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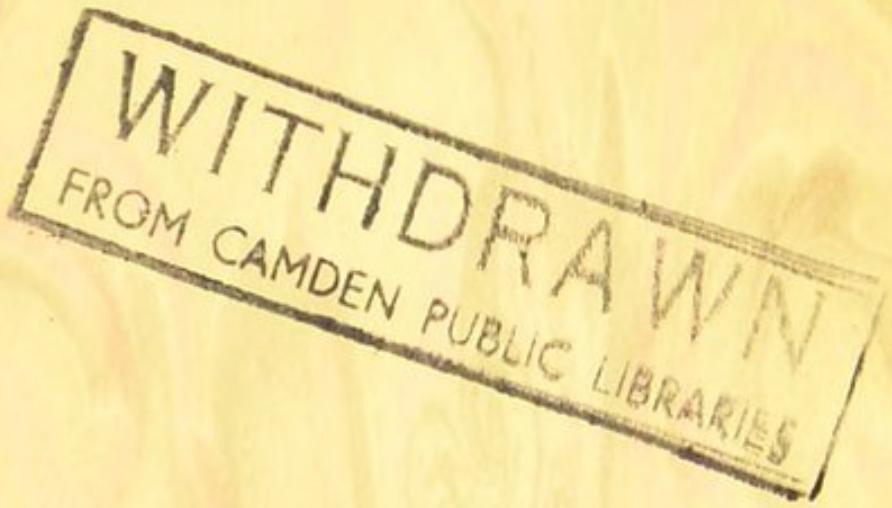

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THE HOUSEHOLDER'S COMPANION

BY

FRANCIS MINTON, M.A.

SOLICITOR

MILLS & BOON, LIMITED

49 RUPERT STREET

LONDON W.

Published 1911

PREFACE

EVERY householder has manifold rights, duties, and liabilities, and the purpose of this book is to afford him (or her) useful advice in securing and conducting the dwelling in which he makes his home. While not obtruding technicalities, it aims at putting the reader into possession of the experience gained by one who is at the same time a lawyer and a householder, and it is believed that the legal statements (as well as the practical hints with which these are interspersed) may prove of value to those who wish to realise exactly the many points and considerations which householding involves.

The author trusts that a perusal of this book may lighten the burden which the complex English system of citizenship throws on any who makes himself responsible for the house in which he resides. The table of contents will show the ground that has been covered in this volume, and the cross references and index will, it is hoped, facilitate its use for individual details.

F. M.

33 BEDFORD STREET,
STRAND, LONDON, W.C.

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THE HOUSEHOLDER'S COMPANION

CHAPTER I

PURCHASE AND SALE OF HOUSES

It is the legitimate ambition of every Englishman to own a house in which to reside, but to acquire a residence of his own with security and without encumbrances is a question which it is impossible for a layman to settle without legal assistance; while, therefore, the employment of a solicitor with or without counsel may be considered, except in the rarest cases, indispensable, yet it is hoped that this chapter of the book may prove useful to the would-be house-owner.

As a rule a householder agrees to purchase by direct treaty with an owner, by means of an estate agent, or by auction, and the purchaser must be careful to see that a binding agreement is not reached in the course of negotiations by correspondence before he is sure of his ground, because so soon as an offer is definitely made by either party, and the terms are clearly set out in writing and signed by the party to be charged, or by his agent, a written

or even an oral acceptance by the other party is sufficient to constitute the necessary contract (although the arrangement is subject to a formal agreement to be signed later), and on the strength thereof the courts may be invoked to prevent any breach of the contract and to order the party offering or accepting in writing to complete the sale or purchase without giving him the option to pay damages for non-performance.

The householder, having decided that a house will *prima facie* meet his requirements, will face many considerations; he will ascertain whether the property is freehold, copyhold, or long leasehold; even if it is freehold, it may be subject to certain covenants, especially if it is a part of a building estate that is being developed, while copyhold land can only be sold subject to the customs of the manor of which it is a part, and these may be very onerous, especially in the way of "fines," i.e. payments to the lord of the manor on various occasions; on the other hand, he may be able to arrange for the copyhold land he wishes to purchase to be enfranchised under several modern statutes; if, however, the land is leasehold, the question of the ground rent is very material, as well as the covenants in the lease which is to be transferred; nor is it advisable to spend time, etc., in negotiating for these, unless it is probable that the consent to transfer to the householder will not be withheld ultimately. Of course the price is the first point to be settled, and in connection with this

a purchaser may have to consider whether the vendor will accept part only of the purchase-money down on completion and may allow the remainder to be secured by a mortgage either left definitely at interest, or to be gradually, with interest, paid off by instalments; should the vendor decline to allow this or not grant favourable terms, in many instances a building society will undertake the mortgage, and many well-known institutions of this kind advance purchase-money on very reasonable terms, nor is there the same likelihood of the mortgage being called in, as by an individual vendor, at inconvenient times.

In the course of the negotiations, no doubt many statements and representations will be made by the vendor or his agent, and, as far as possible, these should be in writing. The general rule of law is that a vendor should disclose to a purchaser those facts which it is material for a purchaser to know, whether in reply to questions or otherwise, but the line drawn legally between what falls and does not fall within the rule is rather fine, and great reliance cannot therefore be placed upon it; moreover, a representation made innocently and without fraud is no ground for damages after the conveyance has been concluded, while a charge of fraud is always fought to the utmost; so that it is far safer to assure oneself by actual inquiry into the truth of the material points, e.g. that the right to light from all windows, etc., is clearly established, and that no so-called easement, or right of any other party in respect of the

house or grounds, exists, such as a right of way over the grounds or a right of support by an adjoining house, etc.

In any event, nothing in the nature of an agreement to purchase should be concluded before a competent surveyor or architect has been called in to make his report; this gentleman must be employed and paid by the purchaser, and his written report should definitely advise that the house is structurally sound, that the sanitary arrangements are satisfactory, and he should be asked to specify what alterations or repairs (as distinct from decorative work) are necessary to make the house really comfortable for habitation; very often he can advise if the price negotiated for is reasonable. The adviser will no doubt raise points as to water, heating, lighting, etc. (dealt with herein elsewhere), and he may be able to prepare a plan showing where pipes, etc., fuses, or stop-cocks, etc., are affixed. (Such a plan is most useful in an emergency, especially when calling in a local builder.)

The purchaser will next consider the terms of the agreement; purchase at an auction is dealt with at p. 55, and if a solicitor is not employed to draw the agreement, at least a competent estate agent should be asked to assist the layman, even if he has not already acted as a go-between (see as to this at p. 59). The agreement should plainly set out the exact price; what is included outwardly in the bargain, such as gardens, outhouses, etc., and what internally, such as

fixtures (landlord's or tenant's); if any point is left to subsequent valuation, the name of the valuer, his remuneration, and the finality of his decision must be made clear; it must be clear who the parties are, e.g. if the vendor is merely acting as agent, trustee, etc., and, if the house is still inhabited, when vacant possession will be given. The agreement, if not under seal, will require the usual sixpenny agreement stamp, and is generally in duplicate. In any event, a purchaser should not sign any agreement with special stipulations referring to title, or to other documents, without a lawyer's advice, or else he may find that, instead of purchasing a house, he has involved himself in expensive litigation.

The purchaser should also assure himself that the vendor is of full capacity to sell; an infant (i.e. a person under twenty-one) cannot do so as a general rule; a married woman may require her husband's concurrence; contracts by lunatics are voidable; corporations such as companies are limited in their powers by statute, memorandum of association, etc.; bankrupts can, generally speaking, only convey by means of their trustee; in all these cases, however eligible the house, no contract should be concluded without expert advice; and this is even more important when the vendor is acting in a fiduciary capacity, e.g. as trustee or as mortgagee by virtue of a power of sale, or possibly as executor or administrator; similarly a tenant for life may be empowered to sell his land, subject to special arrange-

ments as to the application of the proceeds of sale. It is not that a purchase from such parties is not good in law; in most cases the sale is absolutely valid, but it is impossible except in a technical volume to deal with the law in each of these cases, but informalities may involve a doubtful title, and expense incurred by at once consulting a solicitor often saves far greater expense in the long run.

In England, unfortunately, at any rate from the layman householder's point of view, land with the title thereto is not generally registered. It is true that Land Registries exist for Middlesex and Yorkshire, and that default of registry may invalidate a transfer as against a party subsequently duly registered, and that so-called "memorials" of previous dealings with the houses or land can be found there; while the Land Transfer Act, 1897, allows an optional registration of title generally, and in London a compulsory registration of a possessory title is now the law; but absolute and qualified titles are rarely registered, and in most cases the title to land depends on various deeds, wills, etc., the connection between which, the validity of which, and the formalities of which are matters as to which a conveyancing solicitor or barrister has alone a working knowledge, and even these often hesitate on the abstruse legal questions involved; the vendor of a house often stipulates as to the limitation of his title, but this should never be accepted in the negotiations before or at the agreement without legal advice (and consequent responsibility). Speaking

generally, in the sale of freeholds, a forty years' title must be shown, but the purchaser may have to go back even further to get at the so-called "root."

In leaseholds the title begins with the headlease, even though this is more than forty years old. Sometimes nothing more than a possessory title, i.e. by uninterrupted possession for a period covered by prescription (i.e. as a rule twelve years' continuous occupation), is the only title that can be shown, and the whole law and practice as to this is so specialised that reliance on a little knowledge becomes especially hazardous. It should, however, be added that the solicitor who acts, not only should advise on the contract, but he thereupon in practice examines the title in detail from a so-called "abstract," which is an epitome or *précis* of the whole history of the house to be purchased, at all material times; he examines all the original documents and sees that they are fairly represented in the abstract, and duly signed, stamped, etc.; he considers whether any gap or omission in the title or disclosed in the various deeds has been satisfactorily bridged over, and he prepares a series of questions, called requisitions, which it is the duty of the seller to answer; these range from necessary documents to questions whether the rates and taxes have been paid up to date, and it is not until these requisitions have been dealt with that the final conveyance is drafted, submitted, amended, engrossed (i.e. fair copied on parchment or durable

paper), and finally signed, witnessed, and stamped. The expenses involved for stamps and legal assistance, etc., are dealt with at p. 16.

One important point for consideration is the time within which the agreement is arranged to be "completed"; the parties in the agreement can so arrange by express words that the contract shall come to an end if not finally carried out at a fixed time, but subject thereto the courts will not hold that delay in delivering the abstract, answering the requisitions, etc., is fatal to the sale, unless the property sold makes, by its nature, time the essence of the contract, as when the house is sold "for immediate residence," and is so expressed in the agreement; moreover, acquiescence in delay without protest may easily be held to constitute a waiver of the right, and any arrangement to pay interest in default of completion at a fixed date would be considered evidence that time did not go to the basis of the contract. In the absence of a definite stipulation as to time, notice should be given fixing an amply reasonable time for the completion, and this notice should be clear as to the intention to treat further delay as a rescission of the contract, assuming the delay to be due to the default of the other party. If the buying householder, however, delays matters, and the seller is not guilty of wilful default, the householder may find himself liable to pay interest on the purchase-money after the due date, 4 per cent being nowadays the customary rate. Similarly, if the seller make default, and the house brings in a profit

by subletting, etc., the seller will be liable to pay the profits lost by his tardiness.

Very often the purchaser is required to make a deposit, both by way of part payment and as a lever for the seller to get his sale through. If the seller makes default, of course the deposit can be recovered, as well as where the agreement is mutually rescinded; but it is better to draw an express clause relating to the terms of the deposit, such as whether in any event it is to be subject to interest or not; if the purchaser makes default or repudiates his agreement, he cannot recover the deposit from the seller, but it will be taken in account in assessing the damages (if any) from the default or repudiation, such as the legal expenses properly incurred up to date; but in any event the deposit is not conclusive either way as to damages. Sometimes difficulties may be avoided by paying the deposit to a stakeholder, e.g. into a bank in the joint names of buyer and seller: this has the advantage possibly of adding interest to the deposit, and will obviate certain difficulties if either party becomes a bankrupt in the interval.

The time for completion is also important to the householder, because he must be prepared to pay the purchase-money on that day; as a rule only cash or notes and not cheques, etc., are accepted, because the conveyance and the payment are mutually dependent and generally take place at the same time; but of course a fixed day may have been settled for payment, although

the time for conveyance is not ready, and if on that day the vendor is in a position to make a conveyance in due course, payment must be made then; the purchaser is presumably liable to draw up the deed of conveyance at his own expense. When the conveyance is signed, the ordinary rule is for the vendor to hand over all the title-deeds he possesses or controls, unless these deeds refer also to other land or houses, which the vendor retains; if for some reason the vendor does not intend to hand over the deeds in the ordinary course, he generally provides for this in the contract. The householder in this case is entitled to attested copies of the deeds retained by the vendor, if, as buyer, he is willing to pay therefor; but in any event the vendor is bound to covenant to produce title-deeds set out in the abstract, which are material, and a statutory acknowledgment is generally given which involves all the essential obligations, such as to produce them when necessary in a law court or at a re-sale; express covenants are, however, necessary when the vendor may have to procure the deeds from a third party, such as a mortgagee or trustee. The vendor, unless he is a trustee, can also be called upon to undertake the safe custody of deeds not handed over; in any event the householder will be well advised to deposit all documents handed over in some secure place, such as bank or strong-room, in case of any legal questions arising in future.

At every completion there is an apportionment

between vendor and buyer of all the various outgoings such as rates, taxes, etc., and all receipts are produced and if necessary handed over; the apportionment is by day, unless otherwise arranged.

In the case of leaseholds it is important to stipulate for the right to inspect, etc., the headlease, and see that, if a consent to any assignment or underlease is necessary, such assent has been duly given; the purchaser cannot without express stipulation enter into the validity of the freehold title, so that sometimes further inquiries are necessary, but great care must here be exercised to see that no covenant is involved that "runs with the land," which may interfere with the householder's full enjoyment of his house or with his rights. Of course, in the case of leaseholds, the householder assures himself that rent has been paid up to date and accepted without protest, not only to the head lessor, but also to any intermediate parties.

The purchaser should also before completion assure himself of the exact boundaries of his house; of course, if the house is fronted by a public road, no difficulty should arise as to frontage, but if no road exists or it has not been made up, not only must the householder take care that due access is provided to the road ultimately, but that no question can arise as to the limit of his property; as a rule, the boundaries of gardens, yards, etc., are set out in plans and measured accurately, but it is often found that the measurements do not correspond with the practical boundaries, such as hedges,

walls, etc., and possibly before completion some question as to compensation may arise in connection with these; still more important in houses not completely detached is the question of the party wall, its legal ownership, and the right to interfere with it without affecting the rights of neighbours; even in long leases questions may arise as to structural alterations affecting neighbours, and no householder restricted on this point can consider his purchase his own property. As already pointed out, even before agreement, it should be clear that the full right to light exists not only for every window, but that no right exists elsewhere to prevent a window or other access of light being arranged at parts of the house hitherto solid.

The question of insurance of the house should also be settled immediately after agreement; the householder's best plan is to insure the building himself immediately; but should he not have done so and a fire arise, it is very doubtful how far he can compel the seller who has insured to expend the policy moneys on rebuilding; i.e. unless the agreement contains a definite stipulation on this point.

In the purchase of houses, there often arise between agreement and conveyance various difficulties due either to the conduct of the parties or to legal questions not easily settled, and to avoid these the householder can only adopt the advice often repeated here, to agree to nothing but a carefully drawn contract settled by an experienced lawyer; otherwise, owing to caprice or to a change in the

value of the house, the seller may repudiate by notice or by course of dealing. Legal questions arising are generally brought to a head by a summons in the Chancery Division under the Vendor and Purchaser Act, and the court may thereunder decide on the enforcement of a requisition or whether a good title has been made out; the expense of this proceeding (which is, of course, in the discretion of the judge) should not be very heavy, unless appealed against, whereas the ordinary remedies by way of action for damages or for specific performance may be distinctly costly and out of proportion to the advantages accruing thereby to the householder. The court will not force a householder to carry out his purchase if the title is not reasonably satisfactory, and generally will seek to mitigate a hardship, as where the written agreement has been varied orally and not (as is legally necessary) by a written document; the householder may, however, lose his deposit and all the expenses he has already incurred. The householder will, however, sometimes be able to secure specific performance from the seller, and may even get some compensation if it is shown that what the seller can legally dispose of is less than what he has contracted to sell; the householder will not, on the other hand, be forced to buy, if he has acted on representations by the seller or his agent which are false, although not fraudulent. Of course, wherever there is a legal breach, the ordinary action for damages is open to either party, but no damages can be recovered for innocent mis-

representations. After completion, practically nothing short of fraud will entitle the courts to interfere with the transfer.

