

THE
ALL ENGLAND
LAW REPORTS
ANNOTATED

OF CASES DECIDED IN

THE HOUSE OF LORDS

THE PRIVY COUNCIL

ALL DIVISIONS OF THE SUPREME COURT

AND

COURTS OF SPECIAL JURISDICTION

1941

VOLUME 3

Consulting Editor:

ROLAND BURROWS, K.C.

Recorder of Cambridge.

Managing Editor of Halsbury's Laws of England Hailsham Edition.

Consulting Editor for Chancery Cases:

HAROLD CHRISTIE, K.C.

Bencher of Lincoln's Inn.

General Editor:

W. J. WILLIAMS, B.A.

of Lincoln's Inn, Barrister-at-Law.

[For full list of Editors and Reporters see overleaf]

Published by the Proprietors of

THE LAW JOURNAL, 37-39 ESSEX STREET, LONDON, W.C.2

CASES REFERRED TO

	PAGE
Abdullah Bey Chedid v. Tenenbaum (1933), Pal.L.R. 831	21, 24
Addie (R.) & Sons (Collieries) v. Dumbreck, [1929] A.C. 358; Digest Supp.; 98 L.J.P.C. 119; 140 L.T. 650	158, 181
Alexander v. Rayson, [1936] 1 K.B. 169; Digest Supp.; 105 L.J.K.B. 148; 154 L.T. 205	333, 334
Allen v. Wright (1838), 8 C. & P. 522; 14 Digest 177, 1546	338, 351
Alman v. Oppert, [1901] 2 K.B. 576; Digest, Pleading, 198, 1663; 70 L.J.K.B. 745; 84 L.T. 828	339, 378
Alty v. Farrell, [1896] 1 Q.B. 636; 44 Digest 141, 87; 65 L.J.M.C. 115; 74 L.T. 492	236, 239
Anglo-Mexican, The, [1918] A.C. 422; 2 Digest 144, 183; 87 L.J.P. 33; 118 L.T. 260	420, 423, 428
Anon. (1807), 13 Ves. 590; 4 Digest 30, 240	12, 16, 17
Askew, Re, Marjoribanks v. Askew, [1930] 2 Ch. 259; Digest Supp.; 99 L.J.Ch. 466; 143 L.T. 616	21, 25, 26
Assam Railways & Trading Co., Ltd. v. Inland Revenue Comrs., [1935] A.C. 445; Digest Supp.; 103 L.J.K.B. 583; 152 L.T. 28; 18 Tax Cas. 609	339, 379
Associated Distributors, Ltd. v. Hall, [1938] 2 K.B. 83; [1938] 1 All E.R. 511; Digest Supp.; 107 L.J.K.B. 701; 158 L.T. 236	474, 481
Atkinson v. Ritchie (1809), 10 East, 530; 41 Digest 464, 2955	257, 261
Atlantic Mutual Insurance Co. v. King, [1919] 1 K.B. 307; 29 Digest 226, 1839; 88 L.J.K.B. 1001; 120 L.T. 191	63, 76
A.-G. v. Adelaide S.S. Co., [1923] A.C. 292; 29 Digest 228, 1850; 92 L.J.K.B. 537; sub nom. Adelaide S.S. Co. v. R., 129 L.T. 161	215, 216, 217
A.-G. v. Ard Coasters, Ltd., Liverpool & London War Risks Insurance Assocn., Ltd. v. S.S. Richard De Larrinaga Marine Underwriters, [1921] 2 A.C. 141; 29 Digest 228, 1851; 91 L.J.K.B. 31; 125 L.T. 548	214, 216, 217
Bailly v. De Crespligny (1869), L.R. 4 Q.B. 180; 11 Digest 279, 2067; 38 L.J.Q.B. 98; 19 L.T. 681	486, 489, 490
Baker v. Inland Revenue Comrs., [1924] A.C. 270; 39 Digest 285, 670; 93 L.J.K.B. 211; 130 L.T. 513	188
Barker v. Blakes (1808), 9 East, 283; 29 Digest 284, 2315	63, 71
Barnard v. Gorman, [1941] 3 All E.R. 45; Digest Supp.	339, 357, 361, 380
Barnardo v. McHugh, [1891] A.C. 388; 16 Digest 270, 793; 61 L.J.Q.B. 721; 65 L.T. 423; affg. S.C. sub nom. R. v. Barnardo, Jones's Case, [1891] 1 Q.B. 194	389, 401
Becker, Gray & Co. v. London Assurance Corpn., [1918] A.C. 101; 29 Digest 208, 1675; 87 L.J.K.B. 69; 117 L.T. 609	63, 77, 257, 261
Beckwith v. Philby (1827), 6 B. & C. 635; 43 Digest 449, 776; 5 L.J.O.S.M.C. 132	339, 351
Blackpool Motor Car Co., Ltd., Re, Hamilton v. Blackpool Motor Car Co., Ltd., [1901] 1 Ch. 77; 5 Digest 856, 7182; 70 L.J.Ch. 61	502
Blalberg, Re, Blalberg and Public Trustee v. De Andia Yrarrzaal and Blaiberg, [1940] 1 Ch. 385; [1940] 1 All E.R. 632; Digest Supp.; 109 L.J.Ch. 166; 162 L.T. 418	197, 198, 199, 210, 211, 212, 213
Blyth v. Birmingham Waterworks Co. (1856), 11 Exch. 781; 36 Digest 6, 7; 25 L.J.Ex. 212; 26 L.T.O.S. 261	158, 167
Board of Trade v. Hain S.S. Co., [1929] A.C. 534; Digest Supp.; 98 L.J.K.B. 625; 141 L.T. 435	215, 217
Bolletta, The (1809), 1 Edw. 171; 37 Digest 591, 279	420, 432
Borwick, Re, Borwick v. Borwick, [1933] Ch. 657; Digest Supp.; 102 L.J.Ch. 199; 149 L.T. 116	197, 199, 208
Bowditch v. Balchin (1850), 5 Exch. 378; 14 Digest 183, 1619; 19 L.J.Ex. 337; 15 L.T.O.S. 232	45, 54, 55, 339, 361
Bowmaker, Ltd. v. Tabor, [1941] 2 All E.R. 72; Digest Supp.	327, 330
Bradford-Avon Assessment Committee v. White, [1898] 2 Q.B. 630; 38 Digest 567, 1052; 67 L.J.Q.B. 643; 78 L.T. 758	227, 231
British S.S. Co. v. R., Green v. British India Steam Navigation Co., British India Steam Navigation Co. v. Liverpool & London War Risks Insurance Assocn., [1921] 1 A.C. 99; 29 Digest 230, 1860; 89 L.J.K.B. 881; 123 L.T. 721	214, 216, 224
British & Foreign Marine Insurance Co., Ltd. v. Sanday (Samuel) & Co., [1916] 1 A.C. 650; 29 Digest 276, 2236; 85 L.J.K.B. 550; 114 L.T. 521; affg. S.C. sub nom. Sanday & Co. v. British & Foreign Marine Insurance Co., [1915] 2 K.B. 781	63, 66, 70, 71, 72, 77, 78, 80, 83, 84, 85, 90, 94
British & Foreign S.S. Co. v. R., [1918] 2 K.B. 879; 29 Digest 228, 1849; 87 L.J.K.B. 910; 118 L.T. 640	214, 216
British Games, Ltd., Re, [1938] Ch. 240; [1938] 1 All E.R. 230; Digest Supp.; 107 L.J.Ch. 81; 158 L.T. 239	128, 129
Bromley v. Hessletine (1807), 1 Camp. 75	420, 421
Broughton v. Jackson (1852), 18 Q.B. 378; 43 Digest 449, 774; 21 L.J.Q.B. 265; 19 L.T.O.S. 88	339, 351
Buckner v. Ashby & Horner, Ltd., [1941] 1 K.B. 321; Digest Supp.	158, 185
Bushell's Case (1670), Vaughn, 135; 16 Digest 262, 664	105, 121, 389, 403
Cahen, Re, Ez p. Cahen (1879), 10 Ch.D. 183; 4 Digest 30, 248; 39 L.T. 645	12, 17
Cant's Estate, Re (1859), 4 De G. & J. 503; 11 Digest 246, 1458; 28 L.J.Ch. 641; 33 L.T.O.S. 280	486, 488
Cardiff Revenue Officer v. Cardiff Assessment Committee and Western Mail, Ltd., Cardiff Revenue Officer v. Cardiff Assessment Committee and David Duncan & Sons, Ltd., Westminster Revenue Officer v. Daily Mirror Newspapers, Ltd., [1931] 1 K.B. 47; Digest Supp.; 99 L.J.K.B. 672; 143 L.T. 500	252, 254
Carus Wilson's Case (1845), 7 Q.B. 984; 16 Digest 260, 650; 14 L.J.Q.B. 105, 201; 4 L.T.O.S. 311, 353, 373; 5 L.T.O.S. 52	389, 391, 393
Casdagli v. Casdagli, [1919] A.C. 145; 11 Digest 323, 115; 88 L.J.P. 49; 120 L.T. 52; revog., [1918] P. 89	21, 25, 26
Cates (Captain J. A.) Tug & Wharfage Co. v. Franklin Insurance Co., [1927] A.C. 698; Digest Supp.; 96 L.J.P.C. 132; 137 L.T. 709	63, 80
Central India Mining Co. v. Societe Coloniale Anversoise, [1920] 1 K.B. 753; Digest Supp.; 89 L.J.K.B. 769; 122 L.T. 451	420, 422
Chabot v. Davies, [1936] 3 All E.R. 221; Digest Supp.; 106 L.J.Ch. 81; 155 L.T. 525	145, 153
Chester & Cole, Ltd. v. Avon (1929), Jones and Proudfoot's Notes on Hire-purchase Law, 2nd Edn., p. 115	474, 479

