Debentures of Companies—Share in Partnership.]—The rule that a gift, unlimited in time, of the income of a fund is a gift of the fund itself applies to shares in a limited company, but not to a share in a partnership. *Lawes-Wittenronge, In re; Maurice* v. *Bennett*, 84 L. J. Ch. 472; [1915] 1 Ch. 408; 112 L. T. 931—Warrington, J.

A testator, who held shares in companies and debentures issued by them as security for loans from him, and was also a partner in a commercial firm, made a gift of "one-fifth share of the net profits in all my commercial undertakings, being" the companies and firm in question :—*Held*, that the legatee was entitled to one-fifth of the shares, though not to any debentures; but that as regarded the partnership he was only entitled to receive one-fifth of the net profits which would otherwise have been paid to the executors of the testator, so long as the partnership business was carried on. *Ib.*

"Pensions or allowances" — Whether Voluntary Payments Included.]—A testator had from 1870 until his death in 1890 given an annual subscription, at first of 50*l*. and afterwards of 100*l*., to a county infirmary, and he had also from 1850 until his death made an annual payment of 67*l*. to a cathedral vestry for the upkeep of the organ and the choir. The testator's estate book contained these payments under the heading "Donations and Subscriptions," but it contained no heading "Pensions and Allowances." The testator devised the estates to his widow, "subject to the payment of all pensions or allowances then paid" :—*Held*, that the direction to pay "pensions or allowances" did not include the above payments, as they were purely voluntary payments or donations. *Scott, In re; Scott* v. *Scott* (*No.* 2), 31 T. L. R. 505—Neville, J.

Bequest of Debts Due at Testator's Death—Portion Accrued During his Lifetime.] — A testator bequeathed "all the debts and accounts due to me at the time of my death, except rents issuing out of houses and lands" to T. :—*Held*, that the bequest did not include

the apportioned part, accrued during the testator's lifetime, of dividends declared after his death in respect of the half-year in the course of which he died. *Burke, In re; Wood* v. *Taylor*, [1914] 1 Ir. R. 81—Barton, J.

Herd of Deer in Park—Tenant for Life and Remainderman.] — A testator bequeathed certain "live and dead stock including deer" to trustees in trust for his wife for life, and after her decease for the persons who for the time being should under the will be entitled to the possession of the rents and profits of certain real estate. At the time of the testator's death there was a herd of tame deer in a park which formed part of the estate. A tenant for life under the will from time to time purchased deer and added them to the herd for the purpose of improving it. The deer in the herd at the time of the testator's death having died,—*Held*, upon the authority of *Maynard* v. *Gibson* ([1876] W. N. 204), that the herd of deer did not belong to the tenant for life absolutely, but that she was only entitled to their reasonable use and enjoyment as in the case of farming stock. *Held*, further, that the deer which had been added to the herd by the tenant for life must be taken to have been added in accordance with her obligation to maintain the herd, and that they therefore became subject to the trusts of the will. *White* v. *Paine*, 83 L. J. K.B. 895; [1914] 2 K.B. 486; 58 S. J. 381; 30 T. L. R. 347—Pickford, J.

"Arrears of rent" Due at Death—Apportionment—Gross or Net Rents.]—Bequest of all arrears of rents due to testatrix at the time of her death held to include the proportion of rents for the current quarter, as apportioned under the Apportionment Act, 1870, up to March 4, the date of death, and to mean gross rents without any deduction for outgoings or otherwise. *Dictum* of Jessel, M.R., in *Hasluck* v. *Pedley* (44 L. J. Ch. 143, 144; L. R. 19 Eq. 271, 273), followed on the first point. *Ford, In re; Myers* v. *Molesworth*, 80 L. J. Ch. 355; [1911] 1 Ch. 455; 104 L. T. 245—Swinfen Eady, J.

"Rent"—Tithe Rentcharge.]—Rent held to include tithe rentcharge. *Ib.*

Settlement—Power of Appointment—Absolute Interest in Default of Appointment—Gift and Appointment by Will—Gift Inconsistent with Power—Intention.]—By his marriage settlement a certain fund was held upon trust for the testator's children as he should appoint, and in default of appointment for the testator absolutely. By his will the testator said, "I . . . bequeath all my personal estate and by virtue of the provisions contained in the settlement executed upon my marriage . . . I appoint the funds subject to the trusts thereof," upon trust, after payment of debts and expenses, for his children equally, but he settled the daughters' shares:—*Held*, that the use of the word "appoint" was not to be narrowly construed, and that the will operated as if the settled property had not been the subject of a power of appointment, but belonged to the testator absolutely. *Griffiths, In re; Griffiths* v. *Waghorne*, 80 L. J. Ch. 176; [1911] 1 Ch. 246; 104 L. T. 125—Joyce, J.

Capital and Income—Will—Construction—Leaseholds—Tenant for Life—Conversion.]—When a testator dies possessed of freehold and leasehold property, a gift by him to a tenant for life of the "rents issues and profits" arising from the real and personal estate does not afford any sufficient indication of an intention that the leaseholds should be enjoyed by the tenant for life *in speeie*; and they ought to be treated as converted at the expiration of a year from the testator's death in accordance with the rule in *Howe* v. *Dartmouth* (*Earl*) (7 Ves. 137*a*). *Wareham, In re; Wareham* v. *Brewin*, 81 L. J. Ch. 578; [1912] 2 Ch. 312; 107 L. T. 80; 56 S. J. 613—C.A.

Craig v. *Wheeler* (29 L. J. Ch. 374) and *Game, In re; Game* v. *Young* (66 L. J. Ch. 505; [1897] 1 Ch. 881), followed. *Crowe* v. *Crisford* (17 Beav. 507), *Wearing* v. *Wearing* (23 Beav. 99), *Elmore's Will, In re* (9 W. R. 66), and *Vachell* v. *Roberts* (32 Beav. 140) overruled. *Ib.*

Directions to Pay Legacies in "this my will"—Free of Duty—Codicils.]—A direction to pay legacies given by "this my will" free of duty does not apply *prima facie* to every legacy subsequently given by codicil; and though the direction applies to legacies given in substitution for those in the will, and to the same beneficiaries, yet where the codicil gives legacies in trust, in lieu of direct, and under the trust fresh beneficiaries are added, these trust legacies must bear their own duty. *Trinder, In re; Sheppard* v. *Prince*, 56 S. J. 74—Parker, J.

And see REVENUE, *ante*, cols. 1327-1330.

ii. General Devise of Real Estate.

See also Vol. XV. 1187, 2064.

Bequest of "All to be divided in equal parts"—"Pay to trustees"—Omission of Word "Devise"—Real Estate Included in the Bequest.]—A testator by his will made the following gift: "I give and bequeath unto all the undermentioned names all to be divided in equal parts." The word "devise" did not occur in the will, though the word "pay" did:—*Held*, that the idea of totality conveyed by the word "all" outweighed not only the omission of the word "devise," but also the expressions which seemed to negative the inclusion of real estate, and that consequently the testator's realty passed under the gift. *Bowman* v. *Milbanke* (1 Lev. 130) distinguished. *Shepherd, In re; Mitchell* v. *Loram*, 58 S. J. 304—Eve, J.

iii. Gift of Residue.

See also Vol. XV. 1201, 2065.

Gift of Residue to Forty-six Named Persons Equally—Codicil—Revocation of Gift of Two Shares of Residue—No Express Disposition of Revoked Gifts—Will Confirmed in all other Respects—No Intestacy.]—A testator gave his residuary estate to his trustees to be divided equally between forty-six persons named in

the will and being the children, or the widows or children of deceased children, of his own and his wife's brothers and sisters. The list included F. W. and T. W. By a codicil the testator revoked the gifts in favour of F. W. and T. W., and in all other respects confirmed his will:—*Held*, that there was no intestacy in respect of the gifts revoked by the codicil; and that the whole residuary estate was divisible amongst the remaining forty-four persons named in the will. *Whiting, In re; Ormond* v. *de Launay*, 82 L. J. Ch. 309; [1913] 2 Ch. 1; 108 L. T. 629; 57 S. J. 461—Joyce, J.

b *What Words will Pass Particular Property.*

See also Vol. XV. 1221, 2067.

Devise of House and Premises known as "A"—"In which I now reside"—Additional Land Purchased after Date of Will.]—A testator devised his "house and premises known as Ankerwyke in which I now reside" to his wife. Between the date of his will and his death he purchased additional land, part of which was adjacent to the house, and a part of which was on the opposite side of the road, and all of which was occupied together with the house by the testator until his death:—*Held*, that all the additional land passed under the devise. *Willis, In re; Spencer* v. *Willis*, 81 L. J. Ch. 8; [1911] 2 Ch. 563; 105 L. T. 295; 55 S. J. 598—Eve, J.

Devise by Wrong Description—Ambiguity—Falsa Demonstratio—"Castle Street"—Admissibility of Evidence.]—A testator directed "my two freehold cottages or tenements known as numbers 19 and 20 Castle Street" in T. to be sold for the benefit of his daughters. He disposed specifically of two other houses in T., one of them being No. 39 Castle Street. He did not dispose of two cottages known as Nos. 19 and 20 Thomas Street, in T., which constituted the remainder of his real estate, and there was no residuary devise. There were houses in T. known as Nos. 19 and 20 Castle Street, but they did not belong to the testator:—*Held*, that evidence as to the real estate possessed by the testator was admissible; that the words "Castle Street" might be rejected as *falsa demonstratio*; and that Nos. 19 and 20 Thomas Street passed by the devise. *Mayell, In re; Foley* v. *Ward*, 83 L. J. Ch. 40; [1913] 2 Ch. 488; 109 L. T. 40—Warrington, J.

2. **What Interest Passes.**

a. *Estates in Fee-simple, or in Tail, or for Life.*

i. What Words Pass the Fee-simple.

See also Vol. XV. 1272, 2071.

Gift to A. "or his issue"—Words of Limitation or Substitution—Estate Tail.]—The rules that a devise to A. "or his heirs" gives to A. an estate in fee-simple, and that a devise to A. "or the heirs of his body" gives to A. an estate tail, have not been altered in modern times in the case of wills coming into operation since the Wills Act, 1837. A devise therefore to A. "or his issue" gives to A an estate tail. *Clerke, In re; Clowes* v. *Clerke*, 84 L. J. Ch. 807; [1915] 2 Ch. 301; 59 S. J. 667—Eve, J.

Absolute Gifts of Freeholds—Gift of Income of Same Freeholds for Maintenance—Period when Vesting is to Take Place—Supplying Words—Implication to be Drawn from Previous Gifts—Ultimate Gift Inoperative.]—Where by his will a testator bequeaths his freeholds to his sons, and subsequently gives all the income of the same freeholds to his wife for the maintenance of his children, and declares that if his wife should die before his youngest child shall have attained twenty-one the property is not to be divided until such youngest child has attained twenty-one, and then proceeds as follows: "And in case that my children should all die and leaving no issue, I give the property share and share alike to my nephews and nieces then surviving,"—*Held*, that on the death of the wife leaving two unmarried children her surviving, such two children took their respective shares of the testator's freeholds absolutely, since, on the construction of the whole will, the gift over was not intended to take effect unless all the children died in the lifetime of their mother. *Mitchell, In re; Mitchell* v. *Mitchell*, 108 L. T. 180; 57 S. J. 339—Farwell, L.J.

Gift of Income to Son until Bankruptcy—Gift over on Death of Son "should he die without leaving a male heir"—Determinable Equitable Estate in Fee-simple.]—A testator, by his will, devised "the Manor or Lordship of Martock . . . and all other my freehold . . . messuages . . . upon trust to pay the rents produce and annual income arising therefrom . . . unto my nephew R. L., until he shall assign charge or otherwise dispose of the same or some part thereof or become bankrupt or compound or make any arrangement with his creditors, borrow money, or do something whereby the said annual income or some part thereof would become payable to or vested in some other person which of the said events shall first happen and if the trusts hereinafter declared shall determine in the lifetime of the said R. L. to accumulate at compound interest for the benefit of the male heir of his body till he attains the age of twenty-one years and should he die without leaving a male heir then I direct my trustees to apply the annual income to my nephews W. B. L., F. J. L., and H. D. L. and the respective male heirs of their bodies successively":—*Held*, that R. L. took an equitable estate in fee-simple determinable in the event of his assigning, charging, or becoming bankrupt, which estate, if he died without assigning, charging, or becoming bankrupt, &c., became an ordinary estate in fee-simple, but subject to the executory limitation over to the testator's nephews in the event of R. L. dying without leaving any male heir of his body at the time of his decease. *Leach, In re; Leach* v. *Leach*, 81 L. J. Ch. 683;

[1912] 2 Ch. 422; 106 L. T. 1003; 56 S. J. 649—Joyce, J.

Estate Tail or Estate in Fee-simple.] — A testator by his will left real estate to trustees, and directed "that the same shall not be disposed of, mortgaged, or incumbered in any way whatsoever, but shall remain for the benefit of my wife and children free from the control of their respective husbands and wives, so that the same shall remain in my family from time to time for ever hereafter; the rents and proceeds arising out of said property to be equally divided between my said children," naming them, "and also to my said wife for her life use only, and after her death same to revert back, and her share to be equally divided amongst my aforesaid children or the issue thereof respectively":—*Held*, that the children took absolute interests in fee-simple. *Gardiner & Co.* v. *Dessaix*, 84 L. J. P.C. 231; [1915] A.C. 1096—P.C.

ii. Limitations Creating an Estate Tail.

See also Vol. XV. 1285, 2071.

Devise to One and "his lawful eldest male issue"—Gift Over "in default of male issue . . . and not attaining lawful age."] — A testator by his will made in 1848 devised fee-simple lands to trustees "for the use of my grandson G. . . . and his lawful eldest male issue . . . and in default of male issue of the said G. and not attaining lawful age, in that case then to go to my grandsons D. and H. in equal divisions, and their lawful heirs": —*Held*, that the words "lawful eldest male issue" should be construed as *nomen collectivum*, the word "eldest" indicating the order of succession, and accordingly that G. took an estate in tail male. *Lovelace* v. *Lovelace* (Cro. Eliz. 40) and *Sheridan* v. *O'Reilly* ([1900] 1 Ir. R. 386) distinguished. *Lewis* v. *Puxley* (16 L. J. Ex. 216; 16 M. & W. 733) and *Doe d. Tremewen* v. *Permewen* (11 A. & E. 431) applied. *Finlay's Estate, In re*, [1913] 1 Ir. R. 143—Wylie, J.

"Issue" Equivalent to Heirs of the Body —Rule in Shelley's Case.]—In a devise to V. and his issue male in succession so that every elder son and his issue male may be preferred to every younger son and his issue male, and so that every such son may take an estate for his life with remainder to his first and every subsequent son successively according to seniority in tail male, the word "issue" is a word of limitation meaning heirs of the body, and the context does not require that it be interpreted to mean "sons." The effect of the devise is therefore to confer an estate in tail male on V. *Keane's Estate, In re* ([1903] 1 Ir. R. 215), followed and applied. *Simcoe, In re; Fowler-Simcoe* v. *Fowler*, 82 L. J. Ch. 270; [1913] 1 Ch. 552; 108 L. T. 891; 57 S. J. 533—Swinfen Eady, J.

Estate Tail or Estate in Fee Simple.] — *See Gardiner & Co.* v. *Dessaix, supra.*

iii. Life Estates.

See also Vol. XV. 2072

Devise, whether in Fee or for Life.] — A testator, by his will executed in 1908, bequeathed to P. G. "the field (with his house thereon) containing about eleven Irish acres, subject to a rent of 1*l.* per Irish acre to be paid to my nephews N. M. and J. M." The field formed part of the farm of M. which was held by the testator in fee-simple, and was devised to N. M. and J. M. in these words: "I leave, devise and bequeath to my two nephews N. M. and J. M. my house and farm at M. (subject to the tenancy hereinbefore bequeathed to P. G.)":—*Held*, that the description in the will of P. G.'s interest as a "tenancy," coupled with the fact of a rent being payable by him to N. M. and J. M., afforded such evidence of a contrary intention as prevented section 28 of the Wills Act from applying, and that P. G. took only an estate for life in the field. *Gannon, In re*; *Spence* v. *Martin*, [1914] 1 Ir. R. 86—M.R.

Gift of "all my real and personal estate whatsoever absolutely"—"Residue" to be Divided.]—A testator gave to his wife, so long as she remained a widow, "all my real and personal estate whatsoever absolutely," and at her death, or on her re-marriage, the "residue" thereof was to be divided between his brothers and sisters:—*Held*, that the wife took only a life estate. *Dixon, In re; Dixon* v. *Dixon*, 56 S. J. 445—Neville, J.

Property neither to be Mortgaged nor Sold —Life Interest—Married Woman—Restraint on Anticipation.] — A testator by his will devised certain houses held under a lease for lives renewable for ever, to M. for her sole use, neither to be mortgaged nor sold, and at her demise to descend to her next-of-kin, and neither to be mortgaged nor sold as long as the lease of the said houses should last: —*Held*, that M. took only a life interest for her separate use, with a restraint on anticipation during coverture. *Taylor, In re; Shaw* v. *Shaw*, [1914] 1 Ir. R. 111—Barton, J.

Absolute Gift or Estate for Life — Words Sufficient to Pass Realty.]—A testator by his will bequeathed his property in these terms: "I devise and bequeath to my wife all the property of which I am possessed, whether it be leasehold property, stock in trade, accounts in my books, machinery, goods of every description, and furniture, to hold and to use for her benefit and the benefit of any of my children under the age of twenty-one years until they reach that age, and if she deem it advisable to dispose of any of the said property she may do so at her will, and at her death whatsoever property may remain shall be equally divided among my children": —*Held*, that the testator's real estate passed under the will; and further *held*, that it went to the wife for life, with a power to dispose of it during her lifetime and then to the children. *Roberts* v. *Thorp*, 56 S. J. 13—Warrington, J.

Devise "to every son of mine and his issue male in succession"—Subsequent Explanatory Words—Estate Tail or Estate for Life—Rule in "Shelley's Case."] — A testator devised real estate "unto and to the use of every son of mine and his issue male in succession so that every elder son and his issue male be preferred to every younger son and his issue male and that my grandsons respectively with their respective male issue take in succession according to their respective seniorities and so that every such son and every such grandson who shall be begotten in my lifetime take an estate for his life without impeachment of waste, with remainder to his first and every subsequent son successively according to seniority in tail male, and that every such grandson who shall be begotten after my death take an estate in tail male" with remainders over:—*Held*, that the rule in *Shelley's Case* (1 Co. Rep. 93*b*) did not apply, and that the subsequent words after the devise to every son and his issue male in succession, which might by itself have given an estate in tail male to the son, must be read as part and parcel of the devise, so as to cut down the estate of every son and every grandson begotten in the testator's lifetime to an estate for life only, with remainders to his first and every other son in tail male. *Lawrence (Lord), In re; Lawrence* v. *Lawrence*, 84 L. J. Ch. 273; [1915] 1 Ch. 129; 112 L. T. 195; 59 S. J. 127—C.A.

b. *Vested, Contingent and Future Interests.*

See also Vol. XIV. 1507, 2283.

Court Aids Vesting rather than Divesting—Power of the Court to Read Words into Will.] —A testator gave real property in trust for his granddaughter Emily, with remainder to her children upon attaining twenty-one, and with remainder over in favour of another grandchild, Esther, and her children. He gave other property to Esther, with remainder to her children, but without specifying that they should attain any age, and with a similar gift over in favour of Emily and her children. The wording of the will pointed to an intention of the testator to make both gifts identical, reference being made to children of Esther "capable of taking," and to their shares "vesting at the same age":—*Held*, that the Court could not supply words in a will, particularly to prevent vesting, and that a daughter of Esther who died an infant had taken a vested interest. *Litchfield, In re: Horton* v. *Jones*, 104 L. T. 631—Parker, J.

Contingent and Vested Remainders—Real Estate—Devise in Strict Settlement—Disclaimer of Life Estate — Acceleration.] — A testator devised certain real estate to his eldest son, J. S., for life, with remainder to the first and other sons of J. S. successively in tail male, with remainder to the testator's grandson, W. S. (the son of the testator's second son) for life, with remainder to the first and other sons of W. S. successively in tail male, with remainders over. Upon the death of the testator, J. S., who was married, but had no male issue, disclaimed the life estate given him by the testator's will:—*Held*, that the disclaimer by J. S. did not operate so as to cause an acceleration of the life estate of W. S., but that during the remainder of the life of J. S. or until the birth of issue male to him the estates were undisposed of by the devise, and passed during such period under the residuary devise contained in the will. *Carrick* v. *Errington* (2 P. Wms. 361; affirmed by the House of Lords, *sub nom. Errington* v. *Carrick*, 5 Bro. P.C. 391), applied. *Scott, In re; Scott* v. *Scott*, 80 L. J. Ch. 750; [1911] 2 Ch. 374; 105 L. T. 577—Warrington, J.

Direction to Pay Income of Legacy for Three Years after Death to A., Followed by Bequests of Legacies—Death of Legatee within the Three Years.]—A trust to sell and pay the annual income arising from such sale to A. during the three years immediately following the testator's death, and from and after the determination of such three years upon trust to pay out of the capital of the said trust fund legacies to B, C, and D, gives B a vested interest in his legacy immediately on the death of the testator. Such a legacy does not lapse by reason of B dying before the expiration of three years from the testator's death. *Boam, In re; Shorthouse* v. *Annibal*, 56 S. J. 142—Swinfen Eady, J.

"Distribute"—Time of Vesting—Defeasance.]—A direction to distribute on the death of a tenant for life, followed by a proviso that in the event of the death of all objects to whom such distribution is to be made without descendants, there is to be a gift over, does not make such direction to distribute inconsistent with the rule in *O'Mahoney* v. *Burdett* (44 L. J. Ch. 56*n.*; L. R. 7 H.L. 388), and accordingly the objects to whom such distribution is to be made are indefeasibly entitled, and take absolutely on the death of the tenant for life. *Mackinlay, In re; Scrimgeour* v. *Mackinlay*, 56 S. J. 142—Swinfen Eady, J.

Gift to Class Attaining Twenty-one — Vesting.]—Where a fund is left to a class contingently on their attaining twenty-one, the eldest of the class on attaining twenty-one takes a vested interest in possession of his share and a contingent interest in the shares of the other members of the class who are still under twenty-one. *Holford, In re; Holford* v. *Holford* (63 L. J. Ch. 637; [1894] 3 Ch. 30), followed. *Williams' Settlement, In re; Williams* v. *Williams*, 80 L. J. Ch. 249; [1911] 1 Ch. 441; 104 L. T. 310; 55 S. J. 236—Eve, J.

Gift to Son at Twenty-six—Income Charged with other Payments — Intermediate Income — Accumulation — Vesting.] — A testator bequeathed his shares in a certain company to trustees upon trust out of the income to pay certain annual sums in augmentation of the income of his daughters and to pay his debts and the estate duty payable at his death, and declared that the trustees should hold one fourth part of the shares upon trust out of the income, subject as aforesaid to pay to his son G. an annual sum not exceeding 3,000*l.*

"until he shall have attained the age of twenty-six years and when and so soon as he shall have attained the said age of twenty-six years my trustees shall hold such last-mentioned one fourth part of my said shares and the accumulations of income arising therefrom but subject as aforesaid in trust for my said son G. absolutely." There was no gift over in the event of G. dying under twenty-six. He survived the testator, but died at the age of twenty-three:—*Held*, that there was no severance of the one-fourth part of the shares bequeathed from the rest of the estate, that the interest of G. therein was contingent upon his attaining twenty-six, and that as he died under age it fell into the residuary estate. *Nunburnholme (Baron), In re; Wilson* v. *Nunburnholme*, 81 L. J. Ch. 347; [1912] 1 Ch. 489; 106 L. T. 361; 56 S. J. 343—C.A.

Per Buckley, L.J.: Where by a will a specific gift is made to trustees upon trusts for A when and so soon as he shall attain a named age and the gift is to be immediately separated from the rest of the property and the income is at once given to the beneficiary or the income is to be accumulated for the benefit of the beneficiary, and when and so soon as he attains the named age the *corpus* and the accumulations are given to him with no gift over, then the Court ceases to regard the gift as a contingent gift and holds it to be a vested gift. *Ib.*

Decision of Neville, J. (81 L. J. Ch. 85; [1911] 2 Ch. 510), reversed. *Ib.*

Gift in Remainder to Children as a Class, but the Whole to One Child if there should be only One Child Living—Death of some Children before Period of Distribution — Survival of more than One.]—A testator bequeathed 4,000*l.* to his daughter for life and upon her death to her children in equal parts if any there should be, or the whole to one if only one child, and if there should be no children living at her death then to the children of his son in equal parts, or the whole to one child if there should then be only one. The daughter died a spinster. The son had eleven children, of whom three died in the lifetime of the daughter:—*Held*, that all the eleven children took vested interests subject only to be divested in an event which did not happen—namely, one child only of the son surviving the daughter. *Firth, In re; Loveridge* v. *Firth*, 83 L. J. Ch. 901; [1914] 2 Ch. 386; 111 L. T. 332—Sargant, J.

Spencer v. *Bullock* (2 Ves. Jun. 687), *Pearce* v. *Edmeades* (8 L. J. Ex. Eq. 61; 3 Y. & C. Ex. 246), *Lewis* v. *Templer* (33 Beav. 625), and *Cooper* v. *Macdonald* (42 L. J. Ch. 533; L. R. 16 Eq. 258) distinguished. The opinion of Sir E. Sugden in *Kimberley* v. *Tew* (4 Dr. & W. 139) and the decision in *Templeman* v. *Warrington* (13 Sim. 267) followed. *Ib.*

Vesting of Interest—Whether Absolute or Subject to Defeasance.]—A testator, who died in 1913, by his will left his property to trustees on trust to pay the funeral and testamentary expenses and certain legacies and to pay out of the income of the residue during the life of his wife certain annuities to his wife and children, and from the death of his wife the trustees were to stand possessed of the residuary trust funds in trust for all the children in certain proportions. The will then provided: "If any child shall die in my lifetime or after my decease leaving a child or children who shall survive me then and in every such case such last-mentioned child or children shall take and if more than one equally between them the share which his or her or their parent would have taken of and in the residuary trust funds if such parent had survived me." The testator was survived by his wife and by the seven children. Some of the children of the testator had children, and some had not:—*Held*, that each of the testator's children acquired on the death of the testator a vested interest liable to defeasance in the event of his or her dying in the lifetime of the testator's widow and leaving a child or children. *Ward* v. *Brown*, 31 T. L. R. 545—P.C.

c. *Absolute Interests in Personal Estate.*

See also Vol. XV. 1300, 2073.

Devise in Tail—Failure of Issue—Contrary Intention — Absolute Interest in Chattels Real.]—A testator, after the Wills Act, and describing each gift as of "all my right title and interest" therein, devised and bequeathed real estate to his eldest son J. and to his heirs lawfully begotten. He also bequeathed to J. chattels real, and declared that in case J. should die without issue lawfully begotten the lands devised and bequeathed to him should revert to the testator's second son T. and his heirs lawfully begotten. The testator bequeathed to T. chattels real, and declared that in case T. should die without issue lawfully begotten the lands bequeathed to him were to revert to J. The testator further declared that in case J. or T. should die without issue lawfully begotten the whole of the said lands should be the property of the survivor or longest liver of them, and that in case both should die without issue the said lands should revert to the testator's daughter R. and her heirs lawfully begotten, and that in case J., T., or R. should all die without lawful issue the lands devised and bequeathed to J. should revert to the second son of the testator's brother A. and to his lawful heirs, but on failure of such issue then to the next son in priority of age, and so on successively in remainder, and the lands bequeathed to T. should revert to the testator's brother B.'s eldest son and his heirs lawfully begotten, but on failure of such to his second or third son by priority of ages, and so on successively in remainder. And the testator declared it to be his will that neither J. nor T. should sell or dispose of any part of the said lands, but that the same should remain the *bona fide* properties of them and their heirs for ever:—*Held*, by Ross, J., and by the Lord Chancellor and Cherry, L.J., that, on the true construction of the will, the operation of section 29 of the Wills Act was excluded; that the words "die without issue lawfully begotten" meant indefinite failure of issue; and that consequently under the terms of the bequests of the

chattels real, which would have conferred estates tail in real estate, J. and T. took absolute interests in the chattels real respectively bequeathed to them. *Held*, by Holmes, L.J., that section 29 of the Wills Act applied to the bequests of the chattels real, and that J. and T. each took an absolute estate in the chattels real bequeathed to them, with an executory bequest to his brother in the event of failure of issue at the time of his death, and with a further executory bequest of all the chattels real to R. in the event of failure of issue of both J. and T. at the times of their respective deaths, with a final executory bequest to the testator's nephews in the event of failure of issue of R. at the time of her death. *Weldon* v. *Weldon*, [1911] 1 Ir. R. 177—C.A.

Legatee to Receive a Sum Monthly with Power to Dispose by Will of any Portion Remaining.]—A testatrix by her will provided as follows: "I will and bequeath to my brother J. my household furniture and the money in bank which I am entitled to under the will of my brother T., to be given to him at the rate of 2*l.* per month during his life, and should any portion be remaining at his death he to have power to dispose of it by will." There was no gift over:—*Held*, that J. took an absolute interest, and was entitled to payment of a sum in bank of 317*l.*, which represented assets of the testatrix received by her under the will of her brother T. *McKenna* v. *McCarten*, [1915] 1 Ir. R. 282—Barton, J.

d. *Gifts to Benefit in a Particular Manner.*

See also Vol. XV. 1324, 2077.

Gifts of Residue in Equal Shares to Named Persons Surviving Tenant for Life—Effect of Revocation of Shares of One or More—Gift to a Class.] — A testator bequeathed the residue of his property to trustees upon trust for his sister for life, and upon her death in trust for five persons or such of them as should be alive at the death of the survivor of his sister and himself, in equal shares. By a codicil the testator revoked the gift to two of the five legatees. All five survived the testator and his sister:—*Held*, that the effect of the revocation was to augment the shares of the other legatees. *Donaldson, In re; Watson* v. *Donaldson*, [1915] 1 Ir. R. 63—C.A.

Gift by A. to the Personal Representatives of B.—"As part of her personal estate"—Insufficient Estate of B.—Taker of Personal Estate of B. Predeceases A.] — Where a testatrix gave by will to the personal representatives of her sister a sum to go as part of the sister's personal estate, the sister having made her will many years previously, and the sister shortly after the testatrix had made her will died leaving an insufficient estate, and then the ultimate named taker of the personal estate under the sister's will, subject to a life interest still subsisting, died, and at last the testatrix died:—*Held*, that the legal personal representative of the ultimate taker of the personal estate of the sister got nothing, and the estate of the sister was relieved to that extent subject to the life interest, but the legatees of the sister who had abated would have to be paid in full before the residuary legatee of the sister took anything out of the testatrix's estate. *Long* v. *Atkinson* (17 Beav. 471) followed. *Bosanquet, In re; Unwin* v. *Petre*, 85 L. J. Ch. 14; 113 L. T. 152—Sargant, J.

Gift to Wife "for life for her own maintenance and the maintenance and advancement in life" of Testator's Children—Right of Adult Children to Maintenance during Life of Widow.]—A testator gave all his property to trustees upon trust to permit his wife to occupy the mansion house during her life, and, after payment of outgoings, to pay the net rents and profits of the property to his wife "for life for her own maintenance and the maintenance and advancement in life" of his children, and after his wife's decease in trust for his eldest and other sons in tail male with further remainders, and, in the event of his wife predeceasing him or dying during the minority of his children, the testator made further provision for the maintenance and advancement of his children until their attaining the age of twenty-one years or marrying, and the testator made further provision for his younger children:—*Held*, that the wife took the income subject to a trust for the maintenance and advancement of the children during the mother's lifetime so long as they should require same. *K'Eogh* v. *K'Eogh*, [1911] 1 Ir. R. 396—Ross, J.

The children, other than the eldest son, being provided for, the eldest son, the tenant in tail male in remainder subject to his mother's life interest, who had married and, at the desire of his mother, had left the parental home, but who was unprovided for, issued a summons to determine what provision should be made for him out of his mother's income. The Court directed the enquiry asked for. *Ib.*

Bequest to Provide Art Gallery.]—Under the trusts of the testator's will,—*Held*, that the Court would sanction a payment of 5,000*l.* to the G. Corporation towards the cost of the maintenance of an art gallery, and 25,000*l.* to be expended in the erection of the gallery. *Shipley, In re; Middleton* v. *Gateshead Corporation*, 77 J. P. 424—Eve, J.

e. *Absolute Gifts when Cut Down.*

See also Vol. XV. 1342, 2078.

Life Estate or Absolute Interest.] — A testator bequeathed to his sister M. the sum of 2,000*l.* for her life, and at her death to be disposed of as she so wished. M. died without making any disposition of the 2,000*l.*:—*Held*, that M. took a life interest only with a power of appointment. *Burkitt, In re; Hancock* v. *Studdert*, [1915] 1 Ir. R. 205—M.R.

Life Estate to Daughter Determinable on a Certain Event—Gift over on Happening of Event — Non-happening of Event — Share of Residue.]—A testator gave to his daughter the

income of one-fourth share of his residuary estate for life or until she should receive a certain legacy left to her under the will of her late father-in-law, in which case there was to be a gift over. The daughter died without having received the legacy, and there was no prospect of her estate ever receiving the same or any part of it:—*Held*, that the daughter took a terminable life interest and that the gift over took effect on her death and was not limited to the happening of the event mentioned in the will. The principle of *Luxford* v. *Cheeke* (3 Lev. 125), *Browne* v. *Hammond* (Johns. 210), *Etches* v. *Etches* (3 Drew. 441), and *Cane, In re; Ruff* v. *Sivers* (60 L. J. Ch. 36), applied. *Seaton, In re; Ellis* v. *Seaton*, 83 L. J. Ch. 124; [1913] 2 Ch. 614; 107 L. T. 192—Parker, J.

Provision that Tenant for Life shall have Power to Apply such Portion of the Capital as he shall Think Fit for his own Use and Benefit—General Power of Appointment Inter Vivos.]—A testatrix gave her estate on trust to pay the income to her husband till he should marry again or die, and on his death or re-marriage on charitable trusts; but with a provision that he should have power, so long as he should be entitled to the income, to apply such portion of the capital of the estate as he should think fit for his own use and benefit:—*Held*, that the husband took a general power of appointment over the capital *inter vivos*, though not by will. *Richards, In re; Uglow* v. *Richards* (71 L. J. Ch. 66; [1902] 1 Ch. 76), followed. *Dictum* of James, L.J., in *Thomson's Estate, In re; Herring* v. *Barrow* (49 L. J. Ch. 622; 14 Ch. D. 263), not followed. *Ryder, In re; Burton* v. *Kearsley*, 83 L. J. Ch. 653; [1914] 1 Ch. 865; 110 L. T. 970; 58 S. J. 556—Warrington, J.

f. *Successive and Concurrent Interests—Joint Tenancy and Tenancy in Common.*

See also Vol. XV. 1360, 2080.

Life Estate—Gift over to Two Persons—"Should one die before the other"—Certainty of Event—Impossibility of Death of both eo instanti—Contingency Imported.]—A testator left property in trust for A for life and at her death to his two nieces B and C in equal shares, adding the words, "should one of my nieces die before the other the other surviving niece to take the whole." There was a gift over "should my nieces die without lawful issue." The tenant for life died in 1873. In 1911 one of the nieces died leaving children her surviving. The surviving niece, who also had children, claimed the whole of the property:—*Held*, that there must be read into the gift the contingency of a niece dying in the lifetime of the tenant for life, as death itself is not a contingency, but a certainty, and no two persons can die *eo instanti*, and, accordingly, the surviving niece was only entitled to one half of the property, and the legal personal representative of the deceased niece were entitled to the other half. *Howard* v. *Howard* (21 Beav. 550) followed. *Fisher, In re; Robinson* v. *Eardley*, 84 L. J. Ch. 342; [1915] 1 Ch. 302; 112 L. T. 548; 59 S. J. 318—Sargant, J.

Joint Tenancy or Tenancy in Common—Children to be Paid their Parent's Share—Effect of Word "Pay" on Joint Tenancy.]—A testator gave leasehold property to his nephews and nieces as tenants in common, and in case of the death of one or more of them he directed that the child or children of such one or more of his nephews and nieces so dying should "be paid" a parent's share:—*Held*, that the children of a deceased nephew took their parent's share as joint tenants, and not as tenants in common. A simple direction to "pay" a legacy or share of residue to more than one person is not sufficient to make the recipients tenants in common. *Dictum* of North, J., in *Atkinson, In re; Wilson v. Atkinson* (61 L. J. Ch. 504; [1892] 3 Ch. 52, 54), not followed. *Clarkson, In re; Public Trustee* v. *Clarkson*, 84 L. J. Ch. 881; [1915] 2 Ch. 216; 59 S. J. 630—Eve, J.

—— **Words of Severance—Powers of Advancement and Maintenance — "Presumptively entitled."**]—A testator gave his residuary estate to trustees upon trust for A. for life, and on A.'s death to divide between and amongst the members of a class then living, and their issue *per stirpes* if any of them should be then dead; and he gave his trustees powers of maintenance and advancement. The power of maintenance was a power, "during the minority of any legatee entitled" under the will, to apply to maintenance the whole or part of "the annual income to which any such infant legatee shall for the time being be actually or presumptively entitled." The power of advancement was a power, "from time to time during the minority of any male legatee" under the will, to apply to his advancement "all or any part of the capital to which such legatee shall be presumptively entitled for the time being." On a summons taken out after A.'s death,—*Held*, that the substantial gift was restricted to children only of members of the class, and that (on the construction of the maintenance and advancement clauses) such children took as tenants in common. *Bennett* v. *Houldsworth*, 104 L. T. 304; 55 S. J. 270—Joyce, J.

—— **Gift for "support" of Children—Tenancy.**]—A testator gave to his daughter A all the cash he had in bank, to be used by her for her own support and that of his children B and C, and gave to her all his stock-in-trade and furniture and other effects, to be applied by her for the like purpose. B and C were adults at the date of the will:—*Held*, that the word "support" was equivalent to "benefit," and A, B, and C took the property absolutely and as joint tenants. *Nolan, In re; Sheridan* v. *Nolan*, [1912] 1 Ir. R. 416—M.R.

3. **Mortgages.**

Specific Devise of Mortgaged Property—Banking Account — Transfer of Banking Account—Guarantee to Bank by Transferor—Exoneration of Personal Estate.]—A testator charged a freehold house with payment to his

bankers of all moneys for the time being owing from him to them, in order from time to time to be able to overdraw his business account. Subsequently, being unable owing to illness to carry on his business himself, he transferred the account into the name of his son and a daughter, and requested the bank to give them such credit and make them such advances as they might require, and guaranteed the bank the payment of all moneys then and thereafter due on the general balance of the account. At his death the account was in debit to the amount of something over 2,000*l.* Having by his will specifically devised the freehold house to his son,—*Held*, (*a*) that the charge included all money due or capable of becoming due from the testator to the bank under the guarantee; (*b*) that the testator was in substance and in fact the principal debtor for the balance owing to the bank at his death; (*c*) that therefore the Real Estate Charges Act, 1854, applied, and that the freehold house specifically devised was subject to the charge for that amount in exoneration of the testator's personal estate. *Hawkes, In re; Reeve* v. *Hawkes*, 81 L. J. Ch. 641; [1912] 2 Ch. 251; 106 L. T. 1014—Parker, J.

Semble, that if in substance as well as in form the testator had been merely a surety for the payment of the debit balance, and the principal debtor had actually paid it off after the testator's death, the Real Estate Charges Act, 1854, would not have applied. *Ib.*

Husband and Wife—Mortgage of Property Belonging to Wife—Election of Wife to take under Will—Liability of Property Brought in by Election for Debts—Incidence of Contribution as between Beneficiaries.]—A testator, whose estate consisted chiefly of five leasehold properties, appointed his wife and C. executors and trustees and gave all his estate to them upon trust to pay to his wife the rents for life, and after her death he left his four leasehold messuages in Q. Street and his six leaseholds in J. Street to his trustees upon trust to pay the income to his daughter, E. S., for life, and after her death to her children; and after the death of his wife he bequeathed two leaseholds in R. Street and a leasehold villa, B., to a niece, and after disposing of the remaining leaseholds in S. Street for the benefit of E. S. and her children, he bequeathed the residue of his estate to his wife, charged with debts. The property in Q. Street was subject to a mortgage for 318*l.* The property in J. Street was assigned to the testator's wife in 1888, and by a deed of August 25, 1909, the testator purported to mortgage it to secure 400*l.* This mortgage was existing at his death. The leasehold villa B. was assigned to the testator and his wife jointly in 1905, and by a deed of August 15, 1905, they jointly mortgaged the same to secure 400*l.* The other leaseholds in R. and S. Streets were also assigned to the testator's wife in 1888. The widow elected to take under the testator's will. On an originating summons by C. to have it determined how, as between the beneficiaries, the two mortgages for 400*l.* respectively and the debts should be borne,—*Held*, that the equities had to be determined as at the testator's death, and as to the mortgage of 400*l.* on the J. Street property, created without the knowledge of the wife, Locke King's Act did not apply, and this property was not primarily liable for the payment of this mortgage debt. But held as to the villa B., mortgaged by a deed to which the wife was a party, that Locke King's Act applied, and the property was primarily liable for the charge upon it. *Williams, In re; Cunliffe* v. *Williams*, 84 L. J. Ch. 578; [1915] 1 Ch. 450; 110 L. T. 569—Eve, J.

Held, further, that, the residue of the testator's estate being now insufficient for the payment of debts, the property brought in by reason of the widow's election was liable to contribute *pari passu* with the testator's property in discharging his debts. *Cooper* v. *Cooper* (44 L. J. Ch. 6; L. R. 7 H.L. 53) applied. *Ib.*

4. Marshalling.

Devise of Mortgaged Property—Trust for Sale Reserving Rentcharges — Deficiency — Exoneration of Real Estate.] — A testator devised property upon trust for sale and directed certain rentcharges to be created and reserved out of such property for the benefit of his daughters. At the date of the will and at the date of the testator's death the property was subject to mortgages. The property appeared to be insufficient to provide for the rentcharges and for payment off of the mortgages:—*Held*, that the principles of marshalling should be applied, and that if, after a sale of the property reserving the rentcharges, the proceeds of sale were not sufficient to satisfy the mortgages, the deficiency should be paid out of the residuary estate, and that the rentcharges should not be required to contribute to payment of the mortgage debts unless the residuary estate were insufficient. *Buckley* v. *Buckley* (19 L. R. Ir. 544) followed. *Fry, In re; Fry* v. *Fry*, 81 L. J. Ch. 640; [1912] 2 Ch. 86; 106 L. T. 999; 56 S. J. 518—Joyce, J.

Devise of Freeholds and Leaseholds—Disclaimer of Leaseholds and Freeholds — Pecuniary Legacies—Insufficient Assets.]—Where it has been held that leaseholds having been disclaimed, the specifically devised and residuary freeholds must also be disclaimed, and where there was an insufficiency of assets,—*Held*, that the rules of marshalling applied in the same way as if there had been an intestacy as to the leaseholds and freeholds disclaimed, and that accordingly, in paying the testatrix's debts and funeral and testamentary expenses, after exhausting her residuary personal estate, except a fund consisting of so much thereof as would satisfy the pecuniary legacies which had been set aside, resort must be had to the disclaimed freeholds before resorting to the said fund so set aside. *Sitwell, In re; Worsley* v. *Sitwell*, 57 S. J. 730—Neville, J.

Contingent Specific Legacy of Shares—Debts and Testamentary Expenses—Sale of Shares to Relieve Residue — Subsequent Decrease in Value of Shares—Vesting of Con-

tingent Legacy — Compensation of Specific Legatee.]—A testator bequeathed a specific legacy of certain shares to a trustee upon trust for his son on his attaining the age of twenty-one. Some of these shares were sold by the executors in order to satisfy creditors, in relief of the residuary estate. Subsequently the son attained the age of twenty-one :—*Held*, that the son was now entitled to compensation for the shares thus sold, on the basis of the value of the shares at the time of his attaining twenty-one, but not on the basis of their value at the time of their sale. *Broadwood, In re; Lyall* v. *Broadwood*, 80 L. J. Ch. 202; [1911] 1 Ch. 277; 104 L. T. 49—Neville, J.

5. Trusts.

See also Vol. XV. 1459, 2085.

Beneficial Interest or Trust.]—A testator bequeathed to his wife his entire worldly effects to be managed as best she could for the benefit of their children :—*Held*, that the wife took no beneficial interest. *Hickey, In re; Hickey* v. *Hickey*, [1913] 1 Ir. R. 390—C.A.

Precatory Trust.]—The doctrine of precatory trusts as defined and limited by modern authority considered and stated. *Atkinson, In re; Atkinson* v. *Atkinson*, 80 L. J. Ch. 370; 103 L. T. 860—C.A.

Testator made the following bequest : "To my father, if living at my death, and if not, to my younger sister, I bequeath absolutely 5,000*l.*, but it is my specific wish that the said sum shall be distributed as follows : 4,000*l.* to" a certain school; 500*l.* to another school; and 500*l.* "to be given to" ten or more deserving people as therein mentioned : —*Held*, that the testator's father, who survived the testator, was entitled to the legacy of 5,000*l.* free from any trust or legal obligation. *Ib.*

The words "I desire the 300*l.* which I have bequeathed to A to be divided by her on her death, as she shall think fit, amongst the daughters of my cousin B" create a trust capable of being enforced. *Jevons, In re; Jevons* v. *Public Trustee*, 56 S. J. 72—Swinfen Eady, J.

A testator appointed his wife universal legatee. The will continued : "It is my earnest wish and desire that my wife should during her lifetime pay out of my estate to my sister . . . the sum of 30*s.* each and every week" :—*Held*, that this expression of a wish did not amount to a precatory trust or direction to pay, and gave to the sister of the testator no interest to propound his will. *Dobie* v. *Edwards; Hanmer, In the goods of*, 80 L. J. P. 119; 55 S. J. 537; 27 T. L. R. 464—Bargrave Deane, J.

—— **Power to Appoint among Named Persons —Default of Appointment—Implied Gift—Death of Remainderman during Life Interest.**]—A bequest to A. for life, "with remainder as she shall by deed or will and in his sole discretion appoint amongst" certain named persons, creates a trust by implication, in default of appointment, for such of those persons as survive the testator, whether they survive the life tenant or not. *Wilson* v. *Duguid* (53 L. J. Ch. 52; 24 Ch. D. 244) applied. *Walford, In re; Kenyon* v. *Walford*, 55 S. J. 384—Joyce, J.

6. Gifts by Reference and Implication.

Trusts Declared in Will by Reference to Trusts Contained in Daughter's Marriage Settlement.]—Where a testator gave a share of his residuary estate to the trustees of his will upon trust for his married daughter, and declared that his trustees should hold the same "upon the same trusts and with and subject to the same powers" as were in her marriage settlement contained with respect to the funds thereby settled,—*Held*, that, inasmuch as there were different instruments, different settlors, different funds, and different sets of trustees, the rule of construction to be applied was to read into the will the trusts and powers of the settlement as though they were therein set out, and that there was consequently no accretion to the funds of the settlement, but that the testator had by his will created a new and distinct settlement. *Beaumont, In re; Bradshaw* v. *Packer*, 82 L. J. Ch. 183; [1913] 1 Ch. 325; 108 L. T. 181; 57 S. J. 283—Farwell, J.

Hindle v. *Taylor* (25 L. J. Ch. 78; 5 De G. M. & G. 577), *Cooper* v. *Macdonald* (42 L. J. Ch. 533; L. R. 16 Eq. 258), *Trew* v. *Perpetual Trustee Co.* (64 L. J. P.C. 49; [1895] A.C. 264), and *Baskett* v. *Lodge* (23 Beav. 138) distinguished. *Ib.*

7. Legacies, whether General, Specific or Demonstrative.

See also Vol. XV. 1500, 2088.

Specific Legacies Bequeathed "as general and not as specific legacies."] — A testator gave legacies of certain specific stock, bonds, and shares "all now standing in my name as general and not as specific legacies." The will also contained gifts of general pecuniary legacies. The estate proved insufficient to pay all the legacies in full :—*Held*, that, although the legacies were in fact specific, the testator intended them to take effect as though they were general legacies, and that for purposes of administration they must be treated as general legacies. *Compton, In re; Vaughan* v. *Smith*, 83 L. J. Ch. 862; [1914] 2 Ch. 119; 111 L. T. 245; 58 S. J. 580—Sargant, J.

Demonstrative Legacy—Reversionary Fund —Interest.]—A demonstrative legacy directed to be paid out of a reversionary fund affords no exception to the general rule stated by Lord Cairns in *Lord* v. *Lord* (36 L. J. Ch. 533, 538; L. R. 2 Ch. 782, 789), that where no time for payment is fixed a legacy is payable at and bears interest from the end of a year after the testator's death. *Walford* v. *Walford*, 81 L. J. Ch. 828; [1912] A.C. 658; 107 L. T. 657; 56 S. J. 631—H.L. (E.)

A testator, who died in 1903, bequeathed to his sister "the sum of 10,000*l.* sterling as her sole and absolute property, to be paid out of the estate and effects inherited by me from my

mother in terms of her last will," and with respect to the residue of the aforesaid estate and effects of his mother and of all other his estate and effects then in his possession and enjoyment, appointed as his sole heir or heirs such heir or heirs as should succeed to the estate of his father appointed by his father's will. The estate and effects of the testator's mother out of which the 10,000*l.* legacy was payable were subject to the life interest therein of the testator's father, who died in 1910, having by his will appointed an heir in accordance with the terms of the testator's will :—*Held*, that the 10,000*l.* carried interest from the expiration of one year from the testator's death. *Ib.*

8. Conditional Legacy.

Legacy on Condition of Acting as Trustee—Sufficient Intention Shewn—Codicils—Revocation.]—By his will dated October, 1899, the testator bequeathed a legacy of 10,000*l.* to the plaintiff, provided he acted as trustee of the will, and in default of his so acting, this legacy was to fall into the residuary estate. By a codicil of December, 1899, the testator revoked this legacy, and in lieu thereof gave the plaintiff 8,000*l.* subject to the same condition and gift over as contained in the will. By a second codicil he confirmed the first; and by a third codicil made in 1904 he provided as follows : " Whereas by my will . . . I bequeathed to " the plaintiff " the sum of 10,000*l.*, provided he acted as trustee of my said will, now I absolutely revoke said bequest and in all other respects I hereby ratify and confirm my said will." The testator died in 1904 and probate was granted in the same year to two of the trustees and executors named in the will, but the plaintiff was abroad, and stated that he was not aware of the testator's death till 1911, when he expressed himself ready and willing to act as trustee of the will, and came back to Ireland and called for a transfer of the trust property to himself and the other trustees. There had been advances of money made by the testator to the plaintiff on foot of the legacy of 8,000*l.* in 1900 and 1901 :—*Held*, first, that there had been sufficient compliance by the legatee with the condition; and, secondly, that the third codicil did not operate as a revocation of the first codicil, and that the plaintiff was entitled to the legacy of 8,000*l.* given to him by the first codicil after giving credit for money paid to him in advance in respect of the legacy. *Browne* v. *Browne*, [1912] 1 Ir. R. 272—Barton, J.

9. Cumulative Legacies.

See also Vol. XV. 1525, 2089.

Several Documents — Legacies, whether Cumulative or Substitutional.]—A testatrix by her will bequeathed seven legacies to as many legatees, including two legacies to her two executors in case they acted as such; she bequeathed a sum of stock to her executors on trust to pay the income to A for life, then to B for life, and directed that on the death of the survivor the said stock should fall into her residuary estate, which she devised and bequeathed to two persons in equal shares. The testatrix subsequently executed four documents in the nature of codicils; and seven months after the first will she executed a second, beginning with the words, " This is my last will and testament," but containing no revocation clause. The second will was almost a copy of the first; the legatees were the same, and were mentioned in the same order. Four of the pecuniary legacies were, however, reduced in amount; one was increased; and two remained unaltered. The bequest of stock was repeated, and the same persons were appointed residuary legatees. All six testamentary documents were together admitted to probate :—*Held*, that the pecuniary legacies bequeathed by the second document were substitutionary for those in the first, and not cumulative. *Bell* v. *Park*, [1914] 1 Ir. R. 158—C.A.

10. Charitable Legacies. *See* Charity.

11. Annuities. *See* Annuities.

12. Legacy to Debtor.

See also Vol. XV. 1550, 2089.

Legacy to Daughter—Advances to Son-in-law—Entries in Ledger Relating to Debt—Appointment of Debtor as Executor—Direction in Will to Deduct Debt from Legacy—Release of Debt.]—A testator in his lifetime advanced money from time to time to his son-in-law. In his ledger he made an entry in February, 1907, " 5,000*l.* is given off this debt for a definite object arranged between me and Mrs. Moore " —the wife of the debtor—" as from July 3, 1906, with interest due to that date." After deducting the sum of 5,000*l.* the indebtedness amounted in June, 1909, to 4,800*l.*, and the testator then made another entry : " This debt is absolutely cancelled from this date viz. : 4,800*l.* and interest." By his will dated March 12, 1908, the testator, after appointing the debtor to be one of his executors, gave a settled legacy to the debtor's wife and children and directed that the debt due from the debtor should be treated as a loss to the legacy and not as a loss to his residuary estate :—*Held*, that the debt of 4,800*l.* and interest had been effectively released, but that the rest of the debtor's indebtedness remained a debt due to the testator's estate. *Strong* v. *Bird* (43 L. J. Ch. 814; L. R. 18 Eq. 315) explained and followed. *Pink, In re : Pink* v. *Pink*, 81 L. J. Ch. 753; [1912] 2 Ch. 528; 107 L. T. 241; 56 S. J. 668; 28 T. L. R. 528—C.A.

Intention to Release Debt—Covenant in a Mortgage—Evidence of Intention of Testator.] —A direction by a testator in his will to his trustees to pay his son a sum of money, coupled with evidence that at the time when the testator took security from his son for a debt still owing he had said that he did not intend to enforce such security, does not amount to a release of such debt, and the trustees can accordingly retain such legacy, and set it off against the debt, which was of

larger amount than the legacy. *Tinline, In re; Elder* v. *Tinline*, 56 S. J. 310—Parker, J.

Evidence of Debt—Appointment of Alleged Debtor as Executor—Evidence of Continuing Intention to Forgive the Debt—Release.]—Where a testator wrote a letter offering a sum of 150*l.* to her friend, and making certain suggestions with regard to her giving her an I O U., and paying interest thereon, and wound up the letter as follows: "I engage not to use the I O U during your life; also not to call in the loan, but leave it with you as long as you want it, and the interest is paid"; and subsequently seemed offended when the friend offered to pay the capital, and said, "I thought it would just fall into your hands when I died. The I O U is in an envelope with my papers, directed to you, and when I die all you have to do is to destroy it," and finally appointed the friend her executor:—*Held*, that there was a sufficient legal release of the debt by the appointment of the friend as executor, coupled with the continuing intention to release the debt. *Strong* v. *Bird* (43 L. J. Ch. 814; L. R. 18 Eq. 315) applied. *Goff, In re; Featherstonehaugh* v. *Murphy*, 111 L. T. 34; 58 S. J. 535—Sargant, J.

See also cases under ADVANCES—HOTCHPOT *post*, col. 1833.

13. Legacy to Creditor: Satisfaction.

See also Vol. XV. 1564, 2090.

Bequest to a servant *held* to be a satisfaction of wages due to him by the testator at the time of his death. *Ellard* v. *Phelan*, [1914] 1 Ir. R. 76—Ross, J.

14. Ademption.

See also Vol. XV. 1576, 2091.

Specific Bequest of Shares—Reconstruction of Company—Substitution of New Shares.]—A specific bequest of ten shares in a company is not adeemed by the fact that, after the date of the will, the company has been wound up, reconstructed, and incorporated under the same name, the ten shares being represented by a greater number of shares in the new company. *Leeming, In re; Turner* v. *Leeming*, 81 L. J. Ch. 153; [1912] 1 Ch. 828; 106 L. T. 793—Neville, J.

And see Greenberry, In re, ante, col. 1800.

"Shares belonging to me"—Will Speaking from Death—Contrary Intention.]—Where a testator bequeaths "twenty-three of the shares belonging to me" in a certain company, and such shares are between the dates of the will and the testator's death, and on the occasion of the amalgamation of that company with another similar company, subdivided into four shares each, the bequest will, in the absence of a contrary intention, pass ninety-two of such subdivided shares, provided it be possible to identify the ninety-two shares as the equivalent in all but name and form of the original twenty-three shares. *Clifford, In re; Mallam* v. *McFie*, 81 L. J. Ch. 220; [1912] 1 Ch. 29; 106 L. T. 14; 56 S. J. 91; 28 T. L. R. 57—Swinfen Eady, J.

"All my shares"—Reconstruction—Inclusion of Stock.]—A gift of "all my shares" in "the A. B. and C companies was held to pass preferred ordinary stock, into which the shares in the company had been converted on a reconstruction of that company and amalgamation with another company, but not a debenture bond which had been created by a reconstruction of the A company nor debenture stock of the C company similarly created on a reconstruction. *Humphreys, In re; Wren* v. *Ward*, 60 S. J. 105—Sargant, J.

Specific Legacy—Misdescription—Shares in a Company—Amalgamation with another Company.]—By her will, made in 1907, a testatrix gave to her son all the shares in the W. Co. belonging to her at the time of her decease. There was no company of that name in existence at the date of the will nor at the death of the testatrix in 1911, but for some years prior to 1900 the testatrix had held shares in the A. Co., and in that year the W. Co. was amalgamated with the A. Co., the testatrix receiving shares in the latter company in exchange for her shares in the absorbed company, which she still held at the date of her death:—*Held*, that the shares in the A. Co. did not pass to the specific legatee, but fell into the residue. *Atlay, In re; Atlay* v. *Atlay*, 56 S. J. 444—Eve, J.

Bank Share—Amalgamation with another Bank.]—A testator bequeathed to trustees twenty-three shares belonging to him in the London and County Bank upon certain trusts. At the date of his will the testator held 104 shares in the bank of 80*l.* each, 20*l.* paid. Between the date of the will and the date of the testator's death the London and County Bank was amalgamated with the London and Westminster Bank, the name was changed to the London County and Westminster Bank, and the shares of 80*l.* each, 20*l.* paid, were subdivided into four shares of 20*l.*, 5*l.* paid:—*Held*, that the bequest was not adeemed and that the twenty-three original shares, or four times that number since the division of the shares, passed by the bequest. *Clifford, In re; Mallam* v. *McFie*, 56 S. J. 91; 28 T. L. R. 57—Swinfen Eady, J.

Legacy—Money Paid into Joint Account of Testator and Legatee—Admissibility of Parol Evidence.]—A testator by his will dated August 12, 1908, gave the sum of 300*l.* to S. D., who had been his housekeeper and nurse and faithful servant. On April 15, 1909, he wrote a letter to S. D., inclosing a cheque for 300*l.* and stating that this sum was to be instead of the 300*l.* left to her in his will. This letter, together with the cheque, was put in an envelope and given to S. D., with instructions that the envelope was to be opened at his death. S. D. did not know the contents of the letter of April 15, 1909. In December, 1910, the testator sent S. D. for the envelope, and in her presence opened it and took out the cheque and re-sealed the letter in another envelope. Later on in December, 1910, a sum of 300*l.* was placed by the testator in a bank to a joint account in the names of himself

and S. D., with power for either of them to draw upon it. The testator never expressed any wish to alter or revoke his will or any legacy contained in it:—*Held*, that the gift of 300*l.* to S. D. was a clean gift unaccompanied by conditions, and that the legacy to her of 300*l.* had not been adeemed by the gift; S. D. having no knowledge of the contents of the letter of April 15, 1909, and there being nothing to affect her conscience, that letter could not be admitted as evidence to prove that the testator intended his executors not to pay the legacy. *Shields, In re; Corbould-Ellis* v. *Dales*, 81 L. J. Ch. 370; [1912] 1 Ch. 591; 106 L. T. 748—Warrington, J.

Chapman v. *Salt* (2 Vern. 646), *Shudal* v. *Jekyll* (2 Atk. 516), *Hall* v. *Hill* (1 Dr. & W. 94), *Kirk* v. *Eddowes* (13 L. J. Ch. 402; 3 Hare, 509), and *Fowkes* v. *Pascoe* (44 L. J. Ch. 367; L. R. 10 Ch. 343) considered. *Ib.*

Bequest for Purchase of Land for Glebe—Subsequent Purchase and Gift of Land by Testator—Evidence.]—A testator by his will dated December 31, 1904, bequeathed 500*l.* to his trustees on trust to invest the same in the purchase of land, in the parish of M., to be used as glebe land for the vicarage of the parish church, and he declared that the bequest was made in pursuance of the express wish of his wife to do something for the parish. Evidence was given that shortly after his wife's death, in 1896, the testator had told the vicar that he should like to do something in memory of his wife, and that what she would have liked best was the gift of a particular meadow to the living. In 1905 the testator purchased this piece of land for 375*l.*, and conveyed it on trust for the endowment of the incumbent for the time being of the living of M., as if the same was a part of the glebe of the living. In the conveyance it was recited that the testator had purchased the land with the object and intention of presenting the same to the living of M. in memory of his wife:—*Held*, that the statement made by the testator to the vicar in 1896 was not admissible in evidence, and that as the objects of the bequest and the gift *inter vivos* were different, the one object being to carry out the wife's wish and the other to do something in memory of the wife, the conveyance of 1905 was not an ademption of the legacy bequeathed by the will. *Aynsley, In re; Kyrle* v. *Turner*, 84 L. J. Ch. 211; [1915] 1 Ch. 172; 112 L. T. 433; 59 S. J. 128; 31 T. L. R. 101—C.A.

Decision of Joyce, J. (83 L. J. Ch. 807; [1914] 2 Ch. 422), affirmed. *Ib.*

15. Lapse.

See also Vol. XV. 1596, 2094.

Legacy—Gift of Share of Residue—Contingency—Legatee to be a Widow at Date of Distribution—Gift Over in Case she be a Wife—Death of Legatee as a Widow before Period of Distribution — Failure of Gifts and Gifts Over.]—Where a testator gave (*a*) a legacy of 1,000*l.* and (*b*) a share of residue to his sister, a widow, payable on his wife's death, provided the sister be a widow at that date, but in the event of her being a wife at that date then over to her two children, and the sister died a widow, but predeceased the testator's wife,—*Held*, upon the death of the testator's wife, that the legacy and the gift of the share of residue, as well as the gifts over to the children in each case, were contingent upon the sister being alive at the date of distribution, and that in the events that had happened both the gifts and the gifts over failed. *Laing, In re; Laing* v. *Morrison*, 81 L. J. Ch. 686; [1912] 2 Ch. 386; 107 L. T. 822; 57 S. J. 80—Parker, J.

Davies v. *Davies* (30 W. R. 918), *Brock* v. *Bradley* (33 Beav. 670), and *Whitmore, In re; Walters* v. *Harrison* (71 L. J. Ch. 673; [1902] 2 Ch. 66), distinguished. *Ib.*

Settled Legacy — Lapse — Death of Life Tenant before Testator.] — A testator bequeathed his residuary estate to be divided between his five named children, "subject to the trusts following," which were in effect a settlement on each child for life, with remainder as to the capital of the share to his grandchildren, the children of such child, with accruer to the other shares in default of such grandchildren. One of the children died in the lifetime of the testator, leaving no issue him surviving:—*Held*, that the share of the deceased child did not lapse, but accrued to the other shares. *Walter, In re; Turner* v. *Walter*, 56 S. J. 632—C.A.

16. Disclaimer of Legacy.

Onerous Bequest — Bequest of Leasehold House and Furniture—Separate and Independent Gift.] — A testatrix by her will bequeathed to L. her leasehold house with the appurtenances belonging thereto for all the residue of the term for which the same was held, subject to the rent reserved by and the covenants and conditions contained in the lease under which the said premises were held, together with all articles of personal or domestic or household or stable or garden use or ornament; and she further bequeathed to L. all the ready money which at her decease might be in her house or standing to the credit of her current account at her bankers'; she also gave him a life interest in certain trust funds:—*Held*, that L. was entitled to disclaim the bequest of the leasehold house and accept the gift of chattels and other benefits contained in the will. *Syer* v. *Gladstone* (30 Ch. D. 614), as explained by *Kensington (Baron), In re; Longford (Earl)* v. *Kensington (Baron)* (71 L. J. Ch. 170; [1902] 1 Ch. 203), and *Hotchkys, In re; Freke* v. *Calmady* (55 L. J. Ch. 546; 32 Ch. D. 408), considered and followed. *Lysons, In re; Beck* v. *Lysons*, 107 L. T. 146; 56 S. J. 705—Joyce, J.

Married Woman—Bequest of Annuity for Separate Use without Power of Anticipation.] —A married woman, being entitled to an annuity under a will for her separate use without power of anticipation, agreed with the residuary legatees to disclaim the bequest on condition that they paid her a sum of money; —*Held*, that the married woman was entitled to disclaim the bequest. *Wimperis, In re;*

Wicken v. *Wilson*, 83 L. J. Ch. 511; [1914] 1 Ch. 502; 110 L. T. 477; 58 S. J. 304—Warrington, J.

Power to Retract Refusal to Accept Income.]—*See Young, In re; Fraser* v. *Young, post*, col. 1833.

17. Charge of Legacies.

See also Vol. XV. 1633, 2094.

General Charge of Debts Including Mortgage Debts—Specific Devises of Incumbered and Unincumbered Property — Subsequent Devise of Specific Property on Trust for Payment of Debts.]—Where a testator declared that all his debts, including mortgage debts and funeral and testamentary expenses, should be paid and satisfied, and subsequently—after making a specific bequest of personalty and a number of specific devises of incumbered and unincumbered property in favour of his children—created an express trust fund, consisting of certain specific realty and of the residue of his realty and personalty for payment of his debts, including mortgage debts, and funeral and testamentary expenses, and this express trust fund proved inadequate to the burden imposed upon it,—*Held*, first, that the general charge of debts implied by the initial direction was explained and limited by the subsequent creation of a definite fund for the purpose, and that only such real estate as was comprised in that fund was charged with debts and funeral and testamentary expenses. *Thomas* v. *Britnell* (2 Ves. sen. 313), *Palmer* v. *Graves* (1 Keen, 545), and *Corser* v. *Cartwright* (L. R. 8 Ch. 971) followed. *Price* v. *North* (11 L. J. Ch. 68; 1 Ph. 85) distinguished. *Major, In re*; *Taylor* v. *Major*, 83 L. J. Ch. 461; [1914] 1 Ch. 278; 110 L. T. 422; 58 S. J. 286—Sargant, J.

Held, secondly, that so much of the mortgage debts as was not discharged out of the express trust fund must be borne by the separate mortgaged properties, each property bearing the remainder of its own mortgage. *Held*, thirdly, that the other debts and the funeral and testamentary expenses not paid out of the express trust fund must fall rateably on the specifically bequeathed personalty and specifically devised hereditaments in proportion to their values, which in the case of such of them as were incumbered would be the total value of each property less the proportion of its mortgages not discharged out of the express trust fund. *Ib.*

Gift of Specific Foreign Realty and Personalty Subject to Legacies and Debts—No Express Exoneration of Residuary Estate—Foreign Personalty Primarily Liable—Foreign Realty not so Liable—Order of Administration—Mixed Fund.]—A testator appointed executors and gave legacies free of duty and, subject to the payment of the said legacies and duty and his funeral and testamentary expenses and debts, he gave all his real estate situate in the Argentine Republic, together with certain personal property in or about the same, to his trustees upon trust to sell and to pay the proceeds to certain nephews in equal shares, and he gave all the residue of his real and personal estate to the plaintiff. On the question whether the testator had charged his specifically given real and personal estate in the Argentine Republic with the payment of his legacies, duties, expenses, and debts in exoneration of his residuary estate,—*Held*, first, that, as a matter of construction, the charge was confined to the Argentine property. Secondly, that the rule that something must be found in the will to shew that the testator intended not only to charge the realty, but to discharge the personalty, applies to land outside the jurisdiction. Thirdly, that, since there was no trust for conversion for the purposes of satisfying the charge upon the specifically given property, it was not a "mixed fund" within the authority of *Roberts* v. *Walker* (1 Russ. & M. 752). Fourthly, that the specifically given personalty was charged in exoneration of the residuary estate. Fifthly, that the legacies, duties, expenses, and debts were therefore payable out of the several funds in the following order of administration: (*a*) the specifically given personalty, (*b*) the residuary personal estate, and (*c*) the specifically given realty. *Smith, In re; Smith* v. *Smith*, 83 L. J. Ch. 13; [1913] 2 Ch. 216; 108 L. T. 952—Eve, J.

18. Abatement; Priorities.

See also Vol. XV. 1670, 2095.

Life Interests in Appropriated Sums—Capital to Fall into Residue — Legatees Treated as Annuitants—Insufficient Estate—Abatement — Valuation.]—Legatees whose legacies are life interests in sums directed to be appropriated for their benefit and after their deaths to fall into residue are really annuitants, and where the estate is insufficient to pay legacies and keep down the annuities the rule for the purpose of ascertaining the proper and proportionate abatement of legacies and annuities respectively is to put all on the same level and to convert the annuities into pecuniary legacies. To effect this each annuity is to be valued as at the date when it would have been payable had it taken the form of a pecuniary legacy, and the value so ascertained is treated as a pecuniary legacy liable to abate rateably with the other legacies. *Cottrell, In re; Buckland* v. *Bedingfield* (79 L. J. Ch. 189; [1910] 1 Ch. 402), applied. *Richardson, In re; Richardson* v. *Richardson*, 84 L. J. Ch. 438; [1915] 1 Ch. 353; 112 L. T. 554—Eve, J.

Legacy in Satisfaction of an Interest under a Settlement—Insufficiency of Assets—Abatement.]—A testator by a voluntary settlement settled a sum of money upon trust to pay the income thereof to himself for life, and after his death to pay such income to his maidservant if she should survive him, and after the death of the survivor of them upon trust as to both capital and income for the benefit of an orphanage. Subsequently, by his will he gave a sum of 1,000*l.* to the said maidservant on condition that she released the trustees of the settlement from all claims by her under the settlement and accepted the legacy in place

thereof. The testator's estate proved insufficient to pay in full all the pecuniary legacies given by the will :—*Held*, that the legacy in question, if accepted, was not entitled to priority over other pecuniary legacies, but was liable to abate with them. *Davies* v. *Bush* (Younge, 341) and *Wedmore, In re; Wedmore* v. *Wedmore* (76 L. J. Ch. 486; [1907] 2 Ch. 277), considered. *Whitehead, In re; Whitehead* v. *Street*, 82 L. J. Ch. 302; [1913] 2 Ch. 56; 108 L. T. 368; 57 S. J. 323—Farwell, L.J.

Settled Legacy — Annuity — Insufficient Estate — Apportionment.]—The testator left his estate to trustees on trust to convert, and, as to one moiety of the proceeds, to hold 2,500*l.* on trust for M. T. for life, and to set aside a sum sufficient to produce an income of 78*l.* per annum, and hold the same in trust for A. T. for life. The moiety of the estate proved insufficient to satisfy the legacy and annuity : —*Held*, that the trustees must ascertain what sum invested in Two and a Half Per Cent. Consols at one year from the testator's death would have been sufficient to produce an income of 78*l.* per annum, and apportion the moiety of the estate in the proportion of that sum to 2,500*l.* *McMahon, In re; Wells* v. *Tyrer*, 55 S. J. 552—Warrington, J.

Priority of Legacies—Words "after making provision."]—A testator bequeathed certain personal legacies; and continued : "after making provision for the above-mentioned sums, I direct" certain legacies to be paid to charities. The estate was insufficient to pay all the legacies in full :—*Held*, that the personal legacies had priority over the charities. *Olivieri, In re; Hamill* v. *Rusconi*, 56 S. J. 613 —C.A.

—— Gift to Charity of Legacies Payable out of such Part of Personal Estate as may Lawfully be Appropriated to such Purposes—Will made after Mortmain Act, 1891—Direction to Pay Certain Legacies and "after payment thereof" others—Priorities of Legatees.]—A testator gave his residuary real and personal estate on trust for sale and conversion, and directed his trustees thereout "in the first place" to pay or retain all the expenses incidental to the execution of certain trusts and powers, and his debts and funeral and testamentary expenses, and "in the next place" to pay or retain all the expenses incidental to the execution of certain trusts and powers, and his debts and funeral and testamentary expenses, and "in the next place" to pay legacies to certain nephews, "and after payment thereof" to pay legacies to certain nieces. He gave legacies to eleven charities, and directed that they should be paid "exclusively out of such part of my personal estate as may lawfully be appropriated to such purposes and in preference to any other payments thereout." The will was made after the passing of the Mortmain and Charitable Uses Act, 1891 :—*Held*, first, construing the will with reference to the law after the passing of that Act, that the charitable legacies were a first charge upon the whole of the testator's personal estate not specifically bequeathed, in preference to all other payments, but were not payable out of the proceeds of sale of real estate; and secondly, that the words "after payment" of the legacies to the nephews did not indicate that they were to have any priority of interest over the nieces, and that the legacies given to the nephews and nieces therefore ranked *pari passu*. *Bridger, In re; Brompton Hospital* v. *Lewis* (63 L. J. Ch. 186; [1894] 1 Ch. 297), and *Thwaites* v. *Foreman* (1 Coll. C.C. 409; on app. 10 Jur. 483) followed. *Harris, In re; Harris* v. *Harris*, 81 L. J. Ch. 512; [1912] 2 Ch. 241; 106 L. T. 755—Warrington, J.

—— Executor Manager of Business — Salary Given by Will—Legacy—Insolvent Estate.]—A testator empowered his trustees to appoint one of their number to manage his business till sale, at a salary, the estate afterwards proving insolvent :—*Held*, that the gift of salary was a legacy, and could not be paid in priority to the creditors of the estate. *Salmen, In re; Salmen* v. *Bernstein*, 107 L. T. 108; 56 S. J. 632—C.A.

19. Interest and Intermediate Income.

See also Vol. XV. 1721, 2095.

Interest — Postponement of Legacies until Legatees Attain Twenty-three—Attainment of that Age before Death of Testator—Whether Payable from Date of Testator's Death or from Expiration of One Year After.]—A testator gave a legacy to each of his seven children as and when he or she should respectively attain the age of twenty-three. The two eldest children attained that age in the lifetime of the testator, and it was claimed on their behalf that interest became payable on the two legacies in question as from the death of the testator :—*Held*, that interest did not become payable until one year from the death of the testator. *Pickwick* v. *Gibbes* (1 Beav. 271) and *Coventry* v. *Higgins* (14 Sim. 30) distinguished and criticised. *Palfreeman, In re; Public Trustee* v. *Palfreeman*, 83 L. J. Ch. 702; [1914] 1 Ch. 877; 110 L. T. 972; 58 S. J. 456—Sargant, J.

—— Gift to Son on Attaining Twenty-five—Share of Residue—Interest by Way of Maintenance.]—A testator bequeathed to his infant son a legacy on his attaining twenty-five and a further legacy on his attaining thirty, and also gave him a share of residue which was to be settled on the son for life with remainder to his children :—*Held*, that the legacies did not carry interest even up to the age of twenty-one. *Abrahams, In re; Abrahams* v. *Bendon*, 80 L. J. Ch. 83; [1911] 1 Ch. 108; 103 L. T. 532; 55 S. J. 46—Eve, J.

A bequest of a share of residue does not amount to such a provision for maintenance as will displace the general rule that a contingent legacy given by a parent to an infant child carries interest. *Moody, In re; Woodroffe* v. *Moody* (64 L. J. Ch. 174; [1895] 1 Ch. 101), followed. *Ib.*

A legacy to an infant legatee to whom the testator stands *in loco parentis*, where the legacy is contingent on events having no relation to his infancy, does not carry interest. *Ib.*

—— **Legacy Payable at Twenty-one—Maintenance—Provision for Maintenance of Legatee out of other Funds.**]—The intention that a legacy should carry interest, which is presumed where a testator merely gives a future legacy with a power to the executors to maintain the legatee out of the legacy, cannot be presumed in a case where a testator in addition to such future legacy makes provision for the maintenance of the legatee out of some other fund. *West, In re; Westhead* v. *Aspland*, 82 L. J. Ch. 488; [1913] 2 Ch. 345; 109 L. T. 39—Warrington, J.

Pett v. *Fellows* (1 Swanst. 561*n*.), *Leslie* v. *Leslie* (Ll. & G. 1), and *Churchill, In re; Hiscock* v. *Lodder* (79 L. J. Ch. 10; [1909] 2 Ch. 431), distinguished. *Ib*.

Destination of Income — "From and after the decease of my said six nieces"—Income between the Death of the First to Die and the Last to Die—Distributive Construction.]—A testator gave his trust estate to trustees "upon trust to pay the income thereof to each of such of my said six nieces as shall be living . . . at the time of" the death of "the survivor of my said wife and son, for and during the respective lives of my said nieces, and from and after the decease of my said six nieces, to stand possessed of my said trust estate and the income thereof," upon trust for such child or children of the testator's son as should be living at the son's death. Three nieces survived the testator's widow and son. The son left one child:—*Held*, that "from and after the decease of my said six nieces" should be read distributively, and that, as and when each niece died, her share of income went immediately to the remainderman—that is, to the son's child. *Browne's Will Trusts, In re; Landon* v. *Brown*, 84 L. J. Ch. 623; [1915] 1 Ch. 690; 113 L. T. 39—Sargant, J.

Gift of Life Interest in Realty — Gift in Remainder of "as well the income as the corpus of the same"—Remaindermen Infants—Interests Vesting at Twenty-one or Marriage—Right to Intermediate Income.]—A testator who died in 1904 gave real estate on trust to permit one of his daughters to receive the income during her life, and on her death on trust to hold "as well the income as the *corpus* of the same" on such trusts as she should by will appoint, and subject thereto on trust for all her children at twenty-one or marriage. He gave his residuary estate on trust for his wife for life, and on her death for his children. The daughter died intestate in December, 1913. She left six children, of whom the eldest attained twenty-one in December, 1914. The other five were infants and unmarried:—*Held*, in view of the express mention of income in addition to, and before the mention of, *corpus*, that the income for the period between the death of the daughter and the attainment of twenty-one by her eldest child belonged to her children, and did not fall into residue as undisposed of; and that, as between the daughter's children, the eldest child was not entitled to the whole of the income for any period, but that each of the six children was entitled to a sixth of the income of the property as and when becoming entitled to a corresponding sixth of the *corpus*, and in the meantime to maintenance out of such income. *Bective (Earl)* v. *Hodgson* (33 L. J. Ch. 601; 10 H.L. C. 656) and *Averill, In re; Salisbury* v. *Buckle* (67 L. J. Ch. 233; [1898] 1 Ch. 523), distinguished. *Stevens, In re; Stevens* v. *Stevens*, 84 L. J. Ch. 432; [1915] 1 Ch. 429; 112 L. T. 982; 59 S. J. 441—Sargant, J.

Held, also, that if the intermediate income between the death of the daughter and the attainment of twenty-one by her eldest child had fallen into residue, it would have been payable as income to the tenant for life. *Ib*.

Gift to Several Persons Equally for Life—Gift Over on Death of Survivor—Implying Gift of all Income to Survivors till Distribution—Provision for Parties Entitled under Gift Over during Lives of Life Tenants — Life Tenant Predeceasing Testator—Intestacy.]—The principle that where there is a gift equally between A, B, and C for their respective lives, with a gift over of the whole property on the death of the survivor, an intention will be implied on the part of the testator that the survivor or survivors of A, B, and C shall, after the death of one or more of them, be entitled to all the income till the period of distribution, cannot be applied where there is a provision, during the lives of some of the first takers, for parties entitled under the gift over. *Hobson, In re; Barwick* v. *Holt*, 81 L. J. Ch. 432; [1912] 1 Ch. 626; 106 L. T. 507; 56 S. J. 400—Parker, J.

A testator gave the income of his residuary estate on trust for fourteen named persons during their respective lives. In case any of them should die leaving children them surviving, the share of income of the parent so dying was to be divided equally among the children. On the death of the survivor of thirteen of the fourteen persons the property was given equally among such of the children of H. and the thirteen persons as might be living at the death of the last survivor. Two of the fourteen persons died without issue in the testator's lifetime:—*Held*, that the Court could neither construe the gift as one to the named persons in joint tenancy, or imply a gift over to the survivors, on the deaths of any of the named persons, of the shares of income given to them; and that there was therefore an intestacy as to the shares of income given to the two persons who predeceased the testator. *Ib*.

Income of Trust Fund to be Paid to Legatee for Life—Refusal of Legatee to Accept Income — Power to Retract Refusal.] — A testatrix directed her trustees to set apart out of her estate and invest a sum of 1,000*l*. and to pay the income thereof to the plaintiff during her life, and after her death to pay the income to the plaintiff's son for his life, and after his death she directed that the capital and come of the fund should sink into and form part of her residuary estate. For some time the plaintiff refused to accept the income of the fund in question, and she desired that it should be paid to her son; and accordingly it was paid to him till his death. Thereafter

the plaintiff requested that the income should be paid to her :—*Held*, that she was entitled to have the income paid to her as no one had been prejudiced by what had occurred. *Young, In re; Fraser* v. *Young*, 82 L. J. Ch. 171; [1913] 1 Ch. 272; 108 L. T. 292; 57 S. J. 265; 29 T. L. R. 224—Swinfen Eady, J.

20. **Advances—Hotchpot.**

See also Vol. XV. 2100.

Bequest of Residue to Children Subject to Life Interest of Widow — Advances to be Brought into Account on Division of Residue — Advances made by Testator, whether Released by Will.]—A testator devised and bequeathed all his residuary estate upon trust for his wife for life and after her death in the events that happened for division equally between his nine children. The testator provided by his will and two codicils that in making such division any advances that he might have made to any of his sons during his lifetime and which should not have been repaid should be brought into account together with simple interest thereon at the rate of 2 per cent. from the date of the advance up to the date of the death of his widow. Prior to the date of the will and also between the date of the will and the dates of the codicils the testator had made advances to each of his five sons. No written acknowledgments were given by the sons to the testator in respect of the advances made to them respectively, but some of the advances had, without demand, been partially repaid during the testator's lifetime :—*Held*, that the sons were not released from repaying the advances, and that the widow as tenant for life was entitled to such interest as was paid in respect of the advances from and after the testator's death. *Young, In re; Young* v. *Young*, 83 L. J. Ch. 453; [1914] 1 Ch. 581, 976; 111 L. T. 265—C.A.

Gift of Residue to Children in Equal Shares — Advances to some Children in Lifetime — Further Advances by Trustees—Postponement of Conversion — Division of Income Pending Conversion — Adjustment between Advanced and Unadvanced Children.]—Where a testator gave his residuary estate to his trustees upon trust to be divided amongst his children in equal shares, and had made advances to some of his children during his lifetime which he directed to be brought into hotchpot, and had given his trustees wide power to postpone the conversion of his estate, and where the trustees had made further advances to some of the children,—*Held*, that for the purposes of the division of the income of the estate pending conversion, the actual income of the estate must be taken and to that interest on the advances, whether made in the lifetime of the testator or afterwards, added, and the aggregate so arrived at divided amongst the children, deducting in the case of an advanced child the interest on the advance made to such child. *Poyser, In re; Landon* v. *Poyser* (77 L. J. Ch. 482; [1908] 1 Ch. 828), followed, *Hargreaves, In re; Hargreaves* v. *Hargreaves* (88 L. T. 100), considered and distinguished. *Craven, In re; Watson* v. *Craven*, 83 L. J. Ch. 403; [1914] 1 Ch. 358; 109 L. T. 846; 58 S. J. 138—Warrington, J.

Advances to be Taken in Satisfaction pro tanto of Share of Residue—In Default of Direction to the Contrary in Writing—Covenant to Pay Annual Allowance — Declaration that Allowance not to be Taken in Part Satisfaction of Share under Will—Codicil after Date of Settlement.]—By a will it was provided that moneys which a testator had given or covenanted to give to any child "on his or her marriage or otherwise for his or her advancement or establishment in life" should, "in default of any direction to the contrary in writing under my hand," be taken in or towards satisfaction of the child's share under the testator's will and "brought into hotchpot and accounted for accordingly." On the marriage of the testator's son after the date of the will he covenanted to pay to the son's settlement trustees an annual sum during the joint lives of himself and other persons, and declared that the sums payable under that covenant should not be taken in satisfaction of any share which the child might take in the testator's residuary estate under his will, and he subsequently made a codicil whereby he confirmed his will. It was objected that this declaration to the contrary must be disregarded as being an attempt to regulate a testamentary disposition by a non-testamentary instrument :—*Held*, that the sums should not be brought into account, as the hotchpot clause should be construed as requiring to be brought into hotchpot only sums answering a particular description—that is, sums advanced free from a declaration to the contrary as to hotchpot—and that this construction was aided by the fact that the codicil made by the testator after the date of the settlement confirmed the will. *Semble*, such an allowance does not come within the scope of the hotchpot clause at all. *Arbuthnot, In re; Arbuthnot* v. *Arbuthnot*, 84 L. J. Ch. 424; [1915] 1 Ch. 422; 112 L. T. 987; 59 S. J. 398—Sargant, J.

Shares of Residue—Advances to Residuary Legatees — Period of Distribution — Unadvanced Legatees—Recoupment of Income.]—A testator made a general residuary gift to his trustees on trust for sale with full powers of postponement and retention, and declared that the trust fund should be held on trust to pay to his wife during her widowhood out of the income thereof such a sum as, together with the income under her marriage settlement, would make up the yearly sum of 3,000*l.*; and he provided that if the income of the trust fund should not in any year be sufficient to make up the 3,000*l.*, the whole of the income in that year should be paid to her, and any deficiency should be made up when the subsequent income of the trust fund would permit. The trustees were directed to appropriate 4,000*l.* on trust for the benefit of a son of the testator, and subject as aforesaid the capital and interest of the trust fund was to be held in trust for such of his sons, W., E., and J., and his daughters, I. and D., as being

sons should attain twenty-one, or being daughters should attain twenty-one or marry, and so that the share of a son should be double that of a daughter. The testator gave power to the trustees, with the widow's consent during widowhood, to advance a certain proportion of the share of any of the children, and then settled the share of any daughter (less advances) on trust for her for life, and after her death for her children. By a codicil the testator declared that a sum of 7,200*l.* with 4 per cent. interest as from his death, which he had covenanted should be paid by his executors to the trustees of the marriage settlement of his daughter I., should be taken in or towards satisfaction of the share of the daughter and her issue in his residuary estate, and should be brought into hotchpot and accounted for accordingly. By another codicil he provided that if his daughter D. should marry during the wife's widowhood the trustees might settle on her marriage a sum equal to that settled on I., which sum should cease to be subject to the widow's annuity and the other will trusts, but should be brought into hotchpot in the same manner as I.'s 7,200*l.* The executors of the testator, on his death, paid 7,200*l.* to I.'s settlement trustees, and as from his death she received the income of that fund. After the testator's death D. married, and the testator's trustees transferred 7,200*l.* to her settlement trustees free from the widow's annuity, and D. thenceforth received the income of that sum. The income of the testator's estate, after deducting the two sums of 7,200*l.*, was sufficient to provide for the widow's annuity and interest on the 4,000*l.* trust legacy. No income of the residuary estate was paid to I. from the testator's death or to D. from the date of her marriage. In appropriating the various charges on the income of the residuary estate as from the testator's death to the widow's death as between the several shares thereof, it appeared that the shares of I. and D. in such income were insufficient to meet the shares of the charges appropriated thereto respectively:—*Held* (distinguishing *Hargreaves, In re; Hargreaves* v. *Hargreaves*, 88 L. T. 100), that the period of distribution of the estate was the death of the widow, and that the shares settled on I. and D. should be brought into hotchpot at that date and not before, so that they would not be chargeable with the deficiencies of income down to the widow's death, and they were entitled as from that date to the full income of their shares in the residuary estate after bringing the sums settled in their favour into hotchpot. *Poyser, In re; Landon* v. *Poyser* (77 L. J. Ch. 482; [1908] 1 Ch. 828), and *Craven, In re; Watson* v. *Craven* (83 L. J. Ch. 403; [1914] 1 Ch. 358), followed. *Forster-Brown, In re; Barry* v. *Forster-Brown*, 84 L. J. Ch. 361; [1914] 2 Ch. 584; 112 L. T. 681—Sargant, J.

In an ordinary case of a direction to bring into hotchpot advances made either by the testator himself or by his trustees pursuant to directions in his will, interest is not accumulated against advanced children between the testator's death and the period of distribution. *Ib.*

Debt Due to Testator—Release by the Will—Advances to be Brought into Hotchpot.]—A declaration in a will that all moneys advanced to any of the testator's children, or his, or her wife or husband, should be brought into hotchpot and accounted for on the distribution of his estate, was *held* not to cover two advances by way of loan to the husband of one of the testator's daughters, one of a sum of 1,000*l.*, secured by promissory note given before the date of the will, and another of a sum of 650*l.*, also secured by promissory note given after the date of the will. The clause had not had the effect of altering the nature of transactions which were really debtor and creditor transactions. Such a clause is a charging and not a discharging clause, and applies primarily to advances by way of anticipatory portion:—*Held*, accordingly, that these debts were personally recoverable. Judgments of the Lords Justices in *Limpus* v. *Arnold* (54 L. J. Q.B. 85; 15 Q.B. D. 300) not in conflict with this view. *Warde, In re: Warde* v. *Ridgway*, 111 L. T. 35; 58 S. J. 472—Sargant, J.

Supplying Omission by Inference.]—A testator devised his family estate upon trust to raise by mortgage the sums of 4,000*l.*, 3,000*l.*, and 3,000*l.* for the benefit of F. P. H., G. E. W., and K. A. S. respectively, for life, with certain limitations over. Subject to these charges the estate was devised upon certain limitations, which had determined, with an ultimate trust for sale. This, in the events which had happened, had taken effect. The proceeds of sale were to be held on trust for five of the testator's cousins, including F. P. H., G. E. W., and K. A. S., as should be living when the direction for sale came into operation, in equal shares, but so that if F. P. H., G. E. W., and K. A. S., "or any of them shall then be living or shall have previously died leaving issue then living," such of the sums of 4,000*l.*, 3,000*l.*, and 3,000*l.* "as shall have been so set apart for the benefit of the one or more of them so dying and her issue" should be brought into hotchpot; and there was a proviso that if any of the testator's five cousins should die before the direction for sale of the estate should come into operation leaving a child or children living at the time when such direction for sale should come into operation, such child or children should take his, her, or their parent's share. The said sums of 4,000*l.*, 3,000*l.*, and 3,000*l.* were duly raised for the benefit of F. P. H., G. E. W., and K. A. S. respectively. F. P. H. and G. E. W. were living at the date when the direction for sale came into operation; K. A. S. died previously to that date, leaving issue one child:—*Held*, that some blunder having evidently been made in the will, the latter part of the hotchpot clause must be treated as fitting or intended to fit the introductory part, and that F. P. H. and G. E. W., though living, must bring into hotchpot the sums of 4,000*l.* and 3,000*l.* respectively. *Haygarth, In re; Wickham* v. *Haygarth*, 82 L. J. Ch. 328; [1913] 2 Ch. 9; 108 L. T. 756—Joyce, J.

Several Settled Funds—Appointment—Trusts by Reference.] — A testator settled

separate funds upon trust for his three children respectively for their respective lives, with remainder to their issue as they should respectively appoint, and in default of appointment to their respective children equally, "but so nevertheless that no child who . . . shall take a share under any such appointment as aforesaid shall . . . take any part of the trust funds remaining unappointed without bringing the share appointed to him or her . . . into hotchpot." The testator then directed that in the event of the failure of the trusts declared in respect to any of these funds any such fund should go in favour of his other children and their issue successively "upon the like trusts" as had already been declared in respect of the funds settled in the first instance upon them: —*Held*, that a granddaughter of the testator who had become entitled to the whole of one fund under her father's power of appointment was entitled to share in another fund, which passed on failure of the trusts affecting that other fund, equally with her deceased brother's estate under the above-mentioned referential trusts, without bringing the appointed fund into hotchpot. *Wood, In re; Wodehouse* v. *Wood*, 83 L. J. Ch. 59; [1913] 2 Ch. 574; 109 L. T. 347; 57 S. J. 735—C.A.

Decision of Neville, J. (82 L. J. Ch. 203; [1913] 1 Ch. 303), affirmed. *Ib.*

Residuary Gift—Interest on Advancements—Portions.]—*Per* Cozens-Hardy, M.R.: The rules laid down in the authorities for working out the consequences of a common hotchpot clause are, first, that no interest is charged against an advanced child prior to the testator's death; secondly, that where the period of distribution of the testator's property is at the testator's death, interest is charged against an advanced child from the death and not from the subsequent date at which, in fact, the distribution takes place; thirdly, that if the period of distribution is at the expiration of a period of accumulation or of a prior life estate, interest is charged not from the death, but from the period of distribution; and fourthly, that the effect of a charge upon the residue, such as a life annuity secured by a fund set apart to meet it, does not alter the period of distribution. *Willoughby, In re; Willoughby* v. *Decies*, 80 L. J. Ch. 562; [1911] 2 Ch. 581; 104 L. T. 907—C.A.

Testator, who was twice married and had executed a settlement on each occasion, died in 1866, having by his will and codicil bequeathed an annuity in favour of his widow (who died in 1910) during her life, and legacies in favour of certain children, and his residuary estate in favour of all his children, with special hotchpot provisions, according to the true construction of which Parker, J., was of opinion that the testator did not intend an equality by way of benefit, but an equality by way of portion between the children:—*Held* (by Cozens-Hardy, M.R., and Kennedy, L.J., affirming Parker, J.; *dissentiente* Buckley, L.J.), that the case was taken out of the general rule, and that advanced children were not to be charged with interest between the testator's death and the death of the widow when the annuity fund became divisible. *Per* Buckley, L.J.: There was nothing to take the case out of the general rule, and advanced children ought to be charged with interest accordingly from the testator's death. *Ib.*

Per Buckley, L.J.: *Quære* the correctness of the *dictum* in *Lambert, In re; Moore* v. *Middleton* (66 L. J. Ch. 624; [1897] 2 Ch. 169), where Stirling, J., intimated that, if the amount of an annuity were such as that there were nothing immediately available for division during the annuitant's lifetime, he would have been prepared to hold that the period of distribution was not until the death of the annuitant. *Ib.*

Advances by Testator at Interest—To be Taken "in full or in part satisfaction" of Benefits Given by Will—Hotchpot—Indebtedness Exceeding Benefits—Release of Debts—Legacy of Difference.]—A testator by his will made in 1900, after reciting that he had advanced to his son a sum of 25,000*l.* at interest by way of loan, gave the sum of 25,000*l.* to such son absolutely, directing that the advance or so much thereof as should remain owing at his decease should be taken in full or part satisfaction, as the case might be, of the legacy of 25,000*l.* thereinbefore bequeathed. The testator, after making certain specific bequests to his son, who also became entitled under the will to certain contingent reversionary interests, gave his residue among four of his children in equal shares. In dividing up the specific gifts which he made to each of his children the testator apparently meant to produce equality. By a codicil made in 1912, after stating that the sum of 25,000*l.* was still owing, with considerable arrears of interest, and that since the date of his will he had advanced further sums at interest to his son, which were also then owing, the testator directed that all such advances and all interest that might be owing thereon should be taken in full or in part satisfaction, as the case might be, of the legacy of 25,000*l.* and the various other benefits given to his son by his will. Neither the will nor the codicil contained any hotchpot clause. On the death of the testator in 1914 none of these advances had been repaid, and a considerable sum was due for interest, and it was doubtful whether the amount which the son took under the will would be sufficient to satisfy his indebtedness to the testator's estate:—*Held*, that the words in the codicil amounted to a gift to the son of his indebtedness to the estate of the testator, and were sufficient to involve a legacy to him of the difference of the two sums in the event of the debts exceeding the benefits given to him by the will. *Trollope, In re; Game* v. *Trollope*, 84 L. J. Ch. 553; [1915] 1 Ch. 853; 113 L. T. 153—Astbury, J.

The *dicta* in the judgments in *Limpus* v. *Arnold* (53 L. J. Q.B. 415; 13 Q.B. D. 246; 54 L. J. Q.B. 85; 15 Q.B. D. 300) followed. *Cosier, In re; Humphreys* v. *Gadsden* (66 L. J. Ch. 236; [1897] 1 Ch. 325), applied. *Ib.*

Residue—Advances to Children—Hotchpot—Interest—Computation Pending Division.]—A testator directed his trustees to pay the income of one moiety of his residuary estate to his widow reducible on her second marriage, and, subject thereto, directed them to stand possessed

thereof upon trust for his children in the shares mentioned. The shares were settled with a protected life interest with remainders over. The testator directed that in computing the share of his eldest son, such son was to bring into hotchpot a sum of 2,250*l.*, as to which 1,700*l.* had been paid by the testator and 550*l.* was paid after his death by his executors under the testator's guarantee of the son's banking account; and a similar direction was given as to 1,000*l.* advanced to another son :—*Held*, that, for the purpose of ascertaining the proportions of the shares, the various sums paid by the testator and his executors to and for his two sons respectively ought to be added to the value of the moiety of the testator's estate the income of which was not directed to be paid to his widow, and from the aggregate capital so ascertained the sums directed to be brought into account ought to be deducted from the shares of such two sons, and the income divided from the testator's death in the proper proportions of the respective shares of capital so ascertained. *Hargreaves, In re; Hargreaves* v. *Hargreaves* (88 L. T. 100), considered, and the method of computation adopted therein applied. *Hart, In re; Hart* v. *Arnold*, 107 L. T. 757—Eve, J.

Power to Advance to Tenants for Life.]—A proviso in a will authorising trustees, notwithstanding anything thereinbefore contained—that is, notwithstanding (*inter alia*) gifts of income to the children—followed by gifts of capital to the grandchildren to apply moneys out of the capital for or towards the advancement or preferment of the children, limited to a certain amount in the case of each child, is a proviso which contemplates the bringing into account of such sums as were so advanced as against the share of the stirps of the child to whom such advancement was made. *Sparkes, In re; Kemp-Welch* v. *Kemp-Welch*, 56 S. J. 90—Swinfen Eady, J.

Advancement Clause—Fee to Architect.]—A fee paid to an architect by the testator to enable his son to learn the business of an architect is not an "advancement" for the benefit of the son, and need not be accounted for. *Watney, In re; Watney* v. *Gold*, 56 S. J. 109—Swinfen Eady, J.

WINDING-UP.

See COMPANY.

WINE.

See INTOXICATING LIQUORS.

WITNESS.

In Bankruptcy Cases.]—*See* BANKRUPTCY.

In Criminal Cases.]—*See* CRIMINAL LAW.

In Other Cases.]—*See* EVIDENCE.

WOMEN.

Criminal Law, Relating to.]—*See* CRIMINAL LAW.

Seduction.]—*See* MASTER AND SERVANT.

Other Matters, Relating to.]—*See* HUSBAND AND WIFE.

WORDS.

"About to leave or desert" Wife.]—See *Rex* v. *King* (*No.* 1), 110 L. T. 783; 24 Cox C.C. 146.

Access through "court, passage, or otherwise."] — See *Newquay Urban Council* v. *Rickeard*, 80 L. J. K.B. 1164; [1911] 2 K.B. 846; 105 L. T. 519; 9 L. G. R. 1042; 75 J. P. 382.

"Accident."] — See *Trim Joint District School* v. *Kelly*, 83 L. J. P.C. 220; [1914] A.C. 667; [1914] W.C. & I. Rep. 359; 111 L. T. 305; 58 S. J. 493; 30 T. L. R. 452; *Nisbet* v. *Rayne*, 80 L. J. K.B. 84; [1910] 2 K.B. 689; 103 L. T. 178; 54 S. J. 719; 26 T. L. R. 632; *Barbeary* v. *Chugg*, 84 L. J. K.B. 504; 112 L. T. 797; [1915] W.C. & I. Rep. 174; 31 T. L. R. 153; and *Risdale* v. "*Kilmarnock*" (*Owners*), 84 L. J. K.B. 298; [1915] 1 K.B. 503; [1915] W.C. & I. Rep. 141; 112 L. T. 439; 59 S. J. 145; 31 T. L. R. 134.

"Accident arising out of and in the course of the employment."]—See WORKMEN'S COMPENSATION.

"Act adopting the transaction."]—See *Genn* v. *Winkel*, 107 L. T. 434; 17 Com. Cas. 323; 56 S. J. 612; 28 T. L. R. 483.

"Act done in pursuance of Act of Parliament."]—See *Myers* v. *Bradford Corporation*, 84 L. J. K.B. 306; [1915] 1 K.B. 417; 112 L. T. 206; 79 J. P. 130; 13 L. G. R. 1; 59 S. J. 57; 31 T. L. R. 44.

"Action."] — See *Roberts* v. *Battersea Borough Council*, 110 L. T. 566; 78 J. P. 265; 12 L. G. R. 898; and *Johnson* v. *Refuge Assurance Co.*, 82 L. J. K.B. 411; [1913] 1 K.B. 259; 108 L. T. 242; 57 S. J. 128; 29 T. L. R. 127.

Action "for injury caused by any accident."]—See *Potter* v. *Welch & Sons, Lim.*, 83 L. J. K.B. 1852; [1914] 3 K.B. 1020; [1914] W.C. & I. Rep. 607; 30 T. L. R. 644.

"Action founded on any breach of contract."]—See *Hughes* v. *Oxenham*, 82 L. J. Ch. 155; [1913] 1 Ch. 254; 108 L. T. 316.

"Action to recover money."] — See *Blow, In re; St. Bartholomew's Hospital (Governors)* v. *Cambden*, 83 L. J. Ch. 185; [1914] 1 Ch. 233; 109 L. T. 913; 58 S. J. 136; 30 T. L. R. 117.

"Actual military service."]—See *Limond, In re*, 84 L. J. Ch. 833; [1915] 2 Ch. 240; 59 S. J. 613.

"Actual net cost to the owner."] — See *Evans* v. *Gwendraeth Anthracite Colliery Co.*, 83 L. J. K.B. 1312; [1914] 3 K.B. 23; 110 L. T. 959; 30 T. L. R. 376.

"Actually transferred."]—See *Magnus, In re; Salaman, ex parte*, 80 L. J. K.B. 71; [1910] 2 K.B. 1049; 103 L. T. 406; 17 Manson, 282.

"Adapted to distinguish."]—See *Cadbury's Application, In re (No. 1)*, 84 L. J. Ch. 242; [1915] 1 Ch. 331; 112 L. T. 235; 32 R. P. C. 9; 59 S. J. 161; and *Lea's Trade Mark, In re*, 81 L. J. Ch. 241; [1913] 1 Ch. 446; 108 L. T. 355; 30 R. P. C. 216; 57 S. J. 373; 29 T. L. R. 334.

"Adjoining."] — See *Cave* v. *Horsell*, 81 L. J. K.B. 981; [1912] 3 K.B. 533; 107 L. T. 186; 28 T. L. R. 543.

"Adjoining premises."]—See *Derby Motor Cab Co.* v. *Crompton and Evans Union Bank*, 57 S. J. 701; 29 T. L. R. 673.

"Affected."]—See *Mackenzie, In re; Mackenzie* v. *Edwards-Moss*, 80 L. J. Ch. 443; [1911] 1 Ch. 578; 105 L. T. 154; 55 S. J. 406; 27 T. L. R. 337.

"Agreement."]—See *McGuire* v. *Paterson & Co.*, [1913] S. C. 400; [1913] W.C. & I. Rep. 107.

"Agricultural locomotive."] — See *London County Council* v. *Lee*, 83 L. J. K.B. 1373; [1914] 3 K.B. 255; 111 L. T. 569; 78 J. P. 396; 12 L. G. R. 733.

"Aggrieved person."]—See *Pink* v. *Sharwood (No. 2)*, 109 L. T. 594; 30 R. P. C. 725.

"All death duties."]—See *Briggs, In re; Richardson* v. *Bantoft*, 83 L. J. Ch. 874; [1914] 2 Ch. 413; 58 S. J. 722.

"All lighters, barges, and other like craft."] —See *Smeed, Dean & Co.* v. *Port of London Authority*, 82 L. J. K.B. 323; [1913] 1 K.B. 226; 108 L. T. 171; 12 Asp. M.C. 297; 57 S. J. 172; 29 T. L. R. 122.

"All losses."]—See *Century Bank of New York* v. *Mountain*, 110 L. T. 261; 19 Com. Cas. 178.

"All persons interested."] — See *Ivey* v. *Ivey*, 81 L. J. K.B. 819; [1912] 2 K.B. 118; 106 L. T. 485; [1912] W.C. Rep. 293.

"Alteration" of Author's Work.] — See *Carlton Illustrators* v. *Coleman*, 80 L. J. K.B. 510; [1911] 1 K.B. 771; 104 L. T. 413.

"And" Construed as "or."]—See *Golden Horseshoe Estates Co.* v. *Regem*, 80 L. J. P.C. 135; [1911] A.C. 480; 105 L. T. 148.

"Annual licence value."] — See *Inland Revenue Commissioners* v. *Truman, Hanbury, Buxton & Co.*, 82 L. J. K.B. 1042; [1913] A.C. 650; 109 L. T. 337; 77 J. P. 397; 57 S. J. 662; 29 T. L. R. 661.

"Annual profits or gains."]—See *Humber Conservancy Board* v. *Bater*, 83 L. J. K.B. 1745; [1914] 3 K.B. 449.

"Annual rental."]—See *Windham's Settled Estate, In re*, 81 L. J. Ch. 574; [1912] 2 Ch. 75; 106 L. T. 832.

"Annuitant."] — See *British Union and National Insurance Co., In re*, 83 L. J. Ch. 596; [1914] 2 Ch. 77; 111 L. T. 357; 30 T. L. R. 520.

"Any building."]—See *Jackson* v. *Knutsford Urban Council*, 84 L. J. Ch. 305; [1914] 2 Ch. 686; 111 L. T. 982; 79 J. P. 73; 58 S. J. 756.

"Any other ship or vessel."]—See *Bennett Steamship Co.* v. *Hull Mutual Steamship Protecting Society*, 83 L. J. K.B. 1179; [1914] 3 K.B. 57; 111 L. T. 489; 19 Com. Cas. 353; 30 T. L. R. 515.

"Any person aggrieved."] — See *Inland Revenue Commissioners* v. *Joicey (No. 1)*, 82 L. J. K.B. 162; [1913] 1 K.B. 445; 108 L. T. 135; 29 T. L. R. 150.

"Anything inhaled."]—See *United London and Scottish Insurance Co., In re; Brown's Claim*, 84 L. J. Ch. 620; [1915] 2 Ch. 167; 59 S. J. 529; 31 T. L. R. 419.

"Any tobacco."]—See *Hale* v. *Morris & Sons, Lim.*, 83 L. J. K.B. 162; [1914] 1 K.B. 313; 109 L. T. 875; 78 J. P. 17; 23 Cox C.C. 666; 30 T. L. R. 9.

"Appeal."]—See *Furtado* v. *City of London Brewery Co.*, 83 L. J. K.B. 255; [1914] 1 K.B. 709; 110 L. T. 241; 6 Tax Cas. 382; 58 S. J. 270; 30 T. L. R. 177.

"Applicant."]—See *Minister for Lands* v. *Coote*, 84 L. J. P.C. 112; [1915] A.C. 583; 112 L. T. 1098.

"Arrangement or compromise."]—See *Shaw* v. *Royce, Lim.*, 80 L. J. Ch. 163; [1911] 1 Ch. 138; 103 L. T. 712; 18 Manson, 159; 55 S. J. 188.

"**Arrears of rent.**"]—See *Ford, In re; Myers* v. *Molesworth*, 80 L. J. Ch. 355; [1911] 1 Ch. 455; 104 L. T. 245.

"**Article.**"] — See *M'Intyre* v. *M'Intee*, [1915] S. C. (J.) 27.

"**Articles of a perishable nature.**"]—See *London County Council* v. *Welford's Surrey Dairies*, 82 L. J. K.B. 669; [1913] 2 K.B. 529; 108 L. T. 998; 77 J. P. 206; 11 L. G. R. 831; 23 Cox C.C. 428; 29 T. L. R. 428.

"**As general and not as specific legacies.**"] —See *Compton, In re; Vaughan* v. *Smith*, 83 L. J. Ch. 862; [1914] 2 Ch. 119; 111 L. T. 245; 58 S. J. 580.

"**Assessments charged on the premises.**"]— See *Eastwood* v. *McNab*, 83 L. J. K.B. 941; [1914] 2 K.B. 361; 110 L. T. 701; 12 L. G. R. 517.

"**As such trustees but not otherwise.**"]— See *Robinson's Settlement, In re: Gant* v. *Hobbs*, 81 L. J. Ch. 393; [1912] 1 Ch. 717; 106 L. T. 443; 28 T. L. R. 298.

"**At his own disposal.**"]—See *Howell, In re; Buckingham, In re: Liggins* v. *Buckingham*, 83 L. J. Ch. 811; [1914] 2 Ch. 173; 111 L. T. 438.

"**At or immediately before.**"]—See *Dean* v. *Rubian Art Pottery, Lim.*, 83 L. J. K.B. 799; [1914] 2 K.B. 213; [1914] W.C. & I. Rep. 147; 110 L. T. 594; 58 S. J. 302; 30 T. L. R. 283.

"**At sea.**"]—See *The Möwe*, 84 L. J. P. 57; [1915] P. 1; 112 L. T. 261; 59 S. J. 76; 31 T. L. R. 46.

"**At shipper's risk.**"] — See *Wilson, Sons & Co.* v. "*Galileo*" (*Cargo Owners*); *The* "*Galileo*," 83 L. J. P. 102; 111 L. T. 656; 19 Com. Cas. 459; 30 T. L. R. 612.

"**Attempt to commit felony.**"]—See *Rex* v. *Mann*, 83 L. J. K.B. 648; [1914] 2 K.B. 107; 110 L. T. 781; 78 J. P. 200; 24 Cox C.C. 140; 58 S. J. 303; 30 T. L. R. 310.

"**Attested.**"]—See *Shamu Patter* v. *Abdul Kadir Ravuthan*, L. R. 39 Ind. App. 218; 28 T. L. R. 583.

"**Average weekly earnings.**"] — See cases under WORKMEN'S COMPENSATION (Assessment of Compensation).

"**Back-to-back houses.**"]—See *Murrayfield Real Estate Co.* v. *Edinburgh Magistrates*, [1912] S. C. 217; and *White* v. *St. Marylebone Borough Council*, 84 L. J. K.B. 2142; [1915] 3 K.B. 249.

"**Bankruptcy matters.**"] — See *Chatterton* v. *City of London Brewery Co.*, 84 L. J. K.B. 667; [1915] A.C. 631; 112 L. T. 1005; [1915] H. B. R. 112; 59 S. J. 301.

"**Barge.**"]—See *Smeed* v. *Port of London Authority*, 82 L. J. K.B. 323; [1913] 1 K.B. 226; 108 L. T. 171; 12 Asp. M.C. 297; 57 S. J. 172; 29 T. L. R. 122.

"**Become bankrupt.**"]—See *Mackay, In re*, [1915] 2 Ir. R. 347.

"**Become payable to some other person.**"]— See *Laye, In re; Turnbull* v. *Laye*, 82 L. J. Ch. 218; [1913] 1 Ch. 298; 108 L. T. 324; 20 Manson, 124; 57 S. J. 284.

"**Becomes insolvent.**"]—See *James* v. *Rockwood Colliery Co.*, 106 L. T. 128; 56 S. J. 292; 28 T. L. R. 215.

"**Beer.**"]—See *Fairhurst* v. *Price*, 81 L. J. K.B. 320; [1912] 1 K.B. 404; 106 L. T. 97; 76 J. P. 110; 22 Cox C.C. 660; 28 T. L. R. 132.

"**Being.**"] — See *Forrester* v. *Norton*, 80 L. J. K.B. 1288; [1911] 2 K.B. 953; 105 L. T. 375; 75 J. P. 510; 9 L. G. R. 991; 55 S. J. 668; 27 T. L. R. 542.

"**Body having control of street.**"] — See *Postmaster-General* v. *Hendon Urban Council*, 83 L. J. K.B. 618; [1914] 1 K.B. 564; 110 L. T. 213; 78 J. P. 145; 12 L. G. R. 437.

"**Books.**"]—See *Barratt, In re*; *Barratt* v. *Coates*, 31 T. L. R. 502.

"**Breaking.**"] — See *Rex* v. *Chandler*, 82 L. J. K.B. 106; [1913] 1 K.B. 125; 108 L. T. 352; 77 J. P. 80; 23 Cox C.C. 330; 57 S. J. 160; 29 T. L. R. 83.

"**British ship.**"]—See *The Rigel*, 81 L. J. P. 86; [1912] P. 99; 106 L. T. 648; 28 T. L. R. 251; [1912] W.C. Rep. 351.

"**Brothel.**"] — See *Caldwell* v. *Leech*, 109 L. T. 188; 77 J. P. 254; 23 Cox C.C. 510; 29 T. L. R. 457.

"**Building.**"]—See *Schweder* v. *Worthing Gas, Light and Coke Co.*, 81 L. J. Ch. 102; [1912] 1 Ch. 83; 105 L. T. 670; 76 J. P. 3; 10 L. G. R. 19; 56 S. J. 53; 28 T. L. R. 34; and *Regent's Canal and Dock Co.* v. *London County Council* 81 L. J. Ch. 377; [1912] 1 Ch. 583; 106 L. T. 745; 76 J. P. 353; 10 L. G. R. 358; 56 S. J. 309; 28 T. L. R. 248.

"**Building land**" — "**Buildings.**"] — See *Waite's Executors* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 1617; [1914] 3 K.B. 196; 111 L. T. 505; 58 S. J. 634; 30 T. L. R. 568.

"**Buildings**" **or** "**other structures.**"]—See *Morrison* v. *Inland Revenue Commissioners*, 84 L. J. K.B. 1166; [1915] 1 K.B. 716; 112 L. T. 1044; 31 T. L. R. 176.

"**Business.**"]—See *Commercial Cable Co.* v. *Att.-Gen. of Newfoundland*, 82 L. J. P.C. 5; [1912] A.C. 820; 107 L. T. 101; 28 T. L. R. 537; and *Abenheim, In re; Abenheim, ex parte*, 109 L. T. 219.

"By contract or otherwise."]—See *Att.-Gen.* v. *Seccombe*, 80 L. J. K.B. 913; [1911] 2 K.B. 688; 105 L. T. 18.

"Calculated to deceive."] — *See Van der Leeuw's Trade Mark, In re*, 81 L. J. Ch. 100; [1912] 1 Ch. 40; 105 L. T. 626; 28 R. P. C. 708; 56 S. J. 53; 28 T. L. R. 35; *Schicht's Trade Mark, In re*, 29 R. P. C. 483; 28 T. L. R. 375; and *Imperial Tobacco Co.'s Trade Marks, In re*, 84 L. J. Ch. 643; [1915] 2 Ch. 27; 112 L. T. 632; 32 R. P. C. 361; 59 S. J. 456; 31 T. L. R. 408.

"Carriage."] — See *Pollard* v. *Turner*, 82 L. J. K.B. 30; [1912] 3 K.B. 625; 107 L. T. 792; 77 J. P. 53; 11 L. G. R. 42; 23 Cox C.C. 233; 29 T. L. R. 34; and *Cook* v. *Hobbs*, 80 L. J. K.B. 110; [1911] 1 K.B. 14; 103 L. T. 566; 75 J. P. 14; 9 L. G. R. 143.

"Carrying coal for sale."]—See *Hunting* v. *Matthews*, 108 L. T. 1019; 77 J. P. 331; 11 L. G. R. 723; 23 Cox C.C. 444; 29 T. L. R. 487.

Carrying on "a trade or business."]—See *Clark, In re; Pope, ex parte*, 84 L. J. K.B. 89; [1914] 3 K.B. 1095; 112 L. T. 873; [1915] H. B. R. 1; 59 S. J. 44.

"Carrying on business."]—See *Dayer-Smith* v. *Hadsley*, 108 L. T. 897; 57 S. J. 555.

"Carry on the profession of a solicitor."]—See *Woodbridge* v. *Bellamy*, 80 L. J. Ch. 265; [1911] 1 Ch. 326; 103 L. T. 852; 55 S. J. 204.

"Carrying on trade."] — See *Egyptian Hotels* v. *Mitchell*, 83 L. J. K.B. 1510; [1914] 3 K.B. 118; 111 L. T. 189; 58 S. J. 494; 30 T. L. R. 457.

"Carrying on trade of purveyor of milk."]—See *Spiers & Pond, Lim.* v. *Green*, 82 L. J. K.B. 26; [1912] 3 K.B. 576; 77 J. P. 11; 10 L. G. R. 1050; 29 T. L. R. 14.

"Cause of appeal."] — See *Glamorgan County Council* v. *Barry Overseers*, 81 L. J. K.B. 836; [1912] 2 K.B. 603; 76 J. P. 307; 10 L. G. R. 477.

"Causing."]—See *Moses* v. *Midland Railway*, 84 L. J. K.B. 2181.

"Causing injury to health."]—See *Oakey* v. *Jackson*, 83 L. J. K.B. 712; [1914] 1 K.B. 216; 110 L. T. 41; 78 J. P. 87; 12 L. G. R. 248; 23 Cox C.C. 734; 30 T. L. R. 92.

"Causing or encouraging."] — See *Rex* v. *Chainey*, 83 L. J. K.B. 306; [1914] 1 K.B. 137; 109 L. T. 752; 78 J. P. 127; 23 Cox C.C. 620; 30 T. L. R. 51.

"Chargeable."]—See *Rex* v. *Staffordshire Justices; Ormskirk Union, Ex parte*, 81 L. J. K.B. 894; [1912] 1 K.B. 616; 106 L. T. 579; 76 J. P. 177; 10 L. G. R. 274; 56 S. J. 324.

"Charity school."]—See *Ackworth School* v. *Betts*, 84 L. J. K.B. 2112.

"Chartered or as if chartered."] — See *Scottish Shire Line* v. *London and Provincial Marine and General Insurance Co.*, 81 L. J. K.B. 1066; [1912] 3 K.B. 51; 107 L. T. 46; 17 Com. Cas. 240; 56 S. J. 551.

"Children."]—See *Pearce, In re; Alliance Assurance Co.* v. *Francis*, 83 L. J. Ch. 266; [1914] 1 Ch. 254; 110 L. T. 168; 58 S. J. 197.

"Civil commotion or rioting."]—See *London and Manchester Plate-Glass Insurance Co.* v. *Heath*, 82 L. J. K.B. 1183; [1913] 3 K.B. 411; [1913] W.C. & I. Rep. 696; 108 L. T. 1009; 29 T. L. R. 581.

"Clerk."]—See *Jones, In re: Williams* v. *Att.-Gen.*, 106 L. T. 941.

"Clerk or servant."]—See *Beeton & Co., In re*, 83 L. J. Ch. 464; [1913] 2 Ch. 279; 108 L. T. 918; 20 Manson, 222; 57 S. J. 626; and *Morison & Co., In re*, 106 L. T. 731.

"Coachman."]—See *London County Council* v. *Allen*, 82 L. J. K.B. 432; [1913] 1 K.B. 9; 107 L. T. 853; 77 J. P. 48; 10 L. G. R. 1089; 23 Cox C.C. 266; 29 T. L. R. 30.

"Collusion."]—See *Scott* v. *Scott* (*No.* 2), 82 L. J. P. 39; [1913] P. 52; 108 L. T. 49; 57 S. J. 227; 29 T. L. R. 206.

"Colony or dependency."]—See *Maryon-Wilson's Estate, In re*, 81 L. J. Ch. 73; [1912] 1 Ch. 55; 105 L. T. 692; 28 T. L. R. 49.

"Colourable publication."] — See *Francis, Day & Hunter* v. *Feldman & Co.*, 83 L. J. Ch. 906; [1914] 2 Ch. 728; 111 L. T. 521; 59 S. J. 41.

"Committed to prison."] — See *Rex v. Brixton Prison (Governor); Mehamed Ben Ramdan, Ex parte*, 81 L. J. K.B. 1128; [1912] 3 K.B. 190; 76 J. P. 391; 28 T. L. R. 530.

"Common lodging house."] — See *London County Council* v. *Hankins*, 83 L. J. K.B. 460; [1914] 1 K.B. 490; 110 L. T. 389; 78 J. P. 137; 12 L. G. R. 314; 24 Cox C.C. 94; 30 T. L. R. 192.

"Company."] — See *Dunbar* v. *Harvey*, 83 L. J. Ch. 18; [1913] 2 Ch. 530; 109 L. T. 285; 20 Manson, 388; 57 S. J. 686.

"Compensation granted by the Treasury."] —See *Lupton, In re: Official Receiver, ex parte*, 81 L. J. K.B. 177; [1912] 1 K.B. 107; 105 L. T. 726; 19 Manson, 26; 56 S. J. 205; 28 T. L. R. 45.

"Compensation payable by lessor."] — See *Inland Revenue Commissioners* v. *Anglesey (Marquess)*, 82 L. J. K.B. 811; [1913] 3 K.B. 62; 108 L. T. 769; 57 S. J. 517; 29 T. L. R. 495.

"Completed execution."]—See *Godding, In re; Partridge, ex parte*, 83 L. J. K.B. 1222; [1914] 2 K.B. 70; 110 L. T. 207; 21 Manson, 137; 58 S. J. 221.

"Compromise or arrangement."] — See *General Motor Cab Co., In re (No. 1)*, 81 L. J. Ch. 505; [1913] 1 Ch. 377; 106 L. T. 709; 19 Manson, 272; 28 T. L. R. 352.

"Compulsory process."]—See *Rex* v. *Noel*, 84 L. J. K.B. 142; [1914] 3 K.B. 848; 112 L. T. 47.

"Concerned in or participates in profits of any contract."]—See *Star Steam Laundry Co.* v. *Dukas*, 108 L. T. 367; 57 S. J. 390; 29 T. L. R. 269.

"Concerning the interpretation."]—See *The Cap Blanco*, 83 L. J. P. 23; [1913] P. 130; 109 L. T. 672; 12 Asp. M.C. 399; 29 T. L. R. 557.

"Concession."] — See *Wassaw Exploring Syndicate* v. *African Rubber Co.*, 83 L. J. P.C. 316; [1914] A.C. 626; 111 L. T. 54.

"Concurrent contracts of service."] — See *"Raphael" Steamship* v. *Brandy*, 80 L. J. K.B. 1067; [1911] A.C. 413; 105 L. T. 116; 55 S. J. 579; 27 T. L. R. 497.

"Confectionery."] — See *London County Council* v. *Welford's Surrey Dairies*, 82 L. J. K.B. 669; [1913] 2 K.B. 529; 108 L. T. 998; 77 J. P. 206; 11 L. G. R. 831; 23 Cox C.C. 428; 29 T. L. R. 438.

"Confined as a patient in a hospital."]—See *Ormskirk Union* v. *Lancaster Union*, 107 L. T. 620; 77 J. P. 45; 10 L. G. R. 1041.

"Congregation." —*See Hutchinson's Trusts, In re*, [1914] 1 Ir. R. 271.

"Consideration."] — See *London and Provinces Discount Co.* v. *Jones*, 83 L. J. K.B. 403; [1914] 1 K.B. 147; 109 L. T. 742; 21 Manson, 18; 58 S. J. 33; 30 T. L. R. 60.

"Considered as closed."]—See *Manchester Ship Canal Co.* v. *Horlock*, 83 L. J. Ch. 637; [1914] 2 Ch. 199; 111 L. T. 260; 59 S. J. 533; 30 T. L. R. 500.

"Constructively lost."] — See *Manchester Ship Canal Co.* v. *Horlock*, 83 L. J. Ch. 637; [1914] 2 Ch. 199; 111 L. T. 260; 58 S. J. 533; 30 T. L. R. 500.

"Constructive total loss."]—See *Polurrian Steamship Co.* v. *Young*, 84 L. J. K.B. 1025; [1915] 1 K.B. 922; 112 L. T. 1053; 20 Com. Cas. 152; 59 S. J. 285; 31 T. L. R. 211.

"Consumption" of Intoxicating Liquor.]—See *Blakey* v. *Harrison*, 84 L. J. K.B. 1886; [1915] 3 K.B. 258; 113 L. T. 733; 79 J. P. 454; 31 T. L. R. 503.

"Contents of house."] — See *Oppenheim, In re; Oppenheim* v. *Oppenheim*, 111 L. T. 937; 58 S. J. 723.

"Continuance of the security."] — See *Locke & Smith, Lim., In re; Wigan* v. *The Company*, 83 L. J. Ch. 650; [1914] 1 Ch. 687; 110 L. T. 683; 58 S. J. 379.

"Continuing directors."]—See *Sly, Spink & Co., In re*, 81 L. J. Ch. 55; [1911] 2 Ch. 430; 105 L. T. 364; 19 Manson, 65.

"Contract of tenancy current at the commencement of the Act."]—See *Kedwell and Flint, In re*, 80 L. J. K.B. 707; [1911] 1 K.B. 797; 104 L. T. 151; 55 S. J. 311.

"Contrary intention."]—See *Cooper, In re; Cooper* v. *Cooper*, 82 L. J. Ch. 222; [1913] 1 Ch. 350; 108 L. T. 293; 57 S. J. 389; *Rayer, In re; Rayer* v. *Rayer*, 82 L. J. Ch. 461; [1913] 2 Ch. 210; 109 L. T. 304; 57 S. J. 663; and *Daniels, In re; Weeks* v. *Daniels*, 81 L. J. Ch. 509; [1912] 2 Ch. 90; 106 L. T. 792; 56 S. J. 519.

"Convicted."] — See *Rex* v. *Rabjohns*, 82 L. J. K.B. 994; [1913] 3 K.B. 171; 109 L. T. 414; 77 J. P. 435; 23 Cox C.C. 553; 57 S. J. 665; 29 T. L. R. 614.

"Conviction."] — See *Rex* v. *Machardy*, 80 L. J. K.B. 1215; [1911] 2 K.B. 1144; 105 L. T. 556; 55 S. J. 754; 28 T. L. R. 2.

"Corporation."] — See *Plumbers Co.* v. *London County Council*, 108 L. T. 655; 77 J. P. 302; 11 L. G. R. 480; 23 Cox C.C. 355; 29 T. L. R. 424.

"Costs of the execution."]—See *Rogers, In re; Sussex (Sheriff), ex parte*, 80 L. J. K.B. 418; [1911] 1 K.B. 641; 103 L. T. 883; 18 Manson, 22; 55 S. J. 219; 27 T. L. R. 199.

"Course authorized or required by these Rules."]—See *The Hero*, 81 L. J. P. 27; [1912] A.C. 300; 106 L. T. 82; 12 Asp. M.C. 108; 56 S. J. 269; 28 T. L. R. 216.

"Court in law or recognised by law."] — See *Attwood* v. *Chapman*, 83 L. J. K.B. 1666; [1914] 3 K.B. 275; 111 L. T. 726; 30 T. L. R. 596.

"Criminal cause or matter.]—See *Rex* v. *Brixton Prison (Governor); Savarkar, ex parte*, 80 L. J. K.B. 57; [1910] 2 K.B. 1056; 103 L. T. 473; 54 S. J. 635; 26 T. L. R. 561; *Scott* v. *Scott (No. 1)*, 82 L. J. P. 74; [1913] A.C. 417; 109 L. T. 1; 57 S. J. 498; 29 T. L. R. 520; and *Rex* v. *Wiltshire Justices; Jay, Ex parte*, 81 L. J. K.B. 518; [1912] 1 K.B. 566; 106 L. T. 364; 76 J. P. 169; 10 L. G. R. 353; 56 S. J. 343; 28 T. L. R. 255; 22 Cox C.C. 737.

"Current dividends."]—See *Raven, In re; Spencer* v. *Raven*, 111 L. T. 938.

"Custody, charge or care" of Child.]—See *Liverpool Society for Prevention of Cruelty to Children* v. *Jones*, 84 L. J. K.B. 222; [1914] 3 K.B. 813; 111 L. T. 806; 79 J. P. 20; 12 L. G. R. 1103; 58 S. J. 723; 30 T. L. R. 584.

"**Customary steamship despatch.**"] — See *The Kingsland*, 80 L. J. P. 33; [1911] P. 17; 105 L. T. 143; 16 Com. Cas. 18; 27 T. L. R. 75.

"**Damage by collision.**"]—See *The Upcerne*, 81 L. J. P. 110; [1912] P. 160; 28 T. L. R. 370.

"**Damage done by any ship.**"]—See *The Rigel*, 81 L. J. P. 86; [1912] P. 99; 106 L. T. 648; 28 T. L. R. 251; [1912] W.C. Rep. 351.

"**Damage or loss.**"]—See *The Cairnbahn* (*No.* 1), 83 L. J. P. 11; [1914] P. 25; 110 L. T. 230; 12 Asp. M.C. 455; 30 T. L. R. 82.

"**Damage preventing the working of the vessel.**"]—See *Burrell* v. *Green & Co.*, 83 L. J. K.B. 499; [1914] 1 K.B. 293; 109 L. T. 970; 19 Com. Cas. 81; 12 Asp. M.C. 411.

"**Danger.**"]—See *Thorneycroft* v. *Archibald*, [1913] S. C. (J.), 45.

"**Dangerous goods.**"] — See *North-Eastern Railway* v. *Reckitt*, 109 L. T. 327; 29 T. L. R. 573.

"**Dangerous structure.**"] — See *London County Council* v. *Jones*, 81 L. J. K.B. 948; [1912] 2 K.B. 504; 106 L. T. 872; 76 J. P. 293; 10 L. G. R. 471.

"**Deed.**"] — See *Henderson's Trustees* v. *Inland Revenue Commissioners*, [1913] S. C. 987.

"**Deemed to be insolvent.**"] — See *The Feliciana*, 59 S. J. 546.

"**Defect.**"]—See *Barry* v. *Minturn*, 82 L. J. K.B. 1193; [1913] A.C. 584; 109 L. T. 573; 77 J. P. 437; 11 L. G. R. 1087; 57 S. J. 715; 29 T. L. R. 717.

"**Defect**" in "**towing gear.**"] — See *The West Cock*, 80 L. J. P. 97; [1911] P. 208; 104 L. T. 736; 55 S. J. 329; 27 T. L. R. 301.

"**Defence arising out of the contract.**"]—See *Pickersgill* v. *London and Provincial Marine and General Insurance Co.*, 82 L. J. K.B. 130; [1912] 3 K.B. 614; 107 L. T. 305; 18 Com. Cas. 1; 12 Asp. M.C. 263; 57 S. J. 11; 28 T. L. R. 591.

"**Delivery as required.**"]—See *Jackson* v. *Rotex Motor and Cycle Co.*, 80 L. J. K.B. 38; [1910] 2 K.B. 937; 103 L. T. 411.

"**Department.**"] — See *Pickles* v. *Foster*, 82 L. J. K.B. 121; [1913] 1 K.B. 174; 108 L. T. 106; 20 Manson, 106; 6 Tax Cas. 131; 29 T. L. R. 112.

"**Dependants.**"]—See *New Monckton Collieries* v. *Keeling*, 80 L. J. K.B. 1205; [1911] A.C. 648; 105 L. T. 337; 55 S. J. 687; 27 T. L. R. 551.

"**Deposit of money.**"] — See *Boulton* v. *Hunt*, 109 L. T. 245; 77 J. P. 337; 23 Cox C.C. 427.

"**Designated.**"]—See *Newton* v. *Marylebone Borough Council*, 78 J. P. 169; 12 L. G. R. 713.

"**Designated an officer.**"]—See *Newton* v. *Marylebone Borough Council*, 84 L. J. K.B. 1721; 79 J. P. 410; 13 L. G. R. 711; 59 S. J. 493.

"**Device for catching fish.**"]—See *Maw* v. *Holloway*, 84 L. J. K.B. 99; [1914] 3 K.B. 594; 111 L. T. 670; 78 J. P. 347.

"**Die seised.**"]—See *Norman, In re*, 58 S. J. 706.

"**Die without issue.**"] — See *Dunn* v. *Morgan*, 84 L. J. Ch. 812; 113 L. T. 444.

"**Difference.**"] — See *London and North-Western Railway* v. *Jones*, 84 L. J. K.B. 1268; [1915] 2 K.B. 35; 113 L. T. 724.

"**Directing her course.**"]—See *The Tempus*, 83 L. J. P. 33; [1913] P. 166; 109 L. T. 669; 12 Asp. M.C. 396; 29 T. L. R. 543.

"**Direct tax.**"]—See *Cotton* v. *Regem*, 83 L. J. P.C. 105; [1914] A.C. 176; 110 L. T. 276; 30 T. L. R. 71.

"**Dispute arising during the tenancy.**"] — See *May* v. *Mills*, 30 T. L. R. 287.

"**Disqualified premises.**"]—See *Rex* v. *Hull Licensing Justices*, 82 L. J. K.B. 946; [1913] 2 K.B. 425; 109 L. T. 184; 77 J. P. 303; 29 T. L. R. 500.

"**Distinct contracts.**"] — See *Kent County Gas Light and Coke Co., In re*, 82 L. J. Ch. 28; [1913] 1 Ch. 92; 107 L. T. 641; 19 Manson, 358; 57 S. J. 112.

"**Distinctive mark.**"] — See *Lea's Trade Mark, In re*, 82 L. J. Ch. 241; [1913] 1 Ch. 446; 108 L. T. 355; 30 R. P. C. 216; 57 S. J. 373; 29 T. L. R. 334; and *Registrar of Trade Marks* v. *Du Cros*, 83 L. J. Ch. 1; [1913] A.C. 624; 109 L. T. 687; 30 R. P. C. 660; 57 S. J. 728; 29 T. L. R. 772.

"**Dividend.**"]—See *Swan Brewery Co.* v. *Regem*, 83 L. J. P.C. 134; [1914] A.C. 231; 110 L. T. 211; 30 T. L. R. 199.

"**Dockyard port.**"]—See *Denaby and Cadeby Main Collieries* v. *Anson*, 80 L. J. K.B. 320; [1911] 1 K.B. 171; 103 L. T. 349; 11 Asp. M.C. 471; 54 S. J. 748; 26 T. L. R. 667.

"**Documents.**"] — See *Rex* v. *Godstone Rural Council*, 80 L. J. K.B. 1184; [1911] 2 K.B. 465; 105 L. T. 207; 75 J. P. 413; 9 L. G. R. 665; 27 T. L. R. 424.

"**Domestic purposes.**"]—See *Metropolitan Water Board* v. *Avery*, 83 L. J. K.B. 178; [1914] A.C. 118; 109 L. T. 762; 78 J. P. 121; 12 L. G. R. 95; 58 S. J. 171; 30 T. L. R. 189; and *Metropolitan Water Board* v. *Colley's Patents, Lim.*, 81 L. J. K.B. 126; [1912]

A.C. 24; 105 L. T. 674; 9 L. G. R. 1159; 76 J. P. 33; 56 S. J. 51; 28 T. L. R. 48.

"**Domestic servants.**"]—See *Lawson, In re: Wardley* v. *Bringloe*, 83 L. J. Ch. 519; [1914] 1 Ch. 682; 110 L. T. 573; 58 S. J. 320; 30 T. L. R. 335.

"**Drain**" **or** "**Sewer.**"]—See *Kershaw* v. *Paine*, 78 J. P. 149; 12 L. G. R. 297.

"**Due cause shewn.**"] — See *Rubber and Produce Investment Trust, In re*, 84 L. J. Ch. 534; [1915] 1 Ch. 382; 112 L. T. 1129; [1915] H. B. R. 120; 31 T. L. R. 253.

"**Dues.**"]—See *Societa Anonima Ungherese di Armamenti Marittimo* v. *Hamburg South American Steamship Co.*, 106 L. T. 957; 17 Com. Cas. 216; 12 Asp. M.C. 228.

"**During the possession of the tenant.**"]—See *Lewis* v. *Davies*, 82 L. J. K.B. 631; [1913] 2 K.B. 37; 108 L. T. 606.

"**Dwelling house.**"]—See *Inland Revenue Commissioners* v. *Devonshire (Duke)*, 83 L. J. K.B. 706; [1914] 2 K.B. 627; 110 L. T. 659; 30 T. L. R. 209.

"**Dwelling house occupied as such by not more than two families.**"]—See *London County Council* v. *Cannon Brewery Co.*, 80 L. J. K.B. 258; [1911] 1 K.B. 235; 103 L. T. 574; 74 J. P. 461; 8 L. G. R. 1094.

"**Dwelling house wholly let out in apartments or lodgings.**"]—See *Rex* v. *Roberts; Stepney Borough Council, Ex parte*, 84 L. J. K.B. 1577; [1915] 3 K.B. 313; 31 T. L. R. 485.

"**Earned income.**"]—See *Inland Revenue* v. *Shiel's Trustees*, [1915] S. C. 159; 6 Tax Cas. 583.

"**Eldest son.**"]—See *Wise, In re; Smith* v. *Waller*, 82 L. J. Ch. 25; [1913] 1 Ch. 41; 107 L. T. 613; 57 S. J. 28.

"**Embezzlement.**"]—See *Debenhams, Lim.* v. *Excess Insurance Co.*, 28 T. L. R. 505.

"**Emoluments**" **of officer.**]—See *Lawson* v. *Marlborough Guardians*, 81 L. J. Ch. 525; [1912] 2 Ch. 154; 106 L. T. 838; 76 J. P. 305; 10 L. G. R. 443; 56 S. J. 503; 28 T. L. R. 404.

"**Employed about the business of a shop.**"]—See *George* v. *James*, 83 L. J. K.B. 303; [1914] 1 K.B. 278; 110 L. T. 316; 78 J. P. 156; 12 L. G. R. 403; 24 Cox C.C. 48; 30 T. L. R. 230.

"**Employed and bestowed.**"]—See *Rowe, In re*, 30 T. L. R. 528.

"**Employed contributor.**"] — See *O'Callaghan* v. *Irish Insurance Commissioners*, [1915] 2 Ir. R. 262; [1915] W.C. & I. Rep. 412.

"**Employer.**"] — See *Wilmerson* v. *Lynn and Hamburg Steamship Co.*, 82 L. J. K.B. 1064; [1913] 3 K.B. 931; [1913] W.C. & I. Rep. 633; 109 L. T. 53; 57 S. J. 700; 29 T. L. R. 652.

"**Enemy.**"] — See *Société Anonyme Belge des Mines d'Aljustrel (Portugal)* v. *Anglo-Belgian Agency*, 84 L. J. Ch. 849; [1915] 2 Ch. 409; 113 L. T. 581; 59 S. J. 679; 31 T. L. R. 624.

"**Entering or being**" **upon land.**] — See *Pratt* v *Martin*, 80 L. J. K.B. 711; [1911] 2 K.B. 90; 105 L. T. 49; 75 J. P. 328; 22 Cox C.C. 442; 27 T. L. R. 377.

"**Entire exclusion of the donor.**"] — See *Att.-Gen.* v. *Seccombe*, 80 L. J. K.B. 913; [1911] 2 K.B. 688; 105 L. T. 18.

"**Event.**"]—See *Howell* v. *Dering*, 84 L. J. K.B. 198; [1915] 1 K.B. 54; 111 L. T. 790; 58 S. J. 669; and *Slatford* v. *Erlebach*, 81 L. J. K.B. 372; [1912] 3 K.B. 155; 106 L. T. 61.

"**Exhibition.**"]—See *Att.-Gen.* v. *Vitagraph Co.*, 84 L. J. Ch. 142; [1915] 1 Ch. 206; 112 L. T. 245; 79 J. P. 150; 13 L. G. R. 148; 59 S. J. 160; 31 T. L. R. 70.

"**Exists for an illegal purpose.**"] — See *Middle Age Pension Friendly Society, In re*, 84 L. J. K.B. 378; [1915] 1 K.B. 432; 112 L. T. 641.

"**Expenses caused by the desertion.**"]—See *Deacon* v. *Quayle*, 81 L. J. K.B. 409; [1912] 1 K.B. 445; 106 L. T. 269; 76 J. P. 79; 12 Asp. M.C. 125; and *Halliday* v. *Taffs*, 80 L. J. K.B. 388; [1911] 1 K.B. 594; 104 L. T. 188; 11 Asp. M.C. 574; 75 J. P. 165; 27 T. L. R. 186.

"**Expenses wholly or exclusively laid out for the purposes of such trade.**"]—See *Usher's Wiltshire Brewery* v. *Bruce*, 84 L. J. K.B. 417; [1915] A.C. 433; 112 L. T. 651; 6 Tax Cas. 399; 59 S. J. 144; 31 T. L. R. 104.

"**Exposed to sale, or on sale by retail.**"]—See *McNair* v. *Terroni*, 84 L. J. K.B. 357; [1915] 1 K.B. 526; 112 L. T. 503; 79 J. P. 219; 13 L. G. R. 377; 31 T. L. R. 82.

"**Extraordinary expenses.**"]—See *Billericay Rural Council* v. *Poplar Guardians*, 80 L. J. K.B. 1241; [1911] 2 K.B. 801; 105 L. T. 476; 75 J. P. 497; 9 L. G. R. 796.

"**Extraordinary traffic.**"] — See *Ledbury Rural Council* v. *Somerset*, 84 L. J. K.B. 1297; 113 L. T. 71; 79 J. P. 327; 13 L. G. R. 701; 59 S. J. 476; 31 T. L. R. 295.

"**Failure.**"] — See *Hopper* v. *St. John's College, Cambridge*, 31 T. L. R. 139.

"**Fair.**"]—See *Walker* v. *Murphy*, 83 L. J. Ch. 917; [1915] 1 Ch. 71; 112 L. T. 189; 79 J. P. 137; 13 L. G. R. 109; 59 S. J. 88.

"**Fair and reasonable.**"]—See *Ray* v. *Newton*, 82 L. J. K.B. 125; [1913] 1 K.B. 249; 108 L. T. 313; 57 S. J. 130.

"**Farm building.**"] — See *Hadham Rural Council* v. *Crallan*, 83 L. J. Ch. 717; [1914] 2 Ch. 138; 111 L. T. 154; 78 J. P. 361; 12 L. G. R. 707; 58 S. J. 635; 30 T. L. R. 514.

"**Final and conclusive.**"]—See *Murphy* v. *Regem*, 80 L. J. P.C. 121; [1911] A.C. 401; 104 L. T. 788; 75 J. P. 417; 9 L. G. R. 675; 55 S. J. 518; 27 T. L. R. 453.

"**Final judgment or order.**"]—See *Debtor (No. 837 of 1912), In re*, 81 L. J. K.B. 1225; [1912] 3 K.B. 242; 107 L. T. 506; 19 Manson, 317; 56 S. J. 651.

"**Final order.**"]—See *Wills* v. *McSherry*, 83 L. J. K.B. 596; [1914] 1 K.B. 616; 110 L. T. 65; 78 J. P. 120; 12 Asp. M.C. 426.

"**First publication.**"]—See *Francis, Day & Hunter* v. *Feldman & Co.*, 83 L. J. Ch. 906; [1914] 2 Ch. 728; 111 L. T. 521; 59 S. J. 41.

"**Fish.**"]—See *Leavett* v. *Clark*, 84 L. J. K.B. 2157; [1915] 3 K.B. 9; 113 L. T. 424; 79 J. P. 396; 13 L. G. R. 894; 31 T. L. R. 424.

"**Fixed engines.**"] — See *Irish Society* v. *Harold*, 81 L. J. P.C. 162; [1912] A.C. 287; 106 L. T. 130; 28 T. L. R. 204.

"**For the benefit of an enemy.**"] — See *Schmitz* v. *Van der Veen & Co.*, 84 L. J. K.B. 861; 112 L. T. 991; 31 T. L. R. 214.

"**For the time therein mentioned.**"] — See *The Wills*, *No.* 66, 83 L. J. P. 162; 30 T. L. R. 676.

"**Force majeure.**"] — See *Matsoukis* v. *Priestman & Co.*, 84 L. J. K.B. 967; [1915] 1 K.B. 681; 113 L. T. 481; 20 Com. Cas. 252.

"**Foreign possession.**"]—See *Drummond* v. *Collins*, 84 L. J. K.B. 1690; [1915] A.C. 1011; 113 L. T. 665; 6 Tax Cas. 525; 59 S. J. 577; 31 T. L. R. 482.

"**Forged instrument.**"]—See *Rex* v. *Howse*, 107 L. T. 239; 76 J. P. 151; 56 S. J. 225; 28 T. L. R. 186; and *Rex* v. *Cade*, 83 L. J. K.B. 796; [1914] 2 K.B. 209; 110 L. T. 624; 78 J. P. 240; 24 Cox C.C. 131; 58 S. J. 288; 30 T. L. R. 289.

"**Forged stamp.**"] — See *Rex* v. *Lowden*, 83 L. J. K.B. 114; [1914] 1 K.B. 144; 109 L. T. 832; 78 J. P. 111; 23 Cox C.C. 643; 58 S. J. 157; 30 T. L. R. 70.

"**Forthwith.**"] — See *Woods* v. *Winskill*, 82 L. J. Ch. 417; [1913] 2 Ch. 303; 109 L. T. 399; 20 Manson, 261; 57 S. J. 740.

"**Found in or upon any dwelling-house.**"]—See *Moran* v. *Jones*, 104 L. T. 921; 75 J. P. 411; 22 Cox C.C. 474; 27 T. L. R. 421.

"**Found without visible means of support.**"]—See *Rex* v. *Radcliffe*, 84 L. J. K.B. 2196; [1915] 3 K.B. 418; 79 J. P. 546; 13 L. G. R. 1192; 31 T. L. R. 610.

"**Fraud in playing at or with cards.**"]—See *Rex* v. *Brixton Prison (Governor); Sjoland, Ex parte*, 82 L. J. K.B. 5; [1912] 3 K.B. 568; 77 J. P. 23; 29 T. L. R. 10.

"**Free from all deductions.**"]—See *Egmont's (Earl) Settled Estates, In re; Lefroy* v. *Egmont*, 81 L. J. Ch. 250; [1912] 1 Ch. 251; 105 L. T. 292.

"**Free from all taxes and assessments whatsoever.**"]—See *Associated Newspapers, Lim.* v. *London Corporation (No. 1)*, and *Ib. (No. 2)*, 83 L. J. K.B. 979, 988; [1914] 2 K.B. 603, 822; 110 L. T. 796, 975; 78 J. P. 225, 209; 12 L. G. R. 372, 426; 58 S. J. 318; 30 T. L. R. 337, 364.

"**Free of all duty.**"]—See *Snape, In re; Elam* v. *Phillips*, 84 L. J. Ch. 803; [1915] 2 Ch. 179; 113 L. T. 439; 59 S. J. 562.

"**Free of legacy duty.**"]—See *Scott, In re; Scott* v. *Scott (No. 1)*, 84 L. J. Ch. 366; [1915] 1 Ch. 592; 112 L. T. 1057; 31 T. L. R. 227.

"**Fugitive criminal.**"] — See *Moser, Ex parte*, 84 L. J. K.B. 1820; [1915] 2 K.B. 698; 113 L. T. 496; 31 T. L. R. 384.

"**Full and reasonable indemnity.**"] — See *House Property Co. of London* v. *Whiteman*, 82 L. J. K.B. 887; [1913] 2 K.B. 382; 109 L. T. 43; 77 J. P. 319.

"**Full consideration in money or money's worth.**"]—See *Att.-Gen.* v. *Boden*, 81 L. J. K.B. 704; [1912] 1 K.B. 539; 105 L. T. 247.

"**Furious driving.**"] — See *Chatterton* v. *Parker*, 111 L. T. 380; 78 J. P. 339; 12 L. G. R. 1205.

"**Game.**"]—See *Cook* v. *Trevener*, 80 L. J. K.B. 118; [1911] 1 K.B. 9; 103 L. T. 725; 74 J. P. 469; 27 T. L. R. 8.

"**Garden.**"]—See *Stevens* v. *National Telephone Co.*, [1914] 1 Ir. R. 9.

"**Get-up.**"]—See *Edge* v. *Nicholls*, 80 L. J. Ch. 744; [1911] A.C. 693; 105 L. T. 459; 28 R. P. C. 582; 55 S. J. 737; 27 T. L. R. 555.

"**Giving a bonus.**"]—See *United Buildings Corporation* v. *Vancouver City*, 83 L. J. P.C. 363; 111 L. T. 663.

"**Good and sufficient cause.**"]—See *Bennett and Fowler, In re*, 82 L. J. K.B. 713; [1913] 2 K.B. 537; 108 L. T. 497; 77 J. P. 281.

"**Good cause.**"]—See *Hammond* v. *Jackson*, 83 L. J. K.B. 380; [1914] 1 K.B. 241; 110 L. T. 110.

"**Goods.**"] — See *Horwich* v. *Symond*, 110 L. T. 1016; 30 T. L. R. 403.

"**Goods carried into any port in England.**"]—See *The Cap Blanco*, 83 L. J. P. 23; [1913]

P. 130; 109 L. T. 672; 12 Asp. M.C. 399; 29 T. L. R. 557.

Goods "comprised" in.]—See *Jay's Furnishing Co.* v. *Brand & Co.*, 84 L. J. K.B. 867; [1915] 1 K.B. 458; 112 L. T. 719; 59 S. J. 160; 31 T. L. R. 124.

"Goods imported for transhipment only."]—See *British Oil and Cake Mills* v. *Port of London Authority*, 83 L. J. K.B. 1777; [1914] 3 K.B. 1201; 19 Com. Cas. 420; 30 T. L. R. 667; and *Anglo-American Oil Co.* v. *Port of London Authority*, 83 L. J. K.B. 125; [1914] 1 K.B. 14; 109 L. T. 862; 19 Com. Cas. 23; 12 Asp. M.C. 419; 30 T. L. R. 14.

"Grantor of the lease."]—See *Bodega Co.* v. *Read*, 84 L. J. Ch. 36; [1914] 2 Ch. 757; 111 L. T. 884; 59 S. J. 58; 31 T. L. R. 17.

"Grave misconduct."] — See *Poad* v. *Scarborough Guardians*, 84 L. J. K.B. 209; [1914] 3 K.B. 959; 111 L. T. 491; 78 J. P. 465; 12 L. G. R. 1044.

"Gross value."]—See *Lumsden* v. *Inland Revenue Commissioners*, 82 L. J. K.B. 1275; [1913] 3 K.B. 809; 109 L. T. 351; 29 T. L. R. 759.

"Half-cousin."]—See *Chester, In re; Servant* v. *Hills*, 84 L. J. Ch. 78; [1914] 2 Ch. 580.

"Harsh and unconscionable."]—See *Halsey* v. *Wolfe*, 84 L. J. Ch. 809; [1915] 2 Ch. 330; 113 L. T. 720, and other cases sub tit., MONEY-LENDER.

"Head officer."]—See *Saccharin Corporation* v. *Chemische Fabrik von Heyden Actiengesellschaft*, 80 L. J. K.B. 1117; [1911] 2 K.B. 516; 104 L. T. 886.

"Hindermost platform."] — See *Monkman* v. *Stickney*, 82 L. J. K.B. 992; [1913] 2 K.B. 377; 109 L. T. 142; 77 J. P. 368; 11 L. G. R. 612; 23 Cox C.C. 474.

"Holder" of Cheque.] — See *Nicholls* v. *Evans*, 83 L. J. K.B. 301; [1914] 1 K.B. 118; 109 L. T. 990; 30 T. L. R. 42.

"Holder" of Order for Goods.]—See *Civil Service Co-operative Society* v. *Chapman*, 30 T. L. R. 679.

"Holder" of Shares.]—*Paul's Trustee* v. *Justice*, [1912] S. C. 1303.

"Hotels."]—See *Inland Revenue Commissioners* v. *Truman, Hanbury, Buxton & Co.*, 82 L. J. K.B. 1042; [1913] A.C. 650; 109 L. T. 337; 77 J. P. 397; 57 S. J. 662; 29 T. L. R. 661.

House "divided into, and let in different tenements."] — See *Farmer* v. *Cotton's Trustees*, 84 L. J. P.C. 137; [1915] A.C. 922; 113 L. T. 657; 59 S. J. 611; 31 T. L. R. 478.

"House or building let out in separate tenements."]—See *Marylebone Assessment Committee* v. *Consolidated London Properties, Lim.*, 83 L. J. K.B. 1251; [1914] A.C. 870; 111 L. T. 553; 78 J. P. 393; 12 L. G. R. 885; 58 S. J. 593; 30 T. L. R. 551.

"House or other building occupied by himself."]—See *Douglas* v. *Sanderson*, 80 L. J. K.B. 294; [1911] 1 K.B. 166; 103 L. T. 841; 75 J. P. 108; 9 L. G. R. 1; 2 Smith, 234; 55 S. J. 94; 27 T. L. R. 81.

"Idle and disorderly person."]—See *Mathers* v. *Penfold*, 84 L. J. K.B. 627; [1915] 1 K.B. 514; 112 L. T. 726; 79 J. P. 225; 13 L. G. R. 359; 59 S. J. 235; 31 T. L. R. 108.

"Immediately after."] — See *Barker* v. *Lewis & Peat*, 82 L. J. K.B. 843; [1913] 3 K.B. 34; 108 L. T. 941; 57 S. J. 577; 29 T. L. R. 565.

"Immoral act."] — See *Ely* (*Bishop*) v. *Close*, [1913] P. 184; 29 T. L. R. 668.

"In accordance with."] — See *Rex* v. *Sunderland Customs and Excise Commissioners*, 83 L. J. K.B. 555; [1914] 2 K.B. 390; 110 L. T. 527; 78 J. P. 185; 12 L. G. R. 580; 30 T. L. R. 298.

"In a due course of administration."]—See *Fleetwood and District Electric Light and Power Syndicate, In re*, 84 L. J. Ch. 374; [1915] 1 Ch. 486; 112 L. T. 1127; [1915] H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221.

"In all boroughs."]—See *Rex* v. *Roberts; Battersea Borough Council, Ex parte*, 83 L. J. K.B. 146; [1914] 1 K.B. 369; 109 L. T. 466; 77 J. P. 403; 11 L. G. R. 913; 57 S. J. 644.

"In and about any action."]—See *House Property Co. of London* v. *Whiteman*, 82 L. J. K.B. 887; [1913] 2 K.B. 382; 109 L. T. 43; 77 J. P. 319.

"In any situation fronting a street."]—See *Carshalton Urban Council* v. *Burrage*, 80 L. J. Ch. 500; [1911] 2 Ch. 133; 104 L. T. 306; 75 J. P. 250; 9 L. G. R. 1037; 27 T. L. R. 280.

"In any wrapper."] — See *Williams* v. *Baker*, 80 L. J. K.B. 545; [1911] 1 K.B. 566; 104 L. T. 178; 75 J. P. 89; 9 L. G. R. 178.

"In as full and ample a way."] — See *Beard* v. *Moira Colliery Co.*, 84 L. J. Ch. 155; [1915] 1 Ch. 257; 112 L. T. 227; 59 S. J. 103.

"In consequence of any compulsory process."]—See *Rex* v. *Noel*, 84 L. J. K.B. 142; [1914] 3 K.B. 848; 112 L. T. 47.

"In course of delivery."]— See *Helliwell* v. *Haskins*, 105 L. T. 438; 9 L. G. R. 1060; 75 J. P. 435; 27 T. L. R. 463; 22 Cox C.C. 603.

"In full satisfaction."] — See *Hirachand Punamchand* v. *Temple*, 80 L. J. K.B. 1155; [1911] 2 K.B. 330; 105 L. T. 277; 55 S. J. 519; 27 T. L. R. 430.

In "port."]—See *The Roumanian*, 84 L. J. P. 65; [1915] P. 26; 112 L. T. 464; 59 S. J. 206; 31 T. L. R. 111.

"In port and at sea, in docks."]—See *Stott (Baltic) Steamers, Lim.* v. *Marten*, 83 L. J. K.B. 1847; [1914] 3 K.B. 1262; 19 Com. Cas. 438; 30 T. L. R. 686.

"Incapacity for work."]—See *Ball* v. *Hunt*, 80 L. J. K.B. 655; [1911] 1 K.B. 1048; 104 L. T. 327; 55 S. J. 383; 27 T. L. R. 323.

"Income from personal exertion."] — See *Syme* v. *Victoria Commissioner of Taxes*, 84 L. J. P.C. 39; [1914] A.C. 1013; 111 L. T. 1043; 30 T. L. R. 689.

"Inconsistent with good estate management."] — See *Bonnett and Fowler, In re*, 82 L. J. K.B. 713; [1913] 2 K.B. 537; 108 L. T. 497; 77 J. P. 281.

"Incumbrance."] — See *Hodgson's Settled Estates, In re; Altamont (Countess)* v. *Forsyth*, 81 L. J. Ch. 376; [1912] 1 Ch. 784; 106 L. T. 456; and *Stamford and Warrington (Earl), In re; Payne* v. *Grey (No. 2)*, 80 L. J. Ch. 361; [1911] 1 Ch. 648; 105 L. T. 12; 75 J. P. 346; 9 L. G. R. 719; 55 S. J. 483.

"India."] — See *Statham* v. *Statham*, 81 L. J. P. 33; [1912] P. 92; 105 L. T. 991; 28 T. L. R. 180.

"Indorsee" of Cheque.] — See *Nicholls* v. *Evans*, 83 L. J. K.B. 301; [1914] 1 K.B. 118; 109 L. T. 990; 30 T. L. R. 42.

"Inflammable" Films.]—See *Victoria Pier Syndicate* v. *Reeve*, 76 J. P. 374; 10 L. G. R. 967; 28 T. L. R. 443.

"Inhabitant occupier."] — See *Kent* v. *Fittall*, 81 L. J. K.B. 82; [1911] 2 K.B. 1102; 103 L. T. 668; 9 L. G. R. 27; 75 J. P. 113; 2 Smith, 279; 27 T. L. R. 79.

"Injury."]—See *Woodcock* v. *London and North-Western Railway*, 82 L. J. K.B. 921; [1913] 3 K.B. 139; [1913] W.C. & I. Rep. 563; 109 L. T. 253; 29 T. L. R. 566.

"Inside."]—See *Phesse* v. *Fisher*, 84 L. J. K.B. 277; [1915] 1 K.B. 572; 112 L. T. 462; 79 J. P. 174; 13 L. G. R. 269; 31 T. L. R. 65.

"Insolvent."]—See *London and Counties Assets Co.* v. *Brighton Grand Concert Hall and Picture Palace*, 84 L. J. K.B. 991; [1915] 2 K.B. 493; 112 L. T. 380; [1915] H. B. R. 83.

"Instructed and employed independently of any owner of the property."]—See *Solomon, In re; Nore* v. *Meyer*, 81 L. J. Ch. 169; [1912] 1 Ch. 261; 105 L. T. 951; 56 S. J. 109; 28 T. L. R. 84.

"Instrument."]—See *Cherry's Trusts, In re*, 83 L. J. Ch. 142; [1914] 1 Ch. 83; 110 L. T. 16; 58 S. J. 48; 30 T. L. R. 30.

"Insurance effected under the mortgage deed."]—See *Sinnott* v. *Bowden*, 81 L. J. Ch. 832; [1912] 2 Ch. 414; [1913] W.C. & I. Rep. 464; 107 L. T. 609; 28 T. L. R. 594.

"Insurance on his life."] — See *Gould* v. *Curtis*, 81 L. J. K.B. 634; [1912] 1 K.B. 635; 106 L. T. 680; 28 T. L. R. 274.

"Interest in expectancy."]—See *Mudge, In re*, 83 L. J. Ch. 243; [1914] 1 Ch. 115; 109 L. T. 781; 58 S. J. 117.

"Interest in land."]—See *Dawson, In re; Pattisson* v. *Bathurst*, 84 L. J. Ch. 476; [1915] 1 Ch. 626; 113 L. T. 19; 59 S. J. 363; 31 T. L. R. 277; and *Fox, In re; Brooks* v. *Marston*, 82 L. J. Ch. 393; [1913] 2 Ch. 75; 108 L. T. 948.

"Interest insured."]—See *Hewitt* v. *Wilson*, 84 L. J. K.B. 1337; [1915] 2 K.B. 739; 113 L. T. 304; 20 Com. Cas. 241; 31 T. L. R. 333.

"Interference with main structure."] — See *Genders* v. *London County Council*, 84 L. J. Ch. 42; [1915] 1 Ch. 1; 112 L. T. 365; 79 J. P. 121; 12 L. G. R. 1063; 59 S. J. 58; 31 T. L. R. 34.

"Invented word."] — See *Société le Ferment's Application, In re*, 81 L. J. Ch. 724; 107 L. T. 515; 29 R. P. C. 497; 28 T. L. R. 490.

"Invoice required by this Act."] — See *Kyle* v. *Jewers*, 84 L. J. K.B. 255; 112 L. T. 422; 79 J. P. 176; 13 L. G. R. 260.

"Issuance" of policy.]—See *Allis Chalmers Co.* v. *Fidelity and Deposit Co. of Maryland*, 111 L. T. 327; 30 T. L. R. 445.

"Issue."]—See *Howell* v. *Dering*, 84 L. J. K.B. 198; [1915] 1 K.B. 54; 111 L. T. 790; 58 S. J. 669; and *Slatford* v. *Erlebach*, 81 L. J. K.B. 372; [1912] 3 K.B. 155; 106 L. T. 61.

"Judgment."] — See *Cowern* v. *Nield*, [1914] W. N. 349.

Judgment debt "still unsatisfied."]—See *White* v. *Stenning*, 80 L. J. K.B. 1124; [1911] 2 K.B. 418; 104 L. T. 876; 55 S. J. 441; 27 T. L. R. 395.

"Just and equitable."] — See *Clandown Colliery Co., In re*, 84 L. J. Ch. 420; [1915] 1 Ch. 369; 112 L. T. 1060; [1915] H. B. R. 93; 59 S. J. 350.

"Justices sitting in petty sessions."]—See *Huish* v. *Liverpool Justices*, 83 L. J. K.B. 133; [1914] 1 K.B. 109; 110 L. T. 38; 78 J. P. 45; 12 L. G. R. 15; 30 T. L. R. 25.

"Keep."]—See *London County Council* v. *Fairbank*, 80 L. J. K.B. 1032; [1911] 2 K.B. 32; 105 L. T. 46; 75 J. P. 356; 9 L. G. R. 549.

"Land covered with water."]—See *Mersey Docks and Harbour Board* v. *Birkenhead Corporation*, 84 L. J. K.B. 1207; [1915] 2 K.B. 312; 113 L. T. 183; 79 J. P. 318; 13 L. G. R. 764; 31 T. L. R. 323.

Land "used bona fide for any business."]—See *Brake* v. *Inland Revenue Commissioners*, 84 L. J. K.B. 759; [1915] 1 K.B. 731; 112 L. T. 944; 31 T. L. R. 177.

"Land used only as a railway."] — See *Lancashire and Yorkshire Railway* v. *Liverpool Corporation*, 83 L. J. K.B. 1273; 111 L. T. 596; 78 J. P. 409; 12 L. G. R. 771; 58 S. J. 653; 30 T. L. R. 563.

"Lawfully."] — See *Lemy* v. *Watson*, 84 L. J. K.B. 1999; [1915] 3 K.B. 731; 13 L. G. R. 1323; 32 R. P. C. 508; 31 T. L. R. 612.

"Lawful public meeting."]—See *Burden* v. *Rigler*, 80 L. J. K.B. 100; [1911] 1 K.B. 337; 103 L. T. 758; 75 J. P. 36; 9 L. G. R. 71; 27 T. L. R. 140.

"Laying out street."] — See *Att.-Gen.* v. *Dorin*, 81 L. J. Ch. 225; [1912] 1 Ch. 369; 106 L. T. 18; 76 J. P. 181; 10 L. G. R. 194; 56 S. J. 123; 28 T. L. R. 105.

"Left or near side of the road."] — See *Bolton* v. *Everett*, 105 L. T. 830; 9 L. G. R. 1050; 75 J. P. 534; 22 Cox C.C. 632.

"Legacy duty."]—See *Scott, In re; Scott* v. *Scott*, 83 L. J. Ch. 694; [1914] 1 Ch. 847; 110 L. T. 809; 30 T. L. R. 345.

"Legal proceedings."]—See *Boaler, In re*, 83 L. J. K.B. 1629; [1915] 1 K.B. 21; 111 L. T. 497; 24 Cox C.C. 335; 58 S. J. 634; 30 T. L. R. 580.

"Licensed premises held under a lease."]—See *Watney, Combe, Reid & Co.* v. *Berners*, 84 L. J. K.B. 1561; [1915] A.C. 885; 113 L. T. 518; 79 J. P. 497; 59 S. J. 492; 31 T. L. R. 449.

"Lists, cards, or other documents relating to betting."]—See *Hodgson* v. *Macpherson*, [1913] S. C. (J.) 68.

"Literary work."]—See *Libraco, Lim.* v. *Shaw Walker, Lim.*, 58 S. J. 48; 30 T. L. R. 22.

"Live and dead stock."] — See *Cadogan Settled Estates, In re*, 31 T. L. R. 536.

Loss "by war, military or usurped power."] —See *Mitsui & Co.* v. *Mumford*, 84 L. J. K.B. 514; [1915] 2 K.B. 27; [1915] W.C. & I. Rep. 169; 112 L. T. 556; 20 Com. Cas. 107; 59 S. J. 189; 31 T. L. R. 144.

"Loss of or damage to goods however caused which can be covered by insurance."] See *Travers & Sons, Lim.* v. *Cooper*, 83 L. J. K.B. 1787; [1915] 1 K.B. 73; 111 L. T. 1088; 20 Com. Cas. 44; 30 T. L. R. 703.

"Loss" of ship.]—See *Beal* v. *Horlock*, 84 L. J. K.B. 2240; [1915] 3 K.B. 627; 59 S. J. 716; 31 T. L. R. 619.

"Mainly used for the sale and consumption of intoxicating liquor."] — See *Pilkington* v. *Ross*, 83 L. J. K.B. 402; [1914] 3 K.B. 321; 111 L. T. 282; 78 J. P. 319; 12 L. G. R. 944; 30 T. L. R. 510.

"Mains."]—See *Whittington Gas, Light, and Coke Co.* v. *Chesterfield Gas and Water Board*, 83 L. J. Ch. 662; [1914] 2 Ch. 146; 111 L. T. 422; 78 J. P. 379; 12 L. G. R. 892; 58 S. J. 577; 30 T. L. R. 519.

"Maintain and keep efficient."]—See *Board of Education* v. *Rice*, 80 L. J. K.B. 796; [1911] A.C. 179; 104 L. T. 689; 75 J. P. 393; 9 L. G. R. 652; 55 S. J. 440; 27 T. L. R. 378; and *Gillow* v. *Durham County Council*, 82 L. J. K.B. 206; [1913] A.C. 54; 107 L. T. 689; 11 L. G. R. 1; 77 J. P. 105; 57 S. J. 76; 29 T. L. R. 76.

"Majority in value."] — See *"Slogger" Automatic Feeder Co., In re; Hoare* v. *The Company*, 84 L. J. Ch. 587; [1915] 1 Ch. 478; 112 L. T. 579; [1915] H. B. R. 138; 59 S. J. 272.

"Making adverse claims."]—See *Sun Insurance Office* v. *Galinsky*, 83 L. J. K.B. 633; [1914] 2 K.B. 545; 110 L. T. 358.

"Making" of Bedding.] — See *Gamble* v. *Jordan*, 82 L. J. K.B. 743; [1913] 3 K.B. 149; 108 L. T. 1022; 77 J. P. 269; 11 L. G. R. 989; 23 Cox C.C. 451; 29 T. L. R. 539.

"Making use of any port in the district."] —See *Cannell* v. *Lawther, Latta & Co.*, 83 L. J. K.B. 1832; [1914] 3 K.B. 1135; 20 Com. Cas. 29.

"Male servant."] — See *London County Council* v. *Allen*, 82 L. J. K.B. 432; [1913] 1 K.B. 9; 107 L. T. 853; 77 J. P. 48; 10 L. G. R. 1089; 23 Cox C.C. 266; 29 T. L. R. 30; and *London County Council* v. *Perry*, 84 L. J. K.B. 1518; [1915] 2 K.B. 193; 113 L. T. 85; 79 J. P. 312; 13 L. G. R. 746; 31 T. L. R. 281.

"Manservant."]—See *Bell, In re; Wright* v. *Scrivener*, 58 S. J. 517.

"Marketable security."]—See *Deddington Steamship Co.* v. *Inland Revenue Commissioners*, 81 L. J. K.B. 75; [1911] 2 K.B. 1001; 105 L. T. 482; 18 Manson, 373.

"Market price."]—See *Charrington & Co.* v. *Wooder*, 83 L. J. K.B. 220; [1914] A.C. 71; 110 L. T. 548.

"Material facts."]—See *Brooke* v. *Brooke (No. 1)*, 81 L. J. P. 75; [1912] P. 136; 106 L. T. 766; 56 S. J. 382; 28 T. L. R. 314.