The householder will probably notice that the seller in the conveyance conveys "as beneficial owner," and if these words are absent, he should be assured of the reason of their absence. They imply in land covenants by the seller (1) that he has the right to convey in the manner he is doing; (2) that the purchaser shall have quiet enjoyment of his purchase, i.e. without any lawful interruption by the person conveying or by any person claiming through him; (3) that the house is free from encumbrances made by the seller or by any person claiming through him; (4) that he will at the purchaser's cost do what is in his power to further assure the conveyance by him to the purchaser, i.e. will execute any further deed or document that may be necessary to complete the legal transfer. In the case of leaseholds these words also import that the lease is a valid and effectual lease, that all the rents have been paid up to date, and all covenants have been duly performed. The result of the use of these words is to considerably shorten the words of the conveyance, and to give the householder a remedy if his title, etc., is attacked later on.

If, however, the seller sells (as may be the case) as "mortgagee," "settlor," trustee," etc., the covenants are not so extensive, and express words are often needed to protect the householder's interests. The im-

portant point to remember is that these covenants "run with the land," i.e. the benefit of previous similar covenants enures (or continues) for the person in whom the house for the time being is vested, although the householder has not made any bargain with previous owners of the house other than the actual vendor; he will, of course, if selling as "beneficial owner," be liable in the future on these implied covenants, as the covenants for title form part of the consideration, unless otherwise stipulated.

The householder at completion should be careful to have all keys, etc., handed over to him, and if these are not available, before taking possession, to secure new locks with the requisite keys thereto. The householder may also well note—

(1) That the receipt in the conveyance is a sufficient receipt, and that if the solicitor acting for the seller in the seller's absence at the completion tenders a duly signed conveyance, the householder is justified in paying the purchase money to the solicitor (but not to a clerk), without any special authority from the seller.

(2) That certain searches should be made by his solicitor (or by him) to be sure that the house sold is not in any way charged, e.g. that there is no execution against it or no lawsuit registered in connection therewith; searches may also have to be made in registries or in court rolls; in practice these are limited in most cases to five years, but in some to the date at which

the last conveyance was made previous to the sale in question.

(3) That in case of the death of either party to the agreement, the rights and obligations thereunder devolve on the personal representatives.

(4) That included in the full description of the house, without special words, is the right to all easements such as rights of light, etc., attached to the house, as the seller cannot derogate from his own grant.

Expenses of Purchase

A solicitor, when employed to act for the purchaser of a house, is entitled to charge—

(*a*) For negotiating the purchase :

20s. per £100 up to £3000.

10s. per £100 for all sums subsequent between £3000 and £10,000.

5s. per £100 for all subsequent sums over £10,000.

(*b*) For investigating title and preparing and completing conveyance :

30s. per £100 up to £1000.

20s. per £100 for all subsequent sums between £1000 and £3000.

10s. per £100 for all subsequent sums between £3000 and £10,000.

5s. per £100 for all subsequent sums over £10,000.

Fractions under £50 are reckoned as £50 ; over £50 are reckoned as £100.

In each case there is a minimum charge of £5, unless

the consideration is under £100, when £3 is the minimum fixed by the scale.

These items do not include stamps, or other out-of-pocket items which a solicitor may have paid, such as fees for searches, registrations, travelling expenses, counsel's fee, etc., but include all charges for stationery, etc., and these are the maximum fees to which a solicitor is entitled in the absence of a written agreement with his client either to charge more or to charge item by item; possibly, however, a small addition may be made if the work has to be carried through by special exertion in a limited time.

If the solicitor who acts for the purchaser also acts in mortgaging the property at the same time for him, the solicitor is entitled for investigating title and preparing the mortgage deed up to £5000 to one-half the regular mortgage charges, and on any excess above £5000 to one quarter thereof.

The solicitor is not entitled to the complete charges until the whole transaction has been carried through (this, of course, does not affect prepayment); and these charges are exclusive of any contentious business that may arise in the course of the purchase; nor do they apply to land registered under the Land Transfer Acts.

The following is the scale remuneration on leases :—

Lessor's solicitor for preparing, settling, and completing lease and counterpart :

Rent under £100 : £7 10s. per cent on the rental with a minimum of £5.

Rent between £100 and £500 : £7 10s. up to £100 and £2 10s. for each subsequent £100 up to £500.

Rent over £500 : £12 10s. and £1 per £100 for each £100 over £500.

Lessee's solicitor for perusing draft and completing—half the lessor's solicitor's charge, and these fees include the preparation of an agreement for lease (if any).

On the granting of a lease, although the solicitor to the lessor acts on his behalf alone, the lessee is bound to pay these costs, as well as his own, unless he has made a special agreement or there is a local custom to the contrary ; the lessor's solicitor generally gets this payment before handing over the lease, although the lessor also remains liable, till these charges have been paid, but the lessee, of course, is only liable for the scale fees, without extras ; a similar rule applies as between mortgagor and mortgagee's solicitors. The lessee, however, is entitled to the same right of having the bill taxed, as if he were the solicitor's own client.

The stamp duties on a sale where the purchase-money does not exceed £500 are :

6d. up to £5.
1s. between £5 and £10.
1s. 6d. ,, £10 and £15.
2s. 6d. ,, £20 and £25.

And 2s. 6d. for every subsequent £25 ; while over £300 it is estimated at 5s. per £50 ; if the purchase-money exceeds £500 the duty is £1 per cent on the whole amount.

The stamps on leases, the rules as to the stamping of which are more complicated, depend on the rental, the period of the lease, the fine, etc. If the lease is less than for thirty-five years, the stamp may be roughly calculated at 1s. for every £5 of rent, except that, where the rental of a dwelling-house is under £10, an adhesive penny stamp suffices.

The householder, when buying his own dwelling, must accordingly allow for the legal charges and stamp duties involved; of course, difficulties (legal and practical) may at any moment arise, but the risk of these expenses should be obviated by the careful drawing of the preliminary agreement, and the absence therefrom of any unusual clause.

CHAPTER II

LEASES AND OTHER TENANCIES

MANY of the points dealt with in the chapter relating to purchase of houses apply equally to leases, e.g. the necessity of care with reference to the preliminary agreement and the point that the lessor is legally permitted to grant the lease. This latter point is the more important because a tenant who has "attorned to," i.e. paid rent or otherwise definitely recognised his landlord, is not afterwards permitted to deny his landlord's title, although he may say that this landlord's title has expired; a lawyer alone with his authorities is competent to say whether a trustee, mortgagee, guardian, a corporation, etc., can grant a valid lease, but speaking generally, leases can now by statute be granted up to twenty-one years by parties who may not themselves be landlords for the whole of that period; a guardian or a tenant for life may, as a rule, grant a lease at the full annual value up to twenty-one years; a trustee in bankruptcy, a married woman (nowadays), a mortgagor in possession, etc., have leasing powers, while corporations can also do so subject to their charter, private act, or memorandum of association; these last leases, however, should in any event be under seal.

Before signing any agreement, the householder must decide whether he will become tenant for a period or term of years, which really constitutes a lease, whether he will become a yearly tenant, or whether he will take his house for a shorter term than a year. He will weigh in his mind the advantages of security of tenure, absence of cost of moving, greater permanency of home, the enjoyment for a longer period of any improvements, etc., he may make as against increased responsibilities, more lengthy liabilities, and the regular expenses of repair, and the ultimate payment for dilapidations, etc., as it is rare for a lease to be granted for a substantial time without covenants for repairs by the tenant. In connection with repair he will consider the indefiniteness of his liability as against an increased rental with the necessity of an application which may be refused or grudgingly granted, each time the need arises for the employment of a builder or plumber.

When the householder has decided that he will take a lease of a house after due survey, and after negotiations as to the salient conditions respecting rent, term, etc., he should assure himself either that his proposed landlord is the freeholder or that, if his landlord is himself a lessee or sub-lessee, the parties between the ultimate freeholder and himself are solvent and substantial, because, if any rent by any such party is in arrear, the person to whom the rent is owed can distrain on the actual occupier's goods ; and although there are remedies against this (see at p. 97), no householder will be in-

clined to run the risk and incur the unpleasantness. In the next place, the leasing landlord may himself be subject to burdensome covenants or restrictions, which may ultimately fall on the householder, the responsibility for which may be a condition of the lease, and before any document is signed, a reply should be required to the question that only the ordinary covenants will have to be inserted.

Again, if the landlord is not the freeholder, he may be restricted from assigning or subletting the premises, or, as is usual, he may only be permitted to do so to a substantial tenant after getting the written consent of his superior landlord or landlords ; the householder will, of course, take no step until the necessary consents have been submitted to him, and whether the landlord is the freeholder or not, one condition of the tenancy should be that the householder himself is entitled to assign or sublet to any responsible person or party, and that the consent will not be unreasonably withheld, and that if any question arise as to such consent, it should be submitted to the decision of some unprejudiced party whose determination should be final, and who will be entitled to decide on the incidence of any expense incurred in procuring his decision. As frequently litigation arises on the point, the householder should insist on a clear covenant thereon, as otherwise he may find himself, when compelled for any reason to give up his residence, unable to get a tenant who will recoup him for part or the whole of the rent for which he continues liable.

Leases for more than three years must now be under seal, and in fact it is advisable, even if the lease be for a shorter period, that a seal be attached, assuming that anything more than a yearly tenancy is intended.

It often happens that a householder is anxious to take possession before the actual lease has been signed, and if any clear written agreement has been come to, the householder may regard himself as safely in possession, after he has actually entered into residence; i.e. the law will thereupon not allow him to be ejected, but naturally such a course is hardly advisable, owing to the possibility of litigation, if after premature possession legal difficulties arise in the drafting of the actual lease, and it may be necessary to bring an action for specific performance, unless the landlord actually accepts rent after the entry. After entry also without an actual legal title, the householder may find that he has not got a secure position as regards third parties, while he has a very substantial legal status so soon as the actual lease is signed, even before he takes any steps towards taking physical possession of the house.

The householder must also remember that, although before any definite agreement is concluded, no rent, strictly speaking, is payable, yet if he enters into possession he will be liable to pay a sum practically equal to the rack rent for so-called "use and occupation," and care should be taken, if a lease is to begin at a future date, and the tenant either personally or by his servants makes use of the house to paper it, etc., or sends in a

caretaker to look after furniture deposited, that an agreement exists for no pecuniary liability until the actual date when the legal position of landlord and tenant commences, or, in legal language, until the date of the demise. On the other hand, when the actual demise begins, the landlord may not be ready to give up actual possession either by himself or by his existing tenants, and if a house is not vacant at the time of any agreement or lease being signed, the possibility of the house being still occupied when the tenant is entitled to enter can be provided for so as to obviate legal process. No householder should ever sign so highly technical a document as a lease without legal advice, but there is absolutely no reason why the lawyer acting for the householder should not explain the meaning of its constituent parts in simple language ; in any event, even if the landlord's solicitor also undertakes to act for (and receive payment from) the householder, the householder should clearly comprehend his liabilities. The lease begins with the parties and date, next may come so-called recitals (each beginning with the word "whereas") setting out the history of the transaction, although as a rule these are unnecessary ; then comes the actual "demise," i.e. the words handing over the house for the time being ; then the "habendum" setting out the duration of the handing over of the house ; next the "reddendum," setting out the rent, etc., and afterwards come the various covenants, provisos, etc., i.e. the other terms and conditions agreed upon to be carried out either by the landlord or

by the tenant. Finally there are the "attestation" clause, the signatures, witnesses, etc., and the considerations for the householder on some of these points will now be dealt with. (See also the chapters relating to rent and distress, as well as fixtures.) As a rule, in the lease there is an exact plan of the extent of the house, and its boundaries are accurately set out, but these should be checked; in any event, by statute a lease of a house includes all outhouses, erections, fixtures, cellars, areas, drains, ways, passages, watercourses appertaining to the house, or to the land which is actually conveyed, and if there is any doubt, the words "house with its appurtenances" should be used; but if by any chance only a flat or a part of a house is leased, it is better to assure oneself of all rights of access, especially if there are ordinarily two staircases leading thereto, and particular care must be taken in this case as to the right to use any yard, garden, etc., forming part of the whole building in which the flat or tenement is leased. Should, however, there be any ambiguity in the lease as to the premises, the court, if asked, will decide according to what is believed to be the intention of the parties. It has been definitely laid down that the lease of a part of a house includes that part of the outer wall attached to the part demised so as to prevent another tenant affixing any advertisement, etc., to such part of the outer wall. If the landlord by any chance intends to except any rights or reservations, such as the right to pass through the tenant's garden

or to keep for himself a stable or other erection on the land conveyed, it is his duty to use express words for this purpose, and it is not difficult for a layman to understand the words after the letting in which are set out such words as "all that piece or parcel of land situate at," or "all those premises known as," and identified by the plan. There is generally no difficulty as to the term; if the lease is lengthy, provisions are generally inserted entitling the tenant (or possibly the landlord, and sometimes both) to break the lease at fixed intervals by giving due notice; it is common to grant a lease for twenty-one years, entitling the tenant to give notice so as to terminate it at the end of the first seven or fourteen years. The date when the lease is to begin is almost invariably fixed in the body of the lease. The date when it is signed is generally previous, but may also be subsequent, to the actual date of demise; but should the commencement by any chance not be mentioned, will fix the date thereby.

Leases are sometimes granted for the life of the lessee or subject to ending when conditions are satisfied, such as to a woman until she marries, but in practice the ordinary householder arranges a fixed time; it is generally more practical for the purposes of notice, etc., even if the tenant enters in the course of a quarter, to fix the termination by one of the usual quarter-days; if the lease is for less than three years, but renewable, express words should be inserted to show when the first notice can be given, whether it can be given at other

times than the usual quarter-days, and how long the notice must be; if vague words are used, e.g. "for a year certain and so on from year to year until determined," the householder will find he has taken the house for two years at least, whereas a tenancy for a year certain with six months' notice at any time enables a householder to leave at the end of the first year, if the six months' notice be duly given.

In any event, it must be clear whether both parties have equal rights as to termination, and the lawyer acting should inform the householder definitely what his rights are, and a prudent man will get this answer by letter. Sometimes a lease is for a definite period without any possibility of notice, but provision is made for renewal under conditions; this is hardly so favourable to a householder, who should also assure himself as to the exact point of its termination to avoid the question whether his term ends at midnight before or on the midnight of the final date; e.g. it has been argued that a lease from a fixed date for a year may give a day more to the tenant than a lease beginning on a fixed day, and a large amount of legal learning has been expended on such points, which can be obviated in the document by an express statement as to the time of the day when the term ends or for when a notice to quit may be given. (See also as to notices to quit on p. 42.)

In connection with renewal, unless very clear words are used, the renewed lease will not contain an agreement for further renewal, as otherwise something like

a perpetual lease would ensue, though these perpetual leases are not necessarily void legally; moreover, the courts are very strict in construing these lessee's rights against the lessee, so that a renewal will not be specifically enforced against a landlord, if the tenant has not given the due notice of his desire to renew either within the fixed, or within a reasonable time, or if the tenant has himself committed a breach of his duties, e.g. in not carrying out his own obligations to repair, and this in spite of the landlord having failed to insist on the repairs being carried out. Often also (if a special stipulation is contained in the lease) the renewal may only take place by the householder's paying a special sum for the exercise of the right (i.e. a so-called fine). If the landlord is not himself the freeholder, the tenant may have to procure the consent of his immediate landlord's superior landlords. On the other hand, if the householder has sublet, the landlord cannot insist as a condition of renewal on the householder's surrender of his sublease. It is often also in the householder's interest to acquire in his lease an option to purchase the house at a fixed price after a certain period, the lease then being in practice a probationary period to see if the house suits.

