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AUTHORITY OF BUSINESS MANAGER TO BUY ON CREDIT.

The law of principal and agent contains numerous questions of difficulty, and amongst them must be reckoned those with which the Common Pleas dealt in the recent case of *Daun* v. *Simmins*, (40 L. T. Rep. N. S. 556). The real point in that case related to the extent of the authority of the manager of a public house, but it involved some important principles of law. The action was brought by a spirit merchant against the owner of a public house for spirits supplied to the defendant's manager. The manager was authorized to order spirits of two persons only, but not of the plaintiff. When the accounts were sent in, the defendant repudiated the acts of his agent and refused to pay. The argument on behalf of the plaintiff was that the defendant put his agent in the business as general manager to carry on the business; and that, inasmuch as the agent was left in possession of the premises, there was a holding out of him by the defendant as having authority to make binding contracts, which estopped the defendants from proving that he had no authority. The license was taken out in the name of the defendant, but was left in the possession of the manager. The invoices, too, were made out in the name of the defendant. The action was twice tried, and on both occasions the jury found for the plaintiff. A rule *nisi*, however, was granted for a new trial on the ground that there was no evidence to go to the jury, and that the verdict was against the weight of evidence.

The grounds of the plaintiff's claim were twofold, but these might be easily resolved into one, namely: that the defendant had held out the agent as possessing the requisite authority, and was therefore liable with respect to such holding out. There is a great variety of illustrations contained in the law books. The principle upon which they depend is that, if one person employs another in a character which involves a particular authority, he cannot by a secret reservation divest himself of that authority. Hence we have another enquiry raised in *Daun* v. *Simmins*: did the character with which the agent was invested as manager render the instructions of the defendant with respect to the persons with which he was to deal nugatory so far as concerned a third person without notice?

In the early case of *Pickering* v. *Bush*, 15 East, 38, the plaintiff, the true owner, had bought goods through A., who was a broker and agent for sale. At the plaintiff's desire the goods were transferred into the name of A., who afterwards sold them. The action was brought to recover the goods. Lord Ellenborough ruled that the transfer by the plaintiff's direction authorized A. to deal with them as owners with respect to third persons, and that the plaintiff who had enabled A. to assume the appearance of ownership to the world, must abide the consequences of his own act. The jury found for the defendants. Upon the argument of the rule to set aside that verdict, his Lordship made use of his often quoted observations with respect to the limits of an agent's authority, remarking that "Strangers can look only to the acts of the parties and to the external *indicia* of property, and not to the private communications which may pass between a principal and his broker; and if a person authorizes another to assume the apparent right of disposing of property in the ordinary course of trade, it must be assumed that the apparent authority is the real authority. I cannot subscribe to the doctrine that a broker's engagements are necessarily and in all cases limited to his actual authority, the reality of which is afterward to be tried by the fact. It is clear that he may bind his principal within the limits of the authority with which he has been apparently clothed by the principal in respect of the subject matter." In a more recent case (*Summers* v. *Solomon*, 26 L.J. 301, Q. B.) one of the defendants' shops was under the management of his nephew who was in the habit of ordering goods of the plaintiff in the name of the defendant, who paid for them. In Nov. 1855 the plaintiffs received two orders for jewelry from the nephew. The goods were sent and acknowledged by the defendant as ordered by him. On the 7th March 1856, the nephew absconded and obtained on the 10th,

14th and 20th of the same month, a quantity of jewelry, the subject of the action from the plaintiff. The court was of opinion that there was evidence for the jury that the nephew had authority to order the goods, the question being whether the defendant had so held the nephew out, as to lead the plaintiff reasonably to suppose that he was the defendant's general agent for the purpose of ordering goods.

Many of the reported cases relate to persons who hold themselves out as partners. The principle of those cases is of very general application. The principles of law that relate to the liability of a person who holds himself out as a partner were explained by Chief Justice Tindal in *Fox* v. *Clifton*, 6 Bing. 776. The holding oneself out to the world as a partner, as contradistinguished from the actual relation of partnership, imports at least the voluntary act of the party so holding himself out. It implies the lending of his name to the partnership, and is altogether incompatible with the want of knowledge that his name has been so used. In the ordinary cases of its occurrence, where a person allows his name to remain in a firm, either exposed to the public over a shop door, or to be used in printed invoices or bills of parcels, or to be published in advertisements, the knowledge of the party that his name is used, and his assent thereto, is the very ground upon which he is estopped from disputing his liability as a partner.

