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The Golden Rule.

SIC UTERE TUO UT ALIENUM NON LŒDAS.

I. "So use your own property as not to injure the rights of another." See Arg. *Jefferies* v. *Williams*, 5 Ex. 797.

II. "If a man brings, or uses, a thing of a dangerous nature on his own land, he must keep it at his own peril, and is liable for the consequences if it escapes and does injury to his neighbor." *Jones* v. *Festiniog Ry. Co.*, L. R. 3 Q. B. 736.

"Love your neighbor as yourself" is a trifle too vague and purely ethical for adoption as a legal maxim. "Do unto others as you would that they should do unto you," is more practical; and if it could always be predicted of "you" that you only desire others to "do unto you" as the law requires they should, then the maxim merely means that you are to "do unto others" as the law provides, and is, if not objectionable as too axiomatic, a very good rule for your conduct in life.

The maxium *sic utere tuo ut alienum non lædas* may be called the golden rule of law—prescribing, as it does, your duty to your neighbor. The rule itself, as well as its limitations and applications are judge-made. No statute ever attempted to define the relative duties of riparian pro-

prietors or cess-pool owners. The law has been gradually erected by the decisions of the judges as to reasonable and unreasonable conduct, and the system of laws as it stands to-day is a splendid refutation of Bentham's jeremiad against judge-made law. We propose to note here some of the more usual and interesting applications of the rule. Their full ramifications are too extensive for our space.

WATER.—Distinguish between; (1) water flowing in defined, visible, natural channels; (2) water flowing in artificial channels; and (3) subterranean water, not flowing in any ascertained channel.

(1.) *Water flowing in defined, visible, natural channels.* "The flow of a natural stream creates natural rights and liabilities between all the riparian proprietors along the whole of its course. Subject to reasonable use by himself, each proprietor is bound to allow the water to flow on without altering the quantity or quality. These natural rights and liabilities may be altered by grant or by use of an easement to alter the stream, as by diverting, or fouling, or penning back or the like." *Per Earle, C. J., Gaved v. Martyn 19 C. B. N. S. at p. 759.*

(2.) *Water flowing in artificial channels.*—"If an individual collects surface water dispersed on his land, which would naturally disappear by absorption or evaporation, and by means of a trench carries it off in a stream so as appreciably to injure his neighbors, he commits an unlawful act." *Northwood v. Township of Raleigh, 3 Ont. R. 347, 358.* But if the increase in the volume of the stream be inappreciable there is no liability. *Law v. Corporation of Niagara Falls, 6 Ont. R. 467.*

Right to continue or have continued an artificial flow of water.—"If the stream flows at its source by the operation of man, that is, if it is an artificial stream, the owner of the land at its source or the commencement of its flow, is not subject to any rights or liabilities towards any other person in respect to the water of that stream." *Gaved v. Martyn, 19 C. B. N. S. p. 759.* "If there is uninterrupted user of the land of the neighbor for *receiving* the flow as of right for twenty years,

such user is evidence that the land from which the water is sent into the neighbors land has become the dominant tenement, having a right to the easement of so sending the water, and that such neighbor's land has become subject to the easement of receiving the water. But such user of the easement of sending on the water of an artificial stream is of itself alone no evidence that the land from which the water is sent has become subject to the servitude of being bound to send on the water to the land of the neighbor below. The enjoyment of the easement is of itself no evidence that the party enjoying it has become subject to the servitude of being bound to exercise the easement for the benefit of the neighbor." *Ib. 758.*

(3.) *Subterranean water not flowing in any ascertained channel.* Although a flowing stream may not be diverted or diminished, the owner of the land from which it starts may, it would seem, in some cases cut off its source. There seems to be no danger in granting that the owner of land may intercept all the rain which would otherwise fall upon his land and appropriate it to his own use. And yet if this be granted, then it must follow that he has a right to control the rain water after it reaches the ground, and for that purpose to build huge tanks, even though the result may be, in the case of a large owner, to cut off the supply of a stream, and so put an end to the usefulness of mills along its banks. And, *quære*, could the mill owners,. by prescription, claim the right to prevent the land owner catching the rain? If so, they could stop him building a town, for the inhabitants would certainly use up the rain water. Where A, a land owner and a millowner who had for above sixty years enjoyed the use of a stream which was chiefly supplied by percolating underground water, lost the use of the stream after an adjoining owner had dug, on his own ground, an extensive well for the purpose of supplying water to the inhabitants of the district, many of whom had no title as land owners to the use of the water," it was held that A, the mill owner, had no cause of action. *Chasemore v. Richards, 7 H. L. C. 349.*

