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ESTOPPEL BY NEGLIGENCE IN THE CUSTODY AND TRANSFER OF NEGOTIABLE INSTRUMENTS.

The decision of the Court of Appeal in the case of *Baxendale* v. *Bennett*, 40 L. T. Rep. N. S. 23, is both important to the commercial world and interesting to lawyers. By it a new principle may be said to be established as governing the above subject; and, of two old and very familiar cases which are to be found in all the text books, one is questioned and the other overruled. These are *Young* v. *Grote*, 4 Bing. 253, and *Ingham* v. *Primrose*, 7 C. B. N. S. 82. The first was the case of a man leaving with his wife some blank forms of cheques, one of which was so carelessly filled up by the latter, that the clerk to whom it was intrusted for presentment was enabled, by the insertion of words and figures, to make it payable for and obtain payment of a larger amount than was intended. The second was the case of the acceptor of a bill tearing it in two *animo cancellandi*, in the presence of a person who picked up the pieces; and, after having joined them together in such a manner as to convey no notice of the cancellation to a stranger, transferred the bill to a *bona fide* holder. In both these cases, as will be remembered, the negligence was held sufficient to estop the party guilty of it from denying the validity of the instruments.

In a recent case (*Arnold* v. *The Cheque Bank*, 34 L. T. Rep. N. S. 729) decided in the Common Pleas Division in April, 1876, these two cases were distinctly and expressly approved, and were supposed to support, though indirectly, the conclusion there arrived at, and yet it is curious to observe that the authorities there directly relied on, and the *rationale* of the decision itself, were exactly the same as in the case under present notice. Both there and here, in fact, the decision of the court may be said chiefly to have rested upon the dictum of Lord (then Mr. J.) Blackburn in *Swan* v. *The North British Australasian Company*, 32 L. J. 273, Ex.), a case which has been so frequently acted upon that it may be said to be the leading one upon the subject of estoppel by negligence. When that case was in the Court of Exchequer the rule had been laid down by Mr. Baron Wilde thus: "If a man has led others into the belief of a certain state of facts by conduct of culpable neglect calculated to have that result, and they have acted on that belief to their prejudice, he shall not be heard afterwards as against such persons to show that the state of facts did not exist." In the Exchequer Chamber, Lord Blackburn stated that this was correct as far as it went, but did not go far enough, and he added the following very important qualification: "The neglect must be in the transaction itself, and be the proximate cause of the leading the party into that mistake; and also it must be the neglect of some duty that is owing to the person led into that belief or (what comes to the same thing) to the general public, of whom that person is one, and not merely neglect of what would be prudent in respect to the party himself, or even of some duty owing to third persons with whom those seeking to set up the estoppel are not privy."

Here it will be noticed that it is laid down that there are two distinct and necessary ingredients in the neglect which will amount to an estoppel, and, if this be so, it is clear that the absence of either of them will prevent its having that effect. The neglect must be in the transaction itself, and be the proximate cause of leading the third party into mistake, and it must also be the neglect of some duty owing to such third party, either individually or as one of the general public. In accordance with this rule, the validity of which cannot, we think, be now called in question, it was held in *Arnold* v. *The Cheque Bank*, that negligence in the custody of a draft, or in its transmission by post, will not disentitle the owner of it to recover the draft or its proceeds from one who has wrongfully obtained possession of it. Lord Coleridge, who delivered the judgment of the court, after quoting the words of Lord Blackburn above set out, said: "*Young* v. *Grote*, when correctly understood, is in entire accordance with the rule thus expressed, and so is *Ingham* v. *Primrose*." In the last mentioned case, at any rate, it would how-