	PAGE
Chester & Cole, Ltd. v. Wright (1930), Jones and Proudfoot's Notes on Hire-purchase Law, 2nd Edn., p. 124	474, 480
Clan Line Steamers, Ltd. v. Board of Trade, The Clan Matheson, [1929] A.C. 514; Digest Supp.; 98 L.J.K.B. 408; 141 L.T. 275	215, 217
Clark v. London School Board (1874), 9 Ch. App. 120; 11 Digest 137, 233; 43 L.J.Ch. 421; 29 L.T. 903	486, 489
Clavering v. Ellison (1859), 7 H.L.Cas. 707; 44 Digest 440, 2667; 29 L.J.Ch. 761; affg. (1857), 8 De G.M. & G. 662; affg. (1856), 3 Drew. 451	197, 199, 204
Cleaver v. Mutual Reserve Fund Life Assn., [1892] 1 Q.B. 147; 43 Digest 657, 903; 61 L.J.Q.B. 128; 66 L.T. 220	5, 7, 8
Close v. Close (1853), 4 De G.M. & G. 176; 5 Digest 1193, 9629	502, 504
Columbia Graphophone Co., Ltd. v. G. & H. Thomas (1924), 41 R.P.C. 294; 36 Digest 747, 2344	248, 250
Commonwealth v. Pierce (1884), 168 Mass. 165; 52 Am. Rep. 266	158, 167
Commonwealth Shipping Representative v. Peninsular & Oriental Branch Service, [1923] A.C. 191; 29 Digest 226, 1838; 92 L.J.K.B. 142	214, 216
Concrete, Ltd. v. Attenborough (1939), 83 Sol. Jo. 946; Digest Supp.	305, 306, 311
Conybear v. British Briquettes, Ltd., [1937] 4 All E.R. 191; Digest Supp.	188, 189, 192
Cooper v. Jax Stores, Ltd., [1941] 1 K.B. 577; [1941] 1 All E.R. 502; Digest Supp.	447, 454
Cory Brothers & Co. v. Mecca, Turkish S.S. (Owners), The Mecca, [1897] A.C. 286; 12 Digest 478, 3905; 66 L.J.P. 86; 76 L.T. 579	128, 132
Coughlin v. Gillison, [1899] 1 Q.B. 145; 3 Digest 70, 117; 68 L.J.Q.B. 147; 79 L.T. 627	158, 181
Cowlishaw, Re, Cowlishaw v. Cowlishaw, [1939] Ch. 654; Digest Supp.; 108 L.J.Ch. 196; 160 L.T. 455	315, 317
Cowper Essex v. Acton Local Board (1889), 14 App. Cas. 153; 11 Digest 135, 216; 58 L.J.Q.B. 597; sub nom. Essex v. Acton District Local Board, 61 L.T. 1	486, 490
Cox v. Hakes (1890), 15 App. Cas. 506; 42 Digest 633, 367; sub nom. Bell-Cox v. Hakes, 60 L.J.Q.B. 89; 63 L.T. 392	339, 380, 389
Crispe v. Peritt (1744), Willes, 467; 4 Digest 112, 1008	12, 16
Darnell's Case (1627), 3 State Tr. 1; 16 Digest 263, 693	389, 399, 403
Debtor (No. 946 of 1926), Re, [1939] Ch. 489; [1939] 1 All E.R. 735; Digest Supp.	289, 291
108 L.J.Ch. 225; 160 L.T. 349	289, 293, 295
Deutsche Bank (London Agency), Re, [1921] 2 Ch. 291; Digest Supp.; 90 L.J.Ch. 449; 126 L.T. 20	420, 421, 425, 430
Donaldson v. Thompson (1808), 1 Camp. 429; 11 Digest 465, 1204	420, 428
Doswell v. Impey (1823), 1 B. & C. 163; 38 Digest 83, 608; 1 L.J.O.S.K.B. 99	338, 340
Dunfield v. British Insulated Cables, Ltd., [1937] 4 All E.R. 382; Digest Supp.	158, 184
Duncan v. Cammell Laird & Co., Ltd., [1941] 1 All E.R. 437; Digest Supp.	105, 118
Earl v. Lubbock, [1905] 1 K.B. 253; 36 Digest 63, 408; 74 L.J.K.B. 121; 91 L.T. 830	157, 158, 173, 177, 182, 183, 184, 185
Ellis v. Fulham Borough Council, [1938] 1 K.B. 212; [1937] 3 All E.R. 454; Digest Supp.; 107 L.J.K.B. 84; 157 L.T. 380; affg., [1937] 1 All E.R. 698	158, 181
Elsey & Co., Ltd. v. Hyde (1920), Jones and Proudfoot's Notes on Hire-purchase Law, 2nd Edn., p. 107	474, 478, 479, 481
Engelbach's Estate, Re, Tibbetts v. Engelbach, [1924] 2 Ch. 348; 43 Digest 567, 165; 93 L.J.Ch. 616; 130 L.T. 401	6, 7
Eshugbayi Eleko v. Nigeria Government (Administering Officer), [1931] A.C. 662; Digest Supp.; 100 L.J.P.C. 152; 145 L.T. 297	105, 111, 112, 119, 120, 339, 380
Evans, Re, Hewitt v. Edwards, [1940] Ch. 629; Digest Supp.; 109 L.J.Ch. 216; 162 L.T. 420	197, 198, 211, 212
Exchange Telegraph Co. v. Gregory & Co., [1896] 1 Q.B. 147; 17 Digest 80, 13; 65 L.J.Q.B. 262; 74 L.T. 83	145, 153
Fairman v. Perpetual Investment Building Society, [1923] A.C. 74; 36 Digest 37, 213; 92 L.J.K.B. 50; 128 L.T. 386	157, 159, 164, 165, 166, 180
Farnham, Re, [1895] 2 Ch. 799; 4 Digest 30, 243; 64 L.J.Ch. 717; 73 L.T. 231	12, 14, 17, 18, 19
Farnham, Re, [1896] 1 Ch. 836; 4 Digest 30, 250; 65 L.J.Ch. 456; 74 L.T. 214	12, 17, 18
Farr v. Butters Bros. & Co., [1932] 2 K.B. 606; Digest Supp.; 101 L.J.K.B. 768; 147 L.T. 427	158, 174
Fenning Film Service, Ltd. v. Wolverhampton, Walsall & District Cinemas, Ltd., [1914] 3 K.B. 1171; 17 Digest 80, 14; 83 L.J.K.B. 1860; 111 L.T. 1071	145, 153
Forbes v. Aspinall (1811), 13 East, 323; 29 Digest 251, 2035	64, 83
Garrett, Re, [1930] 2 Ch. 137; Digest Supp.; sub nom. Re Garrett, Official Receiver and Trustee v. Bankrupt, 99 L.J.Ch. 341; 143 L.T. 402	289, 294
Gateshead Assessment Committee v. Redheugh Colliery, Ltd., [1925] A.C. 309; 38 Digest 604, 1309; 94 L.J.K.B. 258; 132 L.T. 583	227, 234
Geiringer v. Swiss Bank-Corpn., Oesterreichische Creditanstalt v. Geiringer, [1940] 1 All E.R. 406; Digest Supp.	420, 422
Gerasimo, The, The Aspasia, The Achilles (1857), 11 Moo. P.C.C. 88; 2 Digest 143, 177; 29 L.T.O.S. 269	420, 421, 430, 432
Gist v. Mason (1786), 1 Term Rep. 88; 2 Digest 166, 361	420, 429
Gold, Re, Ex p. Gold (1891), 8 Morr. 45; 4 Digest 574, 5279	289, 291
Goss v. Withers (1758), 2 Burr. 683; 29 Digest 272, 2207	63, 70
Grant v. Australian Knitting Mills, Ltd., [1936] A.C. 85; Digest Supp.; 105 L.J.P.C. 6; 154 L.T. 18	153, 164, 176, 177, 183
Grayburn v. Clarkson (1868), 3 Ch. App. 605; 24 Digest 627, 6553; 37 L.J.Ch. 550; 18 L.T. 494	459, 464
Hadley v. Perks (1866), L.R. 1 Q.B. 444; 42 Digest 665, 754	339, 369
Hall v. Hallet (1784), 1 Cox, Eq. Cas. 134; 24 Digest 567, 6054	459, 463
Halliwel v. Venables (1930), 99 L.J.K.B. 353; Digest Supp.; 143 L.T. 215	333, 334
Hamilton v. Mendes (1761), 2 Burr. 1198; 29 Digest 273, 2208	63, 70
Harris v. Perry & Co., [1903] 2 K.B. 219; 8 Digest 11, 44; 72 L.J.K.B. 725; 89 L.T. 174	158, 181
Haynes v. Mervis (1826), 5 L.J.O.S.K.B. 47; 43 Digest 455, 826	339, 351
Heaven v. Pender (1883), 11 Q.B.D. 503; 36 Digest 8, 9; 52 L.J.Q.B. 702; 49 L.T. 357	158, 172, 173