The tenant of a lease usually covenants to pay not only the rent, but also "rates, taxes, assessments" (as to which see under rating and householder's taxes), and generally follow some of or all the words "duties, charges, impositions, outgoings, parliamentary, parochial or otherwise." A long series of legal decisions deal

with the meanings of these technical words, outgoings being probably the most comprehensive; under such words the tenant is liable for all legal or statutory sanitary requirements, paving expenses, if properly imposed on the house, e.g. if the house is in a new street to the paving of which the frontagers have to contribute, private improvement rates under the Public Health Acts, etc.; these may be in respect of the demised premises or payable *prima facie* either by landlord or tenant; there is, of course, no reason why the tenant should not be exempted by express arrangement from these burdens, or why the landlord should not covenant specifically to pay them; the important point legally is that apt words should be used to saddle one party or the other with their respective liabilities, and that if the landlord is to be liable for any of them, the tenant should be expressly entitled to pay a demand therefor if made upon him, and deduct the same from his next payment of rent. With long leases, the tenant generally covenants to pay all these liabilities; but with short terms it would be manifestly unfair to saddle him with the cost of, say, a complete new set of drains, especially as he may be leaving the premises before the work is concluded or is even begun, as actually happened in the case of a demand for paving expenses. On the other hand, by statute the landlord, and not the tenant, is liable for any tithe rent charge, issuing from the land occupied, and also for the landlord's property tax, as well as for rates in respect of certain lowly rated premises

(as to which see under taxes and rating respectively, p. 107).

Perhaps the practical point on which most difficulty arises between landlord and tenant is on the question of repairs, and no agreement or lease should ever be signed without this point being definitely dealt with. It is clear law that in the absence of an express stipulation the landlord is under absolutely no liability to repair; the premises may fall to bits or be burned down, and rent will still be payable without the landlord having to expend one farthing. On the other hand, in the absence of agreement the tenant is bound to use the premises in a "tenant-like manner." What this means is very doubtful, and probably it is to keep the premises "wind and water-tight," so that in practice the question of repair, whether in a long lease, short agreement, or even a temporary letting, is specifically arranged. The tenant, in arranging, should bear three stages in mind: the necessary repairs to enable him to occupy, repairs during the currency of the tenancy, and the questions of dilapidations, etc., when his term comes to an end. As to the initial stage, while the tenant of course runs a grave risk, unless he employs an independent surveyor to assure him of the general stability, etc., of the premises, a landlord may fairly be required to expend some money on drainage, papering, etc.; if this is agreed upon, a careful specification should be drawn up of what is to be done and the time within which it is to be concluded, and the remedy in case of default, e.g.

that the tenant can complete what is not duly carried out and recover the same by deduction from rent or by action, with, if possible, an arbitration clause.

In a lease, however, the tenant generally enters into specific covenants to repair in the course of his term, divided into exterior and structural repairs, as distinct from interior and decorative work, and often by way of compromise the former is undertaken by the landlord and the latter by the tenant. Unless, however, the landlord is required to do certain work at stated intervals, he is not liable on his covenant without due and reasonable notice (to be given formally) even if, from observation or other sources, he knows that he can be called upon to fulfil his agreement, and of course the landlord, in order to repair, is entitled to reasonable access to the premises at reasonable times for his workmen, etc. Even if the landlord fails to repair when duly called upon, the tenant cannot thereupon give notice to quit, but may execute the repairs himself and sue for damages ; it is doubtful how far he is entitled to deduct the cost of the work he has been forced to do personally from the rent, especially as in all probability he has agreed to pay the rent free from all deductions. Even if the landlord has covenanted to repair in the ordinary way, he is not liable to practically rebuild premises which are decaying from old age ; indeed, this same rule applies to a tenant, and it may be generally stated that the degree of repair to be carried out depends on the general condition of the premises. And this may

possibly involve the rebuilding of part of decaying premises, such as a piece of defective flooring or of an outer wall. The tenant, it is true, by his own obligation, may have to really improve the house for his landlord, but the general rule has been laid down in a well-known case that "good tenantable repair" (the ordinary phrase used) is "such repair as, having regard to the age, character, and locality of the house, would make it reasonably fit for the occupation of a reasonably-minded tenant of the class who would be likely to take it," but as a rule the tenant's covenant is express both decoratively and structurally; e.g. how often to paper, paint, point, etc., as to decoration, and to "uphold, support, maintain, cleanse, repair, etc., structurally," which means that even if the house remains sound otherwise, the tenant is liable to keep it as structurally strong as when he received it, and with an equally good state of drainage.

Very often, however, although the tenant is liable for tenantable, habitable, substantial, etc., repair, he excepts "fair wear and tear" or "reasonable wear and tear," etc., which clause exempts him from liability for ordinary dilapidations; this point is, however, more usual in short terms than in leases. This exception, it has been held, will so far protect a tenant that he will have to cleanse the part painted, and not repaint it at the expiration of his tenancy.

The lawyer who acts for the tenant of a lease is, as a rule, competent to explain to the tenant generally what

is expected under his repairing agreement; but it is difficult to lay down general principles, except that the general condition of the house and its nature must be taken into consideration, and that the repair must at least put the house substantially into the state in which it has been received.

If the agreement is to repair and keep in repair during the term, the agreement involves adequate repair during every part of the period, and often, to ensure this, the landlord exacts a covenant to permit his (or his agent's) entering the premises at reasonable times to view their condition.

Moreover, the tenant is not permitted to commit so-called "waste," i.e. altering or removing any part of the fabric of the house, whether walls, floors, windows, chimneys, etc., without the landlord's consent; unless there is a covenant by the landlord, his specific consent will be required (which should be obtained in writing) if the tenant wishes to make a communicating door, or to remove a landlord's fixture, such as wall-cupboard; a householder also is not permitted to cut down trees in the garden, etc.; but of course small reasonable alterations will not be restrained by any court, and the landlord would have some difficulty in proving damage. (See also fixtures at p. 135.)

Should, however, the householder be the tenant not of a whole house, but of a flat, the landlord should be asked to enter into an express agreement to keep the stairs, passages, etc., leading to the flat in substantial

repair ; the law as to the liability of a landlord for accidents resulting from defective access to the flat both to the tenant, his family, and visitors is far from clear, and although the landlord may be liable by " necessary implication " from the remainder of the agreement, an express proviso should be insisted upon.

Finally, the householder must realise that in an ordinary repairing lease he is liable for dilapidations at the end of his term ; the amount of dilapidations depends on the particular language used in the covenant, but the question of dilapidation often involves the total repapering, repainting, etc., of the whole premises, and that before the last day of the term, so that either the term is practically shortened for some weeks, or the tenant spends this time in the double discomfort of moving and doing up the whole house ; now this can be obviated by a previous arrangement settling a lump sum to be paid in lieu of the " dilapidations " liability, or to be ascertained by a surveyor mutually agreed upon, and a landlord generally prefers cash (even a smaller amount) so as to be in a position to expend it for a new tenant according to such new tenant's wishes, in place of similar work done merely to satisfy his liability by the outgoing householder.

Even in short tenancies, a landlord is sure to require some small expense to be incurred which is alleged to be beyond fair wear and tear, and an arrangement at the commencement of a tenancy for a third party, e.g. an independent builder, to carry out what is necessary is a

saving of annoyance and probably of expense. In these cases it must, however, be clearly stated when the work has to be begun and whether at such previous time vacant possession has to be given. In any event, a surveyor's fee in estimating dilapidations should be a fixed sum and not dependent on the amount of work to be carried out.

The question of insurance is dealt with at p. 63, but the tenant must remember on this point that *prima facie* he is liable to pay rent even if the house is destroyed not only by fire, but by tempest or by decay, and a prudent tenant will either by agreement or by insurance except himself from all liability due to "damage by fire, storm, or tempest, or other inevitable accident." If, as sometimes happens, the landlord insures the fabric of the building, he will not be bound (unless possibly a highly doubtful point of statute law can be called in aid) to expend the insurance money in rebuilding, unless he has covenanted so to do; the tenant, if he insures, must of course take out a policy for such a sum as will enable him to rebuild the premises, but in leases the question of insurance and the application of the insurance money is almost invariably clearly set out, and in shorter agreements, where the landlord takes the responsibility, the tenant can guard himself generally from any serious liability, by giving notice to quit after a fire; the tenant (if insuring) is allowed only a very short time after his tenancy to take out the policy, and should do so personally, even if he underlets;

probably the best plan is to arrange to insure in the joint names of landlord and tenant, with a proviso to produce the policy receipts at reasonable times.

Other covenants in leases, beyond the one to pay rent (which is separately dealt with at pp. 91–96), are commonly entered into by the tenant, such as not to use the premises otherwise than as a private dwelling-house, which will not prevent the tenant from taking in a lodger, but will prevent him from carrying on the business of a lodging or boarding-house ; other covenants are to avoid doing anything which may constitute a nuisance to the neighbours or otherwise. The landlord generally also covenants to give "quiet enjoyment" of the premises, so far as he is concerned, or others acting under him.

Generally in leases also is contained a proviso for re-entry, the lease being forfeitable and the landlord being entitled to re-enter on breach of specified obligations by the tenant ; as a rule, the obligations in question are to pay the rent within twenty-one days of the due date, whether demanded or not, and not to break any other of the tenant's covenants ; but this covenant is generally construed, in cases of doubt, against the landlord, e.g. the words must be express to cover both negative and positive covenants, and of course the landlord is not bound to enforce it. Naturally the re-entry by the landlord must not be forcible, and is generally by action, although he may by the covenant be entitled to retake possession peaceably without legal process (if this is possible) ; but by statute in either case a notice

has first to be served on the lessee specifying the breach or breaches of covenant complained of, and requiring the tenant to remedy or make financial compensation; the notice by the landlord must be precise and give a reasonable time to the tenant to carry out his duties, but the landlord by re-entry does not waive his right to proceed for rent in arrear, or other tenant's liabilities. On the other hand, the landlord may be held to have waived his right to forfeiture by acts acknowledging the continuing existence of the tenancy; receiving, or even demanding, rent due after forfeiture is a waiver, unless the rent was payable before the forfeiture, and a landlord himself carrying out repairs and distraining for the expense was held to have waived the breach; but a landlord can only waive that of which he has knowledge, and the waiver only applies to those breaches existing at the time of the waiver; and accepting rent while a notice to repair is running does not constitute a waiver.

If a landlord once elects not to waive a forfeiture and takes proceedings to act on his rights, he is not entitled afterwards to withdraw from his position, except by the tenant's consent.

On the other hand, the hardships on the tenant of this customary proviso have been greatly mitigated by statutes entitling the court to relieve the tenant from the consequences of his default; not only is the notice already mentioned necessary (although not stated in the lease), but, except in the case of the covenant not to

assign without the landlord's license, the courts have power to make orders, subject to costs, etc., relieving the tenant, and (what is often more important) the sub-tenant, from forfeiture, and a sub-tenant who has been careful can get relief even if the intermediate tenant has assigned without license. The tenant may counterclaim for the relief in an ejectment action brought by the landlord, or he may apply independently, and the underlessee tenant can also apply in the lessor's action. In the case of non-payment of rent the relief must be applied for within six months, and the rent and costs up to date should be tendered or paid into court in the action. Sub-lessees, when applying for relief in connection with the forfeiture of the headlease, may be able, subject to conditions, to get vested in them a direct lease for the remainder of the term without the intervention of their defaulting immediate landlord. Finally, it should be added that the court is by statute empowered as a condition of relief to exact payment by the tenant of the landlord's costs incurred properly in employing in connection with the forfeiture a solicitor, valuer, surveyor, etc.

Should either the landlord or tenant die during the currency of a tenancy, the rights and liabilities of the parties pass to their personal representatives in the absence of any special statement to the contrary, and the executors, etc., of the householder are the persons who should, if desirable, give the requisite notice to quit ; as a rule, in all legal documents connected with

houses, the parties are expressly stated to include their "executors, administrators, and assigns," although the law would generally imply this. The landlord can also assign his rights (in law his "reversion") during his lifetime, and it is then the duty of the tenant to pay the rent, etc., on proper notice of the assignment being given, to the assignee; in any event, if a tenant does not give notice to quit, and continues to pay rent to any person who has become interested in the lease, the tenant will not afterwards be permitted to deny such person's title as landlord; the tenant must, of course, be careful not to pay any arrears of rent to his new landlord without express instructions from the original lessor, and he is protected from responsibility for paying that person until he has received formal notice of the assignment. In practice the assignee gives notice, and the tenant, to make sure, should require his original landlord to confirm in writing that he has parted with his interest to the party giving notice. Of course, a landlord may lose his interest by execution or bankruptcy, and the tenant, on due proof, will have to pay rent to the sheriff or trustee in bankruptcy.

Prima facie a tenant is entitled to assign his lease or agreement, but in practice the landlord exacts a covenant or clause restricting this right, but no prudent householder will agree to anything but a *covenant* in a lease or a clause in an agreement entitling him to transfer to a responsible person; a landlord cannot (unless by express stipulation) enforce a monetary payment as

consideration for permission to assign or sublet, the distinction between them being that in an assignment the proposed new tenant comes into direct connection with the landlord (so-called privity of estate), while in an underlease the landlord looks exclusively to his original tenant; even after assignment, the original lessee remains liable on his express covenants, and while in practice he does not assign without an indemnity from his assignee, if he wishes to get rid of all liability he must arrange with the landlord to surrender the term and get a new contract or lease executed by the landlord and the assignee. Of course, if a householder becomes a bankrupt, his trustee in bankruptcy deals with the lease, but such a trustee has legal means of disclaiming the lease and its liabilities, and the bankrupt householder can no longer consider as his own the house leased in his name.

Of course, many householders are not prepared to take a lease, but prefer to become yearly tenants or tenants from year to year, and in this case a much shorter agreement is generally drawn up; and in default of any agreement, if a householder enters under a void lease (e.g. because it is not under seal) or merely takes a house, enters and pays rent, a yearly tenancy is considered to have been effected. The important point with these agreements is that they can only be terminated by a half-year's notice given by either party (see at p. 46), although of course there is no legal objection to creating such a tenancy with any other such as a three months' notice, and it sometimes even is arranged that

one period of notice may be given by one party and one period by another. In any yearly tenancy, if the requisite notice is not duly given, the tenancy continues for a further year, so that if a yearly tenancy without special terms is entered into, and neither party gives notice at the end of the first half-year, the tenancy lasts for at least two years. It sometimes also happens that by consent a tenant stays on after his lease has expired, and in the absence of express arrangement, if the landlord implicitly or expressly admits the continuation of a tenancy, the householder is deemed a yearly tenant on such conditions of the lease as may be fairly considered to be incorporated into the new agreement, such as continuing the insurance, not subletting, etc.; but such new yearly tenancy would hardly be consistent with a liability for structural repairs, which might exceed the yearly rent. In the absence of express agreement, a yearly tenant is not bound to do any repairs except such as are necessary to keep the premises wind and water-tight, nor is he obliged to rebuild if they are destroyed by fire; on the other hand, a landlord is not bound to do any repairs on his own account, and in fact impliedly enters into no stipulation except to give "quiet enjoyment," so far as he or persons claiming under him are concerned.

The rent is not necessarily payable yearly; in yearly tenancies quarterly payments of rent are common; so are stipulations not to underlet, as in law there is nothing otherwise to prevent a tenant subletting for his term.

Should either party die during tenancy, the tenancy continues until due notice is given, the parties responsible being the personal representatives.

Of course, a yearly tenancy should, like every other agreement, be in writing, if possible, although these agreements are generally couched in language less technical than that used for leases ; if a solicitor is not employed, at all events some one having specialised knowledge, such as a surveyor or house agent, may well be invited by the householder to peruse the agreement *on his behalf*.

