

property held by a debtor in trust does pass to the Trustee, it is hard to say. But the decision seems to go the length of saying that property held by a debtor in trust may be the subject of a fraudulent preference—as against his ordinary creditors.

Then Rule 152 of the Bankruptcy Act, in effect, says that in Bankruptcy proceedings the ordinary rules and practice of the Court are to apply, except where expressly altered by the Bankruptcy Act and Rules. But the Appellate Division seem to say that they do not apply; because Rule 139 of the Judicature Act expressly authorizes the Court to require the bringing in of parties appearing to have an interest in the subject of litigation; and the Appellate Division virtually says the Judge in Bankruptcy ought not to do so.

Rule 120 expressly authorizes a Trustee to apply for a declaration of his title to property adversely claimed, and the Appellate Division seems in this case to say he cannot.

We respectfully submit that the fundamental error of the decision, is the holding that the evidence of Ellis' ownership was inadmissible or irrelevant as between Treifus & Stripp and the Trustee.

The sequel of the case is to be found in *Ellis v. Sternberg*,³ where in an action brought by Ellis against the Trustee the diamonds were declared to be the property of Ellis; a proceeding which would, of course, have been wholly avoided but for the action of the Appellate Division—and would have saved the anomaly of the Appellate Division declaring the diamonds to be the property of the Trustee, and of Mr. Justice Riddell declaring them to be the property of Ellis.

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A BARD IN LAW.

Would it be fair to call Lord Neaves the Nineteenth Century Justice Darling?—fair to either, I mean. These notes may form the best answer—or at any rate some sort of an answer. The curious may probe deeper if he can come upon a little brown cloth volume published in Edinburgh in 1875 and long since out of print. It bears no author's name or initials, but it was written by Lord Neaves, and its title is "Songs and Verses, Social and Scientific, by an old Contributor to *Maga*." Most were written 80 years or more ago.

Maga, the reading world will remember, is "Blackwood's Magazine," one of the oldest of old-timers in periodical literature. Even a century ago the position of Blackwood's was established. Moreover it was unique; for such pens as Jeffrey's, Lockhart's, Christopher North's, Brougham's, plied for it. Many of the finest wits of the Scottish Bar competed for entry to that choice circle. Neaves throve in Blackwood's lusty boyhood. He had been an advocate of noted power before the Bench claimed him early in life; and a Senatorship of the College of Justice, as a judgeship of the Supreme Court of Scotland is officially known, brought him more time and an untroubled atmosphere for scholarly pranks.

For Lord Neaves was scholarly, profoundly so—he even became the grave Lord Rector of a University. Classics, History, Philology, Philosophy came naturally to him; and as a citizen and something of a social and educational reformer he was not behind the times. Yet he sang, actually sang, his own inspirations. And he justified it; for these were convivial days. To Neaves, Grimm's Law was as familiar as the Civil Law, and a song of nine verses explores the theme, until, having confused his hearers with Grimm and Muller, Mithridates and Bopp, he ends:

"The speech of Old England for me,
It serves us on every occasion!
Henceforth, like our soil, let it be
Exempted from foreign invasion.
It answers for friendship and love,
For all sorts of feeling and thinking;
And lastly, all doubts to remove,
It answers for singing and drinking."

Singing and drinking! Often the wise judge jested on these, and no doubt dallied by the table. But the jests had a practical side. Neaves was happy in pondering the discoveries of scientific contemporaries, and in passing these on to a larger public in a guise more agreeable to the unlearned. So he hurrahs for the "Innoculation of Science and Art"; finds more than one moral in *Dust and Disease*; and tells us that:

". . . of most of life's ills you may make a clean cut,
If you breathe through your nostrils and keep your mouth shut."

Agès before, Rabelais had given an illuminating hint of the service human appetite had done in developing the arts of life.

Because the stomach cried out for novelties so did all progress come. Master Gaster, said Rabelais, was the first Master of Art in the world. On this text Neaves discoursed:

“An ingenious fellow was Gaster,
 Though he caused us a little disaster:
 For if you'll look in
 To our first parents' sin,
 It was partly the greed of this Gaster.”

