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RECENT DECISIONS.

Landlord and Tenant. Annexation to the Freehold. Intention to make house part of Land.—Mr. Smith was the transferee of a lease, granted by Mr. Reid's predecessor in title, which contained a covenant by the lessee to erect on the land a building worth £50. When Mr. Smith became transferee, the lessee had already erected on the land a small wooden building affixed to the soil. To this Mr. Smith attached a wooden dwelling house, and on another part of the land he erected another wooden dwelling house. Both rested by their own weight only on brick piers. To each building wooden steps nailed to the verandah were attached, and the bottom tread of each rested on a piece of timber on the ground. It is the practice in Queensland to build houses upon piers or piles with iron plates to break the continuity between the building and the ground, and not to attach the buildings by spikes or nails to the piers, in order to prevent the white ants getting to the building. Mr. Reid sued Mr. Smith for an injunction to restrain him from removing the buildings at the end of the tenancy. Held by the High Court of Australia that the true test in determining whether a chattel has lost its character of chattel, and become part of the freehold, is to enquire what is the object and purpose of its being attached to the freehold that if such object and purpose is not the enjoyment of the chattel itself, but the better enjoyment of the freehold, it must, be taken to have become part of the freehold, and that, having regard to the intention of the parties as manifested by the degree and object of the annexation, the buildings in question had become part of the freehold, although not fastened to the soil, and that the injunction should be granted. *Reid v. Smith.* 3 *Commonwealth L.R.* 657.

Landlord v. Tenant. Lessor's Covenant to Repair.—Mrs. Torrens was the assignee of the lease of three floors of a house near Piccadilly Circus, which contained a covenant by the lessor, Mrs. Walker, to "keep the outside of the premises in good and substantial repair." The house, which was about 200 years old, was absolutely worn out, and when the adjoining houses were pulled down for rebuilding purposes, the London County Council served notice on the premises that the house was in a dangerous condition, and that certain walls must be taken down so far as they were decaying and out of form. Mrs. Torrens immediately notified Mrs. Walker's solicitor, and in a month had to give notice to the guests in the hotel to leave. Nothing was done by either lessor or lessee, and after an order had been made ordering the owner to do the works and not complied with, the County Council pulled down the walls and left the house uninhabitable Mrs. Torrens then sued Mrs. Walker for an injunction to restrain her from keeping the outside walls of the premises out of repair and for damages. Held by Warrington, J., that the lessor's covenant was a covenant to repair on notice, and not otherwise, that there could therefore be no breach of covenant until the notice of the L C.C at all events, and that after that date there was no breach of covenant because "the house had by its own inherent nature fallen into the condition in which it was then found to be; repairs were out of the question, and nothing could be done but to rebuild the front wall and the greater part of the back wall, to do which was not within the lessor's covenant" *Torrens v Walker.* 75 *L J. Ch.* 645.

Landlord v. Tenant. Covenant to Pay Outgoings. Paving Expenses.—Mr. Greaves leased premises in Sheffield to Whitmarsh Watson & Co. for 21 years, the latter covenanting to pay "all rates, taxes and outgoings, now payable or hereafter to become payable in respect of the demised premises" During the term the Sheffield Corporation did paving work in front of the premises Mr. Greaves had to pay £22 as his proportion of the expenses, and sued the Company to recover this amount as an "outgoing" within its covenant. Held that the paving expenses were outgoings payable in respect of the premises and must be paid by the Company. *Greaves v. Whitmarsh Watson & Co*, 75 *L.J. K.B.* 633.

Master and Servant Secret Commission. Dismissal Without Notice. Mr. Swale agreed to become manager of the Ipswich Tannery, Limited, for five years The agreement provided that he should give his whole time and attention to the business and that he should be entitled to six months notice of the determination of his employment. The directors of the Company consulted him and he advised them about the insurance of the tannery buildings. Without their knowledge he accepted the position of cash agent to the Alliance Insurance Co. with which he insured the tannery buildings, and from which he received commissions in respect of such insurances. The Company gave him three months' notice only. He sued it for six months' salary. Held by Kennedy, J., that, although Mr. Swale had not actively concealed his insurance agency and had apparently not shown the slightest bias, yet that his secret receipt and retention of the commissions from the insurance company was misconduct which constituted a ground for immediate dismissal without notice. *Swale v. Ipswich Tannery Limited. XI. Reports of Commercial Cases* 88.

