AIDS TO EQUITY: INTENDED TO ASSIST THE STUDENT IN READING SNELL'S PRINCIPLES OF EQUITY

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Aids to Equity: Intended to Assist the Student in Reading Snell's Principles of Equity by Albert Gibson

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PREFACE.

THE "Aids to Equity" having been published some considerable time after the 5th Edition of Snell's "Principles of Equity" appeared, attention was drawn to the effect of several Acts and Cases not mentioned in the 5th, but duly noticed in the 6th, Edition of Snell, so that the "Aids" are for the most part equally a guide to the 6th as to the 5th edition of Snell's Principles, especially as the Editor of the last edition of Snell has not altered in any way the plan of the work. As, however, in the 6th Edition the Statutes of 1882 are incorporated, it has been thought advisable to publish the following Supplement to the "Aids," bringing it up to the present date, by drawing attention to the alterations in the law effected by Recent Cases and Recent Statutes; and particularly by the Married Women's Property Act and the Settled Land Act of last year. These Statutes materially affect the Chapters on Trustees and Married Women; and the Student, before going through the "Aids" on these Chapters, is advised to go through this Supplement and place a star before the "Points" in the "Aids" which are affected by a Recent Case or Statute, so that when reading the "Aids" he may, at the proper time, refer to the Supplement. If the Student adopts this plan, and notices the minor alterations given in the following pages, he will, I trust, find the "Aids to Equity," as read with this Supplement, sufficient for his purpose, whether he is reading the 5th or 6th Edition of Snell's "Principles of Equity."

ALBERT GIBSON.

SUPPLEMENT to "AIDS TO EQUITY."

PART I.—INTRODUCTORY.

CHAPTER II.—THE MAXIMS OF EQUITY.

IN connection with points Nos. XX., XXI., XXIII., XXIV., and XXV. (Aids, pp. 7, 8), and the defence that the defendant is a purchaser for value without notice, the Conveyancing Act, 1882, must be borne in mind, since it enacts what shall constitute "notice" so as to affect a purchaser.

By sub-sect. 1 of sect. 3 of the Act, it is provided that a "purchaser" (which includes a lessee or mortgagee or an intending purchaser, lessee or mortgagee or other person, who for consideration takes or deals for property) shall not be prejudicially affected by notice of any instrument, fact or thing, unless it is either within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made, as ought reasonably to have been made, by him.

By sub-sect. 3 of the same section, it is provided that a purchaser shall not be affected by notice of any instrument, fact or thing, unless, in the *same* transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel as such, or of his solicitor or agent as such, or would have come to the knowledge of his solicitor or other agent as such, had proper inquiries been made.

These enactments, in the main, merely declare the law relating to actual and constructive notice, as it had been laid down by the equity judges in the cases which came before them, and to which reference is made in Snell. With regard, however, to notice to the solicitor being notice to the client, it is possible that the statute, by enacting that it must be received in the *same* transaction, has reversed the decision

in *Fuller* v. *Bennet* (2 Hare, 394), set out in Snell and referred to in Aids (p. 7), by preventing constructive notice extending to notice obtained by a solicitor or agent in a prior transaction, however recent or closely connected with the transaction in which notice is alleged.

The editor of the 6th edition of Snell is evidently of opinion that the decision in *Fuller* v. *Bennet* is in no way affected by the statutory enactment as to notice, since he gives the facts in the case as in previous editions and without comment; and it will probably be held, that where one transaction is, as it was in *Fuller* v. *Bennet*, closely followed by and connected with another transaction, the two transactions are practically one and the same transaction: so that the words of the section, that notice to a solicitor must be in the *same* transaction, would cover the case where he received notice in one transaction which was closely followed by and connected with the transaction in which notice to the client was alleged, *sed quære*.

PART II.—THE EXCLUSIVE JURISDICTION.

CHAP. II.—EXPRESS PRIVATE TRUSTS.