	PAGE
Herniman v. Smith, [1938] A.C. 305; [1938] 1 All E.R. 1; Digest Supp.; 107 L.J.K.B. 225	339, 378
Herschall v. Stewart & Ardern, Ltd., [1940] 1 K.B. 155; [1939] 4 All E.R. 123; Digest Supp.; 109 L.J.K.B. 328; 161 L.T. 331	158, 174
Hinckley and South Leicestershire Permanent Benefit Building Society v. Freeman, [1941] 1 Ch. 32; [1940] 4 All E.R. 212; Digest Supp.	299, 301
Hobhouse's Case (1820), 3 B. & Ald. 420; 16 Digest 248, 464	389, 393, 394
Hodgson v. Halford (1879), 11 Ch.D. 959; 44 Digest 452, 2748; 48 L.J.Ch. 548 197, 198, 199, 205	339, 362
Holroyd v. Doncaster (1826), 3 Bing. 492; 43 Digest 455, 823; 4 L.J.O.S.C.P. 178	420, 429
Hoop, The (1799), 1 Ch. Rob. 196; 2 Digest 155, 253	333, 334
Hunter v. Wright, [1938] 2 All E.R. 621; Digest Supp.	158, 181, 182
Hyman v. Nye (1881), 6 Q.B.D. 685; 3 Digest 87, 211; 44 L.T. 919	
Indermaur v. Dames (1866), L.R. 1 C.P. 274; 36 Digest 35, 208; 35 L.J.C.P. 184; 14 L.T. 484; <i>affd.</i> (1867), L.R. 2 C.P. 311	158, 165, 166, 167, 182
Inland Revenue Comrs. v. New Sharlston Collieries Co., Ltd., [1937] 1 K.B. 583; [1937] 1 All E.R. 86; Digest Supp.; 106 L.J.K.B. 375; 156 L.T. 279; 21 Tax Cas. 69	296, 297, 298
Ionides v. Universal Marine Insurance Co. (1863), 14 C.B.N.S. 259; 29 Digest 220, 1854; 32 L.J.C.P. 170; 8 L.T. 705	214, 216, 210, 223
Isaacs v. Keech, [1925] 2 K.B. 354; Digest Supp.; 94 L.J.K.B. 676; 133 L.T. 347	45, 50, 55, 56, 61
James, <i>Re</i> (1884), 12 Q.B.D. 332; 4 Digest 30, 246; 53 L.J.Q.B. 575; 50 L.T. 471	12, 17
Jeavons, <i>Re</i> , <i>Ex p.</i> Mackay, <i>Ex p.</i> Brown (1873), 8 Ch. App. 643; 5 Digest 659, 6370; 42 L.J.Ch. 68; 28 L.T. 828	474, 477
Job Edwards, Ltd. v. Birmingham Navigations, [1924] 1 K.B. 341; 36 Digest 214, 575; 93 L.J.K.B. 261; 130 L.T. 522	28, 31, 32
Johns, <i>Re</i> , <i>Worrell v. Johns</i> , [1928] 1 Ch. 737; Digest Supp.; 97 L.J.Ch. 346; 139 L.T. 333	474, 477
Joseph, <i>Re</i> , <i>Pain v. Joseph</i> , [1908] 2 Ch. 507; 44 Digest 1225, 10601; 77 L.J.Ch. 832; 99 L.T. 539; <i>revers.</i> , [1908] 1 Ch. 599	197, 198, 206
Kearsley v. Cole (1846), 16 M. & W. 128; 5 Digest 1192, 9628; 16 L.J.Ex. 115; 8 L.T.O.S.	
Kent County Council v. Humphrey, [1895] 1 Q.B. 903; 44 Digest 141, 86; 64 L.J.M.C. 190; 72 L.T. 563	236, 238, 239
Knox, <i>In the Goods of</i> (1889), 23 L.R.Ir. 542; 44 Digest 457, case 2786 <i>vi</i>	197, 198, 206
Landau, <i>Re</i> , <i>Ex p.</i> Trustee, [1934] Ch. 549; Digest Supp.; 103 L.J.Ch. 294; <i>sub nom.</i> <i>Re Landau</i> , <i>Ex p.</i> Trustee v. Bankrupt, 151 L.T. 190	289, 294
Latham v. Johnson (R.) & Nephew, Ltd., [1913] 1 K.B. 398; 36 Digest 38, 223; 82 L.J.K.B. 258; 108 L.T. 4	158, 182
Layton, <i>Ex p.</i> , <i>Ex p.</i> Hardwicke (1801), 6 Ves. 434; 4 Digest 29, 229	12, 16
Ledwith v. Roberts, [1937] 1 K.B. 232; [1936] 3 All E.R. 570; Digest Supp.; 106 L.J.K.B. 20; 155 L.T. 602	45, 50, 56, 61
Lee (1883), 23 Ch.D. 216; 4 Digest 30, 244; 48 L.T. 193	12, 17
Lees, <i>Ex p.</i> (1858), E.B. & E. 828; 16 Digest 251, 517; 31 L.T.O.S. 247; <i>sub nom.</i> <i>R. v. Lees</i> , 27 L.J.Q.B. 403	389, 391
Le Lievre v. Gould, [1893] 1 Q.B. 491; 36 Digest 10, 26; 62 L.J.Q.B. 353; 68 L.T. 626	158, 172
Liversidge v. Anderson and Morrison, [1941] 2 All E.R. 612; Digest Supp.	105, 112
Liversidge v. Anderson and Morrison, [1941] 3 All E.R. 338; Digest Supp. 388, 391, 396, 402, 404	
Local Government Board v. Arlidge, [1915] A.C. 120; 38 Digest 97, 708; 84 L.J.K.B. 72; 111 L.T. 905	339, 374, 379
London & South Western Ry. Co. v. Gomm (1882), 20 Ch.D. 562; 40 Digest 305, 2617; 51 L.J.Ch. 530; 46 L.T. 449	486, 488, 490, 491
Loveless, <i>Re</i> , <i>Farrer v. Loveless</i> , [1918] 2 Ch. 1; 39 Digest 167, 585; 87 L.J.Ch. 461; 119 L.T. 24	315, 316, 466, 469
Lozano v. Janson (1859), 2 E. & E. 160; 29 Digest 267, 2148; 28 L.J.Q.B. 337; 33 L.T.O.S. 270	64, 88
Lumb v. Teal & Co. (1889), 22 Q.B.D. 675; 29 Digest 510, 614; 58 L.J.Q.B. 298; 60 L.T. 451	236, 288
Lyle (B. S.), Ltd. v. Castle (1938), 158 L.T. 242, n.; Digest Supp.	128, 129, 130
Lyle (B. S.), Ltd. v. Chappell, [1932] 1 K.B. 691; Digest Supp.; 101 L.J.K.B. 185	128, 129, 130, 131
Macey v. Metropolitan Board of Works (1864), 3 New Rep. 669; 11 Digest 143, 273; 33 L.J.Ch. 377; 10 L.T. 66	486, 489
M'Allister (or Donoghue) v. Stevenson, [1932] A.C. 562; Digest Supp.; 101 L.J.P.C. 119; 147 L.T. 281	156, 157, 164, 171, 172, 174, 175, 176, 177, 182, 183, 184, 185
McCloughan v. Clayton and Ridding (1816), Holt, N.P. 478; 43 Digest 449, 773	339, 351
Maclean v. Segar, [1917] 2 K.B. 325; 36 Digest 123, 817; 86 L.J.K.B. 1113; 117 L.T. 376	158, 182
McManus v. Bowes, [1938] 1 K.B. 98; [1937] 3 All E.R. 227; Digest Supp.; 107 L.J.K.B. 51; 157 L.T. 385	498, 501
Marstrand Fishing Co., Ltd. v. Beer, [1937] 1 All E.R. 158; Digest Supp.; 156 L.T. 196	257, 262
May, <i>Re</i> , <i>Eggar v. May</i> , [1932] 1 Ch. 99; Digest Supp.; 101 L.J.Ch. 12; 146 L.T. 56	197, 207
Mellish v. Andrews (1812), 15 East, 18; 29 Digest 281, 2285	68, 72, 98
Melton, <i>Re</i> , <i>Milk v. Towers</i> , [1918] 1 Ch. 87; 26 Digest 124, 879; 87 L.J.Ch. 18; 117 L.T. 679	502
Mersey Docks & Harbour Board v. Procter, [1923] A.C. 253; 86 Digest 15, 59; 92 L.J.K.B. 479; 129 L.T. 34	158, 180
Meyer v. Dreyfus (Louis) et Cie., [1940] 4 All E.R. 157; Digest Supp.; 163 L.T. 335	420, 421, 422
Middlesex Sheriff's Case (1840), 11 Ad. & El. 273; 36 Digest 293, 438; <i>sub nom.</i> <i>R. v. Evans & Wheelton</i> , 9 L.J.Q.B. 82	105, 119, 389, 394, 402
Midland Bank, Ltd., <i>Re</i> , [1914] 1 Ch. 350; Digest Supp.; <i>sub nom.</i> <i>Franklin v. Midland Bank, Ltd.</i> , [1941] 2 All E.R. 135	299, 300
Milford Docks Co. v. Milford Haven Urban District Council (1901), 65 J.P. 483; 38 Digest 109, 780	498, 501
Miller v. Hancock, [1893] 2 Q.B. 177; 31 Digest 99, 2380; 69 L.T. 214	157, 158, 180
Miller v. Law Accident Insurance Co., [1903] 1 K.B. 712; 29 Digest 219, 1748; 72 L.J.K.B. 428; 88 L.T. 370	63, 77, 78