ever, we venture to think, be difficult to point out the necessary duty of which the neglect was a breach, and the absence of this component part of the estoppel in question was evidently the difficulty which was felt by the Court of Appeal in dealing with these cases in their decision in *Baxendale* v. *Bennett*, which we now proceed to notice. There the defendant received for his acceptance from a creditor of his, named Holmes, the form of a bill of exchange with no drawer's name contained in it. The defendant accepted it, and sent it back to Holmes. The latter, however, not desiring to use it, returned it to the defendant without filling in the drawer's name, and the defendant then put it away in an unlocked desk in his chambers. It was afterwards taken away by some unknown person, and came by indorsement to the plaintiff as a *bona fide* holder for value, the name of one Cartwright having being inserted as drawer by some one through whose hands the bill had passed. The defendant had never authorized any one to take the draft, or to fill in the drawer's name. Mr. Justice Lopes, who tried the case, acting probably upon the two old decisions, held that the defendant's negligence entitled the plaintiff to recover, and gave judgment accordingly. A rule *nisi* for a new trial was obtained, and this rule was argued at the same time as a motion for judgment by the defendant to the Court of Appeal. That court while unanimously of opinion that the judgment was wrong, and ought to be entered for the defendant, differed in the reasons which guided them. Lord Justice Bramwell thought that, though there was negligence on the part of the defendant, such negligence did not amount to an estoppel, because it was not the effective or proximate cause of the fraud. He thought that the two old cases went a long way to justify the judgment which had been given, but without otherwise expressly disapproving of them, said that they might be distinguished from the present case on the ground that in them the document had been voluntarily parted with. Lord Justice Brett, in whose reasons Lord Justice Baggallay concurred, grounded his decision chiefly on the fact that the law as to the liability of a person who accepts a bill in blank is, that he gives an apparent authority to the person to whom he issues it to fill it up to the amount which the stamp will cover. Unless he deliver it to some one, there can be no such authority. Here, although it was once issued, his Lordship thought that when it was sent back the defendant was in the same position as if it had never been issued at all. He, however, went on further to say that he thought that there was no negligence in fact, or at any rate none which could amount to an estoppel, because in connection with the draft the defendant owed no duty to anyone after it had been returned to him. *Ingham* v. *Primrose* obviously stood in the way of applying this doctrine to the case of a bill of exchange, and the Lord Justice got over the difficulty by saying explicitly and candidly: "The best mode of dealing with that case is by saying we do not agree with it." As to the other case of *Young* v. *Grote* he thought that its authority had been very much shaken by subsequent decisions, but that it might possibly be upheld on the ground of the existence of a duty in a customer towards his banker; and we venture to think that if the case should again arise this reason ought to prevail.

It will be observed that the reasons of both these judgments are consistent with the doctrine laid down in Swan's case. Lord Justice Bramwell may be said to have applied the first part of Lord Blackburn's rule, and the other Lords Justices the second part, and as each part is distinct and independent of the other, forming of itself an objection to the creation of an estoppel, the difference of opinion does not involve an inconsistency, and there may well be the double reason for the conclusion arrived at.

One important effect of this decision, coupled with that of *Arnold* v. *The Cheque Bank*, may be noticed in conclusion. In the notes in Byles on Bills of Exchange it is stated that the doctrine upon which the decision in *Ingham* v. *Primrose* proceeded has never been extended to instruments under seal, and Swan's case is cited in support of the assertion. It is clear that now the doctrine established in Swan's case is applicable to bills of exchange, and the difference which was then supposed to exist in the law of estoppel as regards bills of exchange, and as regards other instruments, has no existence at the present time.—*Law Times*, (London).

LIABILITY OF HOTEL KEEPERS.

The question whether a person is a guest or boarder at a hotel, and the resulting question of liability of the landlord for property stolen from rooms in the hotel, recently came before the N. Y. Supreme Court. The facts were as follows: In November 1873, General Hancock applied to the proprietors of the St. Cloud Hotel in New York city, for rooms for himself and family, with meals to be served either at the restaurant or in their rooms. A price per month was agreed upon, and the arrangement was to continue until the next summer, unless the General should be ordered away on military duty. In March 1874, in the absence of the family one evening, the rooms were entered by a thief and valuables to the amount of about $4000 stolen. Suit was brought against the proprietors of the hotel, resulting in favor of the plaintiff. In rendering judgment the court uses the following language:

"We cannot adopt the theory that ascertaining and fixing the price that was to be paid for the accommodation, and specifying the probable duration of the stay at the hotel, necessarily had the effect to deprive the plaintiff of the character of guest. The effect of such a theory reduced to practice would be to deprive the visitor at a hotel of the character of guest if he took the precaution to ascertain in advance the price which would be charged for his entertainment. Although the decisions have not been uniform upon the question whether fixing in advance the price to be paid and the duration of the stay of a visitor at a hotel, has the effect in law to constitute such person a mere boarder or lodger, and to deprive him of the character of guest, yet our examination of the subject has led to the conclusion that, regarding hotels as they are now conducted and patronized, such an arrangement does not necessarily have an effect to prevent the relation of innkeeper and guest, and the obligations which attach thereto. * * The law which renders the keeper of a hotel liable for the baggage of the guest which is stolen from the room assigned him, and which remains in the care and supervision of the landlord and the servant whom he selects, is salutary, and should not be rendered substantially inoperative by adopting technical distinctions which rest upon ingenious speculation rather than sound reason."