The decision of the Queen's Bench in *Edmunds* v. *Bushell* and another, L. Rep. 1 Q. B. 97, throws some light on the subject. In that case the defendant A. carried on business in two different towns: in the one he traded as B. & Co. There he employed the defendant B. as his manager to carry on the business in his own name. The drawing and accepting bills of exchange was incidental to the carrying on a business of the like kind, and was proved to be so; but there was an agreement between B. and A. that B. should neither accept nor draw bills. Nevertheless B. accepted a bill in the name of B. & Co. This bill was taken by a banking company for a valuable consideration, and B. was shortly afterward dismissed. It had also been agreed between A. and B. that B. should receive as salary one-half of the net profit derived from the business carried on in his name. The main question upon the argument was whether A. was liable for the act of B. The court acting upon the principle already adverted to, came to the conclusion that B. must be taken to have had authority to do whatever was necessary or incidental to carrying on the business, and that he could not be divested of his apparent authority as against third parties by a secret reservation. A comparison of this case with that of *Daun* v. *Simmins* will show that they differ in some important particulars.

That the limits of an agent's authority will not be gathered from his private instructions, was the principle upon which the well-known case of *Whitehead* v. *Tuckett*, 15 East, 400, was decided. There the plaintiff purchased some hogsheads of sugar of the defendant's brokers. These the defendant refused to give up, on the ground that the brokers had been entrusted with the sugar with a limited authority. The sugar in question had been purchased and paid for in their own names by the brokers, and lodged in their now warehouse, but sold under the price directed by the defendant. A verdict for the plaintiff was found on the ground that the extent of the authority was to be gathered from the recognized mode of dealing.

None of these decisions is a direct authority in support of the argument that a manager, under the circumstances of *Daun* v. *Simmins*, had authority to pledge his employer's credit. The question is, therefore, whether they support such a proposition. It certainly cannot be laid down as a universal proposition that such a manager has implied authority to buy on credit. The court thought there was no evidence of such authority to be inferred from the circumstances of the case, and by the application of Order XL., r. 10, gave judgment for the defendant. It is at least satisfactory to find that upon a motion for a new trial, where the court has the necessary materials before it, final judgment may be given, thus saving the expense of a new trial.—*Law Times* (London).

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, February 28, 1879.

DEMERS v. TURGEON; ST. GABRIEL BUILDING SOCIETY, collocated, and plaintiff contesting.

Privilege—Wages—Period for which privilege exists—C.C. 2,006.

JOHNSON, J. The plaintiff contests items 7, 9 and 11 of the report of distribution which gave her, under her judgment for two years' wages, only the amount due for one year and interest, amounting to $85 in all, and distributed the balance of the $160 levied, *au denier la livre* between her and the building society, which had an obligation on the property, but only registered after the seizure. The contestation maintains the plaintiff's right to two years by privilege. I cannot see that this report is wrong. It recognizes the non-existence of the Building Society's hypothec, which was only registered after the seizure, and divides the balance *au marc la livre* between the plaintiff and the society. It was said the latter had not registered its hypothec; neither is its hypothec recognized by the report at all; but only the debt for which it ranks like the other creditor *au denier la livre*. As to the rest of the contestation, it might perhaps have been urged if the plaintiff's judgment had been registered. Report of distribution maintained, and contestation dismissed with costs.

J. J. Curran, Q.C., for collocated party.

O. Augé, for plaintiff contesting.

THAYER v. ANSELL, and MOSS et al., opposants.

Privilege—Registration—Alienation of immoveable by holder while hypothecary action is pending by a creditor whose claim has not been re-registered under the cadastral system—Rights of the latter as against purchaser with duly registered title—C. C. 2074, 2173.