	PAGE
Miles v. Fletcher (1779), 1 Doug.K.B. 231; 29 Digest 277, 2247	63, 70
Moffatt v. Bateman (1869), L.R. 3 P.C. 115; 36 Digest 64, 412; 22 L.T. 140	158, 181
Moon (Lambeth Revenue Officer) v. London County Council, Potteries Electric Traction Co., Ltd. v. Bailey (Stoke-on-Trent Revenue Officer), [1931] A.C. 151; Digest Supp.; 100 L.J.K.B. 153; 144 L.T. 410	252, 253
Morgan v. Girls' Friendly Society (Incorporated Central Council), [1936] 1 All E.R. 404; Digest Supp.	158, 182
Mure v. Kaye (1811), 4 Taunt. 34; 14 Digest 177, 1554	338, 351
Myrle, Re, Potter v. Dow, [1941] 1 All E.R. 405; Digest Supp.	197, 198
National Farmers Union Mutual Insurance Society, Ltd. v. Dawson (1941), 70 Lloyd, L.R. 167	305, 306
National Phonograph Co. of Australia, Ltd. v. Menck, [1911] A.C. 336; 36 Digest 679, 1590; 80 L.J.P.C. 105; 104 L.T. 5	248, 249
National Provincial Bank, Ltd. v. Liddiard, [1941] 1 Ch. 158; Digest Supp.; sub nom. Re National Provincial Bank, Ltd., [1941] 1 All E.R. 97	299, 300
Newton, Re (1855), 16 C.B. 97; 16 Digest 254, 550; 24 L.J.C.P. 148; 25 L.T.O.S. 99	380, 391
Ocean, The (1804), 5 Ch. Rob. 90; 2 Digest 145, 191	420, 421
Paine, Re, Ex p. Read, [1897] 1 Q.B. 122; 5 Digest 856, 7181; 66 L.J.Q.B. 71; 75 L.T. 316	502
Paine v. Colne Valley Electricity Supply Co., Ltd., and British Insulated Cables, Ltd., [1938] 4 All E.R. 803; Digest Supp.; 160 L.T. 124	158, 183
Parnaby v. Lancaster Canal Co., Lancaster Canal Co. v. Parnaby (1839), 11 Ad. & El. 223; 36 Digest 43, 261; 9 L.J.Ex. 338	158, 167
Parry v. Aluminium Corp., Ltd. (1940), 162 L.T. 236; Digest Supp.	333, 337
Patton v. Toronto General Trusts Corp., [1930] A.C. 629; Digest Supp.; 143 L.T. 572; sub nom. Re Patton, Patton v. Toronto General Trusts Corp., 99 L.J.P.C. 213 197, 198, 199, 207	197, 198
Perrin v. Lyon, Lyon v. Geddes (1807), 9 East, 170; 44 Digest 456, 2778	63, 72, 96
Phelps v. Auldjo (1809), 2 Camp. 350; 29 Digest 152, 1068	305, 306
Pictorial Machinery, Ltd. v. Nicolls (1940), 45 Com. Cas. 334; Digest Supp.	63, 80, 81, 257, 262
Polurrian S.S. Co., Ltd. v. Young, [1915] 1 K.B. 922; 29 Digest 273, 2213; 84 L.J.K.B. 1025; 112 L.T. 1053	137, 138, 139, 140, 420, 421, 423, 428
Porter v. Freudenberg, Kreglinger v. Samuel (S.) & Rosenfeld, Re Merten's Patents, [1915] 1 K.B. 857; 2 Digest 160, 302; 84 L.J.K.B. 1001; 112 L.T. 313	339, 378
R. v. Banks, [1916] 2 K.B. 621; 15 Digest 848, 9323; 85 L.J.K.B. 1657; 115 L.T. 457; 12 Cr. App. Rep. 74	105, 111, 112
R. v. Brixton Prison (Governor), Ex p. Sarno, [1916] 2 K.B. 742; 2 Digest 196, 551; 86 L.J.K.B. 62; 115 L.T. 608	389, 403
R. v. Browne, Corbet, etc. (1686), 2 Show. 484; 16 Digest 250, 497	33, 36
R. v. Cason (1935), 14 Ann. Tax Cas. 471	105, 122
R. v. Chiswick Police Station Superintendent, Ex p. Sacksteder, [1918] 1 K.B. 578; 2 Digest 196, 553; 87 L.J.K.B. 608; 118 L.T. 160	318, 320
R. v. Cole (1941), 165 L.T. 125; Digest Supp.	339, 378
R. v. Forde, [1923] 2 K.B. 400; 15 Digest 853, 9367; 92 L.J.K.B. 501; 128 L.T. 798; 17 Cr. App. Rep. 99	105, 108
R. v. Halliday, Ex p. Zadig, [1917] A.C. 260; 2 Digest 198, 560; 86 L.J.K.B. 1119; 116 L.T. 417	105, 112, 115
109, 110, 115, 120, 121, 338, 344, 345, 357, 367, 370, 371, 373, 375, 376, 380, 385, 386, 389, 404	104, 105, 113, 118
R. v. Home Secretary, Ex p. Budd (1941), Unreported, Mar. 27	338, 349, 350, 358, 373, 385
R. v. Home Secretary, Ex p. Budd, [1941] 2 All E.R. 749; Digest Supp.	104, 105, 113, 118
R. v. Home Secretary, Ex p. Greene, [1941] 3 All E.R. 104; Digest Supp.	273, 276, 283
R. v. Home Secretary, Ex p. Lees, [1941] 1 K.B. 72; Digest Supp.; 110 L.J.K.B. 42; 164 L.T. 41	389, 401, 402, 403
R. v. Hopper, [1915] 2 K.B. 431; 14 Digest 298, 3146; 84 L.J.K.B. 1371; 113 L.T. 381; 11 Cr. App. Rep. 136	227, 228
R. v. Jackson, [1891] 1 Q.B. 671; 15 Digest 827, 9057; 60 L.J.Q.B. 346; 64 L.T. 679	105, 109
R. v. Kesteven J.J. (1844), 3 Q.B. 810; 33 Digest 441, 1509; 13 L.J.M.C. 78; 3 L.T.O.S. 55	274, 277
R. v. Lemon Street Police Station Inspector, Ex p. Venicoff, R. v. Secretary of State for Home Affairs, Ex p. Venicoff, [1920] 3 K.B. 72; Digest Supp.; 89 L.J.K.B. 1200; 23 L.T. 573	227, 228, 229
R. v. Lesbini, [1914] 3 K.B. 1116; 15 Digest 779, 8332; 84 L.J.K.B. 1102; 112 L.T. 175; 11 Cr. App. Rep. 7	338, 349
R. v. Marton cum Grafton (Inhabitants) (1847), 10 Q.B. 971; 33 Digest 451, 1632; 16 L.J.M.C. 159	274, 279
R. v. Prince, [1941] 3 All E.R. 37; Digest Supp.	227, 228, 229
R. v. Reynolds, [1893] 2 Q.B. 75; 26 Digest 394, 1205; 69 L.T. 321; sub nom. R. v. Frodsham J.J. and Edwards, 62 L.J.M.C. 120	227, 229
R. v. Schama, R. v. Abramovitch (1914), 84 L.J.K.B. 396; 15 Digest 972, 10,865; 112 L.T. 480; 11 Cr. App. Rep. 45	227, 229
R. v. Southampton Licensing J.J., Ex p. Cardy, [1906] 1 K.B. 446; 30 Digest 70, 552; 75 L.J.K.B. 295; 94 L.T. 437	227, 229
R. v. Sutton Coldfield Overseers (1874), L.R. 9 Q.B. 153; 33 Digest 449, 1595; sub nom. R. v. London & North Western Ry. Co., 43 L.J.M.C. 57; Digest Supp.; 89 L.J.K.B. 1200; 23 L.T. 573	227, 229
R. v. Turner (1816), 5 M. & S. 206; 14 Digest 430, 4552	236, 237
Roadways Transport Development, Ltd. v. Browne & Gray (1927), Jones and Proudfoot's Notes on Hire-purchase Law, 2nd Edn., p. 118	474, 480, 481
Roberts v. Hardy (1815), 3 M. & S. 533; 2 Digest 140, 152	420, 421
Robertson v. Nomikos (Petros M.), Ltd., [1939] A.C. 371; [1939] 2 All E.R. 723; Digest Supp.; 108 L.J.K.B. 433; 160 L.T. 542	63, 72, 79, 97
Robinson Bros. (Brewers), Ltd. v. Durham County Assessment Committee (Area No. 7), [1938] A.C. 321; Digest Supp.; 158 L.T. 498; sub nom. Robinson Bros. (Brewers), Ltd. v. Houghton & Chester-le-Street Assessment Committee, [1938] 2 All E.R. 79; 107 L.J.K.B. 369	225, 227, 231, 235
Rodoconachi v. Elliott (1874), L.R. 9 C.P. 518; 29 Digest 218, 1747; 43 L.J.C.P. 255; 31 L.T. 239	64, 84
Romanas, Ltd., Re, Unreported	410, 411
Ross, Re, Ross v. Waterfield, [1930] 1 Ch. 377; Digest Supp.; 99 L.J.Ch. 67; 142 L.T. 189	21, 25
Roux v. Salvador (1836), 3 Bing. N.C. 266; 29 Digest 263, 2129; 7 L.J.Ex. 328	63, 82

