SHORT NOTES OF RECENT ENGLISH CASES;

BEING A SELECTION OF ADJUDGED POINTS.

FARINA *vs.* SILVERLOCK. 6 De Gex, Mac. & G. 214.

Trade Mark—Label—Injunction to Restrain Printing of, dissolved.

In this case the Lord Chancellor (reversing the decision of Sir W. Page Wood, V. C., who granted an injunction) held, that where a trade-mark consisted of a label in a certain form, and it was shown that in very many instances labels the same or similar to it might be sold for a *legitimate* purpose, in the absence of proof of actual fraud, the printing and sale of such labels ought not to be restrained, until the owner of the trade-mark, who alleged that they were used for a fraudulent purpose, had established his case by an action at law. "The Vice-Chancellor," said his lordship, "put the case in a manner which struck me forcibly at first; but I confess I cannot quite go along with him. He says, that where a person may be making and selling something for a lawful purpose, or may be making and selling it for an unlawful purpose, it will not do for him to say that he is making it to use for a lawful purpose; but he must show, in some way or other, that it is not to be used for an unlawful purpose. I think I can imagine cases where that reasoning would very properly apply; if, for instance, the article here was one the demand for which, perhaps, would be of rare occurrence, and there was only one dealer in it in this metropolis, and the defendant was a person who was selling thousands of these labels, in such a case, having reference to the article manufactured, it would be a very fair observation to say, that as there could be but one person who could lawfully give an order for the labels, it could not be imagined that the defendant's purpose was lawful, and then the court might interfere. If, however, there are dispersed over the country a hundred, or five hundred, or a thousand persons, for whom these labels might be legitimately made, I cannot think it reasonable to say, that the defendant's stock should be destroyed and his trade stopped, because he may sell to some person to whom he has no right to sell."

KNIGHT *vs.* ROBINSON. 2 Kay & Johns. 503.

Will—Construction—Gift of Securities for Money—Passes Legal Estate.

A testator having by his will in 1832 given all his money, *securities for money*, household furniture, fixtures, &c., and all *other* the rest and residue

of his *personal estate* and effects, *subject to the payment of his just debts, and funeral and testamentary expenses and legacies,* to his wife, *her executors, administrators, and assigns,* absolutely; it was held by Sir W. Page Wood, V. C., that the legal estate of certain mortgaged hereditaments, which was vested in the testator at the date of his will, passed, as well as his beneficial interest therein, under the term "securities for money," and that the concurrence of the testator's heir was not necessary, therefore, to make an effectual conveyance of the mortgaged premises to a purchaser. "It appears to me," said his Honor, "that the view taken by Vice-Chancellor Parker in Re King's Mortgage (5 De G. & S. 646), is founded both upon principle and authority. The only distinction between that case and the present is, that in the former the gift was to the testator's wife, 'she paying thereout all the testator's debts, while here the gift is 'subject to the payment of' the testator's debts and legacies.

"It is perfectly true, that where there is a general devise of all a testator's real, or all his real and personal estate, subject to debts and legacies, then, as in Doe d. Roylance *v.* Lightfoot, (8 M. & W. 533) a dry legal estate in mortgage and trust estates will be held not to pass, because to hold the contrary would be, *quoad* such estates, to throw the debts and legacies upon a mere dry and naked trust estate. But when, as here, you get words such as 'securities for money', then the observation of Sir John Leach, in Renvoize *v.* Cooper (6 Madd. 373), cited by Vice-Chancellor Parker, in Re King's Mortgage (5 De G. & S. 647), applies." . . . . .
And after citing Doe d. Guest *v.* Bennett (6 Exch. 892), his Honor added, "To hold that the testator has given the legal estate in a case where, as here, he has given the security, subject to the payment of his debts, is not to throw such debts upon a mere dry trust estate, because the donee can pay such debts out of the moneys recoverable upon the security. Therefore, in my opinion, the circumstance of this gift being subject to the payment of the testator's debts and legacies, does not make against the construction for which the plaintiff contends.

"The strongest argument urged against that construction was that which was founded upon the circumstance of the enumeration of the securities and other subject-matters of this gift being followed by the words 'and all *other* the rest and residue of my *personal* estate and effects;' which point, it was said, to the inference that bonds and other securities short of the legal estate in a mortgage in fee, were exclusively intended by the testator. In answer to that, I refer to what Vice-Chancellor Parker says in Re King's Mortgage.