IN connection with point to note No. XXI. (Aids, p. 17), and the Bills of Sale Act, 1878, must be borne in mind the Bills of Sale Act, 1882. In a book treating of "The Principles of Equity," it is hardly necessary or desirable to go deeply into the difficult and intricate subject of "bills of sale," but it may be useful, as reference is made to it in Snell, to draw attention to some of the main alterations effected by the Act of 1882. They are:—

(1) A bill of sale by way of mortgage (for the Act only applies to bills of sale given as a *security for money*, and has no application to absolute bills of sale, which are still regulated by the Act of 1878: see *Swift* v. *Pannell*, Law Notes, Vol. II. p. 97), executed on or after 1st November, 1882, must be in the form given in the schedule to the Act, otherwise it is altogether void. Any material deviation from this form vitiates the bill. (See *Davis* v. *Burton*, Law Notes, Vol. II. Part 8, in which the interest was capitalized, and the bill was held void.)

(2) The bill must be attested by one credible witness at least, but he need not be a solicitor, and must be registered within seven days, otherwise the bill is absolutely void, even between the parties. If executed out of England, the seven days runs after the time at which it would in ordinary course of post arrive in England if posted immediately after execution.

(3) The bill must be accompanied with an inventory of the goods, specifying the chattels, and must only comprise (with certain exceptions) goods of which the grantor is possessed at the date of the execution of the will. If it extend to after-acquired chattels, or to goods not comprised in the inventory, it is void as to such goods, *except as against the grantor*.

(4) The goods comprised in the bill can only be seized under the five circumstances set out in the Act, and any attempt to make them capable of seizure under any other circumstances would make the bill void.

(5) The goods seized must not be removed for five days, and during that time the grantor may apply to the Court to prevent the goods being sold. This provision applies to the seizure of goods under bills of sale by way of mortgage executed before the 1st November, 1882, it being the only provision of the Act which is retrospective. (See *Eli Hickson* v. *Darlow* and *Ex parte Izard*, Law Notes, Vol. II. pp. 72, 168.)

(6) Bills of sale under 30*l.* are void altogether.

(7) Provision is made for the local registration of bills of sale.

(8) Goods comprised in a registered bill of sale are not taken out of the order and disposition clause of the Bankruptcy Act; and so bills of sale by traders, although registered, are void against the trustee in bankruptcy, unless the grantee takes actual possession of the goods before the bankruptcy occurs. (For article on this subject, see Law Notes for May, 1882.)

In connection with points to note Nos. XLIII. and XLIV. (Aids, p. 19), sect. 40 of the Settled Land Act, 1882, must be remembered. It makes the receipts of trustees of a *settlement* effectual discharges to the persons paying them money, or transferring to them securities. By the term "settlement" is signified any instrument under or by virtue of which any land or any estate or interest stands for the time being limited to or in trust for any person by way of

succession, and "trustees of a settlement" indicate only trustees who have a power of sale over the settled land, or have power to consent to or approve of the exercise of a power of sale over settled land. The receipts of other trustees are made sufficient and effectual discharges by the Conveyancing Act, 1881, referred to in Aids to Equity, p. 22.

Cases to note.

Ridler v. *Ridler* (52 L. J., Ch. 343; Law Notes, Vol. I. p. 380) decides that a voluntary assignment of leaseholds made by a person insolvent is void under 13 Eliz. c. 5, although there may be burdensome covenants running with the lands which the assignee will have to perform. The principle of *Price* v. *Jenkins* (referred to in Snell, 5th ed. p. 84; 6th ed. p. 77; Aids, p. 17, point to note No. XXIII.), as applied to 27 Eliz. c. 4, cannot be applied to 13 Eliz. c. 5, the object of the two statutes being entirely different.

The Three Towns Building Co. v. *Maddeson* (Law Notes, Vol. II. p. 199).—Lapse of time is no bar to taking steps to set aside a conveyance under 13 Eliz. c. 5.

Chap. V.—Constructive Trusts.

In connection with point to note No. XIV. (Aids, p. 30), and the provisions of the Improvement of Land Act, 1864 (referred to in Snell, 6th ed. p. 134), by virtue of which a tenant for life can borrow money for improvements and charge the repayment thereof upon the lands improved, are considerably enlarged by section 30 of the Settled Land Act, 1882, which provides that money may be advanced under the Act of 1864 for any improvement for which "capital money" under the Settled Land Act, 1882, may be used; and by section 26 of the Act a very wide class of improvements is allowed for such capital money, including drainage for the distribution of sewage, making (1) sea walls, (2) markets, (3) streets, roads, &c., either for the public or individuals, (4) sewers, drains, &c., &c. These improvements were not within the Act of 1864.