"Matter not being an action."] — See *Johnson* v. *Refuge Assurance Co.*, 82 L. J.

K.B. 411; [1913] 1 K.B. 259; 108 L. T. 242; 57 S. J. 128; 29 T. L. R. 127.

"**May.**"]—See *Calico Printers' Association* v. *Booth*, 82 L. J. K.B. 985; [1913] 3 K.B. 652; [1913] W.C. & I. Rep. 540; 109 L. T. 123; 57 S. J. 662; 29 T. L. R. 664; and *McHugh* v. *Union Bank of Canada*, 82 L. J. P.C. 65; [1913] A.C. 299; 108 L. T. 273; 29 T. L. R. 305.

"**May be served.**"]—See *The Rigel*, 81 L. J. P. 86; [1912] P. 99; 106 L. T. 648; 28 T. L. R. 251; [1912] W.C. Rep. 351.

"**Mechanical haulage.**"] — See *Soutar* v. *Reid*, [1913] S. C. (J.) 84.

"**Meeting.**"] — See *East* v. *Bennett Brothers, Lim.*, 80 L. J. Ch. 123; [1911] 1 Ch. 163; 103 L. T. 826; 18 Manson, 145; 55 S. J. 92; 27 T. L. R. 103.

"**Member.**"]—See *Llewellyn* v. *Kasintoe Rubber Estates*, 84 L. J. Ch. 70; [1914] 2 Ch. 670; 112 L. T. 676; 21 Manson, 349; 58 S. J. 808; 30 T. L. R. 683.

"**Merchantable quality.**"]—See *Jackson* v. *Rotex Motor and Cycle Co.*, 80 L. J. K.B. 38; [1910] 2 K.B. 937; 103 L. T. 411.

"**Mineral.**"]—See *Symington* v. *Caledonian Railway*, 81 L. J. P.C. 155; [1912] A.C. 87; 106 L. T. 193; 56 S. J. 87.

"**Minerals.**"]—See *Caledonian Railway* v. *Glenboig Union Fireclay Co.*, 80 L. J. P.C. 128; [1911] A.C. 290; 104 L. T. 657; 75 J. P. 377.

"**Misbehaviour.**"]—See *Holland* v. *Peacock*, 81 L. J. K.B. 256; [1912] 1 K.B. 154; 105 L. T. 957; 76 J. P. 68; 10 L. G. R. 123; 22 Cox C.C. 636.

"**Misconduct.**"] — See *Stock* v. *Central Midwives Board*, 84 L. J. K.B. 1835; [1915] 3 K.B. 756; 113 L. T. 428; 79 J. P. 397; 13 L. G. R. 1227; 31 T. L. R. 436.

"**Mistake or other reasonable cause.**"]—See cases sub tit. WORKMEN'S COMPENSATION (Notice of Accident).

"**Moderate speed.**"]—See *The Counsellor*, 82 L. J. P. 72; [1913] P. 70.

"**Money.**"]—See *Rex* v. *Mortimer*, 80 L. J. K.B. 76; [1911] 1 K.B. 70; 103 L. T. 910; 22 Cox C.C. 359; 75 J. P. 37; 27 T. L. R. 17.

"**Money impressed with a trust.**"] — See *Hooley, In re; Trustee, ex parte*, 84 L. J. K.B. 1415; [1915] H. B. R. 181.

"**Moneys.**"]—See *Mann, In re; Ford* v. *Ward*, 81 L. J. Ch. 217; [1912] 1 Ch. 388; 106 L. T. 64; 56 S. J. 272.

"**Monopoly value.**"]—See *Rex* v. *Sunderland Customs and Excise Commissioners*, 83 L. J. K.B. 555; [1914] 2 K.B. 390; 110 L. T. 527; 78 J. P. 185; 12 L. G. R. 580; 30 T. L. R. 298.

"**Month.**"]—See *Morrell* v. *Studd*, 83 L. J. Ch. 114; [1913] 2 Ch. 648; 109 L. T. 628; 58 S. J. 12; and *Helsham-Jones* v. *Hennen & Co.*, 84 L. J. Ch. 569; 112 L. T. 281.

"**Mortgagee in possession.**"] — See *Ziman* v. *Komata Reef Gold Mining Co.*, 84 L. J. K.B. 1162; [1915] 2 K.B. 163; 113 L. T. 17; 31 T. L. R. 274.

"**Mutual wills.**"]—See *Walker* v. *Gaskill*, 83 L. J. P. 152; [1914] P. 192; 59 S. J. 45; 30 T. L. R. 637.

"**My nephews and nieces.**"]—See *Green, In re; Bath* v. *Cannon*, 83 L. J. Ch. 248; [1914] 1 Ch. 134; 110 L. T. 58; 58 S. J. 185.

"**Natural stream or watercourse.**"] — See *Phillimore* v. *Watford Rural Council*, 82 L. J. Ch. 514; [1913] 2 Ch. 434; 109 L. T. 616; 77 J. P. 453; 11 L. G. R. 980; 57 S. J. 741.

"**Navigable and floatable river.**"] — See *Maclaren* v. *Att.-Gen. for Quebec*, 83 L. J. P.C. 201; [1914] A.C. 258; 110 L. T. 712; 30 T. L. R. 278.

"**Navigate with caution.**"]—See *The Counsellor*, 82 L. J. P. 72; [1913] P. 70.

"**Navigating in ballast.**"]—See *The Tongariro*, 82 L. J. P. 22; [1912] P. 297; 107 L. T. 28; 12 Asp. M.C. 235; 28 T. L. R. 336.

"**Nearest male heir.**"]—See *Lightfoot* v. *Maybery*, 83 L. J. Ch. 627; [1914] A.C. 782; 111 L. T. 300; 58 S. J. 609.

"**Nearest road.**"] — See *Hares* v. *Curtin*, 76 J. P. 313; 10 L. G. R. 753.

"**Necessary.**"]—See *Davies* v. *London Corporation*, 82 L. J. Ch. 286; [1913] 1 Ch. 415; 108 L. T. 546; 77 J. P. 294; 11 L. G. R. 595; 57 S. J. 341; 29 T. L. R. 315.

"**Necessary or proper" party.**]—See *Oesterreichische Export vorm. Janowitzer* v. *British Indemnity Co.*, 83 L. J. K.B. 971; [1914] 2 K.B. 747; 110 L. T. 955.

"**Neglect of duty.**"]—See *Deacon* v. *Evans*, 80 L. J. K.B. 385; [1911] 1 K.B. 571; 104 L. T. 99; 75 J. P. 162; 11 Asp. M.C. 550.

"**Net cash.**"]—See *Clemens Horst Co.* v. *Biddell*, 81 L. J. K.B. 42; [1912] A.C. 18; 105 L. T. 563; 17 Com. Cas. 55; 12 Asp. M.C. 80; 56 S. J. 50; 28 T. L. R. 42.

"**Net charge upon the guardians.**"] — See *Calne Union* v. *Wilts County Council*, 80 L. J. K.B. 548; [1911] 1 K.B. 717; 104 L. T. 607; 75 J. P. 42; 9 L. G. R. 5.

"**Net profits.**"]—See *Johnston* v. *Chestergate Hat Manufacturing Co.*, 84 L. J. Ch. 914; [1915] 2 Ch. 338; 59 S. J. 692.

"**Neutral goods.**"] — See *The Schlesien*, 84 L. J. P. 33; 112 L. T. 353; 59 S. J. 163; 31 T. L. R. 89.

"**New building.**"]—See *Leonard* v. *Hoare & Co.*, 83 L. J. K.B. 1361; [1914] 2 K.B. 798; 111 L. T. 69; 78 J. P. 287; 12 L. G. R. 844; 30 T. L. R. 425.

"**Non-delivery of any package.**"] — See *Wills* v. *Great Western Railway*, 84 L. J. K.B. 449; [1915] 1 K.B. 199; 112 L. T. 368; 59 S. J. 89; 31 T. L. R. 60.

"**Non-textile factory.**"]—See *Keith, Lim.* v. *Kirkwood*, [1914] S. C. (J.) 150.

"**Notify to the seller or his agent.**"]—See *Davies* v. *Burrell*, 81 L. J. K.B. 736; [1912] 2 K.B. 243; 107 L. T. 91; 76 J. P. 285; 10 L. G. R. 645; 28 T. L. R. 389.

"**Not negotiable.**"]—See *Morison* v. *London County and Westminster Bank*, 83 L. J. K.B. 1202; [1914] 3 K.B. 356; 111 L. T. 114; 19 Com. Cas. 273; 58 S. J. 453; 30 T. L. R. 481.

"**Obtaining goods, wares, or merchandise.**"] —See *Rex* v. *Oppenheimer*, 84 L. J. K.B. 1760; [1915] 2 K.B. 755; 113 L. T. 383; 79 J. P. 383; 59 S. J. 442; 31 T. L. R. 369.

"**Occupation.**"] — See *Barron* v. *Potter; Potter* v. *Berry*, 84 L. J. K.B. 2008; [1915] 3 K.B. 593; 59 S. J. 650.

"**Occupier.**"] — See *Rex* v. *Gainsford*, 29 T. L. R. 359.

"**Occupier" of Premises.**]—See *Bruce* v. *McManus*, 84 L. J. K.B. 1860; [1915] 3 K.B. 1; 113 L. T. 332; 79 J. P. 294; 13 L. G. R. 727; 31 T. L. R. 387.

Offence "in connection with the driving of a motor car."]—See *White* v. *Jackson*, 84 L. J. K.B. 1900; 113 L. T. 783; 79 J. P. 447; 13 L. G. R. 1319; 31 T. L. R. 505.

"**Offender whose age does not exceed sixteen years.**"]—See *Rex* v. *Cawthron*, 82 L. J. K.B. 981; [1913] 3 K.B. 168; 109 L. T. 412; 77 J. P. 460; 29 T. L. R. 600.

"**Officer or servant.**"] — See *Lawson* v. *Marlborough Guardians*, 81 L. J. Ch. 525; [1912] 2 Ch. 154; 106 L. T. 838; 76 J. P. 305; 10 L. G. R. 443; 56 S. J. 503; 28 T. L. R. 404.

"**Old on-licence renewed.**"]—See *Wernham* v. *Regem*, 83 L. J. K.B. 395; [1914] 1 K.B. 468; 110 L. T. 111; 78 J. P. 74.

"**On land.**"]—See *The Roumanian*, 84 L. J. P. 65; [1915] P. 26; 112 L. T. 464; 59 S. J. 206; 31 T. L. R. 111.

"**Open and notorious evil liver.**"] — See *Thompson* v. *Dibdin*, 81 L. J. K.B. 918; [1912] A.C. 533; 107 L. T. 66; 56 S. J. 647; 28 T. L. R. 490.

"**Open market.**"] — See *Inland Revenue Commissioners* v. *Clay*, 83 L. J. K.B. 1425; [1914] 3 K.B. 466; 111 L. T. 484; 58 S. J. 610; 30 T. L. R. 573.

"**Opened mine.**"] — See *Morgan, In re; Vachell* v. *Morgan*, 83 L. J. Ch. 573; [1914] 1 Ch. 910; 110 L. T. 903.

"**Opposite party.**"]—See *Studley* v. *Studley*, 82 L. J. P. 65; [1913] P. 119; 108 L. T. 657; 57 S. J. 425.

"**Order of a Court of summary jurisdiction.**"] — See *Rex* v. *Lincolnshire Justices*, 81 L. J. K.B. 967; [1912] 2 K.B. 413; 107 L. T. 170; 76 J. P. 311; 10 L. G. R. 703.

"**Original literary work.**"]—See *Byrne* v. "*Statist*" *Co.*, 83 L. J. K.B. 625; [1914] 1 K.B. 622; 110 L. T. 510; 58 S. J. 340; 30 T. L. R. 254.

"**Or otherwise.**"] — See *Ellis* v. *Allen*, 83 L. J. Ch. 590; [1914] 1 Ch. 904; 110 L. T. 479.

"**Or" read as "and.**"]—See *Crutchley, In re; Kidson* v. *Marsden*, 81 L. J. Ch. 644; [1912] 2 Ch. 335; 107 L. T. 194.

"**Other premises.**"]—See *Inland Revenue Commissioners* v. *Truman, Hanbury, Buxton & Co.*, 82 L. J. K.B. 1042; [1913] A.C. 650; 109 L. T. 337; 77 J. P. 397; 57 S. J. 662; 29 T. L. R. 661.

"**Other settlement than his or her own.**"]— See *Paddington Union* v. *Westminster Union*, 84 L. J. K.B. 1727; [1915] 2 K.B. 644; 113 L. T. 328; 79 J. P. 343; 13 L. G. R. 641.

"**Out of.**"]—See *Plumb* v. *Cobden Flour Mills Co.*, 83 L. J. K.B. 197; [1914] A.C. 62; [1914] W.C. & I. Rep. 48; 109 L. T. 759; 58 S. J. 184; 30 T. L. R. 174.

"**Outworker.**"] — See *Street* v. *Williams*, 83 L. J. K.B. 1268; [1914] 3 K.B. 537; 111 L. T. 544; 78 J. P. 442.

"**Owner.**"]—See *Metropolitan Water Board* v. *Brooks*, 80 L. J. K.B. 495; [1911] 1 K.B. 289; 103 L. T. 739; 75 J. P. 41; 9 L. G. R. 442.

"**Own shop.**"] — See *Haynes* v. *Ford*, 80 L. J. Ch. 490; [1911] 2 Ch. 237; 104 L. T. 696; 75 J. P. 401; 9 L. G. R. 702; 27 T. L. R. 416.

"**Paid in the last working year.**"] — See *Beaufort (Duke)* v. *Inland Revenue Commissioners*, 82 L. J. K.B. 865; [1913] 3 K.B. 48; 108 L. T. 902; 29 T. L. R. 534.

"**Paid office under" Council.**]—See *Greville-Smith* v. *Tomlin*, 80 L. J. K.B. 774; [1911]

2 K.B. 9; 104 L. T. 816; 75 J. P. 314; 9 L. G. R. 598.

"Paid-up share capital."]—See *Newburgh and North Fife Railway* v. *North British Railway*, [1913] S. C. 1166.

"Particular breach."]—See *Jolly* v. *Brown*, 83 L. J. K.B. 308; [1914] 2 K.B. 109; 109 L. T. 532; 58 S. J. 153.

"Parties interested."] — See *Bonney* v. *Hoyle & Sons, Lim.*, 83 L. J. K.B. 541; [1914] 2 K.B. 257; [1914] W.C. & I. Rep. 565; 110 L. T. 729; 12 L. G. R. 358; 58 S. J. 268; 30 T. L. R. 280.

"Part of a street."] — See *Bell* v. *Great Crosby Urban Council*, 108 L. T. 455; 77 J. P. 37; 10 L. G. R. 1007.

"Party wall."] — See *London, Gloucestershire, and North Hants Dairy Co.* v. *Morley*, 80 L. J. K.B. 908; [1911] 2 K.B. 257; 104 L. T. 773; 9 L. G. R. 738; 75 J. P. 437.

"Patent agent."]—See *Hans* v. *Graham*, 83 L. J. K.B. 1255; [1914] 3 K.B. 400; 111 L. T. 551; 78 J. P. 455.

"Payment for the benefit of an enemy."]—See *Rex* v. *Kupfer*, 84 L. J. K.B. 1021; [1915] 2 K.B. 321; 112 L. T. 1138; 79 J. P. 270; 31 T. L. R. 223; and *Continental Tyre and Rubber Co.* v. *Daimler Co.*, 84 L. J. K.B. 926; [1915] 1 K.B. 893; 112 L. T. 324; 20 Com. Cas. 209; 59 S. J. 232; 31 T. L. R. 159.

"Payments made."]—See *Inland Revenue Commissioners* v. *St. John's College, Oxford*, 84 L. J. K.B. 1426; [1915] 2 K.B. 621; 112 L. T. 1039.

"Payments made in consideration of the lease."]—See *Inland Revenue Commissioners* v. *Camden (Marquis)*, 84 L. J. K.B. 145; [1915] A.C. 241; 111 L. T. 1033; 58 S. J. 782; 30 T. L. R. 681.

"Perils of the seas and all other perils, losses and misfortunes."]—See *Stott (Baltic) Steamers, Lim.* v. *Marten*, 83 L. J. K.B. 1847; [1914] 3 K.B. 1262; 19 Com. Cas. 438; 30 T. L. R. 686.

"Period of maintenance."] — See *Calne Union* v. *Wilts County Council*, 80 L. J. K.B. 548; [1911] 1 K.B. 717; 104 L. T. 607; 75 J. P. 42.

"Permanent incapacity."] — See *Marshall, Sons & Co.* v. *Prince*, 84 L. J. K.B. 16; [1914] 3 K.B. 1047; [1914] W.C. & I. Rep. 559; 111 L. T. 1081; 58 S. J. 721; 30 T. L. R. 654.

"Permitted."] — See *Dundas* v. *Phyn*, [1914] S. C. (J.) 114.

"Permit to be carried."] — See *North Staffordshire Railway* v. *Waters*, 110 L. T. 237; 78 J. P. 116; 12 L. G. R. 289; 24 Cox C.C. 271; 30 T. L. R. 121.

"Per pro."]—See *Morison* v. *London County and Westminster Bank*, 83 L. J. K.B. 1202; [1914] 3 K.B. 356; 111 L. T. 114; 19 Com. Cas. 273; 58 S. J. 453; 30 T. L. R. 481.

"Person."] — See *Caldwell* v. *Bethell*, 82 L. J. K.B. 101; [1913] 1 K.B. 119; 107 L. T. 685; 77 J. P. 118; 23 Cox C.C. 225; 29 T. L. R. 94; *Bebb* v. *Law Society*, 83 L. J. Ch. 363; [1914] 1 Ch. 286; 110 L. T. 353; 58 S. J. 153; 30 T. L. R. 179; *Rex* v. *Holden*, 81 L. J. K.B. 327; [1912] 1 K.B. 483; 106 L. T. 305; 76 J. P. 143; 22 Cox C.C. 727; 56 S. J. 188; 28 T. L. R. 173; and *Chuter* v. *Freeth & Pocock*, 80 L. J. K.B. 1322; [1911] 2 K.B. 832; 105 L. T. 238; 75 J. P. 430; 9 L. G. R. 1055; 27 T. L. R. 467; 22 Cox C.C. 573.

"Person aggrieved."]—See *Liverpool Compensation Authority* v. *Inland Revenue Commissioners*, 82 L. J. K.B. 349; [1913] 1 K.B. 165; 108 L. T. 68; 29 T. L. R. 169; *Imperial Tobacco Co.'s Trade Marks, In re*, 84 L. J. Ch. 643; [1915] 2 Ch. 27; 112 L. T. 632; 32 R. P. C. 361; 59 S. J. 456; 31 T. L. R. 408; *Cooke* v. *Bolton Justices*, 81 L. J. K.B. 648; [1912] 2 K.B. 248; 105 L. T. 818; 76 J. P. 67; *Hosking, In re; Hosking, ex parte*, 106 L. T. 640; *Kitson, In re; Sugden & Son, Lim., ex parte*, 80 L. J. K.B. 1147; [1911] 2 K.B. 109; 18 Manson, 224; 55 S. J. 443; and *Wills* v. *McSherry*, 83 L. J. K.B. 596; [1914] 1 K.B. 616; 110 L. T. 65; 78 J. P. 120; 12 Asp. M.C. 426.

"Personal chattels."]—See *Thynne, In re; Thynne* v. *Grey*, 80 L. J. Ch. 205; [1911] 1 Ch. 282; 104 L. T. 19; 18 Manson, 34.

"Personal earnings."]—See *Affleck* v. *Hammond*, 81 L. J. K.B. 565; [1912] 3 K.B. 162; 106 L. T. 8; 19 Manson, 111.

"Personal exertion."]—See *Syme* v. *Victoria Commissioners of Taxes*, 84 L. J. P.C. 39; [1914] A.C. 1013; 111 L. T. 1043; 30 T. L. R. 689.

"Person causing or suffering . . . to flow."]—See *Rochford Rural Council* v. *Port of London Authority*, 83 L. J. K.B. 1066; [1914] 2 K.B. 916; 111 L. T. 207; 78 J. P. 329; 12 L. G. R. 979.

"Person in charge."]—See *North Staffordshire Railway* v. *Waters*, 30 T. L. R. 121.

"Person mainly employed in connexion with the serving of customers."]—See *Prance* v. *London County Council*, 84 L. J. K.B. 623; [1915] 1 K.B. 688; 112 L. T. 820; 79 J. P. 242; 13 L. G. R. 382; 31 T. L. R. 128.

"Person residing in United Kingdom."] — See *Brown* v. *Burt*, 81 L. J. K.B. 17; 105 L. T. 420; 27 T. L. R. 572; 5 Tax Cas. 667.

"Persons having the same interest in one cause or matter."] — See *Walker* v. *Sur*, 83 L. J. K.B. 1188; [1914] 2 K.B. 930; 109 L. T. 888; 30 T. L. R. 171.

"**Persons interested in the licensed premises.**"]—See *Bladon, In re; Dando* v. *Porter*, 81 L. J. Ch. 117; [1912] 1 Ch. 45; 105 L. T. 729; 28 T. L. R. 57; and *Ecclesiastical Commissioners* v. *Page*, 80 L. J. K.B. 1346; [1911] 2 K.B. 946; 105 L. T. 827; 75 J. P. 548.

"**Person who can swear positively to the facts.**"] — See *Symon* v. *Palmer's Stores*, 81 L. J. K.B. 439; [1912] 1 K.B. 259; 106 L. T. 176.

"**Persuade a seaman to refuse to join his ship.**"]—See *Vickerson* v. *Crowe*, 83 L. J. K.B. 469; [1914] 1 K.B. 462; 110 L. T. 425; 78 J. P. 88; 12 Asp. M.C. 446; 24 Cox C.C. 122; 30 T. L. R. 111.

"**Pits.**"]—See *Lofthouse Colliery* v. *Ogden*, 82 L. J. K.B. 910; [1913] 3 K.B. 120; 107 L. T. 827; 57 S. J. 186; 29 T. L. R. 179.

"**Pleasure ground.**"] — See *Stevens* v. *National Telephone Co.*, [1914] 1 Ir. R. 9.

"**Policy on human life.**"]—See *Hampton* v. *Toxteth Co-operative Society*, 84 L. J. Ch. 633; [1915] 1 Ch. 721; 113 L. T. 62; 59 S. J. 397; 31 T. L. R. 314.

"**Port.**"]—See *The Möwe*, 84 L. J. P. 57; [1915] P. 1; 112 L. T. 261; 59 S. J. 76; 31 T. L. R. 46.

"**Practice and procedure.**"]—See *Haxby* v. *Wood Advertising Agency*, 109 L. T. 946; and *Jackson, In re*, 84 L. J. K.B. 548; [1915] 1 K.B. 371; 112 L. T. 395; 59 S. J. 272; 31 T. L. R. 109.

"**Prejudiced in their defence.**"] — See WORKMEN'S COMPENSATION.

"**Prejudice of the purchaser.**"] — See *Williams* v. *Friend*, 81 L. J. K.B. 756; [1912] 2 K.B. 471; 107 L. T. 93; 76 J. P. 301; 10 L. G. R. 494; 28 T. L. R. 407.

"**Premium.**"] — See *King* v. *Cadogan (Earl)*, 84 L. J. K.B. 2069; [1915] 3 K.B. 485; 59 S. J. 680.

"**Private company.**"]—See *Park* v. *Royalties Syndicate, Lim.*, 81 L. J. K.B. 313; [1912] 1 K.B. 330; 106 L. T. 185; 76 J. P. 93; 19 Manson, 97; and *White, In re; Theobald* v. *White*, 82 L. J. Ch. 149; [1913] 1 Ch. 231; 108 L. T. 319; 57 S. J. 212.

"**Private dwelling house.**"] — See *Bristol Guardians* v. *Bristol Waterworks Co.*, 83 L. J. Ch. 393; [1914] A.C. 379; 110 L. T. 846; 78 J. P. 217; 12 L. G. R. 261; 58 S. J. 318; 30 T. L. R. 296.

"**Private road.**"]—See *Windham's Settled Estate, In re*, 81 L. J. Ch. 574; [1912] 2 Ch. 75; 106 L. T. 832.

"**Proceeding instituted in consequence of adultery.**"]—See *Lewis* v. *Lewis*, 81 L. J. P. 24; [1912] P. 19; 106 L. T. 191; 56 S. J. 189; 28 T. L. R. 174.

"**Proceedings pending.**"] — See *Rex* v. *O'Connor*, 82 L. J. K.B. 335; [1913] 1 K.B. 557; 108 L. T. 384; 77 J. P. 272; 23 Cox C.C. 334; 57 S. J. 287; 29 T. L. R. 245.

"**Profit.**"]—See *Commissioner of Taxes* v. *Melbourne Trust*, 84 L. J. P.C. 21; [1914] A.C. 1001; 111 L. T. 1040; 30 T. L. R. 685.

"**Profits.**"]—See *Spanish Prospecting Co., In re*, 80 L. J. Ch. 210; [1911] 1 Ch. 92; 103 L. T. 609; 18 Manson, 191; 55 S. J. 63; 27 T. L. R. 76; and *Trevor-Battye's Settlement, In re; Bull* v. *Trevor-Battye*, 81 L. J. Ch. 646; [1912] 2 Ch. 339; 107 L. T. 12; 56 S. J. 615.

"**Profits or gains.**"]—See *cases* sub tit. REVENUE (Income Tax).

"**Proper officer.**"]—See *Stead (a Solicitor), In re*, 81 L. J. K.B. 68; [1911] A.C. 688; 105 L. T. 120; 55 S. J. 616.

"**Property.**"]—See *Lanark County Council* v. *Motherwell Magistrates*, [1912] S. C. 1251.

"**Property and civil rights in the province.**"]—See *Royal Bank of Canada* v. *Regem*; 83 L. J. P.C. 33; [1913] A.C. 283; 108 L. T. 129; 29 T. L. R. 239.

Property "entrusted."]—See *Rex* v. *Grubb*, 84 L. J. K.B. 1744; [1915] 2 K.B. 683; 113 L. T. 510; 79 J. P. 430; 59 S. J. 547; 31 T. L. R. 429.

"**Property locally situate out of the United Kingdom.**"]—See *Velazquez, Lim.* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 1108; [1914] 3 K.B. 458; 111 L. T. 417; 58 S. J. 554; 30 T. L. R. 539.

Property "passing on the death of the deceased."]—See *Att.-Gen.* v. *Milne*, 82 L. J. K.B. 773; [1913] 2 K.B. 606; 108 L. T. 772; 57 S. J. 532.

"**Property passing to executor as such.**"]—See *O'Grady, In re; O'Grady* v. *Wilmot*, 84 L. J. Ch. 496; [1915] 1 Ch. 613; 112 L. T. 615; 59 S. J. 332.

Property "received."]—See *Rex* v. *Grubb*, 84 L. J. K.B. 1744; [1915] 2 K.B. 683; 113 L. T. 510; 79 J. P. 430; 59 S. J. 547; 31 T. L. R. 429.

"**Property recovered or preserved.**"]—See *Cockrell's Estate, In re; Pinkey* v. *Cockrell*, 81 L. J. Ch. 152; [1912] 1 Ch. 23; 105 L. T. 662.

"Property which does not pass to the executor as such."]—See *Hudson, In re; Spencer* v. *Turner*, 80 L. J. Ch. 129; [1911] 1 Ch. 206; 103 L. T. 718.

"Provision in local Act dealing with construction of new buildings."]—See *Holliday & Greenwood* v. *District Surveyors' Association*, 83 L. J. K.B. 1482; [1914] 2 K.B. 803; 110 L. T. 983; 78 J. P. 262; 12 L. G. R. 633; 30 T. L. R. 370.

"Public company."] — See *White, In re; Theobald* v. *White*, 82 L. J. Ch. 149; [1913] 1 Ch. 231; 108 L. T. 319; 57 S. J. 212.

"Public institution."]—See *Royal Masonic Institution* v. *Parkes*, 82 L. J. K.B. 33; [1912] 3 K.B. 212; 106 L. T. 809; 76 J. P. 218; 10 L. G. R. 376; 23 Cox C.C. 746; 28 T. L. R. 355.

"Public officer."]—See *Rex* v. *Whitaker*, 84 L. J. K.B. 225; [1914] 3 K.B. 1283; 112 L. T. 41; 79 J. P. 28; 58 S. J. 707; 30 T. L. R. 627.

"Public offices and employments of profit."] —See *Pickles* v. *Foster*, 82 L. J. K.B. 121; [1913] 1 K.B. 174; 108 L. T. 106; 20 Manson, 106; 6 Tax Cas. 131; 29 T. L. R. 112.

"Public place."] — See *Campbell* v. *Kerr* [1912] S. C. (J.) 10.

"Public purpose."]—See *Hamabai Framjee Petit* v. *Secretary of State for India*, L. R. 42 Ind. App. 44.

"Public school."]—See *Ackworth School* v. *Betts*, 84 L. J. K.B. 2112.

"Public service."] — See *Samuel's (Sir Stuart) Seat, In re*, 82 L. J. P.C. 106; [1913] A.C. 514; 108 L. T. 696; 29 T. L. R. 429.

"Public stocks."]—See *Hill, In re; Fettes* v. *Hill*, 58 S. J. 399.

"Purchased."]—See *Inland Revenue Commissioners* v. *Gribble*, 82 L. J. K.B. 900; [1913] 3 K.B. 212; 108 L. T. 887; 57 S. J. 476; 29 T. L. R. 481.

"Purchaser."]—See *Lawley, In re; Jackson* v. *Leighton*, 81 L. J. Ch. 97; [1911] 2 Ch. 530; 105 L. T. 571; 56 S. J. 13.

"Racecourse."] — See *Stead* v. *Aykroyd* 80 L. J. K.B. 78; [1911] 1 K.B. 57; 103 L. T. 727; 74 J. P. 482.

"Rags."]—See *Cooper* v. *Swift*, 83 L. J. K.B. 630; [1914] 1 K.B. 253; 110 L. T. 79; 78 J. P. 57; 12 L. G. R. 115; 23 Cox C.C. 759.

"Railway." —See *Lancashire and Yorkshire Railway* v. *Liverpool Corporation*, 82 L. J. K.B. 1096; [1913] 3 K.B. 247; 108 L. T. 872; 77 J. P. 305; 11 L. G. R. 932; 57 S. J. 557; and *Tottenham Urban Council* v. *Metropolitan Electric Tramways*, 83 L. J. K.B. 60; [1914] A.C. 702; 109 L. T. 674; 77 J. P. 413; 11 L. G. R. 1071; 57 S. J. 739; 29 T. L. R. 720.

"Reasonable cause."]—See *Elke* v. *Hart-Dyke*, 80 L. J. K.B. 90; [1910] 2 K.B. 677; 103 L. T. 174; 26 T. L. R. 613; *Potter* v. *Welch & Sons, Lim.*, 83 L. J. K.B. 1852; [1914] 3 K.B. 1020; [1914] W.C. & I. Rep. 607; 30 T. L. R. 644; *Moore* v. *Naval Colliery Co.*, 81 L. J. K.B. 149; [1912] 1 K.B. 28; 105 L. T. 838; [1912] W.C. Rep. 81; *Luckie* v. *Merry*, 84 L. J. K.B. 1388; [1915] 3 K.B. 83; [1915] W.C. & I. Rep. 395; 113 L. T. 667; 59 S. J. 544; 31 T. L. R. 466; *Fox* v. *Barrow Hematite Steel Co.*, 84 L. J. K.B. 1327; [1915] W.C. & I. Rep. 321; 113 L. T. 528; *Wassall* v. *Russell & Sons, Lim.*, 84 L. J. K.B. 1606; [1915] W.C. & I. Rep. 88; 112 L. T. 902; and *Flood* v. *Smith*, [1915] S. C. 726; [1915] W.C. & I. Rep. 212.

"Reasonable facilities."] — See *Spillers & Bakers, Lim.* v. *Great Western Railway*, 80 L. J. K.B. 401; [1911] 1 K.B. 386; 103 L. T. 685; 14 Ry. & Can. Traff. Cas. 52; 55 S. J. 75; 27 T. L. R. 97.

"Reasonable ground."] — See *Adams* v. *Thrift*, 84 L. J. Ch. 729; [1915] 2 Ch. 21; 113 L. T. 569.

"Reasonable grounds for proceedings."] — See *Merriman* v. *Geach*, 82 L. J. K.B. 87; [1913] 1 K.B. 37; 107 L. T. 703; 57 S. J. 146.

"Reasonable security."]—See *Webb, In re; Board of Trade, ex parte*, 83 L. J. K.B. 1386; [1914] 3 K.B. 387; 111 L. T. 175; 21 Manson, 169; 58 S. J. 581.

"Receipt of the rents and profits for their own use."]—See *White* v. *Bown*, 82 L. J. K.B. 89; [1913] 1 K.B. 78; 108 L. T. 159; 77 J. P. 78; 11 L. G. R. 23; 2 Smith, 386; 29 T. L. R. 63.

"Receive."]—See *Haas* v. *Atlas Insurance Co.*, 82 L. J. K.B. 506; [1913] 2 K.B. 209; [1913] W.C. & I. Rep. 375; 108 L. T. 373; 57 S. J. 446; 29 T. L. R. 307.

"Received in Great Britain."]—See *Scottish Provident Institution* v. *Inland Revenue*, [1912] S. C. 452; 6 Tax Cas. 34.

"Receiving of money."] — See *Boulton* v. *Hunt*, 109 L. T. 245; 77 J. P. 337; 23 Cox C.C. 427.

"Recovered in the action."]—See *Lamb* v. *Keeping*, 111 L. T. 527; 58 S. J. 596.

"Recovery of damages not specially provided for."]—See *Swansea Corporation* v. *Harpur*, 81 L. J. K.B. 1103; [1912] 3 K.B. 493; 107 L. T. 6; 76 J. P. 409; 10 L. G. R. 677.

"Recurrence of nuisance."]—See *Greenwich Borough Council* v. *London County Council*, 106 L. T. 887; 76 J. P. 267; 10 L. G. R. 488; 23 Cox C.C. 32.

"**Redeemable" Stock.**] — See *Edinburgh Corporation* v. *British Linen Bank*, 82 L. J: P.C. 25; [1913] A.C. 133; [1913] S. C. (H.L.) 4; 107 L. T. 567; 29 T. L. R. 25.

"**Redeem the liability.**"] — See *Yorkshire (N.R.) County Council and Middlesbrough County Borough Council, In re*, 83 L. J. K.B. 1004; [1914] 2 K.B. 847; 110 L. T. 961; 78 J. P. 257; 12 L. G. R. 555; 58 S. J. 43.

"**Religious purposes.**"] — See *Avenon's Charity, In re; Att.-Gen.* v. *Pelly*, 82 L. J. Ch. 398; [1912] 2 Ch. 261; 109 L. T. 98; 57 S. J. 626.

"**Remunerated by shares in the profits or the gross earnings.**"] — See *Stephenson* v. *Rossall Steam Fishing Co.*, 84 L. J. K.B. 677; [1915] W.C. & I. Rep. 121; 112 L. T. 891.

"**Remuneration.**"] — See *Skailes* v. *Blue Anchor Line*, 80 L. J. K.B. 442; [1911] 1 K.B. 360; 103 L. T. 741; 55 S. J. 107; 27 T. L. R. 119.

"**Rent or premium.**"] — See *King* v. *Cadogan (Earl)*, 84 L. J. K.B. 2069; [1915] 3 K.B. 485; 59 S. J. 680.

"**Rents and profits.**"]—See *Rex* v. *Income Tax Commissioners; Essex Hall, Ex parte*, 80 L. J. K.B. 1035; [1911] 2 K.B. 434; 104 L. T. 764; 27 T. L. R. 466.

"**Rents, dividends, and interest and other produce.**"]—See *Pyke, In re; Birnstingl* v. *Birnstingl*, 81 L. J. Ch. 495; [1912] 1 Ch. 770; 106 L. T. 751; 56 S. J. 380.

"**Represented in a special or particular manner.**"]—See *British Milk Products Co.'s Application, In re*, 84 L. J. Ch. 819; [1915] 2 Ch. 202; 32 R. P. C. 453.

"**Require.**"] — See *Metropolitan Water Board* v. *Johnson*, 82 L. J. K.B. 1164; [1913] 3 K.B. 900; 109 L. T. 88; 77 J. P. 384; 11 L. G. R. 1106; 57 S. J. 625; 29 T. L. R. 603.

Residence "in the borough or within seven miles thereof."]—See *Lloyd* v. *Shrewsbury (Town Clerk)*, 84 L. J. K.B. 446; [1915] 1 K.B. 195; 112 L. T. 456; 13 L. G. R. 265; 3 Smith, 1; 31 T. L. R. 55.

"**Respectable and responsible person.**"] — See *Willmott* v. *London Road Car Co.*, 80 L. J. Ch. 1; [1910] 2 Ch. 525; 103 L. T. 447; 54 S. J. 873; 27 T. L. R. 4.

"**Restraint of princes.**"]—See *Sanday & Co.* v *British and Foreign Marine Insurance Co.*, 84 L. J. K.B. 1625; [1915] 2 K.B. 781; 113 L. T. 407; 20 Com. Cas. 305; 59 S. J. 456; 31 T. L. R. 374.

"**Retention money.**"]—See *West Yorkshire Bank* v. *Isherwood*, 76 J. P. 456; 28 T. L. R. 593.

"**Right, franchise, or privilege.**"] — See *British Columbia Electric Railway* v. *Stewart*, 83 L. J. P.C. 53; [1913] A.C. 816; 109 L. T. 771.

"**Right to work minerals.**"] — See *Inland Revenue Commissioners* v. *Joicey (No. 2)*, 82 L. J. K.B. 784; [1913] 2 K.B. 580; 108 L. T. 738; 57 S. J. 557; 29 T. L. R. 537.

"**Rogues and vagabonds.**"]—See *Hawke* v. *Hulton*, 78 L. J. K.B. 633; [1909] 2 K.B. 93; 100 L. T. 905; 73 J. P. 295; 16 Manson, 164; 22 Cox C.C. 122; 25 T. L. R. 474.

"**Safe port.**"]—See *Hall Brothers Steamship Co.* v. *Paul, Lim.*, 19 Com. Cas. 384; 30 T. L. R. 598.

"**Seaworthiness admitted.**"]—See *Cantiere Meccanico Brindisino* v. *Janson*, 81 L. J. K.B. 1043; [1912] 3 K.B. 452; 107 L. T. 281; 17 Com. Cas. 332; 57 S. J. 62; 28 T. L. R. 564.

"**Second offence.**"] — See *Rex* v. *South Shields Licensing Justices*, 80 L. J. K.B. 809; [1911] 2 K.B. 1; 105 L. T. 41; 75 J. P. 299; 22 Cox C.C. 431; 55 S. J. 386; 27 T. L. R. 330.

"**Securing the payment of royalties.**"]—See *Monckton* v. *Pathé Frères Pathephone, Lim.*, 83 L. J. K.B. 1234; [1914] 1 K.B. 395; 109 L. T. 881; 58 S. J. 172; 30 T. L. R. 123.

"**Securities standing in my name at my decease.**"]—See *Mayne, In re; Stoneman* v. *Woods*, 83 L. J. Ch. 815; [1914] 2 Ch. 115; 58 S. J. 579.

"**Security.**"] — See *Barnard* v. *Foster*, 84 L. J. K.B. 1244; [1915] 2 K.B. 288; 31 T. L. R. 307.

"**Sell.**"]—See *Lambert* v. *Rowe*, 83 L. J. K.B. 274; [1914] 1 K.B. 38; 109 L. T. 939; 78 J. P. 20; 12 L. G. R. 68; 23 Cox C.C. 696.

"**Sells.**"]—See *Caldwell* v. *Bethell*, 82 L. J. K.B. 101; [1913] 1 K.B. 119; 107 L. T. 685; 77 J. P. 118; 23 Cox C.C. 225; 29 T. L. R. 94.

"**Sent by the post.**"]—See *Browne* v. *Black*, 81 L. J. K.B. 458; [1912] 1 K.B. 316; 105 L. T. 982; 56 S. J. 144; 28 T. L. R. 119.

"**Sent to the purchaser.**"]—See *Retail Dairy Co.* v. *Clarke*, 81 L. J. K.B. 845; [1912] 2 K.B. 388; 106 L. T. 848; 76 J. P. 282; 10 L. G. R. 547; 28 T. L. R. 361.

"**Serious and wilful misconduct.**"] — See *Harding* v. *Brynddu Colliery Co.*, 80 L. J. K.B. 1052; [1911] 2 K.B. 747; 105 L. T. 55; 55 S. J. 599; 27 T. L. R. 500.

"**Sewer.**"]—See *Att.-Gen.* v. *Lewes Corporation*, 81 L. J. Ch. 40; [1911] 2 Ch. 495; 105 L. T. 697; 76 J. P. 1; 10 L. G. R. 26; 55 S. J. 703; 27 T. L. R. 581; *Phillimore* v. *Watford Rural Council*, 82 L. J. Ch. 514; [1913] 2 Ch. 434; 109 L. T. 616; 77 J. P. 453; 11 L. G. R. 980; 57 S. J. 741; and *Holywood Urban Council* v. *Grainger*, [1913] 2 Ir. R. 126.

"**Shall deem it desirable.**"]—See *Challis* v. *Watson*, 82 L. J. K.B. 529; [1913] 1 K.B. 547; 108 L. T. 505; 57 S. J. 285; 29 T. L. R. 271; and *Donkin* v. *Pearson*, 80 L. J. K.B. 1069; [1911] 2 K.B. 412; 104 L. T. 643.

"**Shall die in my lifetime.**"]—See *Williams, In re; Metcalf* v *Williams*, 83 L. J. Ch. 570; [1914] 2 Ch. 61; 110 L. T. 923; 58 S. J. 470.

"**Shares belonging to me.**"]—See *Clifford, In re; Mallam* v. *McFie*, 81 L. J. Ch. 220; [1912] 1 Ch. 29; 106 L. T. 14; 56 S. J. 91; 28 T. L. R. 57.

"**Ship.**"]—See *Smeed* v. *Port of London Authority*, 82 L. J. K.B. 323; [1913] 1 K.B. 226; 108 L. T. 171; 12 Asp. M.C. 297; 57 S. J. 172; 29 T. L. R. 122; *The Mudlark*, 80 L. J. P. 117; [1911] P. 116; 27 T. L. R. 385; and *Weeks* v. *Ross*, 82 L. J. K.B. 925; [1913] 2 K.B. 229; 108 L. T. 423; 77 J. P. 182; 12 Asp. M.C. 307; 23 Cox C.C. 337; 29 T. L. R. 369.

"**Shipped again as soon as possible.**"]—See *Anglo-American Oil Co.* v. *Port of London Authority*, 83 L. J. K.B. 125; [1914] 1 K.B. 14; 109 L. T. 862; 19 Com. Cas. 23; 12 Asp. M.C. 419; 30 T. L. R. 14.

"**Shop.**"]—See *Willesden Urban Council* v. *Morgan*, 84 L. J. K.B. 373; [1915] 1 K.B. 349; 112 L. T. 423; 79 J. P. 166; 13 L. G. R. 390; 59 S. J. 148; 31 T. L. R. 93; *Clayton* v. *Le Roy*, 81 L. J. K.B. 49; [1911] 2 K.B. 1031; 104 L. T. 419; 75 J. P. 229; 27 T. L. R. 206; and *Ward* v. *Smith*, 82 L. J. K.B. 941; [1913] 3 K.B. 154; 109 L. T. 439; 77 J. P. 370; 11 L. G. R. 741; 29 T. L. R. 536.

"**Shop assistant.**"] — See *Melhuish* v. *London County Council*, 83 L. J. K.B. 1165; [1914] 3 K.B. 325; 111 L. T. 539; 78 J. P. 441; 12 L. G. R. 1086; 30 T. L. R. 527.

"**Should one die before the other.**"] — See *Fisher, In re; Robinson* v. *Eardley*, 84 L. J. Ch. 342; [1915] 1 Ch. 302; 112 L. T. 548; 59 S. J. 318.

"**Similar licence.**"]—See *Rex* v. *Taylor; Rex* v. *Amendt (No. 2)*, 84 L. J. K.B. 1489; [1915] 2 K.B. 593; 113 L. T. 167; 79 J. P. 332; 31 T. L. R. 317.

"**Single private drain.**"] — See *Holywood Urban Council* v. *Grainger*, [1913] 2 Ir. R. 126.

"**So near thereunto as she may safely get.**"] See *The Fox*, 83 L. J. P. 89; 30 T. L. R. 576.

"**So seized.**"] — See *Salt* v. *Tomlinson*, 80 L. J. K.B. 897; [1911] 2 K.B. 391; 105 L. T. 31; 75 J. P. 398; 9 L. G. R. 822; 27 T. L. R. 427.

"**Soil.**"]—See *St. Catherine's College, Cambridge* v. *Greensmith*, 81 L. J. Ch. 555; [1912] 2 Ch. 280; 106 L. T. 1009; 56 S. J. 551.

"**Sold or exposed for sale.**"]—See *Bothamley* v. *Jolly*, 84 L. J. K.B. 2223; [1915] 3 K.B. 425; 79 J. P. 548; 31 T. L. R. 626.

"**Solicits.**"]—See *Horton* v. *Mead*, 82 L. J. K.B. 200; [1913] 1 K.B. 154; 108 L. T. 156; 77 J. P. 129; 23 Cox C.C. 279.

"**Special circumstance.**"] — See *Beldam's Patent, In re*, 80 L. J. Ch. 133; [1911] 1 Ch. 60; 103 L. T. 454; 27 R. P. C. 758; 55 S. J. 46.

"**Stamp.**"]—See *Rex* v. *Lowden*, 83 L. J. K.B. 114; [1914] 1 K.B. 144; 109 L. T. 832; 78 J. P. 111; 23 Cox C.C. 643; 58 S. J. 157; 30 T. L. R. 70.

"**Stay of execution.**"]—See *Bond, In re; Capital and Counties Bank, ex parte*, 81 L. J. K.B. 112; [1911] 2 K.B. 988; 19 Manson, 22.

"**Steamship carrying mails.**"]—See *Union Steamship Co. of New Zealand* v. *Wellington Harbour Board*, 84 L. J. P.C. 169; [1915] A.C. 622; 113 L. T. 203; 31 T. L. R. 292.

"**Step in the proceedings.**"] — See *Austin and Whiteley* v. *Bowley*, 108 L. T. 921.

"**Storehouse.**"]—See *Appleyard* v. *Bangham*, 83 L. J. K.B. 193; [1914] 1 K.B. 258; 110 L. T. 34; 77 J. P. 448; 11 L. G. R. 1220; 23 Cox C.C. 730; 30 T. L. R. 13.

"**Stores.**"]—See *The Nicolay Belozwetow*, 82 L. J. P. 37; [1913] P. 1; 107 L. T. 862; 12 Asp. M.C. 279; 29 T. L. R. 160; and *The Tongariro*, 82 L. J. P. 22; [1912] P. 297; 107 L. T. 28; 12 Asp. M.C. 235; 28 T. L. R. 336.

"**Structural" separation.**"]—See *Beirne* v. *Duffy*, [1914] 2 Ir. R. 68.

"**Structures.**"]—See *Waite's Executors* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 1617; [1914] 3 K.B. 196; 111 L. T. 505; 58 S. J. 634; 30 T. L. R. 568.

"**Subsequently made.**"] — See *Parrish* v. *Hackney Borough Council*, 81 L. J. K.B. 304; [1912] 1 K.B. 669; 105 L. T. 859; 10 L. G. R. 3; 76 J. P. 89; 56 S. J. 140; 28 T. L. R. 110.

"**Subsidiary company.**"] — See *Lancashire Plate-Glass, Fire, and Burglary Insurance Co., In re*, 81 L. J. Ch. 199; [1912] 1 Ch. 35; 105 L. T. 570; 19 Manson, 149; 56 S. J. 13.

"**Sufficient cause.**"] — See *Scott, In re; Paris-Orleans Railway, ex parte*, 58 S. J. 11; and *Sunderland, In re; Leech & Simpkinson, ex parte*, 80 L. J. K.B. 825; [1911] 2 K.B. 658; 105 L. T. 233; 18 Manson, 123; 55 S. J. 568; 27 T. L. R. 454.

"**Sum certain.**"]—See *Alexandra Docks and Railway* v. *Taff Vale Railway*, 28 T. L. R. 163.

"**Supply.**"]—See *Att.-Gen.* v. *Leicester Corporation*, 80 L. J. Ch. 21; [1910] 2 Ch. 359; 103 L. T. 214; 74 J. P. 385; 9 L. G. R. 185; 26 T. L. R. 568.

"**Supply a notice.**"]—See *Clifford* v. *Battley*, 84 L. J. K.B. 615; [1915] 1 K.B. 531; 112 L. T. 765; 79 J. P. 180; 13 L. G. R. 505; 31 T. L. R. 117.

"**Supply for the purposes of any trade or business.**"]—See *Metropolitan Water Board* v. *Avery*, 83 L. J. K.B. 178; [1914] A.C. 118; 109 L. T. 762; 78 J. P. 121; 12 L. G. R. 95; 58 S. J. 171; 30 T. L. R. 189.

"**Surf days.**"] — See *British and Mexican Shipping Co.* v. *Lockett*, 80 L. J. K.B. 462; [1911] 1 K.B. 264; 103 L. T. 868; 16 Com. Cas. 75.

"**Surplus assets.**"]—See *Ramel Syndicate, In re*, 80 L. J. Ch. 455; [1911] 1 Ch. 749; 104 L. T. 842; 18 Manson, 297.

"**Survivors.**"]—See *Poultney, In re; Poultney* v. *Poultney*, 81 L. J. Ch. 748; [1912] 2 Ch. 541; 107 L. T. 1; 56 S. J. 667.

"**Survivors or survivor.**"]—See *Mears, In re; Parker* v. *Mears*, 83 L. J. Ch. 450; [1914] 1 Ch. 694; 110 L. T. 686.

"**Swear positively to the facts.**"] — See *Pathé Frères Cinema* v. *United Electric Theatres*, 84 L. J. K.B. 245; [1914] 3 K.B. 1253; 112 L. T. 20; 58 S. J. 797; 30 T. L. R. 670.

"**Take on themselves the repair.**"] — See *Stamford and Warrington (Earl), In re; Payne* v. *Grey (No. 2)*, 80 L. J. Ch. 361; [1911] 1 Ch. 648; 105 L. T. 12; 75 J. P. 346; 9 L. G. R. 719; 55 S. J. 483; 27 T. L. R. 356.

"**Taxable income.**"]—See *Commissioners of Taxation of New South Wales* v. *Adams*, 81 L. J. P.C. 185; [1912] A.C. 384; 106 L. T. 307; 28 T. L. R. 263.

"**Testamentary expenses.**"]—See *Porte* v. *Williams*, 80 L. J. Ch. 127; [1911] 1 Ch. 188; 103 L. T. 798; 55 S. J. 45; *Hudson, In re; Spencer* v. *Turner*, 80 L. J. Ch. 129; [1911] 1 Ch. 206; 103 L. T. 718; and *Avery, In re; Pinsent* v. *Avery*, 82 L. J. Ch. 434; [1913] 1 Ch. 208; 108 L. T. 1; 57 S. J. 112.

"**Their daughter.**"] — See *Jeffery, In re; Nussey* v. *Jeffery*, 83 L. J. Ch. 251; [1914] 1 Ch. 375; 110 L. T. 11; 58 S. J. 120.

"**Then.**"]—See *Griffiths* v. *Eccles Provident Industrial Co-operative Society*, 80 L. J. K.B. 1041; [1911] 2 K.B. 275; 104 L. T. 798; 55 S. J. 440; 27 T. L. R. 375.

"**Then executed.**"]—See *Taylor* v. *Steel-Maitland*, [1913] S. C. 562.

"**Thereunto lawfully authorized.**"] — See *Daniels* v. *Trefusis*, 83 L. J. Ch. 579; [1914] 1 Ch. 788; 109 L. T. 922; 58 S. J. 271.

"**Things omitted or knowingly suffered.**"]—See *Eastwood* v. *Ashton*, 84 L. J. Ch. 671; [1915] A.C. 900; 113 L. T. 562; 59 S. J. 560.

"**Through a court, passage, or otherwise.**"]—See *Chatterton* v. *Glanford Brigg Rural Council*, 84 L. J. K.B. 1865; [1915] 3 K.B. 707; 113 L. T. 746; 79 J. P. 441; 13 L. G. R. 1352.

"**Timber.**"]—See *Swift* v. *David*, 107 L. T. 71.

"**Time elapsing.**"]—See *Chetwynd's Trustee* v. *Boltons Library*, 82 L. J. K.B. 217; [1913] 1 K.B. 83; 107 L. T. 673; 20 Manson, 1; 57 S. J. 96.

"**To proceed**" **in a Cause or Matter.**]—See *Deighton* v. *Cockle*, 81 L. J. K.B. 497; [1912] 1 K.B. 206; 105 L. T. 802.

"**Total value.**"]—See *Inland Revenue Commissioners* v. *Camden (Marquis)*, 84 L. J. K.B. 145; [1915] A.C. 241; 111 L. T. 1033; 58 S. J. 782; 30 T. L. R. 681.

"**Towing gear.**"] — See *The West Cock*, 80 L. J. P. 97; [1911] P. 208; 104 L. T. 736; 55 S. J. 329; 27 T. L. R. 301.

"**Tracks.**"] — See *Toronto Suburban Railway* v. *Toronto Corporation*, 84 L. J. P.C. 108; [1915] A.C. 590; 112 L. T. 788.

"**Trade description lawfully and generally applied to goods.**"] — See *Lemy* v. *Watson*, 84 L. J. K.B. 1999; [1915] 3 K.B. 731; 13 L. G. R. 1323; 32 R. P. C. 508; 31 T. L. R. 612.

"**Trade or business.**"]—See *Clark, In re; Pope, ex parte*, 84 L. J. K.B. 89; [1914] 3 K.B. 1095; 112 L. T. 873; [1915] H. B. R. 1; 59 S. J. 44.

"**Trade purposes.**"]—See *Colley's Patents, Lim.* v. *Metropolitan Water Board*, 81 L. J. K.B. 126; [1912] A.C. 24; 105 L. T. 674; 9 L. G. R. 1159; 76 J. P. 33; 56 S. J. 51; 28 T. L. R. 48.

"**Transaction by or with an enemy.**"]—See *Ingle, Lim.* v. *Mannheim Continental Insurance Co.*, 84 L. J. K.B. 491; [1915] 1 K.B. 227; 112 L. T. 510; 59 S. J. 59; 31 T. L. R. 41.

"**Transfer of property.**"]—See *Branson, In re; Moore, ex parte*, 83 L. J. K.B. 1673; [1914] 3 K.B. 1086; 30 T. L. R. 604.

"**Trial.**"] — See *Rex* v. *Brixton Prison (Governor)*; *Stallmann, In re*, 82 L. J. K.B. 8; [1912] 3 K.B. 424; 107 L. T. 553; 28 T. L. R. 572.

"**Tried and discharged.**"] — See *Rex* v. *Brixton Prison (Governor)*; *Stallmann, In re*, 82 L. J. K.B. 8; [1912] 3 K.B. 424; 107 L. T. 553; 77 J. P. 5; 23 Cox C.C. 192; 28 T. L. R. 572.

"**Tunnel.**"] — See *Schweder* v. *Worthing Gas Light and Coke Co.*, 81 L. J. Ch. 102; [1912] 1 Ch. 83; 105 L. T. 670; 76 J. P. 3; 10 L. G. R. 19; 56 S. J. 53; 28 T. L. R. 34.

"Two clear days."] — See *Brammall* v. *Mutual Industrial Corporation*, 84 L. J. Ch. 474; 112 L. T. 1071; 59 S. J. 382.

"Unavoidable cause."] — See *Griffiths* v. *Gilbertson & Co.*, 84 L. J. K.B. 1312; [1915] W.C. & I. Rep. 359; 113 L. T. 628.

"Unconditional."] — See *Robert & Co.* v. *Marsh*, 84 L. J. K.B. 388; [1915] 1 K.B. 42; 111 L. T. 1060; 30 T. L. R. 609.

"Under any contract of service."] — See *Church of England Curates' Employment, In re*, 82 L. J. Ch. 8; [1912] 2 Ch. 563; [1913] W.C. & I. Rep. 34; 107 L. T. 643; 28 T. L. R. 579.

"Undue preference."] — See *Long Eaton Urban Council* v. *Att.-Gen.*, 84 L. J. Ch. 131; [1915] 1 Ch. 124; 111 L. T. 514; 79 J. P. 129; 13 L. G. R. 23; 31 T. L. R. 45; and *Att.-Gen.* v. *Ilford Urban Council*, 84 L. J. Ch. 860; 13 L. G. R. 441.

"Unfit for human habitation."]—See *Hall* v. *Manchester Corporation*, 84 L. J. Ch. 732; 79 J. P. 385; 31 T. L. R. 416.

"Unmarried."]—See *Jones, In re; Last* v. *Dobson*, 84 L. J. Ch. 222; [1915] 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

"Unreasonably refuses or neglects."] — See *Rushton* v. *Skey & Co.*, 83 L. J. K.B. 1503; [1914] 3 K.B. 706; [1914] W.C. & I. Rep. 497; 111 L. T. 700; 58 S. J. 685; 30 T. L. R. 601.

"Unregistered club."]—See *Lees* v. *Lovie*, 81 L. J. K.B. 978; [1912] 2 K.B. 425; 107 L. T. 165; 76 J. P. 372; 28 T. L. R. 441.

"Unregistered company."] — See *Victoria Society, Knottingley, In re*, 82 L. J. Ch. 176; [1913] 1 Ch. 167; 107 L. T. 755; 20 Manson, 76; 57 S. J. 129; 29 T. L. R. 94.

"Use as a trade mark."]—See *Lea, Lim., In re*, 81 L. J. Ch. 489; [1912] 2 Ch. 32; 106 L. T. 410; 29 R. P. C. 165; 56 S. J. 308; 28 T. L. R. 258.

"Used or proposed to be used."] — See *Neuchatel Asphalte Co.'s Application, In re*, 82 L. J. Ch. 414; [1913] 2 Ch. 291; 108 L. T. 966; 30 R. P. C. 349; 57 S. J. 611; 29 T. L. R. 505.

"Using."]—See *Moses* v. *Raywood*, 80 L. J. K.B. 823; [1911] 2 K.B. 271; 105 L. T. 76; 75 J. P. 263.

"Using" House for the Purpose of Betting with Persons "resorting" thereto.] — See *Taylor* v. *Monk*, 83 L. J. K.B. 1125; [1914] 2 K.B. 817; 110 L. T. 980; 78 J. P. 194; 24 Cox C.C. 156; 30 T. L. R. 367.

"Valuation list in force."] — See *Metropolitan Water Board* v. *Phillips*, 82 L. J. Ch. 89; [1913] A.C. 86; 107 L. T. 659; 77 J. P. 73; 10 L. G. R. 983; 57 S. J. 95; 29 T. L. R. 71

"Value."]—See *Rex* v. *Sunderland Customs and Excise Commissioners*, 83 L. J. K.B. 555; [1914] 2 K.B. 390; 110 L. T. 527; 78 J. P. 185; 12 L. G. R. 580; 30 T. L. R. 298.

"Value of the property."]—See *Angel* v. *Jay*, 80 L. J. K.B. 458; [1911] 1 K.B. 666; 103 L. T. 809; 55 S. J. 140.

"Vendor."]—See *Mayner* v. *Payne*, 83 L. J. Ch. 897; [1914] 2 Ch. 555; 111 L. T. 375; 58 S. J. 740.

"Vessel used in navigation."]—See *Weeks* v. *Ross*, 82 L. J. K.B. 925; [1913] 2 K.B. 229; 108 L. T. 423; 77 J. P. 182; 12 Asp. M.C. 307; 23 Cox C.C. 337; 29 T. L. R. 369.

"Waggon."] — See *Smith* v. *Pickering*, 84 L. J. K.B. 262; [1915] 1 K.B. 326; 112 L. T. 452; 79 J. P. 118; 13 L. G. R. 175; 31 T. L. R. 55.

"Wholly let out in apartments."] — See *Crow* v. *Hilleary*, 82 L. J. K.B. 380; [1913] 1 K.B. 385; 108 L. T. 300; 77 J. P. 164; 11 L. G. R. 226; 2 Smith, 410; 29 T. L. R. 147.

"Wholly maintained by voluntary contributions."]—See *Richard Murray Hospital, In re*, 84 L. J. Ch. 184; [1914] 2 Ch. 713; 111 L. T. 710; 79 J. P. 2; 58 S. J. 670; 30 T. L. R. 600.

"Wilful misconduct."] — See *Bastable* v. *North British Railway*, [1912] S. C. 555.

"Withholding consent."] — See *Lewis and Allenbury* v. *Pegge*, 58 S. J. 155.

"Within seven days after service of summons."] — See *Retail Dairy Co.* v. *Clarke*, 81 L. J. K.B. 845; [1912] 2 K.B. 388; 106 L. T. 848; 76 J. P. 282; 10 L. G. R. 547; 28 T. L. R. 361.

"Without actual fault or privity."] — See *Asiatic Petroleum Co.* v. *Lennard's Carrying Co.*, 84 L. J. K.B. 1281; [1915] A.C. 705; 113 L. T. 195; 20 Com. Cas. 283; 59 S. J. 411; 31 T. L. R. 294.

"Without leaving lawful issue as before mentioned."]—See *Davey, In re; Prisk* v. *Mitchell*, 84 L. J. Ch. 505; [1915] 1 Ch. 837; 113 L. T. 60.

"Without visible means of support."] — See *Rex* v. *Radcliffe*, 84 L. J. K.B. 2196; [1915] 3 K.B. 418; 79 J. P. 546; 13 L. G. R. 1192; 31 T. L. R. 610.

"Word."]—See *Teofani & Co.'s Trade Mark, In re*, 82 L. J. Ch. 490; [1913] 2 Ch. 545; 109 L. T. 114; 30 R. P. C. 446; 57 S. J. 686; 29 T. L. R. 591, 674.

"Working day."]—See *British and Mexican Shipping Co.* v. *Lockett*, 80 L. J. K.B. 462; [1911] 1 K.B. 264; 103 L. T. 868; 16 Com. Cas. 75.

"Workman."]—See *Roper* v. *Freke*, 84 L. J. K.B. 1351; [1915] 3 K.B. 222; [1915] W.C.

& I. Rep. 377; 113 L. T. 635; 59 S. J. 596; 31 T. L. R. 507; *Richards* v. *Pitt*, 84 L. J. K.B. 1417; [1915] W.C. & I. Rep. 417; *Skailes* v. *Blue Anchor Line*, 80 L. J. K.B. 442; [1911] 1 K.B. 360; 103 L. T. 741; 55 S. J. 107; 27 T. L. R. 119; *Wilmerson* v. *Lynn and Hamburg Steamship Co.*, 82 L. J. K.B. 1064; [1913] 3 K.B. 931; [1913] W.C. & I. Rep. 633; 109 L. T. 53; 57 S. J. 700; 29 T. L. R. 652; *Knight* v. *Bucknill*, [1913] W.C. & I. Rep. 175; 55 S. J. 1245; *Smith* v. *Horlock*, [1913] W.C. & I. Rep. 441; 109 L. T. 196; and *Smith* v. *Buxton*, 84 L. J. K.B. 697; [1915] W.C. & I .Rep. 126; 112 L. T. 893.

"Wreck."]—See *The Olympic*, 82 L. J. P. 41; [1913] P. 92; 108 L. T. 592; 12 Asp. M.C. 318; 57 S. J. 388; 29 T. L. R. 335.

"Written proceeding requiring particulars."]—See *Robin Electric Lamp Co., In re* (*No.* 1), 84 L. J. Ch. 49; [1914] 2 Ch. 461; 111 L. T. 1062; 31 R. P. C. 341.

"Yearly interest of money."]—See *Gateshead Corporation* v. *Lumsden*, 83 L. J. K.B. 1121; [1914] 2 K.B. 883; 111 L. T. 26; 78 J. P. 283; 12 L. G. R. 701; 58 S. J. 453; and *Garston Overseers* v. *Carlisle*, 84 L. J. K.B. 2016; [1915] 3 K.B. 381; 13 L. G. R. 969.

WORK AND LABOUR.

A. CONTRACTS FOR.

See also Vol. XV. 1772, 2103.

Right of Sub-contractor to Sue Building Owner.]—Sub-contractors *held* entitled on the facts to sue the building owners as the real principals in respect of goods supplied through the building contractors. *Crittal Manufacturing Co.* v. *London County Council*, 75 J. P. 203—Channell, J.

Specialists for the supply of steel work for a building *held* entitled to sue the building owner as the real principal in respect of the goods supplied through the building contractor. *Young* v. *White*, 76 J. P. 14; 28 T. L. R. 87—Lord Coleridge, J.

Specialists for the supply of door handles and door fittings held entitled to sue the builders, as in the circumstances the fact that the goods supplied had been used by the builders raised an implied promise by them to pay for the goods. *Ramsden* v. *Chessum*, 110 L. T. 274; 78 J. P. 49; 58 S. J. 66; 30 T. L. R. 68—H.L. (E.)

Employment of Engineer — Contract of Engineer, whether with Building Owner or Builder — Liability of Building Owner to Engineer.]—By a contract between the defendants, a county council, and a builder, it was provided that the latter in consideration of a lump sum would build a school for the defendants in accordance with the specification and directions of their architect. The specification and the bill of quantities provided for certain "prime cost" items, including a low-pressure heating apparatus, for which provisional sums were to be allowed. The defendants' architect corresponded with the plaintiff, an engineer, with reference to his installing the heating apparatus, and, finding that he was willing to do so, wrote to the builder requesting him to accept the plaintiff's tender. The builder wrote to the plaintiff that the latter's scheme had been approved by the architect, and that he, the builder, would be glad if the plaintiff would let him have full details. The plaintiff replied thanking the builder for accepting his estimate, and promising to send him details. The plaintiff then proceeded with the work. The plaintiff having requested that a sum should be paid to him on account, the architect refused to certify it to him, but it was paid to him by the builder. The builder being unable to pay the plaintiff the balance due to him in respect of the work, the plaintiff brought an action against the defendants to recover the amount:—*Held*, that the contract for the heating apparatus was not between the plaintiff and the defendants, but between the plaintiff and the builder only, and that the defendants were not liable. *Crittall Manufacturing Co.* v. *London County Council* (75 J. P. 203) and *Young & Co.* v. *White* (76 J. P. 14; 28 T. L. R. 87) disapproved. *Hampton* v. *Glamorgan County Council*, 84 L. J. K.B. 1506; 113 L. T. 112; 79 J. P. 473; 13 L. G. R. 819—C.A.

Rescission — Innocent Misrepresentation — Restitutio in Integrum.]—A claim by contractors for the rescission of a contract for the construction of a railway, on the plea that the contract had been entered into under essential error, induced by the innocent misrepresentation of the railway company as to the nature of the strata through which the railway passed, rejected on the ground that *restitutio in integrum* had become impossible by reason of the completion of the railway by the contractors after full knowledge of the facts. *Glasgow and South-Western Railway* v. *Boyd & Forrest*, 84 L. J. P.C. 157; [1915] A.C. 526—H.L. (Sc.)

Decision of the Second Division of the Court of Sessions in Scotland ([1914] S. C. 472) reversed. *Ib.*

B. POWERS AND LIABILITIES OF ARCHITECT.

Powers of Architect.]—By clause 16 of a building contract it was provided that the architect should, during the progress of the works, have power to order in writing from time to time the removal from the works of any materials which in his opinion were not in accordance with the specification, and the substitution of fresh material, and the con-

tractors were forthwith to carry out such order at their own cost. Clause 17 provided that defects or other faults appearing within twelve months from the completion of the works arising in the architect's opinion from materials or workmanship not in accordance with the drawings and specifications, should, upon the directions in writing of the architect, be amended by the contractors at their own cost, unless the architect should decide that they ought to be paid for same:—*Held*, that clause 16 was intended to apply to emergencies during the progress of the work, and that where the architect had seen a piece of work and had not condemned it the clause no longer applied; and that clause 17 applied when in fact the work was badly done. In the latter case the architect was no longer acting on an emergency, but must act judicially. *Adcock's Trustee* v. *Bridge Rural Council*, 75 J. P. 241—Phillimore, J.

Authority of Architect to Employ Measurer.]—There is no usage of trade by which the official architect of a building company, which has not commenced operations or approved of plans, or instructed the architect to proceed with the building, has implied authority to employ the services of a measurer to the effect of rendering the building company liable for the measurer's charges. *Black* v. *Cornelius* (6 R. 581) distinguished. *Knox & Robb* v. *Scottish Garden Suburb Co.*, [1913] S. C. 872—Ct. of Sess.

Liability of Architect for Negligence.]—In the carrying out of a building contract a large amount of flooring had to be laid down. Four years after the building was finished dry rot broke out under the floors, and upon investigation it was discovered that the design which was intended to prevent dry rot occurring had been departed from in certain material respects. The architect had done nothing to see that the design had been complied with:—*Held*, that the matter was not one of detail which the architect was entitled to leave to the clerk of works, and that the architect was liable in an action for negligence. *Leicester Guardians* v. *Trollope*, 75 J. P. 197—Channell, J.

C. PERFORMANCE OF WORK.

See also Vol. XV. 1780, 2107.

Provision for Payment of Liquidated Damages for Delay—Failure of Contractor to Complete Contract—Completion by Other Person—Applicability of Provision as to Payment of Liquidated Damages.]—A contract for the construction of certain works by a specified date contained a clause providing for the payment of liquidated damages at certain rates by the contractor for each week's delay beyond that date. It was further provided that if the contractor should suspend the works the employer might take possession of the plant and materials and engage others to complete the contract. The contractor became bankrupt and suspended the works, and the employers thereupon engaged other persons to complete them, but they were not completed until at least six weeks after the date specified in the original contract. In an action at the instance of the employers for the loss incurred by them through the failure of the contractor to fulfil his contract the pursuers claimed (*inter alia*) damages for six weeks' delay at the rates specified in the liquidated damages clause:—*Held*, that, while the pursuers were entitled to sue for damages for breach of contract, they could not found on the liquidated damages clause, as that clause applied only where the contractor had himself completed the contract, and could not apply where the control of the contract, and so of the time taken to complete it, had passed out of his hands. *British Glanzstoff Manufacturing Co.* v. *General Accident, Fire, and Life Assurance Corporation*, [1912] S. C. 591—Ct. of Sess. Affirmed, [1913] A.C. 143—H.L. (Sc.)

Penalty for Non-completion within Contract Time—Delay Caused by Extra Works—Final Certificate of Engineer — Jurisdiction of Engineer to Determine the Exclusion of Penalties.]—A building contract entered into by G. for the erection of artisans' cottages for an urban council contained the following conditions and provisions—namely, that in consideration of the payment of the contract price by instalments, payable on the certificate of the council's engineer, the contractor should within one week from the signing of the contract begin, and within nine months from that date complete, the contract works, unless delayed by strikes or lock-outs; that the contractor should carry out all necessary works and complete all works specified in the plans &c. annexed to the contract, or implied or incidental thereto, or to be thereafter specified or required by explanatory instructions or drawings, being in conformity with the original specifications &c., and such additional instructions and drawings not being so in conformity with the original specifications &c. as should from time to time during the progress of the contract work be required by the council's engineer, subject in case of non-completion within the contract time to forfeiture out of the money due to the contractor of a sum of 5*l.* per week for every week elapsing after the completion of the contract time; that it should be lawful for the council's engineer, or the council, by written instructions to make alterations and deviations and to supply omissions in or to the original specifications &c., and that such alterations &c. should not vacate the contract, but should be determined as thereby provided, and the value thereof deducted from or added to the contract price; and that the decision of the council's engineer "with respect to the amount, state, and condition of the works actually executed and any other question that might arise concerning the construction of the plans, sections, elevations, drawings, and specifications and contract, and the execution of the works included therein, or in any wise relating thereto, shall be final and legally binding and without appeal." The contract works were in fact not completed within the contract time, but certain extra works had been ordered by the council and were executed by the contractor. The council's engineer having from time to time given

certificates for the payment of the instalments of the contract price, by his final certificate awarded a sum in respect of extra works, but in that certificate did not refer to or make any deduction in respect of penalties for non-completion within the contract time. In an action by G. for the recovery of portion of the contract price from the council, the council pleaded that penalties for non-completion within the contract time had arisen, and that the same should be deducted from the money due to the plaintiff, who in reply pleaded that the delay in completion was caused by the extras ordered and executed; and further, that, by reason of the final certificate of their engineer, the defendants were estopped from making any claim in respect of penalties. The jury found that there was no waiver of the right to penalties by the defendants, and assessed damages for delay at 30*l.*:—*Held*, that the jurisdiction conferred upon the council's engineer by the contract did not extend to his determining whether the penalty clause in the contract was or was not excluded by the order for, and execution of, the extras. *Held* further (Boyd, J., dissenting), that, as it appeared that the plaintiff had been prevented from completing within the contract time by the extra works ordered, the penalty clause of the contract was extinguished, and the plaintiff was entitled to judgment on his claim. *Gallivan* v. *Killarney Urban Council*, [1912] 2 Ir. R. 356—K.B. D.

Time Limit—Impossibility of Performance within Stipulated Time.]—A firm of joiners contracted to perform the joiner work on certain buildings which were to be erected, and undertook to complete their department of the work by a specified date. The building owners entered into similar contracts with other tradesmen for other departments of the work, except that the plasterer was not bound to complete his work within any specified time. Owing to delay in the execution of the mason's and plasterer's contracts it became impossible for the joiners to complete their work within the stipulated time; but they completed their work with all reasonable dispatch after it became possible for them to proceed with it. The building owner resisted an action by the joiners for payment for the work done under the contract, on the ground that the pursuers, having failed to complete the work within the stipulated time, were in breach of their contract:—*Held*, that in the circumstances the pursuers were absolved from the obligation of the time limit, and decree for payment was granted; *per* Lord Dundas, on the ground that it was a condition precedent of the contract that the pursuers should obtain timeous access to the premises on which the work was to be performed, and that, if this was withheld from them by any cause, they were proportionally freed from the operation of the time limit; *per* Lord Salvesen, on the ground that the impossibility of performance was caused by the act or omission of the building owner, in respect that he had failed to fix a time limit for the completion of the plasterer's contract; and *per* Lord Guthrie, on both of the above grounds. *Duncanson* v. *Scottish County Investment Co.*, [1915] S. C. 1106—Ct. of Sess.

D. REMUNERATION.

See also Vol. XV. 1795, 2112.

Work Done on Land by Builder in Expectation of Lease — Discontinuance of Work by Builder—Benefit to Freeholder—Implied Contract to Pay for Work.]—The plaintiff, who was a builder, entered into an arrangement under which he was to erect a building on a piece of land upon the terms that the building should be in accordance with the requirements of the freeholder of the land, who upon its completion should give the plaintiff a lease of of premises at 90*l.* a year, and that the plaintiff should sub-let them at 500*l.* a year. At that time the intended freeholder was one W., and in the course of certain negotiations between the various persons interested in the speculation, but before they had finally come to terms, certain drawings of a portion of the work were shewn to the plaintiff, and he was asked to begin the work. He accordingly did so, and had proceeded with the work for some time, incurring considerable expense in executing the same, when it was arranged that in place of W. the defendant should become the freeholder, and an alteration in the character of the building was insisted on, which the plaintiff was unwilling to accept on the ground that it would involve a considerably larger expenditure on his part than he had originally contemplated. He therefore discontinued the work, and eventually brought an action against the defendants to recover compensation for the amount which he had expended on the same:—*Held*, that, the arrangement being one under which the plaintiff was to erect the building at his own cost on the defendant's land, no promise to pay him for the work executed by him could be implied from the request to him to start the work, nor from the acceptance by the defendant of the benefit of the work. *Wheeler* v. *Stratton*, 105 L. T. 786—D.

Obligation on Contractor to Complete Building by Specified Date—Wrongful Temporary Exclusion of Contractor from Site by Third Person — Consequent Loss to Contractor — Implied Warranty by Building Owner against such Wrongful Exclusion—Implied Warranty of Use of Land not Vested in Building Owner — Alleged Change in Circumstances making Contract Inapplicable.] — A contract between the plaintiff and the defendants, an urban council, provided that the plaintiff should build a school for the defendants upon land belonging to them, that he should be entitled to enter on the site immediately, and that he should complete the work by a specified time under penalties. The only access to the site was from a certain road, and, as the soil of the defendants' land was soft, and the side of the road adjoining that land had not been made up and was also soft, the contract further provided that the plaintiff might lay a temporary sleeper roadway from the road to the site. The contract also provided that, when the sleeper roadway was removed, the plaintiff should make a permanent pathway from the road to the site, and a gateway on the boundary of the defendants' land, and should do certain

incidental paving work on the adjoining portion of the road. The plaintiff entered upon the land and commenced work, but was forced to abandon it in consequence of certain claims and the threat of an injunction by R., a third person, the owner of the soil under the road, who alleged that he had not dedicated to the public the unmade-up side of the road, and that that consequently was not a public highway, but his private property, upon which the plaintiff was not entitled to enter. As the result of legal proceedings by the defendants, R.'s claims were held to be unfounded, and the plaintiff resumed and completed the work. The side of the road adjoining the defendants' land did not become a street vested in the defendants as local authority, of which they could give the plaintiff possession for the purpose of doing the work intended to be done thereon, until the plaintiff had executed the greater part of the building work under the contract. The plaintiff brought an action against the defendants, claiming damages in respect of the delay caused by the action of R.:—*Held*, that there was no implied warranty by the defendants against wrongful interference by third parties with the plaintiff's free access to the site; that there was no implied warranty by the defendants that the plaintiff should be entitled to have possession of and do work upon the portion of the road adjoining the entrance until after the sleeper roadway had been removed, which meant, until after the building work, or the greater part of it, had been completed; that there was no evidence of any request by the defendants to the plaintiff that he should stop work; and that the fact that the plaintiff was prevented from laying sleepers in the unmade-up part of the road did not render the performance of the contract commercially impossible, or constitute so complete a change in the circumstances contemplated by the parties that the contract was no longer applicable to them; and, consequently, that the plaintiff was not entitled to recover. *Porter* v. *Tottenham Urban Council*, 84 L. J. K.B. 1041; [1915] 1 K.B. 776; 112 L. T. 711; 79 J. P. 169; 13 L. G. R. 216; 31 T. L. R. 97—C.A.

Decision of the Divisional Court (83 L. J. K.B. 566; [1914] 1 K.B. 663) affirmed. *Ib.*

Lump Sum Contract — Defects in Work — Right to Recover—Quantum Meruit.]—Certain builders entered into a contract to carry out a large number of alterations and repairs to a house in accordance with specifications for a lump sum of 264*l.* In an action by the builders to recover this sum the official referee found that the builders had failed to complete the contract in the following particulars: First, the concrete used to underpin a wall was not in accordance with the specifications either as to quality or quantity; secondly, certain rolled steel joists supplied had not been bolted at the top in accordance with the specifications; and thirdly, solid columns, four inches in diameter, had been supplied in place of hollow columns, five inches in diameter. He therefore held that the plaintiffs were not entitled to be paid anything under the contract:—*Held*, that the plaintiffs were entitled to recover the lump sum of 264*l.*, subject to a deduction of the amount necessary to make the work correspond with that contracted to be done. The defects and omissions in the work amounted only to a negligent performance of the contract and not to an abandonment of or failure to complete the contract. *Dakin & Co.* v. *Lee*, 84 L. J. K.B. 2031; 59 S. J. 650—C.A.

Decision of the Divisional Court (84 L. J. K.B. 894) affirmed. *Ib.*

Deviations Sanctioned by Architect—Buildings Accepted on Completion.]—A builder entered into a contract to erect a building in accordance with certain plans and in conformity with a detailed estimate of prices. The building was erected under the supervision of the employers' architect, who during the course of erection sanctioned certain deviations from the details of the building set forth in the estimate. As the building proceeded the architect granted the usual certificates, and the instalments of the contract price were duly paid. When the building was completed the employers accepted it and entered into possession. On the builder suing them for the unpaid balance of the contract price the employers resisted payment, on the ground that, in respect of these deviations, the building was not conform to contract:—*Held* (Lord Skerrington dissenting), that the builder was entitled to recover the balance of the contract price—*per* the Lord President, on the ground that, although the architect had no authority to sanction the deviations, and consequently a breach of contract had taken place, the defenders' remedy in the circumstances was limited to a claim of damages for which they had no record in the present action; *per* Lord Johnston, on the ground that, as the details in the contract and estimate were lacking in precision and ambiguous, it was within the power of the architect to determine how the work was to be carried out. *Ramsay* v. *Brand* (25 R. 1212) and *Steel* v. *Young* ([1907] S. C. 360) discussed and doubted. *Forrest* v. *Scottish County Investment Co.*, [1915] S. C. 115—Ct. of Sess.

Observations on the remedies available to the parties to a building contract, where there have been deviations from its terms. *Ib.*

Part of Work to be Supplied by Particular Maker—Inefficiency of Part Supplied.]—The plaintiffs, a firm of engineers, undertook to execute certain works in accordance with specifications. Under the contract, a windmill had to be obtained from certain makers, which, when supplied, proved inefficient. Delay took place in the completion of the contract, and the defendants purported to act upon the forfeiture clause. The plaintiffs then, treating the contract as wrongfully terminated by the defendants, sued them on a *quantum meruit*:—*Held*, that the plaintiffs were not liable for defects in the windmill, and that they were entitled to recover. *Bower* v. *Chapel-en-le-Frith Rural Council*, 75 J. P. 122; 9 L. G. R. 339—Lawrance, J. New trial ordered, 75 J. P. 321; 9 L. G. R. 663—C.A.

False Representation as to Nature of Work —Fraudulent Party Barred from Relying on Conditions in his Favour.]—A railway com-

pany invited tenders for the construction of a line of railway, and for the information of intending offerers exhibited what purported to be a journal of bores taken along the proposed line. A lump sum written contract was concluded, which stated that the company did not guarantee the accuracy of the bores, and would not be liable for claims in respect of any error in, or omission from, the specification of work prepared by them. The contractors were also taken bound (*inter alia*) to make good any injury to water pipes caused by their operations. During the progress of the work it was discovered that the nature of the ground was materially different from that which the journal represented it to be, and it ultimately appeared that the bores had been taken by servants of the company, who, as the company knew, had no skill in such work, and that the so-called "journal" was not a record kept by the borers, but was compiled by the company's engineer from notes supplied by the borers. In compiling the "journal," the engineer had in several instances inserted, not what the borers said, but what the engineer thought they meant, with the result that ground was called "soft" when in reality it consisted, and had been reported by the borers to consist, of hard material. It was also discovered that a bridge required to be built at great expense to carry certain water pipes, the existence of which was perfectly well known to the railway company, but was not disclosed by them to the contractors. In consequence of these circumstances the work cost far more than the contract price, on account both of the extra labour required and of the disorganisation caused by the unexpected obstacles. The contractors made frequent protests while the work was in progress, but were induced to continue by assurances on the part of the company, and by some extra payments. After the completion of the line, in an action by the contractors against the railway company,—*Held*, that the contractors were entitled to recover in respect of the extra cost of construction a reasonable compensation therefor, either in name of *quantum meruit* or in name of damages. *Boyd & Forrest* v. *Glasgow and South-Western Railway*, [1911] S. C. 33—Ct. of Sess. Reversed on the facts, [1913] A.C. 404—H.L. (Sc.)

Contract for making Railway Siding—Necessity for Detailed Account of Claim.]—In a contract for the construction of a railway siding entered into between a railway company and a quarry master it was stipulated that the company should construct certain works and that the quarry master should thereafter pay to the company—first, the cost of the labour expended on the works, and, secondly, interest on the value of materials used in connection therewith, as such cost and interest should be determined by the engineer of the company. The company having rendered an account of sums said to be due under the contract, certified by their engineer, in which the cost of labour and the value of the materials employed were stated as lump sums and without details, the quarry master refused to pay the account, and the company thereupon sued him to enforce payment:—*Held*, that the action must be dismissed as premature on the ground that the pursuers had made no proper demand under the contract, and that, although the contract made the engineer the final judge of the amount due, this did not absolve the company from the necessity of giving particulars of their claim. *Held*, further, that as the reference to the engineer was a reference to him as a man of skill, he was entitled to arrive at his determination by whatever methods he chose, and was not bound to take evidence or hear parties. *North British Railway* v. *Wilson*, [1911] S. C. 730—Ct. of Sess.

Arbitration Clause—Reference of Matters to Building Owners' Architect — Payments on Certificate of Arbitrator — Improper Delay in Issue of Final Certificate — Architect Improperly Influenced by Building Owners—Disqualification.]—Under a building contract the decision of the architect of the building owners relating to any matters or thing or the goodness or sufficiency of any work, or the extent or value of any extra or omitted work, was to be final, conclusive, and binding on all parties; and payments as the work proceeded were to be made on the certificate of the architect. The architect having taken a wrong view of his position and being improperly influenced by the building owners, delayed issuing his certificate for the outstanding balance due to the contractor. After the work had been completed and after the period of maintenance had expired, the contractor brought an action against the building owners to recover the balance due to him. After the commencement of the action the architect issued his final certificate:—*Held*, that the building owners could not, as a defence to the action, rely on the issue of the certificate being a condition precedent to the right of the contractor to commence proceedings for the recovery of the balance, or on the certificate itself as being when issued an adjudication, as to the amount of the claim, which was binding on the contractor. *Hickman* v. *Roberts*, 82 L. J. K.B. 678; [1913] A.C. 229; 108 L. T. 436*n*.—H.L. (E.)

Whether Certificate of Engineer Condition Precedent to Action.] — A contract for the supply of machinery contained provisions for payment of the price by certain instalments to be paid after production of the certificate of the purchasers' engineer that such instalments were due and payable. A portion of the machinery having been rejected by the purchasers, an action was brought by the sellers for the unpaid balance of the purchase price without production of the engineer's certificate that the balance sued for was due and payable:—*Held*, on the construction of the contract, that the production of a certificate from the engineer had not been made a condition precedent to the right to recover payment, and accordingly that the action was competent. *Howden* v. *Powell Duffryn Steam Coal Co.*, [1912] S. C. 920—Ct. of Sess.

"Retention money"—Charge on.]—A building contract provided that the contractor should, at his own cost, complete and deliver to a rural council on or before the date fixed

the whole of certain sewage works for a lump sum; but a clause in the conditions incorporated in the contract provided as follows: "The contractor shall be entitled to payment for his work in manner following: the work shall be measured monthly and 80 per cent. of the value of the work executed shall be paid to the contractor upon the engineer's certificate. When the whole of the works have been certified as duly completed a further sum of 15 per cent. shall be paid, and the balance within six months after the works shall have been delivered up to the council and shall have been certified by the engineer to be completed. . . ." The plaintiffs were mortgagees of moneys payable to the contractor under the contract. At the time of the granting of the mortgage the contractor had already given the defendants a charge on his retention money under the contract. On a question as to what was assigned to the defendants as retention money,—*Held*, that in making the assignment the contractor intended, and was understood by the defendants as intending, to include not only the 5 per cent., but also the 15 per cent., as retention money. *West Yorkshire Bank* v. *Isherwood*, 76 J. P. 456; 28 T. L. R. 593—Bankes, J.

WORKHOUSE.

See POOR LAW.

WORKMAN.

See WORKMEN'S COMPENSATION.

WORKMEN'S COMPENSATION.

I. SCOPE OF WORKMEN'S COMPENSATION ACT, 1906.

The Workmen's Compensation Act, 1906, has no application in the case of an accident happening on a British ship on the high seas unless the accident happens to a member of the crew within the provisions of section 7 of the statute. *Schwartz* v. *India-Rubber, Gutta-Percha, and Telegraph Works, Lim.*, 81 L. J. K.B. 780; [1912] 2 K.B. 299; [1912] W.C. Rep. 190; 106 L. T. 706; 28 T. L. R. 331—C.A.

II. THE ACCIDENT.

a. What is an Accident.

See also Vol. IX. 2167.

Injury by Premeditated Assault.]—"Accident" in the Workmen's Compensation Act, 1906, includes any injury not expected or designed by the injured workman himself, and therefore a premeditated injury inflicted on a workman in the course of his employment, in pursuance of a criminal conspiracy against him, may be an "accident" within the meaning of the Act. *Nisbet* v. *Rayne & Burn* (80 L. J. K.B. 84; [1910] 2 K.B. 689) and *Anderson* v. *Balfour* ([1910] 2 Ir. R. 497) approved. *Murray* v. *Denholm & Co.* ([1911]

S. C. 1087) disapproved. *Trim Joint District School* v. *Kelly*, 83 L. J. P.C. 220; [1914] A.C. 667; [1914] W.C. & I. Rep. 359; 111 L. T. 305; 58 S. J. 493; 30 T. L. R. 452—H.L. (Ir.)

Judgment of the Court of Appeal in Ireland (47 Ir. L. T. 151; [1913] W.C. & I. Rep. 401) affirmed, Lord Dunedin, Lord Atkinson, and Lord Parker dissenting. *Ib.*

One of a party of workmen, employed in a woodyard to take the place of others who were on strike, was injured by the attacks of the strikers, who rushed the police guarding the yard and assaulted the workers:—*Held*, that this was not a case of injury by accident within the meaning of the Workmen's Compensation Act, 1906. *Anderson* v. *Balfour* ([1910] 2 Ir. R. 497) and *Nisbet* v. *Rayne* (80 L. J. K.B. 84; [1910] 2 K.B. 689) disapproved. *Murray* v. *Denholm*, [1911] S. C. 1087—Ct. of Sess.

Per The Lord Justice-Clerk and Lord Salvesen; *dub.* Lord Dundas: The accident, if it was an accident, did not arise "out of" the employment. *Ib.*

Assault by Employer.]—The applicant, an errand boy in the service of the respondent, was, while at work, attacked by the respondent with a chopper and so severely injured as to be totally incapacitated. The respondent had been in an asylum and was subject to periodical fits of melancholia:—*Held*, that the applicant's injuries were not caused by "accident." *Blake* v. *Head*, [1912] W.C. & I. Rep. 198; 106 L. T. 822; 28 T. L. R. 321—C.A.

Cashier—Special Risk—Duty to Carry about Money—Robbery and Murder.]—A cashier was employed by certain colliery owners, and it was part of his regular duty to take weekly large sums of money from his employers' office to their colliery by rail for the payment of the wages of the colliers. Whilst he was thus engaged he was robbed and murdered in the train. His widow applied for compensation:—*Held*, that the murder was an "accident" within section 1 of the Workmen's Compensation Act, 1906, and that it arose not only in the course of, but also out of, the employment. *Nisbet* v. *Rayne*, 80 L. J. K.B. 84; [1910] 2 K.B. 689; 103 L. T. 178; 54 S. J. 719; 26 T. L. R. 632—C.A.

Pneumonia Caused by Inhaling Carbon-monoxide Gas.]—A miner in a coal mine who had fired a shot returned three minutes afterwards to the working place, while it was still full of smoke. Soon after he felt ill, and ultimately developed pneumonia, of which he died, the pneumonia being caused by the inhalation of carbon-monoxide gas. In proceedings under the Workmen's Compensation Act it was proved that the firing of shots was of daily occurrence at the miner's working place; that the firing of the shots generated carbon-monoxide gas in quantities which varied with the ventilation; and that on former occasions the miner had frequently suffered from headache, giddiness, and nausea through inhaling the gas. The arbitrator having found that the death of the miner resulted from injury by accident, the Court refused to disturb his decision, holding that the unexplained and unforeseen presence of the gas in fatal quantity on the occasion in question might reasonably be said to be an "accident." *Kelly* v. *Auchenlea Coal Co.*, [1911] S. C. 864—Ct. of Sess.

Death from Disease — Ptomaine Poisoning Caused by Sewer Gas—"Injury by accident" — Notice of Accident — Delay — "Reasonable cause."]—Except in the case of the industrial diseases scheduled in the Workmen's Compensation Act, 1906, to which by section 8 the provisions of the Act are to apply, unless the applicant can indicate the time, the day, and circumstance and place in which the accident has occurred, by means of some definite event, a disease cannot be treated as a personal "injury by accident" within section 1, subsection 1 of the Act, and the applicant is not entitled to compensation. *Eke* v. *Hart-Dyke*, 80 L. J. K.B. 90; [1910] 2 K.B. 677; 103 L. T. 174; 26 T. L. R. 613—C.A.

In July, 1909, a gardener and labourer and caretaker was ordered by his employer to open certain cesspools for the purpose of inspection, and was engaged in such work on four or five different days. Early in August he became unwell, and on August 23 saw a doctor, who thought he was suffering from the smell of paint. In September another doctor saw him and considered that he was affected with sewer-gas poisoning. He died on October 30, 1909, but no notice was given to his employer until December 30. His widow took proceedings for compensation. The application for arbitration gave no date as to when the alleged accident occurred. It was admitted that the man's disease was obscure. The County Court Judge found that it was not possible to give any particular day as the date of the accident, but he decided that the man died from poisoning contracted whilst working on the cesspools, and that the employer was not prejudiced in his defence by want of notice; and he awarded compensation:—*Held*, that the second limb of proviso (*a*) in sub-section 1 of section 2 of the Act of 1906 had nothing to do with the prejudice caused to the employer by the want of notice, which was dealt with in the first limb, but said that the want of notice should not be a bar to proceedings for compensation if such want was occasioned by a reasonable cause; and that under the circumstances there was "reasonable cause" for not giving the notice. But *held* (Kennedy, L.J., doubting), that there had not been an accident within the meaning of the Act, that the County Court Judge's finding was not sufficient to support his decision, and that consequently no compensation was payable. *Ib.*

Brintons, Lim. v. *Turvey* (74 L. J. K.B. 474; [1905] A.C. 230) distinguished. *Broderick* v. *London County Council* (77 L. J. K.B. 1127; [1908] 2 K.B. 807) explained. *Ib.*

Incapacity Due to Heart Disease.]—A workman while engaged in lifting a weight in the course of his employment felt a pain in the breast followed by palpitation of the heart. It was proved that he was found to be suffering from heart disease of long standing which was

bound to manifest itself sooner or later and probably in the way described; and that from that time his condition became gradually worse until, eventually, he became permanently incapacitated for work as a result of the diseased state of his heart. It was not proved that the lifting of the weight had accelerated the progress of the disease :—*Held*, that on these facts the arbitrator was entitled to find, as he did, that the workman had failed to prove that his incapacity was due to an "accident" within the meaning of the Workmen's Compensation Act, 1906. *Clover, Clayton & Co.* v. *Hughes* (79 L. J. K.B. 470; [1910] A.C. 242) distinguished. *Spence* v. *Baird & Co.*, [1912] S. C. 343; [1912] W.C. Rep. 18—Ct. of Sess.

Accident Causing Loss of Finger — Subsequent Employment in Different Work — Inflammation of Hand — Liability of First Employer.]—In 1902 a workman employed as a riveter met with an accident resulting in the amputation of his forefinger. His employers paid compensation, and the workman, having to all appearance completely recovered, was in 1903 taken on to the lighter employment of a caulker at usual wages by the same employers. In 1910 the hand became inflamed as the result of the workman using a new pneumatic hammer, and the workman claimed compensation under the Workmen's Compensation Act, 1897, for injury arising out of the 1902 accident. The County Court Judge found that the 1902 accident was a contributory cause to the injury, and made an award in the workman's favour :—*Held*, that the question whether the 1902 accident was a contributing cause was irrelevant, and that the claim was misconceived. *Held*, also, that there was no evidence to justify the County Court Judge in finding that the first accident was a contributing cause. *Noden* v. *Galloways, Lim.*, 81 L. J. K.B. 28; [1912] 1 K.B. 46; [1912] W.C. Rep. 63; 105 L. T. 567; 55 S. J. 838; 28 T. L. R. 5—C.A.

Cut Finger—Septic Infection—Amputation Necessitated.]—A workman while at his home cut the forefinger of his right hand slightly with an ordinary clean household knife. He sucked the wound, bound it up with a clean rag, and afterwards returned to his work as fireman on a railway. While so engaged, coal dust, oil, grease, and other noxious matter worked through the bandage into the cut, septic infection supervened, and eventually the forefinger had to be amputated :—*Held*, that to attribute the septic infection to the workman's employment was at best a mere "surmise, conjecture, or guess," there being many possible sources of infection; and that therefore the workman's claim under the Workmen's Compensation Act, 1906, for compensation failed. *Chandler* v. *Great Western Railway*, [1912] W.C. Rep. 169; 106 L. T. 479—C.A.

Pneumonia Following upon Chill—Chill Due to Partial Immersion in Water Accumulating in Pit.]—During the working time in a coal pit, which was a wet pit, water began to accumulate owing to a defect in the pump; and the pump being stopped for repair, the water accumulated still further. When the miners found the water rising they decided to leave the pit, and hastened to the pit bottom, where they were kept waiting for twenty minutes, during which time they were severely chilled by the water, which rose to their knees, and by exposure to the current of cold air descending the shaft. One of these miners on reaching the pit head lingered there for at least twenty minutes, and on arriving at his home complained of chill, and next day suffered from a cough, hoarseness, and pains, but went to his work. After several days—on three of which he worked at the pit—he was found to be suffering from pneumonia, of which he ultimately died :—*Held* (Lord Salvesen dissenting), that the occurrence in the mine on the day in question was an "accident," and that there was evidence on which the arbitrator might competently find that the deceased's pneumonia was due to that occurrence. *Drylie* v. *Alloa Coal Co.*, [1912] S. C. 549; [1913] W.C. & I. Rep. 213—Ct. of Sess.

In consequence of an accident in one of the shafts of a mine the workmen were withdrawn, and, as only one shaft was available, some of the men were kept waiting for a long time at the bottom of the shaft before they could be brought up, and were exposed to a current of cold air. In consequence one of them got a bad chill which turned to pneumonia, of which he died :—*Held*, that his death was the result of an accident arising out of and in the course of his employment, and that his dependants were entitled to compensation. *Drylie* v. *Alloa Coal Co.* ([1913] S. C. 549) approved. *Brown* v. *Watson, Lim.*, 83 L. J. P.C. 307; [1915] A.C. 1; [1914] W.C. & I. Rep. 228; 111 L. T. 347; 58 S. J. 533; 30 T. L. R. 501—H.L. (Sc.)

Judgment of the Second Division of the Court of Session in Scotland ([1913] S. C. 593; [1913] W.C. & I. Rep. 233) reversed. *Ib.*

Pleurisy Following upon Chill.]—A collector and canvasser, who had contracted pleurisy, claimed compensation from his employers averring that in order to finish his work timeously one day he had to over-exert himself in climbing the stairs of a tenement; that he became "sweated" and contracted a chill which developed into pleurisy, and that he thus sustained an accident in the course of his employment. The arbitrator, without allowing a proof, dismissed the application as irrelevant, holding that the workman had failed to aver an "accident" within the meaning of the Act :—*Held*, that the arbitrator was right. *M'Millan* v. *Singer Sewing Machine Co.*, [1913] S. C. 346; [1913] W.C. & I. Rep. 70—Ct. of Sess.

Deafness Following upon Chill — Miner Voluntarily Waiting in Water Accumulated in Mine through Breakdown of Pump.]—A miner, about to ascend to the surface at the end of his shift, in order to be among the first to obtain a place in the cage, stood for upwards of thirty minutes in a pool of water which had accumulated in the pit bottom owing to a defect in the

pump. If he had waited his turn upon dry ground, as he might have done, he could have reached the cage comparatively dry. Owing to the wetting he contracted a chill which produced deafness, causing incapacity :—*Held*, that the incapacity was not due to injury by accident within the Workmen's Compensation Act, 1903. *Drylie* v. *Alloa Coal Co.* (*supra*) distinguished. *M'Luckie* v. *Watson, Lim.*, [1913] S. C. 975—Ct. of Sess.

Pilot Jumping into Boat — Getting Wet — Sciatica.]—A man was employed as a pilot to take a ketch out of harbour. Having piloted her out, he attempted to get into his own boat, towing astern of the ketch, in order to go ashore. He jumped in, alighting somewhere near the bows of the boat, with the result that they went under water, and he was wetted to the thighs. He was pulled aboard the ketch again. He ultimately got ashore in the boat. Subsequently he suffered from sciatica in consequence of this wetting :—*Held*, that he was suffering from injury by "accident," and that the accident arose "out of and in the course of" his employment within section 1, subsection 1 of the Workmen's Compensation Act, 1906. *Barbeary* v. *Chugg*, 84 L. J. K.B. 504; [1915] W.C. & I. Rep. 174; 112 L. T. 797; 31 T. L. R. 153—C.A.

Accident Causing Idleness, and Idleness Producing Obesity.]—The respondent, a workman employed by the appellants, was injured by an accident arising out and in the course of his employment. The appellants paid him compensation for three years, and then made an application for a review of the payments, on the ground that he had recovered from the effects of the accident. The evidence was that the incapacity resulting from the injuries had ceased, but that enforced idleness for three years in consequence of the accident had caused the respondent, who was an elderly man with a natural tendency to obesity, to become so obese as to incapacitate him for his former active employment, and make him capable of sedentary employment only. The arbitrator found that he was partially incapacitated from work, but that such incapacity did not result from the accident, and terminated the compensation :—*Held*, that he was justified in so doing on the evidence. *Taylor & Co.* v. *Clark*, 84 L. J. P.C. 14; 111 L. T. 882; 58 S. J. 738—H.L. (Sc.)

Decision of the First Division of the Court of Session in Scotland ([1914] S. C. 432; 51 Sc. L. R. 418) reversed. *Ib.*

Accident Causing Disease and Ultimately Death—Workman Quite Healthy before Accident — After-effects of Operation Immediate Cause of Death—Effect of Medical Evidence.]—A workman received a heavy blow on his back by accident in the course of his employment, and was incapacitated for over three months. He was able to resume work for six months, but was never as well as he had always been before the accident. He was operated upon for acute kidney trouble, and the operation was successful, but revealed the possibility that other causes than the accident might have brought about his condition. He ultimately died from the after-effects of a subsequent operation intended to heal the scar caused by the first one :—*Held*, that, having regard in particular to the fact that he had always been in good health before the accident, there was evidence from which the inference that his death was thereby caused was properly drawn. *Lewis* v. *Port of London Authority*, [1914] W.C. & I. Rep. 299; 111 L. T. 776; 58 S. J. 686—C.A.

Workman Suffering from Disease — Death Accelerated.]—Where a workman is suffering from an internal disease of some standing, the symptoms of which became acute immediately after an accident in the course of his employment, and of which he dies within a short time, the arbitrator, in proceedings under the Workmen's Compensation Act, 1906, is justified in finding that the death was accelerated by the accident, and in awarding compensation to the workman's dependants. *Woods* v. *Wilson, Sons & Co.*, 84 L. J. K.B. 1067; [1915] W.C. & I. Rep. 285; 113 L. T. 243; 59 S. J. 348; 31 T. L. R. 273—H.L. (E.)

Decision of the Court of Appeal ([1914] W.C. & I. Rep. 569; 29 T. L. R. 726) reversed (Lord Parker and Lord Sumner dissenting). *Ib.*

Death Due to Heart Failure.]—In an arbitration, under the Workmen's Compensation Act, 1906, the arbitrator found that a farm labourer, apparently in good health, died suddenly while engaged, in the course of his ordinary work, in lifting baskets of corn to feed a bruising machine; that the cause of death was "failure of the heart"; and that "a contributing cause of the failure of the heart's action was the strain arising from the exertion made by the deceased in repeatedly stooping to fill the basket with corn and then lifting it when full up to the level of his shoulders in order to feed the bruiser" :—*Held*, that there were no facts stated from which the arbitrator could competently infer that the death was due to injury by accident within the meaning of the Workmen's Compensation Act, since there was no particular event or occurrence to which the death could be attributed. *Clover, Clayton & Co.* v. *Hughes* (79 L. J. K.B. 470; [1910] A.C. 242) distinguished. *Ritchie* v. *Kerr*, [1913] S. C. 613; [1913] W.C. & I. Rep. 297—Ct. of Sess.

Death from Heart Weakness Set up by Operation—Operation not Confined to Injury Caused by Accident.]—A workman accidentally ruptured himself in the course of his employment and was obliged to undergo an operation for hernia. In the course of the operation he was discovered to be suffering also from another hernia of long standing, and both hernias were operated upon at the same time. He subsequently died, the cause of death being found to be heart weakness and degeneracy "set up by the strain of the operation." In defence to a claim for compensation the employers maintained that, death being due to an operation part of which only was rendered necessary by the accident, the operation was a *novus actus* intervening to break

the chain of causation between the accident and the death :—*Held*, that on the facts stated there was evidence to justify the arbitrator in finding that death was the result of the accident the workman had sustained in the course of his employment. *Thomson* v. *Mutter, Howey & Co.*, [1913] S. C. 619; [1913] W.C. & I. Rep. 241—Ct. of Sess.

Death Accelerated by Workman's Conduct.]—An accident to a workman in the course of his employment brought on pneumonia, and he was sent into hospital. After being there three days he insisted on leaving and walking home, although warned by the doctor at the hospital that this was dangerous to life. Two days later he died at home, the immediate cause of death being pneumonia. In an application by his widow for compensation, the arbitrator obtained a report from a medical referee which stated that the workman's "folly in leaving the hospital probably accelerated his death," but that this circumstance could not "disestablish the conclusion that but for the accident" the workman "would not have died how and when he did die." On considering the report and the facts of the case, the arbitrator "found in fact that but for the accident the deceased would not have died at the time at which and in the way in which he did die, and found, in fact and law, that the said injury by accident was thus the cause of the death." On appeal by the employer,—*Held*, that it was the duty of the arbitrator to decide, in terms of the actual words of the First Schedule, whether the workman's death had "resulted" from the accident; and as the arbitrator in his finding had not decided that question, the case should be remitted to him to do so and report. The arbitrator having thereafter reported that he found as a fact that the death "resulted" from the accident, the Court, holding that there was evidence on which he was justified in coming to this conclusion, affirmed his decision. *Dunnigan* v. *Cavan and Lind*, [1911] S. C. 579—Ct. of Sess.

Death from Disease Following on an Accident.]—A workman had a fall from a ladder whereby his ankle was injured, and he also suffered from severe pains and general shock. He was thereafter confined to bed, and although the injury to his ankle improved, he continued to suffer pain and remained in a low state of health, until about a month after the accident he was seized with violent internal pains and died, the cause of death being certified as appendicitis peritonitis. In an arbitration upon a claim by his widow for compensation, in which two doctors were examined for each side, there was a conflict of medical evidence, one doctor for the claimant being of opinion that it was probable that the workman "would have been alive now had he not met with the accident," the other being of opinion that the condition of which the workman died "was consequent, indirect if you will, of the accident," and that "in all probability" he "would not have died but for the accident." The two doctors examined for the respondents could see no connection between the accident and the cause of death. The arbitrator having found that the death was the result of the accident,—*Held*, that there was evidence upon which that judgment could be supported. *Euman* v. *Dalziel & Co.*, [1913] S. C. 246; [1913] W.C. & I. Rep. 49—Ct. of Sess.

Incapacity—Supervening Disease—Effect of Disease to Aggravate Injury.]—A workman met with an accident to his knee in the course of his employment. A slight operation became necessary and was successfully performed, but three or four days later the workman developed scarlet fever. The wound subsequently suppurated and the knee joint had to be excised, thereby causing incapacity. The medical evidence was that the suppuration might have been caused by the scarlet fever, but that, apart from the accident, it could not have had that effect. On an application by the workman to recover compensation under the Workmen's Compensation Act, 1906,—*Held*, that it followed from the medical evidence that the incapacity resulted from the accident. *Brown* v. *Kent, Lim.*, 82 L. J. K.B. 1039; [1913] 3 K.B. 624; [1913] W.C. & I. Rep. 639; 109 L. T. 293; 29 T. L. R. 702—C.A.

Once it is established that the incapacity of a workman has been caused by an accident, it makes no difference that a fresh cause, arising casually and uninvited by any special condition of the workman, may have aggravated the injury resulting from the accident and contributed to the incapacity. *Ib.*

Return to Work after Accident—Supervening Aneurism.]—A miner strained his back on December 7, 1911, and in consequence became incapacitated for work. On May 1, 1912, a medical referee certified that he would be able to resume his usual work in three weeks, and he returned to work on May 27. He continued to work, doing a full shift at the coal face until August 15, when he became totally incapacitated, and was found to be suffering from dilatation of the heart caused by an aneurism of the aorta. He did not feel pain in the cardiac region until July, and the doctors who had attended him previously, including the medical referee, had not noticed any symptoms of heart trouble. In a claim for compensation the arbitrator was of opinion that the aneurism was caused by the miner being engaged between May and August at work which was beyond his physical powers, and found that his present incapacity was not due to the accident of December 7 :—*Held*, that the arbitrator was entitled to arrive at that decision. *Paton* v. *Dixon, Lim.*, [1913] S. C. 1120—Ct. of Sess.

Incapacity Caused by Accident — Incapacity Caused by Disease — Each Cause Operating Independently — Each Cause Equally Disabling.]—A workman met with an accident in the course of his employment. His employers admitted liability and paid him a weekly compensation by arrangement with him and not under the Workmen's Compensation Act, 1906. On May 20, 1912, they stopped payment of the compensation on the advice of doctors who reported that the workman was suffering from heart disease. On July 5, 1912, the

workman commenced arbitration proceedings claiming compensation from May 20, 1912. The County Court Judge found that the heart disease was not caused by the accident; that the workman was suffering from partial incapacity for work caused by two things—by the accident and also by the heart disease, each cause operating independently of the other; and that there was no work which the accident prevented him from doing which the heart disease did not also prevent him from doing. On these findings,—*Held*, that as the incapacity caused by the accident still continued, the workman, notwithstanding the subsequently supervening cause of incapacity, was entitled to compensation under section 1, sub-section 1 of the Workmen's Compensation Act, 1906. *Harwood* v. *Wyken Colliery Co.*, 82 L. J. K.B. 414; [1913] 2 K.B. 158; [1913] W.C. & I. Rep. 317; 108 L. T. 282; 57 S. J. 300; 29 T. L. R. 290—C.A.

Incapacity for Work—Loss of Eye—Subsequent Accident making the Loss Apparent.]—A workman many years back, while in the service of a different employer, met with an accident through which he lost the sight of one eye, but the loss was not apparent, and he was able to obtain employment at usual wages as if his sight had been normal. In 1910, while in the service of the respondents, he met with a second accident which necessitated the removal of the blind eye and rendered the loss apparent, as the result of which, though now completely recovered, he was unable to obtain further employment in his trade :—*Held* (*dissentiente* Fletcher Moulton, L.J.), that as the second accident did not cause a physical incapacity, but only revealed a pre-existing incapacity, the workman was not now entitled to compensation under the Act. *Ball* v. *Hunt*, 80 L. J. K.B. 655; [1911] 1 K.B. 1048; 104 L. T. 327; 55 S. J. 383; 27 T. L. R. 323—C.A.

Per Fletcher Moulton, L.J. : The words "incapacity for work" in Schedule I. clause 1 (*b*) ought not to be limited to mere loss of physical power, but include inability to find employment as a workman resulting from the injury. A workman guarantees his ability to do the work for which he is employed, but he is under no obligation to disclose his physical defects to his employer. *Ib.*

Rupture of Aneurism of Aorta — Rupture Caused by Strain in Performance of Ordinary Work—Natural and Inevitable Termination of Disease.]—A workman, who was fifty years of age, had been employed at the respondents' tin sheds for ten years. On October 5, 1914, while shifting tin plates from a pile to a trolly, he stood on the trolly and was pulling a box weighing 2cwt. towards him with a tool when his hands let go and he fell backwards dead off the trolly on to the floor. His death was discovered by a *post-mortem* examination to have been caused by rupture of an aneurism of the aorta. Sticking the tool into and drawing the box forward was the easiest part of the work; the heavier was lifting the boxes when the shed heap had got lower than the heap on the trolly. The medical evidence was to the effect that it was the continued strain of ten years' work and the walls of the arteries gradually getting weaker accounted for the condition of the workman; that the strain in pulling the box forward was quite sufficient to cause the rupture of the aneurism, that being the culminating point; and that the cause of his death was the natural and inevitable termination of his disease, the final burst being practically instantaneous :—*Held*, that there was clearly an "accident" within the meaning of the statutory provision as construed by the House of Lords in *Fenton* v. *Thorley & Co.* (72 L. J. K.B. 787; [1903] A.C. 443); and that the facts of the present case were practically indistinguishable from those of *Clover, Clayton & Co.* v. *Hughes* (79 L. J. K.B. 470; [1910] A.C. 242). *McArdle* v. *Swansea Harbour Trust*, [1915] W.C. & I. Rep. 448; 113 L. T. 677—C.A.

Recurrence of Rupture—No Proof of Specific Accident.]—A farm labourer, while engaged in his employment, had a recurrence of an old rupture, which became strangulated and caused his death. There was no proof of anything specific having happened to him to cause the rupture to recur, and the arbitrator refused compensation to the workman's dependants on the ground that it was not proved that the workman had met with an accident : —*Held*, that it could not be said that the arbitrator had come to an unreasonable decision. *Walker* v. *Murray*, [1911] S. C. 825 —Ct. of Sess.

Trawler on Fishing Voyage — Admiralty Directions to Master to Avoid Mine Field—Trawler Traversing Mine Field Blown up by Mine—Injury to Engineer.]—The master of a steam trawler proceeding upon a fishing voyage was warned by the Admiralty of an enemy's mine field, and directed to steer a roundabout course which would avoid it. In spite of these instructions he steered an easterly course directly through the mine field towards his fishing ground. While the vessel was in the mine field he saw some mines, which he buoyed, and then steered southward to warn some warships, which he saw in that direction, of the mines. While on this course the vessel struck another mine and was blown up. The chief engineer was severely injured by the explosion, and claimed compensation. He was unaware of the Admiralty instructions :—*Held*, that the injury was caused by "accident," and that, as it happened while the engineer was carrying out the lawful orders of the master, it arose "out of and in the course of" the employment within section 1, sub-section 1 of the Workmen's Compensation Act, 1906. *Risdale* v. "*Kilmarnock*" (*Owners*), 84 L. J. K.B. 298; [1915] 1 K.B. 503; [1915] W.C. & I. Rep. 141; 112 L. T. 439; 59 S. J. 145; 31 T. L. R. 134—C.A.

b. Accident Arising Out of and in the Course of the Employment.

i. *Generally.*

See also Vol. IX. 2180.

Obedience to Directions of Superior Workman—Enlargement of Scope of Employment.]

—Obedience to the directions of a superior fellow workman may so enlarge the scope of employment of a workman that an accident resulting from an act done in accordance with those directions, although in contravention of the express regulations of the employer, may entitle the workman to compensation under the Workmen's Compensation Act, 1906, inasmuch as to impose upon a workman the duty of ascertaining the authority of a superior fellow workman to give such directions would be to lay upon him an obligation which in many cases it would be impossible for him to discharge. *Geary* v. *Ginzler*, [1913] W.C. & I. Rep. 314; 108 L. T. 286—C.A.

—— **Workman Acting Reasonably and Within Ambit of his Employment.**]—The applicant, who was employed as a lighterman by the respondent, received instructions from him to take on the early morning flood tide a barge which was lying in the river Thames to the south of midstream off a wharf to a certain place. While waiting until the tide had ebbed sufficient for him to reach the barge the applicant stepped into a boat that was lying on the mud to rest himself. In so doing he slipped with his foot caught under the thwart of the boat, and sustained injuries :—*Held* (*dubitante* Eve, J.), that the evidence was sufficient to support the finding that the applicant in going to rest in the boat was acting reasonably and within the ambit of his employment; and that therefore the accident which befell him arose "out of and in the course of" his employment, within the meaning of section 1 of the Workmen's Compensation Act, 1906, entitling him to compensation. *May* v. *Ison*, [1914] W.C. & I. Rep. 40; 110 L. T. 525—C.A.

Scope of Employment—Direction to Find a Job—Extension of Scope of Employment.]—A boy, who was employed to take trucks full of wood away from a machine and stack them, was seen by his employer doing nothing, and was ordered to find a job. There was nothing for him to do in connection with the trucking, and so he started to clear up, this being work he had been put to two days before. He then found that the suction pipe or blower of the machine in connection with which he did the trucking was blocked up, and he took a stick and tried to clear it. While doing so he slipped and put his hand near a rotary saw forming part of the machine, with the result that he was incapacitated. The machine was a very complicated one, and there were four men and two boys to attend to it. It was part of the duty of a boy attending to the machine to clear the blower :—*Held*, that the order to find a job extended the sphere of the boy's employment so as to entitled him to engage himself on any boy's work that was not obviously improper for him to do, and therefore that the accident arose out of the boy's employment, and he was entitled to compensation under the Workmen's Compensation Act, 1906, s. 1. *Lane* v. *Lusty*, 84 L. J. K.B. 1342; [1915] 3 K.B. 230; [1915] W.C. & I. Rep. 326; 113 L. T. 615—C.A.

Assault by Employer.]—The applicant, an errand boy in the service of the respondent, was, while at work, attacked by the respondent with a chopper and so severely injured as to be totally incapacitated. The respondent had been in an asylum and was subject to periodical fits of melancholia :—*Held*, that the applicant's injuries were not caused by "accident" or by an accident arising out of the employment within the meaning of section 1 of the Workmen's Compensation Act, 1906, and therefore that the applicant was not entitled to compensation under the Act. *Blake* v. *Head*, [1912] W.C. Rep. 198; 106 L. T. 822; 28 T. L. R. 321—C.A.

Employment during Strike — Assault by Strikers — Special Bargain to Indemnify for Injury by Strikers—Enlargement of Course of Employment.]—A master engaged a servant who was a storekeeper to work for him as a carter during a strike, on the understanding that he would indemnify him for any injury that occurred to him as a result of doing such work :—*Held*, that this special contract did not enlarge the course of the servant's employment within the meaning of section 1 of the Workmen's Compensation Act, 1906, so as to enable the servant to recover compensation under that statute for injuries sustained by him by being assaulted by strikers at a time that, in the absence of such enlargement, was not within the course of his employment. *Poulton* v. *Kelsall*, 81 L. J. K.B. 774; [1912] 2 K.B. 131; [1912] W.C. Rep. 295; 106 L. T. 522; 28 T. L. R. 320—C.A.

Felonious Assault—Death from Injury—Risk Incidental to Employment.] — In the afternoon of May 17, 1913, the yard foreman of a firm of furniture removers was assaulted in the yard by a man who was one of the odd-job men employed at times by the firm. The foreman died of his injuries. Among his duties were the taking on of those odd-job men and also letting out vans to any applicants. The day before the assault this man applied for a van for the morning of the following day, but failed to get it, as he came late. There was evidence of the rough character of the odd-job men, and the risk of assault from them when refused a job. There was no evidence of any risk in connection with letting out vans :—*Held*, that the risk of such an assault was incidental to the employment, and that the accident therefore arose out of and in the course of the employment within the Workmen's Compensation Act, 1906, s. 1, sub-s. 1. *Weekes* v. *Stead, Lim.*, 83 L. J. K.B. 1542; [1914] W.C. & I. Rep. 434; 111 L. T. 693; 58 S. J. 633; 30 T. L. R. 586—C.A.

Engine Driver—Injury by Bombardment—Whether Arising "out of" Employment.]—The appellant, who was an engine driver in the employment of the respondents, a railway company, was on duty with his engine between East and West Hartlepool at the time of the bombardment of Hartlepool by German warships in December, 1914. A shell burst close to him, and he left his engine and sought shelter behind some trucks, but went back to his engine to open the injector in order to prevent the boiler tubes from getting burnt.

When returning to shelter he was struck by a splinter of shell and wounded. On his filing a claim for compensation, the Judge dismissed the claim, holding that the appellant was not exposed to additional risk by reason of his being in charge of the engine and that therefore the accident did not arise "out of" his employment :—*Held*, on appeal, that as the appellant was not entitled to compensation unless he could prove that he was exposed by the nature of his employment to some special or peculiar risk beyond that of all other inhabitants of Hartlepool, the appeal must be dismissed. *Cooper* v. *North-Eastern Railway*, 85 L. J. K.B. 187; [1915] W.C. & I. Rep. 572; 60 S. J. 105; 32 T. L. R. 131—C.A.

Assault by Drunken Man.]—While a carter was in charge of his employers' horse and van in a street a drunken man approached and struck the horse. The carter warned the man that the horse might hurt him, and the man thereupon assaulted the carter and struck him a blow on the head from which he died. On a claim for compensation by the widow of the carter,—*Held*, that, assuming the occurrence to have been an "accident," it did not arise "out of" the employment, the risk of being assaulted by a drunken man not being in any way specially connected with or incidental to the employment of a carter; and that the widow was therefore not entitled to compensation under the Workmen's Compensation Act, 1906. *Warner* v. *Couchman* (81 L. J. K.B. 45; [1912] A.C. 35; [1912] W.C. Rep. 28) followed. *Mitchinson* v. *Day*, 82 L. J. K.B. 421; [1913] 1 K.B. 603; [1913] W.C. & I. Rep. 324; 108 L. T. 193; 57 S. J. 300; 29 T. L. R. 267—C.A.

Per Buckley, L.J. : To entitle an applicant to compensation under the Act the occurrence must be one in which there is personal injury by something arising in a manner unexpected and unforeseen from a risk reasonably incidental to the employment. *Ib.*

A workman in an iron foundry, while engaged in his employment there, was struck by a stranger who had found his way into the works in a state of intoxication. When the blow was struck the workman was working in a stooping position in proximity to boxes of molten metal. In consequence of the blow, and of his position when he was struck, the workman lost his balance and fell between the boxes, burning and bruising his arm :—*Held*, that the arbitrator was entitled to find that the workman was injured by an accident arising out of his employment. *Macfarlane* v. *Shaw* (*Glasgow*), *Lim.*, [1915] S. C. 273; [1915] W.C. & I. Rep. 32—Ct. of Sess.

Tortious Act — Stone-throwing by Boys.] — The appellant, a boy of fourteen, was employed by the respondents at their colliery to pick stones out of coal passing along a belt. Another boy, who was similarly employed a few yards off, mischievously threw a stone which hit the appellant in the eye, so that he lost the sight of it. There was a notice prohibiting stone-throwing, but the boys, of whom there were several, sometimes threw stones at each other to attract attention. On an application by the appellant for compensation the County Court Judge found that the accident arose out of the appellant's employment, as he was exposed to the special risk of stones being thrown by other boys, and made an award in his favour :—*Held*, that the question was one of fact, and there was evidence which, coupled with general knowledge as to boys' habits, was sufficient to support the Judge's conclusion. *Clayton* v. *Hardwick Colliery Co.*, 85 L. J. K.B. 292; 60 S. J. 138; 32 T. L. R. 159—H.L. (E.) Reversing, [1914] W.C. & I. Rep. 343; 111 L. T. 788—C.A.

Cashier—Special Risk—Duty to Carry about Money—Robbery and Murder.]—A cashier was employed by certain colliery owners, and it was part of his regular duty to take weekly large sums of money from his employers' office to their colliery by rail for the payment of the wages of the colliers. Whilst he was thus engaged he was robbed and murdered in the train. His widow applied for compensation :—*Held*, that the murder was an "accident" within the meaning of section 1, subsection 1 of the Workmen's Compensation Act, 1906, and that it arose not only "in the course of," but also "out of," the employment, inasmuch as the duty of carrying the money about subjected the cashier to the special risk of being robbed and murdered, which was consequently incidental to his employment; and that therefore the widow was entitled to compensation. *Challis* v. *London and South-Western Railway* (74 L. J. K.B. 569; [1905] 2 K.B. 154) and *Anderson* v. *Balfour* ([1910] 2 Ir. R. 497) applied. *Nisbet* v. *Rayne*, 80 L. J. K.B. 84; [1910] 2 K.B. 689; 103 L. T. 178; 54 S. J. 719; 26 T. L. R. 632—C.A.

Driver of Taxicab—Shot by Sentry—Risk Incidental to Employment.]—A taxicab driver was employed to drive an officer to a fort guarded by sentries at two o'clock in the morning. The night was windy and rainy. The driver in approaching the fort was challenged by a sentry, but failed to hear the challenge owing to the wind and rain and the noise of the engine of the cab, and he was shot by the sentry. He sought to recover and was awarded by the arbitrator compensation for the accident from his employers :—*Held*, that there was evidence on which the arbitrator could properly find that the driver was, from his employment, more exposed to the risk of such an accident as occurred than an ordinary member of the public, and that the arbitrator was justified in awarding compensation. *Thorn* v. *Humm & Co.*, 84 L. J. K.B. 1459; [1915] W.C. & I. Rep. 224; 112 L. T. 888; 31 T. L. R. 194—C.A.

Workman Committing Suicide—Insanity.] —See *Grime* v. *Fletcher*, *post*, col. 1965.

Drunken Workman — Special Risk of Employment.]—When a workman in the course of his employment meets with his death or is seriously and permanently disabled as the result of an accident arising out of a special risk of the employment, the employer is liable to pay compensation under the Workmen's Compensation Act, 1906, to him, or in the case of death to his dependants, although the acci-

dent was due to his drunken condition. *Fraser* v. *Riddell & Co.* ([1914] W.C. & I. Rep. 125; 1913, 2 S. L. T. 377) followed. *Williams* v. *Llandudno Coaching and Carriage Co.*, 84 L. J. K.B. 655; [1915] 2 K.B. 101; [1915] W.C. & I. Rep. 91; 112 L. T. 848; 59 S. J. 286; 31 T. L. R. 186—C.A.

Frith v. "*Louisianian*" (*Owners*) (81 L. J. K.B. 701; [1912] 2 K.B. 155; [1912] W.C. Rep. 285), *Murphy* v. *Cooney* ([1914] W.C. & I. Rep. 44; 48 Ir. L. T. 13), *Nash* v. "*Rangatira*" (*Owners*) (83 L. J. K.B. 1496; [1914] 3 K.B. 978; [1914] W.C. & I. Rep. 490), and *Renfrew* v. *M'Crae, Lim.* ([1914] W.C. & I. Rep. 195; 1914, 1 S. L. T. 354), distinguished. *Ib.*

Driver of Traction Engine Falling from Engine while Drunk.]—The driver of a traction engine while driving the engine fell from the footplate and was run over and killed. In an application for compensation at the instance of his widow the arbitrator found that the accident did not arise out of his employment in respect that the man was under the influence of drink and unfit for his work at the time of the accident:—*Held*, that the accident arose out of and in the course of the employment. *Fraser* v. *Riddell & Co.*, [1914] S. C. 125; [1914] W.C. & I. Rep. 125—Ct. of Sess.

Trawler on Fishing Voyage — Admiralty Directions to Master to Avoid Mine Field—Trawler Traversing Mine Field Blown up by Mine—Injury to Engineer.]—The master of a steam trawler proceeding upon a fishing voyage was warned by the Admiralty of an enemy's mine field, and directed to steer a roundabout course which would avoid it. In spite of these instructions he steered an easterly course directly through the mine field towards his fishing ground. While the vessel was in the mine field he saw some mines, which he buoyed, and then steered southward to warn some warships, which he saw in that direction, of the mines. While on this course the vessel struck another mine and was blown up. The chief engineer was severely injured by the explosion, and claimed compensation. He was unaware of the Admiralty instructions:—*Held*, that the injury was caused by "accident," and that, as it happened while the engineer was carrying out the lawful orders of the master, it arose "out of and in the course of" the employment within section 1, sub-section 1 of the Workmen's Compensation Act, 1906. *Risdale* v. "*Kilmarnock*" (*Owners*), 84 L. J. K.B. 298; [1915] 1 K.B. 503; [1915] W.C. & I. Rep. 141; 112 L. T. 439; 59 S. J. 145; 31 T. L. R. 134—C.A.

Ordinary Street Dangers—Coachman Injured while Cycling to Fetch Employer's Letters.]—A coachman, in obedience to his orders, had, from time to time, to fetch his employer's letters from a post office in a small country town four miles off, and in doing so he generally, as his employer was aware, rode a bicycle. When his employer was at home he might have to go to the post office every evening; at other times he might not go for a fortnight. On one occasion, when returning with letters, he was injured through a man lurching against his bicycle and knocking him over:—*Held* (*dubitante* Lord Johnston), that the accident arose "out of" the employment, although the danger was one common to all the users of the roads, and although, owing to the infrequency of the coachman's employment, he was not exceptionally liable to that danger. *Hughes* v. *Bett*, [1915] S. C. 150; [1914] W.C. & I. Rep. 614—Ct. of Sess.

Charwoman Sent to Post Letter—Injury—Nature of Risk.]—The applicant, who went to the respondent's house each day under an agreement to assist the household staff, was sent to post a letter for the respondent, and while going to the post office she slipped and broke her leg:—*Held*, that the applicant was not entitled to compensation, as her employment did not expose her to any special risk greater than that of an ordinary person. *Sheldon* v. *Needham*, [1914] W.C. & I. Rep. 274; 111 L. T. 729; 58 S. J. 652; 30 T. L. R. 590—C.A.

Use of Master's Horse and Cart by Servant to Fetch his Box — Terms of Employment — No Contract by Master to have Box Fetched.]—A farm servant drove a horse and cart of his employer's, a farmer, from the farm to a station five miles away, in order to fetch a box of his to the farm. On the way to the station a motor car frightened the horse, with the result that the servant's left leg was broken and had to be amputated. It was a term of his employment that he could have the use of his employer's horse and cart to fetch his box, but there was no contractual obligation by his employer to have it fetched:—*Held*, that the accident did not arise "out of" the employment within section 1, sub-section 1 of the Workmen's Compensation Act, 1906. *Whitfield* v. *Lambert*, 84 L. J. K.B. 1378; [1915] W.C. & I. Rep. 48; 112 L. T. 803—C.A.

Canvasser and Collector—Going Rounds on Bicycle — Fatal Injury Caused by Electric Tram Car.]—A canvasser and collector in the employment of a supply company, whilst going his rounds on a bicycle, was knocked down by an electric tram car and fatally injured. It was no part of his duties to ride a bicycle for that purpose, and although it was permitted it was neither required nor desired nor encouraged by his employers:—*Held*, that under the circumstances the deceased met his death by an accident arising out of and in the course of his employment within the meaning of section 1, sub-section 1 of the Workmen's Compensation Act, 1906. *M'Neice* v. *Singer Sewing Machine Co.* ([1911] S. C. 12; 48 Sc. L. R. 15) approved and followed. *Warner* v. *Couchman* (80 L. J. K.B. 526; [1911] 1 K.B. 351) explained. *Pierce* v. *Provident Clothing and Supply Co.*, 80 L. J. K.B. 831; [1911] 1 K.B. 997; 104 L. T. 473; 55 S. J. 363; 27 T. L. R. 299—C.A.

A salesman and collector in the employment of a firm of sewing machine manufacturers, whilst riding in the street on a bicycle in the course of his employment, was kicked on the knee by a passing horse, and incapacitated for work:—*Held*, that the accident arose out of his employment within section 1 of the Work-

men's Compensation Act, 1906. *M'Neice* v. *Singer Sewing Machine Co.*, [1911] S. C. 12—Ct. of Sess.

Chill Contracted.]—A journeyman baker who in his rounds delivered bread to his master's customers on a cold day, and in receiving money and giving change contracted a chill, followed by œdema, which disabled him for a time, was *held* not to have been injured "by accident arising out of his employment," and not to be entitled to compensation. Decision of the Court of Appeal (80 L. J. K.B. 526; [1911] 1 K.B. 351) affirmed. *Warner* v. *Couchman*. 81 L. J. K.B. 45; [1912] A.C. 35; [1912] W.C. Rep. 28; 105 L. T. 676; 56 S. J. 70; 28 T. L. R. 58—H.L. (E.)

Rheumatism Caused by Immersion while Baling Water in a Pit.]—The pumps in a coal pit broke down and the pit became flooded. Five days after the breakdown a workman whose ordinary employment was that of a "brusher," went down the pit in the belief that he was going to his regular work, but on reaching the bottom he was directed to bale the water which had accumulated. He stood for several hours immersed up to his chest, and thereby contracted rheumatism, by which he became incapacitated:—*Held*, that the incapacity was attributable to accident arising out of and in the course of the workman's employment, and entitled him to compensation. *Welsh* v. *Glasgow Coal Co.*, [1915] W.C. & I. Rep. 463; [1915] S. C. 1020—Ct. of Sess.

Death in Consequence of Chill.]—In consequence of an accident in one of the shafts of a mine the workmen were withdrawn, and, as only one shaft was available, some of the men were kept waiting for a long time at the bottom of the shaft before they could be brought up, and were exposed to a current of cold air. In consequence one of them got a bad chill which turned to pneumonia, of which he died:—*Held*, that his death was the result of an accident arising out of and in the course of his employment, and that his dependants were entitled to compensation. *Drylie* v. *Alloa Coal Co.* ([1913] S. C. 549; [1913] W.C. & I. Rep. 213) approved. *Brown* v. *Watson, Lim.*, 83 L. J. P.C. 307; [1915] A.C. 1; [1914] W.C. & I. Rep. 228; 111 L. T. 347; 58 S. J. 533; 30 T. L. R. 501—H.L. (Sc.)

Judgment of the Second Division of the Court of Session in Scotland ([1913] S. C. 593; [1913] W.C. & I. Rep. 233) reversed. *Ib.*

Brewers' Drayman — Continuous Duty in Streets for Twelve Hours—Leaving Dray to Get Refreshment.]—A drayman whose duties took him into the streets for twelve hours continuously away from his home and his employers' place of business, while going his proper rounds, stopped opposite a public house. He left his dray, crossed the street to the public house, got one glass of ale there, and in re-crossing the street to his dray was run over and killed. He was not away from his dray for more than two minutes:—*Held*, that the street risk he ran was one incidental to his employment, and that under the circumstances of the employment he was entitled so to procure reasonable liquid refreshment, and that the accident therefore arose "out of and in the course of" the employment within section 1, sub-section 1 of the Workmen's Compensation Act, 1906. *Martin* v. *Lovibond & Sons, Lim.*, 83 L. J. K.B. 806; [1914] 2 K.B. 227; [1914] W.C. & I. Rep. 76; 110 L. T. 455—C.A.

Herd Cycling between Two Farms on which He was Employed — Risk Unconnected with Employment.]—A herd who was employed to look after the stock on two farms, on one of which he lived, was starting on a bicycle to traverse the distance between them (535 yards), along a public road, when a dog, his own property, collided with the bicycle and knocked it down, and the herd thereby sustained injuries from the fall which caused his death:—*Held*, that the accident did not arise "out of" the employment and that his dependants were not entitled to compensation. *Greene* v. *Shaw*, [1912] 2 Ir. R. 430; [1912] W. C. Rep. 25—C.A.

An accident does not arise "out of" the employment unless caused by risk peculiar to that particular employment, and not common, at least in an equal degree, to the general public. *Ib.*

Collector Falling on Stair.]—A collector for an insurance company, whose duty it was to make a door-to-door collection of premiums, fell upon a stair which he had occasion to use while seeking to collect a premium, and was injured:—*Held*, that the accident arose out of and in the course of the employment. *Millar* v. *Refuge Assurance Co.*, [1912] S. C. 37—Ct. of Sess.

Gardener Slipping on Footpath.]—The circumstance that the soil of a footpath which a workman used as a member of the public was vested in his employer was *held* not to render an injury that he sustained through slipping and falling while passing along the footpath on his way to his employment an "injury by accident arising out of and in the course of" his employment within the meaning of section 1 of the Workmen's Compensation Act, 1906, so as to entitle him to compensation under that Act. *Williams* v. *Assheton-Smith*, [1913] W.C. & I. Rep. 146; 108 L. T. 200—C.A.

Commercial Traveller while Drunk Run Over by Train—Unexplained Death.]—A commercial traveller in the course of his rounds arrived late in the day at a town where he had customers. He, however, did not attempt to transact business, but proceeded to get intoxicated, and while in this condition found his way to the railway station (where he could get a train for his home), and when last seen uninjured he was sitting on a seat on the platform. After a goods train had passed, he was found on the line, having been run over by the train and having sustained injuries from which he died. No one saw how he got or fell on to the line:—*Held*, that the accident did not arise out of the employment of the deceased. Whether it even arose in the course of the employment, *quære*. *Semble* (*per* the Lord

Justice-Clerk), that it did not. *Renfrew* v. *M'Crae, Lim.*, [1914] S. C. 539—Ct. of Sess.

Engine Driver Alighting from his Engine during Journey.]—While a goods train was standing in a siding, having drawn up there for the purpose of allowing an express train to pass, the engine driver alighted from the engine. Shortly afterwards his body was found on the railway line, he having, it was assumed, been knocked down and killed by a light engine which came along :—*Held*, that the burden had not been discharged which lay upon the applicant for compensation as the sole dependant of the deceased of shewing that the accident was one which arose "out of and in the course of the employment" of the deceased within the meaning of section 1 of the Workmen's Compensation Act, 1906. *Dyhouse* v. *Great Western Railway*, [1913] W.C. & I. Rep. 491; 109 L. T. 193—C.A.

Brakesman on Train—Attending to Points—Onus of Proof.] —A brakesman was in a train composed of an engine pushing three trucks in front without a brake van, when the train overtook another train consisting of a brake van behind and an engine in front. The two trains ran together uncoupled, but buffer to buffer. They were approaching points about a quarter of a mile distant, after passing which the trains were to stop, and the deceased was to descend and turn the points so as to enable the trains to run into a siding. The deceased was seen climbing by the buffers from the front truck of his own train to the brake van of the other train, in the act of doing which he fell and was killed :—*Held* (Lord Atkinson dissenting), that it was a legitimate inference that the accident arose out of and in the course of the man's employment. *Evans & Co.* v. *Astley*, 80 L. J. K.B. 1177; [1911] A.C. 674; 105 L. T. 385; 55 S. J. 687; 27 T. L. R. 557—H.L. (E.)

Brakesman Riding on Lorry—Duty to Walk behind Lorry.]—A workman was employed to attend to the screw brakes at the rear of a lorry which was carrying a heavy casting, and it was his duty to walk behind it continuously to be ready to apply the brakes at any moment. There was a rule, of which the workman was aware, that no one but the driver should ride on the lorry, but in spite of this he took his seat besides the driver on the front of the lorry. On being required by the driver, under whose orders he was, to put on the brakes, he fell in attempting to jump off the lorry, and was injured. In a claim for compensation the arbitrator found that the accident did not arise out of the workman's employment : *Held*, affirming that determination, that in being on the front of the lorry instead of walking at the rear, the workman had created for himself a risk which was not incidental to his employment. *Revie* v. *Cumming*, [1911] S. C. 1032—Ct. of Sess.

Workman Getting off Waggon to Pick up his Pipe.]—A workman, whose duty it was to load and accompany a train of waggons drawn by a traction engine, in dismounting from a waggon on which he was riding, for the purpose of recovering a pipe he had dropped, fell and was run over by the waggon :—*Held*, that the accident arose out of and in the course of the employment. *M'Laughlan* v. *Anderson*, [1911] S. C. 529—Ct. of Sess.

Traveller—Duty at Goods Yard—Attempt to Cross Railway Lines—Fatal Accident.] — A workman was employed as a traveller, and it was his duty to inspect scrap iron consigned to his employers at various railway stations. After one of such inspections at a goods yard he had in the course of his employment to return to the warehouse, and in order to do so he attempted to cross the lines of railway, but was killed by shunting operations :—*Held*, that as the workman was doing something in the course of his employment and was not acting outside its scope, his dependants were entitled to compensation from his employers. *Sanderson* v. *Wright, Lim.*, [1914] W.C. & I. Rep. 177; 110 L. T. 517; 30 T. L. R. 279—C.A.

Injury by Falling Slate during Gale.] — During a severe gale an engineer's fitter was engaged in erecting machinery in an open yard near to a building from the roof of which slates were being blown. While stooping to adjust a large piece of machinery, he was struck on the head by a falling slate and injured :—*Held*, that the arbitrator was entitled to find that the accident arose out of the employment. *Adamson* v. *Anderson & Co.*, [1913] S. C. 1038—Ct. of Sess.

During a severe gale a carter in charge of a horse and lorry within his employer's yard was struck by a sheet of corrugated iron blown from the roof of an adjoining building, and was injured :—*Held* (*dub.* Lord Dundas), that the arbitrator was not entitled to find that the accident arose out of the employment. *Adamson* v. *Anderson* (*supra*) distinguished. *Guthrie* v. *Kinghorn*, [1913] S. C. 1155—Ct. of Sess.

Dangerous State of Roof in Servant's Sleeping Apartment.] — A domestic servant, employed in a private hotel, was called by her mistress at six o'clock in the morning to light the fire in the kitchen range. While in the act of getting up to do so, some mortar from the rendering attached to the slates fell into her right eye, in consequence of which she lost the sight of that eye. Handfuls of mortar had often before fallen from the slates above the servant's sleeping room to the knowledge of her employer :—*Held*, that the accident arose out of and in the course of the employment. *Aldridge* v. *Merry*, [1913] 2 Ir. R. 308; [1913] W.C. & I. Rep. 97—C.A.

Fever Hospital Attendant Contracting Fever—Proof as to Time and Place.]—A workman is not entitled to recover compensation under the Workmen's Compensation Act, 1906, unless he can satisfy the Court of the particular time, place, and circumstances in which the injury by accident alleged by him happened. The applicant was employed as a porter at a scarlet fever hospital, and among his duties was that of cleaning out the mortuary. He had an attack of influenza in February, 1911, and returned to work on March 22. On April 1,

and for some days previous to that date, he was out and in the fever ward, and on April 1 he cleaned out the mortuary. There was no proof that at that time there was in the mortuary any dead body of a person who had died of scarlet fever. Three days later the applicant was found to be suffering from scarlet fever which incapacitated him for work. On a claim by him for compensation, the County Court Judge found that the applicant contracted fever on April 1 in the mortuary, and that he contracted it nowhere else; that there was an injury by accident within the Workmen's Compensation Act, 1906; and that the applicant was therefore entitled to an award of compensation :—*Held*, that there was no evidence to justify the conclusion that there was a particular time and place at which the applicant had contracted the disease, and that the applicant had failed to shew that he had met with an injury by accident arising out of and in the course of his employment. *Martin* v. *Manchester Corporation*, [1912] W.C. Rep. 289; 106 L. T. 741; 76 J. P. 251; 10 L. G. R. 996; 28 T. L. R. 344—C.A.

Workman Employed in Removing Sewage Contracting Typhoid Fever.]—A workman was employed as a machinery attendant, and part of his duty consisted in removing sewage out of the machinery. After having been engaged several years in this employment he contracted typhoid fever, of which he died. Medical evidence was given that he might have acquired the disease by handling the sewage, but no evidence was given that the removal of the sewage was the cause of the disease :—*Held*, that the evidence did not establish that the death resulted from an accident in the course of the employment, and that there was no right of compensation under the Workmen's Compensation Act, 1906. *Finlay* v. *Tullamore Union*, [1914] 2 Ir. R. 233—C.A.

Injury to Finger while Removing Sock before Commencing Work.] — In the cotton mill where the applicant was a minder it was the practice for the workers, for their own convenience, and it might be in order to do more efficient work, to take off their coats and waistcoats, and usually, although not universally, they also worked without socks. The applicant, just before commencing work, injured his finger in the course of removing a sock, and was thereby incapacitated for some time from doing his work :—*Held*, that the accident did not arise out of the employment, and therefore that the applicant was not entitled to compensation under the Workmen's Compensation Act, 1906. *Peel* v. *Lawrence*, [1912] W.C. Rep. 141; 106 L. T. 482; 28 T. L. R. 318—C.A.

Master of Workhouse—Fall Down Steps of Residence in Workhouse—Giddiness Caused by Cough.] — The master of a workhouse was sitting on the top of some steps leading to his residence at the workhouse, there being nothing peculiar or particularly dangerous about them, talking to the labour master, when a fit of coughing came on, caused by a disease of his lung, which made him giddy, and he fell down the steps and received an injury which caused his death a few days afterwards :—*Held*, that the accident did not arise out of his employment, and his dependants were not entitled to compensation. *Butler* v. *Burton-on-Trent Union*, [1912] W.C. Rep. 222; 106 L. T. 824—C.A.

School Janitor Injured by Falling in Street through Faintness.]—A school janitor conveying a message on school business through the streets of Paisley about noon on a hot July day was overcome by giddiness or faintness brought on by the heat, and fell, struck his head against the pavement, and sustained injuries of which he died :—*Held*, that the accident did not arise out of his employment. *Rodger* v. *Paisley School Board*, [1912] S. C. 584; [1912] W.C. Rep. 157—Ct. of Sess.

Accident Causing Disease and Ultimately Death—Workman Quite Healthy before Accident — After-effects of Operation Immediate Cause of Death — Effect of Medical Evidence.]—A workman received a heavy blow on his back by accident in the course of his employment, and was incapacitated for over three months. He was able to resume work for six months, but was never as well as he had always been before the accident. He was operated upon for acute kidney trouble, and the operation was successful, but revealed the possibility that other causes than the accident might have brought about his condition. He ultimately died from the after-effects of a subsequent operation intended to heal the scar caused by the first one :—*Held*, that, having regard in particular to the fact that he had always been in good health before the accident, there was evidence from which the inference that his death was thereby caused was properly drawn. *Lewis* v. *Port of London Authority*, [1914] W.C. & I. Rep. 299; 58 S. J. 686—C.A.

Tuberculosis Supervening — Death Accelerated by the Accident.]—On July 2, 1914, an accident happened to a workman. He was taken to a hospital, where he remained until July 15, when he was taken to the workhouse infirmary. There he stayed until October 14. On that date he was taken back to his home. On October 16 he was found to be suffering from acute and active tuberculosis, and he was taken to another workhouse infirmary, where he died on December 2. The accident affected the workman mentally at first and for some considerable time afterwards. One of the doctors stated that he had diagnosed the case, and that the workman was admitted to the infirmary with a diagnosis of general paralysis of the brain. There were signs of chronic bronchitis, but no definite signs of pulmonary tuberculosis were noted, the disease being quiescent all the time he was an inmate of the infirmary. Other medical evidence was to the effect that it was a bad case, going very rapidly when the doctor saw the workman, and that it might have been going three months before. A *post-mortem* examination was held upon the body, and as a result of that the doctor who made it stated that the workman had been suffering from double pulmonary tuberculosis, but latent for two years or longer,

and that in his opinion the acute condition was of three months' duration. Further medical witnesses stated that a serious disease, such as that which was occasioned by the accident to the workman in the present case, might have caused the latent tuberculosis to become acute. In these circumstances it was decided by the learned County Court Judge that the dependants of the workman were entitled to compensation. The employers appealed. The question was whether upon the evidence that was adduced before the learned County Court Judge it was possible for him properly to come to the conclusion that the workman's death was the result of the accident in the sense that it was accelerated by the accident :—*Held*, that there was evidence which justified the learned County Court Judge in coming to the conclusion at which he did—namely, that the death of the workman was accelerated by the accident, the same sufficing to set up the diseased condition of the workman; and that there was no trace of *novus actus interveniens*. *Beare* v. *Garrod*, [1915] W.C. & I. Rep. 438; 113 L. T. 673—C.A.

Death from Angina Pectoris — Onus of Proof.]—A workman employed in fairly light work in a colliery was taken ill. He went home and died the same day from angina pectoris. The man's heart was found to be in bad condition of long standing. The medical evidence was that angina pectoris might be brought on by several causes and might be due to circumstances which could scarcely be called an accident at all :—*Held*, that, though as a matter of conjecture it was probable, it was not proved as a matter of legitimate inference from the facts, that the death was due to an accident arising out of and in the course of the employment. *Barnabas* v. *Bersham Colliery Co.* (103 L. T. 513) followed and applied. *Clover, Clayton & Co.* v. *Hughes* (79 L. J. K.B. 470; [1910] A.C. 242) distinguished. *Hawkins* v. *Powell's Tillery Steam Coal Co.*, 80 L. J. K.B. 769; [1911] 1 K.B. 988; 104 L. T. 365; 55 S. J. 329; 27 T. L. R. 282—C.A.

Wasp Sting—Normal Risk.]—A workman was stung in the leg by a wasp when working a threshing machine, and as the result of the sting died subsequently of blood poisoning :—*Held*, that the workman's widow could not recover compensation because the accident did not arise out of the workman's employment, but was due to a risk common to all mankind. *Craske* v. *Wigan* (78 L. J. K.B. 994; [1909] 2 K.B. 635) and *Warner* v. *Couchman* (80 L. J. K.B. 526; [1911] 1 K.B. 351) followed. *Amys* v. *Barton*, 81 L. J. K.B. 65; [1912] 1 K.B. 40; [1912] W.C. Rep. 22; 105 L .T. 619; 28 T. L. R. 29—C.A.

Heat Apoplexy.] — A plumber who was engaged in laying and jointing iron pipes in the open air on a day of unusual heat, and who had to stoop at his work, was taken ill while so employed and died some days afterwards from heat apoplexy :—*Held*, that, even assuming that there had been an "accident," it did not arise "out of" the deceased's employment, as there was no peculiar danger to which he had been exposed by the nature of his employment beyond that to which other persons who had to stoop at outdoor labour on the day in question were exposed. *Blakey* v. *Robson, Eckford & Co.*, [1912] S. C. 334; [1912] W.C. Rep. 86—Ct. of Sess.

Death Due to Apoplexy Brought on by Overexertion.]—A gate keeper employed at a flax mill—whose duty it was, besides attending to the gate, to take charge of the ambulance appliances for use in cases of accidents occurring in the works, to telephone for the doctor in case of necessity, and to attend personally to minor accidents—was informed, while on duty, of a scaffold accident in the works to some slaters, who were not in the employment of the flax spinners, but who were engaged in doing work at the mill. The gate keeper ran to the scene of the accident, and then back to the gate to telephone for a doctor. The exertion of running and the excitement brought on an apoplectic shock, from which he died in a few hours :—*Held*, that the death of the workman was due to an accident arising out of and in the course of his employment. *Aitken* v. *Finlayson, Bousfield & Co.*, [1914] S. C. 770—Ct. of Sess.

Injury Producing Paralysis.] — Where a workman while engaged at work which he was employed to do sustained a partial fracture of his spine, which led in time to paralysis, producing a condition that resulted in his death about nine months after the occurrence of the accident, it was decided that the Court was bound to draw the inference that the death was due to an accident that arose "out of and in the course of the employment" of the deceased workman. *Hewitt* v. *Stanley*, [1913] W.C. & I. Rep. 495; 109 L. T. 384—C.A.

Right to Occupy Cottage in Return for Performance of Additional Duties—Death Caused while Sleeping in Cottage — Tenancy.] — A workman, who was employed as a steel-tester, was permitted by his employers to occupy a cottage adjoining their offices on the terms of a written memorandum by which he agreed to be responsible for the cleaning of the offices and other duties, in return for which he could live in the cottage, rent and rates free, with coal and light provided. The cleaning and other duties were performed by his daughters. The workman was killed while sleeping in the cottage by the escape of gas from a stove in the basement of the offices into his bedroom. On an application for compensation by his dependants it was held that death had been caused by an accident arising out of and in the course of the employment, the memorandum constituting a contract of service by which the workman was obliged to sleep in the cottage, and compensation was awarded :—*Held* (Kennedy, L.J., dissenting), that the written memorandum was merely a tenancy agreement embodying a contract for services, and that there was no evidence to support the award of the County Court Judge. *Wray* v. *Taylor Brothers & Co.*, [1913] W.C. & I. Rep. 446; 109 L. T. 120—C.A.

Seaman Drinking Water Containing Caustic Soda.]—A seaman, employed on a vessel lying in a Mediterranean harbour, received injuries through drinking from a tin water which contained caustic soda. The drinking water for the crew was supplied from a pump, but, this water not being cold, the crew were in the habit of drawing it off in their tins, which they placed in cool places to allow the water to cool, and the tins were then used indiscriminately by any members of the crew. The practice was known to, and sanctioned by, the ship's officers. The tin containing the soda did not belong to the seaman in question, but he, finding it in a cool place, drank from it in the belief that it contained pure water which had been placed there to cool :—*Held*, that there was evidence on which the arbitrator was entitled to find that the seaman's injuries were caused by an accident arising out of and in the course of his employment. *M'Kinnon* v. *Hutchison*, [1915] S. C. 867—Ct. of Sess.

Fireman Falling Overboard.] — A fireman during his watch in the tropics disappeared :—*Held*, that on the facts there was evidence to justify a finding that the man came on deck for air, and that he fell overboard in the course of his employment. *Lee* v. *Stag Line*, [1912] W.C. Rep. 398; 107 L. T. 509; 56 S. J. 720—C.A.

Disappearance of Seaman while on Duty on Deck.] — A sailor was seen by his captain about 4 A.M. going on deck to keep his watch from 4 A.M. to 8 A.M. He was complaining of giddiness and was last seen about 7 A.M., and was not found, though search was made for him :—*Held*, on a balance of probabilities, that he had met with his death by accident arising out of and in the course of his employment within section 1 of the Workmen's Compensation Act, 1906. "*Swansea Vale*" (*Owners*) v. *Rice*, 81 L. J. K.B. 672; [1912] A.C. 238; [1912] W.C. Rep. 242; 104 L. T. 658; 12 Asp. M.C. 47; 55 S. J. 497; 27 T. L. R. 440—H.L. (E.)

Unexplained Disappearance of Seaman from Ship.]—The second cook employed on board a steamship left his duties in the galley in the course of a voyage when the ship was rolling heavily, and he was not seen again. He suffered from a disease of the kidneys which would necessitate his going repeatedly to the urinal :—*Held*, that the inference was irresistible that the deceased accidentally fell overboard and was drowned; but that, in the absence of any evidence to shew how he got out of his galley and fell overboard, there was nothing to take the case out of the region of "mere surmise, conjecture, or guess," which did not suffice to establish the dependants' claim for compensation. *Burwash* v. *Leyland & Co.*, [1912] W.C. Rep. 400; 107 L. T. 735; 56 S. J. 703; 28 T. L. R. 546—C.A.

The unexplained drowning of a seaman who rose from his sleep and went on deck for the sake of fresh air, and whose body was found in the water immediately under his usual resting place, does not justify the inference of fact that he met with an accident arising out of his employment. (The Lord Chancellor and Lord James of Hereford dissenting.) *Marshall* v. "*Wild Rose*" *Steamship*, 79 L. J. K.B. 912; [1910] A.C. 486; 103 L. T. 114; 11 Asp. M.C. 409; 54 S. J. 678; 26 T. L. R. 608—H.L. (E.)

The Court may infer from the unexplained drowning of a seaman while engaged in doing his duty on board his ship at sea, that the death was due to an accident arising out of as well as in the course of his employment. A workman, who was chief engineer of a steamship on a voyage from Petrograd to Hull, gave orders on the evening of June 15, 1913, that he was to be called at 5.40 A.M. next day, about two hours earlier than the usual time. This was done, and at 5.50 A.M. he was seen in his working clothes walking aft, where he went behind the wheelhouse. He was never seen again. The ship was then in the North Sea, and was due to arrive at its port that day. The workman had been worried on the journey about something that had happened to the propeller, and the propeller could be seen from aft if a man put his head and shoulders through the rails at the side of the ship, or climbed over them. The ship was steady at the time. The County Court Judge drew the inference that the man had put himself on duty on the morning of the accident to attend to the machinery, and had met his death in trying to look at the propeller. He therefore held that the accident arose out of as well as in the course of the man's employment, and awarded compensation to his dependants :—*Held*, that there was evidence to support the inference of the County Court Judge. *Proctor* v. "*Serbino*" (*Owners*), 84 L. J. K.B. 1381; [1915] 3 K.B. 344; [1915] W.C. & I. Rep. 425; 113 L. T. 640; 59 S. J. 629; 31 T. L. R. 524—C.A.

Seaman Found Drowned — Arbitrator's Decision—Award of Compensation—Evidence to Support Award.]—While the respondents' steamship was lying in harbour the body of a man employed on the vessel as cook and steward, who, when last seen alive, was lying in his bunk, was found on the following day in the sea at a short distance from the vessel. His death was due to drowning and the body bore no marks of violence. He had never been seen to be the worse for liquor, but he was subject to nausea and had been frequently seen vomiting over the side of the vessel. On an application by the man's dependants for compensation under the Workmen's Compensation Act, 1906, the arbitrator drew the inference that the man had accidentally fallen overboard and been drowned, and held that the accident arose out of and in the course of the man's employment, and awarded compensation :—*Held* (Lord Dunedin and Lord Atkinson dissenting), that the decision of the arbitrator must be affirmed as there was evidence to support it. *Kerr* (or *Lendrum*) v. *Ayr Steam Shipping Co.*, 84 L. J. P.C. 1; 58 S. J. 737; 30 T. L. R. 664—H.L. (Sc.)

Decision of the Court of Session ([1913] S. C. 331; [1913] W.C. & I. Rep. 10) reversed. *Ib.*

A sailor, whose engagement on a ship was completed, was leaving the ship by means of

a ladder to get on to a dolphin, which was a floating stage belonging to the Port Authority. He got on to the dolphin, but before he could reach the bridge connecting the dolphin with the quay he fell and was killed. In a claim for compensation by his widow, the County Court Judge held that the deceased's employment ceased when he arrived on board the dolphin owned by the Port Authority, and therefore that the applicant was not entitled to compensation. The applicant appealed :—*Held*, dismissing the appeal, that the employers' liability ceased when the deceased reached the dolphin, which was part of the dock premises. *Cook* v. "*Montreal*" (*Owners*), [1913] W.C. & I. Rep. 206; 108 L. T. 164; 57 S. J. 282; 29 T. L. R. 233—C.A.

Seaman's Return to Ship.]—The master of a ship lying in Bangor Roads went on shore, and after staying about an hour at an hotel went to the pier and hailed the ship to send a boat. But before a boat came he fell into the sea and was drowned. It was not shewn that he went on shore on the ship's business :—*Held*, that the accident did not arise out of the employment. *Fletcher* v. "*Duchess*" *Steamship* (*Owners*), 81 L. J. K.B. 33; [1911] A.C. 671; [1912] W.C. Rep. 16; 105 L. T. 121; 55 S. J. 598; 27 T. L. R. 508—H.L. (E.)

Decision of the Court of Appeal (*sub nom. Hewitt* v. "*Duchess*" *Steamship* (*Owners*), 79 L. J. K.B. 867; [1910] 1 K.B. 772) affirmed. *Ib.*

A sailor, having been absent on leave, was returning to his ship, when he fell into the water. There was no evidence whether he had ever reached the gangway which led from the wharf to the ship and was well lighted :—*Held*, that the accident arose in the course of but not out of the employment, and that no compensation was payable. *Kitchenham* v. "*Johannesburg*" *Steamship*, 80 L. J. K.B. 1102; [1911] A.C. 417; 105 L. T. 118; 55 S. J. 599; 27 T. L. R. 504—H.L. (E.)

—— Drunken Sailor — Return to Ship Unfit for Duty.] — A sailor who had gone ashore without leave returned to his ship in a state a drunkenness. The ship at the time, having got in her gangways and cast off her ropes from the quay, was already moving, her deck being still alongside and level with the wall of the quay. The sailor, with the assistance of two persons standing on the quay, was pushed on to the deck of the ship, where he fell on his hands and knees. After a minute or two he tried to get on to his feet, but staggered backwards and fell into the water and was drowned, the ship then having moved about three feet from the wall :—*Held*, that the sailor having arrived on board ship unfit for duty, the accident, which was due solely to his own drunkenness, was not an accident arising out of his employment, and accordingly his dependants were not entitled to compensation under section 1 of the Workmen's Compensation Act, 1906. *Frith* v. "*Louisianian*" (*Owners*), 81 L. J. K.B. 701; [1912] 2 K.B. 155; [1912] W.C. Rep. 285; 106 L. T. 667; 28 T. L. R. 331—C.A.

A sailor who had been on shore with leave returned to his ship at night in a drunken condition and started to mount the gangway from the quay to the ship, holding on to the ropes on either side. When part of the way up he let go with one hand, overbalanced, and fell on to the quay and was killed. The County Court Judge found on the evidence that the primary cause of the accident was the man's drunken condition, but that there were really two concurrent causes for the accident—first, the fact that he was mounting the gangway to return to his employment, and was thereby subjected to a special risk; and secondly, his drunken condition. He therefore held that the accident arose out of the man's employment and awarded compensation to his dependants :—*Held*, by the Court of Appeal (Pickford, L.J., dissenting), that, as the accident was caused by the sailor's drunken condition, it did not arise out of the man's employment and the dependants were not entitled to compensation. It made no difference for this purpose that the accident had happened within the ambit of the employment. *Frith* v. "*Louisianian*" (*Owners*) (81 L. J. K.B. 701; [1912] 2 K.B. 155; [1912] W.C. Rep. 285) followed. *Nash* v. "*Rangatira*" (*Owners*), 83 L. J. K.B. 1496; [1914] 3 K.B. 978; [1914] W.C. & I. Rep. 490; 111 L. T. 704; 58 S. J. 705—C.A.

Seaman Attempting to Reach Ship in a Boat without Oars.]—A ship's engineer who had been ashore in the course of his employment attempted to reach his vessel, which was moored one hundred yards from the shore, alone and without oars in a twenty-seven foot lifeboat which should have been manned by a crew of six rowers, trusting that the boat would be carried in the direction of the vessel by the force of wind and tide, his only means of directing its course being by paddling with the rudder. He was blown out to sea and was drowned :—*Held* that the accident did not arise out of the employment. *Halvorsen* v. *Salvesen*, [1912] S. C. 99—Ct. of Sess.

Steward on Steamship—Death by Drowning —Evidence.]—A steward employed on a steamship of the respondents, which was lying in a harbour, was seen by the captain lying in his bunk at about 4.30 P.M. partially dressed. The captain told him to prepare tea for the crew before the ship sailed at 6 P.M. He was never seen alive again. His clothing, boots, cap, purse, and watch were found on a settee in the saloon out of which his cabin opened, and the next day his body was found in the water dressed only in his underclothing. There were no marks of violence, and death was due to drowning. There was evidence that he was a good-tempered, sober, sociable man, and that he suffered from attacks of nausea and vomiting. In a proceeding by his dependants under the Workmen's Compensation Act, 1906, the arbitrator held that he met his death by an accident arising out of and in the course of his employment :—*Held*, that on the facts admitted and proved there was evidence to support such finding. *Lendrum* v. *Ayr Steam Shipping Co.*, 84 L. J. P.C. 1; [1915] A.C.

217; [1914] W.C. & I. Rep. 438; 111 L. T. 875; 58 S. J. 737; 30 T. L. R. 664—H.L. (Sc.)

Judgment of the Second Division of the Court of Session in Scotland ([1913] S. C. 331; [1913] W.C. & I. Rep. 10) reversed (Lord Dunedin and Lord Atkinson dissenting). *Ib.*

Mate of Vessel — Fall from Bridge after being Ordered Below as Unfit for Duty.]—C. was mate of a steamship. He came on board at night heavily under the influence of drink, and went on the bridge, where, as was his duty, he took the wheel. Owing to his dangerous steering, the master ordered him below as not being fit for duty. C. remained for eight or ten minutes at the head of the ladder leading to the deck. A thud was shortly afterwards heard, and C. was found at the foot of the ladder with a wound on his head, from which death subsequently resulted. No one saw him fall:—*Held*, that there was no evidence that the accident arose out of the employment. *Murphy* v. *Cooney*, [1914] 2 Ir. R. 76; [1914] W.C. & I. Rep. 44—C.A.

Sailor Leaving Ship — Accident Due to Means of Access — Ladder from Quay.] — A seaman was leaving his ship on the completion of his day's work. The ship was moored against the quay of a harbour, and the only access to the quay was by a plank which was laid from the ship to a perpendicular ladder fixed to the side of the quay, which was the property of the harbour authority. The man crossed the plank in safety, but fell from the ladder into the harbour, and was injured:—*Held*, that the ladder being the only means of access from the ship to the quay, the accident arose out of and in the course of his employment within the meaning of the Workmen's Compensation Act, 1906, s. 1, sub-s. 1. *Cook* v. "*Montreal*" (*Owners*) ([1913] W.C. & I. Rep. 206) distinguished. *Webber* v. *Wansbrough Paper Co.*, 84 L. J. K.B. 127; [1915] A.C. 51; [1915] W.C. & I. Rep. 313; 111 L. T. 658; 58 S. J. 685; 30 T. L. R. 615—H.L. (E.)

Decision of the Court of Appeal (82 L. J. K.B. 1058; [1913] 3 K.B. 615; [1913] W.C. & I. Rep. 627) reversed. *Ib.*

"Crew to provide their own provisions"— Seaman on Shore to Purchase Provisions and Drowned while Returning to Ship.] — A seaman had signed articles for a coasting voyage, which contained the term "Crew to provide their own provisions." When the ship had arrived in a harbour he went ashore to buy necessary provisions, and after doing so left the shop in the direction of the pier where the ship was lying. It was a dark, wet, stormy night, and the next day his body was found in the water near the pier:—*Held*, that the accident by which he lost his life did not arise out of his employment, as he was not absent from the vessel in pursuance of a duty to his employer. *Parker* v. "*Black Rock*" (*Owners*), 84 L. J. K.B. 1373; [1915] A.C. 725; [1915] W.C. & I. Rep. 369; 113 L. T. 515; 59 S. J. 475; 31 T. L. R. 432—H.L. (E.)

Decision of the Court of Appeal (83 L. J. K.B. 421; [1914] 2 K.B. 39; [1914] W.C. & I. Rep. 116) affirmed. *Ib.*

Seaman Returning to Vessel — Fall from Quay.]—A seaman employed on a ship in port went ashore after work was over, as he was entitled to do, partly to buy food (which under his contract of employment he was bound to provide for himself) and partly to see the town. On returning to the vessel, before he had reached the gangway, which was the only access from the quay to the vessel, he accidentally fell from the quay into the water and was drowned. The passage way along the quay from the gangway to beyond the point where the man fell was narrowed to a width of two feet by a row of barrels which were standing on the quay. The arbitrator found that the accident did not arise out of the seaman's employment:—*Held*, that there was evidence to warrant that finding. *Craig* v. "*Calabria*" (*Owners*), [1914] S. C. 765—Ct. of Sess.

Discharging Vessel.]—A seaman employed on board a fishing vessel was engaged in discharging fish from it across a gangway resting on a floating pontoon. While he was standing in the middle of the gangway it became necessary to lower the end of it that rested on the pontoon. Instead of walking off the gangway the seaman caught hold of the stem of another vessel which was moored alongside, and swung himself therefrom. While doing so he slipped and fell into the water, sustaining such serious injuries that he died:—*Held*, that the accident arose "out of" as well as "in the course of" the seaman's employment. *Gallant* v. "*Gabir*" (*Owners*), [1913] W.C. & I. Rep. 116; 108 L. T. 50; 12 Asp. M.C. 284; 57 S. J. 225; 29 T. L. R. 198—C.A.

Ship's Carpenter Burnt by Shavings Accidentally Set on Fire by Shore Labourer.]—A ship's carpenter, working on the poop of a vessel lying in harbour, was severely burnt owing to some shavings by which he was surrounded being ignited by a match carelessly thrown down by a shore labourer. The carpenter's trousers happened to be saturated with inflammable oil which had leaked from a barrel he had shifted in the course of his work, and thus readily caught fire from the shavings:—*Held*, that he was injured by an accident arising out of and in the course of his employment. *Manson* v. *Forth and Clyde Steamship Co.*, [1913] S. C. 921; [1913] W.C. & I. Rep. 399—Ct. of Sess.

Pilot Jumping into Boat — Getting Wet — Sciatica.]—A man was employed as a pilot to take a ketch out of harbour. Having piloted her out, he attempted to get into his own boat, towing astern of the ketch, in order to go ashore. He jumped in, alighting somewhere near the bows of the boat, with the result that they went under water, and he was wetted to the thighs. He was pulled aboard the ketch again. He ultimately got ashore in the boat. Subsequently he suffered from sciatica in consequence of this wetting:—*Held*, that he was suffering from injury by "accident," and that the accident arose "out of and in the course of" his employment within section 1, sub-section 1 of the Workmen's Compensation Act, 1906. *Barbeary* v. *Chugg*,

84 L. J. K.B. 504; 112 L. T. 797; [1915] W.C. & I. Rep. 174; 31 T. L. R. 153—C.A.

Sunstroke.] — While a ship on which the applicant was an officer was in a West Indian port, loading cargo, the applicant was on May 31, 1910, posted on a portion of the steel deck, which was unprotected by an awning, and he had to lean over a hatchway from 6 A.M. to 11 A.M. to superintend the work. At 11 A.M. he was taken ill with sunstroke, which resulted in injury to his eyes. In a claim for compensation under the Workmen's Compensation Act, 1906, the County Court Judge made an award in favour of the applicant on the ground that he had been subjected to an abnormal risk in the course of his employment:—*Held*, that there were facts on which the County Court Judge could come to that conclusion. *Davies* v. *Gillespie*, 105 L. T. 494; 56 S. J. 11; 28 T. L. R. 6—C.A.

