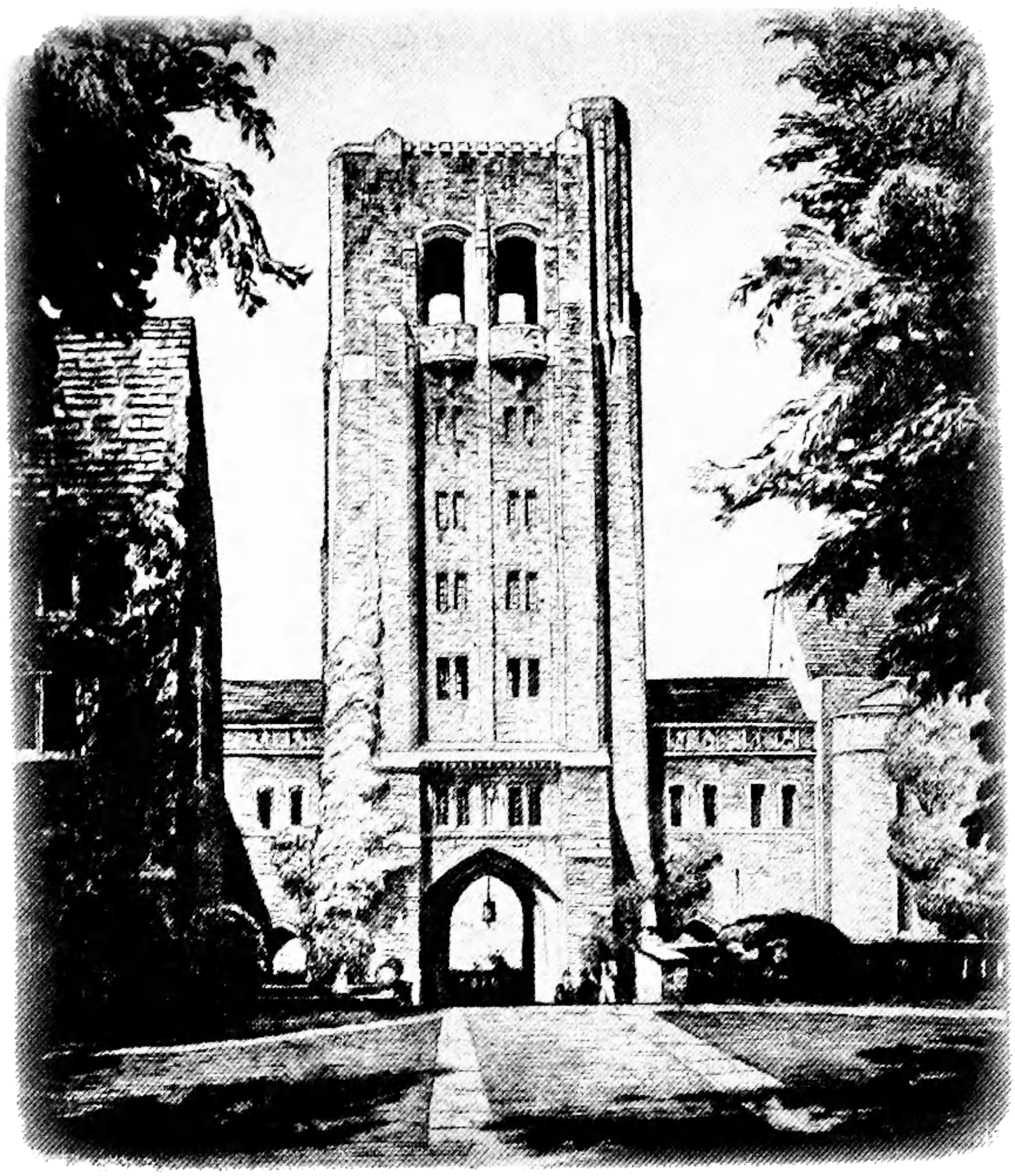
www.forgottenbooks.com

Copyright © 2016 FB &c Ltd.
All rights reserved. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other noncommercial uses permitted by copyright law.



Cornell Law School Library

Marshall Equity Collection

Gift of

E. J. Marshall, LL. B. 1894

CORNELL UNIVERSITY LIBRARY

3 1924 085 501 710

A MANUAL

OF

EQUITY JURISPRUDENCE

FOR

PRACTITIONERS AND STUDENTS,

FOUNDED ON THE WORKS OF

STORY AND OTHER WRITERS,

COMPRISING THE

FUNDAMENTAL PRINCIPLES

AND THE

POINTS OF EQUITY

USUALLY OCCURRING IN GENERAL PRACTICE.

BY

JOSIAH W. SMITH, B.C.L., Q.C.,

AUTHOR OF "A COMPENDIUM OF THE LAW OF REAL AND PERSONAL PROPERTY,"
"A MANUAL OF COMMON LAW," ETC.

FIFTEENTH EDITION

BY

SYDNEY E. WILLIAMS

OF LINCOLN'S INN, BARRISTER-AT-LAW.

AUTHOR OF "THE LAW OF ACCOUNT," "THE LAW RELATING TO LEGAL REPRESENTATIVES," "THE LAW AND PRACTICE RELATING TO PETITIONS," "FORENSIC FACTS AND FALLACIES," ETC.

LONDON:

STEVENS AND SONS, LIMITED,

119 & 120, CHANCERY LANE.

Law Publishers,

1900.

B63789

BRADBURY, AGNEW, & CO. LD., PRINTERS,
LONDON AND TONBRIDGE.

PREFACE

TO

THE FIFTEENTH EDITION.

SINCE the date of the Fourteenth Edition, the Partnership Act, 1890; the Custody of Children Act, 1891; the Mortmain Act, 1891; the Voluntary Conveyances Act, 1893; the Trustee Acts, 1893 and 1894; the Judicial Trustees Act, 1896; and the Land Transfer Act, 1897, with other statutes, have been passed, and many important cases have been decided which affect the subject-matter of this Work.

In the preparation of this Edition, the design has been to shorten and simplify, where feasible, the statements of the principles of Equity, and to make the additions and alterations necessitated by recent legislation and decisions of the Courts. A selection of recent cases to December, 1899, which appeared most appropriate to the object and scope of the Work, has been added. For other cases omitted from want of space, the reader is referred to the Works on which this Manual purports to be founded.

The Trustee Act, 1893, and the Land Transfer Act, 1897, Part I., the provisions of which have been incorporated in the text, have, on account of their importance, been set out in the Appendix.

S. E. W.

LINCOLN'S INN,
January, 1900.

PREFACE

TO

THE SECOND EDITION.

THE writer of these pages, in publishing the First Edition, was under no apprehension that a work answering to the title of the present little book would be deemed *unnecessary*. On the contrary, he was not aware of the existence of any book purporting to give a succinct yet comprehensive view of the leading principles of Equity Jurisprudence; and he believed that the want of a book of that description was greatly felt by students, and indeed by many practitioners in each branch of the profession. For the student labours under great disadvantages when he enters upon the perusal of a large Treatise without having previously read any smaller work upon the same subject; and after he has read a work of two volumes, he is able accurately to retain but few points in his memory—far fewer than he would after a careful perusal of a condensed work. And the practitioner often stands in need of a body of points and principles, well fixed in his mind, as his constant guide and aid amidst the rapid occasions of daily practice: and yet it is impossible for him to become possessed of such a body of knowledge, except by the help of some succinct view of Equity, or by the experience gained during long and extensive practice.

The Manual is founded on the "Commentaries on Equity Jurisprudence" of the late Joseph Story, LL.D., one of the Justices of the Supreme Court of the United States (*a*); and it is of a *semi-original character, bearing the same relation to the Commentaries, as the Commentaries bear to the treatises and reports on which they are founded.* The division of the subject is original. And although many passages are mere extracts, yet the selection of such passages as expressed in the fewest words the pith of whole sections, or that view of a subject which seemed to be the more correct, involved considerable deliberation and discrimination. And, taking the Manual as a whole, there has been the same process of analysing, arranging, digesting, defining, distinguishing, deducing, qualifying, and commenting, as in the generality of legal treatises; and the reader will scarcely suppose the amount of close consideration which has been bestowed upon so small a book.

As the learned judge seems to have availed himself of most of the treatises, as well as of the reports, in the composition of his Commentaries, there appeared to be no necessity, in general, for the writer's consulting other works besides the Commentaries, while engaged upon the Manual, unless he had designed to enter more into detail. At the same time he has written under the light derived from the previous perusal of other works. And he has noticed several recent enactments which, as not applicable to America, the learned judge has omitted.

With regard to the principle of selection, the writer has endeavoured to collect together, under appropriate

(*a*) The third and subsequent editions are also founded on Spence's Equitable Jurisdiction of the Court of Chancery.

heads, the points usually occurring, and necessary to be accurately known, and constantly borne in mind by every Chancery and Conveyancing Counsel, and by every Solicitor; and for that purpose he has laboured to extract, and mould into a concise and perspicuous form, the essence of the Commentaries, which comprise upwards of 1,700 pages; omitting points of law in some instances, and such cases in Equity as are of a peculiar nature and not likely to occur again; and also omitting, except where it seemed advisable to use them as examples, such cases as are of so simple and obvious a character, that the decisions respecting them embody nothing more than so plain and necessary an application of points and principles stated in the work, that it would be sure to suggest itself at once, without variation, to the minds of different individuals. . . .

J. W. S.

CONTENTS.

INTRODUCTION.

PAGE

SECT. I.—*Of the Nature of Equity Jurisprudence, and the Extent of Equity Jurisdiction* 1

II. —*Of the General Effect of the Judicature Acts, as regards Equity Jurisdiction and Jurisprudence* 9

III.—*Of the General Maxims of Equity Jurisprudence.* 12

IV.—*Of the Division of Equity* 27

TITLE I.

OF REMEDIAL EQUITY.

SPECIFICALLY SO TERMED.

CHAP. I.—OF ACCIDENT 28

II.—OF MISTAKE 35

III.—OF ACTUAL FRAUD 43

IV.—OF CONSTRUCTIVE FRAUD 56

TITLE II.

OF EXECUTIVE EQUITY.

CHAP. I.—OF LEGACIES AND PORTIONS 90

II.—OF DONATIONES MORTIS CAUSA 97

III.—OF EXPRESS PRIVATE TRUSTS, EVIDENCED BY SOME WRITTEN DOCUMENT 99

IV.—OF EXPRESS CHARITABLE TRUSTS 122

V.—OF IMPLIED TRUSTS 128

VI.—OF CONSTRUCTIVE TRUSTS 145

VII.—OF TRUSTEES AND OTHERS STANDING IN A FIDUCIARY RELATION 154

VIII.—OF THE SPECIFIC PERFORMANCE OF AGREEMENTS AND DUTIES NOT ARISING FROM TRUSTS. 192

TITLE III.

OF ADJUSTIVE EQUITY.

PAGE

CHAP. I.—OF ACCOUNT IN GENERAL . . . 226
II.—OF ADMINISTRATION 231
III.—OF MORTGAGES, PLEDGES, AND LIENS . . 256
SECT. 1.—*Of Legal Mortgages of Real Property* . 256
2.—*Of Equitable Mortgages* . . . 298
3.—*Of Mortgages and Pledges of Personal Property* 302
4.—*Of Liens* 305
IV.—OF APPORTIONMENT AND CONTRIBUTION . 309
V.—OF PARTNERSHIP 317
VI.—OF CERTAIN SPECIAL ADJUSTMENTS IN THE CASE OF DEBTORS AND CREDITORS . . 323
SECT. 1.—*Of the Marshalling of Securities* . . 323
2.—*Of the Mutual Right to the Benefit of Securities between a Creditor and Sureties; and of the Release of Sureties* 324
3.—*Of Set-off or Counter-claim.* . . . 326
VII.—OF CERTAIN MISCELLANEOUS CASES OF ACCOUNT 330
VIII.—OF DAMAGES AND COMPENSATION . . . 332
IX.—OF ELECTION 337
X.—OF SATISFACTION 345
XI.—OF PARTITION; OF SETTLEMENT OF BOUNDARIES; AND OF ASSIGNMENT OF DOWER . 353
SECT. 1.—*Of Partition* 353
2.—*Of the Settlement of Boundaries* . . 356
3.—*Of the Assignment of Dower* . . 357

TITLE IV.

OF PROTECTIVE EQUITY.

IRRESPECTIVE OF DISABILITY.

CHAP. I.—OF PROTECTION FROM LITIGATION OR INJURY AFFORDED BY THE CANCELLING, DELIVERING UP, AND SECURING OF DOCUMENTS . . 359
II.—OF PROTECTION FROM LITIGATION RESPECTING THE PROPERTY OF ANOTHER, BY MEANS OF INTERPLEADER 365

PAGE

CH. III.—OF PROTECTION FROM REPEATED OR RENEWED LITIGATION, AFFORDED BY DECREES UPON BILLS OF PEACE OR PROCEEDINGS TO ESTABLISH WILLS 369

SECT. 1.—*Of Bills of Peace* 369

2.—*Of Proceedings to establish Wills* . . 371

IV.—OF PROTECTION FROM LOSS OR INJURY BY INJUNCTION 373

V.—OF PROTECTION FROM ANOTHER'S ABSCONDMENT, BY THE WRIT OF NE EXEAT REGNO 382

VI.—OF THE PROTECTION OF PROPERTY, BY TAKING AWAY THE POSSESSION OR RECEIPT THEREOF, OR BY REQUIRING SECURITY 384

TITLE V.

OF PROTECTIVE EQUITY.

IN FAVOUR OF PERSONS UNDER DISABILITY (*a*).

CHAP. I.—OF INFANTS 388

II.—OF MARRIED WOMEN 401

SECT. 1.—*The Powers which Husband and Wife have, in Equity; of contracting with, and giving and granting to, each other* 401

2.—*Pin-money and Paraphernalia* . . 405

3.—*The Wife's Separate Estate in Cases not affected by the stat.* 45 & 46 *Vict. c.* 75; *and under that Statute* . . 407

4.—*The Wife's Equity to a Settlement or Maintenance out of her own Property* 434

5.—*Some Miscellaneous Points* . . . 442

APPENDIX.

Trustee Act, 1893 447

Land Transfer Act, 1897 471

INDEX 475

(*a*) Some observations are made on transactions with persons of unsound mind in the chapter on Actual Fraud. But the general subject of persons of unsound mind does not properly form part of Equity Jurisprudence, and therefore is omitted in this Edition.

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

Baltimore (Lord), Penn *v.* 54
Banner, *Ex parte*, 131
Barclay, *Re*, 358b
Barker, *Re*, 348a
— *v.* Cox, 416
Barnard *v.* Ford, 875
Barnes *v.* Bond, 625
— *v.* Ross, 806
Barr's Trust, *In re*, 436
Barrett, *Re*, 468
— *v.* Hartley, 365
Barrington, *Re*, 765
Barron *v.* Willis, 152
Barrow's Case, 376
Barrow *v.* Barrow, 871, 891
Barry, Agra Bank *v.* 534
— *v.* Croskey, 112
— *v.* Stevens, 454
Baseley, Huguenin *v.* 148, 200
Baskcomb *v.* Beckwith, 424
Basset *v.* Nosworthy, 34, 338, 376
Bate, *Re*, 475
Bateman *v.* Faber, 853
Batten, *Re*, 252a
Battison *v.* Hobson, 188
Battyany *v.* Bouch, 609
Baud *v.* Fardell, 351
Bayspoole *v.* Collins, 196
Beak *v.* Beak, Beak's Estate, *In re*, 220
Beale *v.* Symonds, 591
Beaumont *v.* Oliveira, 496
Beck *v.* Pierce, 858, 866
Beddow *v.* Beddow, 443
Beecher *v.* Major, 313
Beevor *v.* Luck, 554
Beioley *v.* Carter, 424
Bell *v.* Carter, 509
— *v.* Holtby, 424
Bellamy and Metropolitan Board of Works, *In re*, 357a, 572b
Benett *v.* Wyndham, 357
Bennett *v.* Houldsworth, 704
— *v.* Lytton, 383
Bennison, *Re*, 366
Bentink, *Re*, 635b
Bentley *v.* Craven, 160
Benwell *v.* Inns, 141
Benyon *v.* Benyon, 714
Bernard *v.* Minshull, 235
Besant, *In re*, 796, 799
— *v.* Wood, 823, 893, 896
Bethell *v.* Abraham, 707
Beyfus, *Re*, 416
Beynon *v.* Cook, 169
Biddle *v.* Jackson, 816
Biggs *v.* Peacock, 716
Birchall, *Re*, 88
Bird, *In re*, Oriental Commercial Bank *v.* Savin, 357
Biron *v.* Mount, 250
Bishop, *Ex parte*, 635a
Blaiklock *v.* Grindle, 686
Blake, *Re*, 467
— *v.* Gale, 32, 383a
Blakely Ordnance Co., *Re*, 439
Blandy *v.* Widmore, 51, 316
Blatchford *v.* Woolley, 856
Bloye's Trust, *In re*, 154
Blyth *v.* Fladgate, 372
— *v.* Whiffin, 454
Bold *v.* Hutchinson, 95
Bolton *v.* Curre, 381, 853
Bond *v.* England, 479
Bone *v.* Pollard, 313
Bonhote *v.* Henderson, 92, 733
Bostock *v.* Floyer, 357
Boston, &c. *v.* Ansell, 160
Bosville, Glenorchy (Lord) *v.* 30, 89, 236, 237
Boswell *v.* Coaks, 604
Bothamley *v.* Sherson, 499
Boughton *v.* Boughton, 681
Boulter, *In re*, *Ex parte* National Provincial Bank, 89
Boulton, *Ex parte*, 436
Bowen, *Re*, 278
Bowes, Strathmore (Countess of) *v.* 182
Bown, *Re*, 851
Box *v.* Barrett, 695
Boyd *v.* Allen, 716
Boyes, *Re*, 234, 235
Boyse *v.* Rossborough, 131, 754
Bracken, *Re*, 383
Bradford Bank *v.* Briggs, 530
— Rouse *v.* 164
Bradwell *v.* Catchpole, 372
Braithwaite, *Re*, 208
Breton's Estate, *In re*, 230, 421, 824
Breton *v.* Mockett, 233
— *v.* Woollven, 824
Briant, *Re*, 876
Brice *v.* Bannister, 435, 436
— *v.* Stokes, 348, 368
Bridger, *Re*, 497
— *v.* Deane, 202

Brier, *Re*, 368a
Briggs *v.* Penny, 235, 287
Bright *v.* Larcher, 477
— *v.* Legerton, 32
Bristow *v.* Ward, 681
Britain *v.* Rossiter, 448
British Mutual Investment Company *v.* Smart, 597
Broadbent *v.* Barrow, 477
Brocklesby *v.* Temperance, &c. 535
Brooke, *In re*, 304, 847
— *v.* Rooke, *In re* Brooke, 304
— *v.* Rounthwaite, 416
Brooking *v.* Maudslay, 732
Broughton *v.* Broughton, 345
Broun *v.* Kennedy, 93
Brown, *Re*, 83
— *v.* Brown, 689
— *v.* Collins, 801
— *v.* Gellatly, 359
— Shipley & Co. *v.* Kough, 435, 614a
— *v.* Smith, 806
— *v.* Tanner, 436
Brumridge *v.* Brumridge, 369
Brunton *v.* Electrical, &c. 616
Bryant *v.* Hickley, 806
Bubb *v.* Yelverton, *Ex parte* Hastings, 768
Buccleuch (Duke of) *v.* Metropolitan Board of Works, 440
Buchanan *v.* Harrison, 295, 300
Buck *v.* Robson, 435
Budge *v.* Gummow, 352
Buller *v.* Plunkett, 436
Bute *v.* James, 751b
Butler *v.* Butler, 822
— *v.* Cumpston, 856
Butters, *Ex parte*, 572a
Byram *v.* Tull, 841a

C.

Caballero *v.* Henty, 190, 424
Cabburn, *Re*, 467
Cadman *v.* Cadman, 805
Camden *v.* Murray, 800
Campbell's Trusts, *In re*, 341
Campbell *v.* Holyland, 548
— *v.* Wardlaw, 765
Cann *v.* Cann, 355
— *v.* Wilson, 112
Caplen, *Re*, 230
Carew's Estate, *Re*, 178
Carew *v.* Cooper, 429
Carpmael *v.* Powis, 87
Carr's Trusts, *In re*, 880
Carter *v.* Wake, 605, 612
Castell & Brown, *Re*, 535
Castle *v.* Wilkinson, 416
Caton *v.* Caton, 448
Cavander *v.* Bulteel, 187
Cave *v.* Cave, 436
Cavendish *v.* Dacre, 679
— *v.* Geaves, 661
Chancey's Case, 712
Chaplin, *Ex parte*, 183
Charlesworth *v.* Jennings, 112a
Chauntler's Claim, *In re* Haselfoot's Estate, 604
Cheslyn *v.* Dalby, 440
Chesterfield *v.* Janssen, 165
Chetwynd *v.* Morgan, 41
Chichester, Coventry *v.* 705
— (Lord) *v.* Coventry, 704, 706
Chillingworth *v.* Chambers, 372
Chilton *v.* Progress, &c. 773
Chowne *v.* Baylis, 435
Christian *v.* Whitaker, 830a
Christie *v.* Davey, 770
— *v.* Taunton, 439
Christison *v.* Bolam, 604
Chubb *v.* Stretch, 856
Clark *v.* Leach, 639
Clarke *v.* Franklin, 299
— *v.* Hilton, 301
— *In re*, 796a
— *v.* Palmer, 535
Clarkson *v.* Henderson, 517
Clay, Smith *v.* 32
Clayton's Case, 464
Cleaver *v.* Mutual, &c. 844
Clegg *v.* Edmonson, 32, 333
— *v.* Rowland, 383
Clement *v.* Cheeseman, 220
Clifford, Angus *v.* 112
Clive *v.* Carew, 856
Coates *v.* Coates, 712
Cochrane *v.* Willis, 87, 424
Cockcroft, *Re*, 406
Codrington *v.* Lindsay, 689
Coles *v.* Peyton, 635
Collins *v.* Turner, 149, 150
Colonial Bk. *v.* Whinney, 436
Colverson *v.* Bloomfield, 782
Conron *v.* Conron, 305

Cook *v.* Addison, 363
— *v.* Gregson, 469
— *v.* Rosslyn (Earl of), 741
Cooksen, Somerset (Duke of) *v.* 791
Cooper, *Ex parte*, 313
— *v.* Crabtree, 770
— *v.* Joel, 725
— *v.* Kynock, 237
— *v.* Phibbs, 87, 89
— *v.* Wormald, 376
Cordingley *v.* Cheeseborough, 415
Cork (Earl of) *v.* Russell, 555
Cosnaham *v.* Grice, 223
Cotterell *v.* Stratton, 521
County of Gloucester Bank *v.* Rudry, 786
Cousins, *Re*, 190
Coventry *v.* Chichester, 705
— *v.* Coventry, 477
Coverdale *v.* Eastwood, 450
Cowgill *v.* Rhodes, 753
Cox, Addison *v.* 436
— *v.* Bishop, 438
— *v.* Hickman, 637
Cradock *v.* Owen, 294
Crampton *v.* Varna Railway Company, 405
Crawford *v.* Toogood, 413
Credland *v.* Potter, 530
Crichton *v.* Crichton, 712
Cross, *Re*, 461
Crowther *v.* Elgood, 162
Croxton *v.* May, 883
Cuddee *v.* Rutter, 405, 453, n.
Cummins *v.* Fletcher, 554
— *v.* Perkins, 786
Curteis *v.* Wormald, 298a
Curwen *v.* Milburn, 616
Cutler, *In re*, 871

D.

Dagnall, *Re*, 857
Dally *v.* Wonham, 160
Dance *v.* Goldingham, 377
Daniels *v.* Davison, 190
Danson, *Re*, 341a
Darbey *v.* Whitaker, 440
Darby *v.* Darby, 647
Dartmouth (Earl of), Howe *v.* 359
Dashwood *v.* Jermyn, 177a
— *v.* Magniac, 764
Davies, *Re*, 844
— *v.* Davies, 147
— *v.* Jenkins, 856
— *v.* Nicolson, 488
Davis *v.* Davis, 647
— *v.* Freethy, 529
— *v.* Ingram, 717
— *v.* Whitehead, 179, 320, 575
Daw *v.* Terrell, 592
Dawson *v.* Bank of Whitehaven, 555
— *v.* Beeson, 642
Day *v.* Brownrigg, 22, 762
— *v.* Day, 436
— *v.* Woolwich Equitable Building Society, 357a, 572b
Deane, *Re*, 202
Deare *v.* Soutten, 904
Dearle *v.* Hall, 436
De Burgh Lawson, *In re*, 681
De Bussche *v.* Alt, 33, 160
De Cordova *v.* De Cordova, 88
De Hoghton *v.* Money, 431, 731
Delmar, *Re*, 276a
Denny *v.* Hancock, 424, 425
Dering *v.* Winchelsea (Earl of), 633
Derry *v.* Peek. 112a
Devaynes *v.* Robinson, 371
Devoy *v.* Devoy, 313
Dewar *v.* Maitland, 685
De Witte *v.* Palin, 805
Dicks *v.* Brooks, 774
Diggles, *Re*, 233
Dilkes *v.* Broadmead, 487
Dillwyn *v.* Llewelyn, 731
Dimmock *v.* Hallett, 424
Diplock *v.* Hammond, 435
Di Sora *v.* Phillipps, 58
Dixie *v.* Wright, 409
Dixon *v.* Dixon, 855
— *v.* Muckleston, 592, 593
— *v.* Peacock, 628
Docker *v.* Somes, 345
Doe *d.* Hiscocks *v.* Hiscocks, 100
Doering *v.* Doering, 375
Doherty *v.* Allman, 763
Dolan *v.* Macdermot, 275
Douglas & Co., *Re*, 616
Dowse, *Re*, 712
Dowling *v.* Betjemann, 405
Drake *v.* Kershaw, 483
Drosier *v.* Brereton, 352

Drover *v.* Beyer, 782, 784
Duffy's Trust, *Re*, 879, 891
Duncombe *v.* Greenacre, 871, 872
Dunkley *v.* Dunkley, 883
Dunn *v.* Flood, 377
Dye *v.* Dye, 823
Dyer *v.* Dyer, 311

E.

Eads *v.* Williams, 413
Eames *v.* Hacon, 502
East and West India Dock Co. *v.* Kirk, 441
Eaton *v.* Bennett, 91
Eaves *v.* Hickson, 357
Ebbetts *v.* Conquest, 190
Edward *v.* Cheyne, 855
Edwards *v.* Barnard, 649
— *v.* Carter, 132c
— *v.* Freeman, 76a
Egmont *v.* Darell, 753
Elcock *v.* Mapp, 294
Elgood *v.* Crowther, 162
Elibank (Lady) *v.* Montolieu, 882
Elliot *v.* Merryman, 192, 257
Elliott, *Ex parte*, 183
Ellison *v.* Ellison, 193, 230, 245, 421
Elmore *v.* Pirrie, 668
Elwes *v.* Elwes, 90
Emery, *Re*, 832
European Bank, *Re*, 618
Evans *v.* Bagshaw, 718
— *v.* Bremridge, 658
— *v.* Carrington, 898, 899, 900
— Williams *v.* 447, 448
Everitt *v.* Automatic, &c., 556a
— *v.* Everitt, 733
Ewing *v.* Orr-Ewing, 54
Eykyn's Trusts, *In re*, 313
Eyre, *Re*, 342
— *v.* Shaftesbury (Countess of), 792

F.

Fabian, Nunn *v.* 447, 448
Fairclough *v.* Marshall, 560
Fairer *v.* Park, 712
Falcke *v.* Gray, 405, 424
Fane *v.* Fane, 87
Farquharson *v.* Floyer, 475
Farrand *v.* Yorks Bk., 529
Farrar *v.* Cooper, 440
Farrington *v.* Forrester, 132c, 652
Fenner *v.* Wilson, 762
Fenwick *v.* Clarke, 355
— *v.* Potts, 592
Fenwicke *v.* Clark, 355
Ferns *v.* Carr, 624
Field *v.* Peckett (No. 3), 402
Fitzgerald *v.* Chapman, 900
Flamank, *Re*, 854
Fleetwood, *Re*, 235
Fleming *v.* Buchanan, 475
— *v.* Hislop, 770
Fletcher, *Re*, 712
— *v.* Ashburner, 47, 409
Flint *v.* Howard, 652
Flower *v.* Sadler, 131
— and Metropolitan Board of Works, *Re*, 357, 367
Ford *v.* Olden, 553
— *v.* White, 598
Fordham *v.* Claggett, 786
Forshaw *v.* Higginson, 391
Foster, *Re*, 341a
— and Lister, *In re*, 197
— *v.* Foster, 295
Fowler's Trust, *In re*, 681
Fox *v.* Mackreth, 333
Foxwell *v.* Van Grutten, 786
France *v.* Clark, 605, 611
Francis *v.* Clemow, 304
Frape, *Re*, 157
Freeman, *Re*, 763
— *v.* Pope, 183
French *v.* Hope, 53
Friend *v.* Young, 462, 648
Frith *v.* Forbes, 614
Fry *v.* Lane, 123, 169
— *v.* Tapson, 252a
Fulford, Hilliard *v.* 76a
Furniss *v.* Phear, 100
Fytche *v.* Fytche, 697

G.

G., *Re*, 809
Gale *v.* Gale, 422
Galland, *Re*, 616

Galton *v.* Emuss, 178
Games, National Provincial Bank of England *v.* 521
Garbutt *v.* Fawcus, 758
Gardiner, *Re*, 904b
Garfitt *v.* Allen, 471
Garnham *v.* Skipper, 187
Garth *v.* Cotton, 319
— *v.* Townsend, 79
Gaskill, Att.-Gen. *v.* 12
Gaunt, Speight *v.* 352a, 357
General Credit Co. *v.* Glegg, 612
Giacometti *v.* Prodgers, 871
Gibbins *v.* Taylor, 366
Gibbs *v.* Harding, 894
Gibson *v.* Goldsmid, 39
— *v.* Seagrim, 493
Gilbard, Gynn *v.* 801
Gilbert *v.* Lewis, 830
Gilbertson *v.* Gilbertson, 477
Gilchrist, *Ex parte*, Armstrong, *Re*, 904b
Giles v. True, 486a
Gill's Case, 663
Ginnever, Rowley *v.* 323
Gjers, *Re*, 763
Glasse *v.* Woolgar, 424
Glenorchy (Lord) *v.* Bosville, 30, 89, 236, 237
Glover, *Re*, 230
Glyn, Harding *v.* 79, 233, 283
Golding, *Ex parte*, 331
Gordon *v.* James, 572a
Grace, *Ex parte*, 618
Graham, *In re*, 801
— *v.* Drummond, 597
— *v.* Wickham (No. 1), 714
Great Northern Railway Co. *v.* Sanderson, 540a
Greatorix *v.* Shackle, 740
Greedy *v.* Lavender, 886
Green *v.* Britten, 830
— *v.* Paterson, 230
— *v.* Wynn, 164
Greenough *v.* Littler, 538
Greenwood *v.* Greenwood, 88
Greer *v.* Young, 617
— *v.* Edmondson, 233
— *v.* Wilson, 676
Gregson, *Re*, 663
Greville *v.* Browne, 304
Grey, *Re*, 851
Griffiths *v.* Porter, 356
Grogan *v.* McCormick, 234
Gullick, Wolmerhausen *v.* 164
Guthrie *v.* Walrond, 830
Gynn *v.* Gilbard, 801

H.

Hall, *Ex parte*, 435
— *v.* Hall, 200, 733
— *v.* Heward, 553a, 579
Hallett v. Hallett, 620
Halsey *v.* Brotherwood, 771
Hamilton, *Re*, 233
— *v.* Buckmaster, 424
Hampshire Land Co., *Re*, 436
Hancock *v.* Hancock, 830a
Handford, *Re*, 857
Hannah *v.* Hodgson, 149
Harbin v. Darby (No. 1), 345
Harding *v.* Glyn, 79, 233, 283
— *v.* Harding, 435
Harkness, *Re*, 847
Harman *v.* Fisher, 247
Harris *v.* Mott, 848
— *v.* Watkins, 302, 304
Harrison *v.* Guest, 122, 123
— *v.* Randall, 391
Hart *v.* Hart, 893, 894
— *v.* Swaine, 112a, 416
Harter *v.* Colman, 554
Hartland *v.* Murrell, 302
Hartopp *v.* Hartopp, 149
Hastings, *Ex parte*, Bubb *v.* Yelverton, 768
Hatten *v.* Russell, 413
Haygarth *v.* Wearing, 112a
Haynes *v.* Doman, 141a
Head *v.* Gould, 372
Heald *v.* Hay, 429
Heard *v.* Heard, 904
Hedgeley, *Re*, 830a
Henry *v.* Armstrong, 200, 733
Hensman *v.* Fryer, 475
Henty *v.* Wrey, 201, 203a, 214
Heptinstall *v.* Gott, 301
Heron *v.* Heron, 871
Hetling, *Re*, 357a
Hewett, *Re*, 857
Hewison *v.* Negus, 823
Heywood, *Re*, 474a
Higgins *v.* Hill, 137

Hill *v.* Boyle, 431
— *v.* Hicken, 663a
Hillard *v.* Fulford, 76a
Hilton *v.* Woods, 430
Hiscocks (Doe d.) *v.* Hiscocks, 100
Hitchcock *v.* Clendinen, 890
Hitchman *v.* Stewart, 635
Hoblyn *v.* Hoblyn, 149
Hoddel *v.* Pugh, 411
Hodges *v.* Hodges, 853
Hodson *v.* Heuland, 448
Hoghton *v.* Hoghton, 149
Holford, *Re*, 804
Holloway *v.* Radcliffe, 409
Holmes *v.* Millage, 786
— *Re*, 851
Holmesdale (Viscount), Sackville-West *v.* 237
Hooper *v.* Smart, 415
Hope *v.* D'Hédonville, 359
— Finch *v.* 53
— *v.* Hope, 57, 850a
Hopgood *v.* Parkin, 257
Hopkinson *v.* Rolt, 436
Hopwood *v.* Hopwood, 708
Horlock, *Re*, 712
Horne-Payne, Hussey, *v.* 179
Hosking *v.* Smith, 530
Howe *v.* Dartmouth (Earl of), 359
Hubbard *v.* Alexander, 714
Hudson *v.* Cripps, 204
Hughes, *Re*, 857a
— *v.* Jones, 415
Huguenin *v.* Baseley, 148, 152, 200
Huish, *Re*, 712
Hulme *v.* Tenant, 830
Hume *v.* Lopes, 351
Hunnings *v.* Williamson, 72
Hunt *v.* Parry, 804
— Pinney *v.* 754, 755
— Trego *v.* 141
Hunter *v.* Belcher, 460
— *v.* Walters, 114, 115, 133
Huntingdon (Earl of) *v.* Huntingdon (Countess of), 320, 574
Hurst *v.* Hurst, 475
Hussey *v.* Horne-Payne, 179, 420
Hutchinson and Tennant, *In re*, 233
Hutton *v.* Rossiter, 112a

I.

Imperial Loan Co. *v.* Stone, 419
— Mercantile Credit Association *v.* Coleman, 333
Ingilby and Boak Insurance Co., *Re*, 343
Inman *v.* Inman, 536
Ion *v.* Ashton, 480
Irvine *v.* Sullivan, 234
Ivory, *In re*, 755

J.

Jacob *v.* Isaac, 857
Jacubs *v.* Rylance, 375
James *v.* Couchman, 200
James *v.* James, 441, 601
— *v.* Kerr, 124
— *v.* Smith, 445
Janssen, Chesterfield (Earl of) *v.* 165
Jarman's Estate, *In re*, 275
Jarratt *v.* Aldam, 147
Jay *v.* Robinson, 830a
Jefferys *v.* Jefferys, 421
Jegon *v.* Vivian, 749
Jenkins *v.* Jones, 541
Jennings, Charlesworth *v.* 112a
— *v.* Jordan, 554
Jervis *v.* Wolferstan, 392a, 393
Jervoise *v.* Jervoise, 828
Jodrell *v.* Jodrell, 826
Johnson *v.* Gallagher, 856
Jones, *Ex parte*, 132a
— *Re*, 132c
— *v.* Davies, 552, 574
— *v.* Ferrell, 435
— *v.* Lock, 421
— *v.* Scott, 474
— *v.* Smith, 190
— *v.* Thomas, 740
— *v.* Williams, 472
Judkin, *Re*, 808
Jupp, *Re*, 841a

K.

Kennreuther *v.* Griselbrecht, 504a
Kay *v.* Johnston, 323
Keane *v.* Robarts, 370

Keech *v.* Sandford, 333
Keith *v.* Burrows, 53, 607, 608
Kelson *v.* Kelson, 193
Kemp *v.* Burn, 400
Kempson *v.* Ashbee, 149, 150
Kennard *v.* Kennard, 79
Kensington (Lord) *v.* Bouverie, 629
Kerr's Policy, *In re*, 600
Kidd, *Re*, 406
Kilford *v.* Blaney, 478
Kilvert's Trusts, *In re*, 275
King-Harman *v.* Cayley, 804
Kimber *v.* Barber, 160
Kimberley *v.* Dick, 443
Kincaid's Trusts, *In re*, 871, 883
Kinnoul *v.* Money, 575
Kirkwood *v.* Thompson, 545, 555
Kirwan's Trusts, *In re*, 79
Knight *v* Knight, 888
Knox *v.* Gye, 461
— *v.* Mackinnon, 354
Kurtz *v.* Spence, 771

L.

Lacon *v.* Allen, 592
Laing, *Re*, 352
Lake *v.* Craddock, 315
— *v.* Gibson, 35
Lamare *v.* Dixon, 427
Lambarde *v.* Older, 663
Lambe *v.* Eames, 233
— *v.* Orton, 421
Lambert *v.* Thwaites, 284
Langdale (Lady) *v.* Briggs, 479
Langley, *Re*, 402a
Larios *v.* Bonany y Gurety, 451
Lascelles *v.* Butt, 720
Laver *v.* Fielder, 450
Lawes *v.* Lawes, 711
Lawton *v.* Elwes, 345
Lea *v.* Cooke, 276a
Learoyd *v.* Whiteley, 352, 352a
Lechmere *v.* Brotheridge, 848
— *v.* Lechmere, 51, 316
Lee *v.* Angas, 734
— *v.* Howlett, 535
— *v.* Nuttall, 472
Leeds Banking Company, *In re*, 856
Legg *v.* Goldwire, 89
Lehmann *v.* McArthur, 32
Leighton *v.* Leighton, 709
Lemprière *v.* Lange, 116
Le Neve *v.* Le Neve, 187
Leng, *Re*, 823a
Leonino *v.* Leonino, 486b
Leslie *v.* French, 690
Lester *v.* Foxcroft, 447
Letterstedt *v.* Broers, 396
Levy *v.* Stogden, 413, 424
Lewis, *Re*, 157
— Gilbert *v.* 830
— *v.* Hillman, 154
— *v.* Mathews, 830
— *v.* Nobbs, 356
Life Association of Scotland *v.* Siddal, 871
Liles *v.* Terry, 155
Lister, Foster and, *In re*, 197
Liverpool Marine Credit Company *v.* Wilson, 608
Lloyd *v.* Banks, 436
— *v.* Pughe, 825
Lloyd's Bank *v.* Bullock, 331
— *v.* Jones, 535
Locking *v.* Parker, 567
Londesborough (Lord) *v.* Somerville, 310
London Chartered Bank of Australia *v.* Lemprière, 830, 856
— and County Bank *v.* Radcliffe, 582
— and Blackwall Railway Co. *v*, Cross, 440, 762
Long *v.* Bowring, 453
Longmate *v.* Ledger, 130
Lopes, Hume *v.* 351
Loughnan, Morley *v.* 130
Lovett *v.* Lovett, 754
Low *v.* Bouverie, 436
Loxley *v.* Heath, 450
Lucy's Case, 88
Lumley, *Re*, 251
Lush's Trusts, *In re*, 887
Lyddon *v.* Moss, 155
Lyell *v.* Kennedy, 72, 736
Lyon *v.* Home, 200
Lyons (Mayor of) *v.* Advocate-General of Bengal, 276
Lytton *v.* Devey, 776

M.

McCarogher *v.* Whieldon, 707
McCormick *v.* Garnett, 890
— *v.* Grogan, 234
McCreight *v.* Foster, 407

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

Newton *v.* Sherry, 384
Nicholl *v.* Jones, 902
Noble *v.* Edwards, 414
Nordenfelt, Maxim, &c. *v.* 141a
Norris *v.* Frazer, 234
Northern Assam Tea Company, *In re*, *Ex parte* Universal Life Assurance Company, 439
— Insurance Company *v.* Whipp, 535
North London Railway Company *v.* Great Northern Railway Company, 440
Nottidge *v.* Prince, 130
Noys *v.* Mordaunt, 681
Nunn *v.* Fabian, 447, 448

O.

Oakes *v.* Turquand, 113
O'Brien *v.* Tyssen, 234
Odell, *Ex parte*, 506
Odessa Tramways *v.* Mendel, 424
Ogden *v.* Fossick, 424
Ogilvie *v.* Littleboy, 200
O'Halloran *v.* King, 851
Oldham *v.* Stringer, 601a
Oliver *v.* Hinton, 534
Olley *v.* Fisher, 449
Onions *v.* Cohen, 725
Onslow, *Re*, 904b
Opera, Limited, *Re*, 83
Oriental Commercial Bank *v.* Saving, *In re* Bird, 357
— Financial Corporation *v.* Overend and Company, 164
Ormes *v.* Beadel, 441
O'Rorke *v.* Bolingbroke, 123, 170
Orrell *v.* Orrell, 685
Osborne and Rowlett, 343
Ovey, *In re*, 276
Owen, *Re*, 601b

P.

Page *v.* Cox, 232
Paget *v.* Ede, 54
— *v.* Marshall, 89, 102
— *v.* Paget, 320, 575
Palliser *v.* Gurney, 857
Palmer *v.* Hendrie, 549
Palmer *v.* Locke, 424
— *v.* Newell, 714
Pankhurst *v.* Howell, 710
Parfitt *v.* Lawless, 148
Parker, *Re*, 635
— *v.* Clarke, 581
Parkin, *Re*, 868a
Parkinson *v.* Hanbury, 515, 543, 545
Parnall *v.* Parnall, 233
Parsons, *Re*, 834
Partington *v.* Allen, 352, 352a
Pass *v.* Dundas, 369
Paterson *v.* Murphy, 230
— *v.* Scott, 494
Pattle *v.* Hornibrook, 449
Pawson *v.* Brown, 732
Payne *v.* Mortimer, 423, 492
Peachy *v.* Somerset (Duke of), 453, 670
Peake, *Re*, 341a
Pease *v.* Jackson, 582
Peckham *v.* Taylor, 228
Peek, Derry *v.* 112a
Pegler *v.* White, 424
Pelton *v.* Harrison, 857b
Pemberton *v.* Marriott, 889
Pembrooke *v.* Friend, 482
Penfold *v.* Mould, 885
Penn *v.* Baltimore (Lord), 54
Pennington, *Re*, 183
— *v.* Brinsop, 770
Percival *v.* Dunn, 435
Perfect *v.* Lane, 169
Perry *v.* Holl, 190
— *v.* Knott, 371
Persse *v.* Persse, 125
Peterson *v.* Peterson, 473
Pett, Robinson *v.* 163, 333, 336, 345
Philanthropic Society *v.* Kemp, 496
Phillips, *In re*, 817
— *v.* Beal (No. 2), 387
— *v.* Gutteridge, 589
— *v.* Hudson, 749
— *v.* Mullings, 733
— *v.* Phillips, 454
Phillipson *v.* Kerry, 200
Philpott *v.* St. George's Hospital, 277
Picard *v.* Hine, 856
Pickersgill *v.* Rodger, 687
Piercy *v.* Fynney, 662

Piggott *v.* Stratton, 204
Pike *v.* Fitzgibbon, 856
Pilcher *v.* Rawlins, 190
Pilling's Trusts, *Re*, 513, 527
Pinney *v.* Hunt, 755
Piper *v.* Piper, 482
Pledge *v.* White, 554
Plowden *v.* Gayford, 830
Pollard, *Re*, 853
Pollock, *Re*, 710
Poole, *Ex parte*, 316
Pooley *v.* Driver, 637
— *v.* Quilter, 162
Porter *v.* Baddeley, 359
Pott *v.* Todhunter, 183
Potter, *In re*, 817
Poulter *v.* Shackle, 876
Powell *v.* Hulkes, 358a
— *v.* Merrett, 294
— *v.* Riley, 477
— *v.* Smith, 82, 426
Powlett *v.* Hill, 548
Powys *v.* Blagrave, 763
Prees *v.* Coke, 158
Price *Re*, 857
— *v.* Macauley, 416
Pride *v.* Bubb, 846
Prole *v.* Soady, 326
Protector Endowment, &c., Company *v.* Grice, 674
Prout *v.* Cock, 555
Pryce *v.* Bury, 601
Prytherch, *Re*, 576
Pulsford *v.* Richards, 112, 116
Pusey *v.* Pusey, Somerset (Duke of) *v.* Cookson, 791
Pye, *Ex parte*, 698
Pym *v.* Lockyer, 708
Pyrke *v.* Waddingham, 424

R.

Radford *v.* Willis, 424
Ramshire *v.* Bolton, 112a
Ranken *v.* Alfaro, 435, 614b
Ratcliff, *Re*, 397
Ravenscroft *v.* Jones, 709
Rawlins *v.* Stedman, 294
— *v.* Wickham, 640
Redgrave *v.* Hurd, 112a
Rees *v.* Berrington, 164
— *v.* Smith, 112a, 146
Reg. *v.* Lord Mayor of London, 845
Rehden *v.* Wesley, 355
Reid *v.* Hoare, 216
— *v.* Reid, 284, 834, 883
Reynell *v.* Sprye, 145, 430
Reynolds *v.* Godlee, 298
Rhoades, *Re*, 402a
Rhodes, *Re*, 128
Rice *v.* Noakes, 506
— *v.* Rice, 330, 529
Richards, *Re*, 380, 535
— *v.* Delbridge, 230, 421
Richardson *v.* Smith, 424
Rickerson, *Re*, 298a
Ridler *v.* Ridler, 183
Ridgway *v.* Newstead, 32
Riley *v.* Hall, 554
Ripley *v.* Waterworth, 299
Roberts, *Re*, 885
— *v.* Cooper, 883
— *v.* Croft, 592
Robertson *v.* Norris, 541
Robey *v.* Ollier, 614
Robinson *v.* Geldard, 496
— *v.* Harkin, 356, 366, 372
— *v.* London Hospital (Governors of), 295
— *v.* Lynes, 857b
— *v.* Pett, 163, 333, 336, 345
— *v.* Wheelwright, 853
Rochefoucauld *v.* Boustead, 32, 179
Roebuck *v.* Chadebet, 715
Rogers *v.* Challis, 451
— *v.* Ingham, 83
— *v.* Maddocks, 141a
Rolland *v.* Hart, 190
Rolls *v.* Pearce, 220
Rolt *v.* Hopkinson, 530
— *v.* Kensington (Lord), 90
— *v.* White, 112
Rooper *v.* Harrison, 535
Roper, *Re*, 904b
Rose *v.* Watson, 408
Rosher, *In re*, 485
— *v.* Miller, 420
— *v.* Williams, 194
Rouse *v.* Bradford Banking Co., 164
Rousillon *v.* Rousillon, 141a
Rowley *v.* Ginnever, 323
Rudge *v.* Richens, 549, 550
Rumney, *Re*, 343

Russel *v.* Russel, 592
Russell, *Ex parte*, Butterworth, *In re*, 184
— *v.* Russell, 617a
Russell's Policy Trusts, *In re*, 436
Ryan *v.* Mutual Tontine, 424

S.

Sackville-West *v.* Holmesdale (Viscount), 237
Saffron Walden Building Society *v.* Rayner, 436
St. Helen's Smelting Company *v.* Tipping, 770
Salt, *Re*, 475
— *v.* Cooper, 786
Saltmarsh *v.* Barrett, 294
Salusbury *v.* Denton, 284
Samuel *v.* Ward, 698
Sanger *v.* Sanger, 859
Santley *v.* Wilde, 516, 558
Savery *v.* King, 149, 154
Sawyer *v.* Sawyer, 371
Sayers *v.* Collyer, 424
Scanlan, *In re*, 796
Scarlett *v.* Hanson, 744
Scholefield *v.* Lockwood (No. 1), 575
— (No. 3), 558
— *v.* Templer, 115
Scholey *v.* Peck, 617
Schroder *v.* Schroder, 684
Scott *v.* Hanson, 416
— *v.* Morley, 557b, 857
— *v.* Rayment, 638
— *v.* Spashett, 876
— *v.* Tyler, 139
Seaton *v.* Twyford, 571
Sells *v.* Sells, 90
Seroka *v.* Kattenberg, 857
Seton *v.* Slade, 412
Seyton, *Re*, 844
Shackleton *v.* Sutcliffe, 416
Shanks, *In re*, *Ex parte* Swinbanks, 572a
Sharp *v.* St. Sauveur, 271
Sharpe *v.* Foy, 190, 903
Sharshaw *v.* Gibbs, 628
Shaw *v.* Bunny, 545
— *v.* Foster, 407
Sheddon *v.* Goodrich, 681
Shee *v.* French, 469
Sheffield Banking Co. *v.* Clayton, 656
Shelfer *v.* City of London, 668
Shelley's Case, 237
Shepard *v.* Jones, 520
Shillibeer *v.* Jarvis, 448
Shipway *v.* Ball, 885
Shrewsbury and Birmingham Railway Company *v.* North Western Railway Company, 424
Shropshire Union Railways. &c. Company *v.* The Queen, 380
Silk *v.* Prime, 302, 304
Simmins *v.* Shirley, 514a
Simmonds, *Ex parte*, 83
Simpson *v.* Dennison, 777
Sinnett *v.* Herbert, 276
Skinner, Allcard *v.* 32
Slim *v.* Croucher, 112a, 177
Small *v.* Hedgeley, 830a
Smart *v.* Smart, 799
Smith, *Re*, 486a
— . Clay, 32
— *v.* Everett, 386
— . Hill, 304
— . Hurst, 248
— *v.* Lucas, 853
— *v.* O'Grady, 463
Smithson, Ackroyd *v.* 295
Snell, *In re*, 616
Société Générale de Paris *v.* Tramways Union Co., 189, 436
Somerset *v.* Cox, 436
— (Duke of), *In re*, 857
— — *v.* Cookson, 791
South *v.* Bloxam, 495
Speight *v.* Gaunt, 352a, 357
Spencer, *Re*, 852
— *v.* Clarke, 436
— *v.* Pearson, 529
Spicer *v.* Spicer, 871
Spike *v.* Harding, 721
Spirett *v.* Willows, 883
Spread *v.* Morgan, 692, 693
Spurling *v.* Rochfort, 475
Stainton *v.* Carron Company, 664
Standing *v* Bowring, 314
Stanton *v.* Lambert, 421
Stapilton *v.* Stapilton, 88, 125
Stead *v.* Mellor, 233
Steed *v.* Preece, 295
Steel *v.* Dixon, 635, 654

Steele *v.* Murphy, 250
Stephens, *v.* Green, 436
Sterne *v.* Beck, 674
Stevens, *Re*, 808
— *v.* Trevor-Garrick, 830a
Steward *v.* Blakeway, 647
Stewart *v.* Kennedy, 424
— *v.* Sanderson, 354
Stocker *v.* Wedderburn, 424
Stocks *v.* Dobson, 437
Stogden *v.* Lee, 851, 852
Stokes, *Re*, 475
Stonor's Trusts, *In re*, 830a
Stourton *v.* Stourton, 796a
Strange *v.* Brennan, 155
Stratheden, *Re*, 278
Strathmore (Countess of) *v.* Bowes, 182
— (Earl of) *v.* Vane, 365a
Streatfield *v* Streatfield, 681
Street *v.* Union Bank, 762
Stroughill *v.* Anstey, 263, 379
Stuart, *Re*, 157
Stump *v.* Gaby, 155
Suggitt's Trusts, *In re*, 883
Surcombe *v.* Pinniger, 448
Surman *v.* Wharton, 841
Surtees *v.* Parkin, 494
Sutton *v.* Wilders, 357
Swaine *v.* Denby, 716
Swainson *v.* Swainson, 480
Sweet *v.* Sweet, 894
Swinbanks, *Ex parte, In re* Shanks, 572a
Swinfen *v.* Swinfen (No. 5), 355
Sykes *v.* Sheard, 424
Synge *v.* Synge, 448

T.

Talbot *v.* Frere, 604
— *v.* Marshfield, 401
— *v.* Shrewsbury, 712
Tamplin *v.* Miller, 853
Tanner, *Re*, 805
Tanqueray-Willaume, *Re*, 379a
Tarn *v.* Turner, 555, 555a
Tarsey's Trust, *In re*, 830
Tasker *v.* Tasker, 475, 500, 829a
Tassell *v.* Smith, 530
Taunton *v.* Morris, 883, 891
Taylor, *Re*, 797
— *v.* Eckersley, 787
— *v.* Grange, 716
— *v.* Mostyn, 551
— *v.* Meads, 846
— *v.* Neale, 643
— *v.* Portington, 420
— *v.* Pugh, 182
— *v.* Russell, 586
— *v.* Taylor, 295
Teevan *v.* Smith, 556a
Telegraph Despatch, &c. Company *v.* McLean, 424
Tenant *v.* Hulme, 830
Tench *v.* Cheese, 477
Tennant *v.* Trenchard, 601b
Tennent *v.* Welch, 885
Terry and White's Contract, *In re*, 107, 415
Thomas, *Re*, 359
— *v.* Turner, 772
Thompson, *Re*, 857
— *v.* Finch, 366
— *v.* Griffin, 806
— *v.* Hudson, 518, n., 674, 678
— *v.* Whitmore, 90, 93
Thomson *v.* Eastwood, 267
Thornborough *v.* Baker, 339
Thorne *v.* Heard, 547
Thornley *v.* Thornley, 841a
Thorpe, *Re*, 365
Thynne (Lady E.) *v.* Glengall (Earl of), 704
Tidd *v.* Lister, 495, 891
Tildesley *v.* Clarkson, 424
Tilley *v.* Thomas, 413
Tinsley *v.* Lacy, 775
Tipping *v.* St. Helen's Smelting Company, 770
Tollet *v.* Tollet, 31, 79
Tomkins *v.* Colthurst, 475
Tomkinson *v.* Balkis, &c., 112a
Tomson *v.* Judge, 155
Topham *v.* Portland (Duke of), 201
Townley *v.* Sherborne, 356
Townshend *v.* Mostyn, 479, 480
Trail *v.* Baring, 112a
Trego *v.* Hunt, 141
Trench *v.* Hamilton, 233
Trestrail *v.* Mason, 486b
Trott *v.* Buchanan, 477

Troughton, *Re*, 183
Trutch *v.* Lamprell, 366
Tucker *v.* Bennett, 89
— *v.* New Brunswick, 762
— *v.* Priester, 772
Tuff, *Re*, 823a
Tullett *v.* Armstrong, 852
Turnbull, *Re*, 823, 844
Turner, *Re*, 372
— *v.* Collins, 149, 150
— *v.* Hancock, 521
— *v.* Harvey, 118
— *v.* Wright, 319, 767
Turton *v.* Benson, 439
Tussaud's Estate, *In re*, 703, 706
Tyars *v.* Alsop, 159
Tyler *v.* Yates, 168
Tyrrell's Case, 231
Tyrrell *v.* Bank of London, 160
Tyson *v.* Jackson, 431

U.

Underwood *v.* Wing, 294
Ungley *v.* Ungley, 448
Union Bank of London *v.* Ingram, 540a
— *v.* Munster, 424
Universal Life Assurance Company, *Ex parte*, *In re* Northern Assam Tea Company, 439
Upperton *v.* Nickolson, 424

V.

Vanderberg *v.* Palmer, 230
Vane *v.* Barnard, 767
Vane (Earl) *v.* Rigden, 382
Vansittart, *Re*, 500, 829a
— *v.* Vansittart, 419
Vardon's Trusts, *Re*, 681
Vaughan *v.* Vanderstegen, 856
Venn *v.* Furze, *Re*, 379a
Verity *v.* Wylde, 617
Viditz *v.* O'Hagan, 817
Vint *v.* Padget, 554

W.

W—— *v.* B——, 725, 727
Wainford *v.* Heyl, 856
Waite *v.* Morland, 832
Wake *v.* Conyers, 720
Walker, *Re*, 353, 656
— *v.* Bradford Old Bank, 434
— . Drury, 884
— . Hirsch, 637
— . Jeffreys, 413
— *v.* Jones, 580
— . Mottram, 642
— . Symonds, 372
Wall *v.* Colshead, 300
Wallace *v.* Auldjo, 889
Waller *v.* Barrett, 383
Wallis *v.* Smith, 675
Walters *v.* Morgan, 118, 424
Ward *v.* Duncombe, 436
— *v.* Eyre, 157
— *v.* Turner, 219
— *v.* Yates, 883
Warne *v.* Seebohm, 772
Warner *v.* Jacob, 541
Warrick *v.* Queen's College, Oxford, 749
Warren, *Re*, 853
Warriner *v.* Rogers, 230
Warwicker *v.* Bretnall, 800
Wassill *v.* Leggatt, 855
Waters *v.* Thorn, 154, 155
Watson *v.* Marshall, 884
— *v.* Wellington (Duke of), 435
Weall, *Re*, 357
Weaver, *Re*, 128
Webb *v.* England, 405, 819
— *v.* Smith, 493, 652
Webster *v.* Cecil, 424
— *v.* Webster, 436
West *v.* Williams, 530
Western Waggon Co. *v.* West, 434
Wheeler *v.* Howell, 304
— *Re*, 904b
Whistler *v.* Webster, 681
White *v.* City of London Brewery Co., 558
— *v.* Grane, 806
— *v.* White, 681
Whitehouse, *Ex parte*, 529, 661
White's Trusts, *Re*, 276, 284
Whiting *v.* Burke, 634
Whitney *v.* Smith, 353
Whittaker *v.* Kershaw, 393, 857
Wicks *v.* Scrivens, 555
Wiggins *v.* Horlock, 712
Wilcocks *v.* Wilcocks, 316
Wilder *v.* Pigott, 696

Wilkins *v.* Sibley, 381
Wilkinson *v.* Clements, 424
— *v.* Fowkes, 39
— *v.* Lindgren, 275
— *v.* Wilkinson, 140
Williams, *Re*, 233, 527
— *v.* Arkle, 294
— *v.* Bayley, 131
— *v.* Bull, 725
— *v.* Evans, 447, 448
— *v.* Headland, 383
— *v.* Williams, 125, 190, 233, 719, 754
Willis *v.* Kymer, 830
Wills *v.* Stradling, 448
Wilson, Cann *v.* 112
— *v.* Dunsany (Lady), 504
— *v.* Holloway, 647
— *v.* Northampton, &c. Railway Company, 405
— *v.* Thornbury, 691
— *v.* Wilson, 101, 535, 894, 896
Winslow, *Re*, 473
Wintour *v.* Clifton, 682
Wise, *Re*, 808
Withington *v.* Tate, 572
Wolmerhausen *v.* Gullick, 164
Wolverhampton & S. Bk. *v.* George, 538
Woolam *v.* Hearn, 449
Wooldridge *v.* Norris, 164
Wooley *v.* Colman, 540a
Wormsley's Estate, *In re*, 483
Worseley *v.* De Mattos, 247
Worthington *v.* Wiginton, 692
Wright *v.* Maidstone (Lord), 76
— *v.* Pitt, 438
— *v.* Vanderplank, 149
— *v.* Wright, 852

X.

X, *Re*, 794

Y.

York Union Banking Company *v.* Artley, 601
Young, *Re*, 649
— *v.* Young, 477, 530

EDITIONS OF TEXT-BOOKS REFERRED TO.

Brett's Leading Cases, 3rd ed. 1896.
Cordery on Solicitors, 3rd ed. 1899.
Dart's Vendors and Purchasers, 6th ed. 1888.
Fisher on Mortgages, 5th ed. 1897.
Fry on Specific Performance, 3rd ed. 1892.
Kerr on Receivers, 3rd ed. 1888.
Lewin on Trusts, 10th ed. 1898.
Lindley on Partnership, 5th ed. 1891.
Simpson on Infants, 2nd ed. 1890.
Smith's Leading Cases, 10th ed. 1896.
Smith's Manual of Common Law, 11th ed. 1898
Story's Equity Jurisprudence, 2nd ed. 1892.
Tudor's Conveyancing Cases, 4th ed. 1898.
Tudor's Mercantile Cases, 3rd ed. 1884.
White and Tudor's Leading Cases, 7th ed. 1897.
Williams on Bankruptcy, 7th ed. 1898.
Williams on Executors, 9th ed. 1893.
Wolstenholme's Conveyancing Acts, 8th ed. 1899.

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

INTROD. SECT. I.

natural justice, or equity in the larger sense, may be described to be a portion of natural justice, or equity in the larger sense, not embodied in legislative enactments or in the rules of the Common Law, yet modified by a due regard thereto, and to the complex relations and convenience of an artificial state of society, and formerly administered by the Court of Chancery in cases where the particular rights in respect whereof relief was sought came within some general class of rights enforced at Law, or might be enforced without detriment or inconvenience to the community, but where, as to such particular rights, the Common Law Courts could not, or originally did not (at least not without circuity of action or multiplicity of suits) clearly afford any relief or adequate relief, or did not make such qualifications or conditions as might be necessary for the due preservation of the rights of all interested in the property in litigation.

The above definition, exact though it may be, is, however perhaps too long and involved for an elementary treatise like the present, and it may be well therefore to add the short definition of Lord Coke, who stated that three things were to be judged in Courts of Equity, namely, fraud, accident and trust—a definition which was adopted by Blackstone, and is still, broadly speaking, true at the present day. It is by no means true, however, that these are exclusively or the only matters cognizable in Equity. It should also be borne in mind that the jurisdiction of Courts of Equity differed from those of Common Law not only in the principles which guided them, but in the modes of trial, the modes of proof, and the modes of relief. It will be seen therefore that Equity in a technical sense is more a matter of jurisdiction than of jurisprudence,

and the difficulty of defining it is due to the fact that its origin and development are historical rather than scientific. Indeed the true nature and extent of Equity jurisdiction as at present administered can only be ascertained by a specific enumeration of its actual limits in each particular class of cases falling within its remedial justice, and this will accordingly be done in the subsequent pages. **2.**

Equity jurisprudence is not synonymous with natural justice.

I. In the larger sense, Equity is synonymous with natural justice. (See St. § 1, 2.) But Equity, in the technical sense of the term, has a much narrower and an otherwise different signification. Many matters of natural justice are, by the Equity Jurisprudence of this and every other civilised nation, left to be disposed of *in foro conscientiæ*, from the difficulty of framing any general rules to meet them, and from the mischief and inconvenience which would arise from attempting judicially to enforce such duties as charity, gratitude, and kindness, or even positive engagements, where they are not founded on a valuable consideration, or, at least, on what is deemed a good consideration. (See St. § 1, 2, 8, note, and § 14; 1 Sp. 447, n. (*d*).) **3.**

Also a large portion of natural justice, or equity in the larger sense, is comprised in legislative enactments; and that portion is therefore excluded from Equity in the technical sense of the term. Besides, the Common Law Courts have, in the exercise of their jurisdiction, always had regard to natural justice, or equity in the larger sense, and have often proceeded, as far as the nature of the remedies they administered would permit, on the same doctrines as the Court of Chancery; and in the construction of statutes both adopted the same principles of interpretation, as being bound to pay regard to the intention of the legislature.

INTROD. SECT. I.

Thus, a portion of natural justice, or equity in the larger sense, is engrafted into the rules of the Common Law; and this portion is, therefore, also excluded from Equity in the technical sense of the term. (See St. § 7, 8, 9, 15, 20, 34.) **4.**

So that, on the one hand, natural justice, or equity in the larger sense, was not excluded either from legislative enactments or the rules of Common Law; nor, on the other hand, is it carried out to an unlimited extent even in the system of Equity. And in the cases to which it is applied in the system of Equity, it is not always applied in an unmodified form, but is qualified (as we shall see in the third section and in subsequent pages) by a due regard to legislative enactments and the rules of the Common Law, and to the varied and complicated relations and the general convenience of the subsisting order of things. **5.**

A portion of natural justice is left to conscience.

The truth, then, appears to be this: first, that a large portion of natural justice, or equity in the larger sense, is left to be administered *in foro conscientiæ*, because, in addition to the difficulty of propounding precise rules, applicable to all cases, a greater detriment and inconvenience to the community would probably ensue from attempting to enforce it in the public Courts, than from leaving it to the decision and the power of conscience, and to the various motives by which mankind are ordinarily influenced; secondly, that another portion of natural justice, or equity in the larger sense, is included in legislative enactments; thirdly, that another portion of natural justice, or equity in the larger sense, was always administered by the Common Law Courts, and is denominated Law; and, fourthly, only a portion, therefore, of natural justice, or equity in the larger sense, and that in a

Another portion included in legislative enactments.

Another portion administered in Courts of Law.

That which is called Equity in the

modified form, is called Equity in the technical sense of the term, in contradistinction as well to natural justice, or equity in the larger sense, as to that portion of natural justice, or equity in the larger sense, which is included in legislative enactments, and that portion of it administered by the Common Law Courts and included in the rules of the Common Law. **6.**

technical sense is therefore only a portion of natural justice, and in a modified form.

II. Equity jurisdiction has usually been treated of under three heads, viz., 1, exclusive; 2, concurrent; and 3, auxiliary. 1. There were particular rights which came within some general class of rights enforced at Law, or capable of being judicially enforced, not only in particular instances, and for the benefit of particular individuals, but generally, and to the advantage of the community at large; and yet there were anciently no forms of action by which relief could be obtained in respect of such particular rights, and they were consequently left to conscience by the Common Law Courts; but as they were capable of being enforced by proceedings in Equity, and were of a character demanding judicial sanction and interposition, the Court of Chancery readily interfered and afforded relief. In these cases, therefore, the Court of Chancery was said to have an exclusive jurisdiction. This, for example, was the case with trusts, for the most part; with the right to relief in many instances of penalties and forfeitures; and, in most cases, with the right to protection against anticipated loss or injury. (See St. § 29, 962.) Under the present practice, since the Judicature Act, 1873, all matters expressly assigned to the Chancery Division of the High Court of Justice may be classed under this head. (36 & 37 Vict. c. 66, s. 34.) **7.**

Equity jurisdiction treated as exclusive, concurrent, and auxiliary.

Where there is no remedy at Law, and Equity had exclusive jurisdiction.

2. There were many other cases in which the kind

Where Equity

INTROD. SECT. I.

assumed jurisdiction on account of the inadequacy of the legal relief;

of relief which was afforded by Common Law Courts was inadequate, but in which the Court of Chancery could give the precisely appropriate relief. For example, Equity would often enforce the specific performance of a contract; whereas in former times the Common Law Courts could only give damages for the breach thereof. (See St. § 30, 33.) **8.**

or to avoid circuity of action, or multiplicity of suits;

There were also cases in which adequate and complete relief could be had at Law, but in order to obtain it, circuity of action or multiplicity of suits was necessary; whereas complete justice could be done by a suit in Equity. (See St. § 496, 621, 853, 854.) **9.**

or to take due care of the rights of all;

Again: the Common Law Courts could not do more than pronounce a positive judgment in a settled form, either for the plaintiff or the defendant, irrespective of the peculiar circumstances of the case; whereas the Chancery Courts could adapt their decrees to all the various circumstances which might arise, and could take due care of the rights of all who were in any way interested in the property in litigation. (See St. § 26—28.) **10.**

In these three classes of cases, in which a plain, adequate and complete remedy could not be had at Law, the Court of Chancery had a concurrent and practically an exclusive jurisdiction. Indeed, in some, if not in all of the last class of these cases, Equity used to assert an exclusive jurisdiction, by granting an injunction against proceedings in other Courts. **11.**

or on account of the necessity for a discovery;

The necessity for a discovery furnished a ground of jurisdiction to the Court of Chancery for relief in a great variety of cases. For the Court, having acquired cognizance of the suit for the purpose of discovery, frequently entertained it for the purpose of relief.

(St. § 691, 692.) And although under the present practice, since the Judicature Acts, the Courts of the Queen's Bench Division have power to compel discovery, yet it has been held that the old right of discovery of the Court of Chancery still exists, though modified by the Judicature Acts and Rules of Court. (See *Att.-Gen.* v. *Gaskill*, 20 C. D. 509.) **12.**

or on account of the original denial of due relief at Law;

And in cases where the Common Law Courts originally did not afford adequate relief, the Court of Chancery exercised a concurrent jurisdiction, unless prevented by a legislative enactment, even though the Common Law Courts subsequently gave such relief. For they could have no power to circumscribe the jurisdiction of Courts of Equity. (See St. § 64 i, 81; 2 Sp. 16.) **13.**

or the doubtfulness of obtaining such relief.

And so if it was doubtful whether the Common Law Courts could give such relief, the Court of Chancery had jurisdiction. **14.**

Where Equity had auxiliary jurisdiction.

3. In some cases a matter was most properly cognizable at Law, and the Common Law Courts could always have afforded due relief, had they been able to procure that evidence which the Court of Chancery could obtain, but which the Common Law Courts formerly could not obtain. In these cases the Court of Chancery used to have an auxiliary jurisdiction to provide the Common Law Courts with that evidence. (See St. § 64 k, 673.) **15.**

Where it had no jurisdiction.

4. Where it was clear that the Common Law Courts could always afford adequate relief without the aid of the Court of Chancery, and without circuity of action or multiplicity of suits, and could take due care of the rights of all who were interested in the property in controversy, Equity had no jurisdiction.

INTROD. SECT. I.

(See St. § 33, 684 a & c, 686; 1 Sp. 408, 420; 2 Sp. 16.) **16.**

And Courts of Law and Equity are in general alike ousted in the case of internal disputes between the members of a building or other friendly society and the society itself, or any of the officials of the society and the society itself, where the Act of Parliament under which it is constituted, or the Building or Friendly Societies Act, provides that such disputes shall be settled by arbitration.

Nor, as already observed, have Courts of Equity any jurisdiction as to those classes of rights which could not be judicially enforced without occasioning a greater general mischief or inconvenience than that which results from leaving them to be disposed of *in foro conscientiæ*. **18.**

It will be seen from the next section that both the Equity and Common Law Jurisdictions have been the subject of very great alteration by the Judicature Acts. **19.**

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

INTROD. SECT. II.

determined, and all multiplicity of legal proceedings concerning any of such matters avoided." And sections 88, 89, 90, and 91 give similar powers to Inferior Courts, to the extent of their jurisdiction. Section 25 (of which sub-section (1) is repealed and replaced by a similar provision in section 10 of the Act of 1875) provides that there shall be no merger by operation of law only of any estate, the beneficial interest in which would not merge in Equity (4), makes certain changes in other specific points of Jurisprudence, which are noticed in the proper places in this Manual, and also makes the important enactment, that "generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of Equity and the rules of Common Law with reference to the same matter, the rules of Equity shall prevail" (11). **20.**

Section 34 assigns to the Chancery Division all causes and matters for any of the following purposes:—

The administration of the estates of deceased persons.

The dissolution of partnerships or the taking of partnership or other accounts.

The redemption or foreclosure of mortgages.

The raising of portions or other charges on land.

The sale and distribution of the proceeds of property subject to any lien or charge.

The execution of trusts, charitable or private.

The rectification or setting aside or cancellation of deeds or other written instruments.

The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases.

The partition or sale of real estates.

The wardship of infants and the care of infants' estates.

Since the Act other matters have been assigned to the Chancery Division by various statutes: *e.g.*, those arising under the Conveyancing Acts, the Settled Land Acts, and the Guardianship of Infants Act, 1886. **20 a.**

It will be noticed that section 34 does little more than assign to the Chancery Division matters already within its jurisdiction; and indeed it may be said that the general "effect of the Judicature Acts has been either to leave the Chancery Division and other Divisions to themselves as heretofore, or to turn the Chancery Division into the 'predominant partner' whenever its inventions have been utilised; or in a few minor cases it has borrowed from its other partners, or *vice versâ*, with mutual acknowledgments and compliments." **20 b.**

SECTION III.

Of the General Maxims of Equity Jurisprudence.

INTROD. SECT. III.

In addition to those maxims which are acted upon as well in Common Law Courts as in Courts of Equity, and besides various other maxims which in terms apply to particular parts of the Equity system, there are certain general maxims peculiar to Equity which it is of the greatest use rightly to understand, and to bear in mind, whether in reading or in practice. **21.**

I. No wrong without a remedy.

I. It is a maxim, that Equity will not suffer a wrong to be without a remedy, or as it is sometimes expressed: Equity will not suffer a right to be without a remedy. It will be evident from the first section that this maxim lies at the foundation of a large proportion of Equity Jurisprudence, as a system which aimed at supplying the defects which at one time existed in the Common Law, and in particular it lies at the very root of the modern doctrine of uses and trusts. But it will also appear from the observations made in that section, that this maxim must be regarded as referring exclusively to rights which come within a class of rights recognised at Law, or capable of being judicially enforced without occasioning a greater detriment or inconvenience to the public than would result from leaving them to be disposed of *in foro conscientiæ*. For there are still many real wrongs for which there is no remedy, either at Law or in Equity, as in the cases of *damnum absque injuriâ*,

where, though there is actual loss or damage, there is no wrong of which the Courts will take cognizance. (See *Day* v. *Brownrigg*, 10 C. D. 294; *Ajello* v. *Worsley*, (1898) 1 Ch. 274.) The maxim must also be understood to refer to cases where the party who is remediless at Law has not sacrificed or lost his remedy by his own act or laches (see St. § 684 a & c), and where there is no equal or superior adverse right. And there are some exceptive cases of claims of natural justice capable in themselves of being enforced with propriety, but to which neither the Common Law nor Equity give any remedy: as in the case of the exemption at Common Law of the lands of deceased debtors from the payment of debts—an exemption which has now been removed by statute. **22.**

II. But not only will Equity often administer a remedy where the Common Law would not give any relief, but it will also afford relief, as we have already seen, where the Common Law Courts originally did not give plain adequate and complete relief, at least without circuity of action or multiplicity of suits. (St. § 33.) **23.**

II. Equity will administer a due remedy, where it could not be had at Law.

III. But, as we have also seen, where the Common Law Courts always afforded plain adequate and complete relief without the aid of the Court of Chancery, and without circuity of action and multiplicity of suits, and could take due care of the rights of all persons interested in the property in litigation, there Equity had no jurisdiction. **24.**

III. But Equity will not interfere where the Courts of Law could administer a due remedy.

Thus, where there was always an adequate and complete remedy at Law for the recovery of rent, either by an action or distress, no suit would be entertained in Equity, although the remedy in Equity might be more beneficial. **25.**

Illustration drawn from the case of rents.

INTROD. SECT. III.

IV. Equity follows the Law.

IV. Although Equity would go beyond the Law in supplying a remedy in the cases above mentioned, yet it is a well-known maxim that Equity follows the Law. (See St. § 64.) **26.**

The true meaning of this maxim would seem to be: First, that in regard to legal estates, rights, and interests, Equity adopts and follows the rules of Law in all cases to which those rules may, in terms, be applicable. Thus, for example, Equity is governed by the canons on descent, and has never interposed in favour of younger children to mitigate the hardship caused by the rigour of the rule of primogeniture. But Equity has, in proper cases, made the heir-at-law a trustee in favour of persons having a claim upon or otherwise entitled to the descended property; since it would be inequitable to allow the heir-at-law, or any other person, to use a technical advantage as a means of defrauding others, which was never intended. (See *infra*, par. 31.) **27.**

Secondly, that in regard to equitable estates, rights, and interests, Equity adopts and follows the analogies furnished by the rules of Law. Thus, it applies to equitable estates and interests the same rules by which legal estates and interests are regulated at Common Law, as the canons of descent, and the rules of construction of words of limitation of legal estates; and it generally requires proceedings to be brought within the period prescribed for legal proceedings of a similar kind. **28.**

Limitation of the maxim.

The maxim is true in both the above senses; but in neither is it universally true, or at least of universal application. Where a rule either of the Common or the Statute Law is direct and applicable, a Court of Equity is as much bound by it as a Court of Common

Law, and can as little justify a departure from it. But, on the other hand, Equity only follows the Law so far as it can without sacrificing claims grounded on peculiar circumstances, which render it incumbent upon a Court of Equity to interpose in accordance with the maxim previously mentioned, that Equity will not suffer a wrong to be without a remedy. **29.**

Illustration of the maxim in regard to trusts executed.

In reference to the maxim that Equity follows the Law, it may be observed that although the limitations by which equitable estates are created by way of trust *executed* (*post*, par. 236) are construed in the same manner as similar limitations of legal estates, so that, for example, what would create an estate tail in one case will create an estate of the same kind in the other case, yet such a constructive assimilation does not always take place in regard to equitable estates created by way of trust *executory* (*post*, par. 237). For, in the case of trusts executory, there is often no substantial analogy, forming a ground for such assimilation: because in many cases the words are not so much actual limitations, such as those by which legal estates are created, as instructions or intimations as to the mode in which the author of the trust wishes the property to be settled by some future settlement, or assurance, and therefore the words are to be construed according to the intent of the party, rather than according to what would be the strict operation of the words, supposing them to be actual limitations contained in a formal and final instrument. (As to these trusts, see *post*, par. 237; *Lord Glenorchy* v. *Bosville*, 2 Wh. & Tu. 763 *et seq.*) **30.**

Maxim does not apply to trusts executory in all respects.

Illustrations of the qualification added in the writer's statement of

In reference to the qualification that Equity follows the Law only as far as it can without sacrificing claims grounded on such peculiar circumstances as above

INTROD. SECT. III.

the true meaning of the maxim.

Law of primogeniture

mentioned, it may be observed, that Equity follows the Law in regard to the rule of primogeniture, although that rule in any particular instance in which it is so followed may be productive of the greatest hardship towards the younger members of a family who, by the operation of the rule, may be left without provision, whilst the eldest son may be placed in affluence. But these are not peculiar circumstances creating an equitable right to relief in favour of the younger children against the eldest son, and demanding the interposition of Equity. The mere absence or want of a provision, which may have arisen from the culpable neglect of the parent, can create no equity against the eldest son. He has the right to the descended or entailed estate, without any reference to the circumstances of the other members of the family; and the mere fact that they have not been provided for by their parent can impose on the eldest son no obligation, in Equity, to divest himself, and can give the younger children no equitable right to strip him, of that provision which the Law has appointed him. No relief could be given in such a case as this, without directly derogating from a rule of Law, which a Court of Equity has no power to do. But if an eldest son should, by parol, promise his father to pay his sisters' portions, if he would not direct timber to be felled to raise them, although not liable at Law, he would in Equity be deemed liable to pay them, in the same way as if they had been charged on the land. (St. § 64.)

Powers.

So Equity will often support a power defectively executed where at Law the act would be wholly nugatory. (St. § 64 a; *Tollet* v. *Tollet*, 2 Wh. & Tu. 289 *et seq.*)

Statute of Limitations.

And in cases under the old Statute of Limitations (21 Jac. I. c. 16), Equity often interfered,

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

be lost by laches. (*Ridgway* v. *Newstead*, 2 Gif. 492; *Lehmann* v. *McArthur*, L. R. 3 Ch. 496.) Since, inasmuch as his right to follow assets which have been distributed without providing for his debt is a right only in Equity, equitable considerations, if sufficiently weighty, will make it the duty of the Court not to grant that equitable relief to which, under ordinary circumstances, a creditor is entitled. (*Blake* v. *Gale*, 32 C. D. 571.) Equity refuses its aid to stale demands, where the party has slept upon his rights, for nothing can call forth the interference of Equity but conscience, good faith, and reasonable diligence. (*Smith* v. *Clay*, 3 Bro. C. C. 460, n.) "It has been beautifully remarked, with respect to the emblem of Time, who is depicted as carrying a scythe and an hour-glass, that while with the one he cuts down the evidence which might protect innocence, with the other he metes out the period when innocence can no longer be assailed.' (*Bright* v. *Legerton*, 2 D. F. & J. 617.) **32.**

"If a person having a right, and seeing another person about to commit, or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. . . . But when once the act is completed without any knowledge or assent upon the part of the person whose right is infringed, the matter is to be determined on very different legal considerations. A right of action has then vested in him which, at all events as a general rule, cannot be divested without accord and satisfaction, or release under seal. Mere

submission to the injury for any time short of the period limited by statute for the enforcement of the right of action cannot take away such right, although under the name of laches it may afford a ground for refusing relief under some particular circumstances: and it is clear that even an express promise by the person injured that he would not take any legal proceedings to redress the injury done to him could not by itself constitute a bar to such proceedings, for the promise would be without consideration, and therefore not binding." (*De Bussche* v. *Alt*, 8 C. D. 286, 314.) **33.**

VI. Where there is equal Equity, the Law must prevail.

VI. Where there is equal Equity, the Law must prevail; in other words, if the defendant has a claim to the protection of Equity, equal to the claim which the plaintiff has to its assistance, there Equity will not interpose, but will leave the matter as it stands. It is upon this account that Equity refuses to interfere against a *bonâ fide* purchaser for a valuable consideration without notice of the adverse title, if he is in possession or has purchased from an apparent owner in possession, and if he chooses to avail himself of the defence at the proper time and in the proper mode. (St. § 64 c, 436; *Basset* v. *Nosworthy*, 2 Wh. & Tu. 150 *et seq.*) **34.**

VII. Equality is Equity. Illustration drawn from the case of a joint purchase or mortgage.

VII. Another maxim is, that Equality is Equity, or, that Equity delighteth in Equality. (St. § 64 f.) Acting on this principle, Equity leans strongly against joint-tenancy, as it is attended with the inseparable incident of the right of survivorship. For, although it is true that each joint tenant may have an equal chance of being the survivor, yet this is but an equality in point of chance; as soon as one dies, there is an end to the equality between them: on

INTROD. SECT. III.

that event the whole accrues to the survivor. And the equal certainty of having an absolute equal share, or a share proportionate to the amount of the purchase-money advanced, which is an equal share so far as the justice of the case will permit, is considered in Equity far better than an equal chance of having the whole or none of the property purchased. The former is considered to be the true and just equality. And therefore, if two persons jointly purchase, or take a mortgage of an estate, and advance the purchase or mortgage money in unequal proportions, Equity, on the death of either of them, acting on the maxim that Equality is Equity, will hold the survivor a trustee for the representatives of the deceased, as to a share proportionate to the amount of the money so advanced by him. (See St. § 1206; *Lake* v. *Gibson*, 2 Wh. & Tu. 952 *et seq.*) And this furnishes another illustration of the limitations of the maxim, that Equity follows the Law, as above explained. **35.**

VIII. He who comes into Equity must come with clean hands.

Illustration drawn from a fraudulent transaction.

VIII. Another maxim is, that he who comes into Equity must come with clean hands. So that if a person seeks to cancel, set aside, or obtain the delivery up of an instrument on account of fraud, and he himself has been guilty of wilful participation in the fraud, Equity will not interpose in his behalf, unless the fraud is against public policy, and public policy would be defeated by allowing it to stand. (See St. § 695; *post*, par. 727.) **36.**

Qualification of the maxim.

The rule must be understood to refer to wilful misconduct in regard to the matter in litigation, as in the foregoing example, and not to any misconduct, however gross, which is unconnected with the matter

in litigation, and with which the opposite party in the cause has no concern. **37.**

IX. He who seeks equity must do equity.

IX. It is also a maxim, that he who seeks equity must do equity. (St. § 64 c, 707; *post*, par. 729.) **38.**

The meaning of this is, that he who seeks equity must do equity in the transaction in respect of which relief is sought; for the rule does not reach so far as to affect any other transaction than that in respect of which the relief is sought. (*Wilkinson* v. *Fowkes*, 9 Hare, 592; *Gibson* v. *Goldsmid*, 5 D. M. & G. 757.) **39.**

Illustration drawn from a usurious transaction.

To give an illustration of this maxim, the Court will not set aside a usurious transaction at the suit of the borrower, unless upon the terms that he will pay the lender what is *bonâ fide* due to him (*a*). It must not be inferred from this, however, that the Court will oblige the borrower to pay what is so due, on an action by the lender to enforce his claim (see St. § 64 e); for that would be contrary to the maxim, that he who comes into Equity must come with clean hands. **40.**

X. Equity looks on that as done which ought to be done.

X. It is a maxim, that Equity looks upon that as done which ought to be done. (St. § 64 g.) This maxim is acted on in some cases (as in the case of agreements) in favour of persons who have a right to ask that acts might be done, so as virtually to place them, as near as may be, in the same advantageous position as if those acts had been done in the way in which, and at the time when, they ought to have been performed. (See St. § 64 g.) But Equity will not thus act in favour of all persons;

(*a*) The Usury Laws were abolished by the stat. 17 & 18 Vict. c. 90, except those relating to pawnbrokers. But the repeal of the Usury Laws has not affected the right of the Court to give relief against unconscionable bargains. (*Post*, par. 168.)

INTROD. SECT. III.

e.g., not in favour of volunteers. (*Chetwynd* v. *Morgan*, 31 C. D. 596.) **41.**

Conversion.

As a consequence of this maxim, money directed to be employed in the purchase of land, and land directed to be turned into money, are in general regarded as that species of property into which they are directed to be converted—that is, either immediately, or at some future time, according to circumstances. (*Post*, par. 409.) And where the intention in marriage articles is plain, that a conversion should be made, but consents of the parties interested to the actual purchase cannot be obtained as required by the instrument, by reason of their deaths or for some other cause, if any convenient purchase could have been obtained, the Court will take upon itself to judge whether such consents ought to have been given, and the conversion being the paramount object, it will be considered as made. If this were otherwise, the parties to consent would have the option of determining whether the property should be real or personal, which, unless it be clearly given to them, will not be permitted. And when a conversion is rightly made, all the consequences of conversion must follow, unless there be an equity in favour of reconversion. (Brett's L. C. 127 *et seq.*) **42.**

Where money to be converted gets into the hands of the person who is absolutely entitled to it either way, the operation of the rule of conversion will cease. (2 Sp. 270.) **46.**

Where the property is outstanding in a trustee, but there is some person who is absolutely entitled to the property, whether taken as realty or personalty, such person, by any act from which his intention may be

collected, may declare his election in what quality it shall be taken. (2 Sp. 271; *Fletcher* v. *Ashburner*, 1 Wh. & Tu. 327 *et seq.*) Until an election is made, the property passes as if actually converted, and the onus lies on those who would show an election to take it in another character than that it would have if converted. (2 Sp. 272.) **47.**

XI. *Qui prior est tempore, potior est jure.*

XI. As between persons having only equitable interests, if their equities are in all other respects equal, priority of time gives the better equity: *qui prior est tempore, potior est jure*. But in a contest between persons having only equitable interests, priority of time is the last preference resorted to; *i.e.*, the Court will not prefer the one to the other on the mere ground of priority of time, until it finds, upon an examination of their relative merits, that there is no other sufficient ground of preference between them, or, in other words, that their equities are in all other respects equal: and if the one has, on other grounds, a better equity than the other, priority of time is immaterial. (*Post*, par. 529.) **50.**

XII. Equity imputes intention to fulfil an obligation.

XII. Where a man is bound to do an act, and he does one which is capable of being considered to have been done in fulfilment of his obligation, it shall be so construed; because it is right to put the most favourable construction on the acts of others. (*Lechmere* v. *Lechmere*, 2 Wh. & Tu. 399; *Blandy* v. *Widmore*, 2 Wh. & Tu. 407 *et seq.*) **51.**

Where a distributive share is a satisfaction of an obligation by covenant.