"It has been said, that the words 'securities for money' in this will were placed among words relating to personal estate; but that is the place in the will in which they might be expected to be found, the mortgage-money, being in fact personal estate. . . . . I agree with Vice-Chancellor Parker, that Galliott *v.* Moss, (9 B. & C. 267) must be treated as overruled by the subsequent decisions. I also concur in what he says, that it cannot be reconciled with *Ex-parte* Barber (5 Sim. 451), or Mather *v.* Thomas, (6 Sim. 115; and see 10 Bing. 44)."

TENNANT *vs.* HEATHFIELD. 21 Beav. 256.

Will—Construction—Ulterior Bequest on Failure of Prior Gift.

As a general rule, when a bequest is to take effect after the failure of a prior gift, the total failure of that gift will not prevent the ulterior bequest taking effect. Thus, where there was a bequest by a testator to his daughter for her separate use for life, and after her decease to her children, and in case of their deaths before the vesting of their shares, in trust for her next of kin, and the daughter never had any children, it was held by Sir J. Romilly, M. R., that her next of kin were nevertheless entitled. "The case of Jones *v.* Westcomb, (Prec. Ch. 316, 1 Eq. Ca. Ab. 245, pl. 10), and Doe d. Watson *v.* Shepphard, (1 Doug. 75), to which I was referred, appear to me to apply to this case. In the latter case the question was, whether you could imply an estate; that is not the case here.

"Underwood *v.* Wing, (19 Beav. 459; and 4 De G. M. & G. 633) no doubt might seem to have a bearing on this case, but, in my opinion, it has not, and it is perfectly distinct. I adhere to the decision I came to in that case, which is perfectly distinguishable from the present. In Underwood *v.* Wing, the testator, Mr. Underwood, gave the whole of his property to his wife, and in case she died in his lifetime, then to his children; and on failure of the gift to the children, he gave the property to Mr. Wing. All those gifts, no doubt, failed; but they failed for this reason: because it was not proved that the wife died in the testator's lifetime, and consequently it was not proved that the event had occurred on which the gift was to take place. In that case, the whole series of limitations depended on a contingency, which was not proved to have happened. That case was different from the present, where each limitation is to take effect on the failure of that preceding it.

"I am of opinion in this case, that the plain intention of the testator

was, that his daughter should take an estate for life, and on her death, if she had no children who took a vested interest, the property should go to her next of kin; and that, on the authority of Jones *v.* Westcomb, and several other cases, I must hold that the next of kin of the daughter, at her death, took the fund, and that there was no intestacy."

WOOD *vs.* BELL. 5 Ellis & Bl. 772.

Chattel in Course of Manufacture—Vesting of Property—Contract to Build a Ship.

A special case raised, *inter alia*, a question for the opinion of the Court of Queen's Bench, whether the plaintiff or the defendants, the assignees of Joyce, a bankrupt shipbuilder, were entitled to the property in a certain unfinished iron screw steam-vessel, called the *Britannia*, contracted to be built by Joyce for the plaintiff.

This *Britannia* was, at the time of the bankruptcy, being built under the terms of a contract dated the 3d November, 1853. In July of that year, Joyce, who had built several other steamships, contracted to sell one of them, the *Peninsula*, then in course of construction at his shipbuilding-yard, to the plaintiff. This vessel was completed and paid for, accepted under the contract, and duly registered in the plaintiff's name.

On the 10th September, 1853, the bankrupt, by letter, agreed to build a new steamer according to specifications to be furnished by the plaintiff's agent, for 16,000*l.*, payable as follows: 1,000*l.* on 12th September, 1,000*l.* on 12th November, 1000*l.* on 12th December, and 1,000*l.* on 12th January, 1854; the remaining 12,000*l.* by instalments of 3,000*l.* each; the first on 10th March, provided the vessel was plated and decks laid; the second 3,000*l.* on 10th May, providing the vessel was ready for trial; third 3,000*l.* on 10th August, providing the vessel was according to contract, and properly completed; the fourth and last 3,000*l.* on the 10th October.