Royal Bank of Scotland's Application, <i>Re</i> , [1940] Ch. 857; [1940] 3 All E.R. 476; Digest Supp.; 109 L.J.Ch. 439	141, 142
Rushbrook v. Rushbrook, [1940] P. 24; [1939] 4 All E.R. 73; Digest Supp.; 109 L.J.P. 1; 162 L.T. 222	133, 135, 136
Ruys v. Royal Exchange Assurance Corp., [1897] 2 Q.B. 185; 20 Digest 266, 2746; 66 L.J.Q.B. 534; 77 L.T. 23	63, 80
Rylands v. Fletcher (1868), L.R. 3 H.L. 330; 36 Digest 187, 311; 37 L.J.Ex. 161; 19 L.T. 220	158, 168
S. & A. Services, Ltd. v. Dickson, [1940] 2 K.B. 219; [1940] 3 All E.R. 98; Digest Supp.; 109 L.J.K.B. 665; 163 L.T. 717	405, 406
Saillard, <i>Re</i> , Pratt v. Gamble, [1914] 2 Ch. 401; 39 Digest 167, 584; 86 L.J.Ch. 749; 117 L.T. 545	466, 469
Samuel (P.) & Co. v. Dumas, [1924] A.C. 431; 20 Digest 112, 666; 93 L.J.K.B. 415; 130 L.T. 771	63, 82
Santa Anna, The (1809), 1 Edw. 180; 37 Digest 583, 133	420, 432
Saxby v. Manchester & Sheffield Ry. Co. (1869), L.R. 4 C.P. 198; 36 Digest 214, 572; 38 L.J.C.P. 153; 19 L.T. 640	28, 31
Sayer v. Lichfold (1854), 23 L.T.O.S. 324; 43 Digest 449, 775	339, 351
Schaffenius v. Goldberg, [1916] 1 K.B. 284; 2 Digest 156, 261; 85 L.J.K.B. 374; 113 L.T. 949	420, 428
Sedleigh-Denfield v. O'Callaghan (Trustees for St. Joseph's Society for Foreign Missions), [1940] A.C. 880; [1940] 3 All E.R. 349; Digest Supp.	28, 31
Shrewsbury Estate Acts, <i>Re</i> , Shrewsbury v. Shrewsbury, [1924] 1 Ch. 315; 39 Digest 167, 586; 93 L.J.Ch. 171; 130 L.T. 238	315, 317
Sifton v. Sifton, [1938] A.C. 656; [1938] 3 All E.R. 435; Digest Supp.; 107 L.J.P.C. 97; 159 L.T. 289	197, 198, 199, 200
Sinclair's Life Policy, <i>Re</i> , [1938] Ch. 799; [1938] 3 All E.R. 124; Digest Supp.; 107 L.J.Ch. 405; 159 L.T. 189	6, 7
Smith v. Baker & Sons, [1891] A.C. 325; 36 Digest 95, 633; 60 L.J.Q.B. 683; 65 L.T. 467	305, 306
Societe Anonyme Belge des Mines d'Aljustrel (Portugal) v. Anglo-Belgian Agency, Ltd., [1915] 2 Ch. 409; 2 Digest 153, 241; 84 L.J.Ch. 854; 113 L.T. 583	420, 421, 424, 425, 430
Soden & Alexander's Contract, <i>Re</i> , [1918] 2 Ch. 258; 40 Digest 163, 1321; 87 L.J.Ch. 529; 119 L.T. 516	187, 189, 192
Soho Square Syndicate, Ltd. v. Pollard & Co., Ltd., [1940] Ch. 638; [1940] 2 All E.R. 601; Digest Supp.; 109 L.J.Ch. 266; 162 L.T. 372	327, 330
Southern Foundries (1926), Ltd. v. Shirlaw, [1940] A.C. 701; [1940] 2 All E.R. 445; Digest Supp.; 109 L.J.K.B. 461; <i>aff.</i> , [1939] 2 K.B. 206; [1939] 2 All E.R. 113	144, 145, 153
Spence, <i>Re</i> , <i>Ex p.</i> Stamp (1846), De G. 345; 4 Digest 30, 239	12, 16, 17
Stammers v. Yearley (1833), 10 Bing. 35; 43 Digest 441, 695; 2 L.J.C.P. 256	339, 351
Stennett v. Hancock & Peters, [1939] 2 All E.R. 578; Digest Supp.	158, 185
Stevens, <i>Re</i> , Cooke v. Stevens, [1898] 1 Ch. 162; 24 Digest 660, 6864; 67 L.J.Ch. 118; 77 L.T. 508	459, 464
Stirk & Sons, Ltd. v. Halifax Assessment Committee, [1922] 1 K.B. 264; 38 Digest 581, 1157; 91 L.J.K.B. 258; 126 L.T. 338	227, 232, 233, 234
Stockdale v. Hansard (1839), 9 Ad. & El. 1; 36 Digest 289, 377; 8 L.J.Q.B. 294	105, 119
Stringer v. English & Scottish Marine Insurance Co. (1870), L.R. 5 Q.B. 599; 29 Digest 255, 2067; 39 L.J.Q.B. 214; 22 L.T. 802	63, 82, 88
Stuart v. Anderson and Morrison, [1941] 2 All E.R. 665; Digest Supp.	105, 113, 339, 373
Sugden v. Leeds Corp., [1914] A.C. 483; 28 Digest 74, 397; 83 L.J.K.B. 840; 108 L.T. 578; 6 Tax Cas. 211	323, 325
Sutherland v. Mills (James), Ltd., Executors, [1938] 1 All E.R. 283; Digest Supp.	1, 3, 4
Sutherland Publishing Co., Ltd. v. Caxton Publishing Co., Ltd., [1936] Ch. 323; [1936] 1 All E.R. 177; Digest Supp.; 105 L.J.Ch. 150; 154 L.T. 367; <i>aff.</i> , [1938] 4 All E.R. 389	145, 153
Tegg, <i>Re</i> , Public Trustee v. Bryant, [1936] 2 All E.R. 878; Digest Supp.	197, 199, 209
Thicknesse v. Lancaster Canal Co. (1838), 4 M. & W. 472; 11 Digest 136, 230; 8 L.J.Ex. 49	486, 489
Thompson, <i>Re</i> , <i>Ex p.</i> Williams (1877), 7 Ch.D. 138; 5 Digest 962, 7878; 47 L.J.Bcy. 26; 37 L.T. 764	474, 477
Thorne v. Motor Trade Assoc., [1937] A.C. 797; [1937] 3 All E.R. 157; Digest Supp.; 106 L.J.K.B. 495; 157 L.T. 399; 26 Cr. App. Rep. 51	339, 378
Thurn & Taxis (Princess) v. Moffitt, [1915] 1 Ch. 58; 2 Digest 156, 259; 84 L.J.Ch. 220; 112 L.T. 114	420, 428
Tingley v. Muller, [1917] 2 Ch. 144; 2 Digest 142, 163; 86 L.J.Ch. 625; 116 L.T. 482	420, 421
Trebeck v. Croudace, [1918] 1 K.B. 158; 14 Digest 183, 1622; 87 L.J.K.B. 272; 118 L.T. 141	45, 50, 55, 60
Tsinki v. King's Advocate, [1920] A.C. 743	21
Usher v. Noble (1810), 12 East, 639; 20 Digest 247, 1994	64, 83
Vaughan v. Menlove (1837), 3 Bing. N.C. 468; 36 Digest 21, 95; 6 L.J.C.P. 92	158, 167
Walters v. Smith (W. H.) & Son, Ltd., [1914] 1 K.B. 595; 43 Digest 450, 783; 83 L.J.K.B. 335; 110 L.T. 345	339, 351
Watson's Case (1839), 9 Ad. & El. 731; 16 Digest 256, 585; <i>sub nom.</i> R. v. Wixon, 8 L.J.Q.B. 129	105, 119, 389, 394, 400, 402
West v. Automatic Salesman, Ltd., [1937] 2 K.B. 398; [1937] 2 All E.R. 706; Digest Supp.; 106 L.J.K.B. 769; 157 L.T. 539	286, 288
Whitehouse, <i>Re</i> , Whitehouse v. Edwards (1887), 37 Ch.D. 683; 26 Digest 196, 1529; 57 L.J.Ch. 161; 57 L.T. 761	502
Williams v. Williams, [1939] P. 365; [1939] 3 All E.R. 825; Digest Supp.; 108 L.J.P. 140; 161 L.T. 202	133, 135, 136
Wing v. London General Omnibus Co., [1909] 2 K.B. 652; 36 Digest 89, 594; 78 L.J.K.B. 1063; 101 L.T. 411	333, 334, 336
Winterbottom v. Wright (1842), 10 M. & W. 109; 36 Digest 63, 407; 11 L.J.Ex. 415	158, 173, 184, 185
Woodside v. Globe Marine Insurance Co., [1896] 1 Q.B. 105; 29 Digest 246, 1985; 65 L.J.Q.B. 117; 73 L.T. 626	64, 82
Woolmington v. Public Prosecutions Director, [1935] A.C. 462; Digest Supp.; 104 L.J.K.B. 433; 153 L.T. 232; 25 Cr. App. Rep. 72	38, 40, 273, 276, 279, 280, 283
Zamora, The, [1916] 2 A.C. 77; 37 Digest 652, 1071; 85 L.J.P. 89; 114 L.T. 626	339, 367

STATUTES, ETC., REFERRED TO

	PAGE
Habeas Corpus Act, 1816 (c. 100), ss. 3, 4	388
Lands Clauses Consolidation Act, 1845 (c. 18), ss. 18, 49, 63, 68	485
Customs Consolidation Act, 1876 (c. 36), ss. 186, 197, 199, 202, 203, 205, 221, 224, 229, 233, 267	45
Weights and Measures Act, 1889 (c. 21), s. 28	236
Interpretation Act, 1889 (c. 49), s. 1 (1)	100
Moneylenders Act, 1900 (c. 51), s. 1	128
Factory and Workshop Act, 1901 (c. 22), s. 149 (4)	252
Marine Insurance Act, 1906 (c. 41), ss. 45, 49, 60	62
—, s. 60 (2) (i)	256
—, s. 91 (2)	62
Finance (1909-10) Act, 1910 (c. 8), s. 74	186
Copyright Act, 1911 (c. 46), s. 35 (1)	144
Bankruptcy Act, 1914 (c. 59), s. 33 (4)	491
—, s. 51	280
Police Pensions Act, 1921 (c. 31), s. 30, Sched. III	481
Trustee Act, 1925 (c. 19), s. 57	284
Administration of Estates Act, 1925 (c. 23), s. 46 (1) (vi)	301
Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49) s. 25 (2)	225
Rating and Valuation Act, 1925 (c. 90), s. 31 (5)	225
—, s. 37	225
Rating and Valuation (Apportionment) Act, 1928 (c. 44), s. 3	252
Finance Act, 1933 (c. 19), s. 31 (1), (3)	9
Finance Act, 1934 (c. 32), s. 21	296
County Courts Act, 1934 (c. 53), s. 105 (c)	286
Finance Act, 1936 (c. 34), s. 21 (10)	265
Matrimonial Causes Act, 1937 (c. 57), s. 2	133
Factories Act, 1937 (c. 67), s. 24 (7)	1
Limitation Act, 1939 (c. 21), s. 21	498
House to House Collections Act, 1939 (c. 44)	481
Courts (Emergency Powers) Act, 1939 (c. 67), s. 1	455
—, s. 1 (2) (a)	141
—, s. 1 (2) (a) (ii)	326
—, s. 1 (2) (a) (iii)	405
—, s. 1 (4)	299
—, s. 1 (5)	410
Landlord and Tenant (War Damage) Act, 1939 (c. 72), s. 1	446
—, ss. 4, 8	269
Compensation (Defence) Act, 1939 (c. 75), ss. 2 (1) (d), 7, 9	407
National Service (Armed Forces) Act, 1939 (c. 81), ss. 5, 14 (4)	434
Trading with the Enemy Act, 1939 (c. 89)	419
Execution of Trusts (Emergency Provisions) Act, 1939 (c. 114)	100
South Shields Corporation Act, 1935 (c. xcvi), ss. 112-115	322
Ontario Separate Schools Act, (R.S.O., 1937, c. 362), s. 66	241
Palestine Order in Council, 1922, arts. 46, 51, 58, 59, 64	20
Palestine Succession Ordinance, 1923, ss. 2, 3, 4, 11	20
Palestine (Amendment) Order in Council, 1935	20
R.S.C., Ord. 59	104, 388
C.C.R., Ord. 28, r. 11	286
Non-Contentious Probate Rules, r. 119	301
Matrimonial Causes Rules, 1937, r. 4 (1) (f)	268
Defence (General) Regulations, reg. 18B	104, 338, 388
National Service (Armed Forces) Prevention of Evasion Regulations, 1939 (S.R. & O., 1939, No. 1099), reg. 2 (1) (a), (b), (2)	434
Defence (Trading with the Enemy) Regulations, 1940 (S.R. & O., 1940, No. 1092)	419
Bankruptcy Act, 1914 (c. 59), s. 33 (4)	491

WORDS AND PHRASES

	PAGE
<i>Interest in land</i>	485
<i>Marriage with a person who is not of Jewish parentage and of the Jewish faith</i>	196
<i>Landlord or other person</i>	491
<i>Offender</i>	45
<i>Police authority</i>	481

CORRECTIONS

[1941] Vol. 2, p. 308: *Barrett v. Gravesend Assessment Committee*. In the third line of the HELD read "when the proposal was made."
P. 453, ante. *Prichard Jones v. Le Yage*. The Solicitors for the appellant were *Shindler & Co.*

These reports are cited thus:
[1941] 3 All E. R.