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Feb. 4, 1879.

SIR A. A. DORION, C.J., MONK, RAMSAY, CROSS, JJ.

REEVES (plff. below), Appellant, and GERIKEN (deft. below), Respondent.

Hypothecary Action—Personal recourse.

The case arose out of the purchase of a tract of land by Geriken and two associates, Laframboise and Robitaille, from Quesnel, half of which property had been bought by Quesnel from the appellant, Mrs. Reeves. There was an amount due to the appellant by Quesnel on this property which the respondent and his associates undertook to pay. Subsequently the appellant brought a hypothecary action against the respondent and the other two, and thereupon Geriken made a *délaissement* of his share of the property. Then the appellant instituted a personal action against Geriken, and the question was whether this was permissible, after she had accepted the delegation in the deed, and brought a hypothecary action. The Court below (Rainville, J.) considered that the appellant having chosen to bring a hypothecary action, and the respondent having *délaissé* the immoveable, the matter was no longer in the same position, and the appellant had no recourse against the respondent personally. The judgment was in the following terms:—

"La cour, etc.....

"Considérant que la demanderesse, en vertu de l'acte de vente en date du 14 Octobre 1874, par Quesnel au défendeur et autres, aurait pu, vu la stipulation faite en sa faveur par le dit acte, porter l'action personnelle contre le défendeur pour réclamer le montant à elle délégué par le dit Quesnel et que le défendeur s'était obligé de payer à la dite demanderesse, à l'acquit du dit Quesnel;

"Considérant que le dit Quesnel n'avait délégué à la dite demanderesse et n'avait chargé le dit défendeur de lui payer qu'une partie de ce qui lui était dû;

"Considérant que la demanderesse au lieu d'exercer son action personnelle contre le défendeur, a pris contre lui une action hypothécaire pour une partie de tout ce qui lui était dû, savoir pour la somme de $13,603.81;

"Considérant que sur cette action le défendeur a délaissé l'immeuble hypothéqué à la réclamation de la demanderesse;

"Considérant que le dit délaissement est encore en vigueur;

Considérant qu'après le dit délaissement, les choses n'étant plus entières et dans le même état, la demanderesse ayant, par son fait, obligé le défendeur à délaisser l'immeuble, sur une action hypothécaire pour un montant plus considérable que celui dont il pouvait être responsable personnellement, ne peut en loi exercer maintenant un recours personnel contre le dit défendeur;

"Maintient l'exception plaidée par ce dernier et déboute la demanderesse de son action avec dépens."

Sir A. A. DORION, C. J., (*diss.*) was of opinion that the judgment was erroneous. What Geriken said was not a defence to the action. He said that he and his associates had been sued hypothecarily, and they had *délaissé* half the property. This was no defence, or at most it would be a defence only for a proportion equivalent to the part abandoned. He ought to be able to say that he had abandoned the whole.

RAMSAY, J., (*diss.*) concurred with the Chief Justice. On the 14th Oct. 1874, Mrs. Reeves sold to Quesnel the south of lot 4679, and Mrs. Cadieux sold him the north of the same lot. On the 17th Oct. 1874, Quesnel sold to Geriken, Laframboise and Robitaille three-fourths undivided of both properties. On this last sale Quesnel received $22,246.87, leaving due $27,365.63, which the purchasers promised to pay for Quesnel to Mrs. Reeves with interest, in certain instalments arranged to meet Quesnel's liability. Mrs. Reeves, who was not a party to the last deed, sued these joint proprietors hypothecarily for Quesnel's debt, and they made a *délaissement*. Subsequently Geriken was sued under the delegation, and he pretended that having been obliged to *délaisser* a portion of the property, he cannot be sued for any portion of the money.

This is evidently a proposition that cannot be sustained. They have only been evicted from one half of the property, and they still hold the other half. It cannot, therefore, be seriously argued that it is an answer to Quesnel, or to Reeves who is in Quesnel's rights, that he has been evicted from the other half. The least respondent would have to do would be to say, "I have been evicted from a certain proportion of the property, and I only owe you a certain proportion of the price which I have paid you."