It was an attractive theme, and to it Neaves devoted a second sermon, easily jogging like this:

“After living some ages on water and greens
 Gaster found out that bacon ate nicely with beans;
 And he also found out that, to moisten such food,
 Something better than water was needful and good.
 The Nymph of the Well owned that Bacchus surpassed her,
 And gave way to the Grape as the liquor for Gaster.”

And the inevitable warning, for Neaves was a Scot, and your Scot is born into this world a preacher:

“Yet if Gaster would stay in his natural state,
 His exactions would seldom be grievous or great.
 But Luxury comes with suggestions officious,
 And Cookery tempts him with dishes delicious,
 And the Doctor's called in, with his rhubarb and castor,
 To remove the said ills of poor surfeited Gaster.”

In Lord Neaves' day throve such stout platitudinarians as Samuel Smiles and Martin Tupper. Tupper's “Proverbial Philosophy” was just a little too proverbial. Victorian punditism needed some pinching, and in 1864 Neaves supplied the need with his own version of the proverbs:

“O blessings on the men of yore
 Who wisdom thus augmented,
 And left a store of easy lore
 For human use invented.”

. . . “The man who would Charybdis shun
 Must make a cautious movement,
 “Or else he'll into Scylla run—
 Which would be no improvement.

The fish that left the frying-pan,
 On feeling that desire, sir,
 Took little by their change of plan,
 When floundering in the fire, sir

Your toil and pain will all be vain
 To try to milk the bull, sir;
 If forth you jog to shear the hog,
 You'll get more cry than wool, sir.
 'Twould task your hand to sow the sand,
 Or shave a chin that's bare, sir;
 You cannot strip a Highland hip
 Of what it does not wear, sir."

Fast to the Humanities, as of old Scotsmen called Greek literature, did these Edinburgh worthies cling. In the middle of Victoria's reign men still commonly read Greek for recreation. Hellenic Clubs flourished, and the learned, who, might never have heard of electricity, and might have some doubt as to the existence of America, gathered to dine on chicken flavoured with port wine and Greek verses. To such a club the sprightly Neaves made his contribution, in English this time, to justify their doings against the shopkeeping spirit that asked the value of dead Greek.

"The truths that old Homer so gloriously sung
 The spirit of Plato as nobly has said;
 The sweets of Hymettus distil from his tongue,
 And a half-divine halo encircles his head.
 Of love and of beauty,
 Of drinking and duty,
 He makes his own Socrates worthily speak;
 The famous old codger,
 A regular dodger,
 Will teach you some tricks in your reading of Greek."

"The Proposal of Poltys" was another classic, in even more rollicking style. Poltys was the peaceful king of Thrace who tried to prevent the Trojan war with his noble offer to compensate Prince Paris. If Paris would only give back Helen to her proper husband, and go home quietly like a good neighbour, he, Poltys, would let him have a gift of his own two comely wives.

Classicist as he was Neaves held progressive views on education. It worried him that "fusty old fogies, Professors by name" should

shut up the doors of knowledge against half of mankind. The Salic law against college lore and honours was a thing this reformer of 1860 could not abide. Why should not a woman be a doctor? he tartly asks:

“She would blunder in physic no worse than the rest,
She could leave things to Nature as well as the best;
She could feel at your wrist—

and one can imagine the impressive pause the noble singer would make, until, perhaps, any medical victims present had hoped his memory would break down,

“She could feel at your wrist, she could finger your fee;
Then why should a woman not get a degree?”

But the judge finds consolation both for women and for himself that “without a degree see how well the Sex knows how to bind up our wounds and to lighten our woes”; and, audacious as a flatterer as he is dashing as a champion, the poet ends

“So I wonder a woman, the Mistress of Hearts,
Would descend to aspire to be Master of Arts;
A ministering Angel in Woman we see,
And an Angel need covet no other degree.”