In the case of a covenant that, on the death of the covenantor, a wife or relative shall receive a gross sum, his or her distributive share, in the case of an intestacy, if equal to or greater than the sum covenanted to be paid, is to be considered as a performance; if less, as a part performance. But where

INTROD. SECT. III.

the covenant is, that an annuity shall be paid or secured on the death of the covenantor, the distributive share is not a performance or part performance. (*Ib.*; and see *post*, par. 316.) **52.**

XIII. Loss must be borne by person occasioning it.

XIII. It is a rule both at Law and in Equity, that whenever one of two innocent persons must suffer by the act of a third person, that one must bear the loss who has, however innocently, put it in the power of such third person to occasion it. (*Hunter* v. *Walters*, L. R. 7 Ch. 75; *French* v. *Hope*, 56 L. J. Ch. 363.) But the neglect must be in the transaction itself and the proximate cause of the loss, and it must be the neglect of some duty to the person affected by it and to the general public, and not merely the neglect of what would be prudent in respect to the person himself nor even of some duty to a stranger. The mere omission by a person to do something which it is not his duty to do, but which, if done, would have prevented the loss, is not sufficient to render him liable for such loss. (See judgment of Lindley, J., in *Keith* v. *Burrows*, 1 C. P. D. 734.) **53.**

XIV. Rules as to foreign or colonial property or contracts.

XIV. It may be observed in this place, that it is a rule, that although the property in controversy be situate in a country out of the jurisdiction of the Court, whether within the English dominions or not, yet the Court, in all cases where the proper parties are within the territorial process of the Court, will afford relief, so far as it can be afforded, by proceeding against the persons, and not directly against the property. (See St. § 1290—1300, 1352 a; *Penn* v. *Lord Baltimore*, 1 Wh. & Tu. 755 *et seq*; *Ewing* v. *Orr Ewing*, Brett's L. C. 1.) Thus, a suit cannot be brought for a partition of land situate in a country out of the jurisdiction; for the Court cannot award

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

construed according to the law of the place in which they were made. And, as a general rule, a contract will not be enforced, unless it is valid both by the law of the country it which it was made, and by the law of the country in which it is sought to be enforced. (2 Sp. 13, 14; *Hope* v. *Hope*, 8 D. M. & G. 731.) **57.**

Where a written contract is made in a foreign country and in a foreign language, an English Court, in order to interpret it, obtains, first, a translation of the instrument; secondly, an explanation of the terms of art (if it contains any); thirdly, evidence of any foreign law applicable to the case; and, fourthly, evidence of any peculiar rules of construction, if any such rules exist, by the foreign law. And, with this assistance, the Court then interprets the contract itself on ordinary principles of construction. (*Di Sora* v. *Phillipps*, 10 H. L. C. 624, 633.) **58.**

Section IV.

Of the Division of Equity (a).

The subject of Equity Jurisprudence may be conveniently, and perhaps most properly, treated under the following heads, designated according to the more distinctive characteristics of the relief afforded, or the general objects sought to be effected.

I. Of Remedial Equity, specifically so termed.
II. Of Executive Equity.
III. Of Adjustive Equity.
IV. Of Protective Equity, irrespective of disability.
V. Of Protective Equity, in favour of persons under disability. **60.**

(*a*) Now that, by virtue of the Judicature Acts, Law and Equity are concurrently administered in the Queen's Bench and Chancery Divisions —certain particular matters being assigned to each Division—and every Court is, as regards matters assigned to it, a Court of Equity as well as of Law, the above division of Equity jurisdiction would seem to be more appropriate than the division into concurrent, exclusive, and auxiliary jurisdiction, the force of which is destroyed.

TITLE I.

Of Remedial Equity, Specifically so Termed.

CHAPTER I.

OF ACCIDENT.

Definition of accident.

AN accident, in the usual sense of the term, is an occurrence not referable to design. **61.**

Accident, as remediable in Equity, may be defined to be an unforeseen and injurious occurrence, not attributable to mistake, neglect, or misconduct. **62.**

Illustration in the case of a reduction of stock.

Thus, in the case of an investment in public stock sufficient to provide for an annuity directed by will to be secured by such stock, the subsequent reduction by Act of Parliament of the stock, so that the investment becomes insufficient to answer the annuity, is an accident from liability for which Equity will relieve the executors, and may remedy by decreeing the deficiency to be made up against the residuary legatees. (St. § 93.) **63.**

I. Accidents remediable at Law.

I. There are many cases of accident in which due relief could always be obtained at Law; and in such cases there was no remedy in Equity. (St. § 79.) **64.**

II. Accidents not remediable,

II. On the other hand, there are many cases in which no remedy can be had either legal or equitable. (St. § 79.) **65.** Thus,

as in cases of culpability of the sufferer;

1. No relief will be granted where the accident arose from the gross neglect or fault of the party seeking relief, or his agents. (St. § 105.) **66.**

or of an absolute agreement,

2. And where a person has expressly and absolutely contracted or covenanted to do a particular thing, it is no ground for the interference of Equity that he has been prevented by accident from fulfilling his engagement, or from deriving the full benefit of the contract on his side. For he might have prevented any injury to himself from accident, by making proper exceptions; but since he has made no such exceptions, Equity will not conjecturally limit a liability which in terms is general and unqualified. (See St. § 101—105.)

to repair,

So that if a lessee covenants to keep the demised premises in repair, he will be bound to do so, notwithstanding any unavoidable accident by which they are destroyed or injured. (St. § 101.)

or to pay rent,

And where there is a covenant to pay rent during the term, without any exceptions, it must be paid, notwithstanding the premises are accidentally burnt down during the term. (St. § 102.)

or an annuity;

So, if an estate is sold for a certain sum of money and an annuity for the life of the vendor, and the vendor dies before the receipt of any annuity, Equity will not grant relief. (St. § 104.) **67.**

or of a countervailing equity,

3. Nor will relief be granted in favour of a person whose equitable right to assistance is not equal, or not more than equal, to the equitable right of protection which is possessed by the party against whom the relief is sought. For this reason relief is not given against a *bonâ fide* purchaser for valuable consideration, without notice (see St. § 108); or against an heir in tail or remainder-man in tail, in favour of persons claiming under the tenant in tail. (St. § 107.) **68.**

or of want of equity;

4. And so relief will not be granted in favour of a person who, although a great loser through an accident, has no equitable title to relief, or as little as the person against whom relief is sought. Thus, no relief

as where a will is defectively executed.

will be afforded to the legatees or devisees under a will defectively executed (see St. § 105 a, 106): for, being mere volunteers, they have as little equity as the heir or next of kin, or even less, inasmuch as *fortior et æquior est dispositio legis quam hominis* (Co. Litt. 338 a): and therefore the legal right which has vested in the latter will not be taken away; as the maxim is, that "where the equity is equal, the law must prevail." **69.**

III. Accidents remediable in Equity.

III. But where the Common Law Courts originally could not, or did not, give adequate relief, and take due care of the rights of all persons interested, and the party prejudicially affected was free from blame in respect of the accident, relief was granted by the Court of Chancery, if it could be granted without derogating from any positive agreement, or violating any equal or superior equity in another person. And although Courts of Law can now grant relief where formerly they could not, yet the original jurisdiction of Courts of Equity is not thereby taken away, but they still have concurrent jurisdiction. (See St. § 28, 64 i, 79, 81, 85, 89, 101, 105, 106, 109.) **70.**

1. Jurisdiction for discovery in cases of destroyed, lost, or suppressed deeds, and

1. In cases of destroyed, lost, or suppressed deeds, the jurisdiction of the Court of Chancery (now the Chancery Division) to compel a discovery would seem to have been universal, because this was a preliminary assistance peculiar to Equity. **71.**

The Common Law Courts compelled discovery only to a very limited extent by virtue of the Common Law, and somewhat larger powers were conferred on them by the Common Law Procedure Act, 1854, now repealed. Under the Judicature Acts, however, they have the same power of compelling discovery as the Chancery Courts; and subject to the Orders and Rules of Court, a litigant, either in the Chancery Courts

or in the Common Law Courts, can obtain all the discovery he could formerly have had either at Law or in Equity, but where he was not entitled to it either at Law or in Equity, he cannot obtain it now. (*Lyell* v. *Kennedy*, 8 A. C. 223; *Hunnings* v. *Williamson*, 10 Q. B. D. 459.) **72.**

jurisdiction for relief in such cases.

But in these cases, the jurisdiction of the Court of Chancery (now the Chancery Division) for relief, in addition to a discovery, was of limited extent; for, in some of these cases the Common Law Courts have all along been able to administer, and have been in the habit of doing complete justice. (St. § 83, 84.)

Instances in which Equity has jurisdiction for relief in those cases.

Among other instances of equitable relief may be mentioned the case where the plaintiff avers that a deed relating to land has been either destroyed or concealed by the defendant, but that he (the plaintiff) knows not whether it has been so destroyed, or whether it has been only concealed; for there a decree may be obtained in Equity (which formerly could not be made in Law), that the plaintiff shall hold and enjoy the land until the defendant shall produce the deed, or admit its destruction. (St. § 84.) **73.**

So if a deed concerning land is lost, and the party in possession seeks a discovery, and to be established in his possession under it, Equity will afford relief; for in such a case there was no remedy at Law. (St. § 84.) **74.**

2. Jurisdiction in cases of lost bonds.

2. There is jurisdiction in Equity to decree payment of a lost bond; because until a recent period no relief was given at Law, on account of the want of a profert. And the subsequent practice of dispensing with profert at Law does not destroy the ancient jurisdiction in Equity. (St. § 81, 82.) And besides, at Law, the defendant had not the protection of the

oath of the plaintiff to the fact of the loss. Again, it is often proper to grant relief upon the terms of the party giving a bond of indemnity; and formerly a Common Law Court could not insist on that as a part of the judgment; and, although it has sometimes required the previous offer of an indemnity, yet such an offer may be unsatisfactory in many cases; for, in the meantime, the circumstances of the party to the bond of indemnity may undergo a great change. (St. § 82.) **75.**

3. Jurisdiction in cases of lost unsealed securities.

3. There would seem to have been a remedy at Law to enforce payment of money due on a *lost* negotiable note or other negotiable unsealed security, because no profert was necessary, and no oyer was allowed of such securities; and also jurisdiction in Equity to relieve in such a case, at any rate when the remedy at Law was insufficient, or where there was an offer of indemnity in the bill, constituting a ground of jurisdiction. (St. § 85, 86. See now Bills of Exchange Act, 1882, s. 70.) There was in Equity, however, no jurisdiction to give relief on account of the *destruction* of a bill of exchange, because there was always a complete remedy at Law in such cases. (*Wright* v. *Lord Maidstone*, 1 K. & J. 701.) **76.**

4. Payments by executors.

4. Another instance in which the Court would give relief on the ground of accident was where an executor, having to pay various debts or legacies, pays some of them in full, and afterwards the estate turns out to be insufficient. Here the executor, if he has acted with due caution, will be relieved against liability. (*Edwards* v. *Freeman*, 2 P. Wms. 447; *Hilliard* v. *Fulford*, 4 C. D. 389.) **76 a.**

5. Relief in cases of the defective

5. In the absence of any countervailing equity, relief will be granted in Equity in the case of a defective

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

to the power; since it would not be revocable like a will. **78.**

But where the power is coupled with a trust, Equity will grant relief, even in the case of the non-execution of the power: because, in this case, the donee was under an equitable obligation to exercise it. And Equity will also grant relief where the execution of the power has been prevented by fraud. (See, as to these propositions respecting powers, St. § 94—98, 169—177; 2 Sugd. Pow., 7th ed. 88—175; *Tollet* v. *Tollet*, 2 Wh. & Tu. 289; *Harding* v. *Glyn*, 2 Wh. & Tu. 335; *Chetwynd* v. *Morgan*, 31 C. D. 596.) **79.**

CHAPTER II.

OF MISTAKE.

Definition of mistake.

A MISTAKE, as remediable in Equity, may be defined to be an act which would not have been done, or an omission which would not have occurred, but from ignorance, forgetfulness, inadvertence, mental incompetence, surprise, misplaced confidence, or imposition. **80.**

The following propositions appear to be deducible from the cases on the subject:—

I. Mistake made by the sufferer alone.

I. Where the mistake is unilateral, and the sufferer is the person by whom it was made, relief will not be granted, unless there is some circumstance which gives rise to a presumption that there has been some undue influence, misrepresentation, imposition, mental imbecility, surprise, or confidence abused (see St. § 110, 137); and even where this is the case, Equity will not interfere as against a *bonâ fide* purchaser for valuable consideration, without notice. (St. § 139, and see Maxim VI., par. 34, *ante*.) **81.**

Mistake in a matter of law;

In regard to mistakes in matters of law, it is a maxim that *ignorantia legis non excusat.* (St. § 111, 113, 116, 138, 140; *Powell* v. *Smith*, L. R. 14 Eq. 85.) But where the mistake is one of title, arising from ignorance of a principle of law of such constant occurrence as to be understood by the community at large, this is considered sufficient to afford such a presumption as above mentioned, so as to

TIT. I. CAP. II.

entitle the party to relief. (See St. § 121—125, 128, 137.) **82.**

The Court has power to relieve against mistakes in law as well as against mistakes in fact, if there is any equitable ground for such relief; but it will not relieve unless there be a fiduciary relation between the parties, or some equity supervenes by reason of the conduct of one of them. When money has been paid over with a full knowledge of all the facts, and the payment has been acquiesced in with such knowledge, it cannot afterwards be recovered back. (*Rogers* v. *Ingham*, 3 C. D. 351; Brett's Lead. Cas. 80 *et seq.*) Unless the payment be made to an officer of the Court, in which case it will be ordered to be repaid. (*Ex parte Simmonds*, 16 Q. B. D. 308; *In re Brown*, 32 C. D. 597; *In re Opera, Limited*, (1891) 2 Ch. 154.) **83.**

or in a matter of fact.

And in regard to mistakes in matters of fact, relief will be granted on the same presumption, where the mistake is unilateral, and the fact was material to the act or contract, and was not doubtful from its own nature, and was a fact which would not be ascertained by such diligence or care as is usual in transactions of the like nature, and of which the other party was under a legal obligation to inform the mistaken person. (See St. § 117, 118, 140, 141, 146—148, 150, 151.) **84.**

Ignorance of foreign law.

And ignorance of foreign law is deemed ignorance of fact; because no person is presumed to know foreign law. (St. § 140.) **85.**

Vendor's mistake as to value.

But ignorance, on the part of the vendor, of circumstances tending to enhance the value of the property, of which the vendee was aware, will not form a ground for relief, where it is not a case of mutual confidence. (St. § 149.) **86.**

II. Mutual mistake.

II. Where the mistake is mutual, the transaction will be binding; unless it was founded on a mutual surprise; or the mistake consists in supposing that the subject-matter of the contract existed, when in reality it was not in existence; or the mistake consists in one party supposing that he had purchased something which the other did not intend to sell (St. § 113, 134, 142, 143, 144); or the mistake is the result of a miscalculation by the defendant's agent in favour of the defendant (*Carpmael* v. *Powis*, 10 Beav. 36); or by reason of the fact being otherwise than was supposed, there is no consideration to support the transaction (*Cochrane* v. *Willis*, L. R. 1 Ch. 58); or both parties were under the impression that one of them was the owner of property which, in reality, belonged to the other (*Cooper* v. *Phibbs*, L. R. 2 H. L. 149); or one of the parties made a material misrepresentation, though innocently, which influenced the other (*Fane* v. *Fane*, L. R. 20 Eq. 698. And see Brett's Lead. Cas. 84.) **87.**

III. Compromises.

III. In the case of a compromise of doubtful rights, or of rights which are considered by the parties to be doubtful, to make it binding the parties must be at arm's length, on equal terms, with equal knowledge, and with sufficient advice and protection, where, from their relative position or other circumstances, they need it. (*Moxon* v. *Payne*, L. R. 8 Ch. 881, 885.) If all the parties are in a state of mutual ignorance, or they are all acquainted with the doubts which exist in their favour, the compromise will be binding. But where one or more of them is or are not aware of the doubts existing in his or their favour, while the fact that such doubts exist is known to the other or others of them, the compromise will not be binding (see

St. § 130—132; *Lucy's Case*, 4 D. M. & G. 356; *Stapilton* v. *Stapilton*, 1 Wh. & Tu. 223); because, in that case, there is room for the presumption of surprise or confidence abused; and the very nature of the transaction made it requisite that all the parties should be on an equality as regards knowledge or ignorance of the doubts existing in their favour. To render a family compromise binding, there must be not only good faith, but full disclosure by each party to the other, of all such material facts known to them, relative to their rights and title, as are calculated to influence the judgment in the adoption of the compromise; and without full disclosure honest intention is not sufficient. (*Greenwood* v. *Greenwood*, 2 D. J. & S. 28; *Re Birchall*, 16 C. D. 41; *De Cordova* v. *De Cordova*, 4 A. C. 692.) **88.**

IV. Correction of a mistake in a written instrument, or in regard thereto.

IV. Where by mistake an instrument *inter vivos* is not what the parties intended, or there is a mistake in it other than a mistake in Law, or any acts necessary to give validity to the instrument have been omitted, and the mistake is clearly made out by admissible and satisfactory evidence, or is admitted on the record, or is evident from the nature of the case, or from the rest of the deed, Equity will rectify the mistake (St. § 152, 157, 159, 166, 168; *Lord Glenorchy* v. *Bosville* and *Legg* v. *Goldwire*, 2 Wh. & Tu. 763, 770; *Cooper* v. *Phibbs*, L. R. 2 H. L. 149, Brett's L. C. 84; *Paget* v. *Marshall*, 28 C. D. 255; *Tucker* v. *Bennett*, 34 C. D. 754); except as against a *bonâ fide* purchaser for valuable consideration, without notice (St. § 165; 2 Sp. 195), or other person having an equity equal to that of the plaintiff (St. § 176); nor will it, as a rule, supply anything for the want of which

the legislature has declared the instrument void; for that would be to defeat the very policy of the enactment. (St. § 177.) **89.**

But in order to enable the Court to rectify an ante-nuptial settlement by striking out a part, it must be proved that it contains something which has been inserted by mistake, contrary to the intention of all the parties. (*Rooke* v. *Lord Kensington*, 2 K. & J. 753, 764; *Sells* v. *Sells*, 1 Dr. & Sm. 42; *Thompson* v. *Whitmore*, 1 J. & H. 268; *Elwes* v. *Elwes*, 3 D. F. & J. 667.) And where an instrument is substantially what the parties intended, although so framed under a mistaken view of the Law, the Court will not rectify the mistake. (St. § 113—115.) A bond to leave or convey property has, however, been sometimes upheld in Equity, as an agreement defectively executed. (St. § 136.) **90.**

A husband cannot take proceedings to have a settlement rectified, where he executed it with a knowledge of its contents, though he gave notice before the marriage that he should apply to the Court to have it rectified. (*Eaton* v. *Bennett*, 35 Beav. 196.) **91.**

Equity will hesitate to remedy a defect or supply an omission in a deed in favour of a volunteer even when it has arisen from mere mistake, and though the correction would not be inconsistent with the deed. (2 Sp. 886; *Bonhote* v. *Henderson*, (1895) 2 Ch. 202.) **92.**

A voluntary deed therefore will not, as a rule, be rectified on the unsupported evidence of the settlor unless all the parties consent. (St. 164 e, 176; *Phillipson* v. *Kerry*, 32 Beav. 628; *Broun* v. *Kennedy*, 33 Beav. 133, 147; *Thompson* v. *Whitmore*, 1 J. & H. 268; *Bonhote* v. *Henderson*, *supra*.) **93.**

It should be observed, that where the final instrument of conveyance or settlement differs from the preliminary contract, that very circumstance affords of itself some ground for presuming an intentional change of purpose, unless, from some recital in it, or from some attendant circumstances, it appears to have been intended to be merely in pursuance of the original contract. (St. § 160.) **94.**

When there are articles and a settlement before marriage, as a general rule the settlement alone can be looked to; and if it is different from the articles, it must be taken as a new agreement. But if it purports to be executed in pursuance of the articles, or if there is clear and satisfactory evidence showing that the discrepancy has arisen from a mistake, the Court will reform the settlement, and make it conformable to the real intention of the parties. (*Legg* v. *Goldwire*, 2 Wh. & Tu. 770.) If the articles are before marriage and the settlement after marriage, the articles are in effect the binding instrument; and if the settlement gives estates or interests different from those which the Court would give on the construction of the articles, the settlement will be reformed, as between the parties and their representatives and mere volunteers, but not as against a purchaser for valuable consideration without notice. (*Ib.*) **95.**

And as regards the admissibility of the evidence, it is a rule of the Common Law, independently of the Statute of Frauds, that parol evidence is not admissible to disannul, substantially add to, subtract from, qualify, or vary a written instrument. (See St. § 153, 158.) But upon principle it would seem that cases of accident, mistake, and fraud are (in

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

Avoidance of a written instrument on the ground of mistake or fraud.

X. Where the mistake is unilateral, the remedy is not rectification but rescission, but the Court may give to a defendant the option of taking what the plaintiff meant to give in lieu of rescission. (St. § 164 e; *Paget* v. *Marshall*, 28 C. D. 255.) And in cases of fraud the instrument will be entirely set aside. (St. § 694.) Indeed, in cases within the Statute of Frauds, it is an easier matter totally to avoid an agreement than to vary it; for, in the former case, the Statute of Frauds has no influence whatever; since "it does not say that a written agreement shall bind, but that an unwritten agreement shall not bind." (Sugd. V. & P., 10th ed., ch. 3, s. 8, pl. 32.) **102.**

The Judicature Act, 1873, s. 34 (3).

By the stat. 36 & 37 Vict. c. 66, s. 34 (3), all causes and matters for the rectification, or setting aside, or cancellation of deeds or other written instruments, are assigned to the Chancery Division. **102 a.**

CHAPTER III.

OF ACTUAL FRAUD.

Unsafe to define fraud *in general*, or the extent of remedial equity on the ground of fraud.

THE modes of fraud are infinite; and "it has been said, that Courts of Equity have, very wisely, never laid down, as a general proposition, what shall constitute fraud, or any general rule, beyond which they will not go, upon the ground of fraud, lest other means of avoiding the equity of the Courts should be found." (St. § 186.) In accordance with the spirit of this remark no attempt is here made to give a definition of fraud *in general*. It is usually and accurately divided, however, into two large classes, designated, defined, and treated of under the names of Actual Fraud and Constructive Fraud. **103.**

Definition of actual fraud.

An *actual* fraud may be defined to be any deception or artifice used to circumvent, cheat, or deceive another. (See St. § 186.) **104.**

Jurisdiction in cases of fraud.

The Courts of the Chancery Division, to which the rectification, or setting aside, or cancellation of deeds or other written instruments, has been assigned by the Judicature Act, will not entertain jurisdiction to set aside a will obtained by fraud, or establish a will suppressed by fraud; for, in such cases, the proper remedy is exclusively vested in the Probate Division of the High Court. (St. § 184, and note; Wms. on Executors, 9th ed. 464; *Allen* v. *M'Pherson*, 1 H. L. C. 191; *Meluish* v. *Milton*, 3 C. D. 27, 33.) But where the fraud does not go to the whole will, but only to some particular clause, or where the fraud is in

unduly obtaining the consent of the next of kin to the probate, Equity will lay hold of these circumstances to declare the executor a trustee for the next of kin. (St. § 440; Wms. on Executors, 9th ed. 467.) **105.**

In a great variety of other cases, fraud is cognizable at Law; as in cases of fraud in the sale of chattels personal: and in some of these cases adequate relief could be, and constantly is, obtained at Law. (St. § 184, and note.) **106.**

Evidence of fraud.

It is a rule, as well at Law as in Equity, that fraud is not to be presumed. But, on the other hand, neither at Law nor in Equity is positive proof of fraud indispensably necessary. And a lower degree of proof than that required at Law has always been acted upon in Equity. (See St. § 190; *Re Terry and White's Contract*, 32 C. D. 14.) **107.**

When a case is based on fraud, the fraud must be proved, and no relief will be given in the suit in which such a case is made, on any different grounds. But where material allegations of fraud are proved, the plaintiff will obtain relief, although other allegations of fraud are not proved. (*Moxon* v. *Payne*, L. R. 8 Ch. 881, 887.) **108.**

It would be impossible, and unnecessary if it were possible, to enumerate all the different instances in which relief will be granted in Equity on the ground of actual fraud. We shall only notice a few of them under the following two heads: **109.**

Division of actual frauds.

I. Of frauds which receive that denomination from a consideration of the conduct of the guilty parties, irrespective of any peculiarity in the condition of the injured parties. **110.**

II. Of frauds which receive that denomination mainly or in a great measure from a consideration

of the peculiar condition of the parties upon whom they are practised. **111.**

I. First class of actual frauds.

1. Misrepresentation.

I.—1. Misrepresentation or *suggestio falsi*, whether by word or deed, by artifices to mislead as well as by positive assertions, constitutes fraud. But to justify interposition in such cases the fraud must be material or in a matter of substance, and must actually mislead. (St. § 191, 192.) Where a party to whom the misrepresentation is made acts upon it to his damage, the other party will be liable for such damage to the party he has misled, and even to a third party who acts upon it, provided the misrepresentation was made with the intent that it should be acted upon by such third person. (*Barry* v. *Croskey*, 2 J. & H. 22; *Cann* v. *Wilson*, 39 C. D. 39; *Angus* v. *Clifford*, (1891) 2 Ch. 449.) Equity will not interfere, however, if the fraud was not in the transaction which creates the contract, but in a distinct unconnected transaction. (*Rolt* v. *White*, 3 D. J. & S. 360.) Nor will it, as we have seen, interfere if the misrepresentation was on a trifling or immaterial point, or if no injury arose from it. (St. § 191, 195, 196, 203; *Pulsford* v. *Richards*, 17 Beav. 96.) For, in the first case, the evils of litigation would be far greater than the injury occasioned; and, as to the second case, Courts of Equity do not profess to punish guilt, but to redress wrongs. And Equity will not interfere if the party was not misled by the misrepresentation (St. § 202; *Nelson* v. *Stocker*, 4 D. & J. 458); because, in that case, he was not injured by it. Nor will the Court interpose if the misrepresentation was vague and inconclusive (St. § 191); or if it merely amounted to the common language of puffing and commendation of things sold (St. § 201); or if it was in a matter of opinion or fact

equally open to the inquiry of both parties, and in regard to which neither could be presumed to trust the other (St. § 191, 197, 198); or if the party injured may properly impute the loss to a want of ordinary care or discretion on the part of himself or his agents (St. § 199, 200 a). For, the Court does not sit to redress injuries which the injured parties, by ordinary and proper care, could have prevented. It is no part of Equity Jurisprudence to encourage carelessness. (*Ib.*) But, on the other hand, there are many cases in which the effect of false representation is not got rid of on the ground that the person to whom it was made has been guilty of negligence. (*Redgrave* v. *Hurd*, 20 C. D. p. 13.) And in cases of fraudulent representation or wilful concealment it is no answer that the truth might have been learned by inquiry. (*Central Railway of Venezuela* v. *Kisch*, L. R. 2 H. L. 99.) And, *a fortiori*, this principle applies in all cases where the party is under an obligation to make disclosure. (St. § 217, 218.) **112.**

Misrepresentation is a ground of relief, whether the party who made the assertion or intimation knew it to be false, or made it without knowing whether it was true or false. (St. § 193; *Reese River Silver Mining Co.* v. *Smith*, L. R. 4 H. L. 64; *Hart* v. *Swaine*, 7 C. D. 42.) For fraud is proved when it is shown that a false representation has been made without belief in its truth, or recklessly, careless whether it be true or false. (*Derry* v. *Peek*, 14 A. C. p. 374.) So that if a person, whether wilfully or not, makes a false representation to another, with a reasonable ground for supposing that he or a third person would act upon such representation, and he or such third person does act upon it, and is misled thereby, the person

misleading will be made answerable for it. (*Hutton* v. *Rossiter*, 7 D. M. & G. 9, 23, 24; *Slim* v. *Croucher*, 2 Gif. 37; 1 D. F. & J. 518; *Barry* v. *Croskey*, 2 Johns. & H. 1; *Ramshire* v. *Bolton*, L. R. 8 Eq. 294.) It seems, however, clear that a negligent, as distinguished from a fraudulent, misrepresentation will not support an action for deceit (*Angus* v. *Clifford*, (1891) 2 Ch. 449, 464), though in Equity a misrepresentation though not fraudulent may be a good defence (*Tomkinson* v. *Balkis Consolidated Co.*, (1891) 2 Q. B. p. 614). And where a person has been induced to enter into a contract by a material misrepresentation of the other party, he is entitled to have the contract set aside, and not merely to have the representation made good. (*Rawlins* v. *Wickham*, 1 Gif. 355; 3 D. & J. 304; *Trail* v. *Baring*, 4 Gif. 485; *Charlesworth* v. *Jennings*, 34 Beav. 95; *Haygarth* v. *Wearing*, L. R. 12 Eq. 320; *Hart* v. *Swaine*, 7 C. D. 42.) And it is not, as we have seen, a sufficient defence to an action for rescission of the contract, that if the party defrauded had used due diligence he might have discovered that the representation was untrue. (*Redgrave* v. *Hurd*, 20 C. D. 1; *supra*, par. 112.) **112 a.**

A contract induced by fraud is not void, but only voidable at the option of the party defrauded; and though the party who was guilty of the fraud cannot enforce it, yet other persons may, in consequence of it, acquire interests and rights which they may enforce against the party defrauded. (*Oakes* v. *Turquand*, L. R. 2 H. L. 325, 346.) **113.**

If a person, through the fraud of another, has executed a deed, or signed a receipt, containing a representation, he must suffer from the fraudulent use made of such deed or receipt by such other person,

rather than a third person who has, in the ordinary course of business, without negligence or default, trusted to the document containing such representation. (*Hunter* v. *Walters*, L. R. 7 Ch. 75 ; *ante*, par. 53.) **114.**

A person may avail himself of what has been obtained by the fraud of another, if he is not only innocent of the fraud, but has given some valuable consideration. (*Scholefield* v. *Templer*, 4 D. & J. 433 ; *Hunter* v. *Walters*, L. R. 7 Ch. 75.) **115.**

2. Concealment.

2. If a person conceals facts and circumstances which he is under some legal or equitable obligation to communicate to the other, it amounts to a fraud, for which Equity will grant relief. (St. § 204, 207, 214, 217, 220 ; 2 Sp. 765 ; *Pulsford* v. *Richards*, 17 Beav. 94—96.) As if a vendor sells an estate, knowing that he has no title to it, or that there are incumbrances on it, of which the purchaser is ignorant (St. § 208) ; or if the insured does not communicate to the underwriters all facts and circumstances which increase the risk (St. § 216) ; or if a lessee has obtained a lease of a furnished house on an implied representation that he was of full age ; in which case it will be declared void at the option of the lessor. (*Lemprière* v. *Lange*, 12 C. D. 675.) **116.**

And if a person leases lands, and he knows, and the lessee does not know, that as to a part the lessor has no title, and the lessor does not disclose the fact, the lessee may set aside or repudiate the lease. And he may refuse the part to which there is no title, and elect to keep the remainder. (*Mostyn* v. *West Mostyn Company*, 1 C. P. D. 145.) **117.**

But a purchaser is not bound to communicate his knowledge of the value of the property to the vendor (St. § 207, n. ; *Walters* v. *Morgan*, 3 D. F. & J. 718) ;

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

determine this, proceedings for relief against fraud would often be taken in total uncertainty as to the existence of that knowledge, which was of the very essence of the supposed fraud, and absolutely necessary to be proved before any ground for relief could be said to exist. And in many cases there would be the same difficulty in ascertaining whether the defect or advantage, admitting it to be known to the one party, was or was not disclosed by him to the other. **120.**

To draw a distinction which would, perhaps, give as much effect to the principle of sound morals as would be compatible with avoiding frequent and fruitless litigation, and the encouragement of carelessness and negligence, the true course would seem to be to hold that Equity will grant relief, if a person does not disclose any material fact, which, from the nature of the case, he must have known, or ought to have known, and which the other party could not be expected to discover with the care ordinarily used in similar transactions. **121.**

3. Inadequacy.

3. Even before the Sales of Reversions Act, 1867 (*post*, par. 170), mere inadequacy of price, or any other inequality in the bargain, did not constitute by itself a ground to avoid it. (St. § 244; *Harrison* v. *Guest*, 6 D. M. & G. 424.) For the value of things is always fluctuating, and dependent on numberless circumstances. Besides, a man may be induced by difficulties or exigencies, or for other reasons, to part with his property at a particular time, for less than that for which another would have sold it. (St. § 245.) And perhaps the lowness of the price may have been the only inducement to the purchaser to make the purchase; and he may have simply accepted the proposals of the vendor, instead of being the originator

of the transaction, or of being actively concerned in negotiating it, like a man whose design is to gain a fraudulent advantage over another. **122.**

Still, however, there may be such an unconscionableness or inadequacy in the bargain, as to shock the conscience, and amount to conclusive evidence of imposition or some undue influence: and in such a case, Equity will interfere on the ground of fraud. And where there are other ingredients of a suspicious nature, gross inadequacy must furnish the most vehement presumption of fraud. (St. § 246; see remarks of Lord Cranworth in *Harrison* v. *Guest*, 6 D. M. & G. 424; *Fry* v. *Lane*, 40 C. D. 312; *post*, par. 171.) As, if proper time for deliberation is not allowed the party injured; if he is importunately pressed; if those in whom he placed confidence make use of strong persuasion; if he is suddenly drawn into an act, without being fully aware of the consequences; if he is not permitted to consult disinterested friends or counsel, before he is called upon to act, in circumstances of sudden emergency or unexpected right and acquisition; if he is an illiterate person, and advantage has been taken of his necessities; or if he is a person of weak understanding. (St. § 251; *O'Rorke* v. *Bolingbroke*, 2 A. C. 814; *Nevill* v. *Snelling*, 15 C. D. 679; *Fry* v. *Lane*, 40 C. D. 312.) But Equity will not relieve where the parties cannot be placed *in statu quo*. Such relief, for instance, will not be given in the case of marriage settlements; inasmuch as the Court cannot unmarry the parties. (St. § 250.) **123.**

Where a purchase is set aside for inadequacy of consideration, the conveyance will be ordered to stand as a security for what has been advanced with

interest. (1 Wh. & Tu. 323; *James* v. *Kerr*, 40 C. D. 461.) **124.**

Deeds of the nature of family arrangements are exempt from the rules as to the adequacy of the consideration applicable to other deeds; and are binding when in cases between mere strangers the like agreements would not be enforced (St. § 132); but if there is any concealment of material facts they will be held invalid on the ground of fraudulent concealment. (St. § 217; *Persse* v. *Persse*, 7 Cl. & Fin. 279; *Williams* v. *Williams*, 2 Dr. & Sm. 378; L. R. 2 Ch. 294. As to deeds of this nature, see also *Stapilton* v. *Stapilton*, 1 Wh. & Tu. 223; Brett's Lead. Cas. 293.) **125.**

4. Refusal of consent to a marriage.

4. Where gifts and legacies are bestowed on persons, on condition that they shall marry with the consent of parents, guardians, or other confidential persons, Equity will not suffer the manifest object of the condition to be defeated by the fraudulent, corrupt, or unconscientious refusal of the parties whose consent is required to the marriage. (St. § 257.) **126.**

II. Second class of actual frauds.

II. There are other frauds which receive that denomination mainly or in a great measure from the consideration of the peculiar condition of the injured parties. **127.**

With regard to these—

1. On persons of unsound mind.

1. In the case of contracts or other acts, however solemn, of persons who are idiots, lunatics, or otherwise of unsound mind, wherever, from the nature of the transaction, there is not evidence of entire good faith, or it is not seen to be just in itself or for the benefit of those persons, Equity will set it aside, or make it subservient to their just rights and interests. But where there is good faith, and the contract or

other act is for the benefit of such persons, as to provide them with necessaries, the transaction will be upheld, at least if the contractee did not know that he was insane. (St. § 227—229; *Re Weaver*, 21 C. D. 615, 619; *Re Rhodes*, *Rhodes* v. *Rhodes*, 44 C. D. 94, 107.) **128.**

2. On intoxicated persons.

2. If a person, at the time of entering into a contract or doing an act, was so excessively drunk as to be deprived of the use of his understanding; or if there was any contrivance or management to lead him to drink, or some unfair advantage taken of his intoxication, the person who obtained an agreement or deed from him, when so intoxicated, will not be assisted in Equity, but the latter will rather be assisted to get rid of it, on account of the fraud of the other party in obtaining such agreement or deed from a person in such a state or by such means. (See St. § 230—232.) **129.**

3. On persons of weak understanding.

3. The contracts and other acts of persons who are of weak understanding will be held void in Equity if the nature of such contracts or other acts justifies the conclusion that the party has been imposed on, circumvented, or overreached by cunning, artifice, or undue influence. (See St. § 234—238; *Longmate* v. *Ledger*, 2 Gif. 157; *Nottidge* v. *Prince*, 2 Gif. 246; *Morley* v. *Loughnan*, (1893) 1 Ch. 736.) The rule of the Common Law seems to have gone farther in cases of wills, since it requires that a testator should be of sound and disposing memory. (St. § 238.) **130.**

4. On persons who are not free agents: but under duress or in fear,

4. Where a party is not a free agent, and is not equal to protecting himself, Equity will protect him. Hence the Court will relieve against acts done under duress, or under the influence of threats or of real or imaginary terrors, calculated to deprive a person of

TIT. I. CAP. III.

free agency. (St. § 239; *Boyse* v. *Rossborough*, 6 H. L. C. 2, 49; *Williams* v. *Bayley*, L. R. 1 H. L. 200.) So the Court of Bankruptcy has power to go behind a judgment and refuse to admit proof in respect of it where the claim was made for purposes of extortion. (*Ex parte Banner*, *Re Blythe*, 17 C. D. 480.) But to render illegal the receipt of securities by a creditor from his debtor where the debt has been contracted under circumstances which might render the debtor liable to criminal proceedings, it is not sufficient to show that the creditor was thereby induced to abstain from prosecuting. (*Flower* v. *Sadler*, 10 Q. B. D. 572.) And the Court watches with the utmost jealousy all contracts made by a person while under imprisonment; and if there is the slightest ground to suspect oppression or imposition, it will set the contract aside. And, in like manner, circumstances of extreme necessity and distress may so entirely overpower free agency as to justify the Court in setting aside a contract on account of some oppression or fraudulent advantage attendant on it. (St. § 239.) **131.**

or in prison,

or extreme necessity.

5. On infants.

5. Infants may, even at Law, bind themselves in some cases, by contracts for necessaries suitable to their degree and quality, or by contracts of hiring of services for wages, or by acts which the Law requires them to do. But in general, where a contract may be either for the benefit or to the prejudice of an infant, he may avoid it, as well at Law as in Equity. Where it can never be for his benefit it is utterly void (*a*). **132.**

The Infants' Relief Act, 1874.

By the statute 37 & 38 Vict. c. 62, s. 1, it is enacted

(*a*) See Smith's Manual of Common Law, 11th ed. Index, "Infants;" St. § 240, 241.

that "all contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied, or to be supplied (other than contracts for necessaries), and all accounts stated with infants, shall be absolutely void. Provided always, that this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of Common Law or Equity, enter, except such as now by Law are voidable. (*Ex parte Jones*, 18 C. D. 122.) **132 a.**

By section 2, "No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age." **132 b.**

Under the Infants' Settlement Act, 1855, an infant can make a binding marriage settlement with the sanction of the Court; but a settlement made by an infant without the sanction of the Court is not absolutely void but only voidable, and will be binding unless repudiated by the infant within a reasonable time of coming of age. (*Edwards* v. *Carter*, (1893) A. C. 360; *Re Jones*, *Farrington* v. *Forrester*, (1893) 2 Ch. 461.) **132 c.**

Case where one of two innocent persons must suffer.

It may here be observed that when one of two innocent persons must suffer by the fraud of a third person, that person shall be the sufferer who by his conduct, however innocently, put it in the power of the third person to commit the fraud. (*Adsetts* v. *Hives*, 33 Beav. 52; *Hunter* v. *Walters*, L. R. 11 Eq. 292.) **133.**

CHAPTER IV.

OF CONSTRUCTIVE FRAUD.

Definition.

CONSTRUCTIVE frauds are acts, statements, or omissions, which operate as virtual frauds, on individuals, or, if generally permitted, would be prejudicial to the public welfare, and are not clearly resolvable into mere accident or mistake, and yet may have been unconnected with any selfish or evil design, or may amount, in the opinion of the person chargeable therewith, to nothing more than what is justifiable or allowable. **134.**

Four classes of constructive frauds.

The cases which will be noticed in the present Chapter may be arranged in four classes—

I. Frauds on public policy.

I. Relief is granted, on the ground of constructive fraud upon public policy, against agreements, provisions, and transactions, which, although they may not operate as frauds upon individuals, would, if generally permitted, be prejudicial to the welfare of the community. **135.** Thus,

1. Marriage brokage contracts.

1. Marriage brokage contracts, which are agreements whereby a person engages to give another a remuneration, if he will negotiate a marriage for him, are void, as tending to introduce matches which are ill-advised, and not based on mutual affection, and therefore against public policy. And they are so utterly void that they are deemed incapable of confirmation; and money paid under them may be recovered back again in Equity, whether the marriage

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

of married life.

marriage (see St. § 274, 276—283; *Scott* v. *Tyler*, 1 Wh. & Tu. 535): as, that a woman shall not marry a man who has not an estate of 500*l.* a year (St. § 280), or shall not marry till fifty years of age, or shall not marry any person residing in the same town, or any person who is a clergyman, a physician, or a lawyer, or any person except of a particular trade or occupation. (St. § 283; 1 Wh. & Tu. 535—576.) **139.**

A contract or condition imposed on a married woman to cease to reside at a place where her husband then resides is bad. (*Wilkinson* v. *Wilkinson*, L. R. 12 Eq. 604.) **140.**

6. Contracts or conditions in restraint of trade.

6. So, contracts and conditions in general restraint of trade, or beyond what is reasonably necessary for the protection of the party seeking protection, are void, as tending to discourage industry, enterprise, and just competition. But a person may be restrained from carrying on trade in or within a certain distance from a particular place, or with particular persons, or for a reasonable limited time, provided that the contract be reasonable. And a person may lawfully sell a secret in his trade or business, and restrict himself from using the secret. (St. § 292; Brett's L. C. 300, 303; *Trego* v. *Hunt*, (1896) A. C. 7; *Benwell* v. *Inns*, 24 Beav. 307.) **141.**

Rule. Contract must be reasonable.

The rule in such cases is, that the contract must be reasonable: beyond that there is no rule that the contract must be limited as to space; and an unlimited prohibition is only void when the circumstances in which it has been made are unreasonable. The question in each case is, whether the restraint extends further than is necessary for the reasonable protection of the covenantee; if not it will be enforced even though it may be unlimited as to space. (*Rousillon* v.

Rousillon, 14 C. D. 351; *Maxim Nordenfelt Guns, &c.* v. *Nordenfelt*, (1894) A. C. 535, where the nature and difference of covenants in general and partial restraint of trade are discussed; Brett's Lead. Cas. 303.) And the Court will, where possible, sever what is reasonable from what is unreasonable in the restraint. (*Rogers* v. *Maddocks*, (1892) 3 Ch. 346; *Haynes* v. *Doman*, (1899) 2 Ch. 13.) **141 a.**

7. Contracts in violation of public trust.

7. Upon analogous principles, agreements which are founded upon violations of public trust or confidence, or of the rules adopted by Courts in furtherance of the administration of justice, are held void. (St. § 294.) **142.**

8. Contracts for public offices.

8. Contracts for the buying, selling, or procuring of public offices are void, as tending to introduce into public offices persons who are unfit for them in respect of character and other qualifications. (St. § 295.) **143.**

9. Suppression of criminal proceedings.

9. So are agreements for the suppression of criminal prosecutions (St. § 294), as tending to weaken the beneficial preventive influence of the Law, by diminishing the certainty of punishment. **144.**

10. Champerty and corrupt considerations.

10. So are contracts which have a tendency to encourage champerty (St. § 294; *Reynell* v. *Sprye*, 1 D. M. & G. 660), and agreements, bonds, and securities founded on corrupt considerations, that is, on the commission of what is contrary to the moral or municipal Law, or on the evasion thereof. (St. § 296—297.) **145.**

And here may be noticed a distinction in the relief granted in the case of illegal contracts. In general where the parties are alike involved in an illegal transaction Equity will give no relief to either; but where the transaction is repudiated as being against public policy, the fact that the party seeking relief is

particips criminis is not material, the reason being that the public interest requires that the relief should be given, and it is given to the public through the party. (St. § 298.) **145 a.**

Distinction between void and voidable transactions as regards confirmation.

Wherever any contract or conveyance is void, either by a positive Law or upon principles of public policy, it is deemed incapable of confirmation; it being a maxim, *Quod ab initio non valet, in tractu temporis non convalescit.* But where it is merely voidable, or turns upon circumstances of undue advantage, surprise, or imposition, there it is valid until rescinded, and if it is deliberately and upon full examination confirmed by the parties, it will remain valid, except where, as under the Infants' Relief Act, the contract is incapable of confirmation. (St. § 306. See *Reese River Silver Mining Co.* v. *Smith*, L. R. 4 H. L. 64.) **146.**

And where a party to a deed acts upon it in part, that confirms it altogether, in the absence of evidence of a contrary intent. (*Jarratt* v. *Aldam*, L. R. 9 Eq. 463; *Davies* v. *Davies*, L. R. 9 Eq. 468.) **147.**

II. Frauds in the case of persons in the confidential relations of —

II. With regard to transactions *inter vivos*, where a reasonable confidence is reposed in another person, or a peculiar influence is possessed by him in consequence of standing in a confidential relation, and he makes use of that confidence or that influence to obtain an advantage to himself at the expense of the party confiding in him or under his influence, he will not be permitted to retain any such advantage, however unimpeachable the transaction would have been if no such confidence had been reposed, or no such confidential relation had existed. (*Huguenin* v. *Baseley*, 1 Wh. & Tu. 247; Brett's L. C. 78; *Moxon* v. *Payne*, L. R. 8 Ch. 881; *Mitchell* v. *Homfray*, 8

Q. B. D. 587; *Allcard* v. *Skinner*, 36 C. D. 145; *Morley* v. *Loughnan*, (1893) 1 Ch. 736.) But it has been held that this does not apply to a devise or bequest. To set aside a testamentary disposition on account of undue influence, it must amount to this—that the testator was not a free agent. (*Parfitt* v. *Lawless*, L. R. 2 P. & D. 462, 469.) **148.**

1. Parent or person standing *in loco parentis* or relative having influence.

1. Contracts and conveyances whereby benefits are secured by children to their parents or to persons who stand *in loco parentum*, or dispositions made by young persons in favour of their relatives who have an influence over them, if not entered into with scrupulous good faith, and reasonable under the circumstances, will be set aside, unless third persons have acquired an interest under them. (St. § 309; *Wright* v. *Vanderplank*, 8 D. M. & G. 133; *Baker* v. *Bradley*, 7 D. M. & G. 597, 620; *Turner* v. *Collins*, L. R. 7 Ch. 329; *Kempson* v. *Ashbee*, L. R. 10 Ch. 15; *Hoblyn* v. *Hoblyn*, 41 C. D. 200.) In such cases it must be proved—first, that the deed was the real and actual deed of the child or young person, and was intended by him to have the operation it has; and, secondly, that such intention was fairly produced. And where a child, recently after attaining a majority, makes over property to the father, without consideration, or for an inadequate consideration, Equity will require the father to be able to show that the child was really a free agent, and had adequate and independent advice. (*Hoghton* v. *Hoghton*, 15 Beav. 278, 302; *Savery* v. *King*, 5 H. L. Cas. 627, 655; *Everitt* v. *Everitt*, L. R. 10 Eq. 403; *Bainbrigge* v. *Browne*, 18 C. D. 188.) And if an estate held in trust for a father for life, the remainder to his son in fee, is sold or mortgaged by the father and son immediately on the

son coming of age, and the money paid to the father, the transaction will be void unless its straightforwardness be proved. (*Hannah* v. *Hodgson*, 30 Beav. 19; *Baker* v. *Bradley*, 7 D. M. & G. 597.) But an arrangement between father and son for the settlement of family estates, if fair and reasonable, will be supported, though the father did exercise parental influence. (*Hartopp* v. *Hartopp*, 21 Beav. 259.) **149.**

If a person seeking to impugn such transactions is not reasonably prompt in so doing, after the influence has ceased, no relief will be given, unless there is actual fraud. (*Turner* v. *Collins*, L. R. 7 Ch. 329; *Kempson* v. *Ashbee*, L. R. 10 Ch. 15.) **150.**

2 Guardian.

2. During the existence of guardianship, the relative situation of the parties occasions a general inability to deal with each other. And Equity will not permit transactions between guardians and wards to stand, even when they have occurred after the minority has ceased, if the intermediate period is short, especially if all the duties attached to the office have not ceased, or if the estate still remains in some sort under the control of the guardian; unless the circumstances demonstrate the fullest deliberation on the part of the ward, and the most absolute good faith on the part of the guardian. **151.**

And the same principles apply to *quasi* guardians or confidential advisers, as medical advisers or ministers of religion, and to every case where influence is acquired and abused, or confidence is reposed and betrayed, except in the case of husband and wife. (St. § 317—320; *Huguenin* v. *Baseley*, 1 Wh. & Tu. 247; *Allcard* v. *Skinner*, 36 C. D. 145; *Morley* v. *Loughnan*, (1893) 1 Ch. 736; *Barron* v. *Willis*, (1899) 2 Ch. 578.) **152.**

But when the guardianship has entirely ceased, and a fair and full settlement of all transactions growing out of it has been made, and a sufficient time has intervened to allow the ward to feel completely independent of the guardian, there is then no objection even to a bounty being conferred upon the latter. (St. § 230.) **153.**

3. Solicitor.

3. A solicitor is not incapable of contracting with his client; but as the relation must give rise to great confidence in the solicitor, or to very strong influence over the client, the relation must be dissolved before the contract, or the whole onus of proving the fairness and propriety of the transaction will be thrown on the solicitor, or he must show that the client had sufficient advice and assistance to relieve him from the pressure arising from the relation of solicitor and client, and that he has taken no advantage of his professional position, but that he has done as much to protect the client's interest as he would have done in the case of the client dealing with a stranger. It is not necessary to establish that there has been fraud or imposition on the client; the onus of establishing perfect fairness is on the solicitor; and if there is no such proof, Equity will treat the case as one of constructive fraud. (St. § 310—313; Brett's Lead. Cas. 74; *Savery* v. *King*, 5 H. L. C. 627, 655, 656.) And a solicitor who is an agent for a sale cannot become the purchaser, without fully explaining to the parties interested all the circumstances of the sale and of the value of the property; because his duty and his interest are in conflict. (*In re Bloye's Trust*, 1 Mac. & G. 494, 497.) And if a solicitor can show that he is entitled to purchase, yet if, instead of openly purchasing, he purchases in the name of a trustee or agent, without

disclosing the fact, no such purchase can stand. (*Lewis* v. *Hillman*, 3 H. L. C. 630; *McPherson* v. *Watt*, 3 A. C. 254.) **154.**

While the relation exists, a solicitor shall not, either personally or through his wife, accept a gift, or, in any way whatever, in respect of the subject of any transaction between him and his client, make a gain to himself at the expense of his client, beyond the amount of the just and fair professional remuneration to which he is entitled. (St. § 312; *Tomson* v. *Judge*, 3 Drew. 306; *Morgan* v. *Minett*, 6 C. D. 638; *Liles* v. *Terry and Wife*, (1895) 2 Q. B. 679.) On the above principle, an agreement on the part of a client to allow a solicitor a commission of so much per cent. on a fund in Court, as a remuneration for recovering the fund or employing another solicitor to recover it, was declared void, as contrary to the policy of the Law. (*Strange* v. *Brennan*, 15 Sim. 346.) And it was held that an agreement by a client to allow his solicitor interest on his bill of costs, could not be maintained—at all events, not unless the solicitor informed the client that the Law allowed no such charge, or the client acquiesced, after the termination of the relation, and after proper advice upon the subject. (*Lyddon* v. *Moss*, 4 De G. & J. 104.) But a deed executed by a client in favour of his solicitor, if voidable, may be confirmed by the will of the client. (*Stump* v. *Gaby*, 2 D. M. & G. 623. But see *Waters* v. *Thorn*, 22 Beav. 547, 559.) **155.**

An agreement between a solicitor and client, that a gross sum shall be paid for costs for business already done, was formerly and still is valid. But it was decided that an agreement to pay a gross sum for business hereafter to be done, was void; and that if a

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

gross sum, or by commission or percentage, or by salary, or otherwise, as the parties think fit. **157.**

If a solicitor and mortgagee obtains a conveyance from the mortgagor, and the mortgagor is a man in humble circumstances without any legal advice, the onus of justifying the transaction, and showing that it was a fair and right transaction, is thrown upon the mortgagee. (*Prees* v. *Coke*, L. R. 6 Ch. 645, 649; and see *post*, par. 169.) **158.**

5. Doctor.

5. Similar principles apply to a medical adviser and his patient. (St. § 314.) But in this and in all other cases, if the confidential relation has ceased, and the donor elects to abide by the gift, that would be a sufficient confirmation of the gift, at all events to prevent its being set aside after the donor's death. (*Mitchell* v. *Homfray*, 8 Q. B. D. 587; cf. *Tyars* v. *Alsop*, 37 W. R. 339.) **159.**

6. Agent.

6. An agent will not be permitted to reap any advantage by becoming secret vendor or purchaser of property which he is authorized to buy or sell for his principal. (St. § 315.) So that if an agent sells his own property to his principal, as the property of another, without disclosing the fact, or if an agent purchase the goods of his principal in another name, however fair the transaction may be, the principal may either repudiate it, or may claim any profit made by the agent; in order to deter agents from placing themselves in a state of temptation to benefit themselves rather than their employers. And if an agent employed to purchase for another purchases for himself, he will be considered as the trustee of his employer, at the option of the latter. (St. § 316, 1211a; *Bentley* v. *Craven*, 18 Beav. 75; *Tyrrell* v. *Bank of London*, 10 H. L. C. 26; *Kimber* v. *Barber*, L. R. 8 Ch. 56; *De Bussche* v. *Alt*,

8 C. D. 286. *Boston, etc.* v. *Ansell*, 39 C. D. 339.) And in all transactions directly and openly entered into between principal and agent, the utmost good faith is required; so that the agent must not conceal any facts within his knowledge which might influence the judgment of his principal as to the price or value. (St. § 315, 316a; see *Dally* v. *Wonham*, 33 Beav. 154; *De Bussche* v. *Alt*, 8 C. D. 286.) **160.**

7. Trustees.

7. To guard against the danger of any advantage being taken by a trustee, and to remove all temptation from him, he is never permitted to obtain any profit or advantage to himself in managing the concerns of his *cestui que trust*, but whatever benefits or profits are obtained will belong to the *cestui que trust*. And he is not allowed to partake of the bounty of the party for whom he acts, except under circumstances which would make the same valid if it were a case of guardianship. (St. § 321, 322; Lewin on Trusts, 10th ed. 296; see *infra*, Tit. II. c. VI. div. IV. and c. VII. div. XII.) A trustee cannot purchase the trust estate from himself or from his co-trustee. And if a purchase is made of the trust estate by the trustee from his *cestui que trust*, although at a public auction, unless there has been no fraud, concealment, or advantage on the part of the trustee, and no want of protection and security on the part of the *cestui que trust*, the *cestui que trust* may, within a reasonable time, set aside the purchase on application to the Court, and require a re-conveyance by the trustee, or where the trustee has sold it to a person with notice, by such person, the *cestui que trust* repaying the price which the trustee gave, with interest at 4*l*. per cent., and the trustee or purchaser accounting for the profits without interest, or, if in actual possession, being charged with an occupation

rent; or may require a re-sale, and, if the re-sale produces more than the trustee gave, the *cestui que trust* may repudiate the first sale and adopt the re-sale, but if less, he may affirm the first sale. (Dart. V. & P. 6th ed. 52; Lewin on Trusts, 10th ed. 551, 560; St. § 322.) **161.**

8. Counsel, agents, trustees, and solicitors of a bankrupt or insolvent, auctioneers, and creditors.

8. In order to prevent the temptation of availing themselves of information for their own benefit, and concealing it from those for whom they act, the same restriction on the right of purchase applies to other persons standing in similar confidential situations; as to counsel, agents, trustees, and solicitors of a bankrupt's or insolvent's estate, auctioneers, and creditors, who have been consulted as to the sale. (St. § 322; *Pooley* v. *Quilter*, 2 D. & J. 327; *Crowther* v. *Elgood*, 34 C. D. 698.) **162.**

9. Executors or administrators.

9. And it may be laid down as a general rule with regard to executors or administrators, that they will not be permitted under any circumstances to derive a benefit from the manner in which they transact the business of their office. (St. § 322; *Robinson* v. *Pett*, 2 Wh. & Tu. 606.) **163.**

10. Directors and promoters.

10. In like manner a director or promoter of a company will not be allowed to make any secret profit by virtue of his position as director or promoter, and will be compelled to account for any profit so made to the company. (St. § 323, a, b; Williams on Account, 243.) **163 a.**

11. Debtor, creditor, and surety.

11. Entire good faith is required between debtor and creditor and sureties. And if a creditor does or omits to do any act which he is required to do by the surety, or is bound to do, and that act or omission may prove injurious to the surety, or if a creditor enters into any stipulations with the debtor unknown

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

can be sued. The reason why a simple release of the principal debtor discharges the surety is, that it would be a fraud on the principal debtor to profess to release him, and then to sue the surety, who in turn would sue him; but where the bargain is that the creditor is to retain his remedy against the surety, there is no fraud on the principal debtor, and the Court will give effect to the intention of the parties by construing the release as a covenant not to sue the principal debtor." (Judgment of Sir G. Mellish, L.J., in *Nevill's Case*, L. R. 6 Ch. 47.) Mere delay on the part of the creditor, at least if some other equity does not intervene, unaccompanied with any valid contract for such delay, will not amount to laches, so as to discharge the surety. (St. § 326; *Tucker* v. *Laing*, 2 K. & J. 745.) But the sureties are entitled to come into a Court of Equity, after a debt has become due, to compel the debtor, or any one who has given them an indemnity, to exonerate them from their liability by paying the debt. (St. § 327, 499; *Wooldridge* v. *Norris*, L. R. 6 Eq. 410; and see judgment in *Green* v. *Wynn*, L. R. 4 Ch. 207; *Wolmershausen* v. *Gullick*, (1893) 2 Ch. 514.) **164.**

III. Frauds in case of persons peculiarly liable to be imposed on.

III. Relief will be granted in favour of those classes of persons of whom, from their peculiar circumstances, irrespective of any mental incapacity, undue advantage may readily be taken, even where the transaction could not be impeached if entered into by parties otherwise situated. (*Earl of Chesterfield* v. *Janssen*, 1 Wh. & Tu. 289.) **165.** Thus,

1. Bargains with expectant heirs,

1. Bargains with expectant heirs will be set aside, unless the purchaser, on whom the *onus probandi* rests, can show that the transaction was fair, just and reasonable, or that the bargain was fully made

known to and approved by the person to whose estate the expectant heir hoped to succeed; because it is the policy of Equity to prevent designing men from taking advantage of persons whose interests are future, and therefore apt to be under-estimated or improvidently disposed of, especially by the necessitous, the thoughtless, and the young; and it is also the object of Equity to discourage transactions by which the intentions of the ancestor or other person from whom the property was expected are disappointed, and, by cutting off relief at the hands of strangers, to oblige the heir to disclose his difficulties at home. (See St. § 334—340, 343.) **166.**

If the heir, after being relieved from his necessities, absolutely and deliberately, and on full information as to his right of setting aside the bargain, confirms the transaction, or does any act by which the rights or property of the other party are injuriously affected, he will not be allowed to repudiate the bargain. (St. § 345, 346.) **167.**

The repeal of the usury laws has not altered the rules of the Court as to dealings with expectants. (*Miller* v. *Cook*, L. R. 10 Eq. 641, 646; *Tyler* v. *Yates*, L. R. 6 Ch. 665; *Earl of Aylesford* v. *Morris*, L. R. 8 Ch. 490.) **168.**

and remaindermen and reversioners.

The same relief is afforded to remaindermen and reversioners, unless the purchaser can show that the transaction was fair, just, and reasonable, or that the bargain was fully made known to and approved by their parents or other persons standing *in loco parentis*, who had the means of obviating the necessity of such an alienation of their future interests. (St. § 334—340; *Beynon* v. *Cook*, L. R. 10 Ch. 389.) The relief also extends to the case of money lent on unconscionable

terms, not fully understood by the borrower, to a person, without expectations, except such as are founded on his father's position in life. (*Nevill* v. *Snelling*, 15 C. D. 579.) And the like relief will be given even where the property is in possession if the purchase is made from a poor and ignorant man at a considerable undervalue, the vendor having no independent advice. (*Fry* v. *Lane*, 40 C. D. 312 322.) **169.**

By the stat. 31 Vict. c. 4 (Sale of Reversions Act), it is enacted that "No purchase, made *bonâ fide* and without fraud or unfair dealing, of any reversionary interest in real or personal estate shall hereafter be opened or set aside merely on the ground of undervalue" (s. 1); and that "the word 'purchase' in this Act shall include every kind of contract, conveyance, or assignment under or by which any beneficial interest in any kind of property may be acquired" (s. 2). (See *O'Rorke* v. *Bolingbroke*, 2 A. C. 814.) **170.**

This Act in no way alters the *onus probandi* in these cases; and undervalue may still give rise to a presumption of fraud and therefore be a ground for relief; for fraud in these cases need be nothing more than an unconscientious use of the power arising out of the circumstances. (*Fry* v. *Lane*, 40 C. D. 312; *Earl of Aylesford* v. *Morris*, L. R. 8 Ch. 484, 490.) **171.**

2. Post-obit bonds, &c., by expectants.

2. On similar principles post-obit bonds and other securities of the like nature are set aside, when made by heirs and other expectants. A post-obit bond is an agreement made, on the receipt of the money by the obligor, to pay a sum exceeding the sum so received and interest thereon, on the death of the person upon whose decease he expects to become entitled to some

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

IV. Virtual frauds on individuals irrespective of any confidential relation, or any peculiar liability to imposition.

IV. Where something is said or done, or some omission is made, which operates as a virtual fraud upon an individual, then although it may arise from nothing more than mere neglect, unconnected with any selfish or evil design, or may amount, in the opinion of the party, to nothing more than justifiable artifice, or to a fair attempt to obtain a reasonable advantage, or to an allowable act, statement, or omission, of some other kind, relief will be granted on the ground of constructive fraud. **176.** Thus,

1. Misleading.

1. Where a person, by some act, statement, or omission, whether beneficially to himself or not, knowingly produces a false impression on another, who is misled and injured thereby; and such act, statement, or omission, when rightly considered, is contrary to plain moral duty or good faith, but yet may not have been connected with any design either to injure another or to benefit the person who is guilty thereof, in such case the latter alone, even though an infant or married woman, shall suffer thereby, on the ground of constructive fraud. (See St. § 384—390; 2 Sp. 575, 576.) For instance, where a person, knowing himself to be the owner of property, permits another to sell it as his own to a third person, who purchases under the supposition that the vendor has a good title, the real owner will not be allowed to assert his title to it. (St. § 385, 389.) And where a person, aware of the existence of an instrument under which he might reasonably have supposed that he took some interest, neglects to make proper inquiries as to the fact, and encourages a stranger to deal with another person respecting property in which he himself is interested under such instrument, he will be bound by the transaction. (See St. § 387.) And where a

lease was granted on the security of which money was lent, and the lessor, before the lease was granted, was asked by the lender whether he intended to grant such lease, and he answered in the affirmative, forgetting that he had previously granted another lease to the same person, who had assigned it for value, the lessor was held liable for the loss arising from the invalidity of the security. (*Slim* v. *Croucher*, 1 D. F. & J. 518; *ante*, par. 112a.) **177.**

"If a man makes a representation, on the faith of which another man alters his own position, enters into a deed, incurs an obligation, the man making it is bound to perform that representation, no matter what it is, whether it is for present payment or for the continuance of the payment of an annuity, or to make a provision by will. That in the eye of a Court of Equity is a contract, an engagement which the man making it is bound to perform." (Bacon, V.-C, in *Dashwood* v. *Jermyn*, 12 Ch. D. 776.) **177 a.**

2. Frauds on auctions.

2. Upon analagous principles, agreements whereby persons agree not to bid against each other at an auction, were formerly held to be void on the ground that such agreements may cause the property to be sold at an under-value, and thereby injure the person interested in the proceeds of sale; and tend to prejudice the character and value of auctions in general. But such agreements are now held to be valid even where the sale is made under the order of the Court. (See St. § 293; *Re Carew's Estate*, 26 Beav. 187; *Galton* v. *Emuss*, 1 Coll. 243.) On the other hand, if under-bidders or puffers are employed at an auction to enhance the price, the sale will be void. (St. § 293.) But under the stat. 30 & 31 Vict. c. 48, a vendor may, in the particulars or conditions of sale,

reserve to himself the right to bid at an auction, either in person or by one agent. And a similar provision is contained in the Sale of Goods Act, 1893, s. 58. **178.**

3. Unconscientious use of the Statute of Frauds.

3. As the Statute of Frauds was designed as a protection against fraud, it will never be allowed to be set up as a protection and support of fraud. And hence, where from any circumstances which may have resulted from fraud, a contract has not been reduced into writing as it ought to have been, it will be enforced against the party who is chargeable with the omission, in case he attempts to shelter himself behind the provisions of the Statute. (See St. § 330, *Re Marlborough, Davis* v. *Whitehead*, (1894) 2 Ch. 133; *Hussey* v. *Horne-Payne*, 4 A. C. 311; *Rochefoucauld* v. *Boustead*, (1897) 1 Ch. 196.) **179.**

4. Clandestine marriage contracts.

4. If clandestine marriage contracts are designed to impose on parents or persons standing *in loco parentis* or in some other peculiar relation to the parties, so as to disappoint their bounty, or to defeat their intentions in the disposition of their property, such contracts will be set aside, or the equities will be held the same as if they had not been entered into. (See St. § 275.) **180.**

5. Frauds on marriages.

5. So, relief will be granted to the injured parties, where persons, after doing acts required to be done on a treaty of marriage, render those acts virtually unavailing, by entering into other secret agreements, or derogate from those acts, or otherwise commit a fraud upon a marriage. (See St. § 268—272.) As where a parent declines to consent to a marriage, on account of the intended husband being in debt, and the brother of the latter gives a bond for the debts, to procure such consent; and the intended husband then

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

13 Eliz. c. 5.

fraudulent deeds and dispositions of lands or goods which defeat or delay creditors of their just rights are utterly void. Voluntary conveyances which *tend* to defeat or delay creditors are deemed to be fraudulent within the statute. (*Ex parte Elliott*, 2 C. D. 104; *Ex parte Chaplin*, 26 C. D. 319.) But conveyances for valuable consideration will only be void where a direct design to defraud is shown to exist (see *Re Pennington*, 5 Mor. 216; *Re Troughton*, 21 L. T. 427), or in other words, a *bonâ fide* conveyance for valuable consideration will not be void against creditors. Upon the question what amount of indebtedness will raise a presumption of fraud as tending to defeat creditors in the case of voluntary settlements, it may be said that mere indebtedness will not suffice, nor yet is it necessary to prove absolute insolvency; but the settlor must have been at the time so largely indebted as to induce the Court to believe that the intention of the settlement was to defraud the persons who at the time of making the settlement were creditors of the settlor. (*Ridler* v. *Ridler*, 22 C. D. 74, per Hatherley, L.C.) But if the effect of the settlement is to deprive the settlor of the means of paying certain then existing debts it will be set aside, though the settlor was perfectly solvent up to the date of the settlement. (*Freeman* v. *Pope*, L. R. 5 Ch. 538.) And such settlements may be set aside not only at the instance of creditors at the time of making the settlement, but also by subsequent creditors if they can show that their money has been applied in paying off debts which were existing at the date of the settlement. (*Freeman* v. *Pope*, *supra*.) And subsequent creditors may also impeach a settlement which is made on the eve of the settlor entering upon some

hazardous enterprise in which he contemplates debts and difficulties. (*Ex parte Russell, In re Butterworth*, *infra*.) A deed, however, which is apparently voluntary, may be shown by extrinsic evidence to have been made for valuable consideration, and may be supported as such against creditors. (*Pott* v. *Todhunter*, 2 Coll. 76.) And a deed is not necessarily void under this Act, merely because designed to prefer or defeat a particular creditor. (*Alton* v. *Harrison*, L. R. 4 Ch. 622.) **183.**

A man who contemplates going into trade cannot, on the eve of doing so, take the bulk of his property out of the reach of those who may become his creditors in the trading operations. So that a voluntary settlement, whereby the settlor takes the bulk of his property out of the reach of his creditors, shortly before engaging in trade of a hazardous character, may be set aside in a suit on behalf of creditors who became such after the settlement. (*Mackay* v. *Douglas*, L. R. 14 Eq. 106 ; *Ex parte Russell, In re Butterworth*, 19 C. D. 588.) **184.**

Voluntary settlements are also voidable under the Bankruptcy Act, 1883, s. 47, if the settlor becomes bankrupt. **184a.**

8. Frauds on creditors.

8. If a creditor, who is a party to a composition deed, has, unknown to the other creditors, obtained any benefit or security, either from the debtor or a third person, beyond what the others have received, or enters into a contract with the debtor which prevents him from being put into that situation of freedom from existing demands which may be considered as one of the chief inducements to the others to sign the deed, it is a fraud on the policy of the Law ; and such secret arrangements are entirely void, even as against the

assenting debtor, or his sureties, or his friends; and money paid under them may be recovered back. (See St. § 378, 379; 2 Sp. 357—360.) **185.**

So an agreement between a bankrupt debtor and his trustee, by which the estate of the bankrupt is to be held in trust to pay certain annuities to the bankrupt, and to apply the surplus to the extinction of a debt to the trustee, will be rescinded, even at the instance of the bankrupt himself. (St. § 380.) **186.**

9. Mortgage, conveyance, or settlement, with notice of another's title.

9. Where a person takes a mortgage, or a conveyance, or a settlement, with notice of the legal or equitable title of other persons to the same property, his own title will be postponed and made subservient to their title, or to that of a transferee from them. (St. § 395, 396; *Le Neve* v. *Le Neve*, 2 Wh. & Tu. 175 *et seq.*) Thus, if a person takes a mortgage of property, knowing that it was subject to an equitable mortgage made by deposit of the title-deeds, the notice of the equitable mortgage will raise a trust in him to the amount of the equitable mortgage. (St. § 395.) And, on the same principle, if a mortgagee, when he takes his security from a partner, knows that the firm are in possession of the property, he has constructive notice of the title of the partnership; and his claim must be postponed to that of the other partner, as regards his share, and his right to be recouped in respect of partnership debts paid off by him, whether contracted before or after the mortgage. (*Carander* v. *Bulteel*, L. R. 9 Ch. 79.) But a legal mortgagee will not be postponed to a prior equitable mortgagee of whom he had no notice, merely because the mortgagor had contracted to execute a legal mortgage to the prior equitable mortgagee. (*Garnham* v. *Skipper*, 34 W. R. 135.) **187.**

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

and see Conv. Act, 1882, s. 3.) Thus, as a general rule, as between a purchaser who has completed the purchase by taking a conveyance, and the occupier of the purchased land, if a person purchases property which he knows to be in the occupation of another than the vendor, he is bound by all the equities which the party in such occupation may have in the land; and this rule extends not only to equities connected with the tenancy of the occupier, but to equities under collateral agreements, such as a contract for the purchase of the property by the occupier, even when the equities are subsequent to the lease under which the occupier may be in possession, because the purchaser ought to have inquired of the occupier as to his interest in the property. (*Daniels* v. *Davison*, 16 Ves. 249; 17 Ves. 433; 2 Wh. & Tu. 225; *Ebbetts* v. *Conquest*, (1895) 2 Ch. 377.) But this rule does not apply to cases where the matter still rests in contract. Thus, where the conditions of sale of a public-house stated that it was in the occupation of a tenant, and a brewer intending to use it for the sale of his beer contracted to purchase it, but afterwards discovered that it was leased to another brewer for a term of years, it was held that the purchaser was not bound to ascertain from the tenant the terms of his tenancy, and that the vendor could not enforce specific performance. (*Caballero* v. *Henty*, L. R. 9 Ch. 447.) But notice that an occupier holds under another person is notice of the title of the latter; and notice that a tenant pays his rent to any one is notice of the instrument under which he acts and of all rights thereunder. (See 2 Wh. & Tu. 226.) And, as a general rule, a purchaser or other person has constructive notice of the contents of the instrument

under which he claims, or under which the party with whom he contracts, as executor or trustee or appointee, derives his power. Under ordinary circumstances, a man cannot claim under a deed or will, and yet repudiate a knowledge of its contents. (St. § 400; *Pilcher* v. *Rawlins*, L. R. 11 Eq. 53; 7 Ch. 259.) But except in Yorkshire (*ante*, par. 188) the mere registration of a conveyance is not deemed constructive notice to subsequent purchasers, as to collateral effects; so that the mere registration of a second mortgage will not prevent a prior mortgagee from tacking a third mortgage, when he had no actual notice of the existence of the second mortgage. (St. § 401, 402; 2 Sp. 763.) To constitute constructive notice, it is sufficient if it is brought home to the agent, solicitor, or counsel, in the same transaction (see stat. 45 & 46 Vict. c. 39, s. 3); unless there is a moral certainty that he would not have communicated the fact to the principal or client (St. § 408; *Rolland* v. *Hart*, L. R. 6 Ch. 678; *Maxfield* v. *Burton*, L. R. 17 Eq. 15; *Re Cousins*, 31 C. D. 71; *Bailey* v. *Barnes*, (1894) 1 Ch. 25); or he, colluding with the person who was bound to give the notice, concealed the fact (*Sharpe* v. *Foy*, L. R. 4 Ch. Ap. 35). And where the mortgagor has at different times employed the same solicitor in effecting different incumbrances upon the same estate, and the incumbrancers have employed the mortgagor's solicitor in the several transactions, each of the *puisne* incumbrancers is affected with notice of the prior incumbrances. (2 Sp. 761.) But the circumstance of only one solicitor acting in a transaction does not necessarily constitute him the solicitor of both parties, so as to affect both parties

TIT. I. CAP. IV.

with notice of the facts. (*Perry* v. *Holl*, 2 D. F. & J. 38.) **190.**

A purchaser of a legal estate, with notice of an equitable claim, will be protected if he purchases from a prior *bonâ fide* purchaser without notice; for otherwise the latter would not enjoy the full benefit of his own unexceptionable title. And if a purchaser who had notice sells to another, and the latter had no notice and is a *bonâ fide* purchaser for a valuable consideration, the title will not be affected with notice in his hands; for otherwise no man would be safe in any purchase. (St. § 409, 410; 2 Sp. 754: Dart. V. & P. 6th ed. 1023; 2 Wh. & Tu. 134.) **191.**

10. Fraudulent dealing with executors or administrators.

10. Another instance of the doctrine of constructive fraud arising from notice may be seen in purchases from executors. Such purchases are ordinarily valid, notwithstanding it may be affected with some peculiar trust or equity in the hands of the executor; for the purchaser cannot be presumed to know that the sale may not be required in order to discharge the debts of the testator, to which they are legally liable before all other claims. But if the purchaser knows that the executor is converting the estate into money for an unlawful purpose, the purchase will be set aside. (St. § 422, 423, 580, 581; *Elliot* v. *Merryman*, 2 Wh. & Tu. 896 *et seq.*) **192.**

11. Frauds under the stat. 27 Eliz. c. 4, in the case of voluntary deeds, as against subsequent purchasers or mortgagees.

11. The object of the statute 27 Eliz. c. 4, was to give full protection to subsequent purchasers against mere volunteers under prior conveyances. By virtue of that Act, therefore, a prior conveyance was deemed void, as against a subsequent purchaser or mortgagee, whether with or without notice, and even after proceedings to enforce such prior conveyance, if not on valuable consideration, although it might be *bonâ*

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

There was this exception to the general rule, in the case of a charity, that if a purchaser had notice of a gift to a charitable use, or purchased without notice of it from a purchaser who had notice of it, he took subject to it; though, if he had no notice, and had not purchased from a purchaser with notice, he would have the same protection as he would have against an ordinary voluntary conveyance. (2 Sp. 289.) **195.**

A fair voluntary settlement in favour of a wife and children was also an exception to the rule to this extent, that almost any *bonâ fide* consideration, in addition to the meritorious consideration of the provision itself, was sufficient for the purpose of supporting the settlement. Therefore, if a person whose concurrence the parties deemed essential joined in a settlement, his concurrence was deemed a valuable consideration, although he did not substantially part with anything. (See 2 Sp. 288, 290; *Atkinson* v. *Smith*, 3 D. & J. 186; *Bayspoole* v. *Collins*, L. R. 6 Ch. 228.) **196.**

As to pre-nuptial settlements and post-nuptial settlements in pursuance of pre-nuptial articles, or on receipt of an additional portion, or on which the husband and wife, having interests, give up something, they are settlements for valuable consideration, and of course good against subsequent purchasers, or against prior voluntary grantees, as the case may be. (Smith's Compendium, 6th ed. par. 2395; *In re Foster and Lister*, 6 C. D. 87.) **197.**

A collateral relation, who is the object of an ulterior limitation in a settlement, is not a mere volunteer; for though he may not be within the consideration of the marriage, he is within the contract; but yet it was held that he could not prevail against a purchaser. (2 Sp. 291—293.) **198.**

But now all these decisions upon the Statute have in great measure been deprived of their relevancy and importance by the Voluntary Conveyances Act, 1893, which provides that, save as regards sales made before 29th June, 1893, no voluntary conveyance which shall have been in fact made *bonâ fide* and without any actual fraudulent intent shall henceforth be deemed fraudulent and void within the meaning of 27 Eliz. c. 4. (2 Wh. & Tu. 835 *et seq.*) **199.**

12. Frauds in the case of voluntary gifts, as against the donors themselves.

12. In every transaction in which a person obtains, by voluntary donation, a benefit from another, it is necessary, if the transaction be called in question, that he should be able to establish that the person giving him the benefit did so voluntarily and deliberately, and with full knowledge of what he was doing: if this is not established, the transaction will be set aside (*Huguenin* v. *Baseley*, 1 Wh. & Tu. 247 *et seq.*; *Phillipson* v. *Kerry*, 32 Beav. 628; *Lyon* v. *Home*, L. R. Eq. 655); but it will not be set aside if the misapprehension was merely trifling (*Ogilvie* v. *Littleboy*, (1897) W. N. 53).

Want of a power of revocation.

And where the circumstances are such that the donor ought to be advised to reserve a power of revocation, it is the duty of the solicitor to the donor, or a solicitor acting for both parties, so to advise; and in such a case, the want of such a power will in general, in the absence of such advice, be fatal to the deed. (*Hall* v. *Hall*, L. R. 8 Ch. 430; *Henry* v. *Armstrong*, 18 C. D. 668; *James* v. *Couchman*, 29 C. D. 212.) It is not necessary to show that the usual clauses were explained; but any unusual clauses must be shown to have been brought to the donor's notice, explained, and understood. (*Phillips* v. *Mullings*, L. R. 7 Ch. 244, 248.) **200.**

13. Fraudulent appointments.

13. The donee of a power must exercise it *bonâ fide* for the end designed; otherwise it is considered as a fraud upon the power. But the Court will not infer that an appointment is a fraud upon a power unless there are such cogent facts that it cannot reasonably come to any other conclusion. (*Henty* v. *Wrey*, Brett's L. C. 155.)

Appointment whereby a benefit is secured to the appointor.

Hence if a person, having a particular power to be exercised for the benefit of others, makes an appointment in payment of a debt due to the appointee by the appointor, or upon the terms or for the purpose of securing some benefit to himself or some others not objects of the power, such an appointment is fraudulent, and will be set aside in Equity: as where the donee of a power appoints a fund to one of the objects of the power, under an understanding that the latter is to lend the fund to the former, though on good security; or that the appointee should hold the fund in trust for, or make over a part to, persons some of whom are not objects of the power. (St. § 255; *Aleyn* v. *Belchier*, 2 Wh. & Tu. 308; Brett's L. C. 155.) **201.**

Where a power is fraudulently exercised the persons injured by its exercise are entitled to be put in the same position as if it had not been exercised. (*Re Deane, Bridger* v. *Deane*, 42 C. D. 9.) **202.**

Rights of creditors against a general appointee.

Where a person exercises a general power of appointment in favour of a volunteer, it will be deemed a fraud upon his creditors, who will in Equity become entitled to the money in the hands of the appointee. (St. § 169.) **203.**

An appointment is now valid though only a nominal share is given to one or more of the objects of the power (Illusory Appointments Act, 1 Will. IV. c. 46); and though an object of the power is altogether

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

TITLE II.

Of Executive Equity.

CHAPTER I.

OF LEGACIES AND PORTIONS.

TIT. II. CAP. I.

Classes of legacies.

LEGACIES may be divided into three classes—specific, general, and demonstrative. A specific legacy is a bequest of a particular article, or sum of money, or debt, as distinguished from all others of the same description, as a bequest of "my diamond ring," or "my 500*l.* stock," or "100*l.* owing to me by A." A legacy is general when it is not a bequest of a particular article or sum of money as distinguished from all others of the same kind, as a bequest of "a diamond ring," or "500*l.* stock," is a general legacy. A legacy is demonstrative when "it is in the nature of a general legacy, but there is a particular fund pointed out to satisfy it." Thus, a bequest of "500*l.* out of my New 3*l.* per Cent. Annuities" is a demonstrative legacy. A legacy will not be construed as specific unless it is clear that it was so intended. These distinctions are of practical importance, as a specific legacy will not abate if, after payment of debts, the assets are insufficient for payment of all the legacies, while a general legacy will; but if the article or sum specifically bequeathed is destroyed or alienated by the testator,

the legatee is not entitled to compensation from the testator's estate. And a demonstrative legacy does not abate like a general legacy, until the fund out of which it is payable is exhausted, and is not adeemed by the failure of that fund which is only regarded as the primary fund for payment. (1 Wh. & Tu. 786 *et seq.*)

Jurisdiction.

No action lies, at the Common Law, to recover legacies, unless the executor has assented to them (St. § 591); because all the assets vest in him, and are liable to the payment of the testator's debts, and it is the duty of the executor, before he pays, delivers over, or assents to the legacies, to see whether there will be sufficient left to pay the debts, inasmuch as a man must be just before he is permitted to be generous. But after the executor has assented to a specific legacy of chattels, the property vests immediately in the legatee, who may maintain an action at Law for the recovery thereof. A similar rule was attempted to be applied at Law to pecuniary legacies, but the application has been doubted and disapproved of (St. § 591); because the Common Law Courts could not impose on the parties recovering these legacies such terms as might be required; so that, for example, a husband might have recovered a legacy given to his wife, without making any provision for her or her family. (St. § 592.) And in the case of an actual trust, express, implied, or constructive, or of a legacy charged on land, or where the Common Law Courts could not take due care of the interests of all parties, Courts of Equity asserted an exclusive jurisdiction. And even where the executor assented to the legacy, and there was no actual trust, yet they acquired jurisdiction, though merely a concurrent jurisdiction;

because the executor was considered as a kind of trustee for the legatees, which forms a universal ground of equitable interference; and because the interposition of Equity might be required to obtain an account or distribution of assets, or some other relief or assistance which the Common Law Courts were incompetent to afford. (See St. § 593—602.) And by the Judicature Act, 1873, s. 34 (a), all causes and matters for the administration of the estates of deceased persons, the taking of accounts, the raising of portions or other charges on land, and the execution of trusts, are assigned to the Chancery Division. **206.**

No suit in Probate Division.

No suit for legacies or the distribution of residues can be brought in the Probate Division (20 & 21 Vict. c. 77, s. 23; 38 & 39 Vict. c. 77, s. 11, sub-s. 1). But,

County Courts Act, 1888.

by virtue of the stat. 51 & 52 Vict. c. 43, County Courts entertain jurisdiction in personal actions for claims not exceeding 50*l.*, and have the powers and authority of the High Court in actions by creditors, legatees, devisees, heirs-at-law, or next of kin, in which the real and personal estate does not exceed in amount or value the sum of 500*l.* **207.**

Legacy payable at a future day.

In cases of legacies payable at a future day, whether contingent or otherwise, the Court may compel the executor to give security for the payment thereof; or may order the fund to be paid into Court. (St. § 603.) But a legatee has not an absolute right to have his future legacy brought into Court, whether it is in danger or not. (*Re Braithwaite*, 21 C. D. 121.) **208.**

Specific legacy to one for life, remainder to another.

And where a specific legacy is given to one for life, and after his death to another, there the legatee in remainder can obtain a decree for security from the tenant for life for the due delivery over of the legacy to the remainderman, if there is some allegation and

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

But it is otherwise if the payment is postponed until the happening of an event not referable to the person of the party to be benefited, but to the circumstances of the estate out of which the portion or legacy is to be paid. (2 Sp. 396; Lewin, 10th ed. 473.) **213.**

Where a portion is secured, and no particular time is fixed for the vesting, if the child dies before the time when the portion is needed, the portion will not be raised. (2 Sp. 398.) But there is no rule of law that every power for raising portions is subject to the qualification that the portions are not raisable unless the children live to want them. (*Henty* v. *Wrey*, Brett's L. C. 155.) **214.**

Vesting of portions.

As a general rule, if the period for the vesting of portions is not expressed in the instrument by which they are given, or if the instrument is ambiguous on the point, but capable of the construction, the portions of the sons will be construed to vest at twenty-one, and those of the daughters at twenty-one or marriage; and will not be divested by the subsequent deaths of any of the children in the lifetime of the tenant for life. (Lewin on Trusts, 10th ed. 458.) **214 a.**

Time for raising portions.

If there is a limitation to the parent for life, with a term to raise portions at twenty-one or marriage, and the interests are vested, the portions must be raised forthwith by sale or mortgage of the reversionary terms, unless there is something to indicate an intention that the portions shall not be raised until the term falls into possession. (2 Sp. 405.) **215.**

Where a legacy is given by a father or a person standing *in loco parentis*, as a provision for an infant, and no maintenance or interest is given, though the legacy be payable at a future day, the infant has an immediate right to interest. (Lewin, 10th ed. 470.)

For although portions provided for children sink into the land if the children do not live to take them, yet such portions are regarded as vested so far as to carry interest, or allowance for maintenancé, as the Court may think reasonable. (Lewin on Trusts, 10th ed. 473). But a legacy to a stranger, payable on attaining majority, carries no interest in the meantime. (Lewin on Trusts, 10th ed. 470.) **215 a.**

Construction of provisions for "younger children."

When real estate is so settled as that it must on the death of a parent go to his eldest son, and provision is made not by a stranger, but by that parent or by a person standing *in loco parentis*, whether by pre-nuptial settlement or by will, for the younger children, the Court has considered the presumption, that it was intended to make provision for all the children and not to give a double portion to any, to be so strong that it has let in all children unprovided for by the settlement or will itself, or by means which were in contemplation of the parties making the settlement or will, though not strictly "younger," and has excluded the child provided for by the family estate, even though a younger child. This latitude of construction is not extended to a legal limitation in a deed. In ordinary cases, the period of distribution, and not the period of vesting, is the time for ascertaining who is to be excluded. (Lewin, 10th ed. 446; *In re Bailey's Settlement*, L. R. 9 Eq. 491.) But where the eldest son gets nothing from the estate, which is exhausted by the payment of the charges to which it is subject, he is nevertheless regarded as the eldest child entitled to the estate subject to the charges, and is not admitted to share in the portions provided for the younger children. (*Reid* v. *Hoare*, 26 C. D. 363.) **216.**

TIT. II. CAP. I.

Construction of legacies.

In deciding on the validity and interpretation of purely personal legacies, Courts of Equity follow the rules of the Civil Law, as they were recognized and acted on in the Ecclesiastical Courts; but as to the validity and interpretation of legacies charged on land, they generally follow the rules of the Common Law. (St. § 602, 608.) **217.**

With these few remarks we must dismiss the subject of Legacies and Portions, as a separate topic, since it is so extensive that the doctrines of Equity respecting it could not be even succinctly stated, without far transgressing the limits allotted to the present Manual. **218.**

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

27 C. D. 631.) But the delivery of a cheque drawn by the donor which was not presented before his death, was held not to be a good *donatio mortis causâ*, because the death of the drawer is a revocation of the banker's authority to pay (*Clement* v. *Cheesman*, *supra*), unless paid away for valuable consideration before his death. (*Rolls* v. *Pearce*, 5 C. D. 730.) And railway stock cannot be the subject of a *donatio mortis causâ*. (*Moore* v. *Moore*, L. R. 18 Eq. 474.) **220.**

Mixed character of such donations.

A donation of this kind partakes partly of the characteristics of a gift *inter vivos*, and partly of those of a legacy. It differs from a legacy in these respects: 1. It takes effect at once *sub modo* (*i.e.*, conditionally), and therefore does not require probate. 2. It requires no assent on the part of the executor or administrator to perfect the title of the donee. It differs from a gift *inter vivos* in certain respects, in which it resembles a legacy: 1. It is revocable during the donor's lifetime. 2. It might be made to the wife of the donor even before the stat. 45 & 46 Vict. c. 75, when a gift *inter vivos* by a man to his wife would have been void at law. 3. There must be delivery. 4. It was subject to probate duty, and is now subject to estate duty. 5. It is liable to the debts of the donor on a deficiency of assets. (St. § 606 a; Brett's L. C. 33; Wms. on Exors. 681.) **221.**

By what words created.