But the proposition of respondent is not so favourable as this. It is true he has been evicted, but for what cause? For his own debt which he promised Quesnel he would pay to Mrs. Reeves. If he did not do so, he was evicted for his own fault, and he certainly could not set up his own neglect in answer to a demand from Quesnel. But, it is argued that Mrs. Reeves has, by her own act, destroyed her right to sue under the delegation. That as she has brought an hypothecary action, she has chosen to give respondent the option to *délaisser*, and that he having done so at her suggestion, he cannot be sued personally. The authority of Troplong is quoted in support of this proposition, but in spite of the weight due to the opinion of so celebrated a writer, I cannot adopt this view. In the first place, Appellant did not evict Geriken. She summoned him to give up her *gage* in order that it might be sold *en justice*, and that she should be paid from the proceeds. It was no more an eviction than if she had seized the land in execution of a judgment for one instalment. Surely that would not have prevented her recovering for another instalment. The sale of the *gage* does not cancel the original debt unless the proceeds of the sale pay the creditor off. Secondly, I know no rule of law that declares that the personal debtor may not be sued hypothecarily.

There is one other question—that he was evicted for the debt of another. He was evicted for his own debt and that of his *co-obligés*. They were sued together and all have *délaissé*. I would reverse.

CROSS, J., held that by the institution of the hypothecary action, and the *délaissement* thereupon made by Geriken, he ceased to be personally liable. The appellant by bringing the hypothecary action, had put Geriken in a worse

position, and could not now turn round and hold him personally liable.

MONK, J., agreed with Mr. Justice Cross, and he might state that Mr. Justice Tessier, who was absent, after much study had arrived at the same conclusion. The authority of Troplong (Priv. et hyp. tome 3, Nos. 813, 822 & 823) was referred to, as sustaining the view taken by the majority of the Court.

Judgment confirmed, Sir A. A. Dorion, C.J., and Ramsay, J., dissenting.

Doutre, Doutre & Robidoux for appellant.

Duhamel, Pagnuelo & Rainville for respondent.

RECENT ENGLISH DECISIONS.

Libel.—3. An indictment for an obscene publication is bad, even after verdict of guilty, if it fails to set out the words relied upon as obscene, and sets out the title of the work only.—*Bradlaugh* v. *The Queen*, 3 Q. B. D. 607; s. c. 2 Q. B. D. 569.

Limitations, Statute of.—1. In 1783, a lease was granted for ninety-nine years, and there was enjoyment under the lease until 1876, when an action was brought for possession, on the ground that the lease was void, under 13 Eliz. c. 10. *Held*, that the lease was not void, but voidable; and, as an action of ejectment might have been begun at once, the Statute of Limitations began to run at the time of the lease, and not from the date of the action.—*Governors of Magdalen Hospital* v. *Knotts*, 8 Ch. D. 709; s. c. 5 Ch. D. 175.

2. Defendant owed plaintiffs a large debt, incurred in 1865, and, in answer to a demand, wrote them a letter in May, 1874, in which he said: "Believe me, that I never lose out of sight my obligations towards you, and that I shall be glad, as soon as my position becomes somewhat better, to begin again, and continue with my instalments." It appeared that, in 1874, defendant's condition was bettered by £14, but was no better in any other year. *Held*, that, if there was a promise, it was a conditional one, and there was not sufficient evidence that the condition had happened to take the case out of the statute.—*Meyerhoff* v. *Froehlich*, 3 C. P. D. 333.

Negligence.—The defendant left a steam-plow, with a house-van attached, on the grass by the side of the "metalled" or travelled part of the road, the engine being taken away. He was in the habit of travelling from place to place with it, and had left it there, as it was engaged near by for the next day. The plaintiff's testator drove by in the evening in his cart with a mare which, though without his knowledge, was a kicker. The mare shied at the van, got the off-wheel on the foot-path, began to kick, kicked the dasher to pieces, ran, got her leg over the shaft, fell, and pitched the driver out and kicked him in the knee, so that he afterwards died. The jury found that the van was left where it stood "unreasonably" and "negligently," that the accident was "due to the van being where it was, and to the inherent vice of the mare combined," and that there was no contributory negligence on the part of the deceased. *Held*, that the plaintiff was entitled to recover, on the ground of the negligence of the defendant, and that his act was the real cause of the accident.—*Harris* v. *Mobbs*, 3 Ex. D. 268.

