

the mortgagee nevertheless claimed that this stipulation was a continuing liability of which he was entitled to the benefit, and the Court of Appeal decided that question in his favour. Lords Macnaghten, Davey, and Robertson held this to be erroneous, and that the case was within the principle established by *Noakes v Rice* (1902) A.C. 24 (noted ante, vol. 38, p. 335). In doing so they may also be taken to have practically overruled the decision of the Court of Appeal in *Santley v. Wilde* (1899) 2 Ch. 474, noted ante, vol. 35, p. 486.) The ground upon which the dissenting Lords base their view is that it is competent for a mortgagee to bargain not only for repayment of his principal and interest but also for some additional and collateral advantage, and they considered that the mortgagee had validly done so in this case. They considered it was not a clog or fetter on redemption, because on repayment of the loan the mortgagor was entitled to get back his shares, but they considered that he still remained liable to secure the mortgagee's appointment as broker, and to pay him damages if they failed to get him appointed. We are glad to see that this attempt to fritter away the well-established rules regulating the relations of mortgagee and mortgagor has failed. Where borrower and lender are concerned the principle of freedom of contract may be carried too far.

EXPROPRIATION ACTS—CONSTRUCTION—COMPENSATION.

The Commissioner of Public Works v. Logan (1903) A.C. 355, may be briefly referred to because the Judicial Committee of the Privy Council (Lords Macnaghten, Davey, Robertson, and Lindley, and Sir Arthur Wilson) lay it down as a sound principle of construction, that an intention to take away property without compensation should not be imputed to a legislature unless that intention be expressed in unequivocal terms.

PAYMENT—APPROPRIATION—OPTION OF CREDITOR TO APPROPRIATE—SET OFF—STATUTE BARRED DEBT—SOLICITOR AND CLIENT.

Smith v. Betty (1903) 2 K.B. 317, was an action by the executor of a deceased solicitor to recover a sum claimed to be due to the deceased's estate in respect of costs, a bill of which, and a cash account, had been delivered on December 2, 1899. The bill extended from May 13, 1878, to February 6, 1899, there being, however, no items from June 3, 1889, to November 24, 1893. The defendant set up the Statute of Limitations, and paid money into