JOHNSON, J. The point in this case is of some importance and, as far as I can ascertain, has never presented itself before. The plaintiff has seized, under a judgment obtained against the defendant, property which the opposants claim as belonging to them. The facts of the case are as follows:—The opposants became proprietors of the undivided half of an immovable at Cote St. Catherine, by deed of sale from the defendant, in 1874. In October, 1875, they acquired the remaining half—also by deed of sale from the defendant. Before the latter deed was signed, Mr. Cushing, the notary, at the request of one of the opposants, went to the registry office and made search to ascertain if there were any encumbrances registered against the property, and having reported that there were none, the deed was executed. Some time afterwards, the property in question was seized under the plaintiff's execution, and the opposants then became aware, for the first time, that in July, 1875, the plaintiff had brought an action against the defendant for a balance due to him under a former deed of sale to the *auteur* of the defendant, and that the plaintiff had obtained judgment in that action in October, 1875, two days before the second deed of sale, from the defendant to the opposants, was passed. The opposants thereupon filed their opposition, founded on the two deeds above mentioned. The plaintiff, in his contestation, admits the first deed, but disputes the second, and claims the right (under article 2,074 C. C.) to proceed to the sale of the one half. The opposants make answer that at the time the second deed was executed and registered, the plaintiff had no registered rights of any kind upon this property, available against third parties whose rights were registered, and that his action and judgment therefore can have no effect as against the opposants. The plaintiff's claim is founded on a deed executed before the cadastral system came into force. The opposants' deed was executed in accordance with the requirements of the new system—that is, contained a description of the property by its cadastral number, and was duly registered. No renewal of the registration of plaintiff's deed had at this time taken place; and the books of the registry office, therefore, did not show that such a claim existed. The opposants' contention upon these facts is that the plaintiff's claim, in consequence of the non-renewal of registration, is of no effect against them. The position of the plaintiff, on the contrary, is that his rights were never impaired at all by the sale to the opposants, which, under the law, as it is contended, had not even the effect of alienating the property. I have said that the point thus raised appears to me important, and I have taken time to consider it, and am now to give judgment, and state the grounds on which I give it.

The article of the Code (2,074) is founded on the Statute of 1859 (22 Vict., c. 51), which is reproduced in Consolidated Statutes of Lower

Canada, c. 47. It does not give the reason, but only the effect, of the original enactment, which was directed against fraudulent conveyances, as their titles and preamble will show: the fraud sought to be defeated being that of debtors exposing their hypothecary creditors to the reiterated expense of new actions as fast as the debtor could find new purchasers. The law, as expressed in the Code (Art. 2,074), is:—"The alienation of an immoveable by the holder against whom the hypothecary action is brought, is of no effect against the creditor bringing the action, unless the purchaser deposits the amount of the debt, interest and costs due to such creditor." The language of the Statutes is:—"Every sale or alienation of any nature whatsoever of any immoveable charged with hypothec *duly registered prior* to such sale or alienation, after proceedings have been commenced for the recovery of the debt with the payment of which such immoveable is charged, shall be null and void as regards the creditor who has commenced such proceedings, and such creditor may proceed against the defendant in such action to the seizure and sale of such immoveable, as though such sale had never taken place, provided that in such case, the purchaser of the immoveable so seized may prevent the sale thereof by tendering with his opposition, and depositing in the office of the sheriff the amount of the debt with which such immoveable is charged, including principal, interest and costs, and not otherwise," &c. There is nothing in the Statute, nor in the code, that annuls the sale as between the vendor and the purchaser; it is merely said that such a sale does not affect the rights of the creditor, and does not stop the execution, unless the money is paid. The purchasers here, therefore (the opposants), had a title from their vendor—a title, it is true, that was of no avail against a creditor *whose hypothec was duly registered* previously (those are the words of the Statute) and who had commenced an action; but at the same time, a title that was perfect, as between himself and his vendor; a title which he could defend even against the hypothecary creditor by simply paying the money; a title that he could register, and, in fact, did register before the creditor registered his.

Now, coming to the cadastral system, we find that it is said in article 2,173, "*If such renewal be not effected, the real rights preserved by the first registration have no effect against other creditors and subsequent purchasers whose claims have been regularly registered.*" What is "regularly registered?" What was it at that time? It is to be remembered that under the Code a hypothec has no effectual existence at all without registration, (articles 2,047 and 2,130) and real rights rank according to the date of their registration (2,130). Article 2,172 requires renewal of registration of any real right existing before the cadastral system came into force. Article 2,173 declares, as we have already seen, that if such renewal is not effected, the real rights which were preserved up to a certain time by a first registration, have no effect against subsequent purchasers whose claims have been regularly registered. The expression, "real rights" removes all possible doubt as to whether this article was intended to apply to the hypothec created in favor of a vendor by a deed of sale.