Partition.—The Partition Act (31 & 32 Vict. c. 40) provides, that at the request of one part owner for partition, there shall be a public sale, unless the other part owner can show good cause why some other course should be taken. Plaintiffs owned three-sixteenths of property in a town where improvements were going on, and applied for a public sale. Defendant, who owned the remaining thirteen-sixteenths, opposed it, and offered to buy the portion of plaintiffs at a valuation. *Held*, that there should be a valuation in chambers of the three-sixteenths, instead of a public auction of the whole.—*Drinkwater* v. *Radcliffe* (L. R. 20 Eq. 528) considered.—*Gilbert* v. *Smith*, 8 Ch. D. 548.

Sale.—A contract of sale provided, that if the purchaser should make any objection or requisition in respect of the title, or of any other matter which the vendors should be unwilling, by reason of expense or otherwise, to comply with, they should be at liberty to annul the sale and the purchaser should receive back his deposit. The vendors failed to show any title whatever, and claimed to annul the contract and to return the deposit. *Held*, not competent, and that the purchaser could have the deposit, and an inquiry for damages.—*Bowman* v. *Hyland*, 8 Ch. D. 588.

Shipping and Admiralty.—In February, 1876, plaintiff's agent shipped some maize on defendant's ship S., at Constantinople, to be carried to Liverpool. It appeared to be then, on inspection of the defendant, in good condition. March 3, the S. reached Smyrna, when the maize was found to have sprouted, and it was considered dangerous to carry it farther and it was unloaded and stored; and the S. went on without it. Other shippers, on application, refused to take it, by reason of its bad condition. Between March 10 and March 28, numerous telegrams were sent by the defendant's agent to the plaintiff, advising him of surveys, and of the necessity for selling the maize. The plaintiff, in Constantinople, constantly replied that he wished the grain sent on to Liverpool, and not sold, and he sent an agent on to inspect it; but before his arrival it was sold for £77, its value when sound having been £100. The jury found that it was not possible, by reasonable means, to find out the bad state of the grain at Constantinople, and that reasonable means had been used. That the defendants could have communicated with the owner before the sale, and that the sale was not so urgent as to give no opportunity to send him word, and that the sale as made was in itself a good sale. In an action for conversion of the maize, *held*, that the plaintiff could have damages, that he did not warrant that the grain was in good condition when shipped, and that there was no right to *pro rata* freight. *Brass* v. *Maitland* (6 E. & B. 47) mentioned.—*Acatos* v. *Burns*, 2 Ex. D. 282.

Statute.—Where persons played a game called Puff and Dart, which consisted in blowing a small dart through a tube at a target, and the players each put in 2*d.* entrance money, and the money was used to buy a dead rabbit, which was the prize of the game, *held* (COCKBURN, C.J., in doubt), that the players were guilty of "gaming," within the Licensing Act, 1872 (35 & 36 Vict. c. 94).—*Bew* v. *Harston*, 3 Q. B. D. 454.

Surety.—The plaintiff leased to B. a farm of 234 acres, and pasturage for 700 sheep, which went with the farm, from year to year, from April 10, 1873, rent payable half-yearly. B. gave a bond, with the defendant and others as sureties, that he would redeliver the sheep in as good order and number as when he took them, and, if there was any deterioration, damages should be assessed. November 9, 1875, plaintiff gave B. notice to quit on April 10, 1876, or at such time as the notice should be a good notice for. It was admitted that the notice was insufficient to end the lease on April 10, 1876. April 8, 1876, B. refused to obey the notice to quit, and it was withdrawn, and an agreement was made between him and the plaintiff that B. should surrender a certain field, and the rent should be reduced £10 yearly. Under this modification, B. continued tenant until October 5, 1876. Plaintiff gave him due notice to quit April 10, 1877. Before then, B. went into bankruptcy, and his trustee took possession, and surrendered it to plaintiff March 29, 1877. It turned out that the flock had deteriorated, and that the field surrendered would have supported a certain number of sheep. The judge left it to the jury to say whether the new arrangement between B. and the plaintiff made any material change in the capacity of B. to keep the sheep in good order, and to return them without deterioration; and also the jury found that it did not. *Held*, that the negotiations between B. and plaintiff had not created a new tenancy. But that the modification in the terms of the lease, by the surrender of the farm and the reduction of the rent, ought to have been made known to the sureties; and that it was for them, and not for a jury, to say whether that modification had materially affected their liability, by lessening the ability of B. to keep the flock intact, and that they were discharged from liability.—*Holme* v. *Brunskill*, 3 Q. B. D. 495.