In pursuance of this contract, the bankrupt built and completed for the plaintiff a second vessel, afterwards called the *Gibraltar;* and on the 3d November, 1853, whilst this second vessel was in progress, he offered by letter to build for the plaintiff two or more vessels of *the same size and power as the one then in hand, and at the same price*, 16,000*l.* This offer was at once accepted by the plaintiff, and an order given for a new vessel, and the vessel now in dispute was at once commenced; nothing was then agreed as to the mode or time of payment. In March, 1854, however,

the bankrupt obtained an advance from the plaintiff of 7,000*l.*, which advance the bankrupt acknowledged by letter, as an advance partly upon the new vessel contracted for, and partly on any other vessel to be thereafter ordered. The letter stipulated for interest being calculated up to such periods as might be agreed on for the instalments becoming payable, and the plaintiff continued up to the time of the bankruptcy, which happened December, 1854, to make advances to the bankrupt to a greater amount than the whole value of the vessels in progress of building for him; the bankrupt giving receipts as for advances on the said vessels. The *Gibraltar* was completely and duly registered in the plaintiff's name; and the vessel now in dispute was treated by the bankrupt throughout as the plaintiff's. She was, at the date of the bankruptcy, plated, or the decks laid, as stipulated for in the case of the *Gibraltar*, but the name of the new vessel, *Britannia*, and the plaintiff's name as owner, were branded upon her.

The Court of Queen's Bench held, on the authority of Wood *v.* Russell, (5 Barnwell & Alderson, 942), and Clarke *v.* Spence, (4 Ad. & E. 468), that the vessel passed to the plaintiff, and this decision was affirmed by the Court of Exchequer Chamber.

MARE *vs.* CHARLES. 5 Ellis & Bl. 978.

Principal and Agent—Liability of Agent—Purser of Mining Company.

This was an action on a bill drawn by the plaintiffs on the defendant for 102*l.* 0*s.* 6*d.* The bill stated on the face of it that the value received was for machinery supplied the adventurers in Hayter and Holne Moor Mines; but it was directed to the defendant, without describing him as agent or purser. The defendant accepted the bill "for the company," and it appeared that the defendant was purser of the mining company, and not one of the adventurers.

A verdict having been obtained for the plaintiffs, on a rule to enter a nonsuit, the Court of Queen's Bench held that the defendant was personally responsible, as no one but the drawee can accept a bill, unless for honor, and the defendant, by accepting the bill, made himself liable to pay it in the mode in which it was drawn.

Lord Campbell observed, that Thomas *v.* Bishop, (2 Strange, 955), which has been deemed to settle the liability of an agent on a bill drawn on and accepted by him in his own name for value received by his principals, has been uniformly considered good law in this country, though doubted in America.—(Story on Agency, note 3 to sect. 159.)

ORRETT *vs.* CORSER, CORSER *vs.* ORRETT. 21 Beav. 52.

Trust, Breach of—Duty of Bankrupt Trustee to prove for Money due on account of, by himself—Certificate does not remove his Liability.

Sir John Romilly, M. R., decided in this case, that where a trustee indebted to the trust, becomes bankrupt, it is his duty to prove the debt; and if he neglects so to do, he is liable for the loss, notwithstanding he may have obtained his certificate. "Suppose," said his Honor, "a person owing money to a trust estate becomes bankrupt, and the trustee is a distinct and separate person; knowing of the bankruptcy, he is bound to prove the debt; if he does not, he commits a breach of trust, and would be held liable for all that he might have received under the commission, if he had proved the debt, as he ought to have done. Is the case altered because the trustee is himself the debtor? I think not. The original debt is no doubt barred; but the amount of dividends which the trustee might have received under the commission, is a liability subsequently attaching to the trustee in that character, and is not affected by the bankruptcy or the certificate."

SWINFEN *vs.* SWINFEN. 18 Com. B. 485.

Attachment for Disobedience of a Rule of Court—Demand of Performance.

This was an application for an attachment for disobediance of a rule of court requiring the party to execute a conveyance, to carry out certain terms agreed to on the trial of this action. The plaintiff, against whom the application was made, had been merely served with a copy of the rule, and shown the original rule; there was, however, no express demand upon her to do the act which the rule commanded her to do. The Court of Common Pleas, under the circumstances, refused the rule for an attachment. In the course of the discussion, however, it was understood that the court may issue an attachment for disobedience of a rule drawn up on an order of *nisi prius* made at the trial of an issue directed by the Court of Chancery; and that court will not inquire into the authority of counsel to agree to a compromise of the cause at *nisi prius*.