Here, then, we have two laws—an old law and a new law. The meaning of either of them, taken alone, is not doubtful; but we are concerned not so much with the meaning of either of them of itself, as with the effect of the later law on the previous one.

The Statute and the Article 2,047 said to the possessors of real rights in the persons of hypothecary creditors:—"You have mortgages which new purchasers cannot defeat or impede except by paying the money, if you only register your rights, and bring your actions." The second law said to these creditors: "Your rights cannot be preserved against subsequent purchasers unless you take the trouble to renew your registration in a given time." Are we then to have two systems of preserving hypothecs since the cadastral system has come into force? Can a hypothecary creditor bring his action, and wait for years without re-registering, and thus prevent a subsequent purchaser from acquiring a valid title? If he can, what becomes of our registration system? for lenders by the score will be ready to advance their money upon property appearing free on the books, and will then be exposed to hear that a real right, though not registered, still exists in virtue of the mere pendency of

an action. The Article 2,173 is absolute in its terms. The plaintiff, therefore, was bound to have renewed the registration of his "real right"; and not having done so within the period allowed by law, his right becomes of no effect, as against the opposants, whose deed was regularly registered. These words "regularly registered" can only mean regularly registered, as required by Article 2172, and if not so registered, the effect of the omission, must, in my opinion, be that which is declared by Article 2173. As regards the Article 2074, under which the plaintiff claims a right to proceed, the object of that Article, I hold, was to protect a creditor in the exercise of hypothecary rights that he possessed, not to give him rights that he did not possess or that he had lost. The article decides nothing as to whether in a given case, a creditor has, or has not, a hypothecary right which he can enforce against a third party: that is left to be decided by other articles, and notably by Art. 2173; but supposing him to have such a right, Art. 2074 will protect him in the exercise of it. If the right does not exist, or has been lost, there is nothing left to protect, and Art. 2074 becomes then of no use. The plaintiff's contestation could only be maintained by holding that he has a hypothecary right available against third parties, notwithstanding the non-renewal of registration; but how could such a holding be supported in the face of Art. 2173? If, then, the plaintiff had no hypothecary right available against the opposants, his hypothecary action unsupported by a hypothecary right can have no effect against them. Therefore, on the whole, I am of opinion that the right of the creditor arising from the exercise of the action under Art. 2074, must be subordinated to the later enactment contained in articles 2172 and 2173, and the opposition must be maintained, and the contestation dismissed as respects the one-half of the property that is in question.

There was another and totally distinct ground of contestation urged, viz., that the last deed to the opposants was fraudulent and without consideration; but the proof made, as far as it goes, is directly opposed to that pretension. There is no attempt made to set aside the deed, and no allegation of the insolvency of the vendor, and under Art. 2085, knowledge by the opposants of the plaintiff's unregistered rights would have no effect.

Lunn & Cramp, for opposants.

Geoffrion & Co., for plaintiff contesting.

LIBEL BY POST CARD.

A novel question has recently been decided in the Irish High Court of Justice, in the case of *Robinson* v. *Jones*, involving a libel communicated by postal card. The defendant was a trader, and the plaintiff, one of his customers, owed the defendant a sum of money, for the payment of which the defendant applied to him. The plaintiff being unwell, directed his wife to write to the defendant, sending him at the same time money in part payment of the sum due. The defendant, in reply to this letter, wrote in reference to the balance, on a post-card (which was transmitted to the plaintiff through the post-office) the libellous matter complained of. On demurrer to a plea of privileged communication: *Held*, that the court should take judicial notice of the nature of a post-card, and that the publication could not be taken as necessarily limited to the plaintiff. *Held*, further, that, assuming the defendant to have an interest in writing the alleged libel, a communication transmitted by means of a post-card is not privileged. The libellous matter was as follows: "Dr. Robinson, Skibereen. 83 Grand parade, Cork, February 1, 1879.