Words of absolute gift, if accompanied by expressions showing that the intention was that the property should be enjoyed only in the event of the death of the donor, will be sufficient to constitute a *donatio mortis causâ*. (2 Sp. 912.) **222.**

Evidence.

Evidence of the clearest and most unequivocal character is requisite to support a *donatio mortis causâ*. (*Cosnahan* v. *Grice*, 15 Moo. P. C. 215.) **223.**

CHAPTER III.

OF EXPRESS PRIVATE TRUSTS EVIDENCED BY SOME WRITTEN DOCUMENT.

I. A TRUST, when used in the widest sense, is a beneficial interest in, or a beneficial ownership of, real or personal property, distinct from the legal ownership thereof. (See St. § 964.) **224.**

I. Definition of a trust.

II. Trusts arising under wills fell within the exclusive jurisdiction of Equity. (St. § 1058.) And indeed this was the case with most matters of trust. (St. § 952.) And now, by the Judicature Act, s. 34 (3), all causes and matters relating to the execution of trusts, charitable or private, are assigned to the Chancery Division of the High Court. **225.**

II. Extent of jurisdiction over trusts.

III. Trusts may be divided into three kinds: express trusts, implied trusts, and constructive trusts. The last two, however, are frequently confounded, or at least classed together, and are sometimes designated by the name of implied trusts, and sometimes by the name of constructive trusts. **226.**

III. Division of trusts.

IV. An express trust is a trust which is clearly expressed by the author thereof, or may fairly be collected from a written document. **227.**

IV. Definition of an express trust.

V. The Statute of Frauds requires all declarations of trust of land (which includes freehold, copyhold, or leasehold lands, tenements or hereditaments), to be evidenced by some writing signed by the party declaring the same. But declarations of trust of

V. Mode of declaration of trust.

money, even though secured on real estate, or of chattels personal, need not be so evidenced. (St. § 972; Lewin, 10th ed. 53; *Peckham* v. *Taylor*, 31 Beav. 250.) **228.**

A declaration of trust, if *bonâ fide*, is valid, though at a distance of time. And if the document refers to any other document, which shows what was meant by the parties, that is sufficient. (2 Sp. 21, 22.) And if the terms of the trust do not sufficiently appear upon the face of the instrument, evidence may be received to show the position of the party signing, and the circumstances by which he knew himself to be surrounded, and the credibility of the instrument. (Lewin, 10th ed. 57.) **229.**

It is not necessary that there should be any actual transfer of property to render a declaration of trust effectual. If a person declares himself to be a trustee for another of money or personal property to be recovered, whether in writing or by acts or declarations of a decisive and definite nature sufficiently proved, the transaction will be binding against him and his representatives. (Lewin, 10th ed. 68; *Ellison* v. *Ellison*, 2 Wh. & Tu. 835; *Green* v. *Paterson*, 32 C. D. 95.) And if a person, by writing or by word, directs his debtor to hold the money due in trust for a third person, and such direction is communicated to the debtor and the donee, an effectual trust is created in favour of the donee. (2 Sp. 53, 898; *Paterson* v. *Murphy*, 11 Hare, 88; *Vanderberg* v. *Palmer*, 4 K. & J. 204.) But an ineffectual transfer or other imperfect gift cannot be supported as a declaration of trust (*Re Breton*, 17 C. D. 416); for then every imperfect instrument would be made effectual by being converted into a

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

an estate is limited to A. and his heirs, to the use of B. and his heirs, to the use of or in trust for C. and his heirs, the Statute executes the use to B. and his heirs; but the use to C. and his heirs is not executed by the Statute, but is a trust. Nor does the Statute execute uses or trusts where it is requisite that the trustee should continue to hold the estate in order to perform them. Nor does the Statute extend to uses or trusts of chattels real or personal; the words of the Statute being, "when any person is *seised* to the use, &c., and the word "seised" being inapplicable to personal estate. And trusts of copyholds were excluded from the operation of the Statute, because otherwise the rights of lords would have been infringed. (See St. § 970; Lewin, 10th ed. 223; Elphinstone's Introduction 7; *Tyrrell's Case*, Tud. Lead. Cas. Real Prop. 4th ed. 289.) **231.**

No particular form of expression is necessary to the creation of a trust. (Lewin, 10th ed. 117.) And a trust may be created, although there may be an absence of any expressions which in terms import confidence. (*Page* v. *Cox*, 10 Hare, 169.) **232.**

Precatory trusts.

There are many cases, arising under wills, in which it is very difficult to determine whether or not a trust was intended to be created. The effect of the old cases was to lay down the rule, that an expression of recommendation, confidence, hope, wish, and desire may be held to create a precatory trust. if the objects of the trust, *i.e.*, the person intended to be benefited, and the property which is to form the subject of the trust, are certain and definite, and if, regard being had to the whole context and circumstances of the will (the subject-matter, the previous conduct of the testator, the situation of the parties, and the probable intent),

the expressions appear to have been intended to be imperative. The current of decisions, however, is now changed and the Court will not allow a precatory trust to be raised unless on a consideration of all the words employed it comes to the conclusion that it was the intention to create a trust. Words of a precatory nature will be given their ordinary meaning as implying a discretion unless a different sense is irresistibly forced upon them by the context. (*Re Adams*, 27 C. D. 394; Brett's L. C. 19.) And an expression showing a desire of the testator that something should be done will not be deemed imperative unless there are express words, or there is a necessary implication that the testator meant to exclude a discretion to perform the act or not, as the party may think fit. If, therefore, either the object or the subject is not definite; or, if a discretion and a choice to act or not is given to the donee: or if the disposition of the property imports an absolute ownership in the donee, as where it is given without any fetter in a former part of the will; or if the motive assigned is beneficial to the donee; or if the words which contemplate a benefit to a third person appear to be expressive of the motive by which the testator was actuated, rather than of a trust in favour of such person, as where a legacy is given to A. the better to enable him to maintain his children; or where a testator bequeaths a sum to trustees upon trust to pay the income to a person for life, "nevertheless to be by him applied towards the maintenance, education, or benefit of his children," which are legal obligations;—no valid trust will be created by words of this character. (St. § 1069—1070 a, and notes; 2 Sp. 64—71; *Harding* v. *Glyn*, 2 Wh. & Tu. 335 *et seq.*; Brett's L. C. 19; *Lambe* v.

TIT. II. CAP. III.

Eames, L. R. 6 Ch. 597; *Stead* v. *Mellor*, 5 C. D. 225; *In re Hutchinson and Tenant*, 8 C. D. 540; *In re Adams and Kensington Vestry*, 24 C. D. 199; 27 C. D. 394; *Mussoorie Bank* v. *Raynor*, 7 A. C. 321; *Re Diggles*, *Gregory* v. *Edmondson*, 39 C. D. 253; *Re Hamilton*, *French* v. *Hamilton*, (1895) 2 Ch. 370; *Re Williams*, *Williams* v. *Williams*, (1897) 2 Ch. 12.) And any words by which it may be expressed, or from which it may be implied, that the first taker may apply any part of the subject to his own use, are held to prevent the subject of the gift from being considered certain. And a vague description of the object, that is, a description by which the giver neither clearly defines the object himself nor names a distinct class out of which the first taker is to select, or which leaves it doubtful what interest the object is to take, will prevent the object from being certain within the meaning of the rule. (St. § 1070, note; *Breton* v. *Mockett*, 9 C. D. 95; *Parnall* v. *Parnall*, 9 C. D. 96.) But it is not indispensable that the persons should be described by their names. More general descriptions will often amount to a sufficient designation if the context fixes the particular persons who are to take clearly and definitely. Thus, the family of A. will often be a sufficient designation of the objects; for the context may render it definite, and show that it means the heir-at-law of A., or, in other cases, the children of A., or in others, the brothers and sisters, or next of kin of A. according to the Statutes of Distribution. Generally speaking, neither the husband nor the wife will be considered as included under the word "family." Although the term "relations" is still more indefinite, the Court has executed a trust in favour of relations, by giving the property, when personal, to the next of kin according to the Statutes of Distribution,

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

the case where the words are directly or indirectly imperative, but the objects are too indefinite, or are not pointed out at all, or not in such a way that the Court can take judicial notice of them. (St. § 979 a, b; *Briggs* v. *Penny*, 3 Mac. & G. 546; *Bernard* v. *Minshull*, Johns. 276.) In such case, if the subject of the gift be realty, the legal estate passes to the donee, but the beneficial interest will result either to the testator's heir-at-law or general residuary devisee; and if the subject of the gift be personalty, the equitable interest will result to the next of kin or pass to the residuary legatee. (See *Re Fleetwood*, 15 C. D. 594; *Re Boyes*, 26 C. D. 531.) **235.**

VIII. Trusts executed and executory.

VIII. Express trusts are either executed or executory, in the sense of directory. A trust executed is a trust which is fully and finally declared by the instrument creating it—one in which the creator of the trust may be said to have been his own conveyancer. A trust executory or directory is a trust raised either by stipulation or by a direction, in express terms or by necessary implication, to make a settlement or assurance to uses or upon trusts which are indicated in, but not finally declared by, the instrument containing such stipulation or direction. *Lord Glenorchy* v. *Bosville*, 2 Wh. & Tu. 763 *et seq.*; Brett's L. C. 36.) **236.**

In the case of trusts executed the same construction is put on technical words in Equity as that which is put at Law on limitations of legal estates. But in the case of trusts executory, Equity considers the apparent intent to be collected from the whole instrument, or, where the language is doubtful, the presumable intent, rather than the strict import of technical words (see 2 Sp. 131—135; *Lord Glenorchy* v.

Bosville, 2 Wh. & Tu. 763; *Sackville-West* v. *Visc. Holmesdale*, L. R. 4 H. L. 543; Brett's L. C. 34); but this must be regarded as subject to the rule that deeds are construed more strictly than wills. (*Cooper* v. *Kynock*, L. R. 9 Ch. 398.) Thus, where the legal estate is limited to a person for life, remainder to the heirs male of his body, he takes an estate tail male under the rule in *Shelley's Case*. And where, in a *will* or *voluntary* deed, there is a mere direction to settle an estate on a person for life, to be followed by a remainder to the heirs of his body, then since there is nothing of an inchoate or executory nature in the instrument itself, and the words are formal and explicit, and there is nothing in the instrument to show or afford a presumption that the words were not intended to be used in their technical sense, the mere reference to a further instrument does not render the trust executory, and therefore the limitations, as regards the rule in *Shelley's Case*, receive the same construction as similar words used in limiting legal estates. But if *marriage articles* express that an estate is to be settled on the husband for life, with remainder to the heirs of his body, there the inchoate nature of the instrument, combined with the allusion to a further instrument, renders the trust executory; and as the issue in this case are purchasers for valuable consideration, so Equity will construe the articles as giving an estate for life only to the husband, with a remainder in tail to the children. (2 Sp. 136; St. § 984; Brett's L. C. 36.) **237.**

IX. Trusts in real property, which are exclusively cognizable in Equity, are generally governed by the same rules as legal estates. (St. § 974.) But—

IX. Trusts governed by same rules as legal estates

TIT. II. CAP. III.

Exceptions.

1. The construction put upon trusts executory, as we have before seen, differs, in some respects, from that which prevails in regard to legal estates and trusts executed. 2. Before the late Dower Act, trust estates were held not subject to dower; because, before the question was tried, it was the general opinion that, by the creation of a trust estate, dower was prevented from attaching; and it is a maxim that *communis error facit jus*; and to have held that trust estates were subject to dower, would have affected a large proportion of the estates in the kingdom. (1 Sp. 501.)

3. An equitable estate, being incapable of livery of seisin and of every form of conveyance which operates by the Statute of Uses, it was held that a mere declaration of trust, if in writing, signed by the party bound or his agent lawfully authorized, was sufficient to transfer such an estate; except that a fine or recovery was required, where the same would have been necessary if the estate had been a legal estate. (See St. § 974, 974 a, and notes, and § 975; 1 Sp. 497, 500, 506, 877; and as to executory trusts, see *supra*, pars. 30, 236, 237.) In practice, however, trust estates have been usually conveyed in the same manner as legal estates. (1 Sp. 506.) 4. Trusts were independent of the rules of the Common Law founded on tenure; so that a life interest in a trust estate was not forfeited on any alienation by the tenant for life. (1 Sp. 500, 505.) **238.**

X. Trusts of terms.

X. Long terms for years are often created for securing the repayment of money lent on mortgage, and for other purposes. Prior to the statute 8 & 9 Vict. c. 112, such terms did not determine on the mere performance of the trusts for which they were created, unless there was a special provision to that

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

all persons claiming under such prior estate, charge, or incumbrance, by taking an assignment of the satisfied term to a trustee for himself, or by taking an assignment thereof to himself where he took the conveyance, lease, or assignment of the estate or interest to be protected in the name of a trustee; for he might use the legal estate in such satisfied term to defend his possession during the continuance of the term, or, if he had lost the possession, to recover it. (See St. § 998—1002, and notes.) **240.**

By the stat. 8 & 9 Vict. c. 112, s. 1, every satisfied term which was attendant on the 31st of December, 1845, was on that day to cease, except that, if attendant by express declaration, it was to afford the same protection as it would have afforded if it had continued to subsist, but had not been assigned or dealt with after that day. And by s. 2, every term which, after the 31st of December, 1845, should become satisfied and attendant, was to cease immediately upon the same becoming so attendant. **241.**

An attendant term might at any time be disannexed by the proper acts of the parties in interest, and be turned into a term in gross. (St. § 1002.) **242.**

It may here be noticed that long terms may now, under the Conveyancing Act, 1881, s. 65, be enlarged into the fee simple where there is no trust or equity of redemption affecting the term. **243.**

XI. Trusts created without *cestui que trust's* knowledge.

XI. A person in whose favour a trust has been created may affirm it, and enforce the performance thereof, although it was created without his knowledge, if at least it is not revoked by the author of the trust before it is so affirmed. (St. § 972.) **244.**

XII. What trusts will be enforced.

XII. Equity will enforce a trust where it is executed, or where it is raised by will, even though it is a mere

voluntary trust; but it will not enforce an executory trust raised by a covenant or agreement, unless it is supported by a valuable consideration. (See cases referred to, St. § 793 a, b, c; *Ellison* v. *Ellison*, 2 Wh. & Tu. 835 *et seq.*; *In re Flavell*, 25 C. D. 89. And as to the distinction between executory and executed, see *supra*, pars. 236, 237.) **245.**

XIII. Execution of marriage articles.

XIII. Marriage articles will be specifically executed on the application of any person within the scope of the consideration of the marriage, or of those claiming under any such person. But they will not be specifically executed on the application of persons who are volunteers, even of a wife or child by a subsequent marriage; although where the proceeding is by persons who are within the scope of the consideration, or by those claiming under them, specific execution will be decreed as well in favour of the mere volunteers as of the plaintiff, as the Courts either execute them *in toto* or not at all. (St. § 986, 987; 2 Sp. 287.) **246.**

XIV. Assignments for benefit of creditors.

XIV. Putting the bankrupt and insolvent laws out of the case, a person is at liberty to assign all his property for the benefit of his creditors, though it may be for the purpose of defeating some particular creditor of his execution in an action commenced by him against the debtor. For a debtor in securing the equal distribution of his effects among all his creditors, is only performing a moral duty. But such an assignment must be free from fraud and misrepresentation. (2 Sp. 350, 352; *Worseley* v. *De Mattos*, Tudor's Lead. Cas. Merc. Law, 3rd ed. 755; *Harman* v. *Fishar*, Tudor's Lead. Cas. Merc. Law, 3rd ed. 773.) **247.**

Preferences and priorities of particular creditors

are ordinarily valid in general assignments made by debtors in discharge of their debts, except under the laws of bankruptcy and insolvency. (St. § 1036; 2 Sp. 350—352.) But a debtor cannot vest his property in one of his creditors for the purpose of hindering and delaying his other creditors and compelling them to come to terms; for such a deed is fraudulent and void. (*Smith* v. *Hurst*, 10 Hare, 30.) **248.**

Assignees under general assignments take only such rights as the assignor or debtor had at the time of the general assignment; and consequently a prior special assignee will hold against them, without giving notice of his assignment. (St. § 1038.) **249.**

In order to entitle the creditors named in a general assignment for the benefit of creditors to take under it, it is not necessary that they should be technical parties thereto, unless they are named in the assignment as parties, and are expressly required to execute before they can take under its provisions. It is sufficient if they have notice of the trust in their favour, and assent to it; and if there is no stipulation for a release, or any other condition which may render it not for their benefit, their assent will be presumed till the contrary appears. (St. § 1036 a. See *Biron* v. *Mount*, 24 Beav. 642.) Until, however, the creditors have assented to the trust, and given notice thereof to the assignee, an assignment of this kind, in which the creditors are not parties, and have not executed, is deemed revocable by the debtor, in Equity as well as at law, whether the creditors are individually named or not. (St. § 1036 b; *Steele* v. *Murphy*, 3 Moo. P. C. 445.) **250.**

Where creditors have acted under a deed of composition and treated it as valid, the Court will also

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

assent and notice, the third person may avail himself of it in Equity, without any reference to the assent or dissent of the mandatory; for his receipt of the property binds him to follow the order of his principal. (St. § 1045, 1046.) **253.**

Revocableness of a conveyance of equitable property, or a declaration of trust in favour of a volunteer.

Where a person executes and delivers a deed of conveyance of equitable property to a volunteer, or where the legal estate is transferred and a trust of it is declared in favour of a volunteer, and there is nothing upon the face of the transaction or from contemporaneous evidence to show that it was intended to be revocable, or that a power of revocation ought to have been inserted, it cannot be revoked or avoided in any way. And even if the donor should procure a retransfer of stock by the trustees, and where it is in writing, should cancel the instrument and by will make a provision for the same *cestui que trust*, the settlement will be binding; and unless the subsequent provision is expressed to be substitutionary, the *cestui que trust*, if the gift is not by way of portion, will take both; but they will have their election, if it is expressed to be in substitution. And now by the Voluntary Conveyances Act, 1893, a voluntary settlement of land is in the same position as a voluntary settlement of personal estate, and cannot be avoided by a subsequent purchaser. (2 Sp. 882, 883; see *supra*, par. 193, 194.) **254.**

The keeping in the donor's possession a deed so executed as to pass the estate is not of itself sufficient to enable the donor to revoke it by cancellation or by will; for, the estate having passed, it would require the active interference of a Court to revest the estate; and it is no ground for such interference that the act was foolishly or inconsiderately done. (Lewin, 76.) **255.**

XVI. Effect of a direction or power to raise money out of rents for debts, &c.

XVI. Where a will contains a direction or power to raise money out of the rents and profits of an estate to pay debts or portions, &c., and the money must be raised and paid without delay, those words have been so construed as to give a power to raise by sale or mortgage, unless restrained by other words. (St. § 1064, 1064 a; 2 Sp. 316.) **256.**

XVII. Obligation of purchaser to see to the application of the purchase-money — General rules.

XVII. Prior to the enactments which will be presently mentioned, where real property was devised to be sold for, or was charged with, the payment of definite and ascertained sums only, and such payment was to take place at the time when the required amount was to be raised, the purchaser of such property was bound to see that the purchase-money was applied in the fulfilment of the trust, unless expressly exempted by a provision by the author of the trust. But where the property sold constituted the natural and primary fund for the payment of debts generally, or was expressly charged with, or conveyed or devised for, the payment of debts generally, and therefore, in order to ascertain the sums to the payment of which the property was liable, it would be necessary for the purchaser to institute proceedings in Equity, or where the purchaser, if bound to see to the application of the money, would be involved in a trust of long continuance: then, the purchaser, unless he had notice that there were no debts, or notice of fraud, was not bound to see to the application of the purchase-money. (See St. § 1126—1128, 1130—1134; *Elliot* v. *Merryman*, 2 Wh. & Tu. 896 *et seq.*) **257.**

Specific points in illustration of the above rules as to the purchaser's obligations.

In illustration of these rules, it may be observed that, as the personal estate, whether consisting of chattels personal or of chattels real, is liable at the Common Law, and constitutes the natural and

primary fund for the payment of the debts of the testator generally, the purchaser of the whole or of any part of it, without notice that there were no debts, or that the sale was not made for payment of debts, was not bound to see that the purchase-money was applied by the executors in the discharge of the debts (St. § 1126, 1128; 2 Sp. 372, 377); even if the testator had directed his real estate to be sold for payment of debts, whether specified or not, and had made a specific bequest of a part of his personal estate for a particular purpose, or to a particular person, although such specific bequest was known to the purchaser, provided he had no reason to suspect any fraudulent or unauthorized purpose; for, otherwise, before a person could become a purchaser of personal estate specifically bequeathed, it would be indispensable for him to come into Court to have an account taken of the assets of the testator, and of the debts due from him, so as to ascertain whether it was necessary for the executor to sell. (St. § 1129; 2 Sp. 375—377.) **258.**

The same rule, for the same reason, applied to real estate devised for or charged with the payment of debts generally (St. § 1130; 2 Sp. 380, 382); even though the trust was only to sell, or was a charge for, so much as the personal estate was deficient to pay the debts, and even though a specific part of the real estate was devised for a particular purpose or trust, if the whole real estate was charged with the payment of debts generally by the will. If, however, the trustee has only a power to sell, and not an estate devised to him, then, unless the personal estate is deficient, the power to sell does not arise. (St. § 1131; 2 Sp. 382.) **259.**

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

Where the time appointed by the devise for the sale of real estate had arrived, and the persons entitled to the money were infants or unborn, there the purchaser was not bound to see to the application of the purchase-money, because that might have involved him in a trust of long continuance. But if an estate was charged with a sum of money payable to an infant at his majority, the purchaser was bound to see the money duly paid on his coming of age; for the estate remained chargeable with it in his hands. (St. § 1133; 2 Sp. 387.) **264.**

Where the money was to be applied by the trustees to purposes which required, on their part, time, delay, and discretion, it seems the purchaser was not bound to see to the application of the purchase-money. (St. § 1134; 2 Sp. 387.) **265.**

By the stat. 22 & 23 Vict. c. 35, s. 23, it was enacted that the *bonâ fide* payment to and the receipt of any person to whom any purchase or mortgage money should be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security. And by Lord Cranworth's Act (23 & 24 Vict. c. 145), s. 12, it was also enacted that receipts for purchase-money, given by the persons exercising the power of sale thereby conferred on mortgagees should be sufficient discharges to the purchaser, who should not be bound to see to the application of the purchase-money. And by s. 29 it was also enacted that the receipts of trustees, for any money payable to them by reason or in the exercise of any trusts or powers reposed or vested in them, shall be sufficient discharges for the money

therein expressed to be received, and should effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof. **266.**

The Conveyancing Act, 1881 (44 & 45 Vict. c. 41) repeals the 12th and 29th sections of the stat. 23 & 24 Vict. c. 145. And by the Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 20, repealing a like provision contained in the Conveyancing Act, 1881, it is enacted that the "receipt in writing of any trustees or trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person, paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof." This section applies to trusts created either before or after the commencement of the Act. The Settled Land Act, 1882 (45 & 46 Vict. c. 38), which came into operation on the 1st of January, 1883, enacts by s. 40, that "the receipt in writing of the trustees of a settlement, or where one trustee is empowered to act, of one trustee, or the personal representatives or representative of the last surviving or continuing trustee, for any money or securities paid or transferred to the trustees, trustee, representatives, or representative, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and in the case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for

The Conveyancing Act, 1881.

The Settled Land Act, 1882.

any purpose of this Act, or that no more than is wanted is raised." **266 a.**

The above paragraphs (257 *et seq.*) must now also be read and considered with reference to the Land Transfer Act, 1897, which makes freehold real estate assets for payment of debts. It is conceived, therefore, that in the case of persons dying after the Act their real estate will by law be charged with the payment of debts. (With respect to the power of trustees to authorize solicitors to receive and give valid discharges for money, by permitting the solicitors to have the custody of and to produce deeds containing receipts for such money, see *infra*, par. 357 a.) **266 b.**

XVIII. When lapse of time will bar a *cestui que trust.*

XVIII. Apart from the Trustee Act, 1888, and as long as the relation of trustee and *cestui que trust*, under an *express* trust, is acknowledged to exist, lapse of time can constitute no bar to an account or other proper relief for the *cestui que trust*. (Williams on Account, 199; *Thomson* v. *Eastwood*, 2 App. Cas. 215.) And it may be observed, that where a sum of money is bequeathed to an executor, upon trust to be laid out on certain trusts, as soon as it is severed from the bulk of the estate, it ceases to be a mere legacy, and the bar of the Statute of Limitations does not apply: for it is then a case of express trust, which is specially excepted. (2 Sp. 62; *Thomson* v. *Eastwood*, 2 App. Cas. 215.) But when this relation of trustee and *cestui que trust* is no longer admitted to exist, or time and long acquiescence have obscured the nature and character of the trust, or the acts of the parties or other circumstances render it unjust to give relief, Equity will refuse relief, upon the ground of its inability to do complete justice. (St. § 529; *Rochefoucauld* v. *Boustead*, (1897) 1 Ch. 196.) **267.**

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

CHAPTER IV.

OF EXPRESS CHARITABLE TRUSTS.

I. Charities favoured.

I. CHARITIES are so highly favoured in the Law that charitable gifts have received a more liberal construction than gifts to individuals. (St. § 1165.) **272.** Thus—

In regard to the want of proper trustees:

1. In regard to the want of proper trustees, if a testator makes a bequest for charity to such persons as he shall afterwards name executors, or to such persons as his executors shall name, and he appoints no executors, or the executors die in the lifetime of the testator and no others are appointed; or if the trustees of a charitable legacy all die in the testator's lifetime; or if a corporation intrusted with a charity fails; the Court will enforce the charity. (St. § 1165, 1166, 1177.) So if a legacy is given to persons who have no legal corporate capacity to enable them to take as a corporation; as where a legacy is given to the churchwardens for a charitable purpose. And so if a corporation for whose use a charity is designed is not *in esse*, and cannot come into existence but by some future act of the Crown. (St. § 1169, 1170.) **273.**

in regard to defects in conveyances:

2. The Court will supply all defects in conveyances, where the vendor is capable of conveying, and has a disposable estate, and the mode of donation does not contravene any statute. (St. § 1171.) **274.**

in regard to the objects:

3. In regard to the object, it matters not how uncertain the persons or objects may be. For if there is an absolute intention to give to charitable uses, and a bequest is made in the most general and indefinite manner simply for charitable uses, or religious and charitable purposes, *eo nomine*, the Court will treat it as a valid charitable bequest, and will dispose of it for such charitable purposes as it shall think fit. Hence if a man bequeaths a sum of money to such charitable uses as he shall direct by a codicil annexed to his will or by a note in writing, and he leaves no direction by note or codicil, there is a clear gift to charity which the Court will execute by disposing of the money to such charitable purposes as it shall think fit. (St. § 1167 ; *In re Jarman's Estate*, 8 Ch. D. 584). But it is of the first importance to remember that charitable bequests in Equity are limited to bequests for those purposes enumerated as charitable in the Statute of Charitable Uses (43 Eliz. c. 4), or which by analogy are deemed within its spirit and intendment. (St. § 1155.) And therefore gifts, though in a sense charitable, will be void if they do not fall within the statute. Thus a gift for objects of benevolence and liberality, or for charitable and philanthropic purposes, or for such benevolent, religious, and charitable purposes, or for such charitable or public purposes, as the trustees should think most beneficial, is void. (See St. § 1156—1158, 1164, note 4 to 6th ed., 1167, 1169, 1183 ; *Wilkinson* v. *Lindgren*, L. R. 5 Ch. 570 ; *In re Kilvert's Trusts*, L. R. 12 Eq. 183 ; 7 Ch. 170 ; *Re Macduff*, (1896) 2 Ch. 451.) And yet it has been held that a bequest for such charities and other public purposes in the parish of T., as the trustees should think fit, is good,

as it must mean public purposes for the benefit of that parish, and therefore refers to charities within the stat. 43 Eliz. c. 4. (*Dolan* v. *Macdermot*, L. R. 5 Eq. 60; 3 Ch. 676.) **275.**

Cy-près doctrine:

Where, in the case of a valid gift of property by deed or will, the giver has manifested a general intention to give to charity, but has specified some particular charitable object, which is contrary to the policy of the Law, or from some other reason cannot be accomplished at all, or not in the way prescribed, the failure of the particular object, or the particular mode in which the charity is to be accomplished, will not destroy the charitable gift, but, if the substantial intention is charity, the Court will devote the property to some other charitable purpose. This is called the *cy-près* doctrine. But where the residue is given to charity, that will not oblige the Court to devote the particular gift which fails to the objects of the residuary gift. (*Mayor of Lyons* v. *Advocate-General of Bengal*, 1 App. Cas. 92.) But where there appears no such general intention of charity, but only a particular charitable object (as where the testator's object is to build a church at W.), and that cannot be effected, the next of kin will take. (See St. § 1167—1169, 1172, 1176, 1181, 1182; *Sinnett* v. *Herbert*, L. R. 7 Ch. 232; *In re Orey*, 29 C. D. 560; *Re White*, 33 C. D. 449.) And where a legacy was given to a company to build almshouses, when a suitable site could be obtained, for the benefit of certain poor persons, but there was no reasonable prospect of obtaining a site, and no income to maintain the almshouses, the legacy lapsed and fell into the residue. (*In re White's Trusts*, 33 C. D. 449.) Where, a general intention of charity being manifest, there are no objects *in esse*, but some may arise, the

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

against perpetuities, at least, to this extent, that where there is a valid immediate gift to one charity, a gift over to another charity is not subject to the rule (*Re Bowen*, (1893) 2 Ch. 491; *Re Stratheden*, (1894) 3 Ch. 265). **278.**

II. Charities abroad.

II. Where money is bequeathed to charitable purposes abroad, the Court will secure the fund, and cause the charity to be administered under its own direction, provided the charitable purposes are to be executed by persons residing within the jurisdiction of the Court. (St. § 1186, 1300.) But this will not be done if the objects of the charity are against Law or public policy, unless the principle of such policy or Law is of a national or conventional, rather than of a universal and moral or religious character. (See St. § 1184, 1185.) **279.**

III. Reward to informers.

III. It seems that, with a view to encourage the discovery of charitable donations given for indefinite purposes, it is the practice for the Crown to reward the persons who made the communication, if they can bring themselves within the scope of the charity, by giving them a part of the fund; and the like practice takes place also in relation to escheats. (St. § 1192.) **280.**

IV. Altering charity.

IV. A charity must be accepted upon the terms upon which it is given, and cannot be altered by any new agreement between the heir of the donor and the donees. (St. § 1175.) **281.**

V. Mortmain Act, 1891.

V. By the Mortmain Act, 1891 (54 & 55 Vict. c. 73), which applies to wills of all testators dying after 5th August, 1891, it is provided that land may be given by will for any charitable use, but it must be sold within a year from the testator's death, or such further time as the Court or Charity Commissioners

allow, otherwise it will vest in the official trustee of charity lands (ss. 5, 6). It is also provided that personal estate by will directed to be laid out in the purchase of land for the benefit of any charitable use, shall be held as if the will contained no such direction (s. 7).

CHAPTER V.

OF IMPLIED TRUSTS.

Definition.

AN implied trust is a trust which is founded on an unexpressed but presumed intention. (See St. § 1195, 1254.) **282.**

I. Effectuating the general intention of the donor of a power.

I. Where, in the case of a will or other instrument, the donor of a power has a general intention in favour of a class, and a particular intention in favour of individuals of that class to be carried out by the donee of the power, and the particular intention fails, from its not being carried out by the donee of the power, the Court will treat it as a trust, and carry into effect the general intention in favour of the class. (St. § 1061 a; *Harding* v. *Glyn*, 2 Wh. & Tu. 335 *et seq.*) **283.**

Thus, if a fund is given to such of a certain class of persons, or to a certain class of persons in such proportions, as a third person shall appoint, if no appointment is made, the objects named will take equally. (2 Sp. 83; *Salusbury* v. *Denton*, 3 K. & J. 529; *Reid* v. *Reid*, 25 Beav. 469; *Re White's Trusts*, Johns. 656; *Lambert* v. *Thwaites*, L. R. 2 Eq. 151.) **284.**

II. Where trusts fail

or the property is unexhausted by the trust.

II. Where property is given upon trust, and the trusts fail, either entirely or partially, by reason of the failure of the intended objects or purposes, or some of them, or of the illegality or indefinite nature of the trusts, or some of them, or otherwise; or where the trusts are fully and finally fulfilled, without exhausting all the property out of which they were to be

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

TIT. II. CAP. V.

If there are any circumstances to show that a trust was intended, then the onus of proof is on the donee, to prove that a beneficial gift to him was intended. (Lewin, 10th ed. 160.) **288.**

If a devise is to an infant or a married woman, the presumption is against the devise being upon trust; yet this presumption must yield to the fair construction of the will, if, according to that, the testator appears to have intended a trust. (2 Sp. 225.) **289.**

A discretion as to the application of the property given may be so large, that the gift may amount to an absolute gift; as where there is an uncontrolled power to give away the property as and to whom the donee may think fit. But if the discretion is limited to certain general purposes, though they may be too indefinite to be enforced, the donee is a trustee. (2 Sp. 225.) **290.**

IV. Limitation of a particular interest only.

IV. Where a person parts with or limits a particular estate only, and leaves the residue undisposed of, the residue results to him, even though there may be a consideration. .(St. § 1199.) **291.**

The heir will take, as personal estate, the benefit of the surplus interest in a term or other particular interest carved out of the inheritance for a particular purpose which does not exhaust the whole, as against the devisee, where the devisee takes only what remains after the particular interest so given is carved out. (2 Sp. 230.) **292.**

A legacy to the heir or next of kin will not of itself preclude their claim to the surplus undisposed of. Nor will a bare intention to exclude, however expressed, though accompanied by words of anger or antipathy or even negative words, be sufficient to exclude the heir in respect of the beneficial interest in real estate

undisposed of, or the next of kin in respect of personalty, unless it is either specifically or as part of a fund effectually devised or bequeathed away to some one else, either directly, or by the same kind of necessary implication as would in other cases be admitted to constitute an actual gift. (2 Sp. 232.) **293.**

V. Undisposed of residue of testator's personal estate.

V. Before the Statute 1 Will. IV. c. 40, where a testator made no express disposition of the residue of his personal estate, the executors were at Law entitled to such residue; and Courts of Equity, as the Act recites, so far followed the Law, as to hold the executors to be entitled to retain such residue for their own use, unless it appeared to have been the testator's intention to exclude them from the beneficial interest therein. In that case they were held to be trustees for the person or persons who would have been entitled to such estate under the Statute of Distributions, if the testator had died intestate. And Equity laid hold of any circumstance or expression in the will, which might appear to rebut the presumption of a gift to the executors, and convert them into trustees for those on whom the Law would have cast the surplus in case of complete intestacy. (See St. § 1208 and note; *Elcock* v. *Mapp*, 3 Cl. & Fin. 507, 508; *Underwood* v. *Wing*, 4 D. M. & G. 633, 656, 659; *Powell* v. *Merrett*, 1 Sm. & G. 381; *Cradock* v. *Owen*, 2 Sm. & G. 241; *Read* v. *Stedman*, 26 Beav. 495; *Saltmarsh* v. *Barrett*, 29 Beav. 474.) The stat. 1 Will. IV. c. 40, furthers the views of Courts of Equity, in narrowing the application of the rule of Law, by enacting, as to wills made by persons who should die after the first day of September, 1830, that the executors shall be deemed by Courts of Equity to be trustees for the persons (if any) who would be entitled

under the Statute of Distributions in respect of any residue not expressly disposed of, unless it should appear by the will, or a codicil thereto, that the executors were intended to take such residue beneficially. (*Williams* v. *Arkle*, L. R. 7 H. L. 606.) But the Act does not affect the rights of executors where there are no next of kin, and in such a case, if there is no contrary intention, they will be entitled as against the Crown. (*Re Bacon*, 31 C. D. 460.) **294.**

VI. Undisposed of produce of real estate.

VI. Where real estate is directed to be sold for certain purposes, so much of the real estate, or the produce thereof, as is not effectually disposed of by the will at the testator's death, from silence, or the inefficacy of the will itself, or from subsequent lapse, results to the heir, unless the testator has sufficiently declared his intention that the produce of the real estate should be deemed personalty, *whether such purposes take effect or not;* and where the sale is necessary, it results to the heir as personalty; but where the sale is unnecessary, it results as part of the old use, and descends to him as realty. (*Ackroyd* v. *Smithson*, 1 Wh. & Tu. 372 *et seq.*) What *Ackroyd* v. *Smithson* decided was, that a conversion directed by a testator is a conversion only for the purposes of the will, and that all that is not wanted for these purposes must go to the person who would have been entitled but for the will. It does not decide that if the Court or a trustee sell more than is necessary there is any Equity to reconvert the surplus for the benefit of the heir-at-law of the person entitled at the time of sale. If a conversion is rightfully made either by the Court or a trustee, all the consequences of a conversion must follow if there be no Equity in favour of the heir or any one else for reconversion. (Brett's L. C. 127;

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

them off, and thereby prevent the sale, and take the estate. (2 Sp. 234.) **296.**

Undisposed of part of mixed fund.

Where real estate is not made a subsidiary fund, but a testator creates from real and personal estate a mixed and general fund, and directs the whole of that fund to be applied for certain purposes, as for the payment of debts and legacies, there he in effect directs that the real and personal estates, which have been converted into that fund, shall answer the stated purpose *pro ratâ* according to their respective values. If any of those purposes fail, then the part of the fund which upon this principle would otherwise have been applicable to those purposes is undisposed of. So far as that part of the fund has been composed of real estate, the heir is to have the benefit of it, as so much real estate undisposed of, whether the estate be eventually sold or not; and so far as that part of the fund has been composed of personal estate, it is personal estate undisposed of, for the benefit of the next of kin. (2 Sp. 235.) **297.**

Undisposed of part of money directed to be converted, or of the produce thereof.

Where money is bequeathed to be laid out in land, the same principle applies as where land is directed to be converted into money: the conversion will operate only so far as the will disposes of the land into which it is to be converted; so that if the land is devised for a limited estate only, the produce of the fund, or the fund itself, if unconverted, beyond the interest so given will result to the testator's next of kin, as personalty, unless it is given away to some other person. (Lewin, 10th ed. 165; *Reynolds* v. *Godlee*, Johns. 536, 582.) **298.**

And where personal estate is bequeathed upon trusts which ultimately fail, land purchased before the failure of the trusts goes to the next of kin as

real estate. (*Curteis* v. *Wormald*, 10 Ch. D. 172; *Re Richerson*, (1892) 1 Ch. 379.) **298 a.**

Failure of objects for conversion under a deed.

Where real estate is settled by deed, upon trust to sell for certain specified purposes, and one of those purposes fails, there, whether the trust for sale is to arise in the lifetime of the settlor or not until after his decease, the property to that extent results to the settlor, as personalty, from the moment that the deed is executed, and not to his heir, either as real or as personal estate. For, the deed takes effect the moment it is executed, and a constructive conversion immediately takes place by force of the direction to convert, although the actual conversion is not to take place until after the settlor's death. (*Clarke* v. *Franklin*, 4 K. & J. 257.) But where the whole of the purposes for which the conversion is directed fail from the moment of the execution of the deed, there the Court regards the case as if no conversion had been directed, and the property results to the grantor as real estate. (Lewin, 10th ed. 164; see Lord Eldon's remarks in *Ripley* v. *Waterworth*, 7 Ves. 435, and V.-C. Wood's remarks in *Clarke* v. *Franklin*, 4 K. & J. 265.) **299.**

Failure of the object for a conversion under a will.

Where, in the events that happen, the contemplated object for which a conversion of land into money or money into land is directed by will to be made, does not exist, the Court will not vary the property from that state in which it was found at the death of the testator; for where the purpose fails, the intention fails. (2 Sp. 234, 261; *Buchanan* v. *Harrison*, 1 Johns. & H. 662, 673.) But where any event has happened on which the conversion ought to take place, though the object for the conversion afterwards ceases to exist, or partially fails, the property will be

TIT. II. CAP. V.

treated as if converted. (See 2 Sp. 262; *Bagster* v. *Fackerell*, 26 Beav. 469; *Wall* v. *Colshead*, 2 D. & J. 683.) **300.**

VII. Charges. Devise or bequest in trust to pay debts and charges.

VII. Implied trusts are often created by charges. Where a testator devises an estate or makes a bequest in trust to pay debts or other charges, no beneficial interest passes to the devisee, or legatee, but he is a mere trustee for the payment of debts or charges, and, after payment thereof, a trustee of the residue for the heir or next of kin. But where property is devised or bequeathed, charged with or subject to debts or other charges, the whole beneficial interest passes to the devisee or legatee, subject only to the payment of the debts or other charges. (St. § 2245; 2 Sp. 23, n. (*b*), 226; *Heptinstall* v. *Gott*, 2 Johns. & H. 449; *Clarke* v. *Hilton*, L. R. 2 Eq. 810.) This and the following paragraphs must now, however, be considered with reference to the Land Transfer Act, 1897, which makes real estate assets for payment of debts in the hands of the legal personal representative. (Appendix.) **301.**

Devise or bequest charged with or subject to debts and charges.

Indirect charge of debts.

In the interpretation of wills, favour to creditors has been an acknowledged principle of construction. (2 Sp. 327 n. (*g*).) And real estate might be charged by will with the payment of debts, even by a mere expression of an intention that the testator's debts should be paid, without any other indication that they were to be paid out of the real estate. But if a testator directs a particular person to pay, it is natural to presume that the testator intended him to pay out of the funds with which he is intrusted, and not out of other funds over which he has no control; and if the executor is pointed out as the person to pay, that ordinarily excluded any presumption that other persons not named were to pay, or that the debts

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

thereout. But even where there has been a previous devise, which was sufficient of itself to account for the residuary form of a subsequent devise, it has been held that such residuary form rendered legacies a charge upon the real estate, especially where the executor was residuary devisee. (2 Sp. 328; *Francis* v. *Clemow*, Kay, 435, and cases there cited; *Harris* v. *Watkins*, Kay, 438; *Wheeler* v. *Howell*, 3 K. & J. 198; *Greville* v. *Browne*, 7 H. L. C. 689; *In re Brooke, Brooke* v. *Rooke*, 3 C. D. 630; *Smith* v. *Hill*, 9 C. D. 143.) **304.**

A general charge of legacies on real and personal estate, even though expressed to be on "all the testator's estates of every description, both real and personal," will not render real or personal estate specifically devised or bequeathed liable to pecuniary legacies in case of a deficiency in the personal estate; for the specific devisee or legatee is as much an object of the testator's bounty as the pecuniary legatee. (Robbins, Mortg. 409; *Conron* v. *Conron*, 7 H. L. C. 168.) **305.**

Even where real estate is charged, it will not be held to be liable until after the general personal estate is exhausted, unless there is an intention to exonerate the personal estate. (2 Sp. 338.) **306.**

And the Land Transfer Act, 1897, s. 2 (3), provides that nothing therein contained shall alter or affect the order in which real and personal assets are now applicable in or towards the payment of debts or legacies, or the liability of real estate to be charged with the payment of legacies. **307.**

Where annual and gross charges are to be raised out of the rents and profits, or by sale or mortgage, if those words are evidently used in contradistinction,

the annual charges will be raisable out of the annual rents and profits, and the gross charges by sale or mortgage. (2 Sp. 370.) But Equity will in general consider a charge on the rents and profits to raise portions, legacies, or debts, as a charge on the land if such charge is not restrained to the annual profits, and will imply a power to sell or mortgage. (2 Sp. 406; *Lord Londesborough* v. *Somerville*, 19 Beav. 295; *Metcalfe* v. *Hutchinson*. (1 C. D. 591.) **310.**

VIII. Conveyance, assignment, or security in another's name.

VIII. Where a person buys freehold, copyhold, or leasehold land, and pays the purchase-money for it, but takes the conveyance or assignment in his own name and that of another or others, or exclusively in the name of another or others whether jointly or successively, the trust of the legal estate will result to the person who advanced the purchase-money; for it is presumed that the real purchaser intended the purchase to be for his own benefit, and took it in the name of another or others merely to answer some collateral purpose. The same doctrine is applied to securities, as, for instance, a bond taken in the name of a third person. (St. § 1201, 1201a; *Dyer* v. *Dyer*, 2 Wh. & Tu. 803 *et seq.*) And proof of the payment of the purchase-money by the real purchaser may be furnished either by the language of the deed itself, or by some memorandum or note of the nominal purchaser, or by his admissions in legal proceedings, or by papers left by him and discovered after his death. (St. § 1201, note; 2 Sp. 202.) **311.**

Purchase or transfer of stock or delivery of money.

In like manner there will be a resulting trust, where stock is purchased in the names of the purchaser and a stranger, or is transferred by the owner into the names of himself and a stranger. But if a man delivers money or transfers stock to another, even

though he is a stranger, no implied trust will arise, unless upon evidence. (2 Sp. 219; and see Brett's Lead. Cas. 9.) **312.**

Where a resulting trust is rebutted

No resulting trust will be raised where a contrary intention (*i.e.*, an intention on the part of the person who advanced the purchase-money, and which cannot be subsequently altered, that the person or persons to whom the property is transferred should take for his or their own benefit) unrebutted by other evidence or grounds of presumption, is indicated by the terms or the object and purpose of the instrument creating the trust, or is established by written or parol evidence, or may be presumed from the relation between the parties. (St. § 1196a, note, and 1202; *Beecher* v. *Major*, 2 Dr. & Sm. 431.) And hence, in general, there will be no resulting trust where a purchase is made or a security is taken by a husband or a father

as where a purchase or security is taken in the name of a wife or child.

(either solely, or jointly with his own name or that of a stranger) in the name of a wife, or in the name of a legitimate child, or an illegitimate child if treated as a child, who is unprovided for, or considered by the husband or father as unprovided for, or as insufficiently provided for; or by a grandfather in the name of his grandchild unprovided for, or considered by him as unprovided for, or as insufficiently provided for, where the father is not living; or by a widowed mother in the name of her child; because it will be presumed that it was intended as an advancement and provision in discharge of a moral obligation, or as a tribute of affection; unless there are circumstances which furnish a strong presumption of a contrary intention; such as a contemporaneous declaration or act to manifest an intention that the party should take as a trustee. A subsequent act or declaration

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

them and their heirs, this is a joint-tenancy. But joint-tenancy is not favoured in Equity: indeed Equity will lay hold of any circumstances which will afford grounds to vary in this respect from the rule of Law. Thus, if two persons advance a sum of money by way of mortgage, and take a mortgage to them jointly, they will be tenants in common in Equity; and if one of them dies, his personal representatives will be entitled to his proportion, and the survivor will be a trustee for them of the share of the deceased. But the receipt in writing of the survivor or his personal representatives is a sufficient discharge for the mortgage money, notwithstanding notice of severance (44 & 45 Vict. c. 41, s. 61). So if two persons jointly purchase an estate, and pay unequal proportions of the purchase-money, and take the conveyances in their joint names; in case of the death of either of them, there will be no survivorship, but they will be deemed to be purchasers in the nature of partners, and to have intended to hold the estate in proportion to the sum which each advanced. (St. § 1206; *Lake* v. *Craddock*, 2 Wh. & Tu. 952 *et seq.*) And where real or personal estate is purchased for partnership purposes in trade, and on partnership account, the legal estate, in whomsoever it may be vested, is in Equity deemed to be partnership property, not subject to survivorship. (St. § 1207.) **315.**

Joint mortgage.

Joint purchase.

X. Covenant or trust to purchase lands.

X. When a person has covenanted to lay out money in the purchase of land, or to pay money to trustees to be laid out in the purchase of land to be settled, if he afterwards purchases land, to himself and his heirs, but does not settle it, the land will be subject to the trusts upon which the land to be

purchased was to be settled; for, unless the contrary clearly appears, it will be presumed that he purchased in fulfilment of his covenant, upon the principle that acts capable of being considered as done in fulfilment of an obligation shall be so construed. This is what is known as the doctrine of Performance, and illustrates the maxim "Equity imputes an intention to fulfil an obligation." (St. § 1210; *Wilcocks* v. *Wilcocks*, 2 Vern. 558; *Blandy* v. *Widmore*, 2 Wh. & Tu. 407; *Lechmere* v. *Lechmere*, *ibid.* 399.) And where a trustee or agent is bound by a trust to lay out money in land, if he actually lays it out, the act will, if possible, be presumed to have been done in execution of the trust. (2 Sp. 204—206; *Manningford* v. *Toleman*, 1 Coll. C. C. 670; *Ex parte Poole*, 11 Jur. 1005.) **316**.

XI. Covenant to settle lands.

XI. It is a general rule that if a settlor covenant to convey and settle lands, without specifying any in particular, such covenant will not constitute a specific lien on his lands, and the covenantee will be deemed a creditor by specialty only (St. § 1249); for he may have intended to purchase land for the purpose, instead of settling any part of the land he then had. **317**.

XII. Collateral securities for a debt assigned.

XII. Where an assignor of a debt has collateral securities for the debt, the assignee will be entitled to the full benefit of such securities, unless it is otherwise agreed between the parties. Thus, the assignee of a debt secured by a mortgage will, in Equity, be held entitled to the benefit of the mortgage. (St. § 1047. a.) **318**.

XIII. Trust as to ornamental timber.

XIII. Equity implied a trust as to ornamental timber in favour of the objects of subsequent limitations. So that a tenant for life, or a tenant in fee, with an executory devise over, might be restrained from abusing his legal power, by cutting down

ornamental timber, which is called equitable waste. (St. § 518 a; *Garth* v. *Cotton*, 2 Wh. & Tu. 971 *et seq.*; *Turner* v. *Wright*, Johns. 740.) **319**.

By the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (3), it is enacted that an estate for life without impeachment of waste shall not confer upon the tenant for life any legal right to commit equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate. And by the Settled Land Act, 1882, s. 35, a tenant for life impeachable for waste may under certain circumstances cut timber ripe for cutting. **319 a.**

XIV. Trust of wife's mortgaged property.

XIV. An implied trust arises in favour of the wife when she joins with the husband in effecting a mortgage upon her property, by which the equity of redemption is reserved to the husband, and there is no recital and no special circumstances to show that her interest was intended to be changed further than by the creation of an incumbrance. (*Huntingdon* v. *Huntingdon*, 2 L. C. Eq. (6th ed.), 1147 *et seq.*; *Re Marlborough*, *Davis* v. *Whitehead*, (1894) 2 Ch. 133; and see *Paget* v. *Paget*, (1898) 1 Ch. 470.) **320**.

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

purchaser of the property, he will be entitled to a deduction from the purchase-money in respect of expenditure in lasting improvements and *à fortiori* in the nature of salvage. (*Rowley* v. *Ginnever*, (1897) 2 Ch. 503; *Re Montague*, (1897) 2 Ch. 8.) As to improvements by a tenant for life of settled land, see 45 & 46 Vict. c. 38, ss. 25—30. **323.**

II. Payment of legatees or distributees before creditors.

II. So, where executors, by mistake, but *bonâ fide* and without fault, have paid legatees or distributees before a due discharge of all the debts, the latter are treated as trustees for the purpose of paying the debts; because they are not entitled to anything except the surplus of the assets, after all the debts are paid. (St. § 1251.) **324.**

III. Covenant or agreement to convey or transfer property, or pay money.

III. Where a person is under a covenant or agreement, for valuable consideration, to convey or transfer property, or to pay money, to or for the use or benefit of another, a constructive trust arises in favour of the latter against the former and his representatives, and those claiming under him as volunteers or with notice of the covenant or agreement; because, where things are covenanted or agreed to be done, Equity treats them, for many purposes, as if they were done. (See St. § 1212, 1231.) **325.**

Hence, where the Court is satisfied by parol evidence that a marriage took place on the faith of representations as to a settlement, it will direct a settlement in accordance with those representations, as against the person making them or his devisees. (*Prole* v. *Soady*, 2 Giff. 1.) **326.**

Nature of, and reasons for, the vendor's lien.

And so a constructive trust arises when the purchase-money of an estate is not paid. In such a case the vendor has a lien on the property in Equity; that is, a hold upon it for the satisfaction of the purchase-

money: and to the extent of the lien, the purchaser becomes a trustee for the vendor. (See St. § 1215, 1217—1220; *Mackreth* v. *Symmons*, 2 Wh. & Tu. 926 *et seq.*) And although, in some cases, it is reasonable to presume a tacit consent or agreement that the vendor should have such a lien, yet the lien is not strictly attributable to such a consent or agreement, but is founded on the most obvious principles of natural justice. (See St. § 1219, 1220.) **327.**

Where it originally exists.

In general, the vendor has such a lien; and the burden of proof is on the purchaser, to establish that in the particular case it has been intentionally displaced or waived by the consent of the vendor. (St. § 1224.) Though, on the face of the conveyance, the consideration is expressed to be paid, and even if a receipt is indorsed on the back of the conveyance, and yet the money has not actually been paid, the vendor has a lien. (St. § 1225; *Mackreth* v. *Symmons*, 2 Wh. & Tu. 926; Conv. Act, 1881, s. 55.) And if a security has been taken for the money, the burden of the proof has been held to lie on the purchaser, to show that the vendor agreed to rest on the security and to discharge the land; or, at most, the taking of a security has been deemed to be no more than a presumption, under some circumstances, of an intentional waiver of the lien, and not as conclusive of the waiver. (St. § 1226.) **328.**

Continuance thereof.

Where the vendor has a lien against the vendee, it continues, notwithstanding any devolution or transfer of the estate, except where it is extinguished by the countervailing Equity of a *bonâ fide* purchaser for valuable consideration without notice, when clothed with the legal title. (St. § 1228.) **329.**

Against whom it exists.

So that it exists against the vendee and his heir,

and against volunteers claiming under him; against purchasers under him with notice that he had not paid the purchase-money; against purchasers even without notice, having an equitable title only; against assignees claiming by a general assignment under the bankrupt and insolvent laws; against assignees claiming under a general assignment made by a failing debtor for the benefit of creditors; and against a judgment creditor of the vendee, at least before an actual conveyance of the estate has been made to him. (See St. § 1228.) For, in each of these cases (except that of the *bonâ fide* purchaser for valuable consideration without notice, who has only an equitable title), the party in possession has obviously no more equity against the lien of the vendor than the vendee himself had, but clearly stands in the same situation and subject to the same equity. And although the *bonâ fide* purchaser without notice, who has only an equitable title, has an equity quite distinct from that of his vendor, the first vendee, yet the equity of such purchaser to retain what he has paid for is only equal to that of the first vendor to be paid for that which he has parted with; and when the equities are equal, and neither of the parties has the support of the legal title, the maxim applies, *Qui prior est tempore, potior est jure.* But this is only the case, and time is only material, where the equities are in all other respects equal (*ante*, par. 50); and consequently an equitable mortgagee may be entitled to payment in priority to the unpaid vendor on the ground that the latter has lost his priority by his own negligence in having delivered to the purchaser a conveyance in which he declared by the receipt indorsed that the whole purchase-money had been paid. (*Rice*

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

similar claim against the estate in the hands of the vendor. (*Watson* v. *Rose*, 10 H. L. C. 672.) **331.**

Where the vendee has sold only a part of it, the part retained by him is primarily chargeable with the lien. Where he has sold different parts to different persons, the lien is to be borne rateably between them. (St. § 1232 a.) **332.**

IV. Property acquired, or profits made by persons in a fiduciary relation.

IV. If a trustee, or other person standing in a fiduciary relation, acquires property or makes a profit by means of transactions within the scope of his agency or authority, or if a person employs another's property in any trade or speculation, there will be a constructive trust, as to the property so acquired or the profits so made, for the benefit of the *cestui que trust*, principal, owner, or other party standing in the opposite relation. (See St. § 1211, 1211 a, 1261; *Fox* v. *Mackreth*, 1 Wh. & Tu. 141 *et seq.*; *Robinson* v. *Pett*, 2 Wh. & Tu. 606 *et seq.*) So that, if a trustee should purchase a lien or mortgage on a trust estate at a discount, he would not be allowed the benefit of the difference, but the purchase would be a trust for the *cestui que trust*. So if a trustee or a partner should renew a lease of the trust or partnership estate, he would be a trustee of such renewed interest for his *cestui que trust* or co-partner, even though the lessor may have refused to grant a renewal to the *cestui que trust* or co-partner. (St. § 2211; *Keech* v. *Sandford*, 2 Wh. & Tu. 693 *et seq.*; *Clegg* v. *Edmondson*, 8 D. M. & G. 787.) So if an agent, who is employed to purchase for another, purchases in his own name or on his own account, he will be held to be a trustee for the principal, at the option of the latter. (St. § 1211 a.) And the same principle applies as between a company and one of the directors.

(*Imperial Mercantile Credit Association* v. *Coleman*, L. R. 6 H. L. 189.) **333.**

V. Upon analogous principles, if a trustee or executor or a mortgagee, or a person having a limited interest in leasehold property, renews the term on his own account, he will be held to be a trustee for all the persons interested in the old lease. (1 Sp. 512; 2 Sp. 299, 302, 303; Lewin, 10th ed. 192; Robbins, 164.) **334.**

V. Renewal of lease by a person having a limited interest.

The person so converted into a trustee of a renewed lease is entitled to the costs and expenses of renewal, with interest, and to compensation for repairing, building, and lasting improvement; and he may retain the renewed lease to secure the payment. (2 Sp. 304; Lewin, 10th ed. 196.) **335.**

VI. In general, whenever property of one kind has been wrongfully converted into property of another kind, by a trustee or agent, the right *in rem* of the principal or *cestui que trust* ceases, if the means of ascertainment fail; which, of course, is the case when the subject-matter is turned into money, and mixed and confounded in a general mass of property of the same description. But if the property which has been so substituted can be ascertained to be such, it will be liable to the rights of the *cestui que trust* or principal to which the property converted was subject. (See St. § 1158, 1259, 1260; *Robinson* v. *Pett*, 2 Wh. & Tu. 606 *et seq.*) **336.**

VI. Wrongful conversion or alienation of trust property.

But in cases of this sort, the *cestui que trust* or beneficiary is not at all bound by the act of the other party. He has an option to insist on having that into which the trust property has been converted, or to disclaim any title thereto, and resort to any other remedy to which he is entitled, either *in rem* or *in*

personam. (St. § 1262.) But he cannot insist on repugnant claims: so that, in the case of a sale of stock by a trustee or executor, in violation of his trust, the party beneficially entitled may either oblige the trustee or executor to replace the stock, or he may affirm his conduct and take the sum at which he has sold it, with interest and any further profits he may have made by the sale; but the party beneficially entitled cannot insist on having the stock replaced, and having the interest instead of the dividends, or on taking the money, and having the dividends as if the stock had remained. (St. § 1263.) **337.**

If, however, the trustee conveys the trust property to a *bonâ fide* purchaser for valuable consideration, who has paid his purchase-money, and had no notice of the trust at the time of paying the same, the trust is extinguished. But if the trustee should afterwards re-purchase or otherwise become entitled to the same property, the trust would be revived by construction of Equity. (See St. § 1264, and note; *Basset* v. *Nosworthy*, 2 Wh. & Tu. 150 *et seq.*) And if a trustee conveys or assigns the trust property for valuable consideration, in violation of the trust, to a person who is aware of that circumstance, or conveys or assigns it without valuable consideration, even to a person who has no notice, such person will be treated as a trustee for the *cestui que trust*. (St. § 1257.) **338.**

VII. Trust of mortgaged estate.

VII. Where a person has a mortgage in fee which he has not foreclosed, the legal estate in the mortgaged premises formerly descended to his heir; but by construction of Equity he is trustee for the personal representatives, and through them for the persons entitled to the personal estate of the mortgagee.

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

CHAPTER VII.

OF TRUSTEES AND OTHERS STANDING IN A FIDUCIARY RELATION.

TIT. II. CAP. VII.

I. Who may be trustees.

I. GENERALLY speaking, all persons, including femes covert, infants, aliens and bankrupts, are *capable* of being trustees, and a trustee does not cease to be such on becoming a convict. (Lewin, 28 *et seq.*; Trustee Act, 1893, s. 48.) **341.**

But though all persons are capable, they are not all equally fit to be trustees; and on the ground of want of fitness the Court will generally refuse to appoint femes covert, infants, and aliens domiciled abroad, as trustees (Lewin, 36, 40; *Re Peake*, (1894) 3 Ch. 520), and may remove a trustee who is convicted of felony or is a bankrupt. (Trustee Act, 1893, s. 25; *Re Danson*, 48 W. R. 73; *Re Foster*, 55 L. T. 479.) **341 a.**

II. Acceptance of office.

II. If a person who is appointed executor proves the will, he becomes liable for the performance of the duties of the office: and if he is also appointed trustee, the taking probate is an acceptance of the entire trust. (Lewin, 10th ed. 215.) But a trustee to whom any power is given may by deed disclaim it, and it may then be exercised by the other person or persons to whom it is given (45 & 46 Vict. c. 39, s. 6), but he cannot disclaim a particular power while he continues a trustee for other purposes. (*Re Eyre*, 49 L. T. 259.) **342.**

III. Devolution or delegation of a trust.

III. The powers of trustees devolve only on those who are specified as persons to execute the trust. If a man appoints a trustee of real or personal estate, without naming his heir or personal representative, the personal representative does not become a trustee, although the property may vest in such representative. And where two or more persons and the survivor and the heirs of the survivor are appointed trustees, or where they and their executors or administrators, or the trustees for the time being, are directed to sell, then under s. 30 of the Conveyancing Act, the personal representative of the survivor can exercise the power. The effect of s. 30 is that there cannot now, except as to copyholds, be any assign of a trust estate by means of a devise. The only "assign" is the trustee duly appointed. (See Trustee Act, 1893, ss. 22, 10 (3); *Osborne and Rowlett*, 13 C. D. 774; *Re Morton and Hallett*, 15 C. D. 143; *Re Ingleby and Boak, &c. Insurance Co.*, 13 L. R., Ir. 326; *Re Rumney*, (1897) 2 Ch. 351.) A trustee cannot, without the consent of his *cestui que trust* or of the Court, denude himself of the character of trustee, till he has performed the trust. If, without such consent, he assigns the trust or delegates the performance of its duties to a stranger, or even to his co-trustee, he will be answerable for the breaches of trust committed by the stranger or co-trustee. (Lewin, 10th ed. 271.) **343.**

IV. Equity never wants a trustee.

IV. It is a rule in Equity, which admits of no exception, that where a trust exists, Equity never wants a trustee. For wherever a perfect trust, as opposed to a trust resting in contract or in *fieri*, or even an imperfect trust. if supported by a valuable consideration, has once attached, whether it is an

express, an implied, or a constructive trust, and it is not extinguished by the countervailing equity of a *bonâ fide* purchaser for valuable consideration without notice or other person having a conflicting equity, nor has otherwise ceased to subsist, Equity will follow the legal estate, and decree the person in whom it is vested to execute the trust. (See St. § 976, 1159, 1162; Lewin, 10th ed. 1017.) And the lapse of the legal estate never has the least influence on the trusts to which it is subject: if the individuals named fail, whether by death, incapacity, or refusal, the Court will provide a trustee; if no trustees are appointed at all, the Court assumes the office in the first instance (Lewin, 10th ed. 1019); and under the Judicial Trustees Act, 1896, the Court will, in a proper case, appoint the official solicitor or some other person to be a judicial trustee. **344.**

V. No remuneration allowed.

V. Trustees, executors, directors and promoters of companies, and other persons standing in a fiduciary relation, are not allowed, even with the consent of their co-trustees, co-executors, or co-adjutors, and however extraordinary the services they may have rendered, to take any remuneration by way of commission, or brokerage, or salary, without some express or implied provision for that purpose in the instrument under which they claim. (St. § 466 a, 1268; Lewin, 10th ed. 296; Brett's L. C. 171; *Robinson* v. *Pett*, 2 Wh. & Tu. 606; *Docker* v. *Somes*, 2 M. & K. 655, 664.) And a solicitor, who is a trustee, is not entitled to charge for business, either in a suit or in administration without a suit, done by him in relation to the trust, as distinguished from costs out of pocket, although employed to do it by his co-trustee, unless there is a provision in the deed

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

Primâ facie view of the decisions on the subject.

On the other hand, it may appear that in practice Courts of Equity have in many cases required extreme circumspection and vigilance, while, in others, they have been satisfied with the degree of care usually exhibited by men in the management of their own affairs. (St. § 1272, 1273; 2 Sp. 917.) **347.**

True state of the case.

But the true state of the case seems to be this: that there are certain things which either clearly appear in themselves to be duties or are established as such by the uniform policy of Equity; and to these the Courts require a rigid adherence. But with regard to others it is now established that the law requires of a trustee the same degree of diligence and care in the execution of his office as that which is usually exercised by men of ordinary prudence and vigilance in the management of their own affairs. (Lewin, 10th ed. 317; *Brice* v. *Stokes*, 2 Wh. & Tu. 633 *et seq.*) **348.**

And by the Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3, a trustee is entitled to be relieved against a breach of trust where he has acted both honestly and reasonably. (*Re Barker*, 77 L. T. 712.) **348 a.**

Omission to sell.

Thus, if a trustee omits to sell property when it ought to be sold, and it is afterwards lost, although without any fault of his, he is liable; because the loss, although not directly occasioned by his default, would never have happened had he not failed in performing what must have appeared a palpable, although perhaps not an urgent, duty. (See St. § 1269, note; Lewin, 10th ed. 1107.) **349.**

Investments.

If a trustee invests, or even suffers money previously invested to remain, on unauthorized security, however unexceptionable it might seem to be, and such security

afterwards fails, or if he permits choses in action to remain outstanding, and a loss arises, he will be liable; as also he will for the fluctuations of any unauthorized fund. (See St. § 1269, note, 1273, 1274. note.) **350.**

Under the Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 1, trustees, unless expressly forbidden by the instrument creating the trust, may invest in any of the investments therein prescribed. The following may be mentioned as the chief investments which this statute prescribes :—Parliamentary stocks, or public funds or Government securities of the United Kingdom, real securities in Great Britain or Ireland; stock of the Bank of England or Ireland; India stock; securities, the interest of which is guaranteed by Parliament; stock of the Metropolitan Board of Works or London County Council; debenture or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past, before the date of investment, paid a dividend of not less than 3 per cent. on its ordinary stock; stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity, or for not less than 200 years, at a fixed rental to any such railway company as is lastly before mentioned; debenture stock of any railway company in India, the interest on which is paid or guaranteed by the Secretary of State; debenture or guaranteed or preference stock of any company in Great Britain or Ireland established for the supply of water for profit, and incorporated by special Act of Parliament or Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less

than 5 per cent. per annum on its ordinary stock; and nominal or inscribed stock lawfully issued by any municipal borough having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or lawfully issued by any County Council or by any Commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the last census prior to the date of investment, a population exceeding fifty thousand. And the trustees may *vary* the same for other like investments. (*Hume* v. *Lopes*, (1892) A. C. 112.) **351.**

By the Trustee Act, 1894, a trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorized by the instrument creating the trust or by the general law. **351 a.**

The Trustee Act, 1893, s. 5.

And the Trustee Act, 1893 (in which Act the word trustee is, by s. 50, interpreted to include an executor and administrator, and a trustee whose trust arises by construction or implication of law as well as an express trustee), provides by s. 5 that a power to invest trust moneys on real securities authorizes an

Long terms.

investment upon mortgage of long terms of not less than 200 years, not subject to any reservation of rent greater than one shilling a year, or to any right of redemption, or to any condition, for re-entry except for non-payment of rent, or on any charge or mortgage of any charge made under the Improvement of Land Act, 1864. And by s. 19, that trustees of renewable leaseholds may renew, and that it is their duty to do so if required by any person having any beneficial interest; but the section is not to apply where the

Trustees of renewable leaseholds may renew.

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

property apart from the circumstances which regulate its business value. (*Partington* v. *Allen*, 57 L. T. 654.) **352.**

With respect to mortgage investments by trustees, it has been laid down as a rule that they themselves, and not their solicitors, must select their valuers, who must be employed independently of the owners of the property to be mortgaged. (*Fry* v. *Tapson*, 28 C. D. 280; *Re Walker*, 59 L. J. Ch. 386, 391.) It has also been held that if the securities turn out to be insufficient, and a loss of trust funds is occasioned, the trustees are not relieved from responsibility by the fact that they relied upon the report of a valuer employed by them to value the property; and this is still so if the valuation was not made for the purpose of the investment in question. (*Speight* v. *Gaunt*, 9 A. C. 1; *Learoyd* v. *Whiteley*, 12 A. C. 727; *Re Walker*, *supra*.) According to those decisions a trustee may avail himself of assistance and advice in the execution of his trust, but, having obtained that assistance and advice, he is not entitled to adopt it blindly, but must exercise his judgment upon it to the same extent to which an ordinary prudent man would exercise his judgment in dealing with his own affairs. (Stirling, J., in *Partington* v. *Allen*, 57 L. T. 654.) But these cases must be considered in connection with the Trustee Act, 1893, ss. 8, 9, which provides by section 8 that no trustee shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time of the loan (whatever the tenure of the property, and whether agricultural or house or other property upon which the trustee can lawfully lend), if in making the loan the trustee was acting upon a report as to the

The Trustee Act.

value of the property made by a person whom the trustee reasonably believed to be an able practical surveyor, instructed and employed independently of any owner of the property, whether such surveyor carried on business in the locality where the property is situate or elsewhere; and if the amount of the loan does not exceed two equal third parts of the value of the property as stated in such report; and if the loan was made under the advice of such surveyor expressed in such report. That no trustee lending on the security of leaseholds shall be chargeable with a breach of trust for dispensing with the production or investigation of the lessor's title if in the opinion of the Court the title be such as a person acting with prudence and caution would have accepted. That no trustee shall be chargeable with breach of trust if in purchasing, or lending money upon, any property he accepted a shorter title than a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the Court the title be such as a person acting with prudence and caution would have accepted. And by section 9, that where a trustee has improperly lent trust money on a mortgage security which would have been a proper investment in all respects for a less sum, he shall only be liable to make good the sum advanced in excess of the less sum with interest. And these sections apply to advances made as well before as after the passing of the Act. Thus, trustees have now statutory authority for dispensing with the production of the lessor's title on taking a mortgage, as well as on purchasing leaseholds, and may in a proper case take less than a forty years' title. (See Conv. Act, 1881, s. 3; Trustee Act, 1893, ss. 8, 15.) **352 a.**

Liability for loss by reason of improper investments.

A trustee is not authorized to sell out stock, and

invest the proceeds on a mortgage to secure the retransfer of such stock, and the payment of interest equal to the amount of the dividends. (*Whiteley* v. *Smith*, L. R. 4 Ch. 513.) **353.**

Where a fund is settled, trustees are bound to invest on securities of a permanent nature; and must not favour the tenant for life at the expense of the remaindermen. (*Knox* v. *Mackinnon*, 13 A. C. 753.) So that even where trustees have power to invest as they think fit, they may not invest upon guaranteed stock of a *terminable* character. (*Stewart* v. *Sanderson*, L. R. 10 Eq. 26.) **354.**

Omission of trustee or executor to see that the property is duly secured or applied.

An executor will not be liable for money allowed to remain with bankers who fail where it is deposited temporarily or is not an unreasonable sum for executors to keep in the bank (*Swinfen* v. *Swinfen* (No. 5), 29 Beav. 211; *Fenwicke* v. *Clarke*, 31 L. J. Ch. 728), or where it was only reasonable for the money to be deposited there under the circumstances. (*Fenwicke* v. *Clarke*, 4 D. F. & J. 240.) But he will be liable if he places his money in the hands of a banker by way of investment, notwithstanding an indemnity clause against loss by a banker of money deposited for safe custody. (*Rehden* v. *Wesley*, 29 Beav. 213; *Cann* v. *Cann*, 33 W. R. 40.) **355.**

Again, where there are two or more trustees or executors, it is the duty of each trustee and executor to see that the property is duly secured or rightly applied, as the case may be. And therefore, as a general rule, if by the act, direction, agreement, or consent of one of them, the trust fund is paid over to the other without necessity, even though it was so paid over in order to be applied for those purposes for which it was properly applicable, and the receiver

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

rely upon a mere statement by his co-trustee that the money has been duly invested, but to ascertain that such is the fact. (Lewin, 286; and see *post*, par. 368 a.) **356.**

Losses without want of customary care or diligence.

On the other hand, if a trustee or other person standing in a fiduciary relation has not failed in doing what must have appeared to be a palpable duty, and has invested the property on authorized security, he will not be answerable for losses which happen without any want of customary care or diligence on his part. (See St. § 1269, note, 1274, note, and 465; Lewin, 10th ed. 273 *et seq.*) So that if he deposits the money with a banker in good credit, to be remitted to the proper person by a bill drawn by a person in due credit, and the banker or drawer of the bill becomes bankrupt, he will not be responsible. The rule in all cases of this sort is, that where a trustee or executor acts by other hands, either from necessity, or conformably to the common usage of mankind, he is not to be made answerable for losses. (St. § 1269; Lewin, 10th ed. 273; *Speight* v. *Gaunt*, 9 A. C. 1; Brett's L. C. 145.) Thus, it has been decided that a trustee is not liable for trust moneys lost through a broker whom he employed to procure authorized securities, and to whom he paid the purchase-money in accordance with the usual course of business in purchases on the London Exchange. (*Speight* v. *Gaunt*, 9 A. C. 1; Brett's L. C. 145 *et seq.*) But it has been held that trustees who pay over the trust funds to a wrong party on a forged certificate are liable (*Eaves* v. *Hickson*, 30 Beav. 136), for a trustee must look well to the genuineness of the authority to pay. (Lewin, 10th ed. 395.) And a trustee or executor is liable for loss caused by the fraud, negligence, or other fault of

his solicitor, where he has not taken all the precautions that he might have done or where the solicitor is not acting in the ordinary course of his business. (Lewin, 10th ed. 396; *Bostock* v. *Floyer*, L. R. 1 Eq. 26; *Hopgood* v. *Parkin*, L. R. 11 Eq. 74; *Sutton* v. *Wilders*, L. R. 12 Eq. 373; *In re Bird, Oriental Commercial Bank* v. *Sarin*, L. R. 16 Eq. 203; *Re Weall*, 42 C. D. 678.) And where a trustee employs a proper person to do a necessary act, and that person is the cause of an accident (as by felling a tree) for which the trustee is made to pay, the loss ought to be borne by the estate, and not by the trustee. (Lewin, 10th ed. 756; *Bennett* v. *Wyndham*, 4 D. F. & J. 259.) **357.**

The Conveyancing Act, 1881.

The Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 56, provides that, where a solicitor produces a deed having in the body thereof or indorsed thereon a receipt for money or other consideration, the deed being executed or the indorsed receipt being signed by the person entitled to give a receipt for the consideration, the deed shall be sufficient authority to the person liable to pay or give the same for paying or giving it to the solicitor. But the solicitor must be acting for the person entitled to give the receipt. (*Day* v. *Woolwich Equitable Building Society*, 40 C. D. 491.) It was decided by the Court of Appeal in *Re Bellamy and Metropolitan Board of Works*, 24 C. D. 387, that trustees could not authorize their solicitors to receive trust moneys. To meet this decision, the stat. 51 & 52 Vict. c. 59, replaced by section 17 of the Trustee Act, 1893, provides that a trustee may appoint a solicitor as agent to receive and give a discharge for money or property by permitting such solicitor to have the custody of and to produce a deed

The Trustee Act, 1893.

containing such receipt as referred to in the Conveyancing Act, 1881, s. 56; and that no trustee shall be chargeable with breach of trust by reason of such appointment, provided he does not allow the money or property to remain in the control of the solicitor longer than reasonably necessary for transferring it to the trustee. The section does not apparently enable trustees to appoint one of themselves to receive the purchase money. (*Re Flower and Metropolitan Board of Works*, 27 C. D. 592.) And production of the deed pursuant to section 56 of the Conveyancing Act is equivalent to a special authority given to the solicitor to receive the money. (*Re Bellamy*, 24 C. D. 387, 399; and see *Re Hetling*, (1893, 3 Ch. 269.)

The section also empowers a trustee to appoint his banker or solicitor as agent to receive and give a discharge for policy moneys with a similar reservation of liability. **357 a.**

VII. Non-investment.

VII. If trustees do not invest or transfer trust money when they ought to do so, even though they may make no profit by it, they are responsible for the money and interest. (St. § 1273 a; *Att-Gen.* v. *Alford*, 4 D. M. & G. 843.) **358.**

Non-payment.

In like manner executors who, acting *bonâ fide*, have improperly paid or improperly retained moneys in distributing assets, are, as a general rule, liable for interest on the sums improperly paid or improperly retained by them, and which they must refund to the estate. (*Powell* v. *Hulkes*, 33 C. D. 552.) **358 a.**

The rate of interest charged against trustees and executors in such cases was formerly 4 per cent., but the practice now in the Chancery Division is to charge only 3 per cent. (*Re Barclay*, (1898) 1 Ch. p. 686.) The Court, however, will charge more than 3 per cent.

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

with ordinary diligence. (Wms. on Exors. 9th ed. 1316; Lewin, 10th ed. 311.) **360.**

X. Investment on mortgage.

X. When a sum of stock is given to trustees in trust for a married woman for life, with remainder to her children, being infants, the Court will not ordinarily give its sanction to the fund being sold out and invested on mortgage, so as to give the tenant for life a greater income, though power may have been given to the trustees to lay out the property on real security, and though they join in the application. (2 Sp. 569. And see *ante*, par. 354.) **361.**

XI. Equity guards against a breach of trust.

XI. It is the wise policy of Equity to guard against a breach of trust, by prohibiting all acts which may unnecessarily place the trustee in a situation of temptation. (See 2 Sp. 300.) **362.**

Trustee may not mix the trust money with his own.

Hence, in all cases in which a trustee keeps trust money in his hands, or in the hands of a banker, he should take care to keep it separate from his own. For, if he were to mix it with his own in a common account, he would be charged with interest, and would be liable to the *cestui que trust* for any loss sustained by the banker's insolvency, and the *cestui que trust* would be entitled to every portion of the blended property which the trustee could not prove to be his own. (Lewin, 10th ed. 321; St. § 1270; *Cook* v. *Addison*, L. R. 7 Eq. 466.) If the trustee were at liberty to mix the trust money with his own, he would often be tempted to use it as his own, fully intending shortly to replace it; and frequently, indeed, he would not know whether the money with which he was carrying on his affairs was his own or not. In this way, he would be naturally led to expend the trust money on his own account, and loss to the trust property would frequently be occasioned. **363.**

Similar observations may be made with respect to an agent. (St. § 468.) **364.**

XII. Upon the same principle, a trustee, or other person standing in a fiduciary relation, is never permitted to make any profit to himself from the property with which he is entrusted or from the office itself: if any advantage is gained by such a person, it belongs to the *cestui que trust*. Hence he is accountable for all the interest which he ought to have made, and would have made, by the investment of the property on the security directed by the instrument creating the trust, or, in the absence of any such direction as to the mode of investment, on the security authorized by the general rule of the Court. And he will also be accountable for any interest and gains beyond the amount of such interest as above mentioned, which he has actually made on, or with, or in regard to, the trust property, whether in the ordinary discharge of his duty, or in transactions entered into for his own benefit, as he supposed, or otherwise, if the amount of such extra interest and gains can be ascertained. (See *supra*, par. 333, and Lewin, 10th ed. 296; St. § 465, 1211, 1261, 1269, note, 1277, 1278; *Robinson* v. *Pett*, 2 Wh. & Tu. 606; *Re Thorpe*, (1891) 2 Ch. 360.) Or he will be made to pay interest at the rate of *4l.* or *5l.* per cent. (Lewin, 10th ed. 384.) And, under extraordinary circumstances, the Court will direct annual or half-yearly rests to be made, so as to give the *cestui que trust* the benefit of compound interest: as, if a trustee, in manifest violation of his trust, has applied the trust fund to his own benefit and profit in trade, or has conducted himself fraudulently, or has wilfully refused to follow the positive directions of the instrument creating the

XII. Trustee is accountable for interest and gains.

trust, as to the investment of the property. (St. § 1277; Lewin, 10th ed. 384.) And if a trustee or particular agent purchases from his *cestui que trust*, even at a public auction, the *cestui que trust* has the option of taking to or repudiating the transaction; unless the *cestui que trust* intended that the trustee should buy, and there has been no fraud, concealment, or advantage taken on the part of the trustee. (Lewin, 10th ed. 555, 558; *supra*, par. 161.) A person may indeed grant a beneficial interest, or make a present, to his trustee, agent, or receiver; but the latter must show that the dealing was fair, and that the grantor was perfectly free in the matter, and had the same knowledge as he himself had. (2 Sp. 301, 944; Lewin, 10th ed. 747, but see 298; *Barrett* v. *Hartley*, L. R. 2 Eq. 789.) **365.**

For rent of testator's leaseholds.

An executor who takes possession of leasehold property of his testator becomes (from the time of taking possession) personally liable as assign of the lease of the property for payment of rent up to its letting value; but he is not liable for rent beyond such value. (*Earl of Strathmore* v. *Vane*, 37 C. D. 128.) **365 a.**

XIII. Responsibility for each other's acts and defaults.

XIII. A trustee (as in certain cases we have noticed, par. 356) is responsible for his own acts and defaults, and for those wrongful acts and defaults of his co-trustees to which he is privy, and in which, though without any corrupt motive, he expressly, tacitly, or virtually acquiesces, or which would not have happened but for his own act or default. Thus, if two trustees have properly sold out trust moneys, and one of them hands the cheque for the proceeds to the other, who misapplies the money, they are both liable. (*Trutch* v. *Lamprell*, 20 Beav. 116;

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

of Works, 27 C. D. 592); and yet it would be impracticable in some cases, and expensive and inconvenient in others, to require that all should together actually receive the trust money from the person by whom the same may be payable. Hence, it cannot be inferred from a trustee joining in a receipt, that he has received any part of the money. But where there are co-executors, each has a several right to receive the debts due to the estate, and all other assets, and is competent to give a valid discharge by his own separate receipt; and, therefore, if they join in a receipt, it is purely a voluntary act, and it will be presumed that they jointly received the money. (See, however, Land Transfer Act, 1897, s. 2 (2), as to sale of real estate; *post*, par. 368 a.) **367.**

In each case, however, the same rule applies as to responsibility for money received; although, in the one case, the party, being a trustee, is not presumed to have done the act which would make him responsible, namely, the act of receiving the money; because the act done by him is as likely to have been a mere formal act, as not: whereas in the other case, the party, being an executor, is presumed to have done the act involving responsibility; because he has done that which an executor, who has not actually received the money, is not called upon to do. (As to these passages respecting acts and defaults for which a trustee or other person standing in a fiduciary relation is responsible, see St. § 1280, 1280 a, and note; Lewin, 283; *Brice* v. *Stokes*, 2 Wh. & Tu. 633 *et seq.*) **368.**

Trustee Act, 1893.

Further, the Trustee Act, 1893, expressly provides that a trustee shall be chargeable only for money and securities actually received by him, notwithstanding

his signing any receipt for the sake of conformity, and shall be accountable only for his own acts, receipts, neglects, or defaults. (Section 24; *Re Brier*, 26 C. D. 238.)

It must not, however, be forgotten that there may be cases where it would be a breach of trust for one trustee to allow his co-trustee to receive trust money, as perhaps in the case of purchase money on a sale by trustees (*Re Flower*, 27 C. D. 592; Lewin, 315, n.), especially having regard to the Land Transfer Act, 1897, s. 2 (2), which provides that one only of several personal representatives shall not sell real estate. (See Appendix.) **368 a.**

Trustee indemnity clause.

Section 24, however, only expresses the rule of Courts of Equity (*Re Brier*, 26 C. D. 238), and does not extend to cases of wilful default nor exonerate a trustee from the consequences of a breach of trust. (*Brumridge* v. *Brumridge*, 27 Beav. 5.) But it has been held that an indemnity clause may be so specially worded as to exempt trustees from acts for which they would otherwise be held responsible. (*Pass* v. *Dundas*, 29 W. R. 332.) **369.**

XIV. Breach of trust by an executor.

XIV. "Every person who acquires personal assets by a breach of trust or a *devastavit* by an executor, is responsible to those who are entitled under the will, if he is a party to the breach of trust. Generally speaking, he does not become a party to the breach of trust by buying, or receiving as a pledge for money advanced to the executor at the time, any part of the personal assets, even knowing them to be such, whether specifically given by the will or otherwise; because the sale or pledge is held to be *primâ facie* consistent with the duty of an executor. Generally speaking, he does become a party to the breach of

trust by buying or receiving in pledge any part of the personal assets, not for money advanced at the time, but in satisfaction of his private debt; because this sale or pledging is *primâ facie* inconsistent with the duty of an executor." (Per Sir John Leach, in *Keane* v. *Robarts*, 4 Mad. 357; *M'Leod* v. *Drummond*, 14 Ves. 362; St. § 580, 581.) And it may be added that whenever there is a misapplication of the personal assets, and the assets or their proceeds can be traced into the hands of any persons affected with notice of such misapplication, there the trust will attach upon the property or proceeds in the hands of such persons, whatever may have been the extent of such misapplication or conversion. (*Adair* v. *Shaw*, 1 Sch. & Lef. 261, 262; St. § 581.) **370.**

XV. Contribution and indemnity.

XV. Where executors or trustees are jointly implicated in a breach of trust, all of them should, if possible, be brought before the Court, and should be made to contribute proportionably; especially where the trust property is to be brought back to be administered by the trustees, or where a general administration is involved. (*Perry* v. *Knott*, 4 Beav. 179; *Munch* v. *Cockerell*, 8 Sim. 219; *Devaynes* v. *Robinson*, 24 Beav., note to p. 99; *Sawyer* v. *Sawyer*, 28 C. D. p. 601; Lewin, 10th ed. 1117.) **371.**

But each of the trustees, who are jointly implicated in a breach of trust, is responsible for the entire loss, and liable to make it good (as in certain cases we have already noticed): so that the *cestui que trust* may, in case of need, proceed against any or either of them singly or separately, even against the less guilty. (*Walker* v. *Symonds*, 3 Swans. 75—78; *Bradwell* v. *Catchpole*, *id.* 78, note; *Blyth* v. *Fladgate*, (1891) 1 Ch. 337; Lewin, 10th ed. 1116.) And in such case, the

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

whether that interest accrues directly or derivatively, may be impounded to compensate the trust. (*Jacubs* v. *Rylance*, L. R. 17 Eq. 341; *Doering* v. *Doering*, 42 C. D. 203; Lewin, 1119; and see Trustee Act, 1893, s. 45, *post*, par. 390.) **375.**

XVIII. Power of trustee to bind the estate by a sale. &c.

XVIII. A trustee may bind the estate by a conveyance to a *bonâ fide* purchaser, who had no notice at the time of paying his purchase-money (St. § 1264, and note; *Basset* v. *Nosworthy*, 2 Wh. & Tu. 150 *et seq.*): because, in that case, the trust is virtually extinguished by the countervailing equity of the *bonâ fide* purchaser. But if afterwards the trustee re-purchases or otherwise becomes entitled to the same property, the trust revives and re-attaches upon it. (St. § 1264.) The only exception to the rule which protects a purchaser with notice taking from a purchaser without notice is that which prevents a trustee buying back trust property, or a fraudulent man who has acquired property by fraud, saying he sold it to a *bonâ fide* purchaser without notice, and has got it back again. (*Barrow's Case*, 14 C. D. 435, 445, per Jessel, M.R.) And so, if a trustee or executor transfers trust funds upon the trusts of a settlement made or to be made upon his or her marriage, and the opposite party to the marriage contract had no notice of the fact that the party transferring was not beneficial owner of the funds, it has been held that the trusts of the settlement will attach upon the funds. *Cooper* v. *Wormald*, 27 Beav. 266.) **376.**

A purchaser has no right to a conveyance from trustees, where they had no right to sell at all, or not in the way in which they did sell, and where the purchaser was aware of that circumstance before he

paid his purchase-money. (*Dance* v. *Goldingham*, L. R. 8 Ch. 902.) And he might refuse to complete on the ground that the conditions of sale were unnecessarily depreciatory. (*Dunn* v. *Flood*, 28 C. D. 586.) **377.**

The Trustee Act, 1893, s. 14.