CASES REPORTED IN VOLUME 3

	PAGE
ALCOCK, BUTLER v. [C.A.]	411
ALLCHIN v. COULTHARD [K.B.D.]	322
ANDERSON, LIVERSIDGE v. [H.L.]	338
APEX SUPPLY CO., LTD., <i>Re</i> [CH.D.]	473
ARDRON v. HUDDERSFIELD INDUSTRIAL SOCIETY, LTD. [K.B.D. DIVL. CT.]	434
ASKWITH, WESTMINSTER BANK, LTD. v., <i>Re</i> HARVEY [CH.D.]	284
BARKER, R. v. [C.C.A.]	33
BARNARD v. GORMAN [H.L.]	45
BEAUMONT, POPE v. [K.B.D.]	9
BELK v. BEST, <i>Re</i> BEST'S MARRIAGE SETTLEMENT [CH.D.]	315
BERMONDSEY BOROUGH COUNCIL, MOUNTAIN v. [K.B.D.]	498
BERNSTEIN, GILLETTE INDUSTRIES, LTD. v. [C.A.]	248
BEST'S MARRIAGE SETTLEMENT, <i>Re</i> , BELK v. BEST [CH.D.]	315
BISHOP v. BISHOP [Div.]	268
BLACK AND BLACK v. MILEHAM [C.A.]	269
BRIDGE (WILLIAM), LTD. v. HARRISON [K.B.D. DIVL. CT.]	236
BUTLER v. ALCOCK [C.A.]	411
BYWATERS (MARGOT), LTD., <i>Re</i> [CH.D.]	471
CAIDAN, <i>Re</i> , OFFICIAL RECEIVER v. REGIS PROPERTY CO., LTD. [CH.D.]	491
CHALFOUNT AND DISTRICT PERMANENT BUILDING SOCIETY, <i>Re</i> [CH.D.]	41
CHURCHILL (V.L.) & CO., LTD., AND LONBERG, <i>Re</i> <i>An Intended Action Between</i> [C.A.]	137
COLE v. LYNN [C.A.]	502
COULTHARD, ALLCHIN v. [K.B.D.]	322
COXWOLD, THE, YORKSHIRE DALE STEAMSHIP CO., LTD. v. MINISTER OF WAR TRANSPORT [C.A.]	214
CROCKER v. HADLEY [C.A.]	286
CZARNIKOW (C.), LTD. v. JAVA SEA AND FIRE INSURANCE CO., LTD. [K.B.D.]	256
DAW (C.A.) & SON, LTD., HASELDINE v. [C.A.]	156
DEANE v. EDWARDS (H.F.) & CO., LTD. [C.A.]	331
DEBTOR (No. 6 of 1934), <i>Re</i> , <i>Ex parte</i> OFFICIAL RECEIVER [CH.D.]	289
DEBTOR (No. 1 of 1941), <i>Re</i> , DEBTOR v. PETITIONING CREDITOR AND OFFICIAL RECEIVER [CH.D. DIVL. CT.]	11
DIRECTOR OF PUBLIC PROSECUTIONS, MANCINI v. [H.L.]	272
DOWNSBOROUGH v. HUDDERSFIELD INDUSTRIAL SOCIETY, LTD. [K.B.D. DIVL. CT.]	434
EDWARDS (H.F.) & CO., LTD., DEANE v. [C.A.]	331
FEVERSHAM'S CONTRACT, <i>Re</i> [CH.D.]	100
FITZWILLIAM'S (EARL) COLLIERIES CO. v. PHILLIPS [K.B.D.]	296
FORD MOTOR CO. OF CANADA, LTD., WINDSOR CITY BOARD OF EDUCATION v. [P.C.]	241
FORESTAL LAND, TIMBER AND RAILWAYS CO., LTD., RICKARDS v. [H.L.]	62
FOUNTAIN, NORWICH ASSESSMENT COMMITTEE AND, NORWICH RATING AUTHORITY v. [K.B.D. DIVL. CT.]	225
FRASER TAYLOR'S APPLICATION, <i>Re</i> [CH.D.]	141
GILLETTE INDUSTRIES, LTD. v. BERNSTEIN [C.A.]	248
GLENCONNER (LORD), INLAND REVENUE COMMISSIONERS v. [K.B.D.]	265
GORMAN, BARNARD v. [H.L.]	45
GREENE, <i>Ex parte</i> , R. v. HOME SECRETARY [C.A.]	104
GREENE v. SECRETARY OF STATE FOR HOME AFFAIRS [H.L.]	388
HADLEY, CROCKER v. [C.A.]	286
HAMMOND, R. v. [C.C.A.]	318
HANLEY, <i>In the Estate of</i> [C.A.]	301
HARRISON, BRIDGE (WILLIAM), LTD. v. [K.B.D. DIVL. CT.]	236

	PAGE
HARVEY, <i>Re</i> , WESTMINSTER BANK, LTD. v. ASKWITH [CH.D.]	284
HASELDINE v. DAW (C.A.) & SON, LTD. [C.A.]	156
HERBERT, SWINDON BOROUGH COUNCIL v. [K.B.D.]	481
HIRST, <i>Re</i> , PUBLIC TRUSTEE v. HIRST [CH.D.]	466
HOME SECRETARY, R. v., <i>Ex parte</i> GREENE [C.A.]	104
HOME SECRETARY, GREENE v. [H.L.]	388
HOWARD (W.W.) BROTHERS & CO., LTD., KANN v. [H.L.]	62
HUDDERSFIELD INDUSTRIAL SOCIETY, LTD., DOWNSBOROUGH v. [K.B.D. DIVL. CT.]	434
INLAND REVENUE COMMISSIONERS v. GLENCONNER (LORD) [K.B.D.]	265
JABER ELIAS KOTIA v. KATR BINT JIRYES NAHAS [P.C.]	20
JACOBS v. RAMSDEN, <i>Re</i> SAMUEL [C.A.]	196
JAVA SEA AND FIRE INSURANCE CO., LTD., CZARNIKOW (C.), LTD. v. [K.B.D.]	256
JAVA SEA AND FIRE INSURANCE CO., LTD., LESLIE & ANDERSON, LTD. v. [K.B.D.]	256
JOHNSTONE v. SWAN ESTATES, LTD. [CH.D.]	446
KANN v. HOWARD (W.W.) BROTHERS & CO., LTD. [H.L.]	62
KATR BINT JIRYES NAHAS, JABER ELIAS KOTIA v. [P.C.]	20
LAURIE v. RAGLAN BUILDING CO., LTD. [C.A.]	332
LESLIE & ANDERSON, LTD. v. JAVA SEA AND FIRE INSURANCE CO., LTD. [K.B.D.]	256
LE VAYE, PRITCHARD-JONES v. [C.A.]	455
LIVERSIDGE v. ANDERSON [H.L.]	338
LONBERG, CHURCHILL (V.L.) & CO., LTD., AND, <i>Re</i> <i>An Intended Action between</i> [C.A.]	137
LONDON CO-OPERATIVE SOCIETY, LTD. v. SOUTHERN ESSEX ASSESSMENT COMMITTEE [K.B.D. DIVL. CT.]	252
LOTINGA v. NORTH EASTERN MARINE ENGINEERING CO. (1928), LTD. [K.B.D. DIVL. CT.]	1
LYLE (B.S.), LTD. v. PEARSON AND MEDLYCOTT [C.A.]	128
LYNN, COLE v. [C.A.]	502
MANCINI v. DIRECTOR OF PUBLIC PROSECUTIONS [H.L.]	272
MAUFE, MEIKLE v. [CH.D.]	144
MEDLYCOTT, PEARSON AND, LYLE (B.S.), LTD. v. [C.A.]	128
MEIKLE v. MAUFE [CH.D.]	144
MIDDLESEX BRICK CO., LTD., <i>Re</i> [CH.D.]	410
MIDDOWS, LTD., ROBERTSON v. [H.L.]	62
MIDLAND BANK, LTD.'S APPLICATION, <i>Re</i> [CH.D.]	299
MIDLAND BANK EXECUTOR AND TRUSTEE CO., LTD., TANKARD v., <i>Re</i> TANKARD [CH.D.]	458
MILEHAM, BLACK AND BLACK v. [C.A.]	269
MINISTER OF TRANSPORT, OPPENHEIMER v. [K.B.D. DIVL. CT.]	485
MINISTER OF WAR TRANSPORT, YORKSHIRE DALE STEAMSHIP CO., LTD. v., THE COXWOLD [C.A.]	214
MONCKTON v. MONCKTON [Div.]	133
MOUNTAIN v. BERMONDSEY BOROUGH COUNCIL [K.B.D.]	498
MOYLE, WOOLFALL & RIMMER, LTD. v. [C.A.]	304
N. V. GEBR. VAN UDENS SHEEPVAART EN AGENTTUUR MAATSCHAPPIJ EN SOVERACHT, <i>Re</i> AN ARBITRATION BETWEEN [C.A.]	419
NORTH EASTERN MARINE ENGINEERING CO. (1938), LTD., LOTINGA v. [K.B.D. DIVL. CT.]	225
NORWICH ASSESSMENT COMMITTEE AND FOUNTAIN, NORWICH RATING AUTHORITY v. [K.B.D. DIVL. CT.]	225
NORWICH RATING AUTHORITY v. NORWICH ASSESSMENT COMMITTEE AND FOUNTAIN [K.B.D. DIVL. CT.]	225

	PAGE
OFFICIAL RECEIVER, <i>Ex parte</i> , <i>Re</i> A DEBTOR (No. 6 of 1934) [CH.D.]	289
OFFICIAL RECEIVER <i>v.</i> REGIS PROPERTY CO., LTD., <i>Re</i> CAIDAN [CH.D.]	491
OFFICIAL RECEIVER, PETITIONING CREDITOR AND DEBTOR <i>v.</i> , <i>Re</i> A DEBTOR (No. 1 of 1941) [CH.D. DIVL. CT.]	11
OPPENHEIMER <i>v.</i> MINISTER OF TRANSPORT [K.B.D. DIVL. CT.]	485
PEARSON AND MEDLYCOTT, LYLE (B.S.), LTD. <i>v.</i> [C.A.]	128
PETITIONING CREDITOR AND OFFICIAL RECEIVER, DEBTOR <i>v.</i> , <i>Re</i> A DEBTOR (No. 1 of 1941) [CH.D. DIVL. CT.]	11
PHILLIPS, FITZWILLIAM'S (EARL) COLLIERIES CO. <i>v.</i> [K.B.D.]	296
POPE <i>v.</i> BEAUMONT [K.B.D.]	9
PRINCE, R. <i>v.</i> [C.C.A.]	37
PRITCHARD-JONES <i>v.</i> LE VAYE [C.A.]	455
PUBLIC TRUSTEE <i>v.</i> HIRST, <i>Re</i> HIRST [CH.D.]	466
R. <i>v.</i> BARKER [C.C.A.]	33
R. <i>v.</i> HAMMOND [C.C.A.]	318
R. <i>v.</i> HOME SECRETARY, <i>Ex parte</i> GREENE [C.A.]	104
R. <i>v.</i> PRINCE [C.C.A.]	37
RAGLAN BUILDING CO., LTD., LAURIE <i>v.</i> [C.A.]	332
RAMSDEN, JACOBS <i>v.</i> , <i>Re</i> SAMUEL [C.A.]	196
REGIS PROPERTY CO., LTD., OFFICIAL RECEIVER <i>v.</i> , <i>Re</i> CAIDAN [CH.D.]	491
RHODES <i>v.</i> SECRETARY OF STATE FOR WAR [K.B.D. DIVL. CT.]	407
RICHARDS <i>v.</i> FORESTAL LAND, TIMBER AND RAILWAYS CO., LTD. [H.L.]	62
ROBB'S CONTRACT, <i>Re</i> [C.A.]	186
ROBERTSON <i>v.</i> MIDDOWS, LTD. [H.L.]	62
ROSS, SMART BROTHERS, LTD. <i>v.</i> [CH.D.]	326
ROYAL MUTUAL BENEFIT BUILDING SOCIETY'S APPLICATION, <i>Re</i> [CH.D.]	313
SAMUEL, <i>Re</i> , JACOBS <i>v.</i> RAMSDEN [C.A.]	196
SECRETARY OF STATE FOR HOME AFFAIRS, GREENE <i>v.</i> [H.L.]	388
SECRETARY OF STATE FOR WAR, RHODES <i>v.</i> [K.B.D. DIVL. CT.]	407