"1877.—To amount for goods as rendered £1 16 2

" By post-office order on account £1 8 1

0 8 1

"Sir—Your plea of illness for not paying this trifle is mere moonshine. We will place the matter in our solicitor's hands if we have not stamps by return, if it cost us ten times the amount. T. Jones & Sons." The innuendo put upon this communication by the plaintiff was that it meant that the plaintiff falsely pretended that he was prevented by sickness from paying the defendants' demand, and that the alleged sickness was a mere invention and sham; and that the plaintiff was an untruthful person, and unable to discharge his debts, by reason of which the plaintiff had been injured in his character, credit and reputation,

and in his profession. The court, by Palles, C.B., said: "I am willing to assume that the averments in the statement of defence show that the defendant had an interest in writing to the plaintiff the words complained of within the meaning of the authority of *Harrison* v. *Bush*, 5 E. & B. 344; but the publication that is to be justified is not a publication to the plaintiff, but to other persons. It is not stated that the publication was reasonable, but that the defendant believed it to be reasonable; that is apart from the question of what a post-card is. I think that we ought to take judicial notice of the nature of a post-card; and, therefore, I see no reason for holding that a communication written on a post-card is privileged. It would be a most serious thing to lay down that a person may extend the sphere of circulation of defamatory matter because he wants to save a half-penny in postage." This decision is one probably without precedent, springing as it does out of one of the advances of the modern postal system. It assumes the reading of the matter by some third person, essential to the offence, as "no possible form of language in writing can be the basis of an action for libel if read only by the writer and the person whom or whose affairs the language concerns." Townshend on Slander, § 108.

RECENT UNITED STATES DECISIONS.

Accession.—A railroad company made a contract with a rolling mill company for the making at the mill of new rails out of old rails supplied by the railroad, with the addition of new iron, to be supplied by the mill, which was required for the top of the rails. *Held*, that if the railroad furnished the chief or principal part of the material of the new rails, the property in the material and in the new rails as finished remained in the railroad.—*Arnott* v. *Kansas & Pacific Railroad Co.*, 19 Kan. 95.

Bona fide Purchaser.—A negotiable city bond, one of a series numbered separately, was stolen, and was bought *bona fide* for value, after the number had been altered by the thief. *Held*, that the purchaser took a good title.—*Elizabeth* v. *Force*, 29 N. J. Eq. 587.

Contract.—A wrote to B: "Please let C and family have whatever they want for their support, and I will pay you for the same." A physician, procured by B, at the request of C, furnished medicines and services to C's family. *Held*, that B could not recover the physician's bill of A.—*Grant* v. *Dabney*, 19 Kan. 388.

Damages.—Plaintiff ordered of defendants a particular kind of cabbage seed. Defendants sent him seed labelled with that name, but in fact not of that kind; and the seed, being sown, proved wholly unproductive. *Held*, that plaintiff was entitled to recover the value of a crop of the kind of cabbages he had ordered, without deduction of the expense of raising such crop.—*Van Wyck* v. *Allen*, 69 N. Y. 62.

Dog.—Defendant's dog trespassed on plaintiff's close, and there killed a cow. *Held*, that plaintiff might recover the value of the cow in an action in the nature of trespass, without averring or proving that defendant knew the dog to be vicious.—*Chunot* v. *Larson*, 43 Wis. 536.

Escape.—By statute, it is a criminal offence in "any person lawfully imprisoned, upon any criminal charge, before conviction," to break prison. To an information on this statute the prisoner pleaded in bar, that he had been retaken, tried on the charge on which he was imprisoned, and acquitted. *Held*, bad. *State* v. *Lewis*, 19 Kan. 260.

Evidence.—1. Action for libellous words charging a crime. Plea, that the charge was true. *Held*, that the plea need not be proved beyond a reasonable doubt.—*McBee* v. *Fulton*, 47 Md. 403.

2. In a criminal case, a letter from the prisoner to his wife, produced by a third person, was held admissible in evidence, and not a privileged communication.—*Geiger* v. *The State*, 6 Neb. 545.