COLLECTING SUBTERRANEAN WATER.—If a man dig a hole in his own ground and thereby collect a large quantity of water, is he bound, at his peril, to keep it from flowing on to his neighbor. The second rule above quoted seems to say so, but let us see. Supposing A. digs a hole in his land which he wants to keep dry, and B. digs a hole in his land and water precolates into it from the surrounding soil, is B. responsible if the water goes from one hole to the other? Would he be liable if he even helped it on its way by removing what he knew to be the only barrier to its flow? Let us suppose that the holes are mines, and that B. on the higher level is troubled with water, but A. on the lower level is free from it. In such case it has been held that B. can work his mine up to his boundary, although he knows that by so doing the water in his mine will fill up A's, provided he so acts for the purpose of obtaining his coal. *Smith v. Kenrick, 7 C. B. 513; Wilson v. Waddell, 2 App. Ca. 95; Crompton v. Lea, L. R. 19, Eq. 115.* And this may be justified; if A. had not dug his mine it would not have been filled, and he cannot affect B's right to mine his coal to his boundary by changing the character of his land. The reply to this is, that A. has as good a right to dig a hole as B., and that every owner of a hole must see that it breeds no damage to his neighbors. If B. had collected the water on the surface, as for a reservoir, and then allowed it to run over upon his neighbor's land, he would have been clearly liable. *Rylands v. Fletcher, L. R. 3 H. L. 330.* Or if having built a mound against his own wall the moisture collected in it dampened his neighbour's house he would have suffered in damages. *Broder v. Saillard, 2 Ch. Div. 692.* But having collected the water underground, the law relieves him from liability! He must not, however, rub it in, so to speak—or rather pump it in, upon A. It is hard enough on A. to let it go unassisted. *Baird v. Williamson, 15 C. B. N. S. 375.* Perhaps the distinction drawn by Lord Cairns in *Rylands v. Fletcher, L. R. 3 H. L. 338-9*, between the natural use of land, as mining, and the unnatural use, as a site for a reservoir, may supply the reason for the distinctions in the cases.

FOULING SUBTERRANEAN WATER.—It is well settled that A. may drain B's well by digging a deeper one. This seems a little unfair to B., but of course he may enter into a digging competition with A. and see who can stand it the longest. Is it open to him, however, to say to A: "Now, be reasonable, let us dig to equal depths. If you refuse and dig deeper, you may get my water but I will see to it that it will not be very sweet." Or without threat, or wrong intent, can he change his well into a privy, and so spoil A's water? If B. can injure A. as to the *quantity* of his water, (by digging deeper), is he restricted from interfering with its *quality*? In *Ballard v. Thompson, 26 Ch. Div.*, Pearson, J., held that A. had no remedy for the fouling of his well. But the case is unsatisfactory. The learned judge agrees with *Womersly v. Church, 17 L. T. N. S. 190*, in which it was held that "no man is entitled to create on his own land a nuisance of such a nature as to foul the water of his neighbor's well, or to allow sewage to percolate from his land into his neighbor's well." But he distinguishes the case in hand by saying: "That was not a case of dealing with subterranean water." And he bases his decision upon the fact that the course of the water being invisible, the plaintiff takes his chances of what the water may be when it comes to him." The case, moreover, is dissented from in *Snow v. Whitehead, 27 Ch. Div. 588*. In this case the defendant allowed water to collect in his cellar, from which it percolated into the plaintiff's, and it was held that the defendant was liable in damages.

DAMPNESS FROM ARTIFICIAL MOUNDS.—A landowner is not liable for the natural flow of water from his land to that of his neighbor, but he has no right to hold sponges against his neighbor's wall, nor against his own wall if it is not thick enough to keep all the moisture on his own property. *Broder v, Saillard, 2 Ch. Div. 692; Hurdman v. N. E. R'y. Co. 3 C. P. Div. 168.*

NOISE.—"A man is entitled to the comfortable enjoyment of his dwelling-house. If his neighbor makes such a noise as to interfere with the ordinary use and enjoyment of his

dwelling-house, so as to cause serious anoyance and disturbance, the occupier of the dwelling-house is entitled to be protected from it. It is no answer to say that the defendant is only making a reasonable use of his own property, because there are many trades and many occupations which are not only reasonable, but necessary to be followed, and which still cannot be allowed to be followed in the proximity of dwelling-houses, so as to interfere with the comfort of their inhabitants. *Per Jessel, M. R. in Broder v. Saillard, 2 Ch. Div. p. 701;* and see *Ball v. Ray, L. R. 8 Ch. Ap. 467.*