	PAGE
SLATER <i>v.</i> WORTHINGTON'S CASH STORES (1930), LTD. [C.A.]	28
SMART BROTHERS, LTD. <i>v.</i> ROSS [CH.D.]	326
SOUTHERN ESSEX ASSESSMENT COMMITTEE, LONDON CO-OPERATIVE SOCIETY, LTD. <i>v.</i> [K.B.D. DIVL. CT.]	252
SOVRACHT, N. V. GEBR. VAN UDENS SHEEPVAART EN AGENTUUR MAATSCHAPPIJ AND, <i>Re</i> AN ARBITRATION BETWEEN [C.A.]	419
STAPLETON-BRETHERTON, <i>Re</i> , WELD BLUNDELL <i>v.</i> STAPLETON-BRETHERTON [CH.D.]	5
SWAN ESTATES, LTD., JOHNSTONE <i>v.</i> [CH.D.]	446
SWINDON BOROUGH COUNCIL <i>v.</i> HERBERT [K.B.D.]	481
TANKARD, <i>Re</i> , TANKARD <i>v.</i> MIDLAND BANK EXECUTOR AND TRUSTEE CO., LTD. [CH.D.]	458
TRITTON, WHITSTABLE URBAN DISTRICT COUNCIL <i>v.</i> [C.A.]	405
UNITED GLASS BOTTLE MANUFACTURERS, LTD., AND WINSLOW HALL ESTATES CO.'S CONTRACT, <i>Re</i> [CH.D.]	124
V. G. M. HOLDINGS, LTD., <i>Re</i> [CH.D.]	417
WADSWORTH <i>v.</i> HUDDERSFIELD INDUSTRIAL SOCIETY, LTD. [K.B.D. DIVL. CT.]	434
WELD BLUNDELL <i>v.</i> STAPLETON-BRETHERTON, <i>Re</i> STAPLETON-BRETHERTON [CH.D.]	5
WESTMINSTER BANK, LTD. <i>v.</i> ASKWITH, <i>Re</i> HARVEY [CH.D.]	284
WHITSTABLE URBAN DISTRICT COUNCIL <i>v.</i> TRITTON [C.A.]	405
WINDSOR CITY BOARD OF EDUCATION <i>v.</i> FORD MOTOR CO. OF CANADA, LTD. [P.C.]	241
WINSLOW HALL ESTATES CO. AND UNITED GLASS BOTTLE MANUFACTURERS, LTD.'S, CONTRACT, <i>Re</i> [CH.D.]	124
WOOLFALL & RIMMER, LTD. <i>v.</i> MOYLE [C.A.]	304
WORTHINGTON'S CASH STORES (1930), LTD., SLATER <i>v.</i> [C.A.]	28
YORKSHIRE DALE STEAMSHIP CO., LTD. <i>v.</i> MINISTER OF WAR TRANSPORT, THE COXWOLD [C.A.]	214

THE
ALL ENGLAND
LAW REPORTS
ANNOTATED

LOTINGA v. NORTH EASTERN MARINE ENGINEERING
CO. (1938), LTD.

[KING'S BENCH DIVISION (Viscount Caldecote, L.C.J., and Tucker, J.),
July 23, 1941.]

- C *Factories—Dangerous machinery—Travelling crane—Men working in or near wheel-track—Employers' duty to ensure safety—Absolute duty—Exhibition of notice insufficient—Factories Act, 1937 (c. 67), s. 24 (7).*

D An employee of the respondents was working near the wheel-track of a large overhead travelling crane, where he was killed by the movement of the crane. A notice was exhibited in the vicinity of the place that cranes must not approach within 20ft. of men working there and that workmen must notify cranemen of their presence there before starting work. The magistrates found that the system of work in use had been employed for 37 years without accident and that the accident was due to one of the respondents' workmen, well aware of the danger, deferring to take action by warning the craneman until it was too late to avert the danger. It was also found that it was impracticable for the craneman to look out for men at work in or near the wheel-track. Upon these findings they refused to convict the respondents of an offence against the Factories Act, 1937, s. 24 (7) :—

E

F **HELD :** the above subsection imposes an absolute duty to take effective steps by warning the driver of the crane or otherwise to ensure that the crane shall not approach within 20ft. of the place where men are working on or near the wheel-track of the crane. The respondents had failed to carry out this duty and should have been convicted.

G **[EDITORIAL NOTE.]** Decisions of this type are necessarily of a negative character. It is not for the court or the Act to state how safety in working dangerous machines is to be ensured, but, where the Act places on employers an absolute duty to ensure safety, it is no answer to say that the system adopted has been worked for very many years without mishap, nor is it a sufficient compliance with the statutory provision to post notices warning workmen or giving them instructions to warn others of their presence in the danger zone. The employers must make such arrangements and take such precautions that the safety of the workmen is ensured.

H **AS TO DANGEROUS MACHINERY,** see HALSBURY, Hailsham Edn., Vol. 14, pp. 594-603, paras. 1130-1146; and **FOR CASES,** see DIGEST, Vol. 24, pp. 908-913, Nos. 62-85.]

Case referred to :

(1) *Sutherland v. Mills (James), Ltd., Executors*, [1938] 1 All E.R. 283; Digest Supp.

APPEAL by the inspector of factories by way of case stated from a

decision of the justices of the peace for the borough of Wallsend dismissing an information by a factory inspector against the respondent company to the effect that they had contravened the Factories Act, 1937, s. 24 (7). The facts are fully set out in the judgment of VISCOUNT CALDECOTE, L.C.J.

The notice referred to in the judgment was in the following terms :

Cranes must not approach within 20ft. of men working on this gantry. Workmen must notify cranemen of their presence on this gantry before starting work.

Hon. H. L. Parker for the appellant.

J. Harvey Robson for the respondents.

VISCOUNT CALDECOTE, L.C.J. : In this case, it is alleged that a man named Dawson was working near the wheel-track of a 60-ton overhead travelling crane in the erecting shop, in a place where he was liable to be struck by the crane, without effective measures having been taken to ensure that the crane did not approach within 20ft. of the place where he was working. The evidence as found by the magistrates was that this man and two other workmen were employed upon the floor of a gantry, where they were in danger of injury from the movement of the overhead crane, that they had done work similar to that upon which they were engaged, which was that of hoisting the switch on to the gantry and then putting it into position on a steel column, and that they were aware of the danger. It was also found that notices were posted and maintained in the vicinity of this place, which is apparently called a danger zone, warning persons who have to work in this position that they must warn the crane-drivers concerned. The crane-drivers, we are told, cannot look out themselves to see whether there are men in this dangerous position, as they have other duties to attend to. They expect to be warned by the workmen about to work in such a position of danger, and they regularly receive and work on such warnings. The magistrates also found that the crane-driver concerned in this accident had had 37 years' experience of driving the crane in this particular shop and had never before had an accident of this nature. On this occasion, the unfortunate result of the absence of any warning being given to the crane-driver was that Ernest Dawson was killed.

This information is laid under the Factories Act, 1937, s. 24 (7), which provides as follows :

If any person is employed or working on or near the wheel-track of an overhead travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken by warning the driver of the crane or otherwise to ensure that the crane does not approach within 20ft. of that place.

It is not superfluous to remember that the Factories Act, 1937, which is the latest of many Acts dealing with the safety of workpeople, is more stringent in its terms than any preceding legislation. This particular section appears in a part of the Act which deals with safety. Some of the sections in that part, like sect. 24, deal with peculiarly dangerous machines and make special provisions with regard to them, as LORD

HEWART, L.C.J., said in *Sutherland v. Mills (James), Ltd., Executors* (1), at p. 285 :

A large part of the purpose of these statutes was to save workmen from themselves. That is to say, not to save them from deliberate acts of mischief, but to save them from consequences which they may incur, if, in haste, hurry, carelessness, or, it may be, indolence, they do something in a way in which they ought not to do it . . .

A In this particular case, it is said that the obligation resting upon the employers had been discharged because they put up notices forbidding cranes to approach within 20ft. of men working on this gantry and enjoining workmen to notify crane-men of their presence on this gantry before starting work. The magistrates, having heard evidence to the effect
B that the present system was one which had been in force for 37 years without an accident ever before having taken place, have found that it was unreasonable to condemn as ineffective the measures taken by the respondents in this case. Then this is worth noticing. They say :

C That such failure arose from the act of one of the respondents' workmen, who not by reason of ignorance, neglect or carelessness, but well aware of the danger, and of his duty to take the action designed to avert it, chose in his judgment—unhappily wrong—to defer taking action until what he thought would be a more suitable time.

If that is not putting the responsibility upon the workman, I can
D hardly imagine any language which would be more likely to have that effect. The plain meaning of that finding of the magistrates is that it was the duty of the workman to take action designed to avert the accident, that he exercised a wrong judgment in failing to discharge that duty, and that, in consequence, the respondents had not failed in their duty.
E The duty under the Act is put upon the employer, and not upon the workman. They are strong words. The section requires that :

. . . effective measures shall be taken . . . to ensure that the crane does not approach within 20ft. of that place.

So far as the evidence in this case discloses the facts, no measures at all
F were taken, either by warning or otherwise, to prevent the crane from approaching within 20ft. of where the workpeople were working, but what was done was that a general notice was exhibited, in terms which did not correspond very closely with the terms of the section, ordering the workpeople to take steps for their own protection.

G In my judgment, the magistrates arrived at a wrong decision. I think that they went wrong because, perhaps, they were captivated—indeed, their case shows it—by the idea that, because an accident had not taken place for a great number of years, the procedure which had been followed during those years must be effective. I think that
H that is wrong. Effective steps were not taken in this case, and steps were not taken to ensure that the crane did not come within 20ft. of where these workmen were working. To find otherwise would be to water down the provisions of this section under the Act of 1937, which were intended, apparently, by the strongest words that the draftsman could choose, to place an absolute obligation upon the employer.