Trade-mark.—The plaintiff, M., published a work entitled "Hemy's Royal Modern Tutor for the Piano-forte," not copyrighted. It had a great circulation. The defendant, W., employed Hemy to prepare an edition of an old work, formerly in repute, called "Jousse's Royal Standard Piano-forte Tutor," and it was issued under the title, "Hemy's New and Revised Edition of Jousse's Royal Standard Piano-forte Tutor." The word "Hemy's" was in much larger type, and more conspicuous on the cover and title-page than any of the other words. *Held*, that an injunction should be granted to restrain the use of the title-page and cover, and of any title-page and cover calculated to lead the public to believe they were purchasing plaintiff's publication.—*Metzler* v. *Wood*, 8 Ch. D. 606.

Trust.—1. A testator gave his residue to trustees to sell out and invest in parliamentary funds and real securities. It was, however, provided that the trustees for the time being might "sell out, transfer, or otherwise vary or alter, all or any of the said trust moneys, funds, and securities, and invest the same" in any other funds or securities whatever. The trustees put the property into £3 per cent annuities; but their successors afterwards sold these out, and invested in Egyptian bonds and Russian railway bonds, transferable by delivery; and each trustee took one-half of them to keep. One of them absconded with the portion in his hands, and the bonds greatly sunk in value. *Held*, that the trustees were authorized by the will to change the investment as they did; but that the remaining one was responsible for the portion of the property made off with by the other.—*Lewis* v. *Nobbs*, 8 Ch. D. 191.

2. A testator left his residue in trust for J. and others, his children, the provisions to vest in them at his death, and be paid six months thereafter. Notwithstanding this period for payment, "I provide and declare that it shall be lawful to, and in the power and option of, my trustees, if they see cause and deem it fit, to postpone as long as they shall think it expedient to do so the payment ..... as aforesaid in the case of all or any of my children,..... and to apply the interest or annual produce of the same during the.....postponement to or for behoof of such children.....or by deed under their hands to retain said provisions, or any of them, vested in their own persons, or to vest the same in the persons of other trustees (whom they are hereby authorized to appoint), with all.....the powers.....belonging to themselves,.....so that my children.....or any of them.....may draw.....only the .....annual proceeds of their respective provisions during their lives, or for such time as my trustees may fix, and that the capital may be settled on or for behoof of such children and their issue, on such conditions and under such restrictions and limitations and for such uses as my trustees in their discretion may deem most expedient, of which expediency, and the time and manner of exercising the powers and option hereby given, they shall be sole and final judges." J. received the annual income on his share from the trustees from 1871 to 1876, and also a part of his capital. The respondents then got judgment against J., and proposed to arrest the balance of J.'s capital in the trustees' hands, and apply it in payment of their debt. After the action was brought, but before judgment, the trustees executed a deed to themselves, to pay the interest to J. for life and the fee to his children, and resolving to hold the balance as an alimentary fund for J. and his family. *Held*, reversing the opinion of the Scotch court, that the trustees' discretion was complete, both as to principal and income, and the creditors had no claim on either. Effect of testing clause considered extrajudicially. —*Chambers* v. *Smith*, 3 App. Cas. 795.

3. L. bequeathed the residue to R., J., and I., trustees, to pay the income to his wife for life, and then to invest £850, and to pay the income of £500 thereof to his daughter, M., for life, and at her death for her children; and to pay the income of the other £350 to his daughter, B., for life, and at her death to stand possessed of the amount for her children. If M. died without issue, her share should go and be divided among L.'s other children, in like manner as their original shares were given them. Testator died in 1854, his wife in 1856, and M. in 1859, without issue. Thereupon B. became entitled to the income of one-third of M.'s £500, or £166 13s. 4d. in addition to her own, *i.e.*, to the income of £516 13s. 4d. R. advanced B. £50, and paid her interest upon £350 from the death of the wife, and on £466 13s. 4d. from the death of M. He died in 1863, and his executors continued the payments until 1874, with the knowledge of those interested in R.'s estate. There was among L.'s property a mortgage for £1,200. Between his death and the death of R., £700 of this was paid off in instalments. After the death of R., one of his executors received the other £500 in instalments. The receipts for the £700 were sometimes signed by R. alone, sometimes by R. and the other executors. For the £500, the receipts were signed by one of R.'s executors, "for the executors of L." R.'s executor paid J. one-third of the £500, I. one-third, and kept one-third himself. In 1877, B. began an action against the executors of R. to have the £516 13s. 4d. and the back interest restored out of R.'s estate. It was objected that L.'s other trustees should be joined.