Into his ballads Lord Neaves could write legal lessons too: witness his lecture on the payment of Tithes, and that other on the constituents of marriage according to the law of Scotland. The student would not be likely to forget these; nor should any gathering of advocates forget to join in the singer's gratitude—

“Ye Lawyers who live upon litigants' fees,
And who need a good many to live at your ease;
Grave or gay, wise or witty, whate'er your degree,
Plain stuff or Queen's Counsel, take counsel of me.
When a festive occasion your spirit unbends,
You should never forget the Profession's best friends;
So we'll send round the wine and a bright bumper fill
To the jolly Testator who makes his own Will.”

Lord Neaves joked at his distinguished brethren too. There was the dead and gone Monboddo, an eccentric, but a man of deep learning. Lord Monboddo had long speculated on the descent of Man, and had been laughed to scorn by the opinion of pre-Darwinian day, for Monboddo died in 1799. His theory sounded outrageous then—that as Man developed through his approaches to civilisation he gradually

rubbed his needless tail away by the habit of sitting. The rudiment, however, was left. Of Monboddo Dr. Johnson said he was as proud of his tail as a squirrel. So one of Neave's catching songs was to the memory of Monboddo. Here is a single verse:

“Though Darwin now proclaim the law,
 And spread it far abroad, O!
 The man that first the secret saw
 Was honest old Monboddo.
 The architect precedence takes
 Of him that bears the hod, O!
 So up and at them, Land of Cakes,
 We'll vindicate Monboddo.”

It may be feared the good Judge was hardly orthodox on some of the pieties of his age. Edinburgh led all Scotland in her churen-going, and Sunday was, to the carnal, a day of wrath. Every item of week-day solace, however innocent, was barred. So Lord Neaves wrote a lyric for Saturday night, whose burden was—

“We can't for a certainty tell
 What mirth may molest us on Monday;
 But at least, to begin the week well,
 Let us all be unhappy on Sunday.”

I have hinted at drinking. On that habit we know nothing to the discredit of our Law-giver, but he was certainly no fanatic of the teetotal army. Three or four of his most catching songs honoured the Vine. One is still found in some song collections—“I'm very fond of water.” The chorus ran—

“I'm very fond of water,
 I drink it noon and night;
 No mother's son or daughter
 Hath therein more delight.”

But it was no unmixed love! One verse will suffice to show the flow of this lover's sentiment:

“At luncheon, too, I drink it
 And strength it seems to bring;
 When really good I think it
 A liquor for a king:
 But I forgot to mention—
 Tis best to be sincere—
 I use an old invention
 That makes it into Beer.”

Old preconceptions die hard, one odd survival being the notion that the Scot leads the world in drunkenness. So it may surprise some people to be told so long ago as three generations back a weighty agitation was sweeping Scotland in favour of Prohibition. The guise of it was Local Veto. Year after year a Scottish Permissive Bill making it permissive for localities to close their licensed saloons was doggedly introduced into Parliament. The Scots however chose the longer cut to Temperance—education. Only in the last decade has a similar “Repressive Bill” been put into being. That Lord Neaves did not relish the proposal may be guessed from these verses:

“Pray, what is this Permissive Bill
That some folks rave about?
I can’t, with all my pains and skill,
Its meaning quite make out.”
O it’s a little simple Bill
That seeks to pass *incog.*,
To *pérmitt* me—to *prévent* you—
From having a glass of grog.

“However well a man behaves,
Life’s pleasures must he lose,
Because a lot of fools or knaves
Dislike them or abuse?”
O yes, and soon a bigger Bill
Will go the total hog,
And *pérmitt* me—to *prévent* you—
Having mirth as well as grog.

O yes, a big Permissive Bill
Will go the total hog,
and *pérmitt* me—to *prévent* you
Having Liberty, Mirth, or Grog.

So we get the measure of the man, even in his off-time; not a jester merely; and assuredly not a pedant. Wearing, as still does his mellow compatriot Sir Charles Darling (for Darling, too, is the son of a Lowland Scot), a weight of learning lightly, Neaves left his mark on great calf volumes as on the hearts of a wealth of friends, and adorned even the shining age of Victoria.

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