Asphyxiation by Fumes of Stove in Cabin.] —While the respondents' steamship was lying in port in the Black Sea in February, 1911, the second engineer, on account of the intensity of the cold, rigged up a stove in his cabin. He had been allowed by the chief engineer to use the stove during the daytime, but was forbidden to use it at night, as it was dangerous. On February 9 there was no fire in the stove at 11 P.M., but apparently the second engineer lit the fire at some period of the night, and he was found dead the next morning, having been asphyxiated by the fumes of the fire. On an application by his dependant for compensation under the Workmen's Compensation Act, 1906, the County Court Judge held that the accident arose out of and in the course of the deceased's employment; he accordingly made an award of compensation:—*Held* (Cozens-Hardy, M.R., doubting), that there was evidence upon which the County Court Judge could find as he did. *Edmunds* v. "*Peterston*" (*Owners*), 28 T. L. R. 18—C.A.

Workman Assisting Fellow Servants to Work for Third Party.] — A carter in the service of carting contractors was employed to deliver goods to consignees. It was his duty to sling the goods from his lorry into tackle provided by the consignees, but he had no duty to receive or stow the goods inside the consignees' warehouse. A custom prevailed among the carters, which was not proved to have been known to their employers, that, when several were delivering goods at the same time, one remained outside and slung the goods from all the lorries, while the others entered the warehouse and helped the consignees' servants to receive and stow the goods. For these services each carter, including the one who remained with the lorries, received remuneration from the consignees. When the carter, in accordance with this custom, was slinging goods from several lorries belonging to his employers, he was injured by accident while working on a lorry other than that of which he was in charge:—*Held*, that the accident did not arise out of and in the course of his employment with the contractors. *Goslan* v. *Gillies*, [1907] S. C. 68, distinguished. *Carlton* v. *Sinclair, Lim.*, [1914] S. C. 871—Ct. of Sess.

Travelling in Cart to Receive Wages.] —The applicant was employed on different farms belonging to the respondent. Having finished his work at one farm, the applicant was proceeding to another, about two miles distant by road, for the purpose of receiving his day's pay and to enquire about the work for the next day. Finding an empty cart belonging to the respondent returning to the same farm, the applicant attempted to get into it, and while so doing an accident occurred to him. The respondent's workmen not unfrequently returned in such an empty cart, and this fact was known to him:—*Held*, that it was no part of the applicant's contract of service that he should travel to his employer's farm by a cart, whereby he added unnecessarily to the risk of his employer; and that therefore he was not entitled to compensation under the Workmen's Compensation Act, 1906. *Parker* v. *Pout*, 105 L. T. 493—C.A.

Journey by Railway—Returning from Work—Entering Train in Motion—Added Peril.] — A workman was employed to work for his employers in Sheffield and was given a railway season ticket between that place and Rotherham, where he and his employers lived. He was expected to return to Rotherham and report at the office at 6 P.M. each day. Arriving one day late at the station at Sheffield for the last train that would reach Rotherham before 6 P.M., he attempted to enter it while it was in motion, but fell and suffered injuries from which he died:—*Held*, that, by attempting to enter the train while in motion, the workman exposed himself to an additional risk by doing an unauthorised and illegal act, which was not in any way incidental to his employment, and his dependants were therefore not entitled to compensation. *Jibb* v. *Chadwick*, 84 L. J. K.B. 1241; [1915] 2 K.B. 94; [1915] W.C. & I. Rep. 342; 112 L. T. 878; 31 T. L. R. 185—C.A.

Workman Injured while Going to His Work.]—A workman, employed in oil works, was going to his work at night by a path (which was one of several means of access available to him) situated on land leased by his employers, and provided and maintained by them as an access for their employees, although members of the public were also allowed to use it. At a spot where the path ran alongside a switchback lie he strayed on to the lie and was run over by a railway waggon and killed. The ground on each side of the spot where the accident happened was occupied by bings and sidings in connection with the works, but the spot was eighty yards from the nearest building belonging to the works, and was 330 yards from that department of the works to which the deceased's employment was exclusively confined. An arbitrator having found that the accident did not arise out of and in the course of the employment in respect first, that the workman had only been exposed to the same risks as any member of the public, while using a

route of his own choosing; and secondly, that he had been injured before he reached the "margin of his employment,"—*Held*, that the accident arose out of and in the course of the employment. *Nicol* v. *Young's Paraffin Light Co.*, [1915] S. C. 439; [1915] W.C. & I. Rep. 72—Ct. of Sess.

A miner going to his work went across a footpath which was a near way to the pit. Just after leaving the high road he had to descend some steps cut in the mountain side to get on to the path. The morning was frosty and he slipped on the steps and was injured. The steps were over three-quarters of a mile from the pit:—*Held*, that the accident did not arise in the course of the man's employment. *Davies* v. *Rhymney Iron &c. Co.* (16 T. L. R. 329) followed. *Walters* v. *Staverley Coal and Iron Co.*, 105 L. T. 119; 55 S. J. 579—H.L. (E.)

A workman who was proceeding to his employers' works took a route that he had been in the habit of using for many years, along a footpath which ran across a vacant piece of land and then on to a railway line and so on to the works. The property in the vacant piece of land was vested in the employers. While on this footpath, at a distance of little short of a quarter of a mile from the place where the workman was to go, he slipped on some ice and injured his ankle:—*Held*, that the workman had no right to go, and his employers could not confer upon him any right to go, along the railway line; that another route existed by which he had already access to his work; and that therefore the accident could not be deemed to have arisen "in the course of" his employment. *Gilmour* v. *Dorman, Long & Co.*, 105 L. T. 54—C.A.

Workman Killed while Returning from Work.]—A workman, employed underground in a coal mine, on finishing his day's work returned to the surface and was proceeding home by a track along the side of a private branch railway line, the property of his employers, when he was knocked down and killed by an engine at a point four hundred yards distant from the mouth of the pit:—*Held*, that the accident did not arise out of and in the course of his employment. *Caton* v. *Summerlee and Mossend Iron and Coal Co.* ([1902] 4 F. 989) followed. *Graham* v. *Barr and Thornton*, [1913] S. C. 538; [1913] W.C. & I. Rep. 202—Ct. of Sess.

Death whilst Returning from Work on Bicycle—Use of Bicycle under Contract of Service.]—A workman was employed at 6*d.* an hour to work his employers' threshing machines, and he had also to go about the district allotted to him looking after his employers' interests. As a term of his contract of service, he was provided with a bicycle for going to and from his work as well as for going from one part of his district to another in the course of his employment. When he was working at a distance from the employers' works he was not expected to return there at the end of the day, but ceased work each day at 6 P.M. On September 25, 1912, the workman had been engaged in working a threshing machine some distance away and had stopped working at 6 P.M. Subsequently, whilst riding on the bicycle to his home, he was run into by a motor lorry and killed:—*Held*, that the accident did not happen in the course of the workman's employment and that his dependants were not therefore entitled to compensation under the Workmen's Compensation Act, 1906. *Edwards* v. *Wingham Agricultural Implement Co.*, 82 L. J. K.B. 998; [1913] 3 K.B. 596; [1913] W.C. & I. Rep. 642; 109 L. T. 50; 57 S. J. 701—C.A.

Cremins v. *Guest, Keen & Nettlefold, Lim.* (77 L. J. K.B. 326; [1908] 1 K.B. 469), and *Mole* v. *Wadworth* ([1913] W.C. & I. Rep. 160) discussed. *Ib.*

Actual Work under Contract Ended—Wages for Past Work—Injury whilst Returning from Pay Place.]—The applicant was employed at the respondents' cotton mill as a piecer, her duty being to assist a minder. By the usage of the mill wages were made up to Wednesday, but were paid on Friday at the mill. The applicant actually ceased to work under her contract of service on a Wednesday, and went on the following Friday to the fifth floor of the mill to receive her wages for her past work. She was paid, and was coming down the stairs of the mill when she slipped and was injured:—*Held* (Buckley, L.J., dissenting), that the accident arose out of and in the course of her employment within the meaning of section 1, sub-section 1 of the Workmen's Compensation Act, 1906, and that consequently the applicant was entitled to compensation. *Lowry* v. *Sheffield Coal Co.* (24 T. L. R. 142) applied. *Riley* v. *Holland*, 80 L. J. K.B. 814; [1911] 1 K.B. 1029; 104 L. T. 371; 27 T. L. R. 327—C.A.

Casual Labourer on Farm—Contract of Service—Termination of Employment.]—A farmer employed a proprietor of threshing machines to supply a threshing machine, accompanied by two men to drive and feed it, for the purpose of threshing his corn. It was the practice in the district for several casual labourers to follow a threshing machine in the expectation of being taken on by the various farmers for the threshing. The applicant was one of six men who were thus taken on by the farmer. After the threshing was finished and these men had been paid, they helped the men with the threshing machine to move it off the farm on to the roadway. In doing so the applicant was injured, and he brought these proceedings, claiming compensation under the Workmen's Compensation Act, 1906, from the farmer. It appeared from the evidence that the casual labourers always helped to get the threshing machine on to and off the farm, and that it often could not be done without their help. The farmer stated that, when he engaged the threshing machine with two men, he understood he would have to supply the rest of the labour on the farm:—*Held* (*dubitante* Phillimore, L.J.), that it was part of the applicant's employment by the farmer to help in getting the threshing machine on to and off the farm, and therefore that the accident arose out of and in the course of his employment by the farmer, within section 1, sub-section 1 of the

Workmen's Compensation Act, 1906. *Newson* v. *Burstall*, 84 L. J. K.B. 535; [1915] W.C. & I. Rep. 16; 112 L. T. 792; 59 S. J. 204—C.A.

Conveyance of Workman from Work by Train—Attempt to Get Out at Wrong Place.] —The applicant, who was in the employment of the appellants, a colliery company, was going home by a train which was run by a railway company under a contract with the appellants to carry workmen free to and from their employment, and in order to shorten his way home he attempted to jump off the moving train before it reached the place where it ordinarily stopped for the workmen to alight. The result was that he was injured: —*Held*, that as the applicant had attempted to get out at a place other than the proper place, the accident did not arise out of his employment, and therefore he was not entitled to compensation. *Price* v. *Tredegar Iron and Coal Co.*, [1914] W.C. & I. Rep. 295; 111 L. T. 688; 58 S. J. 632; 30 T. L. R. 583—C.A.

Going Home in Employer's Boat — Only Means of Transit — Injury in Boat before Landing—Use of Boat Implied Term of Contract.] — A farm labourer employed by the year worked on his employer's farms, one of which was situate in the island of Ramsey, and the other on the mainland of Wales opposite to the island. His home was on the mainland. He had no means of crossing between the island and the mainland except by a boat of his master's. On December 8, 1912, his employer took him in his boat across from the island to the mainland. He was going home, and was not going on his master's business. Just before reaching land, in trying to get out of the boat, he slipped and hurt himself on the gunwale of the boat. Shortly afterwards he was landed. Next day he died from the effects of his hurt:—*Held*, that it was an implied term of his contract that he might at all reasonable times go home in his employer's boat, and that the accident therefore arose "out of and in the course of" his employment within section 1, sub-section 1 of the Workmen's Compensation Act, 1906. *Richards* v. *Morris*, 84 L. J. K.B. 621; [1915] 1 K.B. 221; [1914] W.C. & I. Rep. 112; 110 L. T. 496—C.A.

Inference as to Cause of Death.]—A bricklayer in the employment of the respondents returned from work on December 27, 1911, with a sore on the back of the thumb of his left hand. The wound appeared to heal, but ultimately blood poisoning ensued in the armpit, and the workman died on January 30, 1912. His dependants claimed compensation under the Workmen's Compensation Act, 1906, and evidence was given that injuries such as this were common in the case of bricklayers. The workman was engaged in cutting grooves in a wall, and had to use a hammer and chisel. In doing such work the face of the hammer might slip off the chisel and hit the workman's hand. The medical evidence was that the inflammation started under the man's armpit in the form of an abscess, due to an inflamed gland, and that an injury to the back of the thumb might give rise to this. The doctor was of opinion that the bacillus got into the man through this injury, but he said in cross-examination that he could not say that a dirty condition of the armpit might not have caused the abscess. The County Court Judge drew the inference that the man died from septic poisoning resulting from an injury which arose out of and in the course of his employment, and awarded compensation: —*Held*, that there was evidence from which the County Court Judge might infer that the injury to the workman happened to him while he was at work, and further that the County Court Judge was justified in accepting the evidence of the doctor and holding that the workman's death was due to the accident. *Fleet* v. *Johnson*, [1913] W.C. & I. Rep. 149; 57 S. J. 226; 29 T. L. R. 207—C.A.

Evidence — Inference.] — A workman employed on the night shift in the defendants' colliery went to his work on the night of Friday, December 9, about eleven o'clock, and returned at 7.30 the next morning. On his return there was a red patch on his right arm, and also a scratch on his thumb. The workman died on December 21 of blood poisoning, which, according to the medical evidence, resulted from the scratch on the thumb. Evidence was given that there had been some fall of stone on the man while he was working on the Friday night. The medical testimony, however, was to the effect that the red patch on the arm was caused by inflammation from the scratch on the thumb, and that no case had ever been known in which inflammation had appeared earlier than twelve hours after the introduction of the septic poisoning. In a claim for compensation by the workman's widow the County Court Judge thought there was no satisfactory direct evidence that the injury through which septic poisoning was caused was received at the colliery, but he was, however, of opinion, on the authority of *Mitchell* v. *Glamorgan Colliery Co.* (23 T. L. R. 588), that he was entitled to infer that the probabilities were that the injury was received at the colliery, and he concluded that the injury arose out of and in the course of the employment of the workman. On an appeal by the employers:—*Held*, allowing the appeal, that there was no evidence, and nothing in the case of *Mitchell* v. *Glamorgan Colliery Co.* (*supra*), which entitled the County Court Judge to draw the inference which he did. *Jenkins* v. *Standard Colliery*, 105 L. T. 730; 28 T. L. R. 7—C.A.

—— **Balance of Evidence.**] — A collier died from acute blood poisoning caused, according to the medical evidence, by septic infection getting into a superficial abrasion of the skin just below his kneecap. That was stated to be a frequent cause of blood poisoning in colliers, abrasions being occasioned by kneeling on the coal dust while working in a very narrow seam. The dependant of the deceased claimed compensation under the Workmen's Compensation Act, 1906. It was decided by the County Court Judge that if he was allowed to draw a legitimate inference from the fact

that the deceased had been cutting coal on his knees in a very narrow seam the conclusion would be that he was injured while working in his employer's colliery; but that, according to the principle laid down in authorities subsequent to that of *Mitchell* v. *Glamorgan Coal Co.* (23 T. L. R. 588), other possibilities could not be disregarded. The dependant appealed :—*Held*, that the finding of the County Court Judge ought not to be interfered with. *Howe* v. *Fernhill Collieries*, 107 L. T. 508; [1912] W.C. Rep. 408—C.A.

—— Balance of Probabilities—Inference to be Drawn.]—On the morning of August 14, 1911, a collier started at his work in his employers' coal mine having made no complaint to any one, nor did any one see him walking as if there was anything the matter with his feet. Later on he came out of the stall where he had been working and complained to the headman that his foot hurt him. The headman found in the stall a piece of rock, weighing about three or four pounds, on the floor, which had fallen from the roof during the working hours. On August 19 a doctor examined the foot and found a small wound about half an inch in length of a kind that might have been caused, in the doctor's opinion, by a piece of stone falling on it, and death, in the doctor's opinion, was due to tetanus supervening on the wound. A scratch or nearly healed scar on the sole of the foot was also discovered. On August 25 the workman was found to be suffering from tetanus, from which he died the next day. The County Court Judge, giving effect to what was laid down by the House of Lords in *Richard Evans & Co.* v. *Astley* (80 L. J. K.B. 1177; [1911] A.C. 674), held that the more probable conclusion from the evidence was that an accident had happened to the deceased arising out of and in the course of his employment, the inference to be drawn therefrom being that the wounds on his foot were caused by the fall of the stone; and that therefore his death was caused by that accident. The employers appealed :—*Held*, that there was evidence to support the finding of the learned County Court Judge. *Stapleton* v. *Dinnington Main Coal Co.*, 107 L. T. 247; [1912] W.C. Rep. 376—C.A.

ii. *Accident in Doing Act Without Authority or in Contravention of Rules.*

See also Vol. IX. 2185.

Act of Workman Outside Sphere of his Employment.]—Where a workman is employed to do a particular thing and to do it in a particular way and meets with an accident, he may obtain compensation under the Workmen's Compensation Act of 1906, if in the course of doing that he never embarked on a dangerous mode contrary to the regulations of his employers. But where being employed at area "A," which is limited to the sphere of his operations, he goes into area "B" and meets with an accident, the employer is not liable, inasmuch as the workman has done something which he was not authorised or employed to do, and altogether outside the sphere of his employment. *McCabe* v. *North*, [1913] W.C. & I. Rep. 513: 109 L. T. 369—C.A.

Prohibited Act Outside Employment—Cleaning Machinery in Motion.]—A workman was employed in a factory as underman at a mangle. His duties were to carry the cloth to and from the mangle and to assist the headman in putting it on to the rollers. It was no part of his duty to be inside the rail fencing the mangle or to interfere with the mangle while working. Cleaning machinery while in motion was prohibited, but on two days in each week the machinery was stopped in the early morning for cleaning, and it was the duty of the workman to assist the headman to clean the mangle at those times. While the machinery was in motion, and in the absence of the headman, the workman, without orders, went inside the rail and attempted to clean a part of the mangle, and was injured :—*Held*, that the accident did not arise out of and in the course of his employment. *M'Diarmid* v. *Ogilvie*, [1913] S. C. 1103—Ct. of Sess.

Serious and Wilful Misconduct — Non-compliance with Special Rules.]—The applicant for compensation was a girl of fourteen, who was engaged as a bottler in a soda-water factory. While she was at work a bottle exploded in the machine, and a piece of glass struck and injured her right wrist, with the result that she was disabled for fourteen weeks. At the time of the accident she was wearing a glove on her left hand, but had no protection on the right as required by the special rules under the Factory and Workshop Acts for the bottling of soda water, which were posted up. The employer set up that the accident was due to the applicant's serious and wilful misconduct in not wearing protective gauntlets on both arms as required by the rules, and as she had been told to do by himself and the forewoman. The County Court Judge found that gauntlets were provided, that the applicant knew she had to wear them, but that the forewoman, whose duty it was to see that the applicant wore them, had allowed her to do the work without a gauntlet on her right hand to disregard the rules, and only verbally told the applicant to obey the rules to protect herself with the employer. The County Court Judge therefore held that the defence of serious and wilful misconduct had not been established :—*Held*, that the Court would not interfere with the decision of the County Court Judge. *Casey* v. *Humphries*, [1913] W.C. & I. Rep. 485; 57 S. J. 716; 29 T. L. R. 647—C.A.

Doing Work in a Wrong Way.]—If an accident occurs through a workman doing his work in a wrong way it may be an accident arising out of his employment within the meaning of the Workmen's Compensation Act, 1906. The respondent was employed by the appellants to attend to a rolling machine. It was his duty to stand at the machine, but he chose, in disobedience to the rules, to sit on the guard, and in consequence his foot was caught in the rollers and seriously injured. The accident would not have happened if he had remained standing :—*Held*, that the accident arose out of his employment, and that

he was entitled to compensation. *Blair & Co.* v. *Chilton*, 84 L. J. K.B. 1147; [1915] W.C. & I. Rep. 283; 113 L. T. 514; 59 S. J. 474; 31 T. L. R. 437—H.L. (E.)

Decision of the Court of Appeal ([1914] W.C. & I. Rep. 346) affirmed. *Ib.*

Disobedience — Distinction between Doing Assigned Task in Wrong Way and Doing Task not Assigned.] — A workman was employed to dig flints in a quarry where there was a trench into which he was forbidden to go. On the evidence his employment was to dig in the quarry, but not in the trench. An accident having caused his death while in the trench,—*Held*, that his dependants were not entitled to compensation. *Harding* v. *Brynddu Colliery Co.* (80 L. J. K.B. 1052; [1911] 2 K.B. 747) and *Weighill* v. *South Hetton Coal Co.* ([1911] 2 K.B. 757) considered. *Parker* v. *Hambrook*, 107 L. T. 249; 56 S. J. 750; [1912] W.C. Rep. 369—C.A.

Coal Miner not Working where Directed — Disobedience to Orders — Orders Limiting Method, not Sphere of Employment.]—A coal miner was at work in a mine hewing coal at a spot in a gallery known as the "horse level." The under-manager, seeing there was danger there from a threatened fall of stone, directed the miner and others working with him to move from the horse level a few yards into an adjoining gallery running at right-angles into the horse level, and get the coal there. While the miner was working a stone fell upon him, causing injuries resulting in permanent incapacity. It was proved that at the time of the accident the miner was not working where directed by the under-manager, but in the horse level. On an application by the workman for compensation under the Workmen's Compensation Act, 1906,—*Held*, that the workman had been guilty of disobedience of orders in not working where directed; that the orders went only as to the method in which the work was to be done and not to limit the sphere of the employment; and that, inasmuch as the workman was about the work he was employed to do, though in an improper manner, the accident was one arising "in the course of the employment" so as to entitle him to compensation. *Jackson* v. *Denton Collieries Co.*, [1914] W.C. & I. Rep. 91; 110 L. T. 559—C.A.

Workman Resorting to Wrong Place for Necessary Purpose—Serious and Wilful Misconduct.]—A workman, who was employed to attend to the boilers at a colliery, left his work on one occasion for a necessary purpose; but instead of going to the water closets provided by his employers, he went into a space under the table engine about four feet in height. While there he accidentally plunged his foot into a cistern in the floor of this place, which received the escape water from the engine, and his foot was thereby scalded: —*Held*, that the accident did not arise out of and in the course of his employment. *Thomson* v. *Flemington Coal Co.*, [1911] S. C. 823—Ct. of Sess.

Per Lord Salvesen: The workman was guilty of serious and wilful misconduct. *Ib.*

The deceased workman was a labourer employed in the construction of a dock, and at eleven o'clock at night the night gang, of whom he was one, were ordered to go from one part of the dock to another. They marched in single file, and the deceased, who was the last man in the file, intimated to the next man in front that he wanted to stop to ease nature. The others went on, and after a while the next man called out to the deceased asking him why he was not coming on. Getting no answer, he went back and found the deceased dead, his body having been crushed between the upper and lower parts of a hoist. The structure was so low that the deceased must have stooped down to enter. The scene of the accident was amply lighted. The arbitrator found as a fact that the man entered the hoist intentionally, and that it was an unreasonable place for him to go to for the purpose, and that therefore the accident did not arise out of the employment:—*Held*, that, there being evidence to support these findings, the arbitrator was justified in finding that the accident did not arise out of the employment, the risk taken by the workman not being one reasonably incident to the employment. *Rose* v. *Morrison & Mason, Lim.*, 80 L. J. K.B. 1103; 105 L. T. 2—C.A.

Dangerous Method of Doing Work.] — On September 20, 1913, a farm bailiff locked up the outbuildings in his charge at 8 P.M., and after laying the key of the poultry house on a ledge near a sliding window in the cowshed, locked up the cowshed and put the key to it in his pocket. He was away for over three hours, and on his return he went round the premises according to his usual practice to see that everything was all right. He also went to the cowshed to get the key of the poultry house, as he always kept the keys intrusted to him in his house at night. He then found that he had left the key of the cowshed in his house near by. Thereupon he went to the sliding window, opened it, and vaulted on to the window sill some five feet from the ground. Then, sitting on the sill, he reached inside for the key, but in doing so overbalanced and fell, and was killed. There were other occasions on which he had vaulted on to the sill to get keys from the ledge:—*Held*, that, although it might be that the deceased had acted imprudently in vaulting on to the sill to get the key, the accident was one which arose out of and in the course of the man's employment, and his dependants were entitled to recover compensation from the employer under the Workmen's Compensation Act, 1906. *Pepper* v. *Sayer*, 83 L. J. K.B. 1756; [1914] 3 K.B. 994; [1914] W.C. & I. Rep. 423; 111 L. T. 708; 58 S. J. 669; 30 T. L. R. 621—C.A.

The transgression of a prohibition which limits the sphere of employment is an act not within the scope of a workman's employment, and therefore he is not entitled to compensation if an accident results; but he may be if the prohibition only extends to conduct within the sphere of his employment. *Plumb* v. *Cobden Flour Mills Co.*, 83 L. J. K.B. 107; [1914] A.C. 62; [1914] W.C. & I. Rep. 48; 109 L. T. 759; 58 S. J. 184; 30 T. L. R. 174—H.L. (E.)

A workman who was employed to stack

sacks by hand, made use, with the object of making the work easier, of the revolving shafting of some machinery which ran through the room in which he was employed. This use of the shafting was not known to his employers, and would have been forbidden by them if they had known of it. He was caught by the shafting and severely injured while so engaged: —*Held*, that the accident did not arise "out of" his employment within the meaning of section 1 of the Workmen's Compensation Act, 1906, and that he was not entitled to compensation. *Ib.*

Judgment of the Court of Appeal ([1913] W.C. & I. Rep. 209) affirmed. *Ib.*

Getting on Train in Motion.]—A workman on his way home by a route across his employer's property which he was allowed to take, tried to get into one of the trucks of a train which was moving up an incline, which was on his way home, and fell between the trucks and was killed. There was a regulation that no one except the persons in charge of the train should ride on any moving train on an incline without special leave:—*Held*, that the accident did not arise "out of" or "in the course of" his employment, and that his dependants were not entitled to compensation. *Pope* v. *Hill's Plymouth Co.*, 105 L. T. 678; [1912] W.C. Rep. 15—H.L. (E.)

A workman was employed as a shunter, and it was part of his duty to walk in front of any train with which he was working while it moved about the employers' works. On January 17, 1914, he worked with an engine until 12.30 P.M., when it was time to stop work. The engine had to return to its shed three-quarters of a mile away, and started to go there, pushing four waggons in front of it. According to the workman's own story, he jumped upon a front buffer of the leading waggon, and then slipped, fell across the rails, and was run over. In the result both his legs had to be amputated. There was a notice in the locomotive shed that the look-out man must be in front of the waggons on pain of instant dismissal, and the workman admitted that he had no business to get on to a buffer, and that any one seen riding on the buffer by the manager would be dismissed. Upon an application for compensation under the Workmen's Compensation Act, 1906.—*Held* (Phillimore, L.J., dissenting), that the accident did not arise "out of" the employment, but was due to an added risk to which the workman's conduct had exposed him, and which was put outside the sphere of his employment by a genuine prohibition. *Barnes* v. *Nunnery Colliery Co.* (81 L. J. K.B. 213; [1912] A.C. 44; [1912] W.C. Rep. 90) applied. *Chilton* v. *Blair & Co.* ([1914] W.C. & I. Rep. 346) distinguished. *Herbert* v. *Fox & Co.*, 84 L. J. K.B. 670; [1915] 2 K.B. 81; [1915] W.C. & I. Rep. 154; 112 L. T. 833; 59 S. J. 249—C.A.

Train Provided for Conveyance of Workmen to Colliery—Riding on Footboard—Prohibited Act.]—A collier on his way to the colliery in a train provided for the men by the employers, when near the station and before the train had stopped, got out of the carriage on to the footboard so as to be ready to jump off as soon as the train arrived at the stopping-place. He fell off and lost both hands. The County Court Judge held that he was riding in the train in the course of his employment, and therefore, although he was guilty of wilful misconduct, the injury being permanent, he was entitled to compensation:—*Held* (Buckley, L.J., dissenting), that this decision must be affirmed. *Per* Buckley, L.J.: The accident was caused by a peril which did not arise out of the employment, but from an added peril to which the workman by his own conduct exposed himself. *Watkins* v. *Guest, Keen & Nettlefolds*, 106 L. T. 818; [1912] W.C. Rep. 151—C.A.

Workman in Course of Employment Walking on Railway instead of on Road.]—A canal overseer, having occasion, in the course of his employment, to walk from a railway station to his office on the banks of the canal, proceeded thither along the railway line, where, at a narrow and dangerous spot, he was knocked down and killed by a passing train. There was no necessity for the deceased to go along the railway line, for he could have proceeded to his office by the public road, the distance being only slightly longer. He had no right to walk on the railway line, and had been warned by one of his superiors not to do so:—*Held*, that, although the accident arose "in the course of" the employment, it did not arise "out of" the employment. *M'Laren* v. *Caledonian Railway*, [1911] S. C. 1075—Ct. of Sess.

Dangerous Act Committed in Breach of Rules—Railway Porter Jumping on to Footboard of Incoming Train.]—A railway porter, whose duty it was to unload passengers' luggage, was seriously and permanently injured by falling on to the rails while attempting to jump on to the footboard of an incoming train in order to be ready to remove the luggage as quickly as possible when the train stopped. This act was in breach of the company's rules, a copy of which the porter had received but had not read, and he had been reprimanded by the station master for doing the same thing on previous occasions: —*Held*, that the accident arose out and in the course of his employment. *M'William* v. *Great North of Scotland Railway*, [1914] S. C. 453; [1914] W.C. & I. Rep. 135—Ct. of Sess.

Message Clerk Injured while Boarding Tramcar in Motion.]—A boy, employed as a message clerk, was sent on an errand and given money to pay for his tramway fare. While attempting unnecessarily to board a tramway car in motion—which, as he knew, was forbidden—he fell and was injured:—*Held*, that the accident did not arise out of the boy's employment. *Symon* v. *Wemyss Coal Co.*, [1912] S. C. 1239; [1912] W.C. Rep. 336—Ct. of Sess.

Message Boy Injured while Using Hoist against Orders.]—A message boy was employed by a fishmonger to deliver fish at the kitchen of an infirmary situated on the third storey of the building. The ordinary means of access to the kitchen was a stair, but there

was also a hoist, with, however, a notice, publicly displayed, announcing that it was to be used only by servants of the institution and worked only by those authorised by the directors. The message boy, when on his way to deliver fish at the infirmary, found the gate of the hoist standing open, entered the hoist and set it in motion, and his foot was jammed between the floor of the hoist and the wall, and injured. He knew he was doing wrong in using the hoist, for on several previous occasions, and in particular on the evening before the accident, the porter had seen him making his way to the hoist, and had rebuked him and forbidden him to use it, and sent him up the stair :—*Held*, that the accident did not arise out of and in the course of the boy's employment. *M'Daid* v. *Steel*, [1911] S. C. 859—Ct. of Sess.

Bookkeeper in Course of Employment Killed in Crossing Railway Line at Station—Risk Increased by Defiance of Rules.]—A bookkeeper and manager employed by a builder had in the course of his employment to travel daily a short distance by train to a station near which his employer lived, and where his work lay. On arrival, in order to save time, instead of using the footbridge provided for passengers, he used to cross the line on the level. The rules of the company prohibited this practice, but they were not enforced by the station master, and it was adopted by many other people, including the employer himself. One day, in so crossing the line, the workman was knocked down and killed by an express train :—*Held*, that the accident did not arise out of the employment. *Pritchard* v. *Torkington*, [1914] W.C. & I. Rep. 271; 111 L. T. 917; 58 S. J. 739—C.A.

Coal Mine—Explosion—Miner's Breach of Order.]—A fireman discovered a dangerous accumulation of gas in an "upset" in a mine, and accordingly placed a fence across the entrance with the words "No road up here" chalked upon it. A miner, for the purpose of getting a pick which had been left in the upset and which he required for his work, crossed the fence with a naked light in his cap, entered the upset, and was killed by an explosion of gas. The miner, who had been in conversation with the fireman and had watched him erecting the fence, had been told not to enter the upset and understood that there was a dangerous accumulation of gas there, besides being well aware of a special rule in force in the mine forbidding miners to pass any fence :—*Held*, that the accident arose out of and in the course of the deceased's employment. *Conway* v. *Pumpherston Oil Co.*, [1911] S. C. 660—Ct. of Sess.

Observations on disobedience to an order as affecting the question whether an accident arises "in the course of" the employment. *Ib.*

Miner Endeavouring to Fire a Blast Contrary to Rule.]—A miner was employed in a pit in which the use of explosives was regulated by certain rules which provided *(inter alia)*—First, that every charge should be fired by a competent person appointed in writing for this duty; and secondly, that detonators should be under the control of a person specially appointed in writing, and should be issued only to shot firers. The mine owners had in writing duly appointed a shot firer, and had also appointed him to have the control of the detonators. In the absence of the shot firer the miner, who had in the course of his employment been preparing a shot for firing, and who had in his possession a detonator, which, however, he had not obtained from the shot firer, determined to fire the shot himself, and inserted the detonator in it for that purpose. The insertion of detonators was usually performed by the miners and not by the shot firer. When the miner attempted to ignite the fuse the shot exploded prematurely and killed him, the cause of the explosion being an accidental ignition of the fuse prior to the miner's attempt to ignite it :—*Held*, that the accident happened while the miner was arrogating to himself a duty which he was neither engaged nor entitled to perform, and accordingly that it did not arise out of and in the course of the employment. *Kerr* v. *Baird*, [1911] S. C. 701—Ct. of Sess.

—— Miner Taking upon Himself Duty not Intrusted to Him.]—A repairer was engaged in making repairs on an air course in a mine, and it was necessary for him to bring wood to that place for the purpose. This could be done by hauling the wood up the air course, or by taking it up in hutches by a wheel brae, and the repairer was directed to take it up by the air course and not by the wheel brae. The wheel brae was worked by gravity, an empty hutch or a hutch loaded with wood being pulled up by a descending hutch loaded with coal. At the foot of the wheel brae was posted a "hanger on" to whose sole charge was entrusted the duty of attaching hutches there and of giving the necessary signals to the man at the top, who then set the hutches on the wheel brae in motion. The hanger on had attached an empty hutch and had given the appropriate signal to the man at the top, and then temporarily left the foot of the brae to wheel out a full hutch. In his absence the repairer loaded the empty hutch in an unskilful manner with wood, and the man at the top, having already received the necessary signal, attached a full hutch and started the wheel. The chain broke, and the repairer was struck by the descending full hutch and killed :—*Held*, that the repairer was killed while arrogating to himself a duty which he was neither engaged nor entitled to perform, and accordingly that the accident did not arise out of his employment. *Kerr* v. *Baird & Co.* ([1911] S. C. 701) followed. *Burns* v. *Summerlee Iron Co.*, [1913] S. C. 227; [1913] W.C. & I. Rep. 45—Ct. of Sess.

Miner Connecting Detonator Wire to Cable —Unauthorised Act.]—An injury to a workman by an accident caused by his arrogating to himself duties which he was not called on to perform, and had no right to perform, does not arise out of his employment, if the efficient cause of the accident is connected with the arrogation of unauthorised duty by the work-

man. But where the authorised "shot firer" in a mine allowed a workman to connect the detonator wire with the electric cable, which he ought not to have allowed, and then himself connected the cable with the battery, and fired the shot prematurely, whereby the workman was injured,—*Held*, that the injury did not arise out of illicit and unauthorised action of the workman, and that he was entitled to recover compensation as for an injury by accident arising out of and in the course of his employment. *Smith* v. *Fife Coal Co.*, 83 L. J. P.C. 359; [1914] A.C. 723; 111 L. T. 477; 58 S. J. 533; 30 T. L. R. 502—H.L. (Sc.)

Judgment of the Court of Session in Scotland ([1913] S. C. 662; [1913] W.C. & I. Rep. 313) reversed. *Ib.*

Miner—Sphere of Employment—Serious and Wilful Misconduct.]—The deceased workman was a collier and was employed with another man to drill a hole from above into a stall below to let out the gas in the stall. The entrance to the stall from below had been blocked with boards to shew that it was unsafe to enter. The drill had been driven some time without reaching the stall, and the deceased asked an overman if he might go into the stall from below in order to judge from the sound if the drill was being driven in the right direction, and the overman forbade him to do so. Notwithstanding this, the deceased entered the stall and was suffocated by the gas:—*Held* (Cozens-Hardy, M.R., and Kennedy, L.J.; Buckley, L.J., *dissentiente*), that the accident arose out of and in the course of the employment, and that the dependants were entitled to compensation under the Workmen's Compensation Act, 1906. *Harding* v. *Brynddu Colliery Co.*, 80 L. J. K.B. 1052; [1911] 2 K.B. 747; 105 L. T. 55; 55 S. J. 599; 27 T. L. R. 500—C.A.

Collier Killed while Riding in Tub—Prohibition against, without Permission of Manager or Underlooker.]—A collier met his death while riding in a tub at the conclusion of his mining work in the night shift. There was a rule at the employers' colliery to the effect that no person should ride any animal, tub, or waggon except when permitted by the manager or underlooker. There was no proof that the deceased had ever been furnished with a copy of that special rule, or that his attention had ever been called thereto by any one in authority. Moreover, there was no evidence that the deceased knew that he was doing wrong in travelling as he did in the tub. The fireman was the only person who could be regarded as the official in charge of the mine at night. The manager never went down the mine, and the underlooker seldom went down—three or four times a year. In the case of the night shifts when the tubs were going up to a large extent empty, the general practice of the workmen leaving the night shift in order to return to their homes, was to ride in the tubs in the particular part of the mine where the accident to the deceased occurred, and to do so with the acquiescence and tacit permission of the fireman:—*Held*, that the effect of the acquiescence and tacit permission given by the fireman—who was the proper person to give permission when permission was required—to a collier who was not proved to have seen or even known of the existence of the rule in question, and who had acted in accordance with that which was the universal custom in the mine, was sufficient; and that to suggest that an individual collier was to ascertain the authority of the fireman was altogether unreasonable, and therefore that it was a case in which the employers must be taken through their official in charge to have "winked at" the non-observance of the rule; and that therefore it was not such an unauthorised act on the part of the collier as to disentitle his dependant to compensation. *Barnes* v. *Nunnery Colliery Co.* (81 L. J. K.B. 213; [1912] A.C. 44) distinguished. *Richardson* v. *Denton Colliery Co.*, [1913] W.C. & I. Rep. 554; 109 L. T. 370—C.A.

A miner on leaving his work jumped on to a hutch for the purpose of getting a ride to the pit bottom, and was injured by reason of his doing so. By a special rule in force in the mine, of which the miner was aware, miners were forbidden to ride on hutches:—*Held*, that the injury was not caused by an accident arising "out of" the employment. *Kane* v. *Merry & Cunninghame*, [1911] S. C. 533—Ct. of Sess.

A boy of seventeen travelled in a tub drawn by an endless rope along a level in a mine and was fatally injured. The use of the tubs was forbidden both by notice in the mine and by a special rule of the colliery:—*Held*, that the accident did not arise out of the deceased's employment within the meaning of section 1, sub-section 1 of the Workmen's Compensation Act, 1906. *Barnes* v. *Nunnery Colliery Co.*, 81 L. J. K.B. 213; [1912] A.C. 44; 105 L. T. 961; 56 S. J. 159; 28 T. L. R. 135; [1912] W.C. Rep. 90—H.L. (E.)

iii. *Industrial Diseases.*

See also Vol. IX. 2179.

Process of Mining—Surface Labour.]—A man employed at the pit-head of a colliery as a surface labourer,—*Held*, not to be employed in the process of "mining" in the sense in which that expression is used in relation to industrial diseases in the Workmen's Compensation Act, 1906. *Scullion* v. *Cadzow Coal Co.*, [1914] S. C. 36; [1914] W.C. & I. Rep. 129—Ct. of Sess.

Disablement "the happening of the accident"—Claim by Workman who has Left Employment Prior to Date of Disablement.]—Section 8 of the Workmen's Compensation Act, 1906, which makes disablement by industrial disease equivalent to injury by accident for purposes of compensation, contains a proviso that "the disablement . . . shall be treated as the happening of the accident":—*Held*, that the proviso merely fixes the date of disablement as the date from which the compensation is payable, and does not have the effect, where the workman has left the employment prior to the date of the disablement, of excluding a claim for compensation on the ground that the accident did not happen in the course of the employment. *Neary* v.

Russell, Lim., [1915] S. C. 672; [1915] W.C. & I. Rep. 201—Ct. of Sess.

Eczematous Ulceration—Disease Contracted in Service of One Employer — Recurrence on Subsequent Employment by Another — Susceptibility to Disease—Liability of Successive Employers.]—A workman contracted, in 1910, an industrial disease while engaged in building work in the employment of certain employers. He left their service to obtain work of another character. In January, 1913, he engaged in the same sort of work which had caused the disease, with Messrs. M., and the disease returned. He left their employment after working for a few days and received compensation from them down to March, 1913, when he had recovered from the disease. He then undertook other work, but in June, 1914, he went back to the same sort of work, and got employment with S. & M., and the disease reappeared, and he had to abandon the job. He claimed compensation from Messrs. M. on account of the injury sustained in January, 1913. The County Court Judge found that, although he had recovered from the attack of January, 1913, the susceptibility to the disease continued, and he awarded compensation to be paid by Messrs. M. :—*Held*, that *prima facie* the workman was entitled to recover compensation from S. & M. as his last employers, who ought to have been respondents and might have set up, under section 8, sub-section 1 *(i) (c) (ii)*, that other employers were liable, but that it was not open to him to make a claim and recover compensation from Messrs. M., as it was not shewn that his susceptibility to the disease was contracted while in their employment. *Timpson* v. *Mowlem & Co.*, 84 L. J. K.B. 1449; [1915] W.C. & I. Rep. 219; 112 L. T. 885—C.A.

Lead Poisoning—Last Employer—Burden of Proof—"At or immediately before the date of the disablement."]—Where a claim for compensation is made by the dependant of a workman who has died from a disease mentioned in the Third Schedule to the Workmen's Compensation Act, 1906, against an employer by whom he has been employed within twelve months previous to the date of his death in a process, the nature of which is such as to cause the disease, the applicant proceeding under section 8, sub-section 1, must prove that the disease was in fact caused or aggravated by that employment, and it is not enough merely to shew that the employment was one of a nature or kind in which the disease might be caused. *Dean* v. *Rubian Art Pottery, Lim.*, 83 L. J. K.B. 799; [1914] 2 K.B. 213; [1914] W.C. & I. Rep. 147; 110 L. T. 594; 58 S. J. 302; 30 T. L. R. 283 – C.A.

A workman who was already suffering from advanced lead poisoning worked for 8½ days only for the respondents in March and April, 1913, in a lead process, leaving their employment on April 19. He died on May 15, 1913, as a result of lead poisoning :—*Held*, that under section 8, sub-section 1, the workman's dependants, in order to recover compensation from the respondents, must shew that the death was due to lead poisoning arising out of the employment with the respondents. *Held*, also, that the burden of proof could not be shifted on to the respondents under sub-section 2 of section 8, as April 19, when the workman was last employed by the respondents, was not "at or immediately before" his death on May 15. *Ib.*

A miner was employed by A between January 28 and April 16, 1913. From April 16, 1913, till January 27, 1914, he was out of employment owing to an injury to his leg. Having recovered from that injury he entered the employment of B on January 27, 1914. He worked in that employment on that day and the following day, but did not return to his work after January 28, 1914, owing to trouble with his eyesight. He was afterwards certified to be suffering from miner's nystagmus, the disablement being found to date from January 28, 1914. In an arbitration in which the miner claimed compensation from B, the Sheriff-Substitute held that the disease was in part due to the nature of the workman's employment before January 28, 1914, and in part due to the nature of his employment between January 28, 1913, and April 16, 1913, and on January 27 and 28, 1914; and he awarded compensation :—*Held*, that it was not necessary for the workman, in order to succeed in his application, to prove either—first, that the disease was due to any particular thing done to or suffered by him on the two days he was in the employment of B; or secondly, that it was solely due to the nature of his employment during the period of twelve months prior to his disablement to the exclusion of any previous period; and award upheld. *Dicta* in *Dean* v. *Rubian Art Pottery* (83 L. J. K.B. 799; [1914] 2 K.B. 213) commented on. *M'Gowan* v. *Merry & Cunninghame, Lim.* [1915] S. C. 34—Ct. of Sess.

Observations *(per* Lord Johnston and Lord Skerrington) as to the meaning of the term "employment" in section 8 of the Workmen's Compensation Act, 1906. *Ib.*

A miner obtained from a certifying surgeon a certificate that he was disabled for work by miner's nystagmus, which is one of the diseases scheduled to the employment of mining. For eight months prior to the date of disablement he had been out of employment, having been incapacitated, while working as a miner, by an accident, which, however, was not proved to have caused or accelerated the nystagmus. The miner having claimed compensation from the employer with whom he was last employed—that is, eight months before the disablement,—*Held*, that the employment was not "at or immediately before the date of disablement" in the sense of sub-section 2 of section 8 of the Workmen's Compensation Act, 1906, and consequently, that the miner was not entitled to the benefit of the statutory presumption that his disease was due to the nature of his employment, but that the onus was upon him to prove that it was so. *M'Taggart* v. *Barr*, [1915] S. C. 224; [1915] W.C. & I. Rep. 335—Ct. of Sess.

"Due to the nature of any employment" —Disease "contracted."]—Observations *(per* Lord Skerrington) on the interpretation to be put on the words "due to the nature of any

employment," and the word "contracted," used in section 8 of the Act with regard to industrial diseases. *Ib.*

Liability of Recurrence after Recovery—Increased Susceptibility—Congenital Defect—Onus of Proof.—A miner who had been incapacitated by an industrial disease, and had been paid compensation, completely recovered, and the compensation was stopped. He then applied for an award as being partially incapacitated owing to increased susceptibility from having once had the disease, and adduced medical evidence to this effect. There was unanimous medical evidence, however, that such susceptibility was also due to a congenital defect from which he suffered. The County Court Judge held there was no incapacity, and dismissed the application:—*Held*, that there was no misdirection. *Jones* v. *Guest, Keen & Nettlefolds, Lim.*, [1915] W.C. & I. Rep. 508; 60 S. J. 75—C.A.

Nystagmus—Liability to Recurrence—Loss of Employment—"Sequelæ" of Disease.]—Where a workman who has suffered from nystagmus—an industrial disease within section 8 of the Workmen's Compensation Act, 1906—has recovered from the disease, but is proved to be under an increased susceptibility to a recurrence of the same complaint, whereby he loses employment, he is entitled to compensation under the Act. Such susceptibility is not a "*sequela*," but a result of the disease. *Dicta* of the Court in *Jones* v. *New Brynmally Colliery Co.* ([1912] W.C. Rep. 281) followed. *Garnant Anthracite Collieries* v. *Rees*, 81 L. J. K.B. 1189; [1912] 3 K.B. 372; 107 L. T. 279; [1912] W.C. Rep. 396—C.A.

Where there was no evidence that miner's nystagmus—an "industrial disease" within the meaning of section 8 of the Workmen's Compensation Act, 1906—from which a collier had been suffering, due to the nature of the employment in which he had been employed, but from which he had entirely recovered, rendered him more liable to the danger of a recurrence of that disease rather than that he possessed a physical susceptibility to the disease not common to all colliers, it was *held* that there was not sufficient evidence to support an award for compensation under section 1 of the Act because his employers would not permit him to work for them underground again. *Jones* v. *New Brynmally Colliery Co.*, 106 L. T. 524; [1912] W.C. Rep. 281—C.A.

Decision of Medical Referee Final—Form of Certificate.—The order of a medical referee, allowing an appeal against the refusal of a certifying surgeon to give a certificate of disablement to a workman in respect of an industrial disease and fixing the date of the man's disablement, is a sufficient certificate for the purpose of proceedings for compensation under section 8 of the Workmen's Compensation Act, 1906; and it is a final and conclusive finding for the purposes of these proceedings that the workman has suffered from the industrial disease, and has been thereby disabled from the date of disablement to the date of the hearing before the certifying surgeon from earning full wages at the work at which he was employed. *Chuter* v. *Ford & Sons, Lim.*, 84 L. J. K.B. 703; [1915] 2 K.B. 113; [1915] W.C. & I. Rep. 104; 112 L. T. 881; 31 T. L. R. 187—C.A.

Act Incorporated in Scheme.]—The rules of a contracting-out scheme which had been duly certified by the Registrar of Friendly Societies provided that it was intended to be in substitution for the Employers' Liability Act, 1880, the Workmen's Compensation Act, 1906, and common law liability, and was intended to provide a fund for the payment of compensation to any member of the scheme in respect of personal injury caused by accident arising out of or in the course of such member's employment:—*Held*, that the word "accident" must be read in the sense in which it is used in the Workmen's Compensation Act, 1906, and as therefore including disablement owing to industrial disease, and that the sections of the Act of 1906 dealing with the recovery of compensation for industrial disease must be read into the scheme. *Horn* v. *Admiralty Commissioners*, 80 L. J. K.B. 278; [1911] 1 K.B. 24, distinguished. *Leaf* v. *Furze*, 83 L. J. K.B. 1822; [1914] 3 K.B. 1068; [1914] W.C. & I. Rep. 601; 111 L. T. 1100—D.

III. PERSONS ENTITLED TO CLAIM COMPENSATION.

a. Workmen.

i. *Generally.*

See also Vol. IX. 2145.

Sea Voyage to Place of Work—Loss of Ship—Death of Servant—Compensation—Member of Ship's Crew.]—The Workmen's Compensation Act, 1906, has no application in the case of an accident happening on a British ship on the high seas unless the accident happens to a member of the crew within the provisions of section 7 of the statute. *Schwartz* v. *India-rubber, Gutta-percha, and Telegraph Works, Lim.*, 81 L. J. K.B. 780; [1912] 2 K.B. 299; 106 L. T. 706; 28 T. L. R. 331; [1912] W.C. Rep. 190—C.A.

An electrical engineer was engaged by an English company to do certain electrical work for them in Teneriffe, and whilst on his way in a British ship to perform his duties—his fare being paid by his employers, as well as his wages during the voyage—the ship in which he travelled was lost in the Bay of Biscay, and he was presumed to have been drowned:—*Held*, that his widow was not entitled to recover compensation under section 1 of the Workmen's Compensation Act, 1906, inasmuch as the Act only applies to cases of employment within the ambit of the United Kingdom, unless the person injured is a member of the crew of a British ship within the meaning of section 7 of that Act, whereas the deceased man did not come within the provisions of that section. *Ib.*

Employment of a Casual Nature—Jobbing Gardener.]—A man who described himself as

a jobbing gardener was employed at a daily wage in lopping trees and doing other work in a private garden for a period which had lasted five weeks, when he was incapacitated by accident :—*Held*, in a claim for compensation, that he was not a "workman" within the definition of the Act, as his employment was of a casual nature. *Knight* v. *Bucknill*, [1913] W.C. & I. Rep. 175; 57 S. J. 245—C.A.

Meters and Weighers Licensed by Conservancy Board under Statutory Powers—Meter Weighing for Steamship Company.]—A conservancy board under statutory provisions appointed and licensed a body of meters and weighers for their port. The board derived no pecuniary profit from their services. Only licensed meters and weighers could be employed in the port. They could be dismissed by the board. They were sent in rotation to persons desiring their services. Such persons paid for their services according to a fixed scale through the meters office of the board, and not directly. Such persons entirely controlled the actual work done, and could, if dissatisfied with a meter, dismiss him and ask for another licensed meter, but otherwise they had no power of selection and dismissal. A steamship company required a meter to weigh cotton cake on their steamer in the port. Weighing of cotton cake in the port was not compulsory, but the company wished it done there. In the course of his employment the meter sent by the board met with an accident. He claimed compensation from the company :—*Held*, that there was evidence to justify the County Court Judge in finding that the meter was a "workman" and that the company were his "employers" within section 13 of the Workmen's Compensation Act, 1906, and therefore liable to pay him compensation. *Wilmerson* v. *Lynn and Hamburg Steamship Co.*, 82 L. J. K.B. 1064; [1913] 3 K.B. 931; [1913] W.C. & I. Rep. 633; 109 L. T. 53; 57 S. J. 700; 29 T. L. R. 652—C.A.

"Member of employer's family dwelling in his house"—Son Paying Board—Accident Occurring while Temporarily Absent on a Job.]—A glazier, aged twenty-six, was employed as an ordinary workman by, and lived with, his father in Glasgow, paying board and lodging. While engaged on a job for his father in Oban, where he lived in lodgings, he was accidentally injured. The son claimed compensation from his father, maintaining that being forisfamiliated he was not "a member of the employer's family," within section 13 of the Workmen's Compensation Act, 1906, and further, that, being absent at Oban, he was not "dwelling in his house" within that section :—*Held*, that at the time of the accident he was "a member of the employer's family dwelling in his house," and accordingly was not a "workman" entitled to compensation. *M'Dougall* v. *M'Dougall*, [1911] S. C. 426—Ct. of Sess.

Inmate of Charitable Institution Receiving Monthly Payments in Course of Industrial Training.]—A blind pauper was injured while working in the industrial department of a charitable institution. The department, which supplied industrial training to blind persons, was not self-supporting, but depended partly on charitable aid. On account of the pauper the institution received 14*l.* 8*s.* per annum from his parish, and 20*l.* per annum from a charitable fund, and, on the other hand, supplied him with his board, lodging, and clothing, and paid him 5*s.* a month :—*Held*, first, that the pauper was a "workman" within the Workmen's Compensation Act; and secondly, that as the monthly payments to such blind persons were supposed, in the institution, to represent 20 per cent. of their average earnings, the compensation fell to be calculated on that basis. *MacGillivray* v. *Northern Counties Blind Institute*, [1911] S. C. 897—Ct. of Sess.

Captain of Barge.]—The owner of a sailing barge having arranged for the freight payable for a cargo on a certain voyage, appointed a man to act as captain of the vessel, giving him instructions where he was to go and what he was to do. The captain received a share of the net freight. During the voyage the captain was injured by accident :—*Held*, that the relation of master and servant existed between the owner of the barge and the captain, the latter being a "workman" who had entered into a "contract of service" with an employer within the meaning of section 13 of the Workmen's Compensation Act, 1906; and that therefore he was entitled to claim compensation under that Act. *Boon* v. *Quance* (102 L. T. 443) distinguished. *Smith* v. *Horlock*, [1913] W.C. & I. Rep. 441; 109 L. T. 196—C.A.

Employee of Board of Guardians Appointed Subject to Approval of Local Government Board.]—A workman employed by a board of guardians who have the right of directing him in his work and of dismissing him at their own pleasure, and who are liable to pay his wages, is a servant of such board within the Workmen's Compensation Act, 1906, although the appointment of such workman by the board of guardians, and the amount of his wages, require the approval of the Local Government Board. *Doran* v. *Waterford Union Guardians* (37 Ir. L. T. Rep. 158) approved. *Murphy* v. *Enniscorthy Union Guardians* ([1908] 2 Ir. R. 609) and *National Insurance Act*, 1911, *In re; Officers of South Dublin Union* ([1913] 1 Ir. R. 244) distinguished. *Finlay* v. *Tullamore Union*, [1914] 2 Ir. R. 233—C.A.

Harvesting—Payment in Beer and Supper—No Money Payment.]—A quarryman after his day's work was done assisted a farmer in carrying hay, and while so occupied fell from a cart and injured his spine. He was in the habit of rendering such services to the farmer for beer, or beer and supper, but he received no money payments :—*Held*, that there was no contract of service within section 13 of the Workmen's Compensation Act, 1906, and that if there was such a contract, it was illegal under the Truck Acts, 1831 and 1887. *Kemp* v. *Lewis*, 83 L. J. K.B. 1535; [1914] 3 K.B. 543; [1914] W.C. & I. Rep. 512; 111 L. T. 699—C.A.

Hop Picker—Domestic Servant on Holiday.]—The applicant, who was a girl of seventeen years of age and was in domestic service, arranged to go hop picking with her aunt during her fortnight's summer holiday. The aunt kept house for the applicant's father, and was employed by the respondent to pick hops for him at 1*s.* for six bushels. Besides the applicant she took with her the applicant's six brothers and sisters, who were of ages varying from twelve months to fifteen years. They were accompanied by a neighbour and her family, and the aunt and neighbour shared a crib which was divided into two parts. The crib stood in their two names, and each was paid for the hops collected into her share of the crib. On the last day of her fortnight's holiday the applicant met with an accident while hop picking, and she claimed to recover compensation under the Workmen's Compensation Act, 1906, from the respondent. Three matters were mainly relied on as proving a contract of service between her and the respondent. First, she gave evidence that at an interview between her aunt and the respondent, at which she was present, she heard the respondent tell her aunt that he would engage her (the applicant). In cross-examination she admitted, however, that she did not remember exactly what happened then, and it appeared that the respondent did not come to an agreement with the aunt until a subsequent date. Secondly, on reaching the hop garden, the applicant and her aunt and a sister fifteen years of age went to the respondent's farm to get bedclothes for the family, and their names were taken as the persons responsible for what each received. Thirdly, some days after the hop picking commenced the three of them saw the respondent with regard to hiring money. The farmer gave the aunt 1*s.* for herself, and she then asked for 6*d.* for each of the two girls, and, on being given two sixpences, handed one of them to the applicant, who, however, told her aunt to keep it towards her food. It appeared from the evidence that it was usual to give a hop picker 1*s.* hiring money, and that, when she brought with her children who had come to an age when their work would be really useful, she also received 6*d.* for each of them:—*Held*, that there was no evidence to support a finding that the relationship of servant and employer existed between the applicant and the respondent. *Richards* v. *Pitt*, 84 L. J. K.B. 1417; [1915] W.C. & I. Rep. 417; 113 L. T. 618—C.A.

Employment "for the purposes of the employer's trade or business"—Farmer—Man Specially Employed to Cut Hedge.]—The garden of a labourer was separated from the adjoining land of a farmer by a hedge on the land of the farmer, and the labourer complained of the height of the hedge. The farmer agreed with the labourer that the latter should cut the hedge and he would pay him 10*s.* for doing it, the farmer to have the poles from the hedge to use in his hopfield. While cutting the hedge the labourer met with an accident:—*Held*, that the employment, though of a casual nature, was for the purpose of the farmer's trade or business, and the labourer was a "workman" within the Workmen's Compensation Act, 1906. *Tombs* v. *Bomford*, 106 L. T. 823; [1912] W.C. Rep. 229—C.A.

"Person whose employment is of a casual nature"—Regular Seasonal Employment.]—A labourer who had been regularly employed every year for many years to work in the woods on a gentleman's estate during the season for this work, which lasted some two months, for the season, at a weekly wage, was injured by accident in this employment:—*Held*, that the employment was not of a casual nature, and that the man was a "workman" within section 13 of the Workmen's Compensation Act, 1906, and was entitled to compensation under the Act. *Smith* v. *Buxton*, 84 L. J. K.B. 697; [1915] W.C. & I. Rep. 126; 112 L. T. 893—C.A.

Workman Engaged by Different Masters in a Common Employment—Interchange of Work with Knowledge and Permission of Employers—Custom of Port—Unloading Collier.]—Four men were engaged in the unloading of a collier. Three of these, a tipper and two winchmen, were employed by the shipowner; the fourth, a barrow man, was employed by the coal merchant who chartered the ship. The tipper got tired of his work and asked the barrow man to exchange work with him, which was done, the barrow man tipping the tubs of coal as they were hoisted from the hold into the barrow and the tipper wheeling off the barrow when full. While the barrow man was thus occupied in tipping he was accidentally knocked into the hold by a tub and was killed. The three surviving workmen proved that it was the habit of men so employed at the port to interchange work in this manner when unloading colliers, and there was no evidence to the contrary, and the employers did not deny their knowledge of the practice or allege that they prohibited it. There was no other evidence of any custom to interchange work at the port when unloading coal:—*Held*, that no such custom was proved; but that as the four men were at the time of the accident engaged in the common employment of getting the coal from the ship to the premises of the coal merchant the interchange of work was in the nature of a deviation from the workmen's special employment for the benefit and with the sanction of the employer; that the accident arose out of and in the course of the deceased's employment, and that his dependants were entitled to compensation. *Henneberry* v. *Doyle*, [1912] 2 Ir. R. 529; [1912] W.C. Rep. 14—C.A.

Independent Contractor—Agreement by Employer to Give Workman Information Enabling Him to Supplement Earnings—Services of Workman not Temporarily Lent.]—A workman was engaged by the lessee of a theatre to do work which occupied him part of the morning and the whole of each evening. For this he was paid a weekly wage, and given early information as to the movements of theatrical performers, so as to enable him to contract with them for the moving of their luggage to and from the railway station at the beginning and end of each week. While removing luggage in the performance of one of these contracts he met with injury by accident:—

Held, that he was not under the control of the lessee at the time, or temporarily lent to another person, but an independent contractor, and therefore that the accident did not arise out of or in the course of his employment. *Huscroft* v. *Bennett*. [1914] W.C. & I. Rep. 9; 110 L. T. 494; 58 S. J. 284—C.A.

Payment for Some Time—Evidence of Agreement to Pay—Contention that Workman not in Employment—Estoppel.]—E. & Co. were the owners of barges each of which had a captain and mate. E. & Co. appointed the captain, and he, without any interference from E. & Co., appointed the mate, paying him a certain proportion of the amount he received from E. & Co. E. & Co. insured against liability under the Workmen's Compensation Act in respect of all the captains and also in respect of the mates. One of the mates met with an accident on a barge on February 7, 1910. E. & Co. paid him 6*s*. a week for more than six months, and it was admitted that this money came from the insurance company. A correspondence then took place between E. & Co. and a solicitor acting for the mate, which resulted in his being paid 8*s*. a week until May, 1911, it being admitted the money came from the insurance company. The County Court Judge held there was evidence of an agreement by E. & Co. to pay the applicant 8*s*. a week during incapacity, and that they were estopped from contending that at the time of the accident the mate was not in their employment:—*Held*, that the circumstances did not amount to an estoppel: that there had been no agreement by E. & Co. within section 1, sub-section 3, to treat the mate as a servant within the Act, and any such agreement was of no effect as the Act only applied to workmen who came within the definition in section 13. *Standing* v. *Eastwood & Co.*, 106 L. T. 477; [1912] W.C. Rep. 200—C.A.

Incapacity Alleged to be Due to Similar Injury in Previous Employment — Onus of Proof.]—In December, 1908, a workman in the course of his employment felt a severe pain in his right knee on raising from a kneeling position, and on examination it was found that the cartilage was torn. Three years before, while in another employment, he had sustained a wrench to the same knee, which had incapacitated him for some weeks, after which he was able to resume his ordinary work. It was not clear on the evidence whether the later injury was connected with the former, or, if so, to what extent it was so connected. In answer to a claim by the workman for compensation against the firm in whose employment he was in December, 1908, the employers maintained that the incapacity was not due to an accident occurring in the course of his employment with them, but to the original injury:—*Held*, that as the injury in December, 1908, was apparently sustained in the employment of his then employers, the onus was on them to shew that it was really due to the former accident; that they had failed to discharge this onus; and that they were accordingly liable to pay compensation. *Borland* v. *Watson, Gow & Co.*, [1912] S. C. 15—Ct. of Sess.

Effect of Imprisonment of Workman—Continuance of Incapacity Caused by Accident. — A workman who had met with an accident in the course of his employment, and was in receipt of 1*l*. a week compensation from his employers, was convicted of stealing and sentenced to eighteen months' imprisonment with hard labour. The employers stopped payment. The workman claimed compensation. He was still suffering from partial incapacity for work as the result of his accident:—*Held*, that, as the incapacity caused by the accident still continued, the workman, notwithstanding his imprisonment, was entitled to compensation under section 1, sub-section 1 of the Workmen's Compensation Act, 1906. *McNally* v. *Furness, Withy & Co.*, 82 L. J. K.B. 1310; [1913] 3 K.B. 605; [1913] W.C. & I. Rep. 717; 109 L. T. 270; 29 T. L. R. 678—C.A.

Stoker in Mercantile Marine — Member of Royal Naval Reserve.] — *Per* Cozens-Hardy, M.R., and Fletcher Moulton, L.J.: The effect of section 9 of the Workmen's Compensation Act, 1906, is to exempt the Crown from liability under the Act towards persons in the naval or military service of the Crown, and not in any way to affect the position of other persons. *Per* Farwell, L.J.: The effect of section 9 is to exclude the Crown and persons in the naval or military service of the Crown from the operation of the Act, and section 13 must accordingly be read as if the words "other than the Crown" were written into the definition of "employer," and the words "other than persons in the naval and military service of the Crown" were written into the definition of "workman." *Brandy* v. "*Raphael*" *Steamship*, 80 L. J. K.B. 217; [1911] 1 K.B. 376; 103 L. T. 746; 11 Asp. M.C. 541; 27 T. L. R. 127—C.A.

"Remuneration"—Amount of Earnings—Additions to Wages—Bonus—Profits on Sales of Spirits.] — The word "remuneration" in section 13 of the Workmen's Compensation Act, 1906, is used in the same sense as "earnings" in the Act. *Dothie* v. *Mac-Andrew & Co.* (77 L. J. K.B. 388; [1908] 1 K.B. 803) followed. *Skailes* v. *Blue Anchor Line*, 80 L. J. K.B. 442; [1911] 1 K.B. 360; 103 L. T. 741; 55 S. J. 107; 27 T. L. R. 119—C.A.

A steward on a ship received 232*l*. per annum for wages, board and lodging, and other items, also a certain bonus from his employers if everything was satisfactory during the voyage, and also he was allowed to retain profits made by retailing glasses of whisky. *Held* (Fletcher Moulton, L.J., differing), that these items should be taken into account in arriving at the remuneration of the steward, so that if they brought it beyond 250*l*. a year he would not be a "workman" within the Act, and the claim of his widow for compensation on account of his death would fail. *Ib*.

Per Fletcher Moulton, L.J.: The question of "remuneration" must be determined by the contract of service, and not by an *ex post facto* examination of what may have happened under it, and therefore the contingent advantage from the bonus, not being mentioned in

the contract and being a voluntary payment, should not be taken into account. As to the profits by retailing glasses of whisky, there was no evidence of the amount derived from this source which would enable the arbitrator to take such profit into account. *Ib.*

—— **"Average weekly earnings"—Basis of Computation—Deductions for Assistance.**]—A dairyman, who had to "take charge of and manage" for his employer a herd of forty-five cows and heifers "according to instructions" from his employer, and to perform duties connected therewith "as and when required" by his employer, receiving therefor 45*s.* a week with a house and some extras, was assisted in his work by his two sisters, who lived with him, and whom he paid for their assistance, though not under any agreement with them. There was no agreement between him and his employer that he should get or pay for assistance. Upon a claim for compensation for accident in the employment,—*Held*, that the man was a "workman" within section 13 of the Workmen's Compensation Act, 1906, and that, in estimating his "average weekly earnings" under Schedule I. clause 2 of the Act, the value of the sisters' assistance could not be deducted. *Roper* v. *Freke*, 84 L. J. K.B. 1351; [1915] 3 K.B. 222; [1915] W.C. & I. Rep. 377; 113 L. T. 635; 59 S. J. 596; 31 T. L. R. 507—C.A.

—— **Exceeding 250*l.* a Year.**]—The captain of a ship was employed under an agreement dated March 13, 1914, to take command at the rate of wages of 20*l.* per month, and it was provided in the agreement that if he kept the ship free of all damage and claims he was to receive a gratuity of 48*l.* per annum, but that if he failed to do so he was to forfeit the gratuity and have his remuneration reduced to 16*l.* per month. The ship was lost with all hands on April 12, 1914, and the widow applied on behalf of herself and the other dependants of the deceased for compensation under the Workmen's Compensation Act, 1906. In the course of the proceedings the value of the deceased's board and accommodation on his ship was assessed at 45*l.* 10*s.* per annum, and no question arose as to this:—*Held*, that the captain's remuneration did not exceed 250*l.* a year, and that he was therefore a "workman" within section 13 of the Act, and that his dependants were entitled to compensation. *Williams* v. "*Maritime*" (*Owners*), 84 L. J. K.B. 663; [1915] 2 K.B. 137; [1915] W.C. & I. Rep. 97; 112 L. T. 907; 31 T. L. R. 218—C.A.

In determining the remuneration, regard must be had only to the existing agreement and what had happened under it, and seeing that the ship had been lost she had not been kept free of damage, and the deceased's salary must be taken as 16*l.* per month, which, with 45*l.* 10*s.* for board and lodging, was less than 250*l.* a year. So held by Lord Cozens-Hardy, M.R., and Swinfen Eady, L.J. (Phillimore, L.J., *dubitante*). *Per* Phillimore, L.J.: The better course is to estimate the salary having regard to the various possible contingencies; but if this is done the remuneration is still less than 250*l.* a year. *Ib.*

Claim for Death of Seaman—Unregistered Ship—Ship Originally Registered.]—The registration of a ship of thirty-five tons was closed and she sailed as an unregistered ship from Lowestoft for Norway, and on the voyage was lost at sea. Upon claim for compensation by the dependant of a deceased seaman lost with the ship,—*Held*, that the ship was not a British ship within section 2 of the Merchant Shipping Act, 1894, and that no claim could be made under the Workmen's Compensation Act, 1906, s. 7, sub-s. 1. *Mortimer* v. *Wisker*, 83 L. J. K.B. 1245; [1914] 3 K.B. 699; [1914] W.C. & I. Rep. 530; 111 L. T. 732; 30 T. L. R. 592—C.A.

Payments Ended by Arbitrator on Ground of Recovery — Supervening Incapacity — New Application for Compensation—Competency.]—The compensation payable under a recorded agreement to a workman by his employers in respect of injuries received in an accident was ended by an arbitrator on an application for review brought under section 16 of Schedule I. of the Workmen's Compensation Act, 1906, on the ground that the workman had recovered. Subsequently the workman instituted arbitration proceedings under section 1, sub-section 3 of the Act, for an award of compensation, averring that incapacity had again supervened:—*Held*, that the new application was incompetent and that the workman could not again obtain compensation in respect of the accident, the payments having been ended by the arbitrator. *Cadenhead* v. *Ailsa Shipbuilding Co.*, [1910] S. C. 1129—Ct. of Sess.

ii. *Crew of Fishing Vessels.*

Fisherman Partly Remunerated by Share in Earnings.]—A fisherman was employed as the member of the crew of a steam trawler upon a contract of service with the master, representing the owner, under which he received wages at the rate of 30*s.* a week and a commission of 2*d.* per 1*l.* on the gross value of the fish landed under deduction of the cost of carriage. During the only week of his employment his commission amounted to 7*s.*:—*Held* (Lord Dundas dissenting), that he was not remunerated by a share in the profits or the gross earnings of the working of the vessel, and accordingly was not excluded from claiming compensation under the Workmen's Compensation Act, 1906. *Colquhoun* v. *Woolfe*, [1912] S. C. 1190; [1912] W.C. Rep. 343—Ct. of Sess.

A man employed on a fishing vessel who receives, in addition to his food and some other small perquisites, wages at a fixed rate per week, and also poundage on the net profits of the voyage, is a member of the crew of a fishing vessel remunerated by a share in the profits of the working of such vessel within section 7, sub-section 2 of the Workmen's Compensation Act, 1906, and therefore the Act does not apply to him. *Costello* v. *Kelsall*, 82 L. J. K.B. 873; [1913] A.C. 407; [1913] W.C. & I. Rep. 410; 108 L. T. 929; 57 S. J. 609; 29 T. L. R. 595—H.L. (E.)

—— **Share of "stocker"—Loss of Vessel—No Stocker on Board—Contract of Service—Right**

to Stocker by Custom of Port.] — A fishing vessel was lost with all hands a day after leaving port. Compensation was claimed for the death of a seaman on board her. In addition to his wages the deceased was entitled, by the custom of the port, to a share of "stocker." There was no stocker on board the vessel when she went down. She was proceeding to fishing grounds, where on former trips a considerable amount of stocker had been taken :—*Held*, that it was a term of the contract of service that the deceased should be remunerated by a share of stocker, and that he was therefore "remunerated by shares in the profits or the gross earnings" within section 7, sub-section 2 of the Workmen's Compensation Act, 1906, so that his dependants were not entitled to compensation under the Act. *Stephenson* v. *Rossall Steam Fishing Co.*, 84 L. J. K.B. 677; [1915] W.C. & I. Rep. 121; 112 L. T. 891—C.A.

—— Running Agreement — Failure to Shew Correct Remuneration—Right to Prove Correct Amount.]—The failure to insert in a running agreement the correct remuneration of the crew as required by section 400 of the Merchant Shipping Act, 1894, does not preclude the owners of the fishing boat from proving the actual remuneration on an application by a member of the crew for compensation under the Workmen's Compensation Act, 1906. *Burman* v. "*Zodiac*" *Steam Fishing Co.*; *Williams* v. "*Duncan*" *(Owners)*; *McCord* v. "*City of Liverpool*" *(Owners)*, 83 L. J. K.B. 1683; [1914] 3 K.B. 1039; [1914] W.C. & I. Rep. 520; 112 L. T. 58; 30 T. L. R. 651—C.A.

B. was employed as a cook on board a steam trawler and met with an accident arising out of and in the course of his employment. He was taken on as cook at wages of 24*s.* a week, but at the time of his engagement the skipper offered him a share of "stocker" and "liver money," if he worked on deck with the deck hands. "Stocker" is money received from the sale of tails of a fish called the monk, roes, shell fish, and other things taken in the ship's trawl. Liver money is the proceeds of the livers cleaned from fish caught in the trawl. The proceeds were substantial :—*Held*, that B. received the stocker and liver money as part of his remuneration, and therefore that he was remunerated by a share in the earnings of the working of the ship within the meaning of section 7, sub-section 2 of the Act, with the result that he was excluded from the Act and not entitled to compensation. In two other cases the applicants were employed as deck hands on steam trawlers and met with accidents arising out of and in the course of their employment. The applicants in each case occasionally received stocker and liver money in addition to their ordinary wages. The ships were, however, sole-catching vessels, and on such vessels the stocker and liver money were very small in amount. There was evidence that the wages of the crew were increased because of this, and that the crew were free either to keep the livers or throw them overboard. On a voyage of about ten days one of the applicants received 3*s.* as his share of liver money. The applicant in the other case on several voyages received no stocker or liver money. On another voyage he received 6*d.* for stocker, and on another voyage 1*s.* for liver money :—*Held*, that there was evidence on which the County Court Judge could find that the stocker and liver money were treated as matters of no importance and not as part of the earnings of the working of the vessel, and that there was no agreement by which the applicants were to be remunerated by a share of the earnings so as to disentitle them to compensation under the Act. *Ib.*

b. Dependants.

See also Vol. IX. 2154.

Wife Separated from her Husband.]—The respondent was married to a collier in 1881. She left him in 1888 and lived with her parents, with whom her children remained until they grew up. She kept herself in various capacities and never received anything for her support from her husband, who in 1910 met with a fatal accident :—*Held*, that she was neither wholly nor partially dependent upon her husband and was not entitled to compensation. *New Monckton Collieries* v. *Keeling*, 80 L. J. K.B. 1205; [1911] A.C. 648; 105 L. T. 337; 55 S. J. 687; 27 T. L. R. 551—H.L. (E.)

Wife and Infant Children Deserted by Husband.] — In 1909 the ship *Bessie* went down with all hands, and in 1911 the respondent, who was the widow of a mate on the ship, took proceedings against the owners of the ship to recover compensation for her two infant children as dependants of their father. The mate had deserted his wife in 1903, and since then she had supported the children without assistance from him. The County Court Judge held that there was a legal presumption that the children were dependants of the father, and awarded them compensation. There was no evidence at the hearing that they were in fact dependants, but the decision of the House of Lords in *New Monckton Collieries, Lim.* v. *Keeling* (80 L. J. K.B. 1205; [1911] A.C. 648) had not then been pronounced :—*Held*, applying the decision in that case, that the dependency was a question of fact, and that there was no legal presumption of dependency in the case of infant children. And *held* (Fletcher Moulton, L.J., dissenting), that in the absence of evidence to support a finding that the children were "wholly or in part dependent upon the earnings of the workman at the time of his death," the appeal against the award must be allowed. *Per* Fletcher Moulton, L.J. : The proper course was to remit the case to the County Court Judge to be re-heard. *Lee* v. "*Bessie*" *(Owners)*, 81 L. J. K.B. 114; [1912] 1 K.B. 83; 105 L. T. 659; 12 Asp. M.C. 89; [1912] W.C. Rep. 57—C.A.

Decree for Aliment—Evidence.]—The question whether the members of the family of a deceased workman are dependent upon him, so as to be entitled to compensation under the Workmen's Compensation Act, 1906, is primarily one of fact, and the point for the

consideration of the arbitrator is whether the right of support possessed by the applicants is of any actual or practical value. Therefore, where a workman had deserted his wife and infant children, and the wife had obtained a decree for aliment in the Sheriff Court, and had arrested his wages under the decree, and he had subsequently removed in order to avoid further proceedings, and his wife had been unable to trace him, though she had endeavoured to do so,—*Held*, that there was evidence that the children were dependants within the meaning of section 13 of the Workmen's Compensation Act, 1906. *New Monckton Collieries, Lim.* v. *Keeling* (80 L. J. K.B. 1205; [1911] A.C. 684) distinguished. *Potts* (or *Young*) v. *Niddrie and Benhar Coal Co.*, 82 L. J. P.C. 147; [1913] A.C. 531; [1913] W.C. & I. Rep. 547; 109 L. T. 568; 57 S. J. 685; 29 T. L. R. 626—H.L. (Sc.)

Decision of the Court of Session ([1912] S. C. 644; [1912] W.C. Rep. 177) reversed. *Ib.*

Children Deserted by Father—Prospects of Future Support.]—Dependency is always a question of fact: and, even where children have been deserted by their father for three years before his death and have received no support from him during that time, they may still be held to be partially dependent upon him if there was a reasonable probability that had he lived he would in the future have contributed to their support. *Dobbie* v. *Egypt and Levant Steamship Co.*, [1913] S. C. 364; [1913] W.C. & I. Rep. 75—Ct. of Sess.

Brothers and Sisters Living in Family.]—*Quære*, whether when a family live together and some of the children work and some do not, and the workers contribute to the family purse, the result in law is that the children who do not work are dependants of those who do. *M'Ginty* v. *Kyle*, [1911] S. C. 589—Ct. of Sess.

Illegitimate Child—Dependency on Mother—Child Maintained Gratuitously by Stranger.]—The mother of an illegitimate child gave it, on its birth, to a woman who had agreed to adopt it without payment. In handing over the child to the woman, the mother stated that she would contribute something to its support, and she subsequently contributed 3*s.* 6*d.* and the materials for a shawl for the child. Apart from this contribution the child was maintained by the woman who had adopted it. Two months after the child's birth the mother was killed through an accident in the course of her employment:—*Held*, that the mother's legal liability to support the child was not in itself sufficient to establish the child's dependency on her, and that, in the circumstances, the child was not wholly or in part dependent upon the earnings of the mother at the date of her death, and was therefore not entitled to compensation. *Briggs* v. *Mitchell*, [1911] S. C. 705—Ct. of Sess.

Illegitimate Posthumous Child—Statements by Deceased Workman—Admissibility.]—The applicant claimed compensation as the posthumous illegitimate child of a workman who was killed by accident arising out of and in the course of his employment:—*Held*, that statements made by the deceased that he intended to marry the mother of the child before its birth were admissible on the issues of paternity and dependency, and that therefore the applicant was entitled to compensation. *Lloyd* v. *Powell Duffryn Steam Coal Co.*, 83 L. J. K.B. 1054; [1914] A.C. 733; [1914] W.C. & I. Rep. 450; 111 L. T. 338; 58 S. J. 514; 30 T. L. R. 456—H.L. (E.)

Decision of the Court of Appeal (82 L. J. K.B. 533; [1913] 2 K.B. 130) reversed. *Ib.*

Partial Dependency — Earnings of Child Killed—Cost of Maintenance—Value of Child's Services Rendered to Parent.]—The question of entire dependency of an applicant for compensation on the earnings of a deceased or disabled workman is wholly a matter of fact to be determined by the arbitrator on consideration of all the circumstances of the case. *Main Colliery Co.* v. *Davies* (69 L. J. Q.B. 755; [1900] A.C. 229) explained and applied. *Tamworth Colliery Co.* v. *Hall*, 81 L. J. K.B. 159; [1911] A.C. 665; 105 L. T. 449; 55 S. J. 615; [1912] W.C. Rep. 79—H.L. (E.)

On an application for compensation by the father of a son who was killed by an accident, the County Court Judge is not precluded from taking into account the cost of the son's maintenance; and secondly, the pecuniary value of the services rendered by the son in the father's business. *Ib.*

Decision of the Court of Appeal, *sub nom. Hall* v. *Tamworth Colliery Co.* (80 L. J. K.B. 304; [1911] 1 K.B. 341), affirmed with a variation. *Ib.*

IV. PERSONS LIABLE TO PAY COMPENSATION.

Whether Relationship of Master and Servant Existed—Owner and Master of Ship—Crew.]—The owners of a small coasting schooner, by written agreement, gave command thereof to K. on the following conditions: K. was to work the vessel on the best paying trade for the benefit of all concerned, receiving for his services two-thirds of all freights carried, out of which he was to pay all crew's wages, victuals of crew, port charges, towages, and all other expenses connected with the working of the vessel; the remaining one-third K. thereby agreed to remit to the owners as "owners' share." If K. had cause to give up command, and so advised the owners, and if requested, K. was to bring the vessel to A. free of charge. While K. was working the vessel under this agreement one of the crew whom he had engaged met with an accident for which he claimed compensation against the owners under the Workmen's Compensation Act, 1906:—*Held*, that, on the true construction of the agreement K. was acting merely as agent for the owners in hiring the crew, and that the relation of master and servant, within the meaning of the Act, existed between the applicant and the owners. *Kelly* v. "*Miss Evans*" (*Owners*), [1913] 2 Ir. R. 385; [1913] W.C. & I. Rep. 418—C.A.

A stevedore's labourer, who had been engaged in discharging a vessel, sued the managing owners of the vessel to recover damages for injuries sustained by him through stepping into an open scuttle, which, as he alleged, had been negligently left uncovered through the fault of the defenders or of those for whom they were responsible :—*Held*, that the defenders, as managing owners, were merely the agents of the registered owners of the vessel, and (there being no averment of personal fault) were not responsible for the accident. *M'Lauchlan* v. *Hogarth*, [1911] S. C. 522—Ct. of Sess.

Principal and Contractor — Obligation on Applicant to Elect which is Sought to be made Liable for Compensation—Award against one, though Partly Fruitless, a Bar to Proceedings against other.]—An applicant who seeks to avail himself of the provisions of section 4 of the Workmen's Compensation Act, 1906, must elect whether he will proceed against the contractor or the principal, their statutory liability for compensation in cases of accident being alternative, and neither joint nor joint and several. Accordingly, where a workman obtained an award against the contractor who employed him, but in consequence of the bankruptcy of the contractor and liquidation of the insuring company was unable to realise more than a small portion of the amount awarded,—*Held*, that he could not subsequently recover the balance of the award from the principal. *Herd* v. *Summers* (7 Fraser, 870) followed. *Meier* v. *Dublin Corporation*, [1912] 2 Ir. R. 129—C.A.

—— Sub-contracting—Execution of Work "in the course of or for the purposes of" Principal's "trade or business."]—Where the owners of a steamship entered into a contract with a contractor to scale the boilers of the vessel, and he engaged certain workmen to do the work, the principals not exercising any control over the workmen, it not being their practice to undertake the scaling of the boilers of their steamships themselves, they always employing an independent contractor to do it, the operation that the contractor had contracted to perform for the principals was held not to be work executed "in the course of or for the purposes of" the principal's "trade or business" within the meaning of section 4, sub-section 1 of the Workmen's Compensation Act, 1906, so that the principals were not liable to pay compensation to one of the workmen who was injured by "accident arising out of and in the course of" his employment. *Spiers* v. *Elderslie Steamship Co.* ([1909] S. C. 1259; 46 Sc. L. R. 893), the reasoning of which was adopted by the Court of Appeal in England in *Skates* v. *Jones & Co.* (79 L. J. K.B. 1168; [1910] 2 K.B. 903), applied. *Luckwill* v. *Auchen Steamship Co.*, [1913] W.C. & I. Rep. 167; 108 L. T. 52; 12 Asp. M.C. 286—C.A.

—— Accident to Member of Gang — Work Undertaken by Principal.]—A company occasionally had goods brought in bulk to their wharf, and in such cases they always employed outside labour to unload the cargo. On September 5, 1914, they were expecting a cargo of sulphur, and employed a riverside labourer, W., to supply a gang to unload it and put it in their warehouse at 1*s.* 6*d.* a ton. On September 7, 1914, the gang came to do the work, and B., a member of the gang, met with an accident in the course of the unloading and broke his leg. It was a common thing among the riverside labourers that one of their number should be employed to collect a gang of men for a job, and the custom was that the gang and ganger should divide what was paid for the job equally, though generally the members of the gang each gave 2*d.* to the ganger. In this case W. had to supply the necessary ladders and tools, and the company provided bags for the sulphur. The company's managing director was present during the unloading to see that no sulphur was spilt and no space wasted in the warehouse in storing it. He gave his orders to W. On an application by B. to recover compensation under the Workmen's Compensation Act, 1906, from the company,—*Held*, that there was no evidence of any contract of service between B. and the company, and also that the company were not liable to pay compensation to B. as principals within section 4, sub-section 1 of the Act, because the contract between the company and W. did not relate to any part of any work undertaken by the company. *Hockley* v. *West London Timber and Joinery Co.* (83 L. J. K.B. 1520; [1914] 3 K.B. 1013; [1914] W.C. & I. Rep. 504) followed. *Bobbey* v. *Crosbie & Co.*, 84 L. J. K.B. 856; [1915] W.C. & I. Rep. 258; 112 L. T. 900—C.A.

—— Contractor Employed on Work not Ordinarily Done by Principal—Work Undertaken by Principal—Work Incidental to Principal's Trade—Accident to Contractor's Workman.]—Work executed by a contractor is not "part of any work undertaken by the principal" within the meaning of section 4, sub-section 1 of the Workmen's Compensation Act, 1906, merely because it is work incidental to, or reasonably necessary for the purposes of, the principal's trade or business. *Hockley* v. *West London Timber and Joinery Co.*, 83 L. J. K.B. 1520; [1914] 3 K.B. 1013; [1914] W.C. & I. Rep. 504; 112 L. T. 1; 58 S. J. 705—C.A.

A company, which carried on business as moulding manufacturers, imported timber for the purpose of their trade, and employed a contractor to load the timber on to carts at their wharves and to unload and stack it on its arrival at their yards. It was necessary to stack the wood for it to become seasoned. The evidence shewed that the company never undertook this work themselves, that it was work requiring strong men with skill and nerve, and that it was the practice in the company's trade to employ contractors to do the work. A workman in the employment of the contractor met with an accident while stacking the company's timber in their yard, and was incapacitated :—*Held*, that the contractor was not employed for the execution of "any part of any work undertaken" by the company within the meaning of section 4, sub-section 1 of the Workmen's Compensation Act, 1906, and therefore that the company

were not liable to pay compensation to the workman under the Act. *Ib.*

No Service of Notice on Principal within Prescribed Time.] — *See Meier* v. *Dublin Corporation*, *post*, col. 1965.

Industrial Disease — Contributions towards Compensation—Calculation thereof—Periods of Time—Working Conditions.]—In determining the contributions to be made by several employers towards compensation paid in respect of an industrial disease under section 8, subsection 1 (*c*) (iii) of the Workmen's Compensation Act, 1906, the arbitrator must take into consideration not only the respective periods of time in each employment, but also the working conditions in the several employments. *Barron* v. *Seaton Burn Coal Co.: East Walbottle Coal Co., Ex parte*, 84 L. J. K.B. 682; [1915] 1 K.B. 756; [1915] W.C. & I. Rep. 132; 112 L. T. 897; 59 S. J. 315; 31 T. L. R. 199—C.A.

V. CONTRACTING OUT.

See also Vol. IX. 2207.

Scheme of Compensation Duly Certified—Jurisdiction of County Court Judge Ousted.]—A workman who has agreed to come under a scheme of compensation which has been certified by the Registrar of Friendly Societies as complying with the conditions required by section 3, sub-section 1 of the Workmen's Compensation Act, 1906, is outside the provisions of the Act altogether. *Horn* v. *Admiralty Commissioners*, 80 L. J. K.B. 278; [1911] 1 K.B. 24; 103 L. T. 614; 27 T. L. R. 84—C.A.

A tinsmith employed in a Government dockyard signed a contract by which he agreed to accept the provisions of a duly certified scheme of compensation in substitution for the provisions of the Act. The scheme provided that when it was established to the satisfaction of the Treasury that the death of a workman had resulted from an injury within the provisions of the Act, remuneration according to the scale therein mentioned should be payable to his dependants. The tinsmith died from lead poisoning and his widow claimed compensation from the Lords Commissioners of the Admiralty. They at first denied liability, but on the hearing of an application by her for arbitration under the Act they admitted liability to pay compensation under the scheme. The County Court Judge made an award in favour of the applicant for the amount admitted to be due:—*Held*, that the deceased had contracted himself out of the Act, that the liability of the employers was to be determined by the scheme solely, and that consequently the jurisdiction of the County Court Judge was entirely ousted. *Ib.*

—— **Re-certification.**]—The object of re-certifying under the Workmen's Compensation Act, 1906, a scheme by which a workman contracts out of the benefit of that Act is to shew that the Registrar of Friendly Societies has looked into the matter, and is satisfied that the scheme conforms with the provisions of the Act which prescribe what it is to contain or is not to contain, and the words of section 15, sub-section 3, are not to be read as referring to the provisions in section 3 as to a ballot of the workmen, which is a condition precedent to a scheme under the Act of 1906 coming into operation, but not to the re-certifying of a pre-existing scheme. *Godwin* v. *Admiralty Commissioners*, 82 L. J. K.B. 1126; [1913] A.C. 638; [1913] W.C. & I. Rep. 680; 109 L. T. 428; 29 T. L. R. 774—H.L. (E.)

It is not an objection to such a scheme that it purports to oust the jurisdiction of the County Court. *Horn* v. *Admiralty Commissioners* (80 L. J. K.B. 278; [1911] 1 K.B. 24) approved. *Ib.*

Judgment of the Court of Appeal (81 L. J. K.B. 532; [1912] 2 K.B. 26; [1912] W.C. Rep. 49) affirmed. *Ib.*

Certified Scheme—Accident during Continuance of Scheme—Termination of Scheme by Revocation of Certificate — Subsequent Claim against Employer — Limit of Employers' Liability.]—A workman can make no claim against his employer under the Workmen's Compensation Act, 1897, in respect of an accident which happened to him during the continuance of a duly certified scheme under section 3 of that Act, of which scheme he was a member, after the scheme has been terminated and its funds exhausted. *Howarth* v. *Knowles*, 82 L. J. K.B. 1325; [1913] 3 K.B. 675; [1913] W.C. & I. Rep. 746; 109 L. T. 278; 57 S. J. 728; 29 T. L. R. 667—C.A.

—— **"Accident"—Industrial Disease—Provisions of Act Incorporated in Scheme.**] — The rules of a contracting-out scheme which had been duly certified by the Registrar of Friendly Societies provided that it was intended to be in substitution for the Employers' Liability Act, 1880, the Workmen's Compensation Act, 1906, and common law liability, and was intended to provide a fund for the payment of compensation to any member of the scheme in respect of personal injury caused by accident arising out of or in the course of such member's employment:—*Held*, that the word "accident" must be read in the sense in which it is used in the Workmen's Compensation Act, 1906, and as therefore including disablement owing to industrial disease, and that the sections of the Act of 1906 dealing with the recovery of compensation for industrial disease must be read into the scheme. *Horn* v. *Admiralty Commissioners* (80 L. J. K.B. 278; [1911] 1 K.B. 24) distinguished. *Leaf* v. *Furze*, 83 L. J. K.B. 1822; [1914] 3 K.B. 1068; [1914] W.C. & I. Rep. 601; 111 L. T. 1100—D.

—— **Determination of Claims for Compensation by Committee of Management — Ouster of Jurisdiction of Court.**]—A scheme made by the defendant company pursuant to section 3 of the Workmen's Compensation Act, 1906, provided that any question with regard to what was an injury within the meaning of that term as used in the scheme should be determined by the committee of management, and that any other question with respect to the scheme should be settled by the committee, whose decision should be final and conclusive. The widow of a workman who met with a

fatal accident claimed compensation, but the committee refused to admit the claim, giving no reasons for their decision :—*Held*, that the decision of the committee was final and ousted the jurisdiction of the Courts, that the only liability of the employer was to pay such sum as under the scheme the committee should find to be payable, and that as the committee had not determined in the plaintiff's favour, she had no cause of action. *Haworth* v. *Knowles* (19 T. L. R. 658) distinguished. *Allen* v. *Great Eastern Railway*, 83 L. J. K.B. 898; [1914] 2 K.B. 243; [1914] W.C. & I. Rep. 388; 110 L. T. 498—C.A.

VI. PROCEEDINGS TO OBTAIN COMPENSATION.

1. Notice of Accident.

See also Vol. IX. 2244.

Verbal Notice — Prejudice.] — A workman met with an accident on a date which was in dispute, but was, according to the workman himself, December 28, 1911. He continued working till January 22, 1912, when he saw the employers' ambulance man and arranged to see a doctor. He said he gave verbal notice of the accident to this man, but this was denied. On February 5, 1912, the workman's mother gave verbal notice of the accident to the employers' cashier. No proceedings to recover compensation were commenced until January 23, 1913. The County Court Judge made his award in favour of the workman :—*Held*, that the verbal notice was not a sufficient notice within the meaning of section 2 of the Workmen's Compensation Act, 1906, and that, as the employers were clearly prejudiced by the delay in giving notice, the award must be set aside. *Coltman* v. *Morrison & Mason, Lim.*, [1914] W.C. & I. Rep. 43—C.A.

Verbal Notice to Sub-contractor—No Notice to Principal for Four Months — Expectation that Sub-contractor would Give Notice—Claim against Principal — Prejudice — Mistake.] — A was building some houses and entered into a contract with B under which B was to do a certain part of the work. A workman employed by B met with an accident. The workman gave verbal notice to B expecting that he would inform A, but he did not do so, and A received no notice of the accident until more than four months after it happened, when the workman served him with a formal notice of it. The County Court Judge held that the claim was prejudiced by want of notice at an earlier date :—*Held*, that the expectation of the workman that B would inform A of the accident did not amount to a "mistake" within section 2, sub-section 1 (*b*) of the Workmen's Compensation Act, 1906, and the workman could make no claim against A. *Griffiths* v. *Atkinson*, 106 L. T. 852; [1912] W.C. Rep. 277—C.A.

Particulars Written Down in Workman's Presence by Mine Official.]—A boy met with an accident while working with his father in a colliery and was unable to resume work for thirteen days. Before leaving the mine on the day of the accident, he and his father gave full particulars of the accident to the manager of the level, who wrote down particulars of it in their presence, in a diary kept by the company on the level for the purpose. Written notice of the accident was not served on the colliery company until the day after the boy resumed work, and there was evidence that, in accordance with the usual practice of the mine, the entry in the diary was not brought to the attention of the officials in charge of compensation claims, so that no doctor was sent to examine the boy's injuries. The County Court Judge found on this evidence that the colliery company had been prejudiced by the delay in giving formal notice of the accident, and refused the boy's application for compensation :—*Held*, that the entry made in the company's book in the presence of the boy and his father constituted a written notice of the accident sufficient to satisfy section 2 of the Workmen's Compensation Act, 1906, and also *held*, that, in any case, the company had not been prejudiced by the delay in delivering the formal notice. *Stevens* v. *Insoles, Lim.*, 81 L. J. K.B. 47; [1912] 1 K.B. 36; 105 L. T. 67; [1912] W.C. Rep. 111—C.A.

Notice Not Given as Soon as Possible.]—The respondent, who was a barber's assistant in the employment of the appellant, began on January 17 to suffer from smarting of the hands, and in February a doctor diagnosed his malady as dermatitis. The respondent continued to work till March 28, when he left. In April the respondent's solicitor wrote to the appellant, claiming damages for injury caused by the use of dangerous dry shampoo. The Judge awarded compensation to the respondent :—*Held*, that there was no evidence of an accident at a definite time and place, and there was no notice as soon as possible after the accident, and the respondent was not entitled to compensation. *Petschett* v. *Preis*, [1915] W.C. & I. Rep. 11; 31 T. L. R. 156—C.A.

—— Delay in Giving Notice — Prejudice — "Mistake . . . or other reasonable cause."]—Where a workman fails to give notice of an accident as soon as practicable merely because he does not realise the extent of the injury he has sustained, the delay in giving notice is not due to "mistake . . . or other reasonable cause" within the meaning of section 2 of the Workmen's Compensation Act, 1906. *Dicta* of Lord Adam in *Rankine* v. *Alloa Coal Co.* (6 Fraser, 375; 41 Sc. L. R. 306) not followed. *Edgerton* v. *Moore*, 81 L. J. K.B. 696; [1912] 2 K.B. 308; 106 L. T. 663; [1912] W.C. Rep. 250—C.A.

A workman met with an accident which caused a swelling of his breast. He resumed work with another employer a few days later. About seven or eight months afterwards his breast began to pain him again, and he realised that the trouble was due to the accident. A few months afterwards his breast had to be operated on for a tubercular abscess. No written notice of the accident was given until about a year from the date of the accident :—*Held*, that the employer must necessarily be prejudiced by the failure to

give notice of the accident for so long a period and that the delay in giving such notice was not due to "mistake . . . or other reasonable cause," within the meaning of section 2 of the Workmen's Compensation Act, 1906, and therefore that the workman was debarred from recovering compensation. *Ib.*

On May 9, 1910, a collector for an insurance company fell on a stair which he had occasion to use in the course of his employment, and sustained injuries. A day or two after the accident, and again on June 8, while he still believed that his injuries were merely of a temporary nature, he gave verbal notice of the accident to the manager of his company, but made no claim for compensation. On June 29 he left the service of the company, and from that date onwards he was incapacitated for work. On September 12, when he had ascertained from medical advice that his condition was much more serious than he had at first supposed, he gave formal notice of the accident to his employers:—*Held*, in the circumstances, that the delay in giving notice was due to "mistake or other reasonable cause" within section 2, sub-section 1 (*a*) of the Workmen's Compensation Act, 1906, and so was not a bar to the maintenance of proceedings for compensation. *Millar* v. *Refuge Assurance Co.*, [1912] S. C. 37—Ct. of Sess.

The applicant, a salesman in the employment of the respondents, was injured on April 3, 1912, by falling from steps while engaged in window-dressing. He continued at work for about two months after the accident, although in continuous pain throughout that time. Ultimately he was incapacitated for work as a result of the accident, and he commenced proceedings claiming compensation under the Workmen's Compensation Act, 1906. Written notice of the accident, as required by section 2 of the Act, was not given till June 3, 1912, but the County Court Judge held that the delay in giving notice was due to a reasonable cause, in that the applicant was able to continue to do his work and did not believe that the injury would result in his having to make a claim for compensation. The County Court judge accordingly made an award in favour of the applicant. The employers appealed:—*Held*, allowing the appeal, that as this was not a case where the injury was not apparent, or a case where the injury was so trivial that it would be absurd to expect a workman to give notice of the accident, but was a case where the applicant was in daily, constant, serious pain, the County Court Judge was wrong in holding that the delay in giving notice of the accident was due to a reasonable cause. *Webster* v. *Cohen*, [1913] W.C. & I. Rep. 268; 108 L. T. 197; 57 S. J. 244; 29 T. L. R. 217—C.A.

In an arbitration under the Workmen's Compensation Act, 1906, the arbitrator found that the claimant alleged that he was injured by an accident on June 1, 1911; that thereafter he suffered from pain in his neck and shoulders, which he attributed to the accident; that on August 5 he consulted a doctor, who diagnosed his trouble as, and treated him for, muscular rheumatism; that on November 11 the claimant left his employment and thereafter was treated for severe strain of the neck; that on December 13 he consulted another doctor, who told him that he was suffering from partial dislocation of the head from the spine, and advised him that his case was dangerous and required treatment in a hospital; that in January, 1912 (that is, after he had left his employment and more than six months after the accident), he for the first time gave notice of the accident to his employers and claimed compensation from them:—*Held*, that as the delay in giving notice and claiming compensation was due to the workman's ignorance of the serious nature of his injury it was occasioned by "mistake or other reasonable cause" within section 2, sub-section 1 of the Act, and so was not a bar to the maintenance of proceedings for compensation. *Ellis* v. *Fairfield Shipbuilding and Engineering Co.*, [1913] S. C. 217; [1913] W.C. & I. Rep. 88—Ct. of Sess.

A workman fell from a stable loft on to his head, and for three days afterwards was unable to work. Upon return to work he suffered continuously from headache, and after some months became incapacitated and seriously ill. No written notice, however, was given until a year after the accident. The County Court Judge found that the failure to give notice was occasioned by mistake or other reasonable cause—namely, the belief that he would soon recover, which lasted until he was too ill to give notice:—*Held* (following *Webster* v. *Cohen*, [1913] W.C. & I. Rep. 268; 108 L. T. 197), that this was a misdirection, and that the want of notice was not occasioned by mistake. *Clapp* v. *Carter*, [1914] W.C. & I. Rep. 80; 110 L. T. 491; 58 S. J. 232—C.A.

Where a workman sustained an "injury by accident arising out of and in the course of" his employment within the meaning of section 1 of the Workmen's Compensation Act, 1906, which injury fell within the term "latent," it is a "reasonable cause" for his not giving notice of the accident as soon as practicable after the happening thereof, as required by section 2 of that Act, where he was unaware that the illness from which he was suffering was attributable to and due to the accident. *Webster* v. *Cohen* ([1913] W.C. & I. Rep. 268; 108 L. T. 197) distinguished. *Thompson* v. *North-Eastern Marine Engineering Co.*, [1914] W.C. & I. Rep. 13; 110 L. T. 441—C.A.

—— **"Reasonable cause" for Failure—Injury neither Latent nor Trivial.**]—An action under the Fatal Accidents Act, 1846, is an action brought to recover damages "for injury caused by an accident" within the meaning of section 1, sub-section 4 of the Workmen's Compensation Act, 1906. *Potter* v. *Welsh & Sons, Lim.*, 83 L. J. K.B. 1852; [1914] 3 K.B. 1020; [1914] W.C. & I. Rep. 607; 112 L. T. 7; 30 T. L. R. 644—C.A.

A workman whilst employed in moving a trolley through a doorway received a severe blow on the head and also a jagged wound on his tongue by reason of a tooth being forced through it. He did not consider the injury serious at the time. He mentioned it to his foreman, but no written notice of the accident was given, and he continued at work. Cancer of the tongue supervened, but his doctor did

not inform him of the nature of the trouble. He remained at work until a week before his death, which took place in July, 1913, the accident having happened the previous January. His widow brought an action under the Fatal Accidents Act, 1846, against his employers, but the jury gave a verdict for the defendants on the ground of contributory negligence. The plaintiff then applied to Channell, J., before whom the action was tried, to assess compensation under section 1, sub-section 4 of the Workmen's Compensation Act, 1906. His Lordship did so, holding that the action was within sub-section 4 of section 1 of the Act, and that the deceased had acted reasonably in not giving notice of the accident to the employers. The Court of Appeal affirmed Channell, J., on the first point, but reversed him on the second point on the ground that, as the injury was neither latent nor trivial, no "reasonable cause" was shewn within section 2 of the Act for the failure to give notice of the accident, and that, therefore, the claim to compensation failed. *Ib.*

Webster v. *Cohen* ([1913] W.C. & I. Rep. 268; 29 T. L. R. 217) and *Clapp* v. *Carter* ([1914] W.C. & I. Rep. 80) applied. *Ib.*

A workman, who could not read or write, sustained an apparently trifling injury to his finger on December 2, 1913. His doctor treated the case as one of septic poisoning, but disapproved of his returning to work. The workman, however, continued to work until February 22, 1914, when he became disabled. In March he consulted another doctor, upon whose advice he went into a hospital, and remained there from March 24 till April 22. He was found to be suffering from an obscure constitutional disease, which might be awakened into activity by such an injury as he had sustained. It was not until he consulted the second doctor in March that he began to regard his injury as serious, and not until he was in hospital that he began to consider the question of compensation. Formal notice was first given to the employers on his behalf on April 22:—*Held*, that on these facts the arbitrator was entitled to find that the workman's failure to give notice as soon as practicable was due to a "reasonable cause." *Flood* v. *Smith & Leishman*, [1915] S. C. 726; [1915] W.C. & I. Rep. 212—Ct. of Sess. And *see Eke* v. *Hart-Dyke*, *ante*, col. 1892.

—— **Employers "prejudiced in their defence."**]—If a workman who has been injured by "accident arising out of and in the course of" his employment, within the meaning of section 1 of the Workmen's Compensation Act, 1906, has reason to believe that, although he is apparently well, the accident may be attended with serious consequences, then he must give notice to his employer "as soon as practicable after the happening thereof," as required by section 2, sub-section 1 of the Act. But it is not necessary for such notice to be given by every workman who has suffered some slight injury such as a scratch on his finger. Where, however, a workman sustained what was apparently only an abrasion on the palm of his hand, but, although his hand gradually got worse, he continued working at his employment for some days after the happening of the accident and he delayed in giving notice thereof to his employers until he was found to be suffering from septic poisoning, it was held that in the circumstances of the case the learned County Court Judge had come to a perfectly right conclusion in deciding that the delay was not brought within the exception "mistake or other reasonable cause," and that the employers were thereby "prejudiced in their defence." *Snelling* v. *Norton Hill Colliery Co.*, [1913] W.C. & I. Rep. 497; 109 L. T. 81—C.A.

The applicant was employed by the respondent in a hop garden. On February 18, 1913, he was using a heavy beadle for driving piles into the ground, but he had to drop it as he felt that he had injured himself. He suffered pain in his left side, but he continued to work till March 14. He made no communication at all to the respondent relating to his injury, and although there was a change of his work, and it was of a lighter description, the change was not due in any respect to what had happened on February 18. In March the applicant consulted his doctor, who advised him to go to a hospital. On May 23 he was discharged from the hospital, and it was not until June 23 that he gave any notice of the accident which was alleged to have taken place on February 18. The ailment from which the applicant was found to be suffering was weakness of heart consequent upon strain continuing for some time thereon. It was a strain, however, which without the applicant being conscious of it might certainly have been due not to any one single occurrence which could be called an "accident" within the meaning of the Workmen's Compensation Act, 1906, but to a course of hard labour done by a workman extending over months or years:—*Held*, that the applicant not having given the respondent notice of the alleged accident "as soon as practicable after the happening thereof," within the meaning of section 2 of the Act, had cast upon him the burden of satisfying the Court affirmatively that the respondent was not "prejudiced in his defence" by such want of notice: and that that burden the applicant had not discharged, the circumstances of the alleged accident being such that it was of the utmost importance that the respondent should have known at once that the fall of the beadle, which did not cause any apparent injury, was an "accident" involving liability on his part to pay compensation to the applicant. *Hughes* v. *Coed Talon Colliery Co.* (78 L. J. K.B. 539; [1909] 1 K.B. 957) considered and applied. *Ing* v. *Higgs*, [1914] W.C. & I. Rep. 84; 110 L. T. 442—C.A. And *see Stevens* v. *Insoles, Lim.*, *ante*, col. 1958.

—— **Onus of Proof.**]—A charwoman broke her kneecap. She alleged that she broke it on July 8, 1913, while working for the respondents. They alleged that she broke it on the following day in her own house. She claimed compensation. She gave no written notice of the accident until July 29, 1913. She said she told a caretaker of her employers of the accident. Want of notice was not shewn to be due to mistake or other reasonable cause:—*Held*, that the woman had not discharged the onus of proving that her employers had not

been prejudiced in their defence by the want of notice, and that the proceedings were therefore barred. *Hodgson* v. *Robins, Hay, Waters & Hay*, [1914] W.C. & I. Rep. 65—C.A. S. P. *Lacey* v. *Mowlem & Co.*, [1914] W.C. & I. Rep. 63—C.A.

On Wednesday, September 24, 1913, a workman slightly injured a finger while working in his employment. He got it bound up with a rag, but went on working for that and the two following days. On Saturday, September 27, he went to work as usual in the morning, but at 10 A.M. had to cease working, because he could not hold his hammer. He first saw a doctor on Monday morning, September 29, who found that the finger was then in a septic condition, and had been so for "some time" before. He gave no notice till the Monday morning:—*Held*, that as from 10 A.M. on Saturday, September 27, there was no reasonable cause for the want of notice, and that the employers had been prejudiced thereby, and that the proceedings were therefore barred under section 2, sub-section 1 (*a*) of the Workmen's Compensation Act, 1906. *Wassall* v. *Russell & Sons, Lim.*, 84 L. J. K.B. 1606; [1915] W.C. & I. Rep. 88; 112 L. T. 902—C.A.

On Thursday, August 20, 1914, a miner, while working in his employment, was struck in the eye by a piece of coal. It caused a certain amount of pain and pricking. He stopped work, washed his eye, and did no more work that day, except that he assisted a fellow employee to push tubs. He did not go to work next day, Friday, because of his injury. From the Saturday following the colliery was closed for a five days' holiday. He first saw a doctor on Monday, August 24. Before seeing the doctor he had treated his eye with a lotion himself. The eye ultimately became septic, and he lost the sight of it. He gave no notice of the accident until August 27. Upon a claim for compensation the original triviality of the injury was alleged as "reasonable cause" for want of notice; it was not contended that the employers were not prejudiced:—*Held*, that there was no "reasonable cause" for the want of notice within section 2, sub-section 1 (*a*) of the Workmen's Compensation Act, 1906, and that the claim was therefore barred. *Fox* v. *Barrow Hematite Steel Co.*, 84 L. J. K.B. 1327; [1915] W.C. & I. Rep. 321; 113 L. T. 528—C.A.

On Friday, June 26, 1914, a carter, while working in his employment, was struck in the eye by something which caused pain and bleeding. He immediately left off work and went and saw his doctor. He went back to work next day, Saturday, which was the last day he worked. The following week was a holiday. He gave no notice to his employer until Monday, July 6, and then only verbal notice. No written notice of any kind was given until August or September. Upon a claim for compensation the arbitrator found that there was no reasonable cause for the want of notice, within section 2, sub-section 1 (*a*) of the Workmen's Compensation Act, 1906, and also that there was no evidence from which he could find that the employer was not prejudiced in his defence, and that he might have been prejudiced, and that the claim was therefore barred. On appeal on the question of "no prejudice,"—*Held*, that the arbitrator having declined to find that the employer was not prejudiced in his defence, upon evidence which justified his finding, his decision could not be interfered with. *Hayward* v. *West Leigh Colliery* (84 L. J. K.B. 661; [1915] A.C. 540; [1915] W.C. & I. Rep. 233) discussed and explained. *Miller* v. *Richardson*, 84 L. J. K.B. 1366; [1915] 3 K.B. 76; [1915] W.C. & I. Rep. 381; 113 L. T. 609—C.A.

—— **Employers not "prejudiced in their defence."**]—Where an accident to a workman "arising out of and in the course of" his employment within the meaning of section 1, sub-section 1 of the Workmen's Compensation Act, 1906, produced injuries to him which he thought, and had reason for thinking, were trivial in the first instance, the exact nature of the injuries not being ascertained until some months after the occurrence of the accident, it was *held* that want of notice thereof was occasioned by "reasonable cause" within the meaning of section 2, sub-section 1 (*a*) of the Act; and that the employers were not thereby "prejudiced in their defence." *Haward* v. *Rowsell*, [1914] W.C. & I. Rep. 314; 111 L. T. 771—C.A.

By section 2 of the Workmen's Compensation Act, 1906, notice of an accident is to be given to the employer "as soon as practicable after the happening thereof . . . Provided always that—(*a*) the want of . . . such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not . . . prejudiced in his defence by the want" of such notice. A workman injured his leg on a Tuesday by an accident arising out of and in the course of his employment. At first the injury did not appear to be serious, and he continued at work for a day or two, but blood poisoning set in, and he died on the Thursday week after the accident. Verbal notice of the accident was given to the employers on the Tuesday after the accident. At the hearing of a claim for compensation by his dependants before a County Court Judge, the applicant proved these facts, and the employers called no evidence to shew that they had been in any way prejudiced in their defence by want of proper notice of the accident:—*Held*, that there was evidence upon which the County Court Judge could hold that they had not in fact been prejudiced. *Hayward* v. *West Leigh Colliery*, 84 L. J. K.B. 661; [1915] A.C. 540; [1915] W.C. & I. Rep. 233; 112 L. T. 1001; 59 S. J. 269; 31 T. L. R. 215—H.L. (E.)

Decision of the Court of Appeal ([1914] W.C. & I. Rep. 21) reversed. *Ib.*

—— **Suicide—"Novus actus interveniens"—Insanity—Evidence—Notice.**]—On December 4, 1913, a workman injured his right eye while working in his employment. On December 5 he saw his own doctor. On December 19 he consulted an eye specialist. On December 20 he committed suicide. He had continued doing his ordinary work with one

small exception from the time of the accident until his death. He became depressed, and suffered pain before December 19, and on that day was terribly depressed and suffered great pain. He was in fear of losing his sight or his work. He had been a cheerful man, and was of excellent character. There was medical opinion that he was insane when he committed suicide. He had given no notice of the accident, but three days after his death notice was given by his widow's solicitors :—*Held*, that there was no evidence to justify the Court in arriving at the conclusion that the man was insane when he committed suicide, and that his death did not therefore arise "out of" the employment within section 1, sub-section 1 of the Workmen's Compensation Act, 1906, and that there was no reasonable excuse for the want of notice by the man himself, and no evidence that the employer was not prejudiced thereby, and that the want of such notice was not affected by the notice given after the man's death, and was consequently a bar to proceedings by his dependants under section 2, sub-section 1 of the Act. *Grime* v. *Fletcher*, 84 L. J. K.B. 847; [1915] 1 K.B. 734; [1915] W.C. & I. Rep. 250; 112 L. T. 840; 59 S. J. 233; 31 T. L. R. 158—C.A.

Principal or Contractor.] —The failure to serve notice of accident and claim on the principal within the prescribed time is an answer to any claim against the principal. *Meier* v. *Dublin Corporation*, [1912] 2 Ir. R. 129—C.A.

2. Claim for Compensation.

See also Vol. IX. 2243.

Claim — Sufficiency of.] —The applicant, having been injured by accident while in the defendant's service, claimed compensation under the Workmen's Compensation Act, 1906. He did not suggest that he had himself given notice of any claim for compensation under the Act, but his wife gave evidence to the effect that she had written to the respondent each week for her husband's wages, and that the respondent had paid five weeks immediately after the accident and then stopped payment. During the sixth week she saw the respondent at his house and asked him, if he would not compensate the applicant, whether he would compensate her and the children. He replied she was nothing to him or he to her, but he was sorry for them :—*Held*, that there had been no notice of a claim for compensation under the Act, and that the applicant was therefore not entitled to an award of compensation. *Johnson* v. *Wootton*, 27 T. L. R. 487—C.A.

Claim not made within Six Months — "Reasonable cause."]—A workman, who had been injured, was offered compensation under the Workmen's Compensation Act. He resolved not to accept it, and instructed a solicitor to recover damages. The solicitor threatened on his behalf to raise an action at common law against the employers, and had several meetings with the solicitor of the insurance company which insured the employers, who was anxious to avoid litigation and to get the workman to accept compensation. Nothing, however, had been arranged, and no action had been raised by the workman when the period of six months from the accident expired. On the workman subsequently initiating proceedings under the Act, the arbitrator found that he had failed to make a claim timeously in terms of the Act, and that there was no reasonable cause for this failure, and dismissed the application. On appeal, the workman contended that there had been what was equivalent to a claim, or, alternatively, that the employers were, in the circumstances, barred from founding on the absence of a claim :—*Held*, that there was no ground for disturbing the arbitrator's findings. *Devons* v. *Anderson*, [1911] S. C. 181—Ct. of Sess.

—— **Industrial Disease — Certificate Fixing of Disablement more than Six Months Previously — Claim for Compensation.**] — Where the certifying surgeon in his certificate under section 8 of the Workmen's Compensation Act, 1906, fixes the date of the disablement caused by an industrial disease (which by section 8, sub-section 1 (*a*), is to be treated as the happening of the accident) more than six months before the date of the certificate, that circumstance amounts to "reasonable cause" within section 2, sub-section 1 (*b*), for the failure by the workman to make a claim for compensation within six months from the occurrence of the accident, unless the workman's visit to the certifying surgeon was unduly delayed. *Moore* v. *Naval Colliery Co.*, 81 L. J. K.B. 149; [1912] 1 K.B. 28; 105 L. T. 838; [1912] W.C. Rep. 81—C.A.

—— **Reasonable Cause — Workman not Disabled from Working within the Six Months.**]— A miner met with an accident while at work on November 21, 1911, which caused a swelling in his groin. After resting for an hour he was able to resume work and the swelling went down by the next day and he was able to go to work as usual. Four months later, and again nine months after that, the swelling reappeared while he was at work, but subsided, and he was able to go on working. Ultimately, in February, 1914, the swelling reappeared, and he was incapacitated by a small hernia. Upon an application by the workman for compensation under the Workmen's Compensation Act, 1906, the employers admitted that the injury was due to accident arising out of and in the course of the man's employment, and waived any question as to notice :—*Held*, that the failure to make a claim for compensation within six months from the accident was occasioned by reasonable cause within section 2, sub-section 1 (*b*) of the Act. *Coulson* v. *South Moor Colliery Co.*, 84 L. J. K.B. 508; [1915] W.C. & I. Rep. 161; 112 L. T. 901; 31 T. L. R. 207—C.A.

—— **Payment of Wages during Incapacity— "Reasonable cause."**]—On October 31, 1913, the applicant, a horse keeper, severely injured the fingers of his left hand while in the employ of the respondent. Next day he told the respondent, who said, "You can potter about the factory until you are better," and continued to pay him his full wages until June 13, 1914, when he was dismissed for misconduct

not connected with the accident. At this time he was nearly doing his old work again. The applicant said that he told the respondent's foreman that his doctor had told him to claim compensation, and that the foreman replied that he should have his wages. The applicant had been seventeen years in the respondent's employment. The applicant made no claim for compensation within the six months prescribed by section 2, sub-section 1 of the Workmen's Compensation Act, 1906, and the respondent denied liability on this ground when proceedings were commenced on December 21, 1914 :—*Held*, without deciding that in all cases payment of wages is "reasonable cause" for not making a claim within the prescribed period, that the payment of wages, coupled with the other circumstances of this case, was "reasonable cause" for not making the claim within section 2, subsection 1 (*b*) of the Workmen's Compensation Act, 1906, and that the employer was therefore liable to pay compensation. *Healy* v. *Galloway* (41 Ir. L. T. 5) did not decide the proposition that payment of wages is not a "reasonable cause" for not making a claim; and *Lynch* v. *Lansdowne (Marquis)* ([1914] W.C. & I. Rep. 244; 48 Ir. L. T. 89), so far as it rests upon the assumption that *Healy* v. *Galloway* (41 Ir. L. T. 5) laid down that proposition is not an authority. *Luckie* v. *Merry*, 84 L. J. K.B. 1388; [1915] 3 K.B. 83; [1915] W.C. & I. Rep. 395; 113 L. T. 667; 59 S. J. 544; 31 T. L. R. 466—C.A.

Ignorance of Existence of Act.]—Ignorance of the existence of the Workmen's Compensation Act, 1906, is not, within section 2, subsection 1 (*b*), a "mistake . . . or other reasonable cause" for the workman's failure to make his claim for compensation within six months from the occurrence of the accident. *Roles* v. *Pascall*, 80 L. J. K.B. 728; [1911] 1 K.B. 982; 104 L. T. 298—C.A.

Delay "occasioned by . . . absence from the United Kingdom."]—A workman's failure to claim compensation against his employers under the Workmen's Compensation Act, 1906, within six months of the occurrence of the accident in respect of which he is seeking to recover compensation, may be "occasioned by . . . absence from the United Kingdom" within the meaning of section 2, subsection 1 (*b*) of the Act, although he might, if he had wished, have returned to the United Kingdom in time to make a claim within that period. The question whether the failure of a workman to make a claim under the Workmen's Compensation Act, 1906, within six months of the accident is occasioned by his absence from the United Kingdom is in every case a question of fact for the arbitrator. *Dight* v. "*Craster Hall*" (*Owners*), 82 L. J. K.B. 1307; [1913] 3 K.B. 700; [1913] W.C. & I. Rep. 714; 109 L. T. 200; 29 T. L. R. 676—C.A.

Assessment of Compensation where Action of Damages has Failed—Parties Entitled to such Assessment—Claim not made within Six Months.]—The privilege of having compensation assessed given by section 1, sub-section 4 of the Workmen's Compensation Act, 1906, is a privilege personal to the pursuer in the action for damages, and other persons who have not claimed compensation within six months are not entitled to be made parties to the compensation proceedings. *M'Ginty* v. *Kyle*, [1911] S. C. 589—Ct. of Sess.

Acquiescence by Workman in Discontinuance of Compensation.]—A workman who in April, 1910, sustained injuries to his back through an accident received compensation, under agreement with his employers, at the full rate till February, 1911, when he was certified to be fit for light work. Thereafter compensation at a reduced rate was paid till August, 1912, when the employers ceased to make further payments. No memorandum was ever recorded. In October, 1912, the workman threatened proceedings for the recovery of compensation, and the employers then denied liability. No further steps, however, were taken by the workman until February, 1914, when, having become totally incapacitated through spinal sclerosis resulting from his injury, he intimated that fact to his employers, and subsequently applied for an award of partial compensation from August, 1912, till February, 1914, and for full compensation thereafter. It was proved that he had never fully recovered from the results of the accident and had never returned to work, but that the sclerosis was not diagnosed till December, 1913. There was no evidence that the employers had been prejudiced by his delay in taking proceedings. The arbitrator having awarded compensation as claimed, the employers appealed on the ground that the workman's claim for compensation for the period from August, 1912, to February, 1914, was excluded by his acquiescence in the non-payment of it throughout that period :—*Held*, that in the circumstances the arbitrator was entitled to make the award. *Rankine* v. *Fife Coal Co.*, [1915] S. C. 476; [1915] W.C. & I. Rep. 207—Ct. of Sess.

Observations on the circumstances in which silence on the part of a workman in the face of his employer's refusal to continue payment of compensation will bar his claim. *Ib.*

Discharge by Workman of Future Claims to Compensation — Validity.] — Circumstances in which a receipt by a workman for payments of compensation, containing, as his employer contended, a final discharge of all future claims, *held*, not to bar the workman from making further claims, in respect that it had been granted by the workman gratuitously and under essential error as to its effect. *Macandrew* v. *Gilhooley*, [1911] S. C. 448—Ct. of Sess.

Release of "all claims" under Merchant Shipping Act, 1894 — Subsequent Incapacity for Work Resulting from Accident on Voyage.] —The release signed by a seaman, on his discharge, of "all claims in respect of the past voyage" under section 136 of the Merchant Shipping Act, 1894, without excepting from such release any specified claim or demand as provided by section 60 of the Merchant Shipping Act, 1906, is not a bar to a claim for compensation under the Workmen's Compensation Act, 1906, in respect of an injury by an accident which happened during the voyage,

but from the effects of which the seaman does not become incapacitated for work until after he has been discharged. *Buls* v. "*Teutonic*" (*Owners*), 82 L. J. K.B. 1331; [1913] 3 K.B. 695; [1913] W.C. & I. Rep. 752; 109 L. T. 127; 29 T. L. R. 675—C.A.

Effect of Imprisonment of Workman—Continuance of Incapacity Caused by Accident.]—A workman who had met with an accident in the course of his employment, and was in receipt of 1*l.* a week compensation from his employers, was convicted of stealing and sentenced to eighteen months' imprisonment with hard labour. The employers stopped payment. The workman claimed compensation. He was still suffering from partial incapacity for work as the result of his accident:—*Held*, that, as the incapacity caused by the accident still continued, the workman, notwithstanding his imprisonment, was entitled to compensation under section 1, sub-section 1 of the Workmen's Compensation Act, 1906. *McNally* v. *Furness, Withy & Co.*, 82 L. J. K.B. 1310; [1913] 3 K.B. 605; [1913] W.C. & I. Rep. 717; 109 L. T. 270; 29 T. L. R. 678—C.A.

Effect of Public Authorities Protection Act.]—*See Fry* v. *Cheltenham Corporation*, *ante*, col. 1219.

3. Proceedings in Name of Workman.

Approved Society—Retainer by Workman.]—The appellant, who was a carter in the employment of the respondent and was a member of an approved society, was incapacitated by an accident, and the society informed him that their solicitors would act for him, free of charge, in making a claim for compensation. The appellant then signed a retainer authorising these solicitors to act on his behalf, and proceedings in the appellant's name were begun against the respondent. The County Court Judge dismissed the application on the ground that counsel for the appellant declined to state for whom he appeared:—*Held*, that, although the society could not use the name of the appellant except in the events and upon the terms mentioned in section 11, sub-section 2 of the National Insurance Act, 1911, the retainer was *prima facie* evidence (although not conclusive) that the appellant was acting in his own interest, and that therefore the Judge ought to have heard the evidence before arriving at a conclusion. *Allen* v. *Francis*, 83 L. J. K.B. 1814; [1914] 3 K.B. 1065; [1914] W.C. & I. Rep. 599; 112 L. T. 62; 58 S. J. 753; 30 T. L. R. 695—C.A.

—— **No Refusal on Part on Workman to take Proceedings—Reasonable Inference that Workman Insured Member of Approved Society—Surprise.**]—A workman having met with an accident, two letters, dated April 23, 1914, and May 2, 1914, were written on behalf of an approved society stating that it was purposing to take proceedings for the workman against the employer to obtain compensation under the Workmen's Compensation Act, 1906. Proceedings were then brought, and at the hearing the secretary of the local branch of the approved society, who was called to give expert evidence, said, in answer to questions put in cross-examination, that his society was an approved society and had taken these proceedings in the name of the workman. He also said that the workman had not refused to take proceedings, but, though anxious to do so, had not the necessary money. The County Court Judge thereupon dismissed the application on the ground that under the National Insurance Act, 1911, s. 11, sub-s. 2, an approved society was not entitled to bring proceedings in a workman's name unless he had unreasonably neglected or refused to take them himself. On appeal it was alleged on the workman's behalf that he was not an insured member of the approved society, but was merely a member of it as a trade union, and it was contended that in these circumstances the National Insurance Act, 1911, s. 11, sub-s. 2, had no application, and that the proceedings were maintainable:—*Held*, that, on the evidence as it stood, the County Court Judge was entitled to draw the inference that the workman was insured in the society under the National Insurance Act, 1911, and that, as no case of surprise had been made, the County Court Judge's decision must stand. *Burnham* v. *Hardy*, 84 L. J. K.B. 714; [1915] W.C. & I. Rep. 146; 112 L. T. 837—C.A.

—— **Rules of Court—Ultra Vires.**]—The provision in rule 44 (3) of the Consolidated Workmen's Compensation Rules, July, 1913, that such an approved society shall for this purpose "be deemed to be parties interested," is *ultra vires*. *Bonney* v. *Hoyle & Sons, Lim.*, 83 L. J. K.B. 541; [1914] 2 K.B. 257; [1914] W.C. & I. Rep. 565; 110 L. T. 729; 12 L. G. R. 358; 58 S. J. 268; 30 T. L. R. 280.

Assistance by Trade Union.]—*Per* Lord Cozens-Hardy, M.R., and Swinfen Eady, L.J.: A workmen's trade union is entitled to assist him in taking proceedings under the Workmen's Compensation Act, 1906, but it may not take proceedings in his name. *Bobbey* v. *Crosbie & Co.*, 84 L. J. K.B. 856; [1915] W.C. & I. Rep. 258; 112 L. T. 900—C.A.

Maintenance — Whether a Defence.]—If an application under the Workmen's Compensation Act, 1906, by an employee against his employer has been "maintained" by a third person, proof of such maintenance would be no defence to the proceedings. *Skelton* v. *Baxter*, 85 L. J. K.B. 181; [1915] W.C. & I. Rep. 583; 60 S. J. 120; 32 T. L. R. 130—C.A.

4. Jurisdiction of County Court Judge.

Question as to Liability to Pay Compensation or as to Amount or Duration of Compensation.]—A workman met with an accident in the course of his employment which for the time being totally incapacitated him, and his employers paid him compensation in respect of the accident at the maximum rate of 50 per cent. of his average weekly earnings. The workman applied to have a memorandum registered of an agreement by the employers to pay him this weekly compensation in accordance with the provisions of the Workmen's Compensation Act, 1906. The employers resisted the application on the ground that they had only agreed to pay this weekly sum so

long as their own doctor certified that the workman was unable to follow his occupation. Thereupon the County Court Judge held that the compensation had not been settled by agreement. The workman then commenced arbitration proceedings to have the compensation settled by the Court:—*Held*, that no question had arisen as to the liability to pay compensation or the amount or duration of the compensation to give the Court jurisdiction to arbitrate under section 1, sub-section 3 of the Workmen's Compensation Act, 1906. *Payne* v. *Fortescue*, 81 L. J. K.B. 1191; [1912] 3 K.B. 346; 107 L. T. 136; 57 S. J. 80; [1912] W.C. Rep. 386—C.A.

A workman who was receiving full compensation for total incapacity under the Workmen's Compensation Act, 1906, applied for the registration of a memorandum of agreement for payment of compensation at that rate until ended, diminished, &c., in terms of the Act. The genuineness of this memorandum was objected to by the employers, on the ground that the workman had signed a receipt bearing that he had agreed that compensation should be paid only while his employers were of opinion that his incapacity continued. The workman accordingly abandoned the application. He then applied for arbitration to fix the amount of compensation, to the competency of which the employers objected on the ground that, as full compensation was being paid, there was no "question" arising in any proceedings under the Act within section 1, sub-section 3 thereof:—*Held*, that there was a "question" in the sense of the Act, and that the workman was entitled to apply for and obtain an award of compensation. *Hunter* v. *Brown & Co.*, [1912] S. C. 996; [1912] W.C. Rep. 318—Ct. of Sess.

The respondent having sustained injury by accident arising out of and in the course of his employment, resulting in total incapacity, the appellants, his employers, admitted liability to pay compensation and tendered the amount due (as to which there was no dispute) subject to the appellant signing a receipt therefor which contained the following term: "At the first or any subsequent payment liability is admitted only for the compensation to date of payment. Further liability, if any, will be determined week by week, when application for payment is made." The respondent refused to sign the receipt upon the ground that he was entitled to have from the appellants a simple and unqualified admission such as could be recorded in a memorandum of agreement, or that he was entitled to have the compensation fixed by arbitration on the ground that a question had arisen as to the duration of the compensation within the meaning of section 1, sub-section 3 of the Workmen's Compensation Act, 1906:—*Held*, that a question as to the duration of compensation had arisen between the respondent and the appellants which the respondent was entitled to have settled by arbitration. *Summerlee Iron Co.* v. *Freeland*, 82 L. J. P.C. 102; [1913] A.C. 221; [1913] S. C. (H.L.) 8; [1913] W.C. & I. Rep. 302; 108 L. T. 465; 57 S. J. 281; 29 T. L. R. 277—H.L. (Sc.)

Payne v. *Fortescue & Sons, Lim.* (81 L. J. K.B. 1191; [1912] 3 K.B. 346; [1912] W.C. Rep. 386), and *Gourlay Brothers & Co. (Dundee), Lim.* v. *Sweeney* (8 Fraser, 965) discussed. *Ib.*

Decision of Court of Session ([1912] S. C. 1145; [1912] W.C. Rep. 325) affirmed. *Ib.*

A workman met with an accident, and his solicitors wrote to his employers on his behalf, enquiring whether they would admit liability to pay compensation during incapacity in accordance with the Workmen's Compensation Act, 1906. The employers' insurance company replied that they had instructed the employers to pay compensation during total incapacity, and subsequently expressed their willingness that an agreement to pay compensation during total incapacity only should be recorded. The workman claimed an admission of liability not limited to total incapacity, and, without accepting any weekly payments of compensation, commenced proceedings for an award of compensation:—*Held*, that a question had arisen for arbitration within section 1, sub-section 3 of the Act, and that there was therefore jurisdiction to make an award of compensation in favour of the workman. *Payne* v. *Fortescue & Sons, Lim.* (81 L. J. K.B. 1191; [1912] 3 K.B. 346; [1912] W.C. Rep. 386), distinguished. *Summerlee Iron Co.* v. *Freeland* (82 L. J. P.C. 102; [1913] A.C. 221; [1913] W.C. & I. Rep. 302) applied. *Cooper* v. *Wales, Lim.*, 84 L. J. K.B. 1321; [1915] 3 K.B. 210; [1915] W.C. & I. Rep. 307; 113 L. T. 637; 59 S. J. 578; 31 T. L. R. 506—C.A.

Question of Law — Question of Fact.] — A County Court Judge sitting as arbitrator under the Workmen's Compensation Act, 1906, is as absolute, or a more absolute judge of fact than a jury at Nisi Prius, and his decision can only be reviewed on questions of law—*per* Lord Atkinson. The appellant was a taxicab driver who, in driving a cab of the respondents, met with an accident. The County Court Judge found that the relation between the respondents and the appellant was that of bailor and bailee, and not that of master and servant, and dismissed the application:—*Held*, that the finding of the County Court Judge could not be disturbed. *Smith* v. *General Motor Cab Co.*, 80 L. J. K.B. 839; [1911] A.C. 188; 105 L. T. 113; 55 S. J. 439; 27 T. L. R. 370—H.L. (E.)

Ouster of Jurisdiction.]—*See Allen* v. *Great Eastern Railway*, *ante*, col. 1957.

As to Preferential Payments on Bankruptcy or Winding-up of Company.]—*See Homer* v. *Gough*, *post*, col. 2006.

5. Medical Examination of Workman.

See also Vol. IX. 2251.

Examination by Employers' Doctor—Claim by Workman to have his Own Doctor Present.] —There is no absolute legal right under the Workmen's Compensation Act, 1906, to require that the medical examination by the employer's medical man should take place in the presence of the workman's medical man. The burden of proving that the workman's request for the attendance of his own doctor at the examination is reasonable lies with the workman.

Morgan v. *Dixon, Lim.*, 81 L. J. P.C. 57; [1912] A.C. 74; 105 L. T. 678; 56 S. J. 88; 28 T. L. R. 64; [1912] W.C. Rep. 43—H.L. (Sc.)

Per Lord Atkinson: The question whether there has been a refusal or not, under the Act of 1906, by a workman to submit to medical examination is a question of fact, and any reasonable requirement by a workman—such as having his own medical man present—ought not and should not by any reasonable arbitrator be held to amount to a refusal to submit to examination. *Ib.*

Refusal by Workman — Suspension of Proceedings.]—A workman was severely injured by an accident arising in the course of his employment. His employers admitted liability and paid him the weekly compensation to which he would have been entitled under the Workmen's Compensation Act, 1906, but by arrangement with him, and not under the Act. He was attended by the employers' doctors. At the end of three years upon their doctors' advice the employers stopped payment of the compensation. The workman then commenced proceedings under the Act claiming compensation from the time when the payment was stopped. Thereupon the employers required the workman to submit himself to medical examination at their expense, but the workman refused:—*Held*, that the proceedings must be suspended until the examination had taken place as provided by Schedule I. clause (4) of the Act. *Major* v. *South Kirkby, Featherstone, and Hemsworth Collieries*, 82 L. J. K.B. 452; [1913] 2 K.B. 145; [1913] W.C. & I. Rep. 305; 108 L. T. 534; 57 S. J. 244; 29 T. L. R. 223—C.A.

Under Schedule I. clause (4), which provides for medical examinations between the accident and the award, the employer is not restricted to one examination only, immediately after notice. *Ib.*

Schedule I. clause (14) applies to medical examinations of workmen, whether they are receiving or entitled to receive weekly payments under the Act. *Ib.*

The regulations of the Secretary of State dated June 28, 1907, as to times and intervals at which examinations may be required are made applicable by Schedule I. clause (15) to both clauses (4) and (14) of Schedule I. *Ib.*

Paragraph 4 of Schedule I. of the Workmen's Compensation Act, 1906, which provides that where a workman has given notice of an accident he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner, and, if he refuses to submit to such examination, that his right to take or prosecute any proceeding under the Act in relation to compensation shall be suspended until such examination has taken place, does not contemplate only one such examination, and after the workman has been examined once the County Court Judge has power to suspend the proceedings if he refuses to submit to a further medical examination when such examination appears to be reasonable. Paragraph 14 of the schedule applies only to the case of a workman who is actually at the time receiving weekly payments under the Act. *Smith* v. *Davis & Sons, Lim.*, 84 L. J. K.B. 1125; [1915] A.C. 528; [1915] W.C. & I. Rep. 299; 113 L. T. 250; 59 S. J. 397; 31 T. L. R. 356—H.L. (E.)

Decision of the Court of Appeal ([1914] W.C. & I. Rep. 71) affirmed. *Ib.*

Award of Compensation—Workman Enlists and Sent Abroad—Application to Suspend Comsation—Obstructing Medical Examination.]—A workman, who had met with an accident in the course of his employment and was in receipt of compensation for partial incapacity under an award, enlisted in a Territorial regiment. The employers subsequently applied for a review and termination of the compensation, but, on their writing to the workman's solicitors requiring him to be medically examined, they were told that he was in India with his regiment. Thereupon they applied to suspend the payments of compensation, on the grounds—first, that by going abroad the workman had obstructed his being medically examined; and secondly, that he had ceased to reside in the United Kingdom:—*Held*, that the workman had in no way obstructed the medical examination so as to entitle the employers to a suspension of the compensation under Schedule I. clause 14 of the Workmen's Compensation Act, 1906, and that he had not ceased to reside in the United Kingdom within the meaning of Schedule I. clause 18 of the Act. *Harrison, Lim.* v. *Dowling*, 84 L. J. K.B. 1412; [1915] 3 K.B. 218; [1915] W.C. & I. Rep. 351; 113 L. T. 622; 59 S. J. 612; 31 T. L. R. 486—C.A.

6. Medical Assessor.

Appointment of Medical Referee as Medical Assessor.]—A medical referee appointed under the Act having given a certificate that a workman was suffering from a scheduled industrial disease at a certain date, with the addition that he had completely recovered at the date of the certificate, the workman commenced proceedings which raised the same issue as that on which the opinion had been given:—*Held*, that the County Court Judge was not entitled to appoint as his assessor the same doctor who had already given his opinion on the question. *Wallis* v. *Soutter & Co.*, [1915] W.C. & I. Rep. 113; 59 S. J. 285—C.A.

Medical Witnesses.]—When an arbitrator is sitting with a medical assessor, he has a right to act upon the advice of the assessor on matters of medical opinion and medical inference, even if there is not any corresponding opinion on the part of the medical witnesses. *Woods* v. *Wilson, Sons & Co.*, 84 L. J. K.B. 1067; [1915] W.C. & I. Rep. 285; 113 L. T. 243; 59 S. J. 348; 31 T. L. R. 273—H.L. (E.)

7. Evidence.

Duty of Judge to Take Notes of Evidence.]—It is the duty of a County Court Judge, under rule 36 of the Workmen's Compensation Rules, to make a proper note of the evidence given at the hearing of any arbitration proceedings under the Workmen's Compensation Act, 1906. *Wright* v. *Sneyd Collieries*, 84 L. J. K.B. 1332; [1915] W.C. & I. Rep. 354; 113 L. T. 633—C.A.

—— **Personal Knowledge of Arbitrator.**] — Employers, who had been paying compensation to an injured workman, discontinued the compensation on the ground that the workman's total incapacity had ceased. The question of his capacity was thereupon referred to a medical referee, who reported that the workman was fit to do light work, and specified certain kinds of such work. Thereafter the workman presented an application for an award of compensation as for total incapacity, and in support thereof averred that he had applied in the district for, and had been unable to obtain, such work as was indicated by the medical referee, and he enumerated the various places at which he had applied for that work. The arbitrator, without allowing a proof, dismissed the application as irrelevant, holding upon his knowledge of the district that there was a market for such work as was indicated by the referee, and that the workman's efforts to obtain work had not been sufficient to test the market:—*Held*, that the arbitrator was not entitled to dismiss the application as irrelevant, but ought to have allowed the workman a proof of his averments, although he would be allowed to use his own knowledge of the district in considering the evidence adduced. *Dyer* v. *Wilsons & Clyde Coal Co.*, [1915] S. C. 199; [1915] W.C. & I. Rep. 433—Ct. of Sess.

—— **Balancing Probabilities.**] — Although when acting as arbitrator in cases arising under the Workmen's Compensation Act, 1906, a County Court Judge may, and in many cases ought, to proceed without any direct evidence, and although he may, and in many cases ought, to proceed upon indirect evidence which justifies his drawing an inference, yet there is nothing to justify him in doing that which is merely a balancing of probabilities. *Parry* (or *Perry*) v. *Ocean Coal Co.*, 106 L. T. 713; [1912] W.C. Rep. 212—C.A.

Evidence on Commission.]—In an arbitration for determining the compensation payable to a workman for an accident under the Workmen's Compensation Act, 1906, the County Court Judge has no power to order the evidence of the applicant to be taken on commission before an examiner or to delegate the taking of evidence to any person other than the arbitrator. Principle of *Sutton* v. *Great Northern Railway* (79 L. J. K.B. 81; [1909] 2 K.B. 791) applied. *Taylor* v. *Cripps*, 83 L. J. K.B. 1538; [1914] 3 K.B. 989; [1914] W.C. & I. Rep. 515; 111 L. T. 780; 30 T. L. R. 616—C.A.

—— **Appeal.**]—An appeal from an order of a County Court Judge that evidence should be taken on commission lies to the Court of Appeal and not to a Divisional Court. *Ib.*

Statements as to Cause of Accident—Statement by Deceased Workman to Doctor—Admissibility.]—A doctor may not give in evidence statements made to him by a deceased workman as to the cause of his injuries some days after an accident. *Wright* v. *Kerrigan* ([1911] 2 Ir. R. 301) discussed. *Amys* v. *Barton*, 81 L. J. K.B. 65; [1912] 1 K.B. 40; 105 L. T. 619; 28 T. L. R. 29; [1912] W.C. Rep. 22—C.A.

The deceased man's wife said that the deceased returned home and stated that he had been out that evening and collapsed while out and got wet through:—*Held*, that this statement was not admissible in evidence. *Beare* v. *Garrod*, [1915] W.C. & I. Rep. 438—C.A.

Statement by Deceased as to Cause of Injury — Admission — Statement against Pecuniary Interest.]—In proceedings by the dependants of a deceased workman to recover compensation in respect of an accident alleged to have caused his death, statements by the workman to an officer of his employers as to the cause of his injury are not admissible in evidence either as an admission or as statements made against pecuniary interest. *Tucker* v. *Oldbury Urban Council*, 81 L. J. K.B. 668; [1912] 2 K.B. 317; 106 L. T. 669; [1912] W.C. Rep. 238—C.A.

A workman in the employment of an undertaker and funeral contractor had in the course of his ordinary duty to lift coffins in and out of vans. One morning he went to his work without any marks of physical injury, and he returned suffering from hurts to his chest, side, and leg, the marks of which were visible, and seen by his wife and medical attendant. They were caused by abrasions as if something had knocked against him. He told the doctor that they were the result of an accident, and the doctor stated to the employer that the injured man said that he met with an accident by the moving of a coffin, that he was very bad, and would probably die of his injuries. The employer's reply (according to the doctor's evidence) was merely that he was insured. The injured man died of pneumonia supervening on traumatic pleurisy caused by these hurts, and the arbitrator having so found, and also found that the accident arose out of and in the course of the employment,—*Held*, that the statements of the deceased workman were properly admitted in evidence, and, following *Mitchell* v. *Glamorgan* (23 T. L. R. 588), that there was sufficient evidence to justify the findings of the arbitrator. *Wright* v. *Kerrigan*, [1911] 2 Ir. R. 301—C.A.

Award Based on Medical Referee's Report—Defective Vision.]—A workman who was employed as a ship's painter and scaler sustained injury to his left eye, caused by a blow from a rivet. Accordingly he claimed compensation from his employers under the Workmen's Compensation Act, 1906. The County Court Judge having heard medical evidence on both sides as to the workman's physical state was not satisfied therewith, and sent the case to the medical referee to report whether the workman was or was not still incapacitated by reason of the condition of his left eye from doing the work of a ship's painter. The report of the medical referee was that there was nothing abnormal in the eye to account for the great defect of vision complained of; that he was inclined to think that the workman had better vision than he would own to; that if

the workman's statements were true, the case must be regarded as one of hysterical blindness or his left eye must always have been a defective one; but that if his sight was as he said it was, he was not fit to do his work as a ship's painter, but he could do ordinary painting when he had not to stand on a scaffolding. On this report the County Court Judge found as a fact that the workman was by reason of the accident incapacitated from doing the work of a ship's painter, and that he would have great difficulty in obtaining any employment, and gave the workman compensation for total incapacity for work on the footing of his average weekly earnings being 45*s*. The employers appealed:—*Held*, that there was sufficient evidence upon which the County Court Judge might arrive at the view at which he did; that, assuming that the defective vision in the workman's left eye was due to the accident thereto and he was not able to do work involving painting on a scaffolding or on a ladder, it was a case in which the workman was an "odd lot man"; and that therefore the decision in *Proctor* v. *Robinson* (80 L. J. K.B. 641; [1911] 1 K.B. 1004) applied, and not that in *Cardiff Corporation* v. *Hall* (80 L. J. K.B. 644; [1911] 1 K.B. 1009). *James* v. *Mordey, Carney & Co.*, [1913] W.C. & I. Rep. 670; 109 L. T. 377—C.A.

Refusal to Undergo Operation — Unreasonable Refusal—Medical Evidence—Probability of Cure.]—A workman applied for compensation on the ground of incapacity resulting from an accident in respect of which he was admittedly entitled to compensation, which had been paid for nine months. The employer then alleged that the incapacity was the result, not of the accident, but of the workman's refusal to undergo an operation which was such as a reasonable man would submit to. The medical evidence was to the effect that the operation would not be attended with excessive pain or risk, and would in all probability restore the workman's capacity to work at his trade. The workman refused on the ground that he might risk his capacity to do other work. The County Court Judge held that his refusal was reasonable, and awarded compensation:—*Held*, that there was no evidence to support the finding of the County Court Judge, and that the workman was not entitled to further compensation. *Warncken* v. *Moreland* (78 L. J. K.B. 332; [1909] 1 K.B. 184) followed. *Walsh* v. *Lock & Co.*, [1914] W.C. & I. Rep. 95; 110 L. T. 452—C.A.

—— Whether Incapacity Results from Injury.]—Circumstances in which *held* that a workwoman's present incapacity was due to an accident to her hand, and could not be attributed to unreasonable conduct on her part in refusing to undergo an operation, which might have restored or improved the capacity of the hand, but which her own doctor advised her not to undergo. *Gracie* v. *Clyde Spinning Co.*, [1915] S. C. 906—Ct. of Sess.

Per the Lord President: Save in very special circumstances the proximate cause of incapacity never can be the unreasonable refusal of a workman to undergo an operation if his own medical adviser advises him against undergoing that operation. *Ib.*

Costs of Expert Witness — Doctor's Fee — Qualifying to Give Evidence—Examination of Workman before Application for Arbitration.]—A workman injured in his employment in April, 1913, received compensation from his employers until September, 1913, when it was stopped. On October 20, 1913, the workman's solicitors wrote asking the employers for suitable work and compensation. On October 25, 1913, the workman was examined by a doctor for the employers. On December 13, 1913, the workman requested arbitration. The County Court Judge made his award in favour of the employers, and ordered them to be paid a qualifying fee for the doctor who examined the workman, who also gave evidence at the hearing:—*Held*, that the County Court Judge, having decided that the examination was made for the purpose of qualifying to give evidence, had jurisdiction to allow the qualifying fee, although the examination took place before the request for arbitration was made. *Jones* v. *Davies & Sons, Lim.*, 83 L. J. K.B. 1531; [1914] 3 K.B. 549; [1914] W.C. & I. Rep. 509; 111 L. T. 769—C.A.

—— Medical Witnesses Called by Employers —Costs—Disallowance—Judicial Discretion.]—Where medical witnesses in a case arising under the Workmen's Compensation Act, 1906, gave evidence which was directly material and was believed, it was *held* that, having regard to the reasons assigned by the County Court Judge, he did not exercise his discretion judicially in disallowing the costs of those witnesses. *Finlayson* v. "*Clinton*" (*Owners*), [1914] W.C. & I. Rep. 430; 111 L. T. 915—C.A.

8. Medical Referee.

Ambiguous Report from Medical Referee.]—The report of a medical referee, to whom a remit has been made under the Workmen's Compensation Act, 1906, Sched. I. clause 15, may competently be sent back to him by the arbitrator for explanation if it is ambiguous or unintelligible. *Kennedy* v. *Dixon*, [1913] S. C. 659; [1913] W.C. & I. Rep. 333—Ct. of Sess.

Conclusiveness of Medical Referee's Report.]—In an arbitration under the Workmen's Compensation Act, 1906, the arbitrator, in consequence of a conflict of medical evidence, remitted to a medical referee under paragraph 15 of Schedule II. to examine the evidence and to report whether a deceased workman was injured by rupture of the heart caused by the work and died therefrom, or whether he died from heart disease. The medical referee reported that the workman "died from disease of the heart." The arbitrator thereafter found that the workman had died from a rupture of the heart caused by the strain resulting from the work in which he was engaged, and awarded compensation:—*Held*, first, that the arbitrator was not bound to accept the medical referee's report as conclusive of the question which he, as arbitrator, had to decide; and secondly, that

as there was some evidence to support his decision it could not be interfered with. *Jackson* v. *Scotstoun Estate Co.*, [1911] S. C. 564—Ct. of Sess.

In an application for review of compensation paid to a miner who had received an injury resulting in the loss of an eye, a remit was made to a medical referee under paragraph 15 of the First Schedule to the Workmen's Compensation Act, 1906. The referee reported that the miner was "as fit as any other one-eyed man to resume his work under ground." The miner applied to have the question of his earning capacity tried, but the arbitrator refused the application and ended the compensation, on the ground that the referee's report was final, and that it meant that the miner's incapacity had ceased:—*Held*, that the report, though final as to the miner's physical condition, was not final as to his earning capacity, and the case was remitted to the arbitrator to hear evidence on this point. *Arnott* v. *Fife Coal Co.*, [1911] S. C. 1029—Ct. of Sess.

By agreement between a coal miner, who had received an injury to his thumb and was receiving compensation, and his employers, the question of the workman's capacity to resume his former employment was referred to a medical referee under paragraph 15 of Schedule I. to the Workmen's Compensation Act, 1906. The medical referee reported that the workman was "quite fit to resume his ordinary employment as a coal miner, having recovered from" the injury. The employers thereupon applied to have the compensation ended, when the workman lodged answers in which he averred that having returned to work he had ascertained "that his earning ability has been considerably reduced from the effects of his injury" and maintained that he was still entitled to partial compensation. The arbitrator having ended the compensation the workman appealed and asked leave to lead evidence in support of his averments:—*Held*, dismissing the appeal, that as the medical referee's report was final and was from its terms conclusive as to the question raised by the workman's averments, proof of these averments was inadmissible. *Ball* v. *Hunt* (81 L. J. K.B. 782; [1912] A.C. 496) and *Macdonald* (or *Duris*) v. *Wilsons and Clyde Coal Co.* (81 L. J. P.C. 188; [1912] A.C. 513) distinguished; and observed that where a medical referee's report is not from its terms conclusive a proof may be admissible. *Gray* v. *Shotts Iron Co.*, [1912] S. C. 1267; [1912] W.C. Rep. 359—Ct. of Sess.

Whether a proof might not have been admissible if the workman had averred that owing to the consequences of the accident he had been unable to obtain employment, *quære*. *Ib.*

—— **Proof as to Wage-earning Capacity.**]—In an application to end the compensation payable to a miner who had received an injury to his eye, the question of his condition and his fitness for employment was referred to a medical referee under paragraph 15 of Schedule I. to the Workmen's Compensation Act, 1906. The medical referee reported that "his condition is such that I consider he ought now to be fit to resume his ordinary work as a miner below ground." The miner having lodged answers in which he averred that he had not yet recovered from the effects of the accident and that his earning capacity was not restored, the Court allowed a proof as to the miner's wage-earning capacity, but excluded all evidence with regard to his physical condition and physical fitness for his ordinary work as a miner below ground, as on those points the medical referee's certificate was final. *Cruden* v. *Wemyss Coal Co.*, [1913] S. C. 534; [1913] W.C. & I. Rep. 188—Ct. of Sess.

Competency of Remit to Medical Referee—Finding by Referee Outside Matter Remitted to him.]—A woman was incapacitated by an accident which caused injuries to her hand, and she refused, on the advice of her own doctor, to undergo a minor operation involving the use of anæsthetics, which was likely to diminish the incapacity of her hand. After evidence, an arbitrator remitted to a medical referee for a report as to whether the woman would be exposed to any exceptional risk in the use of anæsthetics, as this was a matter which had not been established by the evidence. The referee reported that the risk was not more than ordinary; but he added that he considered that the operation would be of little benefit, and that the injury to the hand was permanent. The arbitrator refused to take the latter opinion into consideration, as it went beyond the terms of the remit to the referee. On appeal it was maintained that a remit to a medical referee on a matter as to which no evidence had been given was incompetent, but that if the arbitrator regarded any part of the referee's report he must regard the whole of it:—*Held*, first, that the remit to the medical referee had been competently made; and secondly, that the arbitrator was not entitled to disregard any part of the referee's report. *Gracie* v. *Clyde Spinning Co.*, [1915] S. C. 906—Ct. of Sess.

Report of Medical Referee—Recovery of Wage-earning Capacity—Termination of Compensation—Suspensory Award.]—A workman lost the sight of one eye by an accident arising out of and in the course of his employment, and received compensation from his employers. Upon a remit by consent to a medical referee, the referee reported that the workman had recovered from his incapacity, and was fit for work; and it was also in evidence that he had been in fact employed at his former work at his old rate of wages:—*Held*, that there was evidence on which the arbitrator was entitled to terminate the compensation without making a suspensory award. *Jones* v. *Anderson*, 84 L. J. P.C. 47; [1915] W.C. & I. Rep. 151; 112 L. T. 225; 59 S. J. 159; 31 T. L. R. 76—H.L. (Sc.)

Industrial Disease—Certificates of Certifying Surgeon and Medical Referee—Claimant Certified to be Suffering from Scheduled Disease—Finding that Disease not Due to Employment—Claimant's Right to Prove Contrary.]—A miner claiming compensation under the Workmen's Compensation Act, 1906, in respect of an industrial disease, obtained from a certifying surgeon a certificate that he was suffering

from, and disabled by, "nystagmus," one of the scheduled diseases applicable to the employment of "mining." A medical referee, to whom the matter was referred on the application of the employers, found that the claimant suffered from nystagmus, but that it was not miner's nystagmus, but one of the other forms of that disease. The arbitrator dismissed the claim on the ground that, in view of the referee's finding, the claimant had not obtained the certificate, required by section 8 of the Act, that he was suffering from a scheduled disease: —*Held*, first, that the claimant had obtained the necessary certificate that he was suffering from a scheduled disease; secondly, that the decision of the medical referee was not final as to whether that disease was or was not due to the claimant's employment; and thirdly, that the effect of the finding that it was not due to his employment was to displace the presumption in his favour, and to throw upon him the onus of proving affirmatively that it was. *Held*, therefore, that the case should accordingly be remitted to the arbitrator to take evidence upon this. *M'Ginn* v. *Udston Coal Co.*, [1912] S. C. 668; [1912] W.C. Rep. 134—Ct. of Sess.

It is competent for a medical referee, while affirming the certificate of a certifying surgeon that a claimant is suffering from a scheduled disease, to vary that certificate by finding that the disease is or is not due to his employment. *Ib.*

—— **Date of Disablement Rendering Certificate Useless to Workman — Workman "aggrieved" — Right to Appeal to Medical Referee.**]—A miner left his employment with a coal company on September 1, 1911, since which date he had done no work, and went into hospital for colitis. At this time and for two years previously he had been suffering from his eyes. On November 27, 1912, having left the hospital, he went to a certifying surgeon, who gave him a certificate that he was suffering from miner's nystagmus, but did not fix the date of the commencement of the disablement. The surgeon subsequently gave an amended certificate fixing the date as November 27, 1912. This certificate was useless to the workman as it fixed the date more than twelve months after his leaving the employment of the company. He appealed from the certifying surgeon to the medical referee, who fixed the date as September 1, 1911. The company contended there could be no appeal by a workman from the certifying surgeon to the medical referee except from a refusal to give a certificate, and that even if he could appeal from a given certificate the medical referee could not fix the date:—*Held*, that an appeal lay from the certifying surgeon to the medical referee under section 8, sub-section 1 (*i.*), (*f*), and that the medical referee could fix the date of disablement under section 8, sub-section 4 (*a*) of the Workmen's Compensation Act, 1906. *Birks* v. *Stafford Coal and Iron Co.*, 82 L. J. K.B. 1334; [1913] 3 K.B. 686; [1913] W.C. & I. Rep. 755; 109 L. T. 290; 57 S. J. 729—C.A.

—— **Certificate by Certifying Surgeon Referred to Medical Referee—Scope of Medical Referee's Decision.**]—Under section 8, sub-section 1 of the Workmen's Compensation Act, 1906, a medical referee can only decide whether a certifying surgeon's certificate was rightly granted. Accordingly, where a medical referee upheld the granting of a certificate of disablement, an addendum by him to the effect that, at the date of his (the medical referee's) examination the workman was again able to work, was incompetent and fell to be treated *pro non scripto*. *Garrett* v. *Waddell*, [1911] S. C. 1168—Ct. of Sess.

When a certificate by a certifying surgeon as to whether a workman is suffering from an industrial disease is objected to, and is referred under section 8, sub-section 1 (*f*) of the Workmen's Compensation Act, 1906, to a medical referee, it is the duty of the medical referee to decide categorically whether the certificate has been rightly granted or not. Therefore, where a medical referee pronounced a decision "subject to" a note, the terms of the note being contradictory of what purported to be the effect of the decision, the matter was remitted to him to complete the reference by giving a categorical answer. *Winters* v. *Addie & Sons' Collieries, Lim.*, [1911] S. C. 1174—Ct. of Sess.

Death Regulations made by the Secretary of State and the Treasury.]—On an arbitration under the Workmen's Compensation Act, 1906, the arbitrator can, under Schedule II. (15), submit to a medical referee for a report any matter which seems material to any question arising in the arbitration, notwithstanding that the workman is dead and that the regulations on the subject made by the Secretary of State and the Treasury only contemplate the case of a living workman. *Carolan* v. *Harrington*, 80 L. J. K.B. 1153; [1911] 2 K.B. 733; 105 L. T. 271; 27 T. L. R. 486—C.A.

Medical Referee as Medical Assessor.] — *See Wallis* v. *Soutter & Co.*, *ante*, col. 1974.

9. Assessing Compensation.

a. By Agreement: Recording of Memorandum.

See also Vol. IX. 2234.

"Party interested"—Approved Society.]—Whether an approved society under the National Insurance Act, 1911, is a "party interested" who, in terms of the Workmen's Compensation Act, 1906, Schedule II. (9), may apply for registration of a memorandum of an agreement regarding the payment of compensation to one of its members, *quære*. *Baird & Co.* v. *Ancient Order of Foresters*, [1914] S. C. 965; [1914] W.C. & I. Rep. 534—Ct. of Sess.

Workman Insured in Approved Society — Locus Standi to Object to Registration — "Parties interested."]—Where an agreement is made as to the redemption by a lump sum of a weekly payment to a workman who is an insured person within the meaning of the National Insurance Act, 1911, the approved

society concerned in the administration of any benefit to which such insured person is entitled under that Act are not "parties interested" for the purpose of clause 9 of the Second Schedule to the Workmen's Compensation Act, 1906, and have no *locus standi* to appear before the County Court Judge and object to the recording of a memorandum of such agreement. *Bonney* v. *Hoyle & Sons, Lim.*, 83 L. J. K.B. 541; [1914] 2 K.B. 257; [1914] W.C. & I. Rep. 565; 110 L. T. 729; 12 L. G. R. 358; 58 S. J. 268; 30 T. L. R. 280—C.A.

Implied Agreement — Registration.] — Employers intimated their intention to pay, and did in fact pay, a weekly sum to an injured workman upon the production by him of a fortnightly certificate from the employers' doctor that the workman was still incapable of returning to work:—*Held*, that there was no evidence of an implied agreement to pay this sum during incapacity within Schedule II. (9) of the Workmen's Compensation Act, 1906. *Phillips* v. *Vickers, Son & Maxim*, 81 L. J. K.B. 123; [1912] 1 K.B. 16; 105 L. T. 564; [1912] W.C. Rep. 71—C.A.

The mere payment by an employer of a weekly payment by way of compensation to a workman who has been injured by accident arising out of and in the course of his employment, within the meaning of section 1 of the Workmen's Compensation Act, 1906, does not suffice to establish that an agreement so to do has been come to, a memorandum of which is capable of being recorded pursuant to section 9 of the Second Schedule to the Act. *Hartshorne* v. *Coppice Colliery Co.*, 106 L. T. 609; [1912] W.C. Rep. 255—C.A.

A workman having been injured by "accident arising out of and in the course of" his employment within the meaning of section 1, sub-section 1 of the Workmen's Compensation Act, 1906, his employers paid a weekly sum representing half his wages to the workman for a time and then discontinued the payment on the advice of their doctor that the workman had recovered from the effects of the accident. The workman subsequently applied to the Registrar of the County Court to record a memorandum of an alleged agreement under section 9 of the second schedule to the Act. The workman sought by recording the memorandum of the alleged agreement to impose upon the employers the burden of shewing that circumstances had been changed so that they would be entitled to claim a review of the agreement, which if recorded would have the effect of an award. The employers, however, contended that no such agreement as was alleged had in fact ever been entered into; that the County Court Judge could not make an agreement between the parties; but that the Court could only record a memorandum of an agreement which had in fact been made:—*Held*, that an agreement within the Act need not be in writing; that it might be inferred and implied by reason of the conduct of the parties and all the circumstances; but that there was no evidence in the present case to support the view that any such document as was sought to be recorded was in fact entered into; and that the learned County Court Judge had no jurisdiction to order an agreement to be recorded which was not really an agreement entered into between the parties. *Phillips* v. *Vickers, Son & Maxim* (81 L. J. K.B. 123; [1912] 1 K.B. 16) and *Hartshorne* v. *Coppice Colliery Co.* ([1912] W.C. Rep. 255; 106 L. T. Rep. 609) applied. *Godbold* v. *London County Council*, 111 L. T. 691—C.A.

The applicant was a plasterer's labourer in the employment of the respondents, and met with an accident which totally incapacitated him. The respondents paid him compensation from the date of the accident at the rate of half his average weekly earnings, and on each payment he gave a receipt for "compensation to date under the Workmen's Compensation Act, 1906, for personal injury by accident sustained" by him. The applicant applied for registration of an agreement by the respondents to pay him compensation at the rate of 50 per cent. of his average weekly earnings until the same was ended, diminished, redeemed, or suspended, in terms of the Act. The only evidence of an agreement consisted in the receipts. The County Court Judge dismissed the application on the ground that he could not infer that an agreement in the form proposed had ever been arrived at:—*Held*, on appeal, that as the receipts were no evidence of such an agreement, the Judge's decision was right. *Madden* v. *Guest's Executors*, [1915] W.C. & I. Rep. 589; 32 T. L. R. 74—C.A.

In an application to an arbitrator for an award of compensation under the Workmen's Compensation Act, 1906, the pursuer averred that "The defenders admitted liability to pursuer in respect of said accident and the said injuries sustained by him under said Workmen's Compensation Act, 1906, and paid pursuer compensation at the rate of 10*s.* per week up to and including payment for the week ending December 9, 1914, since which date defenders refuse to continue payment." The defenders objected to the competency of the proceedings on the ground that these averments disclosed that the questions between the parties had been settled by agreement:—*Held*, that the averments did not shew an agreement within the meaning of section 1, sub-section 3 of the Act, and accordingly that the application was competent. *Kane* v. *Stein & Co., Lim.*, [1915] S. C. 863—Ct. of Sess.

Compensation Agreed—Payment into Court by Agents other than Solicitors.]—Where an amount of compensation has been agreed it can be paid into Court by other agents of the employers than their solicitors, and the *præcipe* sent with the money may be signed by such agents—for example, the Shipping Federation *Thompson & Co.* v. *Watt-Taylor*, 57 S. J. 479—Bailhache, J.

Terms of Memorandum Differing from Terms of Agreement.] — Where an agreement in writing has been entered into between an employer and a workman with regard to compensation, it is the duty of the Sheriff (if objection is taken) to refuse to record a memorandum which is not in the precise terms of the written agreement. It is not part of his duty to construe the written agreement and

then to determine whether the memorandum gives effect to it as so construed. *M'Lean* v. *Allan Line Steamship Co.*, [1912] S. C. 256; [1912] W.C. Rep. 37—Ct. of Sess.

A workman, who had been totally incapacitated by accident, received weekly payments of 10*s.* from his employers, for which he granted receipts bearing that the payments were accepted "as the weekly compensation payable during the period of total incapacity for work as the result of the accident." He subsequently applied for warrant to record a memorandum which bore that the parties had agreed "that compensation be paid by" the employers to the workman "in terms of the Workmen's Compensation Act, at the rate of 10*s.* per week from" the date of the accident:—*Held*, that the memorandum was not genuine, in respect of the omission of the qualification "during the period of total incapacity." *Pryde* v. *Moore & Co.*, [1913] S. C. 457; [1913] W.C. & I. Rep. 100—Ct. of Sess.

An injured workman and his employers verbally agreed that compensation should be paid to the former at the rate of 15*s.* 1*d.* per week. The workman thereafter signed a number of receipts, each of which bore to be for "weekly compensation to date under the Workmen's Compensation Act, 1906, under which I claim for personal injury by accident sustained by me." Thereafter the employers objected to the recording of a memorandum which bore that the agreement was to pay compensation at the foresaid rate "until the same is ended, diminished, redeemed, or suspended in terms of" the Act, on the ground that the memorandum was not genuine because it differed in terms from the agreement, which contained no obligation as to future payments:—*Held*, the arbitrator who had granted warrant to record the memorandum was right in so doing in respect that the agreement was an agreement to pay compensation in terms of the Act and that this memorandum merely set forth those terms. *Pearson* v. *Babcock & Wilcox*, [1913] S. C. 959; [1913] W.C. & I. Rep. 430—Ct. of Sess.

A workman, who had been incapacitated as the result of an accident, received payments of compensation from his employers for more than a year, and granted receipts for these payments, which bore that they were "accepted as the amounts payable under the Workmen's Compensation Act, 1906." The payments were all at the rate of 10*s.* per week, which was the rate to which the workman was entitled as for total incapacity. On the employers ceasing to make further payments the workman sought to record a memorandum, which bore that "the liability to pay workmen's compensation during the claimant's incapacity for work at the rate of 10*s.* per week was admitted by the respondents." The employers objected to the recording of this memorandum, on the ground that the agreement, as evidenced by the receipts, was to pay compensation during total incapacity only, and accordingly that the memorandum was not in terms of the agreement:—*Held*, that the agreement was not limited to the period of total incapacity, and accordingly that the memorandum was in terms of the agreement, and fell to be recorded. *Scott* v. *Sanquhar and Kirkconnel Collieries*, [1915] S. C. 520; [1915] W.C. & I. Rep. 196—Ct. of Sess.

Discretion as to Recording.] — An injured workman, who had entered into an agreement with his employers with regard to payment of compensation, sought to record a memorandum of that agreement. The employers objected to the recording of the agreement on the ground (which was admitted) that the workman had returned to work and was earning the same wages as before the accident, and the Sheriff refused to record:—*Held*, that the memorandum being a genuine record of the agreement, the Sheriff had no discretion to refuse to record it, but should have recorded it, attaching such conditions as he considered just in the circumstances. *Scott* v. *Sanquhar and Kirkconnel Collieries*, [1915] S. C. 520; [1915] W.C. & I. Rep. 196—Ct. of Sess.

The Second Schedule, clause 9 (*d*) of the Workmen's Compensation Act, 1906, provides that a Sheriff-Clerk [Registrar] to whom a memorandum of agreement for the redemption of a claim for compensation by payment of a lump sum is brought, may refuse to record it if, "on any information which he considers sufficient," it appears to him that by reason of the inadequacy of the sum or the means by which the agreement was obtained, the agreement should not be recorded:—*Held*, that the Sheriff-Clerk is not bound in every case *ex proprio motu* to enquire into these matters before proceeding to record. *M'Guire* v. *Paterson & Co.*, [1913] S. C. 400; [1913] W.C. & I. Rep. 107—Ct. of Sess.