Especially important is the question of the requisite notice to terminate ; the agreement ends on the corresponding day of the year on which it was begun, or rather, at the last moment of the previous day ; it often obviates difficulties if the tenancy is deemed to commence on one of the usual quarter-days, and if, as of course may happen, the tenant enters in an interval between the quarter-days, it is easy to draw up an agreement from one of such days in addition to the short term between such day and the date of actual entry. As a notice to quit has to be given for an exact day, the day of entry (from which *prima facie* it has to be given) should never be left in doubt ; in fact, a prudent householder who takes a house on a yearly tenancy would have his notice to quit legally drawn and served ; otherwise, the tenant should give his notice at an earlier date than necessary, and ask the landlord to accept and admit the notice as valid. Of course, no notice need be

given if the house is taken for one year certain, and no more, but such a tenancy should be express and in writing. As to notices to quit, see also at p. 46.

As to tenancies for less than a year, the chief point to settle is whether they are for a single definite period or to continue unless notice is given. Even if the householder takes premises for a short period at the seaside, a formal written agreement duly stamped (sixpenny stamp) should be insisted upon; but for ordinary purposes no tenancy for less than a year would entitle the tenant to consider himself a householder, and it is not proposed to deal with such occupations in this volume. There remains the case of furnished houses, and it cannot be too strongly insisted upon that at common law in the case of *furnished houses or apartments only* is there any implied warranty by a landlord that a house is fit for occupation. The householder, after taking an unfurnished house, may find it infested by insects, the drainage positively dangerous to health, or so damp or structurally rotten as to make habitation most unpleasant or impossible, but the tenant who has signed an agreement has no remedy; it is true that under the Public Health Acts any person letting a house or a part thereof, knowing that any occupant has been suffering from any dangerous infectious disease, and that it has not been disinfected to a doctor's satisfaction, is liable to penalties, and that in most districts the occupier of a house where there has been infectious disease is bound under penalties to have it properly disinfected; but

this might entail criminal proceedings, which would hardly satisfy the incoming tenant; moreover, even in case of furnished houses there is no undertaking by the landlord that the house, if fit for occupation on entry, will remain so, or that he will execute any necessary repairs; on the other hand, a landlord in the case of a furnished house is liable, even if he *bona fide*, but mistakenly, believes it is quite fit for habitation. The other important point with regard to furnished houses is the inventory; the agent or surveyor who draws it up should agree *for consideration* to act for both landlord and tenant (this saves the expense of two surveyors), and the same man should be asked to check the dilapidations at the end of the tenancy, or an independent man may be called upon to determine dilapidations on behalf of both parties; in any event, the householder should insist on the question being settled at the time of leaving, as otherwise many difficulties may arise owing to damage being caused after he has quitted, and for which a claim is often made, and is not easy to rebut.

The law, however, as to the landlord's immunity from responsibility in house-letting has been considerably changed by an Act of 1909, which has already been referred to; it applies only in London to houses with a rental not exceeding £40, in large boroughs to a maximum rental of £26, and elsewhere of £16, unless such house is let for at least three years with an agreement to put the house into reasonable repair. In these small houses not only does a landlord on letting warrant their

fitness for habitation, but the warranty extends during the whole period of the letting. The landlord is of course entitled, on twenty-four hours' notice, to enter to view the house's condition, and the local authorities have an equal right. In default of the landlord's executing necessary repairs in these houses, the householder should inform the local authority, who, if satisfied that the landlord is not doing his duty, will execute the necessary works themselves and recover the expenses from the defaulting landlord. This new Act is a considerable improvement on the former Housing of the Working Classes Act, but is of course, as above shown, largely limited in its application; it refers apparently both to furnished and unfurnished houses.

Before dealing with the termination of tenancies it may well be mentioned that a landlord is not, in the absence of express agreement, entitled either to put up a notice-board or other notice outside the house that the house is to let, nor to send proposed new tenants to view the premises; agreements to admit both these rights are very common and must be construed by both parties in a reasonable spirit; in connection with third parties it may also be stated that if a liability arises towards third parties, owing to defects in the premises or negligence in their upkeep, the tenant and not the landlord is *prima facie* liable; and this is the case whether it be the interior of a house, such as a broken staircase, that causes the injury, or something exterior to the fabric, such as an exterior wall falling on a passer-by, or a

passer-by injuring himself owing to an ill-fastened coal-hole ; in the absence of express contract, however, the landlord may be liable when he lets premises in such a state that they constitute a nuisance, e.g. with a chimney-stack threatening to fall, or when he sends in workmen of his own engagement to do any repair, and they cause injury by their negligence ; on the other hand, a householder suffering from a nuisance created by a third party may sue on his own behalf, e.g. if his neighbour's drains are seriously objectionable, or if any one encroaches on the land demised to him.

The tenancy usually ends either, if for a fixed period, at the effluxion thereof, or by virtue of the notice to quit, which has several times been already mentioned. Although, where a lease is determinable at fixed period by notice, such notice is not strictly a notice to quit, yet it needs equal care in preparation, and must be exactly in accordance with the provisions of the lease. Unless the instrument so provides, the notice to quit need not be in writing, but a written notice is, for safety, practically invariably employed ; also, unless otherwise provided, it may be served by post, but to avoid any question, if the post is the method chosen, the notice should be registered and in ample time. Even if served personally, it is more prudent to obtain *an acknowledgment, if possible.* In law, however, it is generally enough if the householder calls at the landlord's premises and in his absence leaves the notice with the wife or other party apparently in charge, as in such case it will be for the

landlord to prove that he never received it, in which case it would be for the tenant to prove that the party to whom the notice was handed was not only in charge of the house, but was informed of the contents of the document. If the whole course of dealing has been between the landlord's agent and the householder, the agent will be considered to have been held out as entitled to receive the notice, and in the same way a notice not handed directly to the householder may be deemed well served. The important point is proof that the notice has actually reached the party for whom it is intended, even if it is not quite correctly addressed, e.g. if the Christian name or initials are not the right ones. The householder, in giving notice, should in any event sign the document personally.

Although no special form is necessary, the notice must be clear and precise; it should be definite and not optional; if, as often happens, the notice is the result of negotiations, it is far safer to give a clear notice and make any offer to resume the tenancy on other terms in a separate document; it must mention the premises to be quitted clearly, and apply to the whole and not to a part thereof; as already stated, it must reach the party for whom it is intended at the proper time (i.e. in yearly tenancies, six months before the expiration), and must be for the correct date; in case of doubt the form generally used is "at the expiration of the current year of my (or your) tenancy which shall expire next after a half a year from the service of this notice." A

householder in doubt as to the exact day may well employ such a form, if the landlord is so unreasonable as not to give him the exact date (when asked for); the giving of a date of course binds the landlord. Naturally, if by agreement a notice of fixed length may be given at any time, the notice will simply be for such time from the date of service. The householder must also be careful to avoid the use of any unnecessary technical legal term; he quits or determines the tenancy, but he does not "surrender it," which is totally different. As a matter of fact, the tenant is in law entitled to stay until midnight of the day when the notice expires, but in any event the exact day, but no time thereon, should ever be mentioned. The prudent householder will, of course, keep an exact copy of the notice, and add thereto the details of the service, e.g. the posting, with time, etc., or the party giving, receiving it, etc., and the date.

Strictly speaking, when a notice has once been given, it cannot be waived by consent of the parties; but if parties wish it, a new tenancy is created on the terms of the old one. Whether such waiver has taken place is a question of fact to be determined by the conduct of the parties; a second good notice generally constitutes a waiver of the first, so does payment and receipt of rent due after the expiration of the notice; so does a distress for rent due after such expiration. But, except in case of actual distress for or receipt of rent *qua* rent, after the expiration, waiver is afterwards open to rebuttal, and when once a notice has been given, a new

document should be signed by both parties, if the tenancy is to continue. No notice to quit is necessary if the householder has disclaimed his landlord's title (unless such disclaimer has been waived, i.e. denied that a tenancy exists between them), either because he claims the premises as his own or has paid rent and has acknowledged himself the tenant of another party; if, however, the tenant *bona fide* is not paying any rent, because a dispute has arisen as to whom it is to be paid, this does not operate as a disclaimer; in practice in well-drawn leases or agreements the question of disclaimer will not arise. The householder may also "surrender" the premises to his landlord, when no notice to quit is necessary. This "surrender" is a new agreement between the two parties, by which the tenant agrees to give up his tenancy and the landlord agrees to accept the premises back from him. A surrender ought to be a formal document in writing and even under seal (if it be a lease itself under seal to be surrendered); to simply tear up the original lease or agreement is not by itself sufficient; on the other hand, if a valid new lease is made between the same parties of the same premises, the old one will be deemed to have been surrendered; in practice also, where the landlord definitely permits the tenant to leave at some time other than the due date and the landlord actually takes possession of the premises himself (e.g. by accepting the key definitely) or by putting in a new tenant, such landlord will not be afterwards allowed to say that the premises were not

duly surrendered; a conditional acceptance of the premises, with a view to finding a new tenant if possible, is not a surrender in law, nor an agreement for putting in a new tenant, who never actually enters; so that a householder who wishes to quit his premises prematurely is never really safe without a legal document signed by both parties for the "surrendering and yielding up" of his house, and of course a receipt for the rent up to the exact date is also essential.

Assuming that the tenancy is at an end and the householder does not peaceably give up possession to his landlord, two points must be considered: the landlord may employ certain legal means to obtain possession, or he may allow the tenant to hold over; the tenant is considered to hold over if he does not leave the premises with his belongings on the due day, but the mere accidental detention of the keys for a short time, when the premises are actually unoccupied, does not fix the tenant with further liability. In any event, a tenant holding over is considered a tenant on sufferance, i.e. he has all the liabilities of a tenant, but is liable to ejectment at any moment; as soon, however, as the landlord accepts further rent he (the tenant) is considered to become a yearly tenant on the previous terms; moreover, he may be liable for double rent or double value; if he (the householder) has himself given a valid notice to quit (whether written or not), whatever his terms of tenancy are, he is liable to pay double rent, which can be recovered like single rent; the acceptance of the

ordinary rent, however, waives the landlord's right to recover more, and the tenant can leave at any time paying such double rent without further notice. If the tenant, therefore, gives this notice, and does not leave, he is liable whether his holding over be contumacious or not. On the other hand, another statute applies if the landlord has given the notice to quit ; in this case double value can be exacted by the landlord, but this statute only applies to tenancies for at least a year, and the holding over must be wilful, i.e. the holding over must not be on the strength of a *bona fide* claim to continue the tenancy. Moreover, if the landlord intends to claim this double value, he must give notice thereof and demand it specially in writing (i.e. in addition to his ordinary notice to quit) ; this special notice may be given before the end of the tenancy or at any time thereafter (before the receipt of single rent), and double value does not become a liability until the special notice has been received ; moreover, this double value cannot be distrained for, and the value is not necessarily the old rental. In ordinary cases these rules are unimportant to the householder, but he must remember them if he has sublet, or, owing to the sub-lessee's default, he may become responsible under these statutes.

If the landlord does not think fit to allow the tenant to remain in possession, he may either take peaceful possession, if possible (if he should attempt to use force, he may incur a criminal liability), or he may use legal process to recover the premises, and such process is

available whether the term has ended either in the regular way or because of a clause in the agreement or lease entitling the landlord to re-enter on breach thereof, i.e. unless such breach has been waived, or the court grants relief against forfeiture on account of such breach. Special provisions are applicable when the householder has left the premises unoccupied, and they are then considered "deserted premises." In the ordinary course, however, the landlord can take proceedings according to circumstances, in the High Court, the County Court (with a £50 limit), or before a Court of Summary Jurisdiction (with a £20 limit as regards rental). It is outside this volume to enter into the details of any of these legal proceedings, but a few points may be well mentioned for the householder's benefit. Should any rent be in arrear, it should be formally tendered in cash to the landlord, or if proceedings have issued, it should be paid into court; by so doing certain costs may be avoided, and possibly this payment may be sufficient cause to prevent an order for the householder's ejectment being made.

If the householder wishes for time to leave the premises or has a *bona fide* defence to the proceedings, he should be careful to "appear" in accordance with the writ or summons; in the High Court legal assistance for defence is practically inevitable, but in the county courts the householder will find that he (or she) can personally give the requisite notice of defence by carefully following the instructions on the document served

(as a rule the court officials are ready to assist), while in a police court the householder must be careful to attend the court at the time mentioned. It is always open to the householder to ask any court in its discretion to postpone the issue of or delay the execution of any possession warrant for a limited period, but at the end thereof the sheriff, bailiff, or constable will be entitled to oust the householder by force (not excessive, of course) if necessary; moreover, the householder who remains in unlawful possession of premises will be liable to pay not technically rent, but a sum equivalent to the value of his wrongful occupation, and naturally an order for costs will be generally made against him; and it may well be said that if the householder has a real defence he should at once invoke legal assistance, as in landlord and tenant law many highly technical points can be raised, and his costs will be secured, if he is successful thereon.

When once possession is taken by the landlord, all rights and liabilities of the parties as to the existence of the tenancy come to an end, but process may still continue for those liabilities that have already accrued, and if past rent is unpaid, assuming no judgment therefor exists, the landlord can still proceed and recover his judgment in the ordinary course.

Except in the case of agricultural holdings, a tenant who leaves the premises let to him cannot claim anything from the landlord for improvements he may have made to the house in the course of his tenancy; in fact,

the tenant may have to surrender fixtures he has already put up at great expense (see as to this at p. 131), and may even be compelled to block up a door or remove some erection which would otherwise be considered an advantage to the house. The criminal law may even be invoked if the tenant has wilfully or maliciously demolished or damaged any part of the premises, but in practice the question of fixtures is the only point to be settled on leaving as regards the fabric of the building.

Finally, it may be said that the arrangement between the landlord and householder may be ended by some public or semi-public body requiring the house or the land for their purposes and serving on both parties a notice to that effect under the statute entitling them to demand the house or land. In this case both landlord and tenant are entitled to compensation, the householder's loss being assessed and paid to him separately, the compensation being regulated on lines laid down in the particular statute, or in certain general statutes dealing with railways, municipal bodies, etc.

CHAPTER III

AUCTIONS AND COMMISSION AGENCY

So many householders nowadays make use of auctions for buying and selling, that a few points in connection therewith may be useful.

In the first place, the advertisement that an auction is to be held will not entitle people, if it is not held after all, to claim repayment of their expenses and compensation for their time lost by attending in accordance with the announcement, and they are warned, therefore, not to go a considerable distance, unless certainty that the journey will be worth while is otherwise secured ; it is true, however, that fraud in inserting an advertisement, where an auctioneer has no right to sell, may be a ground for damages.

Next, a householder must be particularly careful in buying or selling a house or land at auction ; almost invariably a document is circulated containing the particulars and conditions of sale, the particulars describing the subject matter, and the conditions the terms on which the subject matter is to be sold. This document (or possibly two separate documents referring to one another) deal with the exact boundaries of the property,

the tenure on which it is held, special covenants or restrictions affecting its use, rights of other people over the property, such as rights of way, outgoings other than the usual ones, arrangements as to title, deposit, compensation for errors, rights of rescission, payment for fixtures, and probably a plan of the building or land, and every layman is warned against buying, unless a solicitor has carefully perused the particulars and conditions, and stated that they are fair and usual. It is not that they generally contain any trap, but so many considerations are involved, that a trained lawyer alone can advise; of course, if the householder is selling, such documents should not be circulated unless prepared by a solicitor paid by and acting on his behalf, and it is certainly risky to allow an auctioneer to take the responsibility of drafting them. In any event, any oral statement of the auctioneer will not be held to vary what is written.

With goods as a rule nothing is issued but a catalogue, and very little is generally added to a mere list of the lots; but a statement in the catalogue may amount to a warranty, and if incorrect, may entitle the purchaser to rescission or damages; very often a condition is added that the goods are sold with all faults, and the purchaser then takes the usual risks of a buyer in respect of quality. Generally the catalogue also contains the conditions on which the auction is held, i.e. with respect to deposit, payment, etc., and these should be carefully studied before any bid is made. Even if the purchaser

receives no catalogue, if the conditions are publicly announced, e.g. conspicuously affixed to a wall, etc., the purchaser will be held bound thereby.