"The sounds from a piano," (no distinction as to quality of instrument or performer) and a nursery "are *noises* we must reasonably expect, and must to a considerable extent put up with." *Per Mellish, L. J. in Ball v. Ray, L. R. 8 Ch. Ap. 471.* As to the amount of annoyance which will induce the Court to interfere, see *Grant v. Fynney, L. R. 8 Ch. Ap. 8.*

NOXIOUS FUMES.—There is a distinction between an action for a nuisance in respect of an act producing a material injury to property, and one brought in respect of an act producing personal discomfort. As to the latter, a person must, in the interest of the public generally, submit to the discomfort of the circumstances of the place, and the trades carried on around him. The fact, however, that the locality where a trade is carried on, is one generally employed for the purpose of that and similar trades, will not exempt the person carying it on from liability to an action for damages, in respect of injury created by it to property in the neighborhood. The law does not regard trifling inconveniences. Everything must be looked at from a reasonable point of view, and therefore in an alleged injury to property, as from noxious vapors from a manufactory, the injury to be actionable must be such as visibly to diminish the value of the property. Locality and all other circumstances must be taken into consideration, and in places where great works have been and are carried on, parties must not stand on extreme rights. *St. Helen's Smelting Co., v. Tipping, 11 H. L. C. 641.*

(*To be continued.*)

THE 17TH SEC. OF THE STATUTE OF FRAUDS.

(*Continued from page 95.*)

ARTICLE 13.

Of signing the Note or Memorandum.

Either the name[1] or [perhaps] the initials, if they are intended as a signature, or the mark of the person to be charged[2], must be written, made, printed, or stamped by him or by his agent duly authorized thereto on the note or memorandum[3], in such a position as to show that it was the intention of the signer that such signature should refer to every material part of the note or memorandum proceeding from him[4].

If the signature is not in the usual place, it is a question of fact whether it was or was not intended to have such reference as aforesaid[5].

A signature, actually made before the whole or any part of the note or memorandum, may be adopted by the party signing as his signature intended to have reference to the whole of the note or memorandum in its final condition[6].

Signature by an agent in his own name, whether with or without any statement or qualification showing that he is an agent, is equivalent, for the purposes of this Article, to a signature of the principal's name[7].

It is immaterial whether the signature is made for the purpose of acknowledging, affecting, or verifying the agreement, or for any collateral purpose[8].

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[1] Benj. 190.

[2] Benj. 220. *Quære* as to a mark made by a person capable of signing. See *Hubert* v. *Moreau*, 2 C. & P. 528. Quoted by Benj. *loc. cit.* Also *Baker* v. *Dening*, 8 Ad. & E. 94, which seems to show that such a mark is a signature if so intended.

[3] Illustrations 2, 3, 4.

[4] *Caton* v. *Caton*, L. R. 2 H. L. 127, 142; 36 L. J., Chanc. 886.

[5] Per Lord Abinger in *Johnson* v. *Dodgson*, 2 M. & W. 653.

[6] Illustrations 1 and 5. [7] Benj. 198. [8] Illustration 6.

ILLUSTRATIONS.

1. A orders cotton goods of B. B takes a paper on which is printed, 'Bought of B & Co. cotton yarn and piece goods,' and writes at the head of it A's name, and underneath a list of the goods bought and their prices. This is a sufficient note or memorandum as against B[1].

2. A calls on B to offer goods for sale. B gives A an order, enters the terms in B's own book, with the heading, 'Sold B,' and gets A to sign it. This is a sufficient note or memorandum as against B, the 'Sold B' being a sufficient signature[2].

3. C, agent for B, calls on A to offer goods for sale, and A gives an order. C, at A's request, enters the terms in A's book, and signs them with his own name. This is not a sufficient note or memorandum as against A, as there is nothing to show that A made C his agent to write A's name[3].