Observations on the duties of the Sheriff-Clerk in such a case. *Ib.*

—— Objection not a "workman"—Estoppel.] —The master of a sailing barge was injured by accident in his employment. He applied under Schedule II. paragraph 9 of the Workmen's Compensation Act, 1906, to record a memorandum of an agreement made between himself as a "workman" and the barge owners, under which he was to receive 1*l.* a week during total incapacity. The barge owners objected to the recording of the agreement solely on the ground that the master was not a "workman" within the Act. They did not dispute the agreement itself or the continuance of total disability, or allege fraud or mutual mistake. The County Court Judge found that the master was not a "workman," and refused to record the memorandum. On appeal,—*Held*, that, as it had been settled by the agreement that the master was a "workman" within the Act, the County Court Judge had no jurisdiction, by reason of section 1, sub-section 3 of the Act, to consider that question, and that the agreement must be recorded. *Goodsell* v. *"Lloyds" (Owners)*, 83 L. J. K.B. 1733; [1914] 3 K.B. 1001; [1914] W.C. & I. Rep. 585; 111 L. T. 784; 30 T. L. R. 622—C.A.

Genuineness of Agreement — Adequacy of Amount.]—Schedule II. clause 9 of the Workmen's Compensation Act, 1906, provides that when the amount of compensation under the

Act has been ascertained or any other matter decided under the Act by agreement, a memorandum thereof shall be sent by any person interested to the Registrar of the County Court, who shall, subject to Rules of Court, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a County Court judgment. Provided that (*d*) where it appears to the Registrar, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum ought not to be registered by reason of the inadequacy of the sum, he may refuse to record the memorandum of the agreement, and refer the matter to the Judge, who shall, in accordance with Rules of Court, make such order as under the circumstances he may think just. When an agreement for redemption of a weekly payment by a lump sum has been entered into between employer and workman and a memorandum thereof sent by the employer to the Registrar of the County Court, it is *prima facie* his duty to record it on being satisfied as to its genuineness; but if the adequacy of the amount of redemption is called in question, it is his duty to enquire into the adequacy thereof, notwithstanding that Form 38 in the Appendix to the Consolidated Workmen's Compensation Rules, July, 1913, indicates that he may refer the matter to the County Court Judge on the mere objection of the workman to the registration of the memorandum on the ground of the inadequacy of the sum. *Rex* v. *Bow County Court (Registrar)*; *Scottish Shire Line, Ex parte*, 83 L. J. K.B. 1806; [1914] 3 K.B. 266; [1914] W.C. & I. Rep. 591; 111 L. T. 277—D.

Payment of Lump Sum—Objection to Recording of Agreement—Order for Consignment in Court of Lump Sum Paid to Workman—Validity of Order.] — An injured workman entered into an agreement with his employers that the weekly compensation due to him should be redeemed for a lump sum of 100*l.*, which sum was paid over to him. On the employers presenting a memorandum of this agreement for registration, the Sheriff-Clerk refused to record it on the ground of the inadequacy of the sum, and referred the matter to the Sheriff, who, holding that further enquiry into the question was necessary, ordered the workman to consign in Court the 100*l.* (less the weekly compensation due to date) as a condition precedent to the enquiry being held:—*Held*, that the Sheriff was not entitled to make such an order. *M'Vie* v. *Taylor & Co.*, [1914] S. C. 533—Ct. of Sess.

Compromise of Claim before any Weekly Payments Made—Agreement not Registered—Validity of Agreement.] — An agreement entered into between an adult workman and his employer before any weekly payment of compensation has been made by which the workman's claim for compensation under the Workmen's Compensation Act, 1906, is compromised by payment of a lump sum, is not an agreement falling within Schedule II. clause 10 of the Act, and is effective although not registered under the Act. *Ryan* v. *Hartley*, 81 L. J. K.B. 666; [1912] 2 K.B. 150; [1912] W.C. Rep. 236; 106 L. T. 702—C.A.

Memorandum not Disclosing Agreement as to Costs.]—The solicitor of an employer who was paying weekly compensation to a workman offered the solicitor of the latter 15*l.* and 5*l.* 5*s.* of costs in final settlement of the claim. The workman's solicitor communicated the offer of 15*l.* to his client and urged him to accept it, but did not mention the arrangement about costs. The workman having authorised his solicitor to accept the offer of 15*l.*, the solicitor wrote accepting the offer of 15*l.* in settlement of the compensation "and 5*l.* 5*s.* in full of our [costs] as arranged." Thereafter the employer presented an application to record a memorandum of agreement which narrated that the weekly payments were to be redeemed by payment of 15*l.*, but contained no reference to the costs. The application was opposed by the workman. There was no suggestion that the agreed-on amount of costs was excessive:—*Held*, first, that, in the circumstances, the settlement between the employer and the workman was not vitiated by the fact that the arrangement as to costs had not been communicated to the workman; and secondly, that the memorandum of agreement was genuine though it contained no reference to the agreement as to costs, that being a subsidiary arrangement. *M'Laughlin* v. *Pumpherston Oil Co.*, [1915] S. C. 65—Ct. of Sess.

"Spent" Agreement—Application to Record Memorandum of Agreement.]—A County Court Judge is entitled to refuse to record a memorandum of an agreement for compensation under clause 9 of Schedule II. of the Workmen's Compensation Act, 1906, even though it be solely upon the ground that the facts upon which the agreement was based are changed, or no longer exist, and that the agreement itself is accordingly "spent." *Popple* v. *Frodingham Iron and Steel Co.*, 81 L. J. K.B. 769; [1912] 2 K.B. 141; [1912] W.C. Rep. 231; 106 L. T. 703—C.A.

Agreement to Pay Compensation During Total Incapacity—Arrears of Payments—Application for Leave to Issue Execution—Jurisdiction of Registrar.]—Where a memorandum of an agreement has been recorded by the Registrar of a County Court, pursuant to section 9 of the Second Schedule to the Workmen's Compensation Act, 1906, whereby compensation to a workman is made payable by his employer so long as his total incapacity for work shall last, it may be right to apply to the Registrar to enforce that agreement as a County Court judgment; but if the employer raises the question whether total incapacity has ceased, that being a question which goes to the root of the matter, the Registrar cannot direct execution to issue. If, on the other hand, it is admitted by the employer that the total incapacity continues, then on that admission there is his duty to pay compensation which will be enforced by execution. *Warren* v. *Roxburgh*, [1912] W.C. Rep. 306; 106 L. T. 555—C.A.

Enforceability of Agreement as a County Court Judgment.] — A memorandum of an agreement between a workman and his employer for the redemption, by a lump sum, of a weekly payment awarded as compensation under the Workmen's Compensation Act, 1906, in pursuance of which the employer has paid to the workman the agreed amount, is one which the Registrar of the County Court is bound to register under Schedule II. clause 9 of the Act on the application of the employer, having regard to clause 10 of that schedule, although nothing further can be due thereunder to the workman, the provision of clause 9 that the memorandum when so registered shall be enforceable as a County Court judgment applying equally whether the memorandum is sought to be enforced by the workman or the employer. *Rex* v. *Thetford County Court Registrar; Brandon Gas Co., Ex parte*, 84 L. J. K.B. 291; [1915] 1 K.B. 224; [1915] W.C. & I. Rep. 136; 112 L. T. 413—D.

Death of Workman not from Effects of Accident—Death within Seven Days of Sending in Agreement to be Recorded — Agreement not Conditional until Recorded—Time for Objections not Elapsed—Agreement duly Recorded—Right of Legal Personal Representative to Enforce Agreement.] — A workman was in receipt of weekly compensation from his employers for injury by accident. On June 12, 1914, an agreement in writing, duly executed by the parties, by which the employers agreed to pay the workman a lump sum of 85*l.* in redemption of all their liability under the Workmen's Compensation Act, 1906, was sent to the Registrar to be recorded. The Registrar thereupon sent out the proper notices, and on June 22, 1914, no notice of objection having been received, recorded the agreement. Meanwhile, on June 18, 1914, before the seven days allowed for sending in notices of objections had elapsed, the workman died, admittedly from causes altogether outside the accident. Neither the Registrar nor the employers were aware of his death when the agreement was recorded. There were no dependants. Upon application by the administratrix of the deceased workman for leave to issue execution,—*Held*, that the agreement was not conditional until it was recorded, and that it had been duly recorded despite the death of the workman within the seven days, and that it was enforceable as a County Court judgment by the administratrix under Schedule II. clause 9 of the Workmen's Compensation Act, 1906. *Price* v. *Westminster Brymbo Coal and Coke Co.*, 84 L. J. K.B. 746; [1915] 2 K.B. 128; [1915] W.C. & I. Rep. 245; 112 L. T. 905; 59 S. J. 301; 31 T. L. R. 219—C.A.

Schedule I. clause 19 of the Act does not bar a claim by a legal personal representative to enforce a deceased's workman's right against his employer. *Ib.*

Action to Set Aside Agreement on Ground of Mistake.]—A workman, with the advice of his solicitor, agreed with his employers to accept a lump sum in settlement of a claim for compensation due to him in respect of injuries caused by an accident, and a memorandum of the agreement was recorded. In a subsequent action to set aside the memorandum he averred that both parties were in error as to the extent of his injuries at the time when the agreement was made, both being under the belief that he would recover in a few weeks, whereas it turned out he was permanently incapacitated:—*Held*, that these averments did not disclose a relevant ground for setting aside the agreement. *M'Guire* v. *Paterson & Co.*, [1913] S. C. 400; [1913] W.C. & I. Rep. 107—Ct. of Sess.

"Agreement" in Settlement of Claim for Compensation.] — An agreement between a workman and his employers for the settlement of a claim for compensation by payment of a lump sum may be an "agreement" in the sense of the Workmen's Compensation Act, 1906 (and so recordable), even though the employers dispute liability to pay compensation, if in fact they have agreed to the amount of the payment being fixed as though they were liable under the Act. *Ib.*

Appeal from County Court Judge—Jurisdiction of Court of Appeal.] — When a County Court Judge makes an order upon a matter referred to him by a Registrar of the County Court on his refusal to record a memorandum of agreement under clause 9 (*d*) of Schedule II. to the Workmen's Compensation Act, 1906, an appeal from that order lies direct to the Court of Appeal under clause 4 of Schedule II., and not to the Divisional Court. *Panagotis* v. "*Pontiac*" (*Owners*) (81 L. J. K.B. 286; [1912] 1 K.B. 74; [1912] W.C. Rep. 74) distinguished. *Bonney* v. *Hoyle & Sons, Lim.*, 83 L. J. K.B. 541; [1914] 2 K.B. 257; [1914] W.C. & I. Rep. 565; 110 L. T. 729; 12 L. G. R. 358; 58 S. J. 268; 30 T. L. R. 280—C.A.

Application to Rectify Register by Removing Memorandum—Jurisdiction.]—In arbitration proceedings under the Workmen's Compensation Act, 1906, there is no jurisdiction to remove from the register, kept under Schedule II. clause 9 of the Act, a memorandum of agreement which correctly states the terms of the agreement entered into between the parties, unless the application to remove it is made under Schedule II. clause 9 (*e*) within six months of its being recorded, and it is proved to the satisfaction of the arbitrator that the agreement was obtained by "fraud or undue influence or other improper means." *Schofield* v. *Clough & Co.*, 82 L. J. K.B. 447; [1913] 2 K.B. 103; [1913] W.C. & I. Rep. 292; 108 L. T. 532; 57 S. J. 243—C.A.

Costs—Jurisdiction—Enquiry as to Adequacy of Sum Payable—Order for Successful Party to Pay Costs—No Misconduct Proved.]—Assuming that a County Court Judge has jurisdiction as to the costs of an enquiry, under the Workmen's Compensation Act, 1906, Sched. II. clause 9 (*d*), as to recording a memorandum of an agreement for redemption of a weekly payment, he cannot order a successful party against whom no misconduct

is proved to pay the costs of the other party. *Kierson* v. *Thompson & Sons, Lim.*, 82 L. J. K.B. 920; [1913] 1 K.B. 587; [1913] W.C. & I. Rep. 140; 108 L. T. 236; 57 S. J. 226; 29 T. L. R. 205—C.A.

b. Amount of Compensation.

See also Vol. IX. 2217.

Seaman.]—In the case of seamen, compensation for accident under the Workmen's Compensation Act begins exactly where the right to maintenance under the Merchant Shipping Acts ends. *McDermott* v. "*Tintoretto*" *Steamship*, 80 L. J. K.B. 161; [1911] A.C. 35; 103 L. T. 769; 11 Asp. M.C. 515; 55 S. J. 124; 27 T. L. R. 149—H.L. (E.)

The words in paragraph 3 of Schedule I. to the Workmen's Compensation Act, that the arbitrator is to have regard to "any payment, allowance, or benefit which the workman may receive from the employers during the period of his incapacity," refer only to such as is received in respect of the incapacity or that period of it which is covered by the compensation. *Ib.*

The appellant, a seaman, was injured by accident on board ship and received maintenance and wages until he landed in New York, where he was discharged and taken to a hospital, where he stayed for some weeks. He was then conveyed to England, where he arrived more than two months after the accident:—*Held*, that the arbitrator, in assessing compensation for the accident, was not required by paragraph 3 of the schedule to make any deduction from the award in respect of the wages, maintenance, and treatment received by the seaman on the ship from the time of the accident until he was discharged. *Ib.*

Stoker in Mercantile Marine — Member of Royal Naval Reserve — Concurrent Contracts of Service.]—A sailor, who was also a member of the Royal Naval Reserve, met with an accident, and compensation was awarded to him. The County Court Judge, in estimating the average weekly earnings of the applicant, had regard, in addition to his wages, to the annual sum of 6*l.* which he received as a member of the Royal Naval Reserve:—*Held*, that there were concurrent contracts of service within Schedule I. 2 (*b*) of the Workmen's Compensation Act, 1906, and that the applicant was entitled to bring the annual sum as well as his wages into account. "*Raphael*" *Steamship* v. *Brandy*, 80 L. J. K.B. 1067; [1911] A.C. 413; 105 L. T. 116; 55 S. J. 579; 27 T. L. R. 497—H.L. (E.)

"Benefit" Received from Employer—Hospital Charges Paid.]—Payment by employers of an account rendered to them for the maintenance of an injured workman in hospital is a benefit received by the workman within the meaning of the Workmen's Compensation Act, 1906, Sched. I. (3), which falls to be taken into account in fixing the amount of his compensation. *Sorensen* v. *Gaff & Co.*, [1912] S. C. 1163; [1912] W.C. Rep. 342—Ct. of Sess.

"Suitable employment"—Risk of Future Incapacity—One-eyed Miner.]—A miner was struck by a chip of coal while working at the coal face and thereby lost the sight of one eye. His employers, after paying compensation for a time, ceased payment on the ground that he was able to resume his former occupation and to earn his former wage. The miner having applied to the Sheriff to have the compensation continued, the Sheriff dismissed the application, finding that the miner was able to resume his former occupation at the face and to earn his former wage, and that the risk, which was incidental to working at the face, of a similar accident again happening was not increased by the fact that he had lost the sight of an eye. On appeal, it was contended for the miner that the Sheriff had disregarded the relevant consideration that the loss of one eye, although not increasing the risk of a similar accident occurring, would render the results of such an accident more serious, as total blindness would follow; and accordingly that, the employment of a miner working at the face not being a "suitable employment" for him, he was still entitled to compensation:—*Held* (*dub.* Lord Johnston), that the determination of the Sheriff, in dismissing the application, was right. *Law* v. *Baird*, [1914] S. C. 423; [1914] W.C. & I. Rep. 140—Ct. of Sess.

Observed that the question whether an employment was suitable arose only under Schedule I. (3) of the Workmen's Compensation Act, 1906, when partial incapacity existed, and therefore did not arise in this case as the workman's incapacity had ceased. *Ib.*

Per The Lord President and Lord Guthrie (Lord Johnston dissenting): The circumstance that the results of a future accident might be more serious to a workman who had lost one eye than to a workman who had not, could not relevantly be taken into consideration in determining what was "suitable" employment. *Ib.*

Dicta in *Eyre* v. *Houghton Main Colliery Co.* (79 L. J. K.B. 698; [1910] 1 K.B. 695) discussed. *Ib.*

Loss of Eye — Recovery of Wage-earning Capacity—Question of Fact.]—The appellant, who was a miner in the employment of the respondents, met with an accident arising out of and in the course of his employment in the year 1912 and lost the sight of an eye, and the respondents paid him compensation. In 1913, by consent, the question of the appellant's fitness for employment was referred to a referee, who reported that he had recovered from his incapacity and was again fit for his work as a miner. Since that time the respondents were willing to employ him as a miner, and they in fact employed him at labouring work on the surface. On the application of the respondents the arbitrator ended the compensation on the ground that the appellant had not proved that he had not recovered his

wage-earning capacity :—*Held*, that the question was one of fact for the arbitrator. *Jones* v. *Anderson*, 59 S. J. 159; 31 T. L. R. 76—H.L. (Sc.)

Accident Making Loss of Eye Apparent—Loss of Earning Capacity—Inability to Obtain Employment.]—The theory upon which compensation for injury by accident under the Workmen's Compensation Act, 1906, proceeds is that of compensation to the worker as a wage earner, and a disfigurement which impairs or destroys the injured workman's capacity to get work is an element to be taken into consideration in the assessment of compensation. *Ball* v. *Hunt*, 81 L. J. K.B. 782; [1912] A.C. 496; [1912] W.C. Rep. 261; 106 L. T. 911; 56 S. J. 550; 28 T. L. R. 428—H.L. (E.)

The appellant, who was an edge-tool moulder, many years back met with an accident in the course of his employment whereby he lost the sight of one eye, but the loss was not apparent and he was able to obtain employment at usual wages as if his sight had been normal. In September, 1910, while in the service of the respondents, he met with a second accident which necessitated the removal of the blind eye and rendered the loss apparent, as the result of which, though now completely recovered, he was unable, although his power to do work remained as before, to obtain further employment in his trade :—*Held*, that the appellant's inability to obtain employment by reason of his disfigurement by the removal of his blind eye was an element to be taken into consideration in assessing compensation under the Workmen's Compensation Act, 1906. *Ib.*

Decision of the Court of Appeal (80 L. J. K.B. 655; [1911] 1 K.B. 1048) reversed. *Ib.*

Goods Porter—Light Work Found by Employers after Accident—Mess-room Attendant—Same Rate of Wages as before—Interruption of Work for Four Days by Reason of Strike.]—A goods porter, employed by a railway company at 23*s.* 6*d.* a week, in November, 1911, was totally incapacitated by accident in the course of his employment. In December, 1912, having partially recovered, he resumed work, and the company having paid him half wages in the interval, found him light work as a mess-room attendant at the same rate of wages that he was receiving before the accident, and he was so employed at the present time. In November and December, 1913, on four days, which were not consecutive days, the company were unable to find work for him and other members of their staff, in consequence of a labour strike in Dublin. He claimed 7*s.* 10*d.* as compensation for the four days :—*Held*, that the claim could not be supported; that it was inconsistent with the provisions of Schedule I. clauses 1 (*b*) and 3 of the Workmen's Compensation Act, 1906; that it was immaterial that the light work was obtained from the employers and not from a stranger, and that, as the relation of employers and workman had continued ever since December, 1913, with only the loss of four days, the interruption, if it could fairly be so called, was of no moment. *Woodhouse* v. *Midland Railway*, 83 L. J. K.B. 1810; [1914] 3 K.B. 1034; [1914] W.C. & I. Rep. 595; 111 L. T. 1084; 30 T. L. R. 653—C.A.

Partial Incapacity—General Fall in Wages since Accident—Method of Assessing Compensation — Extraneous Circumstances.] — In awarding compensation to a workman for partial incapacity under the Workmen's Compensation Act, 1906, Sched. I. clause 3, the Court will have regard to extraneous circumstances not personal to the workman. *Bevan* v. *Energlyn Colliery Co.*, 81 L. J. K.B. 172; [1912] 1 K.B. 63; [1912] W.C. Rep. 126; 105 L. T. 654; 28 T. L. R. 27—C.A.

In 1907 a collier sustained injuries through an accident, and was paid compensation by his employers until February, 1911. In August, 1911, he commenced proceedings to recover compensation for partial incapacity. Before the accident his average weekly earnings were 2*l.* 19*s.* 1*d.*, but now he was only earning 1*l.* 12*s.* 7*d.* a week. There was evidence, however, that apart from any accident he would not have been able to earn as much as he was doing in 1907, because colliers' earnings had fallen universally owing to the passing of the Coal Mines Regulation Act, 1908, which reduced the working hours of miners to eight hours a day :—*Held*, that the fall in wages was a circumstance to which the Court must have regard in awarding compensation for partial incapacity under Schedule I. clause 3 of the Workmen's Compensation Act, 1906. *James* v. *Ocean Coal Co.* (73 L. J. K.B. 915; [1904] 2 K.B. 213) distinguished. *Ib.*

"Average weekly earnings"—Computation — Mathematical Accuracy.] — Although the Court does not require mathematical accuracy in calculating the average weekly earnings of a workman who has been injured by "accident arising out of and in the course of" his employment, within the meaning of section 1 of the Workmen's Compensation Act, 1906, a small mistake in the ascertained amount not being sufficient to upset an award, yet where there is a substantial mistake the case must go back to the County Court Judge to assess the compensation to which the workman is entitled. *James* v. *Mordey, Carney & Co.*, [1913] W.C. & I. Rep. 670; 109 L. T. 377—C.A. And *see Roper* v. *Freke*, *ante*, col. 1947.

—— Amount Earned by "a person in the same grade" — Two Grades of Casual Labourers — Preferential Right of Employment.] — A man engaged as "extra casual labourer" met with an accident in his employment. He had only been engaged for a day when he met with the accident, so that his "average weekly earnings" had to be computed by taking the average amount earned by "a person in the same grade" as himself within Schedule I. (2) (*a*) of the Workmen's Compensation Act, 1906. The man's employers had two classes of casual labourers—"B" ticket men with preferential rights of employment and "extra casual labourers." "B" ticket men got on the average four days' work a week, and "extra casual labourers" three days' work a week. Both classes received the

same rate of pay and did the same work :—*Held* (Cozens-Hardy, M.R., dissenting), that the preference made a difference of grade between the "B" ticket men and the "extra casual labourers," and that in computing the man's average weekly earnings under Schedule I. (2) (*a*) regard must be had to the average amount earned by the latter grade, and not to that earned by the former grade. *Barnett* v. *Port of London Authority* (*No.* 1), 82 L. J. K.B. 353; [1913] 2 K.B. 115; [1913] W.C. & I. Rep. 250; 108 L. T. 277; 57 S. J. 282; 29 T. L. R. 252—C.A.

The provision in Schedule I. clause 2 (*a*) of the Workmen's Compensation Act, 1906, that for the purpose of assessing compensation in respect of an accident to a workman "average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated," means that they are to be computed in the manner best calculated to give the rate of his remuneration under the employer for whom he was working when the accident happened. A casual labourer who is employed casually by two or more different employers is not employed under concurrent contracts of service within the meaning of Schedule I. clause 2 (*b*) of the Act. A workman who was employed by the respondents as a casual corn porter met with an accident in the course of his employment. He had been employed by them casually during the three years preceding the accident, and during the year preceding the accident he had also been employed by a shipping firm at such a high rate of pay that his combined earnings for the year averaged over 2*l.* 5*s.* a week. The average earnings of a corn porter in the employment of the respondents was 30*s.* a week :—*Held*, that the workman's average weekly earnings must be computed by regard to the average weekly earnings of a workman in the same grade under the same employer, but that regard must also be had to the man's personal qualification as shewn by his high wages with the shipping company. In any case, however, the average weekly earnings could not be computed at more than the maximum sum earned by a man in the same grade under the same employer. *Cue* v. *Port of London Authority*, 83 L. J. K.B. 1445; [1914] 3 K.B. 892; [1914] W.C. & I. Rep. 481; 111 L. T. 736—C.A.

—— **Grade of Employment — Change of Grade.**]—A girl in a rope and sailcloth factory, employed at a weekly wage of 7*s.* 6*d.* to work a drawing machine dealing with hemp which was afterwards spun into rope, was promoted to work, at a weekly wage of 8*s.*, a drawing machine dealing with tow, a finer material which was afterwards woven into sailcloth. Five weeks after the change she was accidentally injured :—*Held*, that the change was a change in the "grade" of her employment within the meaning of Schedule I. (2) (*c*) of the Workmen's Compensation Act, 1906, and that compensation was to be calculated on the basis of her average weekly earnings for these five weeks. *Dalgleish* v. *Edinburgh Roperies and Sailcloth Co.*, [1913] S. C. 1007—Ct. of Sess.

—— **Workman Employed in Different Grades of Employment.**]—A workman, a boilermaker by trade, who had been employed for four weeks as a boilermaker at a boilermaker's wage, and for fifteen weeks as a labourer at a labourer's wage, in the service of the same employer, was injured while working as a labourer :—*Held*, that in calculating his average weekly earnings for purposes of compensation, the wages he had earned as a boilermaker did not fall to be included. *Babcock & Wilcox* v. *Young*, [1911] S. C. 406—Ct. of Sess.

A workman was employed as a casual labourer for five weeks, when he met with an accident in the course of that employment. Occasionally during that time he had been employed to take the place of a grinder who was ill, for which he received higher remuneration, but he had not been employed as a grinder for fourteen days before the accident :—*Held*, that, in considering the amount of compensation to be awarded, the earnings in both capacities should be taken into account. *Dobson* v. *British Oil and Cake Mills*, [1912] W.C. Rep. 207; 106 L. T. 922—C.A.

—— **Earnings of Same Grade—Personal Qualifications—Actual Earnings.**]—A man engaged as a casual grain porter met with an accident while employed by a corporation. He was preferentially employed as an able and reliable man by some firms, but not by the corporation. He obtained an average weekly wage of 2*l.*, whereas the average weekly wage of casual grain porters was 25*s.* The County Court Judge found that there was no grade of preferred casual grain porters, and that the man was only entitled to 12*s.* 6*d.* a week compensation, half the average earnings of his grade of casual grain porters :—*Held*, that the County Court Judge ought to have had regard to the personal qualifications and actual earnings of the man as well as the average earnings of his grade, and that he was entitled to compensation at 1*l.* a week. *Snell* v. *Bristol Corporation*, 83 L. J. K.B. 353; [1914] 2 K.B. 291; [1914] W.C. & I. Rep. 100; 110 L. T. 563—C.A.

—— **Power of Arbitrator in Awarding Amount.**] — An arbitrator is not bound to award the full half of his average weekly earnings to a workman as compensation for total incapacity, although he cannot give more. *Ib.*

—— **Capacity for Work Offered—Interference by Trade Union—Incapacity Caused by Accident—Machine Minder—Skilled Workman.**]—A workman, who was originally a labourer earning 21*s.* a week, was promoted by his employers to mind a newly invented wire-drawing machine at 37*s.* 6*d.* a week. He was injured while working this machine, and lost two fingers. Full compensation was paid until he had recovered as far as possible. When he returned his employers gave him work as a labourer, which after a time he left. They were willing to give him work on the machine, and said he was fit for it. He also was willing and said he could do the work, but a trade union interposed and forbade men who had not been apprenticed to wire drawing—and this

workman had not been apprenticed—to work a wire-drawing machine. There was no other evidence as to the amount the man could now earn in a suitable employment:—*Held*, that the man could not claim compensation based on his wages of 37*s.* 6*d.* a week, as his employers were prevented from giving him the machine work; that he was in a grade beyond that of an ordinary labourer, and that, as there was no evidence of partial incapacity resulting from the injury, a declaration of liability only should be made. *Thompson* v. *Johnson & Nephew, Lim.*, 84 L. J. K.B. 158; [1914] 3 K.B. 694; [1914] W.C. & I. Rep. 333; 111 L. T. 734—C.A.

—— **"Concurrent contracts of service"—Accident in One Employment—Provision that Workman to Devote Himself Exclusively to that Employer's Service.**]—Where a workman is employed concurrently under two or more contracts of service, they need not be *ejusdem generis* in order to be "concurrent contracts of service" within the meaning of Schedule I. clause 2 (*b*) of the Workmen's Compensation Act, 1906. *Lloyd* v. *Midland Railway*, 83 L. J. K.B. 330; [1914] 2 K.B. 53; [1914] W.C. & I. Rep. 105; 110 L. T. 513; 58 S. J. 249; 30 T. L. R. 247—C.A.

A workman was employed by a railway company as a platelayer, his hours of work being from 6 A.M. to 5.30 P.M. on weekdays, except Saturdays, when he finished work at 12 noon. He also worked of an evening as checktaker at a theatre under a contract of service. When the workman was first taken into the railway company's employment, he was handed a book entitled "Rules and Regulations for the Guidance of Officers and Men" in this company's employment. Rule 1 provided that "persons employed by the company must devote themselves exclusively to the company's service." The workman, having met with an accident while working for the railway company, made a claim for compensation under the Workmen's Compensation Act, 1906:—*Held*, that rule 1, on its true construction, only meant that the workman was to devote himself exclusively to the company's service during the actual hours of his employment by them, and that, notwithstanding that rule, the workman's compensation must be computed on the footing that his "average weekly earnings" were the combined earnings in his two concurrent employments in accordance with Schedule I. clause 2 (*b*) of the Act of 1906. *Ib.*

—— **"Grade"—Temporary Employment.**]—A man who was ordinarily employed as a "hobbler" was drowned while temporarily acting as mate of a ship, the proper mate being absent through illness:—*Held*, that the man had not met his death while holding the "grade" of a mate within the meaning of that term in Schedule I. clause 2 (*a*) of the Workmen's Compensation Act, 1906. *Jury* v. *Atlanta s.s. (Owners)*, 81 L. J. K.B. 1182; [1912] 3 K.B. 366; [1912] W.C. Rep. 389; 107 L. T. 366; 56 S. J. 703; 28 T. L. R. 562—C.A.

—— **"Grade"—Permanent Employment as Carter—Temporary Employment as Teamsman.**]—A workman was employed for a few weeks as a casual carter, and subsequently, but only temporarily, as a casual teamster, at a higher rate of wages. Having met with his death by an accident arising out of and in the course of this latter form of employment, and his dependants having claimed compensation under the Workmen's Compensation Act, 1906,—*Held*, that, under the special circumstances of the case, the temporary employment as teamster did not constitute a new and distinct "grade" of employment within the meaning of Schedule I. clause 2 (*a*) of the statute; and that the arbitrator accordingly was justified in adding together his wages in the two different kinds of employment in order to form a basis on which to arrive at his "average weekly earnings." *Dobson* v. *British Oil and Cake Mills* ([1912] W.C. Rep. 207) followed. *Edge* v. *Gorton*, 81 L. J. K.B. 1185; [1912] 3 K.B. 360; [1912] W.C. Rep. 392; 107 L. T. 341; 56 S. J. 719; 28 T. L. R. 566—C.A.

—— **Absence During Illness.**]—A workman, who met with a fatal accident in the course of his employment, had been in his employment from the beginning of October, 1910, to the date of his death on May 20, 1912, and his total earnings during that period amounted to 111*l.* 12*s.* 3*d.* On proceedings taken by the workman's widow to obtain compensation, the employers paid into Court 202*l.* 9*s.* 6*d.*, being a sum equal to 150 times the average weekly earnings of the workman, the weekly earnings being calculated on the division of 111*l.* 12*s.* 3*d.* by eighty-six, the number of weeks worked. It appeared that during the eighteen months of his employment the workman was absent during eight days by illness, and that there were two broken weeks at the beginning and end of the employment. The County Court Judge adopted the employers' contention as to the calculation of the sum payable and awarded the amount paid into Court:—*Held*, that the award was right; that although the broken days at the beginning of the employment ought strictly to be added to the days in the broken week at the end, the County Court Judge was not bound in view of the length of the employment to go into this with microscopical accuracy; and that in the circumstances he was justified in disregarding the number of days during which the workman was absent through illness. *Turner* v. *Port of London Authority*. [1913] W.C. & I. Rep. 123; 29 T. L. R. 204—C.A.

—— **Days Lost through Shortage of Work—Method of Computation.**]—In calculating the average weekly earnings of a workman for the purpose of awarding compensation under the Workmen's Compensation Act, 1906, the Court must not disregard days or parts of days during the twelve months preceding the accident in which there was a shortage of work so that the employer was unable to find the workman any work to do. *White* v. *Wiseman*, 81 L. J. K.B. 1195; 3 K.B. 352; [1912] W.C. Rep. 403; 107 L. T. 277; 56 S. J. 703; 28 T. L. R. 542—C.A.

—— **Absence from Work Due to Trade Fluctuations—Trade during Period of War—**

Absence not Due to "unavoidable cause."]—In computing "average weekly earnings" under Schedule I. of the Workmen's Compensation Act, 1906, absence from work due to trade fluctuations during a period of war, but arising independently of the war, is not to be excluded as absence due to "unavoidable cause" within Schedule I. clause 2 (*c*) of the Act. *Per* Warrington, L.J.: Even if the absence from work were due to fluctuations of trade caused by war, it ought not to be excluded, as such fluctuations would not, during a period of war, be abnormal incidents of the employment. *Griffiths* v. *Gilbertson & Co.*, 84 L. J. K.B. 1312; [1915] W.C. & I. Rep. 359; 113 L. T. 628—C.A.

—— **Employment under Abnormal Circumstances.**]—A workman was taken on during a dock strike as an extra dock labourer and was incapacitated, after working for twelve days, by an accident arising out of and in the course of his employment. He was paid at the ordinary rate per hour of a casual dock labourer, but was able to earn more than an extra casual dock labourer would in ordinary times because there was a shortage of workmen and the employment was continuous. The arbitrator found that the circumstances were entirely abnormal, that there was no grade to which he could find that the workman belonged, and that the workman would have earned during the strike period at least as much per week as he earned during the first week. He therefore computed the man's average weekly earnings at that amount and awarded compensation on that basis:—*Held*, that the arbitrator had not misdirected himself, and was justified in computing the man's average weekly earnings in that way. *Barnett* v. *Port of London Authority (No. 1)*, 82 L. J. K.B. 353; [1913] 2 K.B. 115; [1913] W.C. & I. Rep. 250; 108 L. T. 277; 57 S. J. 282; 29 T. L. R. 252—C.A.

—— **Aliquot Share of Net Earnings of Gang.**]—A workman employed by a company worked in a gang. The gang was paid a certain rate per ton of stone raised, the powder necessary to raise it being supplied to the gang by the company at cost price. The head of the gang received the net sum due after the cost of the powder had been deducted, and distributed it among the members of the gang according to the number of hours each had worked and not according to the amount of stone raised or powder used by each. The average weekly sum actually received by the workman was 1*l.* 6*s.* 2*d.* The average cost per man per week of the powder was 3*s.*:—*Held*, that the workman's average weekly earnings, computed on the footing of Schedule I. (2) (*a*) of the Workmen's Compensation Act, 1906, were his aliquot share of the net earnings of the gang—namely, 1*l.* 6*s.* 2*d.* *Shipp* v. *Frodingham Iron and Steel Co.*, 82 L. J. K.B. 273; [1913] 1 K.B. 577; [1913] W.C. & I. Rep. 230; 108 L. T. 55; 57 S. J. 264; 29 T. L. R. 215—C.A.

Whether a sum deducted from a definite wage to an individual workman would be considered a sum paid to cover any special expense within Schedule I. (2) (*d*), *quære*. *Ib.*

—— **Temporary Employment — Intention of Leaving England.**]—A carpenter who had been working in Canada came to England in November intending to return to Canada in April. He worked temporarily for employers whom he had informed of his intention to leave this country, and having met with an accident in February, after working for nine weeks, he claimed compensation. The arbitrator assessed compensation under Schedule I. clause 1 (*b*) of the Act at 50 per cent. of one-ninth part of the aggregate amount actually earned by the workman during the nine weeks. He refused to take into consideration that he might have earned more in the summer by working longer hours at the same employment, as he was intending to leave for Canada in April, and he considered it not "impracticable," under Schedule I. clause 2 (*b*), at the date of the accident to compute the rate of remuneration of the workman in this way:—*Held*, that the employment being admittedly of a temporary character, the arbitrator had made no error of law in so computing the "average weekly earnings," and he was not bound to give the workman the benefit of the higher wages he might have earned when the days were longer if he had continued in the same employment. *Godden* v. *Cowlin*, 82 L. J. K.B. 509; [1913] 1 K.B. 590; [1913] W.C. & I. Rep. 330; 108 L. T. 166; 57 S. J. 282; 29 T. L. R. 255—C.A.

Employment by Same Employer for Three Years Next Preceding Injury—Absence from Work During Period—Period of Employment —"Employment by the same employer."]—Where the relationship of master and servant has existed continuously for a period of three years next preceding the death of a workman by accident in his employment, the case falls within the First Part of Schedule I. clause 1 (*a*) (i) of the Workmen's Compensation Act, 1906, and the definition of the words "employment by the same employer" in Schedule I. clause 2 (*c*) is not to be applied to those words in the First Part of Schedule I. clause 1 (*a*) (i), so that neither absence from work due to "illness or other unavoidable cause" nor change of grade is to be regarded, and the compensation to be awarded to the deceased's total dependants is the amount of wages actually earned by him during that period. *Semble*, a very prolonged absence might break the continuity of the employment. *Greenwood* v. *Nall & Co.*, 84 L. J. K.B. 1356; [1915] 3 K.B. 97; [1915] W.C. & I. Rep. 346; 113 L. T. 612; 59 S. J. 577; 31 T. L. R. 476—C.A.

A workman was, for a period of exactly three years next preceding his death by accident in his employment, employed only by the respondent employers in one grade. During this period he was absent from work for 163 working days; forty-five not accounted for, thirty-five for sickness, and eighty-three for injury, the longest period of absence being six weeks:—*Held*, that the compensation payable to his dependant was the amount of the sum actually earned by the deceased during the period of three years. *Ib.*

Power of County Court Judge to Amend Claims.]—Where a claim has been made on

the basis of partial dependency, and no application to amend has been made, the County Court Judge has no power to make an award, on the basis of total dependency, for a larger sum than that claimed. *Lloyd* v. *Powell Duffryn Steam Coal Co.*, 83 L. J. K.B. 1054; [1914] A.C. 733; [1914] W.C. & I. Rep. 450; 111 L. T. 338; 58 S. J. 514; 30 T. L. R. 456—H.L. (E.)

10. Suspensory Award.

Possibility of Supervening Incapacity.]—A workman who had suffered injuries which necessitated the amputation of portions of three fingers of the right hand, after recovering from the operation obtained work at higher wages in the district where he had been employed and where, owing to the construction of public works, there was a large demand for labour. In an arbitration under the Workmen's Compensation Act, 1906, the arbitrator, while finding that the workmen's injuries were permanent, found also that he was no longer incapacitated owing to the accident from earning his former wages, and ended the compensation that was being paid to him. In an appeal at the instance of the workman, the Court remitted the Case to the arbitrator to consider and decide whether the ending of the payment of compensation should be permanent or temporary. *Dempsey* v. *Caldwell & Co.*, [1914] S. C. 28—Ct. of Sess.

Per The Lord President (*dub.* Lord Johnston): A suspensory order was the proper judgment for the arbitrator to pronounce, looking to the possible adverse effect of a change in the condition of the labour market on the future wage-earning capacity of a permanently damaged person. *Ib.*

Rosie v. *Mackay* ([1910] S. C. 714) and *Taylor* v. *London and North-Western Railway* (81 L. J. K.B. 541; [1912] A.C. 242) considered, and the former case held overruled by the latter. *Ib.*

Rupture—Declaration of Liability—Suspensory Award.] — On September 6, 1913, the applicant suffered personal injury—namely, a rupture—by "accident arising out of and in the course of" his employment within the meaning of section 1, sub-section 1 of the Workmen's Compensation Act, 1906. The rupture did not permanently disable him, but it occasioned a certain amount of pain. On informing the manager of his employers of the accident an order was given to him to go to the infirmary, where he was told to wear a truss, which he obtained there. The injury was of a nature which even immediately did not interfere with his work. He was only away one or two days, and the truss which was given him at the infirmary he thought so little of that he wore it only off and on, since which his wife had made him an appliance that, according to the medical evidence, was practically useless. For eighteen months the applicant continued to work for the greater part of the time with the same employers, doing the same work, without any ill consequences arising from it. But there came a time when his employers did not want him any more, and thereupon he commenced proceedings to obtain compensation. It was found by the learned County Court Judge that it was not proved that incapacity for work had resulted from the injury to the applicant as between the date of the accident and February 13, 1915, when he finally left the respondent's employment; and that the applicant had not been incapacitated for work since the last-mentioned date inasmuch as there was nothing to shew that he was unable to do suitable work of the same class as that which he had done for the respondents almost continuously since the accident. In these circumstances His Honour declined to make a declaration of liability, as he was of opinion that there was no reasonable ground for anticipating that with reasonable care on the part of the applicant he would suffer any incapacity in the future from the accident. The applicant appealed:—*Held* (*dissentiente* Lord Cozens-Hardy, M.R.), that the case came within the decisions in "*Tynron*" (*Owners*) v. *Morgan* (78 L. J. K.B. 857; [1909] 2 K.B. 66) and *Griga* v. "*Harelda*" (*Owners*), (3 B.W.C.C. 116); and that therefore the applicant was entitled to a declaration of liability or a nominal award. *Chapman* v. *Sage & Co.*, [1915] W.C. & I. Rep. 472; 113 L. T. 623—C.A.

Wage-earning Capacity—"Suitable employment."]—A workman met with an accident arising out and in the course of his employment which caused the loss of one eye. Subsequently he recovered sufficiently to be physically able to do his old work, and his employers offered to take him on again at his work at his old wages:—*Held*, that this was not sufficient to shew that all incapacity from the accident had ceased. The test was whether the man's wage-earning capacity had been diminished, and in this connection it was the duty of the Court to consider whether the old work was "suitable employment" for him. Where by their answer a workman's employers have formally submitted to a suspensory award in favour of the workman, the arbitrator is not entitled to withhold it from the workman and make an unqualified award in favour of the employers. *Jackson* v. *Hunslet Engine Co.*, 84 L. J. K.B. 1361; [1915] W.C. & I. Rep. 389; 113 L. T. 630—C.A.

Unreasonable Refusal to Submit to Medical Treatment.]—A collier met with an accident arising out of and in the course of his employment, and was paid compensation by his employers under the Workmen's Compensation Act, 1906, for over a year. They then stopped paying it, and he thereupon commenced proceedings for compensation; but the employers denied liability on the ground that, if the incapacity still continued, it was owing to the man's unreasonable refusal to undergo medical treatment provided and paid for by them. A few months before the employers stopped the payments the man had been advised to undergo the Weir-Mitchell treatment for neurasthenia. The employers agreed to provide it, and the man's solicitors, in writing to say that he agreed to submit himself to it, suggested that as he was also advised to have massage for some injury to his back this should be given

him at the same time. The employers agreed to this, and the man entered a home for treatment, but on an attempt being made to massage him he left the home. The medical evidence was apparently all in favour of massage, but no note of the evidence was taken by the County Court Judge, who dismissed the application on the ground that the continued incapacity was due to the man's unreasonable refusal to submit to massage :—*Held*, on the correspondence and admitted facts, that there was evidence to support the Judge's decision, but that, as it was not certain that massage would cure the incapacity, there ought to be a suspensory award of 1*d.* a week. *Smith* v. *Davis & Sons, Lim.*, 84 L. J. K.B. 1125; [1915] A.C. 528; [1915] W.C. & I. Rep. 299; 113 L. T. 250; 59 S. J. 397; 31 T. L. R. 356—H.L. (E.)

Refusal of Compensation — No Suspensory Award—Incapacity Continued.]—On a workman's application for compensation under the Workmen's Compensation Act, 1906, a suspensory award may be made on an original application for compensation as well as on an application to review under Schedule I. clause 16 of the Act. If the workman's application is dismissed without any such suspensory award being made the matter is *res judicata*, and no subsequent application for compensation can be entertained in respect of the same accident, although the workman's capacity for work may have altered in the meantime. *Nicholson* v. *Piper* (76 L. J. K.B. 856; [1907] A.C. 215) followed. *Green* v. *Cammell, Laird & Co.*, 82 L. J. K.B. 1230; [1913] 3 K.B. 665; [1913] W.C. & I. Rep. 707; 109 L. T. 202; 29 T. L. R. 703—C.A.

Per Kennedy, L.J. : In cases of a permanent physical injury the arbitrator, if satisfied that the workman's incapacity for work has for the time ceased, ought as a general rule—inasmuch as in such a case an incapacity for work due to the injury may supervene at a later time—not to make an award simply terminating the weekly payment, but should make an order keeping alive the employer's liability. *Ib.*

See also cases sub tit. Review and Redemption of Weekly Payments.

11. Form and Costs of Award.

Judge's Decision—Duty to State Grounds.]—It is the duty of a County Court Judge, when sitting as an arbitrator under the Workmen's Compensation Act, 1906, to state the grounds of his decision. *Marshall* v. *Price, Wills & Reeves*, 30 T. L. R. 248—C.A.

Form of Award.]—The use of Form 24 or of the Workmen's Compensation Rules, 1907 (made in pursuance of the Workmen's Compensation Act, 1906), is *intra vires* an arbitrator under the statute when making an award for compensation to an injured workman. Although circumstances might conceivably arise in which it might be necessary to modify this form, or to depart from it altogether, yet in the vast majority of cases this is the proper form to be used. *Higgins* v. *Poulson*, 81 L. J. K.B. 690; [1912] 2 K.B. 292; [1912] W.C. Rep. 244; 106 L. T. 518; 28 T. L. R. 323—C.A.

Oral Judgment — Alteration in Subsequent Formal Award — Subsequent Correction of Formal Award — Jurisdiction.] — Where the award of a County Court Judge, sitting as an arbitrator under the Workmen's Compensation Act, 1906, has been signed, sealed, and filed in accordance with rule 28 of the Workmen's Compensation Rules, 1907, it is not competent for him afterwards to alter it, except as provided for in sub-rule 2 of rule 28. *Mowlem & Co.* v. *Dunne*, 81 L. J. K.B. 777; [1912] 2 K.B. 136; [1912] W.C. Rep. 298; 106 L. T. 611—C.A.

Per Cozens-Hardy, M.R. : It is competent for the County Court Judge, however, to alter an award subsequently to his making it verbally in Court, but prior to its being signed, sealed, and filed in accordance with rule 28. *Ib.*

Costs of Obtaining Award — Bankruptcy — Preferential Payment.]—The costs of obtaining an award under the Workmen's Compensation Act, 1906, are not payable in priority to all other debts in a bankruptcy. *Jinks, In re ; Trustee, ex parte*, 112 L. T. 88; 58 S. J. 741—D.

12. Bankruptcy of Employer or Winding up of Employing Company.

See also Vol. IX. 2217.

Employer Insured against Liability in Respect of Workman—Bankruptcy—Rights of Workman.] — Section 5, sub-section 1 of the Workmen's Compensation Act, 1906, enacts that "Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming bankrupt, . . . the rights of the employer against the insurers as respects that liability shall, . . . be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer." The effect of this section is to give to the workman a right to enforce the policy against the insurance company, in substitution for the right which he possessed before the Act of proving against the estate of a bankrupt employer. The section does not give the workman merely an additional right or, in other words, an option either to prove against the bankrupt employer's estate or to claim against the insurance company. *Craig* v. *Royal Insurance Co.*, 84 L. J. K.B. 333; [1915] W.C. & I. Rep. 139; 112 L. T. 291; [1915] H. B. R. 57—Atkin, J.

—— **Employer and Insurer Insolvent—Workman's Right of Proof.**]—A workman was receiving compensation from his employer on account of an accident arising out of and in the course of his employment. The employer

company was insured against workmen's compensation claims with an insurance company. The employer company became insolvent, and shortly afterwards the insurance company also became insolvent. It being unlikely that the insurance company would pay any dividend at all, the workman sought to prove for his whole claim in the liquidation of the employer company, and as to 100*l.* thereof as a preferential payment:—*Held*, that there was no right to preferential payment, and that the workman's right of proof in the liquidation of the employer company was impliedly taken away by section 5, sub-sections 1 and 2 of the Workmen's Compensation Act, 1906, and that his only remedy was proof against the insurance company notwithstanding their insolvency. *Pethick, Dix & Co., In re; Burrows* v. *The Company*, 84 L. J. Ch. 285; [1915] 1 Ch. 26; [1915] W.C. & I. Rep. 5; 112 L. T. 212; [1915] H. B. R. 59; 59 S. J. 74—Neville, J.

Costs of Award — Whether a Preferential Debt.]—*See Jinks, In re; Trustee, ex parte*, *ante*, col. 2004.

Winding-up of Company—Insurance—Liability of Insurers.]—A colliery company were members of the respondent company, and as such members were entitled to an indemnity against all proceedings, costs, damages, claims, and demands in respect of compensation resulting from any accident to their workmen. By the articles of association, "Whenever a member's protection has been determined . . . he shall not be entitled to any indemnity in respect of any accident." The colliery company made default in payment of a call, and the respondent company removed their name from the list of protected mines and works. The colliery company was afterwards wound up. The respondent company had become liable to pay an indemnity to the colliery company in respect of an accident to the appellant, one of their workmen, which occurred while the colliery company were still members of the respondent company:—*Held*, that the clause in the articles of association referred to accidents happening after the protection had been determined, not to accidents which had happened while it was existing, and that on the winding up of the colliery company the respondent company were liable to pay compensation to the appellant under section 5 of the Workmen's Compensation Act, 1906. Judgment of the Court of Appeal ([1913] W.C. & I. Rep. 1) reversed. *Daff* v. *Midland Colliery Owners' Mutual Indemnity Co.*, 82 L. J. K.B. 1340; 109 L. T. 418; 20 Manson, 363; 57 S. J. 773; 29 T. L. R. 730—H.L. (E.)

Winding-up Proceedings Commenced — Insurance Policy—Arbitration Clause—Dispute—Subrogation—Award under Policy—Condition Precedent to Right of Action.] — A girl was employed by a company, and in the course of her employment met with a serious accident. The company did not dispute their liability, and paid compensation until winding-up proceedings were commenced. They had a policy of insurance which contained a clause that any dispute between the insured and the insurers should be referred to arbitration under the Arbitration Act, 1889, and that an award in favour of the insured should be a condition precedent to any right of action against the insurers. The girl applied to the County Court under section 5, sub-section 1 of the Workmen's Compensation Act, 1906, for an order that the insurers should continue the payment of compensation. The insurers denied liability on the ground that the policy had become invalid through a breach of its conditions by the employers:—*Held* (affirming the County Court Judge, who decided that there was a dispute between the parties, and that in the circumstances he had at present no jurisdiction in the matter), that section 5, sub-section 1 of the Act of 1906 merely enabled the applicant, by way of subrogation, to stand in the position of the employers, and that, consequently, until there had been a submission to arbitration under the Arbitration Act, 1889, and an award, as provided by the policy, the applicant was not entitled to claim any payment from the insurers. *King* v. *Phœnix Assurance Co.*, 80 L. J. K.B. 44; [1910] 2 K.B. 666; 103 L. T. 53—C.A.

—— Commuted Sum—Order for Payment out of Assets—Receiver and Liquidator—Preferential Payment.]—On an application under section 5 of the Workmen's Compensation Act, 1906, the County Court Judge ordered the liquidator of a company in voluntary liquidation to pay to the applicant the commuted sum of 100*l.* in lieu of a weekly payment ordered to be paid under a former award:—*Held*, that any question relating to the preferential payment of this sum must be decided in the winding-up, and was not the subject of appeal under the Workmen's Compensation Act, 1906. *Homer* v. *Gough*, 81 L. J. K.B. 261; [1912] 2 K.B. 303; [1912] W.C. Rep. 30; 105 L. T. 732—C.A.

—— Appeal — Jurisdiction.] — *Semble*, that under section 5, sub-section 3 of the Workmen's Compensation Act, 1906, the County Court Judge's jurisdiction was limited to assessing the lump sum and that he had no jurisdiction to order payment; but as this objection was not taken before the County Court Judge the Court of Appeal could not entertain it. *Ib.*

13. Claims Under and Independently of Act.

"Proceedings independently of this Act"—Receipt Referring to Employers' Liability Act, 1880—Subsequent Death of Workman—Claim by Dependants.]—A workman who was injured by accident arising out of and in the course of his employment through the breaking of a chain was paid a sum of money by his employers and gave a receipt for the same as "being in full satisfaction and liquidation of all claims under the Employers' Liability Act, 1880, and the common law, in respect of injuries, whether now or hereafter to become manifest, arising directly or indirectly from an accident which occurred to" him on a specified date. Shortly afterwards the workman died, and his dependants claimed com-

pensation under the Workmen's Compensation Act, 1906:—*Held*, that there had been no exercise by the workman of the option conferred upon him by section 1, sub-section 2 (*b*) of the Act; and that, therefore, his dependants were only barred from recovering under the Act to the extent of the benefits received by him. *Howell* v. *Bradford*, 104 L. T. 433—C.A.

Res Judicata—Finding in Arbitration—Subsequent Action at Common Law.]—In an application under the Workmen's Compensation Act, 1906, to end or diminish compensation payable to a minor workman, the arbitrator found that the workman had agreed to accept compensation at a certain rate, and reduced the amount. The workman having thereafter sued his employers at common law for damages for his injury and for setting aside the arbitrator's finding that he had agreed to accept compensation, the defenders, on the ground that the arbitrator's decision was final on questions of fact, pleaded that the matter was *res judicata*. The Court repelled the plea. *M'Feetridge* v. *Stewarts and Lloyds*, [1913] S. C. 773—Ct. of Sess.

Action by Widow for Damages under Fatal Accidents Act, 1846—Verdict for Employers on Ground for Contributory Negligence — Action "for injury caused by any accident"—Assessment of Compensation by Judge.]—An action under the Fatal Accidents Act, 1846, is an action brought to recover damages "for injury caused by any accident" within the meaning of section 1, sub-section 4 of the Workmen's Compensation Act, 1906. *Potter* v. *Welsh & Sons, Lim.*, 83 L. J. K.B. 1852; [1914] 3 K.B. 1020; [1914] W.C. & I. Rep. 607; 112 L. T. 7; 30 T. L. R. 644—C.A.

A workman whilst employed in moving a trolley through a doorway received a severe blow on the head and also a jagged wound on his tongue by reason of a tooth being forced through it. He did not consider the injury serious at the time. He mentioned it to his foreman, but no written notice of the accident was given, and he continued at work. Cancer of the tongue supervened, but his doctor did not inform him of the nature of the trouble. He remained at work until a week before his death, which took place in July, 1913, the accident having happened the previous January. His widow brought an action under the Fatal Accidents Act, 1846, against his employers, but the jury gave a verdict for the defendants on the ground of contributory negligence. The plaintiff then applied to Channell, J., before whom the action was tried, to assess compensation under section 1, sub-section 4 of the Workmen's Compensation Act, 1906. His Lordship did so, holding that the action was within sub-section 4 of section 1 of the Act, and that the deceased had acted reasonably in not giving notice of the accident to the employers. The Court of Appeal affirmed Channell, J., on the first point, but reversed him on the second point on the ground that, as the injury was neither latent nor trivial, no "reasonable cause" was shewn within section 2 of the Act for the failure to give notice of the accident, and that therefore the claim to compensation failed. *Ib.*

Webster v. *Cohen* ([1913] W.C. & I. Rep. 268; 29 T. L. R. 217) and *Clapp* v. *Carter* ([1914] W.C. & I. Rep. 80) applied. *Ib.*

Payment of Maximum Amount to Dependants of Deceased Workman—No Claim under Act by Widow—Subsequent Action by Widow under Fatal Accidents Act, 1846.]—A workman was killed by accident arising out of and in the course of his employment. He left a widow and six children dependent on him. His employers admitted that they were liable to pay compensation under the Workmen's Compensation Act, 1906, and paid into Court 300*l.*, the maximum amount for which they were liable under that Act, and that amount was invested on behalf of the six children. Before any step had been taken under the Act of 1906, a letter had been sent on behalf of the widow to the employer stating that she proposed to claim damages under the Fatal Accidents Act, 1846; but she was afterwards added, though not at her own request, as a claimant in the proceedings under the Act of 1906. She was throughout cognisant of the proceedings under that Act, she approved of and concurred in the application for the investment of the 300*l.*, attended at the hearing thereof, and thereat renounced her rights in that sum in favour of her children, and the award was made with her consent. The widow subsequently sued the employers for damages under the Fatal Accidents Act, 1846, alleging that it was in consequence of their negligence that her husband was killed:—*Held*, that, by virtue of section 1, sub-section 2 (*b*) of the Act of 1906, the action was not maintainable, inasmuch as the employers, having with the knowledge and consent of the widow paid the maximum amount of compensation under that Act, were not liable to pay her compensation independently of that Act. *Codling* v. *Mowlem & Co.* (*No.* 1), 83 L. J. K.B. 1727; [1914] 3 K.B. 1055; [1914] W.C. & I. Rep. 579; 111 L. T. 1086; 58 S. J. 783; 30 T. L. R. 677—C.A.

Decision of Atkin, J. (83 L. J. K.B. 445; [1914] 2 K.B. 61; [1914] W.C. & I. Rep. 1), affirmed. *Ib.*

"Recovery" of Compensation from Employers — Acceptance of Compensation under Reservation of Claims against Third Parties—Competency of Action against Third Parties.]—An injured workman claimed compensation from his employers in respect of an accident. His right to compensation was admitted, and payments were made for which he granted receipts which stated that he had "elected to take compensation under the Workmen's Compensation Act." They further bore to be granted "under reservation of my claims against third parties," and he agreed with his employers to repay the sums received from them if he recovered damages from the third parties whom he alleged to be responsible for the accident. In an action of damages by the workman against these third parties,—*Held*, that he had not "recovered" compensation in the sense of section 6 of the Workmen's Compensation Act, 1906, so as to

be barred from pursuing the action. *Wright* v. *Lindsay*, [1912] S. C. 189—Ct. of Sess.

—— **Injury through Negligence of Third Person.**]—The plaintiff, who was employed by a colliery company, occupied himself in his leisure time in the cultivation of a plot of land as a farmer. In the course of his work for the colliery company he was injured by accident owing to the negligence of the defendants. He was paid compensation by his employers under the Workmen's Compensation Act, 1906, but he claimed to be entitled to recover from the defendants the loss he had sustained in his capacity of farmer:—*Held*, that, having received compensation, he was precluded by section 6 of the Act from maintaining an action for damages arising out of the same injury. *Woodcock* v. *London and North-Western Railway*, 82 L. J. K.B. 921; [1913] 3 K.B. 139; [1913] W.C. & I. Rep. 563; 109 L. T. 253; 29 T. L. R. 566—Rowlatt, J.

The word "injury" in section 6 of the Workmen's Compensation Act, 1906, means physical injury or hurt, and is not a translation of the juristic term "*injuria*." *Ib.*

A workman employed by a colliery company as brakesman on a branch line of railway belonging to his employers, was incapacitated for work as the result of an accident and received compensation under the Workmen's Compensation Act, 1906, for three years, until he died from his injuries. His father thereupon brought an action of damages in respect of his son's death, against a railway company, owing to whose fault, he averred, the accident had happened. The Court dismissed the action, holding that the pursuer's claim was excluded by section 6 of the Workmen's Compensation Act, 1906, on account of his son having recovered compensation from his employers. *Gray* v. *North British Railway*, [1915] S. C. 211; [1915] W.C. & I. Rep. 460—Ct. of Sess.

14. Remitting Case to Arbitrator.

Refusal of Arbitrator to State Case.] — In proceedings under the Workmen's Compensation Act, 1906, the arbitrator found that a workman's death resulted from injuries sustained by him owing to a fall from a ladder, and awarded compensation. A medical certificate which was produced stated the cause of death to have been appendicitis-peritonitis. The arbitrator refused to state a Case for the opinion of the Court on the question whether the death of the deceased "was the result of an accident arising out of and in the course of his employment," on the ground that the question was one of fact and not of law:—*Held*, that the proper question was "whether there was evidence upon which it could competently be found that the death of the workman was the result of an accident arising out of and in the course of his employment"; and case remitted to the arbitrator to state a Case on this question. *Euman* v. *Dalziel & Co.*, [1912] S. C. 966; [1912] W.C. Rep. 328—Ct. of Sess.

Power to Remit Case to Arbitrator.] — A Court is entitled to remit a case to an arbitrator if it has been stated ambiguously or incompletely, in order to obtain further information, but it is not entitled to do so in order to obtain evidence which will enable the Court to substitute itself for the arbitrator. *Lendrum* v. *Ayr Steam Shipping Co.*, 84 L. J. P.C. 1; [1915] A.C. 217; [1914] W.C. & I. Rep. 438; 111 L. T. 875; 58 S. J. 737; 30 T. L. R. 664—H.L. (Sc.)

15. Costs.

See also Vol. IX. 2256.

Costs Ordered to be Paid by Successful Applicant — Severable Issues.] — Where a County Court Judge, sitting as arbitrator under the Workmen's Compensation Act, 1906, has made an award in favour of a workman's claim for compensation, it is not competent for him to order the workman to pay the employer's costs of and incident to the arbitration; but he must exercise his discretion judicially as to the payment of costs. *Evans* v. *Gwauncaegurwen Colliery Co.*, 106 L. T. 613; [1912] W.C. Rep. 215—C.A.

Where in applications under the Act there is more than one issue to be determined it is competent for the learned County Court Judge to treat such issues as severable, and to order the costs of an issue upon which a party has failed to be paid, or to be set off against the remainder of the costs. *Ib.*

Enquiry as to Adequacy of Sum Payable—Order for Successful Party to Pay Costs—No Misconduct Proved.]—Assuming that a County Court Judge has jurisdiction as to the costs of an enquiry, under the Workmen's Compensation Act, 1906, Sched. II. clause (9) (*d*), as to recording a memorandum of an agreement for redemption of a weekly payment, he cannot order a successful party against whom no misconduct is proved to pay the costs of the other party. *Kierson* v. *Thompson & Sons, Lim.*, 82 L. J. K.B. 920; [1913] 1 K.B. 587; [1913] W.C. & I. Rep. 140; 108 L. T. 236; 57 S. J. 226; 29 T. L. R. 205—C.A.

Set-off of Costs—Validity of Award—Right to Contest — Receipt of Weekly Payment — Approbation and Reprobation.] — Where an award has been made under the Workmen's Compensation Act, 1906, for payment of a weekly sum as compensation to a workman, and the award contains an order for payment of certain costs by the workman with liberty to the employers to set off such costs at a certain rate per week against the weekly sum payable for compensation, the workman cannot, after receiving the weekly sum payable under the award, contest the jurisdiction of the arbitrator to order the costs to be set off and deducted from the weekly payments. The award is entire, and the workman cannot contend that part of it is good and part bad. *Johnson* v. *Newton Fire Extinguisher Co.*, 82 L. J. K.B. 541; [1913] 2 K.B. 111; [1913] W.C. & I. Rep. 352; 108 L. T. 360—C.A.

Costs of Appeal—Costs of Arbitration—Set-off — Jurisdiction.] — The Court of Appeal cannot, after judgment has been given speci-

fically dealing with costs, alter their judgment by ordering that the costs of the appeal shall be costs in an arbitration in the County Court under the Workmen's Compensation Act, 1906, so as to enable the appeal costs to be set off against costs in the arbitration. *Barnett* v. *Port of London Authority (No. 2)*, 82 L. J. K.B. 918; [1913] W.C. & I. Rep. 414; 108 L. T. 944; 57 S. J. 577—C.A.

Costs of Obtaining Award — Whether Preferential Debt.]—The costs of obtaining an award under the Workmen's Compensation Act, 1906, are not payable in priority to all other debts in a bankruptcy. *Jinks, In re; Trustee, ex parte*, 112 L. T. 88; 58 S. J. 741—D.

16. Appeal.

See also Vol. IX. 2257.

Accident before Commencement of Act — Reference to Medical Referee—Appeal to House of Lords.]—No appeal lay to the House of Lords from the Court of Session in Scotland in a proceeding under the Workmen's Compensation Act, 1897. The Act of 1906 by Schedule II. section 17 (*b*), gave an appeal to the House of Lords in cases from Scotland under that Act, and by section 16, subsection 2, repealed the Act of 1897, but provided that that Act should "continue to apply to cases where the accident happened before the commencement of this Act, except to the extent to which this Act applies to those cases." Section 16, sub-section 1 of the Act of 1906 provided that that Act, "except so far as it relates to references to medical referees, and proceedings consequential thereon, shall not apply to any case where the accident happened before the commencement of this Act." In a case where an accident happened after the passing of the Act of 1906, but before it came into operation, and after it had come into operation the Sheriff directed a reference to a medical referee,—*Held*, that a subsequent appeal from the award of the Sheriff to the Court of Session was not a "proceeding consequential on" the report of the medical referee, so as to make the Act of 1906 apply to the case and give an appeal to the House of Lords from the decision of the Court of Session. *Mackay* v. *Rosie*, [1912] W.C. Rep. 41; 105 L. T. 682; 56 S. J. 87—H.L. (Sc.)

Review of County Court Decisions by Court of Appeal.]—The function of the Court of Appeal in reviewing the decisions of the County Court explained. *Wilmerson* v. *Lynn and Hamburg Steamship Co.*, 82 L. J. K.B. 1064; [1913] 3 K.B. 931; [1913] W.C. & I. Rep. 633; 109 L. T. 53; 57 S. J. 700; 29 T. L. R. 652—C.A.

Appeal from Order—Evidence on Commission.]—*See Taylor* v. *Cripps*, *ante*, col. 1975.

Order for Detention of Ship.]—An order made by a County Court Judge for the detention of a ship under section 11 of the Workmen's Compensation Act, 1906, is only in aid of an arbitration under the Act, and not part of it. An appeal from such an order, therefore, does not lie to the Appeal Court under the Act, but to the Divisional Court in the usual way, notwithstanding Schedule II. clause 4, the application of which is limited by section 1, sub-section 3 of the Act:—So *held* by Cozens-Hardy, M.R., and Fletcher Moulton, L.J. (*dissentiente* Farwell, L.J.). *Panagotis* v. "*Pontiac*" (*Owners*), 81 L. J. K.B. 286; [1912] 1 K.B. 74; [1912] W.C. Rep. 74; 105 L. T. 689; 12 Asp. M.C. 92; 56 S. J. 71; 28 T. L. R. 63—C.A.

Order on Reference from Registrar.]—When a County Court Judge makes an order upon a matter referred to him by a Registrar of the County Court on his refusal to record a memorandum of agreement under clause 9 (*d*) of Schedule II. to the Workmen's Compensation Act, 1906, an appeal from that order lies direct to the Court of Appeal under clause 4 of Schedule II., and not to the Divisional Court. *Panagotis* v. "*Pontiac*" (*Owners*) (81 L. J. K.B. 286; [1912] 1 K.B. 74; [1912] W.C. Rep. 74) distinguished. *Bonney* v. *Hoyle & Sons, Lim.*, 83 L. J. K.B. 541; [1914] 2 K.B. 257; [1914] W.C. & I. Rep. 565; 110 L. T. 729; 12 L. G. R. 358; 58 S. J. 268; 30 T. L. R. 280—C.A.

Appeal by Workman against Part of Award —Acceptance by Workman of Payment under Award.]—A workman cannot appeal against any part of an award made under the Workmen's Compensation Act, 1906, after he has accepted payment of compensation under it. *Johnson* v. *Newton Fire Extinguisher Co.* (82 L. J. K.B. 541; [1913] 2 K.B. 111; [1913] W.C. & I. Rep. 352) followed. *Jones* v. *Winder*, [1914] W.C. & I. Rep. 37—C.A.

Quantum of Compensation.]—In claims for compensation under the Workmen's Compensation Act, 1906, it is for the County Court Judge to find the *quantum* of compensation to be awarded, and the Court of Appeal will not interfere with his award unless there has been misdirection or no proper exercise of his judicial discretion. *Cheverton* v. *Oceanic Steam Navigation Co.*, [1913] W.C. & I. Rep. 462; 29 T. L. R. 658—C.A.

VII. REVIEW AND REDEMPTION OF WEEKLY PAYMENTS.

See also Vol. IX. 2260.

1. Review.

a. Jurisdiction.

Recorded Memorandum—Review.]—When a memorandum has been recorded in terms of the Workmen's Compensation Act, 1906, the only method by which the employer can relieve himself of the liability imposed upon him by that memorandum is by an application for review. *Wilsons and Clyde Coal Co.* v. *Cairnduff*, [1911] S. C. 647—Ct. of Sess.

Condition Precedent to Jurisdiction of Arbitrator.]—Where a workman is in receipt of a weekly payment by way of compensation under the Workmen's Compensation Act, 1906,

either under the award of an arbitrator or under a recorded agreement, it is not a condition precedent to the jurisdiction of the arbitrator to review the weekly payment that a question should have arisen between the employer and workman before the application for a review was launched. *Tyne Tees Shipping Co.* v. *Whilock*, 82 L. J. K.B. 1091; [1913] 3 K.B. 642; [1913] W.C. & I. Rep. 579; 109 L. T. 84; 57 S. J. 716—C.A.

Award by Committee—Application to County Court to Review—Refusal to Hear Application —Appeal.]—An application was made to a County Court Judge to review an award made by a committee of employers and workmen under schedule 2, paragraph 1 of the Workmen's Compensation Act, 1906. The Judge refused to hear the application on the grounnd that, the award having been made by a committee, he had no jurisdiction to review it:—*Held*, that the Judge had refused to entertain jurisdiction, and an appeal from his decision lay to the Divisional Court and not to the Court of Appeal. *Howarth* v. *Samuelson*, 104 L. T. 907—C.A.

Where an award of a weekly payment as compensation to a workman has been made by a committee representative of an employer and his workmen under the Second Schedule of the Workmen's Compensation Act, 1897, a memorandum of which has been duly recorded in the County Court register, the workman is entitled, under clause 12 of the First Schedule, to have such award reviewed by the County Court Judge, provided that he has objected to the settlement of the matter by the committee by notice in writing sent to the other party before the committee meet to consider the matter, inasmuch as the review of such award is a new matter under the Act. *Rex* v. *Templer; Howarth, Ex parte*, 81 L. J. K.B. 805; [1912] 2 K.B. 444; [1912] W.C. Rep. 209; 106 L. T. 855; 56 S. J. 501; 28 T. L. R. 410—C.A.

Termination of Weekly Payment—Jurisdiction.]—In an application by employers for a review of weekly payments made under an agreement—whereby the employers agreed to pay the injured man a certain sum per week until the same should be ended, diminished, increased, or redeemed, in pursuance of the Workmen's Compensation Act, 1906—on the ground that the incapacity of the man for work had ceased, the County Court Judge made an order terminating the agreement and the weekly payments:—*Held*, that the order was technically erroneous because the Judge's jurisdiction was merely to say that the weekly payments should be "ended, diminished, increased, or redeemed," and not that the agreement should be terminated. Appeal dismissed by consent of parties, the appellant not desiring a remit on the point of form. *Taylor* v. *London and North-Western Railway*, 81 L. J. K.B. 541; [1912] A.C. 242; [1912] W.C. Rep. 95; 106 L. T. 354; 56 S. J. 323; 28 T. L. R. 290—H.L. (E.)

Medical Referee—Finality of Report.]—In an application for review of compensation paid to a miner who had received an injury resulting in the loss of an eye, a remit was made to a medical referee under paragraph 15 of the First Schedule to the Workmen's Compensation Act, 1906. The referee reported that the miner was "as fit as any other one-eyed man to resume his work under ground." The miner applied to have the question of his earning capacity tried, but the arbitrator refused the application and ended the compensation, on the ground that the referee's report was final, and that it meant that the miner's incapacity had ceased:—*Held*, that the report, though final as to the miner's physical condition, was not final as to his earning capacity, and the case was remitted to the arbitrator to hear evidence on this point. *Arnott* v. *Fife Coal Co.*, [1911] S. C. 1029—Ct. of Sess.

Prospective Award—Termination of Weekly Payment at Future Date.]—It is not competent for a County Court Judge, sitting as arbitrator under the Workmen's Compensation Act, 1906, to prophesy as to how long the incapacity for work of a workman, who has been injured by accident arising out of and in the course of his employment, will last, and to anticipate what may happen in the future in the workman's condition. It is for the employer who desires to obtain on the ground of change of circumstances a review of the weekly payment which has been made payable to the injured workman to establish that such change has taken place, and the onus of so proving ought not to be shifted to the workman. *Baker* v. *Jewell* (79 L. J. K.B. 1092; [1910] 2 K.B. 673) applied. *Walton* v. *South Kirkby, Featherstone, and Hemsworth Colliery*, [1912] W.C. Rep. 383; 107 L. T. 337—C.A.

Cesser of Workman's Incapacity for Work—Ending Weekly Payment—Suspensory Award Unnecessary.]—Where a County Court Judge sitting as arbitrator under the Workmen's Compensation Act, 1906, has found—there being ample evidence to justify his finding—that a workman who has been injured by accident arising out of and in the course of his employment and has been awarded compensation in respect thereof is no longer suffering from any incapacity resulting from the accident, that is a finding of fact with which the Court of Appeal has no jurisdiction to interfere; and the Judge has power to make an order ending the liability of the employers to make any further weekly payments under the original award, and is not bound to qualify his finding of fact by deciding that he ought to make a suspensory award. *Wheeler, Ridley & Co.* v. *Dawson*, [1912] W.C. Rep. 410; 107 L. T. 339—C.A.

b. Notice of Application for Review.

Service of Notice on "all persons interested" —Service on Personal Representative.]—The notice of an application for variation that it is necessary in such a case by rule 58, sub-rule 3 of the Workmen's Compensation Rules, 1907, to serve upon "all persons interested" may be served upon the personal representative of a dead "dependant." *Ivey* v. *Ivey*, 81 L. J.

K.B. 819; [1912] 2 K.B. 118; [1912] W.C. Rep. 293; 106 L. T. 485—C.A.

Interest of Dependant not Part of his Personal Estate.]—The interest of a "dependant" in compensation awarded him under the Act does not pass to his personal representative on his death as part of his personal estate. *Ib.*

c. Grounds for Review.

Subsequent Change of Circumstances — Death of one "Dependant" — Variation of Award—Apportionment between other Dependants.]—The death of one of several "dependants" who are beneficiaries under an award under the Workmen's Compensation Act, 1906, constitutes such a "variation of the circumstances" of the other "dependants" as will justify the Court, if it think proper, in altering the award under the provisions of clause 9 of Schedule I. of the statute. *Ivey* v. *Ivey*, *ante*, col. 2014.

Partial Incapacity—"Able to earn"—Workman Fit for Light Work.]—In an application at the instance of the employers of a workman to end or diminish the weekly payments of compensation due under a recorded memorandum of agreement, it was proved that about nine months after the accident (by which the workman, a labourer, had been wholly incapacitated and for which he had been receiving compensation at the rate of 12*s.* weekly) the employers offered him light work as a labourer, which he refused, though he was able for the work, and though it would have aided his recovery. Six months later, at the date of the application for review, the workman was proved to be "able for light work such as that of a messenger or light porter or other occupation, where he would not require to do the heavy work of a labourer," and the employers renewed their previous offer of employment. There was no evidence of how much the workman was capable of earning at such work as he was able to perform. The arbitrator having reduced the compensation to 8*s.* weekly, the workman appealed on the ground that there was no evidence to justify the award. The Court *sustained* the award. *Proctor* v. *Robinson* (80 L. J. K.B. 641; [1911] 1 K.B. 1004) and *Cardiff Corporation* v. *Hall* (80 L. J. K.B. 644; [1911] 1 K.B. 1009) considered. *Carlin* v. *Stephen*, [1911] S. C. 901—Ct. of Sess.

Per Lord Salvesen: Incapacity for the purposes of the Workmen's Compensation Act is primarily physical incapacity; it does not include inability to get employment which arises from something not personal to the workman. *Ib.*

One-armed Man—Ability to Do Light Work—No Attempt to Get Work—Particular Kind of Light Work—"Suitable employment"—Evidence—Local Knowledge of County Court Judge.]—In 1909 a labourer lost his right arm in his employment and was in receipt of 11*s.* a week compensation. In 1914 his employers applied to review. Shortly after his accident the man had applied for work once to his employers and was refused. Since then he had never attempted to get any work. He married three years after his accident, and there was evidence that he was a strong healthy young man capable of light work, but there was no evidence of any particular light work which he could do, or that suitable work was obtainable. The County Court Judge found that he was capable of doing some kinds of light work which were obtainable in the district in which he lived, and, as he had never attempted to obtain any work, reduced his compensation to 7*s.* 6*d.* a week. On appeal,—*Held*, that the facts proved, coupled with his local knowledge, justified the conclusion of the County Court Judge. *Silcock* v. *Golightly*, 84 L. J. K.B. 499; [1915] 1 K.B. 748; [1915] W.C. & I. Rep. 164; 112 L. T. 800—C.A.

Chance of Obtaining Light Work—Burden of Proof.]—A lime washer employed by a firm of builders, sustained injuries to his left foot and ankle by the breaking of a ladder, and received weekly payments as compensation under the Workmen's Compensation Act, 1906, on the footing of total incapacity. On an application by the employers for a review and reduction of the weekly payments, the County Court Judge found that the workman was suffering from bad flat foot as a result of the accident, which prevented him from following his ordinary employment or from doing the full work of an ordinary labourer or able-bodied man, but that he could do some light work if he could obtain it; and, there being no evidence that the man could obtain any such work, the Judge refused the application:—*Held*, that the burden was on the employers to establish what particular kind of light work the man was able to perform, and to prove either that they had offered him work of that kind or that there was a chance of his obtaining such work in the district if he applied for it; and that as they had failed to discharge the burden, the decision of the County Court Judge was right. *Proctor* v. *Robinson*, 80 L. J. K.B. 641; [1911] 1 K.B. 1004—C.A.

Where on an application by the employer to review the amount of weekly payments under an award the medical evidence finds that the workman is able to do any form of light work, it is not necessarily incumbent on the employer to shew that he has offered to provide such work or that it can be obtained in the neighbourhood, and it is competent to the arbitrator to reduce the amount, notwithstanding evidence by the workman that he has made some unsuccessful attempts to obtain such work:—So *held* (*dissentiente* Cozens-Hardy, M.R.). *Clark* v. *Gas Light and Coke Co.* (21 T. L. R. 184), *Proctor & Sons* v. *Robinson* (80 L. J. K.B. 641; [1911] 1 K.B. 1004), and *Radcliffe* v. *Pacific Steam Navigation Co.* (79 L. J. K.B. 429; [1910] 1 K.B. 685) discussed. *Cardiff Corporation* v. *Hall*, 80 L. J. K.B. 644; [1911] 1 K.B. 1009; 104 L. T. 467; 27 T. L. R. 339—C.A.

Partial Incapacity—Inability to Obtain Suitable Employment.]—An averment, in an application to review weekly payments which had been awarded as compensation for partial incapacity resulting from injury by accident,

that the injured man, who had been dismissed from his employment, was unable to obtain suitable work within reasonable distance of the locality in which he had been employed,—*Held*, to be a relevant averment for enquiry. *Macdonald* (or *Duris*) v. *Wilsons and Clyde Coal Co.*, 81 L. J. P.C. 188; [1912] A.C. 513; [1912] W.C. Rep. 302; 106 L. T. 905; 56 S. J. 550; 28 T. L. R. 431—H.L. (Sc.)

Per Lord Shaw: *Boag* v. *Lochwood Collieries, Lim.* ([1910] S. C. 51) was wrongly decided. *Ib.*

Light Work — Amount Workman Able to Earn—Discretion.]—A workman having sustained an injury received the full amount of compensation for a time, and then the employer offered him some light work which he refused to accept. The employer then applied for a review with the object of diminishing the weekly payments. It was proved that the man was able to do light work, but there was no evidence to shew the exact amount of wages he would be able to earn. The County Court Judge, acting partly on his own local knowledge, diminished the payments:—*Held*, that the employer having established a case for a review of the payments, the Judge had a discretion to diminish the amount without evidence of the actual sum the workman could earn. *Roberts & Ruthven* v. *Hall*, [1912] W.C. Rep. 269; 106 L. T. 769—C.A.

Offer of Light Work — Change of Circumstances.]—An unskilled dock labourer while working at the docks met with a serious accident which rendered him unable to do the full work that he did before. For a considerable time his employers paid compensation to the workman under an agreement with him. Subsequently they offered to take him on as a labourer and give him 8*s.* a day and to find him work for four or five days a week, but they warned him that he must not take that as a guarantee by them of perpetual employment. The employers then applied under section 16 of the First Schedule to the Workmen's Compensation Act, 1906, for an order to review the weekly payment payable to the workman, on the ground that there was a change in the circumstances because of their offer of light work to him:—*Held*, that, having regard to the findings of the learned County Court Judge that the workman was fit for light work, and to the fact that the employers had offered the same to him, his Honour ought to have required evidence as to the probable amount of the wages which the workman could earn in order to ascertain what alteration should be made in the weekly payment (if any), and that therefore the case must go back to the learned Judge. *Gray, Dawes & Co.* v. *Reed*, [1913] W.C. & I. Rep. 127; 108 L. T. 53—C.A.

Partially Incapacitated Workman — Employer's Offer of Full Wages for Light Work —Refusal of Offer—Suspension of Compensation.]—An injured workman, who had been receiving compensation in pursuance of an agreement with his employer, recovered from his injuries sufficiently to be fit for light work. His employer thereupon offered him such work, and offered to pay him therefor the same wage as he had been earning before the accident. The workman refused this offer and presented for registration a memorandum of the agreement with his employer. The Sheriff refused to record the memorandum and ended the compensation:—*Held*, first, that the workman was barred from receiving compensation by his refusal of work, at full wages, suited to his capacity; and secondly, that the proper course for the Sheriff was to have recorded the memorandum, but, in respect of the employer's offer to pay the workman full wages, to have suspended compensation. *Keevans* v. *Mundy*, [1914] S. C. 525—Ct. of Sess.

—— Registration of Agreement — Review — Application by Employers for Termination of Weekly Payments — Burden of Proof.]—A collier in January, 1906, met with an accident which caused permanent injury to his right hand. His employers admitted liability, and by agreement paid him half-wages until August, 1908, when they found him light work in the colliery at wages somewhat higher than his old wages. He was first employed as a watchman on the surface, and afterwards as a signalman underground. He had to walk up a high hill to get to the pit, and in April, 1910, he gave up work because he was suffering from heart disease and could not walk uphill. In January, 1911, he obtained registration of the agreement for compensation. His employers thereupon applied under Schedule I. clause 12 of the Workmen's Compensation Act, 1897, for a review and termination of the weekly payments as from April, 1910. It was proved that the heart disease was not caused by the accident, and that the man's hand was useless except for some special kind of light work. The County Court Judge declined to terminate the agreement, but slightly reduced the weekly payments:—*Held* (affirming his decision), that the burden was on the employers to prove that the workman was not now under any incapacity by reason of the accident, and that that burden was not discharged by shewing that since the accident he was earning wages equal to or greater than his old wages. *Cory* v. *Hughes*, 80 L. J. K.B. 1307; [1911] 2 K.B. 738; 105 L. T. 274; 27 T. L. R. 498—C.A.

—— Mental Infirmity Supervening — Insufficient Medical Evidence to Prove Complete Recovery.]—A miner met with an accident, causing injury to his back and involving complete incapacity for nearly two years, at the end of which he was put on light work on the surface. After a time he asked to be allowed to try his old work again, but owing to symptoms of mental infirmity he was prohibited from descending the mine. The employers applied to terminate or diminish the compensation on the ground of recovery; but their medical evidence only dealt with the workman's mental, and not his physical condition, and the arbitrator was not satisfied with it, and dismissed the application without hearing the respondent's evidence:—*Held*,

that he was justified in so doing. *New Monckton Collieries* v. *Toone*, [1913] W.C. & I. Rep. 425; 109 L. T. 374; 57 S. J. 753—C.A.

Incapacity at First Total, Then Partial—Reduction in Weekly Payments.]—A workman, at first totally incapacitated by an accident for the consequences of which the employers accepted liability, was paid by them half-wages for some months, when they sought to reduce the weekly rate of payment on the ground that total incapacity had ceased. The workman applied for arbitration, and was the only witness examined before the County Court Judge. He proved that he had tried to get employment and failed, and was admittedly not actually in any employment at the time of his application. He did not, however, give any estimate of what would be the value of his services if employed. No evidence of any kind was adduced by the employers. The County Court Judge awarded the applicant, until further order, a weekly sum which was equivalent to half the wages he was earning up to the time of the accident:—*Held*, that the County Court Judge was within his jurisdiction in making the award, and that it should be affirmed. *Osborne* v. *Tralee and Dingle Railway*, [1913] 2 Ir. R. 133; [1913] W.C. & I. Rep. 391—C.A.

Permanent Partial Incapacity—Infant—Offer of Suitable Work at Increased Wages—Termination of Award.]—A workgirl, seventeen years old, employed in a factory, lost one of the fingers of her left hand by accident while attending to a machine, and obtained an award of 3*s*. per week. Later the employers applied to terminate this award, and offered her suitable employment in their works, not involving any danger through machinery, at higher wages than her average wage before the accident. The County Court Judge refused to disturb the award:—*Held*, that as he had not purported to exercise any discretion under the proviso to Schedule I. (16), and as there was no evidence upon which he could have done so, the award ought to be terminated. *Clarke, Nicholls & Coombes* v. *Knox*, [1913] W.C. & I. Rep. 664; 57 S. J. 793—C.A.

Partial Recovery.]—When a workman who has been totally incapacitated, and has been receiving full compensation in terms of the Workmen's Compensation Act, 1906, partially recovers and is earning a wage, a *prima facie* case arises for reducing his compensation; but it is open to him to prove circumstances which will warrant the arbitrator, in the exercise of his discretion, in refusing to diminish the compensation. The circumstance that the compensation he has been receiving together with the wage he is earning does not equal his average weekly earnings before the accident does not by itself justify a refusal to diminish. *Pryde* v. *Moore & Co.*, [1913] S. C. 457; [1913] W.C. & I. Rep. 100—Ct. of Sess.

Industrial Disease—Recovery—Susceptibility to Recurrence.] — In an application by employers for the ending or diminishing of a weekly payment it was proved that the workman, after being duly certified as suffering from miner's nystagmus (an industrial disease), was awarded compensation, that he had "now completely recovered from this attack," but that he was susceptible to a recurrence of the disease. It was not proved whether the susceptibility was due to the original attack or to constitutional predisposition, the evidence being inconclusive:—*Held*, that as the workman had recovered from the original attack, and as he had failed to discharge the onus which lay on him of proving that his susceptibility to recurrence of the disease was due to that attack, the compensation fell to be ended. *Darroll* v. *Glasgow Iron and Steel Co.*, [1913] S. C. 387; [1913] W.C. & I. Rep. 80—Ct. of Sess.

Incapacity for Work—Physical Capacity—Wage-earning Capacity.]—A miner who had lost one eye by an accident and who had been given work above ground and was receiving partial compensation, was examined by a medical referee, who reported that he was "as fit as any other one-eyed man to resume his work underground." The employers having applied to have the compensation ended, the arbitrator found that the miner had made various applications for work underground without success, and that he "is presently working on the surface and is only able on account of his injuries to earn 18*s*. a week," and dismissed the application. On appeal, the Court refused to disturb the arbitrator's finding. *Arnott* v. *Fife Coal Co.*, [1912] S. C. 1262; [1912] W.C. Rep. 355—Ct. of Sess.

Unreasonable Refusal to Work—Medical Advice.]—A bricklayer met with an accident in the course of his employment and was in receipt of compensation for some years. In September, 1912, he was offered light work, but refused it, and his own doctor then certified that he was incapable of continuous work of any sort. Thereupon the employers commenced proceedings, asking, first, for the diminution and, secondly, for the termination of the compensation. Both applications came on for hearing together. There was a serious conflict of medical testimony, but the employers' medical evidence was that the workman had no physical disability which would prevent him doing light work or beginning work as a bricklayer, but was merely suffering from weakness of will and a fixed but erroneous idea that he was a chronic invalid. The County Court Judge terminated the compensation. He found that the workman had been offered light work which he had unreasonably refused; that an average man suffering as the workman did would long ago have gone back to work; and that, acting on unwise medical advice, the man had behaved in an unreasonable manner. He did not think the man was a malingerer, and he agreed with the medical referee who reported that the employers' medical evidence gave the correct view of the man's condition, and that a continuance of compensation was likely to keep up that condition:—*Held* (Cozens-Hardy, M.R., dissenting), that on these findings the County Court Judge was justified in terminating the compensation. *Higgs & Hill, Lim.* v. *Unicume*, 82 L. J. K.B.

369; [1913] 1 K.B. 595; [1913] W.C. & I. Rep. 263; 108 L. T. 169—C.A.

Per Cozens-Hardy, M.R.: The County Court Judge ought to have reduced the compensation to 1*d.* a week so as to allow the conflicting opinions of the doctors to be subjected to the test of actual experiment. *Ib.*

Per Hamilton, L.J.: There is no fixed rule that a man acting on the advice of his doctor cannot be held to have acted unreasonably. *Ib.*

Refusal to Undergo Surgical Operation.]—A workman accidentally injured in the foot, and thereby incapacitated, refused to undergo a simple operation which it was reasonably certain would have cured him. In so refusing he acted on the advice of his own doctors, who were of opinion that the proposed operation, though devoid of danger, would be useless. In an application for review of a payment of compensation which he was receiving,—*Held*, that he was precluded by his refusal from claiming a continuance of the compensation. *O'Neill* v. *Brown & Co.*, [1913] S. C. 653; [1913] W.C. & I. Rep. 235—Ct. of Sess.

Report by Medical Referee of Fitness for Work—Finality of Medical Referee's Report.]—By agreement between a coal miner, who had received an injury to his thumb and was receiving compensation, and his employers, the question of the workman's capacity to resume his former employment was referred to a medical referee under paragraph 15 of Schedule I. to the Workmen's Compensation Act, 1906. The medical referee reported that the workman was "quite fit to resume his ordinary employment as a coal miner, having recovered from" the injury. The employers thereupon applied to have the compensation ended, when the workman lodged answers in which he averred that having returned to work he had ascertained "that his earning ability has been considerably reduced from the effects of his injury" and maintained that he was still entitled to partial compensation. The arbitrator having ended the compensation, the workman appealed and asked leave to lead evidence in support of his averments:—*Held*, dismissing the appeal, that as the medical referee's report was final and was from its terms conclusive as to the question raised by the workman's averments, proof of these averments was inadmissible. *Ball* v. *Hunt* (81 L. J. K.B. 782; [1912] A.C. 496) and *Macdonald* (or *Duris*) v. *Wilsons and Clyde Coal Co.* (81 L. J. P.C. 188; [1912] A.C. 513) distinguished; and observed that where a medical referee's report is not from its terms conclusive a proof may be admissible. *Gray* v. *Shotts Iron Co.*, [1912] S. C. 1267; [1912] W.C. Rep. 359—Ct. of Sess.

Whether a proof might not have been admissible if the workman had averred that owing to the consequences of the accident he had been unable to obtain employment, *quære*. *Ib.*

Report of Medical Referee — Recovery of Wage-earning Capacity—Termination of Compensation—Suspensory Award.]—A workman lost the sight of one eye by an accident arising out of and in the course of his employment, and received compensation from his employers. Upon a remit by consent to a medical referee, the referee reported that the workman had recovered from his incapacity, and was fit for work; and it was also in evidence that he had been in fact employed at his former work at his old rate of wages:—*Held*, that there was evidence on which the arbitrator was entitled to terminate the compensation without making a suspensory award. *Jones* v. *Anderson*, 84 L. J. P.C. 47; [1915] W.C. & I. Rep. 151; 112 L. T. 225; 59 S. J. 159; 31 T. L. R. 76—H.L. (Sc.)

Recovery from Injury—Supervening Incapacity — Onus of Proof.] — Under a remit by parties to a medical referee to report on the condition of a workman, who had been injured and who was in receipt of compensation, the referee reported that he was fit for his former work. Thereafter the employers applied for review of the compensation, which was opposed by the workman on the ground that, since the date of his examination by the medical referee, he had again become incapacitated as a result of the accident:—*Held*, that the onus was on the workman of proving that the supervening incapacity was due to the accident. *M'Callum* v. *Quinn* ([1909] S. C. 227) distinguished. *M'Ghee* v. *Summerlee Iron Co.*, [1911] S. C. 870—Ct. of Sess.

—— Possible Recurrence — Keeping Arbitration Open.] — The appellant met with an accident which necessitated the removal of one of his eyes. Compensation was paid as for total incapacity. Subsequently his employers applied for a review. The Sheriff-Substitute and the Court of Session found that earning capacity had been completely restored, that a cataract which had been developed was not due to the accident, and made an order ending the compensation; and the House of Lords affirmed their decision, being of opinion that the arbitration ought not to be kept open to meet future developments. *Hargreave* v. *Haughhead Coal Co.*, 81 L. J. P.C. 167; [1912] A.C. 319; [1912] W.C. Rep. 275; 106 L. T. 468; 56 S. J. 379;—H.L. (Sc.)

—— Loss of Sight of one Eye — Earning Capacity Restored — Subsequent Disease of other Eye—Incapacity therefrom.]—If a man loses the sight of one eye from injury by accident arising out of and in the course of his employment and recovers his original earning capacity, but afterwards, owing to disease in his other eye, which has no causal connection with the injury by accident, suffers incapacity for work, the injury by accident cannot be treated as a contributory cause of his subsequent incapacity, and a suspensory order made in respect of the injury by accident cannot therefore be increased on account of such incapacity. The principles laid down in *Hargreave* v. *Haughhead Coal Co.* (81 L. J. P.C. 167; [1912] A.C. 319; [1912] W.C. Rep. 275) applied. *Hart* v. *Cory Brothers, Lim.*, 85 L. J. K.B. 116; [1915] W.C. & I. Rep. 522; 60 S. J. 89—C.A.

Agreement to Pay—"During total incapacity"—"Change of circumstances"—Total

Incapacity, Supposed to be Temporary, Become Permanent.]—Where an agreement has been entered into between a workman who has been injured by "accident arising out of and in the course of" his employment, within the meaning of section 1, sub-section 1 of the Workmen's Compensation Act, 1906, and his employers for payment to him of compensation "during his total incapacity for work," the weekly payment cannot be reviewed under section 16 of the first schedule to the Act merely because the total incapacity, which the parties thought would be temporary, has subsequently become permanent by reason of the necessity that the workman should undergo a surgical operation, that not being a "change of circumstances" within the meaning of the authorities. *Scott* v. *Long Meg Plaster Co.*, [1914] W.C. & I. Rep. 258; 111 L. T. 773—C.A.

The meaning of "change of circumstances" is that where an injured workman is awarded compensation on the footing that he is able to do some light work, he being only partially incapacitated, the weekly payment to him can be reversed if it is subsequently proved that that which, according to the medical evidence, was believed to be the fact turns out to have been unfounded. Or, if it can be proved that total incapacity has ceased and that there is only partial incapacity, there can be a review of the weekly payments. But, if total incapacity was supposed to exist at the date of the award or the agreement, it is immaterial to consider whether that which was a matter for doubt at one time has subsequently become a matter of certainty. *Ib.*

Incapacity from Nervous Effects—Neurasthenia — No Actual Physical Effects.] — In March, 1913, a workman suffered an injury to his head. The wound was completely healed by July, 1913. He was in receipt of compensation for total incapacity from his employers. In September, 1914, the employers applied to review on the ground that the man was capable of light work, which they had offered and he had refused. The medical evidence was conflicting. The medical assessor reported that the man could do light work on the level, but that he genuinely believed that he was unable to work. There were no actual physical effects. The County Court Judge found that the man honestly believed that he was incapable of work, and that his condition was due to neurasthenia resulting from the accident, but said that he ought to try and get work, and dismissed the application :—*Held* (Phillimore, L.J., dissenting), that there was evidence to justify the finding of the County Court Judge. *Wall, Lim.* v. *Steel*, 84 L. J. K.B. 1599; [1915] W.C. & I. Rep. 117; 112 L. T. 846—C.A.

Permanent Injury—Chance of Employment — Review of Compensation — Termination or Suspension.]—A workman met with an accident which necessitated the amputation of the thumb of his left hand. In an arbitration under the Workmen's Compensation Act, 1906, after the workman had recovered from the effects of the operation, the arbitrator found that he was fit to resume his former work as a brakesman, and also that the loss of his thumb did "not impair his chance of employment in his former line of employment or in any other line of employment which he might reasonably hope to follow," and terminated the compensation. The workman contended that the compensation should have been suspended and not ended :—*Held*, that, notwithstanding the permanent and patent nature of the injury, the arbitrator, in view of his finding as to the workman's chance of employment, was entitled to end the compensation. *Watson* v. *Beardmore & Co.*, [1914] S. C. 718—Ct. of Sess.

Temporary Recovery — Nominal Award — Suspensory Order.] — Decision in *Rosie* v. *Mackay* ([1910] S. C. 714) to the effect that it is incompetent to keep open a claim to compensation by means of a nominal award or similar device, doubted in view of the opinions delivered in the House of Lords in *Taylor* v. *London and North-Western Railway* (81 L. J. K.B. 541; [1912] A.C. 242). *Weir* v. *North British Railway*, [1912] S. C. 1073; [1912] W.C. Rep. 332—Ct. of Sess.

Unreasonable Conduct of Workman—Incapacity Due in Whole or in Part to Workman's Failure to Return to Work.]—In an application for termination or review of compensation which was being paid to an injured workman, the arbitrator found that the workman had for some time been fit for light work, but had made no attempt to obtain work, and that, though partial incapacity still existed, it was "due in whole or in part to the defender's failure to return to work when able to do so," and ended payments of compensation till further order :—*Held*, that, as the arbitrator's findings did not exclude the conclusion that incapacity was still partly due to the workman's injuries, he was not entitled to end the compensation. *Devlin* v. *Chapel Coal Co.*, [1915] S. C. 71—Ct. of Sess.

Observations on the effect of a workman's unreasonable conduct on his right to continue to receive compensation, and *semble* (*per* Lord Mackenzie and Lord Skerrington) that unreasonable conduct cannot *per se* deprive a workman of his right to compensation, but can only do so if it is proved that the existing incapacity is due to that conduct. *Ib.*

Rise in Wages between Date of Agreement and Date of Review—Increase of Amount.]—The compensation payable to a minor workman was fixed by agreement at a weekly sum representing half the amount which, in the opinion of the parties, he would have been earning at the date of the agreement had he remained uninjured. Some months afterwards, in consequence of a general rise in wages, he applied to the Sheriff to have the compensation increased :—*Held*, that the fact that there had been a general rise in wages between the date of the agreement and the date of the application did not *per se* entitle the workman to an increase, but that it was merely one of the items to be taken into consideration by the Sheriff in determining for himself the weekly sum which the workman would probably have been earning at the date of the review if he had remained

uninjured. *Malcolm* v. *Spowart & Co.*, [1913] S. C. 1024—Ct. of Sess.

Reduction of Amount Payable from Previous Date — Over-payment — Set-off against Sums Subsequently Payable.]—A workman was injured in 1908, and compensation was paid to him at the rate of 14*s.* 7*d.* a week under an agreement duly recorded under the Workmen's Compensation Act, 1906. On the application of the employers the payments were reduced by the Judge on July 4, 1910, to 10*s.* a week as from February 18, 1910. The employers having paid 14*s.* 7*d.* a week from February 18, had paid the workman 4*l.* 11*s.* 8*d.* too much. They claimed to set the over-payments off against the 10*s.* a week falling due :—*Held*, that the previous over-payments could not be set off against the weekly payments falling due after July 4, in consequence of Schedule I. clause 19 of the Act, which provides that a weekly payment "shall not be capable of being assigned, charged or attached . . . nor shall any claim be set off against the same." *Hosegood* v. *Wilson*, 80 L. J. K.B. 519; [1911] 1 K.B. 30; 103 L. T. 616; 27 T. L. R. 88—C.A.

"Diminution and (or) redemption"—Right of Employer to Withdraw Claim for Redemption.]—A workman met with an accident in his employment. His employer paid him compensation for over a year and then applied to review asking for "diminution and (or) redemption," on the ground that the workman could do light work. The workman submitted to redemption on the footing that he could not do his former work. The employer then, before the arbitration came on, gave notice that he withdrew his application so far as it related to redemption :—*Held*, that the employer was entitled to withdraw that part of his application. *Gotobed* v. *Petchell*, 83 L. J. K.B. 429; [1914] 2 K.B. 36; [1914] W.C. & I. Rep. 115; 110 L. T. 453; 48 S. J. 249; 30 T. L. R. 253—C.A.

d. Date from which Review may be Ordered.

Termination of Award.]—Upon application by a workman to review an award as from a date antecedent to the date of the application, the applicant alleging inability to work since that date owing to incapacity and the respondents denying inability to work since that date and the incapacity, and saying that they should ask for termination of the award, —*Held*, that the arbitrator had jurisdiction to terminate the award as from the antecedent date, the issue of incapacity as from that date having been raised. *Bagley* v. *Furness, Withy & Co.*, 83 L. J. K.B. 1546; [1914] 3 K.B. 974; [1914] W.C. & I. Rep. 518—C.A.

It is competent for an arbitrator to end the weekly compensation payable to an injured workman under the Workmen's Compensation Act, 1906, at a date antecedent to that of the application for review, if it be proved that in fact his incapacity for earning wages had ceased at the earlier date. *Donaldson* v. *Cowan* ([1909] S. C. 1292) disapproved. *Gibson & Co.* v. *Wishart*, 83 L. J. P.C. 321; [1915] A.C. 18; [1914] W.C. & I. Rep. 202; 111 L. T. 466; 58 S. J. 592; 30 T. L. R. 540—H.L. (Sc.)

Increase of Weekly Payments in Case of Minors—Order not to be Dated Prior to Date of Application to Review.]—On February 6, 1911, a collier, who was then under twenty-one years of age, was certified to be suffering from nystagmus. He was paid as compensation half his average wages, 10*s.* a week, until April 20, 1911, when compensation was stopped and he was given a job by his employers at 1*l.* 6*s.* 1*d.* a week. On September 23, 1913, he applied to review, as a minor when certified, under the proviso to Schedule I. clause 16 of the Workmen's Compensation Act, 1906, asking for increased compensation so as to make up his earnings to the amount which he would probably have been earning if he had remained uninjured. He claimed the increase as from April 20, 1911. The arbitrator awarded him increased compensation as from February 6, 1912, a year after the disease was certified :—*Held*, that the arbitrator could not award an increase of compensation as from a date prior to the date of the application to review—namely, September 23, 1913. *Williams* v. *Bwllfa and Merthyr Dare Steam Collieries*, 83 L. J. K.B. 442; [1914] 2 K.B. 30; [1914] W.C. & I. Rep. 527; 110 L. T. 561—C.A.

2. Redemption.

Discretion of Judge.]—Where a weekly payment under the Workmen's Compensation Act, 1906, has been continued by an employer for not less than six months he has an absolute right, under Schedule I. paragraph 17 of the Act to redeem the liability therefor by a payment as therein provided, and the Judge has no discretion to refuse to allow him to do so. *Kendall & Gent* v. *Pennington*, [1912] W.C. Rep. 144; 106 L. T. 817—C.A.

Permanent Incapacity — Lump Sum — "May"—Redemption Compulsory—Onus of Proof.]—Where an employer applies for commutation of a weekly payment under clause 17 of Schedule I. to the Workmen's Compensation Act, 1906, the arbitrator, whether he finds the incapacity to be permanent or not, must award a lump sum which can be enforced as a judgment. When the award has been made it is compulsory on the employer to redeem at the figure found payable, and the award should not be in the form that the employer "may" redeem the weekly payment at that figure. *Calico Printers' Association* v. *Booth*, 82 L. J. K.B. 985; [1913] 3 K.B. 652; [1913] W.C. & I. Rep. 540; 109 L. T. 123; 57 S. J. 662; 29 T. L. R. 664—C.A.

In an application under clause 17 the arbitrator must ascertain on the evidence before him, as best he can, whether the weekly payment already fixed is likely to be proper during the rest of the workman's life; and so long as he does not misdirect himself his conclusion of fact will not be interfered with. *Ib.*

Dictum of Farwell, L.J., in *Calico Printers' Association* v. *Higham* (81 L. J. K.B. 232, 238; [1912] 1 K.B. 93, 104; [1912] W.C. Rep.

104, 109) that the onus of proving permanent incapacity is on the person alleging it, doubted. *Ib.*

Permanent Incapacity — Actuarial Value — Duty of Court Court Judge.] — The words "where the incapacity is permanent" in clause 17 of Schedule I. to the Workmen's Compensation Act, 1906, include partial as well as total incapacity; but the question whether the diminished capacity to work is permanent or not is one which the arbitrator must decide on proper evidence before applying the actuarial method of ascertaining the amount of compensation under the first alternative in clause 17. It does not follow because the physical injury is permanent—as, for example, the loss of a finger—that the diminished capacity to work is necessarily permanent also. *National Telephone Co.* v. *Smith* ([1909] S. C. 1363) dissented from. *Calico Printers' Association* v. *Higham*, 81 L. J. K.B. 232; [1912] 1 K.B. 93; [1912] W.C. Rep. 104; 105 L. T. 734; 56 S. J. 89; 28 T. L. R. 53—C.A.

Per Fletcher Moulton, L.J. : The arbitrator in assessing the commutation of a weekly payment under the second alternative in clause 17 is not determining the compensation to be given for the accident. He has to consider only the amount of the weekly payments, their probable duration, the probability of their being diminished or raised in the future, and the probable extent of such variation, if any, and ought not to be guided by any consideration of what a jury might allow as damages. *Ib.*

Per Fletcher Moulton, L.J. : *Semble*, the words in clause 3 of Schedule I., "the average weekly amount which" the workman "is earning or is able to earn in some suitable employment or business after the accident," refer to the value of the work which the workman is doing in his own business—that is, the wages which he would have to pay to another for the services which he is himself performing therein. *Ib.*

Principle of Assessment.] — In December, 1906, a workman fell from a ladder while working at his employer's mill and sustained injuries which resulted in total incapacity. For a considerable time the employers paid the workman a weekly sum of 16*s.* 1*d.* by way of compensation, but in September, 1910, they stopped these payments. On January 12, 1911, the workman obtained an award of compensation at the same rate from September 10, 1910. The employers then took proceedings under the Workmen's Compensation Act, 1897, Sched. I. clause 13, to obtain redemption of these weekly payments. The County Court Judge awarded a lump sum of 120*l.* 13*s.* 5*d.*, which he arrived at by estimating the damages he would have awarded at the time of the accident, deducting the weekly payments since received by the workman, and awarding the balance :—*Held*, that the County Court Judge had made the award on a fallacious principle, and that the case must be remitted to him to re-assess the redemption price. *Victor Mill, Lim.* v. *Shackleton*, 81 L. J. K.B. 34; [1912] 1 K.B. 22; [1912] W.C. Rep. 33; 105 L. T. 613—C.A.

Principles governing the award of a lump sum in redemption of weekly payments under the Workmen's Compensation Act, 1897, discussed. *Ib.*

Infant—"Permanent incapacity."]—Where an application is made by employers to redeem a weekly payment to a workman under Schedule I. clause 17 of the Workmen's Compensation Act, 1906, on the ground of the permanent incapacity of the workman, the arbitrator must satisfy himself whether the physical condition of the injured workman is stable. The permanent incapacity referred to is the incapacity to earn full wages, and the condition of the workman may be stable and his incapacity permanent although if uninjured he would at some future time in the ordinary course of his employment become entitled to be paid higher wages. If the incapacity is permanent an infant under clause 17 is in no better position than an adult, and the weekly payment may be redeemed by the payment of a lump sum of such an amount as would purchase an annuity equal to 75 per cent. of the weekly payment, although his probable earnings would be likely to increase if he had remained uninjured. If the incapacity is not permanent the amount is in the discretion of the arbitrator. On such an application to redeem a weekly payment the burden of proving the permanent incapacity of the workman lies upon the employers. *Marshall, Sons & Co.* v. *Prince*, 84 L. J. K.B. 16; [1914] 3 K.B. 1047; [1914] W.C. & I. Rep. 559; 111 L. T. 1081; 58 S. J. 721; 30 T. L. R. 654—C.A.

Applications both for Review and Redemption Pending.]—A girl of thirteen years of age met with an accident arising out of and in the course of her employment, which caused permanent injuries to one of her hands. Five years later, the hand having reached a condition of stability, the employers applied for redemption of the weekly payment they were making. The respondent, having appeared to an irregular service of this application, applied for an increase on the ground of increased earning powers but for the injury. Both applications were set down for hearing on the same day, the employers' being first :—*Held*, that the employers' right to redeem the existing payment was not absolute, but subject to the workman's right to review and obtain an increase of the payment. *Eley* v. *Moreland*, [1915] W.C. & I. Rep. 554; 60 S. J. 59—C.A.

VIII. ACTION BY EMPLOYER FOR INDEMNITY.

Payment by Master—Alleged Legal Liability of Third Party—Notice of Claim—Condition Precedent to Action.]—Where an injury to a workman is caused in circumstances creating a legal liability in a person other than his employer to pay damages in respect thereof, and the workman has received compensation under the Workmen's Compensation Act, 1906, from his employer, the employer is entitled, under section 6 of the Workmen's Compensa-

tion Act, 1906, to bring an action against such third party for an indemnity, notwithstanding that he has not served upon such third party the notice of his claim as required by rules 19 and 24 of the Workmen's Compensation Rules, 1907 to 1911. The only effect of not giving such notice is that the third party is not bound by the decision in the arbitration in the County Court, and that the employer has to prove his claim strictly against such third party. *Nettleingham* v. *Powell*, 82 L. J. K.B. 911; [1913] 3 K.B. 209; [1913] W.C. & I. Rep. 424; 108 L. T. 912; 57 S. J. 593; 29 T. L. R. 577—C.A.

Injury to Workman—Payment of Compensation by Master—Alleged Legal Liability in Third Party.] — The plaintiffs, having purchased from the defendants a quantity of coal, sent their steamship to take delivery of the coal at certain staiths of which the defendants had control in a navigable river. When the steamship was opposite the staiths a foy boat with two men in it came on to the port quarter of the steamship close to the propeller, and was receiving a steel rope from the steamship to take to the staiths. The staith foreman, who was a servant of the defendants, gave the order "Slow ahead, helm a-port." The pilot on the steamship passed the order on to the captain, but neither of them enquired whether the propeller was clear. The second officer, who was aft while he thought there was danger, did not signal to the captain that the propeller was not clear, thinking that he should defer to the staith foreman. The engines were accordingly started, the foy boat was sucked on to the propeller and sunk, and the boatmen were injured. The plaintiffs having paid compensation to the injured boatmen under the Workmen's Compensation Act, 1906, brought an action against the defendants for an indemnity under section 6 of the Act. There was evidence to shew that it was the practice on the river when a vessel got off the staiths for the staith foreman to indicate to what spout she was to go, and then to give directions as to her mooring. There was also evidence that the second officer was aft on such occasions for the very purpose, among others, of seeing that the propeller was clear, and that the captain and pilot on the bridge should get a hail from aft that all was clear before they started the propeller. The Judge found that the staith foreman had been negligent, but that the officers of the steamship had been guilty of contributory negligence, and he gave judgment for the defendants:—*Held*, by the Court of Appeal, that the plaintiffs were not entitled to the indemnity which they claimed, inasmuch as—first (Kennedy, L.J., doubting on this point), the circumstances did not create a legal liability on the defendants to pay damages under the section, the plaintiffs' own negligence by their servants the officers of the steamship having been the immediate and proximate cause of the injuries; and secondly, even if the defendants by their servant the staith foreman had been guilty of negligence conducing to the injuries, the plaintiffs had been guilty of contributory negligence, and were in the position of joint wrongdoers with the defendants. *Cory* v. *France*, *Fenwick & Co.*, 80 L. J. K.B. 341; [1911] 1 K.B. 114; 103 L. T. 649; 11 Asp. M.C. 499; 55 S. J. 10; 27 T. L. R. 18—C.A.

Negligence of Fellow Workman — "Some person other than the employer."]—Where a workman is injured in consequence of the negligence of a fellow workman, and receives compensation from his employer, the latter has a right to indemnity from the fellow workman who caused the injury. *Lees* v. *Dunkerley*, 80 L. J. K.B. 135; [1911] A.C. 5; 103 L. T. 467; 55 S. J. 44—H.L. (E.)

Negligence of other Persons — Absence of Contributory Negligence of Workman.] — A workman, a lad about sixteen years of age, was seated with his employer's son in his employer's cart. The son got down to attend to some business on one side of a railway line running alongside certain docks. The workman then got down for his own private and necessary purpose. He crossed the railway line, which was on the other side of the road. He passed through an opening in a sort of passage between heaps of boxes and went behind those boxes. On his return in a short time he ran out from the opening by which he had entered, and when he was in the act of crossing the railway line, not having looked either to the right hand or to the left, he was knocked down by an engine belonging to a railway company and was seriously injured. The railway company were served with notice by the employer under section 6 of the Workmen's Compensation Act, 1906. The deputy County Court Judge found that there was evidence of negligence on the part of the railway company. He ruled that there was no evidence of contributory negligence such as would disentitle the workman to recover compensation. The railway company appealed:—*Held*, that, on the question of contributory negligence, the circumstances were such that the case fell rather within *Dublin, Wicklow, and Wexford Railway* v. *Slattery* (3 App. Cas. 1155) than within *Davey* v. *London and South-Western Railway* (52 L. J. Q.B. 665; 11 Q.B. D. 213); and that it being a question of fact and not a question of law, it was not competent for the Court to do other than accept the finding of the learned Judge. *Cutsforth* v. *Johnson*, [1913] W.C. & I. Rep. 131; 108 L. T. 138—C.A.

Injury Caused by Negligence of Third Person —Death of Workman—Payment of Compensation to Dependant — No Right of Action by Dependant against Third Person.] — By section 6 of the Workmen's Compensation Act, 1906, where the injury in respect of which compensation under the Act is payable is caused under circumstances creating a legal liability in a third person, the workman may take proceedings both against the third person for damages and against his employer for compensation under the Act, but may not recover both damages and compensation; and if the workman recovers compensation under the Act, the person paying the compensation shall be entitled to be indemnified by the third person. A workman was injured through the negligence of third persons, the defendants,

and died in consequence four days later. His employers, the plaintiffs, paid compensation under the Workmen's Compensation Act, 1906, to his illegitimate daughter, his sole dependant, and claimed an indemnity in respect thereof from the defendants under section 6 of the Act :—*Held*, that the legal liability of the defendants to the workman created by the fact of the negligence causing the injury was none the less a legal liability because it ceased with the workman's death, and that the provision as to the right of the workman to an alternative remedy was not intended to limit the effect of the provision as to the right of the employers to indemnity, and that, consequently, the fact that the dependant, the illegitimate daughter, could not exercise the option referred to in the section, as she was not entitled to bring an action against the defendants under Lord Campbell's Act, made no difference to the plaintiff's rights, and that they were entitled to the indemnity claimed. *Smith's Dock Co.* v. *Readhead*, 81 L. J. K.B. 808; [1912] 2 K.B. 323; [1912] W.C. Rep. 217; 106 L. T. 843; 28 T. L. R. 397—Bray, J.

Award against Employer—Fatal Injury from Kick of Horse—Owner's Liability—Scienter.]—Whilst engaged in his work at his employer's yard, a workman was kicked and fatally injured by a horse which belonged to a third party and was standing there unattended. The horse was not known by its owner to be vicious :—*Held*, that, even assuming that the horse was a trespasser in the yard and had been left there unattended by the negligence of its owner, the employers were not entitled to be indemnified by him under section 6 of the Workmen's Compensation Act, 1906, in respect of their liability to pay compensation to the dependants of the deceased workman. In the case of a horse not known to be vicious it was not the natural consequence of leaving it unattended in the yard that it should kick the workman, and the damage was therefore too remote and the owner of the horse not liable. *Cox* v. *Burbidge* (32 L. J. C.P. 89; 13 C. B. (N.S.) 430) followed. *Bradley* v. *Wallaces*, 82 L. J. K.B. 1074; [1913] 3 K.B. 629; [1913] W.C. & I. Rep. 620; 109 L. T. 281; 29 T. L. R. 705—C.A.

Industrial Disease — Disease Contracted by Gradual Process — Several Employers — Liability to Contribute.]—Where a workman has in the course of his employment contracted a disease mentioned in Schedule III. to the Workmen's Compensation Act, 1906, and is entitled to compensation from his last employer under section 8, if the disease is of such a nature as to be contracted by a gradual process, the last employer is, under subsection 1 (*c*), clause (iii.) of that section, entitled to an arbitration to determine the contribution to the compensation payable which should be made by any other employers of the workman who during the twelve months previous to the date of his disablement have employed him in the employment to which the nature of the disease was due, without proving that the disease was in fact contracted in the employment of such other employers. *Mallinder* v. *Moores & Son, Lim.*, 81 L. J. K.B. 714; [1912] 2 K.B. 124; [1912] W.C. Rep. 257; 106 L. T. 487—C.A.

WORKSHOP.

See MASTER AND SERVANT.

WOUNDING.

See CRIMINAL LAW.

WRECK.

See SHIPPING.

WRIT.

Of Attachment.]—*See* ATTACHMENT.

Of Elegit.]—*See* EXECUTION.

Of Extent.]—*See* EXECUTION.

Of Fi. Fa.]—*See* EXECUTION.

Of Sequestration.]—*See* EXECUTION.

Of Summons.]—*See* PRACTICE.

CASES

FOLLOWED, NOT FOLLOWED, APPROVED, OVERRULED, QUESTIONED, EXPLAINED, DISTINGUISHED, AND COMMENTED ON.

A.

Abrahams v. **Deakin,** 60 L. J. Q.B. 238; [1891] 1 Q.B. 516; 63 L. T. 690; 39 W. R. 183; 55 J. P. 212: followed and applied in *Radley* v. *London County Council*, 29 T. L. R. 680.

Abrahams' Estate, In re, 77 L. J. Ch. 578: [1908] 2 Ch. 69; 99 L. T. 240: applied in *Smelting Corporation, In re; Seaver* v. *Smelting Corporation*, 84 L. J. Ch. 571; [1915] 1 Ch. 472; 113 L. T. 44; [1915] H. B. R. 126.

Abram v. **Cunningham,** 2 Lev. 182: overruled in *Hewson* v. *Shelley*, 83 L. J. Ch. 607; [1914] 2 Ch. 13; 110 L. T. 785; 58 S. J. 397; 30 T. L. R. 402.

Aberdeen Railway Co. v. **Blaikie,** 1 Macq. 461: considered and applied in *Transvaal Lands Co.* v. *New Belgium (Transvaal) Land &c. Co.*, 84 L. J. Ch. 94; [1914] 2 Ch. 488; 112 L. T. 965; 21 Manson, 364; 59 S. J. 27; 31 T. L. R. 1.

Abergavenny Improvement Commissioners v. **Straker,** 58 L. J. Ch. 717; 42 Ch. D. 83; 60 L. T. 756; 38 W. R. 158: followed in *Hailsham Cattle Market Co.* v. *Tolman*, 84 L. J. Ch. 299; [1915] 1 Ch. 360; 79 J. P. 185; 13 L. G. R. 248; 59 S. J. 303; 31 T. L. R. 86.

Accles, In re, [1902] W. N. 164: distinguished in *Piccadilly Hotel, In re*, [1911] 2 Ch. 534; 56 S. J. 52.

Acraman, Ex parte; Pentreguinea Fuel Co., In re, 31 L. J. Ch. 741; 4 De G. F. & J. 541; followed in *Hanau* v. *Ehrlich*, 81 L. J. K.B. 397; [1912] A.C. 39; 106 L. T. 1; 56 S. J. 186; 28 T.L. R. 113.

Adams v. **Adams,** 61 L. J. Ch. 237; [1892] 1 Ch. 369: applied in *Williams, In re*, 81 L. J. Ch. 296; [1912] 1 Ch. 399; 106 L. T. 584; 56 S. J. 325.

Adams v. **Great North of Scotland Railway,** [1891] A.C. 31: followed in *King and Duveen, In re*, 82 L. J. K.B. 733; [1913] 2 K.B. 32; 108 L. T. 844.

Adkins, In re; Solomon v. **Catchpole,** 98 L. T. 667: distinguished in *Mann, In re; Ford* v. *Ward*, 81 L. J. Ch. 217; [1912] 1 Ch. 388; 106 L. T. 64; 56 S. J. 272.

Agar v. **Blacklock & Co.,** 56 L. T. 890: followed in *Spalding* v. *Gamage, Lim.*, 83 L. J. Ch. 855; [1914] 2 Ch. 405; 111 L. T. 829; 58 S. J. 722.

Ailesbury (Marquis) and Iveagh (Lord), In re, 62 L. J. Ch. 713; [1893] 2 Ch. 345; 69 L. T. 101; 41 W. R. 644: applied in *Trafford's Settled Estates, In re*, 84 L. J. Ch. 351; [1915] 1 Ch. 9; 112 L. T. 107.

Ajello v. **Worsley,** 67 L. J. Ch. 172; [1898] 1 Ch. 274; 77 L. T. 783; 46 W. R. 245: considered and approved in *Spalding* v. *Gamage*, 83 L. J. Ch. 855; [1914] 2 Ch. 405; 110 L. T. 530; 58 S. J. 722.

Akerman, In re, 61 L. J. Ch. 34; [1891] 3 Ch. 212; 65 L. T. 194; 40 W. R. 12: discussed in *Smelting Corporation, In re*, 84 L. J. Ch. 571; [1915] 1 Ch. 472; 113 L. T. 44; [1915] H. B. R. 126; in *Peruvian Railway Construction Co.*, [1915] 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464; and in *Dacre, In re*, [1915] 2 Ch. 480.

Alabaster v. **Harness,** 64 L. J. Q.B. 76; [1894] 2 Q.B. 897; [1895] 1 Q.B. 339; 71 L. T. 740; 43 W. R. 196: considered and followed in *Oram* v. *Hutt*, 83 L. J. Ch. 161; [1914] 1 Ch. 98; 110 L. T. 187; 78 J. P. 51; 58 S. J. 80; 30 T. L. R. 55.

Alcock v. **Cooke,** 7 L. J. (o.s.) C.P. 126; 5 Bing. 340: explained in *Vancouver City* v. *Vancouver Lumber Co.*, 81 L. J. P.C. 69; [1911] A.C. 711; 105 L. T. 464.

Alexander v. **Mills,** 40 L. J. Ch. 73; L. R. 6 Ch. 124; 24 L. T. 206; 19 W. R. 310: followed and applied in *Smith* v. *Colbourne*, [1914] 2 Ch. 533; 58 S. J. 783.

Alexander's Will Trustees v. **Alexander's Settlement Trustees,** [1910] S. C. 637: followed in *Hartland, In re; Banks* v. *Hartland*, 80 L. J. Ch. 305; [1911] 1 Ch. 459; 104 L. T. 490; 55 S. J. 312.

Alianza Co. v. **Bell,** 75 L. J. K.B. 44; [1906] A.C. 18; 93 L. T. 705; 54 W. R. 413; 22 T. L. R. 94: applied in *Kauri Timber Co.* v. *Commissioner of Taxes*, [1913] A.C. 771; 109 L. T. 22; 29 T. L. R. 671.

Alison, In re, 11 Ch. D. 284; 40 L. T. 234: followed in *Metropolis and Counties Permanent Investment Building Society, In re*, 80 L. J. Ch. 387; [1911] 1 Ch. 698; 104 L. T. 382.

Allan v. **Gomme,** 9 L. J. Q.B. 258; 11 Ad. & E. 759: distinguished in *White* v. *Grand Hotel, Eastbourne*, 82 L. J. Ch. 57; [1913] 1 Ch. 113; 107 L. T. 695; 57 S. J. 58.

Allcock v. **Hall,** 60 L. J. Q.B. 416; [1891] 1 Q.B. 444; 64 L. T. 309: approved in *Skeate* v. *Slaters, Lim.*, 83 L. J. K.B. 676; [1914] 2 K.B. 429; 110 L. T. 604; 30 T. L. R. 290.

Allen v. **Allen,** 70 L. T. 783: approved in *Brown* v. *Brown*, 84 L. J. P. 153; [1915] P. 83; 113 L. T. 190; 59 S. J. 442; 31 T. L. R. 280.

Allen v. **Embleton,** 27 L. J. Ch. 297; 4 Drew. 226: *dictum* of Kindersley, V.C., in: followed in *Owen, In re; Slater* v. *Owen*, 81 L. J. Ch. 337; [1912] 1 Ch. 519; 106 L. T. 671; 56 S. J. 381.

Allen v. **Francis,** 83 L. J. K.B. 1814; [1914] 3 K.B. 1065; [1914] W.C. & I. Rep. 599; 112 L. T. 62; 58 S. J. 753; 30 T. L. R. 695: considered in *Burnham* v. *Hardy*, 84 L. J. K.B. 714; [1915] W.C. & I. Rep. 146; 112 L. T. 837.

Allen v. **Gold Reefs of West Africa,** 69 L. J. Ch. 266; [1900] 1 Ch. 656; 82 L. T. 210; 48 W. R. 452; 7 Manson, 417: followed in *British Murac Syndicate* v. *Alperton*, 84 L. J. Ch. 665; [1915] 2 Ch. 186; 59 S. J. 494; 31 T. L. R. 391.

Allen v. **Oakey,** 62 L. T. 724: not followed in *J. T. Smith and J. E. Jones, Lim.* v. *Service, Reeve & Co.*, 83 L. J. Ch. 876; [1914] 2 Ch. 576.

Allen and Driscoll's Contract, In re, 73 L. J. Ch. 614; [1904] 2 Ch. 226; 52 W. R. 681; 68 J. P. 469; 2 L. G. R. 959; 20 T. L. R. 605: distinguished in *Taunton and West of England Perpetual Benefit Building Society and Roberts's Contract, In re*, 81 L. J. Ch. 690; [1912] 2 Ch. 381; 107 L. T. 378; 56 S. J. 688.

Allen & Sons, In re, 76 L. J. Ch. 362; [1907] 1 Ch. 575; 96 L. T. 660; 14 Manson. 144: approved in *Morrison, Jones & Taylor, Lim., In re*, 83 L. J. Ch. 129; [1914] 1 Ch. 50; 109 L. T. 722; 58 S. J. 80; 30 T. L. R. 59.

Allhusen v. **Whittell,** 36 L. J. Ch. 929; L. R. 4 Eq. 295; 16 L. T. 695: was founded on and did not enlarge the principle of *Holgate* v. *Jennings* (24 Beav. 623): so held in *McEuen, In re*, [1913] 2 Ch. 704: followed in *Wills, In re*, 84 L. J. Ch. 580; [1915] 1 Ch. 769; 113 L. T. 138; 59 S. J. 477.

Allinson v. **General Medical Council,** 63 L. J. Q.B. 534, at p. 540; [1894] 1 Q.B. 750, at p. 763: definition of professional misconduct in, adopted in *G. (a Solicitor), In re*, 81 L. J. K.B. 245; [1912] 1 K.B. 302; 105 L. T. 874; 56 S. J. 92; 28 T. L. R. 50.

Allman v. **Hardcastle,** 89 L. T. 553; 67 J. P. 440: followed in *Duchesne* v. *Finch*, 107 L. T. 412; 76 J. P. 377; 10 L. G. R. 559; 28 T. L. R. 440.

Amalgamated Society of Railway Servants v. **Osborne,** 79 L. J. Ch. 87; [1910] A.C. 87; 101 L. T. 787; 54 S. J. 215; 26 T. L. R. 177: considered in *Wilson* v. *Amalgamated Society of Engineers*, 80 L. J. Ch. 469; [1911] 2 Ch. 324; 104 L. T. 715; 55 S. J. 498; 27 T. L. R. 418.

Amalgamated Society of Railway Servants v. **Osborne,** 79 L. J. Ch. 87; [1910] A.C. 87; 101 L. T. 787; 54 S. J. 215; 26 T. L. R. 177: application of, considered in *Wilson* v. *Scottish Typographical Association*, [1912] S. C. 534; and in *Gaskell* v. *Lancashire and Cheshire Miners Federation*, 28 T. L. R. 518; 56 S. J. 719.

Anderson, In re, 74 L. J. Ch. 433; [1905] 2 Ch. 70; 92 L. T. 725; 53 W. R. 510: considered and applied in *Tennant's Estate, In re*, [1913] 1 Ir. R. 280.

Anderson v. **Balfour,** [1910] 2 Ir. R. 497: disapproved in *Murray* v. *Denholm*, [1911] S. C. 1087: approved in *Trim Joint District School* v. *Kelly*, 83 L. J. P.C. 220; [1914] A.C. 667; 111 L. T. 305; 58 S. J. 493; 30 T. L. R. 452.

Anderson v. **British Bank of Columbia,** 45 L. J. Ch. 449; 2 Ch. D. 644; 35 L. T. 76; 24 W. R. 624: considered in *Birmingham and Midland Motor Omnibus Co.* v. *London and North-Western Railway*, 83 L. J. K.B. 474; [1913] 3 K.B. 850; 109 L. T. 64; 57 S. J. 752.

Anderson v. **Jacobs,** 93 L. T. 17: distinguished in *Talbot de Malahide (Lord)* v. *Dunne*, [1914] 2 Ir. R. 125.

Anderson v. **Reid,** 66 J. P. 564: followed in *Wills* v. *McSherry*, 82 L. J. K.B. 71; [1913] 1 K.B. 20; 107 L. T. 848; 77 J. P. 65; 23 Cox C.C. 254; 29 T. L. R. 48.

Andrew v. **Bridgman,** 77 L. J. K.B. 272; [1908] 1 K.B. 596; 98 L. T. 656: *dicta* in, affirmed and followed in *West* v. *Gwynne*, 80 L. J. Ch. 578; [1911] 2 Ch. 1; 104 L. T. 759; 55 S. J. 519; 27 T. L. R. 444.

Andrew v. **Crossley,** 61 L. J. Ch. 437; [1892] 1 Ch. 492; 66 L. T. 571; 9 R. P. C. 165: considered in *Stepney Spare Motor Wheel Co.* v. *Hall*, 80 L. J. Ch. 391; [1911] 1 Ch. 514; 104 L. T. 665; 27 T. L. R. 283.

Andrew v. **Failsworth Industrial Society,** 73 L. J. K.B. 510; [1904] 2 K.B. 32; 90 L. T. 611; 52 W. R. 451; 20 T. L. R. 429: distinguished in *Warner* v. *Couchman*, 80 L. J. K.B. 526; [1911] 1 K.B. 351; 103 L. T. 693; 55 S. J. 107; 27 T. L. R. 121.

Andrews v. **Paradise,** 8 Mod. 318: explained in *Pettey* v. *Parsons,* [1914] 1 Ch. 704; 30 T. L. R. 328.

Andrews v. **Partington,** 3 Bro. C.C. 401: held inapplicable in *Faux, In re,* 84 L. J. Ch. 873; 113 L. T. 81; 59 S. J. 457; 31 T. L. R. 289.

Angerstein, Ex parte, 43 L. J. Bk. 131; L. R. 9 Ch. 479; 30 L. T. 446; 22 W. R. 581: applied in *Branson, In re,* 83 L. J. K.B. 1316; [1914] 2 K.B. 701; 110 L. T. 940; 58 S. J. 416.

Anglesey (Marquis), In re, 72 L. J. Ch. 782; [1903] 2 Ch. 727; 52 W. R. 124: applied in *Singer* v. *Fry,* 84 L. J. K.B. 2025; [1915] H. B. R. 115.

Anglo-Australian Steam Navigation Co. v. **Richards,** 4 B.W.C.C. 247: considered in *Silcock* v. *Golightly,* 84 L. J. K.B. 499; [1915] 1 K.B. 748; [1915] W.C. & I. Rep. 164; 112 L. T. 800.

Anglo-Continental Guano Works v. **Bell,** 70 L. T. 670; 58 J. P. 383; 3 Tax Cas. 239: distinguished in *Farmer* v. *Scottish North American Trust,* 81 L. J. P.C. 81; [1912] A.C. 118; 105 L. T. 833; 28 T. L. R. 142.

Ankerson v. **Connelly,** 76 L. J. Ch. 402; [1907] 1 Ch. 678; 96 L. T. 681; 23 T. L. R. 486: applied in *Bailey* v. *Holborn and Frascati, Lim.,* 83 L. J. Ch. 515; [1914] 1 Ch. 598; 110 L. T. 574; 58 S. J. 321.

Anonymous Case, Vander Straaten's Rep. 195: overruled in *Pate* v. *Pate,* 84 L. J. P.C. 234; [1915] A.C. 1100; 31 T. L. R. 590.

Archer v. **Kelly,** 29 L. J. Ch. 911; 1 Dr. & S. 300: followed in *Williams' Settlement, In re,* 80 L. J. Ch. 249; [1911] 1 Ch. 441; 104 L. T. 310; 55 S. J. 236.

Archer's Case, 61 L. J. Ch. 129; [1892] 1 Ch. 322; 65 L. T. 800; 40 W. R. 212: applied in *London and South-Western Canal, In re,* 80 L. J. Ch. 234; [1911] 1 Ch. 346; 104 L. T. 95; 18 Manson, 171.

Arden v. **Arden,** 54 L. J. Ch. 655; 29 Ch. D. 702; 52 L. T. 610; 33 W. R. 593: followed in *Gresham Life Assurance Society* v. *Crowther,* 84 L. J. Ch. 312; [1915] 1 Ch. 214; 111 L. T. 887; 59 S. J. 103.

Armitage, In re, [1893] 3 Ch. 337: followed and applied in *Sale, In re; Nisbet* v. *Philp,* [1913] 2 Ch. 697.

Armitage v. **Parsons,** 77 L. J. K.B. 850; [1908] 2 K.B. 410; 99 L. T. 329; 24 T. L. R. 635: distinguished in *Muir* v. *Jenks,* 82 L. J. K.B. 703; [1913] 2 K.B. 412; 108 L. T. 747; 57 S. J. 476.

Armstrong v. **Eldridge,** 3 Bro. C.C. 215: considered in *Tate, In re; Williamson* v. *Gilpin,* 83 L. J. Ch. 593; [1914] 2 Ch. 182; 109 L. T. 621; 58 S. J. 119.

Arnold v. **Arnold,** 2 Myl. & K. 365: followed in *Richardson, In re,* 84 L. J. Ch. 438; [1915] 1 Ch. 353; 112 L. T. 554.

Arnold v. **Dixon,** L. R. 19 Eq. 113: approved and followed in *Fauntleroy* v. *Beebe,* 80 L. J. Ch. 654; [1911] 2 Ch. 257; 104 L. T. 704; 55 S. J. 497; discussed and applied in *Herbert* v. *Herbert,* 81 L. J. Ch. 733; [1912] 2 Ch. 268.

Ashton Gas Co. v. **Att.-Gen.,** 75 L. J. Ch. 1; [1906] A.C. 10; 93 L. T. 676; 70 J. P. 49; 13 Manson, 35; 22 T. L. R. 82: principle of applied in *Johnston* v. *Chestergate Hat Manufacturing Co.,* 84 L. J. Ch. 914; [1915] 2 Ch. 338; 59 S. J. 692.

Askew v. **Woodhead,** 49 L. J. Ch. 320; 14 Ch. D. 27; 42 L. T. 567; 28 W. R. 874: applied in *Simpson, In re; Clarke* v. *Simpson,* 82 L. J. Ch. 169; [1913] 1 Ch. 277; 108 L. T. 317; 57 S. J. 302.

Aston v. **Kelsey,** 82 L. J. K.B. 817; [1913] 3 K.B. 314; 108 L. T. 750; 18 Com. Cas. 257; 29 T. L. R. 530: followed in *Blaker* v. *Hawes,* 109 L. T. 320; 29 T. L. R. 609.

Atkinson, In re; Barbers' Co. v. **Grose Smith,** 73 L. J. Ch. 585; [1904] 2 Ch. 160; 90 L. T. 825; 53 W. R. 7: distinguished in *Pennington, In re,* 83 L. J. Ch. 54; [1914] 1 Ch. 203; 109 L. T. 814; 20 Manson, 411; 30 T. L. R. 106.

Atkinson, In re; Wilson v. **Atkinson,** 61 L. J. Ch. 504; [1892] 3 Ch. 52: *dictum* of North, J., in, not followed in *Clarkson, In re; Public Trustee* v. *Clarkson,* 84 L. J. Ch. 881; [1915] 2 Ch. 216; 59 S. J. 630.

Atlas Metal Co. v. **Miller,** 67 L. J. Q.B. 815; [1898] 2 Q.B. 500; 79 L. T. 5; 46 W. R. 657: followed and applied in *Fox* v. *Central Silkstone Collieries,* 81 L. J. K.B. 989; [1912] 2 K.B. 597; 107 L. T. 85; 56 S. J. 634.

Attenborough v. **Attenborough,** 1 K. & J. 296: held inapplicable in *De Sommery, In re,* 82 L. J. Ch. 17; [1912] 2 Ch. 622; 57 S. J. 78.

Att.-Gen. v. **Chamberlain,** 90 L. T. 581; 20 T. L. R. 359: not followed in *Att.-Gen.* v. *Milne,* 82 L. J. K.B. 773; [1913] 2 K.B. 606; 108 L. T. 772; 57 S. J. 532.

Att.-Gen. v. **Clack,** 1 Beav. 467: distinguished in *Cotter, In re,* 84 L. J. Ch. 337; [1915] 1 Ch. 307; 112 L. T. 340; 59 S. J. 177.

Att.-Gen. v. **Day,** 69 L. J. Ch. 8; [1900] 1 Ch. 31; 81 L. T. 806; 64 J. P. 88: applied in *Hall's Charity, In re,* 10 L. G. R. 11; 76 J. P. 9; 28 T. L. R. 32.

Att.-Gen. v. **Dodd,** 63 L. J. Q.B. 319; [1894] 2 Q.B. 150; 70 L. T. 660; 42 W. R. 524; 58 J. P. 526: considered in *Goswell's Trusts, In re,* 84 L. J. Ch. 719; [1915] 2 Ch. 106; 59 S. J. 579.

Att.-Gen. v. **Emerson,** 59 L. J. Q.B. 192; 24 Q.B. D. 56 : considered in *Becker* v. *Earl's Court, Lim.*, 56 S. J. 206.

Att.-Gen. v. **Hitchcock,** 16 L. J. Ex. 259; 1 Ex. 91 : considered in *Rex* v. *Cargill*, 82 L. J. K.B. 655; [1913] 2 K.B. 271; 108 L. T. 816; 23 Cox C.C. 382; 29 T. L. R. 382.

Att.-Gen. v. **Horner** (No. 2), 82 L. J. Ch. 339; [1913] 2 Ch. 140; 108 L. T. 609; 77 J. P. 257; 11 L. G. R. 784; 57 S. J. 498; 29 T. L. R. 451 : followed in *Clode* v. *London County Council*, 83 L. J. K.B. 1587; 12 L. G. R. 673; 58 S. J. 633; 30 T. L. R. 489.

Att.-Gen. v. **Leicester Corporation,** 80 L. J. Ch. 21; [1910] 2 Ch. 359; 103 L. T. 214; 74 J. P. 385; 26 T. L. R. 568 : followed in *Att.-Gen.* v. *Sheffield Corporation*, 106 L. T. 367; 76 J. P. 185; 10 L. G. R. 301; 56 S. J. 326; 28 T. L. R. 266.

Att.-Gen. v. **London County Council,** 76 L. J. K.B. 454; [1907] A.C. 131; 96 L. T. 481; 71 J. P. 217; 5 L. G. R. 465; 23 T. L. R. 390 : discussed and explained in *Sugden* v. *Leeds Corporation*, 83 L. J. K.B. 840; [1914] A.C. 483; 108 L. T. 578; 77 J. P. 225; 11 L. G. R. 662; 6 Tax Cas. 211; 57 S. J. 425; 29 T. L. R. 402.

Att.-Gen. v. **Mathieson,** 76 L. J. Ch. 682; [1907] 2 Ch. 383; 97 L. T. 450; 23 T. L. R. 754 : principle of, applied in *Orphan Working School and Alexandra Orphanage, In re*, 81 L. J. Ch. 627; [1912] 2 Ch. 167.

Att.-Gen. v. **Merthyr Tydfil Union,** 69 L. J. Ch. 299; [1900] 1 Ch. 516; 82 L. T. 662; 48 W. R. 403; 64 J. P. 276 : applied in *Att.-Gen.* v. *East Barnet Urban Council*, 9 L. G. R. 913.

Att.-Gen. v. **Sidney Sussex College,** 38 L. J. Ch. 656; L. R. 4 Ch. 722 : followed in *Lavelle, In re; Concannon* v. *Att.-Gen.*, [1914] 1 Ir. R. 194.

Att.-Gen. v. **Smyth,** [1905] 2 Ir. R. 553 : not followed in *Att.-Gen.* v. *Milne*, 82 L. J. K.B. 773; [1913] 2 K.B. 606; 108 L. T. 772; 57 S. J. 532.

Att.-Gen. v. **Wilson,** 8 L. J. Ch. 119; 9 Sim. 526 : distinguished in *Forbes* v. *Samuel*, 82 L. J. K.B. 1135; [1913] 3 K.B. 706; 109 L. T. 599; 29 T. L. R. 544.

Att.-Gen. for Ontario v. **Att.-Gen. for Quebec,** 72 L. J. P.C. 9; [1903] A.C. 39; 87 L. T. 453 : followed in *Att.-Gen. for Quebec* v. *Att.-Gen. for Ontario*, 80 L. J. P.C. 35; [1910] A.C. 627; 103 L. T. 328; 26 T. L. R. 679.

Auriferous Properties, In re (No. 2), 67 L. J. Ch. 574; [1898] 2 Ch. 428; 79 L. T. 71; 47 W. R. 75; 5 Manson, 260 : distinguished in *Peruvian Railway Construction Co., In re*, [1915] 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464.

Averill, In re; Salsbury v. **Buckle,** 67 L. J. Ch. 233; [1898] 1 Ch. 523; 78 L. T. 320; 46 W. R. 460 : distinguished in *Stevens, In re*, 84 L. J. Ch. 432; [1915] 1 Ch. 429; 112 L. T. 982; 59 S. J. 441.

Aylmer, In re, 70 L. T. 244; 1 Manson, 391 : applied in *Bonacina, In re; Le Brasseur* v. *Bonacina*, 81 L. J. Ch. 674; [1912] 2 Ch. 394; 107 L. T. 498; 56 S. J. 667; 28 T. L. R. 508.

B.

Babcock and Wilcox v. **Water Tube Boiler and Engineering Co.,** 27 R. P. C. 626 : followed in *British, Foreign, and Colonial Automatic Light Controlling Co.* v. *Metropolitan Gas Meters, Lim.*, 81 L. J. Ch. 520; [1912] 2 Ch. 82; 106 L. T. 834.

Bainbridge v. **Postmaster-General,** 75 L. J. K.B. 366; [1906] 1 K.B. 178; 94 L. T. 120; 54 W. R. 221; 22 T. L. R. 70 : applied in *Roper* v. *Works and Public Buildings Commissioners*, 84 L. J. K.B. 219; [1915] 1 K.B. 45; 111 L. T. 630.

Bainbridge v. **Smith,** 41 Ch. D. 462; 60 L. T. 879; 37 W. R. 594 : distinguished in *British Murac Syndicate* v. *Alperton Rubber Co.*, 84 L. J. Ch. 665; [1915] 2 Ch. 186; 59 S. J. 494; 31 T. L. R. 391.

Baines v. **Geary,** 56 L. J. Ch. 935; 35 Ch. D. 154; 56 L. T. 567; 36 W. R. 98; 51 J. P. 628 : is not reconcilable with the decision in *Baker* v. *Hedgecock*, 57 L. J. Ch. 889; 39 Ch. D. 520; 59 L. T. 361; 36 W. R. 840 : so held in *Continental Tyre and Rubber Co.* v. *Heath*, 29 T. L. R. 308.

Baird v. **Birsztan,** 8 Fraser, 438 : approved in *Krzus* v. *Crow's Nest Pass Coal Co.*, 81 L. J. P.C. 227; [1912] A.C. 590; 107 L. T. 77; 56 S. J. 632; 28 T. L. R. 488; and in *New Monckton Collieries* v. *Keeling*, 80 L. J. K.B. 1205; [1911] A.C. 648; 105 L. T. 337; 55 S. J. 687; 27 T. L. R. 551.

Baker, In re; Nichols v. **Baker,** 59 L. J. Ch. 661; 44 Ch. D. 262; 62 L. T. 817 : discussed in *Rex* v. *Mitchell*, 82 L. J. K.B. 153; [1913] 1 K.B. 561; 108 L. T. 76; 77 J. P. 148; 23 Cox C.C. 273; 29 T. L. R. 157.

Baker v. **Ambrose,** 65 L. J. Q.B. 589; [1896] 2 Q.B. 372 : approved in *Bagley, In re*, 80 L. J. K.B. 168; [1911] 1 K.B. 317; 103 L. T. 470; 18 Manson, 1; 55 S. J. 48.

Baker v. **Hedgecock,** 57 L. J. Ch. 889; 39 Ch. D. 520; 59 L. T. 361; 36 W. R. 840 : view expressed in, approved in preference to the decision in *Baines* v. *Geary* (56 L. J. Ch. 935; 35 Ch. D. 154) in *Continental Tyre and Rubber Co.* v. *Heath*, 29 T. L. R. 308.

Baker v. **Yorkshire Fire and Life Assurance Co.,** 61 L. J. Q.B. 838; [1892] 1 Q.B. 144; 66 L. T. 161 : applied in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Baker & Co.'s Trade Marks, In re, 77 L. J. Ch. 473; [1908] 2 Ch. 86; 98 L. T. 721; 24 T. L. R. 467 : followed in *Cadbury Brothers' Application, In re (No. 2)*, 84 L. J. Ch. 827; [1915] 2 Ch. 307; 32 R. P. C. 456; 59 S. J. 598; 31 T. L. R. 523.

Baker and Selmon's Contract, In re, 76 L. J. Ch. 235; [1907] 1 Ch. 238; 96 L. T. 110 : applied in *Atkinson's and Horsell's Contract, In re*, 81 L. J. Ch. 588; [1912] 2 Ch. 1; 106 L. T. 548; 56 S. J. 324.

Bald, In re, 76 L. T. 462: considered in *Pryce, In re; Lawford* v. *Pryce*, 80 L. J. Ch. 525; [1911] 2 Ch. 286; 105 L. T. 51.

Ball v. **Hunt,** 81 L. J. K.B. 782; [1912] A.C. 496; [1912] W.C. Rep. 261; 106 L. T. 911; 56 S. J. 550; 28 T. L. R. 428 : distinguished in *Gray* v. *Shotts Iron Co.*, [1912] S. C. 1267; [1912] W.C. Rep. 359 : applied in *Jackson* v. *Hunslet Engine Co.*, 84 L. J. K.B. 1361; [1915] W.C. & I. Rep. 389; 113 L. T. 630.

Bank of Scotland v. **Morrison,** [1911] S. C. 593 : followed in *National Provincial Bank of England* v. *Glanusk (Lord)*, 82 L. J. K.B. 1033; [1913] 3 K.B. 335; 109 L. T. 103; 29 T. L. R. 593.

Banks v. **Hollingsworth,** 62 L. J. Q.B. 239; [1893] 1 Q.B. 442; 68 L. T. 477; 41 W. R. 225; 57 J. P. 436 : followed in *Donkin* v. *Pearson*, 80 L. J. K.B. 1069; [1911] 2 K.B. 412; 104 L. T. 643.

Banks v. **Wooler,** 81 L. T. 785; 64 J. P. 245 : followed in *Preston* v. *Redfern*, 107 L. T. 410; 76 J. P. 359; 10 L. G. R. 717; 28 T. L. R. 435.

Bannatyne v. **MacIver,** 75 L. J. K.B. 120; [1906] 1 K.B. 103; 94 L. T. 150; 54 W. R. 293 : observations in, discussed in *Reversion Fund and Insurance Co.* v. *Maison Cosway, Lim.*, 82 L. J. K.B. 512; [1913] 1 K.B. 364; 108 L. T. 87; 20 Manson, 194; 57 S. J. 144.

Barber v. **Penley, 62** L. J. Ch. 623; [1893] 2 Ch. 447; 68 L. T. 662 : discussed and followed in *Lyons* v. *Gulliver*, 83 L. J. Ch. 281; [1914] 1 Ch. 631; 110 L. T. 284; 78 J. P. 98; 12 L. G. R. 194; 58 S. J. 97; 30 T. L. R. 75.

Barbuit's Case, Ca. t. Talb. 281 : considered in *Republic of Bolivia Exploration Syndicate, In re*, 83 L. J. Ch. 226; [1914] 1 Ch. 139; 109 L. T. 741; 110 L. T. 141; 58 S. J. 173; 30 T. L. R. 78.

Barclay v. **Owen,** 60 L. T. 220: distinguished in *Bythway, In re*, 80 L. J. Ch. 246; 104 L. T. 411; 55 S. J. 235.

Barker, In re, 50 L. J. Ch. 334; 17 Ch. D. 241 : discussed and applied in *Herbert* v. *Herbert*, 81 L. J. Ch. 733; [1912] 2 Ch. 268.

Barker, In re, 50 L. J. Ch. 334; 17 Ch. D. 241; 44 L. T. 33 : applied in *Hopkinson* v. *Richardson*, 82 L. J. Ch. 211; [1913] 1 Ch. 284; 108 L. T. 501; 57 S. J. 265.

Barker v. **Herbert,** 80 L. J. K.B. 1329; [1911] 2 K.B. 633; 105 L. T. 349; 75 J. P. 481; 9 L. G. R. 1083; 27 T. L. R. 488 : discussed and distinguished in *Horridge* v. *Makinson*, 84 L. J. K.B. 1294; 113 L. T. 498; 13 L. G. R. 868; 31 T. L. R. 389.

Barlow's Contract, In re, 72 L. J. Ch., at p. 216; [1903] 1 Ch., at p. 384 : observations in, considered in *Bruen's Estate, In re*, [1911] 1 Ir. R. 76.

Barnabas v. **Bersham Colliery Co.,** 103 L. T. 513; 55 S. J. 63 : followed and applied in *Hawkins* v. *Powell's Tillery Steam Coal Co.*, 80 L. J. K.B. 769; [1911] 1 K.B. 988; 104 L. T. 365; 55 S. J. 329; 27 T. L. R. 282 : applied in *Chandler* v. *Great Western Railway*, 106 L. T. 479 : explained in *Lewis* v. *Port of London Authority*, [1914] W.C. & I. Rep. 299; 111 L. T. 776; 58 S. J. 686.

Barnes v. **Nunnery Colliery Co.,** 81 L. J. K.B. 213; [1912] A.C. 44; [1912] W.C. Rep. 90; 105 L. T. 961; 56 S. J. 159; 28 T. L. R. 135 : applied in *Pepper* v. *Sayer*, 111 L. T. 708; 58 S. J. 669; 30 T. L. R. 621 : applied in *Herbert* v. *Fox & Co.*, 84 L. J. K.B. 670; [1915] 2 K.B. 81; [1915] W.C. & I. Rep. 154; 112 L. T. 833; 59 S. J. 249 : distinguished in *Richardson* v. *Denton Colliery Co.*, 109 L. T. 370.

Barnett v. **Howard,** 69 L. J. Q.B. 955; [1900] 2 Q.B. 784; 83 L. T. 301 : followed in *Wood* v. *Lewis*, 83 L. J. K.B. 1046; [1914] 3 K.B. 73; 110 L. T. 994.

Barnett v. **Wheeler,** 10 L. J. Ex. 102; 7 M. & W. 364 : considered in *Taunton and West of England Perpetual Benefit Building Society and Roberts's Contract, In re*, 81 L. J. Ch. 690; [1912] 2 Ch. 381; 56 S. J. 688.

Barnhart v. **Greenshields,** 9 Moo. P.C. 18: explained in *Reeves* v. *Pope*, 83 L. J. K.B. 771; [1914] 2 K.B. 284; 110 L. T. 503; 58 S. J. 248.

Barrack v. **M'Culloch,** 26 L. J. Ch. 105; 3 K. & J. 110 : applied in *Mackenzie, In re*, 80 L. J. Ch. 443; [1911] 1 Ch. 578; 105 L. T. 154; 55 S. J. 406; 27 T. L. R. 337.

Barraclough v. **Cooper,** 77 L. J. Ch. 555 *n.*; [1908] 2 Ch. 121 *n.* : followed in *Williams, In re; Metcalf* v. *Williams*, 83 L. J. Ch. 570; [1914] 2 Ch. 61; 110 L. T. 923; 58 S. J. 470.

Barratt, In re; Whitaker v. **Barratt,** 59 L. J. Ch. 218; 43 Ch. D. 70; 38 W. R. 59 : followed in *Harris, In re; Davis* v. *Harris*, 83 L. J. Ch. 841; [1914] 2 Ch. 395; 58 S. J. 653.

Barron v. **Potter,** 84 L. J. K.B. 751, 2008; [1915] 3 K.B. 593; 112 L. T. 688; 59 S. J. 650: applied and followed in *Boddington, In re; Salaman, ex parte*, 84 L. J. K.B. 2119.

Barrow's Case, 49 L. J. Ch. 498; 14 Ch. D. 432; 42 L. T. 891: followed in *Wilkes* v. *Spooner*, 80 L. J. K.B. 1107; [1911] 2 K.B. 473; 104 L. T. 911; 55 S. J. 479; 27 T. L. R. 426.

Bartlett, In re; Newman v. **Hook,** 50 L. J. Ch. 205; 16 Ch. D. 516: distinguished in *Thomas, In re; Bartley* v. *Thomas*, 80 L. J. Ch. 617; [1911] 2 Ch. 389; 105 L. T. 59; 55 S. J. 567.

Bartlett v. **Franklin,** 36 L. J. Ch. 671; 17 L. T. 100; 15 W. R. 1077: explained and distinguished in *Edmondson* v. *Copland*, 80 L. J. Ch. 532; [1911] 2 Ch. 301; 105 L. T. 8; 55 S. J. 520; 27 T. L. R. 446.

Barton, Thompson & Co. v. **Vigers,** 19 Com. Cas. 175: distinguished in *Jordeson & Co.* v. *London Hardwood Co.*, 110 L. T. 666; 19 Com. Cas. 161.

Barwell v. **Newport Abercarn Black Vein Steam Coal Co.,** 84 L. J. K.B. 1105; [1915] 2 K.B. 256; 112 L. T. 806; 59 S. J. 233; 31 T. L. R. 136: followed in *Fairbanks* v. *Florence Coal and Iron Co.*, 84 L. J. K.B. 1115; [1915] 2 K.B. 714; 112 L. T. 1013.

Barwick v. **English Joint-Stock Bank,** 36 L. J. Ex. 147; L. R. 2 Ex. 259; 16 L. T. 461; 15 W. R. 877: discussed and explained in *Lloyd* v. *Grace, Smith & Co.*, 81 L. J. K.B. 1140; [1912] A.C. 716; 109 L. T. 531; 56 S. J. 723; 28 T. L. R. 547.

Baskett v. **Lodge,** 23 Beav. 138: distinguished in *Beaumont, In re; Bradshaw* v. *Packer*, 82 L. J. Ch. 183; [1913] 1 Ch. 325; 108 L. T. 181; 57 S. J. 283.

Batchelour v. **Gee,** 83 L. J. K.B. 1714; [1914] 3 K.B. 242; 111 L. T. 256; 78 J. P. 362; 12 L. G. R. 931; 24 Cox C.C. 268; 30 T. L. R. 506: not followed in *Clifford* v. *Battley*, 84 L. J. K.B. 615; [1915] 1 K.B. 531; 112 L. T. 765; 79 J. P. 180; 13 L. G. R. 505; 31 T. L. R. 117.

Bateman v. **Bateman,** 70 L. J. P. 29; [1901] P. 136; 84 L. T. 64, 331: criticised in *De Gasquet James* v. *Mecklenburg-Schwerin (Duke)*, 83 L. J. P. 40; [1914] P. 53; 110 L. T. 121; 58 S. J. 341; 30 T. L. R. 329.

Bateman (Lady) v. **Faber,** 67 L. J. Ch. 130; [1898] 1 Ch. 144; 77 L. T. 576; 46 W. R. 215: *dictum* of Lindley, M.R., in, explained and distinguished in *Wimperis, In re; Wicken* v. *Wilson*, 83 L. J. Ch. 511; [1914] 1 Ch. 502; 110 L. T. 477; 58 S. J. 304.

Bateman v. **Poplar District Board of Works,** 56 L. J. Ch. 149; 33 Ch. D. 360: principle of, followed in *House Property and Investment Co.* v. *Grice*, 9 L. G. R. 758; 75 J. P. 395.

Bates, Ex parte, 48 L. J. Bk. 113; 11 Ch. D. 914; 41 L. T. 263; 27 W. R. 927: followed in *Victor* v. *Victor*, 28 T. L. R. 131.

Batt v. **Metropolitan Water Board,** 80 L. J. K.B. 1354; [1911] 2 K.B. 965; 105 L. T. 496; 9 L. G. R. 1123; 75 J. P. 545; 55 S. J. 714; 27 T. L. R. 579: followed in *Mist* v. *Metropolitan Water Board*, 84 L. J. K.B. 2041; 13 L. G. R. 874; 113 L. T. 500.

Batt & Co.'s Trade Mark, In re, 67 L. J. Ch. 576; 68 L. J. Ch. 557; [1898] 2 Ch. 432; [1899] A.C. 428: followed in *Neuchatel Asphalte Co.'s Application, In re*, 82 L. J. Ch. 414; [1913] 2 Ch. 291; 108 L. T. 966; 30 R. P. C. 349; 57 S. J. 611; 29 T. L. R. 505.

Bayer's Design, In re, 24 R. P. C. 65; 25 R. P. C. 56: followed in *Pugh* v. *Riley Cycle Co.*, 81 L. J. Ch. 476; [1912] 1 Ch. 613; 106 L. T. 592; 29 R. P. C. 196; 28 T. L. R. 249.

Bayley's Settlement, In re, L. R. 9 Eq. 491; L. R. 6 Ch. 590: considered in *Wise's Settlement, In re; Smith* v. *Waller*, 82 L. J. Ch. 25; [1913] 1 Ch. 41; 107 L. T. 613; 57 S. J. 28.

Beal v. **Sheppard,** Cro. Jac. 109: followed in *Heathcote and Rawson's Contract, In re*, 108 L. T. 185; 57 S. J. 374.

Beard v. **London General Omnibus Co.,** 69 L. J. Q.B. 895; [1900] 2 Q.B. 530; 83 L. T. 362; 48 W. R. 658: considered and distinguished in *Ricketts* v. *Tilling*, 84 L. J. K.B. 342; [1915] 1 K.B. 644; 112 L. T. 137; 31 T. L. R. 17.

Beattie v. **Ebury (Lord),** 43 L. J. Ch. 80; [1873] W. N. 194: not followed in *Spalding* v. *Gamage*, 83 L. J. Ch. 855; [1914] 2 Ch. 405; 111 L. T. 829; 58 S. J. 722.

Beavan, In re; Davies, Banks & Co. v. **Beavan,** 81 L. J. Ch. 113; [1912] 1 Ch. 196; 105 L. T. 784: followed in *Lloyd* v. *Coote & Ball*, 84 L. J. K.B. 567; [1915] 1 K.B. 242; 112 L. T. 344.

Bective (Earl) v. **Hodgson,** 33 L. J. Ch. 601; 10 H.L. C. 656: distinguished in *Stevens, In re*, 84 L. J. Ch. 432; [1915] 1 Ch. 429; 112 L. T. 982; 59 S. J. 441.

Bellerby v. **Heyworth,** 79 L. J. Ch. 402; [1910] A.C. 377; 102 L. T. 545; 74 J. P. 257; 54 S. J. 441; 26 T. L. R. 403: applied and followed in *Royal College of Veterinary Surgeons* v. *Kennard*, 83 L. J. K.B. 267; [1914] 1 K.B. 92; 109 L. T. 866; 78 J. P. 1; 23 Cox C.C. 645; 30 T. L. R. 3: applied in *Rex* v. *Registrar of Joint Stock Companies; Bowen, Ex parte*, 84 L. J. K.B. 229; [1914] 3 K.B. 1161; 112 L. T. 38; 30 T. L. R. 707.

Bellerby v. **Rowland & Marwood's Steam-Ship Co.,** 71 L. J. Ch. 541; [1902] 2 Ch. 14; 86 L. T. 671; 50 W. R. 566; 9 Manson, 291: distinguished in *Rowell* v. *John Rowell & Son, Lim.*, 81 L. J. Ch. 759; [1912] 2 Ch. 609; 107 L. T. 374; 56 S. J. 704.

Bennett, In re, 65 L. J. Ch. 422; [1896] 1 Ch. 778; 74 L. T. 157; 44 W. R. 419: followed in *Sherry, In re*, [1913] 2 Ch. 508; 109 L. T. 474.

Bennett's Estate, In re, [1898] 1 Ir. R. 185: not followed in *Cross's Trust*, [1915] 1 Ir. R. 304.

Bentley v. **Black,** 9 T. L. R. 580: distinguished in *Pacaya Rubber and Produce Co., In re; Burns' Case*, 83 L. J. Ch. 432; [1914] 1 Ch. 542; 110 L. T. 578; 58 S. J. 269; 30 T. L. R. 260.

Berdsley v. **Pilkington,** Gouldsb. 100: followed in *Coaker* v. *Willcocks*, 80 L. J. K.B. 1026; [1911] 2 K.B. 124; 104 L. T. 769; 27 T. L. R. 357.

Bernard (or Burnard) v. **Aaron,** 31 L. J. C.P. 334; 9 Jur. N.S. 470: followed in *Associated Portland Cement Manufacturers* v. *Ashton*, 84 L. J. K.B. 519; [1915] 2 K.B. 1; 112 L. T. 486; 20 Com. Cas. 165.

Berry v. **Gaukroger,** 72 L. J. Ch. 319, 435; [1903] 2 Ch. 116; 88 L. T. 521; 51 W. R. 449: applied in *Charlesworth, In re; Tew* v. *Briggs*, 81 L. J. Ch. 267; [1912] 1 Ch. 319; 105 L. T. 817; 56 S. J. 108.

Bettison, In re, L. R. 4 A. & E. 294: followed in *Corke* v. *Rainger*, [1912] P. 69; 76 J. P. 87; 28 T. L. R. 130.

Beverley, In re, 70 L. J. Ch. 295; [1901] 1 Ch. 681; 84 L. T. 296; 49 W. R. 343: distinguished in *Cooke's Settlement, In re*, [1913] 2 Ch. 661.

Beverley, In re, 70 L. J. Ch. 295; [1901] 1 Ch. 681; 84 L. T. 296; 49 W. R. 343: observations of Buckley, J., in, considered in *Cooke's Settlement, In re*, 83 L. J. Ch. 76; [1913] 2 Ch. 661; 109 L. T. 705; 58 S. J. 67: followed in *Craven, In re; Watson* v. *Craven*, 83 L. J. Ch. 403; [1914] 1 Ch. 358; 109 L. T. 846; 58 S. J. 138.

Bewley v. **Atkinson,** 49 L. J. Ch. 153; 13 Ch. D. 283: considered in *Smith* v. *Colbourne*, 84 L. J. Ch. 112; [1914] 2 Ch. 533; 111 L. T. 927; 58 S. J. 783.

Bideford Parish, In re, [1900] P. 314: approved in *Sutton* v. *Bowden*, 82 L. J. Ch. 322; [1913] 1 Ch. 518; 108 L. T. 637; 29 T. L. R. 262.

Bigge, In re; Granville v. **Moore,** 76 L. J. Ch. 413; [1907] 1 Ch. 714; 96 L. T. 903: overruled in *Watkins' Settlement, In re*, 80 L. J. Ch. 102; [1911] 1 Ch. 1; 103 L. T. 749; 55 S. J. 63.

Billericay Rural Council v. **Poplar Guardians,** 80 L. J. K.B. 1241; [1911] 2 K.B. 801; 9 L. G. R. 796; 55 S. J. 647: explained in *Colchester Corporation* v. *Gepp (No. 1)*, 81 L. J. K.B. 356; [1912] 1 K.B. 477; 106 L. T. 54; 76 J. P. 97; 10 L. G. R. 109; 56 S. J. 160.

Birch v. **Sherratt,** 36 L. J. Ch. 925; L. R. 2 Ch. 644; 17 L. T. 153: followed in *Watkins' Settlement, In re*, 80 L. J. Ch. 102; [1911] 1 Ch. 1; 103 L. T. 749; 55 S. J. 63.

Bird v. **Jones,** 15 L. J. Q.B. 82; 7 Q.B. 742: considered in *Herd* v. *Weardale Steel, Coal, and Coke Co.*, 82 L. J. K.B. 1354; [1913] 3 K.B. 771; 109 L. T. 457.

Birkenhead Corporation v. **London and North-Western Railway,** 55 L. J. Q.B. 48; 15 Q.B. D. 572; 50 J. P. 84: distinguished in *Thurrock Grays and Tilbury Joint Sewerage Board* v. *Goldsmith*, 79 J. P. 17.

Birmingham and Midland Motor Omnibus Co. v. **London and North-Western Railway,** 83 L. J. K.B. 474; [1913] 3 K.B. 850; 109 L. T. 64; 57 S. J. 752: followed in *Adam Steamship Co.* v. *London Assurance Corporation*, 83 L. J. K.B. 1861; [1914] 3 K.B. 1256; 111 L. T. 1031; 12 Asp. M.C. 559; 20 Com. Cas. 37; 59 S. J. 42.

Biscoe v. **Jackson,** 56 L. J. Ch. 93, 540; 35 Ch. D. 460; 56 L. T. 753: discussed and distinguished in *Wilson, In re; Twentyman* v. *Simpson*, 82 L. J. Ch. 161; [1913] 1 Ch. 314; 108 L. T. 321; 57 S. J. 245.

Bisgood v. **Henderson's Transvaal Estates,** 77 L. J. Ch. 486; [1908] 1 Ch. 743; 98 L. T. 809; 15 Manson, 163; 24 T. L. R. 510: applied in *Etheridge* v. *Central Uruguay Northern Extension Railway*, 82 L. J. Ch. 333; [1913] 1 Ch. 425; 108 L. T. 362; 20 Manson, 172; 57 S. J. 341; 29 T. L. R. 328: observations in, followed and applied in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Black v. **Cornelius,** 6 Rettie, 581: distinguished in *Knox and Robb* v. *Scottish Garden Suburb Co.*, [1913] S. C. 872.

Blackburn v. **Vigors,** 57 L. J. Q.B. 114; 12 App. Cas. 531; 57 L. T. 730; 36 W. R. 449; 6 Asp. M.C. 216: *dictum* of Lord Halsbury in, commented on and explained in *Muir's Executors* v. *Craig's Trustees*, [1913] S. C. 349.

Blackburn and District Benefit Building Society v. **Cunliffe, Brooks & Co.,** 54 L. J. Ch. 1091; 29 Ch. D. 902; 53 L. T. 741: disapproved in *Sinclair* v. *Brougham*, 83 L. J. Ch. 465; [1914] A.C. 398; 111 L. T. 1; 58 S. J. 302; 30 T. L. R. 315.

Blackburn Local Board v. **Sanderson,** 71 L. J. K.B. 590; [1902] 1 K.B. 794; 86 L. T. 304; 66 J. P. 452: followed in *Metropolitan Water Board* v. *Bunn*, 82 L. J. K.B. 1024; [1913] 3 K.B. 181; 109 L. T. 132; 57 S. J. 625; 29 T. L. R. 588.

Blackwell v. **Pennant,** 22 L. J. Ch. 155: 9 Hare, 551: distinguished in *Sheffield (Earl), In re; Ryde* v. *Bristow*, 80 L. J. Ch. 521; [1911] 2 Ch. 267.

Blackwood v. **Reg.**, 52 L. J. P.C. 10; 8 App. Cas. 82: followed in *Rex* v. *Lovitt*, 82 L. J. P.C. 140; [1912] A.C. 212; 105 L. T. 650; 28 T. L. R. 41.

Blair v. **Duncan**, 71 L. J. P.C. 22; [1902] A.C. 37; 86 L. T. 157; 50 W. R. 369; followed in *Da Costa, In re*, 81 L. J. Ch. 293; [1912] 1 Ch. 337; 106 L. T. 458; 56 S. J. 240; 28 T. L. R. 189.

Blake v. **Gale**, 55 L. J. Ch. 559; 32 Ch. D. 571: considered and distinguished in *Eustace, In re; Lee* v. *McMillan*, 81 L. J. Ch. 529; [1912] 1 Ch. 561; 106 L. T. 789; 56 S. J. 468.

Blake v. **Lanyon**, 6 Term Rep. 221: followed in *Wilkins and Brothers, Lim.* v. *Weaver*, 84 L. J. Ch. 929; [1915] 2 Ch. 322.

Blake v. **Midland Railway**, 73 L. J. K.B. 179; [1904] 1 K.B. 503; 90 L. T. 433; 68 J. P. 215; 20 T. L. R. 191: distinguished in *Popple* v. *Frodingham Iron and Steel Co.*, 81 L. J. K.B. 769; [1912] 2 K.B. 141; 106 L. T. 703.