But the Trustee Act, 1893, s. 14, provides, with respect to sales by trustees after its passing, (1) that no sale by a trustee shall be impeached by any beneficiary upon the ground that the conditions, subject to which the sale was made, may have been unnecessarily depreciatory, unless the consideration was thereby rendered inadequate; (2) that no sale by a trustee after the execution of the conveyance shall be impeached as against the purchaser, upon the ground aforesaid, unless the purchaser was acting in collusion with the trustee; and (3) that no purchaser, upon any sale by a trustee, shall make any objection to the title upon the ground aforesaid. Thus, while the purchaser, on the one hand, cannot make any objection on the ground that the conditions were unnecessarily depreciatory, so, on the other, his title cannot be impeached by any *cestuis que trust* after the execution of the conveyance to him of the property, unless he has acted in collusion with the trustee. **377 a.**

The trustee may bind the estate by a *bonâ fide* mortgage, or other specific lien, without notice of the trust. But the trust property will not be bound by any judgment or any other claim of creditors against him. (St. § 977.) **378.**

If, however, for a great number of years a trust for raising money remains unperformed, and a sale or mortgage is proposed to be made by the trustees, without an apparent reason for the sale or mortgage,

and without the concurrence of the parties who are in possession and receipt of the rents, the purchaser or mortgagee is under some obligation to inquire and see whether the transaction is or is not a breach of trust. *Stroughill* v. *Anstey*, 1 D. M. & G. 654.) **379.**

Therefore, after a lapse of twenty years, it is fair to assume that the debts have been paid and the purchaser is bound to inquire (*Re Tanqueray-Willaume*, 20 C. D. 465; but see Wms. on Legal Repres. 88); but this was held not to apply to the case of an executor selling leaseholds. (*Re Venn and Furze*, (1894) 2 Ch. 101.) **379 a.**

And if a person, though without any notice of a trust, and for valuable consideration, takes from a trustee a mere equitable estate, interest, or charge, when, for his own safety, he ought to have required a legal estate, interest, or charge, he cannot, in the absence of negligence on the part of the *cestui que trust*, set it up against the *cestuis que trust*, where the trustee wrongfully created it. (*Shropshire Union Railways, &c. Co.* v. *The Queen*, L. R. 7 H. L. 496; *Re Richards*, 45 C. D. 589.) **380.**

Where a trustee is beneficially interested in part of a trust fund, and misapplies the other part, his own part is liable to make good the other part. And if he assigns his beneficial interest to a stranger, the assignee cannot claim the beneficial interest without discharging the liability. (Lewin, 10th ed. 849; *Wilkins* v. *Sibley*, 4 Gif. 442.) And a similar equity attaches upon an assignee of a *cestui que trust*, whose interest is liable to be impounded by reason of complicity in a breach of trust. (*Bolton* v. *Curre*, (1895) 1 Ch. 544.) **381.**

XIX. Liability, duty,

XIX. An executor or administrator is personally

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

intestate, such executor or administrator shall, at the expiration of the time named in the said notices or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof, as the case may be; but nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively." And an executor has the same protection under this Act as under a decree (*Clegg* v. *Rowland*, L. R. 3 Eq. 368); and as to advertisements, see *Re Bracken*, 43 C. D. 1. **383.**

But the right of a creditor to follow assets which have been distributed without providing for his debt, being a right only in Equity, equitable consideration, if sufficiently weighty, will make it the duty of the Court not to grant that equitable relief to which under ordinary circumstances creditors are entitled. (Judgment of Cotton, L.J., in *Blake* v. *Gale*, 32 C. D. 571; *Mohan* v. *Broughton*, *supra*.) **383 a.**

This Act applies to claims of next of kin as well as to claims of creditors. And it affords protection to the sureties in an administration bond, where the administrator has pursued the course prescribed. (*Newton* v. *Sherry*, L. R. 1 C. P. D. 246.) **384.**

By the stat. 22 & 23 Vict. c. 35, s. 30, trustees, executors, or administrators may apply, by petition or

summons, upon a written statement, for the opinion, advice, or direction of a judge, on any question respecting the management or administration of the trust property, or the assets of any testator or intestate. But the procedure by originating summons under Order 55 is so much cheaper that the procedure under the above Act has been practically rendered obsolete. (Wms. on Legal Repres. 203.) **385.**

One of two or more executors may settle an account with a person who is accountable to the estate, so as to bind the others and the estate; subject to any question of his liability to the parties beneficially interested for any impropriety of conduct; and subject to this also, that if there is any fraud or gross error in the settlement of account, it may be a ground for re-opening it. (*Smith* v. *Everett*, 27 Beav. 446, 454.) **386.**

After an administration decree, an executor can do no act to vary the rights of the parties; as by giving an acknowledgment to take a debt out of the Statute of Limitations. (*Phillips* v. *Beal* (No. 2), 32 Beav. 26.) **387.**

XX. Trustees to support contingent remainders.

XX. Trustees to support contingent remainders are peculiarly considered as honorary trustees for the benefit of the family, and as entitled to exercise a discretion for that purpose. And hence a Court of Equity, except in special cases, will not order them to join in conveyances which may affect or destroy the remainders. And, on the other hand, in those instances where they have so joined, after the first tenant in tail attained his majority, no judge in Equity has gone the length of holding that he would punish them as for a breach of trust, even in a case where a Court of Equity would not have directed them

to join. Where, however, before the first tenant in tail is of age, trustees join in destroying the remainders, they are liable for a breach of trust; and so is every purchaser under them with notice. In some few cases, however, Courts of Equity have compelled such trustees to join in conveyances which may affect or destroy the remainders, under peculiar circumstances of pressure, to discharge incumbrances prior to the settlement; or in favour of creditors, where the settlement was voluntary; or for the advantage of persons who were the first objects of the settlement; as, for example; to enable the first son to make a settlement on an advantageous marriage. (St. § 995—997). But trusts of this description are now of rare occurrence, the reason being that, by the Contingent Remainders Act, 1877, contingent remainders are no longer dependent on the particular estate in all cases in which the limitation would have been valid had it been a springing or shifting use or an executory devise or other limitation; but where such limitation would be void for remoteness the remainder will still be liable to be defeated. (See Lewin, 10th ed. 444.) **388.**

XXI. Equity will aid and direct trustees.

XXI. Courts of Equity will assist trustees and protect them in the due performance of the trust, whenever they ask the aid and direction of the Court, as to the establishment, the management, or the execution of it. (St. § 961.) And in cases of substantial doubt it is best to ask for the direction of the Court. (Lewin, 10th ed. 404, 754.) **389.**

Safety of trustees.

A trustee who commits a plain breach of trust is not protected from its consequences by the circumstance that he honestly took and followed the advice and opinion of his solicitor or counsel, whatever

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

the Court. (Lewin, 10th ed. 676; *Brown* v. *Smith*, 10 C. D. 377.) **391.**

It is impossible ever to pronounce that a trustee or executor is safe from personal risk, unless he has acted in the execution of the trust under the directions of the Court, or is protected by the stat. 22 & 23 Vict. c. 35, ss. 29, 30 (*supra*, pars. 383, 385.) The Trustee Act, 1888 (51 & 52 Vict. c. 59), has, however, limited the risk by providing by sect. 8, that in any proceeding against a trustee or person claiming through him, except where the claim is founded on fraud or fraudulent breach of trust to which the trustee is party or privy, or is to recover trust property retained by the trustee, or converted by him to his own use; (a) all rights conferred by any statute of limitations shall be enjoyed as if the trustee, or person claiming through him, had not been a trustee or person claiming through a trustee; (b) if the action is brought to recover money or property, and is one to which no statute of limitations applies, the trustee or person claiming under him shall be entitled to plead lapse of time (that is, six years from the time of the cause of action arising, subject of course to the disabilities allowed by law) as a bar to such proceeding, as if the claim had been an action of debt for money had and received, but so that the statute shall run against a married woman entitled in possession for her separate use, whether with or without a restraint on anticipation, but shall not begin to run against any beneficiary until the interest of such beneficiary shall be an interest in possession. No beneficiary as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment obtained by another beneficiary, than

The Trustee Act, 1888, s. 8.

if this section had been pleaded to the action if brought by him. This section applies only to proceedings commenced after the 1st of January, 1890, and does not deprive any executor or administrator of any right or defence under any existing statute. (As to the effect of this section, see Williams on Account, 201.) **392.**

Where a person accepts the office of trustee, at the request of the *cestui que trust*, and the trust estate fails, he is entitled to be indemnified by the latter personally against all loss which may arise in the due execution of the trust. (*Jervis* v. *Wolferstan*, L. R. 18 Eq. 18; Lewin, 10th ed. 761.) **392 a.**

Notice to an executor of a possible contingent liability of his testator's estate (such as the possible insolvency of a company believed to be perfectly solvent), is not a sufficient reason for rendering it improper for him to distribute the estate without the direction of the Court; and if the liability afterwards becomes a debt, he will be entitled to call on the residuary legatees to refund the capital paid to them, but not the intermediate income. (*Jervis* v. *Wolferstan*, L. R. 18 Eq. 18; *Whittaker* v. *Kershaw*, 45 C. D. 320.) **393.**

XXII. A trustee is entitled to have the muniments of title, and, in fact, it is his duty to keep them in his possession. (Lewin, 10th ed. 830.) **394.**

XXII. Muniments of title.

Where there is any difficulty or danger, as regards the title deeds of a trust estate, or the securities of a trust fund, the Court may provide for every such emergency by ordering the deeds or the securities to be deposited in Court. (2 Sp. 46; Lewin, 1197.) **395.**

XXIII. Apart from the Trustee Act (*ante*, par. 341), if trustees are guilty of gross negligence, mismanage-

XXIII. Equity will remove

trustees, and appoint others.

ment, or misconduct, or if, from any cause, there is a failure of trustees qualified and willing to act, new trustees will be substituted by the Court. (St. § 1287, 1289.) And the Court will remove a trustee where it is satisfied that the continuance of the trustee would prevent the trusts being properly executed, as where the other trustees would not act with him; because if he were not removed, irreparable mischief might happen to the trust property. (St. § 1288; Lewin, 10th ed. 1033; *Letterstedt* v. *Broers*, 9 A. C. 371, 386.) **396.**

XXIV. Removal of executor.

XXIV. And under the Judicial Trustees Act, 1896, the Court has power to remove an executor and appoint a judicial trustee in his place. (*Re Ratcliff*, (1898) 2 Ch. 352.) **397.**

XXV. Where trustees took the fee.

XXV. Before the Wills Act (1 Vict. c. 26), ss. 30, 31, the rule was that trustees took the inheritance, in those cases where it was necessary, for the purpose of a trust created by will, that they should take the inheritance. And in the case of a devise to trustees for sale, though only a part of the inheritance was required to be sold, yet the Court considered them as trustees of the whole inheritance. (2 Sp. 295.) But it is enacted by sect. 30 "that where any real estate (other than, or not being, a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him, expressly or by implication." And by sect. 31, "that where any real estate shall be devised to a trustee without any express limitation of the estate to be taken

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

XXVII. Rendering and settlement of accounts.

XXVII. A trustee is entitled to have his accounts examined, and to have a settlement of them. He is also bound to render proper accounts, if demanded, and to be always ready with them. If the *cestui que trust* is satisfied that nothing more is due to him, he ought to close the account, and give an acknowledgment equivalent to a release, though the trustee cannot oblige the *cestui que trust* to give a release under seal. On the other hand, if the *cestui que trust* is dissatisfied with the accounts, he ought to require to have the accounts taken. He is bound to adopt one of these two courses: he is not at liberty to keep proceedings hanging for an indefinite time over the head of the trustee. (Williams on Account, 162, 209; 2 Sp. 46, 47, 921; *Kemp* v. *Burn*, 4 Gif. 348.) **400.**

Duty of rendering other information.

A trustee or executor is bound to render every necessary information, and, if he have not all the necessary information, he is bound to seek for it, and, if practicable, to obtain it. (Williams on Account, 165; *Talbot* v. *Marshfield*, L. R. 3 Ch. 622.) **401.**

Breaking up testator's establishment.

Executors must be allowed a reasonable time for breaking up a testator's domestic establishment, and discharging his servants. (*Field* v. *Peckett* (No. 3), 29 Beav. 576.) **402.**

Right of retainer.

As an executor or administrator may pay one creditor of the deceased, in preference to another of equal degree, so he has a right to retain for a debt due to him from the deceased in preference to all other creditors of equal degree with him, but not in preference to creditors of a higher degree; provided that the debt be one for which another person if the creditor could maintain an action. This right of retainer is based upon the ground that it would be absurd for the executor or administrator to sue himself in order to

obtain payment of the debt due to him. Payment into Court or to an official receiver does not bar the right. But there is no retainer against assets got in by a receiver. (Williams on Legal Repres. 115; Brett's L. C. 165; *Re Rhoades*, (1899) 2 Q. B. 347; *Re Langley*, 68 L. J. Ch. 361.) **402 a.**

CHAPTER VIII.

OF THE SPECIFIC PERFORMANCE OF AGREEMENTS AND DUTIES NOT ARISING FROM TRUSTS.

I. Remedy at law.

I. BY the Common Law, if a party who ought to perform a contract or covenant, failed to do so, no redress could be had, except in damages. (St. § 714.) **403.**

[I. A specific performance will be decreed in Equity, where damages would not afford compensation.

II. In Equity a specific performance of a contract, covenant, or duty, will be decreed, where damages would not afford an exact compensation for the non-performance thereof, whatever may be the form or character of the instrument containing such contract or covenant, or giving rise to such duty. And hence it will be decreed in all cases of contracts for the purchase of land; because the local character, vicinage, soil, easements, or accommodations of the land, may give it a peculiar value in the eyes of the purchaser; so that damages, which would enable the purchaser to buy other land, of the very same marketable value, would not or might not be a complete compensation. And if a bond is entered into, with a penalty, Equity will not regard it as an option to do the act required or pay the penalty, but as an agreement to do the act at all events, of which it will enforce a specific performance. (St. § 715, 717, 718, 739—742, 746, 751, 783—786, 850, 1425.) **404.**

III. Not where they would afford a

III. But Equity will not interfere where damages at Law would amount to a complete compensation.

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

personal and executory, but in Equity, as performed, in regard to consequences.

simply as personal and executory contracts and covenants, and not as attaching to the property in any manner as a present or future charge or otherwise. (See St. § 714, 790.) But in Equity, from the time of a contract for the sale of land, the vendor, and his heirs, and any one claiming as a subsequent purchaser under him, become, as to the land, trustees for the purchaser and his heirs, devisees, or vendees, provided that in case of the vendor's death after the 31st of December, 1881, if the contract is enforceable against his heir or devisee, his personal representatives can convey the land in order to give effect to the contract (44 & 45 Vict. c. 41, s. 4; and see now the wider provisions of the Land Transfer Act, 1897, ss. 1, 2); and the purchaser and (except so far as the case is altered by Locke King's Act (40 & 41 Vict. c. 34), *infra*, par. 486) his personal representatives become, as to the money, trustees for the vendor and his personal representatives (St. § 788, 789, 790); for, in case of the purchaser's death, his executors must pay the purchase-money and his heir is entitled to the estate, but since Locke King's Act (40 & 41 Vict. c. 34), the estate in the hands of the heir is liable for the repayment to the executors of the purchase-money paid by them. (*Re Cockcroft*, 24 C. D. 94; *Re Kidd*, (1894) 3 Ch. 558.) **406.**

A vendor of land may receive the balance of the purchase-money, and convey the estate to the purchaser, without regard to the receipt of a mere notice that the purchaser had agreed to assign the contract. (*McCreight* v. *Foster*, L. R. 5 Ch. 604; *S. C. nom. Shaw* v. *Foster*, 5 H. L. 321.) **407.**

Every payment of purchase-money to the vendor

transfers, in Equity, to the purchaser, a corresponding proportion of the estate. And hence, where the purchase-money is to be paid by instalments, and the purchaser has paid some instalments, and then declines to complete, and is absolved from the liability to complete the purchase, owing to the default of the vendor, the purchaser has a lien on the estate for the money he has so paid, as against the vendor, and every mortgagee of the vendor who simply gives him notice of his mortgage, without attempting to prevent the completion of the contract or the payment of the instalments. (*Rose* v. *Watson*, 10 H. L. C. 672.) **408.**

Land directed to be sold, and money directed to be invested in land.

In like manner, land directed to be sold and turned into money, is reputed as money; and money directed to be invested in land has in Equity many of the qualities of real estate, and in particular is descendible and devisable as such. And this is the case whether the direction be by will, by conveyance or assignment, by marriage articles, by settlement, or otherwise, and whether the land be actually conveyed, or only agreed to be conveyed, and whether the money be actually paid to trustees for the purpose, or only covenanted to be so paid. (St. § 790; *Fletcher* v. *Ashburner*, 1 Wh. & Tu. 327 *et seq.*; *Dixie* v. *Wright*, 32 Beav. 662.) But the person for whose benefit the conversion is to be made may elect to take the property in its unconverted state. And this election he may make as well by acts or declarations clearly indicating a determination to that effect as by an application to a Court of Equity. (St. § 793, 1213.) But where it has vested in two or more persons, one cannot elect without the others or other. (*Holloway* v. *Radcliffe*, 23 Beav. 163.) **409.**

In general, Courts of Equity do not incline to change the quality of the property as the testator or intestate has left it, unless there is some clear act or intention by which he has unequivocally fixed upon it throughout a definite and different character. (St. § 1214, 1214 a.) **410.**

V. Specific performance decreed between persons claiming under the parties.

V. Where the specific execution of a contract respecting lands would have been decreed between the parties, it will be decreed between all parties claiming under them in privity of estate, representation, or title, unless other controlling equities have intervened. (St. § 788.) And where on the death of a vendor of freeholds an enforceable contract for sale is subsisting, his personal representative, who is empowered to convey the lands to the purchaser (under the Conveyancing Act, 1881, s. 4), may maintain a suit against the purchaser for a specific performance. (*Hoddel* v. *Pugh*, 33 Beav. 489.) And, before Locke King's Act (40 & 41 Vict. c. 34), *infra*, pars. 481, 485, 486), where the heir of the purchaser came into Equity for a specific performance, he might in general require the purchase-money to be paid out of the personal estate of the purchaser in the hands of his personal representatives. (St. § 790.) **411.**

Purchaser's heir may require the money to be paid out of the personal estate.

VI. Noncompliance with terms of agreement in non-essential particulars, or slight misdescription.

VI. If the terms of an agreement, either through negligence or otherwise, have not been complied with in particulars which do not pertain to the essence of the contract, or if there has been a slight misdescription of the property, specific performance will nevertheless be decreed in favour of the party chargeable with the non-compliance or misdescription, if compensation can be made for an injury that may have been occasioned by the non-compliance or for the misdescription of the property. (See St. § 747,

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

VII. Want of title, or a substantial misdescription, or want of reasonable compliance with agreement.

VII. Where the vendor is incapable of making a complete title to all the property sold, or there has been a substantial misdescription in important particulars, or the terms have not been reasonably complied with on the part of the vendor, Courts of Equity will generally allow the purchaser an election to proceed with the purchase, *pro tanto*, or abandon it altogether; and in the former case he will be entitled to have the contract specifically performed as far as the vendor can perform it, and to have an abatement made out of the purchase-money or a compensation. This right to an abatement may be excluded by express condition, even for a deficiency of nearly half, if the purchaser seeks specific performance, though the Court would not enforce specific performance against him (St. § 779; *Hughes* v. *Jones*, 3 D. F. & J. 307, 315; *Cordingley* v. *Cheeseborough*, 4 D. F. & J. 379; *Hooper* v. *Smart*, L. R 18 Eq. 683; *In re Terry and White*, 32 C. D. 14); and where the land is less than the quantity stated by a very large proportion, the course is to allow the purchaser to rescind the contract. (*Aberaman Iron Works* v. *Wickens*, L. R. 4 Ch. 101.) **415.**

But where there is a substantial misdescription, as where copyhold is described as freehold, or *vice versâ*, the vendor cannot compel specific performance. (*Hart* v. *Swaine*, 7 C. D. 42; *Re Beyfus*, 39 C. D. 110.)

On the other hand, where the misdescription is not substantial, the Court will enforce the contract at the suit of the vendor, compelling him only to make compensation to the purchaser; and this is generally the case where there is an error as to quantity. (*Shackleton* v. *Sutcliffe*, 1 De G. & S. 609; *Scott* v. *Hanson*, 1 R. & M. 128.) But such partial perform-

ance will not be compelled where there has been fraud or wilful misrepresentation (*Price* v. *Macauley*, 2 D. M. & G. 339, 344), nor where the compensation cannot be estimated (*Brooke* v. *Rowntlwaite*, 5 Ha. 298), nor where the purchaser, at the time of entering into the contract, knew of the vendor's limited title. (*Castle* v. *Wilkinson*, L. R. 5 Ch. 534.) And if a person professes to be the owner of the fee simple, and undertakes to sell it, but he is not able to do so. and the purchaser was not aware of his inability, he must convey as much as he can, if the purchaser desires it, and submits to an abatement of the purchase-money. (*Barker* v. *Cox*, 4 C. D. 464; *M'Kenzie* v. *Hesketh*, 7 C. D. 675.) **416.**

VIII. Where a man has performed a valuable part of an agreement, but is rendered incapable of performing the remainder, by a subsequent accident, without any default on his part, Courts of Equity will enforce the agreement in his favour (allowing such compensation as may be just), in case he is not *in statu quo* as to the part which he has performed, but not otherwise. (St. § 772, 796, 797.) **417.**

VIII. Accidental incapacity of performing the remainder of an agreement.

IX. In some cases, a performance of an agreement will be decreed, not according to the letter of the contract, if that would be unconscientious, but according to the change of circumstances. (St. § 775.) **418.**

IX. Performance *sub modo*.

X. Of course, an agreement entered into by parties incompetent to contract, such as infants and lunatics, will not be enforced against them. Nor will it be enforced in favour of such parties; because the remedy ought to be mutual. (St. § 787, 751, note; *Vansittart* v. *Vansittart*, 4 K. & J. 62; *Imperial Loan Co.* v. *Stone*, (1892) 1 Q. B. 509.) **419.**

X. Agreement not enforced where the parties were incompetent to contract.

XI. Nor will Courts of Equity enforce a contract,

XI. Nor where the

terms are not certain and definite.

although it is written, if the terms are not certain and definite in themselves: for, in such a case, they might decree precisely what the parties did not intend; and besides this, if any terms are to be supplied, it must be by parol evidence; and the admission of such evidence would let in all the mischiefs intended to be guarded against by the Statute of Frauds. (St. § 767; *Taylor* v. *Portington*, 7 D. M. & G. 328.) But if a complete contract with certain and definite terms can be collected from correspondence between the parties, specific performance of such a contract will be decreed, even although it was agreed that a formal contract should be prepared embodying the same terms, unless the acceptance of the contract be subject to the condition that a formal contract should be prepared and agreed upon, so that until that condition is fulfilled there is no concluded contract. (*Rossiter* v. *Miller*, 3 A. C. 1124; *Hussey* v. *Horne-Payne*, 4 A. C. 311. See Brett's Lead. Cas. 285 *et seq.*) **420.**

XII. Enforcing voluntary deeds.

XII. Courts of Equity will enforce an obligation imposed by will, without any consideration. (2 Sp. 255.) But they will not enforce, either against the party himself, or any volunteers claiming under him, any contract or any imperfect gifts *inter vivos* (not being donations *mortis causâ*), or imperfect assignments of debts or other property, or executory trusts raised by a covenant or agreement, or defective or imperfect settlements or conveyances, which are not founded on a valuable consideration, even though the transaction be founded on a meritorious consideration, as in the case of a provision for a wife or child; that is, Equity will not enforce them so far as something is sought beyond that which may be recovered under them at Law, although it will, if

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

valuable consideration to a settlement has exacted, as part of the contract, that certain property shall be so settled as that the property, whether belonging to one of the parties or the other, shall go to some near relative, in the event of the intended limitation to the issue of the marriage failing to take effect. (2 Sp. 281.) But it would appear that, if the party exacting the stipulation releases the other, the stranger cannot enforce it, unless his condition in life has been altered by the stipulation. (See 2 Sp. 280, 281.) **422.**

A grant or obligation which is voluntary as regards the grantee or obligee, ceases to be voluntary where, with the privity of the grantor or obligor, it forms the consideration on the faith of which a marriage is contracted and a settlement executed. (*Payne* v. *Mortimer*, 1 Gif. 118.) **423.**

XIII. No specific performance, where it would be morally wrong or inequitable.

XIII. Equity will not interfere, (1.) Where, in ordinary cases, the contract has become incapable of being substantially performed on the part of the person asking relief (St. § 736), or has been violated by him. (*Telegraph, Despatch, &c. Co.* v. *McLean*, L. R. 8 Ch. 658.) (2.) If the plaintiff has been guilty of any negligence affecting the essence of the contract (St. § 771); or if there has been laches on the part of the plaintiff, whether vendor or purchaser, either in executing his part of the contract or in applying to the Courts; for a party cannot call upon a Court of Equity for specific performance unless he has shown himself ready, desirous, prompt, and eager. (Fry, 502; *Levy* v. *Stogden*, (1899) 1 Ch. 5; *Mills* v. *Haywood*, 6 C. D. 202.) (3.) If specific performance is sought by the vendor, and there is a substantial defect in the title of the whole or the principal part of the property, not remediable before the decree. (4.) If there is a

substantial misrepresentation or misdescription of the estate or property, in a matter unknown to the purchaser, and in regard to which he was not put upon inquiry; or if it appears upon the evidence that there was, in the description of the property, a matter in which a person might *bonâ fide* make a mistake, and he swears positively that he did make a mistake, and his evidence is not disproved, the Court will not enforce the specific performance against him. (*Dimmock* v. *Hallett*, L. R. 2 Ch. 21; St. § 778; *Denny* v. *Hancock*, L. R. 6 Ch. 1; *Stewart* v. *Kennedy*, 15 A. C. 108.) Where the conditions of sale of a public-house state that it is in the occupation of a tenant, and a brewer agrees to buy it for the sale of his beer, he cannot be compelled to complete his purchase, if he finds that it is under lease to another brewer for a term, of which some years are unexpired. (*Caballero* v. *Henty*, L. R. 9 Ch. 447.) (5.) If the title is doubtful, in the opinion of the Court, although the Court itself may have a favourable opinion of the title; for the Court has no means of settling the question as against adverse claimants, or of indemnifying the purchaser, if its own opinion should turn out not to be well founded. (*Pyrke* v. *Waddingham*, 10 Hare, 7, 10; *Sykes* v. *Sheard*, 2 D. J. & S. 6; *Mullings* v. *Trinder*, L. R. 10 Eq. 449; *Palmer* v. *Locke*, 18 C. D. 381.) But if the Court is clearly of opinion that the title is good, it will not be deterred from enforcing specific performance, by the fact that one of the conveyancing counsel of the Court, or a judge of the Court below, considered the title doubtful. (*Hamilton* v. *Buckmaster*, L. R. 3 Eq. 323; *Beioley* v. *Carter*, L. R. 4 Ch. 230; *Radford* v. *Willis*, L. R. 7 Ch. 7; *Bell* v. *Holtby*, L. R. 15 Eq. 178.) (6.) If the character and condition of the property

have been so altered that the terms of the contract are no longer applicable to the existing state of things. (St. § 750.) (7.) If the defendant can show that, by fraud or mistake, the thing bought is different from what he intended; or if there was a great mistake as to the price. (*Webster* v. *Cecil*, 30 Beav. 62.) (8.) If the estate bought is of a different tenure; as if it was described as freehold, when in fact it is copyhold (*Ayles* v. *Cox*, 16 Beav. 23); or copyhold enfranchised under an Act of Parliament reserving to the lord his mineral rights (*Upperton* v. *Nickolson*, L. R. 6 Ch. 436, 444); or if it was described as freehold when leasehold, or as copyhold when freehold (*Ayles* v. *Cox*, 26 Beav. 23). (9.) If material terms have been omitted in the agreement, or there has been a variation of it by parol, (St. § 770.) (10.) If the contract is founded in imposition, surprise, misrepresentation, undue influence, or fraud of any kind; as where property was put up for sale to the highest bidder without mentioning any reserve, and the auctioneer and an agent for the vendor both bid against each other (*Mortimer* v. *Bell*, L. R. 1 Ch. 10; 30 & 31 Vict. c. 48); or where a purchaser, who is better informed as to the value of the property than the vendor, hurries the vendor into an agreement, without giving him an opportunity of inquiry or advice. (*Wulters* v. *Morgan*, 3 D. F. & J. 718.) But the fact that the purchaser at a sale by auction was induced by a fictitious bidding, unknown to the vendor, to purchase for more than he had bid previously to the fictitious bidding, and more than the reserved price, has been held to be no defence to an action for specific performance by the vendor. (*Union Bank* v. *Munster*, 37 Ch. D. 51.) (11.) If, after the day fixed for performance is past, specific performance is sought by the

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

And where there is a sufficient ground why specific performance should not be enforced against a purchaser, the Court will not enforce it, though something else than that may be his actual motive for resisting specific performance. (*Denny* v. *Hancock*, L. R. 6 Ch. 1.) **425.**

The Court will not refuse to decree the specific performance of an agreement on the ground that one of the contracting parties has mistaken its clear legal effect. (*Powell* v. *Smith*, L. R. 14 Eq. 85.) **426.**

Notwithstanding a party may have taken possession before the fulfilment of the promises of the opposite party to do necessary works, he may set up the non-fulfilment of such promises as a defence to a specific performance of the agreement to take the property. (*Lamare* v. *Dixon*, L. R. 6 H. L. 414.) **427.**

XIV. Nor will Equity enforce assignments, contracts, or covenants, against public policy: as in the case of,

1. Assignments by officers of the government.

XIV. In like manner, Equity will not enforce assignments, contracts, or covenants which are against public policy. **428.** And hence,

1. An officer in the army or navy, or other officer of the government, cannot assign his future accruing pay, or other remuneration connected with the right of the government to future services from him; because it is contrary to the honour, dignity, and interest of the State that its servants should be in danger of being reduced to poverty by anticipating these resources which were intended to place them in a suitable condition of respectability, comfort, and efficiency. (See St. § 769, 1040 c—1040 f, and notes.) But a man may assign a pension given him entirely for past services: and prize money may be assigned. (2 Sp. 867.) And an assignment of a pension granted by the late East India Company is valid. (*Heald* v. *Hay*, 3 Gif. 467.) And it has been held that the

pension payable to a former officer of the East India Company out of the revenues of India since the Transfer Act (21 & 22 Vict. c. 106) may be assigned. (*Carew* v. *Cooper*, 4 Gif. 619.) **429.**

2. On principles of public policy, Equity will not uphold assignments which involve champerty, or maintenance, or buying of pretended titles. (St. § 1049; *De Hoghton* v. *Money*, L. R. 2 Ch. 169; *Reynell* v. *Sprye*, 1 D. M. & G. 660.) Champerty (*campi partitio*) is properly a bargain between a plaintiff or defendant in a cause, and another person who has no interest in the subject in dispute (*campum partire*), to divide between them the land or other property sued for, if they prevail, in consideration of the other person carrying on the suit at his own expense. Maintenance, of which champerty is a species, is properly an officious intermeddling in a suit which in no way belongs to one, by maintaining or assisting either party with money or otherwise to prosecute or defend it. Each of these is punishable both at the Common Law and by statute, as tending to keep alive strife and contention, and to pervert the remedial process of the Law into an engine of oppression. And the stat. 32 Hen. VIII. c. 9, prohibits the transfer of any right or title to hereditaments, unless the seller or his ancestors, or those by whom he claims, have been in possession of the same, or of the remainder or reversion thereof, or of the rents and profits thereof, for one year next before the sale. (St. § 1048, and note, and 1048 a; 2 Sp. 869; *Hilton* v. *Woods*, L. R. 4 Eq. 432.) And Courts of Equity enforce all the principles of Law upon these points. Exceptions are made, however, to the general rule against champerty and maintenance, in the case of

2. And those involving champerty, maintenance, or buying of pretended titles.

father and son, or of an heir-apparent, or of the husband of an heiress, or of a master and servant, or the like. (St. § 1049; 2 Sp. 870, 871.) **430.**

3. Nor assignments of mere naked rights to litigate.

3. Upon the same principle of not giving any encouragement to litigation, especially when undertaken as a speculation, Equity will not enforce the assignment of a mere naked right to litigate, that is, a right which, from its very nature, is incapable of conferring any benefit except through the medium of a suit; such as a mere naked right to set aside a conveyance for fraud. (St. § 1040 g, and note; 2 Sp. 868, 869, 872. See *Hill* v. *Boyle*, L. R. 4 Eq. 260.) The right to complain of a fraud is not a marketable commodity; and if it appears that an agreement for purchase has been entered into for the purpose of acquiring such a right, the purchaser cannot call upon the Court for a specific performance of the agreement. (*De Hoghton* v. *Money*, L. R. 2 Ch. 164.) But a person may take an assignment of the whole interest of another in a contract, or security, or property, which is in litigation, provided he does not make any advance beyond the mere support of the interest which he has so acquired. Thus, notwithstanding the statute 32 Hen. VIII. c. 9, above referred to, an equitable interest under a disputed contract for the purchase of real estate may be the subject of a sale. If such an interest is sold by the purchaser under such original contract, he becomes in Equity a trustee for his sub-purchaser, and must permit the sub-purchaser to use his name in legal proceedings for obtaining the benefit of the contract. And without entering into any covenants for the purpose, such sub-purchaser is obliged to indemnify the original purchaser from all the acts which he

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

30 & 31 Vict. c. 144, and 31 & 32 Vict. c. 86. And in the case of an assignment of a bond or other debt which formed an exception to the above-mentioned rule, it was necessary to sue in the name of the original creditor; the person to whom it is transferred being regarded rather as an attorney than as an assignee. (St. § 1056.) **432.**

is not adopted in Equity.

Even before the late Statute of Wills, a devise of a possibility coupled with an interest, or of a contingent interest, whether in real or personal estate, was good at Law. (2 Sp. 854.) And a covenant to settle, charge, dispose of, or affect property to be hereafter acquired, will operate in Equity upon the property so afterwards acquired. (2 Sp. 254.) And Courts of Equity gave effect to assignments, for valuable consideration, of trusts and possibilities of trusts, and contingent interests, whether in real or personal estate, contingent gains, such as freight to be earned or a cargo to be procured, and even mere expectancies of heirs to their ancestor's estate, and *choses in action*. For such an assignment of a *chose in action* is considered in Equity as amounting to an agreement to permit the assignee to make use of the name of the assignor at Law, in order to recover the debt, or to reduce the property into possession; or as a contract entitling the assignee to sue in Equity in his own name, and enforce payment of the debt directly against the debtor, whether he has assented or not, making him, as well as the assignor, if necessary, a party to the action. (See St. § 1040, 1040 c, 1044, 1055, 1057.) And such assignments of contingent interests, possibilities and expectancies, are regarded in Equity as amounting to contracts to assign, when the interest becomes vested: and when the interest does so

become vested, the claim of the assignee is enforced, not indeed as a trust, but as a right under a contract. (St. § 1040 b.) **433.**

Assignment of debts and choses in action.

By the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, (6) "Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal *chose in action*, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive, or claim such debt or *chose in action*, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or *chose in action* from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same without the concurrence of the assignor;" and such notice may be given at a subsequent date even after the death of the assignor, but the assignment will be subject to the equities arising up to the date of the notice. (*Walker* v. *Bradford Old Bank*, 12 Q. B. D. 511; *Western Waggon Co.* v. *West*, (1892) 1 Ch. 271.) "Provided always, that if the debtor, truster, or other person liable in respect of such debt or *chose in action* shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or *chose in action*, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity

with the provisions of the Acts for the relief of trustees." **434.**

What amounts to an assignment.

To come within that section an assignment must be an absolute assignment by writing under the hand of the assignor. But an absolute assignment may be made of moneys not yet become due. (*Brice* v. *Bannister*, 3 Q. B. D. 569.) And with respect to what amounts to an assignment, it may be stated that, as a general rule, anything written, said, or done, in pursuance of an agreement, and for valuable consideration, or in consideration of an antecedent debt, to place a *chose in action* or fund out of the control of the owner, and appropriate it in favour of another person, amounts to an equitable assignment. (2 Sp. 855, 860, 861, 907; *Clowne* v. *Baylis*, 31 Beav. 351.) So that an agreement between a debtor and a creditor, that the debt shall be paid out of a specific fund coming to the debtor, will operate as an equitable assignment. And an order given by a debtor to his creditor upon a person owing money to such debtor, or holding funds belonging to him, directing such person to pay the creditor out of such money or funds, will amount to an irrevocable equitable assignment of such money or funds, or a sufficient part thereof, if made in consequence of a direct agreement. *Diplock* v. *Hammond*, 2 Sm. & Gif. 141; *Watson* v. *D. Wellington*, 1 R. & M. 602; *Malcolm* v. *Scott*, 3 Ha. 39; *Buck* v. *Robson*, 3 Q. B. D. 686; *Harding* v. *Harding*, 17 Q. B. D. 442.) And if such money or fund is handed over to the assignor by the person so ordered to pay, he will be made to pay it over again to the assignee. (*Jones* v. *Farrell*, 1 D. & J. 208; *Brice* v. *Bannister*, 3 Q. B. D. 569.) But a mere mandate will not amount to an equitable assignment or appropriation, for such

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

ownership remaining in a person who in fact is not the owner, or, in case of voluntary assignments, even as against the assignor himself. Hence notice of the assignment of a debt should be given to the debtor or his legal personal representative or other the legal hand to receive the debt (*Stephens* v. *Green*, (1895) 2 Ch. 148), and such notice, in the case of a debt, for instance, is for many purposes tantamount to possession, for the notice perfects the title and gives a complete right *in rem*; and this doctrine of equity of the necessity for notice in such cases is sometimes called the rule in *Dearle* v. *Hall* (3 Russ. 1). And if after notice the debtor pays away the debt to any other than the assignee who has given notice, he will be liable to pay it over again out of his own moneys to the assignee. (*Brice* v. *Bannister*, 3 Q. B. D. 569; *Ward* v. *Duncombe*, (1893) A. C. 369.) The notice may be informal, if otherwise sufficient (*Newman* v. *Newman*, 28 C. D. 674); but as against the insurance office itself, notice of the assignment of a policy of insurance must be the formal notice prescribed by 30 & 31 Vict. c. 144 (*Newman* v. *Newman*, *supra*). It is not necessary that the notice should be given in the lifetime of the assured: the principle is that it is sufficient if the notice is given to the party having the fund, while it remains in his possession. (*In re Russell's Policy Trusts*. L. R. 15 Eq. 26.) If a policy of insurance is deposited with a person to secure an equitable mortgage to him, he will have priority over a second equitable mortgagee, though the first did not give notice to the company, and the second mortgagee did give notice to the company. For one equitable mortgagee without possession of the deeds must be postponed to another who has the deeds. (*Spencer*

v. *Clarke*, 9 C. D. 137, 143.) But in general, in assignments of equitable interests other than equitable estates, he who gives formal notice to the holder of the fund has priority over him who does not. In general, notice to one of several obligors or trustees is sufficient, at least, during the lifetime of that trustee. (Lewin, 864; Brett's L. C. 215; *Low* v. *Bouverie*, (1891) 3 Ch. 82; *Ward* v. *Duncombe*, (1893) A. C. 369.) And notice to the solicitor of the trustees is sufficient if the solicitor be actually, either expressly or impliedly, authorized as agent to receive notices. (*Saffron Walden Building Society* v. *Rayner*, 14 C. D. 406; and see Conveyancing Act, 1882, s. 3.) Where the assignor is one of the trustees the notice which he has is not sufficient, but where the assignee is one of the trustees the notice which he has is sufficient, for he will, of course, for his own protection take care to apprise future incumbrances of the assignment to himself. (Lewin, 865; *Browne* v. *Savage*, 4 Drew. 635; *Newman* v. *Newman*, 28 C. D. 674.) In the case of an assignment of an interest in a fund in Court, the assignee should obtain a stop order. (As to the effect of a stop order see Lewin, 872; *Mutual Life Assoc.* v. *Langley*, 32 C. D. 460, 470; *Mack* v. *Postle*, (1894) 2 Ch. 449.) In the case of an assignment of costs of suit not yet ordered to be paid, notice should be given to the trustees to whom they would be payable. (*Day* v. *Day*, 1 D. & J. 144.) In the case of an assignment of freight, the assignee should give notice to the charterers of the assignment. (*Brown* v. *Tanner*, L. R. 3 Ch. 597.) In the case of shares in a company, notice must be given to the company. (*Ex parte Boulton*, 1 D. & J. 163; and see, as to the effect of such notices on the rights of the company, *Société*

Générale v. *Tramways Union Co.*, 11 A. C. 20; *Colonial Bank* v. *Whinney*, *ib.* 426; *Re Hampshire Land Co.*, (1896) 2 Ch. 743; *Hopkinson* v. *Rolt*, 9 H. L. C. 514.) But verbal notice to the directors, in the course of the transaction of the business of the company, is sufficient. (*Ex parte Agra Bank*, L. R. 3 Ch. 555.) If the notice be by parol it must be clear and distinct (Lewin, 870), or sufficient to bring to the mind of the trustee an intelligent apprehension of the nature of the dealing with the trust property so that he may regulate his conduct accordingly. (*Lloyd* v. *Banks*, L. R. 3 Ch. 488, 490; *Saffron Walden* v. *Rayner*, 14 C. D. 406.) In order to maintain his priority, it is sufficient if a prior assignee of the proceeds to arise from the sale of an officer's commission gives notice to the army agent of the regiment before the money has reached the agent's hands, though a subsequent assignee gave notice first. (*Buller* v. *Plunkett*, 1 Johns. & H. 441; see also *Webster* v. *Webster*, 31 Beav. 393; *Somerset* v. *Cox*, 33 Beav. 634; *Addison* v. *Cox*, L. R. 8 Ch. 76.) And here it may be added that in general notice through an agent will not be imputed where the circumstances are such as to raise a conclusive presumption that he would not communicate the fact to his principal. (*Cave* v. *Cave*, 15 C. D. 639, 644.) **436.**

Payments to assignee of a debt.

When a debt not legally assignable has been equitably assigned by the creditor to a purchaser for valuable consideration, and the debtor has had notice of the assignment, all payments which he may thereafter make to the purchaser on account of the debt must be considered to be well made, so far at least as the debtor is concerned, notwithstanding that the purchaser may in fact, after notice of his

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

Equity compel arbitrators to make an award. Nor, when they have made an award, will Equity compel them to disclose the grounds of their judgment. (St. § 1457; *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 H. L. 418.) Nor will it interfere in the case of an agreement which was agreed to be wholly or partly determined by arbitrators who have not yet arbitrated. (*Darbey* v. *Whitaker*, 4 Drew. 134.) The Court has no power to grant an injunction to restrain a person from proceeding to arbitration in a matter beyond the agreement to refer, although the arbitration may be futile and vexatious (*North London Rail.* v. *Great Northern Rail.*, 11 Q. B. D. 30); and the Court has not even jurisdiction to restrain a party from proceeding without any authority whatever in an arbitration in the name of another, because the objection may be taken in an action to enforce the award. (*Farrar* v. *Cooper*, 44 C. D. 323; *London and Blackwall Rail.* v. *Cross*, 31 C. D. 354.)

But an inequitable refusal of a plaintiff to submit to arbitration according to contract may disentitle him to relief in Equity, on the ground that he who seeks Equity must do Equity. (*Cheslyn* v. *Dalby*, 2 Y. & C. Ex. 170.) **440.**

Courts of Equity will enforce a specific performance of an award which is unexceptionable, and in which the parties have acquiesced. (St. § 1458, 1459; Arbitration Act, 1889, s. 12.) And where both parties have for a long time acquiesced in or acted upon an award, even though objections might have been originally urged against it, an application to set it aside will not be entertained. (St. § 1459.) But where an arbitrator has been guilty of unfairness or partiality, relief will be given against his award.

(*Ormes* v. *Beadel*, 2 Gif. 166.) But there must be proof, and not merely suspicion, of this. (*Moseley* v. *Simpson*, L. R. 16 Eq. 226.) And where it appears that an arbitrator is going wrong in point of law, even in a matter within his jurisdiction, the Court has power to give leave to revoke the submission to arbitration; but it will only do so under exceptional circumstances. (*James* v. *James*, 23 Q. B. D. 12; *East and West India Dock Co.* v. *Kirk*, 12 A. C. 738.) **441.**

On the question of setting aside an award, Courts of Law and Equity have acted on the same principles. (*Moseley* v. *Simpson*, L. R. 16 Eq. 226.) Any kind of irregularities may be waived by the parties. (*Moseley* v. *Simpson*, L. R. 16 Eq. 226.) **442.**

The arbitrator must not have any interest in the matter in dispute. (*Beddow* v. *Beddow*, 9 C. D. 89.) And where there is an engagement between an architect and his employer that the total outlay shall not exceed a certain amount, and that engagement is concealed from the builder, it annuls a proviso for referring all matters to the arbitration of the architect, so far as the builder is concerned. (*Kimberley* v. *Dick*, L. R. 13 Eq. 1, 19.) **443.**

XV. Courts of Equity will enforce a specific performance of a parol contract within the Statute of Frauds— **444.**

XV. Parol contracts enforced.

1. Where it is fully set forth by the plaintiff, and it is admitted by the answer of the defendant, and the defendant does not insist on the Statute as a bar. For, under these circumstances, there can be no fraud. And, although there may indeed be a temptation to the defendant to commit perjury; yet that is the case with every answer, where the defendant's

1. When set forth by plaintiff, and admitted.

interest is concerned. And as the defendant does not insist on the Statute, he may be deemed to have waived it; and the rule is, *Quisque renuntiare potest juri pro se introducto.* (St. § 775—777, and notes.) But if the defendant insists on the Statute as a bar, although he confesses the agreement, Courts of Equity will not enforce it; for that would be contrary to the express provisions of the Statute. (St. § 757; *James* v. *Smith*, (1891) 1 Ch. 384.) **445.**

2. Where the reducing it to writing was prevented by fraud.

2. Equity will also enforce such a parol agreement where it was intended to be reduced to writing according to the Statute, but that has been prevented by the fraud of one of the parties; for the Statute was meant to prevent fraud, and not to be used as an engine of fraud. (St. § 768; *Rochefoucauld* v. *Boustead*, (1897) 1 Ch. 196.) **446.**

3. Where partly performed.

3. A parol agreement will also be enforced whether it is an original agreement or a variation of or substitute for a prior written agreement, where it is a completed agreement, and it has been partly carried into execution, and it is shown, by satisfactory evidence, to be clear, definite, and unequivocal in all its terms. (St. § 759, 764, 770, note; *Lester* v. *Foxcroft*, 2 Wh. & Tu. 460, *et seq.*; *Maddison* v. *Alderson*, 8 A. C. 467; *McManus* v. *Cooke*, 35 C. D. 681; Brett's L. C. 290.) **447.**

What is deemed part performance.

With regard to the acts which will be deemed a part performance, so as to take the case out of the operation of the 4th section of the Statute of Frauds, in an action for specific performance of a contract, they should be such as are clearly and exclusively referable to a complete agreement, and must have been done with no other view than to perform such agreement (St. § 762;

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

paying of the purchase-money will not be deemed such a part performance as will take the case out of the Statute without parol testimony to connect the deposit, securing, or payment with the alleged contract; for the money can be recovered back. (St. § 760; *Britain* v. *Rossiter*, 11 Q. B. D. 123.) Nor will the delivery of an abstract of title, giving directions for conveyances, going to view the estate, fixing upon an appraiser to value stock, making valuations or admeasurements, registering conveyances, and acts of the like preliminary or auxiliary and equivocal character, be considered as a part performance of the agreement, so as to take it out of the Statute. (St. § 762; *Maddison* v. *Alderson*, *supra*.) Nor will an act which is explicable on other grounds, *e.g.*, the mere holding over by a tenant, unless qualified by the payment of a different rent. (*Wills* v. *Stradling*, 3 Ves. 381.) Nor where the act is merely negative or is a condition precedent. (*Maddison* v. *Alderson*, 8 A. C. 467; Brett's L. C. 291.) Nor is marriage of itself an act of part performance; for the Statute itself enacts that every agreement in consideration of marriage must be in writing. (*Caton* v. *Caton*, L. R. 1 Ch. 137.) But if a father, in consideration of the marriage of his daughter, makes an oral promise to give his daughter a house, and after the marriage he puts his daughter into *possession*, and she remains in possession till his death, the possession prevents the Statute of Frauds being set up as a bar to the proof of the parol contract; and it was held that any incumbrance on the house must be paid out of the settlor's estate. (*Ungley* v. *Ungley*, 5 C. D. 887; *cf. Synge* v. *Synge*, *post*, par. 450.) **448.**

XVI. Parol variations or additions.

XVI. With respect to a parol variation or addition, it is to be observed that evidence of it was totally inadmissible at Law; and that the most unequivocal proofs of it will be required in Equity: and, in general, it was formerly only allowed to be used by a defendant in resisting a specific performance: not by a plaintiff in compelling such performance. The reason of this distinction being that the Statute does not say that a written agreement shall bind, so as to prevent a defendant from insisting on a parol variation thereof, but only that a parol agreement shall not bind. There were, however, exceptions to this doctrine of the inability of a plaintiff to make use of a parol variation. (1.) Where there had been such a part performance of the parol portion of the agreement as would enable the Court to decree a specific performance in the case of an original and independent agreement. (2.) Where an omission had occurred by fraud; and in cases not within the Statute of Frauds, where there had been a clear omission by mistake. (3.) Where the defendant set up a parol variation or addition, and the plaintiff sought a specific performance of the contract with such variation or addition. (See St. § 770, note, and 770a; *Woolam* v. *Hearn*, 2 Wh. & Tu. 513.) The distinction, however, since the Judicature Act, 1873, s. 24 (7), no longer exists; and where the Statute of Frauds does not create a bar, a plaintiff may now in one and the same action obtain upon parol evidence of mistake, rectification of a written contract, and specific performance of the contract as rectified. (*Olley* v. *Fisher*, (1897) 1 Ch. 25; Fry, 375.) It may be added here that it is permissible by parol evidence to prove the abandonment of a written contract (Fry, 470); and where an alleged contract in writing is sued on,

the defendant may show by parol evidence that, notwithstanding the writing, there was no contract. (*Pattle* v. *Hornibrook*, (1897) 1 Ch. 25.) **449.**

XVII. Promise enforced.

XVII. It is the practice of Courts of Equity to enforce strict truth in the dealings of one man with another; so that if one man makes a deliberate promise to another, with a view to induce that other to do a particular act, which, relying on such promise, he accordingly does, the promissor shall be compelled to make good his word. (M. R. in *Loxley* v. *Heath*, 17 Beav. 532; *Laver* v. *Fielder*, 32 Beav. 1, 12; *Coverdale* v. *Eastwood*, L. R. 15 Eq. 121, 131.) Thus, where a marriage takes place on the faith of a promise to make a settlement, or on a written promise to leave property by will, such promise will be enforced. (*Alt.* v. *Alt*, 4 Gif. 84; *Coverdale* v. *Eastwood*, L. R. 15 Eq. 121; *Synge* v. *Synge*, (1894) 1 Q. B. 466.) And where a person intends to make certain provisions, gifts, or arrangements for the benefit of others, but omits to do so, on the faith of a promise by another person to carry into effect what was so intended, such a promise will be specifically enforced in Equity; so that where an executor promised a testator that he would pay a legacy, and told the testator he need not put it in his will, the executor was decreed specifically to perform the promise. (St. § 781.) But in all these cases there must be something more than the representation of an *intention*. And where in an action for specific performance of a contract, part performance is relied on to take the case out of the operation of the 4th section of the Statute of Frauds, such part performance must be unequivocally and in its nature referable to the contract, and not capable of explanation without supposing such a contract. There must

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

TITLE III.

Of Adjustive Equity.

CHAPTER. I.

OF ACCOUNT IN GENERAL.

TIT. III. CAP. I.

Jurisdiction of Equity.

UNDER the old practice before the Judicature Acts, in matters of account arising out of equitable claims, Courts of Equity had universal jurisdiction. (St. § 452.) But in matters of account growing out of privity of contract, and cognizable at Law, Courts of Equity had a general jurisdiction only where there were mutual and complicated accounts, or where the accounts were on one side, but very complicated and intricate, or a remedy peculiar to a Court of Equity was required. But where the accounts, whether receipts or payments, or both, were all on one side, or where there was a single matter on the side of the plaintiff, and mere set-off on the other side, and where, in each case, no complication existed, and no peculiar equitable remedy was sought or required, Courts of Equity declined jurisdiction. (See St. § 454, 459, 511, 512; *Phillips* v. *Phillips*, 9 Hare, 471.) Some special circumstances are therefore necessary to draw into activity the remedial interference of a Court of Equity; and when these exist it will interfere not only in cases arising under contract, but in cases arising under

direct or constructive tort as in the case of a person entering upon an infant's land. St. § 511.

A bill for account lay in Equity (1) where the accounts were mutual (2) where the accounts were complicated (3) where there was a fiduciary relation between the parties (4) where there was fraud (5) where discovery was required, but this can hardly be the case now (Williams on Account, 1—4). There is no right of account against the Crown as agent; and the relation of principal and agent does not of itself entitle the principal to come into Equity for an account if the matter could be fairly tried at Law. (*Barry* v. *Stevens*, 31 Beav. 258; *Blyth* v. *Whiffin*, 27 L. T. 330; Wms. on Account, 223, 235.) Under the present practice, by the Judicature Act, 1873 (36 & 37 Vict. c. 66), the taking of partnership or other accounts is assigned to the Chancery Division of the High Court (s. 34 (3)). And the Court or judge may at any stage of the proceedings, in a cause or matter, direct any necessary inquiries or accounts to be made or taken, and give directions as to the mode in which the account is to be taken. (Rules of Court, 1883, Order XXXIII.) **454.**

Division of accounts.

Accounts may be divided into open and stated, or settled accounts. **455.**

Open accounts.

An open account is an account of which the balance is not struck, or which is not accepted by both parties. **456.**

Settled accounts.

A stated or settled account is one that is accepted by both parties. This acceptance need not be expressed, but may be implied from circumstances: as, if no objection is made to the account within a reasonable time. What is a reasonable time, is to be determined by the habit of business; and the usual course is

required to be followed, unless there are special circumstances, constituting a ground for variation. Between merchants, acquiescence is presumed, under ordinary circumstances, after a lapse of several posts. (St. § 526. Williams on Account, 48.) **457.**

A stated account is ordinarily a bar to a suit for an account.

When it is not.

It is ordinarily a good bar to a suit for an account that the parties have already stated the items and struck the balance; for, under such circumstances, there is an adequate remedy at Law. But if there is any mistake, omission, accident, or fraud, by which the account stated is vitiated, and the balance is incorrectly fixed, a Court of Equity will interfere: in some cases, by directing the whole account to be opened and taken *de novo;* in others, by allowing it to stand, with liberty to the plaintiff to surcharge and falsify, or by simply opening the account to contestation as to one or two items which are specially set forth by the plaintiff in the suit. (St. § 523.) The showing an omission for which credit ought to have been taken is a surcharge; the proving an item to be wrongly inserted is a falsification. The *onus probandi* is always on the party having the liberty to surcharge and falsify; and the liberty extends to the examination, not only of errors of fact, but also of errors in law. (St. § 525.) **458.**

Different modes of relief.

Meaning of "surcharge" and "falsify."

Onus probandi.

Extent of the liberty to surcharge and falsify.

Generally where an account has been settled, the rule is only to give liberty to surcharge and falsify the account if errors of fact or of law are shown in the account; but where an account has been settled between a trustee and his *cestui que trust*, under circumstances of fraud or misrepresentation, or undue influence used on the part of the trustee, there is scarcely any length of time that will prevent the Court from opening the account altogether. (St. § 527; 2 Sp. 942.) **459.**

Opening settled accounts.

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

him: (b) if the proceeding is brought to recover money or other property, and is one to which no statute of limitations applies, the trustee or person claiming through him may plead lapse of time as a bar to such proceeding, as if the claim had been against him in an action of debt for money had and received, but so that the statute is not to be deemed to run against any beneficiary until his interest is an interest in possession (s. 8). **462.**

It has been held that lapse of time will not of itself bar an executor of an executor of his right to have an account of the original testator's estate taken, with a view to ascertain his own testator's liabilities as an accounting party. (*Smith* v. *O'Grady*, L. R. 3 P. C. 311.) **463.**

Appropriation of payments.

The general law as to the appropriation of payments is this: the debtor is entitled to apply the payments, at the time of making them, in such manner as he thinks fit. In default of appropriation by the debtor, the creditor is entitled to determine the application of the sums paid. And if neither does so by an express act, the Law implies an appropriation of such payments to the items of debt in the order of their date, which is known as the rule in *Clayton's case*. (See Wms. on Account, 44.) The rule in *Clayton's case*, however, is not a rigid rule of law, but is based on the intention of the creditor, expressed, implied, or presumed. It does not therefore apply where, from the account rendered or other circumstances, it appears that the creditor did not intend to make any appropriation. (*The Mecca*, (1897) A. C. 286.) **464.**

Agent liable to account only to his principal.

An agent is not liable to account, except to his principal; and the case of a charity forms no exception to the rule. (*Att.-Gen.* v. *Earl of Chesterfield*, 18 Beav. 596.) **465.**

CHAPTER II.

OF ADMINISTRATION.

I. Jurisdiction.

I. IN cases of any complication or difficulty, the Court of Chancery had, practically speaking, almost an exclusive jurisdiction in the administration of assets and the distribution of the residue; founded on the notion of a constructive trust, or on some auxiliary ground, such as the necessity for a discovery formerly existing, or the consideration that the aid, if any, afforded at Common Law or in the Ecclesiastical Court was not plain, adequate, and complete. (St. § 534—543.) By the stat 20 & 21 Vict. c. 77, s. 23, the jurisdiction of the Ecclesiastical Court in the distribution of residues is abolished, and is not to be exercised by the Court of Probate. The administration of the estates of deceased persons, and the execution of trusts, is now assigned to the Chancery Division of the High Court of Justice (36 & 37 Vict. c. 66, s. 34 (3).) **466.**

II. Proceedings by residuary legatee.

II. The former practice of the Court that a person interested in the residue was entitled as a matter of course to the full decree for administration of the estate of a deceased person or of any trust is now completely altered, and all applications for administration judgments or orders are at the risk of the applicants. (*Re Blake*, 29 C. D. 913.) An applicant therefore is now liable to pay the costs of an unnecessary administration. And questions arising

with respect to such an estate or trust may be and should be determined on an originating summons without an administration. (Brett's Lead. Cas. 275 *et seq.*)

Proceeding by executor or administrator.

The application for assistance is sometimes made by the executor or administrator himself, against the creditors generally, when he finds the affairs of his testator or intestate so much involved that he cannot safely administer the estate except under the direction of the Court. But proceedings for administering the estate, instituted by executors or administrators, are not encouraged, and they will be made to pay the costs of any unnecessary or vexatious proceedings. (*Re Cabburn*, 46 L. J. 848.) **467.**

III. Proceeding of creditors.

III. But the aid of the Court is more usually sought by creditors. (St. § 546.) And as a decree in Equity is held of equal dignity and importance with a judgment at Law, a decree on a proceeding of this sort, being for the benefit of all the creditors, makes them all creditors by decree, on an equality with creditors by judgment, so as to exclude, from the time of such decree, all preference in favour of the latter. (St. § 547.) As soon as the administration order is made in proceedings on behalf of all the creditors, the executor or administrator is entitled to prevent legal proceedings against him by any of the creditors, except under the direction of the Court by which the decree was made. (St. § 549; *Re Barrett*, 43 C. D. 70.) **468.**

IV. Division of assets.

Definition of legal assets.

IV. Assets (that is, property available for the payment of debts of a deceased person) are divided into legal and equitable. Legal assets are property which creditors may make available in a Court of Law for the payment of debts, as having devolved

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

purpose of settling questions of priority, a breach of trust is treated as a simple contract debt. But equitable assets, with the exception above mentioned, are distributed *pari passu* among all the creditors without regard to the priority or dignity of the debts; and, after they are satisfied, among all the legatees or distributees. But if the fund is insufficient to pay all the debts, all the creditors must abate in proportion. And so if the fund, after payment of debts, is insufficient to pay all the legacies, they must all abate in proportion, unless some priority is specifically given by the testator to some legacies over others. (St. § 554-6; 2 Sp. 314.) But as between specific and pecuniary legatees, the loss is to fall wholly on the latter. And charitable legacies now abate, as well as legacies of another kind. (St. § 1180.) And where a devisee of real estate charged with the payment of legacies, or his assigns, have been in possession of the estate, and the estate proves insufficient to satisfy the legacies, the legatees are nevertheless not entitled to back rents. (*Garbitt* v. *Allen*; *Allen* v. *Longstaffe*, 37 Ch. D. 48.) **471.**

Administration of equitable assets.

Abatement of debts and legacies.

Back rents.

Administration of assets of insolvent estates and companies.

By the Supreme Court of Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10, it is enacted (in lieu of the 1st sub-section of section 25 of the principal Act, 36 & 37 Vict. c. 66), that, "in the administration by the Court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be

observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, and make such claims against the same as they may respectively be entitled to by virtue of this Act." (Note that now by s. 125 of the Bankruptcy Act, 1883, the estate may be administered in bankruptcy.) The object of s. 10 was to get rid of the rule in Chancery under which a secured creditor could prove for the full amount of his debt and realize his security afterwards, and to put him on the same footing as in bankruptcy where he was only entitled to prove for the balance after realizing or valuing his security. (*Lee* v. *Nuttall*, 12 C. D. 61, per James, L. J.) The section has not the effect of introducing into the administration, in the Chancery Division, of an insolvent estate, the provisions of s. 40 of the Bankruptcy Act, 1883. (*Re Maggi*, 20 C. D. 545; *Re Williams*, *Jones* v. *Williams*, 36 Ch. D. 573.) **472.**

Where one of several residuary legatees or next of kin has received his share of the estate of a testator or intestate, the others cannot call upon him to refund because the assets have been wasted, unless they show that the wasting took place before the share was paid over. (*Peterson* v. *Peterson*, L. R. 3 Eq. 111;

Re Bacon, 42 C. D. 559; *Re Winslow*, 43 C. D. 249.) **473.**

Operation of the Statute of Limitations as regards debts.

Debts actually barred by the Statute of Limitations are not revived by or included in a trust for payment of debts. But where a provision is made, either by will or by deed, for payment of debts out of real estate, then (subject to the provisions of the Trustee Act, 1888, s. 8, *supra*, par. 392) the statutory time will cease to run in the former case, from the death of the testator, in the latter from the date of the deed; because the creditor, the *cestui que trust*, is not to be barred by the neglect of the trustee to do his duty. (Lewin, 591.) The same principle will apply (subject to the same provisions) where personal estate only is assigned in trust for payment of debts. But where personalty is *bequeathed* for payment of debts, it does not prevent the running of the Statute; because the personalty vests in the executor upon trust for the creditors by act of law so that the words of the will are nugatory. (*Jones* v. *Scott*, 4 Cl. & Fin. 382; Lewin, 592; see now Land Transfer Act, 1897.) **474.**

Order of priority in payment of debts.

With regard to the payment of debts in the administration of an estate, the Court has always observed certain priorities, paying the debts in the following order:—(1) Debts due to the Crown by record or specialty; (2) debts having preference under particular Statutes, as, for instance, income-tax, poor-rates, etc.; (3) judgments duly registered and unregistered judgments recovered against the personal representatives prior to the order for administration; (4) recognizances and statutes, the latter, however, being practically obsolete; (5) debts by specialty and by simple contract *pari passu*, including rent, unregistered judgments other than

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

for the specific devisee is expressly an object of the testator's regard, whereas the heir only takes by act of law. *Fifthly*, general pecuniary legacies, *pro rata*. It was held by Kay, J., in *Re Bate*, 43 C. D. 600, that the fourth and fifth classes must be transposed. But in *Re Stokes*, 67 L. T. 223, Stirling, J., refused to be bound by this authority; and in *Re Salt*, (1895) 2 Ch. 203, Chitty, J., followed Stirling, J., saying "the reasoning of Stirling, J., in *Re Stokes*, appears to me to be unanswerable," which is surely the case. *Sixthly*, specific bequests, specific devises, and residuary devises not charged with debts. The law as to residuary devises being on the same footing as specific devises, and both ranking before pecuniary legatees was settled in *Tomkins* v. *Coulthurst*, 1 C. D 626; *Farquharson* v. *Floyer*, 3 C. D. 109; and *Hensman* v. *Fryer*, 3 Ch. 420, is only law so far as it asserts the first of these two principles (Brett's L. C. 237). *Seventhly*, personalty and realty, over which the person whose estate is to be administered has exercised a general power of appointment. (*Fleming* v. *Buchanan*, 3 D. M. & G. 976; *Spurling* v. *Rochfort*, 16 C. D. 18.) *Eighthly*, paraphernalia of the widow of the deceased, which however must be distinguished from absolute gifts of paraphernal articles since the Married Women's Property Act, 1882. (See *Tasker* v. *Tasker*, (1895) P. 1.) **475.**

Personal estate primarily applied, except—

A legacy or annuity given generally is payable out of personal estate only. And even when a legacy or annuity is given out of real and personal estate, or where debts are payable out of real as well as out of personal estate, it is the general rule that the personal estate is first to be applied so far as it will extend. The personal estate constitutes the primary and

natural fund for payment of debts and legacies (and note that the Land Transfer Act, 1897, does not alter the order in which real and personal assets are applicable for payment of debts and legacies, s. 2 (3)), and will first be applied, except in the following cases: **476.**

1. When there are express words (*Young* v. *Young*, 26 Beav. 522), or a plain intention of the testator to exonerate his personal estate. (*Coventry* v. *Coventry*, 2 Dr. & Sm. 470.) And to constitute such a plain intention, directions and expressions which do not necessarily imply more than that the real estate shall make good the deficiency are not enough; there must appear upon the whole testamentary disposition, taken together, an intention so expressed as to convince a judicial mind that it was meant not merely to charge the real estate, but so to charge it as to exempt the personal estate. (1 Rop. Leg. by White, 703, 710; 2 Wh. & Tu. 742; Brett's L. C. 236; *Broadbent* v. *Barrow*, 31 C. D. 113.) And (1.) If the real estate is directed to be sold for payment of debts, and the personal estate is expressly bequeathed to legatees, then the personal estate will be exonerated by necessary implication. But neither of these circumstances, apart from the other and from circumstances affording similar implication of intention, is a sufficient indication of an intention to exonerate the personal estate. For it is most probable that a direction to sell real estate for the payment of debts, where no disposition is made of the personal estate, was intended to be followed only in the event of the personal estate proving insufficient for the purpose of paying the debts. And, on the other hand, it is most probable that a bequest of personal estate, not by way of specific

1. In the case of express words or plain intention to the contrary.

legacy, where no provision is made for payment of debts out of the real estate, was made subject to the payment of debts out of such personal property. (2 Sp. 340, 341, 818, 823; 2 Wms. on Executors, 9th ed. (1561) *et seq.*) (2.) Where the testator gives his personal estate as a whole, and not as a residue, by way of specified legacy to one who is not executor, and another fund is supplied for payment of debts, legacies, and funeral and testamentary expenses, the personal estate is exonerated. (2 Sp. 341; *Gilbertson* v. *Gilbertson*, 34 Beav. 354; *Powell* v. *Riley*, L. R. 12 Eq. 175; *Broadbent* v. *Barrow*, 31 C. D. 113.) (3.) Where a testator directs the conversion of his real and personal estate, and creates a mixed fund out of the produce, and appropriates that fund for the payment of debts, &c., the two estates comprised in that fund are applicable *pro rata*. But in such case, if there is no conversion out and out, the surplus (if any) will result as real and personal estate. If a portion only of the personal estate is comprised in the fund, the residue will be chargeable only when that fund fails. (2 Robbins Mortg. 772; 2 Wms. on Executors, 9th ed. (1583); Turner, L. J., in *Tench* v. *Cheese*, 6 D. M. & G. 467; *Bright* v. *Larcher*, 3 D. & J. 148; *Allan* v. *Gott*, L. R. 7 Ch. Ap. 430; *Ashworth* v. *Mann*, 34 Ch. D. 391.) (4.) So where a devise is made, subject to a condition of paying off the incumbrances affecting the estate; or where only the residue of the proceeds of real estate, after payment of debts, is devised. (2 Sp. 334, 342.) But where real estate is devised to a person, upon condition of his paying debts and legacies generally, or charged with them generally, or is given to trustees for those purposes, and the personal estate is disposed of by a general residuary

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

raise and pay particular sums, as distinguished from a charge or trust for satisfaction of debts or legacies generally. (1 Rop. Leg. by White, 671.) If there be also a personal covenant to raise the jointure, portions, or sums, such covenant will only be regarded as an additional security, not as a primary one. If there is no personal covenant for the payment of portions, but a covenant to settle lands, and to raise a term of years out of the lands for securing the portions, in that case, even though there be a bond to perform the covenant, the portions are not in any event payable out of the personal estate. Under the law before Locke King's Act (17 & 18 Vict. c. 113, *infra*, par. 481), a mortgage debt (except in the case mentioned in the next paragraph), whether the lands in mortgage devolved upon the heir-at-law or a general devisee or a particular devisee, was primarily payable out of the general personal estate of the testator, if not made payable by a devisee. Where the mortgaged estate was devised *cum onere*, it was payable by the devisee. But the expression "subject to the mortgage," in the devise of a mortgaged estate, was sometimes construed as only descriptive of the estate, and not expressive of an intent that the devise was made *cum onere*. (2 Sp. 819; 1 Rop. Leg. by White, 731, 732; *Bond* v. *England*, 2 K. & J. 44; *Townshend* v. *Mostyn*, 26 Beav. 72; *Lady Langdale* v. *Briggs*, 8 D. M. & G. 391.) **479.**

3. Where the debt was not contracted by the person who died last seised or entitled.

3. Where the debt was not contracted by the person who died last seised or entitled, but by some other person from whom he took it by descent or devise, or by some other person from whom he purchased it, or from whom his vendor derived it. Thus, where a mortgage was created by an ancestor—in other words,

if the mortgage debt was an *ancestral mortgage*—and the mortgaged estate descended upon the heir, there, although the heir entered into a collateral contract or covenant, or gave security for payment of the mortgage, yet his personal estate would not be liable to be charged, in favour of any person who should derive title by descent under him to the mortgaged premises, subject to the mortgage. But if the heir or devisee or purchaser did anything which raised a new and independent contract between him and the mortgagee (unless it was simply for the purpose of paying off the debts or legacies of the original mortgagor, as such), or had in any other way made the debt his own, the case would be otherwise. (St. § 571—576, 1003; *Swainson* v. *Swainson*, 6 D. M. & G. 648; *Townshend* v. *Mostyn*, 26 Beav. 72; *Bagot* v. *Bagot*, 34 Beav. 134.) **480.**

4. In certain cases where a person dies entitled to land in mortgage after Dec. 31 1854.

4. By Locke King's Act (17 & 18 Vict. c. 113), which in effect treats every mortgage as an ancestral mortgage, it is enacted that, "when any person shall, after the 31st day of December, 1854, die seised of or entitled to any estate or interest in any land or other hereditaments which shall, at the time of his death be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not, by his will or deed, or other document, have signified any contrary or other intention, the heir or devisee to whom such land or hereditaments shall descend or be devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of

all mortgage debts with which the same shall be charged, every part thereof, according to its value, bearing a proportionate part of the mortgage debts charged on the whole thereof: Provided always that nothing herein contained shall affect or diminish any right of the mortgagee on such lands or hereditaments to obtain full payment or satisfaction of his mortgage debt either out of the personal estate of the person so dying as aforesaid, or otherwise: Provided also that nothing herein contained shall affect the rights of any person claiming under or by virtue of any will, deed, or document already made or to be made before the 1st January, 1855." **481.**

An equitable mortgage by deposit and memorandum is within this Act. (*Pembrooke* v. *Friend*, 1 Johns. & H. 132.) And it extends to copyholds. (*Piper* v. *Piper*, 1 Johns. & H. 91.) **482.**

Leasholds were held to be not within this Act. (*In re Wormsley's Estate*, 4 Ch. D. 665; but were brought within it by an amendment Act, 40 & 41 Vict. c. 34; *post*, par. 486; *Drake* v. *Kershaw*, 37 C. D. 674.) And by the same Act the principal Act was extended to liens for unpaid purchase-money (*post*, par. 486.) Estates tail are excluded from the scope of these Acts. (*Re Anthony*, (1893) 3 Ch. 498.) But mortgaged lands within the meaning of the Acts include lands delivered in execution under a writ of elegit to a testator's creditors. (*Re Anthony*, (1892) 1 Ch. 450.) **483.**

Various other points connected with the construction of this Act have been decided, but they do not come properly within the scope of a work like the present. **484.**

Locke King's Amendment Act.

By the stat. 30 & 31 Vict. c. 69, it is enacted that, "in the construction of the will of any person who

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

residuary real and personal estate or residuary real estate." **486.**

A mere general direction that all debts shall be paid out of personal estate is not therefore deemed a "contrary intention." The contrary intention must refer expressly or by necessary implication to *mortgage* debts. (*Giles* v. *True*, 33 C. D. 195.)

Locke King's Act applies to a mortgaged estate, different portions of which are devised to different persons, and the devisees must contribute according to the value of their respective portions. (*In re Newmarch*, 9 Ch. D. (Ap.) 12; *In re Smith*, 33 Ch. D. 195.) **486 a.**

Where real and personal estate are comprised in the same mortgage, the mortgage debt is not primarily payable out of the realty under Locke King's Act, but must, as between the devisees of the realty and the legatees of the personalty, be borne rateably by the realty and personalty subject thereto. (*Trestrail* v. *Mason*, 7 Ch. D. 655; *Leonino* v. *Leonino*, 10 C. D. 460.) **486 b.**

Non-liability of personalty settled on marriage.

Where assets of a testator, consisting of personalty which could be identified, are settled *bonâ fide* upon marriage, they cease to be liable to subsequently accruing claims in respect of breaches of covenant by the testator, but of which the parties to the settlement had no notice when they executed it. (*Dilkes* v. *Broadmead*, 2 D. F. & J. 566.) **487.**

Liability of property specifically bequeathed.

Property specifically bequeathed is not discharged from its liability to the testator's creditors by the fact that there has come to the hands of the executors personal property of the testator not specifically bequeathed more than sufficient to pay his debts, funeral and testamentary expenses, and that the

specifically bequeathed property has been made over by the executor to the specific legatee, whatever may be the rights of the specific legatee as regards the executor or residuary legatee. (*Davies* v. *Nicolson*, 2 D. & J. 693; *Andrew* v. *Cooper*, 45 C. D. 444.) **488.**

VII. Order of satisfaction.

VII. In the order of satisfaction, if the personal estate of the decease is not sufficient for all purposes, creditors are preferred to legatees; because it is to be presumed that a testator means to be just, by desiring his debts to be paid, before he is generous; and the personal estate, as we have seen, is the natural fund for the payment of debts. Again, specific legatees are preferred to the heir, because the heir, instead of being expressly an object of the testator's regard, like the specific legatee, only takes by act of Law. Specific legatees are also preferred to the devisees of real estate charged with specialties or with the payment of debts, and to residuary devisees of real estate. But general pecuniary legatees are not preferred to residuary devisees of real estate. Nor are specific devisees of lands, not charged with specialties or with the payment of debts, preferred to specific legatees; but upon failure of the general personal estate, the specific devisees and specific legatees shall each, according to the proportionate value of the benefits conferred on each, contribute to the payment of debts. Where a particular portion of the personal estate is bequeathed, subject to the payment of debts and legacies, there, as between the legatees, the residuary personal estate is exonerated, if there is a residuary bequest, but not where there is no gift of the residue. (St. § 571; Brett's L. C. 236.) As between a devisee of a mortgaged fee simple estate and a specific legatee of

personalty, the devisee shall not have his mortgage paid by the specific legatee, but shall take the mortgaged estate *cum onere*. *A fortiori*, a specific legatee of a mortgaged leasehold shall not have the mortgage wholly or partly paid off by specific legatees of other leaseholds. (2 Sp. 838.) *Subject to the stat.* 17 & 18 Vict. c. 113 (*supra*, par. 481), the devisee of mortgaged premises is preferred to the heir-at-law of descended estates; because the devisee is evidently an object of the testator's bounty: and *à fortiori*, the devisee of premises not mortgaged is preferred to the heir-at-law; and if unincumbered lands and mortgaged lands are both specifically devised, but expressly after payment of all the debts, they are to contribute proportionably in discharge of the mortgage. Where the equities of the legatees and devisees are equal, the Court remains neuter, and suffers the Law to prevail. (See St. § 571; 2 Sp. 832, 839, 882.) **489.**

But subject to the stat. 17 & 18 Vict. c. 113 (*supra*, par. 481), where the personal assets are sufficient to pay all the debts and legacies and other charges, there the heir-at-law or devisee, who has been compelled to pay any debt or incumbrance of his ancestor or testator binding on him, is entitled (unless there is some other equity which repels the claim) to have the debt paid out of the personal assets in preference to the residuary legatees or distributees (St. § 571), because such charges are primarily payable out of personal estate. **490.**

And, subject to the same statute, lands devised for or subject to the payment of debts are also liable to discharge a mortgage, in favour of the heir or devisee to whom the mortgaged lands may belong, unless the mortgaged lands are really devised

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

subject to this limitation, that assets are not to be marshalled so as to prejudice another person's rights, so, for example, as to oblige a person who has a lien on a particular property to resign the lien over that property and have recourse to another property. (*Webb* v. *Smith*, 30 C. D. 192; Brett's Lead. Cas. 239 *et seq.*) **493.**

Marshalling in favour of creditors, or of legatees, or of a portionist, or of the heir, or of a devisee.

This plan is adopted as against mortgagees and other creditors of the superior kind, in favour not only of mortgagees and creditors of the superior kind, but also of creditors of an inferior rank, or of legatees (except residuary legatees, where the residue is not exonerated, and legatees whose legacies are given out of a residue), or of portionists, or of the heir-at-law, or of a devisee; and as against simple contract creditors, in favour of legatees. (See St. § 562—566, 570; 2 Sp. 410, 819, 820, 827, 829, 833.) Thus,

Legatees put in the place of mortgagees and specialty and simple contract creditors;

legatees, with the above exceptions, were permitted to stand in the place of specialty creditors, against the real assets descended, or of a mortgagee who had exhausted the personal estate, whether the mortgaged lands descended to the heir-at-law, or were devised to a devisee subject to the mortgage. And where a testator bequeaths legacies, and devises real estate in trust for, or subject to, payment of debts, and the personal estate is exhausted by creditors, the legatees are entitled to come upon the real estate. (*Surtees* v. *Parkin*, 19 Beav. 406; *Paterson* v. *Scott*, 1 D. M. & G. 531.) And in consequence of the stat. 3 & 4 Wm. IV. c. 104, which makes real estate liable to simple contract debts, though it was subject to a priority in favour of specialty debts, legatees are permitted to stand, in regard to land descended in the place of simple contract creditors who have exhausted the

personal estate, so as to prevent a satisfaction of the legacies (St. § 566; 2 Sp. 830); except residuary legatees, where the residue is not exonerated, and legatees whose legacies are given out of a residue, who have no such equity: for a residue of personal estate implies what remains after satisfying the charges upon it. (2 Sp. 820.) And the equity of legatees will not generally prevail against a devisee of the real estate not mortgaged, whether he is a specific or a residuary devisee; for between persons equally taking by the bounty of the testator, Equity will not interfere, unless the testator has clearly indicated some ground of preference or priority of the one to or over the other. (St. § 565; 2 Sp. 820, 829, 830—832.) (*a*) **494.**

but not of devisee of real estate not mortgaged.

Where A. has a charge on two estates, and B. has a charge on one of them only, B. is entitled to require that A. should be satisfied out of that estate which is not in mortgage to B. so far as it will extend (*Tidd* v. *Lister*, 10 Ha. 157); and this general principle is applicable also as against a surety to whom, on payment by him of the debt, A. may have assigned his two securities. (*South* v. *Bloxam*, 2 H. & M. 457; and see *post*, par. 652.) **495.**

Marshalling as between two estates.

The same marshalling of assets takes place as between legacies charged on land and legacies not so charged. (St. § 566.) Formerly by virtue of the statute 9 Geo. II. c. 36, legacies or bequests to charitable uses, payable out of real estate or charged on real estate, or to arise from the sale of real estate, were, with some exceptions, utterly void (St. § 569); and Equity in some cases refused to marshal the assets in favour of charitable bequests, when given

Marshalling as between legacies charged on land and others not so charged.

Administration in the case of charitable legacies.

(*a*) But see *supra*, par. 475.

either directly or by way of trust, out of a mixed fund of real and personal estate, or of personalty connected with realty and pure personalty. Instead of directing the debts and the other legacies to be paid out of the real estate or impure personalty, and reserving the pure personalty to fulfil the charitable bequests, the charity legacies were considered as intended to be charged on the pure personal estate and the proceeds of real estate, or the impure personalty proportionately, like other legacies, just as if no legal objection existed to applying the proceeds of the real estate to the charitable bequests; and as charity legacies could not legally be charged on the proceeds of real estate or the impure personalty, they were held to fail as to that proportion which would have come to them out of the proceeds of the real estate or the impure personalty. (See St. § 569, 1180.) But a testator had the power of directing the marshalling of his assets in favour of charity legacies by inserting in his will a direction that they were to be paid out of the pure personalty, and the debts and private legacies out of the mixed personalty or realty, and the Court would give effect to such a direction. (See *Philanthropic Society* v. *Kemp*, 4 Beav. 581.) And where a testator expressly directed charity legacies to be paid exclusively out of his pure personalty, and the personalty savouring of realty was sufficient for the payment of legacies to individuals, and though the will did not throw the legacies to individuals upon the personalty savouring of realty, yet it did not purport to make those legacies payable at all out of the pure personalty, but gave them without reference to any particular fund, and the pure personalty was not sufficient or only sufficient for the payment of the charity legacies; the legacies

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

Protection of a widow's paraphernalia.

Again, in order to preserve a widow's paraphernalia, which, with the exception of necessary apparel, is liable for her husband's debts after all his other assets, personal and real, including, according to the better opinion, even real estate specifically devised, Equity will oblige creditors who are entitled to proceed against real assets or funds to resort to such assets or funds, or will decree her compensation out of the same. (St. § 568; 2 Sp. 821, 829.) But this is now of little importance, since gifts by a husband to his wife become her separate property, and will probably be treated as such, and therefore are not liable for his debts, even in the case of articles of the nature of paraphernalia, unless it can be proved that they were given her as paraphernalia. (See *Re Vansittart*, (1893) Q. B. 181; *Tasker* v. *Tasker*, (1895) P. 1.) **500.**

IX. Assets collected in a foreign country by a domestic executor or administrator.

IX. With regard to the assets of foreigners, it is to be observed that in general where a domestic executor or administrator collects assets in a foreign country, without any letters of administration taken out or any actual administration accounted for in such foreign country, and brings them home, they will be treated as personal assets to be administered here under the domestic administration. (St. § 583.) **501.**

Assets received by a foreign executor or administrator, and remitted here.

If property is received by a foreign executor or administrator abroad, and afterwards remitted here, an executor or administrator appointed here could not assert a claim to it here, either against a person in whose hands it happened to be, or against the foreign executor or administrator. The only mode of reaching it, if necessary, for the purpose of due administration here, would be to require it to be transferred or distributed after the claims against the foreign executor or administrator had been ascertained and settled

abroad. (St. § 584; *Eames* v. *Hacon*, 18 C. D. 347, 351.) **502.**

Lex domicilii.

In cases of intestacy, the law of the domicile of the deceased determines the fund out of which debts shall be paid; and in cases of testacy, the intention of the testator. (St. § 587.) **503.**

The priorities of creditors are regulated by the domicile of the testator, although the personal assets may be situate and administered in another country. (*Wilson* v. *Lady Dunsany*, 18 Beav. 293.) **504.**

Lex fori.

In England claims must be enforced according to the practice and rules of the English Courts. And according to them a creditor, whether from the furthest north or the furthest south, is entitled to be paid equally with other creditors in the same class. (Judgment of Pearson, J., *In re Kloebe, Kannreuther* v. *Griselbrecht*, 28 Ch. D. 175.) **504 a.**

CHAPTER III.

OF MORTGAGES, PLEDGES, AND LIENS.

SECTION I.

Of Legal Mortgages of Real Property.

TIT. III. CAP. III. SECT. I.

I. What may be mortgaged.

II. What amounts to a mortgage, and what to a purchase with right of repurchase.

I. GENERALLY every description of property and every kind of interest in it, which is capable of absolute sale, may be the subject of a legal mortgage or its equivalent in Equity. (2 Sp. 614.) **505.**

II. It may be considered as an almost universal rule, that wherever a conveyance or assignment of an estate is originally intended as a security for money, whether this intention appears on the deed itself, or by any other instrument, or even by parol evidence, and whether directly or indirectly, it will ever after be considered in Equity as a mortgage, and therefore redeemable on the usual terms. And if at the time of or as a part of the transaction an express agreement be made between the parties that it shall not be redeemable, or that the right of redemption shall be confined to a particular time or to a particular person or description of persons, such an agreement will be void. (St. § **1018.**) The maxim is, *once a mortgage always a mortgage* (*Rice* v. *Noakes*, 48 W. R. 110); and a creditor will not be allowed to obtain an advantage by his security beyond his principal, interest and costs, except that as hereinafter stated a right of pre-emption, in case the mortgagor determines to sell, may be

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

TIT. III. CAP. III. SECT. I.

not be so by parol agreement afterwards. (2 Sp. 622, 623.) **508.**

Where land is conveyed upon trust, in case a sum and interest should not be paid by a day named, to sell, and after payment of principal, interest, and costs, to pay over the surplus and re-convey the unsold part of the estate; and the grantee covenants not to sell without giving six months' notice; and the grantor covenants to pay the debt and interest; but there is no proviso for redemption: this is a mere mortgage, and the grantor is entitled to six months' time to redeem. (*Bell* v. *Carter*, 17 Beav. 11; *In re Alison*, 11 C. D. 284.) **509.**

Where the transaction is clearly one of purchase with a right of re-purchase, the time limited ought precisely to be observed; and there is no principle on which the Court can relieve, if it is not so observed. (2 Sp. 623; Robbins Mortg. 20.) **510.**

In case the transaction is one of re-purchase, and not of redemption, if the purchaser dies seised, and then the right of re-purchase is exercised, the money will go to the heir, and not to the personal representatives, as it would in the case of a mortgage. (Robbins' Mortg. 23.) **511.**

Mutuality.

In determining whether a transaction is to be considered in the light of a mortgage it must be borne in mind that a mortgage cannot be a mortgage on one side only; it must be mutual. (Robbins Mortg. 21.) **512.**

III. Mortgagee's estate, rights, and remedies (*a*).

III. 1. So long as the mortgagor continues in possession, the mortgagee's estate is not absolute, even at Law. For, by stat. 15 & 16 Vict. c. 76,

(*a*) On the subject of powers of mortgagees, see stat. 44 & 45 Vict. c. 41, ss. 19—25.

1. Mortgagee's estate.

ss. 219, 220, if an ejectment is brought by the mortgagee, provided no suit is pending in any Court of Equity for redemption or foreclosure, the payment of principal, interest, and costs will, except in certain cases, be deemed a satisfaction of the mortgage, and the Court may compel the mortgagee to re-convey the estate. But when the mortgagor has ceased to be in possession, and there has been a default in the payment of the money at the stipulated time, the estate of the mortgagee becomes absolute at Law. Yet this estate is in Equity treated as a mere security for the principal and interest and costs properly incurred in relation to the mortgage, and follows the nature of the debt. And, although, where the mortgage was in fee, the legal estate formerly descended to the heir of the mortgagee, yet in Equity it was deemed a chattel interest and personal estate, and belonged to the personal representatives as assets. (2 Sp. 296.) Now, however, by virtue of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 30, in cases of death after the 31st of December, 1881, the legal interest in all mortgages, notwithstanding any testamentary disposition, devolves like a chattel real on the legal personal representatives of the mortgagee. (See *Re Pilling's Trusts*, 26 C. D. 432.) But copyholds were taken out of this provision by the statute 50 & 51 Vict. c. 73, now replaced by the Copyhold Act, 1894, s. 88, which enacts that "the thirtieth section of the Conveyancing and Law of Property Act, 1881, shall not apply to land of copyhold or customary tenure vested in the tenant on the court rolls upon trust or by way of mortgage." **513.**

The Conveyancing and Law of Property Act, 1881.

The Copyhold Act, 1887.

