

## EXAMINATION QUESTIONS AND ANSWERS.

Q. 12. Does the Statute of Frauds affect the creation of trusts, and if so, in what cases and what manner? Give examples of cases where the statute would, and would not, operate.

A.—It requires, by section 7, all creations of trusts of lands to be proved by writing, signed by the party legally capable of declaring the trust; but section 8 makes an exception in favour of trusts arising by operation of law.

Examples. (1.) A person gives a sum of money to his brother and verbally directs the brother to hold it in trust for the brother's infant son and pay it to the son on his coming of age. Here a good trust is created, which can be proved by the verbal direction.

(2.) The same person assigns a leasehold house to the brother and verbally directs that it shall be held in trust for the brother's son. This is void, as a trust of land not evidenced by writing; there will therefore be a resulting trust for the assignor.

Q. 13. Under what circumstances may "secret trusts" or trusts affecting a devisee or legatee be created? State the leading points which have been established on the subject.

A.—If a testator informs a devisee or legatee of the devise to him and states that he wishes him to fulfil certain trusts, and the devisee or legatee promises to fulfil them, or by silence leads the testator to believe that he will fulfil them; then, although the proof of these trusts depends on verbal evidence only, the Court will compel the devisee or legatee to give discovery of what passed, and will not allow him to keep the property. Therefore, if the trusts so declared are lawful, the Court will compel their execution in favour of the objects named. But if the trusts are unlawful, such as a charitable trust of land, the Court will hold that a resulting trust arises for the heir-at-law. In like manner, if a person requests his heir-at-law or next of kin to perform a trust in consideration of his allowing property to devolve upon them, and they by assent or silence induce the person in question to die intestate, the trust will be enforced. (Lewin, Ch. v. s. 3, § 8-17.)

Q.—9. Testator by will directs that his debts be paid, and gives pecuniary legacies, and gives his residuary personalty to A., his executor (who proves), and devises his realty to B.

The personalty is probably insufficient for debts.

A legatee desires to obtain the best judgment for administration to which he is entitled.

State the terms of such judgment, and particularly whether plaintiff is entitled to have it extended to realty, and if so, on what grounds.

A.—The judgment would direct the ordinary accounts of the personal estate, and direct it to be applied in paying the testator's debts, and then the legacies given by his will, and would

go on to say that if the personalty was insufficient to pay the debts and legacies, then not only should the deficiency of the debts be raised out of the real estates, but also the legatees were entitled to stand in the place of the creditors against the real estate, to the extent that such creditors had exhausted the personal estate. It would then go on to direct inquiries as to the real estate, and give directions for raising the amount required to pay the debts and make good the personal estate. (Compare Seton, 4th ed. 981; and see next question.)

## REVIEWS.

PRINCIPLES OF THE LAW OF TORTS, OR, WRONGS INDEPENDENT OF CONTRACT. First American from Second English Edition, by Arthur Underhill, M. A., of Lincoln's Inn, &c., with American Cases by Nathaniel C. Moak, Counsellor at Law, Albany, N. Y. William Gould & Son, 1881.

Mr. Underhill, though an Equity and Conveyancing Counsel, produced a work on Torts that filled a void, inasmuch as it dealt with principles apart from illustrations; that is, a rule of law was stated, and a few well-selected cases, carefully digested, were added, which, within the limits of the work, sufficiently illustrated the rule. This was found admirably suited to the requirements of students, and often as a handy book to the practitioner; and its value is proved by having now gone through three editions in England. The object of Mr. Moak has been to supplement the labours of the English editor for the benefit of practising lawyers in various States of his own country, with their differing laws. Situated as we are, it is obvious that a careful selection of United States decisions must often be of great use to us in Canada, where the circumstances, climate, habits and incidents of life are necessarily somewhat similar. The editor has in the work before us simply reprinted the text of Mr. Underhill's book, and added to it as part of the text, but within brackets, statements of the law in his own country, with appropriate reference to cases illustrating the propositions laid down. We are hardly competent, from want of familiarity with the state of the law across the border, to form an opinion as to whether this has been well done; but at least judging from the remarks of legal journals that should be able to form an opinion, we fancy it has; we