I. was in New Zealand, and J. had died. *Held*, by Fry, J., that the other executors were not necessary parties, and that B. could recover. On appeal, the point as to parties was waived. *Held*, that B. could recover.—*Wilson* v. *Rhodes*, 8 Ch. D. 777.

Waste.—Where the owner of a farm, on which he had previously opened and worked a quarry, leased it, in 1802, for five hundred years, at a peppercorn rent, to secure a mortgage loan, by a lease containing no power to open mines or quarries or to commit waste, and afterwards opened and worked another quarry; and then, in 1811, granted a lease of the mines and quarries for twenty-one years; and, in 1820, the mortgagee under the demise for five hundred years took possession; and, in 1872, the reversioner on that term first learned that he had rights in the property, and, in 1873, brought suit to enjoin the further working of the quarries, and for an account, *held*, that there was no right to open and work quarries without the authority of the reversioner; but that the evidence showed that such authority had been given by acquiescence, and the quarries could be worked to the end of the five hundred years. —*Elias* v. *Griffith*, 8 Ch. D. 521.

Will.—1. J., by his last will, said: "I give and bequeath unto my wife....all my household goods and furniture and implements of household, farming-stock, cattle, growing crops, and other my effects in and about the house and upon the farm and lands in my occupation; .... and also all my ready money and money out at interest, and....mortgages, bonds, bills, book debts, &c., and all other my personal estate, property, chattels, and effects whatso ever and wheresoever, to which I am now seized, possessed, or entitled to, or may hereafter acquire and can hereby dispose of, to hold the same unto my said wife,....her executors, administrators, and assigns,....absolutely, and I do hereby devise all real estate"....held on mortgage to her; .... "but the money secured on such mortgages shall be considered as" personal estate. "I also devise" to her "all....estates....vested in me upon any trust." The testator left estates in fee. *Held*, that these did not pass by the will.—*Jones* v. *Robinson*, 3 C. P. D. 344.

2. A gift of all a testator's property to his wife, "absolutely, with full power for her to dispose of the same as she may think fit for the benefit of my family, having full confidence that she will do so," *held*, to be an absolute gift to the wife, free from any trust.—*Lambe* v. *Eames* (L. R. 6 Ch. 597) followed; *Cormick* v. *Tucker* (L. R. 17 Eq. 320) and *Le Marchant* v. *Le Marchant* (L. R. 18 Eq. 414) impugned.—*In re Hutchinson*, 8 Ch. D. 540.

3. S. made a legacy to A. and one to B., and then said: "Lastly, I give my sheep, and all the rest, residue, moneys, chattels, and all other my effects, to be equally divided among my brothers," naming them. He appointed his brothers executors. He left real estate. *Held*, that it passed to his brothers under this clause. —*Smyth* v. *Smyth*, 8 Ch. D. 561.

GENERAL NOTES.

—The oldest of the English judges is Sir Fitzroy Kelly, who is 83 years; the youngest, Lord Thesiger, who is 41. The oldest Irish judge, is Judge O'Brien, who is 73; the youngest, the Right Hon. Gerald Fitzgibbon, who is 45.

LIMITATION OF LIABILITY.—The *Saturday Review* summarizes as follows the provisions of a bill introduced in the Imperial Parliament to enable unlimited banks to limit their liability:—"An unlimited bank will be able to register itself as a limited bank, and it may, of course, choose any kind of limitation it pleases. It may have half or a third only of its capital paid up, and then, in case of liquidation, the uncalled capital will be payable for the benefit of creditors. But unlimited banks that seek to limit their liability will, under the Bill, have another course open to them. They will be able to register as banks with reserved liability or limited by reserve. In case of disaster, the shareholders will be liable not only for the amount of their shares, but for a further sum, which is always to be a multiple of the amount of each share they hold. Every bank may choose what this multiple shall be. Some banks will choose to multiply by one, and then the reserve liability will be equal to the amount of the share. Others will multiply by two, and then the reserve will be equal to twice the amount of the share."