2. As to the mortgagee's rights, he is entitled to enter into possession of the lands, and to take the

2. Mortgagee's rights.

Possession, leases, rents, timber, insurance, receiver, and sale.

rents and profits, unless there is some agreement to the contrary; and if the security is insufficient, he may open mines; but he may not commit waste. He must, however, account for the rents he receives, or, but for his wilful default, might have received, and pay an occupation-rent for such part as he may keep in his own possession. (2 Robbins Mortg. 801, 804, 1205.) But a mortgagee who has not entered into possession is not entitled to an account of back rents as against a subsequent mortgagee who has not been in possession. By the Conveyancing Act, 1881, in the case of a mortgage made after the 31st of December, 1881, a mortgagee in possession has, unless prevented by the terms of the mortgage deed, as against prior incumbrancers and the mortgagor, power to make and contract for an agricultural or occupation lease not exceeding twenty-one years, and a building lease not exceeding ninety-nine years, every such lease to take effect in possession not later than twelve months after its date, and to reserve the best rent without fine, except that in the case of a building lease there may be a nominal rent for the first five years. (44 & 45 Vict. c. 41, s. 18.) He may also, when in possession, cut and sell timber and other trees not planted for shelter or ornament which are ripe for cutting. (44 & 45 Vict. c. 41, s. 19.) The mortgagee may also at any time after the date of the mortgage deed, insure and keep insured insurable property, the premiums being a charge upon the property, with interest, like the mortgage money. And he may also, when the mortgage money has become due, appoint a receiver (see *infra*, par. 522) of the income of the mortgaged property, and sell or concur in selling (see *infra*, par. 540) the mortgaged property. (44 & 45 Vict. c. 41,

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

(Robbins Mortg. 132; *Clarkson* v. *Henderson*, 14 C. D. 348); but interest cannot be turned into principal to the prejudice of subsequent incumbrances of which the mortgagee has notice at the time of the agreement. (Robbins Mortg. 1164.) **517.**

Increase of interest on default in regular payment.

A provision that if the interest on the mortgage money be not punctually paid, the rate of interest shall be increased, as for instance, that the mortgagor shall pay 4*l.* per cent. if punctual in payment, but 5*l.* per cent. if after the appointed day, is regarded as in the nature of a penalty against which the Court will grant relief; but a provision that the rate of interest shall be reduced on punctual payment, or that the mortgagor shall pay interest at 5*l.* per cent., but that if the interest be punctually paid, 4*l.* only shall be payable, is good, and will be enforced if the payment is punctual. (2 Robbins Mortg. 1157.) (*a*) **518.**

Leases to the mortgagee.

Leases made by the mortgagor to the mortgagee at a rent are looked upon with great suspicion, as likely to have originated in the mortgagee having taken advantage of the necessities of the mortgagor to obtain a lease upon terms upon which the property would not have been let except for those necessities. (2 Sp. 632.) But a lease for 21 years at a fair rent has been upheld; and a lease will not be set aside because of a subsequent change in the value of the property leased, in the course of years. (2 Robbins Mortg. 17.) **519.**

What the mortgagee may add to his debt.

Expenditure.

The mortgagee in possession has a right to add to his debt any sums he may be compelled to pay for arrears of rent, or for maintaining the title to the estate, or for re-building the premises, or for necessary

(*a*) As to the validity of an agreement for making a larger amount of principal payable in default of punctual payment, see *Thompson* v. *Hudson*, L. R. 4 H. L. 1.

repairs, or the expenses of renewing a renewable leasehold, with interest from the time the sums were advanced. But he cannot, by contract or otherwise, entitle himself to make any charge for management. (2 Sp. 649, 650, 653.) Improvements are not included in just allowances; and he will not be allowed for them unless they have been done with the consent of, or have been acquiesced in by, the mortgagor. It has been observed that a mortgagee must not improve the mortgagor out of his property. (2 Robbins Mortg. 1203—1207; *Shepard* v. *Jones*, 21 C. D. 469.) **520.**

Mortgagee's costs.

A mortgagee is entitled to be allowed all costs reasonably incurred in relation to the mortgage. (*National Provincial Bank of England* v. *Games*, 31 C. D. 582; Brett's Lead. Cas. 191.) In a suit for redemption or foreclosure the mortgagee is entitled to his taxed costs, unless he has forfeited them by misconduct. The plaintiff in a suit for redemption pays his own costs, and the mortgagee adds his to his mortgage debt. (*Cotterell* v. *Stratton*, L. R. 8 Ch. 295; *Turner* v. *Hancock*, 20 C. D. 303.) **521.**

Allowance for receiver.

The mortgagee is not allowed to make any charge as a receiver, if he himself has personally received the rents, even though it may have been agreed that he should be paid for his trouble in receiving them, and though a receiver might have been employed at the expense of the mortgagor. But a person duly appointed receiver, whose duty it is to get in the rents and profits and pay the necessary outgoings (and, if appointed manager as well, to carry on the business), will be allowed proper remuneration for his trouble. A receiver may be appointed by the Court under stat. 36 & 37 Vict. c. 66, s. 25, when it appears to the Court "just or convenient" (*post*, par. 786); or

The Judicature Act, 1873.

by the parties, by the mortgage deed or by a separate deed; or by the mortgagee under stat. 45 & 46 Vict. c. 41, s. 19. (2 Robbins Mortg. 919 *et seq.*) But the receiver must render accounts of all receipts and outgoings. **522.**

The Conveyancing Act, 1881.

Mortgage of West India estate.

A mortgagee of a West India estate may stipulate that the consignments shall be made to him. And, if out of possession, he may take a certain reward for the management of the estate, provided he do not make that employment a condition. But when he takes possession, he is not at liberty to charge the mortgagor, whom he has ousted, for the trouble he takes on his own account; and he cannot charge or stipulate for commission on consignments, insurance, and the like, but stands in the position of the mortgagee in possession of an English estate. (Robbins Mortg. 1193.) **523.**

Mortgage of advowson.

As a mortgagee is not allowed any advantage beyond securing his principal and interest and costs, it follows that where an advowson is mortgaged, and the living becomes vacant prior to the foreclosure, the mortgagee is compellable in Equity to present the nominee of the mortgagor; even although nothing but the advowson is mortgaged, and the deed contains a covenant that on any avoidance the mortgagee shall present. But he may pray a sale of the advowson. (Robbins Mortg. 169, 1016.) **524.**

Pre-emption.

The mortgagee is at liberty to stipulate for the option of pre-emption, in case the mortgagor should determine to sell. (2 Sp. 631.) In such case the option of sale must be left to the mortgagor, and there must be no restriction as to the price; and the only effect of the stipulation is that if the mortgagor wishes to sell the mortgaged property he must give the

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

time with the like powers as if the same were a chattel real, and who are deemed his heirs and assigns within the meaning of all trusts and powers. (44 & 45 Vict. c. 41, s. 30.) Where there is no personal representative, a vesting order will be necessary (see *Re Pilling's Trusts*, 26 C. D. 432; *Re Williams*, 36 C. D. 231); but copyholds are taken out of this provision. (See *supra*, par. 513.) **527.**

Mortgagee ejecting or refusing tenant.

If a mortgagee in possession turns out or refuses to accept a responsible tenant, he is liable for any loss occasioned thereby. (2 Robbins Mortg. 805.) **528.**

Priority.

Both at Law and in Equity, in the absence of particular circumstances, statutes, judgments, and recognizances, all rank according to their dates. (Robbins Mortg. 1238.) The priority of equitable charges on real estate, where the equities are equal in all other respects than that of priority of time, rank according to their dates in accordance with the maxim *qui prior est tempore potior est jure*. (2 Robbins Mortg. 1237; *Marsh* v. *Lee*, 2 Wh. & Tu. 107; *Rice* v. *Rice*, 2 Drewry, 78; *Farrand* v. *Yorkshire Banking Co.*, 40 C. D. 182.) And where money is lent on an equitable mortgage, without notice of a prior equitable agreement affecting the same property, the lender gains no priority over the party claiming under the prior equitable agreement, by getting in the legal estate, after notice that the mortgagor has made himself a trustee for the prior incumbrancer. (*Mumford* v. *Stohwasser*, L. R. 18 Eq. 556, *post*, par. 586.) And the doctrine of priority being gained by notice to the legal holder, does not apply to equitable charges on real estate, or chattels real, or to such personalty as is in Equity real estate, unless the charge be vested in a trustee, or is on trust money being the proceeds of sale of real

estate, or on a portion raisable out of real estate, or on any such interest in land vested in trustees as can only reach the hands of the beneficiary in the shape of money; but it has reference to successive assignees in case of assignments of chattels personal, and in such case there is no distinction between legal and equitable incumbrances. (Robbins Mortg. 1236, 1237.) And where a subsequent incumbrancer who makes an advance without notice of a prior incumbrance obtains a conveyance of the legal estate from a trustee for all incumbrancers, with notice of their rights, or of the legal estate affected with an express trust for the prior incumbrancer after notice of the trust, he will not obtain priority. But subject to the cases just mentioned, where a subsequent equitable incumbrancer who had, at the time of the advance, no notice of a prior equitable incumbrance, afterwards obtains the legal estate, he obtains priority over the prior equitable incumbrancer, according to the maxim, where the equities are equal the Law must prevail. Thus, if a third mortgagee, who, at the time of lending his money, has no notice of a second mortgagee, purchases the first legal mortgage, judgment, statute, or recognizance, even after notice of the second mortgage, so as to acquire the legal title, and holds both securities in his own right, Equity will tack both incumbrances together in his favour; so that the second mortgagee will not be permitted to redeem the first, without redeeming the third also; on the principle that where the equities are equal the Law shall prevail. (2 Robbins Mortg. 1215.) But if a puisne creditor, by judgment, statute, or recognizance, buys in a prior mortgage, he will not be allowed to tack his judgment to such mortgage, so as to cut out

Tacking.

or postpone a mesne mortgage; because he did not originally advance his money on the immediate credit of the land, and by his judgment, he did not acquire any right in the land, but before the stat. 1 & 2 Vict. c. 110, only a lien on the land, which might or might not be enforced. (2 Robbins Mortg. 1228; *Spencer* v. *Pearson*, 24 Beav. 266.) And the better opinion would appear to be that this is still the case, although, under the 13th section of that Act, a judgment will operate as a charge on real estate, except so far as the stat. 27 & 28 Vict. c. 112, affects the case. (Robbins Mortg. 1229; but see Fisher Mortg. 566.) Since the latter Act, however, the land is not affected, and no right to tack can arise until the land is actually delivered in execution under a writ of elegit or otherwise, and the judgment is registered in accordance with the provisions of that Act. And it would seem that even after delivery creditor the cannot get rid of the mesne incumbrances by getting in a first legal mortgage. (Robbins, 1230; but see Fisher, 566.) Moreover, the effect of the judgment being only to charge the interest which remains in the debtor, the creditor can have no right, by means of tacking, to cut off an incumbrance which preceded his judgment. (*Ex parte Whitehouse*, 32 C. D. 512; *Davis* v. *Freethy*, 24 Q. B. D. 519.) And, on the other hand, when the land has been actually delivered in execution under that Act, a prior mortgagee cannot, even although he has no notice of the writ of elegit, affect the right of the judgment creditor by tacking to his prior mortgage a charge subsequent to the judgment. (2 Robbins Mortg. 1351.) **529.**

Upon the principle that where the equities are equal the Law shall prevail, if a first mortgagee, who

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

incumbrancer cannot, by buying a subsequent mortgage, tack it to his statute or judgment, because he did not advance his money on the immediate credit of the land. (2 Sp. 740; but see Robbins Mortg. 1233.) And a prior mortgagee having a bond debt (which *per se* is not a charge on land), cannot tack it against any intervening incumbrancer of a superior rank between his bond and mortgage, or against other creditors, or even against the mortgagor himself, or a purchaser of the equity of redemption, but only (to avoid circuity of action) against the heir or beneficial devisee. (St. § 418; 2 Robbins Mortg. 1234.) **531.**

By the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 7, the right of priority or protection by any legal estate, and by tacking, was taken away. But this enactment was repealed as to England as from the date of its operation, except as to anything done thereunder before the commencement of the repealing statute, by the Land Transfer Act, 1875, s. 129. **532.**

When a puisne mortgagee has bought in a prior incumbrance, but the legal estate is vested in a trustee, or the puisne mortgagee has not obtained the legal title, or he takes *in autre droit*, the incumbrances are paid in the order of their priority in point of time, according to the maxim, *Qui prior est tempore potior est in jure*, and the principle that he who has the better right to call for the legal title, or for its protection, shall prevail. (St. § 419; 2 Sp. 745.) **533.**

Where a legal mortgage is executed, and the mortgagee makes proper inquiry for the title deeds, and the mortgagor assigns an apparently satisfactory reason for not handing over or producing the deeds to the mortgagee, the legal mortgage will not be postponed to a prior equitable mortgage, of which

the legal mortgagee had no knowledge or notice. (*Agra Bank* v. *Barry*, L. R. 7 H. L. 135; *Oliver* v. *Hinton*, 68 L. J. Ch. 94.) **534.**

Postponement of a prior mortgagee.

Where a first mortgagee voluntarily, distinctly, and unjustifiably, through fraud or gross negligence, allows the mortgagor to retain the title deeds, or allows the mortgagor to get possession of them, he will be postponed to a subsequent mortgagee or purchaser without notice of the prior mortgage. But the onus of proving such fraud or negligence is on the person seeking to postpone the other. (St. § 393; and see § 1010.) Mere carelessness or want of prudence will not postpone the legal owner. But he will be postponed if he has made no proper inquiry for the deeds, or has entrusted them to an agent who has been guilty of fraud. (*Northern Insurance* v. *Whipp*, 26 C. D. 482; Brett's Lead. Cas. 210; *Clarke* v. *Palmer*, 21 C. D. 124; *Lloyd's Banking Co.* v. *Jones*, 29 C. D. 221; *Brocklesby* v. *Temperance Building Society*, (1895) A. C. 173; *Oliver* v. *Hinton*, 68 L. J. Ch. 94; *Re Castell and Brown*, (1898) 1 Ch. 315.) So if he conceals his mortgage from a person who, as he knows, is about to lend money to the mortgagor, he will be postponed to that person. (St. § 390; *Wilson* v. *Wilson*, L. R. 14 Eq. 32.) A second incumbrancer of a trust fund, who has given notice of his incumbrance to the trustees of the property, whether he has inquired of them as to the state of the title or not, will be preferred to a prior incumbrancer, who has omitted to give notice of his incumbrance to the trustees. (2 Sp. 764; Brett's L. C. 215.) And if a prior incumbrancer on real estate devised in trust for sale, omits to give notice to the trustee, before notice is given of a subsequent incumbrance, he will be postponed to the subsequent incumbrancer. (*Lee* v.

Howlett, 2 K. & J. 531; *Arden* v. *Arden*, 29 C. D. 702; and see *ante*, par. 436.) But a mortgagee of an equitable estate in land not directed to be sold has no occasion to give notice to the trustees, either to complete his title as against his mortgagor or to secure to himself his priority against subsequent incumbrancers. (*Rooper* v. *Harrison*, 2 K. & J. 86.) And a transferee of an equitable mortgagee need not give notice to a mortgagor in order to protect his title (*Re Richards*, 45 C. D. 589, 595), though it will give him an advantage if the mortgagors are trustees. (Brett's L. C. 215.) A declaration of trust of an outstanding term, with a delivery of the deeds creating and continuing the term, has been held to give a subsequent incumbrancer a better equity than a mere declaration of trust taken by a prior incumbrancer. (St. § 521 b, and note; 2 Sp. 279.) **535.**

Infants' Relief Act, 1874.

Independently of the stat. 37 & 38 Vict. c. 62 (*ante*, par. 132*a*), a charge created by an infant (whether representing himself to be an adult or otherwise) will be postponed to a subsequent mortgage executed by him when of full age. (*Inman* v. *Inman*, L. R. 15 Eq. 260.) **536.**

Mortgagee's remedies.

3. As to the remedies of the mortgagee to secure the discharge of the mortgage, a foreclosure is in many cases the appropriate remedy. (St. § 1026.) **537.**

Foreclosure.

An intermediate mortgagee is entitled to a foreclosure against the mortgagor and all mortgagees subsequent to himself. (*Greenough* v. *Littler*, 15 C. D. 93.) A person entitled to a part only of the mortgage money cannot foreclose a portion of the estate. (2 Sp. 674.) Proceedings for foreclosure may be taken until the mortgage is actually paid off and notwithstanding a decree for redemption; for the

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

or in the right of redemption, and notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of the mortgage money, may, if it thinks fit, direct a sale of the mortgaged property on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale, and to secure performance of the terms; (3) in an action brought by a person interested in the right of redemption, and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give security for costs, give the conduct of the sale to any defendant, and give directions as to costs; (4) the Court may direct a sale without determining the priorities of incumbrancers. The sale may be directed upon an interlocutory application (*Wooley* v. *Colman*, 21 C. D. 169), and either in a foreclosure or redemption action at any time before the action is concluded by the decree absolute. (*Union Bank of London* v. *Ingram*, 20 C. D. 463.) By sect. 5 of the same Act, provision is made for the discharge of incumbrances on the sale of land. But the Court will not act under this section where the incumbrance exceeds the value of the land. (*Great Northern Railway* v. *Sanderson*, 25 Ch. D. 788.) **540 a.**

Setting aside sale.

Though a power of sale be harshly exercised, and at a time when, having regard to the interests of the mortgagee, he would not have been advised to sell, yet the sale cannot be impeached on that account. (2 Sp. 634, 646.) The power of sale being given to the mortgagee for his own benefit, the Court will not

interfere unless there is collusion or reckless impropriety tantamount to fraud, or unless the price is so low as to be evidence of fraud. (*Warner* v. *Jacob*, 20 C. D. 220, 224; and see *Martinson* v. *Clowes*, 21 C. D. 861.) But a sale may be set aside as oppressive and irregular when it is made for other purposes than the recovery of his money. (*Robertson* v. *Norris*, 1 Gif. 421; affirmed on appeal.) And if he sells, after tender of principal and interest (and costs, unless they are unascertained, and the security ample), the sale will be set aside, as against him and a purchaser, with notice of the tender. (*Jenkins* v. *Jones*, 2 Gif. 99; 2 Robbins' Mortg. 904.) **541.**

A sale may be made without notice to the mortgagor, and without his concurrence, unless that is made a condition. (2 Sp. 635; *Newman* v. *Selfe*, 33 Beav. 522.) **542.**

But a power to sell without notice may be oppressive under certain circumstances, as in the case of a mortgage by a client to his solicitor, or a mortgage of a reversion by a necessitous person. (Robbins' Mortg. 894.) **543.**

Where notice to the mortgagor is required, a clause that a purchaser should not be required to ascertain that notice had been given, and that the mortgagee's receipt should be a sufficient discharge, does not apply to a case where the purchase is made with actual knowledge that such notice has not been given. (*Parkinson* v. *Hanbury*, 1 Dr. & Sm. 143.) **544.**

The mortgagee who sells and his trustee are not allowed to purchase the mortgaged estate. (Robbins' Mortg. 906.) But a second mortgagee may buy under a power of sale from the first mortgagee; and in such case he will obtain, as against the mortgagor, an

irredeemable title to the property. (*Parkinson* v. *Hanbury*, L. R. 2 H. L. 1; *Shaw* v. *Bunny*, 2 D. J. & S. 468; *Kirkwood* v. *Thompson*, 2 Hem. & M. 392.) **545.**

A mortgagee who has sold under his power, being a trustee of the surplus proceeds, must render an account of his claims in respect of principal, interest, and costs. (Wms. on Account, 95.) **546.**

But a mortgagee exercising his power of sale is only so answerable to persons other than the mortgagor of whose incumbrances or equities he has notice. (*Thorne* v. *Heard*, (1895) A. C. 495.) **547.**

Concurrent remedies of mortgagee.

A mortgagee may use all the remedies belonging to his character of mortgagee, and exercise all the powers that are given to him, as and when he pleases, even concurrently. (2 Robbins' Mortg. 867.) A power of sale therefore does not interfere with the right of the mortgagee to foreclosure. If a debt is secured by the mortgage of real estate, and also by covenant and collaterally by bond, the mortgagee may pursue all his remedies at the same time and in the same action. (*Powlett* v. *Hill*, (1893) 1 Ch. 277.) If he obtains full payment on the bond or covenant, the mortgagor is, by the fact of payment, entitled to redeem the estate, and foreclosure is prevented or not allowed. But if the mortgagee obtains only part payment on the bond or covenant, he may go on with his foreclosure suit, and, giving credit in account for what he has recovered on the bond or covenant, he may foreclose for non-payment of the remainder. On the other hand, if he obtains a foreclosure first, and alleges that the value of the estate is not sufficient to satisfy the debt, he is not absolutely precluded from suing on the bond or covenant; but it is held that by doing so he gives to the mortgagor a renewed right to

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

Equity of redemption.

Hence, if the mortgagee is in possession or receipt of profits, and the mortgagor applies to be allowed to redeem, before the right of redemption is lost by a lapse of twelve years during which no acknowledgment has been made by the mortgagee of the mortgagor's title or of his right of redemption, the mortgagee will then be treated precisely as a trustee for the mortgagor, inasmuch as he will be compelled to re-convey the estate, and account for every kind of profit that he has made in the ordinary way, or which, but for his wilful default, he might have made. (See St. § 1013, 1016, 1028 a; Wms. on Account, 146; *Taylor* v. *Mostyn*, 33 C. D. 226; *Mainland* v. *Upjohn*, 41 C. D. 126.) **551.**

The common equity of redemption, or ordinary right which the mortgagor has in Equity of redeeming the estate, is so inseparable an incident to a mortgage that it cannot be disannexed from such a transaction, or controlled even by an express agreement. (St. § 1019; Robbins' Mortg. 14.) And this constitutes an equitable estate in the land, which may be granted, devised, and entailed; and if entailed, might have been barred by a fine or recovery, and may now be barred by a disentailing deed, as is liable to a tenancy by the curtesy, and, since the statute 3 & 4 Will. IV. c. 105, s. 2, to dower. (St. § 1015; Robbins' Mortg. 44.) Also the equity of redemption, unless there appears a clear intention of making a new settlement of the mortgaged property, remains subject to the uses or trusts to which the property was subject before the mortgage. And the mere form, which may be affected by inaccuracy or mistake, of reversion of the equity of redemption is often not of itself sufficient to alter the previous title. (2 Smith's

Real and Personal Property, 6th ed. par. 1094; *Jones* v. *Davies*, 8 C. D. 205.) **552.**

A mortgagor may, by a subsequent deliberate act, extinguish his equity of redemption. Thus, a mortgagee may purchase the equity of redemption of the mortgagor. (1 Robbins' Mortg. 633.) But the Court views such a transaction with jealousy. (2 Sp. 654.) And if a mortgagor in embarrassed circumstances conveys his equity of redemption (under pressure for payment of the mortgage debt) for a sum considerably less than its value, the sale will be set aside. (*Ford* v. *Olden*, L. R. 3 Eq. 461.) **553.**

A mortgagor cannot redeem part of the mortgaged property included in the same mortgage. Where therefore two or more distinct properties are included in one mortgage, and for one advance, he cannot redeem one of them without redeeming the whole. (*Hall* v. *Howard*, 32 C. D. 430.) **553 a.**

Consolidation.

The rule with regard to the consolidation of mortgages still holds good where the mortgages were made before the Conveyancing Act, 1881, or where the Act is expressly excluded, as is often the case. Consolidation may be described as the right of a mortgagee, having two or more securities from the same mortgagor, to refuse to allow him to redeem one without redeeming the other or others. Where therefore a mortgagee lends two distinct sums to the same mortgagor on two securities, although they be only equitable securities, and although created by two distinct instruments, and at different times, and although the property in one be real and the other personal, the mortgagor or any one claiming under him (even a purchaser of the equity of redemption or mortgagee of the estate sought to be redeemed, who

had no notice of the mortgage on the estate not sought to be redeemed), cannot redeem the property comprised in one security without redeeming the other also; for the person who has the two mortgages has a right to consolidate them, so as to insist on both being paid off together. But the mortgages must be vested in one and the same hand; and a possibility that they may become so vested is not enough. (*Riley* v. *Hall*, 79 L. T. 244.) And where two mortgages of distinct estates originally vested in different mortgagees are transferred to one person, even with notice of a second mortgage, the second mortgagee cannot redeem the one estate without the other. And the transferees of a mortgage made by a person who afterwards becomes bankrupt are entitled to tack a debt insufficiently secured by a previous mortgage of other property made to them directly, though they took the transfer after and with notice of the adjudication. And where the mortgagee has sold one estate under a power of sale, he may apply the balance of the proceeds of that estate, after payment of the mortgage debt upon it, towards payment of the debt upon the other. (St. § 1023, n; Robbins' Mortg. 855; Brett's L. C. 216; 2 Wh. & Tu. 143; *Vint* v. *Padget*, 2 D. & J. 611; *Cummins* v. *Fletcher*, 14 C. D. 699; *Harter* v. *Colman*, 19 C. D. 630; *Jennings* v. *Jordan*, 6 A. C. 698; *Pledge* v. *White*, (1896) A. C. 187.) **554.**

The Conveyancing Act, 1881, s. 17.

But where the mortgages, or one of them, are or is made after the 31st of Dec. 1881, the right of consolidation is, unless a contrary intention is expressed in the mortgage deeds or one of them, taken away by the Conveyancing Act, 1881, which enacts, by s. 17, "A mortgagor seeking to redeem any one mortgage shall, by virtue of this Act, be entitled to do so without

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

And it would seem that a judgment creditor who has not issued execution has a right to redeem. (Robbins' Mortg. 696; *Cork* v. *Russell*, L. R. 13 Eq. 210.) As regards the right to redeem, there is no substantial difference between a mortgage in the form of a trust for sale and a mortgage in the ordinary form. (*Wicks* v. *Scrivens*, 1 Johns. & H. 215; *Kirkwood* v. *Thompson* 2 Hem. & M. 392. **555.**

Where the owner of leasehold property first mortgaged it by demise, and then sublet it, and the mortgagee refused to recognise the tenant, it was held that the tenant was entitled to redeem. (*Tarn* v. *Turner*, 39 C. D. 456.) **555 a.**

A purchaser of an equity of redemption cannot redeem an existing mortgage untill his purchase is completed. (2 Sp. 668.) **556.**

Obligation for mortgagee to transfer instead of reconveying.

Conveyancing and Law of Property Act, 1881.

Where the mortgagee is not, and has not been, in possession, it is enacted by the Conveyancing Act, 1881, s. 15, that "where a mortgagee is entitled to redeem, he shall, by virtue of this Act, have power to require the mortgagee instead of reconveying, and on the terms on which he would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs, and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly." And this enactment takes effect notwithstanding any stipulation to the contrary. And the Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 12, enacts that, "The right of the mortgagor under section fifteen of the Conveyancing Act, 1881, to require a mortgagee, instead of reconveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to and be capable of being enforced by each incumbrancer,

Conveyancing Act, 1882.

or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer." (*Teevan* v. *Smith*, 20 C. D. 724; *Alderson* v. *Elgey*, 26 C. D. 567; *Everitt* v. *Automatic, &c.*, (1892) 3 Ch. 506.) **556 a.**

Every person who has a right to redeem the mortgage may redeem any prior incumbrancer, on payment of principal, interest, and costs due to him; the redeeming party being also liable to be redeemed by those below him, who are all liable to be redeemed by the mortgagor. (2 Sp. 665.) **557.**

Accounts.

A mortgagee in possession, or in receipt of the rents and profits of the mortgaged property, is bound to account for all he has received, or which, but for his wilful neglect or default, he might have received. (Wms. on Account, 146.) But he is not bound to account for any profit derived from a contract or dealing merely collateral to the mortgage, if such advantage is fair and reasonable, and does not prevent redemption on payment of principal, interest, and costs. (*Santley* v. *Wilde*, (1899) 1 Ch. 747.) Thus, where the mortgagees of a public-house entered into possession, and let the house to tenants under agreements binding them to purchase their beer from the mortgagees, it was held that the mortgagees were not bound to account for the profits, which were considerable, derived from the sale of beer to the tenants, although they were liable to account for the increased rent they might have obtained from tenants under no such restriction as to purchasing their beer. (*White* v. *City of London Brewery*, 39 C. D. 559.) And in

Annual rests.

settling the accounts between the mortgagor and mortgagee, where the latter has been in possession, sometimes annual rests are made, so that the excess of rent or value beyond the interest may be applied in liquidation of the principal. (Wms. on Account, 155.) As a general rule, rests are not made where the interest of the mortgage is in arrear at the time when the mortgagee takes possession. But where there is a special reason for making annual rests, as where the rents and profits considerably exceed the interest, rests will be directed. (*Ibid.*) The fact that no arrears of interest are due at the time when the mortgagee enters into possession, when taken with other circumstances, may be a ground for directing rests; or if no interest is due, or if the interest in arrear is converted in principal, there, and in such cases, annual rests will be made. (St. § 1016 a; *Scholefield* v. *Lockwood* (No. 3), 32 Beav. 439.) But whether interest is in arrear or not, rests will not generally be directed where the mortgagee has been driven to take possession in order to defend his security. (Wms. on Account, 158.) Annual rests will equally be directed in respect of the occupation rent fixed on a mortgagee in possession, as in respect of rents received. (2 Sp. 811.) **558.**

Possession.

The mortgagor is not entitled to the possession, in respect of his equitable estate, unless there is some special agreement to that effect, but he holds it solely at the will of the mortgagee, who may at any time, without giving any prior notice, recover the same by ejectment against him, unless he is ready to pay principal, interest, and costs, or against his tenants under a tenancy created subsequently to the mortgage; and he is not even entitled to reap the crop. But so

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

leases not exceeding twenty-one years, and (2) building leases not exceeding ninety-nine years, to take effect in possession not later than twelve calendar months after the date of the lease, a counterpart of which must be delivered by the mortgagor to the mortgagee, or, where more than one, to the first mortgagee, within one calendar month, and by the lessee to the lessor, the building leases to be in consideration of the erection of new, improved, or repaired buildings within not more than five years, and may be at a nominal rent within that time; provided that no other lease can be made than such as could have been made by the mortgagor or mortgagee with the consent of all incumbrancers if the Act had not passed. (44 & 45 Vict. c. 41, s. 18.) **561.**

V. Mortgage of leasehold.

V. Where a mortgage is by assignment of a leasehold interest, the mortgagee (unless there is a special provision to the contrary), as between the mortgagor and the mortgagee, takes the leasehold subject to the covenants and obligations of the original lease. But if an underlease, instead of an assignment, is taken, the mortgagee is protected. (Robbins' Mortg. 155.) **562.**

A mortgage, whether legal or equitable, of leasehold premises, includes the goodwill of a trade followed on the premises, and the fixtures. (2 Sp. 637; Robbins' Mortg. 118.) **563.**

Mortgage of renewable leasehold.

Neither the mortgagor nor the mortgagee of a renewable leasehold is bound to renew, unless it is a part of his contract to do so. The mortgagee, however, has a right to renew and to charge the mortgaged property with the costs of renewal and interest at the same rate as on the original principal; and when freeholds and leaseholds are mortgaged together, a

provision charging the costs of renewal with interest on the whole of the mortgaged property should be inserted in the mortgage deed. If the mortgagor renews, the new lease will be subject in equity to the same mortgage as the old lease. And if, instead of renewing, the mortgagor purchases the reversion, it will be subject in equity to the mortgage. If a renewable leasehold is assigned by way of mortgage, an agreement between the landlord and the mortgagee, without the concurrence of the mortgagor, will not bind the mortgagor. (2 Sp. 650; 1 Robbins' Mortg. 165; 2 *ibid.* 949.) **564.**

VI. Rent instead of interest.

VI. Where the relation of mortgagor and mortgagee subsists, it is hardly possible that an agreement under which the mortgagee is to hold the land at a rent as an equivalent for interest can be supported; it being considered, independently of the question as to usury in cases under the old law, to be against public policy that such agreements should be permitted to take place between parties, one of whom has an obvious advantage over the other. (2 Sp. 617.) **565.**

VII. Mortgage for costs.

VII. A solicitor may take a mortgage security from his client for costs. Formerly such a mortgage was restricted to costs already due, but now it may extend to future costs, charges, and disbursements to be ascertained by taxation or otherwise (33 & 34 Vict. c. 28, s. 16; 44 & 45 Vict. c. 44, s. 5); and the solicitor may commence a foreclosure action without having first had his bill taxed. But if a mortgage by a client to his solicitor contains unusual clauses they will not be enforced, unless specially pointed out to the client. (2 Sp. 630; Robbins' Mortg. 609, 1145.) **566.**

Formerly a solicitor mortgagee was only entitled

to out-of-pocket expenses, and not to profit costs; but under the Mortgagees' Legal Costs Act, 1895, he may now charge his ordinary costs for acting in, negotiating and completing the mortgage. **566 a.**

VIII. Conveyance in trust to sell.

VIII. Lands are sometimes conveyed by way of security to a third person agreed upon by the borrower and a lender, or to the lender himself, in trust, upon non-payment of the loan at the appointed time, and usually upon notice, to sell the estate, to satisfy the debt out of the proceeds. This is a species of mortgage. It is not such a trust for sale as the mortgagor can enforce; because the discretion as to selling or not is in the mortgagee alone. On the other hand, the mortgagee cannot foreclose, but is limited to his remedy by sale. And in this case, though the mortgagor covenant to join, the purchaser cannot require that he should join in the conveyance. (2 Sp. 634; *Locking* v. *Parker*, L. R. 8 Ch. 30; *Re Alison* 11 C. D. 284.) **567.**

IX. Defective mortgage.

IX. Where a person affects to make a mortgage, but the deed is defective, further assurance will be enforced in Equity. (2 Sp. 639.) If a man, after making a defective mortgage to one person, makes a mortgage by an assurance which is effectual to give a perfect title to another person, the second will prevail, if he lent his money on the security of the land, and without notice; because he has equal equity and the legal title. And where all the incumbrances are equitable and the first is defective, no help will be afforded against a subsequent incumbrance. (2 Sp. 639.) But (so far at least as the stat. 1 Vict. c. 110 does not alter the case) a defective mortgage would prevail against a mere subsequent judgment creditor, who is in the nature of a volunteer as regards his lien

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

nominee of the customer, whereby the stock was lost to the trust, it was held that the bank were liable for the value of the stock at the time when they transferred it to the customer's nominee. (*Magnus* v. *Queensland National Bank*, 36 Ch. D. 25.) **569 a.**

Where the death of the mortgagee took place before the 1st of January, 1882, and the condition is for payment to the mortgagee, his heirs *or* his executors, the mortgagor, after the death of the mortgagee and before forfeiture, may pay either the heir or the executor, as he pleases, but after forfeiture the money is to be paid to the executor; and even if paid to the heir before forfeiture, it belongs to the executor; because in Equity a mortgage debt is considered as part of the mortgagee's personalty; the money came from that source, and is to be returned to it. (See 2 Sp. 650, 651.) **570.**

But in case of the death of the mortgagee on or after the 1st of January, 1882, the legal interest in every mortgage, notwithstanding a testamentary disposition, devolves like a chattel real on his legal personal representatives, who are deemed his heirs and assigns within the meaning of all trusts and powers (44 & 45 Vict. c. 41, s. 30), except in the case of copyholds. (See *supra*, par. 513.) **570 a.**

When an agreement for a mortgage contains a stipulation that the principal money shall not be called in for a certain time, the Court, in settling such an agreement, will make the postponement conditional on punctual payment of interest, and also, if the property is leasehold, on the performance of the covenants. (*Seaton* v. *Twyford*, L. R. 11 Eq. 591.) **571.**

If a mortgagor pays off the principal to the solicitors

of the mortgagee, instead of the mortgagee himself, without ascertaining that they are authorised to receive it, he does it at his own risk. So that if the solicitors misappropriate the money, the mortgagor will remain liable to the mortgagee or his assignee. (*Withington* v. *Tate*, L. R. 4 Ch. 288.) **572.**

And, on the same principle, if the mortgagor has not received the money, the mortgagee cannot maintain the validity of the mortgage deed by showing that he paid the money to the mortgagor's solicitor, unless the mortgagee can show that the mortgagor's solicitor was expressly authorised to receive the money by the mortgagor. And the mere fact that the mortgagor's solicitor was in possession of a mortgage deed executed by the mortgagor did not authorise the mortgagor's solicitor to receive the money for the mortgagor. (*Ex parte Swinbanks*; *In re Shanks*, 11 C. D. 525; *Ex parte Butters*, 14 C. D. 265; *Gordon* v. *James*, 30 C. D. 249.) **572 a.**

Receipt in deed or indorsed authority for payment to solicitor.

But where the consideration is to be paid after the 31st of December, 1881, the law is altered by the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 56, which enacts, "Where a solicitor produces a deed having in the body thereof, or indorsed thereon, a receipt for consideration money or other consideration, the deed being executed or the indorsed receipt being signed by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to give or pay the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt." But the solicitor must be acting for such last-mentioned

person. (*Day* v. *Woolwich Equitable Building Society*, 40 C. D. 491.) And the Trustee Act, 1893, s. 17, empowers trustees to appoint a solicitor to receive trust moneys, by permitting him to produce a deed having such a receipt. **572 b.**

Statutory mortgage.

With respect to statutory mortgages, see the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), ss. 26-29, and also Schedule III. Part I. of that Act. **572 c.**

XI. Welsh mortgage.

XI. There is a kind of mortgage called a Welsh Mortgage, which, however, has now fallen into disuse, in which there is no condition or proviso for repayment at any time. The agreement is that the mortgagee, to whom the estate is conveyed, shall receive the rents till his debt is paid; and in such case the mortgagor and his representatives are at liberty to redeem at any time. (1 Robbins' Mortg. 26.) **573.**

XII. Mortgage of wife's estate.

XII. Where a husband is seised *jure uxoris*, and he and his wife join in a mortgage, reserving the equity of redemption to him and his heirs, he has the equity of redemption *jure uxoris* as he before had the legal estate, unless it is evident that the transaction is more than a mere mortgage, or the limitation of the estate is perfectly distinct from the equity of redemption. *Huntingdon* v. *Huntingdon*, 2 Lead. Cas. Eq. 2nd ed. 388 *et seq.* But at the same time the intention to alter the previous title may be manifested by the language of the proviso itself, and there is no necessity for an express declaration or a recital to that effect. (*Atkinson* v. *Smith*, 3 D. & J. 186, 192. *Jones* v. *Davies*, 8 C. D. 205. See *infra*, par. 575.) **574.**

Where a mortgage is made of the wife's lands, to secure money borrowed by the husband—and, in the absence of evidence to the contrary, the loan will be

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

XV. Assignment of mortgage.

XV. An assignment of a mortgage is an assignment of the debt, but notice should be given to the mortgagor without delay. (Robbins' Mortg. 826, 821.) But before an assignment is taken, inquiry should be made of the mortgagor as to the sum due on the mortgage; for in an assignment without the concurrence of the mortgagor, the assignee takes subject to the accounts and equities between the mortgagor and mortgagee although no receipt for any part which may have been paid off, of the mortgage debt, be indorsed on the mortgage deed, and the mortgagor is not bound by the amount appearing due in the assignment. The concurrence of the mortgagor should therefore be obtained when possible. (2 Robbins' Mortg. 819, 821.) **578.**

If a mortgagee in possession assigns over his mortgage without the assent of the mortgagor, the mortgagee is still bound to answer for the profits both before and after the assignment, though assigned only for his own debt. But this does not apply where the transfer is made by order of the Court, as in an administration action. (*Hall* v. *Heward*, 32 C. D. 430.) **579.**

The assignee of a mortgagee cannot stand in any different character or hold any different position, either better or worse, from that of the assignor himself. (*Walker* v. *Jones*, L. R. 1 P. C. 50.) **580.**

Where therefore a mortgagee obtains a mortgage without consideration, and transfers it to a third person, who has no notice of the want of consideration, neither the transferor nor the transferee can enforce it, but it will be ordered to be cancelled. (*Parker* v. *Clarke*, 30 Beav. 54.) **581.**

If a person pays off a first mortgage, and takes the

deeds and a new mortgage without notice of a second equitable mortgage, he will be entitled to priority over the second equitable mortgagee who had notice of the first mortgage. (*Pease* v. *Jackson*, L. R. 3 Ch. 576. And see *London & County Bank* v. *Radcliffe*, 6 A. C. 722.) **582.**

XVI. What a purchaser of a mortgage has a right to claim.

XVI. The purchaser of a mortgage, as a general rule, has a right to claim, against the mortgagor, and all deriving title under him, the full amount of what is due on the security, whatever he may have given; for as he takes the risk, so he is allowed the gain, if any. (2 Robbins' Mortg. 823.) But an heir, a trustee, an agent, an executor, or other person in a fiduciary position, can only claim the amount which he gave for it; unless he has bought in that security to protect one of his own. (Robbins' Mortg. 824, 825.) **583.**

XVII. Gift of mortgage security.

XVII. A gift of a mortgage security is a gift of all the testator's interest in the money and the security. (Robbins' Mortg. 847; 2 Sp. 655.) **584.**

XVIII. Devise by a mortgagee.

XVIII. A mortgagee of realty, whose mortgage is redeemable, has both a legal interest and a beneficial interest, the legal interest being real estate in a mortgage of realty, and the beneficial interest being personal estate. Formerly, in the absence of a contrary disposition in his will, the legal interest passed to his heir-at-law as real estate, and the beneficial interest devolved on his personal representatives as part of his personalty, the heir-at-law becoming a trustee of the legal interest for the personal representatives. And in cases of death before the 1st of January, 1882, where a mortgagee devised all his real estates, whatsoever and wheresoever, the legal estate in mortgaged premises passed by the will, unless a different intention appeared from

the context. The beneficial interest, however, did not pass under such a devise. The decisions as to what words passed the legal and beneficial interest in different cases are somewhat conflicting. (See 2 Robbins' Mortg. 833.) But this question is now of comparatively small importance, since, in cases of death on or after the 1st of January, 1882, the legal estate in the mortgaged property vests, notwithstanding any testamentary disposition, in the personal representatives of the mortgagee (44 & 45 Vict. c. 41, s. 30), except in the case of copyholds. See *supra*, par. 513. **585.**

XIX. Right of purchaser of equity o redemption.

XIX. Generally speaking, a purchaser of an equity of redemption, with notice of subsequent incumbrances, stands in the same situation, as regards the subsequent incumbrancers, as if he had himself been the mortgagor. And where a second equitable mortgagee who becomes such without notice of the first equitable mortgage, afterwards, with notice of the first incumbrance, gets in the legal estate, he obtains priority, unless the circumstances are such as to make it inequitable for him to do so, as where, for example, he had notice that the legal estate was held upon express trust. The mere fact that the subsequent incumbrancer has notice when he gets in the legal estate counts for nothing. (*Taylor* v. *Russell*, (1892) A. C. 244, *per* Lord Macnaghten.) **586.**

Right of second equitable mortgagee.

XX. Extinguishment of the mortgage debt by cancelling.

XX. If a mortgage is cancelled by a mortgagee, and it is so found in his possession on his death, it is as much a release as cancelling a bond. But it does not convey or revest the estate in the mortgagor; for that must be done by some deed: the legal estate in such a case, on the death of the mortgagee before the 1st of

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

TIT. III. CAP. III. SECT. I.

interest in which would not be deemed to be merged or extinguished in Equity." **589 a.**

XXII. Reconveyance (*a*).

XXII. The mortgagee cannot be compelled to reconvey until the money is in pocket: payment into Court is not sufficient. (2 Sp. 653.) And it is presumed that this would apply where a mortgagee, instead of reconveying, transfers under stat. 44 & 45 Vict. c. 41, s. 15.) (See *supra*, par. 555 a.) **590.**

XXIII. Death of mortgagor intestate, and without heirs.

XXIII. Where a person makes a mortgage in fee, and dies intestate without heirs, the equity of redemption does not escheat to the Crown, but belongs to the mortgagee, subject to the debts of the mortgagor, (*Beale* v. *Symonds*, 16 Beav. 406; but see now Intestates Estates Act, *ante*, par. 285 a.) **591.**

SECTION II.

Of Equitable Mortgages.

TIT. III. CAP. III. SECT. II.

Besides mortgages created by a formal instrument, and valid at Law as well as in Equity, there are Equitable Mortgages. These are created either by a written instrument, or by a deposit of deeds with or without writing. (*Russel* v. *Russel*, 2 Wh. & Tu. 76 *et seq.*) Any written agreement or directions, or other instrument in writing, showing that it was the intention of a debtor thereby to make his land or other property a security for the debt, will be equivalent in Equity to an actual mortgage by deed or to a

(*a*) On this subject see stat. 7 & 8 Vict. c. 76, s. 9. repealed by stat. 8 & 9 Vict. c. 106, s. 1; and see stat. 13 & 14 Vict. c. 60, ss. 19, 20 37 & 38 Vict. c. 78, s. 4; 44 & 45 Vict. c. 41, s. 15; 45 & 46 Vict. c. 39, s. 12.

pledge. (2 Sp. 777—979; *Fenwick* v. *Potts*, 8 D. M. & G. 506; *Daw* v. *Terrell*, 33 Beav. 218.) And a deposit of all or some of the material deeds or documents of title constitutes an equitable mortgage, though they do not show a good title in the depositor, if made with a creditor or some person on his behalf (whether with or without any written memorandum, and even without a word passing), as security for an antecedent debt. or on a fresh loan of money, and if received by him (as far as it would appear in good faith and in the belief that they were the title deeds of the estate). (St. § 1020; Robbins' Mortg. 1343; *Lacon* v. *Allen*, 3 Drew. 579; *Roberts* v. *Croft*, 24 Beav. 223; 2 D. & J. 1; *Dixon* v. *Muckleston*, L. R. 8 Ch. 155.) **592.**

Where the Court is satisfied of the good faith of the person who has got a prior equitable charge, and that he was led to believe that he had got the necessary deeds, the Court will not hold that he was bound to examine the deeds. And if he does not, and they do not show any title in the mortgagor, yet such equitable mortgagee is entitled to priority, even over a second equitable mortgagee, without notice who has deeds which show a complete title in the mortgagor, and has a memorandum of deposit. (*Dixon* v. *Muckleston*, L. R. 8 Ch. 155.) This is only defensible on the ground of public convenience in facilitating loans by means of equitable mortgages. It illustrates the great danger of lending on such securities. **593.**

Further advances.

The deposit will cover subsequent advances, if it clearly appears that they were made upon the faith of that security, or that the original deposit was continued with an agreement for a further advance. (Robbins' Mortg. 42, 60.) **594.**

The meaning and object of the deposit may be explained by parol evidence. (2 Sp. 784.) And evidence is admissible to show that a delivery of deeds to a third person, by a person not being the party whose estate is sought to be charged, even though no money passed at the time, constituted an equitable mortgage. (Robbins' Mortg. 57, 61.) **595.**

An equitable mortgagee, by deposit of title-deeds, will have preference over a subsequent purchaser or mortgagee of the legal estate with notice; and not only actual, but constructive notice may be sufficient, as when the subsequent purchaser or mortgagee was informed that the equitable mortgagee had possession of the title-deeds, and neglected to inquire the reason of the possession, but not over a subsequent purchaser or mortgagee who has the legal estate and had no notice of such equitable mortgage. (2 Robbins' Mortg. 1215; *ante*, par. 535.) **596.**

An equitable deposit with memorandum of charge by a devisee or by an executor, who is also residuary legatee, will have priority over the claims of unsatisfied creditors of the testator, if the mortgagee had no notice of the unsatisfied debts. (*British Mutual Investment Co.* v. *Smart*, L. R. 10 Ch. 567. *Graham* v. *Drummond*, (1896) 1 Ch. 968.) **597.**

An equitable incumbrancer on property, who has distinct notice of a prior incumbrance, cannot, by concealing his knowledge from his assignee, give such assignee a better right than that which he himself possesses. (*Ford* v. *White*, 16 Beav. 125, *ante*, par. 581.) **598.**

Where a trustee of funds, invested on a mortgage in his name, deposits the deeds, without notice of the trust, to secure an advance to himself, the *cestuis que*

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

Section III.

Of Mortgages and Pledges of Personal Property.

I. A mortgage and a pledge distinguished from each other.

I. A mortgage of personal property is a transfer of the ownership itself, subject to be defeated by the performance of the condition within a certain time. The right of property passes to the mortgagee by the assignment, and possession is not generally necessary to complete his title. But a *pledge* of a personal chattel only passes the possession of it, or at most a special property therein sufficient to support an action against a person wrongfully converting it, to the pledgee, with a right of retainer till the debt is paid or the engagement is fulfilled. The right of the pledgee is not complete without possession of the thing pledged, and an actual or constructive delivery of it to the pledgee is necessary. (St. § 1030; 2 Sp. 771; Robbins' Mortg. 1458.) **602.**

II. Tacking.

II. A mortgage or a pledge of personal property may be held till a subsequent debt or advance, without notice of a mesne incumbrance, is paid, as well as the original debt (except in the case of a bankruptcy), on the ground that it may be presumed that the mortgagee or pledgee would not have lent the further sum except on the credit of the mortgage or pledge, and that he who seeks equity must do equity. This presumption may indeed be rebutted by circumstances; but, unless it is rebutted, it will generally prevail in favour of the lien, against the pledgor himself, although not against his creditors having a specific lien or interest in the property, or against subsequent purchasers of the equity of redemption. (St. § 1034; 2 Sp. 772, 773.) **603.**

But if the mortgagee realizes his security after the death of the mortgagor the proceeds of whose security exceed the debt secured, he may not apply the balance of such proceeds in payment of any unsecured debt due to him from the mortgagor to the prejudice of other creditors, but must hand over the balance to the executors. (*Talbot* v. *Frere*, 9 C. D. 568; *Christison* v. *Bolam*, 36 C. D. 223.) **604.**

III. Mortgagor's right to redeem, and mortgagee's right to sell.

III. A mortgagor or pledgor of personal property may redeem if he applies within a reasonable time. But, on the other hand, the mortgagee or pledgee may, on due notice, sell the property, though a pledgee cannot foreclose. (St. § 1031—1032; Robbins 1460; *Carter* v. *Wake*, 4 C. D. 605; *France* v. *Clark*, 26 C. D. 257.) The reason would appear to be that on which a Court of Equity acts in not decreeing a specific performance of agreements respecting personal property; namely, that other things of the same kind, and of the very same worth, even to the owner himself, may be purchased for the sum which the articles in question fetch; and therefore if such property is mortgaged, the mortgagee may properly be allowed to sell it, on due notice. **605.**

IV. Mortgage of shares.

IV. If a person transfers his shares in a company by way of mortgage, and the mortgagee, as registered owner, becomes liable for calls or other payments, he cannot compel his mortgagor to indemnify him, unless he comes to redeem. (Robbins' Mortg. 276.) **606.**

V. Mortgage of a ship.

V. The mortgagee of a ship is entitled to the accruing freight from the time he takes possession. (Robbins' Mortg. 266; *Keith* v. *Burrows*, L. R. 2 Ap. Cas. 636.) A security valid in Equity may be given upon freight to be earned or a cargo to be acquired. (Robbins' Mortg. 271.) A contract by

Bottomry.

which a ship, freight, and cargo are rendered liable by the master for the payment, after the arrival of the ship at her destination, of a debt incurred in obtaining what is necessary for the preservation of the ship or for the continuation of the voyage is called bottomry, or, when the security is confined to the cargo, respondentia. **607.**

Respondentia.

The first registered mortgagee of a ship, by taking possession of her before the freight is completely earned, obtains a legal right to receive the freight, and to retain thereout not only what is due on his first mortgage, but also the amount of any subsequent charge which he may have acquired on the freight, in priority to every equitable charge of which he had no notice; and it makes no difference that a subsequent incumbrancer was the first to give notice to the characters of his charge on the freight. (*Liverpool Marine Credit Co.* v. *Wilson*, L. R. 7 Ch. Ap. 507; *Keith* v. *Burrows*, L. R. 2 Ap. Cas. 636.) **608.**

A legal mortgage of a ship must be in the form prescribed by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60). And by section 57 of that Act, it is provided that, subject to the provisions of the Act, "interests arising under contract or other equitable interests may be enforced by or against owners and mortgagees of ships in respect of their interest therein in the same manner as in respect of any other personal property." (See *Batthyany* v. *Bouch*, 50 L. J. Q. B. 421.) **609.**

VI. Pledgor's right of redemption.

VI. In the case of pledges, if a time for redemption is fixed by the contract, still the pledgor may redeem it afterwards, if he applies to the Court within a reasonable time. If no time is specified for the payment, the pledgor may redeem it at any

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

TIT. III. CAP. III. SECT. IV.

will not of itself give a charge on them. (*Robey & Co.* v. *Ollier*, L. R. 7 Ch. 695, 698.) Where, however, a letter of advice showed an intention to consign the goods as a security for the bills, and goods were deposited to meet the bills, it was held that there was a lien. (*Ex parte Ackroyd*, 3 D. F. & J. 726.) And under special circumstances the dealings between consignors and consignees may be such as to create a specific lien. (*Frith* v. *Forbes*, 4 D. F. & J. 409.) But as a general rule, if there is a bill of lading, a mere letter of advice accompanying a bill of exchange will not create any specific lien. (*Brown, Shipley & Co.* v. *Kough*, 29 C. D. 848.) Where, however, a consignor directs his agent to realise a cargo sent against a bill of exchange, and to pay the bill, and the agent communicates this direction to the holder, the latter has a lien on the cargo. (*Ranken* v. *Alfaro*, 5 C. D. 786.) **614.**

With regard to liens in Equity, it may be generally stated that they arise from constructive trusts; and of this we have a good illustration in the case of a vendor's lien for unpaid purchase-money (*ante*, par. 327). The usual way of enforcing a lien in Equity is by a sale of the property to which it is attached. (St. § 1217.) **615.**

Lien of a solicitor for costs

The lien of a solicitor on the deeds, books, and papers of his client, for his costs, is not like a lien arising in the case of contract: it has not the character of a pledge or a mortgage: but it is merely a right to withhold from his client until his bill is paid the deeds, books, and papers which have come into his possession as solicitor, and not a right to enforce his claim against the client. (*Curwen* v. *Milburn*, 42 C. D. 424.) The lien is for costs only, and not for debts (*Re Galland*, 31 C. D. 296); and may be lost by

conduct, as by taking a security for costs. (*Re Douglas Norman & Co.*, (1898) 1 Ch. 199.) It prevails as against the representatives of the client, but it is only commensurate with the right of the client, and is subject to the rights of third persons as against him: so that a prior incumbrancer cannot be affected by it; and when a mortgagee is paid off, the solicitor of the mortgagee cannot retain the deeds. (Robbins Mortg. 1384.) And a solicitor acting both for the mortgagee and the mortgagor in the preparation of a mortgage has no lien on the title deeds in his possession for costs due to him from the mortgagor, unless such lien is expressly reserved, even though the mortgagee may have known that the solicitor had such lien as against the mortgagor. (*In re Snell*, 6 Ch. D. 105. See and distinguish *Brunton* v. *Electrical, &c.*, (1892) 1 Ch. 434.) **616.**

But a solicitor has a lien upon a fund realised in a suit, as to so much as may belong to his own client, for his costs of the suit or immediately connected with it; and this is a lien which he may actively enforce. (Robbins Mortg. 1385; *Verity* v. *Wylde*, 4 Drew. 427.) The Court or a Judge may declare the solicitor entitled to a charge upon the property recovered or preserved, whether real or personal, for his costs of, or in reference to, the suit or proceeding; and may give such charge priority. And the Court may extend the lien of the solicitor to the whole fund realised in the suit independently of the question to what person the fund belongs, and whether the solicitor was employed by that person, or whether that person is an infant or married woman restrained from anticipation. (23 & 24 Vict. c. 127, s. 28; *Greer* v. *Young*, 24 C. D. 545; Brett's L. C. 174; *Scholey* v. *Peck*, (1893) 1 Ch. 709.) **617.**

A set-off for damages or costs between the parties is now allowed, notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought. (Order LXV., r. 14, *Russell* v. *Russell*, (1898) A. C. 307.) **617 a.**

Banker. A banker also has a lien on the securities deposited by a customer for the customer's general balance of account, and this right subsists where not inconsistent with the terms of a special contract for a specific security. (*Re European Bank*, L. R. 8 Ch. 41.)

Lien of a joint tenant: If one of two joint tenants of a lease renews for the benefit of both, he will have a lien on the moiety of the other joint tenant for a moiety of the fines and expenses. (*Ex parte Grace*, 1 B. & P. 376.) **618.**

of a trustee: A trustee is entitled to a lien on the trust estate for his expenses, including the expenses of renewals of leases. (Lewin, 196.) **619.**

cestui que trust. Where there has been a breach of trust and a *cestui que trust* is implicated therein and liable therefor, his beneficial interest in other parts of the trust fund is subject to a lien to the extent of the loss to the trust estate, and his interest may be impounded. (*Hallett* v. *Hallett*, 13 C. D. 232.) And on the other hand the *cestui que trust* has a lien on the whole fund where a trustee has mixed trust moneys with his own. (Lewin, 1095.) **620.**

Lien under a covenant. A covenant for valuable consideration to charge or settle particular lands will create a lien on the property affected by the covenant. **621.**

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

the maintenance will be apportioned in Equity. (St. § 479; and see now the Apportionment Act, 1870.) **624.**

Illustrations of apportionments of the second class.

On the other hand, with regard to an apportionment of, and contribution towards, an incumbrance, loss, expense, or liability, in the absence of an indication to the contrary, where several estates, or parts of estates, are comprised in one mortgage, and they become vested by devise, descent, or otherwise in several persons, each estate or part of an estate mortgaged must, according to its value, contribute proportionally to keep down the interest or to pay off the principal. (St. § 484.) And so it is with different persons having distinct limited interests in an estate which is under mortgage. (St. § 485; 2 Sp. 837.) And as between a tenant for life and a remainderman under a will, the interest on the testator's debts must be borne by the income as from the day of the testator's death. (*Barnes* v. *Bond*, 32 Beav. 653.) **625.**

III. Voluntary discharge of an incumbrance by a tenant in tail or by a tenant for life.

III. With respect to the voluntary discharge of an incumbrance on an estate, by a person having an interest in the estate, the rule is that, in the absence of direct evidence of his intention, the quantum of interest which he owns determines whether the incumbrance is to be regarded as merged and extinguished, or is to be kept alive. Thus, if a tenant in fee simple pays off an incumbrance on the estate of which he is tenant in fee, the incumbrance, in the absence of evidence of a contrary intention, will be presumed to be extinguished. (Lewin, 894.) Also if a tenant in tail in possession pays off an incumbrance on the estate of which he is tenant in tail in possession, it will ordinarily be treated as extinguished, and the remainderman cannot be called upon for a

contribution, unless the tenant in tail keeps alive the incumbrance by some suitable assignment, or otherwise manifests his intention to hold himself out as a creditor of the estate in lieu of the mortgagee; because a tenant in tail in possession can make himself absolute owner of the estate: and therefore, if he discharges incumbrances, he is presumed to do so in the character of owner, unless he clearly shows that he intends to become a creditor in respect of such discharge. (Lewin, 895.) But the like doctrine does not apply to a tenant in fee simple subject to an executory limitation over which he cannot defeat, or to a tenant in tail incapable of making himself absolute owner, or to a tenant in tail in remainder, whose estate may be altogether defeated, or to a tenant for life; for, if either of these persons, and especially a tenant for life, pays off an incumbrance, it must be presumed that he means to keep it alive, against the inheritance, for his benefit. (Lewin, 895.) But, in all these cases, the presumption may be rebutted by circumstances which demonstrate a contrary intention. (St. § 486.) Though it has been said that there is no direct authority for saying that a charge can be made to attend the inheritance of the estate, like a term of years or chattel real, yet there can be little doubt that the common practice of assigning charges for that purpose would be confirmed by the Court. (Lewin, 896.) **626.**

IV. With respect to the compulsory discharge of incumbrances, the modern rule of Equity is this: that the tenant for life shall contribute, beyond the interest, in proportion to the benefit he derives from the liquidation of the debts, and the consequent cessation of interest, which of course will much

IV. Compulsory discharge of incumbrances.

depend on his age, and the computation of the value of his life. If the estate is sold to discharge incumbrances (as the incumbrancer may insist that it shall), the surplus which remains after discharging the incumbrance is to be applied as follows:—the income thereof is to go to the tenant for life during his life; and then the whole capital is to be paid over to the remainderman or reversioner. (St. § 487.) For the statutory powers of tenants for life with respect to leases and sales of, and the discharge of incumbrances on, settled estates, and also as to the capital money and income of such estates, see stats. 45 & 46 Vict. c. 38, 47 & 48 Vict. c. 18. **627.**

V. Keeping down the interest on incumbrances.

V. A tenant for life is bound to keep down interest which has accrued during his own time, so far as the rents and profits will extend. But if there are any arrears which accrued during the life of a preceding tenant for life, and such arrears cannot be recovered from his estate, they are primarily a charge upon the inheritance. (St. § 488, 1028 a; Robbins, 638; *Dixon* v. *Peacock*, 3 Drew. 288, 292; *Sharshaw* v. *Gibbs*, Kay, 333.) **628.**

Where a tenant for life of an estate, subject to a charge bearing interest, pays the interest, although the rents and profits are insufficient for that purpose, he cannot make himself an incumbrancer on the estate for the excess in his payments, if he has not given to the remainderman any intimation of the insufficiency of the rents and profits, and of his intention to charge the excess of his payments on the inheritance. (*Lord Kensington* v. *Bouverie*, 7 H. L. Cas. 557.) **629.**

A tenant in tail in possession, if of full age, cannot be compelled by the remainderman or reversioner to pay the interest; because he can make himself

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

Where such contribution is enforced.

If one surety, on the default of the principal, is compelled to pay the whole sum of money, or to perfórm any other obligation for which all became bound, he can oblige each of his co-sureties, and the representatives of any deceased surety, to contribute, whether the sureties are jointly and severally bound or only severally, unless there is an express or implied contract to the contrary, and whether their suretyship arises under the same instrument or under different instruments, either executed with his knowledge or not, if all the instruments are primary concurrent securities for the same debt. (See St. § 492, 495, 497, 498; *Whiting* v. *Burke*, L. R. 10 Eq. 539; 6 Ch. 342.) But where there are separate bonds given with different sureties, and one bond is intended to be only subsidiary to and a security for the other in case of a default in payment of the latter, and not to be a primary concurrent security, the surety in the subsequent bond would not be compelled to aid those in the first bond by any contribution. (St. § 498; *cf. Whiting* v. *Burke*, *supra*.) **634.**

As to the amount of the contribution between co-sureties, the principle is that there should be an equality of the burden and of the benefit, and consequently that they should contribute equally if each is surety for an equal amount, and if not, then proportionately to the amount for which each is a surety. And in order to effect this, each surety must bring into hotchpot every benefit he has received in respect of the suretyship, including any indemnity from the principal debtor, so that the ultimate burden may be ascertained and distributed among the sureties. (*Steel* v. *Dixon*, 17 Ch. D. 825; Brett's Lead. Cas. 244.)

What is the quantum.

Thus the contribution will generally be equal; but if

there is a contract express or implied to the contrary, it will be otherwise. (St. § 498 ; 2 Sp. 844.) And if there are several sureties, and one of them is insolvent, and another pays the debt, he can recover from the solvent surety or sureties, as much as such solvent surety or sureties would have had to pay if the insolvent had never undertaken the office of surety. (St. § 496 ; 2 Sp. 844 ; *Hitchman* v. *Stewart*, 3 Drew. 871 ; *Re Parker*, (1894) 3 Ch. 400.) And when there are several distinct bonds with different penalties, and a surety on one bond pays the whole, the contribution is in proportion to the penalty of their respective bonds. (St. § 497 ; *Coles* v. *Peyton*, (1893) 3 Ch. 238.) **635.**

Interest.

And as interest is allowed upon payments made by a surety, so it is allowed where there is only an implied contract by co-sureties to indemnify or repay another co-surety the amount paid by him in excess of his fair proportion, on the ground that where there is a contract to indemnify, either express or implied, the person who is to be indemnified ought to be put in the same position as if the act against which he is to be indemnified had been done by the person who is to indemnify him at the time when it ought to have been done. (*Ex parte Bishop*, 15 Ch. D. 400.) **635 a.**

VIII. Joint covenants.

VIII. The doctrine of contribution between joint covenantors is based on a broad principle of Equity, or, as it has sometimes been expressed, on an implied contract, and depends on the intention of the parties. Evidence of such intention is admissible after the death of one of such covenantors. (*Re Bentinck*, 80 L. T. 71.) **635 b.**

IX. General average.

IX. Another instance of apportionment and contribution is that of general average, which is a general contribution by all parties in interest towards a loss

or expense, which, in the course of a voyage, is voluntarily sustained or incurred for the benefit of all; as where goods are thrown overboard to lighten the ship. The contribution is confined to the property saved thereby, including the ship, the freight, and the cargo. (St. § 490, 491.) **636.**

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

of a payment varying with profits does not of itself make him a partner (section 2 (3)). **637.**

II. Specific performance of an agreement to enter into partnership.

II. In general a specific performance of a contract to enter into a partnership which may be dissolved instantly at the will of either party will not be enforced, since that would ordinarily be useless. Nor will it ordinarily decree a specific execution of an agreement to enter into a partnership for a certain time. (St. § 666; *Scott* v. *Rayment*, L. R. 7 Eq. 112.)

Carrying into effect the articles of partnership where a partnership has commenced.

But it will decree the execution of some formal instrument, putting the parties in the position agreed upon, even though the partnership thereby formed might be immediately dissolved. (St. § 666, n.) And after a partnership has commenced, the articles of partnership will be carried into effect, unless there is another entirely adequate remedy. Where there is an agreement, that, in case of any dispute, the same shall be referred to arbitration; the Court will not interfere and proceedings may be stayed. (St. § 667, 670.) **638.**

Application of articles after cesser of term.

Where partners, after the expiration of the time fixed by the articles for the duration of the partnership, continue to carry on business without altering the terms, it will be deemed a partnership at will, regulated by the articles so far only as they are consistent with a partnership at will. (*Clark* v. *Leach*, 32 Beav. 14.) **639.**

III. Dissolution decreed.

III. A partnership may be dissolved, in the ordinary way, by expiration of time, or by notice where no time is fixed, by death or bankruptcy, by the happening of any event which makes it unlawful for the business to be carried on, by a partner suffering his share to be charged under the Act for his separate debt, but in this last case dissolution only takes place at the option

of the other partners. (Partnership Act, 1890, ss. 32—34.)

By the same Act the Court may decree a dissolution if a partner becomes lunatic or otherwise incapable, if his conduct is injurious to the business, if he persistently commits a breach of the partnership agreement, or otherwise conducts himself so as to make it impracticable for the business to be carried on with him, if the business can only be carried on at a loss, or if in the opinion of the Court it is just and equitable that the partnership be dissolved (section 35).

And where a partnership is dissolved before the expiration of the term otherwise than by the death of a partner, the Court will direct a return to his partner of the premium or a proportionate part thereof paid by him when entering into it, on the ground of partial failure of consideration, unless the dissolution is due to his misconduct, or the dissolution is by agreement and there is no provision for such return (section 40).

A partnership may also be dissolved, as from its commencement, where it has originated in fraud, misrepresentation, or oppression (section 41). (*Rawlins* v. *Wickham*, 1 Gif. 355.) **640.**

IV. Dissolution prohibited.

IV. On the other hand, in the case of a partnership existing during the pleasure of the parties, with no time fixed for its renunciation, an injunction against a dissolution will be granted if a sudden dissolution is about to be made in ill-faith, and would work irreparable injury. (St. § 668; Lindley, 6th ed. 559.) **641.**

V. Injury prevented.

V. An injunction will be granted to prevent a partner from doing acts injurious to the partnership

(St. § 669), such as tend either to the destruction of the partnership property (*Marshall* v. *Watson*, 25 Bevan, 501) or to impose an improper liability on, or tend to the exclusion of the other partners. (*Walker* v. *Mottram*, 19 C. D. 355; *Dawson* v. *Beeson*, 22 C. D. 504.) **642.**

VI. Account and manager or receiver.

VI. Where a dissolution has taken place, not only will an account be decreed, but, if necessary, a manager or receiver will be appointed to close the business, and make sale of the property. (St. § 672.) But if there is no actual or contemplated dissolution, so that all the affairs of the partnership may be wound up, an account will not be decreed unless under special circumstances. (St. § 671; *Taylor* v. *Neate*, 39 C. D. 538.) **643.**

VII. Account without dissolution.

VII. But an account without a dissolution will be decreed where a partner withholds some secret profit, or seeks to exclude his co-partner, or drive him to a dissolution. (Wms. on Account, 76.) **644.**

VIII. Profits after dissolution.

VIII. In the absence of any agreement to the contrary, an out-going partner or his estate is entitled at the option of himself or his representatives, to such share of the profits made since the dissolution as are attributable to the use of his share or interest at 5 per cent. on such share. (Partnership Act, 1890, s. 42.) **645.**

But where the continuing partners have an option to purchase the share of a deceased or out-going partner, and the option is properly exercised, the estate of the deceased partner, or the out-going partner, is not entitled to any further or other share of profits (*ibid.*). **646.**

IX. Real estate.

IX. Real estate bought and held for the purposes of a partnership in trade, as a part of the stock in

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

of each partner are entitled to be first paid out of the separate effects of the debtor, before the partnership creditors can claim anything. (St. § 675; *Edwards* v. *Barnard*, 32 C. D. 447; *Re Young*, (1896) 2 Q. B. 484.) **649.**

CHAPTER VI.

OF CERTAIN SPECIAL ADJUSTMENTS IN THE CASE OF DEBTORS AND CREDITORS.

SECTION I.

Of the Marshalling of Securities.

TIT. III. CAP. VI. SECT. I.

General doctrine.

WE have already had occasion to consider the marshalling of assets in cases of Administration, to which the present topic bears a close analogy. The general doctrine is that if one creditor has a lien on or interest in two funds belonging to the same person, and another creditor has a lien on or interest in one only of the funds, and the claims of both could not be satisfied if the former were to resort to the fund in which alone the latter is interested; there the latter creditor can, in Equity, compel the former to resort to the other fund first for satisfaction, unless that would operate to the prejudice of the person entitled to the double fund. But this doctrine will not be enforced to the prejudice of a third party, thus the Court will not marshall in favour of a second mortgagee against a third mortgagee. (St. § 633, 642; 1 Wh. & Tu. 56; *Webb* v. *Smith*, 30 Ch. D. 192; Brett's L. C. 239; *Flint* v. *Howard*, (1893) 2 Ch. 54; *Farrington* v. *Forrester*, *ib.* 461.) **652.**

No marshalling where one of two joint debtors

But although the different securities of the common debtor will be marshalled so as to satisfy the different creditors, yet the interposition always supposes that

TIT. III. CAP. VI. SECT. I.

is also a several debtor of another creditor.

the parties seeking relief are creditors of the same debtor, and where two or more persons are jointly indebted to one creditor, and one of them is also indebted to another creditor, Equity will not compel the joint creditor to satisfy his claim by proceeding against the joint debtor who is only indebted to him, so as to leave the other joint debtor's property for the several creditor; unless it appears that the debt, though joint in form, ought to be paid by one of the debtors only, or that there is some other supervening equity. (St. § 642—645.) For, if each debtor is equally bound in Equity, there can be no Equity to change the liability from both debtors to one, unless there was a duty in one debtor to pay the debt in discharge of the other. (St. § 645.) **653.**

SECTION II.

Of the Mutual Right to the Benefit of Securities between a Creditor and Sureties; and of the Release of Sureties.

SECT. II.

Sureties are entitled to the benefit of all securities which have been taken by any of their co-sureties to indemnify themselves against their liability (St. § 499), on the general principle that, as between co-sureties, there is to be equality of the burden and the benefit, that is, all must contribute equally if each is a surety to an equal amount, and if not, then proportionately to the amount for which each is a surety, so that the ultimate burden be borne by them in proportion to

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

principal, the creditor was entitled to the benefit of it; but it is now settled that a creditor is not entitled to the exclusive benefit of a counter security given to a surety by his debtor. (*Re Walker, Sheffield Banking Co.* v. *Clayton*, (1892) 1 Ch. 621.) **656.**

A surety will be discharged from his liability if by acts subsequent to the contract of suretyship his position has been essentially changed for the worse without his consent. Thus, if the creditor varies the contract with the debtor, or gives time in a binding manner, or releases either the principal debtor or a co-surety, the surety will be discharged. (Robbins' Mortg. 82 *et seq.*; Brett's L. C. 248.) **657.**

Where a person becomes a surety upon the faith of another also agreeing to enter into the obligation, the former has a right to be relieved in Equity, on the ground that the instrument has not been executed by the latter. (St. § 164 a; *Evans* v. *Bremridge*, 8 D. M. & G. 100.) **658.**

SECTION III.

Of Set-off or Counterclaim.

It is not proposed to go into this subject, regarded as a matter of practice or procedure depending on Statutes or Orders; but simply to notice a few points relating to it, when viewed as a matter of Equity Jurisprudence; and it should be noticed that Order 19, r. 3, is only a rule of procedure, and does not alter rights. (Wms. on Account, 35.) **659.**

Connected accounts.

As to connected accounts of debts and credits, the balance only was recoverable, whether at Law or in Equity; which was therefore a virtual set-off between the parties. (St. § 1434.) **660.**

Independent debts or demands.

But Courts of Equity, in virtue of their general jurisdiction, were accustomed to grant relief in all cases where there was a mutual credit between the parties, founded at the time on the existence of some debt due by the crediting party to the other (St. §1435; *Cavendish* v. *Geaves*, 24 Beav. 163), or where peculiar equities intervened. (St. § 1437 a.) And where there were cross demands, of such a nature that, if both were recoverable at Law, they would be the subject of a set-off, there, if either of the demands was a matter of equitable jurisdiction, the set-off would be enforced in Equity. (St. § 1436 a.) On the other hand, Equity would not allow a man to set-off, even at Law, where there was an Equity to prevent his doing so, that is to say, where the rights, though legally mutual, were not equitably mutual. (*Re Whitehouse and Co.*, 9 C. D. 595, 597.) A set-off was ordinarily allowed in Equity in those cases only where the party seeking the benefit of it could show some equitable ground for being protected against the demand of the other party. The mere existence of cross demands would not be sufficient. *A fortiori*, a Court of Equity would not interfere, on the ground of an equitable set-off, to prevent a person from recovering a sum awarded to him for damages for a breach of contract, merely because there was an unsettled account between him and the other party in respect to dealings arising out of the same contract, where it could not be assumed that the balance would be found to be in favour of the latter. There is no Equity to

retain a sum due, because cross demands to a larger amount are about falling due. (St. § 1436, and note.) **661.**

Where one debt is joint and the other separate.

Equity, following the Law, would not allow a set-off of a joint debt against a separate debt, or of a separate debt against a joint debt; unless there was a joint credit given, on account of the separate debt, or there were other special circumstances to justify such an interposition. (St. § 1437; *Piercy* v. *Fynney*, L. R. 12 Eq. 69.) **662.**

Demands in different rights.

And this is so because, except under special circumstances, Courts of Equity have never allowed cross demands existing in different rights to be set the one against the other. And therefore there is no set-off between a debt due to a testator's estate arising after his death and one due before his death (*Re Gregson*, 36 C. D. 223.) And where a creditor of an intestate purchases part of the intestate's goods from his administrator, the creditor cannot set off the sum at which he purchased the goods against a debt due to him from the intestate at the time of his decease. (*Lambarde* v. *Older*, 17 Beav. 542.) **663.**

Intervening equity.

It has already been suggested that there is no set-off in Equity where there is an intervening Equity. Therefore a shareholder who is also a creditor of a company will not be allowed to set off his debt against calls, the Equity of the general creditors intervening. (*Gill's Case*, 12 C. D. 755.) And so an occupation rent with which a tenant in common is chargeable, and which might be set off against his share of the proceeds of sale in a partition action, cannot be set off against the mortgagee of such share. *Hill* v. *Hicken*, (1897) 2 Ch. 579.) **663 a.**

Present practice.

Now, however, there is no difference between set-off

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

CHAPTER VII.

OF CERTAIN MISCELLANEOUS CASES OF ACCOUNT.

PT. III. CH. VII.

Agency.

I. It is the duty of an agent to keep regular accounts and vouchers. (See remarks of Sir John Romilly, M.R., in *Stainton* v. *The Carron Company*, 24 Beav. 353.) And if he does not, he will not be allowed the compensation which would otherwise belong to his agency. And if he mixes up his principal's property with his own, he is put to the necessity of showing clearly what part of the property belongs to him; and so far as he is unable to do this, it is treated, both at Law and in Equity, as the property of the principal. (St. § 468.) The agent of a trustee, however, is accountable only to his principal, the trustee, and not to the *cestuis que trust*, unless the agent, by accepting a delegation of the trust, or by being concerned in fraudulent breach of trust, has constituted himself a trustee by construction of law. (Wms. on Account, 193.) **664.**

Mesne profits.

II. In the ordinary case of mesne profits, where aid was clearly afforded at Law, Courts of Equity did not interpose. (St. § 511.) Wherever relief was given in Equity, there was some peculiar equitable ground for interference; such as fraud, accident, or mistake, the want of a discovery, some impediment at Law, the existence of a constructive trust, or the necessity of interposing to prevent multiplicity of suits. (St. § 509—514.) But if an account is sought as incident to relief respecting the corpus, the general rule is that if

the suit for recovery of possession be properly cognisable in a Court of Equity, and the plaintiff obtains a decree, the Court will direct an account of rents and profits as incident to such relief. (Lewin, 1089.) **665.**

III. Waste.

III. In cases of legal waste, relief was ordinarily at Law. (St. § 515—518.) If the waste was equitable only, of course the remedy was in Equity. But what was equitable waste only, is now legal waste, and both in the Queen's Bench and Chancery Divisions, the Court may grant an injunction in all cases in which it is just and convenient (*a*). As to the different kinds of waste and the powers of a tenant for life to commit waste, see Lewin, 199 *et seq.* (St. § 515—518 b.) **666.**

IV. Tithes.

IV. Matters of account also arise in regard to tithes and moduses. Wherever the right to tithe is clearly established, an account is consequent. But if the right is disputed, it must first be established before an account will be decreed. (St. § 519.) For some years past, however, tithes have been commuted for tithe rent-charges, under the stat. 6 & 7 Will. IV. c. 47, and subsequent Acts. **667.**

V. Other cases.

V. Matters of account also arise as between guardians and infants, and in respect of the infringement of patents, trade marks, and copyright, and in some few other cases. (See Wms. on Account, Chap. X.—XII.)

(*a*) On this subject, see the Judicature Act, 1873, s. 25 (3), and Settled Land Act, 1882, ss. 6, 11, 35.

CHAPTER VIII.

OF DAMAGES AND COMPENSATION.

TIT. III. CAP. VIII.

I. Old rule as to damages or compensation to a plaintiff.

I. DAMAGES or compensation were decreed in favour of a plaintiff in Equity, only as incident to other relief, sought by the bill and actually granted, or where there was no adequate remedy at Law, or where some peculiar equities intervened. (St. § 724, 798, 799.) But by Lord Cairns' Act (21 & 22 Vict. c. 27, s. 1) it was enacted, that "in all cases in which the Court of Chancery has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract, or agreement, or against the commission or continuance of any wrongful act, or for the specific performance of any covenant, contract, or agreement, it shall be lawful for the same Court, if it shall think fit, to award damages to the party injured, either in addition to or in substitution for such injunction or specific performance; and such damages may be assessed in such manner as the Court shall direct." (*Shelfer* v. *City of London, &c.*, (1895) 1 Ch. 322.) That statute is now repealed; but under the Judicature Acts the Court has full power to give damages, and has now a much larger power than it had under Lord Cairns' Act. (*Elmore* v. *Pirrie*, 57 L. T. 353, per Kay, J.) **668.**

II. Compensation to a defendant.

II. Compensation is often given to a defendant, on the principle that he who seeks equity must do equity. Thus, if a plaintiff in Equity seeks the aid of the Court

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

the other to commit an act of gross oppression, or oblige the former to suffer a loss wholly disproportionate to the injury to the other party. (St. § 1316.) And although, in some cases, from peculiar circumstances, which cannot be taken into account, the compensation awarded may not amount to an adequate compensation, yet that is no solid objection against the interference of Courts of Equity; for a great injury is always prevented by such interference; whereas the mischief caused thereby is only occasional; and all general rules must work occasional mischiefs. (St. § 1316, note.) **673.**

A stipulation, that if instalments be not punctually paid, the whole sum shall be payable at once, is not to be deemed of the nature of a penalty. (*Sterne* v. *Beck*, 1 D. J. & S. 595; *The Protector Endowment, &c. Co.* v. *Grice*, 5 Q. B. D. (Ap.) 592.) Nor is a reservation of a right to have full payment of money actually due at the date of an existing contract, if there should be a failure to pay a smaller sum on a day certain. (*Thompson* v. *Hudson*, L. R. 4 H. L. 1.) **674.**

IV. No relief against liquidated damages, where they are really such.

IV. Courts of Equity will not relieve in cases of liquidated damages, which occur where the parties have agreed that in case one party shall do or omit a certain act, the other party shall receive a certain sum, as the just amount of the damage sustained by such act or omission, and where the sum so agreed to be paid is not grossly disproportionate to the nature or extent of the injury. If the sum is so disproportionate, and it is in reality penal, although it may assume the disguise of liquidated damages, a Court of Equity will treat it as a penalty, and relieve against it accordingly. (St. § 1318; *Wallis* v. *Smith*, 21 C. D. 243.) **675.**

V. Where relief is granted as to a breach of covenant or condition.

V. In the case of a breach of a covenant to pay rent, Equity will relieve, even where the term is gone at Law by reason of the landlord's entry by virtue of a clause of re-entry; for that is deemed to be a mere security for the payment of the rent. (St. § 1315, and note to § 1323.) And the stat. 23 & 24 Vict. c. 126, s. 1, extended this relief to cases of ejectment for forfeiture for non-payment of rent. But no relief will be granted in Equity in case of forfeiture for the breach of any covenant other than a covenant to pay rent, unless on the ground of accident, mistake, or fraud; for it has been considered that even where the damages are capable of being ascertained, the jurisdiction of Equity in giving relief is a dangerous jurisdiction, and rarely works a real compensation. (St. § 1320—1322; *Gregory* v. *Wilson*, 9 Hare, 689.) The Conveyancing Act, 1881, s. 14, prescribes further relief against forfeiture for breach of covenant or condition in a lease, by requiring notice of the particular breach, and a request to remedy the breach or make compensation, to be served on the lessee as a condition precedent to the right of forfeiture, and the act enables the Court, on the application of the lessee, to grant relief on such terms (if any) as it thinks fit. The Act, however, does not apply to (1) a covenant not to assign or underlet; (2) a condition of forfeiture on bankruptcy or execution; or (3) a covenant in a mining lease for inspection, etc. But by the Conveyancing Act, 1892, s. 2 (2), even forfeiture on bankruptcy or execution will now be relieved against in certain cases and under certain restrictions. **676.**

The Conveyancing Acts, 1881 and 1892.

VI. Relief not granted against statutory penalties or forfeitures.

VI. And Equity will not mitigate any penalty or a forfeiture imposed by Statute; for that would be in contravention of the direct expression of the legislative

will; nor generally speaking will it interfere in cases of forfeiture founded on custom. (St. § 1326.) **677.**

VII. A penalty or forfeiture never enforced.

VII. On the other hand, it is a uniform rule in Equity never to enforce either a penalty or a forfeiture. Therefore, Courts of Equity will never aid in the divesting of an estate, for a breach of a covenant, on a condition subsequent. (St. § 1319; and on the subject of enforcing a penalty, see *Thompson* v. *Hudson*, L. R. 4 H. L. 1.) **678.**

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

property or interest; but if he takes the gift, he must resign his own property or interest. On the other hand, if he elects to hold his own property or interest, or, as the phrase is, if he elects against the instrument, he cannot have the gift; or at least he cannot have the entire gift without compensating the party whom he has disappointed by electing to take his own property. Equity, in not suffering the disposition by which such gift is made to enure to the benefit of the person so electing against the instrument, will not render that disposition inoperative, but will make it the means of effectuating that intention of the author of the instrument which such person has frustrated by so electing to retain his own property or interest; for Equity will treat such gift, or at least a part of it, as a trust in the donee or devisee, the person so electing, for the benefit of the party disappointed by such person's refusing to give up his own property or interest. (See St. § 1077, note, and 1081—1084, 1086, 1088, 1089, 1093; *Noys* v. *Mordaunt*, and *Streatfield* v. *Streatfield*, 1 Wh. & Tu. 414 *et seq.*; *Re Vardon's Trusts*, 31 C. D. 275; Brett's L. C. 256.) Since the doctrine of election depends upon compensation, it follows that it can never be applied where an election is made contrary to the instrument, unless the interest that would pass by it is of that freely disposable nature that it can be laid hold of to compensate the party who suffers by the exercise of such election against the instrument. (1 Wh. & Tu. 423.) Thus, where there is a fund subject to the appointment of a father amongst his children, and the father appoints a part to some of his children, and the other part to persons not objects of the power; any child who is an appointee

may both take his appointed share and also claim his share of the improperly appointed portion, as in default of appointment. (*Bristow* v. *Ward*, 2 Ves. Jr. 336; *Re Fowler*, 27 Beav. 362.) But if there is a power to appoint to two, and the donee of the power appoints to one only and gives a legacy to the other, he cannot claim the legacy and also dispute the validity of the appointment; or, if a person has a special power of appointment and appoints to a person not an object of the power, and gives property of his own to the person entitled in default, the latter cannot take this benefit and also dispute the appointment, but will be put to his election. (*Whistler* v. *Webster*, 2 Ves. Jr. 367.) But where a testator, having a power of appointment over certain settled property in favour of children of his first marriage, appointed it to a son of the first marriage, subject to a charge in favour of his other children of his first and second marriages, and also devised other property of his own to the same son, subject to the same charges in favour of his other children, so as to equalize the shares of his children, the children of the first marriage were held bound to elect between taking the settled property freed from the charge in favour of the children of the second marriage, and taking their shares in the settled and unsettled property with the children of the second marriage according to the will of the testator. (*White* v. *White*, 22 C. D. 555.) Generally speaking, if the will is ineffectual to pass real estate, the heir will not be put to election. (*Sheddon* v. *Goodrich*, 8 Ves. 481; but see *post*, par. 684.) Thus, where a will was void with respect to certain real estate, which the testatrix attempted to devise to other children away from her heir in whose

favour she had by her will made a valid appointment of other property, it was held that the heir was not bound to elect in favour of the other children. (*In re De Burgh Lawson*, 34 W. R. 39.) But if the legacy is given to the heir on the express condition that he does not dispute the will, he will be bound to elect. (*Boughton* v. *Boughton*, 2 Ves. Sen. 12.) **681.**

Primâ facie, it is not to be supposed, nor can it be proved by extrinsic evidence, that a testator disposes of that which is not his own, so as to raise a case of election. It must appear on the will itself, by plain demonstration or by necessary implication. (1 Wh. & Tu. 425, 428; *Wintour* v. *Clifton*, 8 D. M. & G. 641; *Miller* v. *Thurgood*, 33 Beav. 496.) **682.**

The doctrine of election is applied to interests, not in respect of their amount, but of their inconsistency with the testator's intention. Their remoteness or their value is therefore no criterion of such intention. (St. § 1095.) And the doctrine is equally applied to all interests, whether immediate or remote, vested or contingent, of value or of no value, and whether in real or personal estate. (St. 1096.) **683.**

The same doctrine of election also arises in cases where it was apparently a testator's intention to dispose of all the property he might have at the time of his death, and the heir, who is a devisee under the will, claims property, which was purchased subsequently to the will, and which consequently, under the old law, did not pass by the will, but was intended to pass to another person under the general words of the will. (St. § 1094; *Schroder* v. *Schroder*, Kay, 578.) **684.**

And where a testator devises all the residue of his real estate situate in any part of the United Kingdom

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

TIT. III. CAP. IX.

Election in the case of a settlement.

Election may also arise where a person attempts to claim both under and in opposition to a settlement. It is a rule that a person will not be allowed to take under and against the same instrument. (*Anderson* v. *Abbott*, 23 Beav. 457; *Brown* v. *Brown*, L. R. 2 Eq. 485; *Codrington* v. *Lindsay*, L. R. 8 Ch. 578, 593; 7 H. L. 854; but see *Re Vardon's Trusts*, 31 C. D. 275.) **689.**

Election need not be made in ignorance of circumstances.

The party is not bound to make an election till all the circumstances are known. And if he should make a choice in ignorance of the real state of the funds, or under a misconception of the extent of the claims on the fund elected by him, it will not be conclusive on him. And he is entitled, in order to make an election, to have discovery, and all necessary accounts taken and inquiries made, in order to ascertain the real state of the fund. (St. § 1098; *Leslie* v. *French*, 23 C. D. 552.) **690.**

Election by conduct.