Blakeway v. **Patteshall**, [1894] 1 Q.B. 247: followed in *Haywood* v. *Farabee*, 59 S. J. 234.

Blanchard v. **Bridges**, 5 L. J. K.B. 78; 5 N. & M. 567; 1 H. & W. 630; 4 Ad. & E. 176: distinguished in *Bailey* v. *Holborn & Frascati, Lim.*, 83 L. J. Ch. 515; [1914] 1 Ch. 598; 110 L. T. 574; 58 S. J. 321.

Bland's Settlement, In re; **Bland** v. **Perkin**, 74 L. J. Ch. 28; [1905] 1 Ch. 4; 91 L. T. 681: distinguished in *Brook, In re; Brook* v. *Hirst*, 111 L. T. 36; 58 S. J. 399.

Bloomenthal v. **Ford**, 66 L. J. Ch. 253; [1897] A.C. 156; 76 L. T. 205; 45 W. R. 449; 4 Manson, 156: applied in *Gresham Life Assurance Society* v. *Crowther*, 83 L. J. Ch. 867; [1914] 2 Ch. 219.

Bluett v. **Stutchburys Lim.**, 24 T. L. R. 469: distinguished in *Nelson* v. *Nelson & Sons*, 82 L. J. K.B. 827; [1913] 2 K.B. 471; 108 L. T. 719; 20 Manson, 161; 57 S. J. 501; 29 T. L. R. 461.

Blyth v. **Hulton**, 72 J. P. 401: distinguished in *Scott* v. *Director of Public Prosecutions*, 83 L. J. K.B. 1025; [1914] 2 K.B. 868; 111 L. T. 59; 78 J. P. 267; 30 T. L. R. 396.

Boag v. **Lockwood Collieries**, [1910] S. C. 51, was wrongly decided: so stated by Lord Shaw in *Macdonald or Duris* v. *Wilsons and Clyde Coal Co.*, 81 L. J. P.C. 188; [1912] A.C. 513; 106 L. T. 905; 56 S. J. 550; 28 T. L. R. 431.

Board v. **Board**, 43 L. J. Q.B. 4; L. R. 9 Q.B. 48; 29 L. T. 459; 22 W. R. 206: distinguished in *Tennant's Estate, In re*, [1913] 1 Ir. R. 280.

Bodega Co. v. **Read**, 84 L. J. Ch. 36; [1914] 2 Ch 757; 111 L. T. 884; 59 S. J. 58; 31 T. L. R. 17: followed in *Bodega Co.* v. *Martin*, 85 L. J. Ch. 17; [1915] 2 Ch. 385; 31 T. L. R. 595.

Boden, In re, 76 L. J. Ch. 100; [1907] 1 Ch. 132; 95 L. T. 741: discussed in *Rose, In re*, 85 L. J. Ch. 22; 113 L. T. 142.

Boden, In re, 76 L. J. Ch. 100; [1900] 1 Ch. 132; 95 L. T. 741: followed in *Boulcott's Settlement, In re*, 104 L. T. 205; 55 S. J. 313.

Bond, In re; Capital and Counties Bank, ex parte, 81 L. J. K.B. 112; [1911] 2 K.B. 988; 19 Manson, 22: applied in *Renison, In re; Greaves, ex parte*, 82 L. J. K.B. 710; [1913] 2 K.B. 300; 108 L. T. 811; 20 Manson, 115; 57 S. J. 445.

Boon v. **Quance**, 102 L. T. 443: distinguished in *Smith* v. *Horlock*, 109 L. T. 196.

Born, In re, 69 L. J. Ch. 669; [1900] 2 Ch. 433; 83 L. T. 51: applied in *Meter Cab Co., In re*, [1911] 2 Ch. 557; 105 L. T. 572; 56 S. J. 36.

Borthwick v. **Elderslie Steamship Co.** (*No. 2*), 74 L. J. K.B. 772; [1905] 2 K.B. 516; 93 L. T. 387; 53 W. R. 643; 21 T. L. R. 630: distinguished in *Ashover Fluorspar Mines* v. *Jackson*, 80 L. J. Ch. 687; [1911] 2 Ch. 355; 105 L. T. 334; 55 S. J. 649; 27 T. L. R. 530.

Boss v. **Helsham**, 36 L. J. Ex. 20; L. R. 2 Ex. 72; 15 L. T. 481: distinguished in *Eastwood* v. *Ashton*, 82 L. J. Ch. 313; [1913] 2 Ch. 39; 108 L. T. 759; 57 S. J. 533.

Boswell v. **Coaks**, 36 Ch. D. 444: distinguished in *Spalding* v. *Gamage*, 83 L. J. Ch. 855; [1914] 2 Ch. 405; 111 L. T. 829; 58 S. J. 722.

Bottomley, In re, 10 Morrell, 262: discussed in *Webb, In re*, 83 L. J. K.B. 1386; [1914] 3 K.B. 387; 58 S. J. 581.

Bouch v. **Sproule**, 56 L. J. Ch. 1037; 12 App. Cas. 385; 57 L. T. 345; 36 W. R. 193: followed in *Evans, In re; Jones* v. *Evans*, 82 L. J. Ch. 12; [1913] 1 Ch. 23; 107 L. T. 604; 19 Manson, 397; 57 S. J. 60.

Boulter v. **Kent Justices**, 66 L. J. Q.B. 787; [1897] A.C. 556; 77 L. T. 288; 46 W. R. 114; 61 J. P. 532: followed in *Huish* v. *Liverpool Justices*, 83 L. J. K.B. 133; [1914] 1 K.B. 109; 110 L. T. 38; 78 J. P. 45; 12 L. G. R. 15; 58 S. J. 83; 30 T. L. R. 25: *dictum* of Lord Halsbury in, followed in *Attwood* v. *Chapman*, 83 L. J. K.B. 1666; [1914] 3 K.B. 275; 111 L. T. 726; 79 J. P. 65; 30 T. L. R. 596.

Bourke v. **Cork and Macroom Railway**, 4 L. R. Ir. 682: *dicta* of Dowse, B., in, disapproved by Lord Shaw in *Taff Vale Railway* v. *Jenkins*, 82 L. J. K.B. 49; 107 L. T. 564; 57 S. J. 27; 29 T. L. R. 19.

Bourne v. **Swan & Edgar**, 72 L. J. Ch. 168; [1903] 1 Ch. 211; 87 L. T. 589; 51 W. R. 213: observations of Farwell, J., in, applied in *Royal Warrant Holders' Association* v. *Deane & Beal*, 81 L. J. Ch. 67; [1912] 1 Ch. 10; 105 L. T. 623; 28 R. P. C. 721; 56 S. J. 12; 28 T. L. R. 6.

Boussmaker, Ex parte, 13 Ves. 71: followed in *Rombach Baden Clock Co., In re*, 84 L. J. K.B. 1558; 31 T. L. R. 492.

Bowling & Welby's Contract, In re, 64 L. J. Ch. 427; [1895] 1 Ch. 663; 72 L. T. 411; 43 W. R. 417; 2 Manson, 257: distinguished by Astbury, J., in *Llewellyn* v. *Kasintoe Rubber Estates*, 84 L. J. Ch. 70; [1914] 2 Ch. 670; 112 L. T. 676; 21 Manson, 349; 58 S. J. 808; 30 T. L. R. 683.

Bowman v. **Milbanke,** 1 Lev. 130: distinguished in *Shepherd, In re; Mitchell* v. *Loram*, 58 S. J. 304.

Boxall v. **Boxall,** 53 L. J. Ch. 838; 27 Ch. D. 220; 51 L. T. 771; 32 W. R. 896: applied in *Hewson* v. *Shelley*, 82 L. J. Ch. 551; [1913] 2 Ch. 384; 57 S. J. 717; 29 T. L. R. 699.

Bradford Banking Co. v. **Briggs,** 56 L. J. Ch. 364; 12 App. Cas. 29; 56 L. T. 62; 35 W. R. 521: observations in, followed and applied in *Hickman* v. *Kent* (or *Romney Marsh*) *Sheep Breeders' Association*, 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Bradford Navigation Co., In re, 39 L. J. Ch. 733; L. R. 5 Ch. 600; 23 L. T. 487: discussed in *Woking Urban Council* (*Basingstoke Canal*) *Act*, 1911, *In re*, 83 L. J. Ch. 201; [1914] 1 Ch. 300; 110 L. T. 49; 78 J. P. 81; 12 L. G. R. 214; 30 T. L. R. 135.

Bradley v. **Carritt,** 72 L. J. K.B. 471; [1903] A.C. 253; 88 L. T. 633; 51 W. R. 636: discussed and distinguished in *Kreglinger* v. *New Patagonia Meat and Cold Storage Co.*, 82 L. J. Ch. 79; [1914] A.C. 25; 109 L. T. 802; 58 S. J. 97; 30 T. L. R. 114.

Bradley v. **James,** Ir. R. 10 C. L. 441: considered in *Mackay, In re*, [1915] 2 Ir. R. 347.

Brennan v. **Dillon,** Ir. R. 7 Eq. 215; 8 Eq. 94: approved in *Gilbert, In the goods of*, [1911] 2 Ir. R. 36.

Brewster, In re, 77 L. J. Ch. 605; [1908] 2 Ch. 365: followed in *De Sommery, In re*, 82 L. J. Ch. 17; [1912] 2 Ch. 622; 57 S. J. 78.

Brickwood v. **Reynolds,** 67 L. J. Q.B. 26; [1898] 1 Q.B. 95; 77 L. T. 456; 46 W. R. 130: distinguished in *Smith* v. *Lion Brewery Co.*, 80 L. J. K.B. 566; [1911] A.C. 150; 104 L. T. 321; 75 J. P. 273; 55 S. J. 269; 27 T. L. R. 261: commented on in *Usher's Wiltshire Brewery* v. *Bruce*, 84 L. J. K.B. 417; [1915] A.C. 433; 112 L. T. 651; 6 Tax Cas. 399; 59 S. J. 144; 31 T. L. R. 104.

Bridger, In re; Brompton Hospital v. **Lewis,** 63 L. J. Ch. 186; [1894] 1 Ch. 297; 70 L. T. 204; 42 W. R. 179: followed in *Harris, In re*, 81 L. J. Ch. 512; [1912] 2 Ch. 241; 106 L. T. 755: applied in *Groos, In re*, 84 L. J. Ch. 422; [1915] 1 Ch. 572; 112 L. T. 984; 59 S. J. 477.

Bridgewater Navigation Co., In re, 60 L. J. Ch. 415; [1891] 2 Ch. 317; 64 L. T. 576: applied in *Spanish Prospecting Co., In re*, 80 L. J. Ch. 210; [1911] 1 Ch. 92; 103 L. T. 609; 18 Manson, 191; 55 S. J. 63; 27 T. L. R. 76.

Bridgwater's Settlement, In re; Partridge v. **Ward,** 79 L. J. Ch. 746; [1910] 2 Ch. 342; 103 L. T. 421: applied in *Gresham Life Assurance Society* v. *Crowther*, 83 L. J. Ch. 867; [1914] 2 Ch. 219.

Brierly v. **Kendall,** 21 L. J. Q.B. 161; 17 Q.B. 937: applied in *Belsize Motor Supply Co.* v. *Cox*, 83 L. J. K.B. 261; [1914] 1 K.B. 244; 110 L. T. 151.

Briggs v. **Hartley,** 19 L. J. Ch. 416: overruled in *Bowman, In re*, 85 L. J. Ch. 1; [1915] 2 Ch. 447; 59 S. J. 703; 31 T. L. R. 618.

Briggs v. **Mitchell,** 48 Sc. L. R. 606: approved in *Lee* v. "*Bessie*" (*Owners*), 81 L. J. K.B. 114; [1912] 1 K.B. 83; 105 L. T. 659; 12 Asp. M.C. 89.

Brinsmead v. **Harrison,** 40 L. J. C.P. 281; L. R. 6 C.P. 584; 24 L. T. 798; 19 W. R. 956: held inapplicable in *Bradley & Cohn* v. *Ramsay*, 106 L. T. 771; 28 T. L. R. 388.

Bristol (Marquis) Settlement, In re; Grey (Earl) v. **Grey,** 66 L. J. Ch. 446; [1897] 1 Ch. 946; 76 L. T. 757; 45 W. R. 552: followed in *Cavendish Settlement, In re; Grosvenor* v. *Butler* (*No.* 2), 81 L. J. Ch. 400; [1912] 1 Ch. 794; 106 L. T. 510; 56 S. J. 399: distinguished in *Fraser Settlement, In re; Ind* v. *Fraser*, 82 L. J. Ch. 406; [1913] 2 Ch. 224; 108 L. T. 960; 57 S. J. 462: followed in *Wood, In re; Wodehouse* v. *Wood*, 82 L. J. Ch. 203; [1913] 1 Ch. 303; 108 L. T. 31; 57 S. J. 265.

Bristow v. **Eastman,** 1 Esp. 172: followed in *Cowern* v. *Nield*, 81 L. J. K.B. 865; [1912] 2 K.B. 419; 106 L. T. 984; 56 S. J. 552; 28 T. L. R. 423.

Britannia Merthyr Coal Co. v. **David,** 79 L. J. K.B. 153; [1910] A.C. 74; 101 L. T. 833; 54 S. J. 151; 26 T. L. R. 164: explained in *Watkins* v. *Naval Colliery Co.*, 81 L. J. K.B. 1056; [1912] A.C. 693; 107 L. T. 321; 56 S. J. 719; 28 T. L. R. 569.

British Asbestos Co. v. **Boyd,** 73 L. J. Ch. 31; [1903] 2 Ch. 439; 88 L. T. 763; 51 W. R. 667: applied in *Channell Collieries Trust* v. *St. Margarets, Dover, and Martin Mill Light Railway,* 84 L. J. Ch. 28; [1914] 2 Ch. 506; 111 L. T. 1051; 21 Manson, 328; 30 T. L. R. 647.

British Gold Fields of West Africa, In re, 68 L. J. Ch. 412; [1899] 2 Ch. 7; 80 L. T. 638; 47 W. R. 552; 6 Manson, 334: observations of Lindley, M.R., in, applied in *Debtor* (*No.* 68 *of* 1911), *In re,* 80 L. J. K.B. 1224; [1911] 2 K.B. 652; 104 L. T. 905.

British Mutual Banking Co. v. **Charnwood Forest Railway,** 56 L. J. Q.B. 449; 18 Q.B. D. 714; 57 L. T. 833; 35 W. R. 590: *dicta* of Bowen, L.J., in, disapproved in *Lloyd* v. *Grace, Smith & Co.,* 81 L. J. K.B. 1140; [1912] A.C. 716; 109 L. T. 531; 56 S. J. 723; 28 T. L. R. 547.

British Waggon Co. v. **Lea,** 49 L. J. Q.B. 321; 5 Q.B. D. 149; 42 L. T. 437; 28 W. R. 349; 44 J. P. 440: followed in *Sorrentino* v. *Buerger,* 84 L. J. K.B. 725; [1915] 1 K.B. 307; 112 L. T. 294; 20 Com. Cas. 132.

British Workman's and General Insurance Co. v. **Cunliffe,** 18 T. L. R. 425: discussed in *Phillips* v. *Royal London Mutual Insurance Co.,* 105 L. T. 136.

Brock v. **Bradley,** 33 Beav. 670: distinguished in *Laing, In re,* 81 L. J. Ch. 686; [1912] 2 Ch. 386.

Brocklesby v. **Temperance Permanent Building Society,** 64 L. J. Ch. 433; [1895] A.C. 173; 72 L. T. 477; 43 W. R. 606; 59 J. P. 676: applied in *Fry* v. *Smellie,* 81 L. J. K.B. 1003; [1912] 3 K.B. 282; 106 L. T. 404.

Broderick v. **London County Council,** 77 L. J. K.B. 1127; [1908] 2 K.B. 807; 99 L. T. 569; 24 T. L. R. 822: applied in *Martin* v. *Manchester Corporation,* 106 L. T. 741; 76 J. P. 251; 28 T. L. R. 344.

Bromley Rural Council v. **Chittenden,** 70 J. P. 409: *dictum* of Cozens-Hardy, M.R., in, not followed in *Colchester Corporation* v. *Gepp,* 81 L. J. K.B. 356; [1912] 1 K.B. 477; 106 L. T. 54; 76 J. P. 97; 10 L. G. R. 109; 56 S. J. 160.

Brook v. **Badley,** 37 L. J. Ch. 884; L. R. 3 Ch. 672: followed in *Dawson, In re; Pattisson* v. *Bathurst,* 84 L. J. Ch. 476; [1915] 1 Ch. 626; 113 L. T. 19; 59 S. J. 363; 31 T. L. R. 277.

Brooke, In re, 64 L. J. Ch. 21; [1894] 2 Ch. 600; 71 L. T. 398: *dicta* in, disapproved in *Oxley, In re,* 83 L. J. Ch. 442; [1914] 1 Ch. 604; 110 L. T. 626; 58 S. J. 319; 30 T. L. R. 327.

Brookman v. **Mather,** 29 T. L. R. 276: followed in *Keen* v. *Price,* 83 L. J. Ch. 865; [1914] 2 Ch. 98; 58 S. J. 495; 30 T. L. R. 494.

Brooks, In re, 76 L. T. 771: followed in *Cooke's Settlement, In re,* 83 L. J. Ch. 76; [1913] 2 Ch. 661; 109 L. T. 705; 58 S. J. 67: distinguished in *Craven, In re; Watson* v. *Craven,* 83 L. J. Ch. 403; [1914] 1 Ch. 358; 109 L. T. 846; 58 S. J. 138.

Brown, In re; Dixon v. **Brown,** 55 L. J. Ch. 556; 32 Ch. D. 597; 54 L. T. 789: considered in *Wells* v. *Wells,* 83 L. J. P. 81; [1914] P. 157; 111 L. T. 399; 58 S. J. 555; 30 T. L. R. 545.

Brown, In re; Penrose v. **Manning,** 63 L. T. 159: approved in *Pearce, In re; Alliance Assurance Co.* v. *Frances,* 83 L. J. Ch. 266; [1914] 1 Ch. 254; 110 L. T. 168; 58 S. J. 197.

Brown v. **Crossley,** 80 L. J. K.B. 478; [1911] 1 K.B. 603; 104 L. T. 429; 75 J. P. 177; 9 L. G. R. 194; 27 T. L. R. 194: followed in *Printz* v. *Sewell,* 81 L. J. K.B. 905; [1912] 2 K.B. 511; 106 L. T. 880; 76 J. P. 295; 10 L. G. R. 665; 28 T. L. R. 396; and in *White* v. *Jackson,* 84 L. J. K.B. 1900; 79 J. P. 447; 31 T. L. R. 505.

Brown v. **Lilley,** 7 T. L. R. 427: discussed and held not to be good law in *Tarry* v. *Witt,* 84 L. J. K.B. 950; 112 L. T. 1034; 31 T. L. R. 207.

Brown v. **Mitchell,** [1910] S. C. 369; 47 Sc. L. R. 216: observation in, approved in *Bonnett & Fowler, In re,* 82 L. J. K.B. 71; [1913] 2 K.B. 537; 108 L. T. 497; 77 J. P. 281.

Brown & Gregory, In re, 73 L. J. Ch. 430; [1904] 1 Ch. 627; 52 W. R. 412; 11 Manson, 218: distinguished in *Peruvian Railway Construction Co., In re,* [1915] 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464.

Browne v. **Furtado,** 72 L. J. K.B. 296; [1903] 1 K.B. 723; 88 L. T. 309; 67 J. P. 161: discussed in *Westminster School* v. *Reith,* 84 L. J. K.B. 168; [1915] A.C. 259; 112 L. T. 91; 6 Tax Cas. 486; 59 S. J. 57; 31 T. L. R. 31.

Browne v. **Hammond,** Johns. 210: applied in *Seaton, In re; Ellis* v. *Seaton,* 83 L. J. Ch. 124; [1913] 2 Ch. 614.

Browne v. **La Trinidad,** 57 L. J. Ch. 292; 37 Ch. D. 1: distinguished in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association,* 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Bruner v. **Moore,** 73 L. J. Ch. 377; [1904] 1 Ch. 305; 89 L. T. 738; 52 W. R. 295; 20 T. L. R. 125: applied in *Morrell* v. *Studd & Millington*, [1913] 2 Ch. 648; 109 L. T. 628.

Bryan v. **Collins,** 16 Beav. 14: discussed and not followed in *Cattell, In re*, 83 L. J. Ch. 322; [1914] 1 Ch. 177; 110 L. T. 137; 58 S. J. 67.

Buccleuch (Duke) v. **Metropolitan Board of Works,** 41 L. J. Ex. 137; L. R. 5 H.L. 418; 27 L. T. 1: considered and distinguished in *Recher* v. *North British and Mercantile Insurance Co.*, 84 L. J. K.B. 1813; [1915] 3 K.B. 277; 113 L. T. 827.

Buckley v. **Buckley,** 19 L. R. Ir. 544: followed in *Fry, In re*, 81 L. J. Ch. 640; [1912] 2 Ch. 86; 106 L. T. 999; 56 S. J. 518.

Bulkeley v. **Stephens,** 65 L. J. Ch. 597; [1896] 2 Ch. 241; 74 L. T. 409; 44 W. R. 490: distinguished in *Sale, In re; Nisbet* v. *Philp*, [1913] 2 Ch. 697.

Bulli Coal Mining Co. v. **Osborne,** 68 L. J. P.C. 49; [1899] A.C. 351; 80 L. T. 430; 47 W. R. 545: followed in *Oelkers* v. *Ellis*, 83 L. J. K.B. 658; [1914] 2 K.B. 139; 110 L. T. 332.

Bullock v. **London General Omnibus Co.,** 76 L. J. K.B. 127; [1907] 1 K.B. 264; 95 L. T. 905; 23 T. L. R. 62: application of, discussed in *Poulton* v. *Moore*, 83 L. J. K.B. 875; 109 L. T. 976.

Burdick v. **Garrick,** 39 L. J. Ch. 369; L. R. 5 Ch. 233; 22 L. T. 502: approved in *Reid-Newfoundland Co.* v. *Anglo-American Telegraph Co.*, 81 L. J. P.C. 224; [1912] A.C. 555; 105 L. T. 691; 28 T. L. R. 385.

Burland v. **Earle,** 71 L. J. P.C. 1; [1902] A.C. 83; 85 L. T. 553; 50 W. R. 241; 9 Manson, 17: followed in *Dominion Cotton Mills Co.* v. *Amyot*, 81 L. J. P.C. 233; [1912] A.C. 546; 106 L. T. 934; 28 T. L. R. 467.

Burman v. **Zodiac Steam Fishing Co.,** 83 L. J. K.B. 1683; [1914] 3 K.B. 1039; 112 L. T. 58; [1914] W.C. & I. Rep. 520; 30 T. L. R. 651: considered in *Stephenson* v. *Rossall Steam Fishing Co.*, 84 L. J. K.B. 677; [1915] W.C. & I. Rep. 121; 112 L. T. 890.

Burnard (*or* **Bernard**) v. **Aaron,** 31 L. J. C.P. 334; 9 Jur. (N.S.) 470: distinguished in *Associated Portland Cement Manufacturers* v. *Ashton*, 84 L. J. K.B. 519; [1915] 2 K.B. 1; 112 L. T. 486; 20 Com. Cas. 165.

Burns v. **Baird,** [1913] S. C. 358: commented on in *Baird* v. *Ancient Order of Foresters*, [1914] S. C. 965.

Burns-Burns' Trustee v. **Brown,** 64 L. J. Q.B. 248; [1895] 1 Q.B. 324; 71 L. J. 825; 43 W. R. 195; 2 Manson, 23: applied in *Godding, In re*, 83 L. J. K.B. 1222; [1914] 2 K.B. 70; 110 L. T. 207; 58 S. J. 221.

Burr, In re, 61 L. J. Q.B. 591; [1892] 2 Q.B. 467; 66 L. T. 553; 9 Morrell, 133: followed in *Webb, In re*, [1914] 3 K.B. 387; 111 L. T. 175.

Burra v. **Ricardo,** 1 Cab. & E. 478: questioned in *Lloyds Bank* v. *Swiss Bankverein*, 108 L. T. 143; 18 Com. Cas. 79; 57 S. J. 243; 29 T. L. R. 219.

Burrows v. **Lang,** 70 L. J. Ch. 607; [1901] 2 Ch. 502; 84 L. T. 623; 49 W. R. 564: distinguished in *Lewis* v. *Meredith*, 82 L. J. Ch. 255; [1913] 1 Ch. 571; 108 L. T. 549.

Burrows v. **Rhodes,** 68 L. J. Q.B. 545; [1899] 1 Q.B. 816; 80 L. T. 591; 48 W. R. 13; 63 J. P. 532: considered in *Leslie, Lim.* v. *Reliable Advertising and Addressing Agency*, 84 L. J. K.B. 719; [1915] 1 K.B. 652; 112 L. T. 947; 31 T. L. R. 182.

Burton v. **Hudson,** 78 L. J. K.B. 905; [1909] 2 K.B. 564; 101 L. T. 233; 73 J. P. 401; 25 T. L. R. 641: followed in *Talbot de Malahide (Lord)* v. *Dunne*, [1914] 2 Ir. R. 125.

Butler v. **Butler,** 15 P. D. 126; 62 L. T. 477: considered in *Palmer* v. *Palmer*, 83 L. J. P. 58; [1914] P. 116; 110 L. T. 752; 58 S. J. 416; 30 T. L. R. 409.

Butler v. **Wildman,** 3 B. & Ald. 398: distinguished in *Kacianoff* v. *China Traders Insurance Co.*, 83 L. J. K.B. 1393; [1914] 3 K.B. 1121; 30 T. L. R. 546.

Butterknowle Colliery Co. v. **Bishop Auckland Industrial Co-operative Co.,** 75 L. J. Ch. 541; [1906] A.C. 305; 94 L. T. 795; 70 J. P. 361; 22 T. L. R. 516: considered in *Beard* v. *Moira Colliery Co.*, 84 L. J. Ch. 155; [1915] 1 Ch. 257; 112 L. T. 227; 59 S. J. 103.

C.

Caballero v. **Henty,** 43 L. J. Ch. 635; L. R. 9 Ch. 447: there is no conflict between this case and *Carroll* v. *Keayes* (Ir. R. 8 Eq. 97): so held in *Clements* v. *Conroy*, [1911] 2 Ir. R. 500.

Cadman v. **Cadman,** 55 L. J. Ch. 833; 33 Ch. D. 397; 55 L. T. 569: followed in *Badger, In re*, 82 L. J. Ch. 264; [1913] 1 Ch. 385; 108 L. T. 441; 57 S. J. 339.

Cairney v. **Back,** 75 L. J. K.B. 1014; [1906] 2 K.B. 746; 96 L. T. 111; 22 T. L. R. 776: applied in *Sinnott* v. *Bowden*, 81 L. J. Ch. 832; [1912] 2 Ch. 414; 107 L. T. 609; [1913] W.C. & I. Rep. 464; 28 T. L. R. 594.

Caistor Rural District Council v. **Taylor,** 71 J. P. 310: approved and followed in *Rex* v. *Beacontree Justices*, 84 L. J. K.B. 2230; [1915] 3 K.B. 388; 31 T. L. R. 509.

Calcraft v. **Guest,** 67 L. J. Q.B. 505; [1898] 1 Q.B. 759; 78 L. T. 283; 46 W. R. 420: considered in *Ashburton* v. *Pape*, 82 L. J. Ch. 527; [1913] 2 Ch. 469; 109 L. T. 381.

Calico Printers Association v. **Booth,** 82 L. J. K.B. 985; [1913] 3 K.B. 652; [1913] W.C. & I. Rep. 540; 109 L. T. 123; 57 S. J. 662; 29 T. L. R. 664: explained in *Gotobed* v. *Petchell*, 83 L. J. K.B. 429; [1914] 2 K.B. 36; [1914] W.C. & I. Rep. 115; 110 L. T. 453; 58 S. J. 249; 30 T. L. R. 253.

Calico Printers Association v. **Higham,** 81 L. J. K.B. 232; [1912] 1 K.B. 93; [1912] W.C. Rep. 104; 105 L. T. 734; 56 S. J. 89; 28 T. L. R. 53: *dictum* of Farwell, L.J., in, doubted in *Calico Printers Association* v. *Booth*, 82 L. J. K.B. 985; [1913] 3 K.B. 652; [1913] W.C. & I. Rep. 540; 109 L. T. 123; 57 S. J. 662; 29 T. L. R. 664.

Californian Copper Syndicate v. **Harris,** 6 Fraser, 894; 5 Tax Cas. 159: approved and followed in *Commissioner of Taxes* v. *Melbourne Trust*, 84 L. J. P.C. 21; [1914] A.C. 1001; 111 L. T. 1040; 30 T. L. R. 685.

Cameron v. **Young,** 77 L. J. P.C. 68; [1908] A.C. 176; 98 L. T. 592: distinguished in *Mellon* v. *Henderson*, [1913] S. C. 1207.

Campbell v. **Paddington Parishioners,** 2 Rob. Ecc. 558: criticised in *Sutton* v. *Bowden*, 82 L. J. Ch. 322; [1913] 1 Ch. 518; 108 L. T. 637; 29 T. L. R. 267.

Canadian Land Reclaiming and Colonizing Co., In re; Coventry and Dixon's Case, 14 Ch. D. 660; 42 L. T. 559; 28 W. R. 775: followed in *Irish Provident Assurance Co., In re*, [1913] 1 Ir. R. 352.

Cane, In re, 60 L. J. Ch. 36; 63 L. T. 746: applied in *Seaton, In re; Ellis* v. *Seaton*, 83 L. J. Ch. 124; [1913] 2 Ch. 614.

Canning Jarrah Timber Co., In re, 69 L. J. Ch. 416; [1900] 1 Ch. 708; 82 L. T. 409; 7 Manson, 439: explained in *General Motor Cab Co., In re*, 81 L. J. Ch. 505; 106 L. T. 709; 28 T. L. R. 352: followed in *Sandwell Park Colliery Co., In re*, 83 L. J. Ch. 549; [1914] 1 Ch. 589; 110 L. T. 766; 58 S. J. 432.

Capital and Counties Bank v. **Warriner,** 1 Com. Cas. 314: followed in *Ant. Jurgens Margarinefabricken* v. *Dreyfus*, 83 L. J. K.B. 1344; [1914] 3 K.B. 40; 19 Com. Cas. 333.

Cardiff Corporation v. **Hall,** 80 L. J. K.B. 644; [1911] 1 K.B. 1009; 104 L. T. 467; 27 T. L. R. 339: considered in *Carlin* v. *Stephen*, [1911] S. C. 901: considered in *Silcock* v. *Golightly*, 84 L. J. K.B. 499; [1915] 1 K.B. 748; [1915] W.C. & I. Rep. 164; 112 L. T. 800.

Carlin v. **Stephen,** [1911] S. C. 901; 5 B.W.C.C. 486: considered in *Silcock* v. *Golightly*, 84 L. J. K.B. 499; [1915] 1 K.B. 748; [1915] W.C. & I. Rep. 164; 112 L. T. 800.

Carlish v. **Salt,** 75 L. J. Ch. 175; [1906] 1 Ch. 335; 94 L. T. 58; 54 W. R. 244: distinguished in *Shepherd* v. *Croft*, 80 L. J. Ch. 170; [1911] 1 Ch. 521; 103 L. T. 874.

Carlisle Cafe Co. v. **Muse,** 67 L. J. Ch. 53; 77 L. T. 515: followed and explained in *Goldfoot* v. *Welch*, 83 L. J. 360; [1914] 1 Ch. 213; 109 L. T. 820: followed in *Hope* v. *Cowan*, 82 L. J. Ch. 439; [1913] 2 Ch. 312; 108 L. T. 945; 57 S. J. 559; 29 T. L. R. 520.

Carnac, In re, 55 L. J. Q.B. 74; 16 Q.B. D. 308; 54 L. T. 439; 34 W. R. 421: considered in *Wells* v. *Wells*, 83 L. J. P. 81; [1914] P. 157; 111 L. T. 399; 58 J. P. 555; 30 T. L. R. 545.

Carr, In re; Jacobs, ex parte, 85 L. T. 552; 50 W. R. 336: considered in *Beesley, In re*, 109 L. T. 910.

Carr v. **Ingleby,** 1 De G. & S. 362*n.*: followed in *Richardson, In re; Mahony* v. *Treacy*, [1915] 1 Ir. R. 39; and in *Dempster, In re*, 84 L. J. Ch. 597; [1915] 1 Ch. 795; 112 L. T. 1124.

Carrick v. **Errington,** 2 P. Wms. 361 (affirmed, *sub nom. Errington* v. *Carrick*, 5 Bro. P.C. 391): applied in *Scott, In re*, 80 L. J. Ch. 750.

Carroll v. **Keayes,** Ir. R. 8 Eq. 97: principle of, applied in *Clements* v. *Conroy*, [1911] 2 Ir. R. 500.

Carter and Kenderdine's Contract, In re, 66 L. J. Ch. 408; [1897] 1 Ch. 776; 76 L. T. 476; 45 W. R. 484; 4 Manson, 34: applied in *Hart, In re; Green, ex parte*, 81 L. J. K.B. 1213; [1912] 3 K.B. 6; 107 L. T. 368.

Casey v. **Hellyer,** 55 L. J. Q.B. 207; 17 Q.B. D. 97; 54 L. T. 103; 34 W. R. 337: distinguished in *Hopkins* v. *Collier*, 29 T. L. R. 367.

Cassella's Trade Mark, In re, 79 L. J. Ch. 529; [1910] 2 Ch. 240; 102 L. T. 792; 27 R. P. C. 453; 54 S. J. 505; 26 T. L. R. 472: considered and applied in *Sharpe's Trade Mark, In re*, 84 L. J. Ch. 290; 112 L. T. 435; 32 R. P. C. 15; 31 T. L. R. 105.

Castle Spinning Co. v. **Atkinson,** 74 L. J. K.B. 265; [1905] 1 K.B. 336; 92 L. T. 147; 53 W. R. 360; 21 T. L. R. 192: applied and followed in *Calico Printers Association* v. *Booth*, 82 L. J. K.B. 985; [1913] 3 K.B. 652; 109 L. T. 123; [1913] W.C. & I. Rep. 540; 57 S. J. 662; 29 T. L. R. 664.

Caterham Urban Council v. **Godstone Rural Council,** 73 L. J. K.B. 589; [1904] A.C. 171, 90 L. T. 653; 52 W. R. 625; 68 J. P. 429; 2 L. G. R. 596: distinguished in *Midlothian County Council* v. *Musselburgh Magistrates*, [1911] S. C. 463.

Catlin, In re, 18 Beav. 508: distinguished in *Morgan & Co., In re*, 84 L. J. Ch. 249; [1915] 1 Ch. 182; 112 L. T. 239; 59 S. J. 289.

Caton v. **Summerlee and Mossend Iron and Coal Co.,** 4 Fraser, 989: followed in *Graham* v. *Barr and Thornton*, [1913] S. C. 538; [1913] W.C. & I. Rep. 202.

Catt v. **Tourle,** 38 L. J. Ch. 665; L. R. 4 Ch. 654: considered in *London County Council* v. *Allen*, 83 L. J. K.B. 1695; [1914] 3 K.B. 642.

Cattle v. **Stockton Waterworks Co.,** 44 L. J. Q.B. 139; L. R. 10 Q.B. 453; 33 L. T. 475: followed in *Remorquage à Hélice (Société Anonyme)* v. *Bennetts*, 80 L. J. K.B. 228; [1911] 1 K.B. 243; 16 Com. Cas. 24; 27 T. L. R. 77.

Cavalier v. **Pope,** 74 L. J. K.B. 857; 75 L. J. K.B. 609; [1905] 2 K.B. 757; [1906] A.C. 428; 93 L. T. 475; 95 L. T. 65; 21 T. L. R. 747; 22 T. L. R. 648: applied in *Ryall* v. *Kidwell*, 83 L. J. K.B. 1140; [1914] 3 K.B. 135; 111 L. T. 240; 30 T. L. R. 503; in *Middleton* v. *Hall*, 108 L. T. 804; 77 J. P. 172; and distinguished in *Mellon* v. *Henderson*, [1913] S. C. 1207.

Cave v. **Coleman,** 7 L. J. (o.s.) K.B. 25; 3 Man. & Ry. 2: *dictum* of Bayley, J., in, disapproved by Lord Moulton in *Heilbut, Symons & Co.* v. *Buckleton*, 82 L. J. K.B. 245; [1913] A.C. 30; 107 L. T. 769; 20 Manson, 54.

Cave v. **Horsell,** 81 L. J. K.B. 981; [1912] 3 K.B. 533; 107 L. T. 186; 28 T. L. R. 543: distinguished in *Derby Motor Cab Co.* v. *Crompton and Evans Union Bank*, 57 S. J. 701; 29 T. L. R. 673.

Cavendish v. **Strutt,** 73 L. J. Ch. 247; [1904] 1 Ch. 524; 90 L. T. 500; 52 W. R. 333; 20 T. L. R. 99: judgment in, corrected in *Giles* v. *Randall*, 84 L. J. K.B. 786; [1915] 1 K.B. 290; 112 L. T. 271; 59 S. J. 131.

Cavendish Bentinck v. **Fenn,** 57 L. J. Ch. 552; 12 App. Cas. 652; 57 L. T. 773; 36 W. R. 441: applied in *Irish Provident Assurance Co., In re*, [1913] 1 Ir. R. 352.

Cavendish Settlement, In re; Grosvenor v. **Butler,** 81 L. J. Ch. 400; [1912] 1 Ch. 794; 106 L. T. 510; 56 S. J. 399: distinguished in *Fraser Settlement, In re; Ind* v. *Fraser*, 82 L. J. Ch. 406; [1913] 2 Ch. 224; 108 L. T. 960; 57 S. J. 462: and followed in *Wood, In re; Wodehouse* v. *Wood*, 82 L. J. Ch. 203; [1913] 1 Ch. 303; 108 L. T. 31; 57 S. J. 265.

Caygill v. **Thwaite,** 49 J. P. 614; 33 W. R. 581: considered and followed in *Leavett* v. *Clark*, 84 L. J. K.B. 2157; [1915] 3 K.B. 9; 113 L. T. 424.

Chalchman v. **Wright,** Noy, 118: followed in *Forbes* v. *Samuel*, 82 L. J. K.B. 1135; [1913] 3 K.B. 706; 109 L. T. 599; 29 T. L. R. 544.

Challenger v. **Sheppard,** 8 Term Rep. 597: distinguished in *Jones, In re*, 84 L. J. Ch. 222; [1915] 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Challis v. **London and South-Western Railway,** 74 L. J. K.B. 569; [1905] 2 K.B. 154; 93 L. T. 330; 53 W. R. 613; 21 T. L. R. 486: discussed and distinguished in *Clayton* v. *Hardwick Colliery Co.*, [1914] W.C. & I. Rep. 343; 111 L. T. 788.

Chamberlain's Wharf, Lim. v. **Smith,** 69 L. J. Ch. 783; [1900] 2 Ch. 605; 83 L. T. 238; 49 W. R. 91: considered in *Osborne* v. *Amalgamated Society of Railway Servants*, 80 L. J. Ch. 315; [1911] 1 Ch. 540; 104 L. T. 267; 27 T. L. R. 289.

Chant, In re, 69 L. J. Ch. 601; [1900] 2 Ch. 345; 83 L. T. 341; 48 W. R. 646: followed in *Jones, In re*, 84 L. J. Ch. 222; [1915] 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Chaplin v. **Chaplin,** 3 P. Wms. 229: applied in *Pinkerton* v. *Pratt*, [1915] 1 Ir. R. 406.

Chapman v. **Fylde Water Co.,** 64 L. J. Q.B. 15; [1894] 2 Q.B. 599; 71 L. T. 539; 43 W. R. 1; 59 J. P. 5: distinguished in *Stacey* v. *Metropolitan Water Board*, 9 L. G. R. 174; and in *Batt.* v. *Metropolitan Water Board*, 80 L. J. K.B. 1354; [1911] 2 K.B. 965.

Chapman v. **Salt,** 2 Vern. 646: considered in *Shields, In re; Corbould-Ellis* v. *Dales*, 81 L. J. Ch. 370; [1912] 1 Ch. 591; 106 L. T. 748.

Charing Cross, West End, and City Electricity Supply Co. v. **London Hydraulic Power Co.,** 83 L. J. K.B. 116, 1352; [1913] 3 K.B. 442; [1914] 3 K.B. 772; 109 L. T. 635; 111 L. T. 198; 77 J. P. 378; 78 J. P. 305; 11 L. G. R. 1013; 12 L. G. R. 807; 29 T. L. R. 649; 30 T. L. R. 441: distinguished in *Goodbody* v. *Poplar Borough Council*, 84 L. J. K.B. 1230; 79 J. P. 218; 13 L. G. R. 166.

Charles v. **Jones,** 56 L. J. Ch. 745; 35 Ch. D. 544; 56 L. T. 848; 35 W. R. 645: followed in *Williams* v. *Jones*, 55 S. J. 500.

Charlesworth v. **Mills,** 61 L. J. Q.B. 830; [1892] A.C. 231; 66 L. T. 690; 41 W. R. 129; 56 J. P. 628: distinguished in *Dublin City Distillery* v. *Doherty*, 83 L. J. P.C. 265; [1914] A.C. 823; 111 L. T. 81; 58 S. J. 413.

Chaytor, In re; Chaytor v. **Horn,** 74 L. J. Ch. 106; [1905] 1 Ch. 233; 92 L. T. 290; 53 W. R. 251: distinguished in *Inman, In re*, 84 L. J. Ch. 309; [1915] 1 Ch. 187; 112 L. T. 240; 59 S. J. 161.

Chaytor v. **Trotter,** 87 L. T. 33: applied in *Morgan, In re; Vachell* v. *Morgan*, 83 L. J. Ch. 573; [1914] 1 Ch. 910; 110 L. T. 903.

Cherry v. **Boultbee,** 9 L. J. Ch. 118; 4 Myl. & Cr. 442: considered in *Turner* v. *Turner*, 80 L. J. Ch. 473; [1911] 1 Ch. 716; 104 L. T. 901: explained in *Pink* v. *Pink*, 81 L. J. Ch. 353; [1912] 1 Ch. 498; 106 L. T. 338; 56 S. J. 274: principle of held inapplicable in *Smelting Corporation, In re; Seaver* v. *Smelting Corporation*, 84 L. J. Ch. 571; [1915] 1 Ch. 472; 113 L. T. 44; [1915] H. B. R. 126: considered in *Peruvian Railway Construction Co., In re*, [1915] 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464; and in *Dacre, In re*, [1915] 2 Ch. 480.

Cheslyn v. **Cresswell,** 3 Bro. P.C. 246: distinguished in *Whiting, In re; Ormond* v. *De Launay*, 82 L. J. Ch. 309; [1913] 2 Ch. 1; 108 L. T. 629; 57 S. J. 461.

Chesterfield (Earl) v. **Harris,** 77 L. J. Ch. 688; [1908] 2 Ch. 397; 99 L. T. 558; 24 T. L. R. 763: applied in *Staffordshire and Worcestershire Canal Navigation* v. *Bradley*, 81 L. J. Ch. 147; [1912] 1 Ch. 91; 106 L. T. 215; 56 S. J. 91.

Chicago and North-West Granaries Co., In re, 67 L. J. Ch. 109; [1898] 1 Ch. 263; 77 L. T. 677: followed in *Tewkesbury Gas Co., In re*, 80 L. J. Ch. 723; [1912] 1 Ch. 1; 105 L. T. 569; 18 Manson, 395; 56 S. J. 71; 28 T. L. R. 40.

Chilcote v. **Youldon,** 29 L. J. M.C. 197; 3 E. & E. 7: discussed in *Blackett* v. *Ridout*, 84 L. J. K.B. 1535; [1915] 2 K.B. 415.

Child, In re, 61 L. J. Q.B. 250; [1892] 2 Q.B. 77; 66 L. T. 204; 40 W. R. 560; 9 Morrell, 103; followed in *Miller, In re*, 81 L. J. K.B. 1180; [1912] 3 K.B. 1.

Chilton v. **Blair & Co.,** [1914] W.C. & I. Rep. 346; 58 S. J. 669; 30 T. L. R. 623: distinguished in *Herbert* v. *Fox & Co.*, 84 L. J. K.B. 670; [1915] 2 K.B. 81; [1915] W.C. & I. Rep. 154; 112 L. T. 833; 59 S. J. 249.

Chinery v. **Viall,** 29 L. J. Ex. 180; 5 H. & N. 288; 2 L. T. 466; 8 W. R. 629: applied in *Belsize Motor Supply Co.* v. *Cox*, 83 L. J. K.B. 261; [1914] 1 K.B. 244; 110 L. T. 151.

Chisholm v. **Doulton,** 58 L. J. Q.B. 133; 22 Q.B. D. 736; 60 L. T. 966: distinguished in *Armitage* v. *Nicholson*, 108 L. T. 993; 77 J. P. 239; 11 L. G. R. 547; 29 T. L. R. 425.

Cholmondeley (Earl) v. **Clinton (Lord),** 19 Ves. 261; G. Cooper, 80: explained in *Rakusen* v. *Ellis, Munday & Clarke*, 81 L. J. Ch. 409; [1912] 1 Ch. 831; 106 L. T. 556; 28 T. L. R. 326.

Christiansen's Trade Mark, In re, 3 R. P. C. 54: applied in *Coleman* v. *Smith*, 81 L. J. Ch. 16; [1911] 2 Ch. 572; 28 T. L. R. 65.

Christie v. **Richardson,** 12 L. J. Ex. 86; 2 D. [N.S.] 503; 10 M. & W. 688; 6 Jur. 1069: discussed in *Barker* v. *Lewis and Peat*, 82 L. J. K.B. 843; [1913] 3 K.B. 34; 108 L. T. 941; 57 S. J. 577; 29 T. L. R. 565.

Christopharson v. **Naylor,** 1 Mer. 320: distinguished in *Williams, In re; Metcalf* v. *Williams*, 83 L. J. Ch. 570; [1914] 2 Ch. 61; 110 L. T. 923; 58 S. J. 470.

Church Army, In re, 75 L. J. Ch. 467; 94 L. T. 559; 22 T. L. R. 428: followed in *Orphan Working School and Alexandra Orphanage, In re*, 81 L. J. Ch. 627; [1912] 2 Ch. 167: followed and applied in *Att.-Gen.* v. *Foundling Hospital*, 83 L. J. Ch. 673; [1914] 2 Ch. 154; 110 L. T. 894; 78 J. P. 233; 12 L. G. R. 500; 58 S. J. 398; 30 T. L. R. 372.

Churchill, In re; Hiscock v. **Lodder,** 79 L. J. Ch. 10; [1909] 2 Ch. 431; 101 L. T. 380; 53 S. J. 697: distinguished in *West, In re; Westhead* v. *Aspland*, 82 L. J. Ch. 488; [1913] 2 Ch. 345; 109 L. T. 39.

Churchill v. **Denny,** 44 L. J. Ch. 578; L. R. 20 Eq. 534: referred to in *Biscoe, In re*, 111 L. T. 902.

Churchward v. **Churchward,** 64 L. J. P. 18; [1895] P. 7; 71 L. T. 782; 43 W. R. 380: distinguished in *Scott* v. *Scott*, 82 L. J. P. 39; [1913] P. 52; 108 L. T. 49; 57 S. J. 227; 29 T. L. R. 206.

Churchward v. **Coleman,** 36 L. J. Q.B. 57; L. R. 2 Q.B. 18: followed in *Rex* v. *Mellor*, 83 L. J. K.B. 996; [1914] 2 K.B. 588; 110 L. T. 802; 58 S. J. 361; 30 T. L. R. 355.

Citizens' Bank of Louisiana v. **First National Bank of New Orleans,** 43 L. J. Ch. 269; L. R. 6 H.L. 352: applied in *Gresham Life Assurance Society* v. *Crowther*, 83 L. J. Ch. 867; [1914] 2 Ch. 219.

Citizens Insurance Co. v. **Parsons,** 51 L. J. P.C. 11; 7 App. Cas. 96; 45 L. T. 721: followed in *John Deere Plow Co.* v. *Wharton*, 84 L. J. P.C. 64; [1915] A.C. 330; 112 L. T. 183; 31 T. L. R. 35.

Citizens Life Assurance Co. v. **Brown,** 73 L. J. P.C. 102; [1904] A.C. 423; 90 L. T. 739; 53 W. R. 176; 20 T. L. R. 497: distinguished in *Aiken* v. *Caledonian Railway*, [1913] S. C. 66.

Clapp v. **Carter,** [1914] W.C. & I. Rep. 80; 110 L. T. 491; 58 S. J. 232: applied in *Potter* v. *Welsh & Sons*, 83 L. J. K.B. 1852; [1914] 3 K.B. 1020; [1914] W.C. & I. Rep. 607; 112 L. T. 7; 30 T. L. R. 644.

Clark v. **Gas Light and Coke Co.,** 21 T. L. R. 184: discussed in *Cardiff Corporation* v. *Hall*, 80 L. J. K.B. 644; [1911] 1 K.B. 1009; 104 L. T. 467; 27 T. L. R. 339.

Clark v. **London General Omnibus Co.**, 75 L. J. K.B. 907; [1906] 2 K.B. 648; 95 L. T. 435 : distinguished in *Berry* v. *Humm*, 84 L. J. K.B. 918; [1915] 1 K.B. 627; 31 T. L. R. 198.

Clark v. **Newsam**, 16 L. J. Ex. 296; 1 Ex. 131 : followed in *Smith* v. *Streatfeild*, 82 L. J. K.B. 1237; [1913] 3 K.B. 764; 109 L. T. 173; 29 T. L. R. 707.

Clarke v. **Callow**, 46 L. J. Q.B. 53: *dictum* of Brett, L.J., in, disapproved in *North-Western Salt Co.* v. *Electrolytic Alkali Co.*, 107 L. T. 439.

Clarke v. **Clarke**, 60 L. J. P. 97; [1891] P. 278 : dissented from and not followed in *Jones* v. *Jones*, 82 L. J. P. 16; [1912] P. 295; 107 L. T. 590; 57 S. J. 10; 29 T. L. R. 22.

Clayton's Case, 1 Mer. 572, 608: rule in held inapplicable in *British Red Cross Society* v. *Johnson*, [1914] 2 Ch. 419; 58 S. J. 755; 30 T. L. R. 662.

Cleaver v. **Mutual Reserve Fund Life Association**, 61 L. J. Q.B. 128; [1892] 1 Q.B. 147; 66 L. T. 220; 40 W. R. 230; 56 J. P. 180 : applied in *Hall, In the goods of*, 83 L. J. P. 1; [1914] P. 1; 109 L. T. 587; 58 S. J. 30; 30 T. L. R. 1 : applied in *Burgess' Policy In re*, 113 L. T. 443; 59 S. J. 546.

Clements, In re, 70 L. J. K.B. 58; [1901] 1 K.B. 260; 83 L. T. 464; 49 W. R. 176; 8 Manson, 27 : *dicta* of Wright, J., in, disapproved in *Bagley, In re*, 80 L. J. K.B. 168; [1911] 1 K.B. 317; 103 L. T. 470; 18 Manson, 1; 55 S. J. 48.

Clements v. **London and North-western Railway**, 63 L. J. Q.B. 837; [1894] 2 Q.B. 482; 70 L. T. 531, 896; 42 W. R. 663; 58 J. P. 818 : applied in *Roberts* v. *Gray*, 82 L. J. K.B. 362; [1913] 1 K.B. 520; 108 L. T. 232; 57 S. J. 143; 29 T. L. R. 149.

Clemow, In re, 69 L. J. Ch. 522; [1900] 2 Ch. 182; 82 L. T. 550; 48 W. R. 541 : considered in *Porter* v. *Williams*, 80 L. J. Ch. 127; [1911] 1 Ch. 188; 103 L. T. 798; 55 S. J. 45.

Clerk v. **Day**, Cro. Eliz. 313: considered in *Davison's Settlement, In re*, 83 L. J. Ch. 148; [1913] 2 Ch. 498; 109 L. T. 666; 58 S. J. 50

Cleveland (Duke), In re; **Barnard** v. **Wolmer**, 62 L. J. Ch. 955; [1893] 3 Ch. 244: followed in *Upton-Cottrell-Dormer, In re*, 84 L. J. Ch. 861; 112 L. T. 974; 31 T. L. R. 260.

Close, Ex parte, 54 L. J. Q.B. 43; 14 Q.B. D. 386; 51 L. T. 795; 33 W. R. 228 : distinguished in *Dublin City Distillery* v. *Doherty*, 83 L. J. P.C. 265; [1914] A.C. 823; 111 L. T. 81; 58 S. J. 413.

Clover, Clayton & Co. v. **Hughes**, 79 L. J. K.B. 470; [1910] A.C. 242; 102 L. T. 340; 54 S. J. 375; 26 T. L. R. 359 : distinguished in *Spence* v. *Baird*, [1912] S. C. 343; in *Ritchie* v. *Kerr*, [1913] S. C. 613; [1913] W.C. & I. Rep. 297 : observations of Lord Loreburn, L.C., in, distinguished in *Noden* v. *Galloways*, 81 L. J. K.B. 28; [1912] 1 K.B. 46; 105 L. T. 567; 55 S. J. 838; 28 T. L. R. 5 : distinguished in *Hawkins* v. *Powell's Tillery Steam Coal Co.*, 80 L. J. K.B. 769; [1911] 1 K.B. 988; 104 L. T. 365; 55 S. J. 329; 27 T. L. R. 282.

Clunies-Ross, In re; **Stubbings** v. **Clunies-Ross**, 47 L. J. N.C. 107; [1912] W. N. 33: followed in *Greenwood, In re*, 81 L. J. Ch. 298; [1912] 1 Ch. 392; 106 L. T. 424; 56 S. J. 443.

Clutterbuck v. **Clutterbuck**, 108 L. T. 573; 29 T. L. R. 480 : disapproved in *Tangye* v. *Tangye*, 83 L. J. P. 164; [1914] P. 201; 111 L. T. 944; 58 S. J. 723; 30 T. L. R. 649.

Clydebank Engineering Co. v. **Castaneda**, 74 L. J. P.C. 1; [1905] A.C. 6; 91 L. T. 666; 21 T. L. R. 58 : followed in *Webster* v. *Bosanquet*, 81 L. J. P.C. 205; [1912] A.C. 394; 106 L. T. 357; 28 T. L. R. 271.

Coakley v. **Addie**, [1909] S. C. 545: considered and explained in *Popple* v. *Frodingham Iron and Steel Co.*, 81 L. J. K.B. 769; [1912] 2 K.B. 141; 106 L. T. 703.

Cobbold, In re, [1903] 2 Ch. 299: attention called to *errata* in report of, in *Davey, In re*, [1915] 1 Ch. 837.

Cockroft v. **Black**, 2 P. Wms. 298: discussed in *Sutherland (Dowager Duchess), In re*; *Michell* v. *Bubna (Countess)*, 84 L. J. Ch. 126; [1914] 2 Ch. 720; 112 L. T. 72.

Cocks v. **Manners**, 40 L. J. Ch. 640; L. R. 12 Eq. 574; 24 L. T. 869 : followed in *Smith, In re*; *Johnson* v. *Bright-Smith*, 83 L. J. Ch. 687; [1914] 1 Ch. 937; 110 L. T. 898; 58 S. J. 491; 30 T. L. R. 411.

Cohen, In re; **Brookes** v. **Cohen**, 80 L. J. Ch. 208; [1911] 1 Ch. 37; 103 L. T. 626; 55 S. J. 11 : distinguished in *Holland, In re*, 84 L. J. Ch. 389; [1914] 2 Ch. 595; 112 L. T. 27.

Cohen v. **Mitchell,** 59 L. J. Q.B. 409; 25 Q.B. D. 262; 63 L. T. 206; 38 W. R. 551; 7 Morrell, 207 : application of, considered in *Teale, In re; Blackburn, ex parte,* 81 L. J. K.B. 1243; [1912] 2 K.B. 367; 106 L. T. 893; 56 S. J. 553; 28 T. L. R. 415 : applicability of rule laid down in, considered in *Behrend's Trust, In re; Surman* v. *Biddell,* 80 L. J. Ch. 394; [1911] 1 Ch. 687; 104 L. T. 626; 18 Manson, 111; 55 S. J. 459.

Colburn v. **Patmore,** 3 L. J. Ex. 317; 1 Cr. M. & R. 73 : considered in *Leslie, Lim.* v. *Reliable Advertising and Addressing Agency,* 84 L. J. K.B. 719; [1915] 1 K.B. 652; 112 L. T. 947; 31 T. L. R. 182.

Coldwell v. **Holme,** 23 L. J. Ch. 594; 2 Sm. & G. 31 : followed in *Magrath, In re; Histed* v. *Belfast University,* 82 L. J. Ch. 532; [1913] 2 Ch. 331; 108 L. T. 1015; 29 T. L. R. 622.

Cole v. **Accident Insurance Co.,** 5 T. L. R. 736 : considered in *United London & Scottish Insurance Co., In re; Brown's Claim,* 84 L. J. Ch. 620; [1915] 2 Ch. 167; 113 L. T. 397; 59 S. J. 529; 31 T. L. R. 419.

Cole v. **Kernot,** 41 L. J. Q.B. 221; L. R. 7 Q.B. 534*n.* : explained and distinguished in *Lind, In re,* 84 L. J. Ch. 884; [1915] 2 Ch. 345; 59 S. J. 651.

Cole v. **Miles,** 57 L. J. M.C. 132; 60 L. T. 145 : followed in *Arnold* v. *Morgan,* 80 L. J. K.B. 955; [1911] 1 K.B. 314; 103 L. T. 763; 75 J. P. 105; 9 L. G. R. 917.

Coleman v. **Seymour,** 1 Ves. sen. 209: followed in *Master's Settlement, In re,* 80 L. J. Ch. 190; [1911] 1 Ch. 321; 103 L. T. 899; 55 S. J. 170.

Colley's Patents v. **Metropolitan Water Board,** 81 L. J. K.B. 126; [1912] A.C. 24; 105 L. T. 674; 9 L. G. R. 1159; 76 J. P. 33; 56 S. J. 51; 28 T. L. R. 48 : applied in *Metropolitan Water Board* v. *Avery,* 83 L. J. K.B. 178; [1914] A.C. 118; 109 L. T. 762; 78 J. P. 121; 12 L. G. R. 95; 58 S. J. 171; 30 T. L. R. 189.

Colls v. **Home and Colonial Stores,** 73 L. J. Ch. 484; [1904] A.C. 179; 90 L. T. 687; 53 W. R. 30; 20 T. L. R. 475 : discussed and explained in *Paul* v. *Robson,* 83 L. J. P.C. 304; L. R. 41 Ind. App. 180; 111 L. T. 481; 30 T. L. R. 533 : discussed in *Davis* v. *Marrable,* 82 L. J. Ch. 510; [1913] 2 Ch. 421; 109 L. T. 33; 57 S. J. 702; 29 T. L. R. 617.

Collyer v. **Isaacs,** 51 L. J. Ch. 14; 19 Ch. D. 342; 45 L. T. 567; 30 W. R. 70 : principles in, applied in *Pullan* v. *Koe,* 82 L. J. Ch. 37; [1913] 1 Ch. 9; 107 L. T. 811; 57 S. J. 97 : explained and distinguished in *Lind, In re,* 84 L. J. Ch. 884; [1915] 2 Ch. 345; 59 S. J. 651.

Colne Valley Water Co. v. **Hall,** 5 L. G. R. 260; 6 L. G. R. 115 : explained in *Parnell* v. *Portsmouth Waterworks,* 8 L. G. R. 1029; 75 J. P. 99.

Colonial Bank v. **Cady,** 60 L. J. Ch. 131; 15 App. Cas. 267; 63 L. T. 27 : considered in *Fuller* v. *Glyn, Mills, Currie & Co.,* 83 L. J. K.B. 764; [1914] 2 K.B. 168; 110 L. T. 318; 19 Com. Cas. 186; 58 S. J. 235; 30 T. L. R. 162.

Colquhoun, Ex parte; Clift, in re, 38 W. R. 688 : considered in *Wells* v. *Wells,* 83 L. J. P. 81; [1914] P. 157; 111 L. T. 399; 58 S. J. 555; 30 T. L. R. 545.

Coltness Iron Co. v. **Black,** 51 L. J. Q.B. 626; 6 App. Cas. 315; 45 L. T. 145 : applied in *Kauri Timber Co.* v. *Commissioner of Taxes,* [1913] A.C. 771; 109 L. T. 22; 29 T. L. R. 671.

Commercial Bank of Australia v. **Wilson,** 62 L. J. P.C. 61; [1893] A.C. 181; 68 L. T. 540; 41 W. R. 603 : considered and distinguished in *Mackinnon's Trustee* v. *Bank of Scotland,* [1915] S. C. 411.

Company (0022 and 0023 of 1915), In re, 84 L. J. Ch. 382; [1915] 1 Ch. 520; 112 L. T. 1100; [1915] H. B. R. 65; 59 S. J. 302; 31 T. L. R. 241 : applied in *Globe Trust, In re,* 84 L. J. Ch. 903; 113 L. T. 80; 59 S. J. 529; 31 T. L. R. 280.

Condon v. **Mitchelstown Rural Council,** [1914] 1 Ir. R. 113 : approved in *Marron* v. *Cootehill No. 2 Rural Council,* 84 L. J. P.C. 125; [1915] A.C. 792; 79 J. P. 401.

Constantinidi v. **Constantinidi,** 73 L. J. P. 91; [1904] P. 306; 91 L. T. 273; 20 T. L. R. 573 : distinguished in *Loraine* v. *Loraine,* 81 L. J. P. 22; [1904] P. 222 : considered in *Clarke* v. *Clarke,* 80 L. J. P. 135; [1911] P. 186; 105 L. T. 1; 55 S. J. 535.

Continental Tyre and Rubber Co. v. **Daimler Co.,** 84 L. J. K.B. 926; [1915] 1 K.B. 893; 112 L. T. 324; 20 Com. Cas. 209; 59 S. J. 232; 31 T. L. R. 159 : applied in *The Poona,* 84 L. J. P. 150; 112 L. T. 782; 59 S. J. 511; 31 T. L. R. 411.

Conway v. **Pumpherston Oil Co.,** [1911] S. C. 660; 4 B.W.C.C. 392 : followed in *Jackson* v. *Denton Collieries Co.,* [1914] W.C. & I. Rep. 91; 110 L. T. 559.

Cook v. **Gordon,** 61 L. J. Q.B. 445: considered in *Abrahams* v. *Dimmock,* 84 L. J. K.B. 802; [1915] 1 K.B. 662; 112 L. T. 386; 59 S. J. 188; 31 T. L. R. 87.

Cook v. **Lister,** 32 L. J. C.P. 121; 13 C. B. (N.S.) 543: considered and adopted in *Hirachand Punamchand* v. *Temple*, 80 L. J. K.B. 1155; [1911] 2 K.B. 330; 55 S. J. 519; 27 T. L. R. 430.

Cook v. **Montreal (Owners),** [1913] W.C. & I. Rep. 206; 108 L. T. 164; 57 S. J. 282; 29 T. L. R. 233: distinguished in *Webber* v. *Wansbrough Paper Co.*, 84 L. J. K.B. 127; [1915] A.C. 51; [1915] W.C. & I. Rep. 313; 111 L. T. 658; 58 S. J. 685; 30 T. L. R. 615.

Cooke v. **Eshelby,** 56 L. J. Q.B. 505; 12 App. Cas. 271: followed in *Wester Moffat Colliery Co.* v. *Jeffrey*, [1911] S. C. 346.

Cooke v. **Midland Great Western Railway of Ireland,** 78 L. J. P.C. 76; [1909] A.C. 229; 100 L. T. 626; 53 S. J. 319; 25 T. L. R. 375: distinguished in *Jenkins* v. *Great Western Railway*, 81 L. J. K.B. 378; [1912] 1 K.B. 525; 105 L. T. 882: distinguished in *Barker* v. *Herbert*, 80 L. J. K.B. 1329; [1911] 2 K.B. 633; 27 T. L. R. 488: explained and distinguished in *Latham* v. *Johnson*, 82 L. J. K.B. 258; [1913] 1 K.B. 398; 108 L. T. 4; 77 J. P. 137; 57 S. J. 127; 29 T. L. R. 124.

Coomber v. **Berks Justices,** 53 L. J. Q.B. 239; 9 App. Cas. 61: followed in *Glasgow Court House Commissioners* v. *Glasgow Parish Council*, [1913] S. C. 194.

Cooper v. **Cooper,** 44 L. J. Ch. 6, 14; L. R. 7 H.L. 53, 69: applied in *Williams, In re; Cunliffe* v. *Williams*, 84 L. J. Ch. 578; [1915] 1 Ch. 450; 110 L. T. 569.

Cooper v. **Macdonald,** 42 L. J. Ch. 533; L. R. 16 Eq. 258: distinguished in *Firth, In re; Loveridge* v. *Firth*, 83 L. J. Ch. 901; [1914] 2 Ch. 386; 111 L. T. 332: distinguished in *Beaumont, In re; Bradshaw* v. *Packer*, 82 L. J. Ch. 183; [1913] 1 Ch. 325; 108 L. T. 181; 57 S. J. 283.

Cooper v. **Martin,** L. R. 3 Ch. 47: discussed in *Safford's Settlement, In re*, 84 L. J. Ch. 766; [1915] 2 Ch. 211; 59 S. J. 666; 31 T. L. R. 529.

Cooper v. **Reg.,** 49 L. J. Ch. 490; 14 Ch. D. 311: followed in *Yorke* v. *Regem*, 84 L. J. K.B. 947; [1915] 1 K.B. 852; 112 L. T. 1135; 31 T. L. R. 220.

Cooper v. **Whittingham,** 49 L. J. Ch. 752; 15 Ch. D. 501: followed in *Carlton Illustrators* v. *Coleman*, 80 L. J. K.B. 510; [1911] 1 K.B. 771; 104 L. T. 413.

Cooper's Trusts, In re, [1873] W. N. 87: followed in *Pope and Easte's Contract, In re*, 80 L. J. Ch. 692; [1911] 2 Ch. 442; 105 L. T. 370.

Cope, In re; Cross v. **Cross,** 77 L. J. Ch. 558; [1908] 2 Ch. 1; 99 L. T. 374: distinguished in *Williams, In re; Metcalf* v. *Williams*, 83 L. J. Ch. 570; [1914] 2 Ch. 61; 110 L. T. 923; 58 S. J. 470.

Copley v. **Dorminque,** 2 Lev. 167: applied in *Benzon, In re*, 83 L. J. Ch. 658; [1914] 2 Ch. 68; 110 L. T. 926; 21 Manson, 8; 58 S. J. 430; 30 T. L. R. 435.

Corke v. **Rainger,** [1912] P. 69; 76 J. P. 87; 28 T. L. R. 130: approved in *Sutton* v. *Bowden*, 82 L. J. Ch. 322; [1913] 1 Ch. 518; 108 L. T. 637; 29 T. L. R. 262.

Cornish v. **Alington,** 28 L. J. Ex. 262; 4 H. & N. 549: followed in *Wester Moffat Colliery Co.* v. *Jeffrey*, [1911] S. C. 346.

Cornwall's Case, 2 Str. 881: applied in *Saqui & Lawrence* v. *Stearns*, 80 L. J. K.B. 451; [1911] 1 K.B. 426; 16 Com. Cas. 32.

Corporation of the Sons of the Clergy and Skinner, In re, 62 L. J. Ch. 148; [1893] 1 Ch. 178; 67 L. T. 751; 41 W. R. 461: followed in *Att.-Gen.* v. *Foundling Hospital*, 83 L. J. Ch. 673; [1914] 2 Ch. 154; 110 L. T. 894; 78 J. P. 233; 12 L. G. R. 500; 58 S. J. 398; 30 T. L. R. 372.

Corser v. **Cartwright,** L. R. 8 Ch. 971; 29 L. T. 596: followed in *Major, In re; Taylor* v. *Major*, 83 L. J. Ch. 461; [1914] 1 Ch. 278; 110 L. T. 422; 58 S. J. 286.

Cosier, In re; Humphreys v. **Gadsden,** 66 L. J. Ch. 236; [1897] 1 Ch. 325; 76 L. T. 31; 45 W. R. 376: applied in *Trollope, In re*, 84 L. J. Ch. 553; [1915] 1 Ch. 853; 113 L. T. 153.

Costard and Wingfield's Case, 2 Leon. 44: *dictum* in, impugned in *Att.-Gen.* v. *Reynolds*, 80 L. J. K.B. 1073; [1911] 2 K.B. 888; 104 L. T. 852.

Cotterell v. **Stratton,** 42 L. J. Ch. 417; L. R. 8 Ch. 295; 28 L. T. 218: followed in *Rourke* v. *Robinson*, 80 L. J. Ch. 295; [1911] 1 Ch. 480; 103 L. T. 895.

Cottrell, In re; Buckland v. **Bedingfield,** 79 L. J. Ch. 189; [1910] 1 Ch. 402; 102 L. T. 157: applied in *Dempster, In re; Borthwick* v. *Lovell*, 84 L. J. Ch. 597; [1915] 1 Ch. 795; 112 L. T. 1124; and in *Richardson, In re*, 84 L. J. Ch. 438; [1915] 1 Ch. 353; 112 L. T. 554.

Coulthard v. **Consett Iron Co.**, 75 L. J. K.B. 869; [1905] 2 K.B. 869; 93 L. T. 756; 54 W. R. 139; 22 T. L. R. 25: distinguished in *New Monckton Collieries* v. *Keeling*, 80 L. J. K.B. 1205; [1911] A.C. 648; 105 L. T. 337; 55 S. J. 687; 27 T. L. R. 551.

County of Gloucester Bank v. **Rudry Merthyr Steam and House Coal Colliery Co.**, 64 L. J. Ch. 451; [1895] 1 Ch. 629; 72 L. T. 375; 43 W. R. 486; 2 Manson, 223: followed in *Cox* v. *Dublin City Distillery*, [1915] 1 Ir. R. 345.

County Palatine Loan and Discount Co., In re; Teasdale's Case, 43 L. J. Ch. 578; L. R. 9 Ch. 54; 29 L. T. 707: followed in *Rowell* v. *John Rowell & Son, Lim.*, 81 L. J. Ch. 759; [1912] 2 Ch. 609; 107 L. T. 374; 56 S. J. 704.

Coupland v. **Hardingham**, 3 Camp. 398: *dictum* of Lord Ellenborough in, approved and applied in *Att.-Gen.* v. *Roe*, 84 L. J. Ch. 322; [1915] 1 Ch. 235; 112 L. T. 581; 79 J. P. 263; 13 L. G. R. 335.

Coventry v. **Higgins**, 14 Sim. 30: distinguished and criticised in *Palfreeman, In re; Public Trustee* v. *Palfreeman*, 83 L. J. Ch. 702; [1914] 1 Ch. 877; 110 L. T. 972; 58 S. J. 456.

Cowan v. **Milbourn**, 36 L. J. Ex. 124; 79 J. P. 309; L. R. 2 Ex. 230; 16 L. T. 290; 15 W. R. 750: overruled in *Bowman, In re*, 85 L. J. Ch. 1; [1915] 2 Ch. 447; 59 S. J. 703; 31 T. L. R. 618.

Cowes District Council v. **Southampton Steam Packet Co.**, 74 L. J. K.B. 665; [1905] 2 K.B. 287; 92 L. T. 658; 53 W. R. 602; 69 J. P. 298; 3 L. G. R. 807; 21 T. L. R. 506: considered in *General Estates Co.* v. *Beaver*, 84 L. J. K.B. 21; [1914] 3 K.B. 918; 111 L. T. 957; 79 J. P. 41; 12 L. G. R. 1146; 30 T. L. R. 634.

Cowley v. **Newmarket Local Board**, 62 L. J. Q.B. 65; [1892] A.C. 345; 67 L. T. 486: applied in *Papworth* v. *Battersea Borough Council* (*No. 2*), 84 L. J. K.B. 1881; 79 J. P. 309.

Cox v. **Burbidge**, 32 L. J. C.P. 89; 13 C. B. (N.S.) 430: followed in *Bradley* v. *Wallaces*, 82 L. J. K.B. 1074; [1913] 3 K.B. 629; 109 L. T. 281; 29 T. L. R. 705.

Cox v. **Chamberlain**, 4 Ves. 631: applied in *Griffiths' Settlement, In re*, 80 L. J. Ch. 176; [1911] 1 Ch. 246; 104 L. T. 125.

Cox v. **Leigh**, 43 L. J. Q.B. 123; L. R. 9 Q.B. 333; 30 L. T. 494; 22 W. R. 730: followed in *Lewis* v. *Davies*, 83 L. J. K.B. 598; [1914] 2 K.B. 469; 110 L. T. 461; 30 T. L. R. 301.

Cox v. **Midland Counties Railway**, 18 L. J. Ex. 65; 3 Ex. 268; 13 Jur. 65: followed in *Houghton* v. *Pilkington*, [1912] 3 K.B. 308; 56 S. J. 633; 28 T. L. R. 492.

Crabbe and Robertson v. **Stubbs**, 22 Rettie, 860: discussed and explained in *Stubbs* v. *Russell*, 82 L. J. P.C. 98; [1913] A.C. 386; 108 L. T. 529; 29 T. L. R. 409.

Craig v. **Wheeler**, 29 L. J. Ch. 374: followed in *Wareham, In re*, 81 L. J. Ch. 578; [1912] 2 Ch. 312; 107 L. T. 80; 56 S. J. 613.

Craske v. **Wigan**, 78 L. J. K.B. 994; [1909] 2 K.B. 635; 101 L. T. 6; 53 S. J. 560; 25 T. L. R. 632: explained in *Mitchinson* v. *Day*, 82 L. J. K.B. 421; [1913] 1 K.B. 603; [1913] W.C. & I. Rep. 324; 108 L. T. 193; 57 S. J. 300; 29 T. L. R. 267: followed in *Amys* v. *Barton*, 81 L. J. K.B. 65; [1912] 1 K.B. 40; 105 L. T. 619; 28 T. L. R. 29.

Craster v. **Thomas**, 78 L. J. Ch. 734; [1909] 2 Ch. 348; 101 L. T. 66; 25 T. L. R. 659: discussed and distinguished in *Hewson* v. *Shelley*, 82 L. J. Ch. 551; [1913] 2 Ch. 384; 57 S. J. 717; 29 T. L. R. 699.

Craven, In re, 83 L. J. Ch. 403; [1914] 1 Ch. 358; 109 L. T. 846; 58 S. J. 138: followed in *Forster-Brown, In re*, 84 L. J. Ch. 361; [1914] 2 Ch. 584; 112 L. T. 681.

Cremins v. **Guest, Keen & Nettlefold**, 77 L. J. K.B. 326; [1908] 1 K.B. 469; 98 L. T. 335; 24 T. L. R. 189: discussed in *Edwards* v. *Wingham Agricultural Implement Co.*, 82 L. J. K.B. 998; [1913] 3 K.B. 596; 109 L. T. 50; 57 S. J. 701.

Creswell v. **Davidson**, 56 L. T. 811: followed in *Lloyds Bank and Lillington, In re*, 81 L. J. Ch. 386; [1912] 1 Ch. 601; 106 L. T. 561; 56 S. J. 380.

Crippen, In the goods of, 80 L. J. P. 47; [1911] P. 108; 104 L. T. 224; 55 S. J. 273; 27 T. L. R. 258: applied in *Hall, In the goods of*, 109 L. T. 587; 30 T. L. R. 1.

Cripps v. **Wolcott**, 4 Madd. 11: followed in *Poultney, In re*, 81 L. J. Ch. 748; [1912] 2 Ch. 541; 107 L. T. 1; 56 S. J. 667.

Crips, In re; Crips v. **Todd**, 95 L. T. 865: applied in *Johnson, In re; Cowley* v. *Public Trustee*, 84 L. J. Ch. 393; [1915] 1 Ch. 435; 112 L. T. 935; 59 S. J. 333.

Crittall Manufacturing Co. v. **London County Council**, 75 J. P. 203: disapproved in *Hampton* v. *Glamorgan County Council*, 84 L. J. K.B. 1506; 113 L. T. 112; 13 L. G. R. 819.

Crook v. **Seaford Corporation**, L. R. 10 Eq. 678; L. R. 6 Ch. 551; 25 L. T. 1: distinguished in *Hoare* v. *Kingsbury Urban Council*, 81 L. J. Ch. 666; [1912] 2 Ch. 452; 107 L. T. 492; 76 J. P. 401; 10 L. G. R. 829; 56 S. J. 704.

Crosfield's Application, In re, 79 L. J. Ch. 211; [1910] 1 Ch. 130; 101 L. T. 587; 54 S. J. 100; 26 T. L. R. 100: applied in *Pope's Elec-*

tric Lamp Co.'s Application, In re, 80 L. J. Ch. 682; [1911] 2 Ch. 382; 105 L. T. 580; 28 R. P. C. 629; 27 T. L. R. 567 : considered and applied in *Sharpe's Trade Mark, In re*, 84 L. J. Ch. 290; 112 L. T. 435; 32 R. P. C. 15; 31 T. L. R. 105.

Crosley, In re; Munns v. **Burn**, 35 Ch. D. 266; 57 L. T. 298; 35 W. R. 790 : considered in *Benzon, In re*, 83 L. J. Ch. 658; [1914] 2 Ch. 68; 110 L. T. 926; 21 Manson, 8; 58 S. J. 430; 30 T. L. R. 435.

Crossley v. **Crowther**, 9 Hare, 384: followed in *Paine, In re*, 28 T. L. R. 201.

Crowder v. **Stone**, 7 L. J. (o.s.) Ch. 93; 3 Russ. 217 : distinguished in *Dunn* v. *Morgan*, 84 L. J. Ch. 812; 113 L. T. 444.

Crowe v. **Crisford**, 17 Beav. 507: overruled in *Wareham, In re*, 81 L. J. Ch. 578; [1912] 2 Ch. 312; 107 L. J. 80; 56 S. J. 613.

Crowther v. **Appleby**, 43 L. J. C.P. 7; L. R. 9 C.P. 23; 29 L. T. 580; 22 W. R. 265 : distinguished in *Forbes* v. *Samuel*, 82 L. J. K.B. 1135; [1913] 3 K.B. 706; 109 L. T. 599; 29 T. L. R. 544.

Croydon, In re; Hincks v. **Roberts**, 55 S. J. 632 : followed in *Blow, In re; St. Bartholomew's Hospital (Governors)* v. *Cambden*, 83 L. J. Ch. 185; [1914] 1 Ch. 233; 109 L. T. 913; 58 S. J. 136; 30 T. L. R. 117.

Cubison v. **Mayo**, 65 L. J. Q.B. 267; [1896] 1 Q.B. 246; 74 L. T. 65; 44 W. R. 473; 60 J. P. 212 : explained in *Bell* v. *Girdlestone*, 82 L. J. K.B. 696; [1913] 2 K.B. 225; 108 L. T. 648.

Cunnack v. **Edwards**, 65 L. J. Ch. 801; [1896] 2 Ch. 679; 75 L. T. 122; 45 W. R. 99 : distinguished in *Tierney* v. *Tough*, [1914] 1 Ir. R. 142.

Cunningham & Co., In re, 54 L. J. Ch. 448; 28 Ch. D. 682 : distinguished in *Dublin City Distillery* v. *Doherty*, 83 L. J. P.C. 265; [1914] A.C. 823; 111 L. T. 81; 58 S. J. 413.

D.

D. v. **A. & Co.**, 69 L. J. Ch. 382; [1900] 1 Ch. 484; 82 L. T. 47; 48 W. R. 429 : applied in *Aberdonia Cars, Lim.* v. *Brown, Hughes & Strachan, Lim.*, 59 S. J. 598.

D. v. **D.**—See *Dickinson* v. *Dickinson*.

Dagenham Thames Dock Co., In re; Hulse's Claim, 43 L. J. Ch. 261; L. R. 8 Ch. 1022: followed in *Kilmer* v. *British Columbia Orchard Lands, Lim.*, 82 L. J. P.C. 77; [1913] A.C. 319; 108 L. T. 306; 57 S. J. 338; 29 T. L. R. 319.

Dagnall, In re; Soan & Morley, ex parte, 65 L. J. Q.B. 666; [1896] 2 Q.B. 407; 75 L. T. 142; 45 W. R. 79; 3 Manson, 218 : applied in *Clark, In re; Pope, ex parte*, 84 L. J. K.B. 89; [1914] 3 K.B. 1095; 112 L. T. 873; [1915] H. B. R. 1; 59 S. J. 44.

Dalton v. **Fitzgerald**, 66 L. J. Ch. 604; [1897] 2 Ch. 86; 76 L. T. 700; 45 W. R. 685 : distinguished in *Tennant's Estate, In re*, [1913] 1 Ir. R. 280.

Dane v. **Mortgage Insurance Corporation**, 63 L. J. Q.B. 144; [1894] 1 Q.B. 54; 70 L. T. 83; 42 W. R. 227 : applied in *Law Guarantee Trust and Accident Society, In re (No. 2)*, 84 L. J. Ch. 1; [1914] 2 Ch. 617; 111 L. T. 817; 58 S. J. 704; 30 T. L. R. 616.

D'Angibau, In re, 49 L. J. Ch. 756; 15 Ch. D. 228; 43 L. T. 135; 28 W. R. 930 : applied in *Pullan* v. *Koe*, 82 L. J. Ch. 37; [1913] 1 Ch. 9.

Danubian Sugar Factories v. **Inland Revenue Commissioners**, 70 L. J. K.B. 211; [1901] 1 K.B. 245; 84 L. T. 101; 65 J. P. 212 : followed in *Velazquez, Lim.* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 1108; [1914] 3 K.B. 458; 111 L. T. 417; 58 S. J. 554; 30 T. L. R. 539.

Darlington v. **Hamilton**, 23 L. J. Ch. 1000; Kay, 550 : followed in *Lloyds Bank and Lillington, In re*, 81 L. J. Ch. 386; [1912] 1 Ch. 601; 106 L. T. 561; 56 S. J. 380.

Dashwood v. **Magniac**, 60 L. J. Ch. 210, 809; [1891] 3 Ch. 306; 65 L. T. 811 : applied in *Trevor-Battye's Settlement, In re*, 81 L. J. Ch. 646; [1912] 2 Ch. 339; 107 L. T. 12; 56 S. J. 615.

Davey v. **London and South-Western Railway**, 52 L. J. Q.B. 665; 11 Q.B. D. 213; 49 L. T. 739 : considered in *Cutsforth* v. *Johnson*, [1913] W. C. & I. Rep. 131; 108 L. T. 138.

David v. **Rees**, 73 L. J. K.B. 729; [1904] 2 K.B. 435; 91 L. T. 244; 52 W. R. 579; 20 T. L. R. 577 : considered in *Reid* v. *Cupper*, 84 L. J. K.B. 573; [1915] 2 K.B. 147; 112 L. T. 573; 59 S. J. 144; 31 T. L. R. 103.

Davidson, In re; Minty v. **Bourne**, 78 L. J. Ch. 437; [1909] 1 Ch. 567; 99 L. T. 222; 24 T. L. R. 760 : distinguished in *Salter, In re*, [1911] 1 Ir. R. 289.

Davidson's Settlement, In re, 42 L. J. Ch. 347; L. R. 15 Eq. 383 : followed in *Anderson, In re; New Zealand Official Assignee, ex parte*, 80 L. J. K.B. 919; [1911] 1 K.B. 896; 104 L. T. 221.

Davies v. **Bush**, Younge, 341 : considered in *Whitehead, In re*, 82 L. J. Ch. 302; [1913] 2 Ch. 56; 108 L. T. 368; 57 S. J. 323.

Davies v. **Davies**, 30 W. R. 918: distinguished in *Laing, In re*, 81 L. J. Ch. 686; [1912] 2 Ch. 386; 57 S. J. 80.

Davies v. **Glamorgan Coal Co.**, 82 L. J. K.B. 956; [1913] 3 K.B. 222; 109 L. T. 366; 29 T. L. R. 612 : discussed in *Randle* v. *Clay Cross Co.*, [1913] 3 K.B. 795; 109 L. T. 522.

Davies v. Rhymney Iron, &c. Co., 16 T. L. R. 329: followed in *Walters* v. *Staverley Coal and Iron Co.*, 105 L. T. 119; 55 S. J. 579.

Davies's Trust, In re, 41 L. J. Ch. 97, 99; L. R. 13 Eq. 163, 166: *dictum* of Wickens, V.C., in, approved in *Seabrook, In re; Gray* v. *Baddeley*, 80 L. J. Ch. 61; [1911] 1 Ch. 151; 103 L. T. 587.

Davis v. Hutchings, 76 L. J. Ch. 272; [1907] 1 Ch. 356; 96 L. T. 293: general principles laid down by Kekewich, J., in, disapproved in *Allsop, In re; Whittaker* v. *Bamford*, 83 L. J. Ch. 42; [1914] 1 Ch. 1; 109 L. T. 641; 58 S. J. 9; 30 T. L. R. 18.

Davis & Sons v. Taff Vale Railway, 64 L. J. Q.B. 488; [1895] A.C. 542; 72 L. T. 632; 44 W. R. 172: followed in *Att.-Gen.* v. *North-Eastern Railway*, 84 L. J. Ch. 657; [1915] 1 Ch. 905; 113 L. T. 25.

Davy v. Gray, 48 Ir. L. T. R. 32: followed in *Cleary* v. *London and North-Western Railway*, [1915] 2 Ir. R. 210.

Dawson v. African Consolidated Land, &c. Co., 67 L. J. Ch. 47; [1898] 1 Ch. 6; 77 L. T. 392; 46 W. R. 132; 4 Manson, 372: applied in *Channel Collieries* v. *Dover, St. Margaret's, and Martin Mill Light Railway*, 84 L. J. Ch. 28; [1914] 2 Ch. 506; 111 L. T. 1051; 21 Manson, 328; 30 T. L. R. 647.

Dawson v. McGroggan, [1903] 1 Ir. R. 92: distinguished in *Lyell* v. *Hothfield (Lord)*, [1914] 3 K.B. 911; 30 T. L. R. 630.

Day, In re; Hammond, ex parte, 86 L. T. 238; 50 W. R. 448: considered in *Beesley, In re*, 109 L. T. 910.

Day v. McLea, 55 L. J. Q.B. 293; 22 Q.B. D. 610; 60 L. T. 947; 37 W. R. 483; 53 J. P. 532: distinguished in *Hiraehand Punamchand* v. *Temple*, 80 L. J. K.B. 1155; [1911] 2 K.B. 330; 55 S. J. 519; 27 T. L. R. 430.

Dean v. Allen, 20 Beav. 1: applied in *Lawley, In re*, [1911] 2 Ch. 530; 105 L. T. 571; 56 S. J. 13.

Dean v. Rubian Art Pottery, 83 L. J. K.B. 799; [1914] 2 K.B. 213; [1914] W.C. & I. Rep. 147; 110 L. T. 594; 58 S. J. 302; 30 T. L. R. 283: commented on in *M'Gowan* v. *Merry & Cunninghame, Lim.*, [1915] S. C. 34.

Dearberg v. Letchford, 72 L. T. 489: not followed in *Nutt's Settlement, In re*, 84 L. J. Ch. 877; [1915] 2 Ch. 431; 59 S. J. 717.

Deards v. Edinburgh Assessor, [1911] S. C. 918: distinguished in *Maxwell* v. *Galashiels Assessor*, [1915] S. C. 765.

Debendra Nath Dutt v. Administrator-General of Bengal, L. R. 35 Ind. App. 109: discussed and distinguished in *Hewson* v. *Shelley*, 82 L. J. Ch. 551; [1913] 2 Ch. 384; 109 L. T. 157; 57 S. J. 717; 29 T. L. R. 699.

Debenture Corporation v. Uttoxeter Brewery, noted in *Palmer's Company Precedents* (10th ed.), Part III., p. 737: followed on one point in *Piccadilly Hotel, In re*, [1911] 2 Ch. 534; 56 S. J. 52.

Debtor, In re, 91 L. T. 664 (affirmed *sub nom. Goldberg, In re*, 21 T. L. R. 139): distinguished in *Sunderland, In re; Leech and Simpkinson, ex parte*, 80 L. J. K.B. 825; [1911] 2 K.B. 658; 18 Manson, 123; 55 S. J. 568; 27 T. L. R. 454.

Debtor (No. 305 of 1911), In re, 80 L. J. K.B. 1264; [1911] 2 K.B. 718; 105 L. T. 125; 55 S. J. 553; explained in *Debtor* (*No.* 1,838 *of* 1911), *In re*, 81 L. J. K.B. 107; [1912] 1 K.B. 53; 105 L. T. 610; 19 Manson, 12; 56 S. J. 36; 28 T. L. R. 9.

De Francesco v. Barnum (*No.* 2), 60 L. J. Ch. 63; 45 Ch. D. 430: followed in *Fred Wilkins & Brother, Lim.* v. *Weaver*, 84 L. J. Ch. 929; [1915] 2 Ch. 322.

De Gasquet James (Countess) v. Mecklenburg-Schwerin (Duke), 83 L. J. P. 40; [1914] P. 53; 110 L. T. 121; 58 S. J. 341; 30 T. L. R. 329: application of principle of, defined in *Perrin* v. *Perrin; Powell* v. *Powell*, 83 L. J. P. 69; [1914] P. 135; 30 T. L. R. 497.

De Hart v. Stevenson, 45 L. J. Q.B. 575; 1 Q.B. D. 313; 24 W. R. 367: followed in *Janson* v. *Property Insurance Co.*, 19 Com. Cas. 37; 30 T. L. R. 49.

De Hoghton v. De Hoghton, 65 L. J. Ch. 667; [1896] 2 Ch. 385; 74 L. T. 613; 44 W. R. 635: followed in *Greenwood* v. *Lutman*, [1915] 1 Ir. R. 266.

De Jager v. De Jager, 55 L. J. P.C. 22; 11 App. Cas. 411: followed in *De Jager* v. *Foster*, 80 L. J. P.C. 138; [1911] A.C. 450.

De Lassalle v. Guildford, 70 L. J. K.B. 533; [1901] 2 K.B. 215; 84 L. T. 549; 49 W. R. 467: *dictum* of A. L. Smith, M.R., in, disapproved by Lord Moulton in *Heilbut, Symons & Co.* v. *Buckleton*, 82 L. J. K.B. 245; [1913] A.C. 30; 107 L. T. 769; 20 Manson, 54.

De la Warr (Earl) v. Miles, 50 L. J. Ch. 754; 17 Ch. D. 535; 44 L. T. 487; 29 W. R. 809: distinguished in *Lyell* v. *Hothfield (Lord)*, [1914] 3 K.B. 911; 30 T. L. R. 630.

Denaby Main Colliery Co. v. Manchester, Sheffield, and Lincolnshire Railway, 55 L. J. Q.B. 181; 11 App. Cas. 97; 54 L. T. 1; 50 J. P. 340; 6 Ry. & Can. Traff. Cas. 133: considered in *Independent Newspapers, Lim.* v. *Great Northern Railway (Ireland)*, [1913] 2 Ir. R. 255.

De Nicols v. Saunders, 39 L. J. C.P. 297; L. R. 5 C.P. 589; 22 L. T. 661; 18 W. R. 1106: distinguished in *Ashburton (Lord)* v. *Nocton*, 83 L. J. Ch. 831; [1914] 2 Ch. 211; 58 S. J. 635; 30 T. L. R. 565.

Denman v. **Westminster Corporation,** 75 L. J. Ch. 272; [1906] 1 Ch. 464; 94 L. T. 370; 54 W. R. 345; 70 J. P. 185; 4 L. G. R. 442; 22 T. L. R. 270: statement of Buckley, J., in, adopted and followed in *Davies* v. *London Corporation*, 82 L. J. Ch. 286; [1913] 1 Ch. 415; 108 L. T. 546; 77 J. P. 294; 11 L. G. R. 595; 57 S. J. 341; 29 T. L. R. 315.

Derry v. **Peek,** 58 L. J. Ch. 864; 14 App. Cas. 337; 61 L. T. 265: discussed and explained in *Nocton* v. *Ashburton (Lord)*, 83 L. J. Ch. 784; 111 L. T. 641; 30 T. L. R. 602.

Deutsche National Bank v. **Paul,** 67 L. J. Ch. 156; [1898] 1 Ch. 283; 78 L. T. 35; 46 W. R. 243: followed in *Hughes* v. *Oxenham*, 82 L. J. Ch. 155; [1913] 1 Ch. 254; 108 L. T. 316.

Devon's Settled Estates, In re, 65 L. J. Ch. 810; [1896] 2 Ch. 562; 75 L. T. 178; 45 W. R. 25: considered in *Gordon and Adams' Contract, In re*, 82 L. J. Ch. 455; [1913] 1 Ch. 561; 108 L. T. 710; 57 S. J. 477.

Devonport Corporation v. **Tozer,** 72 L. J. Ch. 411; [1903] 1 Ch. 759; 88 L. T. 113; 52 W. R. 6; 67 J. P. 269; 1 L. G. R. 421: observations of Collins, M.R., and Romer, L.J., in, followed in *Att.-Gen.* v. *Dorin*, 81 L. J. Ch. 225; [1912] 1 Ch. 369; 106 L. T. 18; 76 J. P. 181; 10 L. G. R. 194; 56 S. J. 123; 28 T. L. R. 105.

Devonshire, The, 81 L. J. P. 94; [1912] A.C. 634; 107 L. T. 179; 57 S. J. 10; 28 T. L. R. 551: distinguished in *The Umona*, 83 L. J. P. 106; [1914] P. 141; 111 L. T. 415; 12 Asp. M.C. 527; 30 T. L. R. 498.

Dewdney, Ex parte, 15 Ves. 479: applied in *Fleetwood and District Electric Light, &c., Syndicate, In re*, 84 L. J. Ch. 374; [1915] 1 Ch. 486; 112 L. T. 1127; [1915] H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221.

Dickinson v. **Dickinson,** 82 L. J. P. 121; [1913] P. 198; 109 L. T. 408; 58 S. J. 32; 29 T. L. R. 765: overruled in *Napier* v. *Napier*, 84 L. J. P. 177; [1915] P. 184; 113 L. T. 764; 59 S. J. 560; 31 T. L. R. 472.

Dicks v. **Dicks,** 68 L. J. P. 118; [1899] P. 275; 81 L. T. 462: dissented from in *De Gasquet James (Countess)* v. *Mecklenburg-Schwerin (Duke)*, 83 L. J. P. 40; [1914] P. 53; 110 L. T. 121; 58 S. J. 341; 30 T. L. R. 329.

Dictator, The, 61 L. J. P. 73; [1892] P. 304; 67 L. T. 563; 7 Asp. M.C. 251: followed in *The Dupleix*, 81 L. J. P. 9; [1912] P. 8; 106 L. T. 347; 12 Asp. M.C. 122; 27 T. L. R. 577.

Didisheim v. **London and Westminster Bank,** 69 L. J. Ch. 443; [1900] 2 Ch. 15; 82 L. T. 738; 48 W. R. 501: followed in *Pelegrin* v. *Coutts & Co.*, 84 L. J. Ch. 576; [1915] 1 Ch. 696; 113 L. T. 140.

Director of Public Prosecutions (*or* Rex) v. **Ball** (*No.* 2), 80 L. J. K.B. 691; [1911] A.C. 47; 104 L. T. 48; 75 J. P. 180; 22 Cox C.C. 370; 27 T. L. R. 162: followed in *Rex* v. *Shellaker*, 83 L. J. K.B. 413; [1914] 1 K.B. 414; 110 L. T. 351; 78 J. P. 159; 30 T. L. R. 194.

Dixon, In re; Byram v. **Tull,** 42 Ch. D. 306; 61 L. T. 718; 38 W. R. 91: followed in *Jeffery, In re; Nussey* v. *Jeffery*, 83 L. J. Ch. 251; [1914] 1 Ch. 375; 110 L. T. 11; 58 S. J. 120.

Dixon, In re; Penfold v. **Dixon,** 71 L. J. Ch. 96; [1902] 1 Ch. 248; 85 L. T. 622; 50 W. R. 203: overruled in *Avery, In re; Pinsent* v. *Avery*, 82 L. J. Ch. 434; [1913] 1 Ch. 208; 108 L. T. 1; 57 S. J. 112.

Dobson v. **British Oil and Cake Mills,** 106 L. T. 922; [1912] W.C. Rep. 207; 5 B.W.C.C. 405: followed in *Edge* v. *Gorton*, 81 L. J. K.B. 1185; [1912] 3 K.B. 360; 107 L. T. 340.

Dobson v. **Collis,** 25 L. J. Ex. 267; 1 H. & N. 81; 4 W. R. 512: followed in *Hanau* v. *Ehrlich*, 81 L. J. K.B. 397; [1912] A.C. 39; 106 L. T. 1; 56 S. J. 186; 28 T. L. R. 113.

Dodson, In re, 77 L. J. Ch. 830; [1908] 2 Ch. 638; 98 L. T. 395: discussed and applied in *Herbert* v. *Herbert*, 81 L. J. Ch. 733; [1912] 2 Ch. 268: approved and followed in *Fauntleroy* v. *Beebe*, 80 L. J. Ch. 654; [1911] 2 Ch. 257; 104 L. T. 704; 55 S. J. 497.

Dodson v. **Sammell,** 30 L. J. Ch. 799; 1 Dr. & Sm. 575; 8 Jur. (N.S.) 584; 9 W. R. 817: applied in *Lawley, In re*, [1911] 2 Ch. 530; 105 L. T. 571; 56 S. J. 13.

Doecham Gloves, Lim., In re, 82 L. J. Ch. 165; [1913] 1 Ch. 226; 107 L. T. 817; 20 Manson, 79: overruled in *Schweppes, Lim., In re*, 83 L. J. Ch. 296; [1914] 1 Ch. 322; 110 L. T. 246; 21 Manson, 82; 58 S. J. 185; 30 T. L. R. 201.

Doe d. Goodbehere v. **Bevan,** 3 M. & S. 353: followed in *Birkbeck Permanent Benefit Building Society* v. *Licensees' Insurance Corporation and Guarantee Fund*, 82 L. J. Ch. 386; [1913] 2 Ch. 34; [1913] W.C. & I. Rep. 566; 108 L. T. 664; 57 S. J. 559.

Doering v. **Doering,** 58 L. J. Ch. 553; 42 Ch. D. 203; 37 W. R. 796: principle of, when applicable, considered in *Towndrow, In re; Gratton* v. *Machen*, 80 L. J. Ch. 378; [1911] 1 Ch. 662; 104 L. T. 534: considered in *Dacre, In re*, [1915] 2 Ch. 480.

Doherty v. **Allman,** 3 App. Cas. 709: distinguished in *Rose* v. *Hyman*, 80 L. J. K.B. 1011; [1911] 2 K.B. 234; 104 L. T. 619; 55 S. J. 405; 27 T. L. R. 367.

Doherty v. **Kennedy,** [1912] 1 Ir. R. 349 (on app. *sub nom. Dublin Distillery* v. *Doherty*, 83 L. J. P.C. 265; [1914] A.C. 823): considered in *Cox* v. *Dublin City Distillery*, [1915] 1 Ir. R. 345.

Dolphin v. **Robins,** 29 L. J. P. 11; 7 H.L. C. 390: followed in *Mackenzie, In re*, 80 L. J. Ch. 443; [1911] 1 Ch. 578; 105 L. T. 154; 55 S. J. 406; 27 T. L. R. 337.

Donaldson v. **Cowan,** [1909] S. C. 1292: disapproved in *Gibson* v. *Wishart*, 83 L. J. P.C. 321; [1915] A.C. 18; 111 L. T. 466; 58 S. J. 592; 30 T. L. R. 540.

Donnelly's Estate, In re, [1913] 1 Ir. R. 177: distinguished in *Connell's Settlement, In re*, 84 L. J. Ch. 601; [1915] 1 Ch. 867.

Donovan v. **Laing,** 63 L. J. Q.B. 25; [1893] 1 Q.B. 629; 68 L. T. 512; 41 W. R. 455; 57 J. P. 583: distinguished in *M'Cartan* v. *Belfast Harbour Commissioners*, [1911] 2 Ir. R. 143.

Doran v. **Waterford Union Guardians,** 37 Ir. L. T. Rep. 158: approved in *Finlay* v. *Tullamore Union*, [1914] 2 Ir. R. 233.

Dothie v. **MacAndrew,** 77 L. J. K.B. 388; [1908] 1 K.B. 803; 98 L. T. 495; 24 T. L. R. 326: followed in *Skailes* v. *Blue Anchor Line*, 80 L. J. K.B. 442; [1911] 1 K.B. 360; 103 L. T. 741; 55 S. J. 107; 27 T. L. R. 119.

Dowell v. **Dew,** 12 L. J. Ch. 158: affirming 1 Y. & C. C.C. 345: distinguished in *Purchase* v. *Lichfield Brewery Co.*, 84 L. J. K.B. 742; [1915] 1 K.B. 184; 111 L. T. 1105.

Dowling v. **Dowling,** 68 L. J. P. 8; [1898] P. 228: considered and followed in *Bourne* v. *Bourne*, 82 L. J. K.B. 117; [1913] P. 164; 108 L. T. 1039; 29 T. L. R. 657.

Dowse v. **Gorton,** 60 L. J. Ch. 745; [1891] A.C. 190; 64 L. T. 809; 40 W. R. 17: considered in *Orley, In re*, 83 L. J. Ch. 442; [1914] 1 Ch. 604; 110 L. T. 626; 58 S. J. 319; 30 T. L. R. 327.

Doyle v. **Blake,** 2 Sch. & Lef. 231: *dicta* in, disapproved in *Hewson* v. *Shelley*, 82 L. J. Ch. 551; [1913] 2 Ch. 384; **109 L. T. 157;** 57 S. J. 717; 29 T. L. R. 699.

Doyle v. **Craig,** [1911] S. C. 493: distinguished in *O'Connell* v. *Blacklock*, [1912] S. C. 640.

Drax, In re; Savile v. **Drax,** 72 L. J. Ch. 505; [1903] 1 Ch. 781; 88 L. T. 510; 51 W. R. 612: followed in *MacDermott's Estate, In re*, [1912] 1 Ir. R. 166.

Dresser v. **Norwood,** 34 L. J. C.P. 48; 17 C. B. (N.S.) 466: distinguished in *Taylor* v. *Yorkshire Insurance Co.*, [1913] 2 Ir. R. 1.

Drew v. **Barry,** Ir. R. 8 Eq. 260: considered in *Franks's Estate, In re*, [1915] 1 Ir. R. 387.

Drucker, In re, 71 L. J. K.B. 686; [1902] 2 K.B. 237; 86 L. T. 785; 9 Manson, 237: approved in *Watson, In re; Schipper, ex parte*, 107 L. T. 96: followed in *Hooley, In re*, 84 L. J. K.B. 1415.

Drylie v. **Alloa Coal Co.,** [1913] S. C. 549; [1913] W.C. & I. Rep. 213: approved in *Brown* v. *Watson*, 83 L. J. P.C. 307; [1915] A.C. 1; [1914] W.C. & I. Rep. 228; 111 L. T. 347; 58 S. J. 533; 30 T. L. R. 501.

Dubber v. **Trollope,** Amb. 453: considered in *Davison's Settlement, In re*, [1913] 2 Ch. 498.

Dublin Corporation v. **M'Adam,** 20 L. R. Ir. 497: followed in *Mullingar Rural Council* v. *Rowles*, [1913] 2 Ir. R. 44; 6 Tax Cas. 85.

Dublin, Wicklow, and Wexford Railway v. **Slattery,** 3 App. Cas. 1155; 39 L. T. 365: considered in *Cutsforth* v. *Johnson*, [1913] W.C. & I. Rep. 131; 108 L. T. 138: and distinguished in *Macleod* v. *Edinburgh and District Tramways Co.*, [1913] S. C. 624.

Du Bochet, In re; Mansell v. **Allen,** 70 L. J. Ch. 647; [1901] 2 Ch. 441; 84 L. T. 710; 49 W. R. 588: disapproved in *Pearce, In re; Alliance Assurance Co.* v. *Francis*, 83 L. J. Ch. 266; [1914] 1 Ch. 254; 110 L. T. 168; 58 S. J. 197.

Duke v. **Davis,** 62 L. J. Q.B. 549; [1893] 2 Q.B. 260: followed in *Buckley & Beach* v. *National Electric Theatres*, 82 L. J. K.B. 739; [1913] 2 K.B. 277; 108 L. T. 871.

Dungannon (Lord) v. **Smith,** 12 Cl. & F. 546: distinguished in *Fane, In re*, 82 L. J. Ch. 225; [1913] 1 Ch. 404; 108 L. T. 288; 57 S. J. 321; 29 T. L. R. 306.

Dunning v. **Owen,** 76 L. J. K.B. 796; [1907] 2 K.B. 237; 97 L. T. 241; 71 J. P. 383; 23 T. L. R. 494: distinguished in *Mellor* v. *Lydiate*, 84 L. J. K.B. 8; [1914] 3 K.B. 1141; 111 L. T. 988; 79 J. P. 68; 30 T. L. R. 704.

Dyke v. **Stephens,** 55 L. J. Ch. 41; 30 Ch. D. 189; 53 L. T. 561: reasoning of Pearson, J., in, applied in *Pink* v. *Sharwood*, 82 L. J. Ch. 542; [1913] 2 Ch. 286; 108 L. T. 1017; 57 S. J. 663.

Dyson v. **Att.-Gen.,** 80 L. J. K.B. 531; [1911] 1 K.B. 410; 103 L. T. 707; 55 S. J. 168; 27 T. L. R. 143: distinguished in *Hall, In re; Hall* v. *Knight*, 83 L. J. P. 1; [1914] P. 1; 109 L. T. 587; 58 S. J. 30; 30 T. L. R. 405.

E.

E. v. **E.,** 23 T. L. R. 364: distinguished in *Walker* v. *Walker*, 107 L. T. 655; 57 S. J. 175.

E. W. A., In re, 70 L. J. K.B. 810; [1901] 2 K.B. 642; 85 L. T. 31; 49 W. R. 642; 8 Manson, 250: distinguished in *Debtor (No. 14 of* 1913), *In re*, 82 L. J. K.B. 907; [1913] 3 K.B. 11; 20 Manson, 119; 57 S. J. 579.

Earle v. **Bellingham** (*No.* 2), 24 Beav. 448: explained in *Walford, In re*, 81 L. J. Ch. 128; [1912] 1 Ch. 219; 105 L. T. 739.

Eastbourne Corporation v. **Bradford,** 65 L. J. Q.B. 571; [1896] 2 Q.B. 205; 74 L. T. 762; 45 W. R. 31; 60 J. P. 501: applied in *Hull Corporation* v. *North-Eastern Railway*, 84 L. J. Ch. 329; [1915] 1 Ch. 456; 112 L. T. 584; 79 J. P. 221; 13 L. G. R. 587; 59 S. J. 318.

East London Joint Committee v. **Greenwich Union,** 5 L. G. R. 922: followed in *East London Railway* v. *Greenwich Assessment Committee*, 107 L. T. 126; 76 J. P. 318; 10 L. G. R. 562.

East London Railway Joint Committee v. **Greenwich Assessment Committee,** 82 L. J. K.B. 297; [1913] 1 K.B. 612; 107 L. T. 105; 77 J. P. 153; 11 L. G. R. 265; 29 T. L. R. 171: explained and applied in *Great Western and Metropolitan Railways* v. *Hammersmith Assessment Committee*, 110 L. T. 96; 78 J. P. 59; 12 L. G. R. 46.

Eaves v. **Blaenclydach Colliery Co.,** 78 L. J. K.B. 809; [1909] 2 K.B. 73; 100 L. T. 751: applied in *Wall, Lim.* v. *Steel*, 84 L. J. K.B. 1599; [1915] W.C. & I. Rep. 117; 112 L. T. 846.

Ebbetts v. **Conquest,** 64 L. J. Ch. 702; [1895] 2 Ch. 377; 73 L. T. 69; 44 W. R. 56: *dictum* of Lindley, L.J., in, followed in *Clare* v. *Dobson*, 80 L. J. K.B. 158; [1911] 1 K.B. 35; 103 L. T. 506; 27 T. L. R. 22.

Eberle's Hotels Co. v. **Jonas,** 56 L. J. Q.B. 278; 18 Q.B. D. 459; 35 W. R. 467: principles stated in, applied in *Thorn & Son, Lim., In re*, 84 L. J. Ch. 161; [1914] 2 Ch. 438; 112 L. T. 30; [1915] H. B. R. 19; 58 S. J. 755.

Eccles v. **Mills,** 67 L. J. P.C. 25; [1898] A.C. 360; 78 L. T. 206; 46 W. R. 398: applied in *Hughes, In re; Ellis* v. *Hughes*, [1913] 2 Ch. 491; 109 L. T. 509.

Eddystone Marine Insurance Co., In re, 61 L. J. Ch. 362; [1892] 2 Ch. 423; 66 L. T. 370; 40 W. R. 441: applied in *Law Guarantee Trust and Accident Society, In re* (*No.* 2), 84 L. J. Ch. 1; [1914] 2 Ch. 617; 111 L. T. 817; 58 S. J. 704; 30 T. L. R. 616.

Eden v. **Ridsdale Railway Lamp, &c. Co.,** 58 L. J. Q.B. 579; 23 Q.B. D. 368; 61 L. T. 444: applied in *London and South-Western Canal, In re*, 80 L. J. Ch. 234; [1911] 1 Ch. 346; 104 L. T. 95; 18 Manson, 171.

Edinburgh and District Aerated Water Manufacturers' Defence Association v. **Jenkinson,** 5 Fraser, 1159: distinguished in *British Association of Glass Bottle Manufacturers* v. *Nettlefold*, 27 T. L. R. 527.

Edinburgh Life Assurance Co. v. **Lord Advocate,** 79 L. J. P.C. 41; [1910] A.C. 143; 101 L. T. 826; 54 S. J. 133; 26 T. L. R. 146: discussed in *Sugden* v. *Leeds Corporation*, 83 L. J. K.B. 840; [1914] A.C. 483; 108 L. T. 578; 77 J. P. 225; 11 L. G. R. 662; 6 Tax Cas. 211; 57 S. J. 425; 29 T. L. R. 402.

Edinburgh Parish Council v. **Edinburgh Assessor,** [1910] S. C. 823: overruled in *Glasgow Parish Council* v. *Glasgow Assessor*, [1912] S. C. 818.

Edmonds v. **Foster,** 45 L. J. M.C. 41; 33 L. T. 690: followed in *Park* v. *Lawton*, 80 L. J. K.B. 396; [1911] 1 K.B. 588; 104 L. T. 184; 75 J. P. 163; 18 Manson, 151; 27 T. L. R. 192.

Edmundson v. **Render,** 74 L. J. Ch. 585; [1905] 2 Ch. 320; 93 L. T. 124; 54 W. R. 632: distinguished in *Woodbridge* v. *Bellamy*, 80 L. J. Ch. 265; [1911] 1 Ch. 326; 103 L. T. 852; 55 S. J. 204.

Edwards v. **Edwards,** 45 L. J. Ch. 391; 2 Ch. D. 291; 34 L. T. 472; 24 W. R. 713: applied in *Monolithic Building Co., In re; Tacon* v. *The Company*, 84 L. J. Ch. 441; [1915] 1 Ch. 643; 112 L. T. 619; 59 S. J. 332.

Edwards v. **Hope,** 54 L. J. Q.B. 379, 14 Q.B. D. 922; 53 L. T. 69: considered in *Reid* v. *Cupper*, 84 L. J. K.B. 573; [1915] 2 K.B. 147; 112 L. T. 573; 59 S. J. 144; 31 T. L. R. 103.

Edwards v. **Wickwar,** 35 L. J. Ch. 309; L. R. 1 Eq. 403: not followed in *Horn* v. *Beard*, 81 L. J. K.B. 935; [1912] 3 K.B. 181; 107 L. T. 87.

Egerton v. **Brownlow (Earl),** 4 H.L. C. 1: distinguished in *Caithness (Earl)* v. *Sinclair*, [1912] S. C. 79.

Eichbaum v. **City of Chicago Grain Elevators, Lim.,** 61 L. J. Ch. 28; [1891] 3 Ch. 459; 65 L. T. 704: followed in *Rowell* v. *John Rowell & Son, Lim.*, 81 L. J. Ch. 759; [1912] 2 Ch. 609; 107 L. T. 374.

Eke v. **Hart Dyke,** 80 L. J. K.B. 90; [1910] 2 K.B. 677; 103 L. T. 174; 26 T. L. R. 613: applied in *Martin* v. *Manchester Corporation*, 106 L. T. 741; 76 J. P. 251; 28 T. L. R. 344.

Ellenborough, In re; Law v. **Burne,** 72 L. J. Ch. 218; [1903] 1 Ch. 697; 87 L. T. 714; 51 W. R. 315: applied in *Mudge, In re*, 83 L. J. Ch. 243; [1914] 1 Ch. 115; 109 L. T. 781; 58 S. J. 117.

Ellis v. **Ellis,** 74 L. J. Ch. 296; [1905] 1 Ch. 613; 92 L. T. 727; 53 W. R. 617: overruled in *Hewson* v. *Shelley*, 83 L. J. Ch. 607; [1914] 2 Ch. 13; 110 L. T. 785; 58 S. J. 397; 30 T. L. R. 402.

Ellis v. **Kerr,** 79 L. J. Ch. 291; [1910] 1 Ch. 529; 102 L. T. 417; 54 S. J. 307: followed in *Napier* v. *Williams*, 80 L. J. Ch. 298; [1911] 1 Ch. 361; 104 L. T. 380; 55 S. J. 235.

Ellis v. **Maxwell,** 3 Beav. 587: discussed and not followed in *Cattell, In re*, 83 L. J. Ch. 322; [1914] 1 Ch. 177; 110 L. T. 137; 58 S. J. 67.

Ellis v. **Pond,** 67 L. J. Q.B. 345; [1898] 1 Q.B. 426; 78 L. T. 125: distinguished in *Finlay, In re; Wilson* v. *Finlay*, 82 L. J. Ch. 295; [1913] 1 Ch. 565; 108 L. T. 699; 57 S. J. 444; 29 T. L. R. 436.

Ellis's Settlement, In re, 78 L. J. Ch. 375; [1909] 1 Ch. 618; 100 L. T. 511: followed in *Leigh-White* v. *Ruttledge*, [1914] 1 Ir. R. 135.

Elmore's Will, In re, 9 W. R. 66: overruled in *Wareham, In re*, 81 L. J. Ch. 578; [1912] 2 Ch. 312; 107 L. T. 80; 56 S. J. 613.

Elphinstone (Lord) v. **Monkland Iron and Coal Co.,** 11 App. Cas. 332: opinion of Lord Fitzgerald in, commented on and doubted in *Dingwall* v. *Burnett*, [1912] S. C. 1097: *dictum* of Lord Watson in, applied in *Dunlop Pneumatic Tyre Co.* v. *New Garage and Motor Co.*, 83 L. J. K.B. 1574; [1915] A.C. 79; 111 L. T. 862; 30 T. L. R. 625.

Ely, In re, 82 L. T. 501: distinguished in *Goldburg, In re; Page, ex parte*, 81 L. J. K.B. 663; [1912] 1 K.B. 606; 106 L. T. 431.

Ely, In re; Tottenham v. **Ely,** 65 L. T. 452: not followed in *Halston, In re; Ewen* v. *Halston*, 81 L. J. Ch. 265; [1912] 1 Ch. 435; 106 L. T. 182; 56 S. J. 311.

Eley v. **Positive Government Security Life Assurance Co.,** 45 L. J. Ex. 451; 1 Ex. D. 88; 34 L. T. 190; 24 W. R. 338: distinguished in *Hickman* v. *Kent* (or *Romney Marsh*) *Sheep Breeders' Association*, 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Emanuel v. **Constable,** 5 L. J. (o.s.) Ch. 191; 3 Russ. 436: applied in *Limond, In re*, 84 L. J. Ch. 833; [1915] 2 Ch. 240; 113 L. T. 815; 59 S. J. 613.

Emmet v. **Emmet,** 49 L. J. Ch. 295; 13 Ch. D. 484: followed in *Faux, In re*, 84 L. J. Ch. 873; 113 L. T. 81; 59 S. J. 457; 31 T. L. R. 289.

Emmett, In re, 95 L. T. 755: questioned in *Beavan, In re*, 81 L. J. Ch. 113; [1912] 1 Ch. 196; 105 L. T. 784.

Englehart v. **Farrant,** 66 L. J. Q.B. 122; [1897] 1 Q.B. 240; 75 L. T. 617; 45 W. R. 179: considered and applied in *Ricketts* v. *Tilling*, 84 L. J. K.B. 342; [1915] 1 K.B. 644; 112 L. T. 137; 31 T. L. R. 17.

Erie County Gas and Natural Fuel Co. v. **Carroll,** 80 L. J. P.C. 59; [1911] A.C. 105; 103 L. T. 678: approved in *British Westinghouse Co.* v. *Underground Railways of London*, 81 L. J. K.B. 1132; [1912] A.C. 673; 107 L. T. 325; 56 S. J. 734.

Errington v. **Rorke,** 6 Ir. C. L. R. 279: discussed and distinguished in *Hewson* v. *Shelley*, 82 L. J. Ch. 551; [1913] 2 Ch. 384; 109 L. T. 157; 57 S. J. 717; 29 T. L. R. 699.

Erskine, Oxenford & Co. v. **Sachs,** 70 L. J. K.B. 978; [1901] 2 K.B. 504; 85 L. T. 385: followed in *Finlay, In re; Wilson* v. *Finlay*, 82 L. J. Ch. 295; [1913] 1 Ch. 565; 108 L. T. 699; 57 S. J. 444; 29 T. L. R. 436.

Escalera Silver Lead Mining Co., In re, 25 T. L. R. 87: distinguished in *Harris Calculating Machine Co., In re*, 83 L. J. Ch. 545; [1914] 1 Ch. 920; 110 L. T. 997; 58 S. J. 455.

Esposito v. **Bowden,** 27 L. J. Q.B. 17; 7 E. & B. 763: considered in *Karberg & Co.* v. *Blythe, Green, Jourdain & Co.*, 84 L. J. K.B. 1673; [1915] 2 K.B. 379; 113 L. T. 185; 31 T. L. R. 351.

Espuela Land and Cattle Co., In re, 78 L. J. Ch. 729; [1909] 2 Ch. 187; 101 L. T. 13; 16 Manson, 251: discussed and distinguished in *National Telephone Co., In re*, 83 L. J. 552; [1914] 1 Ch. 755; 109 L. T. 389; 58 S. J. 12; 29 T. L. R. 682.

Etches v. **Etches,** 3 Drew. 441; 4 W. R. 307: applied in *Seaton, In re; Ellis* v. *Seaton*, 83 L. J. Ch. 124; [1913] 2 Ch. 614.

Europa, The 77 L. J. P. 26; [1908] P. 84; 98 L. T. 246; 11 Asp. M.C. 19; 24 T. L. R. 151: followed and approved in *Kish* v. *Taylor*, 81 L. J. K.B. 1027; [1912] A.C. 604; 106 L. T. 900; 17 Com. Cas. 355; 56 S. J. 518; 28 T. L. R. 425.

Evans v. **Evans,** 61 L. J. Ch. 456 [1892] 2 Ch. 173; 67 L. T. 152; 40 W. R. 465: *dictum* of Lindley, L.J., in, considered in *Davison's Settlement, In re,* [1913] 2 Ch. 498.

Evans v. **Levy,** 79 L. J. Ch. 383; [1910] 1 Ch. 452; 102 L. T. 128: in effect overruled as regards costs in *West* v. *Gwynne,* 80 L. J. Ch. 578; [1911] 2 Ch. 1; 104 L. T. 759; 55 S. J. 519; 27 T. L. R. 444.

Evans v. **Rival Granite Quarries,** 79 L. J. K.B. 970; [1910] 2 K.B. 979; 54 S. J. 580; 26 T. L. R. 509: applied in *Sinnott* v. *Bowden,* 81 L. J. Ch. 832; [1912] 2 Ch. 414; 107 L. T. 609; [1913] W.C. & I. Rep. 464; 28 T. L. R. 594.

Evershed v. **London and North-Western Railway,** 48 L. J. Q.B. 22; 3 App. Cas. 1029; 39 L. T. 306; 26 W. R. 863: principle of applied in *Att.-Gen.* v. *Long Eaton Urban Council,* 83 L. J. Ch. 774; [1914] 2 Ch. 251; 30 T. L. R. 537.

Everson, In re, 74 L. J. K.B. 38; [1904] 2 K.B. 619; 91 L. T. 81; 52 W. R. 656: distinguished in *Arnold, In re; Hext, Ex parte,* 84 L. J. K.B. 110; [1914] 3 K.B. 1078; [1915] H. B. R. 11; 21 Manson, 319; 59 S. J. 9; 30 T. L. R. 691.

Everth v. **Smith,** 2 M. & S. 278: followed in *Scottish Shire Line* v. *London and Provincial Marine and General Insurance Co.,* 81 L. J. K.B. 1066; [1912] 3 K.B. 51; 107 L. T. 46; 17 Com. Cas. 240; 56 S. J. 551.

Evroy (*or* **Esron**) v. **Nicholas,** 2 Eq. C. Abr. 488; 1 De G. & Sm. 118*n.*: followed in *Stocks* v. *Wilson,* 82 L. J. K.B. 598; [1913] 2 K.B. 235; 108 L. T. 834; 20 Manson, 129; 29 T. L. R. 352.

Exchange Telegraph v. **Gregory,** 65 L. J. Q.B. 262; [1896] 1 Q.B. 147; 74 L. T. 83; 60 J. P. 52: point in, followed in *Goldsoll* v. *Goldman,* 84 L. J. Ch. 63; [1914] 2 Ch. 603; 112 L. T. 21; 59 S. J. 43.

Eykyn's Trusts, In re, 6 Ch. D. 115: followed in *Condrin, In re,* [1914] 1 Ir. R. 89.

Eyre v. **Houghton Main Colliery Co.,** 79 L. J. K.B. 698; [1910] 1 K.B. 695; 102 L. T. 385; 54 S. J. 304; 26 T. L. R. 302: discussed in *Law* v. *Baird,* [1914] S. C. 423; [1914] W.C. & I. Rep. 140.

Eyton & Co., In re, 57 L. J. Ch. 127; 36 Ch. D. 299; 57 L. T. 899: applied in *Rubber and Produce Investment Trust, In re,* 84 L. J. Ch. 534; [1915] 1 Ch. 382; 112 L. T. 1129; [1915] H. B. R. 120; 31 T. L. R. 253.

F.

Faithfull, In re, 57 L. T. 14: distinguished in *Harris, In re; Davis* v. *Harris,* 83 L. J. Ch. 841; [1914] 2 Ch. 395; 58 S. J. 653.

Falkland Islands Co. v. **Reg.,** 1 Moo. P.C. (N.S.) 299: approved in *Arnold* v. *King-Emperor,* 83 L. J. P.C. 299; [1914] A.C. 644; L. R. 41 Ind. App. 149; 111 L. T. 324; 24 Cox C.C. 297; 30 T. L. R. 462.

Farncombe's Trusts, 47 L. J. Ch. 328; 9 Ch. D. 652: applied in *Witty, In re,* [1913] 2 Ch. 666; 109 L. T. 590.

Fauntleroy v. **Beebe,** 80 L. J. Ch. 654; [1911] 2 Ch. 257; 104 L. T. 704; 55 S. J. 497: discussed and applied in *Herbert* v. *Herbert,* 81 L. J. Ch. 733; [1912] 2 Ch. 268.

Fawcett, In the goods of, 58 L. J. P. 87; 14 P. D. 152; 61 L. T. 303: followed in *Shorter* v. *Shorter,* 80 L. J. P. 120; [1911] P. 184; 27 T. L. R. 522.

Feldmann, In re, 97 L. T. 548; 71 J. P. 269; 5 L. G. R. 653; 23 T. L. R. 432: discussed in *Stock* v. *Central Midwives Board,* 84 L. J. K.B. 1835; [1915] 3 K.B. 756; 113 L. T. 428; 79 J. P. 397; 31 T. L. R. 436.

Felstead v. **Director of Public Prosecutions or Regem,** 83 L. J. K.B. 1132; [1914] A.C. 534; 111 L. T. 218; 78 J. P. 313; 24 Cox C.C. 243; 58 S. J. 534; 30 T. L. R. 469: applied in *Rex* v. *Taylor,* 84 L. J. K.B. 1671; [1915] 2 K.B. 709; 113 L. T. 513; 79 J. P. 439; 59 S. J. 530; 31 T. L. R. 449; and followed in *Houghton, In re,* 84 L. J. Ch. 726; [1915] 2 Ch. 173; 113 L. T. 422; 59 S. J. 562; 31 T. L. R. 427.

Fenton v. **Emblers,** 3 Burr. 1278: observations in, disapproved in *Hanau* v. *Ehrlich,* 81 L. J. K.B. 397; [1912] A.C. 39; 106 L. T. 1; 56 S. J. 186; 28 T. L. R. 113.

Fenton v. **Nevin,** 31 L. R. Ir. 478: distinguished in *Howell, In re; Buckingham, In re; Liggins* v. *Buckingham,* 84 L. J. Ch. 209; [1915] 1 Ch. 241; 112 L. T. 188.

Fenton v. **Thorley,** 72 L. J. K.B. 787; [1903] A.C. 443; 89 L. T. 314; 52 W. R. 81: *dictum* of Lord Macnaghten in, explained in *Trim Joint District School Board* v. *Kelly,* 83 L. J. P.C. 220; [1914] A.C. 667; 58 S. J. 493; 30 T. L. R. 452.

Fielding, Ex parte, 25 J. P. 759: followed by Avory, J., in *Healey* v. *Wright,* 81 L. J. K.B. 961; [1912] 3 K.B. 249; 76 J. P. 367; 28 T. L. R. 439.

Fielding v. **Turner,** 72 L. J. K.B. 542; [1903] 1 K.B. 867; 89 L. T. 273; 51 W. R. 543; 67 J. P. 252: applied and followed in *Donaghy* v. *Walsh*, [1914] 2 Ir. R. 261.

Figg v. **Moore,** 63 L. J. Q.B. 709; [1894] 2 Q.B. 690; 71 L. T. 232; 1 Manson, 404: applied in *Godding, In re*, 83 L. J. K.B. 1222; [1914] 2 K.B. 70; 110 L. T. 207; 58 S. J. 221.

Finburgh v. **Moss' Empires, Lim.** [1908] S. C. 928: distinguished in *Gorman* v. *Moss' Empires, Lim.*, [1913] S. C. 1: and in *Aiken* v. *Caledonian Railway*, [1913] S. C. 66.

Fine Cotton Spinners and Doublers Association v. **Harwood, Cash & Co.,** 76 L. J. Ch. 670; [1907] 2 Ch. 184; 97 L. T. 45; 23 T. L. R. 537: followed in *Kingston, Miller & Co.* v. *Kingston & Co.*, 81 L. J. Ch. 417; [1912] 1 Ch. 575; 106 L. T. 586; 29 R. P. C. 289; 56 S. J. 310; 28 T. L. R. 246.

Finlay v. **Chirney,** 57 L. J. Q.B. 247; 20 Q.B. D. 494; 58 L. T. 664; 52 J. P. 324: *dicta* in, not followed in *Quirk* v. *Thomas*, 84 L. J. K.B. 953; [1915] 1 K.B. 798; 59 S. J. 350; 31 T. L. R. 237.

Finlay v. **Liverpool and Great Western Steamship Co.,** 23 L. T. 251: *dictum* of Martin, B., in, considered in *Sanday* v. *British and Foreign Marine Insurance Co.*, 84 L. J. K.B. 1625; [1915] 2 K.B. 781; 59 S. J. 456; 31 T. L. R. 374.

Finlay v. **Mexican Investment Corporation,** 66 L. J. Q.B. 151; [1897] 1 Q.B. 517; 76 L. T. 257: applied in *Law Guarantee Trust and Accident Society, In re* (*No.* 2), 84 L. J. Ch. 1; [1914] 2 Ch. 617; 111 L. T. 817; 58 S. J. 704; 30 T. L. R. 616.

Firebrace v. **Firebrace,** 47 L. J. P. 41; 4 P. D. 36; 39 L. T. 94; 26 W. R. 617: approved and followed in *De Gasquet James (Countess)* v. *Mecklenburg-Schwerin (Duke)*, 83 L. J. P. 40; [1914] P. 53; 110 L. T. 121; 58 S. J. 341; 30 T. L. R. 329.

Firth v. **McPhail,** 74 L. J. K.B. 458; [1905] 2 K.B. 300; 92 L. T. 567; 69 J. P. 203; 3 L. G. R. 478; 21 T. L. R. 403: considered in *Bothamley* v. *Jolly*, 84 L. J. K.B. 2223; [1915] 3 K.B. 425; 31 T. L. R. 626.

Fisher v. **Begrez,** 2 Cr. & M. 240: considered in *Republic of Boliria Exploration Syndicate, In re*, 83 L. J. Ch. 226; [1914] 1 Ch. 139; 109 L. T. 741; 110 L. T. 141; 58 S. J. 173; 30 T. L. R. 78.

Fitzgerald v. **Leonard,** 32 L. R. Ir. 675: not followed in *Cointat* v. *Myham*, 82 L. J. K.B. 551; [1913] 2 K.B. 220; 108 L. T. 556; 77 J. P. 217; 11 L. G. R. 770; 29 T. L. R. 387.

Fitzgerald, In re; Surman v. **Fitzgerald,** 73 L. J. Ch. 436; [1904] 1 Ch. 573; 90 L. T. 266; 52 W. R. 432; 20 T. L. R. 332: applied in *Hoyles, In re; Row* v. *Jagg*, 80 L. J. Ch. 274; [1911] 1 Ch. 179; 103 L. T. 817; 55 S. J. 169; 27 T. L. R. 131.

Fitzroy v. **Cave,** 74 L. J. K.B. 829; [1905] 2 K.B. 364; 93 L. T. 499; 54 W. R. 17; 21 T. L. R. 612: followed in *Defries* v. *Milne*, 82 L. J. Ch. 1; [1913] 1 Ch. 98; 107 L. T. 593; 57 S. J. 27.

Flatau, In re; Scotch Whiskey Distillers, ex parte, 22 Q.B. D. 83; 37 W. R. 42: applied in *Howell, In re*, 84 L. J. K.B. 1399.

Fleeming v. **Howden,** 6 Macq. (H.L.) 113, 121: *dictum* of Lord Westbury in, explained in *Bank of Scotland* v. *Macleod*, 83 L. J. P.C. 250; [1914] A.C. 311; 110 L. T. 946.

Fleetwood, In re; Sidgreaves v. **Brewer,** 49 L. J. Ch. 514; 15 Ch. D. 594; 29 W. R. 45: doubted in *Le Page* v. *Gardom*, 84 L. J. Ch. 749; 113 L. T. 475; 59 S. J. 599.

Flood v. **Irish Provident Assurance Co.,** 46 Ir. L. T. 214; [1912] 2 Ch. 597 *n.*: distinguished in *Sinclair* v. *Brougham*, 83 L. J. Ch. 465; [1914] A.C. 398; 111 L. T. 1; 58 S. J. 302; 30 T. L. R. 315.

Foley v. **Burnell,** 1 Bro. C.C. 274; 4 Bro. P.C. 34: considered in *Swan, In re*, 84 L. J. Ch. 590; [1915] 1 Ch. 829; 113 L. T. 42; 31 T. L. R. 266.

Forbes v. **Samuel,** 82 L. J. K.B. 1135; [1913] 3 K.B. 706; 109 L. T. 599; 29 T. L. R. 544: followed in *Bird* v. *Samuel*, 30 T. L. R. 323.

Formby v. **Barker,** 72 L. J. Ch. 716; [1903] 2 Ch. 539; 89 L. T. 249; 51 W. R. 646: applied in *London County Council* v. *Allen*, 83 L. J. K.B. 1695; [1914] 3 K.B. 642.

Forrest v. **Manchester &c. Railway,** 30 Beav. 40; 4 L. T. 606: disapproved in *Dundee Harbour Trustees* v. *Nicol*, 84 L. J. P.C. 74; [1915] A.C. 550; 112 L. T. 697; 31 T. L. R. 118.

Forsdike v. **Stone,** 37 L. J. C.P. 301; L. R. 3 C.P. 607; 18 L. T. 722: followed in *Barker* v. *Lewis & Peat*, 82 L. J. K.B. 843; [1913] 3 K.B. 34; 108 L. T. 941; 57 S. J. 577; 29 T. L. R. 565.

Forte v. **Dewar,** 7 F. (J.) 82: overruled in *Di Carlo* v. *M'Intyre*, [1914] S. C. (J.) 60.

Foss v. **Best,** 75 L. J. K.B. 575; [1906] 2 K.B. 105; 95 L. T. 127; 70 J. P. 383; 22 T. L. R. 542: not followed in *Wills* v. *McSherry*, 82 L. J. K.B. 71; [1913] 1 K.B. 20; 107 L. T. 848; 77 J. P. 65; 23 Cox C.C. 254; 29 T. L. R. 48.

Foster v. **Foster,** 45 L. J. Ch. 301; 1 Ch. D. 588: applied in *Hopkinson* v. *Richardson*, 82 L. J. Ch. 211; [1913] 1 Ch. 284; 108 L. T. 501; 57 S. J. 265.

Foster v. **Great Western Railway,** 73 L. J. K.B. 811; [1904] 2 K.B. 306; 90 L. T. 779; 52 W. R. 685; 20 T. L. R. 472: distinguished in *Gunyon* v. *South-Eastern and Chatham Railway Companies Managing Committee*, 84 L. J. K.B. 1212; [1915] 2 K.B. 370; 31 T. L. R. 344.

Foster v. **Mackinnon,** 38 L. J. C.P. 310; L. R. 4 C. P. 704; 20 L. T. 887; 17 W. R. 1105: considered in *Carlisle and Cumberland Banking Co. v. Bragg*, 80 L. J. K.B. 472; [1911] 1 K.B. 489; 104 L. T. 121.

Fowkes v. **Pascoe,** 44 L. J. Ch. 367; L. R. 10 Ch. 343; 32 L. T. 545: considered in *Shields, In re; Corbould-Ellis* v. *Dales*, 81 L. J. Ch. 370; [1912] 1 Ch. 591; 106 L. T. 748.

Fox v. **Fox,** L. R. 19 Eq. 286: distinguished in *Hume, In re; Public Trustee* v. *Mabey*, 81 L. J. Ch. 382; [1912] 1 Ch. 693; 106 L. T. 335; 56 S. J. 414.

Frames v. **Bultfontein Mining Co.,** 60 L. J. Ch. 99; [1891] 1 Ch. 140; 64 L. T. 12; 39 W. R. 134; 2 Meg. 374: explained in *Spanish Prospecting Co., In re*, 80 L. J. Ch. 210; [1911] 1 Ch. 92; 103 L. T. 609; 18 Manson, 191; 55 S. J. 63; 27 T. L. R. 76.

France v. **Clark,** 53 L. J. Ch. 585; 26 Ch. D. 257; 50 L. T. 1: distinguished in *Fry* v. *Smellie*, 81 L. J. K.B. 1003; [1912] 3 K.B. 282; 106 L. T. 404.

Fraser v. **Murdoch,** 6 App. Cas. 855; 45 L. T. 417; 30 W. R. 162: applied in *Matthews* v. *Ruggles-Brise*, 80 L. J. Ch. 42; [1911] 1 Ch. 194; 103 L. T. 491.

Fraser v. **Riddell & Co.,** [1914] W.C. & I. Rep. 125; 1913, S. L. T. 377: followed in *Williams* v. *Llandudno Coaching and Carriage Co.*, 84 L. J. K.B. 655; [1915] 2 K.B. 101; [1915] W.C. & I. Rep. 91; 112 L. T. 848; 59 S. J. 286; 31 T. L. R. 186.

Fraser (*or* **Robinson**) v. **Murdoch,** 6 App. Cas. 855; 45 L. T. 417; 30 W. R. 162: distinguished in *Craven, In re; Watson* v. *Craven*, 83 L. J. Ch. 403; [1914] 1 Ch. 358; 109 L. T. 846; 58 S. J. 138.

Frederick v. **Bognor Water Co.,** 78 L. J. Ch. 40; [1909] 1 Ch. 149; 99 L. T. 728; 72 J. P. 501; 7 L. G. R. 45; 25 T. L. R. 31: distinguished in *Oddenino* v. *Metropolitan Water Board*, 84 L. J. Ch. 102; [1914] 2 Ch. 734; 112 L. T. 115; 79 J. P. 89; 13 L. G. R. 33; 59 S. J. 129; 31 T. L. R. 23.

Freeman v. **Pope,** 39 L. J. Ch. 689; L. R. 5 Ch. 538; 21 L. T. 816; 18 W. R. 906: followed in *Carruthers* v. *Peake*, 55 S. J. 291.

Freer v. **Murray,** 63 L. J. M.C. 242; [1894] A.C. 576; 71 L. T. 444; 58 J. P. 508: discussed in *Wernham* v. *Regem*, 83 L. J. K.B. 395; [1914] 1 K.B. 468; 110 L. T. 111; 78 J. P. 74.

Frend v. **Dennett,** 27 L. J. C.P. 314; 4 C. B. (N.S.) 576; 5 L. T. 63: followed in *Hoare* v. *Kingsbury Urban Council*, 81 L. J. Ch. 666; [1912] 2 Ch. 452; 107 L. T. 492; 76 J. P. 401; 10 L. G. R. 829; 56 S. J. 704.

Freston, In re, 52 L. J. Q.B. 545; 11 Q.B. D. 545; 49 L. T. 290: considered in *Seldon* v. *Wilde*, 80 L. J. K.B. 282; [1911] 1 K.B. 701; 104 L. T. 194.

Friends, The, Edw. Adm. 346: considered in *The Iolo*, 59 S. J. 545; 31 T. L. R. 474.

Frith v. **"Louisianian" (Owners),** 81 L. J. K.B. 701; [1912] 2 K.B. 155; [1912] W.C. Rep. 285; 106 L. T. 667; 28 T. L. R. 331: followed in *Nash* v. "*Rangatira*" (*Owners*), 83 L. J. K.B. 1496; [1914] 3 K.B. 978; 111 L. T. 704; 58 S. J. 705: distinguished in *Williams* v. *Llandudno Coaching and Carriage Co.*, 84 L. J. K.B. 655; [1915] 2 K.B. 101; [1915] W.C. & I. Rep. 91; 112 L. T. 848; 59 S. J. 286; 31 T. L. R. 186.

Frost, In re, 59 L. J. Ch. 118; 43 Ch. D. 246; 62 L. T. 25; 38 W. R. 264: followed in *Park's Settlement, In re; Foran* v. *Bruce*, 83 L. J. Ch. 528; [1914] 1 Ch. 595; 110 L. T. 813; 58 S. J. 362: applied in *Bullock's Will Trusts, In re*, 84 L. J. Ch. 463; [1915] 1 Ch. 493; 112 L. T. 1119; 59 S. J. 441.

Fulham Parish v. **Woolwich Union,** 76 L. J. K.B. 739; [1907] A.C. 255; 97 L. T. 117; 71 J. P. 361; 5 L. G. R. 801; 23 T. L. R. 583: applied in *Tewkesbury Union* v. *Upton-on-Severn Union*, 77 J. P. 9; 10 L. G. R. 1019: followed in *Kingston-upon-Hull Incorporation* v. *Hackney Union*, 80 L. J. K.B. 489; [1911] 1 K.B. 748; 104 L. T. 300; 75 S. J. 249; 9 L. G. R. 416; 55 S. J. 289.

Fulham Union v. **Woolwich Union,** 75 L. J. K.B. 675; 76 L. J. K.B. 739; [1906] 2 K.B. 240; [1907] A.C. 255: considered and explained in *Braintree Union* v. *Rochford Union*, 81 L. J. K.B. 251; 106 L. T. 569; 76 J. P. 41; 10 L. G. R. 40; 28 T. L. R. 60.

Furnivall v. **Coombes,** 12 L. J. C.P. 265; 5 Man. & G. 736: followed in *Watling* v. *Lewis*, 80 L. J. Ch. 242; [1911] 1 Ch. 414; 104 L. T. 132.

G.

Galbraith v. **Grimshaw,** 79 L. J. K.B. 1011; [1910] A.C. 508; 103 L. T. 294; 17 Manson, 183; 54 S. J. 634 : applied in *Singer & Co.* v. *Fry*, 84 L. J. K.B. 2025; [1915] H. B. R. 115.

Gall v. **Loyal Glenbogie Lodge of the Oddfellows Friendly Society,** 2 Fraser, 1187: distinguished in *Collins* v. *Barrowfield United Oddfellows*, [1915] S. C. 190.

Gamble v. **Jordan,** 82 L. J. K.B. 743; [1913] 3 K.B. 149; 108 L. T. 1022; 77 J. P. 269; 11 L. G. R. 989; 29 T. L. R. 539: distinguished in *Guildford Corporation* v. *Brown*, 84 L. J. K.B. 289; [1915] 1 K.B. 256; 112 L. T. 415; 79 J. P. 143; 31 T. L. R. 92.

Game, In re; Game v. **Young,** 66 L. J. Ch. 505; [1897] 1 Ch. 881; 76 L. T. 450; 46 W. R. 472 : followed in *Wareham, In re*, 81 L. J. Ch. 578; [1912] 2 Ch. 312; 107 L. T. 80; 56 S. J. 613.

Games v. **Bonnor,** 54 L. J. Ch. 517; 33 L. T. 64 : applied in *Atkinson's and Horsell's Contract, In re*, 81 L. J. Ch. 588; [1912] 2 Ch. 1; 106 L. T. 548; 56 S. J. 324.

Gandy Belt Manufacturing Co. v. **Fleming, Birkby and Goodall,** 18 R. P. C. 276: followed in *J. T. Smith and J. E. Jones, Lim.* v. *Service, Reeve & Co.*, 83 L. J. Ch. 876; [1914] 2 Ch. 576.

Gange v. **Lockwood,** 2 F. & F. 115: followed in *Rose* v. *Hyman*, 80 L. J. K.B. 1011; [1911] 2 K.B. 234; 104 L. T. 619; 55 S. J. 405; 27 T. L. R. 367.

Gardner v. **Ingram,** 61 L. T. 729: followed in *Lancashire and Yorkshire Bank's Lease, In re*, 83 L. J. Ch. 577; [1914] 1 Ch. 522; 110 L. T. 571.

Garrard v. **Lauderdale (Lord),** 2 Russ. & M. 451 : applied in *Ellis & Co.* v. *Cross*, 84 L. J. K.B. 1622; [1915] 2 K.B. 654.

Garritt v. **Sharp,** 4 H. & M. 834; 3 Ad. & E. 325; 1 H. & W. 224 : distinguished in *Bailey* v. *Holborn and Frascati, Lim.*, 83 L. J. Ch. 515; [1914] 1 Ch. 598; 110 L. T. 574; 58 S. J. 321.

Garton v. **Great Western Railway,** 28 L. J. Q.B. 103; 1 E. & E. 258 : followed in *Harrison* v. *Bull*, 81 L. J. K.B. 656; [1912] 1 K.B. 612; 106 L. T. 396; 56 S. J. 292; 28 T. L. R. 223.

Gatenby v. **Morgan,** 15 L. J. Q.B. 597; 1 Q.B. D. 685 : applied in *Jones, In re*, 84 L. J. Ch. 222; [1915] 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Gedney, In re; Smith v. **Grummitt,** 77 L. J. Ch. 428; [1908] 1 Ch. 804; 98 L. T. 797; 15 Manson, 97 : commented on in *Thorne & Son, Lim., In re*, 84 L. J. Ch. 161; [1914] 2 Ch. 438; 112 L. T. 30; [1915] H. B. R. 19; 58 S. J. 755.

Geen v. **Newington Vestry,** 67 L. J. Q.B. 557; [1898] 2 Q.B. 1; 46 W. R. 624; 62 J. P. 564 : principle of, applied in *House Property and Investment Co.* v. *Grice*, 9 L. G. R. 758; 75 J. P. 395.

General Accident Assurance Corporation v. **McGowan,** 77 L. J. P.C. 38; [1908] A.C. 207; 98 L. T. 734; 24 T. L. R. 533 : discussed and explained in *Sun Insurance Office* v. *Clark*, 81 L. J. K.B. 488; [1912] A.C. 443; 106 L. T. 438; 56 S. J. 378; 28 T. L. R. 303.

General Billposting Co. v. **Atkinson,** 78 L. J. Ch. 77; [1909] A.C. 118; 99 L. T. 943; 25 T. L. R. 178 : discussed in *Konski* v. *Peet*, 84 L. J. Ch. 513; [1915] 1 Ch. 530; 112 L. T. 1107; 59 S. J. 383.

General Exchange Bank, In re, L. R. 4 Eq. 138 : principle enunciated by Lord Romilly, M.R., in, applied in *Beer, In re; Brewer* v. *Bowman*, 59 S. J. 510.

General Furnishing and Upholstery Co. v. **Venn,** 32 L. J. Ex. 220; 2 H. & C. 153: followed in *Allix, In re*, 83 L. J. K.B. 665; [1914] 2 K.B. 77; 110 L. T. 592; 21 Manson, 1; 58 S. J. 250.

General Motor Cab Co., In re, 56 S. J. 573: explained in *Consolidated Goldfields of South Africa* v. *Simmer and Jack East, Lim.*, 82 L. J. Ch. 214; 108 L. T. 488; 20 Manson, 142; 57 S. J. 358.

General Motor Cab Co., In re, 81 L. J. Ch. 505; [1913] 1 Ch. 377; 106 L. T. 709; 19 Manson, 272; 28 T. L. R. 352 : distinguished in *Sandwell Park Collieries Co., In re*, 83 L. J. Ch. 549; [1914] 1 Ch. 589; 110 L. T. 766; 58 S. J. 432.

General Rolling Stock Co., In re; Joint Stock Discount Co.'s Claim, ex parte, 41 L. J. Ch. 732; L. R. 7 Ch. 646; 27 L. T. 88; 20 W. R. 762 : applied *Fleetwood and District Electric Light and Power Syndicate, In re*, 84 L. J. Ch. 374; [1915] 1 Ch. 486; 112 L. T. 1127; [1915] H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221.

George v. **Skivington,** L. R. 5 Ex. 1 : discussed in *Blacker* v. *Lake & Elliot*, 106 L. T. 533.

Gerard's Settled Estate, 63 L. J. Ch. 23; [1893] 3 Ch. 252; 69 L. T. 393 : distinguished in *De Crespigny's Settled Estates, In re*, 83 L. J. Ch. 46; [1914] 1 Ch. 227; 110 L. T. 236; 58 S. J. 252.

German v. **Chapman,** 47 L. J. Ch. 250; 7 Ch. D. 271; 37 L. T. 685; 26 W. R. 149: observations of James, L.J., in, applied in *Sobey* v. *Sainsbury*, 83 L. J. Ch. 103; [1913] 2 Ch. 513; 109 L. T. 393; 57 S. J. 836.

Gibbon v. **Paddington Vestry,** 69 L. J. Ch. 746; [1900] 2 Ch. 794; 83 L. T. 136; 49 W. R. 8; 64 J. P. 727: followed in *Davies* v. *London Corporation*, 82 L. J. Ch. 286; [1913] 1 Ch. 415; 108 L. T. 546; 77 J. P. 294; 11 L. G. R. 595; 57 S. J. 341; 29 T. L. R. 315; and in *Beyfus* v. *Westminster Corporation*, 84 L. J. Ch. 838; 112 L. T. 119; 79 J. P. 111; 13 L. G. R. 40; 59 S. J. 129.

Gibbs v. **Guild,** 51 L. J. Q.B. 313; 9 Q.B. D. 59: considered in *Oelkers* v. *Ellis*, 83 L. J. K.B. 658; [1914] 2 K.B. 139; 110 L. T. 332.

Gibbs v. **Rumsey,** 2 V. & B. 294: not followed in *Howell, In re; Buckingham, In re; Liggins* v. *Buckingham*, 83 L. J. Ch. 811; [1914] 2 Ch. 173; 111 L. T. 438.

Gibson, In re, L. R. 2 Eq. 669: applied in *Clifford, In re; Mallam* v. *McFie*, 81 L. J. Ch. 220; [1912] 1 Ch. 29; 106 L. T. 14; 56 S. J. 91; 28 T. L. R. 57.

Gibson v. **Barton,** 44 L. J. M.C. 81; L. R. 10 Q.B. 329; 32 L. T. 396; 23 W. R. 858: followed in *Park* v. *Lawton*, 80 L. J. K.B. 396; [1911] 1 K.B. 588; 104 L. T. 184; 75 J. P. 163; 18 Manson, 151; 27 T. L. R. 192.

Gibson v. **Fisher,** 37 L. J. Ch. 67; L. R. 5 Eq. 51; 16 W. R. 115: not followed in *Dering, In re*, 105 L. T. 404.

Gibson v. **Wishart,** 83 L. J. P.C. 321; [1914] W. N. 232; 58 S. J. 592; 30 T. L. R. 540: followed in *Bagley* v. *Furness, Withy & Co.*, 83 L. J. K.B. 1546; [1914] 3 K.B. 974.

Giebler v. **Manning,** 75 L. J. K.B. 463; [1906] 1 K.B. 709; 94 L. T. 580; 54 W. R. 527; 70 J. P. 181; 4 L. G. R. 561; 22 T. L. R. 416: judgment of Lord Alverstone, C.J., in, explained in *Kates* v. *Jeffery*, 83 L. J. K.B. 1760; [1914] 3 K.B. 160; 111 L. T. 459; 24 Cox C.C. 324; 12 L. G. R. 974; 78 J. P. 310.

Gilbey v. **Great Western Railway,** 102 L. T. 202: applied in *Amys* v. *Barton*, 81 L. J. K.B. 65; 105 L. T. 619; 28 T. L. R. 29.

Giles, In re, 65 L. J. Ch. 419; [1896] 1 Ch. 956; 74 L. T. 21; 44 W. R. 283: not followed in *Beavan, In re*, [1913] 2 Ch. 595; 109 L. T. 538.

Gillins, In re, 78 L. J. Ch. 244; [1909] 1 Ch. 345; 100 L. T. 226; 16 Manson, 74: distinguished in *Clifford, In re; Mallam* v. *McFie*, 81 L. J. Ch. 220; [1912] 1 Ch. 29; 106 L. T. 14; 56 S. J. 91; 28 T. L. R. 57.

Ginger, In re, 66 L. J. Q.B. 777; [1897] 2 Q.B. 461; 76 L. T. 808; 46 W. R. 144; 4 Manson, 149: distinguished in *Harvey, In re*, [1912] 2 Ir. R. 170: approved and followed in *Hollinshead* v. *Egan, Lim.*, 83 L. J. P.C. 74; [1913] A.C. 564; 109 L. T. 681; 20 Manson, 323; 57 S. J. 661; 29 T. L. R. 640.

Girdlestone v. **Brighton Aquarium,** 48 L. J. Ex. 373; 3 Ex. D. 137: followed in *Forbes* v. *Samuel*, 82 L. J. K.B. 1135; [1913] 3 K.B. 706; 29 T. L. R. 544.

Gist, In re; Gist v. **Timbrill,** 75 L. J. Ch. 657; [1906] 2 Ch. 280; 95 L. T. 41; 22 T. L. R. 637: followed in *White, In re*, 111 L. T. 274; 58 S. J. 611.

Glasgow (Lord Provost) v. **Farie,** 58 L. J. P.C. 33; 13 App. Cas. 657; 60 L. T. 274; 37 W. R. 627: followed in *Barnard-Argue-Roth-Stearns Oil &c. Co.* v. *Farquharson*, [1912] A.C. 864; 28 T. L. R. 590.

Glasgow Corporation Water Commissioners v. **Miller,** 23 Sc. L. R. 285: followed in *Mullingar Rural Council* v. *Rowles*, [1913] 2 Ir. R. 44; 6 Tax Cas. 85.

Glendevon, The, 62 L. J. P. 123; [1893] P. 269; 70 L. T. 416: distinguished in *Mawson Shipping Co.* v. *Beyer*, 83 L. J. K.B. 290; [1914] 1 K.B. 304; 109 L. T. 973; 19 Com. Cas. 59.

Glenie v. **Tucker,** 77 L. J. K.B. 193; [1908] 1 K.B. 263; 98 L. T. 515; 24 T. L. R. 177: distinguished in *Shaw* v. *Holland*, 82 L. J. K.B. 592; [1913] 2 K.B. 15; 108 L. T. 543; 18 Com. Cas. 153; 29 T. L. R. 341.

Glenwood Lumber Co. v. **Phillips,** 73 L. J. P.C. 62; [1904] A.C. 405; 90 L. T. 741; 20 T. L. R. 531: approved in *McPherson* v. *Temiskaming Lumber Co.*, 82 L. J. P.C. 113; [1913] A.C. 145; 107 L. T. 664; 29 T. L. R. 80.

Glossop v. **Heston and Isleworth Local Board,** 49 L. J. Ch. 89; 12 Ch. D. 102; 40 L. T. 736; 28 W. R. 111: discussed and distinguished in *Jones* v. *Llanrwst Urban Council*, 80 L. J. Ch. 145; [1911] 1 Ch. 393; 103 L. T. 751; 75 J. P. 68; 9 L. G. R. 222; 55 S. J. 125; 27 T. L. R. 133: observations of James, L.J., in, held inapplicable in *Dawson* v. *Bingley Urban Council*, 80 L. J. K.B. 842; [1911] 2 K.B. 149; 104 L. T. 659; 75 J. P. 289; 9 L. G. R. 502; 55 S. J. 346; 27 T. L. R. 308.

Goddard v. **O'Brien,** 9 Q.B. D. 37: questioned by Fletcher Moulton, L.J., in *Hirachand Punamchand* v. *Temple*, 80 L. J. K.B. 1155; [1911] 2 K.B. 330; 55 S. J. 519; 27 T. L. R. 430.

Godwin v. **Lords Commissioners of the Admiralty,** 81 L. J. K.B. 532; [1912] 2 K.B. 26; 106 L. T. 136; 56 S. J. 307; 28 T. L. R. 229; [1912] W.C. Rep. 49: observations of Fletcher Moulton, L.J., in, distinguished in *Howarth* v. *Knowles*, 82 L. J. K.B. 1325; [1913] 3 K.B. 675; 57 S. J. 728; 29 T. L. R. 667.

Goldstein v. **Sanders,** 84 L. J. Ch. 386; [1915] 1 Ch. 549; 112 L. T. 932: applied in *Stephenson & Co., In re; Poole* v. *The Company (No. 2)*, 84 L. J. Ch. 563; [1915] 1 Ch. 802; 59 S. J. 429; 31 T. L. R. 331.

Goodall's Settlement, In re, 78 L. J. Ch. 241; [1909] 1 Ch. 440; 110 L. T. 223: distinguished in *Johnson, In re*, 84 L. J. Ch. 393; [1915] 1 Ch. 435; 112 L. T. 935; 59 S. J. 333.

Goodlad v. **Burnett,** 1 K. & J. 341: applied in *Clifford, In re; Mallam* v. *McFie*, 81 L. J. Ch. 220; [1912] 1 Ch. 29; 106 L. T. 14; 56 S. J. 91; 28 T. L. R. 57.

Gordon v. **St. Mary Abbotts, Kensington (Vestry),** 63 L. J. M.C. 193; [1894] 2 Q.B. 742; 71 L. T. 196; 58 J. P. 463: followed in *Davies* v. *London Corporation*, 82 L. J. Ch. 286; [1913] 1 Ch. 415; 108 L. T. 546; 77 J. P. 294; 11 L. G. R. 595; 57 S. J. 341; 29 T. L. R. 315.

Gorely, Ex parte, 34 L. J. Bk. 1; 4 De G. J. & S. 477; 10 Jur. (N.S.) 1085; 11 L. T. 319; 13 W. R. 60: followed in *Sinnott* v. *Bowden*, 81 L. J. Ch. 832; [1912] 2 Ch. 414; 107 L. T. 609; [1913] W.C. & I. Rep. 464; 28 T. L. R. 594.

Gorringe v. **Mahlstedt,** 76 L. J. Ch. 527; [1907] A.C. 225; 97 L. T. 111: distinguished in *Williams, In re; Metcalf* v. *Williams*, 83 L. J. Ch. 570; [1914] 2 Ch. 61; 110 L. T. 923; 58 S. J. 470.

Goslan v. **Gillies,** [1907] S. C. 68: distinguished in *Carlton* v. *Sinclair*, [1914] S. C. 871.

Goss v. **Nugent,** 5 B. & Ad. 58: distinguished in *Morrell* v. *Studd and Millington*, [1913] 2 Ch. 648; 109 L. T. 628.

Gourlay Bros. & Co. v. **Sweeney,** 8 Fraser, 965: discussed in *Summerlee Iron Co.* v. *Freeland*, 82 L. J. P.C. 102; [1913] A.C. 221; [1913] W.C. & I. Rep. 302; 108 L. T. 465; 57 S. J. 281; 29 T. L. R. 277.

Gouthwaite v. **Duckworth,** 12 East, 421: followed and applied in *Karmali Abdulla Allarakhia* v. *Vora Karimji Jiwanji*, L. R. 42 Ind. App. 48.

Goy & Co., In re, 69 L. J. Ch. 481; [1900] 2 Ch. 149; 83 L. T. 309; 48 W. R. 425: distinguished in *Peruvian Railway Construction Co.*, [1915] 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464.

Graff v. **Evans,** 51 L. J. M.C. 25; 8 Q.B. D. 373; 46 L. T. 347; 30 W. R. 280; 46 J. P. 262: followed and applied in *Metford* v. *Edwards*, 84 L. J. K.B. 161; [1915] 1 K.B 172; 112 L. T. 78; 79 J. P. 84; 30 T. L. R. 700.

Graham v. **Belfast and Northern Counties** Railway, [1901] 2 Ir. R. 13: *dicta* in, doubted in *Bastable* v. *North British Railway*, [1912] S. C. 555.

Graham v. **Works and Public Buildings Commissioners,** 70 L. J. K.B. 860; [1901] 2 K.B. 781; 85 L. T. 96; 50 W. R. 122; 65 J. P. 677: applied in *Roper* v. *Works and Public Buildings Commissioners*, 84 L. J. K.B. 219; [1915] 1 K.B. 45; 111 L. T. 630.

Gramophone Co.'s Application, In re, 79 L. J. Ch. 658; [1910] 2 Ch. 423; 103 L. T. 107; 27 R. P. C. 689; 26 T. L. R. 597: distinguished in *Carl Lindstroem Aktiengesellschaft's Application, In re*, 83 L. J. Ch. 846; [1914] 2 Ch. 103; 31 R. P. C. 261; 58 S. J. 580; 30 T. L. R. 512.

Grand Junction Canal v. **Petty,** 57 L. J. Q.B. 572; 21 Q.B. D. 273; 59 L. T. 767; 36 W. R. 795; 52 J. P. 692: followed in *Arnold* v. *Morgan*, 80 L. J. K.B. 955; [1911] 1 K.B. 314; 103 L. T. 763; 75 J. P. 105; 9 L. G. R. 917.

Grant v. **Anderson,** 61 L. J. Q.B. 107; [1892] 1 Q.B. 108; 66 L. T. 79: followed in *Okura* v. *Forsbacka Jernverks Aktiebolag*, 83 L. J. K.B. 561; [1914] 1 K.B. 715; 110 L. T. 464; 58 S. J. 232; 30 T. L. R. 242.

Gray, In re, 65 L. J. Ch. 462; [1896] 1 Ch. 620; 74 L. T. 275; 44 W. R. 406; 60 J. P. 314: followed in *Dowling, In re*, 108 L. T. 671.

Graysbrook v. **Fox,** 1 Plowd. 275: overruled in *Hewson* v. *Shelley*, 83 L. J. Ch. 607; [1914] 2 Ch. 13; 110 L. T. 785; 58 S. J. 397; 30 T. L. R. 402.

Great Central Railway v. **Banbury Assessment Committee,** 78 L. J. K.B. 225; [1909] A.C. 78; 100 L. T. 89; 7 L. G. R. 227; 73 J. P. 59; 53 S. J. 177; 25 T. L. R. 143:

explained in *Great Western and Metropolitan Railways* v. *Hammersmith Assessment Committee*, 110 L. T. 96; 78 J. P. 59; 12 L. G. R. 46: explained in *East London Railway Joint Committee* v. *Greenwich Assessment Committee*, 82 L. J. K.B. 297; [1913] 1 K.B. 612; 107 L. T. 805; 77 J. P. 153; 11 L. G. R. 265; 29 T. L. R. 171.

Great Northern Salt and Chemical Works, In re, 59 L. J. 288; 44 Ch. D. 472; 62 L. T. 231; 2 Megone, 46: distinguished in *Consolidated Nickel Mines, In re*, 83 L. J. Ch. 760; [1914] 1 Ch. 883; 58 S. J. 556; 30 T. L. R. 447.

Great Western (Forest of Dean) Coal Consumers Co., In re, 51 L. J. Ch. 743; 21 Ch. D. 769; 46 L. T. 875: applied in *Clandown Colliery Co., In re*, 84 L. J. Ch. 420; [1915] 1 Ch. 369; 112 L. T. 1060; [1915] H. B. R. 93; 59 S. J. 350.

Great Western Railway v. **Bennett,** 36 L. J. Q.B. 133; L. R. 2 H.L. 27; 16 L. T. 186; 15 W. R. 647: explained in *London and North-Western Railway* v. *Howley Park Coal Co.*, 80 L. J. Ch. 537; [1911] 2 Ch. 97; 104 L. T. 546; 55 S. J. 459; 27 T. L. R. 389.

Great Western (*or* Great Northern) Railway v. **Rimell,** 27 L. J. C.P. 201; 18 C. B. 575: considered in *Groves* v. *Cheltenham and East Gloucestershire Building Society*, 82 L. J. K.B. 664; [1913] 2 K.B. 100; 108 L. T. 846.

Greaves v. **Tofield,** 50 L. J. Ch. 118; 14 Ch. D. 563; 43 L. T. 100: distinguished in *Monolithic Building Co., In re; Tacon* v. *The Company*, 84 L. J. Ch. 441; [1915] 1 Ch. 643; 112 L. T. 619; 59 S. J. 332.

Green, In re; Green v. **Meinall,** 80 L. J. Ch. 623; [1911] 2 Ch. 275; 105 L. T. 360; 55 S. J. 552; 27 T. L. R. 490; distinguished in *Mudge, In re*, 82 L. J. Ch. 381; [1913] 2 Ch. 92; 108 L. T. 950; 57 S. J. 578.

Green v. **Rheinberg,** 104 L. T. 149: followed in *Ashburton (Lord)* v. *Nocton*, 83 L. J. Ch. 831; [1914] 2 Ch. 211; 58 S. J. 635; 30 T. L. R. 565.

Greenhalgh v. **Brindley,** 70 L. J. Ch. 740; [1901] 2 Ch. 324; 84 L. T. 763; 49 W. R. 597: approved in *Smith* v. *Colbourne*, 84 L. J. Ch. 112; [1914] 2 Ch. 533; 111 L. T. 927; 58 S. J. 783.

Greenwell v. **Low Beechburn Colliery Co.,** 66 L. J. Q.B. 643; [1897] 2 Q.B. 165; 76 L. T. 759: distinguished in *Att.-Gen.* v. *Roe*, 84 L. J. Ch. 322; [1915] 1 Ch. 235; 112 L. T. 581; 79 J. P. 263; 13 L. G. R. 335.

Greenwood v. **Wadsworth,** 43 L. J. Ch. 788; L. R. 16 Eq. 288; 29 L. T. 88: not followed in *Clegg* v. *Metcalfe*, 83 L. J. Ch. 743; [1914] 1 Ch. 808; 111 L. T. 124; 78 J. P. 251; 12 L. G. R. 606; 58 S. J. 516; 30 T. L. R. 410.

Gregson, In re; Christison v. **Bolam,** 57 L. J. Ch. 221; 36 Ch. D. 223; 57 L. T. 250: commented on in *Thorne & Son, Lim., In re*, 84 L. J. Ch. 161; [1914] 2 Ch. 438; 112 L. T. 30; [1915] H. B. R. 19; 58 S. J. 755.

Gresley, In re; Willoughby v. **Drummond,** 80 L. J. Ch. 255; [1911] 1 Ch. 358; 104 L. T. 244: distinguished in *Greenwood, In re*, 81 L. J. Ch. 298; [1912] 1 Ch. 392; 106 L. T. 424; 56 S. J. 443: not followed in *Clunie-Ross, In re*, 106 L. T. 96; 56 S. J. 252.

Greswolde-Williams v. **Barneby,** 83 L. T. 708: considered and applied in *Millbourn* v. *Lyons*, 83 L. J. Ch. 737; [1914] 2 Ch. 231; 111 L. T. 388.

Grey v. **Friar,** 4 H.L. C. 565: considered in *Strait* v. *Fenner*, 81 L. J. Ch. 710; [1912] 2 Ch. 504.

Grey v. **Grey,** 2 Swanst. 594: followed in *Commissioner of Stamp Duties* v. *Byrnes*, 80 L. J. P.C. 114; [1911] A.C. 386; 104 L. T. 515; 27 T. L. R. 408.

Greymouth Point Elizabeth Railway Co., In re, 73 L. J. Ch. 92; [1904] 1 Ch. 32; 11 Manson, 85: followed in *Cox* v. *Dublin City Distillery*, [1915] 1 Ir. R. 345.

Griffith-Boscawen v. **Scott,** 53 L. J. Ch. 571; 26 Ch. D. 358; 50 L. T. 386; 32 W. R. 580: followed in *Horsfall, In re*, 80 L. J. Ch. 480; [1911] 2 Ch. 63; 104 L. T. 590.

Griffith's Cycle Corporation v. **Humber,** 68 L. J. Q.B. 959; [1899] 2 Q.B. 414; 81 L. T. 310: followed in *Daniels* v. *Trefusis*, 83 L. J. Ch. 579; [1914] 1 Ch. 788; 109 L. T. 922; 58 S. J. 271.

Griffiths, In re, 12 Ch. D. 655; 41 L. T. 540: distinguished in *Sale, In re; Nisbet* v. *Philp*, [1913] 2 Ch. 697.

Griga v. **Harelda (Owners),** 3 B.W.C.C. 116: followed in *Chapman* v. *Sage*, 113 L. T. 623.

Grimble v. **Preston,** 83 L. J. K.B. 347; [1914] 1 K.B. 270; 110 L. T. 115; 78 J. P. 72; 12 L. G. R. 382; 24 Cox C.C. 1; 30 T. L. R. 119: applied in *Haynes* v. *Davis*, 84 L. J. K.B. 441; [1915] 1 K.B. 332; 112 L. T. 417; 79 J. P. 187; 13 L. G. R. 497.

Grimond v. **Grimond,** 74 L. J. P.C. 35; [1905] A.C. 124; 92 L. T. 477; 21 T. L. R. 323: followed in *Da Costa, In re*, 81 L. J. Ch. 293; [1912] 1 Ch. 337; 106 L. T. 458; 56 S. J. 240; 28 T. L. R. 189.

Grimthorpe (Lord), In re, 78 L. J. Ch. 20; [1908] 2 Ch. 675; 99 L. T. 679; 25 T. L. R. 15: distinguished in *O'Grady's Settlement, In re*, 84 L. J. Ch. 496; [1915] 1 Ch. 613; 112 L. T. 615; 59 S. J. 332.

Grove v. **Dubois,** 1 Term Rep. 112: considered in *Gabriel* v. *Churchill & Sim*, 84 L. J. K.B. 233; [1914] 3 K.B. 1272; 111 L. T. 933; 19 Com. Cas. 411; 58 S. J. 740; 30 T. L. R. 658.

Groves v. **Wimborne (Lord),** 67 L. J. Q.B. 862; [1898] 2 Q.B. 402; 79 L. T. 284; 47 W. R. 87: distinguished in *Watkins* v. *Naval Colliery Co.*, 80 L. J. K.B. 746; [1911] 1 K.B. 163; 104 L. T. 439.

Guardian Permanent Benefit Building Society, In re; Crace-Calvert's Case, 52 L. J. Ch. 857; 23 Ch. D. 440; 48 L. T. 134; 32 W. R. 73: distinguished in *Sinclair* v. *Brougham*, 83 L. J. Ch. 465; [1914] A.C. 398; 111 L. T. 1; 58 S. J. 302; 30 T. L. R. 315.

Gutteridge v. **Munyard,** 1 Moo. & R. 334; 7 Car. & P. 129: explained and distinguished in *Lurcott* v. *Wakeley*, 80 L. J. K.B. 713; [1911] 1 K.B. 905; 104 L. T. 290; 55 S. J. 290.

Gwilliam v. **Twist,** 64 L. J. Q.B. 474; [1895] 2 Q.B. 84; 72 L. T. 579; 43 W. R. 566; 59 J. P. 484: considered and distinguished in *Ricketts* v. *Tilling*, 84 L. J. K.B. 342; [1915] 1 K.B. 644; 112 L. T. 137; 31 T. L. R. 17.