3. Action for enticing away plaintiff's daughter and servant, and placing and leaving her in a house of ill-fame. *Held*, that evidence of the daughter's declarations made after leaving home, and before being left at the house, was admissible as part of the *res gestae*; otherwise as to her declarations made after that time.—*Felt* v. *Amidon*, 43 Wis. 467.

Extradition.—The prisoner, being indicted for embezzlement and also for forgery, fled to Canada. The former offence is not within the extradition treaty between Great Britain and the United States: the latter is; and the prisoner was demanded of, and surrendered by,

the Canadian Government, to answer to the charge of forgery, and was tried on that charge, and acquitted. *Held*, that he should be discharged without trial on the indictment for embezzlement.—*Commonwealth* v. *Hawes*, 13 Bush, 697.

False Pretences.—Indictment for obtaining money by false pretences that the prisoner owned unencumbered land. In fact, there was an incumbrance, duly recorded, on the land. *Held*, that the indictment was not sustainable; because the prosecutor might and should, by the use of ordinary care, have ascertained the truth.—*Commonwealth* v. *Grady*, 13 Bush, 285.

Illegal Contract.—A contract for the sale of wheat in store, to be delivered at a future time, which required the parties to advance "margins" as security, and provided that if either party should fail, on notice, to advance further margins, according to the market price, the other party might consider the contract filled, and demand the difference between the contract and the market price, without showing an ability or readiness to perform on his part, *held*, illegal.—*Lyon* v. *Culbertson*, 83 Ill. 33; *Rudolf* v. *Winters*, 7 Neb. 126.

Indictment.—Information charging that the defendant, not being licensed, kept liquors with intent to sell, offered them for sale, and sold them, *held* not bad for duplicity, though each of the acts charged was in itself a separate statutory offence.—*State* v. *Burns*, 44 Conn. 149.

Injunction.—The defendants, a board of city water commissioners, threatened to cut off the water from plaintiff's house, occupied by his tenant, on account of the tenant's default in not paying water rates for another house, hired by him of another person. *Held*, that such action was unreasonable, even if warranted by the terms of defendant's by-laws; and an injunction was granted.—*Dayton* v. *Quigley*, 29 N. J. Eq. 77.

Insurance (*Fire*).—A policy forbade the making of gas within the building insured, "or contiguous thereto." *Held*, that a building fifty feet away from that insured was not contiguous, within the meaning of this clause.—*Arkell* v. *Commerce Ins. Co.*, 69 N. Y. 191.

Malicious Prosecution.—In an action for malicious prosecution, it appeared that the prosecution was before a justice of the peace, who convicted the plaintiff; but the conviction was reversed on appeal. *Held*, that there was at least *prima facie* evidence of probable cause for the prosecution.—*Wornack* v. *Circle*, 29 Gratt. 19.

Mandamus.—A city was directed and required by Statute to maintain a bridge. *Held*, that any citizen might apply for a *mandamus* to compel the city to do so.—*Pumphrey* v. *Baltimore*, 47 Md. 145.

Municipal Corporation.—A city, in raising the grade of a street, piled up earth so that it rolled over on to adjacent land and did damage. *Held*, that the city was liable.—*Hendershott* v. *Ottumwa*, 46 Iowa, 658.

Negligence.—Action against a city to recover damages caused by a defective highway on which plaintiff was passing in a hired carriage driven by a friend. *Held*, that contributory negligence in the driver would defeat plaintiff's recovery.—*Prideaux* v. *Mineral Point*, 43 Wis. 513.

Nuisance.—The habitual neglect of a railroad company to give proper signals when its trains were about to cross a highway, *held*, indictable as a public nuisance.—*Lexington & Nashville R. R. Co.* v. *Commonwealth*, 13 Bush, 388.

Partnership.—A partnership was formed for carrying on mining operations on land owned or to be purchased by the firm. *Held*, that one partner had no power to buy land for the use of the firm, nor to bind the firm by bills drawn for the purchase-money of such land.—*Judge* v. *Braswell*, 13 Bush, 67.

Watercourse.—Defendant conveyed to plaintiff land with a factory on it, and the right to use water drawn from springs on defendant's land, and to enter on that land to repair water-pipes and to dig other springs if necessary; and reserved to himself the use of the water at certain places and times. Afterwards, he made excavations on his own land, which drained the water from the springs which supplied the factory. *Held*, that he was liable to plaintiff.—*Johnstown Cheese Manuf. Co.* v. *Veghte*, 69 N. Y. 16.