Election may be implied from conduct; but election by conduct must be by a person who has positive information as to his rights to the property, and with this knowledge really means to give that property up. (*Wilson* v. *Thornbury*, L. R. 10 Ch. 239.) **691.**

Election presumed.

An election may be presumed from a long acquiescence or from other circumstances of a stringent nature. (St. § 1097; *Dewar* v. *Maitland*, L. R. 2 Eq. 834.) Remaining in possession of two estates held under titles not consistent with each other, affords no conclusive proof of the kind. (1 Wh. & Tu. 440; *Spread* v. *Morgan*, 11 H. L. C. 588.) **692.**

The doctrine of election is not of the nature of a positive rule of law which a person is bound to know. And therefore in order to infer an election, it is

necessary to show that the person who ought to elect was aware of the doctrine. (*Spread* v. *Morgan*, 11 H. L. C. 588.) **693.**

No election in the case of creditors.

The doctrine of election is not applied in the case of creditors. They may take the benefit of a devise for payment of debts, and also enforce their legal claim against other funds disposed of by the will; for a creditor claims not as a mere volunteer, but for a valuable consideration, and *ex debito justitiæ*. (St. § 1092.) **694.**

Gift under mistake.

Where a testator gives a much larger property to one child, under the mistaken impression that such child did not take under the testator's marriage settlement, he is not bound to elect between his interest under the settlement and the gift by will. (*Box* v. *Barrett*, L. R. 3 Eq. 244.) **695.**

Disability.

Where the person bound to elect is an infant, the Court will ascertain, by directing an inquiry if necessary, whether it will be most beneficial for such person to take under or against the will or deed, and will decree accordingly, though in some cases it will postpone the election until the infant comes of age. (1 Wh. & Tu. 416.) And an inquiry will also be directed in the case of a lunatic or person of unsound mind not so found by inquisition. (*Wilder* v. *Pigott*, 22 C. D. 263.) With regard to married women, a restraint on anticipation amounts to a contrary intention, and therefore excludes the doctrine of election. (Brett's L. C. 259.) But where there is no such restraint, they can of course elect as regards their separate estate; and in other cases an inquiry will, if necessary, be directed. (1 Wh. & Tu. 443.) **696.**

Persons having

Where a person, who had a right of election, dies

Tit III. Cap. IX.

separate rights of election as next of kin of a person who died without electing.

intestate, without having exercised it, each of his or her next of kin has a separate right of election; so that neither the election of the majority nor of the heir or administrator will bind the others. (*Fytche* v. *Fytche*, L. R. 7 Eq. 494.) **697.**

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

the instrument must be looked at for some expression of intention. If there is so such expression, the presumption of law against double portions arises; and when you come to a presumption to imply an intention the rule is that parol evidence is admissible to rebut such presumption. But parol evidence is not admissible to raise a presumption. (*Tussaud* v. *Tussaud*, 9 C. D. 363; and see Brett's L. C. 266.) **703.**

I. As to portions secured by settlement.

I. Where a portion or provision is secured to a child by a marriage settlement or otherwise, and the parent, or person standing *in loco parentis*—that is, a person meaning to stand in the place of a parent as regards providing for a relation's child—afterwards by will gives the same child a legacy, whether particular or residuary, without expressly declaring it to be in satisfaction of such portion or provision, in such case, if the legacy is substantially the same in its value, in its nature, in time of payment, in certainty, and in benefit, with the portion or provision, and if it is no given for a different purpose, it will, in the absence of evidence to the contrary, be deemed a full satisfaction, as Courts of Equity incline against double portions. If the legacy is less in amount than the portion or provision, or if it is payable at a different period, then it may be deemed a satisfaction *pro tanto*, or in full, according to the circumstances. (St. § 1103, 1104, 1109, 1110; *Thynne* v. *Glengall*, 2 H. L. Cas. 153; *Chichester* v. *Coventry*, L. R. 2 H. L. 71; *Bennett* v. *Houldsworth*, 6 Ch. D. 671.) **704.**

In the case of a provision by will, followed by a provision by deed, the first being revocable, there is no difficulty in the way of the second provision taking effect in lieu of the first; for it is reasonable to suppose that the parent or person standing *in loco parentis* has,

on some occasion for advancing the child occurring subsequently to the date of his will, anticipated the provision by his will, and substituted for it either wholly or *pro tanto* according to circumstances, the provision by deed. And no election, on the part of the person to be benefited, is required. Where the settlement comes first, this is said to be satisfaction properly so called; but if the will comes first, then it is styled ademption. The difference, however, is merely verbal, and the principles in the two cases are the same. (*Coventry* v. *Chichester*, 2 H. & M. 158, *per* Wood, V.-C.) **705.**

On the other hand, in the case of a provision by deed, followed by a provision by will, the first being not revocable, and actual rights being conferred thereby, it is more natural in one respect to regard the second provision as additional, rather than as substitutional, and the application of the presumption against double portions is consequently more difficult; and indeed no substitutional effect can be given to the will, except by the election of the person intended to be benefited. (*Lord Chichester* v. *Coventry*, L. R. 2 H. L. 71; *Tussaud* v. *Tussaud*, 9 C. D. (Ap.) 363, 380. But see *Montagu* v. *Sandwich*, 32 C. D. 525.) **706.**

Where by a covenant, to take effect on the death of the settlor, a portion is settled on the husband for life, and then on his wife and children, and an absolute gift of other property is afterwards made by the settlor by will in favour of the husband, it may be a satisfaction of the husband's life interest under the settlement, but not of the interest of the wife and children. (*McCarogher* v. *Whieldon*, L. R. 3 Eq. 236; *Mayd* v. *Field*, 3 C. D. 587; *Bethell* v. *Abraham*, *ib.* 590, n.) But in *Tussaud* v. *Tussaud* (*supra*), where the Court of

Appeal decided there was no satisfaction, the question that influenced the Court most was that the parties were different. (See Brett's L. C. 267.) **707.**

II. As to portions left by will to a child.

II. Where a parent or other person standing *in loco parentis* bequeaths a legacy, whether particular or residuary, to a child to whom he stands in that relation, and then, by an act *inter vivos*, makes a provision for the same child, of equal or greater amount, of equal certainty, and substantially the same in kind and in degree of benefit, without expressing it to be in lieu of the legacy, or for other objects than those for which the legacy was given, in such case, in the absence of evidence to the contrary, it will be deemed a satisfaction or ademption of the legacy. And if the provision *inter vivos* is less than the legacy, it will be deemed an ademption *pro tanto*. (St. § 1111, and note, and 1103—1105, 1112, 1113, 1115; *Pym* v. *Lockyer*, 5 M. & C. 29; *Hopwood* v. *Hopwood*, 7 H. L. Cas. 728.) Where there is a bequest of residue to children and a wife or stranger in moieties, and the share of one of the children is adeemed by an advance, the children only will profit, and the stranger will not be entitled to benefit by taking the advance into account in estimating the residue. (*Meinertzhagen* v. *Walters*, L. R. 7 Ch. 670.) **708.**

A legacy may be adeemed by a gift, though not made on marriage or on any other occasion having a special reference to the donee; and a gift of stock will adeem a charge on land. (*Leighton* v. *Leighton*, L. R. 18 Eq. 458.) But a bequest to a daughter is not adeemed by a gift to the husband; nor by an advance to her, on her marriage, for her outfit. (*Ravenscroft* v. *Jones*, 32 Beav. 669.) **709.**

No ademption

And this doctrine of the constructive ademption of

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

there is as much reason, in such cases, why the testator should choose to make an additional gift, as there was for his making the original gift. (*Lawes* v. *Lawes*, 20 C. D. 81.) **711.**

III. As to legacies to creditors.

III. A legacy given to a creditor, if it is of an amount equal to or greater than the debt, and in other respects equally beneficial, will, in general, in the absence of all countervailing circumstances, be deemed to be a satisfaction of the debt, on the principle that a testator shall be presumed to be just before he is generous. (St. § 1119, 1120; *Talbot* v. *Shrewsbury*, 2 Wh. & Tu. 375; *Re Fletcher*, *Gillings* v. *Fletcher*, 38 C. D. 373.) But this principle has met with much censure, and slight circumstances will be laid hold of to escape from it. (See *Re Horlock*, (1895) 1 Ch. 516, *per* Stirling, J.) Thus, where the testator expressly directs his debts *and* legacies to be paid (*Chancey's Case*, 2 Wh. & Tu. 376), or even if he only directs his debts to be paid without mentioning legacies (*Re Huish*, 43 C. D. 260), there will be no satisfaction. Hence, too, the rule is not allowed to prevail where the legacy is of less amount than the debt, even as a satisfaction *pro tanto*, unless the creditor assented, in the debtor's lifetime, to such an arrangement; nor where there is a difference in the time of payment of the debt and of the legacy; nor where they are of a different nature, as to the subject-matter, or as to the interest therein; nor where a particular motive is assigned for the gift; nor where the debt is contracted subsequently to the will; nor where the legacy is contingent or uncertain; nor where the bequest is of a residue; nor where the debt is a negotiable security; nor where the debt is on an open and running account, so that the testator might not know whether he owed

anything. And as to a debt strictly so called, there is no difference whether it is a debt due to a stranger or to a wife or child. (St. § 1103, 1122; Brett's L. C. 269; *Fairer* v. *Park*, 3 C. D. 309; *Wiggins* v. *Horlock*, 39 C. D. 142; *Re Dowse*, 50 L. J. Ch. 285; *Crichton* v. *Crichton*, (1895) 2 Ch. 853; *Coates* v. *Coates*, (1898) 1 Ir. R. 258.) **712.**

IV. As to legacies to debtors.

IV. On the other hand, where a creditor leaves a legacy to his debtor, and either takes notice of the debt, or leaves his intention doubtful, Courts of Equity will not deem the legacy as either necessarily or *primâ facie* manifesting an intention to release or extinguish the debt; but they will require some evidence, either on the face of the will, or *aliunde*, to establish such an intention. (St. § 1123.) For if the legacy is less than the debt, it would clearly be a positive injury to the creditor to construe the legacy a release of the debt; and even if the legacy is more than the debt, it does not follow that because the testator has manifested his bounty towards the debtor in that respect, he intends the debtor to have another benefit which has no necessary connection with the former. Where the testator does not mention the debt, but gives the debtor a legacy of equal or greater amount, he thereby benefits the debtor to at least the same extent, by giving him the means of paying the debt, as if he had directly forgiven the debt, but had given the debtor nothing, or nothing but the overplus; and his reason for thus giving the debtor the means of paying the debt, without alluding to the debt, may have been one of kind consideration towards the debtor, namely, in order that none but the executor might be aware of the debt. **713.**

V. Annuity.

V. Where an annuity to the separate use of a

married woman is charged on an estate, the gift of an annuity to her generally, and charged upon property of a different nature, though to the same amount and payable on the same days, is not a satisfaction. (2 Sp. 609.) And where a person executes a deed by which he gives annuities to certain persons, and then executes another deed by which he gives other annuities to those persons, there is no presumption that the latter were intended to be a substitute for the former, especially where the annuities given by the second deed are of less amount, or the first deed contains a power of revocation which is not exercised by the second deed. (*Palmer* v. *Newell*, 20 Beav. 32; 8 D. M. & G. 74.) And, generally speaking, there is no satisfaction of legacies by subsequent legacies, unless they are of equal amount and given by the same instrument, or unless the motive of the gift is in each case expressed to be the same. (*Benyon* v. *Benyon*, 17 Ves. 34; *Hubbard* v. *Alexander*, 3 C. D. 738.) And an appointment of a sum by will is not a satisfaction of a covenant to bequeath a like sum. (*Graham* v. *Wickham* (No. 1), 31 Beav. 447; 1 D. J. & S. 474.) **714.**

Covenant to bequeath.

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

made at the hearing. (1 Wh. & Tu. 202, *Mayfair Property Co.* v. *Johnston*, (1894) 1 Ch. 508.)

The new remedy of sale has, however, been tacked on to the old remedy of partition by the Partition Acts, 1868 & 1876; and has to a great extent superseded the old remedy of partition, as being in most cases obviously more convenient and beneficial.

Where a sale is asked for, partition may be ordered, and *vice versâ* under the Act of 1876, s. 7. And the order may be for partition of one part and sale of another part of the property. (*Roebuck* v. *Chadebet*, L. R. 8 Eq. 127.)

Under the Act of 1868, sections 3—5, the Court *may* direct a sale where it would be more beneficial than a division, or where one party requests a sale and the others do not undertake to buy his share. But the Court *must* direct a sale where parties interested to the extent of a moiety request one, unless it sees good reason to the contrary (section 4). As to what is good reason to the contrary, see Brett's L. C. 123. **715.**

Title must be shown.

As a partition is completed by mutual conveyances, it is essential to show a title. (St. § 653.) Where there is an overriding trust the Court will refuse a sale. (*Taylor* v. *Grange*, 15 C. D. 165.) Thus the Court will not decree a sale where the estate is devised to trustees upon a trust for sale which is still subsisting (*Swaine* v. *Denby*, 14 C. D. 326; *Biggs* v. *Peacock*, 22 C. D. 284), but is not in general deterred by a mere power of sale given to the trustees. (*Boyd* v. *Allen*, 24 C. D. 622.) **716.**

Partition by or against tenants who have limited interests.

The Court will decree a partition even in a suit by or against persons who are only tenants for life or years (*Mason* v. *Keays*, 78 L. J. 33): and the decree will be binding on all whom they virtually represent,

but not on other persons. Thus, a decree in a suit by or against a tenant for life will be binding on the remainderman who is not *in esse* at the time, on the ground of virtual representation, if the Court is of opinion that it will be for the benefit of such remainderman that the agreement should be carried into effect. (St. § 656, 656 a.) And by the Partition Act, 1876, s. 6, persons under disability may request a sale or give an undertaking. And infants may be declared trustees for the purchaser, and the next friend appointed to convey their shares. (*Davis* v. *Ingram*, (1897) 1 Ch. 477.) **717.**

But, on the other hand, a reversioner cannot maintain a suit for a partition. (*Evans* v. *Bagshaw*, L. R. 5 Ch. 340.) **718.**

Equitable adjustments.

In the case of an actual partition the Court may decree a pecuniary compensation to one in order to make up his share to its proper value, where the estate cannot conveniently be divided into equal parts. (St. § 654.) And instead of dividing each of several distinct estates, the whole of one estate may be allotted to one person, and the whole of another estate to another person, and compensation directed to be made to the person to whom the less valuable estate is allotted. (St. § 657.) So, to one who has made improvements on the estate, the property on which the improvements have been made may be assigned, or the Court will direct an account and inquiry as to the compensation to be given him. (*Williams* v. *Williams*, 68 L. J. Ch. 528.) And care will be taken to assign to the parties such portions of the estate as will best accommodate them; and the Court will act according to its own notions of general justice and equity between the parties, and will, if necessary for that purpose, direct a distinct partition of each of

several portions of the estate in which derivative alienees have distinct interests, in order to protect those interests. (St. § 655, 656 b, c.) **719.**

SECTION II.

Of the Settlement of Boundaries.

SECT. II.

General rule.

The general rule observed by Courts of Equity was not to exercise jurisdiction in settling boundaries on the mere ground that they are a subject of controversy, but to require that the soil itself should be in question or that there should be some superadded equity. (St. § 615—623; *Wake* v. *Conyers*, 1 Wh. & Tu. 170 *et seq.*) In the case of *Lascelles* v. *Butt*, 2 Ch. D. 588, which was an action for a declaration of a boundary, Bacon, V.-C., said, "When it is objected that certain rules by which the Court was guided in former days have become obsolete, I do not know that these rules are not as worthy of observation as they ever were, and that the Court is not as much bound to follow them as it ever was." From this it would appear that the old rules must still be regarded under the present practice. **720.**

Confusion through fraud.

If the confusion of boundaries has been occasioned by fraud, that will constitute a sufficient ground for the interference of the Court. And if the fraud is established, the Court will, by directing an inquiry in Chambers (*Spike* v. *Harding*, 7 C D. 871), ascertain the boundaries, if practicable; and if that is not practicable, it will do justice between the parties by

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

married on or after the 1st of January, 1834, a widow's right to dower only attaches when her husband dies intestate as to any estates of inheritance belonging to him, and may be excluded in a variety of ways. It therefore seldom arises, and actions respecting it do not often occur in practice; but it would appear that they might be brought either in the Queen's Bench or Chancery Divisions of the High Court of Justice. **724.**

TITLE IV.

Of Protective Equity, Irrespective of Disability.

CHAPTER I.

OF PROTECTION FROM LITIGATION OR INJURY. AFFORDED BY THE CANCELLING, DELIVERING UP, AND SECURING OF DOCUMENTS.

Voidable and void instruments and those which have answered their purpose.

The Court of Chancery assumed jurisdiction to cancel, or rescind, or order the delivery of instruments which answered the end for which they were made, or instruments which were voidable, or instruments which were in reality void, and yet apparently valid. This was done upon the principle, as it is technically called, *quia timet*, that is, for fear that such instruments may be vexatiously or injuriously used, when the evidence to impeach them may be lost or diminished, or for fear that they may throw a cloud or suspicion over the plaintiff's title and interests. (St. § 694, 698, 699, 700, 705; *Cooper* v. *Joel*, 27 Beav. 313; *Williams* v. *Bull*, 32 Beav. 574; *Onions* v. *Cohen*, 2 Hem. & M. 354.) And under the present practice all causes and matters for the rectification, or setting aside, or cancellation of deeds or other written instruments, are assigned to the Chancery Division of the High Court of Justice. (36 & 37 Vict. c. 66, s. 34 (3).) **725.**

But where the illegality of the instrument appears on the face of it, so that its nullity can admit of no doubt, the Court will not interfere; because, in that case, the ground for interference does not exist. (St. § 700 a.) **726.**

The Court will generally cancel or rescind instruments, or order them to be delivered up, where there is an actual or constructive fraud, and the plaintiff has not participated therein, or is not *in pari delicto*; or where there is an offence against public policy, and the plaintiff has participated therein, and is *in pari delicto*, but yet public policy would be more promoted by assisting the plaintiff, than by refusing to assist him. (St. § 298, 695; *Milltown* v. *Stewart*, 3 My. & Cr. 18.) **727.**

Where both parties are concerned in an illegal act, it does not always follow that they stand *in pari delicto*; for one party may act under circumstances of oppression, imposition, hardship, undue influence, or great inequality of condition or age; so that his guilt may be far less in degree than that of his associate in the offence. (St. § 300.) **728.**

In cases of usury before the Usury Laws were abolished (*ante*, par. 40, n.), if the lender came into Court, seeking to enforce the contract, the Court would refuse to give any assistance, and would repudiate the contract. But, on the other hand, if the borrower came into Court, seeking relief against the contract, the Court would interfere, although only on the terms that the plaintiff would do equity, by paying the defendant what was really due to him, deducting the usurious interest. (St. § 301.) And if the borrower had paid the money, the Court would assist him to recover back the excess beyond principal

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

38 C. D. 636.) But where, just before going through the marriage ceremony with his deceased wife's sister, a man vests property in trustees for her benefit, neither he nor his representatives after his death can set the gift or settlement aside. (*Ayerst* v. *Jenkins*, L. R. 16 Eq. 275.) But where a man, previously to going through the ceremony of marriage with his deceased wife's sister, executed a settlement reciting the intended marriage, and assigning certain property to trustees in trust for himself until the solemnization of the marriage, and after the solemnization thereof upon certain trusts for himself, his intended wife and children; it was held that, as no valid marriage could take place between the settlor and his deceased wife's sister, the trust in favour of himself until the solemnization of the intended marriage continued, and the subsequent trusts never having arisen, the property remained in the settlor, and formed part of his personal estate. (*Pawson* v. *Brown*, 13 C. D. 202.) **732.**

A settlement made by an unmarried lady shortly after majority, without contemplating marriage with any particular person, will be set aside, as an improvident act of a person who ought to be protected by the Court. (*Everitt* v. *Everitt*, L. R. 10 Eq. 405.) But cases of this description depend upon the circumstances of each case, and no general rule can be laid down as to the proper and usual provisions of a voluntary settlement; but a power of revocation is not essential. In order to support a voluntary settlement against the settlor, it must be shown that all the provisions are proper under the circumstances, and usual, or if there are any unusual provisions, that they were brought to the notice of the settlor and understood by him. But the mere absence of a power of revocation, even if the

attention of the settlor was not called to that absence, does not make a voluntary settlement invalid. (*Hall* v. *Hall*, L. R. 8 Ch. 430.) A substantial reason must be proved why the deed should be set aside. (*Henry* v. *Armstrong*, 18 C. D. 668; *Bonhote* v. *Henderson*, (1895) 2 Ch. 202.) Thus where a young man of improvident habits who had just attained his majority was induced to execute a settlement by which he assigned money to trustees, upon trust to apply the income, or so much as the trustees should consider might be beneficially applied, for the settlor, or any wife or child of his, during his life, and after his death, upon certain trusts for his widow and children, with an ultimate trust for certain cousins; but he had no power of appointment in default of issue, and no power of revocation, and no power to appoint new trustees; it was held that he could not set aside the settlement. (*Phillips* v. *Mullings*, L. R. 7 Ch. 244; and see *James* v. *Couchman*, 29 C. D. 212.) **733.**

Forged instruments.

Forged instruments may be decreed to be delivered up, without any prior trial at law on the point of forgery. (St. § 701; *Lee* v. *Angas*, L. R. 7 Ch. 79 n.) **734.**

Delivery up of unexceptional instruments to party entitled to them.

Assistance will often be given even in regard to unexceptional instruments. The Court will order them to be delivered up to the party entitled to them, if his title to the property to which they relate is not disputed. But where the title to the possession of deeds and other writings depends on the validity of the title of the party to the property to which they relate, and he is not in possession of the property, and the evidence of his title to it is in his own power, or it does not depend on the production of the deeds or writings of which he prays the delivery; in such case,

he must first establish his title to the property before he can entitle himself to a delivery of the deeds. (St. § 703.) **735.**

Inspection and copies of deeds.

Again, persons having rights and interests in real estate are entitled to an inspection and copies of the deeds under which they claim title. (St. § 704; see Order XXXI.; *Lyell* v. *Kennedy*, 8 A. C. 217; and Conv. Act, 1881, s. 9.) **736.**

Securing of documents.

And remaindermen and reversioners, and other persons having limited or ulterior interests in real estate, have a right, in certain cases, to have the title-deeds secured or brought into Court for preservation. But this will not be directed, unless it clearly appears that there is danger of a loss or destruction of the instruments in the hands of the persons possessing them; and also that the interest of the plaintiff is not too contingent or too remote to warrant the proceeding. (St. § 704.) **737.**

Delivery up of securities.

Bonds and notes given by a relative have been ordered to be given up by executors or administrators, where it has been fairly inferable, from the conduct of the deceased, that he did not intend that any use should be made of the securities. (See St. § 705 a—706 a.) **738.**

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

than for charges or costs, can compel them to contest the matter between themselves, without involving him in any vexatious litigation respecting it. (See St. § 806, and notes, and 807, 810—816, 820, 824; *Jones* v. *Thomas*, 2 Sm. & Gif. 186.) It is essential that the applicant should have no personal interest in the subject-matter, and that the dispute should be in respect of one and the same thing. (*Greatorix* v. *Shackle*, (1895) 2 Q. B. 249.) **740.**

Illustrations in the case of landlord and tenant.

Thus, where a tenant is liable to pay rent, but there are several persons claiming title to it, he is entitled to file an interpleader to compel them to ascertain to whom the rent is payable. (St. § 811; *Cook* v. *Earl of Rosslyn*, 1 Gif. 167.) **741.**

Connection between the titles of the two claimants.

But where the title of the one claimant was not derived from that of the other, nor were both titles derived from the same common source but were independent of and adverse to each other, the party holding the property could not formerly obtain interpleader in Equity. Under the present practice, however, since the Judicature Act and Rules thereunder, he is not disentitled to relief by interpleader, by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another. (36 & 37 Vict. c. 66, s. 24; Ord. LVII. r. 3.) **742.**

Principal and agent.

Also property put into the hands of a private agent by his principal, or received by an agent for his principal, was not in Equity under the old practice the subject of an interpleader, on the assertion of a claim to it by a third person under an independent adverse title; but the agent must have delivered it to the principal; for the possession of the agent is the possession of the principal. And the like doctrine

prevailed in favour of a third person to whom the principal, after the bailment, had transferred the right to the property, where the transfer had been recognised and assented to by the agent. (St. § 817, 817 a, 818.) But if the principal had created an interest in or lien on the funds in the hands of the agent, in favour of a third person, and the nature and extent of that interest or lien was controverted between the principal and such third person, there an interpleader would lie. (St. § 817 a.) Under the present practice, however, the agent would be entitled to interpleader as against his principal or the transferee, where the property was claimed by a third person under an independent adverse title, without the creation by the principal of such an interest or lien as above mentioned. (See preceding paragraph.) **743.**

Power to order sale.

Where goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the High Court, and any claimant alleges that he is entitled under a bill of sale or otherwise to the goods or chattels by way of security for debt, the Court or a judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just. (Ord. LVII. r. 12.) *Scarlett* v. *Hanson*, 12 Q. B. D. 213. **744.**

Actual proceedings not necessary.

It is not necessary that proceedings should have been commenced either at Law or in Equity, in order to found a jurisdiction for an interpleader. (St. § 808.) It is sufficient if the applicant expects to be sued. (Ord. LVII. r. 1.) **745.**

Preliminaries.

In order to prevent an interpleader being made the instrument of delay or of collusion with one of the

parties, the applicant must satisfy the Court or judge, by affidavit or otherwise, that he claims no interest in the subject-matter in dispute, other than for charges or costs; that there is no collusion between him and any of the other parties; and also, that he is willing to pay or transfer the subject-matter into Court, or to dispose of it as the Court or a judge may direct. (Ord. LVII. r. 2.) **746.**

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

105; 6 Ch. 716; *Jegon* v. *Vivian*, L. R. 6 Ch. 742. For other instances, see St. § 855, 856.) **749.**

Pre-requisites to a bill of peace.

In most cases of this class, before Rolt's Act, 25 & 26 Vict. c. 42, enabling the Court of Chancery to try questions of fact, with or without a jury, it was held that the plaintiff ought to establish his right by a determination of a Court of Law, before he filed his bill in Equity. And if he did not do so, and the right he claimed had not the sanction of a long possession, and he had any means of trying the matter at Law, a demurrer would hold; for the object of these bills, as their name itself imports, was simply to secure the quiet enjoyment of a right which, *primâ facie* at least, clearly existed, and not to decide the question of a doubtful right. But by the above Act, the Court could itself decide the right, without directing an action or issue at law; and could then make a decree finally binding on all the parties. (*Warrick* v. *Queen's Coll.*, L. R. 6 Ch. 716.) **750.**

Rights in contravention of public rights not protected in this way.

It seems that Courts of Equity, on principles of public policy, will not, on such a proceeding, decree a perpetual injunction for the establishment or the enjoyment of the right of a party who claims in contravention of a public right. (St. § 858.) **751.**

It does not appear that bills of peace are affected by the Judicature Acts, except that they would now be called actions in the nature of bills of peace. **751 a.**

Action to perpetuate testimony.

Under the present practice since the Judicature Acts, any person who would, under circumstances alleged by him to exist, become entitled upon the happening of any future event to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such

event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim. (36 & 37 Vict. c. 66. ss. 16, 24; Order XXXVII. r. 35.) The evidence is usually taken before an examiner. (*Marquis of Bute* v. *James*, 33 C. D. 157.) **751 b.**

SECTION II.

Of Proceedings to establish Wills.

Jurisdiction in general belongs to the Court of Probate.

Exceptions.

The proper jurisdiction for deciding as to the validity of wills, where they are actually contested, belongs to the Probate Division of the High Court of Justice **752.**

1. The heir-at-law might formerly by consent come into a Court of Equity for the purpose of having an issue to try the validity of the will at law. He could not come into Equity unless by consent; because he had a legal remedy by ejectment, and if there were any impediments to the proper trial of the merits of such an ejectment, he could come into Equity to have them removed. (St. § 1447, note; *Egmont* v. *Darell*, 1 Hem. & M. 563; *Cowgill* v. *Rhodes*, 33 Beav. 310.) Under the present practice since the Judicature Acts, however, every Court of each Division of the High Court of Justice is, with respect to the matters assigned to it, a Court of Equity as well as of Law; and consequently, an heir-at-law would not now, in an action for recovery of the land, meet with any impediments which the Court could not deal with at the trial of his action. **753.**

2. A devisee in possession, whether legal or

equitable, has an equity to have the will established against the heir, although the heir has brought no action of ejectment against the devisee, and although no trusts are declared by the will, and although it is not necessary to administer the estate under the direction of a Court of Equity. (*Boyse* v. *Rossborough*, 6 H. L. Cas. 1; *Williams* v. *Williams*, 33 Beav. 306; *Lovett* v. *Lovett*, 3 K. & J. 1.) But since a probate is now, by virtue of the Land Transfer Act, 1897, conclusive as to real estate as well as personal estate, and therefore conclusive as against the heir (see Wms. on Legal Repres. 38), it is conceived that there can no longer be any Equity in a devisee to have the will established against the heir. **754.**

3. And where in an action a will is contested, and it is necessary to establish its validity, in order to accomplish purposes such as the execution of trusts, the marshalling of assets, &c., the Court will direct the action to stand over in order that proceedings may be taken in the Probate Division to obtain probate of the will. In all divisions of the High Court the only evidence of a will whether of real or of personal estate is the probate; and before you can ask the Court to look at the will and grant any relief upon it you must prove it. (*Pinney* v. *Hunt*, 6 C. D. 98; Land Transfer Act, 1897, s. 2. And see *Meluish* v. *Milton*, 3 C. D. 27; *In re Ivory*, 10 C. D. 372.) **755.**

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

temporary, as until a certain day named, or until further order, or until the hearing; or they are perpetual, and amount to a perpetual prohibition. (St. § 873.) **759.**

total or partial, qualified or unconditional, preventive or restorative.

Injunctions may be also either total or partial, qualified or unconditional. (St. § 886.) And though they are generally preventive and protective, they may in some few cases be of a mandatory or restorative character. The former are by far the most common. (St. § 862.) **760.**

By the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (8), "a mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable." Notwithstanding the words "just or convenient" in this sub-section, it has been held that the effect of this provision is not to alter or extend the principles upon which the Court has always acted in granting injunctions. And the powers given by it must not be exercised by caprice, "but according to sufficient legal reasons, and on settled legal principles." (*North*

London Ry. v. *Great Northern Ry.*, 11 Q. B. D. 30; Brett's L. C. 320 *et seq.*) **761.**

Limit of power of granting injunctions.

Under that Act, the Courts have power to grant injunctions in all cases in which it appears just and convenient so to do. But no injunction will be granted where the case is one, not of legal injury, but of mere inconvenience. (*Day* v. *Brownrigg*, 10 C. D. 294; *Street* v. *Union Bank of Spain*, 30 C. D. 156.) Nor where a mandamus is the natural and proper remedy. (*Attorney-General* v. *Clerkenwell Vestry*, (1891) 3 Ch. 527, 536.) And *primâ facie* there can be no injunction to restrain actionable wrongs for which damages are the proper remedy. (*London & Blackwall Ry.* v. *Cross*, 31 C. D. 354, per Lindley, L. J.) In all doubtful cases where damages may be occasioned to the defendant, in the event of an interim injunction proving to have been wrongly granted, the Court will require the plaintiff seeking the injunction to give an undertaking to give such damages to the defendant as it may order; and such undertaking is not confined to damage to the defendant. (*Tucker* v. *New Brunswick, &c.*, 44 C. D. 249; and see *Fenner* v. *Wilson*, (1893) 2 Ch. 656.) And the Courts decline laying down any rule which shall limit their power and discretion as to the particular cases in which injunctions shall be granted or withheld. (St. § 959 b; and for the law as to their discretion to grant or withhold injunctions, see *Doherty* v. *Allman*, 3 A. C. 709.)

General rule as to cases where they will be granted.

And unless some special reason intervenes, they will in all cases protect their own officers, who execute their process, against any suit brought against them for acts done under or by virtue of such process (St. § 891); and, generally, the Court will, by injunction, interfere to prevent any one from

Some specific cases pointed out.

prejudicing another's legal or equitable rights contrary to equity and good conscience (see St. § 903—908, 927—929, 951—959): so that it would appear to be only needful to advert to a few specific cases presenting points which are not of a sufficiently obvious character to be omitted. **762.**

I. Waste.

I. An injunction will be granted to restrain waste. (St. § 912—919.) The principle, upon which the Court interferes with a limited owner in respect of equitable waste, is that he is using his powers unfairly, or making an unconscientious use of his powers. (*Baker* v. *Sebright*, 13 C. D. 179; Brett's L. C. 108.) But Courts of Equity have no means of interfering in cases of permissive waste by a tenant for life. (*Powys* v. *Blagrave*, 4 D. M. & G. 448; *Re Freeman*, (1898) 1 Ch. 28.) But this does not apply to a tenant for life of leaseholds, who is bound to repair under a covenant in the lease. (*Re Gjers*, (1899) 2 Ch. 54.)

As to ameliorating waste—that is, waste which so far from doing injury to the inheritance improves it—the Court declines to interfere by injunction. (*Doherty* v. *Allman*, 3 A. C. 709; *Meux* v. *Cobley*, (1892) 2 Ch. 253.) **763.**

A tenant for life impeachable of waste is only allowed to fell timber when, where, and in such a manner as in the well-known course of arboriculture the settlor would have considered necessary, and he is entitled to the proceeds. (*Baker* v. *Sebright*, *supra*; *Daslwood* v. *Magniac*, (1891) 3 Ch. 306, 360.) Under

Settled Land Act, 1882.

the stat. 45 & 46 Vict. c. 38, s. 35, he may, on obtaining the consent of the trustees of the settlement or an order of the Court, cut timber ripe and fit for cutting, and one-fourth of the proceeds of the sale of the timber goes as rents and profits, but the other

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

standing for the shelter or ornament of the house or its grounds. (St. § 915; *Vane* v. *Barnard*, 2 Vern. 738; *Micklethwait* v. *Micklethwait*, 1 D. & J. 504; *Turner* v. *Wright*, 2 D. F. & J. 234; *Baker* v. *Sebright*, 13 C. D. 179.) **767.**

Where such trees have been cut down, the Court will give damages proportionate to the injury (if any) done to the inheritance. (*Bubb* v. *Yelverton*, L. R. 10 Eq. 465.) **768.**

Waste in the case of tenants in common, co-parceners, and joint tenants.

On similar grounds, although in general the Court will not interfere by injunction to prevent waste as between tenants in common, or co-parceners, or joint tenants, because they have a right to enjoy the estate as they please, and because they can make partition when they choose, so as to prevent future waste; yet the Court will interfere in special cases, as where the waste is destructive of the estate, and not within the usual legitimate exercise of the right of enjoying the estate. (St. § 916; and see 909, note, *Bailey* v. *Hobson*, L. R. 5 Ch. 180.) **769.**

II. Public nuisances.

Private nuisances.

II. In the case of public nuisances, an information lay and lies in Equity to redress the grievance by way of injunction. (St. § 923, 924a.) In regard to private nuisances, in order to justify the interposition of a Court of Equity, there must be an injury such as from its nature is not susceptible of being adequately compensated by damages at Law, or such as from its continuance must occasion a constantly recurring grievance, which cannot be prevented otherwise than by an injunction. (St. § 925, 926; *St. Helen's Smelting Company* v. *Tipping*, 11 H. L. C. 653; *Fleming* v. *Hislop*, 11 A. C. 686.) Therefore a mere common trespass is not a ground for an injunction, unless there is a claim of right to do the act, which is always

a sufficient ground for an injunction. (*Pennington* v. *Brinsop Hall Co.*, 5 C. D. 769.) But in all cases where the injury is *irreparable*, the Court will interfere. (*Cooper* v. *Crabtree*, 20 C. D. 567; *Christie* v. *Davey*, (1893) 1 Ch. 316.) **770.**

III. Patents.

III. The Court also interferes in cases of patents for inventions and trade marks. In order to prevent irreparable mischief and vexatious litigation, the Court will interfere by injunction to prevent infringement and to secure the rights of the inventor or manufacturer. Formerly, if the validity of the patent or trade mark had not been already ascertained by a trial, and the defendant denied it, or put the matter in doubt, there, in general, the Court would require the validity of the patent to be ascertained. But since the Judicature Act, the question of validity will be decided in the Court in which the injunction is moved for. (*Halsey* v. *Brotherhood*, 15 C. D. 544.) And an injunction will be granted after the time limited for the expiration of a patent, to restrain the sale of articles manufactured in violation of the patent while it was in force. (St. § 934; and see *Kurtz* v. *Spence*, 33 C. D. 579.) **771.**

IV. Copyrights.

IV. The Court also affords protection to copyrights, but the plaintiff must first make out his title by registration or otherwise. (*Thomas* v. *Turner*, 33 C. D. 292.) There may be copyright not only in books, but also in lectures, music, engraving, sculpture, painting, photographs and other designs. (*Tuck* v. *Priester*, 19 Q. B. D. 48, 629; *Warne* v. *Seebohm*, 39 C. D. 73; *Pollard* v. *Photographic Co.*, 40 C. D. 345.) **772.**

If a work is of a clearly irreligious, immoral, libellous or obscene character, it will not be protected.

(St. § 936—938.) Nor will an announcement of the horses which a newspaper has selected as winners. (*Chilton* v. *Progress Printing Co.*, (1895) 2 Ch. 29.) **773.**

It is not an infringement of the copyright of a book to make *bonâ fide* quotations or extracts from it, or a *bonâ fide* abridgement of it, or to make a *bonâ fide* use of the same common matter in the compilation of another work. But what constitutes a *bonâ fide* case of extracts, or a *bonâ fide* abridgement, or a *bonâ fide* use of the same common materials, is often a matter of most embarrassing inquiry. (St. § 939—942; *Dicks* v. *Brooks*, 15 C. D. 52.) **774.**

It is not an infringement of copyright for a person to represent a play dramatised from a novel written by another. But it is an infringement to print and publish a play so constructed, at least if it embodies verbatim the most stirring passages from the novel. (*Tinsley* v. *Lacey*, 1 Hem. & M. 447.) **775.**

V. Letters.

V. The Court will also restrain the publication of private letters, whether of a literary character or otherwise, where the publication is attempted without the consent of the author. The property in letters remains in the person to whom they are sent, but the sender has still that kind of interest which gives him a right to restrain any use being made of them. But there is one exception to this general principle, and that is where it is necessary for the sendee to use them for his own justification or for vindicating his character. (*Lytton* v. *Devey*, 27 C. D. 28.) **776.**

VI. Applications to Parliament.

VI. The Court has manifestly no jurisdiction to restrain an application to Parliament for a public act, and though it may have power to restrain an application for a private act, it will refuse to exercise it, since

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

CHAPTER V.

OF PROTECTION FROM ANOTHER'S ABSCONDMENT BY THE WRIT OF NE EXEAT REGNO.

THE writ of *ne exeat regno* is a prerogative writ issued to prevent a person from leaving the realm to the damage of the person to whom he is indebted until he has given security for the amount due (St. § 1465), even though his usual residence might be in foreign parts. (2 Sp. 15.) **780.**

It was originally applied only to great political purposes. (St. § 1467.) And although subsequently applied in certain cases by custom to private civil matters only, yet it was employed with great caution and jealousy. (St. § 1467, note, § 1468.) **781.**

This writ would not be granted, except in cases of equitable debts and claims certain in nature, of a pecuniary character, and not contingent but actually payable; for, in regard to civil rights, it is treated in the nature of an equitable bail. (St. § 1470, 1474; Seton, 450; *Colverson* v. *Bloomfield*, 29 C. D. 341; *Drover* v. *Beyer*, 13 C. D. 242.) **782.**

To this, however, two exceptions were made: 1. Where alimony was decreed by the Court, and no appeal was made against the decree, the writ was granted, unless the husband made it appear that he did not intend to leave the kingdom. (St. § 1471 and note, and § 1472.) 2. In the case of an admitted balance due from the defendant to the plaintiff, but a

larger sum claimed by the latter, the writ would be issued. (St. § 1471, 1473.) **783.**

The writ has several times been issued since the Judicature Acts; but in *Drover* v. *Beyer*, 13 C. D. 242, Jessel, M. R., said: "Under the present practice the writ of *ne exeat* is not to be issued except in cases which come within the provisions of section 6 of the Debtors Act, 1869." **784.**

CHAPTER VI.

OF THE PROTECTION OF PROPERTY, BY TAKING AWAY THE POSSESSION OR RECEIPT THEREOF, OR BY REQUIRING SECURITY.

I. Appointment of a receiver.

I. THE Court of Chancery, on the principle of *quia timet*, exercised the power of appointing receivers, and frequently prevented anticipated wrong or loss, by the appointment of a receiver to receive rents and other income or profits. (St. § 826.) And such an appointment might be made even where the property was legal, and judgment creditors had taken possession of it under writs of *elegit*; for it was competent for the Court to appoint a receiver in favour of annuitants and equitable creditors, not disturbing the just prior rights, if any, of judgment creditors. (St. § 829.) But the Common Law Courts did not, until the Judicature Act, appoint receivers. **785.**

By the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (8), it is provided that a receiver may be appointed by an interlocutory order of the Court in *all cases in which it shall appear to the Court to be just or convenient* that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just. (*Foxwell* v. *Van Grutten*, (1897) 1 Ch. 64.) This section has enlarged the powers of the Court (Brett's L. C. 329), but it has not altered the character

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

but in urgent cases the Court will appoint an interim receiver without security. (*Taylor* v. *Eckersley*, 2 C. D. 203.) He is regarded as an officer of the Court, for the getting in of rents, income, or profits, and securing the same for the benefit of the persons entitled; and he must pass his accounts and pay the balances at the times fixed by the Court or judge. (Order L. r. 18.) In the case of adverse claims the appointment of a receiver does not at all affect the right. The Court virtually becomes the landlord *pro hac vice*, and the receiver, as an officer of the Court, is generally entitled to the possession; and his possession is treated as the possession of the Court, in the first instance, and then of the party who ultimately establishes his right to it: and, therefore, is not to be disturbed without the leave of the Court. (St. § 831, 833, 833 a.) **787.**

His power.

The receiver cannot proceed in any ejectment against the tenant, except by the authority of the Court. (St. § 833.) And when in possession, he has very little discretion allowed him, but must apply from time to time to the Court for authority to do such acts as may be beneficial to the estate. (St. § 833 a.) For an account of the powers, duties and remuneration of a receiver appointed by the Court, see Seton, chap. XVI.; Kerr, 164. **788.**

II. Payment into Court, or to the party entitled, or security.

II. In other cases, the Court affords protection by an order to pay a fund into Court; in others by directing security to be given, or money to be paid over. (St. § 826, 839—848.) **789.**

III. Deposit of documents.

III. The Court will also direct that papers and writings in the hands of executors and administrators shall be deposited with the Court for the benefit of those interested, unless there are other purposes which

require that they should be retained in the hands of the executors or administrators. (St. § 842.) **790.**

IV. Delivery of chattels.

IV. The Court will not ordinarily entertain suits for the specific delivery of chattels. But where the chattel is of such a nature that the loss of it could not be fully compensated by damages, the Court will decree a specific delivery thereof. (St. § 708—710; *Pusey* v. *Pusey*, *Duke of Somerset* v. *Cookson*, 2 Wh. & Tu. 454 *et seq.*) And see Order XLVIII.) **791.**

TITLE V.

Of Protective Equity in favour of Persons under Disability.

CHAPTER I.

OF INFANTS.

Tit. V. Cap. I.

Jurisdiction.

THE care of infants, as persons who are not able to protect themselves, belonged to the Sovereign, as *parens patriæ;* and this prerogative was delegated to the Court of Chancery from its establishment, and not to the Lord Chancellor only; since the jurisdiction might be exercised as well by the Master of the Rolls as by the Chancellor, and since an appeal lay, as in other cases in which the Court of Chancery had a general jurisdiction, from the decision of the Court of Chancery to the House of Lords. (St. § 1333—7. *Eyre* v. *Countess of Shaftesbury*, 1 Wh. & Tu. 473 *et seq.*) It should be added that the Common Law Courts also exercised jurisdiction with respect to the custody of infants, and would, on an application for a *habeas corpus* by the father, enforce his right to their custody, even against the mother, unless cruelty or immorality on his part might be apprehended, or the infants were of age to elect for themselves as to their custody. (1 Wh. & Tu. 525.) **792.**

The Judicature Act, 1873.

Now, however, the stat. 36 & 37 Vict. c. 66, enacts that "in questions relating to the custody and

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

Court may remove any guardian and appoint another in his place (section 6). Guardians appointed by the Court are considered as officers of the Court, and are held responsible to it accordingly. (St. § 1338.) **794.**

Custody of Infants Act, 1891.

By the Custody of Infants Act, 1891, the Court has full power and discretion to refuse the custody of his child to a parent who has abandoned or deserted the child, or has so conducted himself as to disentitle him to the assistance of the Court, or has been unmindful of his duties in allowing another person to bring it up. But the Court has power, even where it deprives the parent of the custody, to order that the infant shall be brought up in the religion on which the parent has a right to insist (section 4). **794 a.**

Removal of guardians.

The Court will remove a guardian of any kind, whenever sufficient cause can be shown for such a purpose, or will regulate and direct the conduct of the guardian in regard to the custody and education and maintenance of the infant, and, if necessary, will even appoint the school where he shall be educated, and will require security to be given, if there is any danger of injury to his person or property. (St. § 1339.) **795.**

Religion.

Although it is the right of the father to have the custody of his children and to have them brought up in his own religion, the welfare of the infants is the paramount consideration, and the Court will in a proper case deprive him of the custody and disregard his wishes as to their religious education. (*Re Newton* (*Infants*), (1896) 1 Ch. 740.) But apart from anything disentitling him to that right, the rule of the Court is that the father has the right to control the religious education of his infant children, and that after his death, the children should be brought up in the religion

of their father. So that when a deceased father was a member of the Church of England, and the mother, who was their guardian, had become one of the Plymouth Brethren, she was restrained from taking them to a meeting-house of that sect. (*In re Newbery*, L. R. 1 Eq. 431; 1 C. 263; *In re Besant*, 11 C. D. 508.) And the rule that the father has the right to decide what religious education his children shall receive, and that after his death the guardians of the children are bound to see that they are brought up in the religious faith of their father is unaffected by the Guardianship of Infants Act, 1886. Thus, where, on the death of the father, the mother, by virtue of that Act, becomes their guardian by law, either alone when no testamentary guardian is appointed by the father or jointly with any guardian appointed by him, she has no greater powers with respect to their religious education than a guardian before the Act, and is bound to see that the children are brought up in the religious faith of their father unless under very special circumstances. And where the deceased father was a Protestant and the mother a Roman Catholic, the Court under section 2 of the Act appointed two Protestants to act jointly with her as guardians of the children, and directed that they should be brought up as members of the Church of England. (*In re Scanlan*, 40 C. D. 215.) **796.**

Of course the father may waive this right. But he does not waive or forfeit it, even by a pre-nuptial engagement that the children shall be brought up in the religion of the mother; for all such agreements whether before or after marriage are absolutely void, and he has the legal right to the custody and control of his children, as against the mother, and as against

the children while under age, and as against any other guardian, and even as against the Court itself, unless in consequence of moral misconduct or physical inability, or of the profession of immoral or irreligious opinions deemed to unfit him to have the charge of his children, it would be highly inexpedient for the interests of the children to allow him to exercise his parental authority over them. And the Court will by injunction enforce his authority as against the mother or children or guardian. In some cases the Court will examine the children to ascertain what course it would be expedient to adopt; in other cases, the Court will leave it entirely to the father. (*Stourton* v. *Stourton*, 8 D. M. & G. 760; *In re Agar-Ellis*, *Agar-Ellis* v. *Lascelles*, 10 C. D. 49, 69—76; *In re Clarke*, 21 C. D. 817; *Re McGrath*, (1893) 1 Ch. 143; *Re Newton*, (1896) 1 Ch. 740; Brett's L. C. 94.) **796 a.**

Court may order that mother may have access to and custody of infant under sixteen years.

By the stat. 36 Vict. c. 12 (24th April, 1873), it is enacted that "from and after the passing of this Act it shall be lawful for the Court, upon hearing the petition by her next friend of the mother of any infant or infants under sixteen years of age, to order that the petitioner shall have access to such infant or infants at such times and subject to such regulations as the Court shall deem proper, or to order that such infant or infants shall be delivered to the mother, and remain in or under her custody or control, or shall, if already in her custody or under her control, remain therein until such infant or infants shall attain such age, not exceeding sixteen, as the Court shall direct; and further, to order that such custody or control shall be subject to such regulations as regards access by the father or guardian of such infant or infants, and otherwise, as the said Court shall deem proper"

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

injurious to the morals or interests of his or her children, the Court will deprive him or her of the custody of his or her children, and appoint a suitable person to act as guardian. (St. § 1341-9; *In re Besant*, 11 C. D. 508; *Smart* v. *Smart*, (1892) A. C. 425; Brett's L. C. 93.) And it is now provided by the stat. 49 & 50 Vict. c. 27, that in case of divorce or judicial separation of the parents, the Court may declare the guilty parent unfit to have the custody of the children (s. 7). **799.**

The Guardianship of Infants Act, 1886.

Conversion of the infant's property.

Guardians may not change the nature of the property, unless it is manifestly for the benefit of the infant; indeed, it has been said that there must be an overwhelming necessity for the conversion. (*Camden* v. *Murray*, 16 C. D. 161, 171.) And although there is no equity in such a case between the representatives of the infant, nevertheless, for the purpose of preventing any such acts of the guardian, in case of the death of the infant before he comes of age, from changing improperly, through partiality or otherwise, the rights of the parties, who, as heirs or distributees, would otherwise be entitled to the property, the Court holds, lands purchased by the guardian with the infant's personal estate, or with the rents and profits of his real estate, to be personalty, and distributable as such; and on the other hand, treats the proceeds arising from the sale of real property (as, for example, of timber cut down on a fee-simple estate of the infant) as real estate. Guardians should in all cases apply for the sanction of the Court to acts of this sort; and, when the Court directs any such change of property, it directs the new investment to be in trust for the benefit of those who would be entitled to it, if it had remained in its original

state. (St. § 1357; *Warwicker* v. *Bretnall*, 23 C. D. 188.) **800.**

Who are wards of Court.

Sometimes infants become wards of Court. Properly speaking, a ward of Court is a person who is under a guardian appointed by the Court. But whenever a suit is instituted in the Court relating to the person or property of an infant, although he is not under any general guardian appointed by the Court, he is treated as a ward of the Court. (St. § 1352; *Gynn* v. *Gilbard*, 1 Dr. & Sm. 356.) And even a mere order for maintenance made without suit or payment into Court under the Trustee Act, constitutes an infant a ward of Court. (*In re Graham*, L. R. 10 Eq. 530; *Brown* v. *Collins*, 25 C. D. 56; Simpson on Infants, 241.) **801.**

All acts affecting them must be done under the direction of the Court.

Any act affecting the person or state or property of a ward of Court, unless done under the express or implied direction of the Court, is treated as a violation of the authority of the Court, and the offending party will be arrested for that contempt, and compelled to submit to such order, and to such punishment by imprisonment, as are applied to other cases of contempt. (St. § 1353.) **802.**

Maintenance.

Whenever an infant is a ward of Court, and a suit is depending in the Court as to his property, the Court will direct a suitable maintenance for the infant, having a due regard to his rank, intended profession or employment, property, and expectations. (St. § 1354.) And maintenance will also be ordered even where the infant is not a ward of the Court, and not resident within the jurisdiction, if he has no father, or his father is unable to maintain him. (See St. § 1354, 1354 a, 1354 b.) **803.**

Where a legacy is given to a child, whether

absolutely or contingently on his attaining twenty-one, the income of the legacy is, by the Conveyancing Act, 1881, s. 43, available for his maintenance, if the bequest carries the right to intermediate income. (*Re Holford*, (1894) 3 Ch. 30; Brett's L. 71; *Arnold* v. *Burt*, (1895) 2 Ch. 577.) And this is so, though the interest is directed to be accumulated, and the parents' interest is considerable. (*King-Harman* v. *Cayley*, (1899) 1 Ir. R. 39; and see *Hunt* v. *Parry*, 32 C. D. 383.) **804.**

The Court has power to charge reversionary property of infants with money required for their maintenance, even where some of them may never become entitled to possession. (*De Witte* v. *Palin*, L. R. 14 Eq. 251; *Re Tanner*, 53 L. J. Ch. 1108; but see and comp. *Cadman* v. *Cadman*, 33 C. D. 397.) **805.**

The Court is governed by a regard to the circumstances and state of the family to which the infant belongs, in respect to the allowance of maintenance and to the amount of such allowance. So that, although there may be a trust for maintenance under which the whole income may be applied, yet the Court will not apply more of it than necessary, where the infants have other sources of income, sufficient to suitably maintain and educate them according to their position in life. (*White* v. *Grane*, 18 Beav. 571; *King-Harman* v. *Cayley*, *supra*.) And if the father is able to maintain the infant out of his own property, the Court will ordinarily withhold all allowance from the property or income of the infant for the maintenance of the latter, even though there may be a power (as distinguished from a trust) in the settlement or will, at the discretion of the trustees, to appoint part of the income for the purpose of his maintenance and

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

(*Re Stevens*, (1896) W. N. 24; *Re Wise*, (1896) 1 Ch. 281); or may avoid the accumulations *pro tanto* where they infringe the Thellusson Act. (*Re Mason*, (1891) 3 Ch. 467.) **808.**

Where the income of property is given to the mother for the maintenance of herself and her children, she is to receive the whole income, and maintain the children out of it, so long as they form part of her family; but when they are forisfamiliated as by marriage, they lose the right to maintenance. (2 Sp. 461; but see *ante*, par. 233; and *Re G.*, 1 Ch. 799.) **809.**

Property decreed to infants by foreign Court.

Where infants resident here become entitled to personal property, under the decree of a foreign tribunal, it will be administered for their benefit here, just as any other property. (2 Sp. 13, 14.) **810.**

Marriage of a ward of the Court without the consent.

If a man marries a ward of Court without the consent of the guardian, he and all others concerned in aiding and abetting the act, are treated as guilty of a contempt of Court; and even though he was ignorant that she was a ward of the Court, he is deemed guilty of a contempt. (St. § 1358.) **811.**

Recognizance that a ward of Court shall not marry.

Where the Court appoints a guardian, or committee in the nature of a guardian, to have the care of an infant, it is accustomed to require the guardian or committee to give a recognizance that the infant shall not marry without the leave of the Court; so that if the infant should marry even without the knowledge or neglect of the guardian or committee, yet the recognizance would in strictness be forfeited, whatever favour the Court might think fit to show to the party, when he should appear to have been in no fault. (St. § 1359.) **812.**

Interdiction of intended marriage of a ward of Court, and of addresses.

Where there is reason to suspect an improvident marriage without its sanction, the Court will, by an injunction, not only interdict the marriage, but also all communications between the ward and the admirer; and if the guardian is suspected of any connivance, the Court will substitute a committee in his stead. (St. § 1360.) **813.**

Settlement on a ward of Court.

In case of an offer to marry a ward of Court, the Court will inquire and ascertain whether the match is a suitable one, and what settlement ought to be made on the marriage; and it is not competent to the parties, by delaying the marriage until the wife has come of age, to defeat the settlement approved by the Court. (2 Sp. 499.) And when a man has been committed for a contempt in marrying a ward of Court without its sanction, he will not be discharged until he has actually made such a settlement as shall have been deemed proper by the Court. And this will be the case even where the ward has subsequently come of age, and is ready to waive her right to a settlement; for the Court will protect her against her own indiscretion and the undue influence of her husband. (St. § 1361.) **814.**

Where a settlement is executed a few days after the ward of Court has attained her majority, and is pursuant to proposals made a very short time before she attained her majority, and is such as the Court would not approve of, it will be rectified, if at least it was the work of her friends, and she was not made to understand its effect, and not called upon to exercise her judgment upon it. (*Money* v. *Money*, 3 Drew. 256.) **815.**

If a ward of Court marries a few days after majority, the Court will decline to order her fortune to be paid out of Court, and will refuse to do more

than order payment of the income during their joint lives, or until further order, without prejudice to any question, and with liberty to apply. (*Biddle* v. *Jackson*, 26 Beav. 282.) **816.**

Settlement on an infant who is not a ward of Court.

The Court has no power to order a settlement of the property of an infant, not being a ward of Court, who has married after attaining the age at which she is capable of contracting a marriage. (*In re Potter*, L. R. 7 Eq. 484.) But under the Marriage Act, (4 Geo. IV. c. 76), where a minor has married without the guardian's consent, the Court can decree a settlement. (*Re Phillips*, 34 C. D. 467.) And under the Infants' Settlement Act (18 & 19 Vict. c. 43), the Court may by its sanction enable infants to make binding marriage settlements when they have attained the age of twenty-one if males, or seventeen if females, although the marriage may have taken place before such ages. (*In re Phillips*, 34 C. D. 467.) But an infant's settlement, though made without the sanction of the Court, is only voidable and not void. It is valid until disaffirmed, and unless repudiated within a reasonable time, the infant is absolutely bound by it. *Viditz* v. *O'Hagan*, 68 L. J. Ch. 553.) **817.**

Control over guardians and others for the benefit of infants.

The Court will exercise a vigilant care over infants in the management of their property; and will also aid and protect infants against other persons than those who are guardians; such, for instance, as intruders upon the estate. (St. § 1356.) **818.**

Cancellation of apprenticeship.

The Court has no jurisdiction to order the cancellation of articles of apprenticeship and the return of a portion of the premium, on the ground of the wrongful refusal of the master to continue to instruct his apprentice in his trade according to his agreement. (*Webb* v. *England*, 29 Beav. 44; and see *ante*, par. 624.) **819.**

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

the marriage in acordance with the old legal doctrine that husband and wife were one person. But Courts of Equity, although they generally followed the same doctrine, enforced such contracts, where it would be in futherance of the manifest intention of the parties to do so; as in the case of an agreement by husband and wife for a settlement on marriage. (St. § 1370, 1371.)

The Married Women's Property Act, 1882.

Now, however, the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), has removed the inability of husband and wife to contract with one another, and to sue one another on such contracts. (See sections 1, 12, *infra*, pars. 857, 845.) But it has been held that a husband cannot sue his wife in respect of a debt incurred by her to him before marriage, but that he can sue her in respect of a contract made after marriage and intended to bind her separate estate. And the wife can sue her husband in respect of a contract made by him after marriage. (*Butler* v. *Butler*, 14 Q. B. D. 831; 16 ibid. 374.) **822.**

II. Contracts after marriage.

II. Contracts made between husband and wife, after marriage, were a mere nullity at Law; but under peculiar circumstances they were enforced in Equity if of a reasonable nature. Thus, if the husband contracted with his wife, for good reasons, that she should separately possess and enjoy property bequeathed to her, the contract would be upheld in Equity. (See St. § 1372; *Hewison* v. *Negus*, 16 Beav. 594; *Anderson* v. *Abbott*, 23 Beav. 457.) Also contracts affecting property belonging to the wife for her separate use, and contracts relating to the separation of husband and wife, as well as the compromise of legal proceedings between them in the Divorce Court, would be enforced. And the Married Women's Property Act, 1870, s. 11, enacted that "a married woman might

maintain an action, in her own name, for the recovery of any property belonging to her before marriage, and which her husband had agreed in writing should belong to her after marriage as her separate property." (*Dye* v. *Dye*, 13 Q. B. D. 147.) The Act of 1882 repeals that Act and also the amending Act, 37 & 38 Vict. c. 50, but provides that "such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act." (Section 22; *Re Turnbull*, (1897) 2 Ch. 415.) So the wife might even become a creditor of her husband: and her rights, as such, would be enforced against him and his representatives. Thus, if a wife raised money out of her estate, to answer his necessities, whatever be the mode adopted to carry that purpose into effect, she would in Equity be entitled to reimbursement out of his estate. (St. § 1373; *cf. Paget* v. *Paget*, (1898) 1 Ch. 470.) **823.**

And now under the Act of 1882, husband and wife are free to enter into contracts with one another and to sue one another "in contract or in tort or otherwise," the proceedings in tort being apparently restricted to those by the wife for the protection and security of her separate property (see sections 1, 12, *infra*, pars. 857, 845); but their powers of contracting *inter se* are limited to contracts not contrary to public policy. (See remarks of Jessel, M. R., in *Besant* v.

TIT. V. CAP. II. SECT. I.

Wood, 12 Ch. D. 620.) And with respect to loans by the wife to the husband that Act enacts: "Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied." (Section 3.) This also applies where the husband dies insolvent. (*Re Long*, (1895) 1 Ch. 652.) And it applies unless it is shown that money was not lent to the husband for the purpose of his business (*Mackintosh* v. *Poyose*, (1895) 1 Ch. 505); but if lent to a trading partnership of which the husband is a member, the wife so far as respects the joint estate is not postponed to other creditors. (*Re Tuff*, 19 Q. B. D. 88.) **823a.**

III. Gifts and grants after marriage.

III. Gifts and grants too, whether express or implied, by a husband to his wife, after marriage, although ordinarily void at Law, would be in some cases enforced in Equity (see *Re Breton*, 17 C. D. 416). But now by the Act of 1882, the former incapacity of married women to acquire real and personal property is taken away, and they are capable of receiving or making gifts and grants from or to their husbands as well as from or to other persons, as if they were unmarried. (But see section 10 as to such gifts being void against the husband's creditors.) **824.**

It was held before the Married Women's Property Act, 1882, and is no doubt still the law, that if a husband places money in a bank in the name of his

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

meant to dress the wife during the year, so as to keep up the dignity of the husband, and not for the purpose of accumulation. And, on the same principle, the personal representatives of the wife are not allowed to make any claim even for arrears of a year. (St. § 1375, 1375 a, 2 Sp. 501.) **827.**

The Married Women's Property Act, 1882.

The Married Women's Property Act, 1882, would not, it is conceived, affect any provision for pin-money made by marriage settlement (as to which see Elphinstone's Introduction, 265), but as regards provisions for pin-money or gifts in the nature of pin-money made during coverture, it remains to be seen whether any distinction between pin-money and separate estate can be maintained. **827 a.**

II. Paraphernalia.

II. The wife's paraphernalia are personal apparel and ornaments of the wife, suitable to her rank and condition in life. (St. § 1376.) Old family jewels, though worn by the wife, do not constitute part of her paraphernalia, unless she has acquired them by gift or bequest. (*Jervoise* v. *Jervoise*, 17 Beav. 566.) **828.**

Rule of Law respecting them.

At Law, the husband may, in his lifetime, but not by his will, dispose of the wife's paraphernalia, with the exception of necessary apparel; and they are liable to the claims of creditors with the like exception. And if the articles were given by the husband, either before or after marriage, Courts of

Rule of Equity, where they were given by the husband,

Equity fully recognize this right of the husband and his creditors, instead of treating the articles as absolute gifts to the wife for her separate property; although, in the case of creditors, claiming against the assets of the husband, his personal assets will be marshalled against his representatives in favour of the widow. But if the articles were bestowed on

the wife by any one else, they will be deemed absolute gifts to her separate use, and then, if received with the consent of the husband, neither he nor his creditors can dispose of them. (St. § 1376, 1377.) **829.**

or where given by any one else.

The Married Women's Property Act, 1882, has not abolished the general law as to gifts of paraphernalia. But it seems doubtful whether a gift of paraphernal articles by a husband to wife will now be construed as an out and out gift or as a gift of paraphernalia in the old sense. (*Re Vansittart*, (1893) 1 Q. B. 181; *Tasker* v. *Tasker*, (1895) p. 1.) **829 a.**

The Married Women's Property Act, 1882.

SECTION III.

The Wife's Separate Estate.

I. With regard to the means of acquiring separate estate, it will be convenient to consider first, those cases which are not affected by the Married Women's Property Act, and then those cases which fall within it.

I. Means acquiring

1. Whenever real or personal estate is given, granted, devised to, or settled on a woman, either with or without the intervention of trustees, whether after marriage, or as a provision on marriage, or not in contemplation of immediate marriage, and whether by her husband or by a mere stranger, it will be deemed separate estate if it clearly appears that the property was intended for her separate use. (St. § 1380, 1381, 1384; *Hulme* v. *Tenant*, 1 Wh. & Tu. 654; Brett's L. C. 25.) Thus, a bequest to a married woman, "for her own use, and at her own disposal," has been held to be a bequest to her separate use. So money paid

1. By gift, grant, devise, or settlement.

to the husband "for the livelihood of the wife" and other similar expressions, which are inconsistent with any interference on the part of the husband, have been construed as gifts to her separate use. (St. § 1382; Lewin, 10th. ed. 923.) But where the expressions do not clearly show that the husband is to be excluded from his marital rights, the wife will not take for her separate use. Thus, in the case of a direction to pay money to her "absolute use," or "into her own proper hands," or "for her own use and benefit," it has been held that although the money is to be for her own use, yet there is nothing in that inconsistent with its being subject to the husband's marital rights. (St. § 1383; Lewin, 10th ed. 924.) And a direct gift to a woman who is either single or will become discovert on the testator's death, for her sole use and benefit, does not create a separate estate (*Gilbert* v. *Lewis*, 1 D. J. & S. 38: and see *Lewis* v. *Mathews*, L. R. 2 Eq. 177; *Massey* v. *Bowen*, L. R. 4 H. L. 288), unless aided by other expressions in the will or other circumstances; such as the fact that the instrument shows that the marriage of the person spoken of was contemplated by the author of it. (*In re Tarsey's Trust*, L. R. 1 Eq. 561.) But a gift, by way of trust, for her sole benefit, to a married woman, does create a separate estate (*Green* v. *Britten*, 1 D. J. & S. 649; *Guthrie* v. *Walrond*, 22 C. D. 573); and where a precatory trust has been created by will in favour of children, simpliciter, the trustee may, in execution of the trust, limit the shares of the daughters to their separate use. (*Willis* v. *Kymer*, 7 C. D. 181.) Where personal property is vested in a woman for her separate use without any restraint on anticipation, with remainder as she shall by deed or will appoint, with remainder to her

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

or post-nuptial settlement, where its effect would be to alter the destination of such property. Thus, where, in such a settlement, there is a covenant by husband and wife, or a covenant by the husband only, to settle after-acquired property of the wife married before the 1st of January, 1883, and the wife after that date becomes absolutely entitled to property not expressed to be for her separate use, the effect of section 19 is to prevent section 5 from making that property the separate property of the wife, so as to exclude the operation of the covenant, although, if the property had been expressed to be for the separate use of the wife, it would not have been bound by the covenant. (*In re Stonor's Trusts*, 24 C. D. 195; *Christian* v. *Whitaker*, 34 C. D. 227; *Hancock* v. *Hancock*, 38 C. D. 78; *Stevens* v. *Trevor-Garrick*, (1893) 2 Ch. 307.) **830 a.**

2. By carrying on a separate trade in London : or even elsewhere, by agreement before marriage :

2. By the custom of London, a married woman may carry on trade within the City, as a sole trader, and be liable as such; and then her property employed in the business, as well as her earnings, will be her separate property. But, independently of any such custom, if it is agreed between the husband and wife, *before* marriage, that the wife shall be allowed to carry on a separate trade, such an agreement will be maintained at Law against the husband: and being an agreement for valuable consideration, namely, that of the intended marriage, it will also be maintained at Law against his creditors. And if such an agreement is made *after* marriage, and the property employed in the business be vested in trustees for the wife, it will be maintained at Law against the husband; and if it is on valuable consideration, against his creditors also; for, in such case, the wife's trustees will, at

by agreement after marriage ;

Law, be entitled to the property vested in them, and to the increase and profits thereof, and she will be considered at Law as their agent, and her possession as their possession. The trustees, however, will be regarded in Equity as holding such property, and receiving the increase and profits thereof, for the sole and separate use of the wife. And thus in such cases where trustees are interposed, the beneficial interest in the property, and the increase and profits thereof, are secured to the wife by the joint operation of Law and Equity. By the operation of Law, the legal estate is vested in the trustees, and taken out of the power of the husband. By the operation of Equity the beneficial interest is vested in, and secured to, the wife, against her husband, and, if the agreement is for valuable consideration, against his creditors also. But even where there are no trustees interposed, such an agreement has the force, in Equity, of creating a separate estate for the wife, and securing it against the husband; and, if the agreement is for valuable consideration, against his creditors also. And this is the case even though it be a mere implied agreement. So that if the husband should permit his wife, after the marriage, to carry on business on her sole and separate account, all her earnings in the trade will be her separate property. And if a husband should desert his wife, and she should be enabled, by the aid of her friends, to carry on a separate trade, her earnings in such trade will be enforced in Equity against her husband, independently of the stat. 20 & 21 Vict. c. 85, ss. 21, 25. (See St. § 1385—1387.) **831.**

even though the agreement be merely implied.

3. By the stats. 20 & 21 Vict. c. 85, s. 21; 21 & 22 Vict. c. 108, s. 8; and 41 Vict. 19, s. 4, if a wife is deserted by her husband, she may obtain an order of protection

3. By an order of protection, or by a judicial separation.

of her property against her husband and his creditors; and by section 25 of the former Act, if judicially separated, she is to be deemed a feme sole as regards property (see *Waite* v. *Morland*, 38 C. D. 135); and in case of subsequent cohabitation, it shall be held to her separate use, subject to any agreement. (*Re Emery*, 50 L. T. 197.) **832.**

4. The Married Women's Property Act, 1870.

4. The Married Women's Property Act, 1870, enacted that the separate earnings, deposits in savings banks, property in the funds, joint stock companies and societies, of a married woman, personal property coming to her as next of kin, personal property not exceeding £200 coming to her under any deed or will, and the rents and profits of real property coming to her as heiress or co-heiress of an intestate, shall belong to her for her separate use, and also contained provisions respecting policies of assurance taken out for the benefit of the wife, either by husband or wife. **833.**

The Married Women's Property Act, 1882.

The Act of 1882 has, by section 22, repealed the stat. 33 & 34 Vict. c. 93, except as to acts done, and rights or liabilities accrued, under the latter Act while in force (see *supra*, par. 823), and after providing that a married woman shall be capable of disposing of her property, both real and personal, as if she were a feme sole, enacts: "Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid, all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation, in which she is

Property and earnings of a woman married after the Act to be held by her as a *feme sole*.

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

As to stock, &c. to be transferred to a married woman.

beneficially entitled thereto for her separate use, so as to authorise her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband. And by section 7, all such annuities, stocks, and shares, as shall after the 1st January, 1883, be allotted to, or otherwise stand in the sole name of any married woman shall be deemed, unless the contrary be shown, her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable. **836.**

Investments in joint names of married woman and others.

And by section 8, the above provisions shall apply to deposits, annuities, stocks, funds, &c., which, at the commencement of the Act, or at any time afterwards, shall be standing in the name of any married woman, jointly with any persons or person other than her husband. **837**

As to stock, &c. standing in the joint names of a married woman and others.

Formerly the concurrence of the husband was necessary to the transfer of stock of the wife unless the stock had been placed in her name as a married woman for her separate use. But now by the Act of 1882, it is not necessary for the husband to join in the transfer of any annuity, deposit, stocks or funds, standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband (section 9). **838.**

Married woman as executrix or trustee.

And by the Act of 1882, a married woman who is an executrix or administratrix alone or jointly with any other person or persons, or a trustee alone or jointly of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity, deposit, stock or funds, in that character, without her husband, as if she were a *feme sole* (section 18). **839.**

Fraudulent investments with money of husband.

And by section 10, the Act makes provision against fraudulent investments by the wife with her husband's moneys, and provides that such moneys shall remain the husband's property, and if such investments are made in fraud of his creditors, they shall be void as against such creditors, as will also any gift to the wife of property remaining in the order and disposition of the husband. **840.**

Husband's right as to curtesy and administration.

The effect of the Act of 1882 is to abolish, during the life of the wife, the marital right of the husband in all the property of the wife married on or after the 1st of January, 1883, and in the property acquired on or after that date of a wife married before that date. But the Act does not take away his interest in his wife's property after her death, or alter the devolution of that property. His estate by the curtesy in his wife's real estate survives where the latter is not disposed of by the wife (*post*, par. 850 b).

And since the Act does not purport to deal with the devolution of property, he is still entitled to possess himself of so much of her personal property acquired on or after the 1st of January, 1883, as she may leave undisposed of, as her administrator, whether separate property under the Act, or as having been limited to her for her separate use; but it will probably be necessary for him to take out administration to complete his title on her death. (Wolst. 264; *Surman* v. *Wharton*, (1891) 1 Q. B. 491; *Stanton* v. *Lambert*, 39 C. D. 626.) **841.**

Wife may be tenant in common or joint tenant with husband.

Also, since by virtue of the Act of 1882 husband and wife are no longer one person in Law in cases to which that Act applies, a wife may now acquire property as tenant in common or joint tenant with her husband, while formerly husband and wife took by

entireties. (*Re March*, 24 C. D. 222; *Thornley* v. *Thornley*, (1893) 2 Ch. 229.) But in the case of a gift to husband and wife and a third person, it has been held that the husband and wife will still take half only (the half of the wife of that half being her separate property), and the third person the other half. (*Re Jupp*, 39 C. D. 148; *Byram* v. *Tull*, 42 C. D. 306.) **841a.**

Questions between husband and wife as to property to be decided in a summary way.

The stat. 45 & 46 Vict. c. 75, also enacts: "In any question between husband and wife as to the title to or possession of property, either party, or any such corporation, company, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court, or (at the option of the applicant irrespectively of the value of the property in dispute) to the judge of the County Court of the district, and the judge may make such order with respect to the property, and as to the costs, or may direct such application to stand over, and any inquiry to be made as he shall think fit;" with a proviso giving a right of appeal, and a right of removal into the High Court, in certain cases; and also a proviso that the corporation, company, or society should, in the matter of such application for the purposes of costs or otherwise, be treated as a stakeholder only (section 17). **842.**

Married woman may effect policy of insurance.

"A married woman may by virtue of the power of making contracts hereinbefore contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly" (section 11). She had a similar power under section 10 of the repealed stat. 33 & 34 Vict. c. 93, with the difference that the

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

(1897) 2 Ch. 415.) In case of a policy effected under this section by a husband for the benefit of his wife and children, if it is not stated to be for the benefit of the wife for life, the wife and children will take as joint tenants. (*Re Seyton*, 34 Ch. D. 511.) The repealed stat. 33 & 34 Vict. c. 93, s. 10, provided that the policy was to be in trust for the wife for her separate use. **844.**

Remedies of married woman for protection and security of separate property.

By section 12 "every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section, it shall be sufficient to allege such property to be her property; and in any proceeding under this section, a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife." (Section 12; and see section 16,

and the Married Women's Property Act, 1884.) The wife's right to sue her husband for a tort or criminalty seems confined to the case where such an action is necessary for the security of her separate property. She cannot therefore proceed against her husband for a defamatory libel. (*Reg.* v. *Lord Mayor of London*, 16 Q. B. D. 772.) **845.**

II. Wife's power of disposing of separate estate.

II. As to the wife's power of disposing of her separate estate before the Act, she has always been able to dispose of it in Equity, either by deed or will, provided there was no restraint upon anticipation. With regard, however, to real estate given to her for her separate use, without the intervention of trustees the legal estate vested in the husband, and though the wife could dispose of the equitable or beneficial interest, yet to pass the legal estate it was necessary for the husband to join and for the deed to be acknowledged. (*Taylor* v. *Meads*, 34 L. J. Ch. 203; *Pride* v. *Bubb*, L. R. 7 Ch. 64.) **846.**

Acknowledgment is, however, no longer necessary where the woman was married, or the property was acquired since the Act, except in one single instance, that is, where she is a trustee. (*Re Harkness*, (1896) 2 Ch. 358; *cf. Re Brooke*, (1898) 1 Ch. 647; and see Conv. Act, 1882, s. 7.) **847.**

With this single exception therefore, a woman married after the Act, or acquiring property after the Act, has the same powers of disposition as if she were a *feme sole*, without the necessity of any settlement or agreement for a settlement. But the Act does not affect existing settlements or the power to make future settlements. (See *supra*, par. 830 a.) **848.**

It may be worth while to point out, that though a married woman can now dispose of her separate

property as if she were a *feme sole* she does not, under the old law, appear to have been deemed a *feme sole*, and the Act of 1870 does not use the expression. **849.**

Now by virtue of the Married Women's Property Act, 1882, a married woman can dispose of her separate property as if she were a *feme sole*. Further

The Settled Land Act, 1882.

a married woman can now, under the Settled Land Act, 1882, s. 61, exercise the powers of a tenant for life under that Act, even though there is a restraint on anticipation. **850.**

It was long ago settled that on the death of a woman, entitled absolutely to real property for her separate use, and not having disposed thereof by deed or will, it goes to her heir subject to the husband's estate by curtesy; and this right of the husband to curtesy in the undisposed-of real estate of his wife, is not affected by the Married Women's Property Act, 1882. (*Hope* v. *Hope*, (1892) 2 Ch. 336.) **850 a.**

Restrictions against alienation or anticipation.

A mere prohibition of alienation or anticipation is void against a man, or a woman while she is unmarried. (See 2 Sp. 520.) And it is void when annexed to a gift of real estate in fee or for life to a woman, even though at the time married, if such gift is not for her separate use. (*Stogden* v. *Lee*, (1891) 1 Q. B. 661). *Secus*, if the gift, though not expressed to be for her separate use, is so by virtue of the Married Women's Property Act. (*Re Lumley*, (1896) 2 Ch. 690.) But a gift, either of real estate, whether in fee or for life, or of personal estate (whether it be of a sum of money, or of a fund producing income), to a woman for her separate use, even though she be unmarried at the time, may be accompanied by restrictions against alienation or anticipation. (St. § 1382 a, 1384; *In re Boun*, *O'Halloran* v. *King*, 27 Ch. D. 411.) But where there

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

for the benefit of the married woman: as where a legacy of considerable amount was given to her on condition that she conveyed away a separate estate of inconsiderable value. (*Robinson* v. *Wheelwright*, 21 Beav. 214; 6 D. M. & G. 535; *Smith* v. *Lucas*, 18 C. D. 531.) Nor could she herself bind it by way of admission or estoppel. (*Bateman* v. *Faber*, (1898) 1 Ch. 144.) But now, by the Conveyancing Act, 1881, s. 39, it is provided that "notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property." Under this section, the Court has not a general power of removing the restraint, but only a power to make binding a particular disposition if it be for her benefit. (*Re Warren*, 52 L. J. Ch. 928; Brett's L. C. 104.) It has been held, however, that good ground must be shown to the Court for the removal of the restraint, and the mere wish of the married woman is insufficient. (*Tamplin* v. *Miller*, 30 W. R. 422.) It must also be for the married woman's own benefit, and will not be done in order to benefit her creditors. (*Hodges* v. *Hodges*, 20 Ch. D. 749; and see Brett's L. C. 104, and cases there cited.) But every case must stand on its own merits, and it is for the Court to decide whether it will exercise its discretion. (*Re Pollard*, (1896) 2 Ch. 552.) Also by the Married Women's Property Act, 1893, s. 2, costs may be ordered to be paid out of property subject to a restraint on anticipation. And under the Trustee Act, 1893, s. 45, such property may be impounded to make good a breach of trust. (See *Bolton* v. *Curre*, (1895) 1 Ch. 544.) **853.**

Where the wife bestows her separate property upon her husband, the Court required to give sanction or effect to the gift, will ascertain whether she acts voluntarily, and not under undue marital influence, and for this purpose will examine the wife in Court, and adopt other precautions to ascertain her unbiassed wishes. (St. § 1395; see *Re Flamank*, 40 C. D. 461.) **854.**

Gifts to the husband by the wife.

Where the husband, with the consent of the wife, is in the habit of receiving the income of her separate estate, it is regarded as showing her voluntary choice thus to dispose of it for the benefit of the family; and separate money of the wife paid to the husband or placed to his account by her authority or with her concurrence, cannot be recalled. (St. § 1396; 1 Wh. & Tu. 693; *Edward* v. *Cheyne*, 13 A. C. 384, 398.) But if there is no evidence of the wife's having acquiesced in the receipt by the husband she will be entitled to be reimbursed. (*Dixon* v. *Dixon*, 9 C. D. 587; *Wassill* v. *Leggatt*, (1896) 1 Ch. 554.) **855.**

Husband's receipt of the income.

III. As to the liability of the wife's separate estate to her contracts, debts, and charges (except under the stat. 20 & 21 Vict. c. 85, s. 26, which relates to women judicially separated), a woman cannot render herself or her property liable, at Common Law, for any contract, debt or other charge created by her during the coverture, not even for necessaries. But a married woman having separate estate (except so far as she is restrained from anticipation), being considered in Equity as a *feme sole* as regards the separate estate, with respect to the capacity of enjoying it, she is likewise considered as a *feme sole* with respect to the capacity of charging the estate

III. Liability of separate estate previously to the Married Women's Property Act, 1882.

with debts or engagements. No personal decree, however, can be made against her: the Court can only affect her separate estate in the hands of her trustees; she cannot bind her person at all, or her property generally, but only her separate property. (St. § 1379, and note, and 1400, note; see remarks of Kindersley, V.-C., in *Vaughan* v. *Vanderstegen*, 2 Drew. 179—184; *Blatchford* v. *Woolley*, 2 Dr. & Sm. 204.) Her separate property is liable for all the debts, charges, and incumbrances which she expressly charges, or which, judging from the nature thereof, it may be fairly inferred that she intended, or which she ought to be deemed to have intended, to charge on her separate estate, and for her breaches of trust, except so far as she is prevented by being restrained from anticipation. (*Clive* v. *Carew*, 1 Johns. & H. 199; and see *Johnson* v. *Gallagher*, 3 D. F. & J. 494; *In re Leeds Banking Co.*, L. R. 3 Eq. 781; *Picard* v. *Hine*, L. R. 5 Ch. Ap. 274; *McHenry* v. *Davies*, L. R. 10 Eq. 88; *London Chartered Bank of Australia* v. *Lemprière*, L. R. 4 P. C. 572.) And hence, if she gives a promissory note, or an acceptance, or a bond to pay her own debt, or if she joins in a bond or note with her husband to pay his debts without reference to her separate estate, it shall be intended as an application *pro tanto* of her separate estate; because the security must have been executed with the intention that it should operate in some way, and it can have no operation except as against her separate estate. And if she employs a lawyer, upon her own responsibility, or an agent to raise money on the credit of her name, her separate estate will be liable from the nature of the engagement. The separate estate is liable to make good all contracts which are

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

Women's Property Act, 1882.

a married woman's separate estate at Common Law and in Equity, which has been altered by the stat. 45 & 46 Vict. c. 75, which enacts by section 1—"(1) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a *feme sole*, without the intervention of any trustee." It was held, that this gives a married woman power to dispose by will, only of property of which she is seised or possessed while under coverture (*Re Price*, 28 C. D. 709); but under the Married Women's Property Act, 1893, s. 3, a will made by her during coverture will pass property which she acquires after the coverture has determined, and such will need not be re-executed after such determination. And "(2) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise." Nevertheless her husband remains liable for her torts. (*Seroka* v. *Kattenburg*, 17 Q. B. D. 177.) It has been decided that although suing without a husband or next friend she cannot be ordered to give security for costs although she have at the time of the action no separate

estate, and there be nothing upon which, if she fails, the defendant can issue available execution. (*Jacob* v. *Isaac*, 30 C. D. 418; *Re Thompson*, 38 C. D. 318); but this does not apply to costs of appeal (*Whittaker* v. *Kershaw*, 44 C. D. 296), and the section does not enable a married woman to act as next friend or guardian *ad litem*. (*In re Duke of Somerset*, 34 C. D. 465.) Also "(3) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown"; and "(4) Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire." It has been decided that the contract referred to in this sub-section is one entered into at the time she has existing separate property. If she commits a breach of such a contract and a judgment is recovered against her for the breach, the judgment can be enforced against the separate property which she then has. But the sub-section does not enable a married woman who has no existing separate property to bind by contract any separate property which she may possibly thereafter acquire. (*Palliser* v. *Gurney*, 19 Q. B. D. 519.)

The last two sub-sections (3 and 4) have, however, been repealed by the Act of 1893, which provides that every contract hereafter entered into by a married woman otherwise than as agent, shall bind her separate property, whether she is or is not in fact possessed of any at the time of the contract, and shall bind all separate property which she may at that time or

thereafter be entitled thereto, and shall be enforceable against all property which she may thereafter, while discovert, be entitled to, except where she is restrained from anticipating. And "(5) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*." (*Re Dagnall*, (1896) 2 Q. B. 407; *Re Hewett*, (1895) 1 Q. B. 328; *Re Handford*, (1899) 1 Q. B. 566; and see *post*, par. 904 b.) And by section 24 "the word 'contract' in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word 'property' in this Act includes a thing in action." (*Re Ayres*, 8 P. D. 168.) **857.**

Execution of general power.

By section 4, "The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act." (*Re Ann*, (1894) 1 Ch. 549; *Re Hughes*, (1898) 1 Ch. 529.) **857 a.**

Personal liability of married women.

With respect to the personal liability of married women for their contracts previously to and since the Act of 1882, the law may be thus stated. At Common Law, as regards a contract made by a woman before marriage, she and her husband were sued together, and, if it was proved that the contract had been made by the wife before marriage, the judgment went

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

was not subject at Common Law, but which has been imposed on her solely by the Act of 1882, is this: The damages recovered are not to be payable by the married woman; they are to be payable out of her separate property. The judgment ought to follow the words of the Act. The damages recoverable are to be recovered against the married woman but are to be payable out of her separate property. (*Pelton* v. *Harrison*, (1892) 1 Q. B. 118.) This merely imposes a new liability on a married woman at Law, which will produce the same result as was before the Act produced in Equity. In Equity, the decree was that the sum found due should be charged on the married woman's separate estate, and the same effect is given by the Act to an action at Law as was before the Act produced in Equity by a different process. Still, the liability of a married woman under her contracts is not merely a proprietary, but, for some purposes at least, a personal liability. (*Robinson* v. *Lynes*, (1894) 2 Q. B. 577; *Pelton* v. *Harrison*, *ubi supra*.) But section 5 of the Debtors Act, 1869, does not apply to a judgment which can be recovered against a married woman by virtue of the stat. 45 & 46 Vict. c. 75. (*Scott* v. *Morley*, 20 Q. B. D. 120; *Robinson* v. *Lynes*, *supra*.) **857 b.**

Wife's ante-nuptial debts and liabilities.

With respect to the wife's liability for ante-nuptial debts and contracts, the Act of 1882 enacts by section 13, "A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock

companies; and she may be sued for any such debt and for any liability in damages *or otherwise* (*Smith* v. *Lucas*, 18 C. D. 531, 543), under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong as aforesaid, except as to any separate property to which she may become entitled" through the Act. (See *Re Hedgely* and *Jay* v. *Robinson*, *ante*, par. 830 a; and *Beck* v. *Pierce*, 23 Q. B. D. 316.) 858.

Husband's liability under Married Women's Property Act, 1870.

Under the repealed Act of 1870, s. 12, a husband was exempted from all liability for the debts of his wife contracted before marriage, and the wife was made exclusively liable therefor to the extent of her separate estate. And this extended to property settled to the separate use of a married woman without power of anticipation. (*Sanger* v. *Sanger*, L. R. 11 Eq. 470.) **859.**

This enactment was repealed, so far as respects marriages after the 30th July, 1874, and fresh enactments substituted, by the Married Women's Property Act, 1874. **860.**

The latter Act enacts "So much of the Married Women's Property Act, 1870, as enacts that a husband

shall not be liable for the debts of his wife contracted before marriage is repealed so far as respects marriages which shall take place after the passing of this Act, and a husband and wife married after the passing of this Act, may be jointly sued for any such debt." (Section 1.) **861.**

The husband, however, in such action and in any action brought for damages sustained by reason of any tort committed by the wife before marriage or by reason of the breach of any contract made by the wife before marriage, shall only be liable to the extent of the assets specified in the 5th section of that Act. **862.**

The Married Women's Property Act, 1882.

The Act of 1874 has now been repealed, except as to acts done and rights or liabilities accrued while it was in force, by section 22 (see *supra*, par. 823) of the Act of 1882, which enacts by section 14—"A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint-stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at Law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise"; and any Court may direct any inquiry or proceedings for the purpose of ascertaining the value of such property: Provided that nothing in

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

Section IV.

The Wife's Equity to a Settlement or Maintenance out of her own Property (a).

Power of trustees of the wife's personalty not settled to her separate use.