4. B is a hop-grower, A a hop-merchant, C a factor. By the custom of the hop trade, the factor acts for the seller only. After negotiation between A and C for the purchase of B's hops, B and A meet in C's counting-house, and agree for the sale of B's hops to A at 16*l.* 16*s.* a cwt. C then and there writes out and delivers to A a memorandum, as follows:—

Messrs. A.	Bought of C.
Bags 33.	B 16*l.* 16*s.*

The memorandum is dated, and the date is altered at A's request, in order to give him a longer time to pay, according to the custom of the trade. A takes away the memorandum. C retains a counterpart of it headed 'Sold to A.' These facts are relevant to show that C was authorized by B to make a binding record of the bargain between A and B; and if he was so authorized, there is a sufficient note or memorandum as against A[4].

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[1] *Schneider* v. *Norris*, 2 M. & S. 286; and see *Saunderson* v. *Jackson*, 2 B. & P. 238.

[2] *Johnson* v. *Dodgson*, 2 M. & W. 653.

[3] *Graham* v. *Musson*, 5 Bing. N.C. 603; cf. *Murphy* v. *Boese*, L.R. 10 Ex. 126.

[4] *Durrell* v. *Evans* (Ex. Ch.), 1 H. & C. 174; 31 L. J.. Exch. 337.

5. B sends to A an unsigned memorandum containing the terms proposed by B for a sale of B's ship. A makes alterations in the memorandum, and then signs it, and returns it to B. B strikes out A's alterations, makes others of his own, signs the document, and takes it back to A. A then orally agrees to B's alterations, and approves of the memorandum as signed by B. A's signature now refers to the memorandum in its final condition, and there is, as against A, a sufficient note or memorandum of the agreement[1].

6. It is resolved at a meeting of directors of a company that an agreement be entered into in the terms of a draft then submitted to the board. The secretary enters a minute of the resolution in the minute book, and at the next meeting the minutes of the first meeting, including this entry, are signed by the chairman. The minutes so signed are a sufficient note and memorandum of the agreement as against the company[2].

ARTICLE 14.

Bought and Sold Notes.

If a sale of goods to the value of 10*l.* or upwards is made by a broker, and if the broker does not enter the contract of sale in his book, or enters but does not sign it, and if the broker afterwards sends a bought note to the buyer of the goods, and a sold note to the seller of the goods, the following consequences follow :—

If both notes are sent, and both are signed, and if the two correspond, they constitute a note or memorandum of the bargain within the meaning of the Statute of Frauds[3].

If a bought note is sent to the buyer, signed by the broker, it is a sufficient note or memorandum to satisfy the Statute of Frauds as against the buyer[4].

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[1] *Stewart* v. *Eddowes*, L. R. 9 C. P. 311.

[2] *Jones* v. *Victoria Graving Dock Co.*, 2 Q. B. D. 314 (on s. 4.)

[3] *Groom* v. *Aflalo*, 6 B. & C. 117, as explained in *Sievewright* v. *Archibald*, 17 Q. B. 103; 20 L. J., Q. B. 529.

[4] *Parton* v. *Crofts*, 16 C. B., N. S. 11; 33 L. J., C. P. 189. *Cowie* v. *Remfry*, 5 Moo. P. C. C. 232, seems to be opposed to this. The case was strongly disapproved of by Willes, J. in *Heyworth* v. *Knight*, 17 C. B., N. S. 298.

If a sold note is sent to the seller, signed by the broker, and if the buyer authorized the broker to make the contract for him, and to send out bought and sold notes, the note is a sufficient note or memorandum to satisfy the Statute of Frauds as against the buyer[1].

If bought and sold notes are sent out, each signed by the broker, but varying from each other in a material point, and if the orignal contract was verbal, neither of the notes is a note or memorandum in writing within the meaning of the Statute of Frauds[2]. The burden of proving such a variance lies on the defendant as soon as the plaintiff has produced a bought note or a sold note sufficient as against the defendant, according to the rules hereinbefore stated[3].

JAMES FITZJAMES STEPHEN.
FREDERICK POLLOCK.

P. S.—My part of this paper was written some, I think upwards of seven, years ago. I have not revised or indeed seen it since, nor have I brought down the digest to the present day[4]. My judicial experience for the last six years has confirmed the opinions expressed in the paper. I may add that the Statute appears to me to have fallen practically into disuse. I have hardly ever been called upon to decide a case on the 17th Section. I am informed that in some large towns, in Liverpool for instance, mercantile men repudiate it in practice.

J. F. S.

November 25, 1884.

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[1] *Thompson* v. *Gardiner*, 1 C. P. D. 777.

[2] *Sieveright* v. *Archibald*, 17 Q. B. 103; 20 L. J., Q. B. 529, and several earlier cases.