Gyles, In re, [1907] 1 Ir. R. 65: dissented from in *Walford, In re*, 81 L. J. Ch. 128; [1912] 1 Ch. 219; 105 L. T. 739.

H.

Hackney Furnishing Co. v. **Watts,** 81 L. J. K.B. 993; [1912] 3 K.B. 225; 106 L. T. 676; 28 T. L. R. 417: followed in *Jay's Furnishing Co.* v. *Brand*, 83 L. J. K.B. 505; [1914] 2 K.B. 132; 110 L. T. 108; 30 T. L. R. 244.

Hackney Union v. **Kingston-upon-Hull Incorporation for the Poor,** 81 L. J. K.B. 739; [1912] A.C. 475; 106 L. T. 909; 76 J. P. 361; 10 L. G. R. 409; 56 S. J. 535; 28 T. L. R. 418: followed and applied in *Tewkesbury Union* v. *Upton-on-Severn*, [1913] 3 K.B. 475; 109 L. T. 557; 77 J. P. 9; 10 L. G. R. 1019.

Hadley, In re; Johnson v. **Hadley,** 78 L. J. Ch. 254; [1909] 1 Ch. 20; 100 L. T. 54; 25 T. L. R. 44: followed and applied in *Pryce, In re; Lawford* v. *Pryce*, 80 L. J. Ch. 525; [1911] 2 Ch. 286; 105 L. T. 51; considered and applied in *O'Grady, In re*, 84 L. J. Ch. 496; [1915] 1 Ch. 613; 112 L. T. 615; 59 S. J. 332.

Halbronn v. **International Horse Agency,** 72 L. J. K.B. 90; [1903] 1 K.B. 270; 88 L. T. 232; 51 W. R. 622: disapproved in *Williams* v. *Lister*, 109 L. T. 699.

Haley v. **Bannister,** 4 Madd. 275, 277: *dictum* in, disapproved in *Cattell, In re*, 83 L. J. Ch. 322; [1914] 1 Ch. 177; 110 L. T 137; 58 S. J. 67.

Hall, In re, 2 Jur. (N.S.) 1076: considered in *Wells* v. *Wells*, 83 L. J. P. 81; [1914] P. 157; 111 L. T. 399; 58 S. J. 555; 30 T. L. R. 545.

Hall, In re; Hall v. **Hall,** 54 L. J. Ch. 527; 33 W. R. 508: distinguished in *Cotter, In re*, 84 L. J. Ch. 337; [1915] 1 Ch. 307; 112 L. T. 340; 59 S. J. 177.

Hall, In re; Watson v. **Hall,** 56 S. J. 615; 28 T. L. R. 480: distinguished in *Ashburnham, In re*, 107 L. T. 601; 57 S. J. 28.

Hall v. **Hill,** 1 Dr. & W. 94: considered in *Shields, In re; Corbould-Ellis* v. *Dales*, 81 L. J. Ch. 370; [1912] 1 Ch. 591; 106 L. T. 748.

Hall v. **Lund,** 32 L. J. Ex. 113; 1 H. & C. 676: distinguished in *Pwllbach Colliery Co.* v. *Woodman*, 84 L. J. K.B. 874; [1915] A.C. 634; 113 L. T. 10; 31 T. L. R. 271.

Hallett's Estate, In re; Knatchbull v. **Hallett,** 49 L. J. Ch. 415; 13 Ch. D. 696; 42 L. T. 421; 28 W. R. 732: explained in *Sinclair* v. *Brougham*, 83 L. J. Ch. 465; [1914] A.C. 398; 111 L. T. 1; 58 S. J. 302; 30 T. L. R. 315: distinguished in *Roscoe (Bolton), Lim.* v. *Winder*, 84 L. J. Ch. 286; [1915] 1 Ch. 62; 112 L. T. 120; [1915] H. B. R. 61; 59 S. J. 105.

Hamill v. **Lilley,** 56 L. J. Q.B. 337; 19 Q.B. D. 83; 56 L. T. 620; 35 W. R. 437; distinguished in *Manks* v. *Whiteley*, 82 L. J. Ch. 267; [1913] 1 Ch. 581; 108 L. T. 450.

Hamilton v. **Hamilton,** 61 L. J. Ch. 220; [1892] 1 Ch. 396; 66 L. T. 112; 40 W. R. 312: followed in *Hargrove, In re*, 84 L. J. Ch. 484; [1915] 1 Ch. 398; 112 L. T. 1062; 59 S. J. 364.

Hamilton v. **Long,** [1903] 2 Ir. R. 407; [1905] 2 Ir. R. 552: approved and followed in *Peters* v. *Jones*, 83 L. J. K.B. 1115; [1914] 2 K.B. 781; 110 L. T. 937; 30 T. L. R. 421.

Hamilton v. **Mackie,** 5 T. L. R. 677: approved and followed in *Thomas* v. *Portsea Steamship Co.*, 105 L. T. 257; 55 S. J. 615: followed in *The Portsmouth*, 81 L. J. P. 17; [1912] A.C. 1; 105 L. T. 257; 12 Asp. M.C. 23; 55 S. J. 615.

Hamilton v. **Watson,** 12 Cl. & F. 109: distinguished in *London General Omnibus Co.* v. *Holloway*, 81 L. J. K.B. 603; [1912] 2 K.B. 72; 106 L. T. 502.

Hamlyn v. **Talisker Distillery Co.,** [1894] A.C. 202; 71 L. T. 1; 58 J. P. 540: applied in *Pena Copper Mines* v. *Rio Tinto Co.*, 105 L. T. 846.

Hankow, The, 48 L. J. P. 29; 4 P. D. 197: approved in *The Umsinga*, 81 L. J. P. 65; [1912] P. 120; 106 L. T. 722; 56 S. J. 270; 28 T. L. R. 212.

Hanley v. **Niddrie and Benhar Coal Co.,** [1910] S. C. 875: considered and explained in *Popple* v. *Frodingham Iron and Steel Co.*, 81 L. J. K.B. 769; [1912] 2 K.B. 141; 106 L. T. 703.

Harberton, The, 83 L. J. P. 20; [1913] P. 149; 108 L. T. 735; 12 Asp. M.C. 342; 29 T. L. R. 490: distinguished in *The Ancona*, 84 L. J. P. 183; [1915] P. 200.

Harbridge v. **Warwick,** 18 L. J. Ex. 245; 3 Ex. 552: explained in *Mallam* v. *Rose*, 84 L. J. Ch. 934; [1915] 2 Ch. 222.

Harburg Indiarubber Comb Co. v. **Martin,** 71 L. J. K.B. 529; [1902] 1 K.B. 778; 86 L. T. 505; 50 W. R. 449: considered in *Davys* v. *Buswell*, 82 L. J. K.B. 499; [1913] 2 K.B. 47; 108 L. T. 244.

Harding v. **Brynddu Colliery Co.,** 80 L. J. K.B. 1052; [1911] 2 K.B. 747; 105 L. T. 55; 55 S. J. 599; 27 T. L. R. 500: considered in *Parker* v. *Hambrook*, 56 S. J. 750: followed in *Jackson* v. *Denton Collieries Co.*, [1914] W.C. & I. Rep. 91; 110 L. T. 559.

Hardoon v. **Belilios,** 70 L. J. P.C. 9; [1901] A.C. 118; 83 L. T. 573; 49 W. R. 209: applied in *Matthews* v. *Ruggles-Brise*, 80 L. J. Ch. 42; [1911] 1 Ch. 194; 103 L. T. 491.

Hardwicke (Earl) v. **Douglas,** 7 Cl. & F. 795: discussed in *Stoodley, In re*, 84 L. J. Ch. 822; [1915] 2 Ch. 295; 59 S. J. 681.

Hare v. **Burges,** 27 L. J. Ch. 86; 4 K. & J. 45: applied in *Wynn* v. *Conway Corporation*, 84 L. J. Ch. 203; [1914] 2 Ch. 705; 111 L. T. 1016; 78 J. P. 380; 13 L. G. R. 137; 59 S. J. 43; 30 T. L. R. 666.

Hargreaves, In re, 88 L. T. 100: considered and distinguished in *Craven, In re*; *Watson* v. *Craven*, 83 L. J. Ch. 403; [1914] 1 Ch. 358; 109 L. T. 846; 58 S. J. 138; and in *Forster-Brown, In re*, 84 L. J. Ch. 361; [1914] 2 Ch. 584; 112 L. T. 681: considered and the method of computation adopted therein applied in *Hart, In re*, 107 L. T. 757.

Harnett v. **Miles,** 48 J. P. 455: followed in *Cook* v. *Trevener*, 80 L. J. K.B. 118; [1911] 1 K.B. 9; 103 L. T. 725; 74 J. P. 469; 27 T. L. R. 8.

Harriman v. **Harriman,** 78 L. J. P. 62; [1909] P. 123; 100 L. T. 557; 73 J. P. 193; 53 S. J. 265; 25 T. L. R. 291: followed in *Stevenson* v. *Stevenson*, 80 L. J. P. 137; [1911] P. 191; 27 T. L. R. 547.

Harris, In re, 14 Manson, 127: discussed in *David & Adlard, In re*, [1914] 2 K.B. 694.

Harris v. **Beauchamp,** 63 L. J. Q.B. 480; [1894] 1 Q.B. 801; 70 L. T. 636; 42 W. R. 451: followed in *Morgan* v. *Hart*, 83 L. J. K.B. 782; [1914] 2 K.B. 183; 110 L. T. 611; 30 T. L. R. 286.

Harris v. **Harris** (*No.* 2), 29 Beav. 110: explained in *Robinson, In re*; *McLaren* v. *Public Trustee*, 80 L. J. Ch. 381; [1911] 1 Ch. 502; 104 L. T. 331; 55 S. J. 271.

Harris v. **Judge,** 61 L. J. Q.B. 577; [1892] 2 Q.B. 565; 67 L. T. 19; 41 W. R. 9: followed in *Buckley & Beach* v. *National Electric Theatres*, 82 L. J. K.B. 739; [1913] 2 K.B. 277; 108 L. T. 871.

Harris v. **Poyner,** 1 Drew. 174: approved in *Wareham, In re*, 81 L. J. Ch. 578; [1912] 2 Ch. 312; 107 L. T. 80; 56 S. J. 613.

Harrison, In re, 55 L. J. Ch. 687; 32 Ch. D. 395; 55 L. T. 150; 34 W. R. 736: principle of, applied in *Beavan, In re*, [1913] 2 Ch. 595.

Harrison v. **Wright,** 13 East, 343: followed in *Wall* v. *Rederiaktiebolaget Luggude*, 84 L. J. K.B. 1663; [1915] 3 K.B. 66; 31 T. L. R. 487.

Harse v. **Pearl Life Assurance Co.,** 73 L. J. K.B. 373; [1904] 1 K.B. 558; 90 L. T. 245; 52 W. R. 457; 20 T. L. R. 264: applied to insurances by friendly societies in *Evans* v. *Crooks*, 106 L. T. 264: discussed in *Phillips* v. *Royal London Mutual Insurance Co.*, 105 L. T. 136.

Hart, In re; Green, ex parte, 81 L. J. K.B. 1213; [1912] 3 K.B. 6; 107 L. T. 368; 19 Manson, 334; 56 S. J. 615; 28 T. L. R. 482: followed in *Shrager, In re*, 108 L. T. 346.

Hartland, In re; Banks v. **Hartland,** 80 L. J. Ch. 305; [1911] 1 Ch. 459; 104 L. T. 490; 55 S. J. 312: followed in *Briggs, In re,* 83 L. J. Ch. 874; [1914] 2 Ch. 413; 111 L. T. 939; 58 S. J. 722.

Hartshorne v. **Coppice Colliery Co.,** 106 L. T. 609: applied in *Godbold* v. *London County Council,* 111 L. T. 691.

Harvey v. **Stracey,** 22 L. J. Ch. 22; 1 Drew. 73: applied in *Witty, In re,* [1913] 2 Ch. 666; 109 L. T. 590.

Harwood v. **Wyken Colliery Co.,** 82 L. J. K.B. 414; [1913] 2 K.B. 158; 108 L. T. 282; [1913] W.C. & I. Rep. 317; 57 S. J. 300; 29 T. L. R. 290: applied in *McNally* v. *Furness, Withy & Co.,* 82 L. J. K.B. 1310; [1913] 3 K.B. 605; 109 L. T. 270; 29 T. L. R. 678.

Hasluck v. **Pedley,** 44 L. J. Ch. 143; L. R 19 Eq. 271: *dictum* of Jessel, M.R., in, followed in *Ford, In re,* 80 L. J. Ch. 355; [1911] 1 Ch. 455; 104 L. T. 245.

Hastings Peerage Claim, 8 Cl. & F. 144 not followed in *St. John Peerage Claim,* [1915] A.C. 282; 30 T. L. R. 640.

Hatschek's Patents, In re, 78 L. J. Ch. 402; [1909] 2 Ch. 68; 100 L. T. 809; 26 R. P. C. 228; 25 T. L. R. 457: followed in *Robin Electric Lamp Co., In re* (*No.* 2), 84 L. J. Ch. 500; [1915] 1 Ch. 780; 113 L. T. 132; 32 R. P. C. 202; 31 T. L. R. 309.

Hawksley v. **Outram,** 62 L. J. Ch. 215; [1892] 3 Ch. 359; 67 L. T. 804: applied in *Morrell* v. *Studd & Millington,* [1913] 2 Ch. 648.

Hawley, In re; Ridgway, ex parte, 4 Manson, 41: distinguished in *Jones Brothers, In re; Associated Newspapers, ex parte,* 81 L. J. K.B. 1178; [1912] 3 K.B. 234; 56 S. J. 751.

Haworth v. **Knowles,** 19 T. L. R. 658: distinguished in *Allen* v. *Great Eastern Railway,* 83 L. J. K.B. 898; [1914] 2 K.B. 243; 110 L. T. 498.

Hawthorn v. **Shedden,** 25 L. J. Ch. 833; 2 Sm. & G. 293: followed and applied in *Seabrook, In re; Gray* v. *Baddeley,* 80 L. J. Ch. 61; [1911] 1 Ch. 151; 103 L. T. 587.

Hayes, In re, [1899] 1 Ir. R. 206: overruled in *Harvey, In re,* [1912] 2 Ir. R. 170.

Haylock v. **Spark,** 22 L. J. M.C. 67; 1 E. & B. 471; 17 Jur. 731; 20 L. T. (o.s.) 276: followed in *Lansbury* v. *Riley,* 109 L. T. 546; 29 T. L. R. 733.

Haynes v. **Foster,** 70 L. J. Ch. 302; [1901] 1 Ch. 361; 84 L. T. 139: distinguished in *Hargrove, In re,* 84 L. J. Ch. 302; [1915] 1 Ch. 398; 112 L. T. 1062; 59 S. J. 364; and in *Tongue, In re; Burton, In re,* 84 L. J. Ch. 378; [1915] 1 Ch. 390; 112 L. T. 685.

Hayward v. **West Leigh Colliery,** 84 L. J. K.B. 661; [1915] A.C. 540; [1915] W.C. & I. Rep. 223; 112 L. T. 1001; 59 S. J. 269; 31 T. L. R. 215: discussed and explained in *Miller* v. *Richardson,* 84 L. J. K.B. 1366; [1915] 3 K.B. 76; 113 L. T. 609; [1915] W.C. & I. Rep. 381.

Haywood v. **Brunswick Permanent Benefit Building Society,** 51 L. J. Q.B. 73; 8 Q.B. D. 403; 45 L. T. 699; 30 W. R. 299: followed and applied in *Smith* v. *Colbourne,* [1914] 2 Ch. 533; 58 S. J. 783.

Hazeldine's Trusts, In re, 77 L. J. Ch. 97; [1908] 1 Ch. 34; 97 L. T. 818: followed in *Fox, In re; Brookes* v. *Marston,* 82 L. J. Ch. 393; [1913] 2 Ch. 75; 108 L. T. 948.

Healey v. **Galloway,** 41 Ir. L. T. 5: considered in *Luckie* v. *Merry,* 84 L. J. K.B. 1388; [1915] 3 K.B. 83; [1915] W.C. & I. Rep. 395; 113 L. T. 667; 59 S. J. 544; 31 T. L. R. 466.

Heard v. **Pickthorne,** 82 L. J. K.B. 1264; [1913] 3 K.B. 299; [1913] W.C. & I. Rep. 685; 108 L. T. 818; 11 L. G. R. 621; 57 S. J. 532; 29 T. L. R. 497: distinguished in *Bailey* v. *Co-operative Wholesale Society,* 83 L. J. K.B. 948; [1914] 2 K.B. 233; 110 L. T. 816; 78 J. P. 285; 12 L. G. R. 545; 58 S. J. 304; 30 T. L. R. 299.

Hearle v. **Greenbank,** 3 Atk. 695, 715: applied in *De Virte, In re,* 84 L. J. Ch. 617; [1915] 1 Ch. 920; 112 L. T. 972.

Hearle v. **Hicks,** 1 Cl. & F. 20: followed in *Stoodley, In re,* 84 L. J. Ch. 822; [1915] 2 Ch. 295; 59 S. J. 681.

Heasman v. **Pearse,** L. R. 7 Ch. 275: statement of the law by James, L.J., in, applied and supplemented in *Haygarth, In re; Wickham* v. *Holmes,* 81 L. J. Ch. 255; [1912] 1 Ch. 510; 106 L. T. 93; 56 S. J. 239.

Heather v. **Webb,** 46 L. J. C.P. 89; 2 C.P. D. 1; 25 W. R. 253: distinguished in *Bonacina, In re,* 81 L. J. Ch. 674; [1912] 2 Ch. 394; 107 L. T. 498; 56 S. J. 667; 28 T. L. R. 508.

Heaver v. **Fulham Borough Council,** 72 L. J. K.B. 715; [1904] 2 K.B. 383; 91 L. T. 31; 68 J. P. 278; 2 L. G. R. 672; 20 T. L. R. 383: *dicta* in, referred to in *Kershaw* v. *Paine,* 78 J. P. 149; 12 L. G. R. 297.

Hebert v. **Royal Society of Medicine,** 56 S. J. 107: explained and distinguished in *Seal* v. *Turner,* 84 L. J. K.B. 1658; [1915] 3 K.B. 194; 113 L. T. 769; 59 S. J. 649.

Helby v. **Matthews,** 64 L. J. Q.B. 465; [1895] A.C. 471; 72 L. T. 841; 43 W. R. 561; 60 J. P. 20: considered in *Belsize Motor Supply Co.* v. *Cox,* 83 L. J. K.B. 261; [1914] 1 K.B. 244; 110 L. T. 151.

Hepworth v. **Heslop,** 6 Hare 561: discussed in *Jones, In re; Peak* v. *Jones*, 83 L. J. Ch. 568; [1914] 1 Ch. 742; 58 S. J. 579.

Herd v. **Summers,** 8 Fraser, 870: followed in *Meier* v. *Dublin Corporation*, [1912] 2 Ir. R. 129.

Heritable Reversionary Co. v. **Millar,** [1892] A.C. 598: distinguished in *Bank of Scotland* v. *Macleod*, 83 L. J. P.C. 250; [1914] A.C. 311; 110 L. T. 946.

Herne Bay Urban Council v. **Payne,** 76 L. J. K.B. 685; [1907] 2 K.B. 130; 96 L. T. 666; 5 L. G. R. 631; 71 J. P. 282; 23 T. L. R. 442: explained in *Alderson* v. *Bishop Auckland Urban Council*, 82 L. J. K.B. 737; [1913] 2 K.B. 324; 76 J. P. 347; 10 L. G. R. 722.

Herring v. **Metropolitan Board of Works,** 19 C. B. (N.S.) 510: distinguished in *Lingke* v. *Christchurch Corporation*, [1912] 3 K.B. 595; 107 L. T. 476; 56 S. J. 735; 28 T. L. R. 536.

Hertfordshire County Council v. **Great Eastern Railway,** 78 L. J. K.B. 1076; [1909] 2 K.B. 403; 101 L. T. 213; 73 J. P. 353; 7 L. G. R. 1006; 53 S. J. 575; 25 T. L. R. 573: distinguished in *Sharpness New Docks and Gloucester and Birmingham Navigation Co.* v. *Att.-Gen.*, 84 L. J. K.B. 907; [1915] A.C. 654; 112 L. T. 826; 79 J. P. 305; 13 L. G. R. 563; 59 S. J. 381; 31 T. L. R. 254.

Hesse v. **Albert,** 3 Man. & Ry. 406: followed in *Crouch* v. *Crouch*, 81 L. J. K.B. 275; [1912] 1 K.B. 378; 106 L. T. 77; 56 S. J. 188; 28 T. L. R. 155.

Hewitt v. **Price,** 11 L. J. C.P. 292; 4 Man. & G. 355: followed in *Hill, In re; Fettes* v. *Hill*, 58 S. J. 399.

Hext v. **Gill,** L. R. 7 Ch. 699: followed in *Thornhill* v. *Weeks (No. 1)*, 82 L. J. Ch. 299; [1913] 1 Ch. 438; 108 L. T. 892; 77 J. P. 231; 11 L. G. R. 362; 57 S. J. 477.

Heywood v. **Heywood,** 29 Beav. 9: distinguished in *Jones, In re*, 84 L. J. Ch. 222; [1915] 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Hick v. **Raymond,** 62 L. J. Q.B. 98; [1893] A.C. 22; 68 L. T. 175; 41 W. R. 384; 7 Asp. M.C. 233: applied in *Sims* v. *Midland Railway*, 82 L. J. K.B. 67; [1913] 1 K.B. 103; 107 L. T. 700; 18 Com. Cas. 44; 29 T. L. R. 81.

Higginson v. **Hall,** 48 L. J. Ch. 250; 10 Ch. D 235; 39 L. T. 603; 27 W. R. 469: not followed in *Pink* v. *Sharwood*, 82 L. J. Ch. 542; [1913] 2 Ch. 286; 108 L. T. 1017; 57 S. J. 663.

High v. **Billings,** 1 L. G. R. 723: principle laid down in, followed in *House Property and Investment Co.* v. *Price*, 9 L. G. R. 758; 75 J. P. 395.

Highett and Bird's Contract, In re, 72 L. J. Ch. 220; [1903] 1 Ch. 287; 87 L. T. 697; 51 W. R. 227: distinguished in *Taunton and West of England Building Society and Roberts's Contract, In re*, 81 L. J. Ch. 690; [1912] 2 Ch. 381; 56 S. J. 688; 107 L. T. 378.

Hilcoat v. **Canterbury and York (Archbishops),** 19 L. J. C.P. 376; 10 C.B. 327: discussed and explained in *Corrie* v. *MacDermott*, 83 L. J. P.C. 370; [1914] A.C. 1056; 111 L. T. 952.

Hill, In re, 33 Ch. D. 266: applied in *Meter Cabs, In re*, [1911] 2 Ch. 557; 105 L. T. 572; 56 S. J. 36.

Hill v. **Thomas,** 62 L. J. M.C. 161; [1893] 2 Q.B. 333; 69 L. T. 553; 42 W. R. 85; 57 J. P. 628: judgment of Bowen, L.J., in, considered in *Ledbury Rural Council* v. *Somerset*, 84 L. J. K.B. 1297; 113 L. T. 71; 79 J. P. 327; 13 L. G. R. 701; 59 S. J. 476; 31 T. L. R. 295.

Hill v. **Tottenham Urban Council,** 15 T. L. R. 53: followed in *Thompson* v. *Bradford Corporation*, 84 L. J. K.B. 1440; [1915] 3 K.B. 13; 79 J. P. 364; 13 L. G. R. 884; 59 S. J. 495.

Hill v. **Wright,** 60 J. P. 312: commented on in *Godman* v. *Crofton*, 83 L. J. K.B. 1524; [1914] 3 K.B. 803; 111 L. T. 754; 79 J. P. 12; 12 L. G. R. 1330.

Hill's Trusts, In re, 50 L. J. Ch. 134; 16 Ch. D. 173: overruled in *Dawson, In re; Pattisson* v. *Bathurst*, 84 L. J. Ch. 476; [1915] 1 Ch. 626; 113 L. T. 19; 59 S. J. 363; 31 T. L. R. 277.

Hillyer v. **St. Bartholomew's Hospital Governors,** 78 L. J. K.B. 958; [1909] 2 K.B. 820; 101 L. T. 368; 73 J. P. 501; 53 S. J. 714; 25 T. L. R. 762: followed in *Foote* v. *Greenock Hospital Directors*, [1912] S. C. 69.

Hindle v. **Taylor,** 25 L. J. Ch. 78; 5 De G. M. & G. 577; 1 Jur. (N.S.) 1029: distinguished in *Beaumont, In re; Bradshaw* v. *Packer*, 82 L. J. Ch. 183; [1913] 1 Ch. 325; 108 L. T. 181; 57 S. J. 283.

Hoare, In re, 61 L. J. Ch. 541; [1892] 3 Ch. 94: and applied in *Yorkshire Insurance Co.* v. *Metropolitan Amalgamated Estates*, 81 L. J. Ch. 745; [1912] 2 Ch. 497.

Hobson v. **Blackburn,** 1 Addams Ecc. 274: followed in *Walker* v. *Gaskill*, 83 L. J. P. 152; [1914] P. 192; 111 L. T. 941; 59 S. J. 45; 30 T. L. R. 637.

Hockley v. **West London Timber and Joinery Co.,** 83 L. J. K.B. 1520; [1914] 3 K.B. 1013; [1914] W.C. & I. Rep. 504; 112 L. T. 1; 58 S. J. 705: followed in *Bobbey* v. *Crosbie*, 84 L. J. K.B. 856; [1915] W.C. & I. Rep. 258; 112 L. T. 900.

Hodge v. **Att.-Gen.,** 8 L. J. Ex. Eq. 28; 3 Y. & C. 342 : followed in *Dyson* v. *Att.-Gen.*, 80 L. J. K.B. 531; [1911] 1 K.B. 410; 103 L. T. 707; 55 S. J. 168; 27 T. L. R. 143.

Hodges, In re, [1899] 1 Ir. R. 480: *dicta* in, disapproved in *Orley, In re*, 83 L. J. Ch. 442; [1914] 1 Ch. 604; 110 L. T. 626; 58 S. J. 319; 30 T. L. R. 327.

Hodson v. **Tea Co.,** 49 L. J. Ch. 234; 14 Ch. D. 859; 28 W. R. 458 : applied in *Crompton & Co., In re*, 83 L. J. Ch. 666; [1914] 1 Ch. 954; 110 L. T. 759; 58 S. J. 433.

Holford, In re, 63 L. J. Ch. 637; [1894] 3 Ch. 30; 70 L. T. 777; 42 W. R. 563 : followed in *Williams' Settlement, In re*, 80 L. J. Ch. 249; [1911] 1 Ch. 441; 104 L. T. 310; 55 S. J. 236.

Holleran v. **Bagnell,** 6 L. R. Ir. 333 : *dicta* of Morris, C.J., in, disapproved by Lord Shaw in *Taff Vale Railway* v. *Jenkins*, 82 L. J. K.B. 49; 107 L. T. 564; 57 S. J. 27; 29 T. L. R. 19.

Hollis & Son, In re, 112 L. T. 135; 58 S. J. 784; 30 T. L. R. 680 : approved in *Clark, In re*, 84 L. J. K.B. 89; [1914] 3 K.B. 1095; 112 L. T. 873; [1915] H. B. R. 1; 59 S. J. 44.

Hollis' Hospital and Hague's Contract, In re, 68 L. J. Ch. 673; [1899] 2 Ch. 540; 81 L. T. 90; 47 W. R. 691 : followed in *Da Costa, In re*, 81 L. J. Ch. 293; [1912] 1 Ch. 337; 106 L. T. 458; 56 S. J. 240; 28 T. L. R. 189.

Home, In re; Ferniehough v. **Wilkinson,** [1908] W. N. 223 : followed in *Ashburnham, In re*, 107 L. T. 601; 57 S. J. 28.

Hope v. **Cowan,** 82 L. J. Ch. 439; [1913] 2 Ch. 312; 108 L. T. 945; 57 S. J. 559; 29 T. L. R. 520 : *dictum* in, followed in *Goldfoot* v. *Welsh*, 83 L. J. Ch. 360; [1914] 1 Ch. 213; 109 L. T. 820.

Hope v. **Croydon and Norwood Tramways,** 56 L. J. Ch. 760; 24 Ch. D. 730; 56 L. T. 822; 35 W. R. 594 : distinguished in *Cleary* v. *Brazil Railway*, 85 L. J. K.B. 32; 113 L. T. 96.

Hopkins v. **De Robeck,** 3 Term Rep. 79: considered in *Republic of Bolivia Exploration Syndicate, In re*, 83 L. J. Ch. 226; [1914] 1 Ch. 139; 109 L. T. 741; 110 L. T. 141; 58 S. J. 173; 30 T. L. R. 78.

Horn v. **Admiralty Commissioners,** 80 L. J. K.B. 278; [1911] 1 K.B. 24; 103 L. T. 614; 27 T. L. R. 84 : distinguished in *Leaf* v. *Furze*, 83 L. J. K.B. 1822; [1914] 3 K.B. 1068; [1914] W.C. & I. Rep. 601; 111 L. T. 1100 : approved in *Godwin* v. *Admiralty Commissioners*, 82 L. J. K.B. 1126; [1913] A.C. 638; 109 L. T. 428 : followed in *Howarth* v. *Knowles*, 82 L. J. K.B. 1325; [1913] 3 K.B. 675; 57 S. J. 728; 29 T. L. R. 667.

Horne, In re; Wilson v. **Cox-Sinclair,** 74 L. J. Ch. 25; [1905] 1 Ch. 76; 92 L. T. 263; 53 W. R. 317 : considered in *Ainsworth, In re; Finch* v. *Smith*, 84 L. J. Ch. 701; [1915] 2 Ch. 96; 31 T. L. R. 392.

Horne's Settled Estate, In re, 57 L. J. Ch. 790; 39 Ch. D. 84; 59 L. T. 580; 37 W. R. 69 : distinguished in *Johnson, In re*, 84 L. J. Ch. 393; [1915] 1 Ch. 435; 112 L. T. 935; 59 S. J. 333.

Horsfall, Ex parte, 6 L. J. (o.s.) K.B. 48; 7 B. & C. 528 : distinguished in *Crawford (Earl)* v. *Paton*, [1911] S. C. 1017.

Horsnaill, In re; Womersley v. **Horsnaill,** 78 L. J. Ch. 331; [1909] 1 Ch. 631; 100 L. T. 603 : approved and followed in *Kipping, In re*, 83 L. J. Ch. 218; [1914] 1 Ch. 62; 109 L. T. 919.

Horton v. **Walsall Assessment Committee,** 67 L. J. Q.B. 804; [1898] 2 Q.B. 237; 78 L. T. 684; 46 W. R. 607; 62 J. P. 437 : followed and explained in *Hendon Paper Works Co.* v. *Sunderland Union*, 84 L. J. K.B. 476; [1915] 1 K.B. 763; 112 L. T. 146; 79 J. P. 113; 13 L. G. R. 97.

Hotchkys, In re; Freke v. **Calmady,** 55 L. J. Ch. 546; 32 Ch. D. 408; 55 L. T. 110; 34 W. R. 569 : distinguished in *Johnson, In re; Cowley* v. *Public Trustee*, 84 L. J. Ch. 393; [1915] 1 Ch. 435; 112 L. T. 935; 59 S. J. 333.

Houston, In re, [1909] 1 Ir. R. 319 : followed in *Cross's Trust, In re*, [1915] 1 Ir. R. 304.

How v. **Winterton (Earl),** 65 L. J. Ch. 832; [1896] 2 Ch. 626; 75 L. T. 40; 45 W. R. 103 : followed in *Blow, In re; St. Bartholomew's Hospital (Governors)* v. *Cambden*, 83 L. J. Ch. 185; [1914] 1 Ch. 233; 109 L. T. 913; 58 S. J. 136; 30 T. L. R. 117.

Howard v. **Howard,** 21 Beav. 550: followed in *Fisher, In re*, 84 L. J. Ch. 342; [1915] 1 Ch. 302; 112 L. T. 548; 59 S. J. 318.

Howarth, In re, 78 L. J. Ch. 687; [1909] 2 Ch. 19; 100 L. T. 865; 53 S. J. 519 : distinguished in *Boulcott's Settlement, In re*, 104 L. T. 205; 55 S. J. 313 : followed in *Young, In re; Brown* v. *Hodgson*, 81 L. J. Ch. 817; [1912] 2 Ch. 479.

Howe v. **Smith,** 53 L. J. Ch. 1055; 27 Ch. D. 89; 50 L. T. 573 : explained in *Hall* v. *Burnell*, [1911] 2 Ch. 551; 105 L. T. 409; 55 S. J. 737.

Hubbard, Ex parte, 55 L. J. Q.B. 490; 17 Q.B. D. 690; 59 L. T. 172*n.*; 35 W. R. 2; 3 Morrell, 246: distinguished in *Dublin City Distillery* v. *Doherty*, 83 L. J. P.C. 265; [1914] A.C. 823; 111 L. T. 81; 58 S. J. 413.

Hudson v. **Carmichael,** 23 L. J. Ch. 893, at p. 894; Kay, 613, at p. 620: statement of the law by Wood, V.C., in, is not overruled or dissented from by Lindley, L.J., in *Paget* v. *Paget* (67 L. J. Ch. 266, at p. 270; [1898] 1 Ch. 470, at pp. 474, 475): so held in *Hall* v. *Hall*, 80 L. J. Ch. 340; [1911] 1 Ch. 487; 104 L. T. 529.

Huggett v. **Miers,** 77 L. J. K.B. 710; [1908] 2 K.B. 278; 99 L. T. 326; 24 T. L. R. 582: followed in *Lucy* v. *Bawden*, 83 L. J. K.B. 523; [1914] 2 K.B. 318; 110 L. T. 580; 30 T. L. R. 321.

Hughes v. **Coed Talon Colliery Co.,** 78 L. J. K.B. 539; [1909] 1 K.B. 957; 100 L. T. 555: considered and applied in *Ing* v. *Higgs*, [1914] W.C. & I. Rep. 84; 110 L. T. 442.

Hughes v. **Justin,** 63 L. J. Q.B. 417; [1894] 1 Q.B. 667; 70 L. T. 365; 42 W. R. 339: followed in *Muir* v. *Jenks*, 82 L. J. K.B. 703; [1913] 2 K.B. 412; 108 L. T. 747; 57 S. J. 476.

Huguenin v. **Basely,** 14 Ves. 273: applied in *Lloyd* v. *Coote & Ball*, 84 L. J. K.B. 567; [1915] 1 K.B. 242; 112 L. T. 344.

Hulm and Lewis, In re, 61 L. J. Q.B. 502; [1892] 2 Q.B. 261; 66 L. T. 683: distinguished in *Hurst and Middleton, Lim., In re*, [1912] 2 Ch. 520; 107 L. T. 502; 56 S. J. 652; 28 T. L. R. 500.

Hulse v. **Hulse,** 40 L. J. P. 51; L. R. 2 P. & D. 259; 24 L. T. 847: applied in *Sinclair* v. *Fell*, 82 L. J. Ch. 105; [1913] 1 Ch. 155; 108 L. T. 152; 57 S. J. 145; 29 T. L. R. 103.

Humphries v. **Humphries,** 79 L. J. K.B. 919; [1910] 2 K.B. 531; 103 L. T. 14: followed in *Cooke* v. *Rickman*, 81 L. J. K.B. 38; [1911] 2 K.B. 1125.

Hurst v. **Picture Theatres, Lim.,** 83 L. J. K.B. 1837; [1915] 1 K.B. 1; 111 L. T. 972; 58 S. J. 739; 30 T. L. R. 642: applied and followed in *Allen* v. *King*, [1915] 2 Ir. R. 213.

Huskisson v. **Lefevre,** 26 Beav. 157: considered in *Goswell's Trusts, In re*, 84 L. J. Ch. 719; [1915] 2 Ch. 106; 59 S. J. 86.

Hussey v. **Payne,** 48 L. J. Ch. 846; 4 App. Cas. 311; 41 L. T. 1; 27 W. R. 585: applied in *Morrell* v. *Studd*, 83 L. J. Ch. 114; [1913] 2 Ch. 648; 109 L. T. 628; 58 S. J. 12.

Hutchins v. **Chambers,** 1 Burr. 579: followed in *MacGregor* v. *Clamp*, 83 L. J. K.B. 240; [1914] 1 K.B. 288; 109 L. T. 954; 78 J. P. 125; 58 S. J. 139; 30 T. L. R. 128.

Hyam v. **Terry,** 29 W. R. 32: applied in *Coleman* v. *Smith*, 81 L. J. Ch. 16; [1911] 2 Ch. 572; 28 T. L. R. 65.

Hyams v. **Stuart King,** 77 L. J. K.B. 794; [1908] 2 K.B. 696; 99 L. T. 424; 24 T. L. R. 675: distinguished in *Genforsikrings Aktieselskabet (Skandinavia Re-insurance Co. of Copenhagen)* v. *Da Costa*, 80 L. J. K.B. 236; [1911] 1 K.B. 137; 103 L. T. 767; 11 Asp. M.C. 548; 16 Com. Cas. 1; 27 T. L. R. 43.

Hyett v. **Mekin,** 53 L. J. Ch. 241; 25 Ch. D. 735; 50 L. T. 54; 32 W. R. 513: approved and followed in *Fauntleroy* v. *Beebe*, 80 L. J. Ch. 654; [1911] 2 Ch. 257; 104 L. T. 704; 55 S. J. 497: explained and followed in *Herbert* v. *Herbert*, 81 L. J. Ch. 733; [1912] 2 Ch. 268.

Hyman v. **Nye,** 6 Q.B. D. 685; 44 L. T. 919; 45 J. P. 554: principle of, applied in *The West Cock*, 80 L. J. P. 97: 104 L. T. 736; 55 S. J. 329; 27 T. L. R. 301.

I.

Ile's Case, Vent. 153: discussed and applied in *Rex* v. *Dymock (Vicar)*, 84 L. J. K.B. 294; [1915] 1 K.B. 147; 112 L. T. 156; 79 J. P. 91; 13 L. G. R. 48; 31 T. L. R. 11.

Illingworth, In re, 78 L. J. Ch. 701; [1909] 2 Ch. 297; 101 L. T. 104; 53 S. J. 616; discussed in *Safford's Settlement, In re*, 84 L. J. Ch. 766; [1915] 2 Ch. 211; 113 L. T. 723; 59 S. J. 666; 31 T. L. R. 529.

Imperial Hydropathic Hotel Co., In re, 23 Ch. D. 1; 49 L. T. 147; 31 W. R. 330: observations in, followed and applied in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Incandescent Gas Light Co. v. **Cantelo,** 12 R. P. C. 262: approved in *National Phonograph of Australia* v. *Menck*, 80 L. J. P.C. 105; [1911] A.C. 336; 104 L. T. 5; 28 R. P. C. 229; 27 T. L. R. 239.

Inchbald v. **Robinson & Barrington,** L. R. 4 Ch. 388; 20 L. T. 259: discussed and followed in *Lyons* v. *Gulliver*, 83 L. J. Ch. 281; [1914] 1 Ch. 631; 110 L. T. 284; 78 J. P. 98; 12 L. G. R. 194; 58 S. J. 97; 30 T. L. R. 75.

Incorporation of Tailors in Glasgow v. **Inland Revenue Commissioners,** 14 Rettie, 729; 2 Tax Cas. 297: distinguished in *Grand Lodge of Freemasons* v. *Inland Revenue Commissioners*, [1912] S. C. 1064; 6 Tax Cas. 116.

Ingram & Royle v. **Service Maritimes du Tréport,** 83 L. J. K.B. 1128; [1914] 3 K.B. 28; 110 L. T. 967; 12 Asp. M.C. 493: distinguished in *Hobson* v. *Leng*, 83 L. J. K.B. 1624; [1914] 3 K.B. 1245; 111 L. T. 954; 59 S. J. 28; 30 T. L. R. 682.

Inland Revenue v. **Heywood-Lonsdale's Trustees,** 43 Sc. L. R. 589: not followed in *Att.-Gen.* v. *Milne*, 82 L. J. K.B. 773; [1913] 2 K.B. 606; 108 L. T. 772; 57 S. J. 532.

Inland Revenue Commissioners v. **Clay and Buchanan,** 83 L. J. K.B. 581, 1425; [1914] 1 K.B. 339; [1914] 3 K.B. 466; 110 L. T. 311; 111 L. T. 484; 58 S. J. 610; 30 T. L. R. 573: approved in *Glass* v. *Inland Revenue*, [1915] S. C. 449.

Inland Revenue Commissioners v. **Herbert,** 82 L. J. P.C. 119; [1913] A.C. 326; 108 L. T. 850; 57 S. J. 516; 29 T. L. R. 502: considered in *Lumsden* v. *Inland Revenue Commissioners*, 82 L. J. K.B. 1275; [1913] 3 K.B. 809; 29 T. L. R. 759.

Inland Revenue Commissioners v. **Walker,** 84 L. J. P.C. 115; [1915] A.C. 509; 112 L. T. 611: discussed in *Congregation of Jews* v. *Inland Revenue*, [1915] S. C. 997.

International Tea Co.'s Stores v. **Hobbs,** 72 L. J. Ch. 543; [1903] 2 Ch. 165; 88 L. T. 725; 51 W. R. 615: followed in *Lewis* v. *Meredith*, 82 L. J. Ch. 255; [1913] 1 Ch. 571; 108 L. T. 549.

Irving v. **Carlisle Rural Council,** 5 L. G. R. 776: applied in *Masters* v. *Hampshire County Council*, 13 L. G. R. 879.

Irwin, In re, 73 L. J. Ch. 832; [1904] 2 Ch. 752: followed in *Monckton's Settlement, In re*, 83 L. J. Ch. 34; [1913] 2 Ch. 636; 109 L. T. 624; 57 S. J. 836.

Isaacs, In re, 63 L. J. Ch. 815; [1894] 3 Ch. 506; 71 L. T. 386; 42 W. R. 685: followed in *Marlay, In re; Rutland (Duke)* v. *Bury*, 84 L. J. Ch. 706; [1915] 2 Ch. 264; 59 S. J. 494; 31 T. L. R. 422.

Isle of Wight Railway v. **Tahourdin,** 53 L. J. Ch. 353; 25 Ch. D. 320; 50 L. T. 132; 32 W. R. 297: applied in *Barron* v. *Potter*, 83 L. J. Ch. 646; [1914] 1 Ch. 895; 110 L. T. 929; 21 Manson, 260; 58 S. J. 516; 30 T. L. R. 401.

J.

Jackson v. **Barry Railway,** [1893] 1 Ch. 238; 68 L. T. 472: judgment in Bowen, L.J., in, has not been modified by subsequent cases: so held by Vaughan Williams, L.J., in *Aird* v. *Bristol Corporation*, 28 T. L. R. 278.

Jackson v. **De Kadich,** [1904] W. N. 168: distinguished in *Hall* v. *Burnell*, [1911] 2 Ch. 551; 105 L. T. 409; 55 S. J. 737.

Jacob v. **Down,** 69 L. J. Ch. 493; [1900] 2 Ch. 156; 83 L. T. 191; 48 W. R. 441; 64 J. P. 552: *dictum* of Stirling, J., in disapproved in *Stephens* v. *Junior Army and Navy Stores*, 84 L. J. Ch. 56; [1914] 2 Ch. 516; 111 L. T. 1055; 58 S. J. 808; 30 T. L. R. 697.

Jacomb v. **Turner,** [1892] 1 Q.B. 47: discussed in *Blaekett* v. *Ridout*, 84 L. J. K.B. 1535; [1915] 2 K.B. 415.

Jacubs v. **Rylance,** 43 L. J. Ch. 280; L. R. 17 Eq. 341: considered in *Dacre, In re*, [1915] 2 Ch. 480.

Jagger v. **Jagger,** 53 L. J. Ch. 201; 25 Ch. D. 729; 49 L. T. 667; 32 W. R. 384: discussed and not followed in *Cattell, In re*, 83 L. J. Ch. 322; [1914] 1 Ch. 177; 110 L. T. 137; 58 S. J. 67.

Jakeman v. **Cook,** 48 L. J. Ex. 165; 4 Ex. D. 26: applied in *Bonacina, In re; Le Brasseur* v. *Bonacina*, 81 L. J. Ch. 674; [1912] 2 Ch. 394; 107 L. T. 498; 56 S. J. 667; 28 T. L. R. 508.

James, Ex parte; Condon, in re, 43 L. J. Bk. 107; L. R. 9 Ch. 609; 30 L. T. 773: discussed in *Wells* v. *Wells*, 83 L. J. P. 81; [1914] P. 157; 111 L. T. 399; 58 S. J. 555; 30 T. L. R. 545.

James v. **Buena Ventura Nitrate Grounds Syndicate,** 65 L. J. Ch. 284; [1896] 1 Ch. 456; 74 L. T. 1: applied in *Llewellyn* v. *Kasintoe Rubber Estates*, 84 L. J. Ch. 70; [1914] 2 Ch. 670; 112 L. T. 676; 21 Manson, 349; 58 S. J. 808; 30 T. L. R. 683.

James v. **Ocean Coal Co.,** 73 L. J. K.B. 915; [1904] 2 K.B. 213; 90 L. T. 834; 52 W. R. 497; 68 J. P. 431; 20 T. L. R. 483: distinguished in *Bevan* v. *Energlyn Colliery Co.*, 81 L. J. K.B. 172; [1912] 1 K.B. 63; 105 L. T. 654; 28 T. L. R. 27.

Janson v. **Driefontein Consolidated Mines,** 71 L. J. K.B. 857; [1902] A.C. 484; 87 L. T. 372; 51 W. R. 142; 7 Com. Cas. 268: considered in *Karberg* v. *Blythe, Green, Jourdain & Co.*, 84 L. J. K.B. 1673; [1915] 2 K.B. 379; 113 L. T. 185; 31 T. L. R. 351.

Jarman v. **Vye,** 35 L. J. Ch. 821; L. R. 2 Eq. 784: distinguished in *Dunn* v. *Morgan*, 84 L. J. Ch. 812; 113 L. T. 444.

Jassy, The, 75 L. J. P. 93; [1906] P. 270; 95 L. T. 363: considered in *Republic of Bolivia Exploration Syndicate, In re*, 83 L. J. Ch. 226; [1914] 1 Ch. 139; 109 L. T. 741; 110 L. T. 141; 58 S. J. 173; 30 T. L. R. 78.

Jemmett and Guest's Contract, In re, 76 L. J. Ch. 367; [1907] 1 Ch. 629: distinguished in *Johnson, In re*, 83 L. J. Ch. 758; [1914] 2 Ch. 134; 58 S. J. 611.

Jenkins, In re, 90 L. T. 65; 20 T. L. R. 187: distinguished in *Godding, In re; Partridge, ex parte*, 83 L. J. K.B. 1222; [1914] 2 K.B. 70; 110 L. T. 207; 58 S. J. 221.

Jenkins v. **Comber,** 67 L. J. Q.B. 780; [1898] 2 Q.B. 168; 78 L. T. 752; 47 W. R. 48: approved and followed in *Shaw* v. *Holland*, 82 L. J. K.B. 592; [1913] 2 K.B. 15; 108 L. T. 543; 18 Com. Cas. 153; 29 T. L. R. 341.

Jenkins v. **Price,** 76 L. J. Ch. 507; [1907] 2 Ch. 229; 23 T. L. R. 608: in effect overruled as regards costs in *West* v. *Gwynne*, 80 L. J. Ch. 578; [1911] 2 Ch. 1; 104 L. T. 759; 55 S. J. 519; 27 T. L. R. 444.

Jenkins v. **Robertson,** 23 L. J. Ch. 816; 2 Drew. 351: followed in *Debtor* (*No.* 14 *of* 1913), *In re*, 82 L. J. K.B. 907; [1913] 3 K.B. 11; 109 L. T. 323; 20 Manson, 119; 57 S. J. 579.

Jennes, In re, 53 S. J. 376: *ratio decidendi* in, applied in *Olpherts* v. *Coryton* (*No.* 1), [1913] 1 Ir. R. 211: opinion, but not decision, of Neville, J., in, followed in *Harris, In re: Davis* v. *Harris*, 83 L. J. Ch. 841; [1914] 2 Ch. 395; 58 S. J. 653.

Jerningham v. **Herbert,** 6 L. J. (O.S.) Ch. 134; 4 Russ. 388: applied in *Hoyles, In re; Row* v. *Jagg*, 80 L. J. Ch. 274; [1911] 1 Ch. 179; 103 L. T. 817; 55 S. J. 169; 27 T. L. R. 131.

Jervis v. **Wolferstan,** 43 L. J. Ch. 809; L. R. 18 Eq. 18; 30 L. T. 452: applied in *Matthews* v. *Ruggles Brise*, 80 L. J. Ch. 42; [1911] 1 Ch. 194; 103 L. T. 491.

Jesson v. **Wright,** 2 Bligh, 1, 57: applied in *Simcoe, In re; Vowler-Simcoe* v. *Vowler*, 82 L. J. Ch. 270; [1913] 1 Ch. 552; 108 L. T. 891; 57 S. J. 533.

Johnson v. **Kearley,** 77 L. J. K.B. 904; [1908] 2 K.B. 514; 99 L. T. 506; 24 T. L. R. 729: distinguished in *Aston* v. *Kelsey*, 82 L. J. K.B. 817; [1913] 3 K.B. 314; 108 L. T. 750; 18 Com. Cas. 257; 29 T. L. R. 530.

Johnson v. **Lyttle's Iron Agency,** 46 L. J. Ch. 786; 5 Ch. D. 687; 36 L. T. 528; 25 W. R. 548: observations in, followed and applied in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Johnson v. **Regem,** 73 L. J. P.C. 113; [1904] A.C. 817; 91 L. T. 234; 20 T. L. R. 697: applied in *Vaithinatha Pillai* v. *Regem*, 29 T. L. R. 709.

Johnson v. **Stear,** 33 L. J. C.P. 130; 15 C.B. (N.S.) 330; 10 Jur. N.S. 99; 9 L. T. 538; 12 W. R. 347: applied in *Belsize Motor Supply Co.* v. *Cox*, 83 L. J. K.B. 261; [1914] 1 K.B. 244; 110 L. T. 151.

Jolly v. **Kine,** 76 L. J. Ch. 1; [1907] A.C. 1; 95 L. T. 656; 23 T. L. R. 1: discussed and explained in *Paul* v. *Robson*, 83 L. J. P.C. 304; L. R. 41 Ind. App. 180; 30 T. L. R. 533: observations of Lord Atkinson in, considered in *Davis* v. *Marrable*, 82 L. J. Ch. 510; [1913] 2 Ch. 421; 109 L. T. 33; 57 S. J. 702; 29 T. L. R. 617.

Jones, In re, 55 L. J. Ch. 350; 31 Ch. D. 440; 53 L. T. 855; 34 W. R. 249: not followed in *Harris, In re: Davis* v. *Harris*, 83 L. J. Ch. 841; [1914] 2 Ch. 395; 58 S. J. 653: not followed in *Olpherts* v. *Coryton* (*No.* 1), [1913] 1 Ir. R. 211.

Jones v. **Evans,** 45 L. J. Ch. 751; 2 Ch. D. 420; 24 W. R. 778: distinguished in *Harris, In re: Davis* v. *Harris*, 83 L. J. Ch. 841; [1914] 2 Ch. 395; 58 S. J. 653.

Jones v. **Jones,** 79 L. J. K.B. 762; [1910] 2 K.B. 262; 103 L. T. 41; 74 J. P. 317; 26 T. L. R. 497: followed in *Atkins* v. *Agar*, 83 L. J. K.B. 265; [1914] 1 K.B. 26; 109 L. T. 891; 78 J. P. 7; 23 Cox C.C. 677; 30 T. L. R. 27.

Jones v. **Jones,** 58 J. P. 653; 10 T. L. R. 300: dissented from in *Batchelour* v. *Gee*, 83 L. J. K.B. 1714; [1914] 3 K.B. 242; 111 L. T. 256; 78 J. P. 362; 12 L. G. R. 931; 24 Cox C.C. 268; 30 T. L. R 506: followed in *Clifford* v. *Battley*, 84 L. J. K.B. 615; [1915] 1 K.B. 531; 112 L. T. 765; 79 J. P. 180; 13 L. G. R. 505; 31 T. L. R. 117.

Jones v. **New Brynmally Colliery Co.,** 106 L. T. 524; [1912] W.C. Rep. 281: followed in *Garnant Anthracite Collieries* v. *Rees*, 81 L. J. K.B. 1189; [1912] 3 K.B. 372; 107 L. T. 279.

Jones v. **Phipps,** 37 L. J. Q.B. 198; L. R. 3 Q.B. 567: explained in *Stait* v. *Fenner*, 81 L. J. Ch. 710; [1912] 2 Ch. 504; 107 L. T. 120; 56 S. J. 669.

Jones v. **Pritchard,** 77 L. J. Ch. 405; [1908] 1 Ch. 630; 98 L. T. 386; 24 T. L. R. 309: distinguished in *Pwllbach Colliery Co.* v. *Woodman*, 84 L. J. K.B. 874; [1915] A.C. 634; 113 L. T. 10; 31 T. L. R. 271.

Jones v. **Selby,** Pr. Ch. 300: followed in *Wasserberg, In re*, 84 L. J. Ch. 214; [1915] 1 Ch. 195; 112 L. T. 242; 59 S. J. 176.

Jones v. **Victoria Graving Dock Co.,** 46 L. J. Q.B. 219; 2 Q.B. D. 314; 36 L. T. 347; 25 W. R. 501: followed in *Daniels* v. *Trefusis*, 83 L. J. Ch. 579; [1914] 1 Ch. 788; 109 L. T. 922; 58 S. J. 271.

Joseph v. **Law Integrity Insurance Co.,** 82 L. J. Ch. 187; [1912] 2 Ch. 581; 107 L. T. 538; [1913] W.C. & I. Rep. 337; 20 Manson, 85: approved in *Gould* v. *Curtis*, 82 L. J. K.B. 802; [1913] 3 K.B. 84; 108 L. T. 779; 57 S. J. 461; 29 T. L. R. 469.

Julius v. **Oxford (Bishop),** 49 L. J. Q.B. 577; 5 App. Cas. 214; 42 L. T. 546; 28 W. R. 726; 44 J. P. 600: followed in *Rex* v. *Mitchell: Livesey, Ex parte*, 82 L. J. K.B. 153; [1913] 1 K.B. 561; 108 L. T. 76; 77 J. P. 148; 23 Cox C.C. 273; 29 T. L. R. 157.

Juno, The, 112 L. T. 471; 59 S. J. 251; 31 T. L. R. 131 : applied in *The Iolo*, 59 S. J. 545; 31 T. L. R. 474.

Jureidini v. **National British and Irish Millers Insurance Co.,** 84 L. J. K.B. 640; [1915] A.C. 499; [1915] W.C. & I. Rep. 239; 112 L. T. 531; 59 S. J. 205; 31 T. L. R. 132 : considered in *Wall* v. *Rederiaktiebolaget Luggude*, 84 L. J. K.B. 1663; [1915] 3 K.B. 66; 31 T. L. R. 487.

Jupp, In re; **Jupp** v. **Buckwell,** 57 L. J. Ch. 774; 39 Ch. D. 148; 59 L. T. 129; 36 W. R. 712 : distinguished in *Jeffery, In re; Nusscy* v. *Jeffery*, 83 L. J. Ch. 251; [1914] 1 Ch. 375; 110 L. T. 11; 58 S. J. 120.

Juson v. **Dixon,** 1 M. & S. 601: followed in *Eastwood* v. *McNab*, 83 L. J. K.B. 941; [1914] 2 K.B. 361; 110 L. T. 701; 12 L. G. R. 517 : and applied in *MacGregor* v. *Clamp*, 83 L. J. K.B. 240; [1914] 1 K.B. 288; 109 L. T. 954; 78 J. P. 125; 58 S. J. 139; 30 T. L. R. 128.

K.

Kaufman v. **Gerson,** 73 L. J. K.B. 320; [1904] 1 K.B. 591; 90 L. T. 608; 52 W. R. 420; 20 T. L. R. 277 : applied in *Société des Hôtel Réunis* v. *Hawker*, 29 T. L. R. 578.

Kavanagh v. **Workingman's Benefit Building Society,** [1896] 1 Ir. R. 56: disapproved by Cozens-Hardy, M.R., and Buckley, L.J., but approved by Fletcher Moulton, L.J., in *Bath* v. *Standard Land Co.*, 80 L. J. Ch. 426; [1911] 1 Ch. 618; 104 L. T. 867; 55 S. J. 482; 27 T. L. R. 393.

Kay, In re; **Moseley** v. **Keyworth or Kay,** 66 L. J. Ch. 759; [1897] 2 Ch. 518; 46 W. R. 74 : applied in *Allsop, In re; Whittaker* v. *Bamford*, 83 L. J. Ch. 42; [1914] 1 Ch. 1; 109 L. T. 641; 58 S. J. 9; 30 T. L. R. 18.

Kay v. **Kay,** 73 L. J. P. 108; [1904] P. 382; 91 L. T. 360; 20 T. L. R. 521: approved in *Stevenson* v. *Stevenson*, 80 L. J. P. 137; [1911] P. 191; 27 T. L. R. 547.

Kaye v. **Croydon Tramways Co.,** 67 L. J. Ch. 222; [1898] 1 Ch. 358; 78 L. T. 237; 46 W. R. 405 : considered and applied in *Baillie* v. *Oriental Telephone, &c., Co.*, 84 L. J. Ch. 409; [1915] 1 Ch. 503; 112 L. T. 569; 31 T. L. R. 140.

Keane's Estate, In re, [1903] 1 Ir. R. 215; followed and applied in *Simcoe, In re; Fowler-Simcoe* v. *Fowler*, 82 L. J. Ch. 270; [1913] 1 Ch. 552; 108 L. T. 891; 57 S. J. 533.

Kearsley v. **Philips,** 52 L. J. Q.B. 269; 10 Q.B. D. 36, 465; 48 L. T. 468; 31 W. R. 467 : followed in *Coomes* v. *Hayward*, 82 L. J. K.B. 117; [1913] 1 K.B. 150; 107 L. T. 715 : distinguished in *Forbes* v. *Samuel*, 82 L. J. K.B. 1135; [1913] 3 K.B. 706; 109 L. T. 599.

Keene v. **Thomas,** 74 L. J. K.B. 21; [1905] 1 K.B. 136; 92 L. T. 19; 53 W. R. 336; 21 T. L. R. 2 : distinguished in *Cassils & Co.* v. *Holden Wood Bleaching Co.*, 84 L. J. K.B. 834; 112 L. T. 373.

Kemble v. **Farren,** 6 Bing. 141: *dictum* of Tindal, C.J., in, approved in *Dunlop Pneumatic Tyre Co.* v. *New Garage and Motor Co.*, 83 L. J. K.B. 1574; [1915] A.C. 79; 111 L. T. 862; 30 T. L. R. 625.

Kemp-Welch v. **Kemp-Welch,** 79 L. J. P. 92; [1910] P. 233; 102 L. T. 787; 26 T. L. R. 464 : principle of, applied in *Sanders* v. *Sanders*, 80 L. J. P. 44; [1911] P. 101; 104 L. T. 231; 55 S. J. 312.

Kent v. **Fittall,** 81 L. J. K.B. 82; [1911] 2 K.B. 1102; 105 L. T. 422; 9 L. G. R. 999; 75 J. P. 378; 2 Smith, 279; 55 S. J. 687; 27 T. L. R. 564 : followed in *Havercroft* v. *Dewey*, 108 L. T. 296; 77 J. P. 115; 11 L. G. R. 28; 2 Smith, 393; 29 T. L. R. 62.

Kent v. **Fittall,** 81 L. J. K.B. 82; [1911] 2 K.B. 1102; 103 L. T. 668; 9 L. G. R. 27; 75 J. P. 113; 2 Smith, 279; 27 T. L. R. 79 : distinguished in *Smith* v. *Newman*, 81 L. J. K.B. 183; [1912] 1 K.B. 162; 105 L. T. 631; 9 L. G. R. 1254; 76 J. P. 25; 2 Smith, 327; 56 S. J. 16; 28 T. L. R. 19.

Kent Coal Concessions v. **Duguid,** 79 L. J. K.B. 423, 872; [1910] 1 K.B. 704; [1910] A.C. 452 : distinguished in *Irish Agricultural Wholesale Society* v. *McCowan*, [1913] 2 Ir. R. 313.

Kenward, In re; **Hammond** v. **Eade,** 94 L. T. 277 : distinguished in *Hay, In re; Stanley Gibbons, Lim.* v. *Hay*, 84 L. J. Ch. 821; [1915] 2 Ch. 198; 59 S. J. 680.

Kepitigalla Rubber Estates v. **National Bank of India,** 78 L. J. K.B. 964; [1909] 2 K.B. 1010; 100 L. T. 516; 16 Manson, 234; 14 Com. Cas. 116; 53 S. J. 377; 25 T. L. R. 402 : followed in *Walker* v. *Manchester and Liverpool District Banking Co.*, 108 L. T. 728; 29 T. L. R. 492; 57 S.J. 478.

Kerr (*or* **Lendrum**) v. **Ayr Steam Shipping Co.,** 84 L. J. P.C. 1; [1915] A.C. 217; 111 L. T. 875; [1914] W.C. & I. Rep. 438; 58 S. J. 737; 30 T. L. R. 664 : applied in *Proctor* v. "*Serbino*" (*Owners*), 84 L. J. K.B. 1381; [1915] 3 K.B. 344; [1915] W.C. & I. Rep. 425; 113 L. T. 640; 59 S. J. 629; 31 T. L. R. 524.

Kerr v. **Baird,** [1911] S. C. 701: distinguished in *Smith* v. *Fife Coal Co.*, 83 L. J. P.C. 359; [1914] A.C. 723; 58 S. J. 533; 30 T. L. R. 502.

Kerr v. **Baird & Co.,** [1911] S. C. 701: followed in *Burns* v. *Summerlee Iron Co.*, [1913] S. C. 227; [1913] W.C. & I. Rep. 45.

Key (*or* **Kay**) v. **Goodwin,** 8 L. J. (o.s.) C.P. 212; 6 Bing. 576 : considered in *Lemm* v. *Mitchell*, 81 L. J. P.C. 173; [1912] A.C. 400; 106 L. T. 359; 28 T. L. R. 282.

Khedive, The, 5 P. D. 1: 41 L. T. 392; 28 W. R. 364: distinguished in *Manks* v. *Whiteley*, 82 L. J. Ch. 267; [1913] 1 Ch. 581; 108 L. T. 450; 57 S. J. 391.

Kidson v. **Turner,** 27 L. J. Ex. 492; 3 H. & N. 581: distinguished in *Bonacina, In re*, 81 L. J. Ch. 674; [1912] 2 Ch. 394: 107 L. T. 498; 56 S. J. 667; 28 T. L. R. 508.

Kimberley v. **Tew,** 4 Dr. & W. 139: opinion of Sir E. Sugden in, followed in *Firth, In re; Loveridge* v. *Firth*, 83 L. J. Ch. 901; [1914] 2 Ch. 386; 111 L. T. 332.

Kingan v. **Matier,** [1905] 1 Ir. R. 272: not followed in *Leigh-White* v. *Ruttledge*, [1914] 1 Ir. R. 135.

Kingston Cotton Mill Co. (*No.* 2), **In re,** 65 L. J. Ch. 673; [1896] 2 Ch. 279; 74 L. T. 568; 3 Manson, 171: discussed in *Republic of Bolivia Exploration Syndicate, In re*, 83 L. J. Ch. 235; [1914] 1 Ch. 139; 110 L. T. 141; 21 Manson, 67; 58 S. J. 321; 30 T. L. R. 146.

Kinnoul (Earl) v. **Money,** 3 Swanst. 202*n.* at p. 208*n.*: was not overruled by or dissented from by Lindley, L.J., in *Paget* v. *Paget* (67 L. J. Ch. 266, at p. 270; [1898] 1 Ch. 470, at pp. 474, 475): so held in *Hall* v. *Hall*, 80 L. J. Ch. 340; [1911] 1 Ch. 487; 104 L. T. 529.

Kirk v. **Eddowes,** 13 L. J. Ch. 402; 3 Hare, 509: considered in *Shields, In re; Corbould-Ellis* v. *Dales*, 81 L. J. Ch. 370; [1912] 1 Ch. 591; 106 L. T. 748.

Kirkland v. **Peatfield,** 72 L. J. K.B. 355; [1903] 1 K.B. 756; 88 L. T. 472; 51 W. R. 544: followed in *Fox, In re; Brooks* v. *Marston*, 83 L. J. Ch. 393; [1913] 2 Ch. 75; 108 L. T. 948.

Kirkpatrick v. **King,** 32 Ir. L. T. R. 41: distinguished in *Gray* v. *Gray*, [1915] 1 Ir. R. 261.

Kirkwood v. **Gadd,** 79 L. J. K.B. 815; [1910] A.C. 422; 102 L. T. 753; 54 S. J. 599; 26 T. L. R. 530: *dicta* in, explained and distinguished in *Hadsley* v. *Dayer-Smith*, 83 L. J. Ch. 770; [1914] A.C. 979; 58 S. J. 554; 30 T. L. R. 524.

Knight v. **Halliwell,** 43 L. J. M.C. 113; L. R. 9 Q.B. 412; 30 T. L. R. 359: judgment of Blackburn, J., in, followed in *Kates* v. *Jeffery*, 83 L. J. K.B. 1760; [1914] 3 K.B. 160; 111 L. T. 459; 78 J. P. 310.

Knight v. **Simmonds,** 65 L. J. Ch. 583; [1896] 2 Ch. 294; 74 L. T. 563; 44 W. R. 580; observations of Lindley, L.J., in, applied in *Sobey* v. *Sainsbury*, 83 L. J. Ch. 103; [1913] 2 Ch. 513; 109 L. T. 393; 57 S. J. 836.

Knight of St. Michael, The, 67 L. J. P. 19; [1898] P. 30; 78 L. T. 90; 46 W. R. 396; 8 Asp. M.C. 360: distinguished in *Kacianoff* v. *China Traders Insurance Co.*, 83 L. J. K.B. 1393; [1914] 3 K.B. 1121; 111 L. T. 407; 30 T. L. R. 546.

Knox v. **Gye,** 42 L. J. Ch. 234; L. R. 5 H.L. 656: distinguished in *Gordon* v. *Holland*, 82 L. J. P.C. 81; 108 L. T. 385.

Kolchmann v. **Meurice,** 72 L. J. K.B. 209; [1903] 1 K.B. 534; 88 L. T. 369; 51 W. R. 356: followed in *Hughes* v. *Oxenham*, 82 L. J. Ch. 155; [1913] 1 Ch. 254; 108 L. T. 316.

Kriegel, In re; Trotman, ex parte, 68 L. T. 588; 10 Morrell, 99: followed in *Barker & Co., In re*, 21 Manson, 238.

L.

Lacon's Settlement, In re, 80 L. J. Ch. 302, 610; [1911] 1 Ch. 351; [1911] 2 Ch. 17; 104 L. T. 840; 55 S. J. 551; 27 T. L. R. 485: considered in *Pyke, In re; Birnstingl* v. *Birnstingl*, 81 L. J. Ch. 495: [1912] 1 Ch. 770; 106 L. T. 751; 56 S. J. 380: followed in *Dealtry, In re*, 108 L. T. 832.

Lacons v. **Warmoll,** 76 L. J. K.B. 914; [1907] 2 K.B. 350; 97 L. T. 379; 23 T. L. R. 495: *dictum* of Fletcher Moulton, L.J., in, approved in *Blow, In re; St. Bartholomew's Hospital (Governors)* v. *Cambden*, 83 L. J. Ch. 185; [1914] 1 Ch. 233; 109 L. T. 913; 58 S. J. 136; 30 T. L. R. 117.

Laing v. **Hollway,** 47 L. J. Q.B. 512; 3 Q.B. D. 437; 26 W. R. 769: considered and discussed in *Mawson Shipping Co.* v. *Beyer*, 83 L. J. K.B. 290; [1914] 1 K.B. 304; 109 L. T. 973; 19 Com. Cas. 59.

Lainson v. **Lainson** (*No.* 2), 18 Beav. 7: followed in *Salvin, In re; Worsley* v. *Marshall*, 81 L. J. Ch. 248; [1912] 1 Ch. 332; 106 L. T. 35; 56 S. J. 241; 28 T. L. R. 190.

Lamb v. **Evans,** 62 L. J. Ch. 404; [1893] 1 Ch. 218; 68 L. T. 131; 41 W. R. 405: considered in *Amber Size and Chemical Co.* v. *Menzel*, 82 L. J. Ch. 573; [1913] 2 Ch. 239: applied in *Ashburton* v. *Pape*, 82 L. J. Ch. 527; [1913] 2 Ch. 469; 109 L. T. 381.

Lambert, In re, 27 L. T. 597: applied in *Slater, In re*, 113 L. T. 691.

Lambert, In re; Corns v. **Harrison,** 77 L. J. Ch. 553; [1908] 2 Ch. 117; 98 L. T. 851: followed in *Williams, In re; Metcalf* v. *Williams*, 83 L. J. Ch. 570; [1914] 2 Ch. 61; 110 L. T. 923; 58 S. J. 470.

Lambert, In re; Moore v. **Middleton,** 66 L. J. Ch. 624; [1897] 2 Ch. 169; 76 L. T. 752; 45 W. R. 661: *dictum in*, queried by Buckley, L.J., in *Willoughby, In re*, 80 L. J. Ch. 562; [1911] 2 Ch. 581; 104 L. T. 907.

Lambert v. **Lambert,** 43 L. J. Ch. 106; L. T. 16 Eq. 320; 21 W. R. 748: observed upon in *McEuen, In re*, [1913] 2 Ch. 704.

Lambeth Overseers v. **London County Council,** 66 L. J. Q.B. 806; [1897] A.C. 625; 76 L. T. 795; 46 W. R. 79; 61 J. P. 580: distinguished in *Glasgow Parish Council* v. *Glasgow Assessor*, [1912] S. C. 818.

Lancaster v. **Elce,** 31 L. J. Ch. 789; 31 Beav. 325: distinguished in *Pilet's Deed, In re; Toursier & Co., ex parte*, 84 L. J. K.B. 2133; 31 T. L. R. 558.

Landauer v. **Asser,** 74 L. J. K.B. 659; [1905] 2 K.B. 184; 93 L. T. 20; 53 W. R. 534; 10 Com. Cas. 265; 21 T. L. R. 529: distinguished in *Strass* v. *Spillers & Bakers*, 80 L. J. K.B. 1218; [1911] 2 K.B. 759; 104 L. T. 284; 16 Com. Cas. 166.

Lander v. **Lander,** 60 L. J. P. 65; [1891] P. 161; 64 L. T. 120; 39 W. R. 416; 55 J. P. 152: not followed in *Ollier* v. *Ollier*, 58 S. J. 754.

Langdale v. **Mason,** Park on Insurance (7th ed.), p. 657: definition of "civil commotion" in, adopted in *London and Manchester Plate-Glass Insurance Co.* v. *Heath*, 82 L. J. K.B. 1183; [1913] 3 K.B. 411; 108 L. T. 1009; 29 T. L. R. 581.

Lapington v. **Lapington,** 58 L. J. P. 26; 14 P. D. 21; 59 L. T. 608; 37 W. R. 384: approved in *Stevenson* v. *Stevenson*, 80 L. J. P. 137; [1911] P. 191; 27 T. L. R. 547.

Lassence v. **Tierney,** 1 Mac. & G. 551: applied in *Connell's Settlement, In re*, 84 L. J. Ch. 601; [1915] 1 Ch. 867.

Lawes v. **Bennett,** 1 Cox, 167: explained in *Marlay, In re; Rutland (Duke)* v. *Bury*, 84 L. J. Ch. 706; [1915] 2 Ch. 264; 59 S. J. 494; 31 T. L. R. 422.

Lawford v. **Billericay Rural Council,** 72 L. J. K.B. 554; [1903] 1 K.B. 772; 88 L. T. 317; 51 W. R. 630; 67 J. P. 245; 1 L. G. R. 535; followed in *Douglass* v. *Rhyl Urban Council*, 82 L. J. Ch. 537; [1913] 2 Ch. 407; 109 L. T. 30; 57 S. J. 627; 29 T. L. R. 605.

Lawson v. **Wright,** 1 Cox, 275: explained in *Stirling* v. *Burdett*, [1911] 2 Ch. 418; 105 L. T. 573.

Lawson's Trusts, In re, 65 L. J. Ch. 95; [1896] 1 Ch. 175; 73 L. T. 571; 44 W. R. 280: followed in *Anderson, In re; New Zealand Official Assignee, ex parte*, 80 L. J. K.B. 919; [1911] 1 K.B. 896; 104 L. T. 221.

Laybourn v. **Gridley,** 61 L. J. Ch. 352; [1892] 2 Ch. 53; 40 W. R. 274: is not inconsistent with *Williams* v. *Pott* (40 L. J. Ch. 775; L. R. 12 Eq. 149): so held in *Mitchell* v. *Mosley*, 83 L. J. Ch. 135; [1914] 1 Ch. 438; 109 L. T. 648; 58 S. J. 218; 30 T. L. R. 29.

Lea, Lim., In re, 81 L. J. Ch. 489; [1912] 2 Ch. 32; 106 L. T. 410; 29 R. P. C. 165; 56 S. J. 308; 28 T. L. R. 258: point in, overruled in *Teofani & Co.'s Trade Mark, In re*, 82 L. J. Ch. 490; [1913] 2 Ch. 545; 109 L. T. 114; 30 R. P. C. 446; 57 S. J. 686; 29 T. L. R. 591, 674.

Lea v. **Facey,** 55 L. J. Q.B. 371; 56 L. J. Q.B. 536; 17 Q.B. D. 139; 19 Q.B. D. 352: distinguished in *Douglass* v. *Rhyl Urban Council*, 82 L. J. Ch. 537; [1913] 2 Ch. 407; 109 L. T. 30; 57 S. J. 627; 29 T. L. R. 605.

Leahy v. **De Moleyns,** [1896] 1 Ir. R. 206: considered and distinguished in *Eustace, In re; Lee* v. *McMillan*, 81 L. J. Ch. 529; [1912] 1 Ch. 561; 106 L. T. 789; 56 S. J. 468.

Le Blanche v. **London and North-Western Railway,** 45 L. J. C.P. 521; 1 C.P. D. 286; 34 L. T. 667; 24 W. R. 808: approved in *Erie County Natural Gas &c. Co.* v. *Carroll*, 80 L. J. P.C. 59; [1911] A.C. 105; 103 L. T. 678.

Le Brasseur and Oakley, In re; Turrell, ex parte, 65 L. J. Ch. 763; [1896] 2 Ch. 487; 74 L. T. 717; 45 W. R. 87: adopted in *Harben* v. *Gordon*, 83 L. J. K.B. 322; [1914] 2 K.B. 577; 109 L. T. 794; 58 S. J. 140.

Leconfield, In re, 20 T. L. R. 347: followed in *Swaythling, In re*, 57 S. J. 173; 29 T. L. R. 88.

Lee v. **Butler,** 62 L. J. Q.B. 591; [1893] 2 Q.B. 318; 69 L. T. 370; 42 W. R. 88: considered in *Belsize Motor Supply Co.* v. *Cox*, 83 L. J. K.B. 261; [1914] 1 K.B. 244; 110 L. T. 151.

Lee v. **Sangster,** 26 L. J. C.P. 151; 2 C.B. (N.S.) 1: applied in *Branson, In re*, 83 L. J. K.B. 1316; [1914] 2 K.B. 701; 110 L. T. 940; 58 S. J. 416.

Leeds Estate Building and Investment Co. v. **Shepherd,** 57 L. J. Ch. 46; 36 Ch. D. 787; 57 L. T. 684; 36 W. R. 322: discussed in *Republic of Bolivia Exploration Syndicate, Lim.*, 83 L. J. Ch. 235; [1914] 1 Ch. 139; 110 L. T. 141; 21 Manson, 67; 58 S. J. 321; 30 T. L. R. 146.

Leeds and Hanley Theatres of Varieties, In re, 73 L. J. Ch. 553; [1904] 2 Ch. 45; 52 W. R. 506: distinguished in *Peruvian Railway Construction Co., In re*, [1915] 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464.

Legge v. **Croker,** 1 Ball & B. 506: followed in *Angel* v. *Jay*, 80 L. J. K.B. 458; [1911] 1 K.B. 666; 103 L. T. 809; 55 S. J. 140.

Leggett v. **Barrett,** 15 Ch. D. 306; 43 L. T. 641: considered and applied in *Millbourn* v. *Lyons*, 83 L. J. Ch. 737; [1914] 2 Ch. 231; 111 L. T. 388; 58 S. J. 578.

Leigh Urban Council v. **King,** 70 L. J. K.B. 313; [1901] 1 K.B. 747; 83 L. T. 777; 65 J. P. 243: disapproved in *Cababe* v. *Walton-upon-Thames Urban Council*, 83 L. J. K.B. 243; [1914] A.C. 102; 110 L. T. 674; 78 J. P. 129; 12 L. G. R. 104; 58 S. J. 270.

Leith Dock Commissioners v. **Leith Magistrates,** [1911] S. C. 1139: followed in *Christie* v. *Leven Magistrates*, [1912] S. C. 678.

Leonard v. **Hoare,** 83 L. J. K.B. 1361; [1914] 2 K.B. 798; 111 L. T. 69; 78 J. P. 287; 12 L. G. R. 844; 30 T. L. R. 425: overruled in *Rex* v. *Foots Cray Urban Council*, 85 L. J. K.B. 191; 113 L. T. 705; 79 J. P. 521; 13 L. G. R. 1027; 59 S. J. 597.

Leonis s.s. Co. v. **Rank** (*No.* 2), 13 Com. Cas. 295: followed in *Moore Line* v. *Distillers' Co.*, [1912] S. C. 514.

Leslie, In re; Leslie v. **French,** 52 L. J. Ch. 762; 23 Ch. D. 552: discussed in *Jones' Settlement, In re*, 84 L. J. Ch. 406; [1915] 1 Ch. 373; [1915] W.C. & I. Rep. 277; 112 L. T. 1067; 59 S. J. 364.

Leslie v. **Leslie,** Ll. & G. 1: distinguished in *West, In re; Westhead* v. *Aspland*, 82 L. J. Ch. 488; [1913] 2 Ch. 345; 109 L. T. 39.

Leslie & Co. v. **Metropolitan Asylums District Managers,** 68 J. P. 86: approved in *Hampton* v. *Glamorgan County Council*, 84 L. J. K.B. 1506; 113 L. T. 112; 13 L. G. R. 819.

Lester v. **Torrens,** 46 L. J. M.C. 280; 2 Q.B. D. 403; 25 W. R. 691: followed in *Young* v. *Gentle*, 84 L. J. K.B. 1570; [1915] 2 K.B. 661; 79 J. P. 347; 31 T. L. R. 409.

Lewis v. **Great Western Railway,** 47 L. J. Q.B. 131; 3 Q.B. D. 195: doubted in *Bastable* v. *North British Railway*, [1912] S. C. 555.

Lewis v. **Puxley,** 16 L. J. Ex. 216; 16 M. & W. 733: applied in *Finlay's Estate, In re*, [1913] 1 Ir. R. 143.

Lewis v. **Templer,** 33 Beav. 625: distinguished in *Firth, In re; Loveridge* v. *Firth*, 83 L. J. Ch. 901; [1914] 2 Ch. 386; 111 L. T. 332.

Leyman v. **Latimer,** 47 L. J. Q.B. 470; 3 Ex. D. 352: as followed in *Yates* v. *Kyffin Taylor*, [1899] W. N. 141: doubted in *Crippen, In re*, 80 L. J. P. 47; [1911] P. 108; 104 L. T. 224; 55 S. J. 273; 27 T. L. R. 258.

Liles v. **Terry,** 65 L. J. Q.B. 34; [1895] 2 Q.B. 679; 73 L. T. 428; 44 W. R. 116: applied in *Lloyd* v. *Coote & Ball*, 84 L. J. K.B. 567; [1915] 1 K.B. 242; 112 L. T. 344.

Limpus v. **Arnold,** 54 L. J. Q.B. 85; 15 Q.B. D. 300; 33 W. R. 537: considered in *Warde, In re; Warde* v. *Ridgway*, 111 L. T. 35; 58 S. J. 472.

Limpus v. **Arnold,** 53 L. J. Q.B. 415; 54 L. J. Q.B. 85; 13 Q.B. D. 246; 15 Q.B. D. 300: *dicta* in, followed in *Trollope, In re*, 84 L. J. Ch. 553; [1915] 1 Ch. 853; 113 L. T. 153.

Lines v. **Usher,** 14 R. P. C. 206: followed in *Cummings* v. *Stewart*, [1913] 1 Ir. R. 95.

Linoleum Manufacturing Co. v. **Nairn,** 47 L. J. Ch. 430; 7 Ch. D. 834; 38 L. T. 448: distinguished in *Brock* v. *Pain*, 105 L. T. 976; 28 R. P. C. 697.

Linotype Co.'s Trade Mark, In re, 69 L. J. Ch. 625; [1900] 2 Ch. 238; 82 L. T. 794: followed in *La Société le Ferment's Application, In re*, 81 L. J. Ch. 724; 107 L. T. 515; 28 T. L. R. 490; 29 R. P. C. 497.

Linton v. **Linton,** 54 L. J. Q.B. 529; 15 Q.B. D. 239; 52 L. T. 782: distinguished in *Victor* v. *Victor*, 81 L. J. K.B. 354; [1912] 1 K.B. 247; 105 L. T. 887; 19 Manson, 53; 56 S. J. 204; 28 T. L. R. 131.

Lister v. **Lane,** 62 L. J. Q.B. 583; [1893] 2 Q.B. 212; 69 L. T. 176; 41 W. R. 626; 57 J. P. 725: explained and distinguished in *Lurcott* v. *Wakeley*, 80 L. J. K.B. 713; [1911] 1 K.B. 905; 104 L. T. 290; 55 S. J. 290.

Litchfield v. **Jones,** 25 Ch. D. 64; 32 W. R. 288: discussed in *Taylor* v. *Plinston*, [1911] 2 Ch. 605; 105 L. T. 615; 56 S. J. 33; 28 T. L. R. 11.

Little v. **Kingswood and Parkfield Collieries Co.,** 51 L. J. Ch. 498; 20 Ch. D. 733: decision of Hall, V.C., in, not followed in *Rakusen* v. *Ellis, Munday & Clarke*, 81 L. J. Ch. 409; [1912] 1 Ch. 831; 106 L. T. 556; 28 T. L. R. 326.

Liverpool Household Stores Association, In re, [1889] W. N. 48: practice laid down by Kekewich, J., in, followed in *Foss, Bilbrough, Plaskitt & Foss, In re*, 81 L. J. Ch. 558; [1912] 2 Ch. 161; 106 L. T. 835; 56 S. J. 574.

Livingstone v. **Ross,** 70 L. J. P.C. 58; [1901] A.C. 327; 85 L. T. 382: distinguished in *Kelly* v. *Enderton*, 82 L. J. P.C. 57; [1913] A.C. 191; 107 L. T. 781.

Llanelly Railway and Dock Co. v. **London and North-Western Railway,** 45 L. J. Ch. 539; L. R. 7 H.L. 550; 32 L. T. 575; 23 W. R. 927: distinguished in *Lindrea, In re; Lindrea* v. *Fletcher*, 109 L. T. 623.

Llangattock (Lord) v. **Watney, Combe, Reid & Co.,** 79 L. J. K.B. 559; [1910] A.C. 394; 102 L. T. 548; 74 J. P. 194; 54 S. J. 456; 26 T. L. R. 418: followed in *Knight* v. *City of London Brewery Co.*, 81 L. J. K.B. 194; [1912] 1 K.B. 10; 106 L. T. 564.

Llanover (Baroness), In re; Herbert v. **Ram,** [1907] 1 Ch. 635: the *semble* in the headnote to, questioned in *Sumner's Settled Estates, In re*, 80 L. J. Ch. 257; [1911] 1 Ch. 315; 103 L. T. 897; 55 S. J. 155; 27 T. L. R. 173.

Llewellyn, In re, 80 L. J. Ch. 259; [1911] 1 Ch. 451; 104 L. T. 279; 55 S. J. 254: followed in *Beauchamp's Trusts, In re; Cadge* v. *Barker-Hahlo*, 83 L. J. Ch. 440; [1914] 1 Ch. 676; 110 L. T. 814; 58 S. J. 320.

Lloyd & North London Railway, In re, 65 L. J. Ch. 626; [1896] 2 Ch. 397; 74 L. T. 548; 44 W. R. 522: approved and followed in *Griggs, In re; London School Board, ex parte*, 83 L. J. Ch. 835; [1914] 2 Ch. 547; 111 L. T. 931; 13 L. G. R. 27; 58 S. J. 796.

London and County Banking Co. v. **London and River Plate Bank,** 57 L. J. Q.B. 601; 21 Q.B. D. 535: applied in *Lloyds Bank* v. *Swiss Bankverein*, 17 Com. Cas. 280; 56 S. J. 688; 28 T. L. R. 501.

London County Council v. **Allen,** 82 L. J. K.B. 432; [1913] 1 K.B. 9; 107 L. T. 853; 77 J. P. 48; 10 L. G. R. 1089; 23 Cox C.C. 266; 29 T. L. R. 30: discussed in *London County Council* v. *Perry*, 84 L. J. K.B. 1518; [1915] 2 K.B. 193; 113 L. T. 85; 79 J. P. 312; 13 L. G. R. 746; 31 T. L. R. 281.

London County Council v. **Att.-Gen.,** 70 L. J. K.B. 77; [1901] A.C. 26; 83 L. T. 605; 49 W. R. 686; 65 J. P. 227: discussed and explained in *Sugden* v. *Leeds Corporation*, 83 L. J. K.B. 840; [1914] A.C. 483; 108 L. T. 578; 77 J. P. 225; 11 L. G. R. 662; 6 Tax Cas. 211; 57 S. J. 425; 29 T. L. R. 402.

London County Council v. **Bermondsey Bioscope Co.,** 80 L. J. K.B. 141; [1911] 1 K.B. 445; 103 L. T. 760; 75 J. P. 53; 9 L. G. R. 79; 27 T. L. R. 141: approved in *Rex* v. *London County Council; London and Provincial Electric Theatres, Ex parte*, 84 L. J. K.B. 1787; [1915] 2 K.B. 466; 113 L. T. 118; 79 J. P. 417; 13 L. G. R. 847; 59 S. J. 382; 31 T. L. R. 329.

London County Council v. **Erith Overseers,** 63 L. J. M.C. 9; [1893] A.C. 562; 69 L. T. 725; 42 W. R. 330; 57 J. P. 821: *dictum* of Lord Herschell in, criticised in *West Kent Main Sewerage Board* v. *Dartford Assessment Committee*, 80 L. J. K.B. 805; [1911] A.C. 171; 104 L. T. 357; 9 L. G. R. 511; 75 J. P. 305; 55 S. J. 363.

London County Council v. **Metropolitan Railway,** 78 L. J. K.B. 830; [1909] 2 K.B. 517; 101 L. T. 323; 73 J. P. 339; 7 L. G. R. 720; 53 S. J. 558 (affirmed, *sub nom. Fleming* v. *London County Council*, 80 L. J. K.B. 35; [1911] A.C. 1): distinguished in *Clode* v. *London County Council*, 83 L. J. K.B. 1587; [1913] 3 K.B. 852; 12 L. G. R. 673; 58 S. J. 633; 30 T. L. R. 489.

London Furnishing Co. v. **Solomon,** 106 L. T. 371; 28 T. L. R. 265: not followed in *Hackney Furnishing Co.* v. *Watts*, 81 L. J. K.B. 993; [1912] 3 K.B. 225; 106 L. T. 676; 28 T. L. R. 417.

London and Globe Finance Corporation, In re, 72 L. J. Ch. 368; [1903] 1 Ch. 728; 88 L. T. 194; 51 W. R. 651; 10 Manson, 198, *dictum* of Buckley, J., in, cited with approval in *Rex* v. *Newton*, 109 L. T. 747; 23 Cox C.C. 609.

London Joint Stock Bank v. **Simmons,** 61 L. J. Ch. 723; [1892] A.C. 201; 66 L. T. 625; 41 W. R. 108; 56 J. P. 644: followed in *Fuller* v. *Glyn, Mills, Currie & Co.*, [1914] 2 K.B. 168; 110 L. T. 318.

London and Northern Steamship Co. v. **Central Argentine Railway,** 108 L. T. 527: approved in *Central Argentine Railway* v. *Marwood*, 84 L. J. K.B. 1593.

London and North-Western Railway v. **Donellan,** 67 L. J. Q.B. 681; [1898] 2 Q.B. 7; 78 L. T. 575: followed in *London and North-Western Railway* v. *Jones*, 84 L. J. K.B. 1268; [1915] 2 K.B. 35; 113 L. T. 724.

London and North-Western Railway v. **Llandudno Improvement Commissioners,** 66 L. J. Q.B. 232; [1897] 1 Q.B. 287; 75 L. T. 659; 45 W. R. 350; 61 J. P. 55: discussed in *Lancashire and Yorkshire Railway* v. *Liverpool Corporation*, 83 L. J. K.B. 1273; [1915] A.C. 152; 111 L. T. 596; 78 J. P. 409; 12 L. G. R. 771; 58 S. J. 653; 30 T. L. R. 563.

London and North-Western Railway v. **Runcorn Rural Council,** 67 L. J. Ch. 324; [1898] 1 Ch. 561; 78 L. T. 343; 46 W. R. 484; 62 J. P. 643: distinguished in *Hull Corporation* v. *North-Eastern Railway*, 84 L. J. Ch. 329; [1915] 1 Ch. 456; 112 L. T. 584; 79 J. P. 221; 13 L. G. R. 587; 59 S. J. 318.

London and North-Western Railway and Great Western Joint Railways v. **Billington,** 68 L. J. Q.B. 162; [1899] A.C. 79; 79 L. T. 503: considered in *London and North-Western Railway* v. *Jones*, 84 L. J. K.B. 1268; [1915] 2 K.B. 35; 113 L. T. 724.

London and South-Western Railway v. **Gomm,** 51 L. J. Ch. 530; 20 Ch. D. 562; 46 L. T. 449; 30 W. R. 620: applied in *London County Council* v. *Allen*, 80 L. J. K.B. 1695; [1914] 3 K.B. 642.

London Steam Dyeing Co. v. **Digby,** 57 L. J. Ch. 505; 36 W. R. 497: not followed in *J. T. Smith & J. E. Jones, Lim.* v. *Service, Reeve & Co.*, 83 L. J. Ch. 876; [1914] 2 Ch. 576.

Long v. **Atkinson,** 17 Beav. 471: followed in *Bosanquet, In re; Unwin* v. *Petre*, 113 L. T. 152.

Long Eaton Urban Council v. **Att.-Gen.,** 84 L. J. Ch. 131; [1915] 1 Ch. 124; 111 L. T. 514; 79 J. P. 129; 13 L. G. R. 23; 31 T. L. R. 45: applied in *Att.-Gen.* v. *Ilford Urban Council*, 84 L. J. Ch. 860; 13 L. G. R. 441.

Loome v. **Baily,** 30 L. J. M.C. 31; 3 E. & E. 444: followed in *Cook* v. *Trevener*, 80 L. J. K.B. 118; [1911] 1 K.B. 9; 103 L. T. 725; 74 J. P. 469; 27 T. L. R. 8.

Lord v. **Lord,** 36 L. J. Ch. 533; L. R. 2 Ch. 782: rule of law laid down by Lord Cairns in, applied in *Walford, In re*, 81 L. J. Ch. 828; [1912] A.C. 658.

Lord Advocate v. **Lovat (Lord),** 5 App. Cas. 273: the words of Lord O'Hagan on possession in, at page 288, cited by Lord Macnaghten in *Johnson* v. *O'Neill*, 81 L. J. P.C. 35; [1911] A.C. 583; 55 S. J. 686; 27 T. L. R. 545: adopted in *Kirby* v. *Cowderoy*, 81 L. J. P.C. 222; [1912] A.C. 599; 107 L. T. 74.

Lord Advocate v. **Moray (Countess),** 74 L. J. P.C. 122; [1905] A.C. 531; 93 L. T. 569; 21 T. L. R. 715: *dictum* of Lord Macnaghten in, followed in *Anson, In re; Buller* v. *Anson*, 84 L. J. Ch. 347; [1915] 1 Ch. 52; 111 L. T. 1065; 30 T. L. R. 694.

Loring v. **Thomas,** 30 L. J. Ch. 789; 1 Dr. & Sm. 497: followed in *Williams, In re; Metcalf* v. *Williams*, 83 L. J. Ch. 570; [1914] 2 Ch. 61; 110 L. T. 923; 58 S. J. 470.

Louis v. **Smellie,** 73 L. T. 226; [1895] W. N. 115: considered in *Amber Size and Chemical Co.* v. *Menzel*, 82 L. J. Ch. 573; [1913] 2 Ch. 239; 108 L. T. 520.

Love v. **Bell,** 53 L. J. Q.B. 257; 9 App. Cas. 286; 51 L. T. 1; 48 J. P. 516: considered in *Beard* v. *Moira Colliery Co.*, 84 L. J. Ch. 155; [1915] 1 Ch. 257; 112 L. T. 227; 59 S. J. 103.

Lovelace v. **Lovelace,** Cro. Eliz. 40: distinguished in *Finlay's Estate, In re*, [1913] 1 Ir. R. 143.

Low (*or* Jackson) v. **General Steam Fishing Co.,** 78 L. J. P.C. 148; [1909] A.C. 523; 101 L. T. 401; 53 S. J. 763; 25 T. L. R. 787: principle laid down in, adopted in *Webber* v. *Wansborough Paper Co.*, 82 L. J. K.B. 1058; [1913] 3 K.B. 615; 109 L. T. 129.

Lower Rhine and Würtemberg Insurance Association v. **Sedgwick,** 68 L. J. Q.B. 186; [1899] 1 Q.B. 179; 80 L. T. 6; 47 W. R. 261; 8 Asp. M.C. 466: distinguished in *Reliance Marine Insurance Co.* v. *Duder*, 81 L. J. K.B. 870; [1913] 1 K.B. 265; 106 L. T. 936; 12 Asp. M.C. 223; 17 Com. Cas. 227; 28 T. L. R. 469.

Lowery v. **Walker,** 80 L. J. K.B. 138; [1911] A.C. 10; 103 L. T. 674; 55 S. J. 62; 27 T. L. R. 83: distinguished in *Johnstone* v. *Lochgelly Magistrates*, [1913] S. C. 1078.

Lowry v. **Sheffield Coal Co.,** 24 T. L. R. 142: applied in *Riley* v. *Holland*, 80 L. J. K.B. 814; [1911] 1 K.B. 1029; 104 L. T. 371; 27 T. L. R. 327.

Lowther v. **Carlton,** 2 Atk. 242; Barn. Ch. 358: followed in *Wilkes* v. *Spooner*, 80 L. J. K.B. 1107; [1911] 2 K.B. 473; 104 L. T. 911; 55 S. J. 479; 27 T. L. R. 426.

Lucas and Chesterfield Gas and Water Board, In re, 77 L. J. K.B. 1009; [1909] 1 K.B. 16; 99 L. T. 767; 72 J. P. 437; 6 L. G. R. 1106; 24 T. L. R. 858: approved and applied in *Cedar Rapids Manufacturing, &c. Co.* v. *Lacoste*, 83 L. J. P.C. 162; [1914] A.C. 569; 110 L. T. 873; 30 T. L. R. 293.

Luckin v. **Hamlyn,** 21 T. L. R. 366: explained in *Barron* v. *Potter*, 84 L. J. K.B. 2008; [1915] 3 K.B. 593; 113 L. T. 801; 59 S. J. 650.

Ludlow v. **Pike,** 73 L. J. K.B. 274; [1904] 1 K.B. 531; 90 L. T. 458; 52 W. R. 475; 68 J. P. 243; 20 T. L. R. 276: approved by Vaughan Williams, L.J., and Kennedy, L.J., and disapproved by Buckley, L.J., in *Tuff* v. *Drapers' Co.*, 82 L. J. K.B. 174; [1913] 1 K.B. 40; 107 L. T. 635; 57 S. J. 43; 29 T. L. R. 36.

Luker v. **Dennis,** 47 L. J. Ch. 174; 7 Ch. D. 227; 37 L. T. 827; 26 W. R. 167: considered in *London County Council* v. *Allen*, 83 L. J. K.B. 1695; [1914] 3 K.B. 642.

Lumsden v. **Inland Revenue Commissioners,** 84 L. J. K.B. 45; [1914] A.C. 877; 111 L. T. 993; 58 S. J. 738; 30 T. L. R. 673: followed in *Inland Revenue Commissioners* v. *Walker*, 84 L. J. P.C. 115; [1915] A.C. 509; 112 L. T. 611: discussed in *Congregation of Jews* v. *Inland Revenue*, [1915] S. C. 997.

Luxford v. **Cheeke,** 3 Lev. 125: applied in *Seaton, In re; Ellis* v. *Seaton*, 83 L. J. Ch. 124; [1913] 2 Ch. 614.

Lyell v. **Kennedy,** 53 L. J. Ch. 937; 27 Ch. D. 1; distinguished in *Lambert* v. *Home*, 83 L. J. K.B. 1091; [1914] 3 K.B. 86; 58 S. J. 471; 30 T. L. R. 474.

Lyles v. **Southend-on-Sea Corporation,** 74 L. J. K.B. 484; [1905] 2 K.B. 1; 92 L. T. 586; 69 J. P. 193; 3 L. G. R. 691; 21 T. L. R. 389: applied in *Myers* v. *Bradford Corporation*, 84 L. J. K.B. 306; [1915] 1 K.B. 417; 112 L. T. 206; 79 J. P. 130; 13 L. G. R. 1; 59 S. J. 57; 31 T. L. R. 44.

Lynch v. **Lansdowne (Marquis),** [1914] W.C. & I. Rep. 244; 48 Ir. L. T. 89: considered in *Luckie* v. *Merry*, 84 L. J. K.B. 1388; [1915] 3 K.B. 83; [1915] W.C. & I. Rep. 395; 113 L. T. 667; 59 S. J. 544; 31 T. L. R. 466.

Lynde v. **Anglo-Italian Hemp Spinning Co.,** 65 L. J. Ch. 96; [1896] 1 Ch. 178; 73 L. J. 502: followed in *Pacaya Rubber & Produce Co., In re; Burn's Case*, 83 L. J. Ch. 432; [1914] 1 Ch. 542; 110 L. T. 578; 58 S. J. 269; 30 T. L. R. 260.

Lyne v. **Leonard,** 9 B. & S. 65; L. R. 3 Q.B. 156; 18 L. T. 55; 16 W. R. 562: followed in *Maw* v. *Holloway*, 84 L. J. K.B. 99; [1914] 3 K.B. 595; 111 L. T. 670; 78 J. P. 347.

Lyons v. **Weldon,** 2 Bing. 334: followed in *Mackay, In re*, [1915] 2 Ir. R. 347.

Lyons Corporation v. **Advocate General of Bengal,** 1 App. Cas. 91: applied in *Cunningham, In re; Dulcken* v. *Cunningham*, 83 L. J. Ch. 342; [1914] 1 Ch. 427; 110 L. T. 371.

Lysaght v. **Edwards,** 45 L. J. Ch. 554; 2 Ch. D. 499; 34 L. T. 787; 24 W. R. 778: followed and applied in *Allen* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 649; [1914] 1 K.B. 327; 110 L. T. 446; 58 S. J. 318.

Lyttelton Times Co. v. **Warners,** 76 L. J. P.C. 100; [1907] A.C. 476; 97 L. T. 496; 23 T. L. R. 751: distinguished in *Pwllbach Colliery Co.* v. *Woodman*, 84 L. J. K.B. 874; [1915] A.C. 634; 113 L. T. 10; 31 T. L. R. 271.

M.

Mac, The, 51 L. J. Adm. 81; 7 P. D. 126; 46 L. T. 907; 4 Asp. M.C. 555: followed in *The Mudlark*, 80 L. J. P. 117; [1911] P. 116; 27 T. L. R. 385.

Macandrew v. **Tillard,** [1909] S. C. 78: commented on and explained in *Robertson* v. *Wilson*, [1912] S. C. 1276.

Macartney v. **Macartney,** 25 T. L. R. 818: considered in *Kelsey* v. *Donne*, 81 L. J. K.B. 503; [1912] 2 K.B. 482; 105 L. T. 856.

Macbeth v. **Maritime Insurance Co.,** 77 L. J. K.B. 498; [1908] A.C. 144; 11 Asp. M.C. 52; 98 L. T. 594; 13 Com. Cas. 222; 24 T. L. R. 403: considered in *Hall* v. *Hayman*, 81 L. J. K.B. 509; [1912] 2 K.B. 5; 106 L. T. 142; 17 Com. Cas. 81; 12 Asp. M.C. 158; 56 S. J. 205; 28 T. L. R. 171.

M'Callum v. **Quinn,** [1909] S. C. 227: distinguished in *M'Ghee* v. *Summerlee Iron Co.*, [1911] S. C. 870.

McClelland v. **Manchester Corporation,** 81 L. J. K.B. 98; [1912] 1 K.B. 118; 105 L. T. 707; 76 J. P. 21; 9 L. G. R. 1209; 28 T. L. R. 21: followed in *Thompson* v. *Bradford Corporation*, 84 L. J. K.B. 1440; [1915] 3 K.B. 13; 79 J. P. 364; 13 L. G. R. 884; 59 S. J. 495.

McDaid v. **Barton,** 4 Lawson 61: distinguished in *Steele* v. *Dowling*, [1914] 2 Ir. R. 432.

McDonald v. **Hughes,** 71 L. J. K.B. 43; [1902] 1 K.B. 94; 85 L. T. 727; 50 W. R. 318; 66 J. P. 86: applied in *Cooke* v. *Bolton Justices*, 81 L. J. K.B. 648; [1912] 2 K.B. 248; 105 L. T. 818; 76 J. P. 67.

Macdonald (*or* **Duris**) v. **Wilsons and Clyde Coal Co.,** 81 L. J. P.C. 188; [1912] A.C. 513; 106 L. T. 905; 56 S. J. 550; 28 T. L. R. 431; [1912] W.C. Rep. 302: distinguished in *Gray* v. *Shotts Iron Co.*, [1912] S. C. 1267; [1912] W.C. Rep. 359.

McEuen, In re; McEuen v. **Phelps,** 83 L. J. Ch. 66; [1913] 2 Ch. 704; 109 L. T. 701; 58 S. J. 82; 30 T. L. R. 44: followed in *Wills, In re*, 84 L. J. Ch. 580; [1915] 1 Ch. 769; 113 L. T. 138; 59 S. J. 477.

M'Farlane v. **Birrell,** 16 R. (J.) 28: followed in *Summerlee Iron Co.* v. *Thomson*, [1913] S. C. (J.) 34.

Macfarlane's Claim, 50 L. J. Ch. 273; 17 Ch. D. 337; 44 L. T. 299: principle of, not adopted in *Law Car and General Insurance Corporation*, 82 L. J. Ch. 467; [1913] 2 Ch. 103; 108 L. T. 862.

McGlennon's Application, In re, 25 R. P. C. 797; 25 T. L. R. 23: distinguished in *Van der Leeuw's Trade Mark, In re*, 81 L. J. Ch. 100; [1912] 1 Ch. 40; 105 L. T. 626; 28 R. P. C. 708; 56 S. J. 53; 28 T. L. R. 35.

MacGregor v. **Clamp,** 83 L. J. K.B. 240; [1914] 1 K.B. 288; 109 L. T. 954; 78 J. P. 125; 58 S. J. 139; 30 T. L. R. 128: followed in *Eastwood* v. *McNab*, 83 L. J. K.B. 941; [1914] 2 K.B. 361; 110 L. T. 701; 12 L. G. R. 517.

McGregor v. **McGregor,** 57 L. J. Q.B. 591; 21 Q.B. D. 424: considered and explained in *Hanau* v. *Ehrlich*, 81 L. J. K.B. 397; [1912] A.C. 39; 106 L. T. 1; 56 S. J. 186; 28 T. L. R. 113.

M'Guignan v. **Belfast Guardians,** 18 L. R. Ir. 89: followed in *Lloyd* v. *Bermondsey Guardians*, 108 L. T. 716; 77 J. P. 72; 11 L. G. R. 751; 29 T. L. R. 84.

Macintosh v. **Dun,** 77 L. J. P.C. 113; [1908] A.C. 390; 99 L. T. 64; 24 T. L. R. 705: followed in *Greenlands* v. *Wilmshurst*, [1913] 3 K.B. 507; 109 L. T. 487; 57 S. J. 740; 29 T. L. R. 685: considered in *Barr* v. *Musselburgh Merchants' Association*, [1912] S. C. 174.

Mackay, In re; Griessemann v. **Carr,** 80 L. J. Ch. 237; [1911] 1 Ch. 300; 103 L. T. 755: *dictum* of Parker, J., in, approved in *Allsop, In re; Whittaker* v. *Bamford*, 83 L. J. Ch. 42; [1914] 1 Ch. 1; 109 L. T. 641; 58 S. J. 9; 30 T. L. R. 18.

Mackinnon v. **Miller,** [1909] S. C. 373; 46 Sc. L. R. 299: applied in *Proctor* v. "*Serbino*" (*Owners*), 84 L. J. K.B. 1381; [1915] 3 K.B. 344; 113 L. T. 640; [1915] W.C. & I. Rep. 425; 59 S. J. 629; 31 T. L. R. 524.

M'Kone v. **Wood,** 5 Car. & P. 1: distinguished in *North* v. *Wood*, 83 L. J. K.B. 587; [1914] 1 K.B. 629; 110 L. T. 703; 30 T. L. R. 258.

M'Laren v. **Caledonian Railway,** [1911] S. C. 1075; 48 Sc. L. R. 885: approved and followed in *Pritchard* v. *Torkington*, [1914] W.C. & I. Rep. 271; 111 L. T. 917; 58 S. J. 739.

McLean v. **Fleming,** L. R. 2 H.L. Sc. 128: applied in *Kish* v. *Taylor*, 81 L. J. K.B. 1027; [1912] A.C. 604; 106 L. T. 900; 17 Com. Cas. 355; 56 S. J. 518; 28 T. L. R. 425.

M'Mahon v. **Gaussen,** [1896] 1 Ir. R. 143: approved and followed in *Hodgson, In re; Weston* v. *Hodgson*, 82 L. J. Ch. 31; [1913] 1 Ch. 34; 107 L. T. 607.

M'Neice v. **Singer Sewing Machine Co.,** [1911] S. C. 12; 48 Sc. L. R. 15: approved and followed in *Pierce* v. *Provident Clothing and Supply Co.*, 80 L. J. K.B. 831; [1911] 1 K.B. 997; 104 L. T. 473; 55 S. J. 363; 27 T. L. R. 299.

Macoun v. **Erskine, Oxenford & Co.,** 70 L. J. K.B. 973; [1901] 2 K.B. 493; 85 L. T. 372: followed in *Finlay, In re; Wilson* v. *Finlay*, 82 L. J. Ch. 295; [1913] 1 Ch. 565; 108 L. T. 699; 57 S. J. 444; 29 T. L. R. 436.

McPherson v. **Temiskaming Lumber Co.,** 82 L. J. P.C. 113; [1913] A.C. 145; 107 L. T. 664; 29 T. L. R. 80: followed in *Clarkson* v. *Wishart*, 83 L. J. P.C. 59; [1913] A.C. 828; 109 L. T. 775; 29 T. L. R. 778.

M'Quater v. **Fergusson,** [1911] S. C. 640: discussed in *Galloway (Earl)* v. *M'Clelland*, [1915] S. C. 1062.

Magdalena Steam Navigation Co. v. **Martin,** 28 L. J. Q.B. 310; 2 E. & E. 94; 5 Jur. (N.S.) 1260; 7 W. R. 598: considered in *Republic of Bolivia Exploration Syndicate, In re*, 83 L. J. Ch. 226; [1914] 1 Ch. 139; 109 L. T. 741; 58 S. J. 173; 30 T. L. R. 78.

Main Colliery Co. v. **Davies,** 69 L. J. Q.B. 755; [1900] A.C. 358; 83 L. T. 83; 65 J. P. 20; explained in *Tamworth Colliery Co.* v. *Hall*, [1911] A.C. 665; 105 L. T. 449; 55 S. J. 615.

Mair v. **Rio Grande Rubber Estates,** 83 L. J. P.C. 35; [1913] A.C. 853; 57 S. J. 728; 29 T. L. R. 692: followed in *Pacaya Rubber and Produce Co., In re*, 83 L. J. Ch. 432; [1914] 1 Ch. 542; 110 L. T. 578; 58 S. J. 269; 30 T. L. R. 260.

Makin v. **Att.-Gen. for New South Wales,** 63 L. J. P.C. 41; [1894] A.C. 57; 69 L. T. 778; 58 J. P. 148; 17 Cox C.C. 704: explained in *Ibrahim* v. *Regem*, 83 L. J. P.C. 185; [1914] A.C. 599; 111 L. T. 20; 30 T. L. R. 383.

Malcolm v. **Charlesworth,** 1 Keen, 63: considered and applied in *Gresham Life Assurance Society* v. *Crowther*, 84 L. J. Ch. 312; [1915] 1 Ch. 214; 111 L. T. 887; 59 S. J. 103.

Malet's Trusts, In re, 17 L. R. Ir. 424: considered in *Mackay, In re*, [1915] 2 Ir. R. 347.

Manchester Corporation v. **New Moss Colliery Co.,** 75 L. J. Ch. 772; 77 L. J. Ch. 392; [1906] 2 Ch. 564; [1908] A.C. 117: distinguished in *London and North-Western Railway*, 80 L. J. Ch. 537; [1911] 2 Ch. 97; 104 L. T. 546; 55 S. J. 459; 27 T. L. R. 389.

Manchester Ship Canal Co. v. **Manchester Racecourse Co.,** 70 L. J. Ch. 468; [1901] 2 Ch. 37; 84 L. T. 436; 49 W. R. 418: distinguished in *Ryan* v. *Thomas*, 55 S. J. 364.

Mann, In re; Hardy v. **Att.-Gen.,** 72 L. J. Ch. 150; [1903] 1 Ch. 232; 87 L. T. 734; 51 W. R. 165: applied in *Cunningham, In re; Dulcken* v. *Cunningham*, 83 L. J. Ch. 342; [1914] 1 Ch. 427; 110 L. T. 371.

Manning v. **Burges,** 1 Ch. Cas. 29: followed in *Webb* v. *Crosse*, 81 L. J. Ch. 259; [1912] 1 Ch. 323; 105 L. T. 867; 56 S. J. 177.

Mansell v. **Valley Printing Co.,** 77 L. J. Ch. 742; [1908] 2 Ch. 441; 99 L. T. 464; 24 T. L. R. 802: applied in *Bowden* v. *Amalgamated Pictorials, Lim.*, 80 L. J. Ch. 291; [1911] 1 Ch. 386; 103 L. T. 829.

Mansfield (Earl) v. **Ogle,** 28 L. J. Ch. 422; 4 De G. & J. 38: explained in *Salvin, In re; Worsley* v. *Marshall*, 81 L. J. Ch. 248; [1912] 1 Ch. 332; 106 L. T. 35; 56 S. J. 241; 28 T. L. R. 190.

Marchant, In re, 77 L. J. K.B. 695; [1908] 1 K.B. 998; 98 L. T. 823; 24 T. L. R. 375: followed in *Harby* v. *Wood Advertising Agency*, 109 L. T. 946.

Marchant v. **London County Council,** 79 L. J. K.B. 718; [1910] 2 K.B. 379; 102 L. T. 917; 74 J. P. 339; 8 L. G. R. 694; 26 T. L. R. 500 : discussed in *London County Council* v. *Perry*, 84 L. J. K.B. 1518; [1915] 2 K.B. 193; 113 L. T. 85; 79 J. P. 312; 13 L. G. R. 746; 31 T. L. R. 281.

Markey v. **Tolworth Joint Isolation Hospital District Board,** 69 L. J. Q.B. 738; [1900] 2 Q.B. 454; 83 L. T. 28; 64 J. P. 647 : disapproved in *British Columbia Electric Railway Co.* v. *Gentile*, 83 L. J. P.C. 353; [1914] A.C. 1034; 111 L. T. 682; 30 T. L. R. 594.

Marman's Trusts, In re, 8 Ch. D. 256; 38 Ch. D. 797 : followed in *Bennett, In re; Greenwood* v. *Bennett*, 82 L. J. Ch. 506; [1913] 2 Ch. 318; 109 L. T. 302.

Marriott v. **Chamberlain,** 55 L. J. Q.B. 448; 17 Q.B. D. 154; 54 L. T. 714 : discussed in *Nash* v. *Layton*, 80 L. J. Ch. 636; [1911] 2 Ch. 71; 104 L. T. 834.

Marsh, In re, 54 L. J. Q.B. 557; 15 Q.B. D. 340; 53 L. T. 418 : applied in *Geiger, In re*, 84 L. J. K.B. 589; [1915] 1 K.B. 439; 112 L. T. 562; [1915] H. B. R. 44; 59 S. J. 250.

Marshall v. **Queenborough Corporation,** 1 Sim. & S. 520 : distinguished in *Hoare* v. *Kingsbury Urban Council*, 81 L. J. Ch. 666; [1912] 2 Ch. 452; 107 L. T. 492; 76 J. P. 401; 10 L. G. R. 829; 56 S. J. 704.

Marshall v. **Taylor,** 64 L. J. Ch. 416; [1895] 1 Ch. 641; 72 L. T. 670 : followed in *Kynoch* v. *Rowlands*, 81 L. J. Ch. 340; [1912] 1 Ch. 527; 106 L. T. 316.

Martin v. **Holgate,** 35 L. J. Ch. 789; L. R. 1 H. L. 175 : distinguished in *Addie's Trustees* v. *Jackson*, [1913] S. C. 681.

Martyn, In re; Coode v. **Martyn,** 69 L. J. Ch. 733; 83 L. T. 146 : followed in *Llewellyn, In re*, 80 L. J. Ch. 259; [1911] 1 Ch. 451; 104 L. T. 279; 55 S. J. 254 : questioned in *Beauchamp's Trusts, In re; Cadge* v. *Barker-Hahlo*, 83 L. J. Ch. 440; [1914] 1 Ch. 676; 110 L. T. 814; 58 S. J. 320.

Maryon-Wilson, In re, 69 L. J. Ch. 310; [1900] 1 Ch. 565; 82 L. T. 171; 48 W. R. 338 : followed in *Dundas' Trustees* v. *Dundas' Trustees*, [1912] S. C. 375.

Mason v. **Provident Clothing and Supply Co.,** 82 L. J. K.B. 1153; [1913] A.C. 724; 109 L. T. 449; 57 S. J. 739; 29 T. L. R. 727 : observations of Lord Moulton in, distinguished in *Nevanas & Co.* v. *Walker*, 83 L. J. Ch. 380; [1914] 1 Ch. 413; 110 L. T. 416; 58 S. J. 235; 30 T. L. R. 184.

Massy v. **Rogers,** 11 L. R. Ir. 409: followed in *Raven, In re; Spencer* v. *National Association for Prevention of Consumption*, 84 L. J. Ch. 489; [1915] 1 Ch. 673; 113 L. T. 131.

Mather v. **Brown,** 45 L. J. C.P. 547; 1 C.P. D. 596; 34 L. T. 869; 24 W. R. 736 : distinguished in *Rex* v. *Casey*, [1914] 2 Ir. R. 243.

Maughan v. **Free Church of Scotland,** 20 Rettie, 759; 30 Sc. L. R. 666; 3 Tax Cas. 207 : approved in *Rex* v. *Income Tax Commissioners; Essex Hall, ex parte*, 80 L. J. K.B. 1035; [1911] 2 K.B. 434; 104 L. T. 764; 27 T. L. R. 466.

Maxwell v. **Grunhut,** 59 S. J. 104; 31 T. L. R. 79 : followed and applied in *Gaudig & Blum, In re*, 31 T. L. R. 153.

May v. **Yuill,** 27 R. P. C. 525: not followed in *British, Foreign, and Colonial Automatic Light Controlling Co.* v. *Metropolitan Gas Meters, Lim.*, 81 L. J. Ch. 520; [1912] 2 Ch. 82; 106 L. T. 834.

Maynard v. **Gibson,** [1876] W. N. 204: followed in *White* v. *Paine*, 83 L. J. K.B. 895; [1914] 2 K.B. 486; 58 S. J. 381; 30 T. L. R. 347.

Meek v. **Kettlewell,** 11 L. J. Ch. 293; 1 Hare, 464; 6 Jur. 550 : applied in *Mudge, In re*, 83 L. J. Ch. 243; [1914] 1 Ch. 115; 109 L. T. 781; 58 S. J. 117.

Mégret, In re; Tweedie v. **Maunder,** 70 L. J. Ch. 451; [1901] 1 Ch. 547; 84 L. T. 192 : considered in *Pryce, In re; Lawford* v. *Pryce*, 80 L. J. Ch. 525; [1911] 2 Ch. 286; 105 L. T. 51.

Melhado v. **Porto Alegre and New Hamburg and Brazilian Railway,** 43 L. J. C.P. 253; L. R. 9 C.P. 503; 31 L. T. 57; 23 W. R. 57 : distinguished in *Hickman* v. *Kent* (or *Romney*) *Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Melhuish v. **London County Council,** 83 L. J. K.B. 1165; [1914] 3 K.B. 325; 111 L. T. 539; 78 J. P. 441; 12 L. G. R. 1086; 30 T. L. R. 527 : judgment of Avory, J., in, commented upon in *Prance* v. *London County Council*, 84 L. J. K.B. 623; [1915] 1 K.B. 688; 112 L. T. 820; 79 J. P. 242; 13 L. G. R. 382; 31 T. L. R. 128.

Mellor's Trustees v. **Maas,** 71 L. J. K.B. 26; 74 L. J. K.B. 452; [1902] 1 K.B. 137; [1905] A.C. 102; 85 L. T. 490; 92 L. T. 371; 50 W. R. 111; 53 W. R. 513; 8 Manson, 341; 12 Manson, 107; 21 T. L. R. 304 : discussed and applied in *Johnson* v. *Rees*, 84 L. J. K.B. 1276.

Melson & Co., In re, 75 L. J. Ch. 509; [1906] 1 Ch. 841; 94 L. T. 641; 54 W. R. 468; 13 Manson, 190; 22 T. L. R. 500 : followed in *Clandown Colliery, In re*, 84 L. J. Ch. 420; [1915] 1 Ch. 369; 112 L. T. 1060; [1915] H. B. R. 93; 59 S. J. 350.

Mercedes Daimler Motor Co. v. **Maudslay Motor Co.,** 32 R. P. C. 149; 31 T. L. R. 178: followed in *Rombach Baden Clock Co.*, 84 L. J. K.B. 1558; 31 T. L. R. 492.

Merrick's Case, 2 Peck. 91: discussed and applied in *Rex* v. *Dymock (Vicar)*, 84 L. J. K.B. 294; [1915] 1 K.B. 147; 112 L. T. 156; 79 J. P. 91; 13 L. G. R. 48; 31 T. L. R. 11.

Merryweather v. **Moore,** 61 L. J. Ch. 505; [1892] 2 Ch. 518; 66 L. T. 719; 40 W. R. 540: considered in *Amber Size and Chemical Co.* v. *Menzel*, 82 L. J. Ch. 573; [1913] 2 Ch. 239; 109 L. T. 520.

Merryweather v. **Nixan,** 8 Term Rep. 186; 1 Sm. L.C. (12th ed.), 443; the principle of, does not apply in the case of contribution in general average: so held in *Austin Friars Steamship Co.* v. *Spillers & Bakers*, 84 L. J. K.B. 1958; [1915] 3 K.B. 586; 113 L. T. 805; 31 T. L. R. 535.

Mersey Docks and Harbour Board v. **Lucas,** 53 L. J. Q.B. 4; 8 App. Cas. 891; 49 L. T. 781; 32 W. R. 34; 48 J. P. 212: followed in *City of Dublin Steam Packet Co.* v. *O'Brien*, 6 Tax Cas. 101.

Metcalfe, In re; Metcalfe v. **Earle,** 78 L. J. Ch. 303; [1909] 1 Ch. 424; 100 L. T. 222: followed in *Williams, In re; Metcalf* v. *Williams*, 83 L. J. Ch. 570; [1914] 2 Ch. 61; 110 L. T. 923; 58 S. J. 470.

Metropolitan Coal Consumers Association, In re; Karberg's Case, 61 L. J. Ch. 741; [1892] 3 Ch. 1; 66 L. T. 700: followed in *Pacaya Rubber and Produce Co., In re; Burns's Case*, 83 L. J. Ch. 432; [1914] 1 Ch. 542; 110 L. T. 578; 58 S. J. 269; 30 T. L. R. 260.

Metropolitan Railway v. **London County Council,** 80 L. J. K.B. 35; [1911] A.C. 1; 103 L. T. 466; 8 L. G. R. 1055; 75 J. P. 9; 55 S. J. 28: distinguished in *Clode* v. *London County Council*, 83 L. J. K.B. 1587; [1914] 3 K.B. 852; 12 L. G. R. 673; 58 S. J. 633; 30 T. L. R. 489.

Metropolitan Water Board v. **Avery,** 83 L. J. K.B. 178; [1914] A.C. 118; 109 L. T. 762; 78 J. P. 121; 12 L. G. R. 95; 58 S. J. 171; 30 T. L. R. 189: distinguished in *Oddenino* v. *Metropolitan Water Board*, 84 L. J. Ch. 102; [1914] 2 Ch. 734; 112 L. T. 115; 79 J. P. 89; 13 L. G. R. 33; 59 S. J. 129; 31 T. L. R. 23.

Metropolitan Water Board v. **London, Brighton, and South Coast Railway,** 79 L. J. K.B. 1179; [1910] 2 K.B. 890; 103 L. T. 304; 74 J. P. 409; 8 L. G. R. 930; 26 T. L. R. 676: discussed in *Metropolitan Water Board* v. *Colley's Patents*, 80 L. J. K.B. 929; [1911] 2 K.B. 38; 104 L. T. 478; 75 J. P. 217; 9 L. G. R. 483; 55 S. J. 311; 27 T. L. R. 286.

Meyler v. **Meyler,** 11 L. R. Ir. 522: not followed in *Cross's Trust, In re*, [1915] 1 Ir. R. 304.

Middleton v. **Pollock; Elliott, Ex parte,** 45 L. J. Ch. 293; 2 Ch. D. 104: explanation of, given by Chitty, L.J., in *New, Prance, and Garrard's Trustee* v. *Hunting* (66 L. J. Q.B. 554; [1897] 2 Q.B. 19): approved of in *Cozens, In re; Green* v. *Brisley*, 82 L. J. Ch. 421; [1913] 2 Ch. 478; 109 L. T. 306; 57 S. J. 687.

Mid-Kent Fruit Factory, In re, 65 L. J. Ch. 250; [1896] 1 Ch. 567; 74 L. T. 22; 44 W. R. 284; 3 Manson, 59: distinguished in *Thorne & Son, Lim., In re*, 84 L. J. Ch. 161; [1914] 2 Ch. 438; 112 L. T. 30; [1915] H. B. R. 19; 58 S. J. 755.

Midland Railway v. **Birmingham Corporation,** 13 L. T. 404: followed in *Lancashire and Yorkshire Railway* v. *Liverpool Corporation*, 76 J. P. 329; 10 L. G. R. 575.

Midland Railway v. **Great Western Railway,** 42 L. J. Ch. 438; L. R. 8 Ch. 841; 28 L. T. 718; 21 W. R. 657: distinguished in *Great Central Railway* v. *Midland Railway*, 83 L. J. K.B. 221; [1914] A.C. 1; 110 L. T. 481; 58 S. J. 65; 30 T. L. R. 33.

Midland Railway v. **Loseby,** 68 L. J. Q.B. 326; [1899] A.C. 133; 80 L. T. 93; 47 W. R. 656: followed in *London and North-Western Railway* v. *Jones*, 84 L. J. K.B. 1268; [1915] 2 K.B. 35; 113 L. T. 724.

Midwood v. **Manchester Corporation,** 74 L. J. K.B. 884; [1905] 2 K.B. 597; 93 L. T. 525; 54 W. R. 37; 69 J. P. 348; 3 L. G. R. 1136; 21 T. L. R. 667: followed in *Charing Cross, West End and City Electric Supply Co.* v. *London Hydraulic Supply Co.*, 83 L. J. K.B. 1352; [1914] 3 K.B. 772; 111 L. T. 198; 78 J. P. 305; 12 L. G. R. 807; 58 S. J. 577; 30 T. L. R. 441: distinguished in *Goodbody* v. *Poplar Borough Council*, 84 L. J. K.B. 1230; 79 J. P. 218; 13 L. G. R. 166.

Mighell v. **Sultan of Johore,** 63 L. J. Q.B. 593; [1894] 1 Q.B. 149; 70 L. T. 64; 58 J. P. 244: considered in *Republic of Bolivia Exploration Syndicate, In re*, 83 L. J. Ch. 226; [1914] 1 Ch. 139; 109 L. T. 741; 110 L. T. 141; 58 S. J. 173; 30 T. L. R. 78.

Milan, The, 31 L. J. Adm. 105; Lush. 388: considered in *The Drumlanrig*, 80 L. J. P. 9; [1911] A.C. 16; 103 L. T. 773; 11 Asp. M.C. 520; 55 S. J. 138; 27 T. L. R. 146: explained and distinguished in *The Devonshire*, 81 L. J. P. 94; [1912] A.C. 634; 107 L. T. 179; 57 S. J. 10; 28 T. L. R. 551: considered in

The Umona, 83 L. J. P. 106; [1914] P. 141; 111 L. T. 415; 12 Asp. M.C. 527; 30 T. L. R. 498.

Millar v. **Toulmin,** 55 L. J. Q.B. 445; 17 Q.B. D. 603; 34 W. R. 695: approved in *Skeate* v. *Slaters, Lim.*, 83 L. J. K.B. 676; [1914] 2 K.B. 429; 110 L. T. 604; 30 T. L. R. 290.

Millbourn v. **Lyons,** 83 L. J. Ch. 737; [1914] 2 Ch. 231; 58 S. J. 578: applied in *London County Council* v. *Allen*, 83 L. J. K.B. 1696; [1914] 3 K.B. 642.

Miller v. **Hancock,** [1893] 2 Q.B. 177; 69 L. T. 214; 41 W. R. 578; 57 J. P. 578: distinguished in *Lucy* v. *Bawden*, 83 L. J. K.B. 523; [1914] 2 K.B. 318; 110 L. T. 580; 30 T. L. R. 321; and in *Dobson* v. *Horsley*, 84 L. J. K.B. 399; [1915] 1 K.B. 634; 112 L. T. 101; 31 T. L. R. 12.

Mills v. **Carson,** 10 R. P. C. 9: distinguished in *Cummings* v. *Stewart*, [1913] 1 Ir. R. 95.

Minchin v. **Minchin,** 5 Ir. R. Eq. 178, 258: followed in *Horsfall, In re*, 80 L. J. Ch. 480; [1911] 2 Ch. 63; 104 L. T. 590.

Minter v. **Snow,** 74 J. P. 257: applied in *Rex* v. *Registrar of Joint-Stock Companies; Bowen, Ex parte*, 84 L. J. K.B. 229; [1914] 3 K.B. 1161; 112 L. T. 38; 30 T. L. R. 707.

Minturn v. **Barry,** 80 L. J. K.B. 802; [1911] 2 K.B. 265; 104 L. T. 635; 9 L. G. R. 611; 75 J. P. 330; 55 S. J. 385; 27 T. L. R. 352: *dictum* of Bankes, J., in, overruled in *Barry* v. *Minturn*, 82 L. J. K.B. 1193; [1913] A.C. 584; 109 L. T. 573; 57 S. J. 715; 29 T. L. R. 717; 77 J. P. 437; 11 L. G. R. 1087.

Mirrlees' Charity, In re, 79 L. J. Ch. 73; [1910] 1 Ch. 163; 101 L. T. 549; 26 T. L. R. 77: commented on in *Glasgow Society for Prevention of Cruelty to Animals* v. *National Anti-Vivisection Society*, [1915] S. C. 757.

Mitchell v. **Armstrong,** 17 T. L. R. 495: doubted by Kennedy, L.J., in *Lacon's Settlement, In re*, 80 L. J. Ch. 610; [1911] 2 Ch. 17; 104 L. T. 840; 55 S. J. 551; 27 T. L. R. 485.

Mitchell v. **Glamorgan Colliery Co.,** 23 T. L. R. 588: considered in *Jenkins* v. *Standard Colliery Co.*, 105 L. T. 730; 28 T. L. R. 7: followed in *Wright* v. *Kerrigan*, [1911] 2 Ir. R. 301.

Mitford Union v. **Wayland Union,** 59 L. J. M.C. 86; 25 Q.B. D. 164; 63 L. T. 299; 38 W. R. 632; 54 J. P. 757: *dicta* of Lord Esher in, not followed in *Paddington Union* v. *Westminster Union*, 84 L. J. K.B. 1727; [1915] 2 K.B. 644; 79 J. P. 343; 13 L. G. R. 641.

Mole v. **Wadworth,** [1913] W.C. & I. Rep. 160: discussed in *Edwards* v. *Wingham Agricultural Implement Co.*, 82 L. J. K.B. 998; [1913] 3 K.B. 596; 109 L. T. 50; 57 S. J. 701.

Molloy v. **Mutual Reserve Life Insurance Co.,** 94 L. T. 756: followed in *Oelkers* v. *Ellis*, 83 L. J. K.B. 658; [1914] 2 K.B. 139; 110 L. T. 332.

Monckton's Settlement, In re, 83 L. J. Ch. 34; [1913] 2 Ch. 636; 109 L. T. 624; 57 S. J. 836: approved in *Nutt's Settlement, In re*, 84 L. J. Ch. 877; [1915] 2 Ch. 431; 59 S. J. 717.

Montague, In re; Ward, ex parte, 76 L. T. 203; 4 Manson, 1: discussed and explained in *Teale, In re; Blackburn, ex parte*, 81 L. J. K.B. 1243; [1912] 2 K.B. 367; 106 L. T. 893; 56 S. J. 553; 28 T. L. R. 415.

Montague v. **Montague,** 15 Beav. 565: followed in *Peel's Settlement, In re; Biddulph* v. *Peel*, 80 L. J. Ch. 574; [1911] 2 Ch. 165; 105 L. T. 330; 55 S. J. 580.

Moody, In re; Woodroffe v. **Moody,** 64 L. J. Ch. 174; [1895] 1 Ch. 101; 72 L. T. 190; 43 W. R. 462: followed in *Abrahams, In re*, 80 L. J. Ch. 83; [1911] 1 Ch. 108; 103 L. T. 532; 55 S. J. 46.

Moody v. **Tree,** 9 R. P. C. 333: followed in *Pugh* v. *Riley Cycle Co.*, 81 L. J. Ch. 476; [1912] 1 Ch. 613; 106 L. T. 592; 29 R. P. C. 196; 28 T. L. R. 249.

Moore, In re; Trafford v. **Maconochie,** 57 L. J. Ch. 936; 39 Ch. D. 116; 59 L. T. 681; 37 W. R. 83; 52 J. P. 596: distinguished in *Charleton, In re*, 55 S. J. 330.

Moore, Ex parte, 54 L. J. Q.B. 190; 14 Q.B. D. 627; 52 L. T. 376: followed in *Debtor, In re*, 81 L. J. K.B. 1225; [1912] 3 K.B. 242; 107 L. T. 506.

Moore v. **Cleghorn,** 10 Beav, 423: on app., 12 Jur. 591: distinguished in *Jones, In re*, 84 L. J. Ch. 222; [1915] 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Moore v. **Manchester Liners,** 79 L. J. K.B. 1175; [1910] A.C. 498; 103 L. T. 226; 54 S. J. 703; 26 T. L. R. 618: distinguished in *Kitchenham* v. *Johannesburg (Owners)*, 80 L. J. K.B. 1102; [1911] A.C. 417; 105 L. T. 118; 55 S. J. 599; 27 T. L. R. 504.

Mordaunt v. **Benwell,** 51 L. J. Ch. 247; 19 Ch. D. 302: discussed and applied in *Herbert* v. *Herbert*, 81 L. J. Ch. 733; [1912] 2 Ch. 268.

Morison v. **Moat,** 20 L. J. Ch. 513; 9 Hare, 241: applied in *Amber Size and Chemical Co.* v. *Menzel*, 82 L. J. K.B. 573; [1913] 2 Ch. 239; 109 L. T. 520.

Morphett v. **Morphett,** 38 L. J. P. 23; L. R. 1 P. & D. 702; 19 L. T. 801: disapproved in *Browning* v. *Browning*, 80 L. J. P. 74; [1911] P. 161; 104 L. T. 750; 55 S. J. 462; 27 T. L. R. 404.

Morris v. **Oceanic Steam Navigation Co.,** 16 T. L. R. 533: considered in *Bank of Australasia* v. *Clan Line Steamers*, 84 L. J. K.B. 1250; [1916] 1 K.B. 39.

Morris v. **Richards,** 45 L. T. 210: followed in *Gelmini* v. *Moriggia*, 82 L. J. K.B. 949; [1913] 2 K.B. 549; 109 L. T. 77; 29 T. L. R. 486.

Mortimer v. **M'Callan,** 9 L. J. Ex. 73; 6 M. & W. 58: followed in *Owner* v. *Beehive Spinning Co.*, 83 L. J. K.B. 282; [1914] 1 K.B. 105; 109 L. T. 800; 78 J. P. 15; 12 L. G. R. 42; 23 Cox C.C. 626; 30 T. L. R. 21.

Moss v. **Gallimore,** 1 Dougl. 279: considered in *Ind, Coope & Co., In re; Fisher* v. *The Company*, 80 L. J. Ch. 661; [1911] 2 Ch. 223; 55 S. J. 600.

Moss v. **Great Eastern Railway,** 78 L. J. K.B. 1048; [1909] 2 K.B. 274; 100 L. T. 747; 25 T. L. R. 466: followed in *Taylor* v. *Cripps*, 83 L. J. K.B. 1538; [1914] 3 K.B. 989; 30 T. L. R. 616.

Mostyn v. **Lancaster,** 52 L. J. Ch. 848; 23 Ch. D. 583: applied in *Thomson's Estate, In re*, [1912] 1 Ir. R. 460.

Moult v. **Halliday,** 67 L. J. Q.B. 451; [1898] 1 Q.B. 125; 77 L. T. 794; 46 W. R. 318; 62 J. P. 8: considered in *George* v. *Davies*, 80 L. J. K.B. 924; [1911] 2 K.B. 445; 104 L. T. 648; 55 S. J. 481; 27 T. L. R. 415.

Mowatt v. **Castle Steel and Ironworks Co.,** 34 Ch. D. 58: distinguished in *Cox* v. *Dublin City Distillery Co.*, [1915] 1 Ir. R. 345.

Mozley Stark v. **Mozley Stark,** 79 L. J. P. 98; [1910] P. 190; 101 L. T. 770; 26 T. L. R. 194: distinguished in *Clarke* v. *Clarke*, 57 S. J. 644.

Mulhern v. **National Motor Cab Co.,** 29 T. L. R. 677: commented on in *Bestermann* v. *British Motor Cab Co.*, 83 L. J. K.B. 1014; [1914] 3 K.B. 181; 110 L. T. 754; 58 S. J. 319; 30 T. L. R. 319.

Mundy and Roper's Contract, In re, 68 L. J. Ch. 135; [1899] 1 Ch. 275; 79 L. T. 583; 47 W. R. 226: distinguished in *Collis's Estate, In re*, [1911] 1 Ir. R. 267; observations in, considered in *Bruen's Estate, In re*, [1911] 1 Ir. R. 76.

Murphy v. **Cooney,** [1914] W.C. & I. Rep. 44; 48 Ir. L. T. 13: distinguished in *Williams* v. *Llandudno Coaching and Carriage Co.*, 84 L. J. K.B. 655; [1915] 2 K.B. 101; [1915] W.C. & I. Rep. 91; 112 L. T. 848; 59 S. J. 286; 31 T. L. R. 186.

Murphy v. **Enniscorthy Union,** [1908] 2 Ir. R. 609: distinguished in *Finlay* v. *Tullamore Union*, [1914] 2 Ir. R. 233.

Murray v. **Denholm,** [1911] S. C. 1087: disapproved in *Trim Joint District School* v. *Kelly*, 83 L. J. P.C. 220; [1914] A.C. 667; 111 L. T. 305; 58 S. J. 493; 30 T. L. R. 452.

Murray v. **Scott,** 53 L. J. Ch. 745; 9 App. Cas. 519; 51 L. T. 462: applied in *Birkbeck Permanent Benefit Building Society, In re*, 81 L. J. Ch. 769; [1912] 2 Ch. 183; 106 L. T. 968; 28 T. L. R. 451.

Mustapha, In re, 8 T. L. R. 160: followed in *Wasserberg, In re*, 84 L. J. Ch. 214; [1915] 1 Ch. 195; 112 L. T. 242; 59 S. J. 176.

Musther, In re; Groves v. **Musther,** 59 L. J. Ch. 296; 43 Ch. D. 569: distinguished in *Williams, In re; Metcalf* v. *Williams*, 83 L. J. Ch. 570; [1914] 2 Ch. 61; 110 L. T. 923; 58 S. J. 470.

Musurus Bey v. **Gadban,** 63 L. J. Q.B. 621; [1894] 1 Q.B. 533; [1894] 2 Q.B. 352; 71 L. T. 51; 42 W. R. 545: considered in *Republic of Bolivia Exploration Syndicate, In re*, 83 L. J. Ch. 226; [1914] 1 Ch. 139; 109 L. T. 741; 110 L. T. 141; 58 S. J. 173; 30 T. L. R. 78.

N.

Nash, In re, 65 L. J. Q.B. 65; [1896] 1 Q.B. 13; 73 L. T. 477; 44 W. R. 112; 2 Manson, 503: applied in *Geiger, In re*, 84 L. J. K.B. 589; [1915] 1 K.B. 439; 112 L. T. 562; [1915] H. B. R. 44; 59 S. J. 250.

Nash v. **"Rangatira" (Owners),** 83 L. J. K.B. 1496; [1914] 3 K.B. 978; [1914] W.C. & I. Rep. 490; 111 L. T. 704; 58 S. J. 705: distinguished in *Williams* v. *Llandudno Coaching and Carriage Co.*, 84 L. J. K.B. 655; [1915] 2 K.B. 101; [1915] W.C. & I. Rep. 91; 112 L. T. 848; 59 S. J. 286; 31 T. L. R. 186.

National Insurance Act, 1911, In re; Officers of South Dublin Union, [1913] 1 Ir. R. 244: distinguished in *Finlay* v. *Tullamore Union*, [1914] 2 Ir. R. 233.

National Telephone Co. v. **Smith,** [1909] S. C. 1363: dissented from in *Calico Printers' Association* v. *Higham*, 81 L. J. K.B. 232; [1912] 1 K.B. 93; 105 L. T. 734; 56 S. J. 89; 28 T. L. R. 53.

Neal, Ex parte; Batey, in re, 14 Ch. D. 579; 43 L. T. 264: followed in *Victor* v. *Victor*, 81 L. J. K.B. 354; [1912] 1 K.B. 247; 105 L. T. 887; 19 Manson, 53; 56 S. J. 204; 28 T. L. R. 131.

Nedby v. **Nedby,** 21 L. J. Ch. 446; 5 De G. & Sm. 377 : approved in *Bank of Montreal* v. *Stuart*, 80 L. J. P.C. 75; [1911] A.C. 120; 103 L. T. 641; 27 T. L. R. 117.

Neil v. **Neil,** 4 Hag. Ecc. Rep. 273: distinguished in *Hall* v. *Hall*, 84 L. J. P. 93; [1915] P. 105; 112 L. T. 58; 59 S. J. 381.

Nelson v. **Nelson Line,** 77 L. J. K.B. 97; [1907] 2 K.B. 705; 23 T. L. R. 656 : distinguished in *Mawson Shipping Co.* v. *Beyer*, 83 L. J. K.B. 290; [1914] 1 K.B. 304; 109 L. T. 973; 19 Com. Cas. 59.

Nerot v. **Burnand,** 2 Russ. 56: applied in *Coleman* v. *Smith*, 81 L. J. Ch. 16; [1911] 2 Ch. 572; 28 T. L. R. 65.

Newbery v. **James,** 2 Mer. 446: distinguished in *Amber Size and Chemical Co.* v. *Menzel*, 82 L. J. Ch. 575; [1913] 2 Ch. 239; 109 L. T. 520.

Newdigate Colliery Co., In re, 81 L. J. Ch. 235; [1912] 1 Ch. 468; 106 L. T. 133; 19 Manson, 155; 28 T. L. R. 207 : distinguished in *Great Cobar, Lim., In re*, 84 L. J. Ch. 468; [1915] 1 Ch. 682; [1915] H. B. R. 79.

Newfoundland Government v. **Newfoundland Railway,** 57 L. J. P.C. 35; 13 App. Cas. 199 : distinguished in *Stoddart* v. *Union Trust, Lim.*, 81 L. J. K.B. 140; [1912] 1 K.B. 181; 105 L. T. 806.

New Monckton Collieries v. **Keeling,** 80 L. J. K.B. 1205; [1911] A.C. 684; 105 L. T. 337; 55 S. J. 687; 27 T. L. R. 551 : distinguished in *Potts* (or *Young*) v. *Niddrie and Benhar Coal Co.*, 82 L. J. P.C. 147; [1913] A.C. 531; [1913] W.C. & I. Rep. 547; 109 L. T. 568; 57 S. J. 685; 29 T. L. R. 626.

Newquay Urban Council v. **Rickeard,** 80 L. J. K.B. 1164; [1911] 2 K.B. 846; 105 L. T. 519; 9 L. G. R. 1042; 75 J. P. 382 : *dictum* of Lord Alverstone, C.J., in, disapproved in *Chatterton* v. *Glanford Brigg Rural Council*, 84 L. J. K.B. 1865; [1915] 3 K.B. 707; 113 L. T. 746; 79 J. P. 441; 13 L. G. R. 1352.

New River Co. v. **Hertford Union,** 71 L. J. K.B. 827; [1902] 2 K.B. 597; 87 L. T. 360; 51 W. R. 49; 66 J. P. 724 : followed in *Metropolitan Water Board* v. *Chertsey Union*, 84 L. J. K.B. 1823; 79 J. P. 360; 13 L. G. R. 692.

Newton v. **Birmingham Small Arms Co.,** 75 L. J. Ch. 627; [1906] 2 Ch. 378; 95 L. T. 135; 54 W. R. 621; 13 Manson, 267; 22 T. L. R. 664 : distinguished in *Young* v. *Brownlee*, [1911] S. C. 677.

Newton v. **Cubitt,** 31 L. J. C.P. 246; 12 C. B. (N.S.) 32; 6 L. T. 860 : considered in *General Estates Co.* v. *Beaver*, 84 L. J. K.B. 21; [1914] 3 K.B. 918; 111 L. T. 957; 79 J. P. 41; 12 L. G. R. 1146; 30 T. L. R. 634.

Newton v. **Newton,** 55 L. J. P. 13; 11 P. D. 11 : principle laid down in, is of general application : so held in *Burmester* v. *Burmester*, 82 L. J. P. 54; [1913] P. 76; 108 L. T. 272; 57 S. J. 392; 29 T. L. R. 323.

New York Taxicab Co., In re; Sequin v. **The Company,** 82 L. J. Ch. 41; [1913] 1 Ch. 1; 107 L. T. 813; 19 Manson, 389; 57 S. J. 98 : considered in *Gregson* v. *Taplin & Co.*, 112 L. T. 985; 59 S. J. 349 : distinguished in *Tilt Cove Copper Co., In re*, 82 L. J. Ch. 545; [1913] 2 Ch. 588; 109 L. T. 138; 57 S. J. 773.

Nicholson v. **Piper,** 76 L. J. K.B. 856; [1907] A.C. 215; 97 L. T. 119; 23 T. L. R. 620 : followed in *Green* v. *Cammell, Laird & Co.*, 82 L. J. K.B. 1230; [1913] 3 K.B. 665; 109 L. T. 202; 29 T. L. R. 703.

Nisbet v. **Rayne,** 80 L. J. K.B. 84; [1910] 2 K.B. 689; 103 L. T. 178; 54 S. J. 719; 26 T. L. R. 632 : applied in *Mitchinson* v. *Day*, 82 L. J. K.B. 421; [1913] 1 K.B. 603; 108 L. T. 193; [1913] W.C. & I. Rep. 324; 57 S. J. 300; 29 T. L. R. 267 : disapproved in *Murray* v. *Denholm*, [1911] S. C. 1087 : approved in *Trim Joint District School* v. *Kelly*, 83 L. J. P.C. 220; [1914] A.C. 667; 111 L. T. 305; 58 S. J. 493; 30 T. L. R. 452.

Nisbet and Potts' Contract, In re, 75 L. J. Ch. 238; [1906] 1 Ch. 386; 94 L. T. 297; 54 W. R. 286; 22 T. L. R. 233 : applied in *London County Council* v. *Allen*, 83 L. J. K.B. 1695; [1914] 3 K.B. 642.

Nixon's Navigation Co., In re, 66 L. J. Ch. 406; [1897] 1 Ch. 872 : followed in *De la Rue & Co., In re*, [1911] 2 Ch. 361; 105 L. T. 542; 55 S. J. 715.

Noakes v. **Noakes,** 47 L. J. P. 20; 4 P. D. 60; 37 L. T. 47; 26 W. R. 284 : commented on in *Burmester* v. *Burmester*, 82 L. J. P. 54; [1913] P. 76; 108 L. T. 272; 57 S. J. 392; 29 T. L. R. 323.

Noakes v. **Rice,** 71 L. J. Ch. 139; [1902] A.C. 24; 86 L. T. 62; 50 W. R. 305; 66 J. P. 147 : discussed and distinguished in *Kreglinger* v. *New Patagonia Meat and Cold Storage Co.*, 83 L. J. Ch. 79; [1914] A.C. 25; 109 L. T. 802; 58 S. J. 97; 30 T. L. R. 114.

Noble v. **Cass,** 2 Sim. 343 : applied in *Lacon's Settlement, In re*, 80 L. J. Ch. 610; [1911] 2 Ch. 17; 104 L. T. 840; 55 S. J. 551; 27 T. L. R. 485.

Noblett v. **Hopkinson,** 74 L. J. K.B. 544; [1905] 2 K.B. 214; 92 L. T. 462; 53 W. R. 637; 69 J. P. 269; 21 T. L. R. 448: distinguished in *Bristow* v. *Piper*, 84 L. J. K.B. 607; [1915] 1 K.B. 271; 112 L. T. 426; 79 J. P. 177; 59 S. J. 178; 31 T. L. R. 80.

Nordon v. **Defries,** 51 L. J. Q.B. 415; 8 Q.B. D. 508; 30 W. R. 612; 46 J. P. 566: overruled in *Lambert* v. *Home*, 83 L. J. K.B. 1091; [1914] 3 K.B. 86; 58 S. J. 471; 30 T. L. R. 474.

Norman v. **Villars,** 46 L. J. Q.B. 579; 2 Ex. D. 359; 36 L. T. 788: applied in *Sinclair* v. *Fell*, 82 L. J. Ch. 105; [1913] 1 Ch. 155; 108 L. T. 152; 57 S. J. 145; 29 T. L. R. 103.

Norman & Burt v. **Walder,** 73 L. J. K.B. 461; [1904] 2 K.B. 27; 90 L. T. 531; 52 W. R. 402; 68 J. P. 401; 20 T. L. R. 427: commented on in *Calico Printers' Association* v. *Higham*, 81 L. J. K.B. 232; [1912] 1 K.B. 93; 105 L. T. 734; 56 S. J. 89; 28 T. L. R. 53.

Normandy, The, 20 T. L. R. 239: followed in *The Upcerne*, 81 L. J. P. 110; [1912] P. 160; 28 T. L. R. 370.

North, In re; Meates v. **Bishop,** 76 L. T. 186: distinguished in *Fraser Settlement; Ind* v. *Fraser*, 82 L. J. Ch. 406; [1913] 2 Ch. 224; 108 L. T. 960; 57 S. J. 462.

North v. **Percival,** 67 L. J. Ch. 321; [1898] 2 Ch. 128; 78 L. T. 615; 46 W. R. 552: doubted in *Von Hatzfeldt-Wildenburg (Princess)* v. *Alexander*, 81 L. J. Ch. 184; [1912] 1 Ch. 284; 105 L. T. 434.

North of England Insurance Association v. **Armstrong,** 39 L. J. Q.B. 81; L. R. 5 Q.B. 244; 21 L. T. 822; 18 W. R. 520: followed in *Thames and Mersey Marine Insurance Co.* v. *British and Chilian Steamship Co.*, 84 L. J. K.B. 1087; [1915] 2 K.B. 214; 113 L. T. 173; 20 Com. Cas. 265; 31 T. L. R. 275.

North and South Western Junction Railway v. **Brentford Assessment Committee,** 58 L. J. M.C. 95; 13 App. Cas. 592; 60 L. T. 274: applied in *East London Railway Joint Committee* v. *Greenwich Assessment Committee*, 82 L. J. K.B. 297; [1913] 1 K.B. 612; 107 L. T. 805; 77 J. P. 153; 11 L. G. R. 265; 29 T. L. R. 171.

Northern Counties of England Fire Insurance Co., In re, 50 L. J. Ch. 273; 17 Ch. D. 337; 44 L. T. 299: principle of valuation adopted in, is negatived in the case of companies within the Assurance Companies Act, 1909: so held in *Law Car and General Insurance Corporation, In re; King & Son's Claim (No. 2)*, 82 L. J. Ch. 467; [1913] 2 Ch. 103; 108 L. T. 862; 57 S. J. 556; 29 T. L. R. 532.

North-West Transportation Co. v. **Beatty,** 56 L. J. P.C. 102; 12 App. Cas. 589; 57 L. T. 426: considered and applied in *Costello* v. *London General Omnibus Co.*, 107 L. T. 575: considered and applied in *Transvaal Lands Co.* v. *New Belgium (Transvaal) Land, &c. Co.*, 84 L. J. Ch. 94; [1914] 2 Ch. 488; 112 L. T. 965; 21 Manson, 364; 59 S. J. 27; 31 T. L. R. 1.

Norton, In re, 80 L. J. Ch. 119; [1911] 2 Ch. 27; 103 L. T. 821: considered in *Hewett's Settlement, In re*, 84 L. J. Ch. 715; [1915] 1 Ch. 810; 113 L. T. 315; 59 S. J. 476.

Norton v. **London and North-Western Railway,** 13 Ch. D. 268: followed in *Kynoch* v. *Rowlands*, 81 L. J. Ch. 340; [1912] 1 Ch. 527; 106 L. T. 316.

Norton v. **Yates,** 75 L. J. K.B. 252; [1906] 1 K.B. 112; 54 W. R. 183: applied in *Sinnott* v. *Bowden*, 81 L. J. Ch. 832; [1912] 2 Ch. 414; 28 T. L. R. 594.

Norwich Union Fire Insurance Co. v. **Magee,** 73 L. T. 733; 44 W. R. 384: followed in *Liverpool and London and Globe Insurance Co.* v. *Bennett*, 80 L. J. K.B. 1269; [1911] 2 K.B. 577; 105 L. T. 162; 27 T. L. R. 369.

Nuttall v. **Staunton,** 3 L. J. (o.s.) K.B. 135; 4 B. & C. 51: distinguished in *Lewis* v. *Davies*, 82 L. J. K.B. 631; [1913] 2 K.B. 37; 108 L. T. 606.

Nutter v. **Accrington Local Board,** 47 L. J. Q.B. 521; 4 Q.B. D. 375: *dictum* of Cockburn, C.J., in, explained and distinguished in *Stamford and Warrington (Earl), In re (No. 2)*, 80 L. J. Ch. 361; [1911] 1 Ch. 648; 105 L. T. 12; 75 J. P. 346; 9 L. G. R. 719; 55 S. J. 483; 27 T. L. R. 356.

O.

Oceana Development Co., In re, 56 S. J. 537: principle of, applied in *Victoria (Malaya) Rubber Estates, In re*, 58 S. J. 706.

Odessa, The, 84 L. J. P. 112; [1915] P. 52; 112 L. T. 473; 59 S. J. 189; 31 T. L. R. 148: followed in *The Linaria*, 59 S. J. 530; 31 T. L. R. 396.

Offin v. **Rochford Rural Council,** 75 L. J. Ch. 348; [1906] 1 Ch. 342; 94 L. T. 669; 54 W. R. 244; 4 L. G. R. 595; 70 J. P. 97: distinguished in *Thornhill* v. *Weeks* (*No.* 3), 84 L. J. Ch. 282; [1915] 1 Ch. 106; 111 L. T. 1067; 78 J. P. 154; 12 L. G. R. 597.

Ofner, In re, 78 L. J. Ch. 50; [1909] 1 Ch. 60; 99 L. T. 813: followed in *Halston, In re*; *Ewen* v. *Halston*, 81 L. J. Ch. 265; [1912] 1 Ch. 435; 106 L. T. 182.

Ogden v. **Ogden,** 77 L. J. P. 34; [1908] P. 46; 97 L. T. 827; 24 T. L. R. 94: suggestion of Court of Appeal in, adopted and followed in *Stathatos* v. *Stathatos*, 82 L. J. P. 34; [1913] P. 46; 107 L. T. 592; 56 S. J. 114; 29 T. L. R. 54: and in *De Montaigu* v. *De Montaigu*, 82 L. J. P. 125; [1913] P. 154; 109 L. T. 79; 57 S. J. 703; 29 T. L. R. 654.

Ollier v. **Ollier,** 84 L. J. P. 23; [1914] P. 240; 111 L. T. 697; 58 S. J. 754: considered and applied in *Woodcock* v. *Woodcock*, 111 L. T. 924.

Olpherts v. **Coryton,** [1913] 1 Ir. R. 211: followed in *Harris, In re*; *Davis* v. *Harris*, 83 L. J. Ch. 841; [1914] 2 Ch. 395.

Orme, In re, 50 L. T. 51: principle of, applied in *Beavan, In re*, [1913] 2 Ch. 595; 109 L. T. 538.

Osborn v. **Gillett,** 42 L. J. Ex. 53; L. R. 8 Ex. 88; 28 L. T. 197; 21 W. R. 409: distinguished in *Berry* v. *Humm*, 84 L. J. K.B. 918; [1915] 1 K.B. 627; 31 T. L. R. 198.

O'Shea v. **O'Shea,** 59 L. J. P. 47; 15 P. D. 59; 62 L. T. 713; 38 W. R. 374: considered in *Law* or *Harnett & Co., In re*, 58 S. J. 656: followed in *Scott* v. *Scott*, 81 L. J. P. 113; [1912] P. 241; 107 L. T. 211; 56 S. J. 666; 28 T. L. R. 526.

Osmond v. **Campbell and Harrison,** 75 L. J. K.B. 1; [1905] 2 K.B. 852; 54 W. R. 117; 22 T. L. R. 4: considered in *Tamworth Colliery Co.* v. *Hall*, [1911] A.C. 665; 105 L. T. 449; 55 S. J. 615.

Osmond v. **Mutual Cycle and Manufacturing Co.,** 68 L. J. Q.B. 1027; [1899] 2 Q.B. 88; 81 L. T. 254; 48 W. R. 125: distinguished in *Jones* v. *Llanrwst Urban Council* (*No.* 2), 80 L. J. Ch. 338; [1911] 1 Ch. 393; 104 L. T. 53; 75 J. P. 98: *dictum* of A. L. Smith, L.J., in, dissented from in *Seal* v. *Turner*, 84 L. J. K.B. 1658; [1915] 3 K.B. 194; 113 L. T. 769; 59 S. J. 649.

Oxford Building and Investment Co., In re, 49 L. T. 495: applied in *Rubber and Produce Investment Trust, In re*, 84 L. J. Ch. 534; [1915] 1 Ch. 382; 112 L. T. 1129; [1915] H. B. R. 120; 31 T. L. R. 253.

P.

P. Caland (Owners) v. **Glamorgan Steamship Co.,** 62 L. J. P. 41; [1893] A.C. 207; 68 L. T. 469; 7 Asp. M.C. 317: rule laid down by Lord Herschell and Lord Watson in, as to concurrent findings, considered in "*Hatfield*" (*Owners*) v. "*Glasgow*" (*Owners*), 84 L. J. P. 161; 112 L. T. 703.

Paine, In re, [1891] W. N. 208: followed in *Webb, In re*; *Board of Trade, ex parte*, 83 L. J. K.B. 1386; [1914] 3 K.B. 387; 58 S. J. 581.

Paine v. **Jones,** 43 L. J. Ch. 787; L. R. 18 Eq. 320; 30 L. T. 779; 22 W. R. 807: considered and applied in *Tennant's Estate, In re*, [1913] 1 Ir. R. 280.

Palace Hotel, Lim., In re, 81 L. J. Ch. 695; [1912] 2 Ch. 438; 107 L. T. 521; 19 Manson, 295; 56 S. J. 649: not followed in *Doecham Gloves, Lim., In re*, 82 L. J. Ch. 165; [1913] 1 Ch. 226; 107 L. T. 817; 20 Manson, 79: followed in *Nordberg, In re*, 84 L. J. Ch. 830; [1915] 2 Ch. 439; 59 S. J. 717; and in *Schweppes Lim., In re*, 83 L. J. Ch. 296; [1914] 1 Ch. 322; 110 L. T. 246; 21 Manson, 82; 58 S. J. 185; 30 T. L. R. 201.

Palmer v. **Graves,** 1 Keen, 545: followed in *Major, In re*; *Taylor* v. *Major*, 83 L. J. Ch. 461; [1914] 1 Ch. 278; 110 L. T. 422; 58 S. J. 286.

Panagotis v. **"Pontiac" (Owners),** 81 L. J. K.B. 286; [1912] 1 K.B. 74; [1912] W.C. Rep. 74; 105 L. T. 689; 12 Asp. M.C. 92; 56 S. J. 71; 28 T. L. R. 63: distinguished in *Bonney* v. *Hoyle*, 83 L. J. K.B. 541; [1914] 2 K.B. 257; 110 L. T. 729; 12 L. G. R. 358; 58 S. J. 268; 30 T. L. R. 280.

Panhaus v. **Brown,** 68 J. P. 435: commented on in *Rex* v. *Registrar of Joint Stock Companies*; *Bowen, Ex parte*, 84 L. J. K.B. 229; [1914] 3 K.B. 1161; 112 L. T. 38; 30 T. L. R. 707.

Pannell, In re; **Bates, ex parte,** 48 L. J. Bk. 113; 11 Ch. D. 914; 41 L. T. 263: followed in *Victor* v. *Victor*, 81 L. J. K.B. 354; [1912] 1 K.B. 247; 105 L. T. 887; 19 Manson, 53; 56 S. J. 204; 28 T. L. R. 131.

Paquin, Lim. v. **Beauclerk,** 75 L. J. K.B. 395; [1906] A.C. 148; 94 L. T. 350; 54 W. R. 521; 22 T. L. R. 395: approved in *Skeate* v. *Slaters, Lim.*, 83 L. J. K.B. 676; [1914] 2 K.B. 429; 110 L. T. 604; 30 T. L. R. 290.

Paraguassu Steam Tramroad Co., In re; **Black & Co.'s Case,** 42 L. J. Ch. 404; L. R. 8 Ch. 254; 27 L. T. 509: discussed and

followed in *Law Car and General Insurance Corporation, In re*, 81 L. J. Ch. 218; [1912] 1 Ch. 405; 106 L. T. 180; 19 Manson, 152; 56 S. J. 273.

Park's Settlement, In re; Foran v. **Bruce,** 83 L. J. Ch. 528; [1914] 1 Ch. 595; 110 L. T. 813; 58 S. J. 362: not followed in *Bullock's Will Trust, In re*, 84 L. J. Ch. 463; [1915] 1 Ch. 493; 112 L. T. 1119; 59 S. J. 441.

Parker v. **Talbot,** 75 L. J. Ch. 8; [1905] 2 Ch. 643; 93 L. T. 522; 54 W. R. 132; 22 T. L. R. 10: considered in *London County Council* v. *Hankins*, 83 L. J. K.B. 460: [1914] 1 K.B. 490; 110 L. T. 389; 78 J. P. 137; 12 L. G. R. 314: 30 T. L. R. 192.

Parkers, In re; Sheppard, ex parte, 56 L. J. Q.B. 338; 19 Q.B. D. 84; 57 L. T. 198; 35 W. R. 566; 4 Morrell, 135: distinguished and *dictum* of Cave, J., not followed in *Kent County Gas Light and Coke Co., In re*, 82 L. J. Ch. 28; [1913] 1 Ch. 92; 107 L. T. 641; 19 Manson, 358; 57 S. J. 112.

Parkins, In re, 62 L. J. Ch. 531; [1893] 1 Ch. 283; 67 L. T. 743; 41 W. R. 170: distinguished in *Holland, In re*, [1914] 2 Ch. 595.

Parry, In re, 73 L. J. K.B. 83; [1904] 1 K.B. 129; 89 L. T. 612; 52 W. R. 256; 11 Manson, 18; 20 T. L. R. 73: distinguished in *Collins, In re*, 112 L. T. 87.

Parsons, In re; Stockley v. **Parsons,** 59 L. J. Ch. 666; 45 Ch. D. 51; 62 L. T. 929: followed in *Mudge, In re*, 83 L. J. Ch. 243; [1914] 1 Ch. 115; 109 L. T. 781: 58 S. J. 117.

Payne v. **Fortescue,** 81 L. J. K.B. 1191; [1912] 3 K.B. 346; [1912] W.C. Rep. 386; 107 L. T. 136; 57 S. J. 80: discussed in *Summerlee Iron Co.* v. *Freeland*, 82 L. J. P.C. 102; [1913] A.C. 221; [1913] W.C. & I. Rep. 302; 108 L. T. 465; 57 S. J. 281; 29 T. L. R. 277: distinguished in *Cooper* v. *Wales*, 84 L. J. K.B. 1321; [1915] 3 K.B. 210; [1915] W.C. & I. Rep. 307; 59 S. J. 578; 31 T. L. R. 506.

Pearce, In re; Alliance Assurance Co. v. **Francis,** 83 L. J. Ch. 266; [1914] 1 Ch. 254; 110 L. T. 168; 58 S. J. 197: commented on and applied in *Embury, In re*, 111 L. T. 275; 58 S. J. 612.

Pearce v. **Bolton,** 71 L. J. K.B. 558; [1902] 2 K.B. 111; 86 L. T. 530: followed in *Lamb* v. *Keeping*, 111 L. T. 527; 58 S. J. 596.

Pearce v. **Edmeades,** 8 L. J. Ex. Eq. 61; 3 Y. & C. 246: considered in *Tate, In re; Williamson* v. *Gilpin*, 83 L. J. Ch. 593; [1914] 2 Ch. 182; 109 L. T. 621; 58 S. J. 119: distinguished in *Firth, In re; Loveridge* v. *Firth*, 83 L. J. Ch. 901; [1914] 2 Ch. 386; 111 L. T. 332.

Pearce v. **Gardner,** 66 L. J. Q.B. 457; [1897] 1 Q.B. 688; 76 L. T. 441; 45 W. R. 518: applied in *Last* v. *Hucklesby*, 58 S. J. 431.

Pearks, Gunston & Tee v. **Houghton,** 71 L. J. K.B. 385; [1902] 1 K.B. 889; 86 L. T. 325; 50 W. R. 605; 66 J. P. 422: followed in *Batchelour* v. *Gee*, 83 L. J. K.B. 1714; [1914] 3 K.B. 242; 111 L. T. 256; 78 J. P. 362; 12 L. G. R. 931; 24 Cox C.C. 268; 30 T. L. R. 506.

Pearson v. **Dolman,** 36 L. J. Ch. 258; L. R. 3 Eq. 315; 15 W. R. 120: *dictum* of Wood, V.C., in, approved in *Nunburnholme (Lord), In re*, [1911] 2 Ch. 510; 56 S. J. 34.

Pearson's Trusts, In re, 26 L. T. 393; 20 W. R. 522: was in effect overruled by *Norman* v. *Villars* (46 L. J. Q.B. 579; 2 Ex. D. 359): so held in *Sinclair* v. *Fell*, 82 L. J. Ch. 105; [1913] 1 Ch. 155; 108 L. T. 152; 57 S. J. 145; 29 T. L. R. 103.

Peckover v. **Defries,** 71 J. P. 38: considered in *Mellor* v. *Lydiate*, 84 L. J. K.B. 8; [1914] 3 K.B. 1141; 111 L. T. 988; 79 J. P. 68; 30 T. L. R. 704.

Pekin, The, 66 L. J. P.C. 97; [1897] A.C. 532; 77 L. T. 443: distinguished and explained in *The Olympic and H.M.S. Hawke*, 84 L. J. P. 49; [1915] A.C. 385; 112 L. T. 49; 31 T. L. R. 54.

Pemberton v. **Hughes,** 68 L. J. Ch., at pp. 285 *seq.*; [1899] 1 Ch., at p. 790: rule laid down by Lindley, M.R., in, considered in *Scarpetta* v. *Lowenfeld*, 27 T. L. R. 509.

Penn v. **Spiers and Pond,** 77 L. J. K.B. 542; [1908] 1 K.B. 766; 98 L. T. 541; 24 T. L. R. 354: distinguished in *Huscraft* v. *Bennett*, [1914] W.C. & I. Rep. 9; 110 L. T. 494; 58 S. J. 284.

Pennell v. **Uxbridge Churchwardens,** 31 L. J. M.C. 92; 8 Jur. N.S. 99: followed and applied in *Godman* v. *Crofton*, 83 L. J. K.B. 1524; [1914] 3 K.B. 803; 111 L. T. 754; 79 J. P. 12; 12 L. G. R. 1330.

Perkins, In re; Bagot v. **Perkins,** 62 L. J. Ch. 531; [1893] 1 Ch. 283; 67 L. T. 743: followed in *Fraser Settlement; Ind* v. *Fraser*, 82 L. J. Ch. 406; [1913] 2 Ch. 224; 108 L. T. 960; 57 S. J. 462: considered in *Wood, In re; Wodehouse* v. *Wood*, 82 L. J. Ch. 203; [1913] 1 Ch. 303; 108 L. T. 31; 57 S. J. 265: distinguished in *Carendish Settlement, In re*, 81 L. J. Ch. 400; [1912] 1 Ch. 794; 106 L. T. 510; 56 S. J. 399; in *Vatcher* v. *Paull*, 84 L. J. P.C. 86; [1915] A.C. 372; 112 L. T. 737; and in *Holland, In re*, 84 L. J. Ch. 389; [1914] 2 Ch. 595; 112 L. T. 27.

Perry v. **Meddowcroft,** 12 L. J. Ch. 104; 4 Beav. 197: doubted in *De Sommery, In re*, 82 L. J. Ch. 17; [1912] 2 Ch. 622; 57 S. J. 78; and in *Scott, In re*, 84 L. J. Ch. 366; [1915] 1 Ch. 592; 112 L. T. 1057; 31 T. L. R. 227.

Perry v. **Wright,** 77 L. J. K.B. 236; [1908] 1 K.B. 441; 98 L. T. 327; 24 T. L. R. 186: followed in *Greenwood* v. *Nall & Co.*, 84 L. J. K.B. 1356; [1915] 3 K.B. 97; [1915] W.C. & I. Rep. 346; 113 L. T. 612; 59 S. J. 577; 31 T. L. R. 476.

Persse, In re, 55 S. J. 314: followed in *Debtor* (*No.* 1,838 *of* 1911), *In re*, 84 L. J. K.B. 107; [1912] 1 K.B. 53; 105 L. T. 610; 19 Manson, 12; 56 S. J. 36; 28 T. L. R. 9.

Peter v. **Compton,** Skinner, 353: distinguished in *Hanau* v. *Ehrlich*, 81 L. J. K.B. 397; [1912] A.C. 39; 106 L. T. 1; 56 S. J. 186; 28 T. L. R. 113.

Peter v. **Stirling,** 10 Ch. D. 279; 27 W. R. 469: distinguished in *Scott, In re*, 84 L. J. Ch. 366; [1915] 1 Ch. 592; 112 L. T. 1057; 31 T. L. R. 227.

Peters v. **Perry,** 10 T. L. R. 366: explained in *Skeate* v. *Slaters, Lim.*, 83 L. J. K.B. 676; [1914] 2 K.B. 429; 110 L. T. 604; 30 T. L. R. 290.

Peto v. **Blades,** 5 Taunt. 657: observed upon in *Baylis* v. *London (Bishop)*, 82 L. J. Ch. 61; [1913] 1 Ch. 127; 107 L. T. 730; 57 S. J. 96; 29 T. L. R. 59.