Trustees of a married woman's personalty not settled to her separate use, might pay it over to her husband before Chancery proceedings were taken in respect of it. But, on the other hand, they might refuse to pay it over to him, even at his wife's request unless he made a settlement, when the Court would require him to make one. And this appears to have been the origin of a wife's equity to a settlement. (Lewin, 10th ed., 904.) **869.**

With regard to the cases where the Court required a settlement, the following propositions may be laid down, subject now of course to the Married Women's Property Acts (*supra*, Sect. III.). **870.**

I. Equity of the wife, when defendant against her husband.

I. If the wife has real property, or the absolute interest in personal property (with the exception of a legal term of years, *Heron* v. *Heron*, (1887) W. N. 158), which cannot be reduced into the possession of the husband without a suit in Equity (as where the legal property is vested in trustees), and the husband applies to a Court of Equity for the purpose of reducing the property into his possession, the Court, acting upon the maxim that he who seeks equity must do equity, will not give it up to him, without requiring him to make a suitable settlement on the wife, of a part of the property, or of some other property, for her due maintenance in case of her surviving him (St. § 1404, 1405, 1410, 1418;

(*a*) For a further exposition of the old law on this subject, see *Lady Elibank* v. *Montolieu, &c.*, 1 Wh. & Tu. 621 *et seq.*

Duncombe v. *Greenacre*, 28 Beav. 472: 2 D. F. & J. 509; *Life Association of Scotland* v. *Siddal*, 3 D. F. & J. 271) with a provision for the issue of the marriage (St. § 1406), even though the property is under £200 (*In re Cutler*, 14 Beav. 220; *In re Kincaid's Trusts*, 1 Drew. 326), unless the wife and children are already amply provided for under a prior settlement (St. § 1416; *Spicer* v. *Spicer*, 24 Beav. 365; *Giacometti* v. *Prodgers*, L. R. 8 Ch. 338); or the right to the settlement is waived or lost. (St. § 1418, 1419; *infra*, par. 885.) In the absence of a contract, to that effect, an inadequate settlement, even before marriage, of a part of her property, does not deprive her of her right to a settlement out of the residue of her property, though vested in her at the time of the marriage. (*Barrow* v. *Barrow*, 18 Beav. 529.) **871.**

This equity of the wife exists in the case of a charge on land for her benefit, even though there be a power of entry and receipt of the rents and profits. For, though there is this remedy at Law for raising the money, the remedy in Equity is more convenient. (*Duncombe* v. *Greenacre*, 28 Beav. 472; 2 D. F. & J. 509.) **872.**

Injunction against proceedings in other Courts.

Before the alterations by the Judicature Act, there were instances in which, for the purpose of enforcing the wife's equity to a settlement, bills in Equity were entertained to restrain the husband from having recourse to his remedy in a Court of Common Law to reduce his wife's *choses in action* into possession. (St. § 1403; 2 Sp. 429.) **873.**

Refusal of the husband to make a settlement.

If the husband does not choose to make a settlement or provision for the wife, the Court will not ordinarily take from him the income and interest of his wife's fortune, so long as he is willing to live with

and maintain her, and there is no reason for their living apart. Under such circumstances, the Court secures the fund, so as to give her the chance of taking it by survivorship, allowing the husband, under its order, to receive the income and interest, or a part of it at least. (St. § 1415.) **874.**

Indebtedness of wife on marriage.

Where a woman is indebted at the time of her marriage, she has no equity to a settlement until her debts have been provided for. (*Barnard* v. *Ford*, L. R. 4 Ch. 247.) **875.**

II. Equity of the wife, when defendant, as against her husband's trustees or vendees.

II. The trustees in bankruptcy or insolvency of a husband, and also his trustees for payment of debts due to his creditors generally, are bound to make a settlement on the wife out of her immediate *choses in action* and immediate absolute equitable interests in chattels personal assigned to them, in the same way, and under the same circumstances, as he would be bound to make one; for it is a general principle that such trustees take the property subject to all the equities which affect the bankrupt or insolvent or general assignor. (Lewin, 10th ed. 907; *Re Briant*, *Poulter* v. *Shackel*, 39 C. D. 471; St. § 1411.) And even a specific assignee or purchaser from the husband, for valuable consideration, of her *choses in action* and equitable interests, is bound to make such a settlement. And no assignment of them will convey any right to the assignee or purchaser against the wife, if she survives her husband, and they are not reduced into possession in his lifetime. (St. § 1412; *Scott* v. *Spashett*, 3 Mac. & G. 604.) **876.**

When an immediate provision is required.

There is this distinction, however, between the case of the husband himself and his specific assignees for valuable consideration, on the one hand, and the case of his trustees in bankruptcy or insolvency, or trustees

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

settlement on her husband's death, bankruptcy, or insolvency.

equitable interest, against her husband, or against his assignees, she may assert it, as plaintiff or petitioner. (St. § 1414; *Elibank* v. *Montolieu*, 1 Wh. & Tu. 621.) **882.**

IV. Amount to be settled.

IV. The Court has a full discretion as to the amount to be settled, according to the circumstances of each case. (*Re Suggitt*, L. R. 3 Ch. 215.) In the absence, however, of special circumstances, the general rule or the common course has been to settle about one-half on the wife and her children (Lewin, 10th ed. 907), with remainder, in default of issue of the present or any future husband, to the husband, whether he survives the wife or not, or to his assignees. (*Spirett* v. *Willows*, L. R. 1 Ch. 520; *In re Suggitt's Trusts*, L. R. 3 Ch. 215; *Croxton* v. *May*, L. R. 9 Eq. 404; *Reid* v. *Reid*, 33 Ch. D. 220.) But where particular reasons have occurred, the Court has frequently settled the whole: as in *Roberts* v. *Cooper*, (1891) 2 Ch. 335, where it was small and barely sufficient for maintenance: or as in *Taunton* v. *Morris*, 11 C. D. 779, and in *Marshall* v. *Fowler*, 16 Beav. 249, where the husband was insolvent and dependent on charity; *In re Kincaid's Trusts*, 1 Drew. 326; and *Ward* v. *Yates*, 1 D. & S. 80; where the husband was a bankrupt, and the fund was under £200; and in *Dunkley* v. *Dunkley*, 2 D. M. & G. 390; and *Reid* v. *Reid*, 33 C. D. 220, where the husband had deserted or behaved cruelly to his wife and did not maintain her. **883.**

V. Substitute for a settlement, where fund is small.

V. To avoid the expense of a settlement, where the fund belonging to the wife is small, it will sometimes be ordered to be brought into Court, or if already in Court, it will be retained there, and the dividends directed to be paid to the wife for her life. (*Bagshaw* v. *Winter*, 5 De G. & Sm. 466; *Watson* v. *Marshall*,

17 Beav. 363; *Walker* v. *Drury*, 17 Beav. 482.) **884.**

VI. Wife's equity waived,

VI. The Court will not insist on a settlement on the wife, if at any time before a settlement under the decree is completed, or at least before proposals are made under the decree, the wife (by her consent given in open Court or under a commission) agrees that the absolute fund shall be wholly and absolutely paid over to the husband; except in the case of an infant or of a female ward of the Court, who has married without its authority. (St. § 1418; Lewin, 10th ed. 906; *Shipway* v. *Ball*, 16 C. D. 376; *Re Roberts*, 38 L. J. Ch. 708; *Tennent* v. *Welch*, 37 C. D. 622.) But until a transfer to the husband has actually been made, the wife can revoke her consent. (*Penfold* v. *Mould*, L. R. 4 Eq. 562.) **885.**

or lost, or suspended.

The equity of the wife to a settlement may be lost or suspended by her own misconduct. Thus, if the wife (not being a ward of Court, married without its consent) has been living in adultery, apart from the husband, a Court of Equity will not direct a settlement, on her own application, as it otherwise would; because, by such misconduct, she has rendered herself unworthy of the protection and favour of the Court. But, on the other hand, in such a case, a Court of Equity will not decree such equitable property to be paid over to the husband on his application; for when the wife is living apart from him, he is at no charge for her maintenance; and it is only in respect to his duty to maintain her that the Law gives him her fortune. In the case, however, of a female ward of Court, married without its consent, the Court will insist on a settlement, as a punishment to the husband for contempt of its authority. (St. § 1419, and note,

and 1419 a. And where both husband and wife are guilty, a settlement may be claimed. (*Greedy* v. *Lavender*, 13 Beav. 62.) **886.**

A woman may by her fraud, even though perpetrated by compulsion of her husband, preclude herself from asserting as *against a purchaser* that equity to a settlement which she would otherwise possess. (*In re Lush's Trusts*, L. R. 4 Ch. 591; *cf. Bateman* v. *Faber*, (1898) 1 Ch. 144.) **887.**

Where an executor is indebted to the testator's estate, and unable to pay, he is not entitled to any part of the assets in right of his wife, and consequently no equity to a settlement of any part of the assets can arise to the wife. (*Knight* v. *Knight*, L. R. 18 Eq. 487; but see *Re Briant*, 39 C. D. 471.) **888.**

Waiver of provision for the children.

We have seen that the Court, in making a settlement on the wife, properly attends to the interests of the children. But it must be observed that the Court attends to their interest only upon the supposition that, in so doing, it is carrying into effect her own desire to provide for her offspring. They have no independent equity of their own; for although the husband is under a moral obligation to provide for them, yet he is not bound to provide for them in any particular way or out of any particular fund. They have only a claim to the consideration of the Court, constituting part of the equity of their mother, and capable of being either expressly given up by her before the amount is ascertained, or tacitly waived by her dying without having asserted it. (See St. § 1417.) And it has been held that if she dies before a decree, even without waiving the right to a settlement, the children cannot assert any claim. (*Wallace* v. *Auldjo*, 2 Dr. & Sm. 216; 1 D. J. & S. 643.) But if a decree

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

against a particular assignee for valuable consideration of the husband, to an allowance for maintenance out of the income of real or personal estate to which she is entitled in Equity, for her life only; because, if she were, purchasers would be involved in inquiries respecting the relations between husband and wife, and their other property and sources of maintenance; and the life interests of married women would become incapable of being dealt with, whatever might be the exigencies of the case. (*Tidd* v. *Lister*, 10 Hare, 151, 153; 3 D. M. & G. 857; *Re Duffy's Trust*, 28 Beav. 386.) **891.**

SECTION V.

Some Miscellaneous Points.

SECT. V.

Deeds of separation.

As a deed of separation cannot dissolve the marriage, it does not relieve the wife from the ordinary consequences of coverture. (St. § 1428.) **892.**

It was at one time supposed that the wife could not enter into a valid and binding contract with her husband for separation, as being against public policy so that the intervention of a trustee to contract on the part of the wife was necessary to the validity of a separation deed. But it is now settled that separation deeds *per se* are not against public policy, and for such a deed no trustee is necessary, though for the husband's protection very desirable. (*Besant* v. *Wood*, 12 Ch. D. 622; *Hart* v. *Hart*, 18 C. D. 670; *McGregor* v. *McGregor*, 21 Q. B. D. 424.) **893.**

An agreement for separation is neither illegal or immoral, at least where the separation is imminent

and not merely prospective or remote; and such an agreement will therefore when legal be specifically enforced. (*Gibbs* v. *Harding*, L. R. 5 Ch. 336; *Hart* v. *Hart*, 18 C. D. 670; *Sweet* v. *Sweet*, (1895) 1 Q. B. 12.) And is binding even when it is in the nature of a compromise arrived at in divorce proceedings. (*Hart* v. *Hart*, *supra*; *Cahill* v. *Cahill*, 8 A. C. 420.) A separation deed will be enforced, so long as the separation lasts; but it will not be enforced for a longer period, even as to past separation. (St. § 1428; *Wilson* v. *Wilson*, 1 Wh. & Tu. 577.) **894.**

But a separation deed which has for its primary object the living apart of the parties to it, may also effect a permanent settlement of property which will remain valid, and the covenants of which will be enforced notwithstanding a return to cohabitation of the parties. (*Negus* v. *Forster*, 46 L. T. 675.) **895.**

The Court will interfere to prevent the doing of any personal acts, which, if done, would be in violation of an agreement respecting property entered into on the separation. And where, by articles of separation, it is agreed that the husband shall permit his wife to live separate, and as if unmarried, without any molestation, interference, or annoyance whatever, and that a proper deed shall be executed for effectuating the object of the articles, and containing all such covenants, &c., as shall be deemed expedient for that purpose, this justifies the insertion in the deed of a covenant that the husband will not compel, or endeavour to compel, the wife, by legal proceedings or otherwise, to cohabit or live with him. And such a covenant may be enforced by action or injunction. And similar remarks apply to the opposite case of an agreement by the wife to permit the husband to live

separate. (1 Wh. & Tu. 577 *et seq*; *Wilson* v. *Wilson*, 1 H. L. C. 538; 5 H. L. C. 40, 51, 52, 60—63, 71, 72; *Besant* v. *Wood*, 12 C. D. 605; *Cahill* v. *Cahill*, 8 A. C. 420.) **896.**

Reconciliation puts an end to a deed of separation, as it must not be permitted to parties to make agreements for themselves to hold good whenever they choose to live separate (2 Sp. 532; *Re Abdy*, (1895) 1 Ch. 455); with the exception of such provisions as are intended to operate as a permanent settlement. (See *supra*, par. 895.) **897.**

If a wife induces her husband to execute a deed of separation, in contemplation by her of her renewal of an illicit intercourse, the deed is void. (*Evans* v. *Carrington*, 2 D. F. & J. 481; *cf. Sweet* v. *Sweet*, (1895) 1 Q. B. 12.) **898.**

Non-disclosure of ante-nuptial incontinence.

Non-disclosure of ante-nuptial incontinence on the part of a wife is not such a fraud upon the husband as to entitle him to set aside a settlement made upon the marriage. (*Evans* v. *Carrington*, 2 D. F. & J. 481). **899.**

Benefits under settlement not forfeited by adultery.

The Court has no jurisdiction to deprive an adulteress, whose marriage has been dissolved, of any benefit under the settlement made upon the marriage. (*Evans* v. *Carrington*, 2 D. F. & J. 481; *Fitzgerald* v. *Chapman*, 1 C. D. 563.) **900.**

Fraud.

A woman, although married, cannot, by fraud, obtain for herself or those claiming under her any benefit or interest, to the detriment of any other person. (V.-C. Wood, in *Nicholl* v. *Jones*, L. R. 3 Eq. 709.) **901.**

And if husband and wife mortgage the wife's real estate, and represent to the mortgagee that there is no settlement, and the mortgagee has no notice that

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

guardian. If guardians disagree, any of them may apply to the Court. (49 & 50 Vict. c. 27; *ante*, par. 794; Sm. Com. Law, par. 414.) **904 a.**

Bankruptcy.

Before the Married Women's Property Act, 1882, a married woman could not be made bankrupt except under local custom, or if her husband were civilly dead. Now, however, it is enacted, by section 1 (5) of that Act, "Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*." But a married woman who does not carry on a trade is not subject to the bankruptcy law. (*Re Gardiner*, 20 Q. B. D. 249; *Re a Debtor*, (1898) 2 Q. B. 576.) Nor on becoming bankrupt can she be required to exercise a general power of appointment in favour of the trustee in bankruptcy. (*Ex parte Gilchrist*, 17 Q. B. D. 521.) But her property settled by her marriage settlement to her separate use without a restraint on anticipation will pass to her trustee in bankruptcy. (*Re Onslow*, 39 C. D. 622; *Re Armstrong*, 21 Q. B. D. 264; *Re Wheeler*, 68 L. J. Ch. 663.) As to the effect on her property of her husband's bankruptcy, see section 3 of that Act. **904 b.**

APPENDIX.

THE TRUSTEE ACT, 1893.

(56 & 57 Vict. c. 53.)

An Act to consolidate Enactments relating to Trustees. 56 & 57 Vict. c. 53.

[22nd September, 1893.]

Be it enacted, &c.

PART I.

Investments.

Authorised investments.

1. A trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say:

(*a.*) In any of the parliamentary stocks or public funds or Government securities of the United Kingdom:

(*b.*) On real or heritable securities in Great Britain or Ireland:

(*c.*) In the stock of the Bank of England or the Bank of Ireland:

(*d.*) In India Three and a half per cent. stock and India Three per cent. stock, or in any other capital stock which may at any time hereafter be issued by the Secretary of State in Council of India under the authority of Act of Parliament, and charged on the revenues of India:

(*e.*) In any securities the interest of which is for the time being guaranteed by Parliament:

(*f.*) In consolidated stock created by the Metropolitan Board of Works, or by the London County Council, or in debenture stock created by the Receiver for the Metropolitan Police District:

(*g.*) In the debenture or rentcharge, or guaranteed or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the

56 & 57 Vict. c. 53.

rate of not less than three per centum per annum on its ordinary stock:

(*h.*) In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such railway company as is mentioned in sub-section (*g.*), either alone or jointly with any other railway company:

(*i.*) In the debenture stock of any railway company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India:

(*j.*) In the "B" annuities of the Eastern Bengal, the East Indian, and the Scinde Punjaub and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway; also in deferred annuities comprised in the register of holders of annuity Class D. and annuities comprised in the register of annuitants Class C. of the East Indian Railway Company.

(*k.*) In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed:

(*l.*) In the debenture or guaranteed or preference stock of any company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five pounds per centum on its ordinary stock:

(*m.*) In nominal or inscribed stock issued, or to be issued, by the corporation of any municipal borough having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any county council, under the authority of any Act of Parliament or Provisional Order:

(*n.*) In nominal or inscribed stock issued or to be issued by any commissioners incorporated by Act of Parliament

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

56 & 57 Vict. c. 53.

reservation of rent greater than a shilling a year, or to any right of redemption or to any condition for re-entry, except for non-payment of rent; and

(*b*) on any charge, or upon mortgage of any charge, made under the Improvement of Land Act, 1864.

27 & 28 Vict. c. 114.

(2.) A trustee having power to invest in the mortgages or bonds of any railway company or of any other description of company may, unless the contrary is expressed in the instrument authorising the investment, invest in the debenture stock of a railway company or such other company as aforesaid.

(3.) A trustee having power to invest money in the debentures or debenture stock of any railway or other company may, unless the contrary is expressed in the instrument authorising the investment, invest in any nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875.

38 & 39 Vict. c. 83.

(4.) A trustee having power to invest money in securities in the Isle of Man, or in securities of the government of a colony, may, unless the contrary is expressed in the instrument authorising the investment, invest in any securities of the Government of the Isle of Man, under the Isle of Man Loans Act, 1880.

43 & 44 Vict. c. 8.

(5.) A trustee having a general power to invest trust moneys in or upon the security of shares, stock, mortgages, bonds, or debentures of companies incorporated by or acting under the authority of an Act of Parliament, may invest in, or upon the security of, mortgage debentures duly issued under and in accordance with the provisions of the Mortgage Debenture Act, 1865.

28 & 29 Vict. c. 78.

Power to invest, notwithstanding drainage charges.

10 & 11 Vict. c. 32.

6. A trustee having power to invest in the purchase of land or on mortgage of land may invest in the purchase, or on mortgage of any land, notwithstanding the same is charged with a rent under the powers of the Public Money Drainage Acts, 1846 to 1856, or the Landed Property Improvement (Ireland) Act, 1847, or by an absolute order made under the Improvement of Land Act, 1864, unless the terms of the trust expressly provide that the land to be purchased or taken in mortgage shall not be subject to any such prior charge.

Trustees not to convert inscribed stock into certificates to bearer.

26 & 27 Vict. c. 73.

33 & 34 Vict. c. 71.

38 & 39 Vict. c. 83.

40 & 41 Vict. c. 59.

7.—(1.) A trustee, unless authorised by the terms of his trust, shall not apply for or hold any certificate to bearer issued under the authority of any of the following Acts, that is to say:

(*a*.) The India Stock Certificate Act, 1863;

(*b*.) The National Debt Act, 1870;

(*c*.) The Local Loans Act, 1875;

(*d*.) The Colonial Stock Act, 1877.

(2.) Nothing in this section shall impose on the Bank of England or of Ireland, or on any person authorised to issue any such certificates, any obligation to inquire whether a person applying for such a certificate is or is not a trustee, or subject them to any liability in the event of their granting any such certificate to a trustee, nor invalidate any such certificate if granted. 56 & 57 VICT. c. 53.

Loans and investments by trustees not chargeable as breaches of trust.

8.—(1.) A trustee lending money on the security of any property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2.) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed either wholly or partly with the production or investigation of the lessor's title.

(3.) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase of or in lending money upon the security of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the court the title accepted be such as a person acting with prudence and caution would have accepted.

(4.) This section applies to transfers of existing securities as well as to new securities, and to investments made as well before as after the commencement of this Act, except where an action or other proceeding was pending with reference thereto on the twenty-fourth day of December one thousand eight hundred and eighty-eight.

Liability for loss by reason of improper investments.

9.—(1.) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon the security shall be deemed

56 & 57 VICT. c. 53.

an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2.) This section applies to investments made as well before as after the commencement of this Act except where an action or other proceeding was pending with reference thereto on the twenty-fourth day of December one thousand eight hundred and eighty-eight.

PART II.

VARIOUS POWERS AND DUTIES OF TRUSTEES.

Appointment of New Trustees.

Power of appointing new trustees.

10.—(1.) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing, or being unfit or being incapable, as aforesaid.

(2.) On the appointment of a new trustee for the whole or any part of trust property—

(*a*) the number of trustees may be increased; and

(*b*) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part; and

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

56 & 57 VICT. c. 53.

(4.) This section applies to trusts created either before or after the commencement of this Act,

Vesting of trust property in new or continuing trustees.

12.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner directed by or under Act of Parliament.

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the thirty-first of December one thousand eight hundred and eighty-one.

Purchase and Sale.

Power of trustee for sale to sell by auction, &c.

13.—(1.) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and

to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss. 56 & 57 Vict. c. 53.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the thirty-first of December one thousand eight hundred and eighty-one.

Power to sell subject to depreciatory conditions.

14.—(1.) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2.) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3.) No purchaser upon any sale made by a trustee, shall be at liberty to make any objection against the title upon the ground aforesaid.

(4.) This section applies only to sales made after the twenty-fourth day of December one thousand eight hundred and eighty-eight.

Power to sell under 37 & 38 Vict. c. 78.

15. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section two of the Vendor and Purchaser Act, 1874,

Married woman as bare trustee may convey.

16. When any freehold or copyhold hereditament is vested in a married woman as a bare trustee she may convey or surrender it as if she were a feme sole.

Various Powers and Liabilities.

Power to authorise receipt of money by banker or solicitor.

44 & 45 Vict. c. 41.

17.—(1.) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of, and to produce, a deed containing any such receipt as is referred to in section fifty-six of the Conveyancing and Law of Property Act, 1881; and a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the producing of any such deed by the

56 & 57 VICT. c. 53.

solicitor shall have the same validity and effect under the said section as if the person appointing the solicitor had not been a trustee.

(2.) A trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance, by permitting the banker or solicitor to have the custody of and to produce the policy of assurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

(3.) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor (as the case may be) to pay or transfer the same to the trustee.

(4.) This section applies only where the money or valuable consideration or property is received after the twenty-fourth day of December one thousand eight hundred and eighty-eight.

(5.) Nothing in this section shall authorise a trustee to do anything which he is in express terms forbidden to do, or to omit anything which he is in express terms directed to do, by the instrument creating the trust.

Power to insure building.

18.—(1.) A trustee may insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2.) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

(3.) This section applies to trusts created either before or after the commencement of this Act, but nothing in this section shall authorise any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

Power of trustees of

19.—(1.) A trustee of any leaseholds for lives or years which are renewable from time to time, either under any covenant or

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

56 & 57 VICT. c. 53.

(2.) An executor or administrator, or two or more trustees, acting together, or a sole acting trustee whereby the instrument, if any, creating the trust a sole trustee is authorised to execute the trusts and powers thereof, may, if and as he or they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

(4.) This section applies to executorships, administratorships and trusts constituted or created either before or after the commencement of this Act.

Powers of two or more trustees.

22.—(1.) Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2.) This section applies only to trusts constituted after or created by instruments coming into operation after the thirty-first day of December one thousand eight hundred and eighty-one.

Exoneration of trustees in respect of certain powers of attorney.

23. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying.

Provided that nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made, and that the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Implied indemnity of trustees.

24. A trustee shall, without prejudice to the provisions of

the instrument, if any, creating the trust, be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust moneys, or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default; and may reimburse himself, or pay or discharge out of the trust premises, all expenses incurred in or about the execution of his trusts or powers. 56 & 57 Vict. c. 53

PART III.

Powers of the Court.

Appointment of New Trustees and Vesting Orders.

Power of the Court to appoint new trustees.

25.—(1.) The High Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the foregoing provision, the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt.

(2.) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3.) Nothing in this section shall give power to appoint an executor or administrator.

Vesting orders as to land.

26. In any of the following cases, namely:—

(i.) Where the High Court appoints or has appointed a new trustee; and

(ii.) Where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person,—

(*a*) is an infant, or

(*b*) is out of the jurisdiction of the High Court, or

(*c*) cannot be found; and

56 & 57 Vict. c. 53.

(iii.) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; and

(iv.) Where, as to the last trustee known to have been entitled to or possessed of any land, it is uncertain whether he is living or dead; and

(v.) Where there is no heir or personal representative to a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; and

(vi.) Where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for twenty-eight days after the date of the requirement;

the High Court may make an order (in this Act called a vesting order) vesting the land in any such person in any such manner and for any such estate as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct.

Provided that—

(*a.*) Where the order is consequential on the appointment of a new trustee the land shall be vested for such estate as the Court may direct in the persons who on the appointment are the trustees; and

(*b.*) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of the jurisdiction of the High Court or cannot be found, the land or right shall be vested in such other person, either alone or with some other person.

Orders as to contingent rights of unborn persons.

27. Where any land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of the land on any trust, the High Court may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person or class of unborn persons would on coming into existence, be entitled or possessed in the land.

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

56 & 57 Vict. c. 53.

possessed, as the case may be, as a trustee within the meaning of this Act; and the High Court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate as that Court thinks fit in the purchaser or mortgagee or in any other person.

Vesting order consequential on judgment for specific performance, &c.

31. Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition, or exchange, of any land, or generally where any judgment is given for the conveyance of any land either in cases arising out of the doctrine of election or otherwise, the High Court may declare that any of the parties to the action are trustees of the land or any part thereof within the meaning of this Act, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act, and thereupon the High Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

Effect of vesting order.

32. A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the land for such estate as the High Court directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate as the Court directs, and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

Power to appoint person to convey.

33. In all cases where a vesting order can be made under any of the foregoing provisions, the High Court may, if it is more convenient, appoint a person to convey the land or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

Effect of vesting order

34.—(1.) Where an order vesting copyhold land in any person

is made under this Act with the consent of the lord or lady of the manor, the land shall vest accordingly without surrender or admittance.

56 & 57 Vict. c. 53.

as to copyhold.

(2.) Where an order is made under this Act appointing any person to convey any copyhold land, that person shall execute and do all assurances and things for completing the assurance of the land; and the lord and lady of the manor and every other person shall, subject to the customs of the manor and the usual payments, be bound to make admittance to the land and to do all other acts for completing the assurance thereof, as if the persons in whose place an appointment is made were free from disability and had executed and done those assurances and things.

Vesting orders as to stock and choses in action.

35.—(1.) In any of the following cases, namely:—

(i.) Where the High Court appoints or has appointed a new trustee; and

(ii.) Where a trustee entitled alone or jointly with another person to stock or to a chose in action—

(*a*) is an infant, or

(*b*) is out of the jurisdiction of the High Court, or

(*c*) cannot be found; or

(*d*) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to him by the person so entitled, or

(*e*) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action for twenty-eight days next after an order of the High Court for that purpose has been served on him; or

(iii.) Where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a chose in action is alive or dead,

the High Court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action, in any such person as the Court may appoint:

Provided that—

(*a.*) Where the order is consequential on the appointment by the Court of a new trustee, the right shall be vested in

56 & 57 Vict. c. 53.

the persons who, on the appointment, are the trustees; and

(*b.*) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the Court may appoint.

(2.) In all cases where a vesting order can be made under this section, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(3.) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act, may transfer the stock to himself or any other person, according to the order, and the Banks of England and Ireland and all other companies shall obey every order under this section according to its tenor.

(4.) After notice in writing of an order under this section it shall not be lawful for the Bank of England or of Ireland or any other company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5.) The High Court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised.

(6.) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock.

Persons entitled to apply for orders.

36.—(1.) An order under this Act for the appointment of a new trustee or concerning any land, stock, or chose in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or chose in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2.) An order under this Act concerning any land, stock, or chose in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

Powers of new trustee appointed by Court.

37. Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

56 & 57 VICT. c. 53.

to a trust, may pay the same into the High Court; and the same shall, subject to rules of Court, be dealt with according to the orders of the High Court.

(2.) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into Court.

(3.) Where any moneys or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the High Court may order the payment into court to be made by the majority without the concurrence of the other or others; and where any such moneys or securities are deposited with any banker, broker, or other depositary, the Court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into court, and every transfer payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid, or delivered.

Miscellaneous.

Power to give judgment in absence of a trustee.

43. Where in any action the High Court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the Court, and that he cannot be found, the Court may hear and determine the action and give judgment therein against that person in his character of a trustee, as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Power to sanction sale of land or minerals separately.

44.—(1.) Where a trustee is for the time being authorised to dispose of land by way of sale, exchange, partition, or enfranchisement, the High Court may sanction his so disposing of the land with an exception or reservation of any minerals, and with or without rights and powers of or incidental to the working, getting, or carrying away of the minerals, or so disposing of the minerals, with or without the said rights or powers, separately from the residue of the land.

(2.) Any such trustee, with the said sanction previously obtained, may, unless forbidden by the instrument, creating the trust or direction, from time to time, without any further

application to the Court, so dispose of any such land or minerals. 56 & 57 Vict. c. 53

(3.) Nothing in this section shall derogate from any power which a trustee may have under the Settled Land Acts, 1882 to 1890, or otherwise.

Power to make beneficiary indemnify for breach of trust.

45.—(1.) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the High Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman entitled for her separate use and restrained from anticipation, make such order as to the Court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

(2.) This section shall apply to breaches of trust committed as well before as after the passing of this Act, but shall not apply so as to prejudice any question in an action or other proceeding which was pending on the twenty-fourth day of December one thousand eight hundred and eighty-eight, and is pending at the commencement of this Act.

Jurisdiction of palatine and county courts.

46. The provisions of this Act with respect to the High Court shall, in their application to cases within the jurisdiction of a palatine court or county court, include that court, and the procedure under this Act in palatine courts and county courts shall be in accordance with the Acts and rules regulating the procedure of those courts.

PART IV.

Miscellaneous and Supplemental.

Application to trustees under Settled Land Acts of provisions as to appointment of trustees.

47.—(1.) All the powers and provisions contained in this Act with reference to the appointment of new trustees, and the discharge and retirement of trustees, are to apply to and include trustees for the purposes of the Settled Land Acts, 1882 to 1890, whether appointed by the Court or by the settlement, or under provisions contained in the settlement.

(2.) This section applies and is to have effect with respect to an appointment or a discharge and retirement of trustees taking place before as well as after the commencement of this Act.

(3.) This section is not to render invalid or prejudice any appointment or any discharge and retirement of trustees effected, before the passing of this Act, otherwise than under the provisions of the Conveyancing and Law of Property Act, 1881. 44 & 45 Vict. c. 41.

56 & 57 Vict. c. 53.

Trust estates not affected by trustee becoming a convict.

33 & 34 Vict. c. 23.

48. Property vested in any person on any trust or by way of mortgage shall not, in case of that person becoming a convict within the meaning of the Forfeiture Act, 1870, vest in any such administrator as may be appointed under that Act, but shall remain in the trustee or mortgagee, or survive to his co-trustee or descend to his representative as if he had not become a convict; provided that this enactment shall not affect the title to the property so far as relates to any beneficial interest therein of any such trustee or mortgagee.

Indemnity.

49. This Act, and every order purporting to be made under this Act, shall be a complete indemnity to the Banks of England and Ireland, and to all persons for any acts done pursuant thereto; and it shall not be necessary for the Bank or for any person to inquire concerning the propriety of the order, or whether the Court by which it was made had jurisdiction to make the same.

Definitions

50. In this Act, unless the context otherwise requires,—

The expression "bankrupt" includes, in Ireland, insolvent;

The expression "contingent right," as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent:

The expressions "convey" and "conveyance" applied to any person include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of the conveyance, including the acts to be performed by married women and tenants in tail in accordance with the provisions of the Acts for abolition of fines and recoveries in England and Ireland respectively, and also including surrenders and other acts which a tenant of customary or copyhold lands can himself perform preparatory to or in aid of a complete assurance of the customary or copyhold land;

The expression "devisee" includes the heir of a devisee and the devisee of an heir, and any person who may claim right by devolution of title of a similar description:

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

56 & 57 Vict. c. 53.

property, and the duties incident to the office of personal representative of a deceased person.

Repeal.

51. The Acts mentioned in the schedule to this Act are hereby repealed except as to Scotland to the extent mentioned in the third column of that schedule.

Extent of Act.

52. This Act does not extend to Scotland.

Short title.

53. This Act may be cited as the Trustee Act, 1893.

Commencement.

54. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-four.

THE LAND TRANSFER ACT, 1897

(60 & 61 Vict. c. 65).

An Act to establish a Real Representative, and to amend the Land Transfer Act, 1875. 60 & 61 Vict. c. 65.

[6th August, 1897.]

Whereas it is expedient to establish a real representative, and to amend the Land Transfer Act, 1875, in this Act referred to as "the principal Act:" 38 & 39 Vict. c. 87.

Be it therefore enacted, &c.:—

PART I.

Establishment of a Real Representative.

Devolution of legal interest in real estate on death.

1.—(1.) Where real estate is vested in any person without a right in any other person to take by survivorship it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in them or him.

(2.) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3.) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

(4.) The expression "real estate," in this part of this Act, shall not be deemed to include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant.

(5.) This section applies only in cases of death after the commencement of this Act.

Provisions as to administration.

2.—(1.) Subject to the powers, rights, duties, and liabilities herein-after mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons

60 & 61 Vict. c. 65.

shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.

(2.) All enactments and rules of law relating to the effect of probate or letters of administration as respects chattels real, and as respects the dealing with chattels real before probate or administration, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of personal representatives in respect of personal estate, shall apply to real estate so far as the same are applicable, as if that real estate were a chattel real vesting in them or him, save that it shall not be lawful for some or one only of several joint personal representatives, without the authority of the court, to sell or transfer real estate.

(3.) In the administration of the assets of a person dying after the commencement of this Act, his real estate shall be administered in the same manner, subject to the same liabilities for debt, costs, and expenses, and with the same incidents, as if it were personal estate; provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment of funeral and testamentary expenses, debts, or legacies, or the liability of real estate to be charged with the payment of legacies.

(4.) Where a person dies possessed of real estate, the court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next of kin, shall be equally entitled to the grant with the next of kin, and provision shall be made by rules of court for adapting the procedure and practice in the grant of letters of administration to the case of real estate.

Provision for transfer to heir or devisee.

3.—(1.) At any time after the death of the owner of any land, his personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled thereto as heir, devisee, or otherwise, and may make the assent or conveyance, either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent or conveyance, subject to a charge for all moneys (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

60 & 61 VICT. c. 65.

(3.) In the case of registered land, the production of the prescribed evidence of an appropriation under this section shall authorise the registrar to register the person to whom the property is appropriated as proprietor of the land.

Liability for duty.

5. Nothing in this part of this Act shall affect any duty payable in respect of real estate or impose on real estate any other duty than is now payable in respect thereof.

25. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-eight.

INDEX.

[The figures refer to the paragraphs, and not to the pages, except where otherwise indicated.]

A.

ABATEMENT.
of debts and legacies, 471

ACCIDENT,
definition of, 61—3
remediable at law, 64
not remediable at law or in equity, 65—9
remediable in equity, 70—9
arising from neglect, 66
preventing fulfilment of engagement, 67
to property in lease, 67
death of vendor before receipt of annuity, 67
defective execution of a will, 69
defective execution or non-execution of a power, 77—9
loss of deeds, 71—4
loss of bonds and unsealed securities, 75, 76
payments by executor, 76a

ACCOUNT, 454—465
settlement of accounts, 454
division of accounts, 455
open accounts, 456
stated accounts, 457, 458
settled accounts, 459—463
appropriation of payments, 464
partnership account, 643
agency, 465, 664
mesne profits, 665
waste, 666
tithes and moduses, 667

ACQUIESCENCE,
in a breach of trust, 373

ACTION, THINGS IN,
assignment of, 432—9

ACTION TO PERPETUATE TESTIMONY, 751b

ADEMPTION,
of portions under a settlement, 704—7
of legacies to a child, 708, 709
no ademption of legacies to strangers, 710

ADMINISTRATION,
jurisdiction as to, 466
proceedings by executor or administrator, 467
proceedings of creditors, 468
division of assets, 469,.470
of legal assets, 469—471
of equitable assets, 469—471
of assets, of insolvent estates and companies, 472
refunding share of estate, 473
operation of the Statute of Limitation as regards debts, 474
order of administration of different properties,
in payment of debts, legacies, and annuities, 475—488
order of satisfaction, 489—492
marshalling of assets, 493—500
in the case of charitable legacies, 496, 497
foreign assets, 501—504
lex domicilii, 503, 504
lex fori, 504a
priority of debts, 474a

ADMINISTRATORS. See ADMINISTRATION.
may not derive a benefit, 163
purchase from, 192

ADVANCEMENT, 313, 314, 825

ADVISER,
fraud of a confidential, 153

ADVOWSON,
mortgage of, 524

AGENCY, 664, 743

AGENT,
fraud of an, 163, 362—4
sales and purchases by, 160, 162, 365
gift to, 365
liability to account, 465

AGREEMENT. See FRAUD—SPECIFIC PERFORMANCE.

ALIEN,
trust for an, 271

ALIENATION,
restraint on, 851

ANNUITY,
not a satisfaction, 714

ANTICIPATION,
restraint on, 851, 852

APPOINTMENT. See POWERS.
fraudulent, 201—3
election, in case of an, 681
satisfaction by an, 714

APPORTIONMENT, 622—636. See CONTRIBUTION.

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

BOUNDARIES,
settlement of, 720—3

BREACH,
of trust. See TRUST—TRUSTEES—EXECUTION.

C.

CANCELLING, 725—738
mortgage, 587
apprenticeship, 819

CARGO,
assignment of, 433
contribution, 636

CHAMPERTY, 145, 430

CHARGE,
what debts included, 303
trust created by, 301
devise charged with or subject to charge of debts, 301
of debts, 301—310
of legacies, 304—305a
mode of giving effect to, 306—310

CHARITIES,
jurisdiction as to, page 181, n.
favoured in regard to the want of proper trustees, 273
defects in conveyances, 274
the objects, 275, 276
scheme, 276a
surplus income, 277
lapse of time, 278
abroad, 279
reward to informers as to, 280
altering a charity, 281

CHATTELS,
delivery of, 791

CHILDREN. See INFANTS.
what children to be included, 210
construction of provisions for younger children, 216
removal of children from their parents, 799
waiver of provision for, 889
frauds on, 149, 150

COLONIAL,
property or contracts, 54—8

COMMON,
proceeding to establish a right of, 749

COMPENSATION,
old rule as to, 668
stat. 21 & 22 Vict. c. 27, s. 1, as to damages, 668
to a defendant, 669
relief against penalties and forfeitures, 670—4
no relief against liquidated damages, 675
for a breach of covenant or condition, 676
relief against statutory penalties or forfeitures, 677

COMPROMISE, 88

CONCEALMENT, 116—121, 176—186

CONDITION. See CONTRACT.
illegal, 138, 286
relief against breach of, 670, 676

CONFIRMATION,
distinction between void and voidable transactions, as regards confirmation, 146, 147

CONSENT,
refusal of consent to a marriage, 126

CONSIDERATION. See FRAUD.
inadequate, 122—5
excessive, 172—4
conveyance without consideration, 183, 184, 193—200, 287—290
agreement not generally enforced in the absence of a valuable consideration, 245, 421

CONSIGNMENT,
revocableness of, 253

CONTINGENT INTERESTS,
assignment of, 433

CONTINGENT REMAINDERS,
trustees to support, 388

CONTRACT. See FRAUD—SPECIFIC PERFORMANCE.

CONTRIBUTION. See INCUMBRANCES.
towards incumbrances, 625—631
keeping down interest on incumbrances, 628—631
towards charges of renewal of leaseholds, 632
between sureties, 633—5
interest, 635a
towards a loss or expense in a voyage, 636

CONVERSION,
change in the character of property by agreement or direction to convert, 42—7, 409, 410
undisposed-of produce of real estate, 295, 296
undisposed-of part of mixed fund, 297
undisposed-of part of money directed to be converted, or of the produce thereof, 298, 298a
failure of objects for, 299
of terminable or reversionary property, 359
time allowed for, 360
of infant's property, 800

CONVEYANCE,
with notice of another's title, 187—191
without consideration, and without use or trust, 287—290
in another's name, 311—314
right to call for, 48

COPIES,
of deeds, 736

COPYRIGHT,
injunctions to restrain infringements of, 772—775

COSTS,
mortgage for, 566
mortgagee's costs of suit, 521

COUNSEL,
purchase by, 162

COUNTERCLAIM, 117, 659—663. See SET-OFF.

COVENANT,
where distributive share is a satisfaction of an obligation by, 52
must be fulfilled, notwithstanding accident, 67
to purchase lands, 316
to leave property, 181
to settle lands, 317
to convey, transfer, or pay money or other property, 325, 326
to settle, charge, dispose of, or affect after-acquired property, 433
where relief is granted as to a breach of, 670, 676

CREDITORS. See DEBTOR.
favoured, 302
purchases by, 162
frauds on, 185, 186
frauds by, 164, 181
assignments for benefit of, 247—252
preferences of, 185, 186, 248
payment of legatees or distributees before, 324
where they cannot follow the assets, 382—4
proceedings of, 468
rights of joint creditors of a partnership, 648
priority as between joint and separate creditors of partnership, 649
may proceed against a deceased partner's or joint debtor's estate in the first instance, 650, 651
election in the case of, 694
legacies to, 712
by, 713
right to benefit of securities, 654—8
rights as against general appointee, 203

CRIMINAL PROCEEDINGS,
suppression of, 144

CURTESY,
husband's estate by, 841

CY PRES DOCTRINE, 276

D.

DAMAGES, 668—678. See COMPENSATION.

DEBTOR. See CREDITOR.
frauds in the case of persons standing in the confidential relation of debtor, creditor, and surety, 164

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

DOCUMENTS,
cancelling, delivering up, and securing, 725—738
inspection and copies of, 736
deposit of, 790

DOMICILE,
how far the law of domicile governs, 56, 57, 501—4

DONATIONES MORTIS CAUSA, 219—223

DOWER,
right to, 238
assignment of, 724

DURESS,
frauds on persons under, 131

E.

ELECTION,
defined, 679
at law, 680
in equity, 681—7
as to one benefit given by will, 688
need not be made in ignorance of circumstances, 690
by conduct, 691
presumed, 692, 693
in the case of creditors, 694
by a person under disability, 696
in the case of a settlement, 689
in the case of a gift under a mistake, 695
by persons having separate rights as next of kin of person who died without electing, 697

EQUITY,
follows the law, 26—32
only assists the vigilant, 33, 33a
equal equity, 34, 68
equality is, 35
he who seeks equity must do equity, 38—40
regards as done what ought to have been done, 41—9
to a settlement. See MARRIED WOMEN.

EQUITY JURISDICTION,
where equity had exclusive jurisdiction, 7
where equity had concurrent jurisdiction, 8—14
on account of the inadequacy of the legal relief, 8
or to avoid circuity of action, or multiplicity of suits, 9
or to take due care of the rights of all, 10
or on account of the necessity for a discovery, 12
or on account of the original denial of due relief at law, 13
or the doubtfulness of obtaining such relief, 14
where equity had auxiliary jurisdiction, 15
where it had no jurisdiction, 16—18

EQUITY JURISPRUDENCE. See NATURAL JUSTICE.
definition of, 2
true character of, 3—6
division of, 60

EQUITY JURISPRUDENCE—*continued.*
remedial equity, 61—205
executive equity, 206—453
adjustive equity, 454—724
protective equity, irrespective of disability, 725—791
protective equity, in favour of persons under disability, 792—904

EQUITY OF REDEMPTION, 513, 551—7, 605

EXECUTOR. See TRUSTEES—HEIR—NEXT OF KIN—SURPLUS.
may not derive a benefit, 161, 163, 365
remuneration, 345
fraudulent dealing with executors or administrators, 192
sales or pledges by, 192, 382
distinction between trustees and executors in regard to the effect of joining in receipts, 367, 368
liability, power, and duty of, 382—7
notice to, of possible contingent liability, 393
indebted to testator's estate, not entitled in right of wife, 888
trust of debt due from, 340, 355—7
right of executor to residue, 294
time allowed for breaking up testator's establishment, 402

EXONERATION,
of personal estate from debts, 476—488
of specific legacy, 499

EXPECTANTS,
dealings with, 165—173, 433

EXTINGUISHMENT,
of mortgage, 587—9

F.

FALSIFY,
liberty to surcharge and falsify, 458, 459

FAMILY,
meaning of, 233

FAMILY ARRANGEMENT, 88, 125

FINE,
proceeding to settle fine payable by copyholders, 749

FORECLOSURE, 537—9, 548, 551, 601. See EQUITY OF REDEMPTION.
mortgagee's cost of suit, 521

FOREIGN,
property or contracts, 54—8
ignorance of foreign law, 85
assets, 501—4
judgments in foreign Courts, 54
suit, injunction against, 778

FORFEITURE, 670—8

FORGED INSTRUMENTS, 734

FRAUD IN GENERAL,
unsafe to define fraud in general, or the extent of remedial equity on the ground of fraud, 103
no relief to participator in, 36, 37
contract induced by fraud not void, 113
where it may be enforced, 113—115
transfer of a right to complain of a fraud, 431

FRAUD, ACTUAL,
where no relief, 105, 108
definition thereof, 104
jurisdiction in cases of, 105, 106
evidence thereof, 107, 108
division of, 110, 111
first class of actual frauds, 112
1. Misrepresentation, 112—115
2. Concealment, 116—121
3. Inadequacy, 122—5
4. Refusal of consent to a marriage, 126
second class of actual frauds, 127
1. On persons of unsound mind, 128
2. On intoxicated persons, 129
3. On persons of weak understanding, 130
4. On persons who are not free agents, but under duress, or in fear, or in prison, or in extreme necessity, 131
5. On infants, 132—132c
case when one of two innocent persons must suffer by the fraud of another, 133

FRAUD, CONSTRUCTIVE,
definition of, 134
four classes of constructive frauds, 135—205
frauds on public policy,
1. Marriage brokage contracts, 136
2. Agreements to influence testators, 137
3. Contracts to facilitate marriages, 138
4. Secret agreements in fraud of marriage, 138a
5. Contracts or conditions in restraint of marriage or inconsistent with the duty of married life, 139, 140
6. Contracts or conditions in restraint of trade, 141
7. Contracts in violation of public trust, 142
8. Contracts for public offices, 143
9. Suppression of criminal proceedings, 144
10. Champerty and corrupt considerations, 145
frauds in the case of persons in confidential relations, 148
1. Parent, or person *in loco parentis*, 149, 150
2. Guardian, 151, 152
3. Quasi guardian, adviser, or minister of religion, 153
4. Solicitor, 154—8
5. Doctor, 159
6. Agent, 160
7. Trustee, 161
8. Counsel, agents, trustees, and solicitors of bankrupts or insolvents, auctioneers, and creditors, 162
9. Executor or administrator, 163
10. Directors and promoters, 163a
11. Debtor, creditor, and surety, 164

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

HUSBAND. See MARRIED WOMEN.
estate by curtesy, 841
fraud on, 182
right to wife's personalty as her administrator, 841

I.

IMPROVEMENTS,
trust in respect of, 323

INADEQUACY, 122—5

INCUMBRANCES. See MORTGAGES.
apportionment of, 625—631
voluntary discharge of, 626
compulsory discharge of, 627
keeping down interest on, 628—631

INFANTS,
jurisdiction as to, 792, 793
appointment, removal, control, and assistance of guardians, 794—8
religion, 796
removal from their parents, 799
conversion of their property, 800
maintenance, 803—9
foreign property of, 810
wards of Court,
who are, 801
acts affecting them, 802
marriage of, 811—813
settlement on wards of Court, 814—816
settlement on infants who are not wards of Court, 817
care of, 818
frauds on, 132—132c, 149—152
fraudulent appointments to, 202
statute as to, 132a—132c
agreements by, 419
charge by, 536
election by, 696

INFORMATION,
duty of trustee to give, 401

INJUNCTION,
jurisdiction, 756
different kinds, 759, 760
equity will not limit power of granting, 762
general rule as to cases where they will be granted, 761, 762
against waste, 761, 763—9
against nuisances, 770
against infringements of patents and copyrights, and publication of letters, 771—6
against application to Parliament, 777
against a foreign suit, 778
to do some act, 779

INSOLVENT,
trustees and solicitors of, becoming purchasers, 162

INSPECTION,
of deeds, 736

INTEREST,
conversion into principal, 517
increase of, 518
rent instead of, 565
keeping down, 628—631

INTERPLEADER,
at common law, 739
defined, 740
by a tenant, 741
connection between the titles of the two claimants, 742
by an agent, 743
by a sheriff, 744
power to order sale, 744
actual proceedings not necessary, 745
preliminaries, 746

INTOXICATED PERSONS,
frauds on, 129

INVESTMENT, 350—7, 359
non-investment, 358
on mortgage, 361

J.

JOINT PURCHASE OR MORTGAGE,
doctrines of equity in regard to, 35
implied trust on, 315

JOINT TENANCY,
limitations which would create, 315
equity leans against, 35, 315

JUDGMENT,
against trustee, 378

JUDICATURE ACTS, 20

JURISDICTION. See EQUITY.
interposition of equity in regard to property out of the jurisdiction, 54—8

L.

LACHES,
consequences of, 33, 33a, 461

LEASE,
renewal of, by a trustee, partner, mortgagee, &c., 333—5
person having a limited interest, 334, 335
by a mortgagee, 514
to a mortgagee, 519

LEASEHOLD,
mortgage of, 564
charges of renewal of, 632
leaseholds not within 17 & 18 Vict. c. 113...483

LEGACIES,
classes of, 206
jurisdiction as to, 206, 207
payable at a future day, 208
specific legacy to one for life, remainder to another, 209
for a purpose which cannot be accomplished, 211
construction of, 217, 218
charge of, 304—305a
abatement of, 471
out of what payable, 476—8
ademption of, 705—713
to creditors, 712
to debtors, 713

LEGATEES,
under a will defectively executed, 69

LETTERS,
injunction to restrain the publication of, 776

LIEN,
in general, 613
of a consignee, 614
of a vendor, 327—332
of a solicitor, 616, 617
of a joint tenant, 618
of a trustee, 619
of annuitants, 620
of a legatee, 621
under a covenant, 621a
how enforced, 615

LIMITATIONS, STATUTE OF,
how far equity followed the law as to, 31
operation of, as regards debts, 431
as regards trusts, 278

LITIGATION,
protection from, 725—738
assignments of mere naked rights to litigate, 431

LOST,
deeds, &c., 71—6

LUNATICS AND OTHER PERSONS OF UNSOUND MIND,
frauds on, 128

M.

MAINTENANCE AND CHAMPERTY, 430

MAINTENANCE OF CHILDREN, 803—9

MANAGER, 520, 522, 523, 643

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

MARRIED WOMEN—*continued.*
liability of separate estate previously to Married Women's Property Act, 1882...856
liability of separate estate under Married Women's Property Act, 1882...857
execution of general power by, 857a
personal liability of married woman, 857b
wife's liability for ante-nuptial debts and liabilities, 858
husband's liability on wife's contracts before marriage, 859—866
wife's liability to parish for maintenance of husband, 867
of children and grand-children, 868
wife's legal personal representative, 868a
effect of Married Women's Property Act, 1882...868b
power of trustees of the wife's personalty not settled to her separate use, 869
wife's equity to a settlement out of her own property, 869—891
when defendant against her husband, 871—5
against his trustees or vendees, 876—881
when plaintiff, 882
no equity out of past income, 880
life interest in wife's personalty, 879
amount to be settled, 883
substitute for a settlement where fund is small, 884
waived, lost, or suspended, 885—9
where parties are domiciled in Scotland, 890
wife's right of survivorship in regard to reversionary interests, 881
wife's equity to a maintenance, in case of husband's misconduct, bankruptcy, or insolvency, 891
indebtedness of a wife before her marriage, 875
deeds of separation, 892—8
non-disclosure of ante-nuptial incontinence, 899
benefits under settlement not forfeited by adultery, 900
purchases of, 901
frauds of, 902, 903
acts of wife liable to criminal proceedings, 903a
husband and wife competent witnesses, 903a
money advanced for support of deserted wife, 904
bankruptcy of, 904b

MARSHALLING, 829
of assets, 493
in favour of mortgagees and other creditors, or of legatees, or of a portionist, or of the heir, or of a devisee, 494
as between two estates, 495
as between legacies charged on land and others not so charged, 496
in the case of charitable legacies, 496, 497
as between simple contract debts and a vendor's lien, 498
in favour of widow's paraphernalia, 500
of securities, 652, 653

MAXIMS, GENERAL, 21—59
no right without a remedy, 22
where equity will give a remedy, 23—5
equity follows the law, 26—32
necessity for vigilance, 33, 33a

MAXIMS, GENERAL—*continued.*
where equal equity, law prevails, 34
equality is equity, 35
plaintiff must have clean hands, 36, 37
plaintiff must do equity, 38—40
equity regards as done what ought to be done, 41—9
priority, 50
equity imputes intention to fulfil obligation, 51
loss must be borne by person occasioning it, 53
rules as to foreign and colonial property or contracts, 54—8

MERGER, 20

MESNE PROFITS, 665

MIND. See LUNATICS.
frauds on persons of weak understanding, 130

MINISTER OF RELIGION,
constructive fraud by, 153

MISDESCRIPTION,
slight, 412
substantial, 415

MISLEADING, 177

MISREPRESENTATION, 87, 112—121

MISTAKE,
defined, 80
by the sufferer alone, 81—4
mutual, 87
in or in regard to a written instrument, 89—102
ignorance of foreign law, 85
of vendor as to value, 86

MORTGAGE,
1. *Mortgages of real property*, 505—591
what may be mortgaged, 505
what amounts to, 506—512
mortgagee's estate, 513
mortgagee's rights, possession, leases, rent, timber, insurance, receiver, and sale, 514, 515
limit to mortgagee's advantage, 516
conversion of interest into principal, 517
increase of interest, 518
lease to mortgagee, 519
what mortgagee may add to his debt, 520
expenditure, 520
costs, 521
allowance for receiver, 522
of West India estate, 523
of advowson, 524
pre-emption, 525
production of deeds by mortgagee, 526
right of mortgagee to devise property, 527
mortgagee ejecting or refusing tenant, 528
mortgagee's right to cut timber and open mines, 514

MORTGAGE—*continued.*
I. *Mortgages of real property*—continued.
priority, 436, 529—534
tacking, 529—534
with notice of another's title, 187—191
postponement of prior mortgagee, 535, 536
protection of subsequent mortgagees against prior voluntary conveyances, 193—9
mortgagee's remedies, 537
foreclosure, 537—9
sale, 540—7
concurrent remedies, 548—550
mortgagor's estate and rights, 551
equity of redemption, 551—7
consolidation, 554, 554a
who may redeem, 555—7
obligation for mortgagee to transfer instead of reconveying, 556a
accounts, 558
annual rests, 558
possession by mortgagor, 559, 560
rents received by mortgagor, 559
waste by him, 559
leases by mortgagor in possession, 561
of leasehold, 562—4
rent instead of interest, 565
for costs, 566
conveyance in trust to sell, 567
joint, 315
defective, 568
payment of debt, 569—572a
receipt indorsed, authority for payment to solicitor, 572b
to be postponed till a certain time, 571
out of what, 479—482
contribution towards, 625—7
statutory mortgage, 572c
Welsh mortgage, 573
of wife's estate, 320, 574, 575
first mortgagee answerable to second, 576
disputing mortgagor's title, 577
assignment of, 578—582
what a purchaser of a mortgage can claim, 583
gift of mortgage security, 584
devise by a mortgagee, 585
right of purchaser of equity of redemption, 586
right of second equitable mortgagee, 586
extinguishment of debt by cancelling, 587
by payment or by merger, 588, 589
reconveyance, 590
death of mortgagor intestate, and without heirs, 591
II. *Equitable mortgages of real property*, 592—601
further advances, 594
interest, 600
III. *Mortgages and pledges of personal property*, 602—612
a mortgage and a pledge distinguished, 602
tacking, 603, 604
purchase by a second mortgagee under a power of sale from the first, 545
mortgagor's right to redeem and mortgagee's right to sell, 605

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

PAROL CONTRACTS,
where enforced, 444—8

PAROL PROMISE,
where enforced, 450

PAROL VARIATIONS OR ADDITIONS, 449

PARTITION,
suit for a partition of property out of jurisdiction, 54
mode of partition, 715
title shown, 716
by or against tenants who have limited interests, 717
equitable adjustments, 719
of partnership leaseholds, 644

PARTNERSHIP,
jurisdiction, 637
specific performance of agreement to enter into, 638
carrying into effect the articles of, 638
dissolution of, 640, 641
application of articles after cesser of term, 639
injury prevented, 642
account, manager, and receiver, 643
partition, 644
using stock after dissolution, 645
interest after dissolution, 646
property held for partnership purposes, 315, 647
rights of joint creditors, 648
priority as between joint and separate creditors, 649
creditors may proceed against a deceased partner's estate in the first instance, 650

PATENTS,
injunctions to restrain infringements of, 771

PAYMENT,
into Court or to the party, 789

PAYMENTS,
appropriation of, 464

PEACE,
bills of, 747—751

PENALTIES,
payment of, 453, 670—8

PIN-MONEY, 826, 827

PLEDGES,
distinguished from mortgages of personal property, 602
pledgor's right of redemption, 610
pledgee's rights, 611, 612

POLICY, PUBLIC,
frauds on, 135—147
assignments contracts, and covenants against, 428 *et seq.*

PORTIONS,
what is a portion, 212
where not to be raised, 213, 214
vesting of, 214a
time for raising, 215
interest, 215a
satisfaction of, 704—711

POSSIBILITIES,
assignment of, 432, 433

POST-OBIT BONDS, 172

POWERS,
relief in cases of the defective execution or non-execution of 13, 77—9, 99
effectuating the general intention of the donor of a power, 283, 284

PREFERENCE,
of a particular creditor, 185, 186

PRETENDED TITLES, 430

PRIMOGENITURE,
equity follows the law as to, 31

PRIORITY, 436, 529—536
of debts, 474a

PROMISE. See SPECIFIC PERFORMANCE.

PURCHASE,
with notice of another's title, 187—191
in another's name, 311—314
joint, 315
covenant or trust to purchase lands, 316
of a mortgage, 583
of a lien or mortgage by a trustee, 333
of an estate by a trustee or agent, 333, 365
money to be paid out of personal estate, 411
with right of re-purchase, 506—512
of an equity of redemption, 586
from executor or administrator, 192

PURCHASER,
for valuable consideration, rights of, 34, 68, 89, 344, 376—381
protection of subsequent, 193
purchaser's heir may require the money to be paid out of the personal estate, 411
his obligation to see to the application of the purchase-money, 257—266

Q.

QUIA TIMET, 725

R.

RECEIPTS,
distinction between trustees and executors as regards joining in, 367, 368

RECEIVER,
gift to, 365
appointment of, 643, 761, 785, 786
office, possession, and power, 787, 788
allowance to mortgagee for, 522

RECONVEYANCE, 590

RECTIFYING. See MISTAKE.

REDEMPTION. See MORTGAGE.

REGISTRATION, 188

"RELATIONS,"
meaning of, 233

RELEASE,
rectifying, 97
of sureties, 654—8

REMAINDERMEN,
bargains with, 165—171

REMITTANCE,
revocableness of, 253

RENEWAL,
of lease, by a person having a limited interest, 334, 335

RENT,
obligation to pay, notwithstanding accident, 67

RENTS,
where a suit will be entertained for the recovery of, 25

REPAIRS,
covenant to do, 67
trust in respect of, 323

RE-PURCHASE,
purchase, with right of, 506—512

RESIDUE,
undisposed of, 291—300

RESTS, 365, 558

REVERSIONERS,
bargains with, 165—171
cannot maintain suit for partition, 718

REVOCATION,
want of power of, 200

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

SETTLEMENT. See MARRIED WOMEN—MARRIAGE SETTLEMENT —INFANTS.
rectifying, 89—96
with notice of another's title, 187
setting aside, 732, 733
voluntary. See CONSIDERATION.

SHERIFF,
interpleader by, 744

SOLICITOR,
actual fraud of a, 112
constructive fraud of a, 154, 157
misappropriation of mortgage debt paid to, 572
purchase by, 162
acting for both parties, 190, 616
lien for costs, 616, 617
gifts or gratuity to a, 155—7
charges by a trustee who is a, 345

SPECIFIC PERFORMANCE,
remedy at law, 403, 406
decree in equity where damages would not afford compensation, 404, 405
between persons claiming under the parties, 411
where terms are not complied with in non-essential particulars, or where there is a slight misdescription, 412
where there is a want of title, or a substantial misdescription, or want of reasonable compliance with terms of agreement, 415, 416
where there is an accidental incapacity of performing the remainder of an agreement, 417
sub modo, 418
where the parties were incompetent to contract, 419
where the terms are not certain and definite, 420
where there is no valuable consideration, 421—3
where it would be morally wrong or inequitable, 424—7
of assignments, contracts, or covenants against public policy, 428 *et seq.*
assignments by officers of the government, 429
assignments involving champerty, maintenance, or buying of pretended titles, 430
assignments of mere naked rights to litigate, 431
assignments of possibilities, or things in action, 432—9
connected with arbitration, 440—3
parol contracts, 444—8
variations or additions, 449
promises, 450
agreements to borrow, 451
negative agreements, 452
not avoidable by payment of penalty, 453
of agreement to enter into a partnership, 638
of representations, 177a

STATUTES,
27 Henry VIII. c. 10 (Uses), 231
32 Henry VIII. c. 9 (Pretended Titles), 430
13 Elizabeth, c. 5 (Fraudulent Conveyances), 183
27 Elizabeth, c. 4 (Fraudulent Conveyances), 193, 254, 601a

STATUTES—*continued.*
43 Elizabeth, c. 4 (Charitable Uses), 275
21 Jac. I. c. 16 (Limitations), 461, 462
12 Car. II. c. 24 (Guardians), 794
29 Car. II. c. 3 (Frauds), 179, 228, 444—9
— s. 25 (Frauds), 841
4 Geo. IV. c. 46 (Infants Marriages), 817
1 Wm. IV. c. 40 (Residue), 294
1 & 2 Wm. IV. c. 58 (Interpleader), 739
3 & 4 Wm. IV. c. 27, s. 24 (Statute of Limitations), 278, 539
— c. 104 (Debts), 22, 494
— c. 105, s. 2 (Dower), 552
— c. 106, s. 3 (Devise to Heir), 683
7 Wm. IV. & 1 Vict. c. 28 (Statute of Limitations), 539
1 & 2 Vict. c. 110 (Judgments), 529, 531
7 & 8 Vict. c. 76 (Receipts), 266
— c. 76, s. 9 (Reconveyance of Mortgaged Estate), 590, n.
8 & 9 Vict. c. 106 (Contingent Interests), 432
— c. 106, s. 1 (Reconveyance of Mortgaged Estate), 590, n.
— c. 112 (Terms), 241
9 & 10 Vict. c. 95, s. 65 (Legacies), 207
13 & 14 Vict. c. 60, ss. 19, 20 (Reconveyance of Mortgaged Estate), 590, n.
— c. 60, s. 30 (Partition), 715
— c. 61, s. 1 (Legacies), 207
15 & 16 Vict. c. 76, ss. 219, 220 (Redemption), 513, 551
— c. 86, s. 48 (Sale of Mortgaged Estate), 540, 540a
17 & 18 Vict. c. 90 (Usury), 40, n.
— c. 113 (Mortgage Debts), 481—4
— c. 125, ss. 79—82 (Injunction), 757
18 & 19 Vict. c. 43 (Infant Settlements), 817
19 & 20 Vict. c. 99, s. 5 (Sureties), 655
20 & 21 Vict. c. 57 (Reversionary Interests), 881, n.
— c. 77, s. 23 (Legacies, Residues), 207, 466
— c. 85, ss. 21, 25 (Separate Use), 831, 832
21 & 22 Vict. c. 108, s. 8 (Separate Use), 832
22 & 23 Vict. c. 35, s. 12 (Appointments), 77, n.
— c. 35, s. 13 (Sales under Powers), page 53 n.
— c. 35, s. 23 (Receipts), 266
— c. 35, s. 29 (Notice for Creditors), 383, 384
— 35, s. 30 (Directions to Trustees, &c.), 335
— 35, s. 31 (Reimbursement), 345, n., 369, n.
— 35, s. 31 (Indemnity), 369, n.
— 35, s. 32 (Investments), 351
23 & 24 Vict. 38, s. 1 (Judgments), 648
— 38, ss. 10—12 (Investments), 351
— . 126, s. 1 (Forfeiture), 676
— . 127, s. 28 (Liens), 617
25 & 26 Vict. 63, s. 3 (Mortgages of Ships), 609
28 & 29 Vict. 99, s. 1, par. 8 (Injunctions), 758
30 & 31 Vict. . 69 (Mortgage Debts), 485
— c. 132 (Investments), 351
— c. 144 (Life Assurance), 432
31 Vict. c. 4 (Purchase of Reversions), 170, 171
31 & 32 Vict. c. 86 (Marine Insurance), 432
32 & 33 Vict. c. 46, s. 5 (Debt), 857b
33 & 34 Vict. c. 28 (Solicitors), 157

STATUTES—*continued.*
33 & 34 Vict. c. 93 (Married Women), 820, 823, 833, 834—845, 859, 860, 867, 868
36 Vict. c. 12, s. 1 (Custody of Infant), 797
36 & 37 Vict. c. 66 (Judicature Act, 1873), 2, 20
— c. 66, s. 16 (Jurisdiction of High Court), 751a
— c. 66, s. 24 (Concurrent Jurisdiction), 20, 64, 751a
— c. 66, s. 25 (Changes in certain points of Jurisprudence), 20
— c. 66, s. 25 (2) (Statute of Limitations), 268
— c. 66, s. 25 (3) (Waste), 319a
— c. 66, s. 25 (4) (Merger), 20
— c. 66, s. 25 (5) (Suits for Possession by Mortgagors), 560
— c. 66, s. 25 (6) (Assignment of Debts and Choses in Action), 434
— c. 66, s. 25 (7) (Stipulation not of the Essence of Contracts), 414
— c. 66, s. 25 (8) (Injunctions and Receivers), 522, 761
— c. 66, s. 25 (10) (Custody and Education of Infants), 793
— c. 66, s. 25 (11) (Cases of Conflict not Enumerated), 20, 26, n.
— c. 66, s. 34 (3) (Business assigned to Chancery Division), 7, 102a, 105, 132, 206, 225, 454, 466, 622, 637, 665, 715, 725, 742
— c. 69, ss. 88, 89, 90, 91 (Inferior Courts), 20
37 & 38 Vict. c. 50 (Married Women), 823, 860—6
— c. 57, ss. 1, 8, 9 (Limitation on Recovery of Land, Rent, or Money charged on Land), 539
— c. 57, s. 7 (Barring Mortgagor), 551
— c. 62 (Infants), 132a—132c
— c. 78, s. 4 (Reconveyance of Mortgaged Estate), 590, n.
— c. 78, s. 7 (Priority, Tacking), 532
38 & 39 Vict. c. 77, s. 10 (Administration), 472
— c. 77, s. 11 (1) (Choice of Division of Court), 207
— c. 87 (Priority, Tacking), 532
40 & 41 Vict. c. 34 (Extension of Locke King's Act), 406, 486—486b, 622
44 & 45 Vict. c. 41 (Conveyancing Act, 1881), 853
— c. 41, s. 4 (Completion of Contract after Death), 406, 411
— c. 41, s. 14 (Forfeiture of Leases), 676
— c. 41, s. 15 (Obligation of Mortgagee to Transfer instead of Re-conveying), 556a
— c. 41, s. 16 (Leave for Mortgagor to inspect Deeds), 526
— c. 41, s. 17 (Restriction on Consolidation of Mortgages), 554a
— c. 41, s. 18 (Leasing Powers of Mortgagor, and of Mortgagee in Possession), 514, 561
— c. 41, ss. 19, 24 (Powers incident to Estate of Mortgagee), 514, 522, and page 366 (*a*).
— c. 41, s. 25 (Action respecting Mortgage), 540a, and page 366 (*a*).
— c. 41, ss. 26—9 (Statutory Mortgages), 572c

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

STATUTES—*continued.*
45 & 46 Vict. c. 75, s. 15 (Suits for Ante-nuptial Liabilities), 866
— c. 75, s. 16 (Act of Wife liable to Criminal Proceedings), 903a
— c. 75, s. 17 (Questions between Husband and Wife as to Property to be decided in summary way), 842
— c. 75, s. 18 (Married Woman as Executrix or Trustee), 839
— c. 75, s. 19 (Settlements made in fraud of Creditors), 830a
— c. 75, s. 20 (Married Woman liable to Parish for Maintenance of Husband), 867
— c. 75, s. 21 (Married Woman liable to Parish for Maintenance of Children), 868
— c. 75, s. 22 (Repeal of 33 & 34 Vict. c. 93; 37 & 38 Vict. c. 50), 823
— c. 75, s. 23 (Legal Representative of Married Woman), 868a
— c. 75, s. 24 (Interpretation of Terms), 857
— c. 75, s. 25 (Commencement of Act), 823, 827a, 829a
46 & 47 Vict. c. 52, ss. 4, 6 (Bankruptcy Proceedings), 252a
47 & 48 Vict. c. 14 (Married Women's Property Act, 1884, Witness), 903a
— c. 18 (Settled Land Incumbrances), 627
— c. 71 (Intestates' Estates Act, 1884), 285a
49 & 50 Vict. c. 27 (Guardianship of Infants Act, 1886), 904a
— c. 27, ss. 2, 3, 4, 6 (Rights of Mother as to Guardianship of her Child, and removal and appointment of Guardian by Court), 794
— c. 27, s. 5 (Court may make Orders as to Access to and Custody of Infant), 797, 799
— c. 27, s. 9 (Applications to be made to Chancery Division), 793
— c. 27, s. 52 (Married Women (Maintenance in case of Desertion) Act, 1886), 904
50 & 51 Vict. c. 73, s. 45 (Trust Copyholds of Inheritance not to Descend as Chattels Real), 339a, 513, 527
51 & 52 Vict. c. 43 (County Courts Act, 1888), 207, 758
— c. 59, s. 1 (Definition of Trustee), 351a, 352a, 462
— c. 59, s. 8 (Statute of Limitations may be pleaded by Trustees), 268a, 392, 462
— c. 62 (Preferential Debts), 474a
52 Vict. c. 7, s. 13 (Customs and Inland Revenue Act, 1889, Deposit of Copies of Documents), 345
52 & 53 Vict. c. 49 (Arbitration), 441
53 & 54 Vict. c. 39 (Partnership), 637 *et seq.*
54 Vict. c. 3 (Custody of Infants), 794a
54 & 55 Vict. c. 73 (Charities), 281a, 497
55 & 56 Vict. c. 13 (Conveyancing Act, 1892), 676
56 & 57 Vict. c. 21 (Voluntary Conveyances), 199
— c. 53 (Trustee Act, 1893), 341 *et seq.*
— c. 63 (Married Women), 853, 857
— c. 71 (Sale of Goods), 791
57 & 58 Vict. c. 10 (Trustee Act, 1894), 351a
— c. 30 (Estate Duty), 221

STATUTES—*continued.*
57 & 58 Vict. c. 46 (Copyholds), 339a, 513
— c. 60 (Merchant Shipping Act), 609
58 & 59 Vict. c. 25 (Solicitor-Mortgagee's Costs), 566a
— c. 39 (Married Women), 904
59 & 60 Vict. c. 35 (Judicial Trustees Act), 344, 348a, 397
60 & 61 Vict. c. 65 (Land Transfer Act), 367, 379, 398, 399, 470

STIPULATIONS IN CONTRACTS, 414

STOCK,
reduction of, 63

SUB-PURCHASE, 431

SURCHARGE AND FALSIFY,
liberty to, 458, 459

SURETIES,
contribution between, 633—5
rights of creditors and sureties, 164, 654—8

SURPLUS,
right of heir or next of kin or executor to, 285—299

T.

TACKING, 529—534, 603, 604

TENANT,
interpleader by, 741

TERM OF YEARS,
trusts of, 239—243

TESTATORS,
agreement to influence, 137

TIMBER,
trust as to, 319

TIME,
where time is of the essence of a contract, 413
stipulations as to, 414

TITHES AND MODUSES, 667

TITLE,
muniments of, 394, 395
want of, 415, 416
buying a pretended, 430

TRADE,
contracts or conditions in restraint of, 141

TRUSTS IN GENERAL,
definition of, 224
division of, 226
extent of jurisdiction over, 225

TRUSTS, CONSTRUCTIVE,
defined, 322
in respect of repairs or improvements, 323
in favour of creditors, 324
on a covenant or agreement to convey, transfer property, or pay money, 325, 326
vendor's lien for unpaid purchase-money, 327—332
of lease, of which a renewal is obtained by a person having a limited interest, 334, 335
on a wrongful conversion or alienation of trust property, 336—8
of mortgaged estate, 339, 339a
of debt due from executor, 340

TRUSTS, EXPRESS CHARITABLE. See CHARITIES.

TRUSTS, EXPRESS PRIVATE,
defined, 227
mode of declaring, 228—230
by what words created, 231—3
precatory trusts, 232, 233a
how a devise or bequest may be verbally impressed with a trust, 234
intended trust, though void, excludes donee from taking beneficially, 235
executed and executory, 30, 236, 237
governed by the same rule as legal estates, 238
of terms for years, 239—243
created without *cestui que trust's* knowledge, 244
what will be enforced, 245
execution of marriage articles, 246
assignments for benefit of creditors, 247—252
revocableness of a consignment or remittance, 253
revocableness of a conveyance of equitable property, or a declaration of trust in favour of a volunteer, 254, 255
effect of a direction or power to raise money out of rents for debts, &c., or of a charge, 256
bar of, 267
performed as to the main intent, 269
where legal and equitable estates have no separate existence, 270
for an alien, 271

TRUSTS, IMPLIED,
sometimes called constructive trusts, 321
defined, 282
in a power, 283, 284
where trusts fail or the property is unexhausted, 285
on an absolute gift, with an ineffectual or partial trust, or a void condition, 286
on a conveyance without a consideration, and without a use or trust, 287—290
on a limitation of a particular interest only, 291—3
of undisposed-of residue of testator's personalty, 294
of undisposed-of produce of real estate, 295, 296
of undisposed-of part of mixed fund, 297
of undisposed-of part of money directed to be converted, or of the produce, 298, 298a
failure of objects for conversion, 299, 300
charges, 301—310

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

TRUSTEES—*continued.*
where trustees took the fee, 398
conveyance of legal estate to *cestui que trust*, 399
settlement of accounts, 400
duty of keeping accounts and rendering information, 400, 401
right of retainer, 402a
in bankruptcy or insolvency, 876—8, 891

U.

USURIOUS TRANSACTIONS, 40, 729

V.

VENDOR,
misrepresentation or concealment by, 112—121
vendor's lien, 327—332
nature of, and reasons for, 327
where it originally exists, 328
continuance thereof, 329
against whom it exists, 330—2

VIGILANTIBUS,
non dormientibus æquitas subvenit, 33

VOID AND VOIDABLE CONTRACTS AND INSTRUMENTS.
See FRAUD.
distinction between, as regards confirmation, 146
cancelling, 725—738

VOLUNTARY. See CONSIDERATION.

VOLUNTEER. See CONSIDERATION.
rights of, 49
when a collateral relation not a, 198
fraud of, 200
revocableness of a conveyance of equitable property, or a declaration of trust in favour of a volunteer, 254
when voluntary deed cancelled, or enforced, 731—3

W.

WARDS. See INFANTS.

WASTE,
injunction to restrain, 319, 763—8a
by a mortgagor, 559
by a mortgagee, 514
account in cases of, 666
equitable, 319, 319a, 766—8a

WEAK UNDERSTANDING,
frauds on persons of, 130

WELSH MORTGAGE, 573

WEST INDIA ESTATE,
mortgage of, 523

WIFE. See MARRIED WOMEN.

WILL,
defective execution of a will not remedied, 69
mistake or omission in, 100
fraud in regard to, 105
agreements to influence a testator, 137
proceedings to establish wills, 752—5

THE END.

BRADBURY, AGNEW, & CO. LD., PRINTERS, LONDON AND TONBRIDGE.

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

ANNUAL COUNTY COURT PRACTICE.—The Annual County Court Practice, 1900.—By His Honour Judge SMYLY, Q.C. 2 vols. Demy 8vo. 25*s.*

"The profession generally have gratefully recognized the very great value of this book. It admirably fulfils the essential requisites of a practice book. It is complete without being discursive or of unwieldy bulk; it is accurate and easy of reference, and throughout bears the stamp of having been compiled by a man who is thoroughly acquainted with his subject."—*Law Times.*

ANNUAL DIGEST.—Mews'.—*Vide* "Digest."

ANNUAL LIBRARY (LAWYER'S):—

(1) The Annual Practice.—SNOW, BURNEY, and STRINGER.
(2) The Annual Digest.—MEWS. (*Issued Quarterly.*)
(3) The Annual Statutes.—LELY.
(4) The Annual County Court Practice.—SMYLY.

☞ *Annual Subscriptions. For* Complete Series, as above, delivered on the day of publication, *net*, 2*l.* 5*s.* Nos. 1, 2, and 3 only, *net*, 1*l.* 15*s.* Nos. 2, 3, and 4 only, *net*, 1*l.* 15*s.* (*Carriage extra*, 2*s.*)

Full prospectus forwarded on application.

ANNUAL PRACTICE (THE).—The Annual Practice. 1900. Edited by THOMAS SNOW, Barrister-at-Law; CHARLES BURNEY, a Master of the Supreme Court; and F. A. STRINGER, of the Central Office. 2 vols. 8vo. *Net* 25*s.*

☞ *Dr. Blake Odgers, Q.C., has re-written the Notes to Orders XIX., XX., XXI. and XXV., relating to Pleading, Statement of Claim, Defence and Counter-claim, and Proceedings in Lieu of Demurrer.*

"A book which every practising English lawyer must have."—*Law Quarterly.*

"It is only by the help of this established book of practice that a practitioner can carry on his business."—*Law Times.*

"Every member of the bar, in practice, and every London solicitor, at all events, finds the last edition of the Annual Practice a necessity."—*Solicitors' Journal.*

ANNUAL STATUTES.—Lely.—*Vide* "Statutes."

ARBITRATION.—Mozley-Stark's Duties of an Arbitrator under the Workmen's Compensation Act, 1897.—With Notes on the Act and Rules, and Appendices containing the Act, a selection from the Workmen's Compensation Rules, 1898, and the Medical Referees' Regulations. By A. MOZLEY-STARK, Solicitor. Roy. 12mo. 1898. 5*s.*

Russell's Treatise on the Power and Duty of an Arbitrator, and the Law of Submissions and Awards; with an Appendix of Forms, and of the Statutes relating to Arbitration. By FRANCIS RUSSELL. Eighth Edition. By EDWARD JAMES POLLOCK, Esq., an Official Referee of the Supreme Court of Judicature, and the late HERBERT RUSSELL, Esq., Barrister-at-Law. Royal 8vo. 1900.

ARCHITECTS.—*Vide* "Civil Engineers." (*Nearly ready.*) 30*s.*

AVERAGE.—Hopkins' Hand-Book of Average.—Fourth Edition. By MANLEY HOPKINS, Esq. Demy 8vo. 1884. 1*l.* 1*s.*

Lowndes' Law of General Average.—English and Foreign. Fourth Edition. By RICHARD LOWNDES, Average Adjuster. Author of "The Law of Marine Insurance," &c. Royal 8vo. 1888. 1*l.* 10*s.*

"The most complete store of materials relating to the subject in every particular."—*Law Quarterly Review.*

AUCTIONEERS.—Hart's Law relating to Auctioneers.—By HEBER HART, Esq., LL.D., Barrister-at-Law. Demy 8vo. 1895. 7*s.* 6*d.*

BALLOT.—Fitzgerald's Ballot Act.—With an Introduction. Forming a Guide to the Procedure at Parliamentary and Municipal Elections. Second Edition. By GERALD A. R. FITZGERALD, Esq., Barrister-at-Law. Fcap. 8vo. 1876. 5*s.* 6*d.*

BANKING.—Walker's Treatise on Banking Law.—Second Edition. By J. D. WALKER, Esq., Q.C. Demy 8vo. 1885. 15*s.*

BANKRUPTCY.—Lawrance's Precedents of Deeds of Arrangement between Debtors and their Creditors; including Forms, with Introductory Chapters, also the Deeds of Arrangement Acts, 1887 and 1890, with Notes. Fourth Ed. By H. ARTHUR SMITH, Esq., Barrister-at-Law. 8vo. 1892. 7*s.* 6*d.*

"Concise, practical, and reliable."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

BANKRUPTCY—*continued.*

Williams' Law and Practice in Bankruptcy.—Comprising the Bankruptcy Acts, 1883 to 1890, the Bankruptcy Rules and Forms, 1886, 1890, the Debtors Acts, 1869, 1878, the Bankruptcy (Discharge and Closure) Act, 1887, the Deeds of Arrangement Act, 1887, and the Rules thereunder. By the Right Hon. Sir ROLAND L. VAUGHAN WILLIAMS, a Lord Justice of Appeal. Seventh Edition. By EDWARD WM. HANSELL, Esq., Barrister-at-Law. Roy. 8vo. 1898. 30*s.*

"The leading text-book on bankruptcy."—*Law Journal.*

BASTARDY.—Bott.—*Vide* "Affiliation."

BILLS OF EXCHANGE.—Campbell's Ruling Cases. Vol. IV.—*Vide* "Digests."

Chalmers' Digest of the Law of Bills of Exchange, Promissory Notes, Cheques and Negotiable Securities. Fifth Edition. By His Honour Judge CHALMERS, Draughtsman of the Bills of Exchange Act. Demy 8vo. 1896. 18*s.*

"The leading book on bills of exchange; it is well known, widely used, and highly appreciated."—*Law Journal.*

"Each section having appended to it illustrations in the nature of short statements of decided cases. These are prepared with that skilful conciseness of which the learned Judge is a master."—*Law Times.*

BILLS OF LADING.—Leggett's Treatise on the Law of Bills of Lading.—Second Edition. By EUGENE LEGGETT, Solicitor and Notary Public. Demy 8vo. 1893. 30*s.*

Pollock's Bill of Lading Exceptions.—By HENRY E. POLLOCK. Second Edition. Demy 8vo. 1896. 10*s.* 6*d.*

BOOK-KEEPING.—Matthew Hale's System of Book-keeping for Solicitors, containing a List of all Books necessary, with a comprehensive description of their objects and uses for the purpose of Drawing Bills of Costs and the rendering of Cash Accounts to clients; also showing how to ascertain Profits derived from the business; with an Appendix. Demy 8vo. 1884. 5*s.* 6*d.*

"The most sensible, useful, practical little work on solicitors' book-keeping that we have seen."—*Law Students' Journal.*

BUILDING SOCIETIES.—Wurtzburg on Building Societies.—The Law relating to Building Societies, with Appendices containing the Statutes, Regulations, Act of Sederunt, and Precedents of Rules and Assurances. Third Edition. By E. A. WURTZBURG, Esq., Barrister-at-Law. Demy 8vo. 1895. 15*s.*

"Will be of use not only to lawyers but also to secretaries and directors of building societies. It is a carefully arranged and carefully written book."—*Law Times.*

CANALS.—Webster's Law Relating to Canals.—By ROBERT G. WEBSTER, Esq., Barrister-at-Law. Demy 8vo .1885. 1*l.* 1*s.*

CARDINAL RULES.—*See* "Legal Interpretation."

CARRIERS.—Carver's Treatise on the Law relating to the Carriage of Goods by Sea.—Second Edition. By THOMAS GILBERT CARVER, Esq., Barrister-at-Law. Royal 8vo. 1891. 1*l.* 12*s.*

"A recognized authority."—*Solicitors' Journal.*
"A careful and accurate treatise."—*Law Quarterly Review.*

Macnamara's Digest of the Law of Carriers of Goods and Passengers by Land and Internal Navigation.—By WALTER HENRY MACNAMARA, Esq., Barrister-at-Law, Registrar to the Railway Commission. Royal 8vo. 1888. 1*l.* 8*s.*

"A complete *epitome* of the law relating to carriers of every class."—*Railway Press.*

CHAMBER PRACTICE.—Archibald's Practice at Judges' Chambers and in the District Registries; with Forms of Summonses and Orders. Second Edition. By W. F. A. ARCHIBALD, Esq., Barrister-at-Law, and P. E. VIZARD, of the Summons and Order Department. Royal 12mo. 1886. 15*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

CHANCERY, *and Vide* "Equity."

Daniell's Chancery Practice.—The Practice of the Chancery Division of the High Court of Justice and on appeal therefrom. Sixth Edit. By L. FIELD, E. C. DUNN, and T. RIBTON, assisted by W. H. UPJOHN, Esqrs., Barristers-at-Law. 2 vols. in 3 parts. 8vo. 1882-84. 6*l.* 6*s.*

Daniell's Forms and Precedents of Proceedings in the Chancery Division of the High Court of Justice and on Appeal therefrom. Fourth Edition. By CHARLES BURNEY, B.A. Oxon., a Master of the Supreme Court. Royal 8vo. 1885. 2*l.* 10*s.*

Mews' Digest.—*Vide* "Digests," p. 11.

CHARTER PARTIES.—Carver.—*Vide* "Carriers."

Leggett's Treatise on the Law of Charter Parties.—By EUGENE LEGGETT, Solicitor and Notary Public. Demy 8vo. 1894. 25*s.*

CHILDREN.—Hall's Law Relating to Children. By W. CLARKE HALL, Esq., Barrister-at-Law. Demy 8vo. 1894. 4*s.*

CHURCH LAW. — Whitehead's Church Law.—Being a Concise Dictionary of Statutes, Canons, Regulations, and Decided Cases affecting the Clergy and Laity. Second Edition. By BENJAMIN WHITEHEAD, Esq., Barrister-at-Law. Demy 8vo. 1899. 10*s.* 6*d.*

"A perfect mine of learning on all topics ecclesiastical."—*Daily Telegraph.*

The Statutes relating to Church and Clergy (reprinted from "Chitty's Statutes"), with Preface and Index. By BENJAMIN WHITEHEAD, Esq., Barrister-at-Law. Royal 8vo. 1894. 6*s.*

CIVIL ENGINEERS.—Macassey and Strahan's Law relating to Civil Engineers, Architects and Contractors.—With a Chapter on Arbitrations. Second Edition. By L. LIVINGSTON MACASSEY and J. A. STRAHAN, Esqrs., Barristers-at-Law. Demy 8vo. 1897. 12*s.* 6*d.*

"Contains a statement of law and usage which is at once full and reliable."—*Solicitors' Journal*, July 10, 1897.

COLLISIONS.—Marsden's Treatise on the Law of Collisions at Sea.—Fourth Edition. By REGINALD G. MARSDEN, Esq., Barrister-at-Law. Demy 8vo. 1897. 1*l.* 8*s.*

"Mr. Marsden's book stands without a rival."—*Law Quarterly Review.*
"May be relied upon as a trustworthy authority."—*Shipping Gazette.*

COMMON LAW.— Chitty's Archbold's Practice. Fourteenth Edition. By THOMAS WILLES CHITTY, assisted by J. ST. L. LESLIE, Esqrs., Barristers-at-Law. 2 vols. Demy 8vo. 1885. (Published at 3*l.* 13*s.* 6*d.*) Reduced to *net*, 30*s.*

Chitty's Forms.—*Vide* "Forms."

Elliott's Outlines of Common Law.—Specially prepared for Students. By MARTIN ELLIOTT, Esq., Barrister-at-Law. Demy 8vo. 1898. 10*s.* 6*d.*

"Will prove of the greatest assistance to students."—*Law Times.*

Mews' Digest.—*Vide* "Digests," p. 11.