These improvements have to be made with the formalities laid down in the Act of 1864, and under the direction of the Land (formerly Inclosure) Commissioners.

Such a wide power of improving the estate at the expense of the inheritance being thus afforded a tenant for life by statute law, it would require a very strong case indeed for the Court to construct a trust in his favour for any money he might think fit to spend himself, without recourse to the Act of 1864 as extended by the Act of 1882.

The student will bear this in mind when he reads the case of *Dent* v. *Dent* (Snell, 5th ed. p. 143; 6th ed. p. 133), which was decided before the Act of 1864 was passed, and in connection with point to note No. XIV. in the Aids, p. 30.

CHAP. VI.—TRUSTEES.

Cases to note.

Speight v. *Gaunt* (52 L. J., Ch. 503; Law Notes, Vol. I. p. 209, and Vol. II. p. 36).—A trustee who employs a broker, and hands to him money to invest, is not responsible to his cestui que trust if the broker embezzles the money, provided the trustee selected a broker of proper standing, &c., and otherwise acted as he would have acted had the money been his own.

Statutes to note.

In connection with point to note No. XXV. (Aids, p. 33), and the statutory powers of investment conferred on trustees (see Snell, 5th ed. p. 161; and 6th ed. p. 154), sect. 21 of the Settled Land Act, 1882, has an important bearing. By this section trustees of a settlement (for what this includes, see *ante*, p. 5), having in their hands *money liable to be laid out in the purchase of land*, may, with the consent of the tenant for life, invest the same in any manner in which capital money under the Act may be invested. This includes a very wide class of investments, and, among others, an investment in debenture stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of the investment paid a dividend on its ordinary stock or shares. The student will bear in mind that this enactment does not apply to ordinary trustees, but only to trustees of a settlement holding money which ought to be invested in land.

Other provisions of the Settled Land Act, 1882, to be borne in mind in connection with this chapter are:—

Sect. 41, protecting *a trustee of a settlement* individually, by pro-

viding that he shall be answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts and defaults only; and that he shall not be answerable in respect of the acts, &c. of any other trustee, banker, broker, or other person, or for the deficiency or insufficiency of any securities, or for any loss not happening through his own wilful default. This section only applies to trustees of a settlement; other trustees are protected by a somewhat similar indemnity clause contained in Lord St. Leonards' Act (22 & 23 Vict. c. 35).

These statutory indemnity clauses, however, do not protect trustees in cases where Equity holds them responsible: at least, it has been so decided with regard to the indemnity conferred by Lord St. Leonards' Act on ordinary trustees, and, probably, will be so held with regard to the Settled Land Act to trustees of a settlement. And if it is desired to protect trustees from all responsibility for acts and defaults of a co-trustee, a strong indemnity clause freeing them from responsibility in the cases in which Equity holds them responsible, such as was given in *Wilkins* v. *Hogg* (set out in Snell), should be inserted in the trust instrument. It may here be mentioned, that the case of *Wilkins* v. *Hogg* was followed in the recent, but, we believe, unreported, case—*Pass* v. *Dundas*. These remarks must be borne in mind by the student when working out points to note No. XX., XXI. and XXII. (Aids, p. 33).

Sect. 43, providing that trustees of a settlement may reimburse themselves, and pay and discharge out of the trust property all expenses properly incurred by them.

This is but declaratory, since all trustees have this right.

Sect. 53, providing that a tenant for life, in exercising the powers conferred by the Act, shall be in the position of a trustee for all parties interested.

It would seem that this section means an *express* trustee, and, if so, time will not run in his favour; while if he is held to be but a *constructive* trustee, and he commits a breach of trust, lapse of time will bar the remedy of the remainderman for the breach, in accordance with the rule laid down in Snell, 5th ed. p. 155; 6th ed. p. 146.

By the Married Women's Property Act, 1882, a married woman can accept the office of executrix or trustee without the concurrence of her husband, and her separate estate is liable for any breaches of trust