Pett v. **Fellowes,** 1 Swanst. 561*n.*: distinguished in *West, In re; Westhead* v. *Aspland*, 82 L. J. Ch. 488; [1913] 2 Ch. 345; 109 L. T. 39.

Peverett, In the goods of, 71 L. J. P. 114: [1902] P. 205; 87 L. T. 143: distinguished in *Strong* v. *Hadden*, 84 L. J. P. 188; [1915] P. 211; 112 L. T. 997; 31 T. L. R. 256.

Pfeiffer v. **Midland Railway,** 18 Q.B. D. 243; 35 W. R. 335: followed in *Hughes* v. *Dublin United Tramways Co.*, [1911] 2 Ir. R. 114.

Phillimore, In re; Phillimore v. **Milnes,** 73 L. J. Ch. 671; [1904] 2 Ch. 460; 91 L. T. 256; 52 W. R. 682: applied in *Trafford's Settled Estates, In re*, 84 L. J. Ch. 351; [1915] 1 Ch. 9; 112 L. T. 107.

Phillips v. **Batho,** 82 L. J. K.B. 882; [1913] 3 K.B. 25; 109 L. T. 315; 29 T. L. R. 600: followed in *Harris* v. *Taylor*, 111 L. T. 564.

Phillips v. **Beal,** 32 Beav. 26: applied in *Fleetwood and District Electric Light &c. Co., In re*, 84 L. J. Ch. 374; [1915] 1 Ch. 486; 112 L. T. 1127; [1915] H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221.

Phillips v. **Gutteridge,** 32 L. J. Ch. 1; 3 De G. J. & S. 332: applied and followed in *Buchanan, In re; Stephens* v. *Draper*, [1915] 1 Ir. R. 95.

Phillips v. **Vickers, Son & Maxim,** 81 L. J. K.B. 123; [1912] 1 K.B. 16; 105 L. T. 564; [1912] W.C. Rep. 71: applied in *Godbold* v. *London County Council*, 111 L. T. 691.

Phœnix Life Assurance Co., In re, 31 L. J. Ch. 749; 2 J. & H. 441; 9 Jur. (N.S.) 15; 7 L. T. 191; 10 W. R. 816: distinguished in *Sinclair* v. *Brougham*, 83 L. J. Ch. 465; [1914] A.C. 398; 111 L. T. 1; 58 S. J. 302; 30 T. L. R. 315.

Picard, In re, 53 L. T. 293: discussed and applied in *Herbert* v. *Herbert*, 81 L. J. Ch. 733; [1912] 2 Ch. 268.

Piccadilly Hotel, In re, 81 L. J. Ch. 89: [1911] 2 Ch. 534; 105 L. T. 775; 19 Manson, 85; 56 S. J. 52: followed in *Locke and Smith, In re*, 83 L. J. Ch. 650; [1914] 1 Ch. 687; 110 L. T. 683; 58 S. J. 379.

Pickard, In re, 20 L. J. N.C. 124; 53 L. T. 293; [1885] W. N. 137: explained and followed in *Herbert* v. *Herbert*, 81 L. J. Ch. 733; [1912] 2 Ch. 268.

Pickavance v. **Pickavance,** 70 L. J. P. 14; [1901] P. 60; 84 L. T. 62: statement in, dissented from in *Rex* v. *Tyrone Justices*, [1912] 2 Ir. R. 44: commented on in *Hopkins* v. *Hopkins*, 84 L. J. P. 26; [1914] P. 282; 112 L. T. 174: considered in *Davis* v. *Morton*, 82 L. J. K.B. 665; [1913] 2 K.B. 479; 108 L. T. 677; 77 J. P. 223; 23 Cox C.C. 359; 29 T. L. R. 466.

Pickwick v. **Gibbes,** 1 Beav. 271: distinguished and criticised in *Palfreeman, In re; Public Trustee* v. *Palfreeman*, 83 L. J. Ch. 702; [1914] 1 Ch. 877; 110 L. T. 972; 58 S. J. 456.

Piddocke v. **Burt,** 63 L. J. Ch. 246; [1894] 1 Ch. 343; 70 L. T. 553; 42 W. R. 248: distinguished in *Gordon* v. *Holland*, 82 L. J. P.C. 81; 108 L. T. 385.

Pike, Ex parte, 47 L. J. Bk. 100; 8 Ch. D. 754; 38 L. T. 923; 26 W. R. 806: followed in *O'Shea, In re; Lancaster, ex parte*, 81 L. J. K.B. 70; [1911] 2 K.B. 981; 105 L. T. 486.

Pimm, In re; Sharpe v. **Hodgson,** 73 L. J. Ch. 627; [1904] 2 Ch. 345; 91 L. T. 190; 52 W. R. 648: applied in *Briggs, In re; Richardson* v. *Bantoft*, 83 L. J. Ch. 874; [1914] 2 Ch. 413; 58 S. J. 722.

Pine v. **Barnes,** 57 L. J. M.C. 28; 20 Q.B. D. 221; 58 L. T. 520; 36 W. R. 473; 52 J. P. 199: distinguished in *Atkins* v. *Agar*, 83 L. J. K.B. 265; [1914] 1 K.B. 26; 109 L. T. 891; 78 J. P. 7; 23 Cox C.C. 677; 30 T. L. R. 27.

Plant v. **Bourne,** 66 L. J. Ch. 643; [1897] 2 Ch. 281; 76 L. T. 820; 46 W. R. 59: followed in *Savory, Lim.* v. "*World of Golf,*" *Lim.*, 83 L. J. Ch. 824; [1914] 2 Ch. 566; 58 S. J. 707.

Playfair v. **Cooper,** 23 L. J. Ch. 341; 17 Beav. 187: followed in *Croxon, In re; Ferrers* v. *Croxon*, 84 L. J. Ch. 845; [1915] 2 Ch. 290; 59 S. J. 693.

Plumb v. **Cobden Flour Mills Co.,** 83 L. J. K.B. 197; [1914] A.C. 62; [1914] W.C. & I. Rep. 48; 109 L. T. 759; 58 S. J. 184; 30 T. L. R. 174: considered and applied in *Price* v. *Tredegar Iron and Coal Co.*, 111 L. T. 688; 58 S. J. 632; 30 T. L. R. 583: followed in *Herbert* v. *Fox & Co.*, 84 L. J. K.B. 670; [1915] 2 K.B. 81; [1915] W.C. & I. Rep. 154; 112 L. T. 833; 59 S. J. 249.

Plummer, In re, 69 L. J. Q.B. 936; [1900] 2 Q.B. 790; 83 L. T. 387; 48 W. R. 634; 7 Manson, 367: followed in *Branson, In re*, 83 L. J. K.B. 1673; [1914] 3 K.B. 1086; 111 L. T. 741; 30 T. L. R. 604.

Plumpton v. **Burkinshaw,** 77 L. J. K.B. 961; [1908] 2 K.B. 572; 99 L. T. 415; 24 T. L. R. 642: followed in *E. G., In re*, 83 L. J. Ch. 586; [1914] 1 Ch. 927; 111 L. T. 95; 58 S. J. 497.

Plumptre's Marriage Settlement, In re, 79 L. J. Ch. 340; [1910] 1 Ch. 609; 102 L. T. 315; 54 S. J. 326; 26 T. L. R. 321: distinguished in *Pullan* v. *Koe*, 82 L. J. Ch. 37; [1913] 1 Ch. 9; 107 L. T. 811; 57 S. J. 97: followed in *Leigh-White* v. *Ruttledge*, [1914] 1 Ir. R. 135.

Pointon v. **Hill,** 53 L. J. M.C. 62; 12 Q.B. D. 306; 50 L. T. 268: discussed and commented on in *Mathers* v. *Penfold*, 84 L. J. K.B. 627; [1915] 1 K.B. 514; 112 L. T. 726; 79 J. P. 225; 13 L. G. R. 359; 59 S. J. 235; 31 T. L. R. 108.

Pollitt, In re; Minor ex parte, 62 L. J. Q.B. 236; [1893] 1 Q.B. 455; 68 L. T. 366; 41 W. R. 276; 10 Morrell, 35: distinguished in *Thorne & Son, Lim., In re*, 84 L. J. Ch. 161; [1914] 2 Ch. 438; 112 L. T. 30; [1915] H. B. R. 19; 58 S. J. 755.

Pollock v. **Pendle, In re; Wilson & Mathieson, Lim., ex parte,** 87 L. T. 238: discussed in *Godding, In re; Partridge, ex parte*, 83 L. J. K.B. 1222; [1914] 2 K.B. 70; 110 L. T. 207; 58 S. J. 221.

Poole, In re; Twisaday, ex parte, 7 Morrell, 222; 63 L. T. 321: approved in *Schenk, In re; West Hyde Estate Co., ex parte*, 56 S. J. 651: followed in *Debtor, In re*, 81 L. J. K.B. 1225; [1912] 3 K.B. 242; 107 L. T. 506.

Pope, In re; Dicksee, ex parte, 77 L. J. K.B. 767; [1908] 2 K.B. 169; 98 L. T. 775; 15 Manson, 201; 24 T. L. R. 556: approved in *Collins, In re*, 112 L. T. 87.

Pope v. **Bavidge,** 10 Ex. 73: not followed in *Dunford* v. *Compania Maritima Union*, 104 L. T. 811; 16 Com. Cas. 181; 12 Asp. M.C. 32; 55 S. J. 424.

Pope's Electric Lamp Co.'s Application, In re, 80 L. J. Ch. 682; [1911] 2 Ch. 382; 105 L. T. 580: point in, overruled in *Teofani & Co.'s Trade Mark*, 82 L. J. Ch. 490; [1913] 2 Ch. 545; 109 L. T. 114.

Porter v. **Freudenberg,** 84 L. J. K.B. 1001; [1915] 1 K.B. 857; 112 L. T. 313; 20 Com. Cas. 189; 32 R. P. C. 109; 59 S. J. 216; 31 T. L. R. 162: applied in *Wilson & Wilson, In re*, 84 L. J. K.B. 1893.

Potts, In re; Taylor, ex parte, 62 L. J. Q.B. 392; [1893] 1 Q.B. 648; 69 L. T. 74; 41 W. R. 337; 10 Morrell, 52: distinguished in *Gershon & Levy, In re*, 84 L. J. K.B. 1668; [1915] 2 K.B. 527; 59 S. J. 440.

Pouey v. **Hordern,** 69 L. J. Ch. 231; [1900] 1 Ch. 492; 82 L. T. 51: considered in *Pryce, In re; Lawford* v. *Pryce*, 80 L. J. Ch. 525; [1911] 2 Ch. 286; 105 L. T. 51.

Powell v. **Morgan,** 2 Vern. 90: applied in *Williams, In re*, 81 L. J. Ch. 296; [1912] 1 Ch. 399; 106 L. T. 584; 56 S. J. 325.

Poyser, In re; Landon v. **Poyser,** 77 L. J. Ch. 482; [1908] 1 Ch. 828; 99 L. T. 50: followed in *Craven, In re; Watson* v. *Craven*, 83 L. J. Ch. 403; [1914] 1 Ch. 358; 109 L. T. 846; 58 S. J. 138; and in *Forster-Brown, In re*, 84 L. J. Ch. 361; [1914] 2 Ch. 584; 112 L. T. 681.

Preston v. **Guyon** or **Grand Collier Dock Co.,** 10 L. J. Ch. 73; 11 Sim. 327: followed in *Galloway* v. *Hallé Concerts Society*, 84 L. J. Ch. 723; [1915] 2 Ch. 233; 59 S. J. 613; 31 T. L. R. 469.

Preston v. **Tunbridge Wells Opera House,** 72 L. J. Ch. 774; [1903] 2 Ch. 323; 88 L. T. 53: followed in *Yorkshire Insurance Co.* v. *Metropolitan Amalgamated Estates Co.*, 81 L. J. Ch. 745; [1912] 2 Ch. 497.

Price v. **North,** 11 L. J. Ch. 68; 1 Ph. 85: distinguished in *Major, In re; Taylor* v. *Major*, 83 L. J. Ch. 461; [1914] 1 Ch. 278; 110 L. T. 422; 58 S. J. 286.

Price v. **Union Lighterage Co.,** 73 L. J. K.B. 222; [1904] 1 K.B. 412; 89 L. T. 731; 52 W. R. 325; 9 Com. Cas. 120; 20 T. L. R. 177: distinguished in *Travers* v. *Cooper*, 83 L. J. K.B. 1787; [1915] 1 K.B. 73; 111 L. T. 1088; 20 Com. Cas. 44; 30 T. L. R. 703.

Priestley v. **Fernie,** 34 L. J. Ex. 172; 3 H. & C. 977: followed and applied in *Sullivan* v. *Sullivan*, [1912] 2 Ir. R. 116.

Prince v. **Cooper,** 17 Beav. 187: followed in *Croxon, In re*, 84 L. J. Ch. 845; [1915] 2 Ch. 290; 59 S. J. 693.

Printers' and Transferors' Amalgamated Trades Protection Society, In re, 68 L. J. Ch. 537; [1899] 2 Ch. 184; 47 W. R. 619: considered in *Tierney* v. *Tough*, [1914] 1 Ir. R. 142.

Proctor v. **Robinson,** 80 L. J. K.B. 641; [1911] 1 K.B. 1004: considered in *Silcock* v. *Golightly*, 84 L. J. K.B. 499; [1915] 1 K.B. 748; [1915] W.C. & I. Rep. 164; 112 L. T. 800: discussed in *Cardiff Corporation v. Hall*, 80 L. J. K.B. 644; [1911] 1 K.B. 1009; 104 L. T. 467; 27 T. L. R. 339: considered in *Carlin* v. *Stephen*, [1911] S. C. 901.

Proudfoot v. **Hart,** 59 L. J. Q.B. 389: 25 Q.B. D. 42; 63 L. T. 171: followed in *Lurcott* v. *Wakeley*, 80 L. J. K.B. 713; [1911] 1 K.B. 905; 104 L. T. 290; 55 S. J. 290.

Prudential Insurance Co. v. **Inland Revenue Commissioners,** 73 L. J. K.B. 734; [1904] 2 K.B. 658; 91 L. T. 520; 53 W. R. 108; 20 T. L. R. 621: followed in *Joseph* v. *Law Integrity Insurance Co.*, 82 L. J. Ch. 187; [1912] 2 Ch. 581; [1913] W.C. & I. Rep. 337; 107 L. T. 538; 20 Manson, 85: *dictum* of Channel, J., in, disapproved in *Gould* v. *Curtis*, 82 L. J. K.B. 802; [1913] 3 K.B. 84; 108 L. T. 779; 57 S. J. 461; 29 T. L. R. 469.

Punt v. **Symons,** 72 L. J. Ch. 768; [1903] 2 Ch. 506; 89 L. T. 525; 52 W. R. 41: was overruled by the Court of Appeal in *Bailey* v. *British Equitable Assurance Co.* (73 L. J. Ch. 240; [1904] 1 Ch. 374); and the reversal of the latter decision by the House of Lords (75 L. J. Ch. 73; [1906] A.C. 35) was not due to any dissent from the principle enunciated by the Court of Appeal, which indeed was recognised by the House of Lords: so held in *British Murac Syndicate* v. *Alperton Rubber Co.*, 84 L. J. Ch. 665; [1915] 2 Ch. 186; 59 S. J. 494; 31 T. L. R. 391.

Pycroft v. **Gregory,** 4 Russ. 526: distinguished in *Soper, In re*, 81 L. J. Ch. 826; [1912] 2 Ch. 467; 107 L. T. 525.

R.

Radcliffe v. **Pacific Steam Navigation Co.,** 79 L. J. K.B. 429; [1910] 1 K.B. 685; 102 L. T. 206; 54 S. J. 404; 26 T. L. R. 319: discussed in *Cardiff Corporation* v. *Hall*, 80 L. J. K.B. 644; [1911] 1 K.B. 1009; 104 L. T. 467; 27 T. L. R. 339.

Radford & Bright, Lim., In re, 70 L. J. Ch. 78, 352; [1901] 1 Ch. 272, 735; 84 L. T. 150: suggestion in, acted on in *Rubber and Produce Investment Trust, In re*, 84 L. J. Ch. 534; [1915] 1 Ch. 382; 112 L. T. 1129; [1915] H. B. R. 120; 31 T. L. R. 253.

Railton v. **Mathews,** 12 Cl. & F. 934: applied in *London General Omnibus Co.* v. *Holloway*, 81 L. J. K.B. 603; [1912] 2 K.B. 72; 106 L. T. 502.

Raine, In the goods of, 1 Sw. & Tr. 144: commented on in *Walker* v. *Gaskill*, 83 L. J. P. 152; [1914] P. 192; 111 L. T. 941; 59 S. J. 45; 30 T. L. R. 637.

Raleigh v. **Goschen,** 67 L. J. Ch. 59; [1898] 1 Ch. 73; 77 L. T. 429; 46 W. R. 90: applied in *Roper* v. *Works and Public Buildings Commissioners*, 84 L. J. K.B. 219; [1915] 1 K.B. 45; 111 L. T. 630.

Ralli v. **Universal Marine Insurance Co.,** 31 L. J. Ch. 313; 4 De G. F. & J. 1: distinguished in *Strass* v. *Spillers & Bakers*, 80 L. J. K.B. 1218; [1911] 2 K.B. 759; 104 L. T. 284; 16 Com. Cas. 166.

Ramsden v. **Dyson,** L. R. 1 H.L. 129: considered in *Ramsden* v. *Inland Revenue Commissioners*, 82 L. J. K.B. 1290; [1913] 3 K.B. 580*n*.

Randle v. **Clay Cross Co.,** 83 L. J. K.B. 167; [1913] 3 K.B. 795; 109 L. T. 522; 29 T. L. R. 624: point in, overruled in *Barwell* v. *Newport Abercarn Black Vein Steam Coal Co.*, 84 L. J. K.B. 1105; [1915] 2 K.B. 256; 112 L. T. 806; 59 S. J. 233; 31 T. L. R. 136.

Rankine v. **Alloa Coal Co.,** 6 Fraser, 375; 41 Sc. L. R. 306: *dicta* of Lord Adam in, not followed in *Edgerton* v. *Moore*, 81 L. J. K.B. 696; [1912] 2 K.B. 308; 106 L. T. 663.

Ravensworth v. **Tindale,** 74 L. J. Ch. 353: [1905] 2 Ch. 1; 92 L. T. 490; 21 T. L. R. 357: distinguished in *Sheffield (Earl), In re; Ryde* v. *Bristow*, 80 L. J. Ch. 521; [1911] 2 Ch. 267.

Raymond, In re, 9 Morrell, 108*n*.; 66 L. T. 400: distinguished in *Renison, In re; Greaves, ex parte*, 82 L. J. K.B. 710; [1913] 2 K.B. 300; 108 L. T. 811; 20 Manson, 115; 57 S. J. 445.

Rayson v. **South London Tramways,** 62 L. J. Q.B. 593; [1893] 2 Q.B. 304; 69 L. T. 491; 42 W. R. 21: distinguished in *Wiffen* v. *Bailey*, 84 L. J. K.B. 688; [1915] 1 K.B. 600; 112 L. T. 274; 79 J. P. 145; 13 L. G. R. 121; 59 S. J. 176; 31 T. L. R. 64.

Redhill Gas Co. v. **Reigate Rural Council,** 80 L. J. K.B. 1062; [1911] 2 K.B. 565; 105 L. T. 24; 75 J. P. 358; 9 L. G. R. 814: followed and applied in *Postmaster-General* v. *Hendon Urban Council*, 82 L. J. K.B. 1081; [1913] 3 K.B. 451; 109 L. T. 479; 11 L. G. R. 849; 29 T. L. R. 683.

Rees, In the goods of, [1896] W. N. 57: followed in *Cope* v. *Bennett*, [1911] 2 Ch. 488; 105 L. T. 541; 55 S. J. 521, 725.

Reg. v. **Bailey,** 4 Cox C.C. 390: followed in *Rex* v. *Brixton Prison (Governor)*; *Sjoland and Metzler, Ex parte*, 82 L. J. K.B. 5; [1912] 3 K.B. 568; 29 T. L. R. 10.

Reg. v. **Beckley,** 57 L. J. M.C. 22; 20 Q.B. D. 187; 57 L. T. 716; 36 W. R. 160; 16 Cox C.C. 331; 52 J. P. 120: approved and followed in *Rex* v. *Beacontree Justices*, 84 L. J. K.B. 2230; [1915] 3 K.B. 388; 13 L. G. R. 1094; 31 T. L. R. 509.

Reg. v. **Berger,** 63 L. J. Q.B. 529; [1894] 1 Q.B. 823; 70 L. T. 807; 42 W. R. 541; 58 J. P. 416: statement of Cave, J., in, considered too wide by Hamilton, L.J., in *Att.-Gen.* v. *Horner* (*No.* 2), 82 L. J. Ch. 339; [1913] 2 Ch. 140; 108 L. T. 609; 77 J. P. 257; 11 L. G. R. 784; 57 S. J. 498; 29 T. L. R. 451.

Reg. v. **Blane,** 18 L. J. M.C. 216; 13 Q.B. 769: discussed and distinguished in *Rex* v. *Humphreys; Ward, Ex parte*, 84 L. J. K.B. 187; [1914] 3 K.B. 1237; 111 L. T. 1110; 79 J. P. 66; 30 T. L. R. 698.

Reg. v. **Brighton,** 18 Cox C.C. 535: overruled in *Rex* v. *Shellaker*, 83 L. J. K.B. 413; [1914] 1 K.B. 414; 110 L. T. 351; 78 J. P. 159; 30 T. L. R. 194.

Reg. v. **Brown,** 64 L. J. M.C. 1; [1895] 1 Q.B. 119; 72 L. T. 22; 43 W. R. 222; 59 J. P. 485: distinguished in *Taylor* v. *Monk*, 83 L. J. K.B. 1125; [1914] 2 K.B. 817; 110 L. T. 980; 78 J. P. 194; 30 T. L. R. 367.

Reg. v. **Buckmaster,** 57 L. J. M.C. 25; 20 Q.B. D. 182; 57 L. T. 720; 36 W. R. 701; 16 Cox C.C. 339; 52 J. P. 358: approved and followed in *Rex* v. *Hilliard*, 83 L. J. K.B. 439; 109 L. T. 750; 23 Cox C.C. 617.

Reg. v. **Cox,** 54 L. J. M.C. 41; 14 Q.B. D. 153; 52 L. T. 25; 33 W. R. 396; 15 Cox C.C. 611; 49 J. P. 374: followed in *Rex* v. *Smith*, 84 L. J. K.B. 2153; 59 S. J. 704; 31 T. L. R. 617.

Reg. v. **Cutbush,** 36 L. J. M.C. 70; L. R. 2 Q.B. 379: considered in *Reg.* v. *Martin; Smythe, Ex parte*, 80 L. J. K.B. 876; [1911] 2 K.B. 450; 75 J. P. 425; 27 T. L. R. 460.

Reg. v. **Danger,** Dears. & B. 307: doubted in *Rex* v. *Brixton Prison (Governor)*; *Stallman, In re*, 82 L. J. K.B. 8; [1912] 3 K.B. 424; 107 L. T. 553; 28 T. L. R. 572.

Reg. v. **Eagleton,** 24 L. J. M.C. 158, 166; Dears. C.C. 515, 538: *dictum* of Parke, B., in, approved and followed in *Rex* v. *Robinson*, 84 L. J. K.B. 1149; [1915] 2 K.B. 342; 79 J. P. 303; 59 S. J. 366; 31 T. L. R. 313.

Reg. v. **Ganz,** 51 L. J. Q.B. 419; 9 Q.B. D. 93; 46 L. T. 592: followed in *Rex* v. *Brixton Prison (Governor)*; *Wells, Ex parte*, 81 L. J. K.B. 912; [1912] 2 K.B. 578; 107 L. T. 408; 76 J. P. 310; 28 T. L. R. 405.

Reg. v. **Gloster,** 16 Cox C.C. 471: approved in *Rex* v. *Thomson*, 81 L. J. K.B. 892; [1912] 3 K.B. 19; 28 T. L. R. 478.

Reg. v. **Glynne,** 41 L. J. M.C. 58; L. R. 7 Q.B. 16; 26 L. T. 61; 20 W. R. 94: considered in *McGregor* v. *Telford*, 84 L. J. K.B. 1902; [1915] 3 K.B. 237; 113 L. T. 84; 31 T. L. R. 512.

Reg. v. **Grant or Gaunt,** 36 L. J. M.C. 89; L. R. 2 Q.B. 466; 8 B. & S. 365; 16 L. T. 379; 15 W. R. 1172: considered in *McGregor* v. *Telford*, 84 L. J. K.B. 1902; [1915] 3 K.B. 237; 113 L. T. 84; 31 T. L. R. 512.

Reg. v. **Hensler,** 22 L. T. 691: followed in *Rex* v. *Light*, 84 L. J. K.B. 865; 112 L. T. 1144; 59 S. J. 351; 31 T. L. R. 257.

Reg. v. **Hopkins,** 62 L. J. M.C. 57; [1893] 1 Q.B. 621; 68 L. T. 292; 41 W. R. 431; 57 J. P. 152: applied in *Rex* v. *Leach; Fritchley, ex parte*, 82 L. J. K.B. 897; [1913] 3 K.B. 40; 109 L. T. 313; 77 J. P. 255; 29 T. L. R. 569.

Reg. v. **Hughes,** Bell C.C. 242: followed in *Rex* v. *Goodspeed*, 75 J. P. 232; 55 S. J. 273; 27 T. L. R. 255.

Reg. v. **Johnson,** Car. & M. 218: distinguished in *Rex* v. *Chandler*, 82 L. J. K.B. 106; [1913] 1 K.B. 125; 108 L. T. 352; 77 J. P. 80; 23 Cox C.C. 330; 57 S. J. 160; 29 T. L. R. 83.

Reg. v. **King,** 66 L. J. Q.B. 87; [1897] 1 Q.B. 214; 75 L. T. 392; 61 J. P. 329; 18 Cox C.C. 447: explained and distinguished in *Rex* v. *Barron*, 83 L. J. K.B. 786; [1914] 2 K.B. 570; 78 J. P. 311; 58 S. J. 557; 30 T. L. R. 422.

Reg. v. **Langmead,** 10 L. T. 350: followed in *Rex* v. *Curnock*, 111 L. T. 816.

Reg. v. **Local Government Board,** 52 L. J. M.C. 4; 10 Q.B. D. 309; 48 L. T. 173: applied in *Rex* v. *Local Government Board; Thorp, Ex parte*, 84 L. J. K.B. 1184; 112 L. T. 860; 79 J. P. 248; 13 L. G. R. 402.

Reg. v. **Machen,** 18 L. J. M.C. 213; 14 Q.B. 74 : explained in *McGregor* v. *Telford*, 84 L. J. K.B. 1902; [1915] 3 K.B. 237; 113 L. T. 84; 31 T. L. R. 512.

Reg. v. **Martin,** 36 L. J. M.C. 20; L. R. 1 C.C.R. 56; 15 L. T. 54; 15 W. R. 358; 10 Cox C.C. 383 : followed in *Rex* v. *Moreton*, 109 L. T. 417; 23 Cox C.C. 560.

Reg. v. **Ollis,** 69 L. J. Q.B. 918; [1900] 2 Q.B. 758; 83 L. T. 251; 49 W. R. 76; 64 J. P. 518 : followed in *Rex* v. *Shellaker*, 83 L. J. K.B. 413; [1914] 1 K.B. 414; 110 L. T. 351; 78 J. P. 159; 30 T. L. R. 194.

Reg. v. **Plenty,** 38 L. J. Q.B. 205; L. R. 4 Q.B. 346; 9 B. & S. 386; 20 L. T. 521; 17 W. R. 792 : followed in *Rex* v. *Casey*, [1914] 2 Ir. R. 243.

Reg. v. **Pratt,** 24 L. J. M.C. 113; 4 E. & B. 860 : *dicta* in, followed in *Pratt* v. *Martin*, 80 L. J. K.B. 711; [1911] 2 K.B. 90; 105 L. T. 49; 75 J. P. 328; 27 T. L. R. 377.

Reg. v. **Riley,** 65 L. J. M.C. 74; [1896] 1 Q.B. 309; 74 L. T. 254; 44 W. R. 318; 60 J. P. 519; 18 Cox C.C. 285 : followed in *Rex* v. *Cade*, 83 L. J. K.B. 796; [1914] 2 K.B. 209; 110 L. T. 624; 78 J. P. 240; 58 S. J. 288; 30 T. L. R. 289.

Reg. v. **Rothwell,** 12 Cox C.C. 145, was an extreme case and should not be expanded : so held in *Rex* v. *Birchall*, 29 T. L. R. 711.

Reg. v. **Saddlers Co.,** 32 L. J. Q.B. 337; 10 H.L. C. 404 : considered in *London and Counties Assets Co.* v. *Brighton Grand Concert Hall and Picture Palace*, 84 L. J. K.B. 991; [1915] 2 K.B. 493; 112 L. T. 380; [1915] H. B. R. 83.

Reg v. **Southport (Mayor) and Morris** (*or* **Southport Corporation** v. **Morriss),** 62 L. J. M.C. 47; [1893] 1 Q.B. 359; 68 L. T. 221 : considered in *Wecks* v. *Ross*, 82 L. J. K.B. 925; [1913] 2 K.B. 229; 108 L. T. 423; 77 J. P. 182; 23 Cox C.C. 337; 29 T. L. R. 369.

Reg. v. **Staines Local Board,** 60 L. T. 261; 53 J. P. 358 : is inconsistent with the decision of the Court of Appeal in *Kirkheaton District Local Board* v. *Ainley* (61 L. J. Q.B. 812; [1892] 2 Q.B. 274) is not binding : so held by Avory, J., in *Rochford Rural Council* v. *Port of London Authority*, 83 L. J. K.B. 1066; [1914] 2 K.B. 916; 78 J. P. 329.

Reg. v. **Thomas,** 7 E. & B. 399 : disapproved in *Cababe* v. *Walton-upon-Thames Urban Council*, 83 L. J. K.B. 243; [1914] A.C. 102; 110 L. T. 674; 78 J. P. 129; 12 L. G. R. 104; 58 S. J. 270.

Reg. v. **Welsh,** 11 Cox C.C. 336 : followed in *Rex* v. *Lesbini*, 84 L. J. K.B. 1102; [1915] 3 K.B. 1116; 112 L. T. 175.

Reg. v. **Westmoreland County Court Judge,** 36 W. R. 477 : distinguished in *McArdle* v. *Kane*, [1915] 1 Ir. R. 259.

Reg. v. **White,** 1 Den. C. C. 208 : distinguished in *Morison* v. *London County and Westminster Bank*, 83 L. J. K.B. 1202; [1914] 3 K.B. 356; 111 L. T. 114; 19 Com. Cas. 273; 58 S. J. 453; 30 T. L. R. 481.

Reg. v. **Wiley,** 20 L. J. M.C. 4, 9; 4 Cox C.C. 414, 421 : *dictum* of Patteson, J., in, approved in *Rex* v. *Berger*, 84 L. J. K.B. 541; 31 T. L. R. 159.

Reg. v. **Wimbledon Local Board,** 51 L. J. Q.B. 219; 8 Q.B. D. 459; 46 L. T. 47; 30 W. R. 400; 46 J. P. 292 : followed in *Shaw* v. *Tati Concessions*, 82 L. J. Ch. 159; [1913] 1 Ch. 292; 108 L. T. 487; 20 Manson, 104; 57 S. J. 322; 29 T. L. R. 261.

Registrar of Trade Marks v. **Du Cros,** 83 L. J. Ch. 1; [1913] A.C. 624; 109 L. T. 687; 30 R. P. C. 60; 57 S. J. 728; 29 T. L. R. 772 : applied in *British Milk Products Co.'s Application, In re*, 84 L. J. Ch. 819; [1915] 2 Ch. 202; 32 R. P. C. 453.

Renfrew v. **M'Crae,** [1914] W.C. & I. Rep. 195; [1914] 1 S. L. T. 354 : distinguished in *Williams* v. *Llandudno Coaching and Carriage Co.*, 84 L. J. K.B. 655; [1915] 2 K.B. 101; [1915] W.C. & I. Rep. 91; 112 L. T. 848; 59 S. J. 286; 31 T. L. R. 186.

Revell, Ex parte; Tollemache, in re (*No.* 2), 13 Q.B. D. 727 : distinguished in *Peel, In re; Honour, ex parte*, 57 S. J. 730.

Rex v. **Alexander,** 109 L. T. 745 : followed in *Rex* v. *Lesbini*, 84 L. J. K.B. 1102; [1914] 3 K.B. 1116; 112 L. T. 175.

Rex v. **Bond,** 75 L. J. K.B. 693; [1906] 2 K.B. 389; 95 L. T. 296; 54 W. R. 586; 70 J. P. 424; 21 Cox C.C. 252; 22 T. L. R. 633 : considered in *Perkins* v. *Jeffery*, 84 L. J. K.B. 1554; [1915] 2 K.B. 702; 79 J. P. 425; 31 T. L. R. 444.

Rex v. **Bridgwater,** 74 L. J. K.B. 35; [1905] 1 K.B. 131; 91 L. T. 838; 53 W. R. 415; 69 J. P. 26; 21 T. L. R. 69 : distinguished in *Rex* v. *Hudson*, 81 L. J. K.B. 861; [1912] 2 K.B. 464; 107 L. T. 31; 56 S. J. 574; 28 T. L. R. 459.

Rex v. **Carlisle,** 6 Car. & P. 636 : discussed and followed in *Lyons* v. *Gulliver*, 83 L. J. Ch. 281; [1914] 1 Ch. 631; 110 L. T. 284; 78 J. P. 98; 12 L. G. R. 194; 58 S. J. 97; 30 T. L. R. 75.

Rex v. **Clerkenwell Commissioners of Income Tax,** 70 L. J. K.B. 1010; [1901] 2 K.B. 879; 85 L. T. 503; 65 J. P. 724 : observation of Stirling, L.J., in, considered and applied in *Rex* v. *Kensington Income Tax Commissioners*, 83 L. J. K.B. 1439; [1914] 3 K.B. 429; 111 L. T. 393; 30 T. L. R. 574.

Rex v. **Daye,** 77 L. J. K.B. 659; [1908] 2 K.B. 333; 99 L. T. 165; 72 J. P. 269: applied in *Forbes* v. *Samuel*, 82 L. J. K.B. 1135; [1913] 3 K.B. 706; 109 L. T. 599; 29 T. L. R. 544.

Rex v. **Everest,** 2 Cr. App. Rep. 130: followed in *Rex* v. *Cohen*, 111 L. T. 77.

Rex v. **Fisher,** 79 L. J. K.B. 187; [1910] 1 K.B. 149; 102 L. T. 111; 74 J. P. 104; 26 T. L. R. 122: approved and applied in *Rex* v. *Kurasch*, 84 L. J. K.B. 1497; [1915] 2 K.B. 749; 79 J. P. 399.

Rex v. **Hamilton,** 9 Cr. App. Rep. 89: considered in *Rex* v. *Crowley*, 83 L. J. K.B. 298; 110 L. T. 127; 30 T. L. R. 94.

Rex v. **Hudson,** 81 L. J. K.B. 861; [1912] 2 K.B. 464; 107 L. T. 31; 76 J. P. 421; 56 S. J. 574; 28 T. L. R. 459: followed in *Rex* v. *Watson*, 109 L. T. 335; 29 T. L. R. 450.

Rex v. **Ireland,** 79 L. J. K.B. 338; [1910] 1 K.B. 654; 102 L. T. 608; 74 J. P. 206; 54 S. J. 543; 26 T. L. R. 267: approved in *Rex* v. *Machardy*, 80 L. J. K.B. 1215; [1911] 2 K.B. 1144; 105 L. T. 556; 55 S. J. 754; 28 T. L. R. 2; overruled in *Felstead* v. *Regem*, 83 L. J. K.B. 1132; [1914] A.C. 534; 78 J. P. 313; 58 S. J. 534; 30 T. L. R. 469.

Rex v. **Jefferson,** 24 T. L. R. 877: followed in *Rex* v. *Gilbert*, 84 L. J. K.B. 1424; 112 L. T. 479.

Rex v. **Johnson,** 78 L. J. K.B. 290; [1909] 1 K.B. 439; 100 L. T. 464; 73 J. P. 135; 53 S. J. 288; 25 T. L. R. 229: followed in *Rex* v. *Evans*, 84 L. J. K.B. 1603; [1915] 2 K.B. 762; 79 J. P. 415; 59 S. J. 496; 31 T. L. R. 410.

Rex v. **Joiner,** 74 J. P. 200: *semble*, the Court will not follow, in view of the decisions in *Rex* v. *Pearson* (72 J. P. 449) and *Rex* v. *George* (73 J. P. 11): so held in *Rex* v. *Fraser*, 76 J. P. 168.

Rex v. **Kerrison,** 3 M. & S. 526: distinguished in *Sharpness New Docks and Gloucester and Birmingham Navigation Co.* v. *Att.-Gen.*, 84 L. J. K.B. 907; [1915] A.C. 654; 112 L. T. 826; 79 J. P. 305; 13 L. G. R. 563; 59 S. J. 381; 31 T. L. R. 254.

Rex v. **Leake,** 5 B. & Ad. 469: followed in *Arnold* v. *Morgan*, 80 L. J. K.B. 955; [1911] 2 K.B. 314; 103 L. T. 763; 75 J. P. 105; 9 L. G. R. 917.

Rex v. **London Justices,** 68 L. J. Q.B. 383; [1899] 1 Q.B. 532; 80 L. T. 286; 47 W. R. 316; 63 J. P. 388: applied in *Rex* v. *Lincolnshire Justices*, 81 L. J. K.B. 967; [1912] 2 K.B 413; 76 J. P. 311; 10 L. G. R. 703.

Rex v. **Londonderry Justices,** [1912] 2 Ir. R. 374: explained in *Rex* v. *Monaghan Justices*, [1914] 2 Ir. R. 156.

Rex v. **Machardy,** 80 L. J. K.B. 1215; [1911] 2 K.B. 1114; 105 L. T. 556; 55 S. J. 754; 28 T. L. R. 2: followed, but reasoning of decision disapproved in *Felstead* v. *Regem*, 83 L. J. K.B. 1132; [1914] A.C. 534; 78 J. P. 313; 58 S. J. 534; 30 T. L. R. 469.

Rex v. **Metropolitan Police Commissioner; Pearce, Ex parte,** 80 L. J. K.B. 223; 104 L. T. 135; 75 J. P. 85: overruled in *Rex* v. *Metropolitan Police Commissioner; Holloway, Ex parte*, [1911] 2 K.B. 1131; 105 L. T. 532; 55 S. J. 773; 27 T. L. R. 573; 75 J. P. 490.

Rex v. **Middlesex Justices,** 1 L. J. M.C. 5; 2 B. & Ad. 818: approved in *British Columbia Electric Railway* v. *Stewart*, 83 L. J. P.C. 53; [1913] A.C. 816; 109 L. T. 771.

Rex v. **Moore,** 1 L. J. M.C. 30; 3 B. & Ad. 184: discussed and followed in *Lyons* v. *Gulliver*, 83 L. J. Ch. 281; [1914] 1 Ch. 631; 110 L. T. 284; 78 J. P. 98; 12 L. G. R. 194; 58 S. J. 97; 30 T. L. R. 75.

Rex v. **Munday,** 2 Leach C.C. 991: followed in *Rex* v. *Richards*, 80 L. J. K.B. 174; [1911] 1 K.B. 260; 104 L. T. 48; 75 J. P. 144.

Rex v. **Norfolk County Council,** 70 L. J. K.B. 575; [1901] 2 K.B. 268; 84 L. T. 822; 49 W. R. 543; 65 J. P. 454: distinguished in *Thornhill* v. *Weeks* (*No.* 3), 84 L. J. Ch. 282; [1915] 1 Ch. 106; 111 L. T. 1067; 78 J. P. 154; 12 L. G. R. 597.

Rex v. **Norton,** 79 L. J. K.B. 756; [1910] 2 K.B. 496; 102 L. T. 926; 74 J. P. 375; 54 S. J. 602; 26 T. L. R. 550: discussed and explained in *Director of Public Prosecutions* v. *Christie*, 83 L. J. K.B. 1097; [1914] A.C. 545; 111 L. T. 220; 78 J. P. 321; 24 Cox C.C. 249; 58 S. J. 515; 30 T. L. R. 471.

Rex v. **Palmer,** 82 L. J. K.B. 531; [1913] 2 K.B. 29; 108 L. T. 814; 77 J. P. 340; 23 Cox C.C. 377; 29 T. L. R. 349: commented on in *Rex* v. *Greening*, [1913] 3 K.B. 846; 29 T. L. R. 732.

Rex v. **Preston,** 78 L. J. K.B. 335; [1909] 1 K.B. 568; 100 L. T. 303; 73 J. P. 173; 53 S. J. 322; 25 T. L. R. 280: distinguished in *Rex* v. *Hudson*, 81 L. J. K.B. 861; [1912] 2 K.B. 464; 107 L. T. 31; 56 S. J. 574; 28 T. L. R. 459.

Rex v. **Rodley,** 82 L. J. K.B. 1070; [1913] 3 K.B. 468; 109 L. T. 476; 77 J. P. 465; 58 S. J. 51; 29 T. L. R. 700: approved and applied in *Rex* v. *Kurasch*, 84 L. J. K.B. 1497; [1915] 2 K.B. 749; 79 J. P. 399.

Rex v. **Russell,** 5 L. J. (o.s.) M.C. 80; 6 B. & C. 566: discussed in *Denaby and Cadeby Main Collieries* v. *Anson*, 80 L. J. K.B. 320; [1911] 1 K.B. 171; 103 L. T. 349; 11 Asp. M.C. 471; 54 S. J. 748; 26 T. L. R. 667.

Rex v. **Southampton Justices; Cardy, ex parte,** 75 L. J. K.B. 295; [1906] 1 K.B. 446; 94 L. T. 437; 54 W. R. 484; 70 J. P. 175; 22 T. L. R. 236: followed in *Nicholas* v. *Davies*, 83 L. J. K.B. 1137; [1914] 2 K.B. 705; 111 L. T. 56; 78 J. P. 207; 30 T. L. R. 388.

Rex v. **Southwark Assessment Committee,** 78 L. J. K.B. 319; [1909] 1 K.B. 274; 110 L. T. 136; 73 J. P. 75; 7 L. G. R. 287; 25 T. L. R. 144: applied in *Rex* v. *Shoreditch Assessment Committee*, 80 L. J. K.B. 185; [1910] 2 K.B. 859; 103 L. T. 262; 74 J. P. 361; 8 L. G. R. 744; 26 T. L. R. 663.

Rex v. **Thame (Churchwardens),** 1 Str. 115: discussed and applied in *Rex* v. *Dymock (Vicar)*, 84 L. J. K.B. 294; [1915] 1 K.B. 147; 112 L. T. 156; 79 J. P. 91; 13 L. G. R. 48; 31 T. L. R. 11.

Rex v. **Wells,** 68 J. P. 392: followed in *Rex* v. *Cavan Justices*, [1914] 2 Ir. R. 150.

Rex v. **Wilson,** 6 Cr. App. Rep. 125: followed in *Rex* v. *Cohen*, 111 L. T. 77.

Reynault, In re, 16 Jur. 233: followed in *Leigh* v. *Pantin*, 84 L. J. Ch. 345; [1914] 2 Ch. 701; 112 L. T. 26.

Rhodes v. **Muswell Hill Land Co.,** 29 Beav. 560: applied in *Williams, In re*, 81 L. J. Ch. 296; [1912] 1 Ch. 399; 106 L. T. 584; 56 S. J. 325.

Rhodesia Goldfields, In re, 79 L. J. Ch. 133; [1910] 1 Ch. 239; 102 L. T. 126; 17 Manson, 23; 54 S. J. 135: distinguished in *Peruvian Railway Construction Co., In re*, [1915] 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464; and in *Smelting Corporation, In re; Seaver* v. *Smelting Corporation*, 84 L. J. Ch. 571; [1915] 1 Ch. 472; 113 L. T. 44; [1915] H. B. R. 126.

Richards, In re; Uglow v. **Richards,** 71 L. J. Ch. 66; [1902] 1 Ch. 76; 85 L. T. 452; 50 W. R. 90: followed in *Ryder, In re; Burton* v. *Kearsley*, 83 L. J. Ch. 653; [1914] 1 Ch. 865; 110 L. T. 970; 58 S. J. 556.

Richards v. **Butcher,** 7 R. P. C. 288: judgment of Kay, J., in, followed in *Dental Manufacturing Co.* v. *De Trey*, 81 L. J. K.B. 1162; [1912] 3 K.B. 76; 107 L. T. 111; 28 T. L. R. 498.

Richards v. **Swansea Improvement and Tramways Co.,** 9 Ch. D. 425: observations of Brett, L.J., in, followed in *Regent's Canal and Dock Co.* v. *London County Council*, 81 L. J. Ch. 377; [1912] 1 Ch. 583; 106 L. T. 745; 76 J. P. 353; 10 L. G. R. 358; 56 S. J. 309; 28 T. L. R. 248.

Richards v. **Wrexham and Acton Collieries,** 83 L. J. K.B. 687; [1914] 2 K.B. 497; 110 L. T. 402; 30 T. L. R. 228: followed in *Higginson* v. *Blackwell Colliery Co.*, 84 L. J. K.B. 1189; 112 L. T. 442; 31 T. L. R. 95.

Richardson, In re; St. Thomas's Hospital Governors, ex parte, 80 L. J. K.B. 1232; [1911] 2 K.B. 705; 105 L. T. 226: explained and distinguished in *Law Guarantee Trust and Accident Society, In re (No. 2)*, 84 L. J. Ch. 1; [1914] 2 Ch. 617; 111 L. T. 817; 58 S. J. 704; 30 T. L. R. 616.

Richardson v. **M'Causland,** Beatty, 457: applied and followed in *Kelaghan* v. *Daly*, [1913] 2 Ir. R. 328.

Richardson v. **Mellish,** 2 Bing. 229: discussed in *Chaplin* v. *Hicks*, 80 L. J. K.B. 1292; [1911] 2 K.B. 786; 55 S. J. 580; 27 T. L. R. 458.

Richardson's Trusts, In re, 17 L. R. Ir. 436: distinguished in *Ackerley, In re; Chapman* v. *Andrew*, 82 L. J. Ch. 260; [1913] 1 Ch. 510; 108 L. T. 712.

Richerson, In re (*No. 2*), 62 L. J. Ch. 708; [1893] 3 Ch. 146; 69 L. T. 590; 41 W. R. 583: followed and applied in *Tate, In re; Williamson* v. *Gilpin*, 83 L. J. Ch. 593; [1914] 2 Ch. 182; 109 L. T. 621; 58 S. J. 119.

Ridgway v. **Newstead,** 30 L. J. Ch. 889; 3 De G. F. & J. 474: considered and distinguished in *Eustace, In re; Lee* v. *McMillan*, 81 L. J. Ch. 529; [1912] 1 Ch. 561; 106 L. T. 789; 56 S. J. 468.

Rigby v. **Connol,** 49 L. J. Ch. 328; 14 Ch. D. 482; 42 L. T. 139: considered in *Osborne* v. *Amalgamated Society of Railway Servants*, 80 L. J. Ch. 315; [1911] 1 Ch. 540; 104 L. T. 267; 27 T. L. R. 289.

Riggall v. **Great Central Railway,** 14 Com. Cas. 259; 101 L. T. 392; 53 S. J. 716; 25 T. L. R. 754: followed in *Jenkins* v. *Great Central Railway*, 81 L. J. K.B. 24; [1912] 1 K.B. 1; 106 L. T. 565; 17 Com. Cas. 32; 12 Asp. M.C. 154; 28 T. L. R. 61.

Rimmer v. **Webster,** 71 L. J. Ch. 561; [1902] 2 Ch. 163; 86 L. T. 491; 50 W. R. 517: applied in *Fry* v. *Smellie*, 81 L. J. K.B. 1003; 106 L. T. 404.

Ripley v. **Paper Bottle Co.,** 57 L. J. Ch. 327 : overruled in *Jones* v. *Pacaya Rubber and Produce Co.*, 80 L. J. K.B. 155; [1911] 1 K.B. 455; 104 L. T. 446; 18 Manson, 139.

Rishton v. **Grissell,** L. R. 5 Eq. 326: explained in *Spanish Prospecting Co., In re*, 80 L. J. Ch. 210; [1911] 1 Ch. 92; 103 L. T. 609; 18 Manson, 191; 55 S. J. 63; 21 T. L. R. 76.

River Steamer Co., In re; Mitchell's Claim, L. R. 6 Ch. 822 : applied in *Fleetwood and District Electric Light and Power Syndicate, In re*, 84 L. J. Ch. 374; [1915] 1 Ch. 486; 112 L. T. 1127; [1915] H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221.

Rivett-Carnac, In re; Simmonds, ex parte, 55 L. J. Q.B. 74; 16 Q.B. D. 308 : considered in *Wells* v. *Wells*, 83 L. J. P. 81; [1914] P. 157; 58 S. J. 555; 30 T. L. R. 545.

Robb v. **Green,** 64 L. J. Q.B. 593; [1895] 2 Q.B. 1, 315; 72 L. T. 686; 73 L. T. 15: applied in *Amber Size and Chemical Co.* v. *Menzel*, 82 L. J. Ch. 573; [1913] 2 Ch. 239; 109 L. T. 520.

Robbins v. **Jones,** 33 L. J. C.P. 1; 15 C.B. (N.S.) 221 : followed in *Horridge* v. *Makinson*, 84 L. J. K.B. 1294; 113 L. T. 498; 13 L. G. R. 868; 31 T. L. R. 389.

Roberts v. **Bishop of Kilmore,** [1902] 1 Ir. R. 333 : distinguished in *Jones, In re*, 84 L. J. Ch. 222; [1915] 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Robertson v. **Bristol Corporation,** 69 L. J. Q.B. 590; [1900] 2 Q.B. 198; 82 L. T. 516; 48 W. R. 498; 64 J. P. 389 : considered and applied in *Wandsworth Borough Council* v. *Golds*, 80 L. J. K.B. 126; [1911] 1 K.B. 60; 103 L. T. 568; 74 J. P. 464; 8 L. G. R. 1102.

Robertson v. **Robertson,** 51 L. J. P. 5; 6 P. D. 119 : followed in *Palmer* v. *Palmer*, 83 L. J. P. 58; [1914] P. 116; 110 L. T. 752; 58 S. J. 416; 30 T. L. R. 409.

Robins v. **Gray,** 65 L. J. Q.B. 44; [1895] 2 Q.B. 501; 73 L. T. 252; 44 W. R. 1; 59 J. P. 741 : distinguished in *Cassils & Co.* v. *Holden Wood Bleaching Co.*, 84 L. J. K.B. 834; 112 L. T. 373.

Robinson v. **Shepherd,** 4 De G. J. & S. 129; 9 L. T. 527 : followed in *Dering, In re*, 105 L. T. 404.

Robinson Printing Co. v. **Chic, Lim.,** 74 L. J. Ch. 399; [1905] 2 Ch. 123; 93 L. T. 262; 53 W. R. 681; 12 Manson, 314; 21 T. L. R. 446 : followed in *Deyes* v. *Wood*, 80 L. J. K.B. 553; [1911] 1 K.B. 806; 104 L. T. 404.

Roche v. **Roche,** 74 L. J. P. 50; [1905] P. 142; 92 L. T. 668; 21 T. L. R. 332 : disapproved in *Brooke* v. *Brooke* (No. 1), 81 L. J. P. 75; [1912] P. 136; 106 L. T. 766; 56 S. J. 382; 28 T. L. R. 314.

Roddy v. **Fitzgerald,** 6 H.L. C. 823: applied in *Simcoe, In re; Vowler-Simcoe* v. *Vowler*, 82 L. J. Ch. 270; [1913] 1 Ch. 552; 108 L. T. 891; 57 S. J. 533.

Rodocanachi v. **Milburn,** 56 L. J. Q.B. 202; 18 Q.B. D. 67; 56 L. T. 594; 35 W. R. 241; 6 Asp. M.C. 100 : approved and followed, and held not to have been affected by section 51, sub-section 2 of the Sale of Goods Act, 1893, in *Williams* v. *Agius*, 83 L. J. K.B. 715; [1914] A.C. 510; 110 L. T. 865; 19 Com. Cas. 200; 58 S. J. 377; 30 T. L. R. 351.

Rogers v. **Hosegood,** 69 L. J. Ch. 652; [1900] 2 Ch. 388; 83 L. T. 186; 48 W. R. 659 : distinguished in *Millbourn* v. *Lyons*, 83 L. J. Ch. 737; [1914] 2 Ch. 231; 111 L. T. 388; 58 S. J. 578.

Rogers v. **Humphreys,** 5 L. J. K.B. 65; 4 Ad. & E. 299 : considered in *Ind, Coope & Co., In re; Fisher* v. *The Company*, 80 L. J. Ch. 661; [1911] 2 Ch. 223; 105 L. T. 356; 55 S. J. 600.

Roney, In re, 83 L. J. K.B. 451; [1914] 2 K.B. 529; 110 L. T. 111 : *dictum* in, approved in *Seal* v. *Turner*, 84 L. J. K.B. 1658; [1915] 3 K.B. 194; 113 L. T. 769; 59 S. J. 649.

Rosie v. **Mackay,** [1910] S. C. 714: doubted in *Weir* v. *North British Railway*, [1912] S. C. 1073 : considered and held overruled by *Taylor* v. *London and North-Western Railway* (81 L. J. K.B. 541; [1912] A.C. 242) in *Dempsey* v. *Caldwell*, [1914] S. C. 28.

Ross, In re; Ashton v. **Ross,** 69 L. J. Ch. 192; [1900] 1 Ch. 162; 81 L. T. 578; 48 W. R. 264 : followed in *Dempster, In re*, 84 L. J. Ch. 597 : [1915] 1 Ch. 795; 112 L. T. 1124.

Ross, Ex parte, 2 G. & J. 330 : distinguished in *Benzon, In re*, 83 L. J. Ch. 658; [1914] 2 Ch. 68; 110 L. T. 926; 21 Manson, 8; 58 S. J. 430; 30 T. L. R. 435.

Ross v. **Eason,** [1911] 2 Ir. R. 459: distinguished in *Cooney* v. *Wilson*, [1913] 2 Ir. R. 402.

Rouch v. **Hall,** 50 L. J. M.C. 6; 6 Q.B. D. 17; 44 L. T. 183 : applied in *Monro* v. *Central Creamery Co.*, 81 L. J. K.B. 547; [1912] 1 K.B. 578; 106 L. T. 114; 76 J. P. 131; 10 L. G. R. 134; 22 Cox C.C. 682.

Rourke v. **Robinson,** 80 L. J. Ch. 295; [1911] 1 Ch. 480; 103 L. T. 895 : discussed and distinguished in *Webb* v. *Crosse*, 81 L. J. Ch. 259; [1912] 1 Ch. 323; 105 L. T. 867; 56 S. J. 177.

Rowning v. **Goodchild,** 2 W. Bl. 906: applied in *Hamilton* v. *Clancy*, [1914] 2 Ir. R. 514.

Royal Mail Steam Packet Co. and River Plate Steamship Co., In re, 79 L. J. K.B. 673; [1910] 1 K.B. 600; 15 Com. Cas. 124; 102 L. T. 333; 11 Asp. M.C. 372 : followed in *Mawson Shipping Co.* v. *Beyer*, 83 L. J. K.B. 290; [1914] 1 K.B. 304; 109 L. T. 973; 19 Com. Cas. 59.

Royal Masonic Institution for Boys v. **Parkes,** 82 L. J. K.B. 33; [1912] 3 K.B. 212; 106 L. T. 809; 76 J. P. 218; 10 L. G. R. 376; 28 T. L. R. 355 : followed in *Johnston* v. *Lalonde*, 81 L. J. K.B. 1229; [1912] 3 K.B. 218; 76 J. P. 378; 10 L. G. R. 671.

Royal Warrant Holders' Association v. **Kitson,** 26 R. P. C. 157: followed in *J. T. Smith and J. E. Jones, Lim.* v. *Service, Reeve & Co.*, 83 L. J. Ch. 876; [1914] 2 Ch. 576.

Ruben v. **Great Fingall Consolidated, Lim.,** 75 L. J. K.B. 843; [1906] A.C. 439; 95 L. T. 214; 13 Manson, 248; 22 T. L. R. 712 : *dicta* of Lord Davey in, disapproved in *Lloyd* v. *Grace, Smith & Co.*, 81 L. J. K.B. 1140; [1912] A.C. 716; 56 S. J. 273; 28 T. L. R. 547.

Ruby, The, 83 L. T. 438: followed in *Mackay, In re*, [1915] 2 Ir. R. 347.

Rugby Trustees v. **Merryweather,** 11 East, 275*n.* : approved in *Kingston-upon-Hull Corporation* v. *North-Eastern Railway*, 84 L. J. Ch. 329; [1915] 1 Ch. 456; 112 L. T. 584; 79 J. P. 221; 13 L. G. R. 587; 59 S. J. 318.

Rushton v. **Skey & Co.,** 83 L. J. K.B. 1503; [1914] 3 K.B. 706; [1914] W.C. & I. Rep. 497; 111 L. T. 700; 58 S. J. 685; 30 T. L. R. 601 : applied in *Allen* v. *Francis*, 83 L. J. K.B. 1814; [1914] 3 K.B. 1065; [1914] W.C. & I. Rep. 599; 112 L. T. 62; 58 S. J. 753; 30 T. L. R. 695.

Russell v. **Stubbs, Lim.,** 52 S. J. 580: considered in *Barham* v. *Huntingfield (Lord)*, 82 L. J. K.B. 752; [1913] 2 K.B. 193; 108 L. T. 703.

Russell v. **Town and County Bank,** 58 L. J. P.C. 8; 13 App. Cas. 418; 59 L. T. 481; 53 J. P. 244 : followed in *General Hydraulic Power Co.* v. *Hancock*, 83 L. J. K.B. 906; [1914] 2 K.B. 21; 111 L. T. 251; 6 Tax Cas. 445; 30 T. L. R. 203 : principle of, applied in *Usher's Wiltshire Brewery* v. *Bruce*, 84 L. J. K.B. 417; [1915] A.C. 433; 112 L. T. 651; 6 Tax Cas. 399; 59 S. J. 144; 31 T. L. R. 104.

Ruther v. **Ruther,** 72 L. J. K.B. 826; [1903] 2 K.B. 270; 52 W. R. 154; 67 J. P. 359 : followed in *Adams* v. *Adams*, 83 L. J. P. 151; [1914] P. 155; 58 S. J. 613.

Rutherglen Parish Council v. **Glasgow Parish Council,** [1902] A.C. 360; 4 Fraser (H.L.) 19 : opinion of Lord Brampton and Lord Lindley in, not followed in *St. Matthew, Bethnal Green* v. *Paddington Guardians*, 81 L. J. K.B. 747; [1912] 2 K.B. 335; 107 L. T. 406; 76 J. P. 289; 10 L. G. R. 513; 28 T. L. R. 391.

Ruthin and Cerrig-y-Druidion Railway Act, In re, 56 L. J. Ch. 30; 32 Ch. D. 438; 55 L. T. 237 : applied in *Southport and Lytham Tramroad Act, In re*, 80 L. J. Ch. 137; [1911] 1 Ch. 120; 104 L. T. 154 : followed in *West Yorkshire Tramways Act, In re*, 82 L. J. Ch. 98; [1913] 1 Ch. 170; 108 L. T. 18.

Rutter v. **Everett,** 64 L. J. Ch. 845; [1895] 2 Ch. 872; 73 L. T. 82; 44 W. R. 104; 2 Manson, 371 : discussed in *Neal, In re*, 83 L. J. K.B. 1118; [1914] 2 K.B. 910; 110 L. T. 988; 58 S. J. 536.

Rylands v. **Fletcher,** 37 L. J. Ex. 161; L. R. 3 H.L. 330; 19 L. T. 220 : doctrine of, considered in *Charing Cross, West End and City Electricity Supply Co.* v. *London Hydraulic Power Co.*, 83 L. J. K.B. 1352; [1914] 3 K.B. 772; 111 L. T. 198; 78 J. P. 305; 12 L. G. R. 807; 58 S. J. 577; 30 T. L. R. 441 : principle in, when applicable, considered in *Goodbody* v. *Poplar Borough Council*, 84 L. J. K.B. 1230; 79 J. P. 218; 13 L. G. R. 166.

S.

Saccharin Corporation v. **Chemische Fabrik von Heyden Actiengesellschaft,** 80 L. J. K.B. 1117; [1911] 2 K.B. 516; 104 L. T. 886 : distinguished in *Okura* v. *Forsbacka Jernverks Aktiebolag*, 83 L. J. K.B. 561; [1914] 1 K.B. 715; 110 L. T. 464; 58 S. J. 232; 30 T. L. R. 242.

Sadgrove v. **Kirby,** 6 Term Rep. 483: principle of, applied in *Hope* v. *Osborne*, 82 L. J. Ch. 457; [1913] 2 Ch. 349; 109 L. T. 41; 77 J. P. 317; 11 L. G. R. 825; 57 S. J. 702; 29 T. L. R. 606.

Sadler v. **Evans,** 4 Burr. 1984: considered in *Baylis* v. *London (Bishop)*, 82 L. J. Ch. 61; [1913] 1 Ch. 127; 107 L. T. 730; 57 S. J. 96; 29 T. L. R. 59.

Sadler v. **Pratt,** 5 Sim. 632: applied in *Witty, In re; Wright* v. *Robinson*, [1913] 2 Ch. 666; 109 L. T. 590.

Saffery v. **Mayer,** 70 L. J. K.B. 145; [1901] 1 K.B. 11; 83 L. T. 394; 49 W. R. 54; 64 J. P. 740 : distinguished in *O'Shea, In re*, 81 L. J. K.B. 70; [1911] 2 K.B. 981; 105 L. T. 486.

St. Catherine's Milling and Lumber Co. v. **Reg.,** 58 L. J. P.C. 54; 14 App. Cas. 46; 60 L. T. 197: *dictum* of Lord Watson in, disapproved in *Dominion of Canada* v. *Province of Ontario*, 80 L. J. P.C. 32; [1910] A.C. 637; 103 L. T. 331; 26 T. L. R. 681.

St. Leonard, Shoreditch (Vestry) v. **Phelan,** 65 L. J. M.C. 111; [1896] 1 Q.B. 533; 74 L. T. 285; 44 W. R. 427; 60 J. P. 244: commented upon and not followed in *Kershaw* v. *Smith*, 82 L. J. K.B. 791; [1913] 2 K.B. 455; 108 L. T. 650; 77 J. P. 297; 11 L. G. R. 519.

St. Nazaire Co., In re, 12 Ch. D. 88; 41 L. T. 110; 27 W. R. 854: followed in *Hession* v. *Jones*, 83 L. J. K.B. 810; [1914] 2 K.B. 421; 110 L. T. 773; 30 T. L. R. 320.

Salomon v. **Salomon,** 66 L. J. Ch. 35; [1897] A.C. 22; 75 L. T. 426; 45 W. R. 193; 4 Manson, 89: followed in *Att.-Gen. for Canada* v. *Standard Trust Co. of New York*, 80 L. J. P.C. 189; [1911] A.C. 498; 105 L. T. 152.

Salt v. **Cooper,** 50 L. J. Ch. 529; 16 Ch. D. 544; 43 L. T. 682; 29 W. R. 553: explained in *Hearn, In re; De Bertodano* v. *Hearn*, 108 L. T. 452.

Salt v. **Tomlinson,** 80 L. J. K.B. 897; [1911] 2 K.B. 391; 105 L. T. 31; 75 J. P. 398; 9 L. G. R. 822; 27 T. L. R. 427: considered in *Bothamley* v. *Jolly*, 84 L. J. K.B. 2223; [1915] 3 K.B. 435; 31 T. L. R. 626.

Sampson, In re, 65 L. J. Ch. 406; [1896] 1 Ch. 630; 74 L. T. 246; 44 W. R. 557: applied in *Jenkins, In re; Williams* v. *Jenkins*, 84 L. J. Ch. 349; [1915] 1 Ch. 46.

Samson, In re, 76 L. J. Ch. 21; [1906] 2 Ch. 584; 95 L. T. 633: *ratio decidendi* in, applied in *Olpherts* v. *Coryton (No. 1)*, [1913] 1 Ir. R. 211: considered in *Harris, In re; Davis* v. *Harris*, 83 L. J. Ch. 841; [1914] 2 Ch. 395.

Samuel v. **Jarrah Timber and Wood Paving Corporation,** 73 L. J. Ch. 526; [1904] A.C. 323; 90 L. T. 731; 52 W. R. 673; 11 Manson, 276; 20 T. L. R. 536: discussed and distinguished in *Kreglinger* v. *New Patagonia Meat and Cold Storage Co.*, 83 L. J. Ch. 79; [1914] A.C. 25; 109 L. T. 802; 58 S. J. 97; 30 T. L. R. 114.

Sander v. **Heathfield,** 44 L. J. Ch. 113; L. R. 19 Eq. 21; 31 L. T. 400; 23 W. R. 331: distinguished in *Harris, In re; Davis* v. *Harris*, 83 L. J. Ch. 841; [1914] 2 Ch. 395; 58 S. J. 653.

Sanders' Trusts, In re, L. R. 1 Eq. 675: followed in *Jones, In re; Last* v. *Dobson*, 84 L. J. Ch. 222; [1915] 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Sanitary Carbon Co., In re, 12 L. J. N.C. 183; [1877] W. N. 223: distinguished in *East* v. *Bennett Bros.*, 80 L. J. Ch. 123; [1911] 1 Ch. 163; 103 L. T. 826; 18 Manson, 145; 55 S. J. 92; 27 T. L. R. 103.

Sartoris, In re, 61 L. J. Ch. 1; [1892] 1 Ch. 11; 65 L. T. 544; 40 W. R. 82: applied in *Laye, In re; Turnbull* v. *Laye*, 82 L. J. Ch. 218; [1913] 1 Ch. 298; 108 L. T. 324; 20 Manson, 124; 57 S. J. 284.

Saumarez, In re; Salaman, ex parte, 76 L. J. K.B. 828; [1907] 2 K.B. 170; 97 L. T. 121; 14 Manson, 170; 23 T. L. R. 477: explained and distinguished in *Allix, In re*, 83 L. J. K.B. 665; [1914] 2 K.B. 77; 110 L. T. 592; 21 Manson, 1; 58 S. J. 250.

Saunders v. **Thorney,** 78 L. T. 627: distinguished in *Bristow* v. *Piper*, 84 L. J. K.B. 607; [1915] 1 K.B. 271; 112 L. T. 426; 79 J. P. 177; 59 S. J. 178; 31 T. L. R. 80.

Saundrey v. **Mitchell,** 32 L. J. Q.B. 100; 3 B. & S. 405; 9 Jur. (N.S.) 968; 7 L. T. 849; 11 W. R. 363: distinguished in *Cope* v. *Bennett*, [1911] 2 Ch. 488; 105 L. T. 541; 55 S. J. 521, 725.

Saville v. **Robertson,** 4 Term Rep. 720: distinguished in *Karmali Abdulla Allarakhia* v. *Vora Karinji Jiwangi*, L. R. 42 Ind. App. 48.

Schoole v. **Sall,** 1 Sch. & Lef. 176: distinguished in *Webb* v. *Crosse*, 81 L. J. Ch. 259; [1912] 1 Ch. 323; 105 L. T. 867; 56 S. J. 177.

Schweder, In re, [1893] W. N. 12; 37 S. J. 249: not followed in *Trollope, In re*, 84 L. J. Ch. 553; [1915] 1 Ch. 853; 113 L. T. 153.

Scott, In re, 70 L. J. K.B. 66; [1901] 1 K.B. 228; 83 L. T. 613; 49 W. R. 178; 65 J. P. 84: distinguished in *Greenwood, In re*, 81 L. J. Ch. 298; [1912] 1 Ch. 392; 106 L. T. 424; 56 S. J. 443.

Scott v. **Avery,** 25 L. J. Ex. 308; 5 H.L. C. 811: distinguished in *Jureidini* v. *National British and Irish Millers' Insurance Co.*, 84 L. J. K.B. 640; [1915] A.C. 499; [1915] W.C. & I. Rep. 239; 112 L. T. 531; 59 S. J. 205; 31 T. L. R. 132.

Scott v. **Brown & Co.,** 61 L. J. Q.B. 738; [1892] 2 Q.B. 724: applied in *Robinson's Settlement, In re; Gant* v. *Hobbs*, 81 L. J. Ch. 393; [1912] 1 Ch. 717; 106 L. T. 443; 28 T. L. R. 298.

Scott v. **Carritt,** 82 L. T. 67: distinguished in *Clode* v. *London County Council*, 83 L. J. K.B. 1587; [1914] 3 K.B. 852; 12 L. G. R. 673; 58 S. J. 633; 30 T. L. R. 489.

Scott v. **Nixon,** 3 Dr. & W. 388: applied in *Atkinson and Horsell's Contract, In re*, 81 L. J. Ch. 588; [1912] 2 Ch. 1; 106 L. T. 548; 56 S. J. 324.

Seaver v. **Seaver,** 2 Sw. & Tr. 665 : rule laid down in, has no longer any application in England : so held in *Brooking Phillips* v. *Brooking Phillips*, 82 L. J. P. 57; [1913] P. 80; 108 L. T. 397; 29 T. L. R. 288.

Seaward v. **Drew,** 67 L. J. Q.B. 322; 78 L. T. 19 : not followed in *Stait* v. *Fenner*, 81 L. J. Ch. 710; [1912] 2 Ch. 504; 107 L. T. 120; 56 S. J. 669.

Seaward v. **Paterson,** 66 L. J. Ch. 267; [1897] 1 Ch. 545; 76 L. T. 215; 45 W. R. 610 : followed in *Hubbard* v. *Woodfield*, 57 S. J. 729.

Seddon v. **North-Eastern Salt Co.,** 74 L. J. Ch. 199; [1905] 1 Ch. 326; 91 L. T. 793; 53 W. R. 232; 21 T. L. R. 118 : followed in *Lecky* v. *Walter*, [1914] 1 Ir. R. 378.

Sedgwick, In re, 5 Morrell, 262: applied in *Renison, In re; Greaves, ex parte*, 82 L. J. K.B. 710; [1913] 2 K.B. 300; 108 L. T. 811; 20 Manson, 115; 57 S. J. 445.

Sellman v. **Boorn,** 10 L. J. Ex. 433; 8 M. & W. 552 : observations in, adopted in *Harben* v. *Gordon*, 83 L. J. K.B. 322; [1914] 2 K.B. 577; 109 L. T. 794; 58 S. J. 140.

Shafto v. **Bolckow, Vaughan & Co.,** 56 L. J. Ch. 735; 34 Ch. D. 725; 56 L. T. 608 : followed in *Thornhill* v. *Weeks* (*No.* 1), 82 L. J. Ch. 299; [1913] 1 Ch. 438; 108 L. T. 892; 77 J. P. 231; 11 L. G. R. 362; 57 S. J. 477.

Shardlow v. **Cotterill,** 50 L. J. Ch. 613; 20 Ch. D. 90 : followed in *Savory, Lim.* v. "*World of Golf*," *Lim.*, 83 L. J. Ch. 824; [1914] 2 Ch. 566; 58 S. J. 707.

Sharpe v. **Dawes,** 46 L. J. Q.B. 104; 2 Q.B. D. 26; 36 L. T. 188 : distinguished in *East* v. *Bennett Bros.*, 80 L. J. Ch. 123; [1911] 1 Ch. 163; 103 L. T. 826; 18 Manson, 145; 55 S. J. 92; 27 T. L. R. 103.

Sharpe v. **Sharpe,** 78 L. J. P. 21; [1909] P. 20; 99 L. T. 884; 25 T. L. R. 131 : *dictum* of Bargrave Deane, J., in, discussed and distinguished in *Hall* v. *Hall*, 84 L. J. P. 93; [1915] P. 105; 113 L. T. 58; 59 S. J. 381.

Sharpington v. **Fulham Guardians,** 73 L. J. Ch. 777; [1904] 2 Ch. 449; 91 L. T. 739; 52 W. R. 617; 68 J. P. 510; 20 T. L. R. 643; 2 L. G. R. 1229 : approved in *Myers* v. *Bradford Corporation*, 84 L. J. K.B. 306; [1915] 1 K.B. 417; 112 L. T. 206; 79 J. P. 130; 13 L. G. R. 1; 59 S. J. 57; 31 T. L. R. 44.

Sharples v. **Eason,** [1911] 2 Ir. R. 436 : distinguished in *Cooney* v. *Wilson*, [1913] 2 Ir. R. 402.

Sharpness New Docks v. **Att.-Gen.,** 84 L. J. K.B. 907; [1915] A.C. 654; 112 L. T. 826; 79 J. P. 305; 13 L. G. R. 563; 59 S. J. 381; 31 T. L. R. 254 : applied in *Att.-Gen.* v. *Great Northern Railway*, 84 L. J. K.B. 793; 59 S. J. 578; 31 T. L. R. 501.

Shaw, In re; Gill, ex parte, 83 L. T. 487, 754 : distinguished in *Sunderland, In re; Leech & Simpkinson, ex parte*, 80 L. J. K.B. 825; [1911] 2 K.B. 658; 18 Manson, 123; 55 S. J. 568; 27 T. L. R. 454.

Shaw v. **Smith,** 56 L. J. Q.B. 174; 18 Q.B. D. 193; 56 L. T. 40 : considered in *Birchal* v. *Crisp & Co.*, 82 L. J. Ch. 442; [1913] 2 Ch. 375; 109 L. T. 275.

Shelley's Case, 1 Co. Rep. 93b: rule in, held not applicable in *Davison's Settlement, In re*, 83 L. J. Ch. 148; [1913] 2 Ch. 498; 109 L. T. 666; 58 S. J. 50.

Shenstone v. **Freeman,** 70 L. J. K.B. 982; [1910] 2 K.B. 84; 102 L. T. 682; 54 S. J. 477; 26 T. L. R. 416 : followed in *Rogers* v. *Martin*, 80 L. J. K.B. 208; [1911] 1 K.B. 19; 103 L. T. 527; 75 J. P. 10; 55 S. J. 29; 27 T. L. R. 40.

Shepherd v. **Midland Railway,** 25 L. T. 879: *dictum* of Pigott, B., in, approved in *O'Keefe* v. *Edinburgh Corporation*, [1911] S. C. 18.

Sheridan v. **O'Reilly,** [1900] 1 Ir. R. 386: distinguished in *Finlay's Estate, In re*, [1913] 1 Ir. R. 143.

Shewan v. **Vanderhorst,** 1 Russ. & My. 347; 2 Russ. & My. 75 : applied in *Fleetwood and District Electric Light, &c. Co., In re*, 84 L. J. Ch. 374; [1915] 1 Ch. 486; 112 L. T. 1127; [1915] H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221.

Shirley v. **Fisher,** 47 L. T. 109: distinguished in *Jones' Settlement, In re*, 84 L. J. Ch. 406; [1915] 1 Ch. 373; [1915] W.C. & I. Rep. 277; 112 L. T. 1067; 59 S. J. 364.

Shrapnel v. **Laing,** 57 L. J. Q.B. 195; 20 Q.B. D. 334 : followed and applied in *Fox* v. *Central Silkstone Collieries*, 81 L. J. K.B. 989; [1912] 2 K.B. 597; 107 L. T. 85; 56 S. J. 634.

Shudal v. **Jekyll,** 2 Atk. 516: considered in *Shields, In re; Corbould-Ellis* v. *Dales*, 81 L. J. Ch. 370; [1912] 1 Ch. 591; 106 L. T. 748.

Silles v. **Fulham Borough Council,** 72 L. J. K.B. 397; [1903] 1 K.B. 829; 88 L. T. 753; 51 W. R. 598; 67 J. P. 273; 1 L. G. R. 643 : followed in *Kershaw* v. *Paine*, 78 J. P. 149; 12 L. G. R. 297.

Simcoe, In re; Yowles-Simcoe v. **Yowler,** 82 L. J. Ch. 270; [1913] 1 Ch. 552; 108 L. T. 891; 57 S. J. 533 : distinguished in *Lawrence (Lord), In re*, 84 L. J. Ch. 273; [1915] 1 Ch. 129; 112 L. T. 195; 59 S. J. 127.

Simpson, In re, 73 L. J. Ch. 53; [1904] 1 Ch. 1; 89 L. T. 542; 52 W. R. 310 : distinguished in *Mudge, In re*, 82 L. J. Ch. 381; [1913] 2 Ch. 92; 108 L. T. 950; 57 S. J. 578.

Simpson v. **Inland Revenue Commissioners,** 83 L. J. K.B. 1318; [1914] 2 K.B. 842; 110 L. T. 909; 30 T. L. R. 436 : distinguished in *Matthews* v. *Inland Revenue Commissioners*, [1914] 3 K.B. 192.

Sims v. **Quinlan,** 16 Ir. Ch. Rep. 191; 17 Ir. Ch. Rep. 43 : considered in *Smith, In re; Johnson* v. *Bright-Smith*, 83 L. J. Ch. 687; [1914] 1 Ch. 937; 110 L. T. 898; 58 S. J. 494; 30 T. L. R. 411.

Sinclair, In re; Allen v. **Sinclair,** 66 L. J. Ch. 514; [1897] 1 Ch. 921; 76 L. T. 452; 45 W. R. 596 : distinguished in *Dempster, In re; Borthwick* v. *Lovell*, 84 L. J. Ch. 597; [1915] 1 Ch. 795; 112 L. T. 1124; and in *Richardson, In re; Mahony* v. *Treacy*, [1915] 1 Ir. R. 39.

Sinclair, In re; Payne, ex parte, 15 Q.B. D. 616; 53 L. T. 764 : followed in *Johnson, In re; Ellis, ex parte*, 111 L. T. 165.

Singer Manufacturing Co. v. **London and South-Western Railway,** 63 L. J. Q.B. 411; [1894] 1 Q.B. 833; 70 L. T. 172; 42 W. R. 347 : distinguished in *Cassils & Co.* v. *Holden Wood Bleaching Co.*, 84 L. J. K.B. 834; 112 L. T. 373.

Singleton v. **Ellison,** 64 L. J. M.C. 123; [1895] 1 Q.B. 609; 72 L. T. 236 : followed in *Caldwell* v. *Leech*, 109 L. T. 188; 77 J. P. 254; 29 T. L. R. 457.

Sion College v. **London Corporation,** 70 L. J. K.B. 369; [1901] 1 K.B. 617; 84 L. T. 133; 49 W. R. 361; 65 J. P. 324 : distinguished and questioned in *Associated Newspapers, Lim.* v. *London Corporation (No. 1)*, 83 L. J. K.B. 979; [1914] 2 K.B. 603; 110 L. T. 796; 78 J. P. 225; 12 L. G. R. 372; 58 S. J. 318; 30 T. L. R. 337 : followed in *Associated Newspapers, Lim.* v. *London Corporation (No. 2)*, 84 L. J. K.B. 1913; [1915] 3 K.B. 128; 113 L. T. 587; 59 S. J. 545; 31 T. L. R. 432.

Sir John Moore Gold Mining Co., In re, 12 Ch. D. 325 : applied in *Rubber and Produce Investment Trust, In re*, 84 L. J. Ch. 534; [1915] 1 Ch. 382; 112 L. T. 1129; [1915] H. B. R. 120; 31 T. L. R. 253.

Skeats, In re, 58 L. J. Ch. 656; 42 Ch. D. 522 : distinguished in *Cotter, In re*, 84 L. J. Ch. 337; [1915] 1 Ch. 307; 112 L. T. 340; 59 S. J. 177.

Slater, In re, 76 L. J. Ch. 472; [1907] 1 Ch. 665; 97 L. T. 74 : applied in *Clifford, In re; Mallam* v. *McFie*, 81 L. J. Ch. 220; [1912] 1 Ch. 29; 106 L. T. 14; 56 S. J. 91; 28 T. L. R. 57.

Slater v. **Jones,** 42 L. J. Ex. 122; L. R. 8 Ex. 186; 29 L. T. 56 : applied in *West Yorkshire Darracq Agency, Lim.* v. *Coleridge*, 80 L. J. K.B. 1122; [1911] 2 K.B. 326.

Slatford v. **Erlebach,** 81 L. J. K.B. 372; [1912] 3 K.B. 155; 106 L. T. 61 : distinguished in *Ingram & Royle* v. *Services Maritimes du Tréport (No. 2)*, 83 L. J. K.B. 1128; [1914] 3 K.B. 28; 110 L. T. 967.

Slazenger v. **Pigott,** 12 R. P. C. 439 : not followed in *J. T. Smith and J. E. Jones, Lim.* v. *Service, Reeve & Co.*, 83 L. J. Ch. 876; [1914] 3 Ch. 576.

Slevin, In re; Slevin v. **Hepburn,** 60 L. J. Ch. 439; [1891] 2 Ch. 236 : applied in *Cunningham, In re; Dulcken* v. *Cunningham*, 83 L. J. Ch. 342; [1914] 1 Ch. 427; 110 L. T. 371.

Slobodinsky, In re; Moore, ex parte, 72 L. J. K.B. 883; [1903] 2 K.B. 517; 89 L. T. 190; 52 W. R. 156 : considered in *Goldburg, In re; Silverstone, ex parte*, 81 L. J. K.B. 382; [1912] 1 K.B. 384; 105 L. T. 959; 19 Manson, 44.

Smith v. **Baker,** 60 L. J. Q.B. 683; [1891] A.C. 325; 65 L. T. 467; 55 J. P. 660 : followed in *Taylor* v. *National Amalgamated Approved Society*, 83 L. J. K.B. 1020; [1914] 2 K.B. 352; 110 L. T. 696; 78 J. P. 254; 12 L. G. R. 525.

Smith v. **Callander,** 70 L. J. P.C. 53; [1901] A.C. 297; 84 L. T. 801 : followed in *Taylor* v. *Steel-Maitland*, [1913] S. C. 562.

Smith v. **Lion Brewery Co.,** 80 L. J. K.B. 566; [1911] A.C. 150; 104 L. T. 321; 75 J. P. 273; 55 S. J. 269; 27 T. L. R. 261 : principle of, applied in *Usher's Wiltshire Brewery* v. *Bruce*, 84 L. J. K.B. 417; [1915] A.C. 433; 112 L. T. 651; 6 Tax Cas. 399; 59 S. J. 144; 31 T. L. R. 104.

Smith v. **Lucas,** 18 Ch. D. 531; 45 L. T. 460; 30 W. R. 451 : applied in *Pullan* v. *Koe*, 82 L. J. Ch. 37; [1913] 1 Ch. 9; 107 L. T. 811; 57 S. J. 97.

Smith v. **Paringa Mines,** 75 L. J. Ch. 702; [1906] 2 Ch. 193; 94 L. T. 571; 13 Manson, 316 : distinguished in *Barron* v. *Potter*, 83 L. J. Ch. 646; [1914] 1 Ch. 895; 110 L. T. 929; 58 S. J. 516; 30 T. L. R. 401.

Smith v. **Poole,** 10 L. J. Ch. 192; 12 Sim. 17 : not followed in *Beavan, In re*, 81 L. J. Ch. 113; [1912] 1 Ch. 196; 105 L. T. 784.

Smith v. **Smith,** 31 L. J. Ch. 91; 3 Giff. 263; 5 L. T. 302 : explained and distinguished in *Turner* v. *Turner*, 80 L. J. Ch. 473; [1911] 1 Ch. 716; 104 L. T. 901.

Smith v. **Webster,** 45 L. J. Ch. 528; 3 Ch. D. 49; 35 L. T. 44; 24 W. R. 894 : distinguished in *Daniels* v. *Trefusis*, 83 L. J. Ch. 579; [1914] 1 Ch. 788; 109 L. T. 922; 58 S. J. 271.

Smith v. **Whiteman,** 78 L. J. K.B. 1073; [1909] 2 K.B. 437; 100 L. T. 770: followed in *Hall* v. *Whiteman*, 81 L. J. K.B. 660; [1912] 1 K.B. 683; 105 L. T. 854; 19 Manson, 143; 28 T. L. R. 161.

Smith-Bosanquet's Settled Estates, In re, 107 L. T. 191: followed in *Maryon-Wilson's Settled Estates, In re*, 84 L. J. Ch. 121; [1915] 1 Ch. 29; 112 L. T. 111.

Smithies v. **Bridge,** 71 L. J. K.B. 555; [1902] 2 K.B. 13; 87 L. T. 167; 50 W. R. 686; 66 J. P. 740: commented on in *Scott* v. *Jack*, [1912] S. C. (J.) 87.

Smurthwaite v. **Hannay,** 63 L. J. Q.B. 737; [1894] A.C. 494; 71 L. T. 157; 43 W. R. 113: *dictum* of Lord Russell of Killowen, C.J., in, considered in *Sandeman* v. *Tyzack and Branfoot Steamship Co.*, [1913] A.C. 680; 109 L. T. 580; 57 S. J. 752; 29 T. L. R. 694.

Snowdon, Ex parte, 50 L. J. Ch. 540; 17 Ch. D. 44; 44 L. T. 830; 29 W. R. 654: explained in *Stirling* v. *Burdett*, [1911] 2 Ch. 418; 105 L. T. 573.

Soley, In re, 17 T. L. R. 118: applied in *Cunningham, In re; Dulcken* v. *Cunningham*, 83 L. J. Ch. 342; [1914] 1 Ch. 427; 110 L. T. 371.

Somes, In re, 65 L. J. Ch. 262; [1896] 1 Ch. 250; 74 L. T. 49; 44 W. R. 236: distinguished in *Jones's Settlement, In re*, 84 L. J. Ch. 406; [1905] 1 Ch. 373; [1915] W.C. & I. Rep. 277; 112 L. T. 1067; 59 S. J. 364.

South African Territories v. **Wallington,** 67 L. J. Q.B. 470; [1898] A. C. 309; 78 L. T. 426; 46 W. R. 545: applied in *Kuala Pahi Rubber Estates* v. *Mowbray*, 111 L. T. 1072; and in *Smelting Corporation, In re*, 84 L. J. Ch. 571; [1915] 1 Ch. 472; 113 L. T. 44; [1915] H. B. R. 126.

South Llanharran Colliery Co., In re, 12 Ch. D. 503: distinguished in *Menell, Lim., In re; Regent Street Fur Co.* v. *Diamant*, 84 L. J. Ch. 593; [1915] 1 Ch. 759; 113 L. T. 77; [1915] H. B. R. 141; 31 T. L. R. 270.

South Wales Railway v. **Swansea Local Board of Health,** 24 L. J. M.C. 30; 4 E. & B. 189: discussed in *Lancashire and Yorkshire Railway* v. *Liverpool Corporation*, 84 L. J. K.B. 1273; [1915] A.C. 152; 111 L. T. 596; 78 J. P. 409; 12 L. G. R. 771; 58 S. J. 653; 30 T. L. R. 563.

Southampton Guardians v. **Bell,** 21 Q.B. D. 297: applied in *Porter, Amphlett & Jones, In re*, 81 L. J. Ch. 544; [1912] 2 Ch. 98; 107 L. T. 40; 56 S. J. 521.

Southport and Lytham Tramroad Act, In re, 80 L. J. Ch. 137; [1911] 1 Ch. 120; 104 L. T. 154: distinguished in *West Yorkshire Tramways Bill, In re*, 82 L. J. Ch. 98; [1913] 1 Ch. 170; 108 L. T. 18; 11 L. G. R. 78; 57 S. J. 111; 29 T. L. R. 115.

Southwark and Vauxhall Water Co. v. **Quick,** 47 L. J. Q.B. 258; 2 Q.B. D. 315; 26 W. R. 341: considered in *Birmingham and Midland Motor Omnibus Co.* v. *London and North-Western Railway*, 83 L. J. K.B. 474; [1913] 3 K.B. 850; 109 L. T. 64; 57 S. J. 752.

Spackman v. **Evans,** 37 L. J. Ch. 752; L. R. 3 H.L. 171; 19 L. T. 151: principles stated in, discussed and applied in *Republic of Bolivia Exploration Syndicate, In re*, 83 L. J. Ch. 235; [1914] 1 Ch. 139; 110 L. T. 141; 21 Manson, 67; 58 S. J. 321; 30 T. L. R. 146.

Spence v. **Union Marine Insurance Co.,** 37 L. J. C.P. 169; L. R. 3 C.P. 427; 18 L. T. 632; 16 W. R. 1010: distinguished in *Sandeman* v. *Tyzack and Branfoot Steamship Co.*, [1913] A.C. 680; 109 L. T. 580; 57 S. J. 752; 29 T. L. R. 694.

Spencer v. **Bullock,** 2 Ves. 687: distinguished in *Firth, In re; Loveridge* v. *Firth*, 83 L. J. Ch. 901; [1914] 2 Ch. 386; 111 L. T. 332.

Spencer-Cooper, In re; Poë v. **Spencer-Cooper,** 77 L. J. Ch. 64; [1908] 1 Ch. 130; 98 L. T. 344: discussed in *Palmer, In re; Leventhorpe* v. *Palmer*, 106 L. T. 319.

Spickernell v. **Hotham Kay,** 669: examined and explained in *Pullan* v. *Koe*, 82 L. J. Ch. 37; [1913] 1 Ch. 9; 107 L. T. 811; 57 S. J. 97.

Spiers v. **Elderslie Steamship Co.,** [1909] S. C. 1259; 46 Sc. L. R. 893: applied in *Luckwill* v. *Auchan Steamship Co.*, [1913] W.C. & I. Rep. 167; 108 L. T. 52.

Squire v. **Squire,** 74 L. J. P. 1; [1905] P. 4; 92 L. T. 472; 21 T. L. R. 41: approved in *Ollier* v. *Ollier*, 84 L. J. P. 23; [1914] P. 240; 111 L. T. 697; 58 S. J. 754.

Staffordshire Gas and Coke Co., In re, 66 L. T. 413: overruled in *Channell Collieries* v. *Dover, St. Margaret's and Martin Mill Light Railway*, 84 L. J. Ch. 28; [1914] 2 Ch. 506; 30 T. L. R. 647.

Staffordshire Gas and Coke Co., In re; Nicholson, ex parte, 66 L. T. 413: overruled in *Channell Collieries Trust* v. *St. Margaret's, Dover, and Martin Mill Light Railway*, 84 L. J. Ch. 28; [1914] 2 Ch. 506; 111 L. T. 1051; 21 Manson, 328; 30 T. L. R. 647.

Staffordshire Joint Bank v. **Weaver,** [1884] W. N. 78; Bitt. Ch. Cas. 243: overruled in *Deighton* v. *Cockle*, 81 L. J. K.B. 497; [1912] 1 K.B. 206; 105 L. T. 802.

Staight v. **Burn,** 39 L. J. Ch. 289; L. R. 5 Ch. 163; 22 L. T. 831; 18 W. R. 243: followed and applied in *Bailey* v. *Holborn & Frascati, Lim.*, 83 L. J. Ch. 515; [1914] 1 Ch. 598; 110 L. T. 574; 58 S. J. 321.

Stamford (Earl), In re; Payne v. **Stamford,** 65 L. J. Ch. 134; [1896] 1 Ch. 288: applied in *Cotter, In re*, 84 L. J. Ch. 337; [1915] 1 Ch. 307; 112 L. T. 340; 59 S. J. 177.

Stamford, Spalding, and Boston Banking Co. v. **Smith,** 61 L. J. Q.B. 405; [1892] 1 Q.B. 765: applied in *Beavan, In re,* 81 L. J. Ch. 113; [1912] 1 Ch. 196; 105 L. T. 784.

Standing v. **Eastwood,** [1912] W.C. Rep. 200; 106 L. T. 477: discussed and distinguished in *Goodsell* v. "*Lloyds*" (*Owners*), 83 L. J. K.B. 1733; [1914] 3 K.B. 1001; [1914] W.C. & I. Rep. 585; 111 L. T. 784; 30 T. L. R. 622.

Stanford v. **Roberts,** 53 L. J. Ch. 338; 26 Ch. D. 155; 50 L. T. 147: explained and followed in *Morgan & Co., In re,* 84 L. J. Ch. 249; [1915] 1 Ch. 182; 112 L. T. 239; 59 S. J. 289.

Stanland v. **North-Eastern Steel Co.,** [1907] 2 K.B. 425*n.*: distinguished in *New Monckton Collieries* v. *Keeling,* 80 L. J. K.B. 1205; [1911] A.C. 648; 105 L. T. 337; 55 S. J. 687; 27 T. L. R. 551.

Stanley, In re, 17 L. R. Ir. 487: disapproved in *Hollinshead* v. *Egan, Lim.,* 83 L. J. P.C. 74; [1913] A.C. 564; 109 L. T. 681; 20 Manson, 323; 57 S. J. 661; 29 T. L. R. 640: approved and followed in *Harvey, In re,* [1912] 2 Ir. R. 170.

Statham v. **Brighton Marine Palace and Pier Co.,** 68 L. J. Ch. 172; [1899] 1 Ch. 199; 80 L. T. 73; 47 W. R. 185; 6 Manson, 308: doubted in *Newburgh and North Fife Railway* v. *North British Railway,* [1913] S. C. 1166.

Stathatos v. **Stathatos,** 82 L. J. P. 46; [1913] P. 46; 107 L. T. 592; 56 S. J. 114; 29 T. L. R. 54: approved in *De Montaigu* v. *De Montaigu,* 82 L. J. P. 125; [1913] P. 154.

Stebbing v. **Metropolitan Board of Works,** 40 L. J. Q.B. 1; L. R. 6 Q.B. 37; 23 L. T. 530; 19 W. R. 73: discussed and explained in *Corrie* v. *MacDermott,* 83 L. J. P.C. 370; [1914] A.C. 1056; 111 L. T. 952.

Stedham, In the goods of, 50 L. J. P. 75; 6 P. D. 205: followed in *Carleton, In the goods of,* [1915] 2 Ir. R. 9.

Steel v. **Dartford Local Board,** 60 L. J. Q.B. 256: distinguished in *Thompson* v. *Bradford Corporation,* 84 L. J. K.B. 1440; [1915] 3 K.B. 13; 79 J. P. 364; 13 L. G. R. 884; 59 S. J. 495.

Steel v. **Lester,** 47 L. J. C.P. 43; 3 C.P. D. 121; 37 L. T. 642; 26 W. R. 212: followed in *Associated Portland Cement Manufacturers* v. *Ashton,* 84 L. J. K.B. 519; [1915] 2 K.B. 1; 112 L. T. 486; 20 Com. Cas. 165.

Steel v. **Scott,** 59 L. J. P.C. 1; 14 App. Cas. 601; 61 L. T. 597; 38 W. R. 452; 5 T. L. R. 705: distinguished in *Kish* v. *Taylor,* 81 L. J. K.B. 1027; [1912] A.C. 604; 106 L. T. 900; 17 Com. Cas. 355; 56 S. J. 518; 28 T. L. R. 425.

Steel v. **Young,** [1907] S. C. 360: discussed and doubted in *Forrest* v. *Scottish County Investment Co.,* [1915] S. C. 115.

Stephens, In re; Warburton v. **Stephens,** 59 L. J. Ch. 109; 43 Ch. D. 39; 61 L. T. 609: query of Kay, J., in, answered in the negative in *Raggi, In re; Brass* v. *Young & Co.,* 82 L. J. Ch. 396; [1913] 2 Ch. 206; 108 L. T. 917.

Stepney and Bow Educational Foundation (Governors) v. **Inland Revenue Commissioners,** 82 L. J. K.B. 1300; [1913] 3 K.B. 570; 109 L. T. 165; 29 T. L. R. 631: point in, overruled in *Camden (Marquis)* v. *Inland Revenue Commissioners,* 83 L. J. K.B. 509; [1914] 1 K.B. 641; 110 L. T. 173.

Stevens v. **Chown,** 70 L. J. Ch. 571; [1901] 1 Ch. 894; 84 L. T. 796; 49 W. R. 460; 65 J. P. 470: applied in *Fraser* v. *Fear,* 107 L. T. 423; 56 S. J. 311.

Stimpson v. **Emmerson,** 9 L. T. (o.s.) 199: followed in *King and Duveen, In re,* 82 L. J. K.B. 733; [1913] 2 K.B. 32; 108 L. T. 844.

Stinson's Estate, In re, [1910] 1 Ir. R. 13: considered in *Fauntleroy* v. *Beebe,* 80 L. J. Ch. 654; [1911] 2 Ch. 257; 104 L. T. 704; 55 S. J. 497: followed in *Cross's Trust, In re,* [1915] 1 Ir. R. 304.

Stock v. **Meakin,** 69 L. J. Ch. 401; [1900] 1 Ch. 683; 82 L. T. 248; 48 W. R. 420: distinguished in *Farrer & Gilbert's Contract, In re,* 83 L. J. Ch. 177; [1914] 1 Ch. 125; 110 L. T. 23; 58 S. J. 98.

Stockdale v. **Ascherberg,** 73 L. J. K.B. 206; [1904] 1 K.B. 447; 90 L. T. 111; 52 W. R. 289; 68 J. P. 241; 2 L. G. R. 529; 20 T. L. R. 235: distinguished in *Howe* v. *Botwood,* 82 L. J. K.B. 569; [1913] 2 K.B. 387; 108 L. T. 767; 29 T. L. R. 437.

Stockton and Middlesbrough Water Board v. **Kirkleatham Local Board,** 63 L. J. Q.B. 56; [1893] A.C. 444; 69 L. T. 661; 57 J. P. 772: distinguished in *Perth Gas Co.* v. *Perth Corporation,* 80 L. J. P.C. 168; [1911] A.C. 506; 105 L. T. 266; 27 T. L. R. 526.

Stocks v. **Wilson,** 82 L. J. K.B. 598; [1913] 2 K.B. 235; 108 L. T. 834; 20 Manson, 129; 29 T. L. R. 352: followed in *Leslie* v. *Shiell,* 29 T. L. R. 554.

Stoddart v. **Hawke,** 71 L. J. K.B. 133; [1902] 1 K.B. 353; 85 L. T. 687; 50 W. R. 93; 66 J. P. 68: applied in *Hodgson* v. *Macpherson,* [1913] S. C. (J.) 68.

Stokes v. **Clendon,** 3 Swanst. 150*n.*: followed in *Gee* v. *Liddell,* 82 L. J. Ch. 370; [1913] 2 Ch. 62; 108 L. T. 913.

Stokes v. **Stokes,** 80 L. J. P. 142; [1911] P. 195; 105 L. T. 416; 75 J. P. 502; 55 S. J. 690; 27 T. L. R. 553: approved and followed in *Blackledge* v. *Blackledge,* 82 L. J. P. 13;

[1913] P. 9; 107 L. T. 720; 23 Cox C.C. 230; 57 S. J. 159; 29 T. L. R. 120: considered in *McGregor* v. *Telford*, 84 L. J. K.B. 1902; [1915] 3 K.B. 237; 113 L. T. 84; 31 T. L. R. 512.

Stone v. **Midland Railway,** 73 L. J. K.B. 392; [1904] 1 K.B. 669; 90 L. T. 194; 52 W. R. 491; 20 T. L. R. 225: discussed and distinguished in *Independent Newspapers, Lim.* v. *Great Northern Railway (Ireland)*, [1913] 2 Ir. R. 255.

Strang, Steel & Co. v. **Scott,** see *Steel* v. *Scott*.

Strangways, In re; Hickley v. **Strangways,** 56 L. J. Ch. 195; 34 Ch. D. 423: distinguished in *Llewellyn, In re*, 80 L. J. Ch. 259; [1911] 1 Ch. 451; 104 L. T. 279; 55 S. J. 254.

Stretch v. **White,** 25 J. P. 485: followed in *Lambert* v. *Rowe*, 83 L. J. K.B. 274; [1914] 1 K.B. 38; 109 L. T. 939; 78 J. P. 20; 12 L. G. R. 68; 23 Cox C.C. 696.

Stretton v. **Great Western and Brentford Railway,** 40 L. J. Ch. 50; L. R. 5 Ch. 751; 23 L. T. 379: distinguished in *London Corporation* v. *Horner*, 111 L. T. 512; 78 J. P. 229; 12 L. G. R. 832.

Stribling v. **Halse,** 55 L. J. Q.B. 15; 16 Q.B. D. 246: disapproved in *O'Brien* v. *McCarthy*, [1912] 2 Ir. R. 17.

Stringer's Estate, In re, 46 L. J. Ch. 633; 6 Ch. D. 1; 37 L. T. 233; 25 W. R. 815: considered and applied in *Tennant's Estate, In re*, [1913] 1 Ir. R. 280.

Strong v. **Bird,** 43 L. J. Ch. 814; L. R. 18 Eq. 315; 30 L. T. 745: explained and followed in *Pink, In re*, 81 L. J. Ch. 753; [1912] 2 Ch. 528; 107 L. T. 241: applied in *Goff, In re; Featherstonehaugh* v. *Murphy*, 111 L. T. 34; 58 S. J. 535.

Stroud v. **Norman,** 23 L. J. Ch. 443; Kay, 313: distinguished in *Vatcher* v. *Paull*, 84 L. J. P.C. 86; [1915] A.C. 372; 112 L. T. 737.

Strutt v. **Clift,** 80 L. J. K.B. 114; [1911] 1 K.B. 1; 103 L. T. 722; 74 J. P. 471; 8 L. G. R. 989; 27 T. L. R. 14: distinguished in *Phelon and Moore* v. *Keel*, 83 L. J. K.B. 1516; [1914] 3 K.B. 165; 78 J. P. 247.

Studd v. **Cook,** 8 App. Cas. 577: observations of Lord Selborne in, applied in *Miller, In re; Baillie* v. *Miller*, 83 L. J. Ch. 457; [1914] 1 Ch. 511; 110 L. T. 505; 58 S. J. 415.

Sturges v. **Bridgman,** 48 L. J. Ch. 785; 11 Ch. D. 852; 41 L. T. 219; 28 W. R. 200: distinguished in *Wood* v. *Conway Corporation*, 83 L. J. Ch. 498; [1914] 2 Ch. 47; 110 L. T. 917; 78 J. P. 249; 12 L. G. R. 571.

Suffolk County Lunatic Asylum v. **Stow Union,** 76 L. T. 494: *dictum* of Wright, J., in (which was followed in *Suffolk County Lunatic Asylum* v. *Nottingham Union*, 69 J. P. 120), overruled in *Glamorgan County Asylum* v. *Cardiff Union*, 80 L. J. K.B. 578; [1911] 1 K.B. 437; 103 L. T. 819; 75 J. P. 28; 9 L. G. R. 212.

Summerlee Iron Co. v. **Freeland,** 82 L. J. P.C. 102; [1913] A.C. 221; [1913] W.C. & I. Rep. 302; 108 L. T. 465; 57 S. J. 281; 29 T. L. R. 277: applied in *Cooper* v. *Wales*, 84 L. J. K.B. 1321; [1915] 3 K.B. 210; [1915] W.C. & I. Rep. 307; 59 S. J. 578; 31 T. L. R. 506.

Sunlight, The, 73 L. J. P. 25; [1904] P. 100; 90 L. T. 32; 9 Asp. M.C. 509: considered in *The Llanelly*, 83 L. J. P. 37; [1914] P. 40; 110 L. T. 269; 30 T. L. R. 154.

Surbiton Urban Council v. **Callender's Cable Co.,** 8 L. G. R. 244; 74 J. P. 88: followed in *Poole Corporation* v. *Bournemouth Corporation*, 103 L. T. 828; 75 J. P. 13.

Sutton v. **Great Northern Railway,** 79 L. J. K.B. 81; [1909] 2 K.B. 791; 101 L. T. 175: applied in *Taylor* v. *Cripps*, 83 L. J. K.B. 1538; [1914] 3 K.B. 989; [1914] W.C. & I. Rep. 515; 111 L. T. 780; 30 T. L. R. 616.

Swain v. **Follows and Bate,** 56 L. J. Q.B. 310; 18 Q.B. D. 585; 56 L. T. 335; 35 W. R. 403: followed in *Wilcox* v. *Wallis Crown Cork and Syphon Co.*, 58 S. J. 381.

Swansea Improvements and Tramway Co. v. **Swansea Urban Sanitary Authority,** 61 L. J. M.C. 124; [1892] 1 Q.B. 357; 66 L. T. 119; 40 W. R. 283; 56 J. P. 248: approved in *Tottenham Urban Council* v. *Metropolitan Electric Tramways*, 83 L. J. K.B. 60; [1913] A.C. 702; 109 L. T. 674; 77 J. P. 413; 11 L. G. R. 1071; 57 S. J. 739; 29 T. L. R. 720.

Swansea Vale v. **Rice,** 81 L. J. K.B. 672; [1912] A.C. 238; 104 L. T. 658; 12 Asp. M.C. 47; 55 S. J. 497; 27 T. L. R. 440: applied in *Lee* v. *Stag Line*, 107 L. T. 509; 56 S. J. 720.

Swanston v. **Twickenham Local Board,** 48 L. J. Ch. 623; 11 Ch. D. 838; 40 L. T. 704: followed and applied in *Metropolitan Water Board* v. *London, Brighton, and South Coast Railway*, 83 L. J. K.B. 1491; [1914] 3 K.B 787; 111 L. T. 627.

Swinburne v. **Milburn,** 54 L. J. Q.B. 6; 9 App. Cas. 844; 52 L. T. 222; 33 W. R. 325: followed in *Wynn* v. *Conway Corporation*, 84 L. J. Ch. 203; [1914] 2 Ch. 705; 111 L. T. 1016; 78 J. P. 380; 13 L. G. R. 137; 59 S. J. 43; 30 T. L. R. 666.

Sword v. **Cameron,** 1 Dunlop, 493: distinguished in *Canadian Pacific Railway* v. *Fréchette*, 84 L. J. P.C. 161; [1915] A.C. 871; 31 T. L. R. 529.

Syer v. **Gladstone,** 30 Ch. D. 614: considered and followed in *Lysons, In re; Beck* v. *Lysons*, 56 S. J. 705.

Sykes v. **Sheard,** 33 Beav. 114: considered in *Goswell's Trusts, In re*, 84 L. J. Ch. 719; [1915] 2 Ch. 106; 113 L. T. 319; 59 S. J. 579.

Sykes v. **Sowerby Urban Council,** 69 L. J. Q.B. 464; [1900] 1 Q.B. 584; 82 L. T. 177; 64 J. P. 340: applied in *Phillimore* v. *Watford Rural Council*, 82 L. J. Ch. 514; [1913] 2 Ch. 434; 109 L. T. 616; 57 S. J. 741: followed in *Yorkshire (W.R.) Rivers Board* v. *Linthwaite Urban Council (No. 2)*, 84 L. J. K.B. 1610; 79 J. P. 433; 13 L. G. R. 772.

Symes, Ex parte, 103 L. T. 428; 75 J. P. 33; 9 L. G. R. 154; 22 Cox C.C. 346; 27 T. L. R. 21: followed in *White* v. *Jackson*, 84 L. J. K.B. 1900; 113 L. T. 783; 79 J. P. 447; 31 T. L. R. 505.

Syred v. **Carruthers,** 27 L. J. M.C. 273; E. B. & E. 469; 4 Jur. (N.S.) 549; 6 W. R. 595: approved in *Godman* v. *Crofton*, 83 L. J. K.B. 1524; [1914] 3 K.B. 803: followed in *Wills* v. *McSherry*, 82 L. J. K.B. 71; [1913] 1 K.B. 20; 107 L. T. 848; 77 J. P. 65; 23 Cox C.C. 254; 29 T. L. R. 48.

T.

Taff Vale Railway v. **Jenkins,** 82 L. J. K.B. 49; [1913] A.C. 1; 107 L. T. 564; 57 S. J. 27; 29 T. L. R. 19: applied in *Berry* v. *Humm*, 84 L. J. K.B. 918; [1915] 1 K.B. 627; 31 T. L. R. 198.

Talbot v. **Frere,** 9 Ch. D. 568; 27 W. R. 148: commented on in *Thorne & Son, Lim., In re*, 84 L. J. Ch. 161; [1914] 2 Ch. 438; 112 L. T. 30; [1915] H. B. R. 19; 58 S. J. 755.

Tanner v. **Heard,** 23 Beav. 555: followed in *Williams* v. *Jones*, 55 S. J. 500.

Tanner v. **Smart,** 5 L. J. (O.S.) K.B. 218; 6 B. & C. 603: distinguished in *Brown* v. *Mackenzie*, 29 T. L. R. 310.

Tapster v. **Ward,** 101 L. T. 503: followed in *Phillips, In re*, 83 L. J. K.B. 1364; [1914] 2 K.B. 689; 110 L. T. 939; 58 S. J. 364.

Tatham v. **Reeve,** 62 L. J. Q.B. 30; [1893] 1 Q.B. 44; 67 L. T. 683; 41 W. R. 174; 57 J. P. 118: distinguished in *O'Shea, In re*, 81 L. J. K.B. 70; [1911] 2 K.B. 981; 105 L. T. 486.

Tattersall v. **National Steamship Co.,** 53 L. J. Q.B. 332; 12 Q.B. D. 297; 50 L. T. 299; 32 W. R. 566; 5 Asp. M.C. 206: considered in *Bank of Australasia* v. *Clan Line Steamers*, 84 L. J. K.B. 1250; [1916] 1 K.B. 39.

Tavarone Mining Co., In re; Pritchard's Case, 42 L. J. Ch. 768; L. R. 8 Ch. 956; 29 L. T. 363; 21 W. R. 829: distinguished in *Hickman* v. *Kent* (or *Romney Marsh*) *Sheep Breeders' Association*, 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Taylor, In re, 56 L. J. Ch. 597: followed in *Wasserberg, In re*, 84 L. J. Ch. 214; [1915] 1 Ch. 195; 112 L. T. 242; 59 S. J. 176.

Taylor, Ex parte, 1 Jac. & W. 483: applied in *Woodward, In re; Kenway* v. *Kidd*, 82 L. J. Ch. 230; [1913] 1 Ch. 392; 108 L. T. 635; 57 S. J. 426.

Taylor v. **Best,** 23 L. J. C.P. 89; 14 C. B. 487: considered in *Republic of Bolivia Exploration Syndicate, In re*, 83 L. J. Ch. 226; [1914] 1 Ch. 139; 109 L. T. 741; 110 L. T. 141; 58 S. J. 173; 30 T. L. R. 78.

Taylor v. **Grange,** 49 L. J. Ch. 794; 15 Ch. D. 165: applied in *Dodds* v. *Cattell*, 83 L. J. Ch. 721; [1914] 2 Ch. 1.

Taylor v. **Meads,** 34 L. J. Ch. 203; 4 De G. J. & S. 597; 5 N. R. 348; 11 Jur. (N.S.) 166; 12 L. T. 6; 13 W. R. 394: applied in *Mackenzie, In re*, 80 L. J. Ch. 443; [1911] 1 Ch. 578; 105 L. T. 154; 55 S. J. 406; 27 T. L. R. 337.

Taylor v. **Roe,** 63 L. J. Ch. 282; [1894] 1 Ch. 413; 70 L. T. 232; 42 W. R. 426: followed and applied in *Alexander* v. *Curragh*, [1915] 1 Ir. R. 273.

Taylor v. **Taylor,** 43 L. J. Ch. 314; L. R. 17 Eq. 324: must be treated as having been overruled by *Howarth, In re* (78 L. J. Ch. 687; [1909] 2 Ch. 19): so held in *Young, In re; Brown* v. *Hodgson*, 81 L. J. Ch. 817; [1912] 2 Ch. 479; 107 L. T. 380.

Taylor's Settlement, In re, 22 L. J. Ch. 142; 9 Hare, 596: considered in *Goswell's Trusts, In re*, 84 L. J. Ch. 719; [1915] 2 Ch. 106; 113 L. T. 319; 59 S. J. 579.

Taylor's Trusts, In re, 74 L. J. Ch. 419; [1905] 1 Ch. 734; 92 L. T. 558; 53 W. R. 441: followed and applied in *Salc, In re; Nisbet* v. *Philp*, [1913] 2 Ch. 697.

Tea Corporation, In re; Sorsbie v. **Tea Corporation,** 73 L. J. Ch. 57; [1904] 1 Ch. 12; 89 L. T. 516; 52 W. R. 177; 11 Manson, 34; 20 T. L. R. 57: followed in *Sandwell Park Colliery Co., In re*, 83 L. J. Ch. 549; [1914] 1 Ch. 589; 110 L. T. 766; 58 S. J. 432.

Templeman v. **Warrington,** 13 Sim. 267: followed in *Firth, In re; Loveridge* v. *Firth*, 83 L. J. Ch. 901; [1914] 2 Ch. 386; 111 L. T. 332.

Te Teira v. **Te Roera Tareha,** 71 L. J. P.C. 11; [1902] A.C. 56; 85 L. T. 558: distinguished in *Manu Kapua* v. *Para Haimona*, 83 L. J. P.C. 1; [1913] A.C. 761; 108 L. T. 977.

Thacker v. **Hardy,** 48 L. J. Q.B. 289; 4 Q.B. D. 685; 39 L. T. 595; 27 W. R. 158: definition of gaming and wagering condition formulated by Cotton, L.J., in, considered and applied in *Richards* v. *Starck*, 80 L. J. K.B. 213; [1911] 1 K.B. 296; 103 L. T. 813; 27 T. L. R. 29.

Thames Conservators v. **Gravesend Corporation,** 79 L. J. K.B. 331; [1910] 1 K.B. 442; 100 L. T. 964; 73 J. P. 381; 7 L. G. R. 868: is inconsistent with the decisions of the Court of Appeal in *Kirkheaton District Local Board* v. *Ainley* (61 L. J. Q.B. 812; [1892] 2 Q.B. 274) and in *Yorkshire West Riding Council* v. *Holmfirth Urban Sanitary Authority* (63 L. J. Q.B. 485; [1894] 2 Q.B. 842) and is therefore not binding; so held by Avory, J., in *Rochford Rural Council* v. *Port of London Authority*, 83 L. J. K.B. 1066; [1914] 2 K.B. 916; 78 J. P. 329.

Thatcher's Trusts, In re, 26 Beav. 365: followed in *Hewett's Settlement, In re*, 84 L. J. Ch. 715; [1915] 1 Ch. 810; 113 L. T. 315; 59 S. J. 476.

Thatcher's Trusts, In re, 53 L. J. Ch. 1050; 26 Ch. D. 426; 32 W. R. 679: followed in *Cooper, In re*, 82 L. J. Ch. 222; [1913] 1 Ch. 350; 108 L. T. 293; 57 S. J. 389.

Thomas, In re; Wood v. **Thomas,** 60 L. J. Ch. 781; [1891] 3 Ch. 482; 65 L. T. 142; 40 W. R. 75: followed in *Godfree, In re*, 83 L. J. Ch. 734; [1914] 2 Ch. 110.

Thomas v. **Brigstocke,** 4 Russ. 64: followed in *Yorkshire Insurance Co.* v. *Metropolitan Amalgamated Estates*, 81 L. J. Ch. 745; [1912] 2 Ch. 497.

Thomas v. **Britnell,** 2 Ves. sen. 313: followed in *Major, In re; Taylor* v. *Major*, 83 L. J. Ch. 461; [1914] 1 Ch. 278; 110 L. T. 422; 58 S. J. 286.

Thomas v. **Devonport Corporation,** 69 L. J. Q.B. 51; [1900] 1 Q.B. 16; 81 L. T. 427; 48 W. R. 89; 63 J. P. 740: discussed in *Republic of Bolivia Exploration Syndicate, In re*, 83 L. J. Ch. 235; [1914] 1 Ch. 139; 110 L. T. 141; 21 Manson. 67; 57 S. J. 321; 30 T. L. R. 146.

Thomas v. **Dey,** 24 T. L. R. 272: not followed in *Keen* v. *Price*, 83 L. J. Ch. 865; [1914] 2 Ch. 98; 58 S. J. 495; 30 T. L. R. 494.

Thomas v. **Thomas,** 2 K. & J. 79: approved in *Corea* v. *Appuhamy*, 81 L. J. P.C. 151; [1912] A.C. 230; 105 L. T. 836.

Thompson v. **Cohen,** 41 L. J. Q.B. 221; L. R. 7 Q.B. 527; 26 L. T. 693: explained and distinguished in *Lind, In re*, 84 L. J. Ch. 884; [1915] 2 Ch. 345; 59 S. J. 651.

Thomson v. **Sunderland Gas Co.,** 46 L. J. Ex. 710; 2 Ex. D. 429; 37 L. T. 30; 25 W. R. 809: followed in *Schweder* v. *Worthing Gas Light and Coke Co.*, 81 L. J. Ch. 102; [1912] 1 Ch. 83; 105 L. T. 670; 76 J. P. 3; 10 L. G. R. 19; 56 S. J. 53; 28 T. L. R. 34.

Thomson's Estate, In re; Herring v. **Barrow,** 49 L. J. Ch. 622; 14 Ch. D. 263; 43 L. T. 35; 28 W. R. 802: *dictum* of James, L.J., in, not followed in *Ryder, In re; Burton* v. *Kearsley*, 83 L. J. Ch. 653; [1914] 1 Ch. 865; 110 L. T. 970; 58 S. J. 556.

Thorn v. **City Rice Mills,** 58 L. J. Ch. 297; 40 Ch. D. 357; 60 L. T. 359; 37 W. R. 398: distingnished in *Harris Calculating Machine Co., In re*, 83 L. J. Ch. 545; [1914] 1 Ch. 920; 110 L. T. 997; 58 S. J. 455.

Thornhill v. **Weeks** (*No.* 2), 82 L. J. Ch. 485; [1913] 2 Ch. 464; 109 L. T. 146; 11 L. G. R. 1183: followed in *Thornhill* v. *Weeks* (*No.* 3), 84 L. J. Ch. 282; [1915] 1 Ch. 106; 111 L. T. 1067; 78 J. P. 154; 12 L. G. R. 597.

Thornton v. **Hawley,** 10 Ves. 129: considered in *Goswell's Trusts, In re*, 84 L. J. Ch. 719; [1915] 2 Ch. 106; 113 L. T. 319; 59 S. J. 579.

Thwaites v. **Foreman,** 1 Coll. C.C. 409; on app., 10 Jur. 483: followed in *Harris, In re*, 81 L. J. Ch. 512; [1912] 2 Ch. 241; 106 L. T. 755.

Tilt Cove Copper Co., In re, 82 L. J. Ch. 545; [1913] 2 Ch. 588; 109 L. T. 138; 20 Manson, 288; 57 S. J. 773: followed in *Braunstein & Marjolaine, Lim., In re*, 112 L. T. 25; 58 S. J. 755.

Tod-Heatley v. **Benham,** 58 L. J. Ch. 83; 40 Ch. D. 80; 60 L. T. 241; 37 W. R. 38: followed in *Adams* v. *Ursell*, 82 L. J. Ch. 157; [1913] 1 Ch. 269; 108 L. T. 292; 57 S. J. 227.

Tolhurst v. **Associated Portland Cement Manufacturers,** 71 L. J. K.B. 949; 72 L. J. K.B. 834; [1902] 2 K.B. 660; [1903] A.C. 414; 87 L. T. 465; 89 L. T. 196; 51 W. R. 81; 52 W. R. 143: considered in *Sorrentino* v. *Buerger*, 84 L. J. K.B. 725; [1915] 1 K.B. 307; 112 L. T. 294; 20 Com. Cas. 132.

Tomalin v. **Pearson,** 78 L. J. K.B. 863; [1909] 2 K.B. 61; 100 L. T. 685; 25 T. L. R. 477: followed in *Schwartz* v. *India-Rubber and Telegraph Works Co.*, 81 L. J. K.B. 780; [1912] 2 K.B. 299; 106 L. T. 706; 28 T. L. R. 331.

Torrens v. **Walker,** 75 L. J. Ch. 645; [1906] 2 Ch. 166; 95 L. T. 409; 54 W. R. 584: explained and distinguished in *Lurcott* v. *Wakeley*, 80 L. J. K.B. 713; [1911] 1 K.B. 905; 104 L. T. 290; 55 S. J. 290.

Tottenham Local Board v. **Rowell,** 46 L. J. Ex. 432; 1 Ex. D. 514; 35 L. T. 887: commented on in *Metropolitan Water Board* v. *Bunn*, 82 L. J. K.B. 1024; [1913] 3 K.B. 181; 109 L. T. 132; 57 S. J. 625; 29 T. L. R. 588.

Toulmin v. **Steere,** 3 Mer. 210: considered and distinguished in *Whiteley* v. *Delaney*, 83 L. J. Ch. 349; [1914] A.C. 132; 110 L. T. 434; 58 S. J. 218.

Tower Justices v. **Chambers,** 73 L. J. K.B. 951; [1904] 2 K.B. 903; 91 L. T. 643; 68 J. P. 581; 20 T. L. R. 784: discussed in *Wernham* v. *Regem*, 83 L. J. K.B. 395; [1914] 1 K.B. 468; 110 L. T. 111; 78 J. P. 74.

Tozer v. **Lake,** 4 C.P. D. 322: followed in *Healey* v. *Wright*, 81 L. J. K.B. 961; [1912] 3 K.B. 249; 76 J. P. 367; 28 T. L. R. 439.

Trafford v. **St. Faith's Rural Council,** 74 J. P. 297: doubted by Hamilton, L.J., in *Att.-Gen.* v. *Horner* (*No.* 2), 82 L. J. Ch. 339; [1913] 2 Ch. 140; 108 L. T. 609; 77 J. P. 257; 11 L. G. R. 784; 57 S. J. 498; 29 T. L. R. 451.

Travers & Sons v. **Cooper,** 83 L. J. K.B. 1787; [1915] 1 K.B. 73; 111 L. T. 1088; 20 Com. Cas. 44; 30 T. L. R. 703: followed in *Pyman Steamship Co.* v. *Hull and Barnsley Railway*, 84 L. J. K.B. 1235; [1915] 2 K.B. 729; 112 L. T. 1103; 20 Com. Cas. 259; 31 T. L. R. 243.

Trego v. **Hunt,** 65 L. J. Ch. 1; [1896] A.C. 7; 73 L. T. 575; 44 W. R. 225: rule in, when applicable, considered in *Green* v. *Morris*, 83 L. J. Ch. 559; [1914] 1 Ch. 562; 110 L. T. 508; 58 S. J. 398; 30 T. L. R. 301.

Tremayne v. **Rashleigh,** 77 L. J. Ch. 365; [1908] 1 Ch. 681; 98 L. T. 615: view of Eve, J., in, dissented from in *Heard* v. *Gabbett*, [1915] 1 Ir. R. 213.

Tremewen v. **Permewen,** 11 A. & E. 431; applied in *Finlay's Estate, In re*, [1913] 1 Ir. R. 143.

Trenchard, In re; Trenchard v. **Trenchard,** 71 L. J. Ch. 178; [1902] 1 Ch. 378; 86 L. T. 196; 50 W. R. 266: considered and followed in *Simpson, In re; Clarke* v. *Simpson*, 82 L. J. Ch. 169; [1913] 1 Ch. 277; 108 L. T. 317; 57 S. J. 302.

Trenchard, In re; Ward v. **Trenchard,** 16 T. L. R. 525: dissented from in *Simpson, In re; Clarke* v. *Simpson*, 82 L. J. Ch. 169; [1913] 1 Ch. 277; 108 L. T. 317; 57 S. J. 302.

Trevor v. **Whitworth,** 57 L. J. Ch. 28; 12 App. Cas. 409; 57 L. T. 457; 36 W. R. 145: applied in *Irish Provident Assurance Co., In re*, [1913] 1 Ir. R. 352.

Trew v. **Perpetual Trustee Co.,** 64 L. J. P.C. 49; [1895] A.C. 264; 72 L. T. 241; 43 W. R. 636: distinguished in *Beaumont, In re; Bradshaw* v. *Packer*, 82 L. J. Ch. 183; [1913] 1 Ch. 325; 108 L. T. 181; 57 S. J. 283.

Tringham's Trusts, In re, 73 L. J. Ch. 693; [1904] 2 Ch. 487; 91 L. T. 370; 20 T. L. R. 657: followed in *Cross's Trust, In re*, [1915] 1 Ir. R. 304.

Triquet v. **Bath,** 3 Burr. 1478: considered in *Republic of Bolivia Exploration Syndicate, In re*, 83 L. J. Ch. 226; [1914] 1 Ch. 139; 109 L. T. 741; 110 L. T. 141; 58 S. J. 173; 30 T. L. R. 78.

Tritton, In re; Singleton, ex parte, 61 L. T. 301: applied in *Thynne, In re*, 80 L. J. Ch. 205; [1911] 1 Ch. 282; 104 L. T. 19; 18 Manson, 34.

Tuck, In re; Murch v. **Loosemore,** 75 L. J. Ch. 497; [1906] 1 Ch. 692; 94 L. T. 597; 22 T. L. R. 425: held not applicable in *Aberdonia Cars, Lim.* v. *Brown, Hughes & Strachan, Lim.*, 59 S. J. 598.

Tuck v. **Priester,** 56 L. J. Q.B. 553; 19 Q.B. D. 629; 57 L. T. 110: applied in *Amber Size and Chemical Co.* v. *Menzel*, 82 L. J. Ch. 573; [1913] 2 Ch. 239; 109 L. T. 520.

Tulk v. **Moxhay,** 18 L. J. Ch. 83; 2 Phil. 774: principle of, discussed and explained in *London County Council* v. *Allen*, 83 L. J. K.B. 1695; [1914] 3 K.B. 642; 111 L. T. 610: considered in *Smith* v. *Colbourne*, [1914] 2 Ch. 533.

Turnbull, In re; Skipper v. **Wade,** 74 L. J. Ch. 438; [1905] 1 Ch. 726; 53 W. R. 440: applied in *Snape, In re; Elam* v. *Phillips*, 84 L. J. Ch. 803; [1915] 2 Ch. 179; 113 L. T. 439; 59 S. J. 562.

Turner v. **Evans,** 22 L. J. Q.B. 412; 2 E. & B. 512: approved and followed in *Hodsley* v. *Dayer-Smith*, 83 L. J. Ch. 770; [1914] A.C. 979; 58 S. J. 554; 30 T. L. R. 524.

Turner v. **Moon,** 70 L. J. Ch. 822; [1901] 2 Ch. 825; 85 L. T. 90: followed in *Eastwood* v. *Ashton*, 82 L. J. Ch. 313; [1913] 2 Ch. 39; 108 L. T. 759; 57 S. J. 533.

Turner v. **Walsh,** 50 L. J. P.C. 55; 6 App. Cas. 636; 45 L. T. 50: considered in *Folkestone Corporation* v. *Brockman*, 83 L. J. K.B. 745; [1914] A.C. 338; 110 L. T. 834; 78 J. P. 273; 12 L. G. R. 334; 30 T. L. R. 297.

Turner v. **Wright,** 29 L. J. Ch. 598; 2 De G. F. & J. 234: followed in *Hanbury's Settled Estates*, 82 L. J. Ch. 428; [1913] 2 Ch. 357; 57 S. J. 646; 29 T. L. R. 621.

Turney, In re, 69 L. J. Ch. 1; [1899] 2 Ch. 739; 81 L. T. 548; 48 W. R. 96: distinguished in *Hume, In re; Public Trustee* v. *Mabey*, 81 L. J. Ch. 382; [1912] 1 Ch. 693; 106 L. T. 335; 56 S. J. 414.

Tweddle & Co., In re, 80 L. J. K.B. 20; [1910] 2 K.B. 697; 103 L. T. 257; 26 T. L. R. 583: applied in *Williams & Co., In re; Official Receiver, ex parte*, 82 L. J. K.B. 459; [1913] 2 K.B. 88; 108 L. T. 585; 20 Manson, 21; 57 S. J. 285; 29 T. L. R. 243.

Tyler, In re; Official Receiver, ex parte, 76 L. J. K.B. 541; [1907] 1 K.B. 865; 97 L. T. 30; 14 Manson, 73; 23 T. L. R. 328: distinguished in *Phillips, In re*, 83 L. J. K.B. 1364; [1914] 2 K.B. 689; 110 L. T. 939; 58 S. J. 364: and considered in *Wells* v. *Wells*, 83 L. J. P. 81; [1914] P. 157; 58 S. J. 555; 30 T. L. R. 545.

Tyler v. **Tyler,** 60 L. J. Ch. 686; [1891] 3 Ch. 252: followed in *Davies, In re; Lloyd* v. *Cardigan County Council*, 84 L. J. Ch. 493; [1915] 1 Ch. 543; 112 L. T. 1110; 79 J. P. 291; 13 L. G. R. 437; 59 S. J. 413.

Tynron (Owners) v. **Morgan,** 78 L. J. K.B. 857; [1909] 2 K.B. 66; 100 L. T. 641: followed in *Chapman* v. *Sage*, 113 L. T. 623.

U.

Union Bank of Kingston-upon-Hull, In re, 49 L. J. Ch. 264; 13 Ch. D. 808; 42 L. T. 390; 28 W. R. 808: *dictum* of Jessel, M.R., followed in *Demerara Rubber Co., In re*, 82 L. J. Ch. 220; [1913] 1 Ch. 331; 108 L. T. 318; 20 Manson, 148.

Unity Joint-Stock Mutual Banking Association, Ex parte; King, in re, 27 L. J. Bk. 33; 3 De G. & J. 63; 4 Jur. (N.S.) 1257; 6 W. R. 640: followed in *Stocks* v. *Wilson*, 82 L. J. K.B. 598; [1913] 2 K.B. 235; 108 L. T. 834; 20 Manson, 129; 29 T. L. R. 352.

Uzielli v. **Boston Marine Insurance Co.,** 54 L. J. Q.B. 142; 15 Q.B. D. 11: considered in *British Dominions General Insurance Co.* v. *Duder*, 84 L. J. K.B. 1401; [1915] 2 K.B. 394; 113 L. T. 210; 20 Com. Cas. 270; 31 T. L. R. 361.

V.

Vachell v. **Roberts,** 32 Beav. 140: overruled in *Wareham, In re*, 81 L. J. Ch. 578; [1912] 2 Ch. 312; 107 L. T. 80; 56 S. J. 613.

Van Grutten v. **Foxwell,** 66 L. J. Q.B. 745; [1897] A.C. 658; 77 L. T. 170: applied in *Simeoe, In re; Fowler-Simcoe* v. *Fowler*, 82 L. J. Ch. 270; [1913] 1 Ch. 552; 108 L. T. 891; 57 S. J. 533.

Vardon's Trusts, In re, 55 L. J. Ch. 259; 31 Ch. D. 275; 53 L. T. 895: explained in *Hargrove, In re*, 84 L. J. Ch. 484; [1915] 1 Ch. 398; 112 L. T. 1062; 59 S. J. 364.

Varlo v. **Faden,** 29 L. J. Ch. 230; 27 Beav. 255: followed in *Hurlbatt, In re*, 80 L. J. Ch. 29; [1910] 2 Ch. 553; 103 L. T. 585.

Vaughan, Ex parte; Riddeough, in re, 14 Q.B. D. 25: followed in *Goldburg, In re; Paye, ex parte*, 81 L. J. K.B. 663; [1912] 1 K.B. 606; 106 L. T. 431.

Vawdry v. **Geddes,** 1 Russ. & My. 203: distinguished in *Nunburnholme (Lord), In re; Wilson* v. *Nunburnholme*, [1911] 2 Ch. 510; 56 S. J. 34.

Vezey v. **Rashleigh,** 73 L. J. Ch. 422; [1904] 1 Ch. 634; 90 L. T. 663; 52 W. R. 442: considered in *Williams* v. *Moss' Empires, Lim.*, 84 L. J. K.B. 1767; [1915] 3 K.B. 242; 113 L. T. 560; 31 T. L. R. 463.

Victoria Steamboats, Lim., In re; Smith v. **Wilkinson,** 66 L. J. Ch. 21; [1897] 1 Ch. 158; 75 L. T. 374; 45 W. R. 135: distinguished in *New York Taxicab Co., In re; Sequin* v. *The Company*, 82 L. J. Ch. 41; [1913] 1 Ch. 1; 107 L. T. 813; 19 Manson, 389; 57 S. J. 98; followed in *Braunstein* v. *Marjolaine, In re*, 112 L. T. 25; 58 S. J. 755.

Victorian Railways Commissioners v. **Coultas,** 57 L. J. P.C. 69; 13 App. Cas. 222; 58 L. T. 390; 37 W. R. 129; 52 J. P. 500: discussed in *Coyle* (or *Brown*) v. *Watson*, 83 L. J. P.C. 307; [1915] A.C. 1; [1914] W.C. & I. Rep. 228; 111 L. T. 347; 58 S. J. 533; 30 T. L. R. 501.

Vimbos, Lim., In re, 69 L. J. Ch. 209; [1900] 1 Ch. 470; 82 L. T. 597; 48 W. R. 520: followed in *Deyes* v. *Wood*, 80 L. J. K.B. 553; [1911] 1 K.B. 806; 104 L. T. 404.

Vine v. **National Motor Cab Co.,** 29 T. L. R. 311: commented on in *Bestermann* v. *British Motor Cab Co.*, 83 L. J. K.B. 1014; [1914] 3 K.B. 181; 110 L. T. 754; 58 S. J. 319; 30 T. L. R. 319.

Vine v. **Raleigh,** 65 L. J. Ch. 103; [1896] 1 Ch. 37; 73 L. T. 655; 44 W. R. 169: followed in *Johnson, In re*, 83 L. J. Ch. 758; [1914] 2 Ch. 134; 58 S. J. 611.

Vint v. **Hudspeth,** 54 L. J. Ch. 844; 30 Ch. D. 24; 52 L. T. 774: observations of Lindley, M.R., in, applied in *Debtor (No. 68 of 1911), In re*, 80 L. J. K.B. 1224; [1911] 2 K.B. 652; 104 L. T. 905.

Virginia Carolina Chemical Co. v. Norfolk and North American Steam Shipping Co., 81 L. J. K.B. 129; [1912] 1 K.B. 229; 105 L. T. 810; 12 Asp. M.C. 82; 17 Com. Cas. 6; 28 T. L. R. 85: distinguished in *Ingram and Royle* v. *Services Maritimes du Tréport (No. 1)*, 83 L. J. K.B. 382; [1914] 1 K.B. 545; 109 L. T. 733; 19 Com. Cas. 105; 12 Asp. M.C. 387; 58 S. J. 172; 30 T. L. R. 79.

Vron Colliery Co., In re, 51 L. J. Ch. 389; 20 Ch. D. 442: distinguished in *Armorduct Manufacturing Co.* v. *General Incandescent Co.*, 80 L. J. K.B. 1005; [1911] 2 K.B. 143; 104 L. T. 805

Vyner v. **Wirrall Rural Council,** 7 L. G. R. 628; 73 J. P. 242: statement of Lord Alverstone, C.J., in, disapproved by Hamilton, L.J., in *Att.-Gen.* v. *Horner* (*No.* 2), 82 L. J. Ch. 339; [1913] 2 Ch. 140; 108 L. T. 609; 77 J. P. 257; 11 L. G. R. 784; 57 S. J. 498; 29 T. L. R. 451.

W.

Wagstaff v. **Edison Bell Phonograph Corporation,** 10 T. L. R. 80: discussed and followed in *Lyons* v. *Gulliver*, 83 L. J. Ch. 281; [1914] 1 Ch. 631; 110 L. T. 284; 78 J. P. 98; 12 L. G. R. 194; 58 S. J. 97; 30 T. L. R. 75.

Wagstaff's Settled Estates, In re, 78 L. J. Ch. 513; [1909] 2 Ch. 201; 100 L. T. 955: followed in *Johnson, In re*, 84 L. J. Ch. 393; [1915] 1 Ch. 435; 112 L. T. 935; 59 S. J. 333.

Wakelin v. **London and South-Western Railway,** 56 L. J. Q.B. 229; 12 App. Cas. 41; 55 L. T. 709; 35 W. R. 141; 51 J. P. 406: rule as to burden of proof laid down by Lord Halsbury in, applied in *McKenzie* v. *Chilliwack Corporation*, 82 L. J. P.C. 22; [1912] A.C. 888; 107 L. T. 570; 29 T. L. R. 40.

Walbran, In re; Milner v. **Walbran,** 75 L. J. Ch. 105; [1906] 1 Ch. 64; 93 L. T. 745; 54 W. R. 167: considered in *Harper, In re; Plowman* v. *Harper*, 83 L. J. Ch. 157; [1914] 1 Ch. 70; 109 L. T. 925; 58 S. J. 120.

Walcott v. **Lyons,** 54 L. J. Ch. 847; 29 Ch. D. 584; 52 L. T. 399: distinguished in *White* v. *London General Omnibus Co.*, 58 S. J. 339.

Walker v. **Brewster,** 37 L. J. Ch. 33; L. R. 5 Eq. 25; 17 L. T. 135; 16 W. R. 59: discussed and followed in *Lyons* v. *Gulliver*, 83 L. J. Ch. 281; [1914] 1 Ch. 631; 110 L. T. 284; 78 J. P. 98; 12 L. G. R. 194; 58 S. J. 97; 30 T. L. R. 75.

Walker v. **Jones,** 35 L. J. P.C. 30; L. R. 1 P.C. 50: followed in *Rourke* v. *Robinson*, 80 L. J. Ch. 295; [1911] 1 Ch. 480; 103 L. T. 895.

Walker v. **Mottram,** 51 L. J. Ch. 108; 19 Ch. D. 355; 45 L. T. 687: applied in *Green* v. *Morris*, 83 L. J. Ch. 559; [1914] 1 Ch. 562; 110 L. T. 508; 58 S. J. 398; 30 T. L. R. 301.

Wallace v. **Automatic Machines Co.,** 63 L. J. Ch. 598; [1894] 2 Ch. 547; 70 L. T. 852; 1 Manson, 315: applied in *Crompton & Co., In re*, 83 L. J. Ch. 666; [1914] 1 Ch. 954; 110 L. T. 759; 58 S. J. 433.

Wallace v. **Greenwood,** 50 L. J. Ch. 289; 16 Ch. D. 362; 43 L. T. 720: *dicta* of Jessel, M.R., in, not followed in *Hopkinson* v. *Richardson*, 82 L. J. Ch. 211; [1913] 1 Ch. 284; 108 L. T. 501; 57 S. J. 265.

Waller v. **Barrett,** 24 Beav. 413: applied in *Lawley, In re*, [1911] 2 Ch. 530; 56 S. J. 13.

Waller v. **Loch,** 51 L. J. Q.B. 274; 7 Q.B. D. 619; 45 L. T. 242; 30 W. R. 18; 46 J. P. 484: distinguished in *Greenlands* v. *Wilmshurst*, [1913] 3 K.B. 507; 57 S. J. 740; 29 T. L. R. 685.

Walne v. **Hill,** [1883] W. N. 171: followed in *Russell, In re; Public Trustee* v. *Campbell*, 56 S. J. 651.

Walsh v. **Alexander,** 16 Commonwealth L. R. 293: not followed in *Minister for Lands* v. *Coote*, 84 L. J. P.C. 112; [1915] A.C. 583; 112 L. T. 1098.

Walsh v. **Lonsdale,** 52 L. J. Ch. 2; 21 Ch. D. 9; 46 L. T. 858; 31 W. R. 109: distinguished in *Purchase* v. *Lichfield Brewery Co.*, 84 L. J. K.B. 742; [1915] 1 K.B. 184; 111 L. T. 1105.

Walter v. **Rumbal,** 1 Ld. Raym. 53: followed in *Jarvis* v. *Hemmings*, 81 L. J. Ch. 290; [1912] 1 Ch. 462; 106 L. T. 419; 28 T. L. R. 195.

Walter and Gould v. **King,** 13 T. L. R. 270: followed in *Finlay, In re; Wilson* v. *Finlay*, 82 L. J. Ch. 295; [1913] 1 Ch. 565; 108 L. T. 699; 57 S. J. 444; 29 T. L. R. 436.

Waltham Holy Cross Urban Council v. **Lea Conservancy Board,** 103 L. T. 192; 74 J. P. 253: is inconsistent with the decisions of the Court of Appeal in *Kirkheaton Local Board* v. *Ainley* (61 L. J. Q.B. 812; [1892] 2 Q.B. 274) and *Yorkshire (W. R.) Council* v. *Holmfirth Urban Sanitary Authority* (63 L. J. Q.B. 485; [1894] 2 Q.B. 842) and is therefore not binding: so held by Avory, J., in *Rochford Rural Council* v. *Port of London Authority*, 83 L. J. K.B. 1066; [1914] 2 K.B. 916; 78 J. P. 329.

Ward v. **Byrne,** 9 L. J. Ex. 14; 5 M. & W. 548: followed in *Nevanas & Co.* v. *Walker*, 83 L. J. Ch. 380; [1914] 1 Ch. 413; 110 L. T. 416; 58 S. J. 235; 30 T. L. R. 184.

Ward v. **Royal Exchange Shipping Co.,** 58 L. T. 174: followed in *Ind, Coope & Co., In re*, 80 L. J. Ch. 661; [1911] 2 Ch. 223; 55 S. J. 600.

Waring v. **Ward,** 7 Ves. 332: followed in *Mills* v. *United Counties Bank*, 80 L. J. Ch. 334; [1911] 1 Ch. 669; 104 L. T. 632; 55 S. J. 408; 27 T. L. R. 366.

Warncken v. **Moreland,** 78 L. J. K.B. 332; [1909] 1 K.B. 184; 100 L. T. 12; 25 T. L. R. 129: followed in *Walsh* v. *Lock*, [1914] W.C. & I. Rep. 95; 110 L. T. 452.

Warner v. **Couchman,** 80 L. J. K.B. 526; [1911] 1 K.B. 351; 103 L. T. 693; 55 S. J. 107; 27 T. L. R. 121: explained in *Pierce* v. *Provident Clothing and Supply Co.*, 80 L. J. K.B. 831; [1911] 1 K.B. 997; 104 L. T. 473; 55 S. J. 363; 27 T. L. R. 299.

Warner v. **Couchman,** 80 L. J. K.B. 526; [1911] 1 K.B. 351; 103 L. T. 693; 55 S. J. 107; 27 T. L. R. 121: followed in *Amys* v. *Barton*, 81 L. J. K.B. 65; [1912] 1 K.B. 40; 105 L. T. 619; 28 T. L. R. 29.

Warner v. **Couchman,** 81 L. J. K.B. 45; [1912] A.C. 35; [1912] W.C. Rep. 28; 105 L. T. 676; 56 S. J. 70; 28 T. L. R. 58: followed in *Mitchinson* v. *Day*, 82 L. J. K.B. 421; [1913] 1 K.B. 603; [1913] W.C. & I. Rep. 324; 108 L. T. 193; 57 S. J. 300; 29 T. L. R. 267.

Watkins v. **Guest, Keen & Nettlefold,** 106 L. T. 818; [1912] W.C. Rep. 151; 5 B.W.C.C. 307: considered in *Plumb* v. *Cobden Flour Mills Co.*, 83 L. J. K.B. 197; [1914] A.C. 62; [1914] W.C. & I. Rep. 48; 109 L. T. 759; 58 S. J. 184; 30 T. L. R. 174.

Watkins v. **Naval Colliery Co.,** 81 L. J. K.B. 1056; [1912] A.C. 693; 107 L. T. 321; 56 S. J. 719; 28 T. L. R. 569: applied in *Pursell* v. *Clement Talbot, Lim.*, 111 L. T. 827; 79 J. P. 1.

Watling v. **Lewis,** 80 L. J. Ch. 242; [1911] 1 Ch. 414; 104 L. T. 132: applied in *Tewkesbury Gas Co., In re*, 80 L. J. Ch. 723; [1912] 1 Ch. 1; 105 L. T. 569; 18 Manson, 395; 56 S. J. 71; 28 T. L. R. 40.

Watson v. **Ambergate &c. Railway,** 15 Jur. 448: discussed in *Chaplin* v. *Hicks*, 80 L. J. K.B. 1292; [1911] 2 K.B. 786; 105 L. T. 285; 55 S. J. 580; 27 T. L. R. 458.

Way, In re, 30 L. J. Ch. 815; 3 De G. F. & J. 175; 5 L. T. 510: followed in *Bennet, In re; Greenwood* v. *Bennet*, 82 L. J. Ch. 506; [1913] 2 Ch. 318; 109 L. T. 302.

Wearing v. **Wearing,** 23 Beav. 99: overruled in *Wareham, In re*, 81 L. J. Ch. 578; [1912] 2 Ch. 312; 107 L. T. 80; 56 S. J. 613.

Webb v. **Oldfield,** [1898] 1 Ir. R. 446: considered and applied in *Wedgwood, In re*, 84 L. J. Ch. 107; [1915] 1 Ch. 113; 112 L. T. 66; 59 S. J. 73; 31 T. L. R. 43.

Webb v. **Shropshire Railways Co.,** 63 L. J. Ch. 80; [1893] 3 Ch. 307; 69 L. T. 533: doubted in *Newburgh and North Fife Railway* v. *North British Railway*, [1913] S. C. 1166.

Webb v. **Syme,** 10 Commonwealth L. R. 482: disapproved in *Syme* v. *Victoria Commissioner of Taxes*, 84 L. J. P.C. 39; [1914] A.C. 1013; 111 L. T. 1043; 30 T. L. R. 689.

Webster v. **Cohen,** [1913] W.C. & I. Rep. 268; 108 L. T. 197; 29 T. L. R. 217: distinguished in *Thompson* v. *North Eastern Marine Engineering Co.*, [1914] W.C. & I. Rep. 13; 110 L. T. 441: followed in *Clapp* v. *Carter*, [1914] W.C. & I. Rep. 80; 110 L. T. 491; 58 S. J. 232: applied in *Potter* v. *Welsh & Sons, Lim.*, 83 L. J. K.B. 1852; [1914] 3 K.B. 1020; [1914] W.C. & I. Rep. 607; 112 L. T. 7; 30 T. L. R. 644.

Wedderburn v. **Atholl (Duke),** [1900] A.C. 403: distinguished as being an exclusively Scottish decision in *Irish Society* v. *Harold*, 81 L. J. P.C. 162; [1912] A.C. 287; 106 L. T. 130; 28 T. L. R. 204.

Wedmore, In re, 76 L. J. Ch. 486; [1907] 2 Ch. 277; 97 L. T. 26; 23 T. L. R. 547: considered in *Whitehead, In re*, 82 L. J. Ch. 302; [1913] 2 Ch. 56; 108 L. T. 368; 57 S. J. 323.

Weeding, In re; Armstrong v. **Wilkin,** 65 L. J. Ch. 743; [1896] 2 Ch. 364: distinguished in *Connolly, In re; Walton* v. *Connolly*, 110 L. T. 688.

Weir v. **Richardson,** 3 Com. Cas. 20: followed in *The Kingsland*, 80 L. J. P. 33; [1911] P. 17; 105 L. T. 143; 16 Com. Cas. 18; 27 T. L. R. 75.

Wells v. **Horton,** 5 L. J. (o.s.) C.P. 41; 4 Bing. 40: observations in, disapproved in *Hanau* v. *Ehrlich*, 81 L. J. K.B. 397; [1912] A.C. 39; 106 L. T. 1; 56 S. J. 186; 28 T. L. R. 113.

Welton v. **Saffery,** 66 L. J. Ch. 362; [1897] A.C. 299; 76 L. T. 505; 45 W. R. 508; 4 Manson, 269: observations in, followed and applied in *Hickman* v. *Kent* (or *Romney Marsh*) *Sheep Breeders' Association*, 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Wemyss Coal Co. v. **Symon,** [1912] S. C. 1239; 49 Sc. L. R. 921: considered and applied in *Jibb* v. *Chadwick & Co.*, 84 L. J. K.B. 1241; [1915] 2 K.B. 94; 112 L. T. 878; [1915] W.C. & I. Rep. 342; 31 T. L. R. 185.

Wenham, In re, 61 L. J. Ch. 565; [1892] 3 Ch. 59; 67 L. T. 648; 40 W. R. 636: applied in *Fleetwood and District Electric Light &c. Co., In re*, 84 L. J. Ch. 374; [1915] 1 Ch. 486; 112 L. T. 1127; [1915] H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221.

Wertheim v. **Chicoutimi Pulp Co.,** 80 L. J. P.C. 91; [1911] A.C. 301; 104 L. T. 226; 16 Com. Cas. 297: approved in *British Westinghouse Co.* v. *Underground Railways of London*, 81 L. J. K.B. 1132; [1912] A.C. 673; 107 L. T. 325; 56 S. J. 734: distinguished in *Williams* v. *Agius*, 83 L. J. K.B. 715; [1914] A.C. 510; 110 L. T. 865; 19 Com. Cas. 200; 58 S. J. 377; 30 T. L. R. 351.

West Coast Gold Fields, In re, 74 L. J. Ch. 347; [1905] 1 Ch. 597; 92 L. T. 596; 53 W. R. 455; 12 Manson, 185; 21 T. L. R. 375: distinguished in *Peruvian Railway Construction Co., In re*, [1915] 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464.

West Ham Churchwardens v. **Fourth City Mutual Building and Investment Society,** 61 L. J. M.C. 128; [1892] 1 Q.B. 654; 66 L. T. 350; 40 W. R. 446; 56 J. P. 438: considered and observations disapproved in *Rex* v. *Roberts; Battersea Borough Council, Ex parte,* 83 L. J. K.B. 146; [1914] 1 K.B. 369; 109 L. T. 466; 77 J. P. 403; 11 L. G. R. 913; 57 S. J. 644.

West Ham Union v. **Holbeach Union,** 74 L. J. K.B. 868; [1905] A.C. 450; 93 L. T. 557; 54 W. R. 137; 69 J. P. 442; 3 L. G. R. 1179; 21 T. L. R. 713: followed in *Kingston-upon-Hull Incorporation* v. *Hackney Union,* 80 L. J. K.B. 489; [1911] 1 K.B. 748; 104 L. T. 300; 75 J. P. 249; 9 L. G. R. 416; 55 S. J. 289.

West Ham Union v. **St. Matthew, Bethnal Green,** 63 L. J. M.C. 97; [1894] A.C. 230; 70 L. T. 818; 42 W. R. 573; 58 J. P. 493: considered and explained in *Braintree Union* v. *Rochford Union,* 81 L. J. K.B. 251; 106 L. T. 569; 76 J. P. 41; 10 L. G. R. 40; 28 T. L. R. 60.

Western v. **Kensington Assessment Committee,** 77 L. J. K.B. 328; [1908] 1 K.B. 811; 98 L. T. 688; 72 J. P. 42; 6 L. G. R. 119: approved in *Marylebone Assessment Committee* v. *Consolidated London Properties,* 83 L. J. K.B. 1251; [1914] A.C. 870; 111 L. T. 553; 58 S. J. 593; 30 T. L. R. 551.

Western of Canada Oil, Lands and Works Co., In re, 43 L. J. Ch. 184; L. R. 17 Eq. 1; followed in *Globe Trust, In re,* 84 L. J. Ch. 903; 113 L. T. 80; 59 S. J. 529; 31 T. L. R. 280.

Westminster Corporation v. **Gordon Hotels,** 76 L. J. K.B. 482; 77 L. J. K.B. 520; [1907] 1 K.B. 910; [1908] A.C. 142; 96 L. T. 535; 98 L. T. 681; 71 J. P. 200; 72 J. P. 201; 5 L. G. R. 545; 6 L. G. R. 520; 23 T. L. R. 387; 24 T. L. R. 402: applied in *Wills* v. *McSherry,* 83 L. J. K.B. 596; [1914] 1 K.B. 616; 110 L. T. 65; 78 J. P. 120.

Weston, In re, 76 L. J. Ch. 54; [1906] 2 Ch. 620; 95 L. T. 581: followed in *Sanderson, In re,* 106 L. T. 26; 56 S. J. 291.

Wheatley, In re, 54 L. J. Ch. 201; 27 Ch. D. 606; 51 L. T. 681: applied in *Hargrove, In re,* 84 L. J. Ch. 484; [1915] 1 Ch. 398; 112 L. T. 1062; 59 S. J. 364.

Wheldale v. **Partridge,** 5 Ves. 388; 8 Ves. 227: considered and distinguished in *Gresham Life Assurance Society* v. *Crowther,* 84 L. J. Ch. 312; [1915] 1 Ch. 214; 111 L. T. 887; 59 S. J. 103.

White v. **Bowron,** 43 L. J. Ecc. 7; L. R. 4 Ad. & E. 207: followed in *Grosvenor Chapel, South Audley Street, In re (No. 1),* 29 T. L. R. 286.

White v. **Islington Borough Council,** 78 L. J. K.B. 168; [1909] 1 K.B. 133; 100 L. T. 22; 73 J. P. 44; 7 L. G. R. 133; 25 T. L. R. 121: observations in, explained in *Rex* v. *Roberts; Battersea Borough Council, Ex parte,* 83 L. J. K.B. 146; [1914] 1 K.B. 369; 109 L. T. 466; 77 J. P. 403; 11 L. G. R. 913; 57 S. J. 644.

White v. **Steadman,** 82 L. J. K.B. 846; [1913] 3 K.B. 340; 29 T. L. R. 563: distinguished in *Bates* v. *Batey,* 82 L. J. K.B. 963; [1913] 3 K.B. 351; 108 L. T. 1036; 29 T. L. R. 616.

Whiteley, Lim. v. **Burns,** 77 L. J. K.B. 467; [1908] 1 K.B. 705; 98 L. T. 836; 72 J. P. 127; 24 T. L. R. 319: discussed in *London County Council* v. *Perry,* 84 L. J. K.B. 1518; [1915] 2 K.B. 193; 113 L. T. 85; 79 J. P. 312; 13 L. G. R. 746; 31 T. L. R. 281.

Whitham v. **Kershaw,** 16 Q.B. D. 613; 54 L. T. 124; 34 W. R. 340: *dictum* of Lord Esher in, dissented from in *Defries* v. *Milne,* 82 L. J. Ch. 1; [1913] 1 Ch. 98; 107 L. T. 593; 57 S. J. 27.

Whitmore, In re; Walters v. **Harrison,** 71 L. J. Ch. 673; [1902] 2 Ch. 66; 87 L. T. 210: distinguished in *Laing, In re,* 81 L. J. Ch. 686; [1912] 2 Ch. 386.

Whitting v. **Whitting,** 53 S. J. 100: followed in *Park's Settlement, In re; Foran* v. *Bruce,* 83 L. J. Ch. 528; [1914] 1 Ch. 595; 110 L. T. 813; 58 S. J. 362: remarked on in *Bullock's Will Trusts, In re,* 84 L. J. Ch. 463; [1915] 1 Ch. 493; 112 L. T. 1119; 59 S. J. 441.

Whittuck v. **Waters,** 4 Car. & P. 375: applied in *Woodward, In re; Kenway* v. *Kidd,* 82 L. J. Ch. 230; [1913] 1 Ch. 392; 108 L. T. 635; 57 S. J. 426.

Wilford's Estate, In re; Taylor v. **Taylor,** 48 L. J. Ch. 243; 11 Ch. D. 267; 27 W. R. 155: followed in *Walker* v. *Gaskill,* 83 L. J. P. 152; [1914] P. 192; 111 L. T. 941; 59 S. J. 45; 30 T. L. R. 637.

Wilkinson v. **Peel,** 64 L. J. Q.B. 178; [1895] 1 Q.B. 516; 72 L. T. 151; 43 W. R. 302: distinguished in *Lewis* v. *Davies,* 82 L. J. K.B. 631; [1913] 2 K.B. 37; 108 L. T. 606.

Willesford v. **Watson,** 42 L. J. Ch. 447; L. R. 8 Ch. 473; 28 L. T. 428; 21 W. R. 350: applied in *Hickman* v. *Kent* (or *Romney Marsh*) *Sheep Breeders' Association,* 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Williams v. **Allsup,** 30 L. J. C.P. 353; 10 C. B. (N.S.) 417; 8 Jur. (N.S.) 57; 4 L. T. 550: followed and applied in *Jowitt* v. *Union Cold Storage Co.*, 82 L. J. K.B. 890; [1913] 3 K.B. 1; 108 L. T. 724; 18 Com. Cas. 185; 57 S. J. 560; 29 T. L. R. 477.

Williams v. **Baker,** 80 L. J. K.B. 545; [1911] K.B. 566; 104 L. T. 178; 75 J. P. 89; 9 L. G. R. 178: followed in *Millard* v. *Allwood*, 81 L. J. K.B. 514; [1912] 1 K.B. 590; 106 L. T. 111; 76 J. P. 139; 10 L. G. R. 127; 22 Cox C.C. 676.

Williams v. **Bosanquet,** 1 Brod. & B. 238: distinguished in *Purchase* v. *Lichfield Brewery Co.*, 84 L. J. K.B. 742; [1915] 1 K.B. 184; 111 L. T. 1105.

Williams v. **Earle,** L. R. 3 Q.B. 739; 19 L. T. 238: applied in *Stephenson & Co., In re*, 84 L. J. Ch. 563; [1915] 1 Ch. 802; 113 L. T. 230; 59 S. J. 429; 31 T. L. R. 331.

Williams v. **Hathaway,** 6 Ch. D. 544: distinguished in *Watling* v. *Lewis*, 80 L. J. Ch. 242; [1911] 1 Ch. 414; 104 L. T. 132.

Williams v. **Heales,** 43 L. J. C.P. 80; L. R. 9 C.P. 177; 30 L. T. 20; 22 W. R. 317: the decision in, was founded upon estoppel: so held in *Stratford-upon-Avon Corporation* v. *Parker*, 83 L. J. K.B. 1309; [1914] 2 K.B. 562; 110 L. T. 1004; 58 S. J. 473.

Williams v. **Hunt,** 74 L. J. K.B. 364; [1905] 1 K.B. 512; 92 L. T. 192: distinguished in *Bradshaw* v. *McMullen*, [1915] 2 Ir. R. 187.

Williams v. **London and North-Western Railway,** 69 L. J. Q.B. 531; [1900] 1 Q.B. 760; 82 L. T. 287; 64 J. P. 372: followed in *Lancashire and Yorkshire Railway* v. *Liverpool Corporation*, 76 J. P. 329; 10 L. G. R. 575.

Williams v. **North's Navigation Collieries,** 75 L. J. K.B. 334; [1906] A.C. 136; 94 L. T. 447; 54 W. R. 485; 70 J. P. 217; 22 T. L. R. 372: followed in *Summerlee Iron Co.* v. *Thomson*, [1913] S. C. (J.) 34.

Williams v. **Ocean Coal Co.,** 76 L. J. K.B. 1073; [1907] 2 K.B. 422; 97 L. T. 150; 23 T. L. R. 584: distinguished in *New Monckton Collieries* v. *Keeling*, 80 L. J. K.B. 1205; [1911] A.C. 648; 105 L. T. 337; 55 S. J. 687; 27 T. L. R. 551.

Willson v. **Love,** 65 L. J. Q.B. 474; [1896] 1 Q.B. 626; 74 L. T. 580; 44 W. R. 450: distinguished in *Dunlop Pneumatic Tyre Co.* v. *New Garage and Motor Co.*, 83 L. J. K.B. 1574; [1915] A.C. 79; 111 L. T. 862; 30 T. L. R. 625.

Wilson v. **Playle,** 88 L. T. 554: followed in *Plowright* v. *Burrell*, 82 L. J. K.B. 571; [1913] 2 K.B. 362; 108 L. T. 1006; 77 J. P. 245; 11 L. G. R. 457; 29 T. L. R. 398.

Wilson v. **Walton and Kirkdale Permanent Building Society,** 19 T. L. R. 408: *dictum* of Walton, J., in, not followed in *Metropolis and Counties Permanent Investment Building Society, In re*, 80 L. J. Ch. 387; [1911] 1 Ch. 698; 104 L. T. 382.

Wiltshire v. **Smith,** 3 Atk. 89: followed in *Webb* v. *Crosse*, 81 L. J. Ch. 259; [1912] 1 Ch. 323; 105 L. T. 867; 56 S. J. 177.

Wimbledon Olympia, Lim., In re, 79 L. J. Ch. 481; [1910] 1 Ch. 630; 102 L. T. 425; 17 Manson, 220: followed in *South of England Natural Gas and Petroleum Co., In re*, 80 L. J. Ch. 358; [1911] 1 Ch. 573; 104 L. T. 378; 55 S. J. 412.

Wimborne and Browne's Contract, In re, 73 L. J. Ch. 270; [1904] 1 Ch. 537; 90 L. T. 540; 52 W. R. 334: distinguished in *Collis's Estate, In re*, [1911] 1 Ir. R. 267.

Windham v. **Graham,** 1 Russ. 331: followed in *Wise, In re; Smith* v. *Waller*, 82 L. J. Ch. 25; [1913] 1 Ch. 41; 107 L. T. 613; 57 S. J. 28.

Winn v. **Bull,** 47 L. J. Ch. 139; 7 Ch. D. 29: followed in *Von Hatzfeldt-Wildenburg (Princess)* v. *Alexander*, 81 L. J. Ch. 184; [1912] 1 Ch. 284; 105 L. T. 434.

Wise, In re; Jackson v. **Parrott,** 65 L. J. Ch. 281; [1896] 1 Ch. 281: order in, explained in *Cooper, In re*, 82 L. J. Ch. 222; [1913] 1 Ch. 350; 108 L. T. 293; 57 S. J. 389.

Wixon v. **Thomas,** 80 L. J. K.B. 104; [1911] 1 K.B. 43; 103 L. T. 730; 75 J. P. 58; 8 L. G. R. 1042; 27 T. L. R. 35: approved in *Wixon* v. *Thomas (No. 2)*, 81 L. J. K.B. 686; [1912] 1 K.B. 690; 106 L. T. 312; 76 J. P. 153; 10 L. G. R. 267; 28 T. L. R. 232.

Wolfe v. **De Braam,** 81 L. T. 533: considered in *Kelsey* v. *Donne*, 81 L. J. K.B. 503; [1912] 2 K.B. 482; 105 L. T. 856.

Wolfenden v. **Mason,** 110 L. T. 31; 78 J. P. 13; 11 L. G. R. 1243; 23 Cox C.C. 722: discussed in *London County Council* v. *Perry*, 84 L. J. K.B. 1518; [1915] 2 K.B. 193; 113 L. T. 85; 79 J. P. 312; 13 L. G. R. 746; 31 T. L. R. 281.

Wood, In re, 63 L. J. Ch. 790; [1894] 3 Ch. 381; 71 L. T. 413: applied in *Bewick, In re*, 80 L. J. Ch. 47; [1911] 1 Ch. 116; 103 L. T. 634; 55 S. J. 109.

Wood, In re; Wodehouse v. **Wood,** 82 L. J. Ch. 203; [1913] 1 Ch. 303; 108 L. T. 31; 57 S. J. 265: distinguished in *Fraser Settlement, In re; Ind* v. *Fraser*, 82 L. J. Ch. 406; [1913] 2 Ch. 224; 108 L. T. 960; 57 S. J. 462.

Wood v. **Ledbitter,** 14 L. J. Ex. 161; 13 M. & W. 838: discussed in *Hurst* v. *Picture Theatres, Lim.*, 83 L. J. K.B. 1837; [1915] 1 K.B. 1; 111 L. T. 972; 58 S. J. 739; 30 T. L. R. 642.

Wood v. **Odessa Waterworks Co.,** 58 L. J. Ch. 628; 42 Ch. D. 636; 37 W. R. 733; 1 Meg. 265: observations in, followed and applied in *Hickman* v. *Kent* (or *Romney Marsh*) *Sheep Breeders' Association*, 84 L. J. Ch. 688; [1915] 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Woodall, Ex parte, 53 L. J. Ch. 966; 13 Q.B. D. 479; 50 L. T. 747: *dicta* of Court of Appeal in, followed in *Bagley, In re*, 80 L. J. K.B. 168; [1911] 1 K.B. 317; 103 L. T. 470; 18 Manson, 1; 55 S. J. 48.

Woodbridge v. **Bellamy,** 80 L. J. Ch. 265; [1911] 1 Ch. 326; 103 L. T. 852; 55 S. J. 204: distinguished in *Dayer-Smith* v. *Hadsley*, 108 L. T. 897; 57 S. J. 555.

Woodhouse, In re; Annesley v. **Woodhouse,** [1898] 1 Ir. R. 69: followed in *Llewellyn, In re*, 80 L. J. Ch. 259; [1911] 1 Ch. 451; 104 L. T. 279; 55 S. J. 254.

Woodman v. **Pwllbach Colliery Co.,** 111 L. T. 169 (subsequently affirmed in H.L., 84 L. J. K.B. 874; [1915] A.C. 634): followed in *Priest* v. *Manchester Corporation*, 84 L. J. K.B. 1734; 13 L. G. R. 665.

Woodroff, In re, 4 Manson, 46: distinguished in *Jones Brothers, In re; Associated Newspapers, ex parte*, 81 L. J. K.B. 1178; [1912] 3 K.B. 234.

Worsley, In re; Lambert, ex parte, 70 L. J. K.B. 93; [1901] 1 K.B. 309; 84 L. T. 100; 49 W. R. 182; 8 Manson, 8: applied in *Clark, In re; Pope, ex parte*, 84 L. J. K.B. 89; [1914] 3 K.B. 1095; 112 L. T. 873; [1915] H. B. R. 1; 59 S. J. 44.

Worthington & Co.'s Trade Mark, 49 L. J. Ch. 646; 14 Ch. D. 8; 42 L. T. 563; 28 W. R. 747: applied in *Coleman* v. *Smith*, 81 L. J. Ch. 16; [1911] 2 Ch. 572; 28 T. L. R. 65.

Wragg, Lim., In re, 66 L. J. Ch. 419; [1897] 1 Ch. 796; 76 L. T. 397; 45 W. R. 557; 4 Manson, 179: considered and distinguished in *Hong Kong and China Gas Co.* v. *Glen*, 83 L. J. Ch. 561; [1914] 1 Ch. 527; 110 L. T. 859; 58 S. J. 380; 30 T. L. R. 339.

Wrexham, Mold and Connah's Quay Railway, In re, 68 L. J. Ch. 270; [1899] 1 Ch. 440; 80 L. T. 130; 47 W. R. 464; 6 Manson, 218: followed in *Harris Calculating Machine Co., In re*, 83 L. J. Ch. 545; [1914] 1 Ch. 920; 110 L. T. 997; 58 S. J. 455.

Wright, In the goods of, [1893] P. 21; 68 L. T. 25: affirmed and followed in *Hewson* v. *Shelley*, 83 L. J. Ch. 607; [1914] 2 Ch. 13; 110 L. T. 785; 58 S. J. 397; 30 T. L. R. 402.

Wright v. **Kerrigan,** [1911] 2 Ir. R. 301: discussed in *Amys* v. *Barton*, 81 L. J. K.B. 65; [1912] 1 K.B. 40; 105 L. T. 619; 28 T. L. R. 29.

Wylie-Hill v. **Inland Revenue Commissioners,** [1912] S. C. 1246: approved in *Brooks* v. *Inland Revenue Commissioners*, 83 L. J. K.B. 431; [1914] 1 K.B. 579; 110 L. T. 1; 30 T. L. R. 216.

X.

Xantho, The, 56 L. J. P. 116; 12 App. Cas. 503; 55 L. T. 203; 35 W. R. 23: followed in *Sassoon* v. *Western Assurance Co.*, 81 L. J. P.C. 231; [1912] A.C. 561; 106 L. T. 929; 17 Com. Cas. 274.

Y.

Yeatman v. **Yeatman,** 39 L. J. P. 37; 21 L. T. 647: not followed in *Sanders* v. *Sanders*, 80 L. J. P. 44; [1911] P. 101; 104 L. T. 231; 55 S. J. 312.

Yonge v. **Toynbee,** 79 L. J. K.B. 208; [1910] 1 K.B. 215; 102 L. T. 57; 26 T. L. R. 211: considered and applied in *Simmons* v. *Liberal Opinion*, 80 L. J. K.B. 617; [1911] 1 K.B. 966; 104 L. T. 264; 55 S. J. 315; 27 T. L. R. 278.

York, In re; Atkinson v. **Powell,** 56 L. J. Ch. 552; 36 Ch. D. 233; 56 L. T. 704; 35 W. R. 609: distinguished in *Hay, In re; Stanley Gibbons, Lim.* v. *Hay*, 84 L. J. Ch. 821; [1915] 2 Ch. 198; 59 S. J. 680.

Yorkshire Railway Waggon Co. v. **Maclure,** 51 L. J. Ch. 259; 19 Ch. D. 478: followed in *Wauthier* v. *Wilson*, 27 T. L. R. 582.

Yorkshire (West Riding) Rivers Board v. **Gaunt,** 67 J. P. 183: considered in *Att.-Gen.* v. *Lewes Corporation*, 81 L. J. Ch. 40; [1911] 2 Ch. 495; 105 L. T. 697; 76 J. P. 1; 10 L. G. R. 26; 55 S. J. 703; 27 T. L. R. 581.

Yorkshire (West Riding) Rivers Board v. **Preston,** 69 J. P. 1: considered in *Att.-Gen.* v. *Lewes Corporation*, 81 L. J. Ch. 40; [1911] 2 Ch. 495; 105 L. T. 697; 76 J. P. 1; 10 L. G. R. 26; 55 S. J. 703; 27 T. L. R. 581.