This court has always been slow to listen to any argument which in

effect waters down provisions which place an absolute duty upon the employer and transfers that duty to the workman. The argument presented to us here bears some similarity to that which was addressed to the court in *Sutherland v. Mills (James), Ltd., Executors* (1). The argument there was that the user of a particular machine without accident for a very long period was proof that the machine was not a dangerous machine. As I say, the argument in this case has a certain similarity to the argument in that case. In my judgment, the magistrates here arrived at a wrong decision because they directed their minds to the wrong point. The point which they should have considered was whether or not effective steps were taken on this occasion, and, as there was no evidence of any effective steps having been taken on this occasion, whether due to somebody's fault or not, in my opinion, the offence was proved.

TUCKER, J. : I agree. In my opinion, this case is a very clear one. The Factories Act, 1937, s. 24 (7), is in these words :

If any person is employed or working on or near the wheel-track of an overhead travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken by warning the driver of the crane or otherwise to ensure that the crane does not approach within 20ft. of that place.

It will be observed that two of the words in that section are " effective " and " ensure." In my view, this subsection imposed an absolute obligation on the employers to produce the result that, in the circumstances stated in that subsection, the crane shall not approach within 20ft. of where the workman is working. In my view, that obligation is just as absolute as that which is imposed under sect. 14, which provides that certain machinery shall be securely fenced. That is a section under which there have been many decisions, and it is a section with which the courts are very familiar. It was argued in this case that subsect. (7) does not impose an absolute duty, but I think that, in effect, the justices have construed this subsection as if it said that, in the circumstances stated, the employers should take reasonable steps to secure the safety of the persons concerned. Those are not the words used. The words used are that they shall take effective measures to ensure a certain result. On the facts shown in this case, they did not do that. In my view, there is no defence to this information, and the case should be remitted to the justices with the direction that they should convict.

Appeal allowed with costs. Case remitted to the justices with a direction to convict.

Solicitors : *Treasury Solicitor* (for the appellant) ; *Middleton & Co.*, Sunderland (for the respondents).

[Reported by C. ST. J. NICHOLSON, ESQ., Barrister-at-Law.]

**Re STAPLETON-BRETHERTON, WELD BLUNDELL v.
STAPLETON-BRETHERTON**

[CHANCERY DIVISION (Simonds, J.), **July 3, 22, 1941.**]

A *Contract—Performance—Mode of performance—Contract between brothers to provide for families—Death of one brother—Whether survivor can insist on paying allowances to members of brother's family or must pay brother's executors.*

B In 1918, two brothers, who were entitled successively as tenant for life in remainder, were desirous of making provision for their respective families. They executed a deed in which Frederick, who was first entitled, covenanted with his brother Edmond that, if he survived his father and succeeded to the settled estate, he would, during his lifetime, pay to Edmond during his life, and after his death to his widow during her life, the annual sum of £1,000. Edmond covenanted with Frederick that, if Frederick survived his father and died without male issue, or if he died in the lifetime of his father, he, Edmond, would, if he succeeded to the settled estates, pay such an annual sum to Frederick's wife and daughters as would, with certain other income, make up the widow's income to the sum of £1,000 per annum, and also would, in the same circumstances, during his life pay to each of Frederick's two daughters such an annual sum as would, with certain other income, make up the annual income of each of them to £300. The father died in 1919, and Frederick succeeded to the settled estates. He paid his brother £1,000 per annum until he died in 1938 leaving a widow and two daughters, when Edmond succeeded to the settled estates as tenant for life in possession. The summons was taken out by the executors to determine (i) whether there was a trust of these annual sums in favour of Frederick's widow and daughters, or (ii) whether these sums formed part of the testator's estate. The executors contended that the consideration came entirely from him, and that they alone were entitled to receive payment, while the covenantor, Edmond, opposed this contention :—

C

D

E

HELD : (i) there was no trust created in favour of the widow and daughters, and there was nothing in the deed to suggest that the covenanting parties were trustees for those benefiting under the covenants.

F (ii) the sums did not form part of the testator's estate, the proper inference being that the destination of the payment was an essential part of the bargain to the covenantor. The sums were, therefore, payable not to the executors, but to the named beneficiaries, the covenantor being entitled to perform his obligation in the manner in which he had agreed to perform it.

G [EDITORIAL NOTE. It is settled law that only the parties to a contract can enforce it. After the death of a party, his personal representatives can, of course, enforce it, but, if they, as a result of such proceedings, receive a sum of money, it would, in the ordinary course, be a part of the deceased's estate and liable to satisfy the liabilities thereof to creditors or legatees. In the present case this would have defeated the purpose of the contracting parties, and it is held that the surviving party to the contract is entitled to fulfil his contract by paying the annual sums to the persons named in the contract. It will be noted that the contract was not worded so as to create a trust for those persons.]

H

AS TO MODE OF PERFORMANCE, see HALSBURY, Hailsham Edn., Vol. 7, pp. 188-190, para. 267; and FOR CASES, see DIGEST, Vol. 12, pp. 304-306, Nos. 2506-2531.]

Cases referred to :

(1) *Cleaver v. Mutual Reserve Fund Life Assn.*, [1892] 1 Q.B. 147; 43 Digest 557, 903; 61 L.J.Q.B. 128; 96 L.T. 220.

- (2) *Re Engelbach's Estate, Tibbetts v. Engelbach*, [1924] 2 Ch. 348 ; 43 Digest 567, 165 ; 93 L.J.Ch. 616 ; 130 L.T. 401.
- (3) *Re Sinclair's Life Policy*, [1938] Ch. 799 ; [1938] 3 All E.R. 124 ; Digest Supp. ; 107 L.J.Ch. 405 ; 159 L.T. 189.

SUMMONS to determine the construction of covenants contained in a deed dated Oct. 18, 1918, and made between Frederick Bartholomew Stapleton-Bretherton and Edmond Joseph Stapleton-Bretherton. The facts are fully set out in the judgment.

Wilfrid M. Hunt for the plaintiffs, the executors.

W. P. Spens, K.C., and *A. H. Droop* for the first three defendants, the widow and daughters.

W. F. Waite for the fourth defendant, the surviving covenanting party.

SIMONDS, J. : Frederick Bartholomew Stapleton-Bretherton and Edmond Joseph Stapleton-Bretherton were brothers, the sons of Frederick Stapleton-Bretherton, who in 1918, under the will of Mary Stapleton-Bretherton, was tenant for life in possession of certain settled estates in Lancashire and elsewhere. Frederick Bartholomew Stapleton-Bretherton was tenant for life in remainder of the same estates, which were further limited to certain uses under which Edmond Joseph might become tenant for life thereof. By a settlement made on Aug. 28, 1894, Frederick Bartholomew Stapleton-Bretherton had covenanted with his then present wife, Bertha May Stapleton-Bretherton, that, in the event of his death in the lifetime of his father, he would pay her the sum of £300 per annum during her life or until she should remarry, and he also covenanted to pay, during his life, the sum of £100 per annum to each of his two daughters. In the event of Frederick Bartholomew Stapleton-Bretherton surviving his father and becoming entitled in possession to the settled estate, his wife Bertha would, on his death, become entitled to a jointure rentcharge not exceeding £700 per annum, and each of his daughters would become entitled to a capital sum of £1,000.

In Oct., 1918, the Great War was still being fought, and the brothers were anxious to make some arrangement which would in any contingency provide for their respective wives and families. Accordingly, on Oct. 18, 1918, they executed a deed to which they, and they only, were parties, whereby, after reciting the facts which I have already stated, each of them entered into covenants with the other. Frederick covenanted with Edmond that, if he survived his father and succeeded to the settled estates, he would, during his lifetime, pay to Edmond during his life, and after his death to his widow during her life, the annual sum of £1,000. Edmond covenanted with Frederick that, if Frederick survived his father and died without male issue, or if he died in the lifetime of his father, he, Edmond, would, if he succeeded to the settled estates, pay to Frederick's wife Bertha such annual sum as would, with certain other

income, make up her income to the sum of £1,000 per annum, and also would, in the same circumstances, during his life pay to each of Frederick's two daughters, Ruth and Stella, such an annual sum as would, with certain other income, make up the annual income of each of them to £300.

A Frederick, the father, died on Apr. 13, 1919, and Frederick Bartholomew, the son, then succeeded to the settled estates. He died on Oct. 13, 1938, leaving his widow Bertha and his two daughters him surviving, but no sons, and thereupon Edmond succeeded to the settled estates as tenant
B for life in possession. Frederick, in pursuance of his covenant, paid Edmond £1,000 per annum until his death. The obligation of Edmond arises under his covenant, and the question is by whom it can be enforced and what its effect is. The summons as originally drawn asked whether the sums paid or to be paid by Edmond under his covenant—that is,
C the annual sums required to make up the incomes of the widow and daughters to a certain amount—were impressed with trusts in favour of them respectively or formed part of the estate of Frederick, the covenantee. This ignored the possibility that, even though there might be no trust in favour of the widow and daughters, yet Edmond, the
D covenantor, might discharge his obligation by paying the covenanted sums to them so that such sums would never reach and form part of the estate of Frederick. The summons was accordingly amended so as to enable this question also to be raised.

E I have already decided, and it seems clear beyond all doubt, that no trust in favour of the widow and daughters of Frederick is created by the deed of covenant. They are not parties to the deed, and there is not to be found in it one word which suggests that either Frederick or Edmond was a trustee for any third party of the benefit of any covenant, or of any sum of money which might be paid thereunder. The case is
F covered by such authorities as *Cleaver v. Mutual Reserve Fund Life Assn.* (1), *Re Engelbach's Estate*, *Tibbetts v. Engelbach* (2) and *Re Sinclair's Life Policy* (3). The more difficult question is that raised by the amendment, which I have taken time to consider. Edmond, the covenantor, claims that he is entitled to fulfil his covenant according
G to its terms by paying the stipulated sums to the widow and daughters of Frederick. On the other hand, Frederick's executors claim that the consideration for the covenant came from Frederick, that they alone are entitled to enforce the covenant, and that they can require its fulfilment by payment to them. In effect, they say that, since they alone
H can sue, they alone can give a valid receipt, and that they will give it only if the money is paid as they require. They rely upon a passage in the judgment of LORD ESHER, M.R., in *Cleaver v. Mutual Reserve Fund Life Assn.* (1), at p. 153 :

I should say that, on the true construction of the policy, the only persons who could claim under it, and give a valid receipt for the money insured, were the executors of the insured.

I do not think that this claim by the executors is well-founded. Where,