With reference to sale of goods, the Sale of Goods Act, 1893, lays down the following rules:—

(1) Each lot is *prima facie* deemed to be the subject of a separate contract of sale, so that no written memorandum is necessary, unless an individual lot costs more than £10.

(2) Any buyer may retract his bid before the auctioneer announces its completion by the fall of a hammer or in other customary way; afterwards both parties are bound.

(3) Unless the seller notifies his right to bid, neither he nor anybody on his behalf may bid, nor may any auctioneer knowingly accept such a bid; a sale under these circumstances may be treated as fraudulent by a buyer.

(4) The seller may, however, notify his right to bid, or notify that the sale is subject to a reserve price.

These last two rules mean that, in the absence of notification, puffing by mock bids by a seller is illegal, and the highest *bona fide* bidder is in such absence, and in the absence of a reserve price, entitled to each lot put up; the buyer or seller must, however, be beware against "knock-outs," i.e. a ring of men, not connected with the seller or buyer, agreeing not to bid against one

another, but to bid against those not in their ring ; this is apparently not illegal, but of course seriously menaces the interest of the unprofessional householder, whether he buys or sells.

The auctioneer acts as the seller's agent, and as such is entitled to receive payment of any deposit payable and of the price of the goods, but not, in the absence of special instructions, the price of any real property sold by him ; it lies in his discretion, subject to special instructions, whether to accept a cheque, and whether to part with the goods before the cheque is duly met.

When the bid is accepted, he is also regarded as the purchaser's agent to sign a memorandum necessary to make a contract enforceable, if it relates to land or to goods over £10 in value.

As regards any deposit payable—and if cash is not paid on the spot, a deposit is invariably demanded, especially in the case of land (the details about this will be in the conditions or catalogue)—the auctioneer is stakeholder, but he must be prepared to pay it to the seller, when demand is made ; moreover, as the vendor's agent, he is liable to use all reasonable care in keeping property entrusted to him for sale ; a householder, however, is advised to insure (against fire at least) goods left with an auctioneer for any substantial period or of special value—such as old pictures, etc.

The auctioneer as the vendor's agent is, of course, entitled to remuneration and to secure this he has a lien on the goods in his possession. He is often paid a

commission on the amount realised, but in the absence of express bargain he is entitled to a customary or reasonable sum for the discharge of his duties. A vendor should always ascertain whether the auctioneer requires a special contract, or will abide by the regular charges fixed by one of the big institutes, such as that of the "Estates and House Agents."

It should finally be stated that a sale by auction is not in "market overt," so that a purchaser will be bound to return to the true owner stolen goods which he may have purchased; in such case his remedy is against the auctioneer, unless the auctioneer has disclosed his seller's (principal's) name and has by the conditions of sale avoided personal responsibility; the householder is therefore warned against buying at an auction not conducted by a respectable and responsible party.

Householders often employ auctioneers, who are at the same time estate agents, to buy, lease, or let houses for them, or to make valuations on their behalf, when, of course, the general law of agency, with which this book does not deal, will be applicable. It may here, however, be useful to note that very difficult points arise when the employment has been vague and has not been reduced to writing in terms carefully drawn. An agent is entitled to his commission if he does all he has arranged to do, even if no business results for his principal consequent on his exertions; if he finds a purchaser or tenant willing to purchase or occupy on the terms of his instruc-

tions, he can claim payment, whether the deal comes off or not. On the other hand, a mere introduction of a party to the householder is not enough ; the business must result directly through the introduction, which must be the effective cause of the lease or sale, etc., in order to enable the agent to claim his commission ; so long as it is the effective cause, it does not matter if the transaction is finally concluded through another agency. Of course, if the agent incurs, with due authority, special expenses, such as for advertisements or inquiries, he is entitled to these in any event ; but if before the agent completes his duty the principal revokes his authority, the agent is not generally entitled to any but out-of-pocket payments. Nor is an agent to be paid if he performs services other than those arranged, and if an agent is employed to let, but finds a purchaser for a house instead, he cannot sue for his commission. House agents often send round circulars to householders as to the disposal of their houses, and a mere reply as to what the householder is prepared to do is not enough ; but an incautiously worded letter may often lead to difficulties, and it is suggested that, if an estate agent is employed, a letter should be written stating that no remuneration is payable unless the other party is first introduced by the agent, and that the agent carries out the transaction from such introduction until it is completed in due course. In any event, any term must be avoided which can lead to two commissions being claimed. It often happens that the same party has

his name on the books of several local surveyors, etc., and when the deal is concluded conflicting claims are made, although no commission is really justifiable on the part of any of them. It is clear that when an introduction is fruitless, but a second agent proves more successful with the person introduced, the second agent is the party to be paid. The principal may also by his own conduct put it out of the agent's power (although he has done a substantial amount of the work) to bring his duties to a conclusion; in such a case the agent can claim a fair remuneration for his labour, which may in some instances equal the whole payment he would otherwise have earned. An agent will not be entitled to recover his commission if in the course of his duties he has been guilty of neglect or want of care, e.g. if he arranges a sale on credit, and owing to his not assuring himself of the buyer's solvency, his client loses the benefit of the sale. Acts of misconduct likewise disentitle him to remuneration, especially on the score of accepting a secret commission; an agent is not permitted to accept any remuneration from the other party, unless with his principal's knowledge and consent; in fact, the corrupt acceptance of payment from the other party, which would naturally influence the agent not to do his best, is now a criminal offence, and whether this be proved or not, the agent will not be allowed to retain any secret profit due to the agency, but will actually (unless the transactions can be quite separated) lose the commission he has worked for and which he would other-

wise have earned. The person giving or offering the bribe is liable equally with the agent, but in many cases it is a common practice for an agent to get a double commission, the test of corruptness generally being whether the fact of the commission being received has been brought to the knowledge of his principal.

CHAPTER IV

INSURANCE

One of the first duties of every householder, which prudence suggests, is to consider the subject of insurance. Even when taking the house, the tenant must remember that insurance expenses are an integral part of his liabilities, and he should ascertain that nothing in the building or its neighbourhood will increase the ordinary rates; for instance, the electric light with wiring, fittings, fuses, etc., must be in accordance with the insurance company's requirements, and the premium may be considerably increased if any explosives are stored in the vicinity, or if by isolation, police or fire safeguards are not easily accessible; or if the heating appliances, stoves, chimneys, ranges, etc., make the risk more than ordinarily hazardous.

In the next place, the lease or agreement must be carefully examined with reference to insurance provisions; whether the landlord or tenant insures the fabric of the building is, of course, a matter of arrangement, but a clear written statement must be incorporated showing (1) who has the responsibility of insuring; (2) in whose name the policy is to be taken out; (3) the amount of the insurance and the name or

class of company to be insured with, and the rate of premium (if not to be paid by the actual insurer); (4) whose duty is the reinstating or rebuilding of premises burned; (5) who is liable in the event of the sum paid by the company proving insufficient for the due reinstatement or rebuilding; (6) the time after the fire to be allowed for this purpose; (7) the production of the premium receipts at stated intervals to the party incurring liability by fire; (8) the effect on rent payment or the suspension of the agreement, while owing to fire the premises are uninhabitable.

In leases it is customary for the tenant to insure the fabric of the building, either in his own name or in the joint names of himself and his landlord, but sometimes the landlord insures in his own name, at the tenant's expense, in which case the landlord generally covenants to expend any insurance money received on rebuilding; but in either case a clear written understanding must subsist as to liability if the premises are sublet or underlet.

The householder, however, is generally more concerned with the risks attached to his own goods and chattels; these will be insured either with a recognised company of standing or at Lloyd's; the premium does not generally vary much in either event, but a company's conditions are as a rule less elastic and more stringent than those on a Lloyd's policy, while the security of a policy signed by individuals or syndicates is hardly as good as that of the enormous resources, and especially the uncalled capital of one of the big insurance offices;

most of these form a ring who reinsure with one another, and have an almost identical tariff of charges; some of the risk may, if the amount is large, be placed with a non-tariff company, but it is hardly worth while doing this with a moderate amount of ordinary furniture and other belongings. In any event the householder must be careful to insure up to the full value, as otherwise, owing to the law of so-called average, he will only recover after a fire on the proportion which his insurance bears to the whole risk, so that if he insures his belongings for £500, whereas their real value is £1000, he will only recover half the value of what is burned. With the premium usually charged on dwelling-houses, any economy in estimating the worth of goods is most inadvisable. The householder must also be very careful as to the accuracy of the proposal form which he is generally called upon to fill up; any material mis-statement or misdescription in the proposal or other answers to questions put by the company may entirely invalidate the policy, so that not only can the company decline to pay on a loss, but will not even be bound to repay the premiums actually received by them; the same care must be used in answering any oral as well as any written questions, whether put by an official of the company or by an insurance agent; the law in this matter is, in fact, even more stringent, because it is the duty of the insurer, even without any question asked, to disclose every element that may be material to the risk run by the company, and it is most important to give full information as to the

substance, etc., of which a house is built, its heating and lighting arrangements, an insurance contract demanding the fullest faith (*uberimma fides*), although every element of fraud or deceit be quite absent; it is always advisable, when the policy is received, to see that all the material facts disclosed previously are inserted therein.

The householder when insuring must carefully consider what he wishes to insure; if, as is usual, he would like to recover after a fire the value of the goods of a servant or guest, or adult member of his family, he must insure goods held "on trust and on commission"; if he has any special valuable articles, these should be specially mentioned; many policies exclude money, securities, pictures, coins, and other articles of considerable value (such as any one piece over £10) which cannot easily be replaced; these, if necessary, must be separately insured, and, if a company declines to incorporate them in an ordinary policy, a separate Lloyd's policy for these special goods should be procured. In valuing goods it must be remembered that a company always reserves the right to replace articles burned instead of paying for them, and in any case, an insurance being a contract of indemnity, an insurer will not be allowed to make a profit out of a fire, so that it is idle to insure goods more than once, or for an excessive amount; when a fire loss is being settled, all policies of insurance have to be disclosed, and the person acting for the company or companies (called an average adjuster or assessor) will

take care that each party insuring bears his own proportion of the risk, and he will also ascertain that the insurer has a so-called insurable interest in what is burned; the absence of any interest in or responsibility for goods burned invalidates the policy to the extent thereof, the object of this rule being to prevent a fire being the subject of a gamble.

Besides goods, a householder ought to insure his rent; if the house becomes uninhabitable, he will incur hotel or other lodging expenses, and these should be provided for; many people even insure their rates.

As soon as a risk is accepted and the first premium is paid, the company incur a liability even before the policy is issued; when this is received (bearing a penny stamp), the conditions should be carefully studied; these are generally printed in small type on the back, and are distinctly onerous; especially noticeable is the one requiring proof of the value of all goods claimed for; it is possible, of course, to get a "valued policy," whereby the insurer agrees the value of the property insured, or the contents of the house may be the subject of an inventory and valuation by some approved firm whose statement will be accepted by the insurer; in the absence of either, the householder may be required to produce receipts or copy receipts for all goods on which a claim is based, and although this condition is generally interpreted reasonably, it is advisable to keep the receipts for the chief articles of furniture, etc., for this purpose; these receipts as well as the policy

should be kept at a bank or other safe place of custody, and not in the house insured, so that they are accessible whenever a claim is to be made.

The conditions should also be read to see that they include a fire however it may arise; and do not exclude one caused by an explosion, earthquake, etc., or limit the loss to goods burned and not to those stolen or otherwise lost or spoiled during the progress of a fire; in fact, before any premium is paid, a blank form of policy may well be obtained, to avoid questions of this kind thereafter.

When once the first policy has been settled, the householder must remember to (1) renew it annually by paying the premium, as although a few days' grace may be allowed and reminder notices are generally issued, there is no obligation on the company to do this; (2) to inform the insurer of any change of risk, e.g. the substitution of electric light for gas or the addition of a stove in the house, this being generally one of the printed conditions; (3) to increase the insurance as he adds to the value of his household goods; (4) to provide separate insurance for any goods permanently or temporarily removed, as the policy generally only applies to goods in one particular establishment; (5) to give immediate notice in accordance with the conditions to the company of any loss by fire; companies generally gladly compensate for any small loss accidentally incurred in the ordinary course.

Before concluding fire insurance, although the householder does not generally insure beyond his own goods,

he must remember that he is legally liable to others for the loss by fire due to his or his servant's negligence, so that every precaution must be taken on this account to prevent a fire spreading; it is useful to keep in a prominent place in the house the position of the nearest fire station; as a rule fire engines can be summoned by telephone.

Besides fire, the householder usually insures against theft and burglary; most of the foregoing remarks apply to such policies, but the householder must particularly notice that the policy provides for loss not only against burglary and housebreaking, but also against theft (i.e. when there is no forcible entry, as when a door is accidentally left unlocked and a thief enters thereby); this insurance should also provide against loss directly or indirectly due to the action of domestic servants, e.g. when they either are in league with a thief or admit one by their negligence, as many policies expressly exempt this liability. Most modern houses do not contain much plate-glass, but as this is expensive to replace and easily liable to breakage, both accidental and malicious, the householder may well take out a special plate-glass policy, if he has any in his establishment.

Finally, the householder must nowadays insure against accidents to his servants arising out of and in the due course of their employment. The usual employer's liability policy covers every legal risk, but the insurance company may take every technical point in fighting a

servant's claim on the householder's behalf, so that domestic servants should be protected, if possible, by general accident policies, which will relieve a householder of any moral liability in the case of a servant being disabled. It is, however, important to remember that the householder is legally liable for accidents to servants beyond the domestic maids, and it is prudent to incorporate in a policy the employment of a charwoman or a window-cleaner who may come to the house at fairly regular intervals, nor must outdoor servants such as gardeners, etc., be forgotten. Names need not be mentioned in the policy, but each servant or class of servants receiving wages from the householder must be set out, so that the policy must clearly exonerate him from all legal liability on this head. These policies should relieve the householder of all ordinary risk inside his house, but he must remember that he is also liable to third parties suffering damage by his negligence or that of his servants outside the actual building, e.g. if a passer-by meets with an accident by means of an unprotected coal-hole in the pavement or a defective fence or wall injures him ; insurance can, of course, cover all these outdoor risks, but it is not commonly adopted, as with ordinary care and due supervision of the carrying out of instructions to servants, this additional expense may well be avoided.

CHAPTER V

WATER

ALTHOUGH theoretically, apart from agreement, a householder is not bound to take water from the local supplying authority, in practice he is bound to do so, whether the suppliers are the municipality or a waterworks company; these furnish water under the provisions of a variety of statutes, and the householder's first duty in this matter is to discover whether the house to be taken is already connected by pipes, etc., with the local mains, or whether he or his landlord may be put to expense therewith. In houses under £10 in annual value, the undertakers of the local waterworks are bound to lay down communicating pipes at their own cost on payment or tender of the rate; otherwise, although the suppliers may be forced to connect, the householder may be obliged to pay in advance the company's outlay. The householder is generally entitled to carry out this work himself, on due notice, or he can by actual purchase become the owner of the pipes, etc., provided; in any event, no inhabited house nowadays may be without a water supply, either actually laid on or within a reasonable distance, and local authorities, both urban and rural,

are responsible for carrying out this law; they may even compel a landlord to provide due communication pipes, etc., for his tenant, if a water supply is reasonably near at hand for the house. It is advisable, however, before ever taking a house to assure oneself that a supply is actually available, and that this is a "constant supply" and of sufficient pressure to operate satisfactorily at any part of the premises. The constant supply means one which will make the water reach the top story of the highest house in the district, but this rule should not preclude any would-be tenant from assuring himself that every cistern and tap works comfortably at the actual pressure provided; this is especially important at times of frost, because the suppliers are not responsible for non-access of water on that account, nor, it may be added, can they be held liable for non-supply during unusual drought or other unavoidable cause or accident, or during necessary repairs. The tenant can, however, guard against frost by seeing that all pipes outside the house or in outlying parts are thickly cased with packing or some such material, and this especially should be the case with the pipes leading from the main to the basement of the premises.