Young, In re, 1 Tax Cas. 57; 12 Sc. L. R. 602: distinguished in *Brown* v. *Burt*, 81 L. J. K.B. 17; 105 L. T. 420; 27 T. L. R. 572.

Young v. **Kitchin,** 47 L. J. Ex. 579; 3 Ex. D. 127: distinguished in *Stoddart* v. *Union Trust, Lim.*, 81 L. J. K.B. 140; [1912] 1 K.B. 181; 105 L. T. 806.

Young v. **Royal Leamington Spa Corporation,** 52 L. J. Q.B. 713; 8 App. Cas. 517; 49 L. T. 1: followed in *Hoare* v. *Kingsbury Urban Council*, 81 L. J. Ch. 666; [1912] 2 Ch. 452; 107 L. T. 492; 76 J. P. 401; 10 L. G. R. 829; 56 S. J. 704.

Young v. **Waterpark,** 8 L. J. Ch. 214: distinguished in *Power's Estate, In re*, [1913] 1 Ir. R. 530.

Young v. **White,** 76 J. P. 14; 28 T. L. R. 87: disapproved in *Hampton* v. *Glamorgan County Council*, 84 L. J. K.B. 1506; 113 L. T. 112; 13 L. G. R. 819.

Z.

Zierenberg v. **Labouchere,** 63 L. J. Q.B. 89; [1893] 2 Q.B. 183; 69 L. T. 172; 41 W. R. 675; 55 J. P. 711: applied in *Wootton* v. *Sierier* (*No.* 1), 82 L. J. K.B. 1242; [1913] 3 K.B. 499; 109 L. T. 28; 57 S. J. 609; 29 T. L. R. 596.

PRINTED BY
THE EASTERN PRESS, LTD.,
LONDON AND READING.

MEWS'

NOTER-UP

for 1915

ABBREVIATIONS.

APPL., *applied* or *applicable.*
APPR., *approved.*
COMM., *commented on.*
CONS., *considered.*
CORR., *corrected.*
DICT., *dictum.*
DISAPPR., *disapproved.*
DISC., *discussed.*
DISS., *dissented from.*
DIST., *distinguished.*
DOUBT., *doubted.*
EXPL., *explained.*
FOLL., *followed.*
INAPP., *inapplicable.*
OBS., *observed upon, observations.*
OV., *overruled.*
PRINC., *principle.*
REF., *referred to.*

Allhusen *v.* Whittell, 36 L. J. Ch. 929; L. R. 4 Eq. 295; 16 L. T. 695.
FOLL. in *Wills, In re*, 84 L. J. Ch. 580; (1915) 1 Ch. 769; 113 L. T. 138; 59 S. J. 477.

Arden *v.* Arden, 54 L. J. Ch. 655; 29 Ch. D. 702; 52 L. T. 610; 33 W. R. 593.
FOLL. in *Gresham Life Assurance Society* v. *Crowther*, 84 L. J. Ch. 312; (1915) 1 Ch. 214; 111 L. T. 887; 59 S. J. 103.

Aberdeen Railway Co. *v.* Blaikie, 1 Macq. 461.
CONS. and APPL. in *Transvaal Lands Co.* v. *New Belgium (Transvaal) Land &c. Co.*, 84 L. J. Ch. 94; (1914) 2 Ch. 488; 112 L. T. 965; 21 Manson, 364; 59 S. J. 27; 31 T. L. R. 1.

Abergavenny Improvement Commissioners *v.* Straker, 58 L. J. Ch. 717; 42 Ch. D. 83; 60 L. T. 756; 38 W. R. 158.
FOLL. in *Hailsham Cattle Market Co.* v. *Tolman*, 84 L. J. Ch. 299; (1915) 1 Ch. 360; 79 J. P. 185; 13 L. G. R. 248; 59 S. J. 303; 31 T. L. R. 86.

Abrahams' Estate, In re, 77 L. J. Ch. 578; (1908) 2 Ch. 69; 99 L. T. 240.
APPL. in *Smelting Corporation, In re; Seaver* v. *Smelting Corporation*, 84 L. J. Ch. 571; (1915) 1 Ch. 472; 113 L. T. 44; (1915) H. B. R. 126.

Ailesbury (Marquis) and Iveagh (Lord), In re, 62 L. J. Ch. 713; (1893) 2 Ch. 345; 69 L. T. 101; 41 W. R. 644.
APPL. in *Trafford's Settled Estates, In re*, 84 L. J. Ch. 351; (1915) 1 Ch. 9; 112 L. T. 107.

Akerman, In re, 61 L. J. Ch. 34; (1891) 3 Ch. 212; 65 L. T. 194; 40 W. R. 12.
DISC. in *Smelting Corporation, In re*, 84 L. J. Ch. 571; (1915) 1 Ch. 472; 113 L. T. 44; (1915) H. B. R. 126; in *Peruvian Railway Construction Co.*, (1915) 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464; and in *Dacre, In re*, (1915) 2 Ch. 480.

Allen *v.* Gold Reefs of West Africa, 69 L. J. Ch. 266; (1900) 1 Ch. 656; 82 L. T. 210; 48 W. R. 452; 7 Manson, 417.
FOLL. in *British Murac Syndicate* v. *Alperton*, 84 L. J. Ch. 665; (1915) 2 Ch. 186; 59 S. J. 494; 31 T. L. R. 391.

Allen *v.* Francis, 83 L. J. K.B. 1814; (1914) 3 K.B. 1065; (1914) W.C. & I. Rep. 599; 112 L. T. 62; 58 S. J. 753; 30 T. L. R. 695.
CONS. in *Burnham* v. *Hardy*, 84 L. J. K.B. 714; (1915) W.C. & I. Rep. 146; 112 L. T. 837.

Allen *v.* Allen, 70 L. T. 783.
APPR. in *Brown* v. *Brown*, 84 L. J. P. 153; (1915) P. 83; 113 L. T. 190; 59 S. J. 442; 31 T. L. R. 280.

Andrews *v.* Partington, 3 Bro. C.C. 401.
HELD INAPPL. in *Faux, In re*, 84 L. J. Ch. 873; 113 L. T. 71; 59 S. J. 457; 31 T. L. R. 289.

Anglesey (Marquis), In re, 72 L. J. Ch. 782; (1903) 2 Ch. 727; 52 W. R. 214.
APPL. in *Singer* v. *Fry*, 84 L. J. K.B. 2025; (1915) H. B. R. 115.

Anglo-Australian Steam Navigation Co. *v.* Richards, 4 B.W.C.C. 247.
CONS. in *Silcock* v. *Golightly*, 84 L. J. K.B. 499; (1915) 1 K.B. 748; (1915) W.C. & I. Rep. 164; 112 L. T. 800.

Anonymous Case, Vander Straaten's Rep. 195.
OV. in *Pate* v. *Pate*, 84 L. J. P.C. 234; (1915) A.C. 1100; 31 T. L. R. 590.

Arnold *v.* Arnold, 2 Myl. & K. 365.
FOLL. in *Richardson, In re*, 84 L. J. Ch. 438; (1915) 1 Ch. 353; 112 L. T. 554.

Ashton Gas. Co. *v.* Att.-Gen., 75 L. J. Ch. 1; (1906) A.C. 10; 93 L. T. 676; 70 J. P. 49; 13 Manson, 35; 22 T. L. R. 82.
PRIN. of APPL. in *Johnston* v. *Chestergate Hat Manufacturing Co.*, 84 L. J. Ch. 914; (1915) 2 Ch. 338; 59 S. J. 692.

Atkinson, In re; Wilson *v.* Atkinson, 61 L. J. Ch. 504; (1892) 3 Ch. 52.
DIC. of North, J., in, NOT FOLL. in *Clarkson, In re; Public Trustee* v. *Clarkson*, 84 L. J. Ch. 881; (1915) 2 Ch. 216; 59 S. J. 630.

Att.-Gen. *v.* Clack, 1 Beav. 467.
DIST. in *Cotter, In re*, 84 L. J. Ch. 337; (1915) 1 Ch. 307; 112 L. T. 340; 59 S. J. 177.

Att.-Gen. *v.* Dodd, 63 L. J. Q.B. 319; (1894) 2 Q.B. 150; 70 L. T. 660; 42 W. R. 524; 58 J. P. 526.
CONS. in *Goswell's Trusts, In re*, 84 L. J. Ch. 719; (1915) 2 Ch. 106; 59 S. J. 579.

Auriferous Properties, In re (No. 2), 67 L. J. Ch. 574; (1898) 2 Ch. 428; 79 L. T. 71; 47 W. R. 75; 5 Manson, 260.
DIST. in *Peruvian Railway Construction Co., In re*, (1915) 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464.

Averill, In re; Salsbury *v.* Buckle, 67 L. J. Ch. 233; (1898) 1 Ch. 523; 78 L. T. 320; 46 W. R. 460.
DIST. in *Stevens, In re*, 84 L. J. Ch. 432; (1915) 1 Ch. 429; 112 L. T. 982; 59 S. J. 441.

Barnabas *v.* Bersham Colliery Co., 103 L. T. 513; 55 S. J. 63.
EXPL. in *Lewis* v. *Port of London Authority*, (1914) W.C. & I. Rep. 299; 111 L. T. 776; 58 S. J. 686.

Brickwood *v.* Reynolds, 67 L. J. Q.B. 26; (1898) 1 Q.B. 95; 77 L. T. 456; 46 W. R. 130.
COMM on in *Usher's Wiltshire Brewery* v. *Bruce*, 84 L. J. K.B. 417; (1915) A.C. 433; 112 L. T. 651; 6 Tax Cas. 399; 59 S. J. 144; 31 T. L. R. 104.

Brown *v.* Crossley, 80 L. J. K.B. 478; (1911) 1 K.B. 603; 104 L. T. 429; 75 J. P. 177; 9 L. G. R. 194; 27 T. L. R. 194.
FOLL. in *White* v. *Jackson*, 84 L. J. K.B. 1900; 79 J. P. 447; 31 T. L. R. 505.

Barnes *v.* Nunnery Colliery Co., 81 L. J. K.B. 213; (1912) A.C. 44; (1912) W.C. Rep. 90; 105 L. T. 961; 56 S. J. 159; 28 T. L. R. 135.
APPL. in *Herbert* v. *Fox & Co.*, 84 L. J. K.B. 670; (1915) 2 K.B. 81; (1915) W.C. & I. Rep. 154; 112 L. T. 833; 59 S. J. 249.

Bellerby *v.* Heyworth, 79 L. J. Ch. 402; (1910) A.C. 377; 102 L. T. 545; 74 J. P. 257; 54 S. J. 441; 26 T. L. R. 403.
APPL. in *Rex* v. *Registrar of Joint Stock Companies; Bowen, Ex parte*, 84 L. J. K.B. 229; (1914) 3 K.B. 1161; 112 L. T. 38; 30 T. L. R. 707.

Bernard *v.* Aaron, 31 L. J. C.P. 334; 9 Jur. N.S. 470.
FOLL. in *Associated Portland Cement Manufacturers* v. *Ashton*, 84 L. J. K.B. 519; (1915) 2 K.B. 1; 112 L. T. 486; 20 Com. Cas. 165.

Birmingham and Midland Motor Omnibus Co. *v.* London and North-Western Railway, 83 L. J. K.B. 474; (1913) 3 K.B. 850; 109 L. T. 64; 57 S. J. 752.
FOLL. in *Adam Steamship Co.* v. *London Assurance Corporation*, 83 L. J. K.B. 1861; (1914) 3 K.B. 1256; 111 L. T. 1031; 12 Asp. M.C. 559; 20 Com. Cas. 37; 59 S. J. 42.

Boulter *v.* Kent Justices, 66 L. J. Q.B. 787; (1897) A.C. 556; 77 L. T. 288; 46 W. R. 114; 61 J. P. 532.
DICT. of Lord Halsbury in, FOLL. in *Attwood* v. *Chapman*, 83 L. J. K.B. 1666; (1914) 3 K.B. 275; 111 L. T. 726; 79 J. P. 65; 30 T. L. R. 596.

Ball *v.* Hunt, 81 L. J. K.B. 782; (1912) A.C. 496; 106 L. T. 911; 56 S. J. 550; 28 T. L. R. 428; (1912) W.C. Rep. 261.
APPL. in *Jackson* v. *Hunslet Engine Co.*, 84 L. J. K.B. 1361; (1915) W.C. & I. Rep. 389; 113 L. T. 630.

Bisgood *v.* Henderson's Transvaal Estates, 77 L. J. Ch. 486; (1908) 1 Ch. 743; 98 L. T. 809; 15 Manson, 163; 24 T. L. R. 510.
OBS. in, FOLL. and APPL. in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; (1915) 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Baker & Co.'s Trade Marks, In re, 77 L. J. Ch. 473; (1908) 2 Ch. 86; 98 L. T. 721; 24 T. L. R. 467.
FOLL. in *Cadbury Brothers' Application, In re* (*No.* 2), 84 L. J. Ch. 827; (1915) 2 Ch. 307; 32 R. P. C. 456; 59 S. J. 598; 31 T. L. R. 523.

Barron *v.* Potter, 84 L. J. K.B. 751, 2008; (1915) 3 K.B. 593; 112 L. T. 688; 59 S. J. 650.
APPL. and FOLL. in *Boddington, In re; Salaman, ex parte*, 84 L. J. K.B. 2119.

Bainbridge *v.* Postmaster-General, 75 L. J. K.B. 366; (1906) 1 K.B. 178; 94 L. T. 120; 54 W. R. 221; 22 T. L. R. 70.
APPL. in *Roper* v. *Works and Public Buildings Commissioners*, 84 L. J. K.B. 129; (1915) 1 K.B. 45; 111 L. T. 630.

Bainbridge *v.* Smith, 41 Ch. D. 462; 60 L. T. 879; 37 W. R. 594.
DIST. in *British Murac Syndicate* v. *Alperton Rubber Co.*, 84 L. J. Ch. 665; (1915) 2 Ch. 186; 59 S. J. 494; 31 T. L. R. 391.

Baker *v.* Yorkshire Fire and Life Assurance Co., 61 L. J. Q.B. 838; (1892) 1 Q.B. 144; 66 L. T. 161.
APPL. in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; (1915) 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Barwell *v.* Newport Abercarn Black Vein Steam Coal Co., 84 L. J. K.B. 1105; (1915) 2 K.B. 256; 112 L. T. 806; 59 S. J. 233; 31 T. L. R. 136.
FOLL. in *Fairbanks* v. *Florence Coal and Iron Co.*, 84 L. J. K.B. 1115; (1915) 2 K.B. 714; 112 L. T. 1013.

Batchelour *v. Gee*, 83 L. J. K.B. 1714; (1914) 3 K.B. 242; 111 L. T. 256; 78 J. P. 362; 12 L. G. R. 931; 24 Cox C.C. 268; 30 T. L. R. 506.
NOT FOLL. in *Clifford* v. *Battley*, 84 L. J. K.B. 615; (1915) 1 K.B. 531; 112 L. T. 765; 79 J. P. 180; 13 L. G. R. 505; 31 T. L. R. 117.

Beard *v.* London General Omnibus Co., 69 L. J. Q.B. 895; (1900) 2 Q.B. 530; 83 L. T. 362; 48 W. R. 658.
CONS. and DIST. in *Ricketts* v. *Tilling*, 84 L. J. K.B. 342; (1915) 1 K.B. 644; 112 L. T. 137; 31 T. L. R. 17.

Beavan, In re; Davies, Banks & Co. *v.* Beavan, 81 L. J. Ch. 113; (1912) 1 Ch. 196; 105 L. T. 784.
FOLL. in *Lloyd* v. *Coote & Ball*, 84 L. J. K.B. 567; (1915) 1 K.B. 242; 112 L. T. 344.

Batt *v.* Metropolitan Water Board, 80 L. J. K.B. 1354; (1911) 2 K.B. 965; 105 L. T. 496; 9 L. G. R. 1123; 75 J. P. 545; 55 S. J. 714; 27 T. L. R. 579.
FOLL. in *Mist* v. *Metropolitan Water Board*, 84 L. J. K.B. 2041; 13 L. G. R. 874; 113 L. T. 500.

Bennett's Estate, In re, (1898) 1 Ir. R. 185.
NOT FOLL. in *Cross's Trust*, (1915) 1 Ir. R. 304.

Barker *v.* Herbert, 80 L. J. K.B. 1329; (1911) 2 K.B. 633; 105 L. T. 349; 75 J. P. 481; 9 L. G. R. 1083; 27 T. L. R. 488.
DISC. and DIST. in *Horridge* v. *Makinson*, 84 L. J. K.B. 1294; 113 L. T. 498; 13 L. G. R. 868; 31 T. L. R. 389.

Bective (Earl) *v.* Hodgson, 33 L. J. Ch. 601; 10 H.L. C. 656.
DIST. in *Stevens, In re*, 84 L. J. Ch. 432; (1915) 1 Ch. 429; 112 L. T. 982; 59 S. J. 441.

Bewley *v.* Atkinson, 49 L. J. Ch. 153; 13 Ch. D. 283.
CONS. in *Smith* v. *Colbourne*, 84 L. J. Ch. 112; (1914) 2 Ch. 533; 111 L. T. 927; 58 S. J. 783.

Birkenhead Corporation *v.* London and North-Western Railway, 55 L. J. Q.B. 48; 15 Q.B. D. 572; 50 J. P. 84.
DIST. in *Thurrock Grays and Tilbury Joint Sewerage Board* v. *Goldsmith*, 79 J. P. 17.

Blake *v.* Lanyon, 6 Term Rep. 221. FOLL. in *Wilkins and Brothers, Lim. v. Weaver*, 84 L. J. Ch. 929; (1915) 2 Ch. 322.

Blakeway *v.* Patteshall, (1894) 1 Q.B. 247. FOLL. in *Haywood v. Farabee*, 59 S. J. 234.

Bodega Co. *v.* Read, 84 L. J. Ch. 36; (1914) 2 Ch. 757; 111 L. T. 884; 59 S. J. 58; 31 T. L. R. 17. FOLL. in *Bodega Co. v. Martin*, 85 L. J. Ch. 17; (1915) 2 Ch. 385; 31 T. L. R. 595.

Boden, In re, 76 L. J. Ch. 100; (1907) 1 Ch. 132; 95 L. T. 741. DISC. in *Rose, In re*, 85 L. J. Ch. 22; 113 L. T. 142.

Boussmaker, Ex parte, 13 Ves. 71. FOLL. in *Rombach Baden Clock Co., In re*, 84 L. J. K.B. 1558; 31 T. L. R. 492.

Bowling & Welby's Contract, In re, 64 L. J. Ch. 427; (1895) 1 Ch. 663; 72 L. T. 411; 43 W. R. 417; 2 Manson, 257. DIST. by Astbury, J., in *Llewellyn v. Kasintoe Rubber Estates*, 84 L. J. 70; (1914) 2 Ch. 670; 112 L. T. 676; 21 Manson, 349; 58 S. J. 808; 30 T. L. R. 683.

Bradford Banking Co. *v.* Briggs, 56 L. J. Ch. 364; 12 App. Cas. 29; 56 L. T. 62; 35 W. R. 521. OBS. in, FOLL. and APPL. in *Hickman v. Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; (1915) 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Bradley *v.* James, Ir. R. 10 C. L. 441. CONS. in *Mackay, In re*, (1915) 2 Ir. R. 347.

Bridger, In re; Brompton Hospital *v.* Lewis, 63 L. J. Ch. 186; (1894) 1 Ch. 297; 70 L. T. 204; 42 W. R. 179. APPL. in *Groos, In re*, 84 L. J. Ch. 422; (1915) 1 Ch. 572; 112 L. T. 984; 59 S. J. 477.

Briggs *v.* Hartley, 19 L. J. Ch. 416. OV. in *Bowman, In re*, 85 L. J. Ch. 1; (1915) 2 Ch. 447; 59 S. J. 703; 31 T. L. R. 618.

British Asbestos Co. *v.* Boyd, 73 L. J. Ch. 31; (1903) 2 Ch. 439; 88 L. T. 763; 51 W. R. 667. APPL. in *Channell Collieries Trust v. St. Margarets, Dover, and Martin Mill Light Railway*, 84 L. J. Ch. 28; (1914) 2 Ch. 506; 111 L. T. 1051; 21 Manson, 328; 30 T. L. R. 647.

British Waggon Co. *v.* Lea, 49 L. J. Q.B. 321; 5 Q.B. D. 149; 42 L. T. 437; 28 W. R. 349; 44 J. P. 440. FOLL. in *Sorrentino v. Buerger*, 84 L. J. K.B. 725; (1915) 1 K.B. 307; 112 L. T. 294; 20 Com. Cas. 132.

Brook *v.* Badley, 37 L. J. Ch. 884; L. R. 3 Ch. 672. FOLL. in *Dawson, In re; Pattisson v. Bathurst*, 84 L. J. Ch. 476; (1915) 1 Ch. 626; 113 L. T. 19; 59 S. J. 363; 31 T. L. R. 277.

Brown & Gregory, In re, 73 L. J. Ch. 430; (1904) 1 Ch. 627; 52 W. R. 412; 11 Manson, 218. DIST. in *Peruvian Railway Construction Co., In re*, (1915) 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464.

Burman *v.* Zodiac Steam Fishing Co., 83 L. J. K.B. 1683; (1914) 3 K.B. 1039; 112 L. T. 58; (1914) W.C. & I. Rep. 520; 30 T. L. R. 651. CONS. in *Stephenson v. Rossall Steam Fishing Co.*, 84 L. J. K.B. 677; (1915) W.C. & I. Rep. 121; 112 L. T. 890.

Butterknowle Colliery Co. *v.* Bishop Auckland Industrial Co-operative Co., 75 L. J. Ch. 541; (1906) A.C. 305; 94 L. T. 795; 70 J. P. 361; 22 T. L. R. 516. CONS. in *Beard v. Moira Colliery Co.*, 84 L. J. Ch. 155; (1915) 1 Ch. 257; 112 L. T. 227; 59 S. J. 103.

Brown *v.* Lilley, 7 T. L. R. 427. DISC. and held not to be good law in *Tarry v. Witt*, 84 L. J. K.B. 950; 112 L. T. 1034; 31 T. L. R. 207.

Browne *v.* Furtado, 72 L. J. K.B. 296; (1903) 1 K.B. 723; 88 L. T. 309; 67 J. P. 161. DISC. in *Westminster School v. Reith*, 84 L. J. K.B. 168; (1915) A.C. 259; 112 L. T. 91; 6 Tax Cas. 486; 59 S. J. 57; 31 T. L. R. 31.

Browne *v.* La Trinidad, 57 L. J. Ch. 292; 37 Ch. D. 1. DIST. in *Hickman v. Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; (1915) 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Burnard *v.* Aaron, 31 L. J. C.P. 334; 9 Jur. (N.S.) 470. DIST. in *Associated Portland Cement Manufacturers v. Ashton*, 84 L. J. K.B. 519; (1915) 2 K.B. 1; 112 L. T. 486; 20 Com. Cas. 165.

Burrows *v.* Rhodes, 68 L. J. Q.B. 545; (1899) 1 Q.B. 816; 80 L. T. 591; 48 W. R. 13; 63 J. P. 532. CONS. in *Leslie, Lim. v. Reliable Advertising and Addressing Agency*, 84 L. J. K.B. 719; (1915) 1 K.B. 652; 112 L. T. 947; 31 T. L. R. 182.

Buccleuch (Duke) *v.* Metropolitan Board of Works, 41 L. J. Ex. 137; L. R. 5 H.L. 418; 27 L. T. 1. CONS. and DIST. in *Recher v. North British and Mercantile Insurance Co.*, 84 L. J. K.B. 1813; (1915) 3 K.B. 277; 113 L. T. 827.

Clapp *v.* Carter, (1914) W.C. & I. Rep. 80; 110 L. T. 491; 58 S. J. 232. APPL. in *Potter v. Welsh & Sons*, 83 L. J. K.B. 1852; (1914) 3 K.B. 1020; (1914) W.C. & I. Rep. 607; 112 L. T. 7; 30 T. L. R. 644.

Clutterbuck *v.* Clutterbuck, 108 L. T. 573; 29 T. L. R. 480. DISAPPR. in *Tangye v. Tangye*, 83 L. J. P. 164; (1914) P. 201; 111 L. T. 944; 58 S. J. 723; 30 T. L. R. 649.

Cohen, In re, 80 L. J. Ch. 208; (1911) 1 Ch. 37; 103 L. T. 626; 55 S. J. 11. DIST. in *Holland, In re*, 84 L. J. Ch. 389; (1914) 2 Ch. 595; 112 L. T. 27.

Cook *v.* Montreal (Owners), (1913) W.C. & I. Rep. 206; 108 L. T. 164; 57 S. J. 282; 29 T. L. R. 233. DIST. in *Webber v. Wansbrough Paper Co.*, 84 L. J. K.B. 127; (1915) A.C. 51; (1915) W.C. & I. Rep. 313; 111 L. T. 658; 58 S. J. 685; 30 T. L. R. 615.

Cowes District Council *v.* Southampton Steam Packet Co., 74 L. J. K.B. 665; (1905) 2 K.B. 287; 92 L. T. 658; 53 W. R. 602; 69 J. P. 298; 3 L. G. R. 807; 21 T. L. R. 506. CONS. in *General Estates Co. v. Bearer*, 84 L. J. K.B. 21; (1914) 3 K.B. 918; 111 L. T. 957; 79 J. P. 41; 12 L. G. R. 1146; 30 T. L. R. 634.

Craven, In re, 83 L. J. Ch. 403; (1914) 1 Ch. 358; 109 L. T. 846; 58 S. J. 138. FOLL. in *Forster-Brown, In re*, 84 L. J. Ch. 361; (1914) 2 Ch. 584; 112 L. T. 681.

Caistor Rural District Council *v.* Taylor, 71 J. P. 310. APPR. and FOLL. in *Rex. v. Beacontree Justices*, 84 L. J. K.B. 2230; (1915) 3 K.B. 388; 31 T. L. R. 509.

California Copper Syndicate *v.* Harris, 6 Fraser, 894; 5 Tax Cas. 159. APPR. and FOLL. in *Commissioner of Taxes v. Melbourne Trust*, 84 L. J. P.C. 21; (1914) A.C. 1001; 111 L. T. 1040; 30 T. L. R. 685.

Cardiff Corporation *v.* Hall, 80 L. J. K.B. 644; (1911) 1 K.B. 1009; 104 L. T. 467; 27 T. L. R. 339.

CONS. *in Silcock* v. *Golightly*, 84 L. J. K.B. 499; (1915) 1 K.B. 748; (1915) W.C. & I. Rep. 164; 112 L. T. 800.

Carr *v.* Ingleby, 1 De G. & S. 362*n*.

FOLL. in *Richardson, In re; Mahony* v. *Treacy*, (1915) 1 Ir. R. 39; and in *Dempster, In re*, 84 L. J. Ch. 597; (1915) 1 Ch. 795; 112 L. T. 1124.

Cavendish *v.* Strutt, 73 L. J. Ch. 247; (1904) 1 Ch. 524; 90 L. T. 500; 52 W. R. 333; 20 T. L. R. 99.

JUDG. in, CORR in *Giles* v. *Randall*, 84 L. J. K.B. 786; (1915) 1 K.B. 290; 112 L. T. 271; 59 S. J. 131.

Caygill *v.* Thwaite, 49 J. P. 614; 33 W. R. 581.

CONS. and FOLL. in *Learett* v. *Clark*, 84 L. J. K.B. 2157; (1915) 3 K.B. 9; 113 L. T. 424.

Carlin *v.* Stephen, (1911) S. C. 901; 5 B.W.C.C. 486.

CONS. in *Silcock* v. *Golightly*, 84 L. J. K.B. 499; (1915) 1 K.B. 748; (1915) W.C. & I. Rep. 164; 112 L. T. 800.

Catlin, In re, 18 Beav. 508.

DIST. in *Morgan & Co., In re*, 84 L. J. Ch. 249; (1915) 1 Ch. 182; 112 L. T. 239; 59 S. J. 289.

Cassella's Trade Mark, In re, 79 L. J. Ch. 529; (1910) 2 Ch. 240; 102 L. T. 792; 27 R. P. C. 453; 54 S. J. 505; 26 T. L. R. 472.

CONS. and APPL. in *Sharpe's Trade Mark, In re*, 84 L. J. Ch. 290; 112 L. T. 435; 32 R. P. C. 15; 31 T. L. R. 105.

Chaplin *v.* Chaplin, 3 P. Wms. 229.

APPL. in *Pinkerton* v. *Pratt*, (1915) 1 Ir. R. 406.

Challenger *v.* Sheppard, 8 Term Rep. 597.

DIST. in *Jones, In re*, 84 L. J. Ch. 222; (1915) 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Challis *v.* London and South-Western Railway, 74 L. J. K.B. 569; (1905) 2 K.B. 154; 93 L. T. 330; 53 W. R. 613; 21 T. L. R. 486.

DISC and DIST. in *Clayton* v. *Hardwick Colliery Co.*, (1914) W.C. & I. Rep. 343; 111 L. T. 788.

Charing Cross, West End, and City Electricity Supply Co. *v.* London Hydraulic Power Co., 83 L. J. K.B. 116, 1352; (1913) 3 K.B. 442; (1914) 3 K.B. 772; 109 L. T. 635; 111 L. T. 198; 77 J. P. 378; 78 J. P. 305; 11 L. G. R. 1013; 12 L. G. R. 807; 29 T. L. R. 649; 30 T. L. R. 441.

DIST. in *Goodbody* v. *Poplar Borough Council*, 84 L. J. K.B. 1230; 79 J. P. 218; 13 L. G. R. 166.

Chant, In re, 69 L. J. Ch. 601; (1900) 2 Ch. 345; 83 L. T. 341; 48 W. R. 646.

FOLL. in *Jones, In re*, 84 L. J. Ch. 222; (1915) 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Chaytor, In re; Chaytor v. Horn, 74 L. J. Ch. 106; (1905) 1 Ch. 233; 92 L. T. 290; 53 W. R. 251.

DIST. in *Inman, In re*, 84 L. J. Ch. 309; (1915) 1 Ch. 187; 112 L. T. 240; 59 S. J. 161.

Cherry *v.* Boultbee, 9 L. J. Ch. 118; 4 Myl. & Cr. 442.

PRIN. of held INAPPL. in *Smelting Corporation, In re; Seaver* v. *Smelting Corporation*, 84 L. J. Ch. 571; (1915) 1 Ch. 472; 113 L. T. 44; (1915) H. B. R. 126; CONS. in *Peruvian Railway Construction Co., In re*, (1915) 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464; and in *Dacre, In re*, (1915) 2 Ch. 480.

Chilton *v.* Blair & Co., (1914) W.C. & I. Rep. 346; 58 S. J. 669; 30 T. L. R. 623.

DIST. in *Herbert* v. *Fox & Co.*, 84 L. J. K.B. 670; (1915) 2 K.B. 81; (1915) W.C. & I. Rep. 154; 112 L. T. 833; 59 S. J. 249.

Chilcote *v.* Youldon, 29 L. J. M.C. 197; 3 E. & E. 7.

DISC. in *Blackett* v. *Ridout*, 84 L. J. K.B. 1535; (1915) 2 K.B. 415.

Churchill *v.* Denny, 44 L. J. Ch. 578; L. R. 20 Eq. 534.

REF. to in *Biscoe, In re*, 111 L. T. 902.

Citizens Insurance Co. *v.* Parsons, 51 L. J. P.C. 11; 7 App. Cas. 96; 45 L. T. 721.

FOLL. in *John Deere Plow Co.* v. *Wharton*, 84 L. J. P.C. 64; (1915) A.C. 330; 112 L. T. 183; 31 T. L. R. 35.

Clark *v.* London General Omnibus Co., 75 L. J. K.B. 907; (1906) 2 K.B. 648; 95 L. T. 435.

DIST. in *Berry* v. *Humm*, 84 L. J. K.B. 918; (1915) 1 K.B. 627; 31 T. L. R. 198.

Cleveland (Duke), In re; Barnard *v.* Wolmer, 62 L. J. Ch. 955; (1893) 3 Ch. 244.

FOLL. in *Upton-Cottrell-Dormer, In re*, 84 L. J. Ch. 861; 112 L. T. 974; 31 T. L. R. 260.

Cleaver *v.* Mutual Reserve Fund Life Association, 61 L. J. Q.B. 128; (1892) 1 Q.B. 147; 66 L. T. 220; 40 W. R. 230; 56 J. P. 180.

APPL. in *Burgess' Policy, In re*, 113 L. T. 443; 59 S. J. 546.

Cobbold, In re, (1903) 2 Ch. 299.

ATTEN. called to errata in report of, in *Davey, In re*, (1915) 1 Ch. 837.

Cockroft *v.* Black, 2 P. Wms. 298.

DISC. in *Sutherland (Dowager Duchess), In re; Michell* v. *Bubna (Countess)*, 84 L. J. Ch. 126; (1914) 2 Ch. 720; 112 L. T. 72.

Cole *v.* Accident Insurance Co., 5 T. L. R. 736.

CONS. in *United London & Scottish Insurance Co., In re; Brown's Claim*, 84 L. J. Ch. 620; (1915) 2 Ch. 167; 113 L. T. 397; 59 S. J. 529; 31 T. L. R. 419.

Cohen, In re; Brookes *v.* Cohen, 80 L. J. Ch. 208; (1911) 1 Ch. 37; 103 L. T. 626; 55 S. J. 11.

DIST. in *Holland, In re*, 84 L. J. Ch. 389; (1914) 2 Ch. 595; 112 L. T. 27.

Colburn *v.* Patmore, 3 L. J. Ex. 317; 1 Cr. M. & R. 73.

CONS. in *Leslie, Lim.* v. *Reliable Advertising and Addressing Agency*, 84 L. J. K.B. 719; (1915) 1 K.B. 652; 112 L. T. 947; 31 T. L. R. 182.

Cole *v.* Kernot, 41 L. J. Q.B. 221; L. R. 7 Q.B. 534*n*.

EXPL. and DIST. in *Lind, In re*, 84 L. J. Ch. 884; (1915) 2 Ch. 345; 59 S. J. 651.

Collyer *v.* Isaacs, 51 L. J. Ch. 14; 19 Ch. D. 342.

EXPL. and DIST. in *Lind, In re*, 84 L. J. Ch. 884; (1915) 2 Ch. 345; 59 S. J. 651.

Company (0022 and 0023 of 1915), In re, 84 L. J. Ch. 382; (1915) 1 Ch. 520; 112 L. T. 1100; (1915) H. B. R. 65; 59 S. J. 302; 31 T. L. R. 241.

APPL. in *Globe Trust, In re*, 84 L. J. Ch. 903; 113 L. T. 80; 59 S. J. 529; 31 T. L. R. 280.

Condon *v.* Mitchelstown Rural Council, (1914) 1 Ir. R. 113.

APPR. in *Marron* v. *Cootehill No. 2 Rural Council*, 84 L. J. P.C. 125; (1915) A.C. 792; 79 J. P. 401

Continental Tyre and Rubber Co. *v.* Daimler Co., 84 L. J. K.B. 926; (1915) 1 K.B. 893; 112 L. T. 324; 20 Com. Cas. 209; 59 S. J. 232; 31 T. L. R. 159. — APPL. in *The Poona*, 84 L. J. P. 150; 112 L. T. 782; 59 S. J. 151; 31 T. L. R. 411.

Commercial Bank of Australia *v.* Wilson, 62 L. J. P.C. 61; (1893) A.C. 181; 68 L. T. 540; 41 W. R. 603. — CONS. and DIST. in *Mackinnon's Trustee* v. *Bank of Scotland*, (1915) S. C. 411.

Cook *v.* Gordon, 61 L. J. Q.B. 445. — CONS. in *Abrahams* v. *Dimmock*, 84 L. J. K.B. 802; (1915) 1 K.B. 662; 112 L. T. 386; 59 S. J. 188; 31 T. L. R. 87.

Cooper *v.* Cooper, 44 L. J. Ch. 6, 14; L. R. 7 H.L. 53, 69. — APPL. in *Williams, In re; Cunliff* v. *Williams*, 84 L. J. Ch. 578; (1915) 1 Ch. 450.

Cooper *v.* Reg., 49 L. J. Ch. 490; 14 Ch. D. 311. — FOLL. in *Yorke* v. *Regem*, 84 L. J. K.B. 947; (1915) 1 K.B. 852; 112 L. T. 1135; 31 T. L. R. 220.

Cooper *v.* Martin, L. R. 3 Ch. 47. — DISC. *in Safford's Settlement, In re*, 84 L. J. Ch. 766; (1915) 2 Ch. 211; 59 S. J. 666; 31 T. L. R. 529.

Cottrell, In re; Buckland *v.* Bedingfield, 79 L. J. Ch. 189; (1910) 1 Ch. 402; 102 L. T. 157. — APPL. in *Dempster, In re; Borthwick* v. *Lovell*, 84 L. J. Ch. 597; (1915) 1 Ch. 795; 112 L. T. 1124; and in *Richardson, In re*, 84 L. J. Ch. 438; (1915) 1 Ch. 353; 112 L. T. 554.

Cosier, In re; Humphreys *v.* Gadsden, 66 L. J. Ch. 236; (1897) 1 Ch. 325; 76 L. T. 31; 45 W. R. 376. — APPL. in *Trollope, In re*, 84 L. J. Ch. 553; (1915) 1 Ch. 853; 113 L. T. 153.

Cowley *v.* Newmarket Local Board, 62 L. J. Q.B. 65; (1892) A.C. 345; 67 L. T. 486. — APPL. in *Papworth* v. *Battersea Borough Council* (No. 2), 84 L. J. K.B. 1881; 79 J. P. 309.

Cowan *v.* Milbourn 36 L. J. Ex. 124; 79 J. P. 309; L. R. 2 Ex. 230; 16 L. T. 290; 15 W. R. 750. — OV. in *Bowman, In re*, 85 L. J. Ch. 1; (1915) 2 Ch. 447; 59 S. J. 703; 31 T. L. R. 618.

Crips, In re; Crips *v.* Todd, 95 L. T. 865. — APPL. in *Johnson, In re; Cowley* v. *Public Trustee*, 84 L. J. Ch. 393; (1915) 1 Ch. 435; 112 L. T. 935; 59 S. J. 333.

Crittall Manufacturing Co. *v.* London County Council, 75 J. P. 203. — DISAPPR. in *Hampton* v. *Glamorgan County Council*, 84 L. J. K.B. 1506; 113 L. T. 112; 13 L. G. R. 819.

Coupland *v.* Hardingham, 3 Camp. 398. — DIST. of Lord Ellenborough in, APPR. and APPL. in *Att.-Gen.* v. *Roe*, 84 L. J. Ch. 322; (1915) 1 Ch. 235; 112 L. T. 581; 79 J. P. 263; 13 L. G. R. 335.

Crowder *v.* Stone, 7 L. J. (o.s.) Ch. 93; 3 Russ. 217. — DIST. in *Dunn* v. *Morgan*, 84 L. J. Ch. 812; 113 L. T. 444.

County of Gloucester Bank *v.* Rudry Merthyr Steam and House Coal Colliery Co., 64 L. J. Ch. 451; (1895) 1 Ch. 629; 72 L. T. 375; 43 W. R. 486; 2 Manson, 223. — FOLL. in *Cox* v. *Dublin City Distillery*, (1915) 1 Ir. R. 345

Crosfield & Sons' Application, In re, 79 L. J. Ch. 211; (1910) 1 Ch. 130; 101 L. T. 587; 54 S. J. 100; 26 T. L. R. 109. — CONS. and APPL. in *Sharpe's Trade Mark, In re*, 84 L. J. Ch. 290; 112 L. T. 435; 32 R. P. C. 15; 31 T. L. R. 105.

Drucker, In re, 71 L. J. K.B. 686; (1902) 2 K.B. 237; 86 L. T. 785; 9 Manson, 237. — FOLL. in *Hooley, In re*, 84 L. J. K.B. 1415.

Dawson *v.* African Consolidated Land, &c. Co., 67 L. J. Ch. 47; (1898) 1 Ch. 6; 77 L. T. 392; 46 W. R. 132; 4 Manson, 372. — APPL. in *Channel Collieries* v. *Dover, St. Margaret's, and Martin Mill Light Railway*, 84 L. J. Ch. 28; (1914) 2 Ch. 506; 111 L. T. 1051; 21 Manson, 328; 30 T. L. R. 647.

Devonshire, The, 81 L. J. P. 94; (1912) A.C. 634; 107 L. T. 179; 57 S. J. 10; 28 T. L. R. 551. — DIST. in *The Umona*, 83 L. J. P. 106; (1914) P. 141; 111 L. T. 415; 12 Asp. M.C. 527; 30 T. L. R. 498.

Donaldson *v.* Cowan, (1909) S. C. 1292. — DISAPPR. in *Gibson* v. *Wishart*, 83 L. J. P.C. 321; (1915) A.C. 18; 111 L. T. 466; 58 S. J. 592; 30 T. L. R. 540.

Drylie *v.* Alloa Coal Co., (1913) S. C. 549; (1913) W.C. & I. Rep. 213. — APPR. in *Brown* v. *Watson*, 83 L. J. P.C. 307; (1915) A.C. 1; (1914) W.C. & I. Rep. 228; 111 L. T. 347; 58 S. J. 533; 30 T. L. R. 501.

Dunning *v.* Owen, 76 L. J. K.B. 796; (1907) 2 K.B. 237; 97 L. T. 241; 71 J. P. 383; 23 T. L. R. 494. — DIST. in *Mellor* v. *Lydiate*, 84 L. J. K.B. 8; (1914) 3 K.B. 1141; 111 L. T. 988; 79 J. P. 68; 30 T. L. R. 704.

D. *v.* A. & Co., 69 L. J. Ch. 382; (1900) 1 Ch. 484; 82 L. T. 47; 48 W. R. 429. — APPL. in *Aberdonia Cars, Lim.* v. *Brown, Hughes & Strachan, Lim.*, 59 S. J. 598.

D. *v.* D.—See Dickinson *v.* Dickinson.

Dagnall, In re; Soan & Morley, ex parte, 65 L. J. Q.B. 666; (1896) 2 Q.B. 407; 75 L. T. 142; 45 W. R. 79; 3 Manson, 218. — APPL. in *Clark, In re; Pope, ex parte*, 84 L. J. K.B. 89; (1914) 3 K.B. 1095; 112 L. T. 873; (1915) H. B. R. 1; 59 S. J. 44.

Dane *v.* Mortgage Insurance Corporation, 63 L. J. Q.B. 144; (1894) 1 Q.B. 54; 70 L. T. 83; 42 W. R. 227. — APPL. in *Law Guarantee Trust and Accident Society, In re* (No. 2), 84 L. J. Ch. 1; (1914) 2 Ch. 617; 111 L. T. 817; 58 S. J. 704; 30 T. L. R. 616

David *v.* Rees, 73 L. J. K.B. 729; (1904) 2 K.B. 435; 91 L. T. 244; 52 W. R. 579; 20 T. L. R. 577. — CONS. in *Reid* v. *Cupper*, 84 L. J. K.B. 573; (1915) 2 K.B. 147; 112 L. T. 573; 59 S. J. 144; 31 T. L. R. 103.

Dean *v.* Rubian Art Pottery, 83 L. J. K.B. 799; (1914) 2 K.B. 213; (1914) W.C. & I. Rep. 147; 110 L. T. 594; 58 S. J. 302; 30 T. L. R. 283. — COMM. on in *M'Gowan* v. *Merry & Cunninghame, Lim.*, (1915) S. C. 34.

De Hoghton *v.* De Hoghton, 65 L. J. Ch. 667; (1896) 2 Ch. 385; 74 L. T. 613; 44 W. R. 635. — FOLL. in *Greenwood* v. *Lutman*, (1915) 1 Ir. R. 266.

Davy *v.* Gray, 48 Ir. L. T. R. 32. — FOLL. in *Cleary* v. *London and North-Western Railway*, (1915) 2 Ir. R. 210.

Davis & Sons *v.* Taff Vale Railway, 64 L. J. Q.B. 488; (1895) A.C. 542; 72 L. T. 632; 44 W. R. 172. — FOLL. in *Att.-Gen.* v. *North-Eastern Railway*, 84 L. J. Ch. 657; (1915) 1 Ch. 905; 113 L. T. 25.

Deards *v.* Edinburgh Assessor, (1911) S. C. 918.

DIST. in *Maxwell* v. *Galashiels Assessor*, (1915) S. C. 765.

Dearberg *v.* Letchford, 72 L. T. 489.

NOT FOLL. in *Natt's Settlement, In re*, 84 L. J. Ch. 877; (1915) 2 Ch. 431; 59 S. J. 717.

Dickinson *v.* Dickinson, 82 L. J. P. 121; (1913) P. 198; 109 L. T. 408; 58 S. J. 32; 29 T. L. R. 765.

OV. in *Napier* v. *Napier*, 84 L. J. P. 177; (1915) P. 184; 113 L. T. 764; 59 S. J. 560; 31 T. L. R. 472.

De Francesco *v.* Barnum (No. 2), 60 L. J. Ch. 63; 45 Ch. D. 430.

FOLL. *in Fred Wilkins & Brother, Lim.* v. *Weaver*, 84 L. J. Ch. 929; (1915) 2 Ch. 322.

Didisheim *v.* London and Westminster Bank, 69 L. J. Ch. 443; (1900) 2 Ch. 15; 82 L. T. 738; 48 W. R. 501.

FOLL. in *Pelegrin* v. *Coutts & Co.*, 84 L. J. Ch. 576; (1915) 1 Ch. 696; 113 L. T. 140.

Dewdney, Ex parte, 15 Ves. 479.

APPL. in *Fleetwood and District Electric Light, &c., Syndicate, In re*, 84 L. J. Ch. 873; (1915) 1 Ch. 486; 112 L. T. 1127; (1915) H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221.

Doherty *v.* Kennedy, (1912) 1 Ir. R. 349 (on appeal, *sub nom. Dublin Distillery* v. *Doherty*, 83 L. J. P.C. 265; (1914) A.C. 823).

CONS. in *Cox* v. *Dublin City Distillery*, (1915) 1 Ir. R. 345.

Doering *v.* Doering, 58 L. J. Ch. 553; 42 Ch. D. 203; 37 W. R. 796.

CONS. in *Dacre, In re*, (1915) 2 Ch. 480.

Donnelly's Estate, In re, (1913) 1 Ir. R. 177.

DIST. in *Connell's Settlement, In re*, 84 L. J. Ch. 601; (1915) 1 Ch. 867.

Dowell *v.* Dew, 12 L. J. Ch. 158; aff. 1 Y. & C. C.C. 345.

DIST. in *Purchase* v. *Lichfield Brewery Co.*, 84 L. J. K.B. 742; (1915) 1 K.B. 184; 111 L. T. 1105.

Drew *v.* Barry, Ir. R. 8 Eq. 260.

CONS. in *Franks's Estate, In re*, (1915) 1 Ir. R. 387.

Eberle's Hotels Co. *v.* Jonas, 56 L. J. Q.B. 278; 18 Q.B. D. 459; 35 W. R. 467.

PRIN. stated in, APPL. in *Thorn & Son, Lim., In re*, 84 L. J. Ch. 161; (1914) 2 Ch. 438; 112 L. T. 30; (1915) H. B. R. 19; 58 S. J. 755.

Elphinstone (Lord) *v.* Monkland Iron and Coal Co., 11 App. Cas. 332.

DICT. of Lord Watson in, APPL. in *Dunlop Pneumatic Tyre Co.* v. *New Garage and Motor Co.*, 83 L. J. K.B. 1574; (1915) A.C. 79; 111 L. T. 862; 30 T. L. R. 625.

Eastbourne Corporation *v.* Bradford, 65 L. J. Q.B. 571; (1896) 2 Q.B. 205; 74 L. T. 762; 45 W. R. 31; 60 J. P. 501.

APPL. in *Hull Corporation* v. *North-Eastern Railway*, 84 L. J. Ch. 329; (1915) 1 Ch. 456; 112 L. T. 584; 79 J. P. 221; 13 L. G. R. 587; 59 S. J. 318.

Eaves *v.* Blaenclydach Colliery Co., 78 L. J. K.B. 809; (1909) 2 K.B. 73; 100 L. T. 751.

APPL. in *Wall, Lim.* v. *Steel*, 84 L. J. K.B. 1599; (1915) W.C. & I. Rep. 117; 112 L. T. 846.

Eddystone Marine Insurance Co., In re, 61 L. J. Ch. 362; (1892) 2 Ch. 423; 66 L. T. 370; 40 W. R. 441.

APPL. in *Law Guarantee Trust and Accident Society, In re (No. 2)*, 84 L. J. Ch. 1; (1914) 2 Ch. 617; 111 L. T. 817; 58 S. J. 704; 30 T. L. R. 616.

Edwards *v.* Edwards, 45 L. J. Ch. 391; 2 Ch. D. 291; 34 L. T. 472; 24 W. R. 713.

APPL. in *Monolithic Building Co., In re; Taeon* v. *The Company*, 84 L. J. Ch. 441; (1915) 1 Ch. 643; 112 L. T. 619; 59 S. J. 332.

Edwards *v.* Hope, 54 L. J. Q.B. 379; 14 Q.B. D. 922; 53 L. T. 69.

CONS. in *Reid* v. *Cupper*, 84 L. J. K.B. 573; (1915) 2 K.B. 147; 112 L. T. 573; 59 S. J. 144; 31 T. L. R. 103.

Eley *v.* Positive Government Security Life Assurance Co., 45 L. J. Ex. 451; 1 Ex. D. 88; 34 L. T. 190; 24 W. R. 338.

DIST. in *Hiekman* v. *Kent* (or *Romney Marsh*) *Sheep Breeders' Association*, 84 L. J. Ch. 688; (1915) 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Emanuel *v.* Constable, 5 L. J. (o.s.) Ch. 191; 3 Russ. 436.

APPL. in *Limoud, In re*, 84 L. J. Ch. 833; (1915) 2 Ch. 240; 113 L. T. 815; 59 S. J. 613.

Emmet *v.* Emmet, 49 L. J. Ch. 295; 13 Ch. D. 484.

FOLL. in *Faux, In re*, 84 L. J. Ch. 873; 113 L. T. 81; 59 S. J. 457; 31 T. L. R. 289.

Englehart *v.* Farrant, 66 L. J. Q.B. 122; (1897) 1 Q.B. 240; 75 L. T. 617; 45 W. R. 179.

CONS. and APPL. in *Ricketts* v. *Tilling*, 84 L. J. K.B. 342; (1915) 1 K.B. 644; 112 L. T. 137; 31 T. L. R. 17.

Esposito *v.* Bowden, 27 L. J. Q.B. 17; 7 E. & B. 763.

CONS. in *Karberg & Co.* v. *Blythe, Green, Jourdain & Co.*, 84 L. J. K.B. 1673; (1915) 2 K.B. 379; 113 L. T. 185; 31 T. L. R. 351.

Everson, In re, 74 L. J. K.B. 38; (1904) 2 K.B. 619; 91 L. T. 81; 52 W. R. 656.

DIST. in *Arnold, In re; Hext, ex parte*, 84 L. J. K.B. 110; (1914) 3 K.B. 1078; (1915) H. B. R. 11; 21 Manson, 319; 59 S. J. 9; 30 T. L. R. 691.

Exchange Telegraph *v.* Gregory, 65 L. J. Q.B. 262; (1896) 1 Q.B. 147; 74 L. T. 83; 60 J. P. 52.

POINT in, FOLL. in *Goldsoll* v. *Goldman*, 84 L. J. 63; (1914) 2 Ch. 603; 112 L. T. 21; 59 S. J. 43.

Eyton & Co., In re, 57 L. J. Ch. 127; 36 Ch. D. 299; 57 L. T. 899.

APPL. in *Rubber and Produce Investment Trust, In re*, 84 L. J. Ch. 534; (1915) 1 Ch. 382; 112 L. T. 1129; (1915) H. B. R. 120; 31 T. L. R. 253.

Falkland Islands Co. *v.* Reg., 1 Moo. P.C. (N.S.) 299.

APPR. in *Arnold* v. *King-Emperor*, 83 L. J. P.C. 293; (1914) A.C. 644; L. R. 41 Ind. App. 149; 111 L. T. 324; 24 Cox C.C. 297; 30 T. L. R. 462.

Fenton *v.* Nevin, 31 L. R. Ir. 478.

DIST. in *Howell, In re; Buckingham, In re; Liggins* v. *Buckingham*, 84 L. J. Ch. 209; (1915) 1 Ch. 241; 112 L. T. 188.

Frederick *v.* Bognor Water Co., 78 L. J. Ch. 40; (1909) 1 Ch. 149; 99 L. T. 728 72 J. P. 501; 7 L. G. R. 45; 25 T. L. R. 31.

DIST. in *Oddenino* v. *Metropolitan Water Board*, 84 L. J. Ch. 102; (1914) 2 Ch. 734; 112 L. T. 115; 79 J. P. 89; 13 L. G. R. 33; 59 S. J. 129; 31 T. L. R. 23.

Feldman, In re, 97 L. T. 548; 71 J. P. 269; 5 L. G. R. 653; 23 T. L. R. 432.

DISC. in *Stock* v. *Central Midwives Board*, 84 L. J. K.B. 1835; (1915) 3 K.B. 756; 113 L. T. 428; 79 J. P. 397; 31 T. L. R. 436.

Firth *v.* McPhail, 74 L. J. K.B. 458; (1905) 2 K.B. 300; 92 L. T. 567; 69 J. P. 203; 3 L. G. R. 478; 21 T. L. R. 403.

CONS. in *Bothamley* v. *Jolly*, 84 L. J. K.B. 2223; (1915) 3 K.B. 425; 31 T. L. R. 626.

Finlay *v.* Chirney, 57 L. J. Q.B. 247; 20 Q.B. D. 494; 58 L. T. 664; 52 J. P. 324.

DICTA in, NOT FOLL. in *Quirk* v. *Thomas*, 84 L. J. K.B. 953; (1915) 1 K.B. 798; 59 S. J. 350; 31 T. L. R. 237.

Felstead *v.* Director of Public Prosecutions or Regem, 83 L. J. K.B. 1132; (1914) A.C. 534; 111 L. T. 218; 78 J. P. 313; 24 Cox C.C. 243; 58 S. J. 534; 30 T. L. R. 469.

APPL. in *Rex* v. *Taylor*, 84 L. J. K.B. 1671; (1915) 2 K.B. 709; 113 L. T. 513; 79 J. P. 439; 59 S. J. 530; 31 T. L. R. 449; and FOLL. in *Houghton, In re*, 84 L. J. Ch. 726; (1915) 2 Ch. 173; 113 L. T. 422; 59 S. J. 562; 31 T. L. R. 427.

Finlay *v.* Liverpool and Great Western Steamship Co., 23 L. T. 251.

DICTUM of Martin, B., in, CONS. in *Sanday* v. *British and Foreign Marine Insurance Co.*, 84 L. J. K.B. 1625; (1915) 2 K.B. 781; 59 S. J. 456; 31 T. L. R. 374.

Finlay *v.* Mexican Investment Corporation, 66 L. J. Q.B. 151; (1897) 1 Q.B. 517; 76 L. T. 257.

APPL. in *Law Guarantee Trust and Accident Society, In re* (*No.* 2), 84 L. J. Ch. 1; (1914) 2 Ch. 617; 111 L. T. 817; 58 S. J. 704; 30 T. L. R. 616.

Flatau, In re; Scotch Whiskey Distillers, ex parte, 22 Q.B. D. 83; 37 W. R. 42.

APPL. in *Howell, In re*, 84 L. J. K.B. 1399.

Fleetwood, In re; Sidgreaves *v.* Brewer, 49 L. J. Ch. 514; 15 Ch D. 594; 29 W. R. 45.

DOUBTED in *Le Page* v. *Gardom*, 84 L. J. Ch. 749; 113 L. T. 475; 59 S. J. 599.

Fraser *v.* Riddell & Co., (1914) W.C. & I. Rep. 125; 1913, S. L. T. 377.

FOLL. in *Williams* v. *Llandudno Coaching and Carriage Co.*, 84 L. J. K.B. 655; (1915) 2 K.B. 101; (1915) W.C. & I. Rep. 91; 112 L. T. 848; 59 S. J. 286; 31 T. L. R. 186.

Friends, The, Edw. Adm. 346.

CONS. in *The Iolo*, 59 S. J. 545; 31 T. L. R. 474.

Frith *v.* "Louisianian" (Owners), 81 L. J. K.B. 701; (1912) 2 K.B. 155; (1912) W.C. Rep. 285; 106 L. T. 667; 28 T. L. R. 331.

DIST. in *Williams* v. *Llandudno Coaching and Carriage Co.*, 84 L. J. K.B. 655; (1915) 2 K.B. 101; (1915) W.C. & I. Rep. 91; 112 L. T. 848; 59 S. J. 286; 31 T. L. R. 186.

Foster *v.* Great Western Railway, 73 L. J. K.B. 811; (1904) 2 K.B. 306; 90 L. T. 779; 52 W. R. 685; 20 T. L. R. 472.

DIST. in *Gunyon* v. *South-Eastern and Chatham Railway Companies Managing Committee*, 84 L. J. K.B. 1212; (1915) 2 K.B. 370; 31 T. L. R. 344.

Frost, In re, 59 L. J. Ch. 118; 43 Ch. D. 246; 62 L. T. 25.

APPL. in *Bullock's Will Trusts, In re*, 84 L. J. Ch. 463; (1915) 1 Ch. 493; 112 L. T. 1119; 59 S. J. 441.

Forrest *v.* Manchester &c. Railway, 30 Beav. 40; 4 L. T. 606.

DISAPPR. in *Dundee Harbour Trustees* v. *Nicol*, 84 L. J. P.C. 74; (1915) A.C. 550; 112 L. T. 697; 31 T. L. R. 118.

Foley *v.* Burnell, 1 Bro. C.C. 274; 4 Bro. P.C. 34.

CONS. in *Swan, In re*, 84 L. J. Ch. 590; (1915) 1 Ch. 829; 113 L. T. 42; 31 T. L. R. 266.

Giebler *v.* Manning, 75 L. J. K.B. 463; (1906) 1 K.B. 709; 94 L. T. 580; 54 W. R. 527; 70 J. P. 181; 4 L. G. R. 561; 22 T. L. R. 416.

JUDG. of Lord Alverstone, C.J., in, EXPL. in *Kates* v. *Jeffery*, 83 L. J. K.B. 1760; (1914) 3 K.B. 160; 111 L. T. 459; 24 Cox C.C. 324; 12 L. G. R. 974; 78 J. P. 310.

Gibbon *v.* Paddington Vestry, 69 L. J. Ch. 746; (1900) 2 Ch. 794; 83 L. T. 136; 49 W. R. 8; 64 J. P. 727.

FOLL. in *Beyfus* v. *Westminster Corporation*, 84 L. J. Ch. 838; 112 L. T. 119; J. P. 111; 13 L. G. R. 40; 59 S. J. 129.

Greenhalgh *v.* Brindley, 70 L. J. Ch. 740; (1901) 2 Ch. 324; 84 L. T. 763; 49 W. R. 597.

APPR. in *Smith* v. *Colbourne*, 84 L. J. Ch. 112; (1914) 2 Ch. 533; 111 L. T. 927; 58 S. J. 783.

Grove *v.* Dubois, 1 Term Rep. 112.

CONS. in *Gabriel* v. *Churchill & Sim*, 84 L. J. K.B. 233; (1914) 3 K.B. 1272; 111 L. T. 933; 19 Com. Cas. 411; 58 S. J. 740; 30 T. L. R. 658.

Galbraith *v.* Grimshaw, 79 L. J. K.B. 1011; (1910) A.C. 508; 103 L. T. 294; 17 Manson, 183; 54 S. J. 634.

APPL. in *Singer & Co.* v. *Fry*, 84 L. J. K.B. 2025; (1915) H. B. R. 115.

Gall *v.* Loyal Glenbogie Lodge of the Oddfellows Friendly Society, 2 Fraser, 1187.

DIST. in *Collins* v. *Barrowfield United Oddfellows*, (1915) S. C. 190.

Gamble *v.* Jordan, 82 L. J. K.B. 743; (1913) 3 K.B. 149; 108 L. T. 1022; 77 J. P. 269; 11 L. G. R. 989; 29 T. L. R. 539.

DIST. in *Guildford Corporation* v. *Brown*, 84 L. J. K.B. 289; (1915) 1 K.B. 256; 112 L. T. 415; 79 J. P. 143; 31 T. L. R. 92.

Garrard *v.* Lauderdale (Lord), 2 Russ. & M. 451.

APPL. in *Ellis & Co.* v. *Cross*, 84 L. J. K.B. 1622; (1915) 2 K.B. 654.

Gatenby *v.* Morgan, 45 L. J. Q.B. 597; 1 Q.B. D. 685.

APPL. in *Jones, In re*, 84 L. J. Ch. 222; (1915) 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Gedney, In re; Smith *v.* Grummitt, 77 L. J. Ch. 428; (1908) 1 Ch. 804; 98 L. T. 797; 15 Manson. 97.

COMM. on in *Thorne & Son, Lim., In re*, 84 L. J. Ch. 161; (1914) 2 Ch. 438; 112 L. T. 30; (1915) H. B. R. 19; 58 S. J. 755.

General Rolling Stock Co., In re; Joint Stock Discount Co.'s Claim, ex parte, 41 L. J. Ch. 732; L. R. 7 Ch. 646; 27 L. T. 88; 20 W. R. 762.

APPL. in *Fleetwood and District Electric Light and Power Syndicate, In re*, 84 L. J. Ch. 374; (1915) 1 Ch. 486; 112 L. T. 1127; (1915) H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221.

General Exchange Bank, In re, L. R. 4 Eq. 138.

PRIN. enunciated by Lord Romily, M.R., in, APPL. in *Beer, In re; Brewer* v. *Bowman*, 59 S. J. 510.

General Billposting Co. *v.* Atkinson, 78 L. J. Ch. 77; (1909) A.C. 118; 99 L. T. 943; 25 T. L. R. 178.

DISC. in *Konski* v. *Peet*, 84 L. J. Ch. 513; (1915) 1 Ch 530; 112 L. T. 1107; 59 S. J. 383.

Goodall's Settlement, In re, 78 L. J. Ch. 241; (1909) 1 Ch. 440; 110 L. T. 223.

DIST. in *Johnson, In re*, 84 L. J. Ch. 393; (1915) 1 Ch. 435; 112 L. T. 935; 59 S. J. 333.

Goldstein *v.* Sanders, 84 L. J. Ch. 386; (1915) 1 Ch. 549; 112 L. T. 932.

APPL. in *Stephenson & Co., In re; Poole* v. *The Company* (*No.* 2), 84 L. J. Ch. 563; (1915) 1 Ch. 802; 59 S. J. 429; 31 T. L. R. 331.

Gouthwaite v. Duckworth, 12 East, 421.
FOLL. and APPL. in *Karmali Abdulla Allarakhia* v. *Vora Karimji Jiwanji*, L. R. 42 Ind. App. 48.

Graham v. Works and Public Buildings Commissioners, 70 L. J. K.B. 860; (1901) 2 K.B. 781; 85 L. T. 96; 50 W. R. 122; 65 J. P. 677.
APPL. in *Raper* v. *Works and Public Buildings Commissioners*, 84 L. J. K.B. 219; (1915) 1 K.B. 45; 111 L. T. 630.

Graff v. Evans, 51 L. J. M.C. 25; 8 Q.B. D. 373; 46 L. T. 347; 30 W. R. 280; 46 J. P. 262.
FOLL. and APPL. in *Metford* v. *Edwards*, 84 L. J. K.B. 161; (1915) 1 K.B. 172; 112 L. T. 78; 79 J. P. 84; 30 T. L. R. 709.

Great Western (Forest of Dean) Coal Consumers Co., In re, 51 L. J. Ch. 743; 21 Ch. D. 769; 46 L. T. 875.
APPL. in *Clandown Colliery Co., In re*, 84 L. J. Ch. 420; (1915) 1 Ch. 369; 112 L. T. 1060; (1915) H. B. R. 93; 59 S. J. 350.

Greaves v. Tofield, 50 L. J. Ch. 118; 14 Ch. D. 563; 43 L. T. 100.
DIST. in *Monolithic Building Co., In re*; *Tacon* v. *The Company*, 84 L. J. Ch. 441; (1915) 1 Ch. 643; 112 L. T. 619; 59 S. J 332.

Greenwell v. Low Beechburn Colliery Co., 66 L. J. Q.B. 642; (1897) 2 Q.B. 165; 76 L. T. 759.
DIST. in *Att.-Gen.* v. *Roe*, 84 L. J. Ch. 322; (1915) 1 Ch. 235; 112 L. T. 581; 79 J. P. 263; 13 L. G. R. 335.

Goy & Co., In re, 69 L. J. Ch. 481; (1900) 2 Ch. 149; 83 L. T. 309; 48 W. R. 425.
DIST. in *Peruvian Railway Construction Co.*, (1915) 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464.

Griga v. Harelda (Owners), 3 B.W.C.C. 116.
FOLL. in *Chapman* v. *Sage*, 113 L. T. 623.

Gregson, In re; Christison v. Bolam, 57 L. J. Ch. 221; 36 Ch. D. 223; 57 L. T. 250.
COMM. on in *Thorne & Son, Lim., In re*, 84 L. J. Ch. 161; (1914) 2 Ch. 438; 112 L. T. 30; (1915) H. B. R. 19; 58 S. J. 755.

Greymouth Point Elizabeth Railway Co., In re, 73 L. J. Ch. 92; (1904) 1 Ch. 32; 11 Manson, 85.
FOLL. in *Cox* v. *Dublin City Distillery*, (1915) 1 Ir. R. 345.

Grimble v. Preston, 83 L. J. K.B. 347; (1914) 1 K.B. 270; 110 L. T. 115; 78 J. P. 72; 12 L. G. R. 382; 24 Cox C.C. 1; 30 T. L. R. 119.
APPL. in *Haynes* v. *Davis*, 84 L. J. K.B. 441; (1915) 1 K.B. 332; 112 L. T. 417; 79 J. P. 187; 13 L. G. R. 497.

Grimthorpe (Lord), In re, 78 L. J. Ch. 20; (1908) 2 Ch. 675; 99 L. T. 679; 25 T. L. R. 15.
DIST. in *O'Grady's Settlement, In re*, 84 L. J. Ch. 496; (1915) 1 Ch. 613; 112 L. T. 615; 59 S. J. 332.

Gwilliam v. Twist, 64 L. J. Q.B. 474; (1895) 2 Q.B. 84; 72 L. T. 579; 43 W. R. 566; 59 J. P. 484.
CONS. and DIST. in *Ricketts* v. *Tilling*, 84 L. J. K.B. 342; (1915) 1 K.B. 644; 112 L. T. 137; 31 T. L. R. 17.

Hallett's Estate, In re; Knatchbull v. Hallett, 49 L. J. Ch. 415; 13 Ch. D. 696; 42 L. T. 421; 28 W. R. 732.
DIST. in *Roscoe (Bolton), Lim.* v. *Winder*, 84 L. J. Ch. 286; (1915) 1 Ch. 62; 112 L. T. 120; (1915) H. B. R. 61; 59 S. J. 105.

Hargreaves, In re, 88 L. T. 100.
CONS. and DIST. in *Forster-Brown, In re*, 84 L. J. Ch. 361; (1914) 2 Ch. 584; 112 L. T. 681.

Hill v. Wright, 60 J. P. 312.
COMM. on in *Godman* v. *Crafton*, 83 L. J. K.B. 1524; (1914) 3 K.B. 803; 111 L. T. 754; 79 J. P. 12; 12 L. G. R. 1330.

Hobson v. Blackburn, 1 Addams Ecc. 274.
FOLL. in *Walker* v. *Gaskill*, 83 L. J. P. 152; (1914) P. 192; 111 L. T. 941; 59 S. J. 45; 30 T. L. R. 637.

Horn v. Admiralty Commissioners, 80 L. J. K.B. 279; (1911) 1 K.B. 24; 103 L. T. 614; 27 T. L. R. 84.
DIST. in *Leaf* v. *Furze*, 83 L. J. K.B. 1822; (1914) 3 K.B. 1068; (1914) W.C. & I. Rep. 601; 111 L. T. 1100.

Horton v. Walsall Assessment Committee, 67 L. J. Q.B. 804; (1898) 2 Q.B. 237; 78 L. T. 684; 46 W. R. 607; 62 J. P. 437.
FOLL. and EXPL. in *Hendon Paper Works Co.* v. *Sunderland Union*, 84 L. J. K.B. 476; (1915) 1 K.B. 763; 112 L. T. 146; 79 J. P. 113; 13 L. G. R. 97.

Hadley, In re; Johnson v. Hadley, 78 L. J. Ch. 254; (1909) 1 Ch. 20; 100 L. T. 54; 25 T. L. R. 44.
CONS. and APPL. in *O'Grady, In re*, 84 L. J. Ch. 496; (1915) 1 Ch. 613; 112 L. T. 615; 59 S. J. 332.

Hastings Peerage Claim, 8 Cl. & F. 144.
NOT FOLL. in *St. John Peerage Claim*, (1915) A.C. 282; 30 T. L. R. 640.

Hardwicke (Earl) v. Douglas, 7 Cl. & F. 795.
DISC. in *Stoodley, In re*, 84 L. J. Ch. 822; (1915) 2 Ch. 295; 59 S. J. 681.

Hamilton v. Hamilton, 61 L. J. Ch. 220; (1892) 1 Ch. 396; 66 L. T. 112; 40 W. R. 312.
FOLL. in *Hargrove, In re*, 84 L. J. Ch. 484; (1915) 1 Ch. 398; 112 L. T. 1062; 59 S. J. 364.

Hall, In re, Hall v. Hall, 54 L. J. Ch. 527; 33 W. R. 508.
DIST. in *Cotter, In re*, 84 L. J. Ch. 337; (1915) 1 Ch. 307; 112 L. T. 340; 59 S. J. 177.

Hall v. Lund, 32 L. J. Ex. 113; 1 H. & C. 676.
DIST. in *Pwllbach Colliery Co.* v. *Woodman*, 84 L. J. K.B. 874; (1915) A.C. 634; 113 L. T. 10; 31 T. L. R. 271.

Harbridge v. Warwick, 18 L. J. Ex. 245; 3 Ex. 552.
EXPL. in *Mallam* v. *Rose*, 84 L. J. Ch. 934; (1915) 2 Ch. 222.

Hare v. Burges, 27 L. J. Ch. 86; 4 K. & J. 45.
APPL. in *Wynn* v. *Conway Corporation*, 84 L. J. Ch. 203; (1914) 2 Ch. 705; 111 L. T. 1016; 78 J. P. 380; 13 L. G. R. 137; 59 S. J. 43; 30 T. L. R. 666.

Harrison v. Wright, 13 East, 343.
FOLL. in *Wall* v. *Rederiaktiebolaget Luggude*, 84 L. J. K.B. 1663; (1915) 3 K.B. 66; 31 T. L. R. 487.

Haynes v. Foster, 70 L. J. Ch. 302; (1901) 1 Ch. 361; 84 L. T. 139.
DIST. in *Hargrove, In re*, 84 L. J. Ch. 302; (1915) 1 Ch. 398; 112 L. T. 1062; 59 S. J. 364; and in *Tongue, In re*; *Burton, In re*, 84 L. J. Ch. 378; (1915) 1 Ch. 390; 112 L. T. 685.

Harberton, The, 83 L. J. P. 20; (1913) P. 149; 108 L. T. 735; 12 Asp. M.C. 342; 29 T. L. R. 490.
DIST. in *The Ancona*, 84 L. J. P. 183; (1915) P. 200.

Hayward v. West Leigh Colliery, 84 L. J. K.B. 661; (1915) A.C. 540; (1915) W.C. & I. Rep. 223; 112 L. T. 1001; 59 S. J. 269; 31 T. L. R. 215
DISC. and EXPL. in *Miller* v. *Richardson*, 84 L. J. K.B. 1366; (1915) 3 K.B. 76; 113 L. T. 609; (1915) W.C. & I. Rep. 381.

Hartland, In re; Banks v. Hartland, 80 L. J. Ch. 305; (1911) 1 Ch. 459; 104 L. T. 490; 55 S. J. 312.
FOLL. in *Briggs, In re*, 83 L. J. Ch. 874; (1914) 2 Ch. 413; 111 L. T. 939; 58 S. J. 722.

Healey v. Galloway, 41 Ir. L. T. 5.
CONS. in *Luckie* v. *Merry*, 84 L. J. K.B. 1388; (1915) 3 K.B. 83; (1915) W.C. & I. Rep. 395; 113 L. T. 667; 59 S. J. 544; 31 T. L. R. 466.

Hearle v. Hicks, 1 Cl. & F. 20.
FOLL. in *Stoodley, In re*, 84 L. J. Ch. 822; (1915) 2 Ch. 295; 59 S. J. 681.

Hearle v. Greenbank, 3 Atk. 695, 715.
APPL. in *De Virte, In re*, 84 L. J. Ch. 617; (1915) 1 Ch. 920; 112 L. T. 972.

Hatsckett's Patents, In re, 78 L. J. Ch. 402; (1909) 2 Ch. 68; 100 L. L. 809; 26 R. P. C. 228; 25 T. L. R. 457.
FOLL. in *Robin Electric Lamp Co., In re* (*No. 2*), 84 L. J. Ch. 500; (1915) 1 Ch. 780; 113 L. T. 132; 32 R. P. C. 202; 31 T. L. R. 309.

Hebert v. Royal Society of Medicine, 56 S. J. 107.
EXPL. and DIST. in *Seal* v. *Turner*, 84 L. J. K.B. 1658; (1915) 3 K.B. 194; 113 L. T. 769; 59 S. J. 649.

Heywood v. Heywood, 29 Beav. 9.
DIST. in *Jones, In re*, 84 L. J. Ch. 222; (1915) 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Hertfordshire County Council v. Great Eastern Railway, 78 L. J. K.B. 1076; (1909) 2 K.B. 403; 101 L. T. 213; 73 J. P. 353; 7 L. G. R. 1006; 53 S. J. 575; 25 T. L. R. 573.
DIST. in *Sharpness New Docks and Gloucester and Birmingham Navigation Co.* v. *Att.-Gen.* 84 L. J. K.B. 907; (1915) A.C. 654; 112 L. T. 826; 79 J. P. 305; 13 L. G. R. 563; 59 S. J. 381; 31 T. L. R. 254.

Hill v. Thomas, 62 L. J. M.C. 161; (1893) 2 Q.B. 333; 69 L. T. 553; 42 W. R. 85; 57 J. P. 628.
JUDG. of Bowen, L.J., in, CONS. in *Ledbury Rural Council* v. *Somerset*, 84 L. J. K.B. 1297; 113 L. T. 71; 79 J. P. 327; 13 L. G. R. 701; 59 S. J. 476; 31 T. L. R. 295.

Hill's Trusts, In re, 50 L. J. Ch. 134; 16 Ch. D. 173.
OV. in *Dawson, In re; Pattisson* v. *Bathurst*, 84 L. J. Ch. 476; (1915) 1 Ch. 626; 113 L. T. 19; 59 S. J. 363; 31 T. L. R. 277.

Hill v. Tottenham Urban Council, 15 T. L. R. 53.
FOLL. in *Thompson* v. *Bradford Corporation*, 84 L. J. K.B. 1440; (1915) 3 K.B. 13; 79 J. P. 364; 13 L. G. R. 884; 59 S. J. 495.

Hockley v. West London Timber and Joinery Co., 83 L. J. K.B. 1520; (1914) 3 K.B. 1013; (1914) W.C. & I. Rep. 504; 112 L. T. 1; 58 S. J. 705.
FOLL. in *Bobbey* v. *Crosbie*, 84 L. J. K.B. 856; (1915) W.C. & I. Rep. 258; 112 L. T. 900.

Hope v. Croyden and Norwood Tramways, 56 L. J. Ch. 760; 24 Ch. D. 730; 56 L. T. 822; 35 W. R. 594.
DIST. in *Cleary* v. *Brazil Railway*, 85 L. J. K.B. 32; 113 L. T. 96.

Horne, In re; Wilson v. Cox-Sinclair, 74 L. J. Ch. 25; (1905) 1 Ch. 76; 92 L. T. 263; 53 W. R. 317.
CONS. in *Ainsworth, In re*; *Finch* v. *Smith*, 84 L. J. Ch. 701; (1915) 2 Ch. 96; 31 T. L. R. 392.

Hotchkys, In re; Freke v. Calmady, 55 L. J. Ch. 546; 32 Ch. D. 408; 55 L. T. 110; 34 W. R. 569.
DIST. in *Johnson, In re*; *Cowley* v. *Publie Trustee*, 84 L. J. Ch. 393; (1915) 1 Ch. 435; 112 L. T. 935; 59 S. J. 333.

Houston, In re, (1909) 1 Ir. R. 319.
FOLL. in *Cross's Trust, In re*, (1915) 1 Ir. R. 304.

Howard v. Howard, 21 Beav. 550.
FOLL. in *Fisher, In re*, 84 L. J. Ch. 342; (1915) 1 Ch. 302; 112 L. T. 548; 59 S. J. 318.

Huguenin v. Basely, 14 Ves. 273.
APPL. in *Lloyd* v. *Coote & Ball*, 84 L. J. K.B. 567; (1915) 1 K.B. 242; 112 L. T. 344.

Horne's Settled Estate, In re, 57 L. J. Ch. 790; 39 Ch. D. 84; 59 L. T. 580; 37 W. R. 69.
DIST. in *Johnson, In re*, 84 L. J. Ch. 393; (1915) 1 Ch. 435; 112 L. T. 935; 59 S. J. 333.

Hollis & Son, In re, 112 L. T. 135; 58 S. J. 784; 30 T. L. R. 680.
APPR. in *Clark, In re*, 84 L. J. K.B. 89; (1914) 3 K.B. 1095; 112 L. T. 873; (1915) H. B. R. 1; 59 S. J. 44.

Hurst v. Picture Theatres, Lim., 83 L. J. K.B. 1837; (1915) 1 K.B. 1; 111 L. T. 972; 58 S. J. 739; 30 T. L. R. 642.
APPL. and FOLL. in *Allen* v. *King*, (1915) 2 Ir. R. 213.

Huskisson v. Lefevre, 26 Beav. 157.
CONS. in *Goswell's Trusts, In re*, 84 L. J. Ch. 719; (1915) 2 Ch. 106; 59 S. J. 86.

Ile's Case, Vent. 153.
DISC. and APPL. in *Rex* v. *Dymock* (*Vicar*), 84 L. J. K.B. 94; (1915) 1 K.B. 147; 112 L. T. 156; 79 J. P. 91; 13 L. G. R. 48; 31 T. L. R. 11.

Illingworth, In re, 78 L. J. Ch. 701; (1909) 2 Ch. 297; 101 L. T. 104; 53 S. J. 616.
DISC. in *Safford's Settlement, In re*, 84 L. J. Ch. 766; (1915) 2 Ch. 211; 113 L. T. 723; 59 S. J. 666; 31 T. L. R. 529.

Inland Revenue Commissioners v. Clay and Buchanan, 83 L. J. K.B. 581, 1425; (1914) 1 K.B. 339; (1914) 3 K.B. 466; 110 L. T. 311; 111 L. T. 484; 58 S. J. 610; 30 T. L. R. 573.
APPR. in *Glass* v. *Inland Revenue*, (1915) S. C. 4249.

Inland Revenue Commissioners v. Walker, 84 L. J. P.C. 115; (1915) A.C. 509; 112 L. T. 611.
DISC. in *Congregation of Jews* v. *Inland Revenue*, (1915) S. C. 997.

Isle of Wight Railway v. Tahourdin, 53 L. J. Ch. 353; 25 Ch. D. 320; 50 L. T. 132; 32 W. R. 297.
APPL. in *Barron* v. *Potter*, 83 L. J. Ch. 646; (1914) 1 Ch. 895; 110 L. T. 929; 21 Manson, 260; 58 S. J. 516; 30 T. L. R. 401.

Irving v. Carlisle Rural Council, 5 L. G. R. 776.
APPL. in *Masters* v *Hampshire County Council*, 13 L. G. R. 879.

Imperial Hydropathic Hotel Co., In re, 23 Ch. D. 1; 49 L. T. 147; 31 W. R. 330.
OBS. in, FOLL. and APPL. in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; (1915) 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Isaacs, In re, 63 L. J. Ch. 815; (1894) 3 Ch. 506; 71 L. T. 386; 42 W. R. 685.
FOLL. in *Marlay, In re*; *Rutland (Duke)* v. *Bury*, 84 L. J. Ch. 706; (1915) 2 Ch. 264; 59 S. J. 494; 31 T. L. R. 422.

Ingram & Royle *v.* Service Maritimes du Tréport, 83 L. J. K.B. 1128; (1914) 3 K.B. 28; 110 L. T. 967; 12 Asp. M.C. 493. — DIST. in *Hobson* v. *Leng*, 83 L. J. K.B. 1624; (1914) 3 K.B. 1245; 111 L. T. 954; 59 S. J. 28; 30 T. L. R. 682.

Jones *v.* Jones, 58 J. P. 653; 10 T. L. R. 300. — DISS. from in *Batchelour* v. *Gee*, 83 L. J. K.B. 1714; (1914) 3 K.B. 242; 111 L. T. 256; 78 J. P. 362; 12 L. G. R. 931; 24 Cox C.C. 268; 30 T. L. R. 506; FOLL. in *Clifford* v. *Battley*, 84 L. J. K.B. 615; (1915) 1 K.B. 531; 112 L. T. 765; 79 J. P. 180; 13 L. G. R. 505; 31 T. L. R. 117.

Jacob *v.* Down, 69 L. J. Ch. 493; (1900) 2 Ch. 156; 83 L. T. 191; 48 W. R. 441; 64 J. P. 552. — DICT. of Stirling, J., in, DISAPPR. in *Stephens* v. *Junior Army and Navy Stores*, 84 L. J. Ch. 56; (1914) 2 Ch. 516; 111 L. T. 1055; 58 S. J. 808; 30 T. L. R. 697.

Jacomb *v.* Turner, (1892) 1 Q.B. 47. — DISC. in *Blackett* v. *Ridout*, 84 L. J. K.B. 1535; (1915) 2 K.B. 415.

Jacubs *v.* Rylance, 43 L. J. Ch. 280; L. R. 17 Eq. 341. — CONS. in *Dacre, In re*, (1915) 2 Ch. 480.

James *v.* Buena Ventura Nitrate Grounds Syndicate, 65 L. J. Ch. 284; (1896) 1 Ch. 456; 74 L. T. 1. — APPL. in *Llewellyn* v. *Kasintoe Rubber Estates*, 84 L. J. Ch. 70; (1914) 2 Ch. 670; 112 L. T. 676; 21 Manson, 349; 58 S. J. 808; 30 T. L. R. 683.

Janson *v.* Driefontein Consolidated Mines, 71 L. J. K.B. 857; (1902) A.C. 484; 87 L. T. 372; 51 W. R. 142; 7 Com. Cas. 268. — CONS. in *Karberg* v. *Blythe, Green, Jourdain & Co.*, 84 L. J. K.B. 1673; (1915) 2 K.B. 379; 113 L. T. 185; 31 T. L. R. 351.

Jarman *v.* Vye, 35 L. J. Ch. 821; L. R. 2 Eq. 784. — DIST. in *Dunn* v. *Morgan*, 84 L. J. Ch. 812; 113 L. T. 444.

Johnson *v.* Lyttle's Iron Agency, 46 L. J. Ch. 786; 5 Ch. D. 687; 36 L. T. 528; 25 W. R. 548. — OBS. in, FOLL and APPL. in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; (1915) 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Jones *v.* Pritchard, 77 L. J. Ch. 405; (1908) 1 Ch. 630; 98 L. T. 386; 24 T. L. R. 309. — DIST. in *Pwllbach Colliery Co.* v. *Woodman*, 84 L. J. K.B. 874; (1915) A.C. 634; 113 L. T. 10; 31 T. L. R. 271.

Jones *v.* Selby, Pr. Ch. 300. — FOLL. in *Wasserberg, In re*, 84 L. J. Ch. 214; (1915) 1 Ch. 195; 112 L. T. 242; 59 S. J. 176.

Juno, The, 112 L. T. 471; 59 S. J. 251; 31 T. L. R. 131. — APPL. in *The Iolo*, 59 S. J. 545; 31 T. L. R. 474.

Jureidini *v.* National British and Irish Millers Insurance Co., 84 L. J. K.B. 640; (1915) A.C. 499; (1915) W.C. & I. Rep. 239; 112 L. T. 531; 59 S. J. 205; 31 T. L. R. 132. — CONS. in *Wall* v. *Rederiaktiebolaget Luggude*, 84 L. J. K.B. 1663; (1915) 3 K.B. 66; 31 T. L. R. 487.

Kaye *v.* Croydon Tramways Co., 67 L. J. Ch. 222; (1898) 1 Ch. 358; 78 L. T. 237; 46 W. R. 405. — CONS. and APPL. in *Baillie* v. *Oriental Telephone, &c., Co.*, 84 L. J. Ch. 409; (1915) 1 Ch. 503; 112 L. T. 569; 31 T. L. R. 140.

Keene *v.* Thomas, 74 L. J. K.B. 21; (1905) 1 K.B. 136; 92 L. T. 19; 53 W. R. 336; 21 T. L. R. 2. — DIST. in *Cassils & Co.* v. *Holden Wood Bleaching Co.*, 84 L. J. K.B. 834; 112 L. T. 373.

Kemble *v.* Farren, 6 Bing. 141. — DICT. of Tindal, C.J., in, APPR. in *Dunlop Pneumatic Tyre Co* v. *New Garage and Motor Co.*, 83 L. J. K.B. 1574; (1915) A.C. 79; 111 L. T. 862; 30 T. L. R. 625.

Kenward, In re; Hammond *v.* Eade, 94 L. T. 277. — DIST. in *Hay, In re; Stanley Gibbons, Lim.* v. *Hay*, 84 L. J. Ch. 821; (1915) 2 Ch. 198; 59 S. J. 680.

Kerr (*or* Lendrum) *v.* Ayr Steam Shipping Co., 84 L. J. P.C. 1; (1915) A.C. 217; 111 L. T. 875; (1914) W.C. & I. Rep. 438; 58 S. J. 737; 30 T. L. R. 664. — APPL. in *Proctor* v. "*Serbino*" (*Owners*), 84 L. J. K.B. 1381; (1915) 3 K.B. 344; (1915) W.C. & I. Rep. 425; 113 L. T. 640; 59 S. J. 629; 31 T. L. R. 524.

Kirkpatrick *v.* King, 32 Ir. L. T. R. 41. — DIST. in *Gray* v. *Gray*, (1915) 1 Ir. R. 261.

Kriegel, In re; Trotman, ex parte, 68 L. T. 588; 10 Morrell, 99. — FOLL. in *Barker & Co., In re*, 21 Manson, 238.

Lloyd *v.* North London Railway, In re, 65 L. J. Ch. 626; (1896) 2 Ch. 397; 74 L. T. 548; 44 W. R. 522. — APPR and FOIL. in *Griggs, In re; London School Board, ex parte*, 83 L. J. Ch. 835; (1914) 2 Ch. 547; 111 L. T. 931; 13 L. G. R. 27; 58 S. J. 796.

Lyne *v.* Leonard, 9 B. & S. 65; L. R. 3 Q.B. 156; 18 L. T. 55; 16 W. R. 562. — FOLL. in *Maw* v. *Holloway*, 84 L. J. K.B. 99; (1914) 3 K.B. 595; 111 L. T. 670; 78 J. P. 347.

London and North-Western Railway *v.* Llandudno Improvement Commissioners, 66 L. J. Q.B. 232; (1897) 1 Q.B. 287; 75 L. T. 659; 45 W. R. 350; 61 J. P. 55. — DISC. in *Lancashire and Yorkshire Railway* v. *Liverpool Corporation*, 83 L. J. K.B. 1273; (1915) A.C. 152; 111 L. T. 596; 78 J. P. 409; 12 L. G. R. 771; 58 S. J. 653; 30 T. L. R. 563.

Lambert, In re, 27 L. T. 597. — APPL. in *Slater, In re*, 113 L. T. 691.

Lancaster *v.* Elce, 31 L. J. Ch. 789; 31 Beav. 325. — DIST. in *Pilet's Deed, In re; Toursier & Co., ex parte*, 84 L. J. K.B. 2133; 31 T. L. R. 558.

Lassence *v.* Tierney, 1 Mac. & G. 551. — APPL. in *Connell's Settlement, In re*, 84 L. J. Ch. 601; (1915) 1 Ch. 867.

Lawes *v.* Bennett, 1 Cox, 167. — EXPL. in *Marlay, In re; Rutland (Duke)* v. *Bury*, 84 L. J. Ch. 706; (1915) 2 Ch. 264; 59 S. J. 494; 31 T. L. R. 422.

Leeds and Hanley Theatres of Varieties, In re, 73 L. J. Ch. 553; (1904) 2 Ch. 45; 52 W. R. 506. — DIST. in *Peruvian Railway Construction Co., In re*, (1915) 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464.

Leonard *v.* Hoare, 83 L. J. K.B. 1361; (1914) 2 K.B. 798; 111 L. T. 69; 78 J. P. 287; 12 L. G. R. 844; 30 T. L. R. 425. — OV. in *Rex* v. *Foots Cray Urban Council*, 85 L. J. K.B. 191; 113 L. T. 705; 79 J. P. 521; 13 L. G. R. 1027; 59 S. J. 597.

Leslie, In re; Leslie *v.* French, 52 L. J. Ch. 762; 23 Ch. D. 552. — DISC. in *Jones' Settlement, In re*, 84 L. J. Ch. 406; (1915) 1 Ch. 373; (1915) W.C. & I. Rep. 277; 112 L. T. 1067; 59 S. J. 364.

Leslie & Co. *v.* Metropolitan Asylums District Managers, 68 J. P. 86.
APPR. in *Hampton* v. *Glamorgan County Council*, 84 L. J. K.B. 1506; 113 L. T. 112; 13 L. G. R. 819.

Lester *v.* Torrens, 46 L. J. M.C. 280; 2 Q.B. D. 403; 25 W. R. 691.
FOLL. in *Young* v. *Gentle*, 84 L. J. K.B. 1570; (1915) 2 K.B. 661; 79 J. P. 347; 31 T. L. R. 409.

Liles *v.* Terry, 65 L. J. Q.B. 34; (1895) 2 Q.B. 679; 73 L. T. 428; 44 W. R. 116.
APPL. in *Lloyd* v. *Coote & Ball*, 84 L. J. K.B. 567; (1915) 1 K.B. 242; 112 L. T. 344.

Limpus *v.* Arnold, 53 L. J. Q.B. 415; 54 L. J. Q.B. 85; 13 Q.B. D. 246; 15 Q.B. D. 300.
DICTA in, FOLL. in *Trollope, In re*, 84 L. J. Ch. 553; (1915) 1 Ch. 853; 113 L. T. 153.

London County Council *v.* Allen, 82 L. J. K.B. 432; (1913) 1 K.B. 9; 107 L. T. 853; 77 J. P. 48; 10 L. G. R. 1089; 23 Cox C.C. 266; 29 T. L. R. 30.
DISC. in *London County Council* v. *Perry*, 84 L. J. K.B. 1518; (1915) 2 K.B. 193; 113 L. T. 85; 79 J. P. 312; 13 L. G. R. 746; 31 T. L. R. 281.

London County Council *v.* Bermondsey Bioscope Co., 80 L. J. K.B. 141; (1911) 1 K.B. 445; 103 L. T. 760; 75 J. P. 53; 9 L. G. R. 79; 27 T. L. R. 141.
APPR. in *Reg.* v. *London County Council; London and Provincial Electric Theatres, Ex parte*, 84 L. J. K.B. 1787; (1915) 2 K.B. 466; 113 L. T. 118; 79 J. P. 417; 13 L. G. R. 847; 59 S. J. 382; 31 T. L. R. 329.

London and North-Western Railway and Great Western Joint Railways *v.* Billington, 68 L. J. Q.B. 162; (1899) A.C. 79; 79 L. T. 503.
CONS. in *London and North-Western Railway* v. *Jones*, 84 L. J. K.B. 1268; (1915) 2 K.B. 35; 113 L. T. 724.

London and North-Western Railway *v.* Donellan, 67 L. J. Q.B. 681; (1898) 2 Q.B. 7; 78 L. T. 575.
FOLL. in *London and North-Western Railway* v. *Jones*, 84 L. J. K.B. 1268; (1915) 2 K.B. 35; 113 L. T. 724.

London and North-Western Railway *v.* Runcorn Rural Council, 67 L. J. Ch. 324; (1898) 1 Ch. 561; 78 L. T. 343; 46 W. R. 484; 62 J. P. 643.
DIST. in *Hull Corporation* v. *North-Eastern Railway*, 84 L. J. Ch. 329; (1915) 1 Ch. 456; 112 L. T. 584; 79 J. P. 221; 13 L. G. R. 587; 59 S. J. 318.

London and Northern Steamship Co. *v.* Central Argentine Railway, 108 L. T. 527.
APPR. in *Central Argentine Railway* v. *Marwood*, 84 L. J. K.B. 1593.

Long *v.* Atkinson, 17 Beav. 471.
FOLL. in *Bosanquet, In re; Unwin* v. *Petre*, 113 L. T. 152.

Long Eaton Urban Council *v.* Att.-Gen., 84 L. J. Ch. 131; (1915) 1 Ch. 124; 111 L. T. 514; 79 J. P. 129; 13 L. G. R. 23; 31 T. L. R. 45.
APPL. in *Att.-Gen.* v. *Ilford Urban Council*, 84 L. J. Ch. 860; 13 L. G. R. 441.

Lord Advocate *v.* Moray (Countess), 74 L. J. P.C. 122; (1905) A.C. 531; 93 L. T. 569; 21 T. L. R. 715.
DICT. of Lord Macnaghten in, FOLL. in *Anson, In re; Buller* v. *Anson*, 84 L. J. Ch. 347; (1915) 1 Ch. 52; 111 L. T. 1065; 30 T. L. R. 694.

Love *v.* Bell, 53 L. J. Q.B. 257; 9 App. Cas. 286; 51 L. T. 1; 48 J. P. 516.
CONS. in *Beard* v. *Moira Colliery Co.*, 84 L. J. Ch. 155; (1915) 1 Ch. 257; 112 L. T. 227; 59 S. J. 103.

Luckin *v.* Hamlyn, 21 T. L. R. 366.
EXPL. in *Barron* v. *Potter*, 84 L. J. K.B. 2008; (1915) 3 K.B. 593; 113 L. T. 801; 59 S. J. 650.

Lumsden *v.* Inland Revenue Commissioners, 84 L. J. K.B. 45; (1914) A.C. 877; 111 L. T. 993; 58 S. J. 738; 30 T. L. R. 673.
FOLL. in *Inland Revenue Commissioners* v. *Walker*, 84 L. J. P.C. 115; (1915) A.C. 509; 112 L. T. 611. DISC. in *Congregation of Jews* v. *Inland Revenue*, (1915) S.C. 997.

Lynch *v.* Lansdowne (Marquis), (1914) W.C. & I. Rep. 244; 48 Ir. L. T. 89.
CONS. in *Luckie* v. *Merry*, 84 L. J. K.B. 1388; (1915) 3 K.B. 83; (1915) W.C. & I. Rep. 395; 113 L. T. 667; 59 S. J. 544; 31 T. L. R. 466.

Lyles *v.* Southend-on-Sea Corporation, 74 L. J. K.B. 484; (1905) 2 K.B. 1; 92 L. T. 586; 69 J. P. 193; 3 L. G. R. 691; 21 T. L. R. 389.
APPL. in *Myers* v. *Bradford Corporation*, 84 L. J. K.B. 306; (1915) 1 K.B. 417; 112 L. T. 206; 79 J. P. 130; 13 L. G. R. 1; 59 S. J. 57; 31 T. L. R. 44.

Lyons *v.* Weldon, 2 Bing. 334.
FOLL. in *Mackay, In re*, (1915) 2 Ir. R. 347.

Lyttelton Times Co. *v.* Warners, 76 L. J. P.C. 100; (1907) A.C. 476; 97 L. T. 496; 23 T. L. R. 751.
DIST. in *Pullbach Colliery Co.* v. *Woodman*, 84 L. J. K.B. 874; (1915) A.C. 634; 113 L. T. 10; 31 T. L. R. 271.

Metropolitan Water Board *v.* Avery, 83 L. J. K.B. 178; (1914) A.C. 118; 109 L. T. 762; 78 J. P. 121; 12 L. G. R. 95; 58 S. J. 171; 30 T. L. R. 189.
DIST. in *Oddenino* v. *Metropolitan Water Board*, 84 L. J. Ch. 102; (1914) 2 Ch. 734; 112 L. T. 115; 79 J. P. 89; 13 L. G. R. 33; 59 S. J. 129; 31 T. L. R. 23.

Miller *v.* Hancock, (1893) 2 Q.B. 177; 69 L. T. 214; 41 W. R. 578; 57 J. P. 578.
DIST. in *Dobson* v. *Horsley*, 84 L. J. K.B. 399; (1915) 1 K.B. 634; 112 L. T. 101; 31 T. L. R. 12.

Milan, The, 31 L. J. Adm. 105; Lush. 388.
CONS. in *The Umona*, 83 L. J. P. 106; (1914) P. 141; 111 L. T. 415; 12 Asp. M.C. 527; 30 T. L. R. 498.

Mackinnon *v.* Miller, (1909) S. C. 373; 46 Sc. L. R. 299.
APPL. in *Proctor* v. *"Serbino" (Owners)*, 84 L. J. K.B. 1381; (1915) 3 K.B. 344; 113 L. T. 640; (1915) W.C. & I. Rep. 425; 59 S. J. 629; 31 T. L. R. 524.

McClelland *v.* Manchester Corporation, 81 L. J. K.B. 98; (1912) 1 K.B. 118; 105 L. T. 707; 76 J. P. 21; 9 L. G. R. 1209; 28 T. L. R. 21.
FOLL. in *Thompson* v. *Bradford Corporation*, 84 L. J. K.B. 1440; (1915) 3 K.B. 13; 79 J. P. 364; 13 L. G. R. 884; 59 S. J. 495.

McEuen, In re; McEuen *v.* Phelps, 83 L. J. Ch. 66; (1913) 2 Ch. 704; 109 L. T. 701; 58 S. J. 82; 30 T. L. R. 44.
FOLL. in *Wills, In re*, 84 L. J. Ch. 580; (1915) 1 Ch. 769; 113 L. T. 138; 59 S. J. 477.

M'Laren *v.* Caledonian Railway, (1911) S. C. 1075; 48 Sc. L. R. 885.
APPR. and FOLL. in *Pritchard* v. *Torkington*, (1914) W.C. & I. Rep. 271; 111 L. T. 917; 58 S. J. 739.

Malet's Trusts, In re, 17 L. R. Ir. 424.
CONS. in *Mackay, In re*, (1915) 2 Ir. R. 347.

M'Quater *v.* Fergusson, (1911) S. C. 640.
DISC. in *Galloway (Earl)* v. *M'Clelland*, (1915) S. C. 1062.

Malcolm *v.* Charlesworth, 1 Keen, 63.

CONS. and APPL. in *Gresham Life Assurance Society* v. *Crowther*, 84 L. J. Ch. 312; (1915) 1 Ch. 214; 111 L. T. 887; 59 S. J. 103.

Marchant *v.* London County Council, 79 L. J. K.B. 718; (1910) 2 K.B. 379; 102 L. T. 917; 74 J. P. 339; 8 L. G. R. 694; 26 T. L. R. 500.

DISC. in *London County Council* v. *Perry*, 84 L. J. K.B. 1518; (1915) 2 K.B. 193; 113 L. T. 85; 79 J. P. 312; 13 L. G. R. 746; 31 T. L. R. 281.

Massy *v.* Rogers, 11 L. R. Ir. 409.

FOLL. in *Raven, In re; Spencer* v. *National Association for Prevention of Consumption*, 84 L. J. Ch. 489; (1915) 1 Ch. 673; 113 L. T. 131.

Maxwell *v.* Grunhut, 59 S. J. 104; 31 T. L. R. 79.

FOLL. and APPL. in *Gaudig & Blum, In re*, 31 T. L. R. 153.

Marsh, In re, 54 L. J. Q.B. 557; 15 Q.B. D. 340; 53 L. T. 418.

APPL. in *Geiger, In re*, 84 L. J. K.B. 589; (1915) 1 K.B. 439; 112 L. T. 562; (1915) H. B. R. 44; 59 S. J. 250.

Melhado *v.* Porto Alegre and New Hamburg and Brazilian Railway, 43 L. J. C.P. 253; L. R. 9 C.P. 503; 31 L. T. 57; 23 W. R. 57.

DIST. in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; (1915) 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Melhuish *v.* London County Council, 83 L. J. K.B. 1165; (1914) 3 K.B. 325; 111 L. T. 539; 78 J. P. 441; 12 L. G. R. 1086; 30 T. L. R. 527.

JUDG. of Avory, J., in, COMM. upon in *Prance* v. *London County Council*, 84 L. J. K.B. 623; (1915) 1 K.B. 688; 112 L. T. 820; 79 J. P. 242; 13 L. G. R. 382; 31 T. L. R. 128.

Mellor's Trustees *v.* Maas, 71 L. J. K.B. 26; 74 L. J. K.B. 452; (1902) 1 K.B. 137; (1905) A.C. 102; 85 L. T. 490; 92 L. T. 371; 50 W. R. 111; 53 W. R. 513; 8 Manson, 341; 12 Manson 107; 21 T. L. R. 304.

DISC. and APPL. in *Johnson* v. *Rees*, 84 L. J. K.B. 1276.

Melson & Co., In re, 75 L. J. Ch. 509; (1906) 1 Ch. 841; 94 L. T. 641; 54 W. R. 468; 13 Manson, 190; 22 T. L. R. 500.

FOLL. in *Claudown Colliery, In re*, 84 L. J. Ch. 420; (1915) 1 Ch. 369; 112 L. T. 1060; (1915) H. B. R. 93; 59 S. J. 350.

Mercedes Daimler Motor Co. *v.* Maudslay Motor Co., 32 R. P. C. 149; 31 T. L. R. 178.

FOLL. in *Rombach Baden Clock Co.*, 84 L. J. K.B. 1558; 31 T. L. R. 492.

Merrick's Case, 2 Peck. 91.

DISC. and APPL. in *Rex.* v. *Dymock* (*Vicar*), 84 L. J. K.B. 294; (1915) 1 K.B. 147; 112 L. T. 156; 79 J. P. 91; 13 L. G. R. 48; 31 T. L. R. 11.

Meyler *v.* Meyler, 11 L. R. Ir. 522.

NOT FOLL. in *Cross's Trust, In re*, (1915) 1 Ir. R. 304.

Midland Railway *v.* Loseby, 68 L. J. Q.B. 326; (1899) A.C. 133; 80 L. T. 93; 47 W. R. 656.

FOLL. in *London and North-Western Railway* v. *Jones*, 84 L. J. K.B. 1268; (1915) 2 K.B. 35; 113 L. T. 724.

Mid-Kent Fruit Factory, In re, 65 L. J. Ch. 250; (1896) 1 Ch. 567; 74 L. T. 22; 44 W. R. 284; 3 Manson, 59.

DIST. in *Thorne & Son, Lim., In re*, 84 L. J. Ch. 161; (1914) 2 Ch. 438; 112 L. T. 30; (1915) H. B. R. 19; 58 S. J. 755.

Midwood *v.* Manchester Corporation, 74 L. J. K.B. 884; (1905) 2 K.B. 597; 93 L. T. 525; 54 W. R. 37; 69 J. P. 348; 3 L. G. R. 1136; 21 T. L. R. 667.

DIST. in *Goodbody* v. *Poplar Borough Council*, 84 L. J. K.B. 1230; 79 J. P. 218; 13 L. G. R. 166.

Minter *v.* Snow, 74 J. P. 257.

APPL. in *Rex* v. *Registrar of Joint-Stock Companies; Bowen, Ex parte*, 84 L. J. K.B. 229; (1914) 3 K.B. 1161; 112 L. T. 38; 30 T. L. R. 707.

Mirrlees' Charity, In re, 79 L. J. Ch. 73; (1910) 1 Ch. 163; 101 L. T. 549; 26 T. L. R. 77.

COMM. on in *Glasgow Society for Prevention of Cruelty to Animals* v. *National Anti-Vivisection Society*, (1915) S. C. 757.

Mitford Union *v.* Wayland Union, 59 L. J. M.C. 86; 25 Q.B. D. 164; 63 L. T. 299; 38 W. R. 632; 54 J. P. 757.

DICTA of Lord Esher in, NOT FOLL. in *Paddington Union* v. *Westminster Union*, 84 L. J. K.B. 1727; (1915) 2 K.B. 644; 79 J. P. 343; 13 L. G. R. 641.

Merryweather *v.* Nixan, 8 Term Rep. 186; 1 Sm. L.C. (12th ed.), 443.

THE PRIN. of does not apply in the case of contribution in general average, so held in *Austin Friars Steamship Co.* v. *Spillers & Bakers*, 84 L. J. K.B. 1958; (1915) 3 K.B. 586; 113 L. T. 805; 31 T. L. R. 535.

Moore *v.* Cleghorn, 10 Beav. 423: on app., 12 Jur. 591.

DIST. in *Jones, In re*, 84 L. J. Ch. 222; (1915) 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Monckton's Settlement, In re, 83 L. J. Ch. 34; (1913) 2 Ch. 636; 109 L. T. 624; 57 S. J. 836.

APPR. in *Nutt's Settlement, In re*, 84 L. J. Ch. 877; (1915) 2 Ch. 431; 59 S. J. 717.

Morris *v.* Oceanic Steam Navigation Co., 16 T. L. R. 533.

CONS. in *Bank of Australasia* v. *Clan Line Steamers*, 84 L. J. K.B. 1250; (1916) 1 K.B. 39.

Mowatt *v.* Castle Steel and Ironworks Co., 34 Ch. D. 58.

DIST. in *Cox* v. *Dublin City Distillery Co.*, (1915) 1 Ir. R. 345.

Murphy *v.* Cooney, (1914) W.C. & I. Rep. 44; 48 Ir. L. T. 13.

DIST. in *Williams* v. *Llandudno Coaching and Carriage Co.*, 84 L. J. K.B. 655; (1915) 2 K.B. 101; (1915) W.C. & I. Rep. 91; 112 L. T. 848; 59 S. J. 286; 31 T. L. R. 186.

Mustapha, In re, 8 T. L. R. 160.

FOLL. in *Wasserberg, In re*, 84 L. J. Ch. 214; (1915) 1 Ch. 195; 112 L. T. 242; 59 S. J. 176.

Newton *v.* Cubitt, 31 L. J. C.P. 246; 12 C. B. (N.S.) 32; 6 L. T. 860.

CONS. in *General Estates Co.* v. *Beaver*, 84 L. J. K.B. 21; (1914) 3 K.B. 918; 111 L. T. 957; 79 J. P. 41; 12 L. G. R. 1146; 30 T. L. R. 634.

Nash *v.* "Rangatira" (Owners), 83 L. J. K.B. 1496; (1914) 3 K.B. 978; (1914) W.C. & I. Rep. 490; 111 L. T. 704; 58 S. J. 705.

DIST. in *Williams v. Llandudno Coaching and Carriage Co.*, 84 L. J. K.B. 655; (1915) 2 K.B. 101; (1915) W.C. & I. Rep. 91; 112 L. T. 848; 59 S. J. 286; 31 T. L. R. 186.

Nash, In re, 65 L. J. Q.B. 65; (1896) 1 Q.B. 13; 73 L. T. 477; 44 W. R. 112; 2 Manson, 503.

APPL. in *Geiger, In re*, 84 L. J. K.B. 589; (1915) 1 K.B. 439; 112 L. T. 562; (1915) H. B. R. 44; 59 S. J. 250.

Neil *v.* Neil, 4 Hag. Ecc. Rep. 273.

DIST. in *Hall* v. *Hall*, 84 L. J. P. 93; (1915) P. 105; 112 L. T. 58; 59 S. J. 381.

Newdigate Colliery Co., In re, 81 L. J. Ch. 235; (1912) 1 Ch. 468; 106 L. T. 133; 19 Manson, 155; 28 T. L. R. 207.

DIST. in *Great Cobar, Lim., In re*, 84 L. J. Ch. 468; (1915) 1 Ch. 682; (1915) H. B. R. 79.

Newquay Urban Council *v.* Rickeard, 80 L. J. K.B. 1164; (1911) 2 K.B. 846; 105 L. T. 519; 9 L. G. R. 1042; 75 J. P. 382.

DICT. of Lord Alverstone, C.J., in, DISAPPR. in *Chatterton* v. *Glanford Brigg Rural Council*, 84 L. J. K.B. 1865; (1915) 3 K.B. 707; 113 L. T. 746; 79 J. P. 441; 13 L. G. R. 1352.

New River Co. *v.* Hertford Union, 71 L. J. K.B. 827; (1902) 2 K.B. 597; 87 L. T. 360; 51 W. R. 49; 66 J. P. 724.

FOLL. in *Metropolitan Water Board* v. *Chertsey Union*, 84 L. J. K.B. 1823; 79 J. P. 360; 13 L. G. R. 692.

New York Taxicab Co., In re; Sequin *v.* The Company, 82 L. J. Ch. 41; (1913) 1 Ch. 1; 107 L. T. 813; 19 Manson, 389; 57 S. J. 98.

CONS. in *Gregson* v. *Taplin & Co.*, 112 L. T. 985; 59 S. J. 349.

Noblett *v.* Hopkinson, 74 L. J. K.B. 544; (1905) 2 K.B. 214; 92 L. T. 462; 53 W. R. 637; 69 J. P. 269; 21 T. L. R. 448.

DIST. in *Bristow* v. *Piper*, 84 L. J. K.B. 607; (1915) 1 K.B. 271; 112 L. T. 426; 79 J. P. 177; 59 S. J. 178; 31 T. L. R. 80.

North of England Insurance Association *v.* Armstrong, 39 L. J. Q.B. 81; L. R. 5 Q.B. 244; 21 L. T. 822; 18 W. R. 520.

FOLL. in *Thames and Mersey Marine Insurance Co.* v. *British and Chilean Steamship Co.*, 84 L. J. K.B. 1087; (1915) 2 K.B. 214; 113 L. T. 173; 20 Com. Cas. 265; 31 T. L. R. 275.

Norton, In re, 80 L. J. Ch. 119; (1911) 2 Ch. 27; 103 L. T. 821.

CONS. in *Hewett's Settlement, In re*, 84 L. J. Ch. 715; (1915) 1 Ch. 810; 113 L. T. 315; 59 S. J. 476.

North-West Transportation Co. *v.* Beatty, 56 L. J. P.C. 102; 12 App. Cas. 589; 57 L. T. 426.

CONS. and APPL. in *Transvaal Lands Co.* v. *New Belgium (Transvaal) Land, &c., Co.*, 84 L. J. Ch. 94; (1914) 2 Ch. 488; 112 L. T. 965; 21 Manson, 364; 59 S. J. 27; 31 T. L. R. 1.

Odessa, The, 84 L. J. P. 112; (1915) P. 52; 112 L. T. 473; 59 S. J. 189; 31 T. L. R. 148.

FOLL. in *The Linaria*, 59 S. J. 530; 31 T. L. R. 396.

Offin *v.* Rochford Rural Council, 75 L. J. Ch. 348; (1906) 1 Ch. 342; 94 L. T. 669; 54 W. R. 244; 4 L. G. R. 595; 70 J. P. 97.

DIST. in *Thornhill* v. *Weeks (No. 3)*, 84 L. J. Ch. 282; (1915) 1 Ch. 106; 111 L. T. 1067; 78 J. P. 154; 12 L. G. R. 597.

Ollier *v.* Ollier, 84 L. J. P. 23; (1914) P. 240; 111 L. T. 697; 58 S. J. 754.

CONS. and APPL. in *Woodcock* v. *Woodcock*, 111 L. T. 924.

Osborn *v.* Gillett, 42 L. J. Ex. 53; L. R. 8 Ex. 88; 28 L. T. 197; 21 W. R. 409.

DIST. in *Berry* v. *Humm*, 84 L. J. K.B. 918; (1915) 1 K.B. 627; 31 T. L. R. 198.

Osmond *v.* Mutual Cycle and Manufacturing Supply Co., 68 L. J. Q.B. 1027; (1899) 2 Q.B. 488; 81 L. T. 254; 48 W. R. 125.

DICT. of A. L. Smith, L.J., in, DISS. from in *Seal* v. *Turner*, 84 L. J. K.B. 1658; (1915) 3 K.B. 194; 113 L. T. 769; 59 S. J. 649.

Oxford Building and Investment Co., In re, 49 L. T. 495.

APPL. in *Rubber and Produce Investment Trust, In re*, 84 L. J. Ch. 534; (1915) 1 Ch. 382; 112 L. T. 1129; (1915) H. B. R. 120; 31 T. L. R. 253.

Perry *v.* Meddowcroft, 12 L. J. Ch. 104; 4 Beav. 197.

DOUBTED in *Scott, In re*, 84 L. J. Ch. 366; (1915) 1 Ch. 592; 112 L. T. 1057; 31 T. L. R. 227.

Pickavance *v.* Pickavance, 70 L. J. P. 14; (1901) P. 60; 84 L. T. 62.

COMM. on in *Hopkins* v. *Hopkins*, 84 L. J. P. 26; (1914) P. 282; 112 L. T. 174.

Payne *v.* Fortescue, 81 L. J. K.B. 1191; (1912) 3 K.B. 346; (1912) W.C. Rep. 386; 107 L. T. 136; 57 S. J. 80.

DIST. in *Cooper* v. *Wales*, 84 L. J. K.B. 1321; (1915) 3 K.B. 210; (1915) W.C. & I. Rep. 307; 59 S. J. 578; 31 T. L. R. 506.

Perkins, In re; Bagot *v.* Perkins, 62 L. J. Ch. 531; (1893) 1 Ch. 283; 67 L. T. 743.

DIST. in *Vatcher* v. *Paull*, 84 L. J. P.C. 86; (1915) A.C. 372; 112 L. T. 737; and in *Holland, In re* 84 L. J. Ch. 389; (1914) 2 Ch. 595; 112 L. T. 27.

Pearks, Gunston and Tee *v.* Houghton, 71 L. J. K.B. 385; (1902) 1 K.B. 889; 86 L. T. 325; 50 W. R. 605; 66 J. P. 422.

FOLL. in *Batchelour* v. *Gee*, 83 L. J. K.B. 1714; (1914) 3 K.B. 242; 111 L. T. 256; 78 J. P. 362; 12 L. G. R. 931; 24 Cox C.C. 268; 30 T. L. R. 506.

Pennell *v.* Uxbridge Churchwardens, 31 L. J. M.C. 92; 8 Jur. N.S. 99.

FOLL. and APPL. in *Godman* v. *Crofton*, 83 L. J. K.B. 1524; (1914) 3 K.B. 803; 111 L. T. 754; 79 J. P. 12; 12 L. G. R. 1330.

Peter *v.* Stirling, 10 Ch. D. 279; 27 W. R. 469.

DIST. in *Scott, In re*, 84 L. J. Ch. 366; (1915) 1 Ch. 592; 112 L. T. 1057; 31 T. L. R. 227.

Plumb *v.* Cobden Flour Mills Co., 83 L. J. K.B. 197; (1914) A.C. 62; (1914) W.C. & I. Rep. 48; 109 L. T. 759; 58 S. J. 184; 30 T. L. R. 174.

FOLL. in *Herbert* v. *Fox & Co.*, 84 L. J. K.B. 670; (1915) 2 K.B. 81; (1915) W.C. & I. Rep. 154; 112 L. T. 833; 59 S. J. 249.

Plummer, In re, 69 L. J. Q.B. 936; (1900) 2 Q.B. 790; 83 L. T. 387; 48 W. R. 634; 7 Manson, 367.

FOLL. in *Branson, In re*, 83 L. J. K.B. 1673; (1914) 3 K.B. 1086; 111 L. T. 741; 30 T. L. R. 604.

Poyser, In re; Landon *v.* Poyser, 77 L. J. Ch. 482; (1908) 1 Ch. 828; 99 L. T. 50.

FOLL. in *Forster-Brown, In re*, 84 L. J. Ch. 361; (1914) 2 Ch. 584; 112 L. T. 681.

P. Caland (Owners) *v.* Glamorgan Steamship Co., 62 L. J. P. 41; (1893) A.C. 207; 68 L. T. 469; 7 Asp. M.C. 317.

RULE laid down by Lord Herschell and Lord Watson in, as to concurrent findings, CONS. in *"Hatfield" (Owners)* v. *"Glasgow" (Owners)*, 84 L. J. P. 161; 112 L. T. 703.

Palace Hotel, Lim., In re, 81 L. J. Ch. 695; (1912) 2 Ch. 438; 107 L. T. 521; 19 Manson, 295; 56 S. J. 649.

FOLL. in *Nordberg, In re*, 84 L. J. Ch. 830; (1915) 2 Ch. 439; 59 S. J. 717.

Panhaus *v.* Brown, 68 J. P. 435.

COMM. on in *Rex* v. *Registrar of Joint Stock Companies; Bowen, Ex parte*, 84 L. J. K.B. 229; (1914) 3 K.B. 1161; 112 L. T. 38; 30 T. L. R. 707.

Park's Settlement, In re; Foran *v.* Bruce, 83 L. J. Ch. 528; (1914) 1 Ch. 595; 110 L. T. 813; 58 S. J. 362.

NOT FOLL. in *Bullock's Will Trust, In re*, 84 L. J. Ch. 463; (1915) 1 Ch. 493; 112 L. T. 1119; 59 S. J. 441.

Parry, In re, 73 L. J. K.B. 83; (1904) 1 K.B. 129; 89 L. T. 612; 52 W. R. 256; 11 Manson, 18; 20 T. L. R. 73.

DIST. in *Collins, In re*, 112 L. T. 87.

Peckover *v.* Defries, 71 J. P. 38.

CONS. in *Mellor* v. *Lydiate*, 84 L. J. K.B. 8; (1914) 3 K.B. 1141; 111 L. T. 988; 79 J. P. 68; 30 T. L. R. 704.

Pekin, The, 66 L. J. P.C. 97; (1897) A.C. 532; 77 L. T. 443.

DIST. and EXPL. in *The Olympic and H.M.S. Hawke*, 84 L. J. P. 49; (1915) A.C. 385; 112 L. T. 49; 31 T. L. R. 54.

Perry *v.* Wright, 77 L. J. K.B. 236; (1908) 1 K.B. 441; 98 L. T. 327; 24 T. L. R. 186.

FOLL. in *Greenwood* v. *Nall & Co.*, 84 L. J. K.B. 1356; (1915) 3 K.B. 97; (1915) W.C. & I. Rep. 346; 113 L. T. 612; 59 S. J. 577; 31 T. L. R. 476.

Peverett, In the goods of, 71 L. J. P. 114; (1902) P. 205; 87 L. T. 143.

DIST. in *Strong* v. *Hadden*, 84 L. J. P. 188; (1915) P. 211; 112 L. T. 997; 31 T. L. R. 256.

Phillips *v.* Beal, 32 Beav. 26.

APPL. in *Flectwood and District Electric Light &c. Co., In re*, 84 L. J. Ch. 374; (1915) 1 Ch. 486; 112 L. T. 1127; (1915) H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221.

Phillimore, In re; Phillimore *v.* Milnes, 73 L. J. Ch. 671; (1904) 2 Ch. 460; 91 L. T. 256; 52 W. R. 682.

APPL. in *Trafford's Settled Estates, In re*, 84 L. J. Ch. 351; (1915) 1 Ch. 9; 112 L. T. 107.

Phillips *v.* Gutteridge, 32 L. J. Ch. 1; 3 De G. J. & S. 332.

APPL. and FOLL. in *Buchanan, In re; Stephens* v. *Draper*, (1915) 1 Ir. R. 95.

Punt *v.* Symons, 72 L. J. Ch. 768; (1903) 2 Ch. 506; 89 L. T. 525; 52 W. R. 41.

was OV. by the Court of Appeal in *Bailey* v. *British Equitable Assurance Co.* (73 L. J. Ch. 240; (1904) 1 Ch. 374); and the reversal of the latter decision by the House of Lords (75 L. J. Ch. 73; (1906) A.C. 35) was not due to any dissent from the principle enunciated by the Court of Appeal, which indeed was recognised by the House of Lords; so HELD in *British Murac Syndicate* v. *Alperton Rubber Co.*, 84 L. J. Ch. 665; (1915) 2 Ch. 186; 59 S. J. 494; 31 T. L. R. 391.

Playfair *v.* Cooper, 23 L. J. Ch. 341; 17 Beav. 187.

FOLL. in *Croxon, In re; Ferrers* v. *Croxon*, 84 L. J. Ch. 845; (1915) 2 Ch. 290; 59 S. J. 693.

Pointon *v.* Hill, 53 L. J. M.C. 62; 12 Q.B. D. 306; 50 L. T. 268.

DISC. and COMM. on in *Mathers* v. *Penfold*, 84 L. J. K.B. 627; (1915) 1 K.B. 514; 112 L. T. 726; 79 J. P. 225; 13 L. G. R. 359; 59 S. J. 235; 31 T. L. R. 108.

Pollitt, In re; Minor, ex parte, 62 L. J. Q.B. 236; (1893) 1 Q.B. 455; 68 L. T. 366; 41 W. R. 276; 10 Morrell, 35.

DIST. in *Thorne & Son, Lim., In re*, 84 L. J. Ch. 161; (1914) 2 Ch. 438; 112 L. T. 30; (1915) H. B. R. 19; 58 S. J. 755.

Porter *v.* Freudenberg, 84 L. J. K.B. 1001; (1915) 1 K.B. 857; 112 L. T. 313; 20 Com. Cas. 189; 32 R. P. C. 109; 59 S. J. 216; 31 T. L. R. 162.

APPL. in *Wilson & Wilson, In re*, 84 L. J. K.B. 1893.

Pope, In re; Dicksee, ex parte, 77 L. J. K.B. 767; (1908) K.B. 169; 98 L. T. 775; 15 Manson, 201; 24 T. L. R. 556.

APPR. in *Collins, In re*, 112 L. T. 87.

Potts, In re; Taylor, ex parte, 62 L. J. Q.B. 392; (1893) 1 Q.B. 648; 69 L. T. 74; 41 W. R. 337; 10 Morrell, 52.

DIST. in *Gershon & Levy, In re*, 84 L. J. K.B. 1668; (1915) 2 K.B. 527; 59 S. J. 440.

Preston *v.* Guyon or Grand Collier Dock Co., 10 L. J. Ch. 73; 11 Sim. 327.

FOLL. in *Galloway* v. *Hallé Concerts Society*, 84 L. J. Ch. 723; (1915) 2 Ch. 233; 59 S. J. 613; 31 T. L. R. 469.

Price *v.* Union Lighterage Co., 73 L. J. K.B. 222; (1904) 1 K.B. 412; 89 L. T. 731; 52 W. R. 325; 9 Com. Cas. 120; 20 T. L. R. 177.

DIST. in *Travers* v. *Cooper*, 83 L. J. K.B. 1787; (1915) 1 K.B. 73; 111 L. T. 1088; 20 Com. Cas. 44; 30 T. L. R. 703.

Proctor *v.* Robinson, 80 L. J. K.B. 641; (1911) 1 K.B. 1004.

CONS. in *Silcock* v. *Golightly*, 84 L. J. K.B. 499; (1915) 1 K.B. 748; (1915) W.C. & I. Rep. 164; 112 L. T. 800.

Prince *v.* Cooper, 17 Beav. 187.

FOLL. in *Croxon, In re*, 84 L. J. Ch. 845; (1915) 2 Ch. 290; 59 S. J. 693.

Raine, In the goods of, 1 Sw. & Tr. 144.

COMM. on in *Walker* v. *Gaskill*, 83 L. J. P. 152; (1914) P. 192; 111 L. T. 941; 59 S. J. 45; 30 T. L. R. 637.

Rayson *v.* South London Tramways, 62 L. J. Q.B. 593; (1893) 2 Q.B. 304; 69 L. T. 491; 42 W. R. 21.

DIST. in *Wiffen* v. *Bailey*, 84 L. J. K.B. 688; (1915) 1 K.B. 600; 112 L. T. 274; 79 J. P. 145; 13 L. G. R. 121; 59 S. J. 176; 31 T. L. R. 64.

Rex *v.* Norton, 79 L. J. K.B. 756; (1910) 2 K.B. 496; 102 L. T. 926; 74 J. P. 375; 54 S. J. 602; 26 T. L. R. 550.

DISC. and EXPL. in *Director of Public Prosecutions* v. *Christie*, 83 L. J. K.B. 1097; (1914) A.C. 545; 111 L. T. 220; 78 J. P. 321; 24 Cox C.C. 249; 58 S. J. 515; 30 T. L. R. 471.

Russell *v.* Town and County Bank, 58 L. J. P.C. 8; 13 App. Cas. 418; 59 L. T. 481; 53 J. P. 244.

FOLL. in *General Hydraulic Power Co.* v. *Hancock*, 83 L. J. K.B. 906; (1914) 2 K.B. 21; 111 L. T. 251; 6 Tax Cas. 445; 30 T. L. R. 203. PRIN. of, APPL. in *Usher's Wiltshire Brewery* v. *Bruce*, 84 L. J. K.B. 417; (1915) A.C. 433; 112 L. T. 651; 6 Tax Cas. 399; 59 S. J. 144; 31 T. L. R. 104.

Radford *v.* Bright, Lim., In re, 70 L. J. Ch. 78, 352; (1901) 1 Ch. 272, 735; 84 L. T. 150.
SUGGES. in, ACTED on in *Rubber and Produce Investment Trust, In re*, 84 L. J. Ch. 534; (1915) 1 Ch. 382; 112 L. T. 1129; (1915) H. B. R. 120; 31 T. L. R. 253.

Raleigh *v.* Goschen, 67 L. J. Ch. 59; (1898) 1 Ch. 73; 77 L. T. 429; 46 W. R. 90.
APPL. in *Roper* v. *Works and Public Buildings Commissioners*, 84 L. J. K.B. 219; (1915) 1 K.B. 45; 111 L. T. 630.

Randle *v.* Clay Cross Co., 83 L. J. K.B. 167; (1913) 3 K.B. 795; 109 L. T. 522; 29 T. L. R. 624.
point in, OV. in *Barwell* v. *Newport Abercarn Black Vein Steam Coal Co.*, 84 L. J. K.B. 1105; (1915) 2 K.B. 256; 112 L. T. 806; 59 S. J. 233; 31 T. L. R. 136.

Reg. *v.* Beckley, 57 L. J. M.C. 22; 20 Q.B. D. 187; 57 L. T. 716; 36 W. R. 160; 16 Cox C.C. 331; 52 J. P. 120.
APPR. and FOLL. in *Rex* v. *Beacontree Justices*, 84 L. J. K.B. 2230; (1915) 3 K.B. 388; 13 L. G. R. 1094; 31 T. L. R. 509.

Reg. *v.* Blane, 18 L. J. M.C. 216; 13 Q.B. 769.
DISC. and DIST. in *Rex* v. *Humphreys; Ward, Ex parte*, 84 L. J. K.B. 187; (1914) 3 K.B. 1237; 111 L. T. 1110; 79 J. P. 66; 30 T. L. R. 698.

Reg. *v.* Cox, 54 L. J. M.C. 41; 14 Q.B. D. 153; 52 L. T. 25; 33 W. R. 396; 15 Cox C.C. 611; 49 J. P. 374.
FOLL. in *Rex* v. *Smith*, 84 L. J. K.B. 2153; 59 S. J. 704; 31 T. L. R. 617.

Reg. *v.* Eagleton, 24 L. J. M.C. 158, 166; Dears. C.C. 515, 538.
DICT. of Parke, B., in, APPR. and FOLL. in *Rex* v. *Robinson*, 84 L. J. K.B. 1149; (1915) 2 K.B. 342; 79 J. P. 303; 59 S. J. 366; 31 T. L. R. 313.

Reg. *v.* Grant or Gaunt, 36 L. J. M.C. 89; L. R. 2 Q.B. 466; 8 B. & S. 365; 16 L. T. 379; 15 W. R. 1172.
CONS. in *McGregor* v. *Telford*, 84 L. J. K.B. 1902; (1915) 3 K.B. 237; 113 L. T. 84; 31 T. L. R. 512.

Reg. *v.* Glynne, 41 L. J. M.C. 58; L. R. 7 Q.B. 16; 26 L. T. 61; 20 W. R. 94.
CONS. in *McGregor* v. *Telford*, 84 L. J. K.B. 1902; (1915) 3 K.B. 237; 113 L. T. 84; 31 T. L. R. 512.

Reg. *v.* Hensler, 22 L. T. 691.
FOLL. in *Rex* v. *Light*, 84 L. J. K.B. 865; 112 L. T. 1144; 59 S. J. 351; 31 T. L. R. 257.

Reg. *v.* Langmead, 10 L. T. 350.
FOLL. in *Rex* v. *Curnock*, 111 L. T. 816.

Reg. *v.* Local Government Board, 52 L. J. M.C. 4; 10 Q.B. D. 309; 48 L. T. 173.
APPL. in *Rex* v. *Local Government Board; Thorp, Ex parte*, 84 L. J. K.B. 1184; 112 L. T. 860; 79 J. P. 248; 13 L. G. R. 402.

Reg. *v.* Machen, 18 L. J. M.C. 213; 14 Q.B. 74.
EXPL. *in McGregor* v. *Telford*, 84 L. J. K.B. 1902; (1915) 3 K.B. 237; 113 L. T. 84; 31 T. L. R. 512.

Reg. *v.* Saddlers Co., 32 L. J. Q.B. 337; 10 H.L. C. 404.
CONS. in *London and Counties Assets Co.* v. *Brighton Grand Concert Hall and Picture Palace*, 84 L. J. K.B. 991; (1915) 2 K.B. 493; 112 L. T. 380; (1915) H. B. R. 83.

Reg. *v.* Welsh, 11 Cox C.C. 336.
FOLL. in *Rex* v. *Lesbini*, 84 L. J. K.B. 1102; (1914) 3 K.B. 1116; 112 L. T. 175.

Reg. *v.* Westmoreland County Court Judge, 36 W. R. 477.
DIST. in *McArdle* v. *Kane*, (1915) 1 Ir. R. 259.

Reg. *v.* Wiley, 20 L. J. M.C. 4, 9; 4 Cox C.C. 414, 421.
DICT. of Patteson, J., in, APPR. in *Rex* v. *Berger*, 84 L. J. K.B. 541; 31 T. L. R. 159.

Registrar of Trade Marks *v.* Du Cros, 83 L. J. Ch. 1; (1913) A.C. 624; 109 L. T. 687; 30 R. P. C. 60; 57 S. J. 728; 29 T. L. R. 772.
APPL. in *British Milks Products Co.'s Application, In re*, 84 L. J. Ch. 819; (1915) 2 Ch. 202; 32 R. P. C. 453.

Rex *v.* Alexander, 109 L. T. 745.
FOLL. in *Rex* v. *Lesbini*, 84 L. J. K.B. 1102; (1914) 3 K.B. 1116; 112 L. T. 175.

Rex *v.* Bond, 75 L. J. K.B. 693; (1906) 2 K.B. 389; 95 L. T. 296; 54 W. R. 586; 70 J. P. 424; 21 Cox C.C. 252; 22 T. L. R. 633.
CONS. in *Perkins* v. *Jeffery*, 84 L. J. K.B. 1554; (1915) 2 K.B. 702; 79 J. P. 425; 31 T. L. R. 444.

Rhodesia Goldfields, In re, 79 L. J. Ch. 133; (1910) 1 Ch. 239; 102 L. T. 126; 17 Manson, 23; 54 S. J. 135.
DIST. in *Smelting Corporation, In re; Seaver* v. *Smelting Corporation*, 84 L. J. Ch. 571; (1915) 1 Ch. 472; 113 L. T. 44; (1915) H. B. R. 126.

River Steamer Co., In re; Mitchell's Claim, L. R. 6 Ch. 822.
APPL. in *Fleetwood and District Light and Power Syndicate, In re*, 84 L. J. Ch. 374; (1915) 1 Ch. 486; 112 L. T. 1127; (1915) H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221.

Rex *v.* Johnson, 78 L. J. K.B. 290; (1909) 1 K.B. 439; 100 L. T. 464; 73 J. P. 135; 53 S. J. 288; 25 T. L. R. 229.
FOLL. in *Rex* v. *Evans*, 84 L. J. K.B. 1603; (1915) 2 K.B. 762; 79 J. P. 415; 59 S. J. 496; 31 T. L. R. 410.

Rex *v.* Fisher, 79 L. J. K.B. 187; (1910) 1 K.B. 149; 102 L. T. 111; 74 J. P. 104; 26 T. L. R. 122.
APPR. and APPL. in *Rex* v. *Kurasch*, 84 L. J. K.B. 1497; (1915) 2 K.B. 749; 79 J. P. 399.

Rex *v.* Rodley, 82 L. J. K.B. 1070; (1913) 3 K.B. 468; 109 L. T. 476; 77 J. P. 465; 58 S. J. 51; 29 T. L. R. 700.
APPR. and APPL. in *Rex* v. *Kurasch*, 84 L. J. K.B. 1497; (1915) 2 K.B. 749; 79 J. P. 399.

Rex *v.* Thame (Churchwardens), 1 Str. 115.
DISC. and APPL. in *Rex* v. *Dymock (Vicar)*, 84 L. J. K.B. 294; (1915) 1 K.B. 147; 112 L. T. 156; 79 J. P. 91; 13 L. G. R. 48; 31 T. L. R. 11.

Rex *v.* Norfolk County Council, 70 L. J. K.B. 575; (1901) 2 K.B. 268; 84 L. T. 822; 49 W. R. 543; 65 J. P. 454.
DIST. in *Thornhill* v. *Weeks (No. 3)*, 84 L. J. Ch. 282; (1915) 1 Ch. 106; 111 L. T. 1067; 78 J. P. 154; 12 L. G. R. 597.

Ruby, The, 83 L. T. 438.
FOLL. in *Mackay, In re*, (1915) 2 Ir. R. 347.

Rex *v.* Jefferson, 24 T. L. R. 877.
FOLL. in *Rex* v. *Gilbert*, 84 L. J. K.B. 1424; 112 L. T. 479.

Rex *v.* Kerrison, 3 M. & S. 526.
DIST. in *Sharpness New Docks and Gloucester and Birmingham Navigation Co. v. Att.-Gen.*, 84 L. J. K.B. 907; (1915) A.C. 654; 112 L. T. 826; 79 J. P. 305; 13 L. G. R. 563; 59 S. J. 381; 31 T. L. R. 254.

Renfrew *v.* M'Crae, (1914) W.C. & I. Rep. 195; (1914) 1 S. L. T. 354.
DIST. in *Williams v. Llandudno Coaching and Carriage Co.*, 84 L. J. K.B. 655; (1915) 2 K.B. 101; (1915) W.C. & I. Rep. 91; 112 L. T. 848; 59 S. J. 286; 31 T. L. R. 186.

Reynault, In re, 16 Jur. 233.
FOLL. in *Leigh v. Pantin*, 84 L. J. Ch. 345; (1914) 2 Ch. 701; 112 L. T. 26.

Rhodesia Goldfields, In re, 79 L. J. Ch. 133; (1910) 1 Ch. 239; 102 L. T. 126; 17 Manson, 23; 54 S. J. 135.
DIST. in *Peruvian Railway Construction Co., In re*, (1915) 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464.

Richardson, In re; St. Thomas's Hospital Governors, ex parte, 80 L. J. K.B. 1232; (1911) 2 K.B. 705; 105 L. T. 226.
EXPL. and DIST. in *Law Guarantee Trust and Accident Society, In re* (*No. 2*), 84 L. J. Ch. 1; (1914) 2 Ch. 617; 111 L. T. 817; 58 S. J. 704; 30 T. L. R. 616.

Richards *v.* Wrexham and Acton Collieries, 83 L. J. K.B. 687; (1914) 2 K.B. 497; 110 L. T. 402; 30 T. L. R. 228.
FOLL. in *Higginson v. Blackwell Colliery Co.*, 84 L. J. K.B. 1189; 112 L. T. 442; 31 T. L. R. 95.

Robbins *v.* Jones, 33 L. J. C.P. 1; 15 C.B. (N.S.) 221.
FOLL. in *Horridge v. Makinson*, 84 L. J. K.B. 1294; 113 L. T. 498; 13 L. G. R. 868; 31 T. L. R. 389.

Roberts *v.* Bishop of Kilmore, (1902) 1 Ir. R. 333.
DIST. in *Jones, In re*, 84 L. J. Ch. 222; (1915) 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Robins *v.* Gray, 65 L. J. Q.B. 44; (1895) 2 Q.B. 501; 73 L. T. 252; 44 W. R. 1; 59 J. P. 741.
DIST. in *Cassils & Co. v. Holden Wood Bleaching Co.*, 84 L. J. K.B. 834; 112 L. T. 373.

Roney, In re, 83 L. J. K.B. 451; (1914) 2 K.B. 529; 110 L. T. 111.
DICT. in APPR. in *Seal v. Turner*, 84 L. J. K.B. 1658; (1915) 3 K.B. 194; 113 L. T. 769; 59 S. J. 649.

Ross, In re; Ashton *v.* Ross, 69 L. J. Ch. 192; (1900) 1 Ch. 162; 81 L. T. 578; 48 W. R. 264.
FOLL. in *Dempster, In re*, 84 L. J. Ch. 597; (1915) 1 Ch. 795; 112 L. T. 1124.

Rugby Trustees *v.* Merryweather, 11 East, 275*n*.
APPR. in *Kingston-upon-Hull Corporation v. North-Eastern Railway*, 84 L. J. Ch. 329; (1915) 1 Ch. 456; 112 L. T. 584; 79 J. P. 221; 13 L. G. R. 587; 59 S. J. 318.

Rushton *v.* Skey & Co., 83 L. J. K.B. 1503; (1914) 3 K.B. 706; (1914) W.C. & I. Rep. 497; 111 L. T. 700; 58 S. J. 685; 30 T. L. R. 601.
APPL. in *Allen v. Francis*, 83 L. J. K.B. 1814; (1914) 3 K.B. 1065; (1914) W.C. & I. Rep. 599; 112 L. T. 62; 58 S. J. 753; 30 T. L. R. 695.

Rylands *v.* Fletcher, 37 L. J. Ex. 161; L. R. 3 H.L. 330; 19 L. T. 220.
PRINC. in, when APPL., CONS. in *Goodbody v. Poplar Borough Council*, 84 L. J. K.B. 1230; 79 J. P. 218; 13 L. G. R. 166.

Simcoe, In re; Vowles-Simcoe *v.* Vowler, 82 L. J. Ch. 270; (1913) 1 Ch. 552; 108 L. T. 891; 57 S. J. 533.
DIST. in *Lawrence (Lord), In re*, 84 L. J. Ch. 273; (1915) 1 Ch. 129; 112 L. T. 195; 59 S. J. 127.

Sion College *v.* London Corporation, 70 L. J. K.B. 369; (1901) 1 K.B. 617; 84 L. T. 133; 49 W. R. 361; 65 J. P. 324.
FOLL. in *Associated Newspapers, Lim. v. London Corporation* (*No. 2*), 84 L. J. K.B. 1913; (1915) 3 K.B. 128; 113 L. T. 587; 59 S. J. 545; 31 T. L. R. 432.

Squire *v.* Squire, 74 L. J. P. 1; (1905) P. 4; 92 L. T. 472; 21 T. L. R. 41.
APPR. in *Ollier v. Ollier*, 84 L. J. P. 23; (1914) P. 240; 111 L. T. 697; 58 S. J. 754.

Stebbing *v.* Metropolitan Board of Works, 40 L. J. Q.B. 1; L. R. 6 Q.B. 37; 23 L. T. 530; 19 W. R. 73.
DISC. and EXPL. in *Corrie v. MacDermott*, 83 L. J. P.C. 370; (1914) A.C. 1056; 111 L. T. 952.

Steel *v.* Lester, 47 L. J. C.P. 43; 3 C. P. D. 121; 37 L. T. 642; 26 W. R. 212.
FOLL. in *Associated Portland Cement Manufacturers v. Ashton*, 84 L. J. K.B. 519; (1915) 2 K.B. 1; 112 L. T. 486; 20 Com. Cas. 165.

Stinson's Estate, In re, (1910) 1 Ir. R. 13.
FOLL. in *Cross's Trust, In re*, (1915) 1 Ir. R. 304.

South Wales Railway *v.* Swansea Local Board of Health, 24 L. J. M.C. 30; 4 E. & B. 189.
DISC. in *Lancashire and Yorkshire Railway v. Liverpool Corporation*, 84 L. J. K.B. 1273; (1915) A.C. 152; 111 L. T. 596; 78 J. P. 409; 12 L. G. R. 771; 58 S. J. 653; 30 T. L. R. 563.

Stokes *v.* Stokes, 80 L. J. P. 142; (1911) P. 195; 105 L. T. 416; 75 J. P. 502; 55 S. J. 690; 27 T. L. R. 553.
CONS. in *McGregor v. Telford*, 84 L. J. K.B. 1902; (1915) 3 K.B. 237; 113 L. T. 84; 31 T. L. R. 512.

Sykes *v.* Sowerby Urban Council, 69 L. J. Q.B. 464; (1900) 1 Q.B. 584; 82 L. T. 177; 64 J. P. 340.
FOLL. in *Yorkshire (W.R.) Rivers Board v. Linthwaite Urban Council* (*No. 2*), 84 L. J. K.B. 1610; 79 J. P. 433; 13 L. G. R. 772.

Sutton *v.* Great Northern Railway, 79 L. J. K.B. 81; (1909) 2 K.B. 791; 101 L. T. 175.
APPL. in *Taylor v. Cripps*, 83 L. J. K.B. 1538; (1914) 3 K.B. 989; (1914) W.C. & I. Rep. 515; 111 L. T. 780; 30 T. L. R. 616.

Salt *v.* Tomlinson, 80 L. J. K.B. 897; (1911) 2 K.B. 391; 105 L. T. 31; 75 J. P. 398; 9 L. G. R. 822; 27 T. L. R. 427.
CONS. in *Bothamley v. Jolly*, 84 L. J. K.B. 2223; (1915) 3 K.B. 435; 31 T. L. R. 626.

Sampson, In re, 65 L. J. Ch. 406; (1896) 1 Ch. 630; 74 L. T. 246; 44 W. R. 557.
APPL. in *Jenkins, In re; Williams v. Jenkins*, 84 L. J. Ch. 349; (1915) 1 Ch. 46.

Sanders' Trusts, In re, L. R. 1 Eq. 675.
FOLL. in *Jones, In re; Last v. Dobson*, 84 L. J. Ch. 222; (1915) 1 Ch. 246; 112 L. T. 409; 59 S. J. 218.

Saunders *v.* Thorney, 78 L. T. 627.
DIST. in *Bristow v. Piper*, 84 L. J. K.B. 607; (1915) 1 K.B. 271; 112 L. T. 426; 79 J. P. 177; 59 S. J. 178; 31 T. L. R. 80.

Saville *v.* Robertson, 4 Term Rep. 720.
DIST. in *Karmali Abdulla Allarakhia v. Vora Karinji Jiwangi*, L. R. 42 Ind. App. 48.

Schweder, In re, (1893) W. N. 12; 37 S. J. 249.
NOT FOLL. in *Trollope, In re*, 84 L. J. Ch. 553; (1915) 1 Ch. 853; 113 L. T. 153.

Scott v. Avery, 25 L. J. Ex. 308; 5 H.L. C. 811.
DIST. in *Jureidini* v. *National British and Irish Millers' Insurance Co.*, 84 L. J. K.B. 640; (1915) A.C. 499; (1915) W.C. & I. Rep. 239; 112 L. T. 531; 59 S. J. 205; 31 T. L. R. 132.

Singer Manufacturing Co. v. London and South-Western Railway, 63 L. J. Q.B. 411; (1894) 1 Q.B. 833; 70 L. T. 172; 42 W. R. 347.
DIST. in *Cassils & Co.* v. *Holden Wood Bleaching Co.*, 84 L. J. K.B. 834; 112 L. T. 373.

Shewan v. Vanderhorst, 1 Russ. & My. 347; 2 Russ. & My. 75.
APPL. in *Fleetwood and District Electric Light, &c. Co., In re*, 84 L. J. Ch. 374; (1915) 1 Ch. 486; 112 L. T. 1127; (1915) H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221.

Sharpe v. Sharpe, 78 L. J. P. 21; (1909) P. 20; 99 L. T. 884; 25 T. L. R. 131.
DICT. of Bargrave Deane, J., in, DISC. and DIST. in *Hall* v. *Hall*, 84 L. J. P. 93; (1915) P. 105; 113 L. T. 58; 59 S. J. 381.

Sharpington v. Fulham Guardians, 73 L. J. Ch. 777; (1904) 2 Ch. 449; 91 L. T. 739; 52 W. R. 617; 68 J. P. 510; 20 T. L. R. 643; 2 L. G. R. 1229.
APPR. in *Myers* v. *Bradford Corporation*, 84 L. J. K.B. 306; (1915) 1 K.B. 417; 112 L. T. 206; 79 J. P. 130; 13 L. G. R. 1; 59 S. J. 57; 31 T. L. R. 44.

Sharpness New Docks v. Att.-Gen., 84 L. J. K.B. 907; (1915) A.C. 654; 112 L. T. 826; 79 J. P. 305; 13 L. G. R. 563; 59 S. J. 381; 31 T. L. R. 254.
APPL. in *Att.-Gen.* v. *Great Northern Railway*, 84 L. J. K.B. 793; 59 S. J. 578; 31 T. L. R. 501.

Sinclair, In re; Allen v. Sinclair, 66 L. J. Ch. 514; (1897) 1 Ch. 921; 76 L. T. 452; 45 W. R. 596.
DIST. in *Dempster, In re*; *Borthwick* v. *Lovell*, 84 L. J. Ch. 597; (1915) 1 Ch. 795; 112 L. T. 1124; and in *Richardson, In re*; *Mahony* v. *Treacy*, (1915) 1 Ir. R. 39.

Shirley v. Fisher, 47 L. T. 109.
DIST. in *Jones' Settlement, In re*, 84 L. J. Ch. 406; (1915) 1 Ch. 373; (1915) W.C. & I. Rep. 277; 112 L. T. 1067; 59 S. J. 364.

Sir John Moore Gold Mining Co., In re, 12 Ch. D. 325.
APPL. in *Rubber and Produce Investment Trust, In re*, 84 L. J. Ch. 534; (1915) 1 Ch. 382; 112 L. T. 1129; (1915) H. B. R. 120; 31 T. L. R. 253.

Skeats, In re, 58 L. J. Ch. 656; 42 Ch. D. 522.
DIST. in *Cotter, In re*, 84 L. J. Ch. 337; (1915) 1 Ch. 307; 112 L. T. 340; 59 S. J. 177.

Smith v. Lion Brewery Co., 80 L. J. K.B. 566; (1911) A.C. 150; 104 L. T. 321; 75 J. P. 273; 55 S. J. 269; 27 T. L. R. 261.
PRIN. of, APPL. in *Usher's Wiltshire Brewery* v. *Bruce*, 84 L. J. K.B. 417; (1915) A.C. 433; 112 L. T. 651; 6 Tax Cas. 399; 59 S. J. 144; 31 T. L. R. 104.

Smith-Bosanquet's Settled Estates, In re, 107 L. T. 191.
FOLL. in *Maryon-Wilson's Settled Estates, In re*, 84 L. J. Ch. 121; (1915) 1 Ch. 29; 112 L. T. 111.

Somes, In re, 65 L. J. Ch. 262; (1896) 1 Ch. 250; 74 L. T. 49; 44 W. R. 236.
DIST. in *Jones's Settlement, In re*, 84 L. J. Ch. 406; (1905) 1 Ch. 373; (1915) W.C. & I. Rep. 277; 112 L. T. 1067; 59 S. J. 364.

South African Territories v. Wallington, 67 L. J. Q.B. 470; (1898) A.C. 309; 78 L. T. 426; 46 W. R. 545.
APPL. in *Kuala Pahi Rubber Estates* v. *Mowbray*, 111 L. T. 1072; and in *Smelting Corporation, In re*, 84 L. J. Ch. 571; (1915) 1 Ch. 472; 113 L. T. 44; (1915) H. B. R. 126.

South Llanharran Colliery Co., In re, 12 Ch. D. 503.
DIST. in *Menell, Lim., In re; Regent Street Fur Co.* v. *Diamant*, 84 L. J. Ch. 593; (1915) 1 Ch. 759; 113 L. T. 77; (1915) H. B. R. 141; 31 T. L. R. 270.

Swinburne v. Milburn, 54 L. J. Q.B. 6; 9 App. Cas. 844; 52 L. T. 222; 33 W. R. 325.
FOLL. in *Wynn* v. *Conway Corporation*, 84 L. J. Ch. 203; (1914) 2 Ch. 705; 111 L. T. 1016; 78 J. P. 380; 13 L. G. R. 137; 59 S. J. 43; 30 T. L. R. 666.

Standing v. Eastwood, (1912) W.C. Rep. 200; 106 L. T. 477.
DISC. and DIST. in *Goodsell* v. *"Lloyds" (Owners)*, 83 L. J. K.B. 1733; (1914) 3 K.B. 1001; (1914) W.C. & I. Rep. 585; 111 L. T. 784; 30 T. L. R. 622.

Stamford (Earl), In re; Payne v. Stamford, 65 L. J. Ch. 134; (1896) 1 Ch. 288.
APPL. in *Cotter, In re*, 84 L. J. Ch. 337; (1915) 1 Ch. 307; 112 L. T. 340; 59 S. J. 177.

Stedham, In the goods of, 50 L. J. P. 75; 6 P. D. 205.
FOLL. in *Carleton, In the goods of*, (1915) 2 Ir. R. 9.

Staffordshire Gas and Coke Co., In re; Nicholson, ex parte, 66 L. T. 413.
OV. in *Channell Collieries Trust* v. *St. Margaret's, Dover, and Martin Mill Light Railway*, 84 L. J. Ch. 28; (1914) 2 Ch. 506; 111 L. T. 1051; 21 Manson, 328; 30 T. L. R. 647.

Stanford v. Roberts, 53 L. J. Ch. 338; 26 Ch. D. 155; 50 L. T. 147.
EXPL. and FOLL. in *Morgan & Co., In re*, 84 L. J. Ch. 249; (1915) 1 Ch. 182; 112 L. T. 239; 59 S. J. 289.

Steel v. Dartford Local Board, 60 L. J. Q.B. 256.
DIST. in *Thompson* v. *Bradford Corporation*, 84 L. J. K.B. 1440; (1915) 3 K.B. 13; 79 J. P. 364; 13 L. G. R. 884; 59 S. J. 495.

Summerlee Iron Co. v. Freeland, 82 L. J. P.C. 102; (1913) A.C. 221; (1913) W.C. & I. Rep. 302; 108 L. T. 465; 57 S. J. 281; 29 T. L. R. 277.
APPL. in *Cooper* v. *Wales*, 84 L. J. K.B. 1321; (1915) 3 K.B. 210; (1915) W.C. & I. Rep. 307; 59 S. J. 578; 31 T. L. R. 506.

Steel v. Young, (1907) S. C. 360.
DISC. and DOUBT. in *Forrest* v. *Scottish County Investment Co.*, (1915) S. C. 115.

Sword v. Cameron, 1 Dunlop, 493.
DIST. in *Canadian Pacific Railway* v. *Fréchette*, 84 L. J. P.C. 161; (1915) A.C. 871; 31 T. L. R. 529.

Sykes v. Sheard, 33 Beav. 114.
CONS. in *Goswell's Trusts, In re*, 84 L. J. Ch. 719; (1915) 2 Ch. 106; 113 L. T. 319; 59 S. J. 579.

Stroud *v.* Norman, 23 L. J. Ch. 443; Kay, 313.
DIST. in *Vatcher* v. *Paull*, 84 L. J. P.C. 86; (1915) A.C. 372; 112 L. T. 737.

Symes, Ex parte, 103 L. T. 428; 75 J. P. 33; 9 L. G. R. 154; 22 Cox C.C. 346; 27 T. L. R. 21.
FOLL. in *White* v. *Jackson*, 84 L. J. K.B. 1900; 113 L. T. 783; 79 J. P. 447; 31 T. L. R. 505.

Taff Vale Railway *v.* Jenkins, 82 L. J. K.B. 49; (1913) A.C. 1; 107 L. T. 564; 57 S. J. 27; 29 T. L. R. 19.
APPL. in *Berry* v. *Humm*, 84 L. J. K.B. 918; (1915) 1 K.B. 627; 31 T. L. R. 198.

Talbot *v.* Frere, 9 Ch. D. 568; 27 W. R. 148
COMM. on in *Thorne & Son, Lim., In re*, 84 L. J. Ch. 161; (1914) 2 Ch. 438; 112 L. T. 30; (1915) H. B. R. 19; 58 S. J. 755.

Tattersall *v.* National Steamship Co., 53 L. J. Q.B. 332; 12 Q.B. D. 297; 50 L. T. 299; 32 W. R. 566; 5 Asp. M.C. 206.
CONS. in *Bank of Australasia* v. *Clan Line Steamers*, 84 L. J. K.B. 1250; (1916) 1 K.B. 39.

Tavarone Mining Co., In re; Pritchard's Case, 42 L. J. Ch. 768; L. R. 8 Ch. 956; 29 L. T. 363; 21 W. R. 829.
DIST. in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; (1915) 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Taylor's Settlement, In re, 22 L. J. Ch. 142; 9 Hare, 596.
CONS. in *Goswell's Trusts, In re*, 84 L. J. Ch. 719; (1915) 2 Ch. 106; 113 L. T. 319; 59 S. J. 579.

Taylor *v.* Roe, 63 L. J. Ch. 282; (1894) 1 Ch. 413; 70 L. T. 232; 42 W. R. 426.
FOLL. and APPL. in *Alexander* v. *Curragh*, (1915) 1 Ir. R. 273.

Taylor, In re, 56 L. J. Ch. 597.
FOLL. in *Wasserberg, In re*, 84 L. J. Ch. 214; (1915) 1 Ch. 195; 112 L. T. 242; 59 S. J. 176.

Thatcher's Trusts, In re, 26 Beav. 365.
FOLL. in *Hewett's Settlement, In re*, 84 L. J. Ch. 715; (1915) 1 Ch. 810; 113 L. T. 315; 59 S. J. 476.

Thompson *v.* Cohen, 41 L. J. Q.B. 221; L. R. 7 Q.B. 527; 26 L. T. 693.
EXPL. and DIST. in *Lind, In re*, 84 L. J. Ch. 884; (1915) 2 Ch. 345; 59 S. J. 651.

Thornhill *v.* Weeks (No. 2), 82 L. J. Ch. 485; (1913) 2 Ch. 464; 109 L. T. 146; 11 L. G. R. 1183.
FOLL. in *Thornhill* v. *Weeks (No. 3)*, 84 L. J. Ch. 282; (1915) 1 Ch. 106; 111 L. T. 1067; 78 J. P. 154; 12 L. G. R. 597.

Thornton *v.* Hawley, 10 Ves. 129.
CONS. in *Goswell's Trusts, In re*, 84 L. J. Ch. 719; (1915) 2 Ch. 106; 113 L. T. 319; 59 S. J. 579.

Tilt Cove Copper Co., In re; Trustees, Executors and Securities Corporation *v.* The Company, 82 L. J. Ch. 545; (1913) 2 Ch. 588; 109 L. T. 138; 57 S. J. 773.
FOLL. in *Braunstein & Marjolaine, Lim., In re*, 112 L. T. 25; 58 S. J. 755.

Tolhurst *v.* Associated Portland Cement Manufacturers, 71 L. J. K.B. 949; 72 L. J. K.B. 834; (1902) 2 K.B. 660; (1903) A.C. 414; 87 L. T. 465; 89 L. T. 196; 51 W. R. 81; 52 W. R. 143.
CONS. in *Sorrentino* v. *Buerger*, 84 L. J. K.B. 725; (1915) 1 K.B. 307; 112 L. T. 294; 20 Com. Cas. 132.

Travers and Sons *v.* Cooper, 83 L. J. K.B. 1787; (1915) 1 K.B. 73; 111 L. T. 1088; 20 Com. Cas. 44; 30 T. L. R. 703.
FOLL. in *Pyman Steamship Co.* v. *Hull and Barnsley Railway*, 84 L. J. K.B. 1235; (1915) 2 K.B. 729; 112 L. T. 1103; 20 Com. Cas. 259; 31 T. L. R. 243.

Tremayne *v.* Rashleigh, 77 L. J. Ch. 365; (1908) 1 Ch. 681; 98 L. T. 615.
view of Eve, J., in, DISS. from in *Heard* v. *Gabbett*, (1915) 1 Ir. R. 213.

Tringham's Trusts, In re, 73 L. J. Ch. 693; (1904) 2 Ch. 487; 91 L. T. 370; 20 T. L. R. 657.
FOLL. in *Cross's Trust, In re*, (1915) 1 Ir. R. 304.

Tuck, In re; Murch *v.* Loosemore, 75 L. J. Ch. 497; (1906) 1 Ch. 692; 94 L. T. 597; 22 T. L. R. 425.
held not APPL. in *Aberdonia Cars, Lim.* v. *Brown, Hughes & Strachan, Lim.*, 59 S. J. 598.

Turnbull, In re; Skipper *v.* Wade, 74 L. J. Ch. 438; (1905) 1 Ch. 726; 53 W. R. 440.
APPL. in *Snape, In re; Elam* v. *Phillips*, 84 L. J. Ch. 803; (1915) 2 Ch. 179; 113 L. T. 439; 59 S. J. 562.

Tyler *v.* Tyler, 60 L. J. Ch. 686; (1891) 3 Ch. 252.
FOLL. in *Davies, In re; Lloyd* v. *Cardigan County Council*, 84 L. J. Ch. 493; (1915) 1 Ch. 543; 112 L. T. 1110; 79 J. P. 291; 13 L. G. R. 437; 59 S. J. 413.

Tynron (Owners) *v.* Morgan, 78 L. J. K.B. 857; (1909) 2 K.B. 66; 100 L. T. 641.
FOLL. in *Chapman* v. *Sage*, 113 L. T. 623.

Uzielli *v.* Boston Marine Insurance Co., 54 L. J. Q.B. 142; 15 Q.B. D. 11.
CONS. in *British Dominions General Insurance Co.* v. *Duder*, 84 L. J. K.B. 1401; (1915) 2 K.B. 394; 113 L. T. 210; 20 Com. Cas. 270; 31 T. L. R. 361.

Vardon's Trusts, In re, 55 L. J. Ch. 259; 31 Ch. D. 275; 53 L. T. 895.
EXPL. in *Hargrove, In re*, 84 L. J. Ch. 484; (1915) 1 Ch. 398; 112 L. T. 1062; 59 S. J. 364.

Vezey *v.* Rashleigh, 73 L. J. Ch. 422; (1904) 1 Ch. 634; 90 L. T. 663; 52 W. R. 442.
CONS. in *Williams* v. *Moss' Empires, Lim.*, 84 L. J. K.B. 1767; (1915) 3 K.B. 242; 113 L. T. 560; 31 T. L. R. 463.

Victorian Railways Commissioners *v.* Coultas, 57 L. J. P.C. 69; 13 App. Cas. 222; 58 L. T. 390; 37 W. R. 129; 52 J. P. 500.
DISC. in *Coyle* (or *Brown*) *v. Watson*, 83 L. J. P.C. 307; (1915) A.C. 1; (1914) W.C. & I. Rep. 228; 111 L. T. 347; 58 S. J. 533; 30 T. L. R. 501.

Victoria Steamboats, Lim., In re; Smith *v.* Wilkinson, 66 L. J. Ch. 21; (1897) 1 Ch. 158; 75 L. T. 374; 45 W. R. 135.
FOLL. in *Braunstein* v. *Marjolaine, In re*, 112 L. T. 25; 58 S. J. 755.

Webster *v.* Cohen, (1913) W.C. & I. Rep. 268; 108 L. T. 197; 29 T. L. R. 217.
APPL. in *Potter* v. *Welsh & Sons, Lim.*, 83 L. J. K.B. 1852; (1914) 3 K.B. 1020; (1914) W.C. & I. Rep. 607; 112 L. T. 7; 30 T. L. R. 644.

Wagstaff's Settled Estates, In re, 78 L. J. Ch. 513; (1909) 2 Ch. 201; 100 L. T. 955.
FOLL. in *Johnson, In re*, 84 L. J. Ch. 393; (1915) 1 Ch. 435; 112 L. T. 935; 59 S. J. 333.

Walsh *v.* Alexander, 16 Commonwealth L. R. 293.
NOT FOLL. in *Minister for Lands* v. *Coote*, 84 L. J. P.C. 112; (1915) A.C. 583; 112 L. T. 1098.

Walsh *v.* Lonsdale, 52 L. J. Ch. 2; 21 Ch. D. 9; 46 L. T. 858; 31 W. R. 109.

DIST. in *Purchase* v. *Lichfield Brewery Co.*, 84 L. J. K.B. 742; (1915) 1 K.B. 184; 111 L. T. 1105.

Watkins *v.* Naval Colliery Co., 81 L. J. K.B. 1056; (1912) A.C. 693; 107 L. T. 321; 56 S. J. 719; 28 T. L. R. 569.

APPL. in *Pursell* v. *Clement Talbot, Lim.*, 111 L. T. 827; 79 J. P. 1.

Webb *v.* Oldfield, (1898) 1 Ir. R. 446.

CONS. and APPL. in *Wedgwood, In re*, 84 L. J. Ch. 107; (1915) 1 Ch. 113; 112 L. T. 66; 59 S. J. 73; 31 T. L. R. 43.

Webb *v.* Syme, 10 Commonwealth L. R. 482.

DISAPPR. in *Syme* v. *Victoria Commissioner of Taxes*, 84 L. J. P.C. 39; (1914) A.C. 1013; 111 L. T. 1043; 30 T. L. R. 689.

Wemyss Coal Co. *v.* Symon, (1912) S. C. 1239; 49 Sc. L. R. 921.

CONS. and APPL. in *Jibb* v. *Chadwick & Co.*, 84 L. J. K.B. 1241; (1915) 2 K.B. 94; 112 L. T. 878; (1915) W.C. & I. Rep. 342; 31 T. L. R. 185.

Welton *v.* Saffery, 66 L. J. Ch. 362; (1897) A.C. 299; 76 L. T. 505; 45 W. R. 508; 4 Manson, 269.

OBS. in, FOLL. and APPL. in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; (1915) 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Wenham, In re, 61 L. J. Ch. 565; (1892) 3 Ch. 59; 67 L. T. 648; 40 W. R. 636.

APPL. in *Fleetwood and District Electric Light, &c. Co., In re*, 84 L. J. Ch. 374; (1915) 1 Ch. 486; 112 L. T. 1127; (1915) H. B. R. 70; 59 S. J. 383; 31 T. L. R. 221.

West Coast Gold Fields, In re, 74 L. J. Ch. 347; (1905) 1 Ch. 597; 92 L. T. 596; 53 W. R. 455; 12 Manson, 185; 21 T. L. R. 375.

DIST. in *Peruvian Railway Construction Co., In re*, (1915) 2 Ch. 144; 59 S. J. 579; 31 T. L. R. 464.

Western of Canada Oil, Lands and Works, Co. In re, 43 L. J. Ch. 184; L. R. 17 Eq. 1.

FOLL. in *Globe Trust, In re*, 84 L. J. Ch. 903; 113 L. T. 80; 59 S. J. 529; 31 T. L. R. 280.

Wheatley, In re, 54 L. J. Ch. 201; 27 Ch. D. 606; 51 L. T. 681.

APPL. in *Hargrove, In re*, 84 L. J. Ch. 484; (1915) 1 Ch. 398; 112 L. T. 1062; 59 S. J. 364.

Wheldale *v.* Partridge, 5 Ves. 388; 8 Ves. 227.

CONS. and DIST. in *Gresham Life Assurance Society* v. *Crowther*, 84 L. J. Ch. 312; (1915) 1 Ch. 214; 111 L. T. 887; 59 S. J. 103.

Whiteley, Lim. *v.* Burns, 77 L. J. K.B. 467; (1908) 1 K.B. 705; 98 L. T. 836; 72 J. P. 127; 24 T. L. R. 319.

DISC. in *London County Council* v. *Perry*, 84 L. J. K.B. 1518; (1915) 2 K.B. 193; 113 L. T. 85; 79 J. P. 312; 13 L. G. R. 746; 31 T. L. R. 281.

Whitting *v.* Whitting, 53 S. J. 100.

REMARKED on in *Bullock's Will Trusts, In re*, 84 L. J. Ch. 463; (1915) 1 Ch. 493; 112 L. T. 1119; 59 S. J. 441.

Willesford *v.* Watson, 42 L. J. Ch. 447; L. R. 8 Ch. 473; 28 L. T. 428; 21 W. R. 350.

APPL. in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; (1915) 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Williams *v.* Bosanquet, 1 Brod. & B. 238.

DIST. in *Purchase* v. *Lichfield Brewery Co.*, 84 L. J. K.B. 742; (1915) 1 K.B. 184; 111 L. T. 1105.

Williams *v.* Earle, L. R. 3 Q.B. 739; 19 L. T. 238.

APPL. in *Stephenson & Co., In re*, 84 L. J. Ch. 563; (1915) 1 Ch. 802; 113 L. T. 230; 59 S. J. 429; 31 T. L. R. 331.

Williams *v.* Hunt, 74 L. J. K.B. 364; (1905) 1 K.B. 512; 92 L. T. 192.

DIST. in *Bradshaw* v. *McMullen*, (1915) 2 Ir. R. 187.

Willson *v.* Love, 65 L. J. Q.B. 474; (1896) 1 Q.B. 626; 74 L. T. 580; 44 W. R. 450.

DIST. in *Dunlop Pneumatic Tyre Co.* v. *New Garage and Motor Co.*, 83 L. J. K.B. 1574; (1915) A.C. 79; 111 L. T. 862; 30 T. L. R. 625.

Wolfenden *v.* Mason, 110 L. T. 31; 78 J. P. 13; 11 L. G. R. 1243; 23 Cox C.C. 722.

DISC. in *London County Council* v. *Perry*, 84 L. J. K.B. 1518; (1915) 2 K.B. 193; 113 L. T. 85; 79 J. P. 312; 13 L. G. R. 746; 31 T. L. R. 281.

Woodman *v.* Pwllbach Colliery Co., 111 L. T. 169 (subsequently affirmed in H.L., 84 L. J. K.B. 874; (1915) A.C. 634).

FOLL. in *Priest* v. *Manchester Corporation*, 84 L. J. K.B. 1734; 13 L. G. R. 665.

Worsley, In re; Lambert, ex parte, 70 L. J. K.B. 93; (1901) 1 K.B. 309; 84 L. T. 100; 49 W. R. 182; 8 Manson, 8.

APPL. in *Clark, In re; Pope, ex parte*, 84 L. J. K.B. 89; (1914) 3 K.B. 1095; 112 L. T. 873; (1915) H. B. R. 1; 59 S. J. 44.

Wood *v.* Odessa Waterworks Co., 58 L. J. Ch. 628; 42 Ch. D. 636; 37 W. R. 733; 1 Meg. 265.

OBS. in, FOLL. and APPL. in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association*, 84 L. J. Ch. 688; (1915) 1 Ch. 881; 113 L. T. 159; 59 S. J. 478.

Wilford's Estate, In re; Taylor *v.* Taylor, 48 L. J. Ch. 243; 11 Ch. D. 267; 27 W. R. 455.

FOLL. in *Walker* v. *Gaskill*, 83 L. J. P. 152; (1914) P. 192; 111 L. T. 941; 59 S. J. 45; 30 T. L. R. 637.

Wood *v.* Ledbitter, 14 L. J. Ex. 161; 13 M. & W. 838.

DISC. in *Hurst* v. *Picture Theatres, Lim.*, 83 L. J. K.B. 1837; (1915) 1 K.B. 1; 111 L. T. 972; 58 S. J. 739; 30 T. L. R. 642.

York, In re; Atkinson *v.* Powell, 56 L. J. Ch. 552; 36 Ch. D. 233; 56 L. T. 704; 35 W. R. 609.

DIST. in *Hay, In re; Stanley Gibbons, Lim.* v. *Hay*, 84 L. J. Ch. 821; (1915) 2 Ch. 198; 59 S. J. 680.

Young *v.* White, 76 J. P. 14; 28 T. L. R. 87.

DISAPPR. in *Hampton* v. *Glamorgan County Council*, 84 L. J. K.B. 1506; 113 L. T. 112; 13 L. G. R. 819.

PRINTED BY
THE EASTERN PRESS, LTD.,
LONDON AND READING.