[3] This Article and Article 13 differ in appearance from the eight propositions which Mr. Benjamin submits (255, 3rd ed.) as the result of the cases on the subject, hut they will be found, on a careful comparison, to coincide substantially with them.

[4] It was composed in 1877-8, as part of a plan afterwards abandoned. I do not find that any cases of importance on s. 17 have been reported since that time.—F. P.

THE TORRENS SYSTEM.

WE will soon have some practical experience of this much talked-of system of registration. The Act of last session comes into force on the first of July; and as all unpatented lands are at once brought under its operation, practitioners must soon familiarize themselves with its provisions.

Some of the sections of the Act apply to all lands in the Province and not merely to those registered under its provisions. The most important of these is as follows :—

"21. After the commencement of this Act, all lands in the Province of Manitoba, which, by the common law, are regarded as real estate, shall be held to be chattels real, and shall go to the executor or administrator of any person or persons dying seized or possessed thereof, as other personal estate now passes to the personal representatives."

This almost takes one's breath away. It was once said by Mr. Justice Buller that if proper attention were not given to the doctrine of *scintilla juris* in discussing contingent remainders the constitution itself would be in danger. And now it makes one shudder to think what awful consequences may ensue upon the effacement of the whole law relating to freehold estates, and the consequent destruction of all our heirs. "A son and heir," never so appropriate in this country as in England, must now be turned into "son and executor, or—if I don't make a will—administrator;" a phrase not nearly so euphonious, or so handy in case of a little pleasant embarrasment. It will be very hard to accustom one-self to the new conditions.

We will have, we suppose, to meet the troubles as they arise, and our present purpose is to suggest one topic for vacation reflection—and possible action :—Are the statutory short forms of deeds and mortgages of any further use? If not what is to be done until the next meeting of the Legis-

lative Assembly? The grant in both cases is to the purchaser or mortgagee *his heirs and assigns.* What is the effect of grant of a leasehold to a man and his heirs? The word *heirs* in that case cannot be a word of limitation. Is it a word of purchase? and if so, has it the effect of a settlement? Of course if the land were freehold, Shelley's case would apply, and the word *heirs,* would be a word of limitation and not of purchase. If a freehold were granted to A and his executors, a life estate only would pass, And a grant of a leasehold to A, without more, will pass the whole estate of the grantor (*Leith & Smith, 165*). If then, we repeat, there be a grant of leaseholds to A and his heirs, what effect is produced? The words are not words of limitation—for they are wholly inapplicable; are they words of purchase, and if so, is there a settlement? The answer may be very clear but as we get the Act only on the eve of going to press, we leave the solution to our readers.

At all events this much is clear, that the covenants in the short form Act are not suitable for a sale or mortgage of freeholds. The form of lease will do, because the Act says (sec. 10) that " that where the premises demised are of freehold tenure, the covenants . . . shall be taken to be made with, and the proviso . . to apply to, the heirs and assigns of the lessor; and where the premises demised shall be of leasehold tenure, the covenants and proviso shall be taken to be made with, and to apply to, the lessor, his executors, administrators or assigns." But there is no similar provision as to the other forms.

Another important question that will arise upon this section, is as to the application of the Statute of Uses to any conveyance of land—a slip, we mean chattels real—after the Act comes into operation. The statute only refers to persons *seized,* and therefore has no application to terms of years. Has the whole statute been repealed or made obsolete? Conveyancers must be careful upon this point. A grant of land to A and his heirs to the use of B and his heirs, vests the legal estate in B. But a grant of a chattel

interest with similar limitations is not affected by the statute, and the legal estate will remain in A.

Yet another point suggests itself. Will the Act relating to fradulent preferences now apply to a conveyance of lands —again, we mean chattels real. It mentions *chattels*. Probably this would not cover leaseholds, but we are not clear upon that point.

Before leaving this section of the new Act, we would like to say in defence of Bracton, Coke and Blackstone, that the the common law never regarded *lands* "as real estate," or as personal estate. Estates in lands might be either freehold or less than freehold; and in deference to the old classification we think that the statute might have more accurately provided that "Estates in lands which by the common law are regarded as freehold shall be held to be chattels real." We presume that this is what was meant.

Another important clause of the statute is as follows:—

"23. No devise shall be valid or effectual as against the personal representative of the testator, until the land affected thereby is conveyed to the devisee thereof, by the personal representative of the devisor, saving and excepting such devises as are made by the testator to his personal representative, either in his representative capacity or for his own use."