Will.—A testator having two children, left all his property to his wife; after the date of the will, two other children were born to him. *Held*, that the will was revoked by implication of law.—*Negus* v. *Negus*, 46 Iowa, 487.

RECENT ENGLISH DECISIONS.

[Continued from page 72.]

Will.—4. A testator gave several charitable legacies, including one of £1000 to a hospital in N., and then said: "I direct that my executors shall apply to any charitable.... purpose they may agree upon, and at any time, the residue of the personal property, which by law may be applied to charitable purposes, remaining after the payment of the legacies." By a codicil, he gave another £1000 to the hospital at N. The executors voted to give the residue under the above clause to that hospital. *Held*, that the directions to the executors in the gift were so vague as to render it invalid, and the residue went to the next of kin.—*In re Jarman's Estate. Leavers* v. *Clayton*, 8 Ch. D. 584.

5. H., by his will, devised, *inter alia*, his manor-house of D., and all his "messuages, tenements, lands, and hereditaments situate at or within D., and then in the occupation of J.," and all his lands situated at S. G., then or late in the occupation of S. He had three farms situated wholly or partly in the parish of D., two of them in the occupation of J. Of the first, the farm-house and fifteen closes were in D.; the remaining close was in I., separated by a hedge. Of the second, the farm-house and eight closes were in D.; the remaining three closes were in K., separated from D. by a road. The third was entirely in D., and in the occupation of G. He had two farms at S. G., one in the occupation of S., and the other in the occupation of J. The parish church of D. was within a few feet of the line between D. and K. There was evidence that the farms would be much injured by dividing them on the parish lines. *Held*, that the devise of lands situate at or within D., and in the occupation of J., included the entire farms so occupied, though partly in other parishes, and that the devise of "all" the lands in S. G. in the occupation of S. did not include a farm there in the occupation of J.—*Homer* v. *Homer*, 8 Ch. D. 758.

6. W. directed his debts to be paid out of his personal estate, and, if that proved insufficient, the real was to be sold. All the rest and residue of his personal estate he bequeathed to his daughters. By a codicil, he made some alteration in the disposition of his real estate, and then said: "As to all moneys that may be left after my decease, I give and bequeath the same unto my children, W., J., and M.," to be invested in a mortgage, the income to be paid them for life, and, "after their decease," to testator's grandchildren. *Held*, that this clause in the codicil applied only to cash actually in hand at the testator's death, and, subject to that, the residuary clause in the will proper conveyed the residue.—*Williams* v. *Williams*, 8 Ch. D. 789.

7. A testator devised to trustees three freehold houses in trust for his two daughters, either to live in or to let for their joint benefit; and, should either of them die without issue, one of the houses should be sold, and the proceeds divided equally between the other and testator's surviving sons. But, in case either daughter should have a child, then such child should have its mother's share of the rents and profits of the three houses after its mother's decease. One daughter died without issue, and one house was sold, and the proceeds divided as directed in the will. Finally, the other daughter died, also without issue. *Held*, that the daughters were joint tenants in fee, subject to executory gifts over in the event of issue. The event having never happened, the survivor was entitled to the whole in fee from the death of her sister.—*Yarrow* v. *Knightly*, 8 Ch. D. 736.

A Royal Outlaw.—The King of Spain was outlawed in Westminster Hall, I being of counsel against him. A merchant had recovered costs against him in a suit, which, because he could not get, we advised to have him outlawed for not appearing, and so he was. As soon as Gondemar heard that, he presently sent the money, by reason, if his Majesty had been outlawed, he could not have had the benefit of the law, which would have been very prejudicial, there being then many suits depending betwixt the King of Spain and our English merchants. —*Selden's Table Talk.*

Charles I.—Laud relates in his Diary, that when he was standing one day during dinner near his unfortunate master, then Prince Charles, the Prince, who was in cheerful spirits, talking of many things as occasion offered, said, "that if necessity compelled him to choose any particular profession of life he would not be a lawyer, for", said he, "I can neither defend a bad cause, nor yield in a good one."