Water for domestic purposes is, as a rule, to be paid for by rate, and not by meter; but where water is supplied by measure, the meter should be furnished by the water suppliers, who may charge a rent for same; so long as the meters are maintained by them in proper condition and duly tested, the meter record is *prima*

facie evidence of the amount consumed, although a police court may finally decide any difference on this question between the suppliers and consumer. The domestic purposes for which the rate is made include the usual purposes for which water is used by any inmate (lodger, boarder, visitor, or regular resident) of a dwelling-house, but not water for horses or washing carriages unless these are used exclusively for private purposes; nor may it be used for trade or manufacture, for watering gardens, nor for any ornamental purpose, nor even for a swimming-bath. A doctor, however, or similar professional man who keeps a carriage or motor is entitled to use the domestic water in connection therewith, although he chiefly employs his conveyance for professional work. A householder requiring water for such a purpose must come to terms with the suppliers for extra payment, although by special statute the amount payable is often limited or can be assessed by some nominated authority. The actual rate will, of course, be paid either by the landlord or tenant according to the tenancy agreement, but the occupier is primarily liable to the suppliers except where the annual value of the house or tenement does not exceed £10. The amount of the rate (which is based on the rateable value of the house) also depends on the suppliers' particular statute, but the suppliers are not generally permitted to make more than 10 per cent profit from their undertaking, and if they do, the rate may be diminished by order of the local quarter sessions; local authorities where acting

as suppliers ought not to make any actual profit. Every householder will at once inquire what the rate has been for his district for the previous few years. The rate is payable in advance every quarter, and is first due either when the connection is made with the house or when the agreement with the suppliers is come to ; the occupier's liability, however, begins, if he takes an unoccupied house, on the first day of his tenancy, but it continues till the quarter-day after he has given notice to disconnect, or in absence of notice the quarter-day after he has ceased his occupation. When the rate is in arrear, the water suppliers are entitled to cut off the supply, but this, of course, does not interfere with their right to recover arrears in a law court and their expenses of cutting off. Nor does process in the courts interfere with the right to cut off supply. If the arrears are under £20, a police court has jurisdiction to make an order for their payment, with distress, if necessary, to enforce the order.

Where, however, the owner by law or agreement with the suppliers is liable for the rate, the tenant may not be cut off for non-payment ; after notice, however, the tenant may be sued, if he has not in accordance with the notice paid the arrears up to the amount of the rent for which he is liable ; on such notice he should pay the company, and deduct the amount from his rent. Of course, an incoming tenant cannot be made liable for the arrears of a predecessor, but the water suppliers who have once severed communication on account of

arrears need not restore the same to an incoming tenant at *their* expense; the incoming tenant may also find himself cut off by the suppliers if the house has been unoccupied for twelve months.

The incoming tenant should assure himself that all cisterns, ball and stop-cocks are in good working order, and the agreement should be specific as to whether their repair (if necessary) will fall on the tenant or the landlord, as the water suppliers have the right to send their surveyor at any reasonable time between nine and four o'clock to examine into these fixtures and fittings and assure themselves that there is no waste. If admittance is refused, the supply may be cut off.

In London, the Metropolitan Water Board are the exclusive supplying authority since 1902, and their special Act regulates the various duties and powers in the whole metropolitan area.

As a rule any legal difficulty with regard to water can and must be decided by a police court, which besides enforcing penalties for such offences as wasting water—specially by allowing a cistern or stop-cock to be out of repair, tampering with or removing the suppliers' pipes and other fixtures, such as stop-cocks or meters, without their consent, or taking or supplying water without agreement or for an unauthorised purpose—can also penalise a company that fails in its duty as a supplier by illegally cutting off the householder or otherwise; the court can also by order close any well, pump, or tank in its district that is likely to be used for drinking

purposes, and is proved to be polluted. The local authorities are, of course, under the jurisdiction of the Local Government Board, who may well be appealed to if a local council neglects its duties.

A prudent householder also discovers and makes a note of the nearest available fire plug.

It should be added that although severe penalties are provided for polluting any water supply, there exists no general standard of purity of water for drinking purposes, except in London, where all water supplied for domestic purposes has been effectually filtered. Local authorities, however, responsible for waterworks, and waterworks companies, are bound to give a supply of "pure and wholesome water," which at all events should exclude any serious sewage pollution.

The last practical question for a householder in connection with water is the structural arrangement for supplying hot water both to baths and taps; the ideal is, of course, a permanent supply from the kitchen range to every floor of the house, and to every bedroom, but in default of this, fixtures such as geysers should certainly be available for hot bath water, and one hot-water tap is certainly essential for bedroom service in the upper part of the house. If these are not provided at the commencement of the tenancy by the landlord and passed as satisfactory by the suppliers, legal difficulties may subsequently arise if structural alterations are necessary to supply the deficiency, even if the tenant is prepared to undertake the outlay; a demand now

becoming more common on the part of incoming tenants is also for water pipes and provision for heating passages, etc., and especially for some appliance such as a radiator to counteract the chill of the main hall near a front door.

CHAPTER VI

ELECTRIC LIGHT AND GAS

As in the case of water, the householder is in practice dependent for his gas and electric light supply on either a local authority, or an authorised supplying company (whom we will call the undertakers), who are subject to the supervision of the Board of Trade and carry on their duties by virtue of a private Act or otherwise under public regulations, such as a provisional order, and no householder should occupy a house until one or other of these illuminants is laid on (if not both). In any event, care should be taken that all arrears of gas or electric light payments or meter rents have been met, as an incoming tenant may, by agreement with his predecessor, be liable to the suppliers for the cost of the arrears ; but if he continues his predecessor's business and actually pays him for the goodwill, such continuation of business does not involve liability for arrears due from the outgoing tenant. Should, however, the house to be occupied not be connected, the householder may require a supply from the undertakers, if his premises are within twenty-five yards from the gas mains or fifty yards from the distributing mains of electricity suppliers ; the householder may, however, be liable for the

cost of the connecting pipe beyond thirty feet in the case of gas and sixty feet in the case of electricity. When the supply is needed, reasonable notice must be given; a written contract to take the supply for at least two years may be required with a minimum charge of 20 per cent per annum on the suppliers' outlay for connections, etc., and security for payment of moneys to become due may also be requisite, and provided in the case of electricity that the suppliers are satisfied with the condition of the apparatus the consumer proposes to use. Subject to any special contract with the suppliers, it is the duty of a householder to give at least twenty-four hours' notice to the undertakers of his intention to move or otherwise to require a discontinuance of supply; in default of such notice a householder may be held liable for the amount registered by the meter (although he may have ceased to be an occupant of the premises), until the next time of the meter reading in the ordinary course. Subject to the existence of a *bona fide* dispute, the undertakers are entitled to cut off the householder's supply whenever he is in arrear with his payments, whether such payment be due in respect of the premises cut off or in respect of other premises occupied by him, for the supply of which he is liable.

The undertakers may also remove the meter supplied by them and recover the arrears summarily, and they need not reconnect the defaulting householder until all arrears have been duly settled.

The maximum price to be charged to consumers for gas or electric light depends on the rate prescribed in the Act or order authorising the supply; in the case of gas 10 per cent is (as a rule) the maximum profit to which the suppliers are entitled, and quarter sessions may, on the application of two gas ratepayers, make an order for an accountant to investigate the suppliers' books, etc., to ensure the limit of profit being adhered to, while in the case of electricity twenty consumers may apply to the Board of Trade to have a proper charge for supply fixed.

Gas and electric light rents, as well as the charges for the hire or fixing of meters, may be recovered summarily by the undertakers, together with any cutting-off expenses. The meter register is in the case of gas *prima facie* evidence of the quantity of consumption, although justices can decide any issue between the parties on this point; with electricity a meter is conclusive evidence in the absence of fraud, subject to any question of the meter's accuracy being determined by an electric inspector. Elaborate provisions exist as to the supply and testing of meters for both illuminants. The householder may provide his own meter or may require the suppliers to supply and fix him a meter (at his charge). Meters have to be tested and stamped, or certified by inspectors, who for this purpose are bound by models and rules of the Board of Trade, and who may only charge prescribed fees (the gas meter fee being usually one shilling). Meters when once tested are not

bound to be retested at intervals, but the inspector is entitled at reasonable times to enter the premises and see that the meters are in proper condition, and if necessary to disconnect and remove them for testing (the cost thereof to fall on the consumer, if by his fault the meter is not found in proper working order). In the case of gas there is also a standard of purity and illuminating power, and on the application of five consumers two justices may arrange for the supply to be inspected at the gasworks, while in the case of electric light, on payment of a prescribed fee, an inspector may be required to attend the householder's premises to test all the apparatus and to see that the suppliers fulfil the Board of Trade regulations.

Criminal offences, punishable summarily, are wilfully, fraudulently, or negligently injuring pipes, fittings, or meters belonging to the undertakers, altering the index to any meter or preventing it registering duly, as well as fraudulently abstracting or using the gas or electricity belonging to the suppliers, who can recover the damage sustained as well as a penalty (up to £5) ; the supply may be cut off until the complaint has been remedied, but no longer ; similar offences are connecting a pipe with that of the undertakers without their consent, or (when the illuminant is not paid for by meter) using burners or lamps other than or for longer periods than those contracted for, or otherwise improperly consuming the illuminant supplied.

Undertakers are also liable to penalties for default in

supply, and to a penalty of £5 per day if after twenty-four hours' notice they do not prevent an escape of gas from their pipes ; of course, both gas and electric light companies are liable to a civil action for negligence, or possibly for nuisance, if damage is caused by an escape, while the householder is liable to a similar action at the suit of others if negligence is proved in his case, e.g. if an explosion occurs owing to a tap not being properly turned off. It should be added that where an electric company has a definite area of supply, but does not lay down mains in the streets of the area, any six would-be consumers in any street may requisition the undertakers to lay down a main in the street, and if this requisition is not (subject to definite conditions) complied with, the undertakers may lose their rights in the district. The householder is, however, warned that especially in the metropolis the various illuminant supplying authorities have their own special statutes, and it is dangerous in case of trouble with such authority to rely on general statements which may possibly conflict with some special section of a private Act ; on some doubtful point, the Board of Trade may well be appealed to, as this Government department is entrusted with large statutory powers of supervision over suppliers, whether private companies or local authorities.

CHAPTER VII

DRAINAGE

Of course, before any house is occupied, the householder must assure himself that the drainage is up to date and in perfect order, and if expenditure is incurred for this purpose it is customarily borne by the landlord ; in any event, an independent architect or surveyor should be employed to give a written certificate of satisfactory drainage, and the charge for this should be paid by the proposed tenant, so that (if necessary) he has a direct remedy against the expert, who has not fulfilled his duty.

The costs of keeping the drainage in repair are a matter of agreement, but the tenant should have a clear understanding as to whether he or another party is liable, and if the landlord undertakes this, a clause should be added that in default of the necessary repairs being promptly executed after notice and demand, the tenant is entitled to get the work done himself, and deduct the expenditure from the rent. It is the law that in the case of a *furnished house* there is an implied warranty of its being fit for habitation on occupation, but it is much safer to have an express agreement relating to drainage ; in the same way, although valuable, implicit

reliance should not be placed on the provisions of the new Act making a condition of letting a house that it is reasonably fit and will be kept reasonably fit for human habitation by the landlord; this Act applies only to houses rented at £40 and under in London, £26 and under in boroughs with fifty thousand inhabitants, £16 and under elsewhere, and the remedy is enforceable only through the local authority.

If the householder has no independent inspection of drains, it is advisable, whether he takes a house on lease or not, to have a written warranty that they are in perfect condition; no oral statement should be accepted, but the landlord should be asked in whatever document is signed to state expressly that he holds himself liable for any damage that may accrue owing to the drains not being in perfect condition at the time of occupation, and that such liability extends to any illness that may be caused by defective drainage to any inmate of the house besides the actual tenant. In the absence of a definite legal guarantee, the landlord may only be liable for fraud, which is a difficult element to prove to a court.

A drain, for which the householder is responsible, must, of course, flow either into a cesspool or into a sewer, for the latter of which, as a general rule, the local sanitary authority is liable.

Many difficult legal questions arise as to where the drain ends and the sewer commences; but as a rule a pipe, so long as it serves only one house or building, is a drain, whereas the pipe for two or more buildings

occupied by different owners should be a sewer; especially is the distinction important where two semi-detached houses are considered one building, in which case a clear understanding must exist with the landlord and the neighbour before the agreement is concluded. A sewer generally is held to begin at the point where two independent drainage pipes of separate buildings meet, while in London under its own statute there may be a system of combined drainage.

As sanitary authorities have wide powers of objecting to drainage as being insufficient or ineffectual, and the possibility always arises of a charge being levied on the owner or occupier for this purpose, or because the authority considers that something connected with the drainage is a nuisance, the householder must provide in his agreement for such a contingency; an occupier may also be liable for his share of the expenses of providing a sewer for a private street, and, if necessary, provision should be made as to meeting this liability. (See as to this, covenants in leases and agreements.) In any event, in every urban house the drain must communicate either with a public sewer which is within one hundred feet of some part of the premises, or with a cesspool which is not under any house, and the householder is entitled to have his drains to empty into the local authority's sewer on his giving proper notice and complying with the regulations made for the purpose. If the local authority makes default in providing and maintaining sewers proper for the drainage of its district,

the householder should at once communicate with the Local Government Board or (in the country) with the County Council. The householder may, in case of actual negligence by the local authority, have an action for damages, but this remedy is hedged in by many legal technicalities, whereas an appeal to the Board or Council is generally effective and not costly.

In the country, drains still often empty into cesspools; the pipes leading thereto may or may not be sewers, but the householder should assure himself, before occupation, how far his liability may extend in this direction; in urban districts invariably, and in country districts generally, the local council has power, which it generally exercises, to make by-laws as to these cesspools; for instance, a by-law has been held good that no cesspool may exist within fifty feet of any dwelling-house; a written complaint can always be made by any person as to a cesspool, and may result in a demand by the local authority on the owner or occupier to remedy the nuisance; the owner or occupier is *prima facie* liable for proper attention as to cleaning cesspools, etc., and not allowing them to overflow, but very often the local authority may themselves contract to carry out this duty; the exact position can always be ascertained from the local inspector of nuisances.

The householder must, of course, be careful that his drains connect directly with a sewer, as if, owing to some misconnection or pipe leading elsewhere, the drainage creates a nuisance to some third party, he may be liable;

it is always possible that drains may connect with a pipe which should only carry off water, and a nuisance is thereby easily established; moreover, if drainage matter somehow escapes into a watercourse, and water is thereby polluted, most serious legal consequences can ensue. A really prudent householder, before he enters, secures a complete plan of the drainage of the house, with its openings, traps, etc., so that, if some trouble occur, it can be readily located by a builder or the sanitary authority.

As to the actual sanitary conveniences, the local authority has power on the report of their inspector of nuisances that a house is without a sufficient water-closet or privy, and an ashpit furnished with proper doors and coverings, to require the owner or occupier of the house to provide same; the statute does not prevent the erection of privies, but when the privy becomes insufficient, so that an alteration is necessary, the authority can require, subject to any private statute, a water-closet to be substituted, and in default it can execute the work and recover the expenses summarily from the owner. There is a right of appeal to the Local Government Board against the decision of the authority, who must, in any event, consider each separate case, without insisting on the application of a general scheme. It is not absolutely essential in law that two small adjoining houses or cottages have a privy each, although nowadays this would in practice be insisted on, and, of course, whatever system is adopted, all sanitary conveniences

must be constructed and kept so as not to be a nuisance or injurious to health. On a written application by any party to a local authority that any drain or sanitary convenience is a nuisance or thus dangerous, the local authority may, either with twenty-four hours' notice or on emergency without notice in writing, empower their surveyor or inspector of nuisances to enter the premises and make a proper examination ; if no nuisance exists, the local authority must make good all damage caused by the examination, but if alteration or amendment is required, notice is given to the owner or occupier to do what is necessary, and after a reasonable time, and default by the householder, the authority may execute the works and recover the costs thereof as well as a penalty for the default.