The draughtsmen of this clause is as unable as ourselves to get away from the old terminology. "Land" and "devise" certainly are associated in our minds, but there is no more use for *devise*, *bequeath* will suffice for chattels real.

There is to be no more difficulty in the way of a husband conveying to his wife:—

"26. A man may make a valid conveyance or transfer of his real estate to his wife, and a woman may make a valid conveyance or transfer of her real estate to her husband, without in either case, the intervention of a trustee."

Five clauses before this one we said good-bye to real estate forever we thought.

The common law lawyers might not object to the reversal of their notions upon the subject of real estate, but they would certainly be entitled to complain of a statute which says that lands are not real estate, and then immediately provides that a husband may convey his real estate to his wife. What *is* covered by the words? Blackstone has nothing on the subject, and there is no explanatory note in the Act.

So far as we can judge from a hasty perusal, the other portions of the Act—those specially applicable to the new system of registration are reasonably clear. Some exceptions to this statement must be made. Sections 104 and 106, for example, are in conflict with one another, and the pivot section of the whole Act, 62, is a wonderful jumble. It would also have much facilitated a mastery of the statute if the effect of a certificate of title were all stated at one place instead of being scattered through the Act. For instance, by section 61 the certificate is stated to be subject to a number of minor matters that might form an objection to the title—taxes, easements, short leases &c; but no one would have any idea until the end of the Act was reached that possibly the certificate might be worth nothing at all. Under the heading "Miscellaneous Provisions," (sec 127), it is provided that every certificate "shall be void as against the title of any person adversely in actual occupation of, and rightfully entitled to, such land or any part thereof, at the time when such land was so brought under the provisions of this Act." This section deprives the Act of much of its benefit. Why all hidden difficulties may be obviated by a certificate, and such a palpable thing as possession not be a subject of settlement by the Examiner of Titles is not very apparent.

On the whole we are prepared to welcome the new system, and to give it a fair trial.

The officers appointed are as follows:—Registrar-General, James A. Miller, Q. C.; Examiner of Titles, Felix Chenier; and Accountant, E. H. Coleman.

EDITORIAL NOTES.

Tu Quoque.

After a long wrangle :—

Judge : "Well, Mr. ———, if you do not know how to conduct yourself as a gentleman, I can't teach you."

Counsel : "That is quite clear, my Lord."

—*Law Times* (*Eng.*)

The Law Society.

At the annual election of officers of the Law Society, the Hon. S. C. Biggs, Q.C., was elected President ; J. A. M. Aikins, Esq., Q.C., Treasurer ; and A. E. Richards, Esq., Secretary.

The Law Reports.

For the future the profession will be supplied by the Law Society with the reports. This is as it should be. Our annual subscription is as high as in Ontario, and for it nothing has heretofore been given in return. It is true that the establishment of a library is the first necessity, but the Society has not had poverty to plead. We take some credit for having brought, prominently before the bar, the advantages of a system of law reporting, and in this way of leading up to the new system. Our subscribers will receive THE LAW JOURNAL AND LAW REPORTS as heretofore, and the gift by the Society of the latter half of the current volume of the reports will be as valuable to them as to other members of the bar.

Exemptions.

A number of counsel are engaged, we believe, in the preparation of opinions as to whether an agreement to waive the benefit of the clauses of the recent Administration of

Justice Act as to exemptions, is or is not, valid. There is very little direct authority upon the question in England and in the United States the cases are in the most perplexing confusion. The practical difficulty seems to be this: A can license B to take and sell his (A's) goods, but can a license enlarge a statute? If a sheriff seize goods which by the Act are exempt and is sued in trespass, what can he plead? Can he plead anything but his writ—if his writ is that under which he seized? And if he plead his writ the statute will inevitably defeat him.

We venture to suggest that the following words will give the creditor the power which he desires:—"Upon default in payment of any note or renewal, A. B., his executors, administrators or assigns or his or their agents, may distrain my goods (without any exception or exemption) wherever they may be, and sell the same for the amount in arrear and the expenses of distress and sale." This document, but for the possibility of a breach of the peace in proceeding under it, would obviate all necessity of a judgment. But in practice it would be, no doubt, advisable to procure execution, and when placing it in the sheriff's hands give him a warrant under the license. He can then justify his seizure both under the writ and the license.

That such a power to take goods is perfectly good, will be apparent by considering that it is contained in almost every real estate mortgage. The point is worked out with another view in an article upon "Distress," 1 Man. L. J. 33.