Pollock and Wright's Possession in the Common Law.—Parts I. and II. by Sir F. POLLOCK, Bart., Barrister-at-Law Part III. by R. S. WRIGHT, Esq., Barrister-at-Law. 8vo. 1888. 8*s.* 6*d.*

Shirley.—*Vide* "Leading Cases."

Smith's Manual of Common Law.—For Practitioners and Students. Comprising the Fundamental Principles, with useful Practical Rules and Decisions. By JOSIAH W. SMITH, B.C.L., Q.C. Eleventh Edit. By C. SPURLING, Esq., Barrister-at-Law. Demy 8vo. 1898. 15*s.*

"The arrangement is clear and methodical, and will increase the usefulness of the work, not only for elementary study, but as a handy book of reference."—*Law Quarterly Review.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

CONTRACTS.—Addison on Contracts.—A Treatise on the Law of Contracts. 9th Edit. By HORACE SMITH, Esq., Bencher of the Inner Temple, Metropolitan Magistrate, assisted by A. P. PERCEVAL KEEP, Esq., Barrister-at-Law. Royal 8vo. 1892. 2*l.* 10*s.*

"This and the companion treatise on the law of torts are the most complete works on these subjects, and form an almost indispensable part of every lawyer's library."—*Law Journal.*

Anson's Principles of the English Law of Contract.—By Sir W. R. ANSON, Bart., Barrister-at-Law. Ninth Edit. 1899. 10*s.* 6*d.*

Campbell's Ruling Cases. Vol. VI.—*Vide* "Digests."

Finch's Selection of Cases on the English Law of Contract.—Second Edition. Roy. 8vo. 1896. 28*s.*

Fry.—*Vide* "Specific Performance."

Leake's Law of Contracts.—A Digest of Principles of the Law of Contracts. Third Edition. By STEPHEN MARTIN LEAKE, Esq., Barrister-at-Law. Demy 8vo. 1892. 32*s.*

"Complete, accurate, and easy of reference."—*Solicitors' Journal.*

"Clear, concise, accurate, and exhaustive."—*Law Times.*

Pollock's Principles of Contract.—Being a Treatise on the General Principles relating to the Validity of Agreements in the Law of England. Sixth Edition. By Sir FREDERICK POLLOCK, Bart., Barrister-at-Law, Author of "The Law of Torts," "Digest of the Law of Partnership," &c. Demy 8vo. 1894. 28*s.*

"A work which, in our opinion, shows great ability, a discerning intellect, a comprehensive mind, and painstaking industry."—*Law Journal.*

CONVEYANCING.—Brickdale & Sheldon.—*Vide* "Land Transfer."

Dart.—*Vide* "Vendors and Purchasers."

Dickins' Precedents of General Requisitions on Title, with Explanatory Notes and Observations. Second Edition. By HERBERT A. DICKINS, Esq., Solicitor. Royal 12mo. 1898. 5*s.*

"We cannot do better than advise every lawyer with a conveyancing practice to purchase the little book and place it on his shelves forthwith."—*Law Notes.*

Greenwood's Manual of the Practice of Conveyancing, showing the present Practice relating to the daily routine of Conveyancing in Solicitors' Offices. To which are added Concise Common Forms in Conveyancing.—Ninth Edit. Edited by HARRY GREENWOOD, M.A., LL.D., Esq., Barrister-at-Law. Roy. 8vo. 1897. 20*s.*

"The ninth edition will maintain the reputation which the work has long ago acquired of being one of the best expositions which the English lawyer possesses of the present practice relating to the daily routine of conveyancing in solicitors' offices. We have tested it at various points of a somewhat critical character, and have no hesitation in pronouncing it up to date and in every way reliable as a guide to modern conveyancing practice."—*Literature.*

"We should like to see it placed by his principal in the hands of every articled clerk. One of the most useful practical works we have ever seen."—*Law Stu. Jo.*

Hood and Challis' Conveyancing and Settled Land Acts, and some other recent Acts affecting Conveyancing. With Commentaries. By H. J. HOOD and H. W. CHALLIS. Fifth Edition. By H. W. CHALLIS, assisted by J. I. STIRLING, Esqrs., Barristers-at-Law. Royal 8vo. 1898. 18*s.*

"That learned, excellent and useful work."—*Law Times.*

"This is the best collection of conveyancing statutes with which we are acquainted. . . . The excellence of the commentaries which form part of this book is so well known that it needs no recommendation from us."—*Law Journal.*

Jackson and Gosset.—*Vide* "Investigation of Title."

Jackson and Gosset's Precedents of Purchase and Mortgage Deeds.—By W. HOWLAND JACKSON and THOROLD GOSSET, Esqrs., Barristers-at-Law. Demy 8vo. 1899. 7*s.* 6*d.*

"Not the least merit of the collection is that each Precedent is complete in itself, so that no dipping about and adaptation from other parts of the book are necessary."—*Law Journal*, Dec. 30, 1899.

*** This forms a companion volume to "Investigation of Title" by the same Authors, *vide* p. 17.

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

CONVEYANCING—*continued.*

Morris.—*Vide* "Patents."

Palmer's Company Precedents.—For use in relation to Companies subject to the Companies Acts.

Part I. COMPANY FORMS. Arranged as follows:—Promoters, Prospectuses, Underwriting, Agreements, Memoranda and Articles of Association, Private Companies, Employés' Benefits, Resolutions, Notices, Certificates, Powers of Attorney, Debentures and Debenture Stock, Banking and Advance Securities, Petitions, Writs, Pleadings, Judgments and Orders, Reconstruction, Amalgamation, Special Acts. With Copious Notes and an Appendix containing the Acts and Rules. Seventh Edition. By FRANCIS BEAUFORT PALMER, Esq., Barrister-at-Law, assisted by the Hon. CHARLES MACNAGHTEN, Q.C., and ARTHUR JOHN CHITTY, Esq., Barrister-at-Law. Royal 8vo. 1898. 36*s.*

"No company lawyer can afford to be without it."—*Law Journal.*

Part II. WINDING-UP FORMS AND PRACTICE. Arranged as follows:—Compulsory Winding-Up, Voluntary Winding-Up, Winding-Up under Supervision, Arrangements and Compromises, with Copious Notes, and an Appendix of Acts and Rules. Eighth Edition. By FRANCIS BEAUFORT PALMER, assisted by FRANK EVANS, Esqrs., Barristers-at-Law. Royal 8vo. 1900. (*Nearly ready.*) 32*s.*

"Palmer's 'Company Precedents' is the book *par excellence* for practitioners. There is nothing we can think of which should be within the covers which we do not find."—*Law Journal.*

Part III. DEBENTURES AND DEBENTURE STOCK, including Debentures, Trust Deeds, Stock Certificates, Resolutions, Prospectuses, Writs, Pleadings, Judgments, Orders, Receiverships, Notices, Miscellaneous. With Copious Notes. Eighth Edition. By FRANCIS BEAUFORT PALMER, Esq., Barrister-at-Law. Royal 8vo. 1900. (*Nearly ready.*) 21*s.*

Prideaux's Precedents in Conveyancing—With Dissertations on its Law and Practice. 17th Edit. By JOHN WHITCOMBE, Esq., Barrister-at-Law. 2 vols. Royal 8vo. 1899. 3*l.* 10*s.*

"'Prideaux' is the best work on Conveyancing."—*Law Journal.*

"Accurate, concise, clear, and comprehensive in scope, and we know of no treatise upon Conveyancing which is so generally useful to the practitioner."—*Law Times.*

"Recent legislation has compelled the Editor to re-write some of the preliminary dissertations. He has evidently taken great pains to incorporate the effect of the Land Transfer Act of 1897."—*The Times.*

CORONERS.—Jervis on Coroners.—The Coroners Acts, 1887 and 1892. With Forms and Precedents. Sixth Edition. By R. E. MELSHEIMER, Esq., Barrister-at-Law. Post 8vo. 1898. 10*s.* 6*d.*

"In all respects adequate and exhaustive."—*Law Times.*

COSTS.—Johnson's Bills of Costs in the High Court of Justice and Court of Appeal, in the House of Lords and the Privy Council; with the Scales of Costs and Tables of Fees in use in the Houses of Lords and Commons, relative to Private Bills; Election Petitions, Parliamentary and Municipal. Inquiries and Arbitrations under the Lands Clauses Consolidation Act and other Arbitrations. Proceedings in the Court of the Railway and Canal Commission, in the County Court and the Mayor's Courts. The Scales of Costs and Tables of Fees in use in the Court of Passage, Liverpool, and Conveyancing Costs; with Orders and Rules as to Costs and Court Fees, and Notes and Decisions relating thereto. By HORACE MAXWELL JOHNSON, Esq., Barrister-at-Law. Royal 8vo. 1897. 1*l.* 12*s.*

"It is difficult to conceive how any costs clerk or solicitor can go wrong with a work of this kind to guide him."—*Law Times.*

"We consider the book marvellously accurate, and we are able to commend it in all confidence. On the law of bills of costs the practitioner, let his business be as wide as it may, wants nothing but such a work as the one before us."—*Law Notes.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

COSTS—*continued.*

Summerhays and Toogood's Precedents of Bills of Costs Seventh Edition. By THORNTON TOOGOOD, THOMAS CHARLES TOOGOOD, and C. GILBERT BARBER, Solicitors. Royal 8vo. 1896. 1*l.* 10*s.*

Webster's Parliamentary Costs.—Private Bills, Election Petitions, Appeals, House of Lords. Fourth Edition. By C. CAVANAGH, Esq., Barrister-at-Law. Post 8vo. 1881. 20*s.*

COUNTY COURT APPEALS.—Chamier's Law and Practice relating to County Court Appeals; Mandamus, Prohibition, and Certiorari. By DANIEL CHAMIER, Esq. Demy 8vo. 1896. 10*s.*

COUNTY COURTS.—The Annual County Court Practice, 1900.—By His Honour Judge SMYLY, Q.C. 2 vols. 8vo. 1*l.* 5*s.*

COVENANTS.—Hamilton's Concise Treatise on the Law of Covenants.—By G. BALDWIN HAMILTON, Esq., Barrister-at-Law. Demy 8vo. 1888. 7*s.* 6*d.*

CRIMINAL LAW.—Archbold's Pleading and Evidence in Criminal Cases.—With the Statutes, Precedents of Indictments, &c. Twenty-second Edition. By WILLIAM F. CRAIES and GUY STEPHENSON, Esqrs., Barristers-at-Law. Demy 8vo. 1900. 1*l.* 11*s.* 6*d.*

Chitty's Collection of Statutes relating to Criminal Law.—(Reprinted from "Chitty's Statutes.") With an Introduction and Index. By W. F. CRAIES, Esq., Barrister-at-Law. Royal 8vo. 1894. 10*s.*

Disney and Gundry's Criminal Law.—A Sketch of its Principles and Practice. By HENRY W. DISNEY and HAROLD GUNDRY, Esqrs., Barristers-at-Law. Demy 8vo. 1895. 7*s.* 6*d.*

"We think we have here just what students want. The work is based upon a perfect knowledge of the statute law, and is compiled from the best and most recent authorities."—*Law Times.*

Kershaw's Brief Aids to Criminal Law.—With Notes on the Procedure and Evidence. By HILTON KERSHAW, Esq., Barrister-at-Law. Royal 12mo. 1897. 3*s.*

Mews.—*Vide* "Digest."

Roscoe's Digest of the Law of Evidence in Criminal Cases.—Twelfth Edition. By A. P. PERCEVAL KEEP, Esq., Barrister-at-Law. Demy 8vo. 1898. 1*l.* 11*s.* 6*d.*

"To the criminal lawyer it is his guide, philosopher and friend. What Roscoe says most judges will accept without question."—*Law Times.*

☞ **References to the provisions of the Criminal Evidence Act, 1898, have been inserted throughout the volume, and the Act itself printed in the Appendix of Statutes.**

Russell's Treatise on Crimes and Misdemeanors.—Sixth Edit. By HORACE SMITH, Esq., Metropolitan Police Magistrate, and A. P. PERCEVAL KEEP, Esq. 3 vols. Roy. 8vo. 1896. 5*l.* 15*s.* 6*d.*

"No library can be said to be complete without the new edition of Russell on Crimes."—*Law Times.*

"Indispensable in every Court of criminal justice here and in our Colonies."—*The Times.*

Shirley's Sketch of the Criminal Law.—Second Edition. By CHARLES STEPHEN HUNTER, Esq., Barrister-at-Law. Demy 8vo. 1889. 7*s.* 6*d.*

Warburton.—*Vide* "Leading Cases." Thring.—*Vide* "Navy."

DEATH DUTIES.—Freeth's Acts relating to the New Death Duty, with an Introduction, A Digest, Copious Notes, and an Appendix containing the Estate Duty Forms, and the Rules. Second Edition. By EVELYN FREETH, Esq., Deputy-Controller of Legacy and Succession Duties. Demy 8vo. 1897. 12*s.* 6*d.*

"The official position of the Author renders his opinion on questions of procedure of great value, and we think that this book will be found very useful to solicitors who have to prepare accounts for duty."—*Solicitors' Journal.*

Harman's Finance Act, 1894, so far as it relates to the Death Duties. With an Introduction and Notes, and an Appendix of Forms. By J. E. HARMAN, Esq., Barrister-at-Law. Royal 12mo. 1894. 5*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

DIGESTS.—Campbell's Ruling Cases.—Arranged, Annotated, and Edited by ROBERT CAMPBELL, of Lincoln's Inn, Esq., Barrister-at-Law, Advocate of the Scotch Bar, assisted by other Members of the Bar. With American Notes by IRVING BROWNE, formerly Editor of the American Reports, and the Hon. LEONARD A. JONES. Royal 8vo. 1894-1899. *Half vellum, gilt top, net, each* 25*s.*

The following Volumes have been published:—

I.—Abandonment—Action.
II.—Action—Amendment.
III.—Ancient Light—Banker.
IV.—Bankruptcy—Bill of Lading.
V.—Bill of Sale—Conflict of Laws.
VI.—Contract.
VII.—Conversion—Counsel.
VIII.—Criminal Law—Deed.
IX.—Defamation — Dramatic and Musical Copyright.
X.—Easement—Estate.
XI.—Estoppel—Execution.
XII.—Executor—Indemnity.
XIII.—Infant—Insurance.
XIV.—Insurance—Interpretation.
XV.—Judge—Landlord and Tenant.
XVI.—Larceny—Mandate.
XVII.—Manorial Right—Mistake.
XVIII.—Mortgage—Negligence.
XIX.—Negligence—Partnership.
XX.—Patent. (*Nearly ready.*)
XXI.—Payment—Purchase for Value without Notice. (*In the press.*)
XXII.—Quo Warranto—River. (*In preparation.*)

*** The Volumes are sold separately.

An Addendum, containing, under the appropriate title and rule, Notes of Cases published since the issue of Volume I., together with a complete Index of Cases and a general Index to the first 10 *Volumes, thus bringing all the Volumes up to date. Royal* 8*vo.* 1897. *Half vellum, net,* 20*s.*

*** **SPECIAL OFFER TO NEW SUBSCRIBERS:**

Vols. 1 to 20, ABANDONMENT—PATENT, with Index to Vols. 1 to 10, net, £20.

PLAN OF THE WORK.

All the useful authorities of English Case Law, from the earliest period to the present time, on points of general application, are collected and arranged in alphabetical order of subjects.

The matter under each alphabetical heading is arranged in sections, in an order indicated at the commencement of the heading. The more important and Ruling Cases are set forth at length, subject only to abridgment where the original report is unnecessarily diffuse. The effect of the less important or subordinate cases is stated briefly in the Notes.

The aim of the Work is to furnish the practitioner with English Case Law in such a form that he will readily find the information he requires for ordinary purposes. The Ruling Case will inform him, or refresh his memory, as to the principles; and the Notes will show in detail how the principles have been applied or modified in other cases.

The Work will be completed in 25 Volumes.

"One of the most ambitious, and ought to be, when it is complete, one of the most generally useful legal works which the present century has produced."—*Literature.*

"A perfect storehouse of the principles established and illustrated by our case law and that of the United States."—*Law Times.*

"The general scheme appears to be excellent, and its execution reflects the greatest credit on everybody concerned. It may, indeed, be said to constitute, for the present, the high-water mark of the science of book-making."—*Sat. Rev.*

"A Cyclopædia of law . . . . most ably executed, learned, accurate, clear, concise; but perhaps its chief merit is that it impresses on us what the practising English lawyer is too apt to forget—that English law really is a body of principles."—*The British Review.*

"The Series has been maintained at a high level of excellence."—*The Times,* September 20th, 1899.

Dale and Lehmann's Digest of Cases, Overruled, Not Followed, Disapproved, Approved, Distinguished, Commented on and specially considered in the English Courts. By CHAS. WM. MITCALFE DALE, and RUDOLF CHAMBERS LEHMANN, assisted by CHAS. H. L. NEISH, and HERBERT H. CHILD, Esqrs., Barristers-at-Law. Royal 8vo. 1887. (Published at 2*l.* 10*s.*) *Reduced to net,* 25*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

DIGESTS—*continued.*

Marsden.—*Vide* "Shipping."

Mews' Digest of Cases relating to Criminal Law down to the end of 1897.—By JOHN MEWS, Esq., Barrister-at-Law. Royal 8vo. 1898. 25*s.*

MEWS' DIGEST OF ENGLISH CASE LAW.—Containing the Reported Decisions of the Superior Courts, and a Selection from those of the Irish Courts, to the end of 1897. Under the general Editorship of JOHN MEWS, assisted by W. F. BARRY, E. E. H. BIRCH, A. H. BITTLESTON, B. A. COHEN, W. I. COOK, E. W. HANSELL, J. S. HENDERSON, A. LAWRENCE, J. M. LELY, R. C. MACKENZIE, E. MANSON, R. G. MARSDEN, H. J. NEWBOLT, A. E. RANDALL, J. RITCHIE, J. SMITH, J. F. WALEY, T. H. WALKER, and W. A. G. WOODS, Esqrs., Barristers-at-Law. In 16 vols. Royal 8vo. £20

(*Bound in half calf, gilt top, £3 net extra.*)

"A vast undertaking. . . . We have tested several parts of the work, with the result of confirming our impression as to the accuracy of a work which is indispensable to lawyers."—*The Times.*

*** Lists of Cases followed, overruled, questioned, &c., have been omitted from this DIGEST, but the Publishers have in preparation a New Edition of DALE and LEHMANN'S "OVERRULED CASES" brought down to the end of 1899, by W. A. G. WOODS and J. RITCHIE, Esqrs., Barristers-at-Law.

The Annual Digest for 1898. By JOHN MEWS, Esq., Barrister-at-Law. Royal 8vo. 1899. 15*s.*

*** This Digest is also issued quarterly, each part being cumulative. Price to Subscribers, for the four parts *payable in advance, net* 17*s.*

Law Journal Quinquennial Digest, 1890-95.—An Analytical Digest of Cases Published in the Law Journal Reports, and the Law Reports, from Michaelmas Sittings, 1890, to Trinity Sittings, 1895. By GEORGE A. STREETEN, Esq., Barrister-at-Law. 1896. 1*l.* 10*s.*

*** To Subscribers to the Law Journal Reports, *net* 5*s.*, postage 6*d.*

"Extremely well done, with abundance of headings and cross references . . . could not be done better."—*Law Times.*

Talbot and Fort's Index of Cases Judicially noticed (1865—1890); being a List of all Cases cited in Judgments reported from Michaelmas Term, 1865 to the end of 1890, with the places where they are so cited.—By GEORGE JOHN TALBOT and HUGH FORT, Esqrs., Barristers-at-Law. Royal 8vo. 1891. 25*s.*

"This is an invaluable tool for the worker among cases."—*Solicitors' Journal.*

DISCOVERY.—Sichel and Chance's Discovery.—The Law relating to Interrogatories, Production, Inspection of Documents, and Discovery, as well in the Superior as in the Inferior Courts, together with an Appendix of the Acts, Forms and Orders. By WALTER S. SICHEL. and WILLIAM CHANCE, Esqrs., Barristers-at-Law. Demy 8vo. 1883. 12*s.*

DISTRESS.—Oldham and Foster on the Law of Distress.—A Treatise on the Law of Distress, with an Appendix of Forms, Table of Statutes, &c. Second Edition. By ARTHUR OLDHAM and A. LA TROBE FOSTER, Esqrs., Barristers-at-Law. Demy 8vo. 1889. 18*s.*

DISTRICT COUNCILS.—Chambers' Digest of the Law relating to District Councils, so far as regards the Constitution, Powers and Duties of such Councils (including Municipal Corporations) in the matter of Public Health and Local Government. Ninth Edition. —By GEORGE F. CHAMBERS, Esq., Barrister-at-Law. Royal 8vo. 1895. 10*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

DIVORCE.—Browne and Powles' Law and Practice in Divorce and Matrimonial Causes. Sixth Edition. By L. D. POWLES, Esq., Barrister-at-Law. Demy 8vo. 1897. 25*s.*

"The practitioner's standard work on divorce practice."—*Law Quar. Rev.*

Kelly's French Law.—*Vide* "Marriage."

DOGS.—Lupton's Law relating to Dogs.—By FREDERICK LUPTON, Solicitor. Royal 12mo. 1888. 5*s.*

DOMESDAY BOOK AND BEYOND.—Three Essays in the Early History of England. By Professor MAITLAND. 1897. 8vo. 15*s.*

EASEMENTS.—Campbell's Ruling Cases. Vol. X.—*Vide* "Digests."

Goddard's Treatise on the Law of Easements.—By JOHN LEYBOURN GODDARD, Esq., Barrister-at-Law. Fifth Edition. Demy 8vo. 1896. 1*l.* 5*s.*

"Has taken its place as a standard treatise by virtue of that best evidence of merit, the favour of those for whom it was written."—*J. of British Architects.*

"Nowhere has the subject been treated so exhaustively, and, we may add, so scientifically, as by Mr. Goddard. We recommend it to the most careful study of the law student, as well as to the library of the practitioner."—*Law Times.*

Innes' Digest of the Law of Easements. Sixth Edition. By L. C. INNES, lately one of the Judges of Her Majesty's High Court of Judicature, Madras. Royal 12mo. 1900. 7*s.* 6*d.*

"Constructed with considerable care and pains."—*Law Journal.*

"We have only the pleasing duty remaining of recommending the book to those in search of a concise treatise on the law of Easements."—*Law Notes.*

ECCLESIASTICAL LAW.—Phillimore's Ecclesiastical Law of the Church of England. By the late Sir ROBERT PHILLIMORE, Bart., D.C.L. Second Edition, by his son Sir WALTER GEORGE FRANK PHILLIMORE, Bart., D.C.L., assisted by C. F. JEMMETT, B.C.L., LL.M., Barrister-at-Law. 2 vols. Royal 8vo. 1895. 3*l.* 3*s.*

"The famous treatise of Sir Robert Phillimore will continue to hold a foremost place in our legal literature."—*Law Times.*

"The task of re-editing Phillimore's 'Ecclesiastical Law' was not an easy one. Sir Walter Phillimore has executed it with brilliant success. He has brought to the work all his father's subdued enthusiasm for the Church, he has omitted nothing that lent value to the original treatise, he has expunged from it what could be spared, and has added to it everything that the ecclesiastical lawyer can possibly need to know."—*Law Journal.*

Whitehead's Church Law.—Being a Concise Dictionary of Statutes, Canons, Regulations, and Decided Cases affecting the Clergy and Laity. Second Edition. By BENJAMIN WHITEHEAD, Esq., Barrister-at-Law. Demy 8vo. 1899. 10*s.* 6*d.*

"A perfect mine of learning on all topics ecclesiastical."—*Daily Telegraph.*

ELECTION IN EQUITY.—Serrell's Equitable Doctrine of Election. By GEORGE SERRELL, M.A., LL.D., Esq., Barrister-at-Law. Royal 12mo. 1891. 7*s.* 6*d.*

ELECTIONS.—Day's Election Cases in 1892 and 1893.—Being a Collection of the Points of Law and Practice, together with Reports of the Judgments. By S. H. DAY, Esq., Barrister-at-Law, Editor of "Rogers on Elections." Royal 12mo. 1894. 7*s.* 6*d.*

Hedderwick's Parliamentary Election Manual: A Practical Handbook on the Law and Conduct of Parliamentary Elections in Great Britain and Ireland, designed for the Instruction and Guidance of Candidates, Agents, Canvassers, Volunteer Assistants, &c. By T. C. H. HEDDERWICK, Esq., Barrister-at-Law. Demy 12mo. 1892. 7*s.* 6*d.*

"Clear and well arranged."—*Law Quarterly Review.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

ESTOPPEL.—Everest and Strode's Law of Estoppel. By LANCELOT FIELDING EVEREST, and EDMUND STRODE, Esqrs., Barristers-at-Law. Demy 8vo. 1884. 18*s.*

EVIDENCE.—Campbell's Ruling Cases. Vol. XI.—*Vide* "Digests."

Wills' Theory and Practice of the Law of Evidence.—By WM. WILLS, Esq., Barrister-at-Law. Demy 8vo. 1894. 10*s.* 6*d.*

"It contains a large amount of valuable information, very tersely and accurately conveyed."—*Law Times.*

"We consider that Mr. Wills has given the profession a useful book on a difficult subject."—*Law Notes.*

EVIDENCE ON COMMISSION.—Hume-Williams and Macklin's Taking of Evidence on Commission: including therein Special Examinations, Letters of Request, Mandamus and Examinations before an Examiner of the Court. By W. E. HUME-WILLIAMS and A. ROMER MACKLIN, Barristers-at-Law. Demy 8vo. 1895. 12*s.* 6*d.*

EXAMINATION GUIDES.—Bar Examination Guide. By H. D. WOODCOCK, and R. C. MAXWELL, Esqrs., Barristers-at-Law. Published after each Examination. *Net* 2*s.* 6*d.*

Bar Examination Guide—Vols. I. to IV. (1895, 1896, 1897 and 1898). *Each, net* 7*s.* 6*d.*

Bar Examination Guide—Lecture Supplement, 1896. *Net* 2*s.*

Shearwood's Guide for Candidates for the Professions of Barrister and Solicitor.—Second Edition. By JOSEPH A. SHEARWOOD, Esq., Barrister-at-Law. Demy 8vo. 1887. 6*s.*

Uttley's How to Become a Solicitor; or, Hints for Articled Clerks.—By T. F. UTTLEY, Solicitor. Royal 12mo. 1894. 5*s.*

EXECUTIONS.—Edwards' Law of Execution upon Judgments and Orders of the Chancery and Queen's Bench Divisions. By C. J. EDWARDS, Esq., Barrister-at-Law. Demy 8vo. 1888. 16*s.*

EXECUTORS.—Macaskie's Treatise on the Law of Executors and Administrators. By S. C. MACASKIE, Esq., Barrister-at-Law. 8vo. 1881. 10*s.* 6*d.*

Williams' Law of Executors and Administrators.—Ninth Edition. By the Hon. Sir ROLAND VAUGHAN WILLIAMS, a Justice of the High Court. 2 vols. Roy. 8vo. 1893. 3*l.* 16*s.*

"We can conscientiously say that the present edition will not only sustain, but enhance the high reputation which the book has always enjoyed. The want of a new edition has been distinctly felt for some time, and in this work, and in this work only, will the practitioner now find the entire law relating to executors and administrators treated in an exhaustive and authoritative fashion, and thoroughly brought down to the present date."—*Law Journal.*

Williams' Law relating to Legal Representatives.—Real and Personal. By SYDNEY E. WILLIAMS, Esq., Author of "Law and Practice relating to Petitions," &c. Demy 8vo. 1899. *Cloth,* 10*s.*

"We can commend to both branches of the profession, and more especially to solicitors."—*Law Times.*

"An excellent law book, excellently got up, and though it deals with a subject on which there is an ample literature, its existence is justified by its aim at being 'in as short a form as possible, a summary of the law of legal representatives as modified by the Land Transfer Act, 1897.'"—*Pall Mall Gazette.*

FARM, LAW OF.—Dixon's Law of the Farm: including the Cases and Statutes relating to the subject; and the Agricultural Customs of England and Wales. Fifth Edition. By AUBREY J. SPENCER, Esq., Barrister-at-Law. Demy 8vo. 1892. 26*s.*

"A complete modern compendium on agricultural matters."—*Law Times.*

FINANCE ACT.—*Vide* "Death Duties."

FIXTURES.—Amos and Ferard on the Law of Fixtures and other Property partaking both of a Real and Personal Nature. Third Edition. By C. A. FERARD and W. HOWLAND ROBERTS, Esqrs., Barristers-at-Law. Demy 8vo. 1883. 18*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

FORMS.—Archibald.—*Vide* "Chamber Practice."
Bullen and Leake.—*Vide* "Pleading."

Chitty's Forms of Practical Proceedings in the Queen's Bench Division.—Thirteenth Edition. By T. W. CHITTY and HERBERT CHITTY, Esqrs., Barristers-at-Law. (*In preparation.*)

Daniell's Forms and Precedents of Proceedings in the Chancery Division of the High Court of Justice and on Appeal therefrom.—Fourth Edition. By CHARLES BURNEY, B.A., a Chief Clerk of the Hon. Mr. Justice Chitty. Royal 8vo. 1885. 2*l.* 10*s.*
"The standard work on Chancery Procedure."—*Law Quarterly Review.*

Seton.—*Vide* "Equity."

FRAUD AND MISREPRESENTATION.—Moncreiff's Treatise on the Law relating to Fraud and Misrepresentation.—By the Hon. F. MONCREIFF, Barrister-at-Law. 8vo. 1891. 21*s.*

FRENCH CIVIL CODE.—Cachard's French Civil Code.—By HENRY CACHARD, B.A., and Counsellor-at-Law of the New York Bar, Licencié en Droit de la Faculté de Paris. Demy 8vo. 1895. 20*s.*
Code of Commerce.—*Vide* "Commercial Law."

FRENCH COMMERCIAL LAW.—Goirand's Treatise upon French Commercial Law and the Practice of all the Courts.—With a Theoretical and Practical Commentary. The text of the laws relating thereto, including the entire Code of Commeroe, with a Dictionary of French Judicial Terms. Second Edition. By LEOPOLD GOIRAND, Licencié en droit. Demy 8vo. 1898. 1*l.*

FRENCH LAW.—Sewell's Outline of French Law as affecting British Subjects. By J. T. B. SEWELL, M.A., LL.D., Solicitor. Demy 8vo. 1897. 10*s.* 6*d.*

GAME LAWS.—Warry's Game Laws of England. With an Appendix of the Statutes relating to Game. By G. TAYLOE WARRY, Esq., Barrister-at-Law. Royal 12mo. 1896. 10*s.* 6*d.*
"The author has treated the subject in a clear and lucid style."—*Law Times.*

GOLD COAST ORDINANCES.—Griffith's Ordinances of the Gold Coast Colony.—By Sir WILLIAM BRANDFORD GRIFFITH, Chief Justice of the Gold Coast Colony. 2 vols. Roy. 8vo. 1898. 3*l.*

GOODWILL.—Allan's Law relating to Goodwill.—By CHARLES E. ALLAN, M.A., LL.B., Esq., Barrister-at-Law. Demy 8vo. 1889. 7*s.* 6*d.*
Sebastian.—*Vide* "Trade Marks."

HACKNEY CARRIAGES.—*Vide* "Motor Cars."

HIGHWAYS.—Chambers' Law relating to Highways and Bridges. By GEORGE F. CHAMBERS, Esq., Barrister-at-Law. 1878. 7*s.* 6*d.*

HOUSE TAX.—Ellis' Guide to the House Tax Acts, for the use of the Payer of Inhabited House Duty in England.—By ARTHUR M. ELLIS, LL.B. (Lond.), Solicitor, Author of "A Guide to the Income Tax Acts." Royal 12mo. 1885. 6*s.*
"We have found the information accurate, complete and very clearly expressed."—*Solicitors' Journal.*

HUSBAND AND WIFE.—Lush's Law of Husband and Wife, within the jurisdiction of the Queen's Bench and Chancery Divisions. By C. MONTAGUE LUSH, Esq., Barrister-at-Law. Second Edition. By the Author and W. H. GRIFFITH, Esq., Barrister-at-Law. Demy 8vo. 1896. 1*l.* 5*s.*
"To the practising lawyer the work will be of the utmost importance."—*Law Times.*
"This book will certainly be consulted when difficulties arise relative to the position of married women."—*Law Journal.*

INCOME TAX.—Ellis' Guide to the Income Tax Acts.—For the use of the English Income Tax Payer. Third Edition. By ARTHUR M. ELLIS, LL.B. (Lond.), Solicitor. Royal 12mo. 1893. 7*s.* 6*d.*
"Contains in a convenient form the law bearing upon the Income Tax."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

INCOME TAX—*continued.*

Robinson's Law relating to Income Tax; with the Statutes, Forms, and Decided Cases in the Courts of England, Scotland, and Ireland.—By ARTHUR ROBINSON, Esq., Barrister-at-Law. Royal 8vo. 1895. 21*s.*

"The standard work on a complicated and difficult subject."—*Law Journal.*

INDIA.—Ilbert's Government of India.—Being a Digest of the Statute Law relating thereto, with Historical Introduction and Illustrative Documents. By SIR COURTENAY ILBERT, K.C.S.I. Demy 8vo. 1898. 21*s.*

INLAND REVENUE. — Highmore's Summary Proceedings in Inland Revenue Cases in England and Wales.—Second Edition. By N. J. HIGHMORE, Esq., Barrister-at-Law, and of the Solicitors' Department, Inland Revenue. Roy. 12mo. 1887. 7*s.* 6*d.*

Highmore's Inland Revenue Regulation Act, 1890, as amended by the Public Accounts and Charges Act, 1891, and the Finance Act, 1896, with other Acts; with Notes, Table of Cases, &c. By NATHANIEL J. HIGHMORE, Esq., Barrister-at-Law, Assistant Solicitor of Inland Revenue. Demy 8vo. 1896. 7*s.* 6*d.*

INSURANCE.—Arnould on the Law of Marine Insurance.—Sixth Edition. By DAVID MACLACHLAN, Esq., Barrister-at-Law. 2 vols. Royal 8vo. 1887. 3*l.*

Campbell's Ruling Cases. Vols. XIII. and XIV.—*Vide* "Digests."

McArthur on the Contract of Marine Insurance.—Third Edit. By CHARLES MCARTHUR, Average Adjuster. (*In preparation.*)

Marsden.—*Vide* "Shipping."

Tyser's Law relating to Losses under a Policy of Marine Insurance.—By CHARLES ROBERT TYSER, Esq., Barrister-at-Law. Demy 8vo. 1894. 10*s.* 6*d.*

"A clear, correct, full, and yet concise statement of the law."—*Law Times.*

INTERNATIONAL LAW.—Baker's First Steps in International Law. Prepared for the Use of Students. By Sir SHERSTON BAKER, Bart., Barrister-at-Law. Demy 8vo. 1899. 12*s.*

Dicey.—*Vide* "Conflict of Laws."

Hall's International Law.—Fourth Edit. Demy 8vo. 1895. 1*l.* 2*s.* 6*d.*

Hall's Treatise on the Foreign Powers and Jurisdiction of the British Crown. By W. E. HALL, Esq., Barrister-at-Law. Demy 8vo. 1894. 10*s.* 6*d.*

Holland's Studies in International Law.—By THOMAS ERSKINE HOLLAND, D.C.L., Barrister-at-Law. Demy 8vo. 1898. 10*s.* 6*d.*

Kent's Commentary on International Law.—Edited by J. T. ABDY, LL.D. Second Edition. Crown 8vo. 1878. 10*s.* 6*d.*

Nelson's Private International Law.—By HORACE NELSON, Esq., Barrister-at-Law. Roy. 8vo. 1889. 21*s.*

"The notes are full of matter, and avoid the vice of discursiveness, cases being cited for practically every proposition."—*Law Times.*

Rattigan's Private International Law.—By Sir WILLIAM HENRY RATTIGAN, LL.D., Barrister-at-Law, Vice-Chancellor of the University of the Punjab. Demy 8vo. 1895. 10*s.* 6*d.*

"Written with admirable clearness."—*Law Journal.*

Walker's Manual of Public International Law.—By T. A. WALKER, M.A., LL.D., Esq., Barrister-at-Law. Demy 8vo. 1895. 9*s.*

Walker's History of the Law of Nations.—Vol. I., from the Earliest Times to the Peace of Westphalia, 1648. By T. A. WALKER, M.A., LL.D., Esq., Barrister-at-Law. Demy 8vo. 1899. *Net* 10*s.*

Westlake's International Law.—Chapters on the Principles of International Law. By J. WESTLAKE, Q.C., LL.D. Demy 8vo. 1894. 10*s.*

Wheaton's Elements of International Law; Third English Edition. Edited with Notes and Appendix of Statutes and Treaties. By A. C. BOYD, Esq., Barrister-at-Law. Royal 8vo. 1889. 1*l.* 10*s.*

"Wheaton stands too high for criticism, whilst Mr. Boyd's merits as an editor are almost as well established."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

LAND TAX.—Bourdin's Land Tax.—An Exposition of the Land Tax. Including the Latest Judicial Decisions, and the Changes in the Law effected by the Taxes Management Act, &c. Fourth Edition. By the late FREDERICK HUMPHREYS, Deputy Registrar of Land Tax; and Digests of Cases decided in the Courts by CHARLES C. ATCHISON, Deputy Registrar of Land Tax. Royal 12mo. 1894. *7s. 6d.*

Atchison's Land Tax.—Changes Effected in the Processes of Assessment and Redemption by Part VI. of the Finance Act, 1896 (59 & 60 Vict. c. 28). By CHARLES C. ATCHISON, Deputy Registrar of Land Tax. Royal 12mo. 1897. *Net*, 2*s.* 6*d.*

*** *Forms a Supplement to above.*

LAND TRANSFER.—Brickdale and Sheldon's Land Transfer Acts, 1875 and 1897.—With a Commentary on the Acts, and Introductory Chapters explanatory of the Acts, and the Conveyancing Practice thereunder; also the Land Registry Rules, Forms, and Fee Order, Orders in Council for Compulsory Registration, &c., with Forms of Precedents and Model Registers, &c. By C. FORTESCUE BRICKDALE, Chief Assistant Registrar at the Land Registry, and W. R. SHELDON, Esqrs., Barristers-at-Law. Royal 8vo. 1899. 20*s.*

"Not often is a statute so carefully edited."—The *Times*, Sept. 20, 1899.

"Contains not only lengthy and valuable notes and annotations on the Land Transfer Acts and Rules, but also full and separate dissertations on the law, procedure, and practice thereunder."—*Law Times*, January 28, 1899.

Webster.—*Vide* "Vendor and Purchaser."

LANDLORD and TENANT.—Campbell's Ruling Cases. Vol. XV. —*Vide* "Digests."

Redman and Lyon's Law of Landlord and Tenant.—Including the Practice of Ejectment, with an Appendix containing the Agricultural Holdings Act, 1883. Annotated. Fifth Edition. By JOSEPH H. REDMAN, Esq., Barrister-at-Law. Demy 8vo.

(*In preparation.*)

Woodfall's Law of Landlord and Tenant.—With a full Collection of Precedents and Forms of Procedure; containing also a collection of Leading Propositions. Sixteenth Edition, containing the Statutes and Cases down to Lady Day, 1898. By J. M. LELY, Esq., Barrister-at-Law. Roy. 8vo. 1898. 1*l.* 18*s.*

"It stands pre-eminent as the chief authority amongst law books on the subject of landlord and tenant."—*Law Journal.*

"Nothing that we can say will add to the high reputation of 'Woodfall.'"—*Law Notes*, June, 1898.

LANDS CLAUSES ACTS.—Jepson's Lands Clauses Consolidation Acts; with Decisions, Forms, and Table of Costs. By ARTHUR JEPSON, Esq., Barrister-at-Law. Demy 8vo. 1880. 18*s.*

LAW JOURNAL REPORTS.—Edited by JOHN MEWS, Esq., Barrister-at-Law. Published monthly. *Annual Subscription:*—

Reports and Public General Statutes *Net*, 3*l.* 4*s.*

Reps. Stats. & Mews' Annual Digest (*Issued Quarterly*) *Net*, 3*l.* 10*s.*

Or, with the Law Journal weekly, 1*l.* extra.

LAW LIST.—Law List (The).—Comprising the Judges and Officers of the Courts of Justice, Counsel, Special Pleaders, Conveyancers, Solicitors, Proctors, Notaries, &c., in England and Wales; the Circuits, Judges, Treasurers, Registrars, and High Bailiffs of the County Courts; Metropolitan and Stipendiary Magistrates, Official Receivers under the Bankruptcy Act, Law and Public Officers in England and the Colonies, Foreign Lawyers with their English Agents, Clerks of the Peace, Town Clerks, Coroners, &c., &c., and Commissioners for taking Oaths, Conveyancers Practising in England under Certificates obtained in Scotland. Compiled, so far as relates to Special Pleaders, Conveyancers, Solicitors, Proctors and Notaries, by JOHN SAMUEL PURCELL, C.B., Controller of Stamps, and Registrar of Joint Stock Companies, and Published by the Authority of the Commissioners of Inland Revenue and of the Incorporated Law Society. 1899. (Postage 6*d.* extra.) *Net*, 10*s.* 6*d.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

LAW QUARTERLY REVIEW—Edited by Sir FREDERICK POLLOCK, Bart., M.A., LL.D. Vols. I.—XV. (with General Indices to Vols. I. to XV.) Royal 8vo. 1885-99. *Each*, 12*s*.

☞ *Annual Subscription post free* 12*s*. 6*d*., *net*. *Single numbers, each* 5*s*.

"A little criticism, a few quotations, and a batch of anecdotes, afford a sauce that makes even a quarter's law reporting amusing reading."—*Law Journal.*

"The greatest of legal quarterly reviews . . . the series of 'Notes' always so entertaining and illustrative, not merely of the learning of the accomplished jurist (the Editor) but of the grace of language with which such learning can be unfolded."—*Law Jour.*

LAWYER'S ANNUAL LIBRARY—

(1) The Annual Practice.—SNOW, BURNEY, and STRINGER.
(2) The Annual Digest.—MEWS. (*Issued Quarterly.*)
(3) The Annual Statutes.—LELY.
(4) The Annual County Court Practice.—SMYLY.

☞ *Annual Subscriptions. For* Complete Series, as above, delivered on the day of publication, *net*, 2*l*. 5*s*. Nos. 1, 2, and 3 only, *net*, 1*l*. 15*s*. Nos. 2, 3, and 4 only, *net*, 1*l*. 15*s*. (*Carriage extra*, 2*s*.)

Full prospectus forwarded on application.

LAWYER'S COMPANION.—*Vide* "Diary."

LEADING CASES.—Ball's Leading Cases. *Vide* "Torts."

Shirley's Selection of Leading Cases in the Common Law. With Notes. By W. S. SHIRLEY, Esq., Barrister-at-Law. Fifth Edition. By RICHARD WATSON, Esq., Barrister-at-Law. Demy 8vo. 1896. 16*s*.

"A sound knowledge of common law can be gleaned from Shirley."—*Law Notes.*

Warburton's Selection of Leading Cases in the Criminal Law. With Notes. By HENRY WARBURTON, Esq., Barrister-at-Law. [Founded on "Shirley's Leading Cases."] Second Edition. Demy 8vo. 1897. 10*s*. 6*d*.

"The cases have been well selected, and arranged. . . . We consider that it will amply repay the student or the practitioner to read both the cases and the notes."—*Justice of the Peace.*

LEGAL INTERPRETATION.—Beal's Cardinal Rules of Legal Interpretation.—Collected and Arranged by EDWARD BEAL, Esq., Barrister-at-Law. Royal 8vo. 1896. 12*s*. 6*d*.

"Invaluable to the student. To those with a limited library, or a busy practice, it will be indispensable."—*Justice of Peace.*

LEXICON.—*Vide* "Dictionary."

LIBEL AND SLANDER.—Odgers on Libel and Slander.—A Digest of the Law of Libel and Slander: with the Evidence, Procedure, Practice, and Precedents of Pleadings, both in Civil and Criminal Cases. Third Edition. By W. BLAKE ODGERS, LL.D., one of Her Majesty's Counsel. Royal 8vo. 1896. 32*s*.

"The best modern book on the law of libel."—*Daily News.*

"The most scientific of all our law books. . . . . In its new dress this volume is secure of an appreciative professional welcome."—*Law Times.*

"The general opinion of the profession has always accorded a high place to Mr. Blake Odgers' learned work, and the new edition cannot but enhance that opinion."—*Law Journal.*

LICENSING.—Lathom's Handy Guide to the Licensing Acts. By H. W. LATHOM, Solicitor. Royal 12mo. 1894. 5*s*.

"This book is arranged in dictionary form, with especial regard to ease of reference, and should prove an immense saving of time and labour to the large class to whom it is addressed. The mass of confusing statute and case law on this wide subject has been most ably codified."—*Law Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

LICENSING—*continued.*

Talbot's Law and Practice of Licensing.—Being a Digest of the Law regulating the Sale by Retail of Intoxicating Liquor. With a full Appendix of Statutes and Forms. By GEORGE JOHN TALBOT, Esq., Barrister-at-Law. With Addendum containing the decision of the House of Lords in *Boulter* v. *Justices of Kent*. 12mo. 1896. 7*s*. 6*d*.

"His method gives professional men a guide to the legislation afforded by no other book."—*Law Journal.*

LOCAL AND MUNICIPAL GOVERNMENT.—Bazalgette and Humphreys' Law relating to County Councils.—Third Edition. By GEORGE HUMPHREYS, Esq. Royal 8vo. 1889. 7*s*. 6*d*.

Bazalgette and Humphreys' Law relating to Local and Municipal Government. Comprising the Statutes relating to Public Health, Municipal Corporations, Highways, Burial, Gas and Water, Public Loans, Compulsory Taking of Lands, Tramways, Electric Lighting, &c. With Addenda. By C. NORMAN BAZALGETTE and G. HUMPHREYS, Esqrs., Barristers-at-Law. Sup. royal 8vo. 1888. 3*l*. 3*s*.

Chambers.—*Vide* "District Councils."

Humphreys.—*Vide* "Parish Law."

LONDON LOCAL GOVERNMENT.—Hunt's London Local Government. The Law relating to the London County Council, the Vestries and District Boards elected under the Metropolis Management Acts, and other Local Authorities. By JOHN HUNT, Esq., Barrister-at-Law. 2 vols. Royal 8vo. 1897. 3*l*. 3*s*.

"This very comprehensive and well-arranged code of London Local Government will be invaluable to local authorities, the legal profession and others directly interested in the subject."—*London.*

"Concise, accurate and useful."—*Law Journal.*

"We heartily recommend Mr. Hunt's work."—*County Council Times.*

Hunt's London Government Act, 1899.—The Law relating to Metropolitan Boroughs and Borough Councils. By JOHN HUNT, Esq., Barrister-at-Law, Author of "London Local Government." Royal 8vo. 1899. 7*s*. 6*d*.

"Mr. Hunt deals systematically with all the sections of the Act, and the mass of legislation incorporated by reference."—*Law Journal.*

LUNACY.—Heywood and Massey's Lunacy Practice.—By ARTHUR HEYWOOD and ARNOLD MASSEY, Solicitors. Demy 8vo. 1900. 7*s*. 6*d*.

MAGISTRATES' PRACTICE and MAGISTERIAL LAW.—*Vide* "Justice of the Peace."

MARINE INSURANCE.—*Vide* "Insurance."

MARITIME DECISIONS.—Douglas' Maritime Law Decisions.—Compiled by ROBT. R. DOUGLAS. Demy 8vo. 1888. 7*s*. 6*d*.

MARRIAGE.—Kelly's French Law of Marriage, Marriage Contracts, and Divorce, and the Conflict of Laws arising therefrom. Second Edition. By OLIVER E. BODINGTON, Esq., Barrister-at-Law, Licencié en Droit de la Faculté de Paris. Roy. 8vo. 1895. 21*s*.

MARRIED WOMEN'S PROPERTY.—Lush's Married Women's Rights and Liabilities in relation to Contracts, Torts, and Trusts. By MONTAGUE LUSH, Esq., Barrister-at-Law, Author of "The Law of Husband and Wife." Royal 12mo. 1887. 5*s*.

MASTER AND SERVANT.—Macdonell's Law of Master and Servant. Second Edition. By JOHN MACDONELL, LL.D., M.A., C.B., Esq., a Master of the Supreme Court. (*In preparation.*)

MEDICAL PARTNERSHIPS.—Barnard and Stocker's Medical Partnerships, Transfers, and Assistantships.—By WILLIAM BARNARD, Esq., Barrister-at-Law, and G. BERTRAM STOCKER, Esq., Managing Director of the Scholastic, Clerical and Medical Association (Limited). Demy 8vo. 1895. 10*s*. 6*d*

*** *All standard Law Works are kept in Stock, in law calf and other bindings*

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

NISI PRIUS.—Roscoe's Digest of the Law of Evidence on the Trial of Actions at Nisi Prius.—Sixteenth Edition. By MAURICE POWELL, Esq., Barrister-at-Law. 2 vols. Demy 8vo. 1891. 2*l.* 10*s.*

"Continues to be a vast and closely packed storehouse of information on practice at Nisi Prius."—*Law Journal.*

NOTARY.—Brooke's Treatise on the Office and Practice of a Notary of England.—With a full collection of Precedents. Fifth Ed. By G. F. CHAMBERS, Esq., Barrister-at-Law. Demy 8vo. 1890. 1*l.* 1*s.*

OATHS.—Stringer's Oaths and Affirmations in Great Britain and Ireland; being a Collection of Statutes, Cases, and Forms, with Notes and Practical Directions for the use of Commissioners for Oaths, and of all Courts of Civil Procedure and Offices attached thereto. By FRANCIS A. STRINGER, of the Central Office, Royal Courts of Justice, one of the Editors of the "Annual Practice." Second Edition. Crown 8vo. 1893. 4*s.*

"Indispensable to all commissioners."—*Solicitors' Journal.*

OTTOMAN CIVIL LAW.—Grigsby's Medjellé, or Ottoman Civil Law.—Translated into English. By W. E. GRIGSBY, LL.D., Esq., Barrister-at-Law. Demy 8vo. 1895. 21*s.*

PARISH LAW.—Humphreys' Parish Councils.—The Law relating to Parish Councils, being the Local Government Act, 1894; with an Appendix of Statutes, together with an Introduction, Notes, and a Copious Index. Second Edition. By GEORGE HUMPHREYS, Esq., Barrister-at-Law, Author of "The Law relating to County Councils," &c. Royal 8vo. 1895. 10*s.*

Steer's Parish Law. Being a Digest of the Law relating to the Civil and Ecclesiastical Government of Parishes and the Relief of the Poor. Sixth Edition. By W. H. MACNAMARA, Esq., Assistant Master of the Supreme Court, Registrar of the Court constituted under the Benefices Act, 1898. Demy 8vo. 1899. 20*s.*

"Will be of great service both to lawyers and to parochial officers."—*Solicitors' Journal.*

"A most useful book of reference on all matters connected with the parish, both civil and ecclesiastical."—*Law Journal.*

"Kept in touch with every recent change."—*Law Times.*

PARTNERSHIP.—Pollock's Digest of the Law of Partnership; incorporating the Partnership Act, 1890. Sixth Edition. By Sir FREDERICK POLLOCK, Bart., Barrister-at-Law. Author of "Principles of Contract," "The Law of Torts," &c. Demy 8vo. 1895. 8*s.* 6*d.*

"We are confident this book will be most popular as well as extremely useful."—*Law Times.*

PATENTS.—Edmunds on Patents.—The Law and Practice of Letters Patent for Inventions. By LEWIS EDMUNDS, Q.C. Second Edition. By T. M. STEVENS, Esq., Barrister-at-Law. Roy. 8vo. 1897. 1*l.* 12*s.*

"We have nothing but commendation for the book."—*Solicitors' Journal.*

"It would be difficult to make it more complete."—*Law Times.*

Edmunds' Patents, Designs and Trade Marks Acts, 1883 to 1888, Consolidated with an Index. Second Edition. By LEWIS EDMUNDS, Q.C., D.Sc., LL.B. Imp. 8vo. 1895. *Net* 2*s.* 6*d.*

Gordon's Monopolies by Patents and the Statutable Remedies available to the Public. By J. W. GORDON, Esq., Barrister-at-Law. Demy 8vo. 1897. 18*s.*

"A treatise which we think must take a unique place in our legal literature."—*Law Times.*

Gordon's Compulsory Licences under the Patents Acts. By J. W. GORDON, Esq., Barrister-at-Law, Author of "Monopolies by Patent." Demy 8vo. 1899. 15*s.*

Johnson's Patentees' Manual.—A Treatise on the Law and Practice of Patents for Inventions. Sixth Edition. By JAMES JOHNSON, Esq., Barrister-at-Law; and J. HENRY JOHNSON, Solicitor and Patent Agent. Demy 8vo. 1890. 10*s.* 6*d.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

PATENTS—*continued.*

Morris's Patents Conveyancing.—Being a Collection of Precedents in Conveyancing in relation to Letters Patent for Inventions. With Dissertations and Copious Notes on the Law and Practice. By ROBERT MORRIS, Esq., Barrister-at-Law. Royal 8vo. 1887. 1*l.* 5*s.*

Thompson's Handbook of Patent Law of all Countries.—By WM. P. THOMPSON. Tenth Edition, with Addendum. 12mo. 1899. *Net*, 2*s.* 6*d.*

Thompson's Handbook of British Patent Law. Eleventh Edition. 12mo. 1899. *Net* 6*d.*

PAWNBROKING.—Attenborough's Law of Pawnbroking, with the Pawnbrokers Act, 1872, and the Factors Act, 1889, and Notes thereon. By CHARLES L. ATTENBOROUGH, Esq., Barrister-at-Law. Post 8vo. 1897. 3*s.*

PERSONAL PROPERTY.—Smith.—*Vide* "Real Property."

PLEADING.—Bullen and Leake's Precedents of Pleadings, with Notes and Rules relating to Pleading. Fifth Edition. Revised and Adapted to the Present Practice in the Queen's Bench Division of the High Court of Justice. By THOMAS J. BULLEN, Esq., Barrister-at-Law, CYRIL DODD, Esq., Q.C., and C. W. CLIFFORD, Esq., Barrister-at-Law. Demy 8vo. 1897. 38*s.*

"The standard work on modern pleading."—*Law Journal*, April 10, 1897.

Odgers' Principles of Pleading, Practice and Procedure in Civil Actions in the High Court of Justice.—Third Edition. By W. BLAKE ODGERS, LL.D., Q.C., Recorder of Winchester, Author of "A Digest of the Law of Libel and Slander." Demy 8vo. 1897. 12*s.* 6*d.*

"The student or practitioner who desires instruction and practical guidance in our modern system of pleading cannot do better than possess himself of Mr. Odgers' book."—*Law Journal.*

"Includes a careful outline of the procedure in an ordinary action at law. This sketch will be of the utmost value to students, and ought to win the approval also of examining bodies, as it is remarkably free from any adaptability to the purposes of the mere crammer. New chapters dealing respectively with parties, joinder of causes of action, jurisdiction, trial, appeals, execution, and costs, and an appendix with 120 precedents have been added."—*Literature*, Nov. 13, 1897.

POISONS.—Reports of Trials for Murder by Poisoning.—With Chemical Introductions and Notes. By G. LATHAM BROWNE, Esq., Barrister-at-Law, and C. G. STEWART, Senior Assistant in the Laboratory of St. Thomas's Hospital, &c. Demy 8vo. 1883. 12*s.* 6*d.*

POWERS.—Farwell on Powers.—A Concise Treatise on Powers. Second Edition. By GEORGE FARWELL, Esq., Q.C., assisted by W. R. SHELDON, Esq., Barrister-at-Law. Royal 8vo. 1893. 1*l.* 5*s.*

"The practitioner and the judge will find it comprehensive and complete."—*Law Times.*

PRINCIPAL AND AGENT.—Wright's Law of Principal and Agent. By E. B. WRIGHT, Esq., Barrister-at-Law. Demy 8vo. 1894. 18*s.*

"Clearly arranged and clearly written."—*Law Times.*

"May with confidence be recommended to all legal practitioners as an accurate and handy text book on the subjects comprised in it."—*Solicitors' Journal.*

PRIVY COUNCIL LAW.—Wheeler's Privy Council Law: A Synopsis of all the Appeals decided by the Judicial Committee (including Indian Appeals) from 1876 to 1891. Together with a précis of the Cases from the Supreme Court of Canada. By GEORGE WHEELER, Esq., Barrister-at-Law, and of the Judicial Department of the Privy Council. Royal 8vo. 1893. 31*s.* 6*d.*

PROBATE.—Powles and Oakley's Law and Practice relating to Probate and Administration. By L. D. POWLES, Barrister-at-Law, and T. W. H. OAKLEY, of the Probate Registry. (Being a Third Edition of "Browne on Probate.") Demy 8vo. 1892. 1*l.* 10*s.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

PROPERTY.—*See also* "Real Property."

Raleigh's Outline of the Law of Property.—Demy 8vo. 1890. 7*s.* 6*d.*

Strahan's General View of the Law of Property.—Second Edit. By J. A. STRAHAN, assisted by J. SINCLAIR BAXTER, Esqrs., Barristers-at-Law. Demy 8vo. 1897. 12*s.* 6*d.*

"The student will not easily find a better general view of the law of property than that which is contained in this book."—*Solicitors' Journal*, Dec. 11, 1897.

"We know of no better book for the class-room and the student who desires a concise and scientific exposition of our law."—*Law Times*, Dec. 11, 1897.

PUBLIC HEALTH.—Bazalgette and Humphreys.—*Vide* "Local and Municipal Government."

Hunt.—*Vide* "London Local Government."

PUBLIC MEETINGS.—Chambers' Handbook for Public Meetings, including Hints as to the Summoning and Management of them. Second Edition. By GEORGE F. CHAMBERS, Esq., Barrister-at-Law. Demy 8vo. 1886. *Net*, 2*s.* 6*d.*

QUARTER SESSIONS.—*See* "Criminal Law."

RAILWAY RATES.—Darlington's Railway Rates and the Carriage of Merchandise by Railway; including the Provisional Orders of the Board of Trade as sanctioned by Parliament, containing the Classification of Traffic and Schedule of Maximum Rates and Charges applicable to the Railways of Great Britain and Ireland. By H. R. DARLINGTON, Esq., Barrister-at-Law. Demy 8vo. 1893. 1*l.* 5*s.*

RAILWAYS.—Browne and Theobald's Law of Railway Companies.—Being a Collection of the Acts and Orders relating to Railway Companies in Great Britain and Ireland, with Notes of all the Cases decided thereon. Third Edition. By J. H. BALFOUR BROWNE, Esq., one of Her Majesty's Counsel, and FRANK BALFOUR BROWNE, Esq., Barrister-at-Law. Royal 8vo. 1899. 2*l.* 2*s.*

"Contains in a very concise form the whole law of railways."—*The Times.*

"It is difficult to find in this work any subject in connection with railways which is not dealt with."—*Law Times*, Nov. 18, 1899.

"Practitioners who require a comprehensive treatise on railway law will find it indispensable."—*Law Journal*, Nov. 18, 1899.

RATES AND RATING.—Castle's Law and Practice of Rating.—Third Edition. By EDWARD JAMES CASTLE, Esq., one of Her Majesty's Counsel. Demy 8vo. 1895. 25*s.*

"A sure and safe guide, avoiding all speculation as to what the law might be."—*Law Magazine.*

"Mr. Castle's book has hitherto held a very high place, and the success that has attended it seems assured to the new edition."—*Law Journal.*

"A compendious treatise, which has earned the goodwill of the Profession on account of its conciseness, its lucidity, and its accuracy."—*Law Times.*

Chambers' Law relating to Local Rates; with especial reference to the Powers and Duties of Rate-levying Local Authorities, and their Officers; comprising the Statutes in full and a Digest of 718 Cases. Second Edition. By G. F. CHAMBERS, Esq., Barrister-at-Law. Royal 8vo. 1889. 10*s.* 6*d.*

REAL PROPERTY.—Digby's History of the Law of Real Property. Fifth Edition. Demy 8vo. 1897. 12*s.* 6*d.*

Leake's Elementary Digest of the Law of Property in Land.—Containing: Introduction. Part I. The Sources of the Law.—Part II. Estates in Land.—Part III. The Law of Uses and Profits of Land. By STEPHEN MARTIN LEAKE, Barrister-at-Law. Demy 8vo. 1874—1888. *Net*, 30*s.*

Lightwood's Treatise on Possession of Land: with a chapter on the Real Property Limitation Acts, 1833 and 1874.—By JOHN M. LIGHTWOOD, Esq., Barrister-at-Law. Demy 8vo. 1894. 15*s*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

ROMAN LAW—*continued.*

Greene's Outlines of Roman Law.—Consisting chiefly of an Analysis and Summary of the Institutes. For the use of Students. By T. Whitcombe Greene, Barrister-at-law. Fourth Edition. Foolscap 8vo. 1884. 7*s.* 6*d.*

Grueber's Lex Aquilia.—The Roman Law of Damage to Property: being a Commentary on the Title of the Digest "Ad Legem Aquiliam" (ix. 2). With an Introduction to the Study of the Corpus Iuris Civilis. By Erwin Grueber, Dr. Jur., M.A. 8vo. 1886. 10*s.* 6*d.*

Holland's Institutes of Justinian.—Second Edition. Extra fcap. 8vo. 1881. 5*s.*

Holland and Shadwell's Select Titles from the Digest of Justinian.—Demy 8vo. 1881. 14*s.*

Holland's Gentilis, Alberici, I.C.D., I.C.P.R., de Iure Belli Libri Tres.—Edidit T. E. Holland, I.C.D. Small 4to., half-morocco. 21*s.*

Monro's Digest IX. 2. Lex Aquilia. Translated, with Notes, by C. H. Monro, M.A. Crown 8vo. 1898. 5*s.*

Monro's Digest XIX. 2, Locati Conducti. Translated, with Notes, by C. H. Monro, M.A. Crown 8vo. 1891. 5*s.*

Monro's Digest XLVII. 2, De Furtis. Translated, with Notes, by C. H. Monro, M.A. Crown 8vo. 1893. 5*s.*

Moyle's Imperatoris Justiniani Institutiones.—Third Edition. 2 vols. Demy 8vo. 1896. 1*l.* 2*s.*

Poste's Elements of Roman Law.—By Gaius. With a Translation and Commentary. Third Edition. By Edward Poste, Esq., Barrister-at-Law. Demy 8vo. 1890. 18*s.*

Roby's Introduction to the Study of Justinian's Digest, containing an account of its composition and of the Jurists used or referred to therein. By H. J. Roby, M.A. Demy 8vo. 1886. 9*s.*

Roby's Justinian's Digest.—Lib. VII., Tit. I. De Usufructu, with a Legal and Philological Commentary. By H. J. Roby, M.A. Demy 8vo. 1884. 9*s.*

Or the Two Parts complete in One Volume. Demy 8vo. 18*s.*

Sohm's Institutes of Roman Law.—By Rudolph Sohm, Professor in the University of Leipzig. Translated (from the Fourth Edition of the German) by J. C. Ledlie, B.C.L., M.A. With an Introductory Essay by Erwin Grueber, Dr. Jur., M.A. 8vo. 1892. 18*s.*

Walker's Selected Titles from Justinian's Digest.—Annotated by the late Bryan Walker, M.A., LL.D.

Part I. Mandati vel Contra. Digest XVII. 1. Crown 8vo. 1879. 5*s.*

Part II. De Adquirendo rerum dominio, and De Adquirenda vel amittenda possessione. Digest XLI. 1, 2. Second Edition. (*In the press.*)

Part III. De Condictionibus. Digest XII. 1 and 4—7, and Digest XIII. 1—3. Crown 8vo. 1881. 6*s.*

Walker's Fragments of the Perpetual Edict of Salvius Julianus. Collected and annotated by Bryan Walker, M.A., LL.D. Crown 8vo. 1877. 6*s.*

Whewell's Grotius de Jure Belli et Pacis, with the Notes of Barbeyrac and others; accompanied by an abridged Translation of the Text, by W. Whewell, D.D. 3 vols. Demy 8vo. 1853. 12*s.*

The Translation separate. 6*s.*

RULING CASES.—Campbell.—*Vide* "Digests," p. 10.

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

SALES.—Blackburn on Sales. A Treatise on the Effect of the Contract of Sale on the Legal Rights of Property and Possession in Goods, Wares, and Merchandise. By Lord BLACKBURN. 2nd Edit. By J. C. GRAHAM, Esq., Barrister-at-Law. Royal 8vo. 1885. 1*l.* 1*s.*

"We have no hesitation in saying that the work has been edited with remarkable ability and success."—*Law Quarterly Review.*

SALES OF LAND.—Clerke and Humphry's Concise Treatise on the Law relating to Sales of Land. By AUBREY ST. JOHN CLERKE, and HUGH M. HUMPHRY, Esqrs., Barristers-at-Law. Royal 8vo. 1885. 1*l.* 5*s.*

SALVAGE.—Kennedy's Treatise on the Law of Civil Salvage.—By the Hon. Sir WILLIAM R. KENNEDY, a Justice of the High Court. Royal 8vo. 1891. 12*s.*

"The best work on the law of salvage. It is a complete exposition of the subject, and as such is accurate and exhaustive."—*Law Times.*

SHERIFF LAW.—Mather's Compendium of Sheriff Law, especially in relation to Writs of Execution.—By PHILIP E. MATHER, Solicitor and Notary, formerly Under Sheriff of Newcastle-on-Tyne. Royal 8vo. 1894. 25*s.*

"We think that this book will be of very great assistance to any persons who may fill the positions of high sheriff and under-sheriff from this time forth. The whole of the legal profession will derive great advantage from having this volume to consult."—*Law Times.*

SHIPPING.—Marsden's Digest of Cases relating to Shipping, Admiralty, and Insurance Law, down to the end of 1897.—By REGINALD G. MARSDEN, Esq., Barrister-at-Law, Author of "The Law of Collisions at Sea." Royal 8vo. 1899. 30*s.*

Pulling's Merchant Shipping Act, 1894.—With Introduction, Notes, and Index. By ALEXANDER PULLING, Esq., Barrister-at-Law. Royal 8vo. 1894. *Net* 6*s.*

Pulling's Shipping Code; being the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60); With Introduction, Notes, Tables, Rules, Orders, Forms, and a Full Index.—By ALEXANDER PULLING, Esq., Barrister-at-Law. Royal 8vo. 1894. *Net* 7*s.* 6*d.*

Interleaved and bound in blue leather, net 11*s.*

Temperley's Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60). With an Introduction; Notes, including all Cases decided under the former enactments consolidated in this Act; a Comparative Table of Sections of the Former and Present Acts; an Appendix of Rules, Regulations, Forms, etc., and a Copious Index.—By ROBERT TEMPERLEY, Esq., Barrister-at-Law. Royal 8vo. 1895. 25*s.*

"A full, complete, and most satisfactory work."—*Law Quarterly Review.*
"A monument of well-directed industry and knowledge directed to the elucidation of the most comprehensive and complicated Act."—*Law Journal.*

SLANDER.—Odgers.—*Vide* "Libel and Slander."

SOLICITORS.—Cordery's Law relating to Solicitors of the Supreme Court of Judicature. With an Appendix of Statutes and Rules, the Colonial Attornies Relief Acts, and Notes on Appointments open to Solicitors, and the Right to Admission to the Colonies, to which is added an Appendix of Precedents. Third Edition. By A. CORDERY, Esq., Barrister-at-Law. Demy 8vo. 1899. 21*s.*

"The leading authority on the law relating to solicitors."—*Law Journal.*
"A complete compendium of the law."—*Law Times.*
"Thoroughly up to date in every respect."—*Law Quarterly Review.*

Turner.—*Vide* "Conveyancing" and "Vendors and Purchasers."

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

SPECIFIC PERFORMANCE.—Fry's Treatise on the Specific Performance of Contracts. By the Right Hon. Sir EDWARD FRY. Third Edition. By the Author and E. PORTSMOUTH FRY, Esq., Barrister-at-Law. Royal 8vo. 1892. 1*l.* 16*s.*

"The standard work on Specific Performance."—*Law Gazette.*

STAMP LAWS.—Highmore's Stamp Laws.—Being the Stamp Acts of 1891: with the Acts amending and extending the same, including the Finance Act, 1899, together with other Acts imposing or relating to Stamp Duties, and Notes of Decided Cases; also an Introduction, and an Appendix containing Tables showing the comparison with the antecedent Law. By NATHANIEL JOSEPH HIGHMORE, Assistant-Solicitor of the Inland Revenue. Demy 8vo. 1900. 10*s.* 6*d.*

"A useful guide to those who desire to understand the present state of the stamp laws."—*Law Journal.*

STATUTE LAW.—Wilberforce on Statute Law. The Principles which govern the Construction and Operation of Statutes. By E. WILBERFORCE, Esq., Barrister-at-Law. 1881. 18*s.*

STATUTES, and *vide* "Acts of Parliament."

Chitty's Statutes.—New Edition.—The Statutes of Practical Utility, from the earliest times to 1894 inclusive. Arranged in Alphabetical and Chronological Order; with Notes and Indexes. Fifth Edition. By J. M. LELY, Esq., Barrister-at-Law. Royal 8vo. *Complete with Index. In* 13 *Volumes.* 1894–1895. 13*l.* 13*s.*

Annual Supplements. By J. M. LELY, ESQ. 1895, 5*s.* 1896, 10*s.* 1897, 5*s.* 1898, 7*s.* 6*d.* 1899, 7*s.* 6*d.*

"It is a book which no public library should be without."—*Spectator.*

"We think that the present edition will not only keep up, but add to the reputation of the work, and render it a work of permanent value to the practising lawyer."—*Solicitors' Journal.*

"The profession will feel grateful both to the editor and the publishers of a work which will be found of the highest value."—*Law Journal.*

"A legal work of the very highest importance. . . . Few besides lawyers will, we suspect, realise the amount of work which such an undertaking involves to the editor, who appears to have spared no pains to give a clear, orderly, and methodical character to the compilation."—*Daily News.*

"This collection has fulfilled a purpose of usefulness only to be understood by those who are acquainted with the amazing complexity of English statute law, with its bewildering incoherence and painful heterogeneity."—*Pall Mall Gazette.*

"The efforts of the editor of Chitty's Statutes are directed to the collection and arrangement, under convenient heads, of all the body of practical legislation under which we live."—*Daily Chronicle.*

"Indispensable in the library of every lawyer."—*Saturday Review.*

"We have examined, with some care and much interest, each volume as it has come with rapidity and accuracy from the press, and we must confess to some amazement at the remarkable skill and expedition with which the compilation has progressed. Not only to lawyers, but to all concerned with the laws of England, Chitty's Statutes of Practical Utility are of essential importance, whilst to the practising lawyer they are an absolute necessity."—*Law Times.*

"It is apparently the belief of some popular novelists that lawyers in their difficulties still uniformly consult daily Coke upon Littleton and Blackstone. Those who know better are aware that the lawyer's Bible is the 'Statutes of Practical Utility'—that they are his working tools, even more than accredited text-books or 'authorised reports.' More than one judge has been heard to say that with the 'Statutes of Practical Utility' at his elbow on the bench he was apprehensive of no difficulties which might arise."—*The Times.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings*

THIS PAGE IS LOCKED TO FREE MEMBERS

Purchase full membership to immediately unlock this page

DELVE INTO FANTASY, MAGIC, MYTHOLOGY & FOLKLORE

Forgotten Books' Full Membership gives access to 797,885 ancient and modern, fiction and non-fiction books.

Continue

*Fair usage policy applies

TRADE MARKS.—Sebastian on the Law of Trade Marks and their Registration, and matters connected therewith, including a chapter on Goodwill; the Patents, Designs and Trade Marks Acts, 1883-8, and the Trade Marks Rules and Instructions thereunder; with Forms and Precedents; the Merchandize Marks Acts, 1887-94, and other Statutory Enactments; the United States Statutes, 1870-82, and the Rules and Forms thereunder; and the Treaty with the United States, 1877. By LEWIS BOYD SEBASTIAN, Esq., Barrister-at-Law. Fourth Edition. By the Author and HARRY BAIRD HEMMING, Esq., Barrister-at-Law. Royal 8vo. 1899. 1*l.* 10*s.*

"Stands alone as an authority upon the law of trade-marks and their registration."—*Law Journal.*

"It is rarely we come across a law book which embodies the results of years of careful investigation and practical experience in a branch of law, or that can be unhesitatingly appealed to as a standard authority. This is what can be said of Mr. Sebastian's book."—*Solicitors' Journal.*

Sebastian's Digest of Cases of Trade Mark, Trade Name, Trade Secret, Goodwill, &c., decided in the Courts of the United Kingdom, India, the Colonies, and the United States of America. By LEWIS BOYD SEBASTIAN, Esq., Barrister-at-Law. 8vo. 1879. 1*l.* 1*s.*

"Will be of very great value to all practitioners who have to advise on matters connected with trade marks."—*Solicitors' Journal.*

TRAMWAYS.—Sutton's Tramway Acts of the United Kingdom; with Notes on the Law and Practice, an Introduction, including the Proceedings before the Committees, Decisions of the Referees with respect to Locus Standi, and a Summary of the Principles of Tramway Rating, and an Appendix containing the Standing Orders of Parliament. Rules of the Board of Trade relating to Tramways, &c. Second Edition. By HENRY SUTTON, assisted by ROBERT A. BENNETT, Barristers-at-Law. Demy 8vo. 1883. 15*s.*

TRUSTS AND TRUSTEES.—Ellis' Trustee Act, 1893, including a Guide for Trustees to Investments. By ARTHUR LEE ELLIS, Esq., Barrister-at-Law. Fifth Edit. Roy. 12mo. 1894. 6*s.*

"The entire Act is annotated, and the way in which this is done is satisfactory."—*Law Journal.*

"Mr. Arthur Lee Ellis gives many valuable hints to trustees, not only with regard to the interpretation of the measure, but also with regard to investments."

Godefroi's Law Relating to Trusts and Trustees.—Second Edit. By HENRY GODEFROI, of Lincoln's Inn, Esq., Barrister-at-Law. Royal 8vo. 1891. 1*l.* 12*s.*

"The second edition of this work which lies before us is a model of what a legal text-book ought to be. It is clear in style and clear in arrangement."—*Law Times.*

VENDORS AND PURCHASERS.—Dart's Vendors and Purchasers.—A Treatise on the Law and Practice relating to Vendors and Purchasers of Real Estate. By the late J. HENRY DART, Esq., one of the Six Conveyancing Counsel of the High Court of Justice, Chancery Division. Sixth Edition. By WILLIAM BARBER, Esq., Q.C., RICHARD BURDON HALDANE, and WILLIAM ROBERT SHELDON, Esqrs., Barristers-at-Law. 2 vols. Royal 8vo. 1888. 3*l.* 15*s.*

"The extensive changes and numerous improvements which have been introduced are the result of assiduous labour, combined with critical acumen, sound knowledge, and practical experience. . . . . For the copious and excellent index we have nothing but praise. We have been informed that an authority of the highest eminence has pronounced it to be the best in any existing law book, and we humbly concur in that opinion."—*Law Quarterly Review.*

Turner's Duties of Solicitor to Client as to Sales, Purchases, and Mortgages of Land.—Second Edition. By W. L. HACON, Esq., Barrister-at-Law. Demy 8vo. 1893. 10*s.* 6*d.*

"The most skilled in practical conveyancing would gain many useful hints from a perusal of the book, and we recommend it in all confidence."—*Law Notes.*

*** *All standard Law Works are kept in Stock, in law calf and other bindings.*

VENDORS AND PURCHASERS—*continued.*

Webster's Law Relating to Particulars and Conditions of Sale on a Sale of Land.—With Appendix of Forms. Second Edition. By WILLIAM FREDERICK WEBSTER, Esq., Barrister-at-Law. Royal 8vo. 1896. 25*s.*

"This is the Second Edition of a well arranged and useful book, and the usefulness will not be impaired by the fact that the authority for each proposition and the reference to such authority are cited in the text itself instead of being relegated to a footnote."—*Law Journal.*

Webster's Conditions of Sale under the Land Transfer Acts, 1875 and 1897. Being a Supplement to above. Royal 8vo. 1899. *Net* 2*s.*

WAR, DECLARATION OF.—Owen's Declaration of War.—A Survey of the Position of Belligerents and Neutrals, with relative considerations of Shipping and Marine Insurance during War. By DOUGLAS OWEN, Esq., Barrister-at-Law. Demy 8vo. 1889. 21*s.*

Owen's Maritime Warfare and Merchant Shipping.—A Summary of the Rights of Capture at Sea. By DOUGLAS OWEN, Esq., Barrister-at-Law. Demy 8vo. 1898. *Net* 2*s.*

WILLS.—Theobald's Concise Treatise on the Law of Wills.—Fourth Edition. By H. S. THEOBALD, Esq., Barrister-at-Law. Royal 8vo. 1895. 30*s.*

"Comprehensive though easy to use, and we advise all conveyancers to get a copy of it without loss of time."—*Law Journal.*

"Of great ability and value. It bears on every page traces of care and sound judgment."—*Solicitors' Journal.*

"The work is, in our opinion, an excellent one, and of very great value, not only as a work of reference, but also for those who can afford to give special time to the study of the subject with which it deals."—*Law Student's Journal.*

Weaver's Precedents of Wills.—A Collection of Concise Precedents of Wills, with Introduction, Notes, and an Appendix of Statutes. By CHARLES WEAVER, B.A. Post 8vo. 1882. 5*s.*

WINDING UP.—Palmer's Company Precedents.—For use in relation to Companies, subject to the Companies Acts, 1862—1890. Part II. WINDING-UP FORMS AND PRACTICE. Arranged as follows:—Compulsory Winding-Up, Voluntary Winding-Up, Winding-Up under Supervision, Arrangements and Compromises, with copious Notes, and an Appendix of Acts and Rules. Eighth Edition. By FRANCIS BEAUFORT PALMER, assisted by FRANK EVANS, Esqrs., Barristers-at-Law. Royal 8vo. 1900. (*Nearly ready.*) 32*s.*

"Palmer's 'Company Precedents' is the book *par excellence* for practitioners. . . . . It is needless to recommend Mr. Palmer's book to the profession, for it is already known and appreciated. We advise those who have any doubts to consult it, and they will be in agreement with us."—*Law Journal.*

"Simply invaluable, not only to company lawyers, but to everybody connected with companies."—*Financial News.*

WORKMEN'S COMPENSATION ACT.—*Vide* "Employers' Liability."

WRECK INQUIRIES.—Murton's Law and Practice relating to Formal Investigations in the United Kingdom, British Possessions and before Naval Courts into Shipping Casualties and the Incompetency and Misconduct of Ships' Officers. With an Introduction. By WALTER MURTON, Solicitor to the Board of Trade. Demy 8vo. 1884. 1*l.* 4*s.*

WRONGS.—Addison, Ball, Pollock, Shearwood.—*Vide* "Torts."

PREPARING FOR PUBLICATION.

Annual Digest, 1899.—Edited by JOHN MEWS, Esq., Barrister-at-Law. (*Nearly ready.*)

Arnould on the Law of Marine Insurance.—Seventh Edition. By EDWARD LOUIS DE HART and RALPH ILIFF SIMEY, Esqrs., Barristers-at-Law. (*In preparation.*)

Campbell's Ruling Cases.—Arranged, Annotated and Edited by R. CAMPBELL, Esq., Barrister-at-Law; with American Notes by the late IRVING BROWNE, Esq., and the Hon. LEONARD A. JONES.
Vol. XX.: "Patent." (*Nearly ready.*) [(*In the press.*)
Vol. XXI.: "Payment" to "Purchase for Value without Notice."
Vol. XXII. "Quo Warranto" to "River." (*In preparation.*)
To be completed in 25 Volumes.

Chitty's Forms of Practical Proceedings in the Queen's Bench Division.—Thirteenth Edition. By T. W. CHITTY and HERBERT CHITTY, Esqrs., Barristers-at-Law. (*In preparation.*)

Digest of Cases, Overruled, Approved, or otherwise specially considered in the English Courts to the end of 1899. With extracts from the Judgments dealing with the same. By W. A. G. WOODS and J. RITCHIE, Esqrs., Barristers-at-Law. Being a new edition of "DALE and LEHMANN'S Digest." (*In preparation.*)

Jepson's Lands Clauses Consolidation Acts.—Second Edition. By J. M. LIGHTWOOD, Esq., Barrister-at-Law. (*In preparation.*)

MacArthur on the Contract of Marine Insurance.—Third Edition. By CHARLES MACARTHUR, Esq., Average Adjuster. (*In preparation.*)

Macdonell's Law of Master and Servant.—Second Edition. By JOHN MACDONELL, LL.D., C.B., Esq., a Master of the Supreme Court. (*In preparation.*)

Palmer's Company Precedents.—For use in relation to Companies subject to the Companies Acts.
Part II. WINDING-UP FORMS AND PRACTICE. With an Appendix of Acts and Rules. Eighth Edition. By FRANCIS BEAUFORT PALMER, assisted by FRANK EVANS, Esqrs., Barristers-at-Law. (*Nearly ready.*)
Part III. DEBENTURES AND DEBENTURE STOCK. With copious Notes. Eighth Edition. By FRANCIS BEAUFORT PALMER, Esq., Barrister-at-Law. (*Nearly ready.*)

Redman and Lyon's Law of Landlord and Tenant, including the Practice of Ejectment. Fifth Edition. By JOSEPH H. REDMAN, Esq., Barrister-at-Law. (*In preparation.*)

Roscoe's Digest of the Law of Evidence on the Trial of Actions at Nisi Prius.—Seventeenth Edition. By MAURICE POWELL, Esq., Barrister-at-Law. (*In the press.*)

Russell's Treatise on the Power and Duty of an Arbitrator, and the Law of Submissions and Awards; with an Appendix of Forms, and of the Statutes relating to Arbitration. Eighth Edition. By EDWARD JAMES POLLOCK, Esq., an Official Referee of the Supreme Court of Judicature; and the late HERBERT RUSSELL, Esq., Barrister-at-Law. (*Nearly ready.*)

Shirley's Selection of Leading Cases in the Common Law.—With Notes. By W. S. SHIRLEY, Esq., Barrister-at-Law. Sixth Edition. By RICHARD WATSON, Esq., Barrister-at-Law. (*In the press.*)

Smith's Manual of Equity Jurisprudence for Practitioners and Students. By JOSIAH W. SMITH, Q.C. Fifteenth Edition. By SYDNEY E. WILLIAMS, Esq. (*Nearly ready.*)

Theobald's Concise Treatise on the Law of Wills.—Fifth Edition. By H. S. THEOBALD, Esq., Q.C. (*In the press.*)

STEVENS AND SONS, LD., 119 & 120, CHANCERY LANE, LONDON.

THIS PAGE IS LOCKED TO FREE MEMBERS
Purchase full membership to immediately unlock this page

Know Your Bible

Forgotten Books' Full Membership provides unlimited access to more than 28,000 volumes of Christian literature for $8.99/month

Continue

*Fair use policy applies

16 Vols. Royal 8vo. 1898. Price £20 cloth.

THE

DIGEST OF ENGLISH CASE LAW,

CONTAINING THE

Reported Decisions of the Superior Courts and a Selection from those of the Irish Courts to the end of 1897.

UNDER THE GENERAL EDITORSHIP OF

JOHN MEWS, Barrister-at-Law.

*** *The Annual Digest for* 1898 *&* 1899, *Now Ready. Price* **15***s. each.*

ESTABLISHED IN 1822.] [*78th YEAR OF ISSUE.*

THE

LAW JOURNAL REPORTS.

The Cheapest, Best, Most Accurate, and Oldest-Established Reports.

EDITED BY JOHN MEWS, *Barrister-at-Law.*

SUB-EDITORS: W. E. GORDON AND A. J. SPENCER, *Barristers-at-Law.*

The following are a few of the advantages of these Reports:—

1. Conciseness and Accuracy.

On the question of accuracy the LAW JOURNAL REPORTS have never been impeached.

2. Speedy Publication of the Cases.

This is now a leading feature, the REPORTS being published as speedily as possible, consistent with good reporting and editing; and the Weekly Edition includes Notes of all Cases up to date.

3. Simplicity of Arrangement and Facility of Reference.

There is only One Volume in each year for each Division of the Courts.

4. Digests.

MEWS' DIGEST of all the Reported Decisions of all the Superior Courts, including a Selection from the Irish, with a Collection of Cases followed, distinguished, explained, commented on, overruled or questioned, and References to the Statutes, Orders and Rules of Court during the year (**issued Quarterly**), will be supplied to Subscribers at the reduced rate of 6*s.*

5. Economy.

ANNUAL SUBSCRIPTION.

The Law Journal Reports and Statutes - - - -	£3: 4:0
The Law Journal Reports, Statutes, and Mews' Annual Digest (issued Quarterly) - - -	3:10:0

Subscribers to the LAW JOURNAL REPORTS have the additional advantage of obtaining, for a further Subscription of £1 per annum,

THE LAW JOURNAL NEWSPAPER,

Published Weekly (price 6*d.*), containing the best weekly Notes of all decided Cases of the week, New Orders and Rules of Court, Cause Lists, Articles by Eminent Specialists, Personal Information, Notices of all new Law Books, &c.

Subscriptions payable to STEVENS & SONS, LTD., *and crossed "Union Bank."*

*** *A Catalogue of New Law Works gratis on application.*

*** **SPECIAL OFFER TO NEW SUBSCRIBERS:**

Volumes I. to XX., with Index to Volumes I. to X. £20.

RULING CASES:

ARRANGED, ANNOTATED, AND EDITED BY

ROBERT CAMPBELL, M.A.,

Of Lincoln's Inn, Barrister-at-Law, Advocate of the Scotch Bar.

ASSISTED BY OTHER MEMBERS OF THE BAR.

WITH AMERICAN NOTES

By IRVING BROWNE and The Hon. LEONARD A. JONES.

TO BE COMPLETED in TWENTY-FIVE VOLUMES.

The following Volumes (sold separately) have been published:—

Vol. I.—Abandonment—Action.
II.—Action—Amendment.
III.—Ancient Light—Banker.
IV.—Bankruptcy—Bill of Lading.
V.—Bill of Sale—Conflict of Laws.
VI.—Contract.
VII.—Conversion—Counsel.
VIII.—Criminal Law—Deed.
IX.—Defamation—Dramatic and Musical Copyright.
Vol. X.—Easement—Estate.
XI.—Estoppel—Execution.
XII.—Executor—Indemnity.
XIII.—Infant—Insurance.
XIV.—Insurance—Interpretation.
XV.—Judge—Landlord & Tenant.
XVI.—Larceny—Mandate.
XVII.—Manorial Right—Mistake.
XVIII.—Mortgage—Negligence.
XIX.—Negligence—Partnership.

Vol. XX.—Patent. (*Nearly ready.*)

Vol. XXI.—Payment—Purchase for Value without Notice. (*In the press.*)

Vol. XXII.—Quo Warranto—River. (*In preparation.*)

Royal 8vo, half vellum, gilt top, price each, net, 25s.

Index to Vols. I. to X., with Addenda from 1894 to 1896 inclusive.

Price, bound in half vellum, net 20s.

Opinions of the Press.

"One of the most ambitious, and ought to be, when it is complete, one of the most generally useful legal works which the present century has produced."—*Literature.*

"A perfect storehouse of the principles established and illustrated by our case law and that of the United States."—*Law Times.*

"By this time this series has become so widely known, and doubtless appreciated, that it becomes unnecessary to do much more than chronicle the appearance of the new volume, to state the contents, and to say that its workmanship is quite up to the former level."—*Law Journal.*

"A work of unusual value and interest. . . . Each leading case or group of cases is preceded by a statement in bold type of the rule which they are quoted as establishing. The work is happy in conception, and this first volume shows that it will be adequately and successfully carried out."—*Solicitors' Journal.*

"The general scheme appears to be excellent, and its execution reflects the greatest credit on everybody concerned. It may, indeed, be said to constitute, for the present, the high-water mark of the science of book-making."—*Saturday Review.*

"The English Ruling Cases seem generally to have been well and carefully chosen, and a great amount of work has been expended. . . . . Great accuracy and care are shown in the preparation of the Notes."—*Law Quarterly Review.*

"A Cyclopædia of law . . . most ably executed, learned, accurate, clear, concise; perhaps its chief merit is that it impresses on us what the practising English lawyer is too apt to forget—that English law really is a body of principles."—*British Review.*

STEVENS AND SONS, LIMITED, 119 & 120, CHANCERY LANE, LONDON.

*** *All Standard Law Works are kept in Stock, in law calf and other bindings.*