In 1907 a statute was passed which applied to those districts fixed from time to time by the Local Government Board or a Secretary of State ; if the householder be within such a district, he will find that any old drain may have to be laid open for examination by a surveyor before being allowed to communicate with a sewer, that in any new building duly flushed water-closets sufficient for the circumstances may be requisite, and that even old buildings may fall under this rule if the existing accommodation is insufficient, and the water supply is at hand for this purpose ; and that drains, if a nuisance is alleged by any local health official, may be tested by the smoke or coloured water or similar test, and may have to be remedied within a reasonable time at the owner's

charge; that offensive cesspools, ashpits, wells, etc., may have to be filled up or removed, and sinks or drains may have to be provided for refuse water. In default by the owner (a term which may include a tenant householder), the local authority may do the work themselves and recover the expenses summarily.

An earlier adoptive Act was passed in 1890 (i.e. an Act which only operates where the local authority makes it apply by resolution duly passed and advertised or where its adoption is ordered by the Local Government Board). Assuming the Act to apply to the district where the householder occupies a house, he must be careful not to pass into the local sewers any chemical or other matter which may be injurious thereto or may interfere with the free flow of water therein, or heated liquid which in combination with sewage or alone may create a nuisance. In such district he can, however, compel the local authority (at his cost, paid in advance) to make the communication between his drain and their sewer; where two houses are connected with a sewer by one drain and a nuisance arises therefrom, the local authority have power to deal with the nuisance themselves, and charge the expenses as their surveyor may apportion between the respective householders, subject to an appeal to a Court of Summary Jurisdiction. The local authority, if the Act is adopted, has power to make by-laws as to the flushing of water-closets, and as to the drainage, ashpits, cesspools, etc., generally. The by-laws may, of course, only be such as to reason-

ably carry out the provisions of the statute ; and typical ones may be found in those made by the L.C.C. under the London Building Act. The householder, if assured that his drainage system complies with the latest building regulations of the metropolis, which apply to *new* buildings, need have little fear of legal or practical difficulties.

CHAPTER VIII

RENT

THE rent of his house for the householder is not, as it is to a lawyer, a highly technical term, but denotes the sum to be paid to the landlord from time to time; it is, however, in law a "rent service," and even to-day may be a payment in kind and not in money; if the householder be allowed to occupy rent free for some reason, but the tenancy is to be acknowledged, he is said to pay a "peppercorn rent"; if he pays the full value, he pays "rack rent"; if he pays a lump sum for the renewal of a lease, he is said to pay a "fine" therefor. If he occupies a copyhold house, he may be paying a "chief rent" or "quit rent." In practice, however, the householder's rent is a fixed sum payable and recoverable at fixed dates, with the special incident of distress (see as to this chapter IX) attached. Although the rent must be a fixed sum, it may be a varying one to be ascertained on a definite basis, e.g. it may be arranged to decrease or increase during specified periods of the tenancy, or the alteration may depend on a fixed event; for example, it may be arranged to increase or decrease according as the landlord or tenant

spends a definite sum at a definite date for improvements. Sometimes even a so-called penal rent is agreed upon, e.g. that if the tenant lets lodgings instead of occupying the house merely privately, an enhanced amount is payable, and a similar arrangement may subsist for extra payment if the tenancy agreement or lease is broken in any way; but in this last case the landlord must show that he has actually sustained the loss contemplated, and a fancy sum (really by way of punishment to the tenant and not by way of actual compensation to the landlord) cannot be legally recovered.

In any event, the rent must be payable to the landlord (or his representative) and not to a stranger; of course, it will be payable to the landlord's representatives after his death, or to his assigns if he parts with his interest in the house; but the person or persons having the interest are the persons to receive the rent, although, of course, they may be trustees who will have to pay away what is received to the actual beneficiary. The lease or agreement should make it clear when the rent is to be paid, whether in advance or otherwise, or at fixed dates; in any event, the date of the first payment should be specifically arranged; the time for payment is the morning of the prescribed day, but the rent is not technically in arrear until the same midnight. If a formal demand is necessary, it must technically be just before sunset. If nothing is said about the time for payment, rent will not be payable in advance, and in any event, even at the landlord's request, it should not be

paid before the due day, in case some alteration in the tenancy takes place in the meantime. Even in a yearly tenancy, if nothing is said about the time of payment, no part of the rent is payable until the end of the year; but, as already explained, in most cases it is convenient to arrange for payments to be made on the usual quarter-days; if rent is to be payable in advance, it should be clearly stated whether this advance payment is to continue throughout the whole tenancy or only at first.

Another point to be settled is the place of payment; *prima facie* this is at the actual house let, but a decision on a covenant in a lease to pay rent was held to mean that the householder had to pay wherever in England the landlord might be, so that the place of payment may well be mentioned. This is also important in law, if, as is customary, payment is made through the post by cheque, postal order, etc. Legally, of course, a landlord is entitled to cash, and if a tenant uses the post and a remittance is lost, the loss falls on him (the tenant), unless the landlord has given specific instructions for that particular form of payment; a custom to pay by post is not enough to relieve the tenant; still, money sent by registered letter is generally enough. A landlord is also entitled to have payment made to his agent, but in this case the tenant should insist on a written authority, which should state also that the agent's receipt binds the landlord. The receipt should, of course, if for over £2, bear a penny stamp, provided by the recipient and duly cancelled by him. It should also be said that if

a landlord be paid by cheque or bill in lieu of cash, this is only conditional payment (i.e. on its being met in due course) ; his accepting such a document is evidence that he will not enforce cash payment while it is current, and in one case in the absence of express agreement, a landlord who had received a negotiable instrument was still held entitled to distrain ; in fact, a clear written statement in the agreement or lease or subsequent to it is essential, if the householder wishes to run no risks at all when making other than a cash payment. In two cases, however, the rent may not be payable to the landlord direct ; if it is attached by order of the court, it must be paid in accordance with such order, but this only applies to rent already due ; the other case is under the new Law of Distress Amendment Act as to direct payment to a superior landlord (for which see p. 99). Subject to this, the full rent must be paid to the landlord, except in the case of those deductions which may be made by statute, such as Landlord's Property Tax (see at p. 129), and those which the tenant has had to pay on the landlord's behalf to protect himself, such as a sewers rate for which the landlord may be legally liable. The agreement may, however, be for payment of net rent, i.e. clear of all deductions except landlord's property tax, but this is not in the interests of the householder.

The landlord is not bound to distrain for rent in arrear ; he may, unless a distress is proceeding, bring an ordinary action for rent. If the landlord has made a formal demand, claiming interest from that date on

the arrears, this may also be recovered at current rate (probably 4 per cent); on the other hand, rent on an ordinary agreement not under seal can, like other debts, not be recovered after being six years in arrear, unless the debt has been acknowledged in the meantime; the limitation for rent due under a sealed lease is twenty years; however, these statutes do not affect the landlord's powers while the tenancy is actually subsisting. Even if no fixed sum has been arranged for rent so that the landlord cannot distrain, if the tenant is in occupation of a house, not as a trespasser, but by the landlord's permission express or tacit, he is liable to an action for "use and occupation," the amount being the sum which might reasonably have been arranged to be the rent of the premises. This form of action is common when a tenant is let into possession on terms to be arranged and the negotiations fall through. The tenant, when action is brought, is not allowed to deny the landlord's title, or call for his title-deeds to be produced, when once he has recognised the landlord; he may, however, in any event show that the landlord's title has determined. Of course, the tenant is not liable for rent if he has been evicted by his landlord or somebody claiming under him or by so-called title paramount, e.g. by a mortgagee who has become mortgagee of a house before the householder's tenancy. If a tenant gives up possession of premises before the end of his term, he remains liable for the rent, unless the landlord has actually let them in the meantime (there being no formal covenant), and if he

has not in the interval got an equivalent rent, the tenant will be liable for the difference. Of course, the tenant is not liable for any rent that the landlord has actually recovered by means of distress ; it is even possible for a landlord to recover the rent in arrear from the sheriff or bailiff when an execution has been put in on the premises, but this rather concerns the landlord than the householder, as do the provisions for recovering rent when the tenant becomes bankrupt.

CHAPTER IX

DISTRESS

DISTRESS is, in non-legal language, the right of a landlord without the intervention of a court to seize goods on premises let, and to satisfy himself thereout for rent due but unpaid; this right, depending as it does partly on the old "common law" and partly on a variety of intricate statutes, is hedged around by a number of legal difficulties and subtleties. For the ordinary householder, however, it is of twofold importance, as his goods are liable to be seized for rent due not by him in respect of his premises, but by his own or a superior landlord to a superior landlord, while his own landlord may, if he defaults in his rent payment, employ this process against the householder direct.

In respect of the first liability the householder should, of course, assure himself when taking a house that his landlord, if not the freeholder, is a substantial and respectable person or corporation, but should he find that his goods are being seized for rent for which a superior landlord is really liable, the householder can employ a remedy depending now on a statute of the year 1908, of which it may be convenient to give a little detail. So soon as any superior landlord levies or authorises a distress on the householder, he should serve on the dis-

training party a declaration in writing, saying (1) that the immediate tenant (who is the party in default) has no " right of property or beneficial interest in the goods seized or threatened to be seized " ; (2) that the goods in question are his (the householder's) property or in his lawful possession ; and (3) that such goods are not goods or live stock to which the Act is not applicable ; (4) he must state how and when his rent is payable and the amount thereof, and if any such rent is due or in arrear, and that he undertakes to pay to the distraining landlord any rent so due or to become due until the amount for which the distress is levied is satisfied. To this document he must add a correct inventory of the goods mentioned in the declaration, and he should sign and date this declaration and then serve it on the distrainer and the bailiff. It is not necessary to swear or affirm the declaration, but it should commence or end with a statement saying, " I hereby declare that the subjoined (or above) statements are true." If this document is in order and duly served (and possibly legal assistance may be necessary as the Act provides no fixed form), and the landlord continues the distress, the householder has a remedy before a stipendiary magistrate or before justices, i.e. in an ordinary police court, who can order him the restoration of the goods seized. Moreover, in the County Court he can get damages for illegal distress. Of course, in either court the correctness of the declaration may be disputed by the distrainer. The protection of the Act is limited to premises rented at their full annual value,

where the rent is paid at least every quarter ; moreover, it does not apply to goods comprised in a bill of sale, hire purchase agreement or settlement made by the tenant, nor to goods belonging to distrained tenant's husband, wife, or partner, and there are other exceptions but chiefly relating to business premises, and a householder is not protected if he is an underlessee in breach of any covenant or agreement in writing between the superior landlord and his immediate tenant, or against the wish of the superior landlord, expressed in writing. The Act lays down no time within which the declaration must be served, but a declaration once made will not be enough if a second distress is levied, in which event a second declaration and inventory are essential. The superior landlord can even go further, and where the rent due to him direct is in arrear, he may by registered post serve a notice on the householder to pay the rent to him and not to the householder's immediate landlord, until the arrears due have thus been liquidated ; of course, any rent paid to the superior landlord need not be paid a second time, the payment under the Act being deemed payment to the party defaulting (with whom the tenancy has been made) ; moreover, where a superior landlord has distrained on goods belonging to the householder owing to the immediate landlord's default, the tenant has a good cause of action against the defaulting party. Should a distress be threatened or bailiffs appear to distrain on the householder's property for rent for which he is not liable, the

householder is advised immediately to inform all those distraining of his own goods' immunity and to draw up the declaration, and if further steps are taken or the distress is not withdrawn, to apply to the local police court for protection.

The distress may, however, be (and if it is levied it generally is) for rent alleged to be due by the actual householder, but a distraining landlord has to be careful to keep within his strict rights, if the householder is to be subjected to this remedy, as otherwise the householder would have a good cause of action, and the following limitations apply to distress for rent on whomsoever levied. In the first place, an actual tenancy must be subsisting, and at common law no distraint is valid after a tenancy is concluded, and it must be for rent in arrear, i.e. when it is actually due, whether payable in advance or not ; if days of grace are granted by the agreement, no distress may be levied until the last day of grace for payment has expired ; moreover, nobody can distrain (except by special contract) unless he is the landlord who will have the right to the premises when the tenancy or lease is concluded, but the landlord for this purpose may be a mortgagor or mortgagee or even the personal representative of a deceased landlord.

Primarily any class of goods on the premises are distrainable, but the limitations are many ; the ordinary householder may remember that fixtures are not distrainable, nor loose money, nor wearing apparel, nor bedding and tools of trade up to £5 in value ; bedding

includes bedsteads or mattresses, and tools of trade include a sewing-machine or typewriter if used for business, but when at least £5 worth of such protected goods are left immune, the remainder of the class can be seized ; moreover, the householder's trade utensils cannot be taken until all other distrainable goods have been exhausted. By statute also the fittings for gas, water, electric light, etc. with which the suppliers have furnished the premises cannot be distrained, unless these are the householder's own property. Another exemption is that of perishable goods, such as food, and legal books contain lists of exemptions of which the above are most material to the householder, who, it is assumed, does not trade or farm at home. Curiously enough, domestic animals, such as dogs, are liable to seizure.

Unless prevented by contract, a distress can be levied on the day after rent is due (not on the due date, because it might be paid up to midnight) and no previous demand is necessary ; this point the householder must remember, because distress does not need any preliminary legal proceedings ; no distress, however, is legal before sunrise or after sunset, nor on a Sunday (although there is some doubt as to this latter statement) ; again by statute, if a householder remains in possession after his agreement is over, within six calendar months of the termination of the tenancy a distress is valid for rent accrued during the tenancy.

Of course, a distress can only take place on the premises for which rent is claimed, but if the householder

fraudulently or clandestinely removes his goods in order to avoid distress, the landlord has thirty days in which to follow them, and unless they have in the meantime been *bona fide* sold, he can distrain thereon wherever they are found, i.e. if insufficient goods to satisfy the rent have been left; moreover, a householder thus attempting to defraud his landlord is liable to a penalty of double the value of the goods removed, and so is any party assisting; moreover, if the goods are stored and locked away, certain procedure is arranged permitting the landlord to forcibly enter the place of storage to get at the goods.

A tenant should note that no distress is legal except by a landlord himself or a certificated bailiff; a bailiff ought to be furnished with a written warrant, but this is not essential. The distrainer may not break open any outer door in order to enter, nor may he actually open a window for this purpose; a bailiff may, however, enter by a half-open window or skylight, or climb over a wall or hedge from next door.

When the bailiff (or landlord) has once entered and seized (seizure being either actual, i.e. by laying his hand on the article or articles, or constructive, i.e. by not allowing the removal of any article) notice of the distress should be given to the tenant; such notice, however, is not legally necessary, unless the goods are intended to be sold; the notice must be in writing and give full information as to the cause of distress, etc. (the amount of rent due), and must have an inventory

attached of the goods seized. Formerly various formalities connected with impounding and appraisement of the goods were necessary, but nowadays the bailiff merely remains in possession until sale, i.e. if the distress is not previously paid out. The landlord, however, is not bound to sell, and cannot do so until fully five days have elapsed after seizure, and he is allowed to remain in possession a reasonable time beyond these five days to arrange for a proper sale. The householder can also prolong these five days to fifteen if he so requests in writing and gives security for the additional cost. This sale generally takes place on the premises, but the tenant by a request in writing (with an undertaking to bear the cost of removal) can insist on the goods being removed to some public auction room and there sold; curiously enough, there is no necessity for sale by auction at all, although this is rarely dispensed with, as the seller is responsible for obtaining the best market price. The sale must be a *bona fide* one, and the landlord cannot directly or indirectly buy the goods himself; any surplus of the sale after the amount distrained for with all cost has been satisfied, is to be returned to the tenant (although in strict law it must first pass through the sheriff's hands). There is a fixed scale of expenses, which varies according as the rent due exceeds or does not exceed £20; the bailiff distraining must produce this scale to the householder, if requested, and it can also be seen in the office of the registrar of the local County Court.

It is now clear that full possession money cannot be charged for so-called " walking possession " by a bailiff, i.e. if the bailiff or his agent does not remain in actual possession on the premises, but merely returns and looks in from time to time.