Employer's Liability. Defect in Condition of Ways.—Section 2 of "The Employers Liability Act, 1882," enables a workman injured by reason of any defect in the condition of the ways, works, machinery or plant connected with or used in the business of the employer to claim compensation from the employer, as though he had not been a workman. In other words it excludes the defence of common employment in such cases. Mr. Metcalf was a tool carrier in the employment of the Great Boulder Proprietary Gold Mines, Limited, and it was his duty to descend the shaft, about 2,000 feet deep, at certain times and visit every level Owing to the negligence of the "platman" in omitting to raise certain "chairs" or frames attached to opposite sides of the shafts by hinges, the cage at the 1,100 feet level came violently upon these "chairs" and the plaintiff sustained serious injuries, in respect of which he sued the Company Held by the High Court of Australia that the term "defect in the condition of the ways" means a defect in original construction or subsequent condition, rendering the appliance unfit for the purpose to which it is applied when used with reasonable care and caution, and does not apply to the negligent working by a fellow-servant of an appliance in itself without defect. *Metcalf v. The Great Boulder Proprietary Gold Mines, Limited.* 3 *Commonwealth L.R.* 543.

Sale of Milk. Adulteration. Written Warranty.—Mr Stevens, a milk dealer, bought his milk from Mr Mott under a contract for fixed periodical deliveries of milk, and, being a cautious man, before the delivery of any milk obtained from Mr Mott the following warranty "I guarantee that the milk supplied by me to Mr. Stevens is perfectly pure and with all its cream as the cow gives it. Francis Mott." Four months later, however, Mr Stevens was prosecuted for having sold new milk not of the nature, substance and quality demanded, inasmuch as it contained 16 per cent. of added water. He proved that he had sold the milk in the same state as when he purchased it from Mr. Mott and produced Mr. Mott's warranty, relying on the section of the English statute from which section 9 of "The Adulteration Prevention Acts Amendment Act, 1895" is taken. Held, however, by Lord Alverstone, C. J., and Darling, J. (Ridley, J., dissenting) that there must be a written connection between the warranty and the particular consignment in question, and that, in the absence of evidence to show such connection Mr. Stevens could not rely upon the warranty. Mr. Stevens should have seen that Mr Mott affixed to each can of milk a label in some such form as this "This milk is supplied by me under an agreement, dated the —— day of —— and I warrant the same to be pure and unadulterated new milk with all its cream *Watts v Stevens* 22 *Times L R* 622

Company Voting Papers.—The articles of association of the Le Roi Mining Company provided that votes might be given either personally or by proxy, and that if a poll were demanded it should be taken in such manner as the chairman of the meeting should direct A poll being demanded, the chairman directed the poll to be taken by means of voting papers. Held by Joyce J. that taking the poll by voting papers was unauthorised and invalid *McMillan v Le Roi Mining Co XIII Reports of Bankruptcy and Company Cases* 65.

Bankruptcy. Preferential Payment Commission.—Among the claims entitled to preferential payment in bankruptcy are the wages or salary of any clerk or servant in respect of services rendered to the bankrupt during the four months immediately preceding the date of the bankruptcy petition Mr Goodwin was employed by Mr. Klein as a commercial traveller at a salary of £2 per week and a commission by way of salary of $3\frac{3}{4}$ per cent upon all business transacted by him. When Mr. Klein became bankrupt Mr Goodwin had received his £2 per week but about £25 was due to him for commission Held by Bigham, J., that the commission was part of his "salary" and was entitled to priority *In re Klein.* 22 *Times L R.* 664