A landlord cannot, as a rule, distrain more than once for the same rent, but he can do so if the first levy was insufficient and more goods have been brought on to the premises, or if there has been a *bona fide* mistake as to value, or the tenant has interfered with the proper realisation of the levy. Of course, the tenant can at any time stop the progress of a distress by tendering to the bailiff or the landlord the full rent due with all expenses ; the tender, however, must be unconditional, and (unless the landlord agrees) must be in cash or bank-notes.

At every stage of the distress a landlord or bailiff incurs risks of offending against legal technicalities, but a tenant will need assistance to get a legal remedy for such proceedings, unless in the metropolis, where a police court has jurisdiction where the tenancy is weekly or monthly or the rent is under £15 ; in any district, however, a tenant can apply to a magistrate or justices if £5 worth of tools or wearing apparel have not been left immune.

But a householder is not only liable to distress for rent, but also to distress for unpaid rates and taxes ; but here, except in the case of assessed taxes, a formal demand is necessary, and the warrant is granted after summons

before the local justices; on the other hand, all the householder's property is liable to be seized on this account, and in default of sufficient distress the householder may be committed to gaol; this same rule applies if by any chance the householder has been summoned before a police court and he fails to pay a fine imposed; in some cases, however, if he has only been summoned for a civil liability, he cannot be imprisoned in default of distress unless it be shown that he can pay and will not. In any event, whenever a police court makes an order, a constable will distrain unless the order and costs are duly paid.

CHAPTER X

RATING AND RATES

PRIMA FACIE occupation of premises creates a liability for the payment of rates, and the ratepayer (if otherwise qualified) has, as a rule, the privilege and duties of citizenship, such as voting and serving on juries. Historically this depends on a statute passed in the reign of Queen Elizabeth, which is the foundation of our poor law, rating for the relief of the poor being the basis of our existing system.

The liability for rates, which generally amount to about one-third of the rent and have been known to reach one-half, is a serious consideration in taking a house; as between the landlord and tenant, the landlord may, of course, contract to pay the rates, in which case the tenant should have an agreement that he may deduct all sums by way of rates for which he is personally liable to the authorities from his rent, either regularly, or when the landlord makes default in payment. As the word "rate" has a technical meaning, any agreement of this kind should be specific as to various outgoings, which may be intended to be covered, but which are not included in the actual word "rates." (See as to this point at covenants in leases at p. 29.)

The owner, however, in any event must by law submit to have deducted from the rent any poor rate for which the tenant is legally liable in the case of a house of any value let for a term not exceeding three months ; moreover, in the case of houses not exceeding in rateable value £20 in London, £13 in Liverpool, £10 in Manchester and Birmingham, and £8 elsewhere, the owner may either come to an agreement with the overseers or other authorities to pay rates, or possibly the authorities may make an order for the owners of all such houses in their district to be liable for rates, so as to relieve the small tenant householder of his burden, and the householder of a small house may well inquire if some such scheme (which, however, is rare) has been adopted ; the owners in these cases, if they pay punctually, receive a commission or abatement, and if the occupier is subjected to the rate, he is entitled to deduct same from his rent. Further, under the law relating to public health, where general district rates (as distinguished from poor rates) are to be levied on the occupier, the urban authority making the levy may rate the owner in lieu of the occupier where the rateable value of the premises does not exceed £10, or where the premises so liable are let to weekly or monthly tenants, or where the premises are let as separate apartments, or the rents are collected more often than quarterly ; these provisions, of course, refer to the " general district rate " only, and not to the poor rates, but if a " private improvement rate " is levied, the tenant householder may

deduct from the rent he pays his landlord three-quarters of that rate, assuming he is rack rented, or three-quarters of the proportion of the actual to the rack rent. Rack rent, it should be stated, is the full annual value of a house or tenement. Highway rates may form a part of the urban general district rate, but the provisions of this Act (i.e. the Public Health Act) do not alter or affect any lease or agreement between the landlord and tenant, while the rural rates (if any) under the statute are assimilated as to levy etc. to the ordinary poor rate.

As a rule the householder, whether he owns or rents the premises, is the occupier ; if, however, he leave the house quite vacant, he is not rateable ; he is liable, however, so long as he keeps it furnished and ready for habitation, although he does not reside in it a single day, and even if he never intends to occupy it, but keeps it ready to be let furnished ; even if the householder regularly leaves the house unoccupied for a season or part of a year, he is liable, so long as he shows signs of returning, as by leaving fixtures and not having the water cut off (although this might be an element in its rateable value). The householder is also rateable for the whole of his house, even though in practice he does not use some part of it, or some rooms, but he is exempted as occupier for the rate of a separate tenement, which he may let out by way of a flat or as a shop, etc. Possibly, even if he does not sublet, he may escape liability for some definite part, if he shuts it up and puts up some door or separate structural device. If the tenant

of a house during the part of his term empties his house and merely leaves a caretaker in charge, he should not be held liable during such period; but he is undoubtedly liable while he leaves a substantial part of his furniture on the premises.

Sometimes it may be that the householder escapes personal liability, because he occupies his house in the performance of his duty as a servant, i.e. if he is really the caretaker of premises for an employer, and in respect thereof receives lodging accommodation for himself (and for his family) in a part of a block of buildings. But a schoolmaster, who occupies a whole house in virtue of his position, has been held personally rateable; in nearly all these cases, however, the employer in practice pays the rates; it is a theoretical question as between the parties and authorities, and the liability should be a definite part of the agreement of employment.

A lodger is, of course, not an occupier, but the line between a lodger and tenant is often extremely fine, and depends to a large extent on the power of the party letting to dispossess the other party when he pleases (at the risk of an action for damages) without liability for trespass. The occupier of a flat is naturally *prima facie* liable, and for the purpose of rating a man may find himself a householder without any actual structural severance from his neighbours, but every householder in the popular sense is clearly an occupier legally for rateable purposes, and when a house is split up in prac-

tice into two or more parts, each tenant using a definite part of the building independently (although some part may be used in common), each tenant would (in the absence of agreement) be liable for rates unless it could be shown that the landlord or his representative lived on the premises and so retained control.

Of course, the tenant in this way of a part of a building is not liable if the whole building is actually rated under one entry as an indivisible unit in the official rate book, as in the case of so many blocks of buildings let in tenements or flats.

Furthermore, if the householder is actually in occupation, the title by which he occupies is immaterial, but the title may be a material element in considering whether he is in occupation, and of how large an area; and for this purpose the terms of his tenancy agreement, whether written or oral, may be considered. Where there is a change of occupation in the middle of a rating period, the outgoing occupier is only liable for so much of the rate as is proportionate to the time of his occupation, whether he is succeeded or not by an incoming tenant, with or without an interval between the two occupations. Although, as a rule, there must be a demand for the exact amount of the rate, where the whole rate has been demanded and the outgoing tenant has not paid anything before leaving, the justices when enforcing the demand have at once power to apportion the amount for which the occupier is being summoned, and no amended demand is then necessary; the tenant

who for the purpose of getting the rate reduced attends before the overseers or justices must give proof of the exact period of his occupancy. Similarly, when a new occupier enters, the date of such occupation, etc., is to be entered in the rate book, and from such date the new occupant is held liable for the proportionate part of the full period's rate. There is also a similar power to assess a new house occupied in the middle of a period if the house was incomplete at the time of the making up of the valuation list. The period in each case begins on the day that the rate is actually allowed by the justices (not necessarily on a quarter-day).

A householder must similarly be careful, if he occupies more than one "tenement" that can be rated separately, to have them so described in the rate book, so that in the event of his ceasing to occupy part of the place rented, he also ceases to be liable for the rate of the unoccupied part.

Although there are several classes of property which are wholly or partially exempt from rateable liability, these exemptions do not concern the ordinary householder, as they practically all deal with public or semi-public property or with agricultural land. The householder, however, if through poverty he (or she) is unable to pay the rate, is entitled to appear before two justices and ask them with the consent of the overseers or other parish officials to excuse the payment of the rate; the justices, if satisfied with the proof of inability to pay, may order the applicant's name to be

struck out of the list of persons liable, and the result of this order does not create any liability in respect of the premises so occupied in the case of the landlord or any other party.

A house is rated on its *rateable* or *net annual* value, which is defined by statute to be the rent at which the premises might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes and tithe commutation rent charge (if any) and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain them in a state to command such rent ; the gross annual value includes the rates, taxes, etc., but excludes the repairs and other expenses, or as the statutory definition puts it (for the metropolis), the annual rent which a tenant might reasonably be expected to pay, taking one year with another, if the tenant undertook to pay all the usual tenant's rates and taxes, and if the landlord undertook to bear the cost of repairs, insurance, and the other expenses. The result is that whether the premises are occupied by the landlord or let on any conditions, the house for rating purposes is considered to be let to a hypothetical tenant who pays in accordance with the terms of the statute, whatever be the value of the house to the actual occupier for the time being. The rent actually paid is, of course, considerable evidence of the rateable value, but is not conclusive by any means ; the house may have appreciated or deteriorated in value since the agreement was made, or

the neighbourhood may have so changed its character as to affect the proper measure of rent payable; again, the rent may be high or low, according as the occupier had special inducements to take the house, or because, owing to relationship or other similar reasons, the rent was fixed at a lower figure than really necessary. In fact, although the rent payable is the starting point for value, the actual figure is rather a question for expert surveyors and valuers, who are familiar with the principles of assessment, and with the conditions of the parish where the house is situated, and who can recognise whether a tenant has perhaps himself improved the property, or has paid too much for a lease. In rare cases, or in the case of business premises, the tenant's books may be a source of evidence (though not a very strong one) of value.

Moreover, the house must be valued as it exists at the time of the making of the rate, the probability of its future increase in value being disregarded, as well as the fact that the tenant, by his own action, might or might not increase the amount of its rateability; in this connection it must be noted that the rateable value is that which is brought about by a yearly tenancy, and not that which might arise if the house were let for a short period or for a lengthy term of years, but there is no rule that the tenancy must be considered in danger of being determined at the end of the year, as the yearly hypothetical tenancy is one which may reasonably be considered to be likely to continue. And although,

as a rule, the householder does not make a profit from his tenancy, yet if (not in the case of the particular householder) the hypothetical tenant might well make a profit, either by subletting, or owing to the special advantages of the position of the house (e.g. if at or near a place of popular resort), the profit likely thus to accrue is an element in estimating the annual value.

Sometimes where no yearly rent is payable, interest on the cost of the building is a criterion adopted by valuers, 5 per cent being allowed on the outlay for structure, but so rough a test should not be adopted, when other methods are available, especially as the actual outlay may be very different from the capital value of the building for a hypothetical tenant, and the question of outgoings greatly complicates this calculation.

As to the expenditure to be deducted from gross to fix the net rateable value, the probable annual average must be allowed, as distinct from the expenditure in any one year, and this annual average may include a hypothetical sinking fund for renewals, etc.; the insurance (for the building only) is practically a fixed amount, but the cost of substantial repairs may often have to be spread over more than one year. In the metropolis a maximum deduction from gross to net is fixed by statute and is practically allowed regularly, viz. one-fourth where the gross value is under £20, one-fifth where this is between £20 and £40, and one-sixth over £40, and a deduction of one-sixth for this purpose may be generally assumed all over the country,

although assessment committees occasionally show a tendency to object to the maximum deduction ; in any event, a householder going before them should press for the full abatement.

The actual practice as to valuation varies according as to whether it is in the metropolis, in a few places dealt with under local statutes (including parts of Manchester and Birmingham), and elsewhere.

In the country generally the overseers or assistant overseers or the rural parish council make out a valuation list for the parish ; the actual work being generally performed by paid officials, termed assistant overseers, while the body to revise the list is termed the assessment committee, which is composed of between six and twelve members of the guardians of every union, and the clerk of the union also acts as clerk of the committee ; there is no fixed period for making new or supplementary valuation lists, but these are ordered to be made from time to time by the assessment committee, either on their own discretion or on the application of persons aggrieved. The expenses of making the list are generally charged on the poor rate, whether the list be quite new or supplemental ; all houses occupied or unoccupied are included therein ; the list signed by the overseers is deposited with the rate books, and public notice is given of the deposit on the following Sunday by being attached on the doors of the churches of the parish ; the actual list may be inspected by any inhabitant on payment of a shilling ; and any person aggrieved at an entry or

omission in the list has twenty-eight days from the date of the deposit to give notice of any objection to the assessment committee ; the notice must be in writing, and must also be given to any person the valuation of whose property is objected to, by a party aggrieved, as well as to the overseers ; no special form is provided for the notice, and it is suggested that, if the person giving the notice intends to take actual legal proceedings to enforce it, the notice should be drawn by a lawyer ; otherwise a statement should be addressed to the particular assessment committee, and to the overseers, stating that the objector as occupier of a house in the parish gives notice of objection to the assessment in the valuation list on the grounds set forth, such as that the rateable value is excessive or that the deductions from the gross value are insufficient, or that the house is not in the rating parish ; in any event, every possible objection should be set out. If this notice is given by post, an acknowledgment (by stamped envelope enclosed) should be obtained.

The assessment committee must sit to hear the objections, and must give, by publication on the church doors, twenty-eight days' notice of their sitting, unless the meeting is merely an adjourned one ; no notice of the sitting other than the public one need be given to the parties individually, although in practice this is frequently done in addition. The committee may not entertain any objection of which due notice has not been given, unless all parties waive this point. The objector

may appear personally, or by a lawyer, or by an agent who has written authority to represent the objector. The committee cannot swear any witness or award costs, and cannot insist on any evidence being produced, but the householder who wishes to have an objection entertained naturally produces his lease or agreement, and otherwise by evidence oral or written seeks to substantiate his point; in practice, if the householder is prepared to meet a small expense, though not regular legal costs, he should engage a local surveyor to accompany him to the meeting, especially a surveyor with plenty of rating experience, who will also assist in drafting the proper notice. The assessment committee, when the list is submitted to it, may, whether objections are raised or not, make any alteration in the list on such information as seems sufficient, and can even employ its own valuer for this purpose; sometimes a valuer asks leave to enter the householder's premises and survey them, but he has no legal power to enforce such an inspection. The committee having heard and decided all objections at its various meetings and having made all alterations requisite, has the amended list signed by three members, and causes the list to be redeposited and fresh notice thereof to be given in the regular way, unless no alteration has been made; again, between a week and a fortnight from the deposit, a meeting of the committee, of which notice has been given, must be held to consider objections to the amended list. But in any event, even when the list has been finally approved, a

ratepayer may still within a reasonable time give notice of objection after a rate has been made; the objection must be heard so that the ratepayer can appeal, if necessary, against the rate; the list finally approved is open to inspection, and is (subject to appeal) the basis on which the rate is levied on the individual householder, and this list remains in force until the committee decides on having a new or supplemental one; this is generally done when further property becomes rateable or existing property becomes substantially altered in value; if the householder finds himself damnified by no supplemental list being issued, he should apply as a person aggrieved to the assessment committee.

If the householder wishes, he can appeal against the determination of the assessment committee to Special or Quarter Sessions, but to do this successfully he must have legal aid, and no householder should go beyond the committee without consulting a solicitor and determining what liability he will be prepared to incur for costs; in any event he should lose no time in taking advice, as otherwise he may find that the Sessions to which he should have appealed are over before the necessary steps are taken; moreover, the householder should remember that an appeal may be carried by the assessment committee to the higher tribunals by means of the ratepayers' money, while he may be liable to give security for costs personally, so that generally in case of agreements, as distinct from long leases, the burden of appeals falls on a landlord rather than on a tenant house-

holder, who may have a cheaper remedy by quitting the premises. Moreover, besides the appeal against the actual valuation, appeals may be against the rate, various formalities for the making and allowing of which must be observed, and the rate has to be published within fourteen days of its being made.

In the metropolis, however, by statute a quinquennial valuation (i.e. every five years, 1910, 1915, etc.) has to be made. If necessary, a supplemental list is to be made in each of the four intervening years, showing the necessary alterations in the year, and a provisional list is to be made in the course of the year, if premises have increased or been reduced in value. In London also the Borough Council act as overseers (by their agents), and the assessment committee is appointed not by the guardians, but by the Borough Council. Special provisions also cause the owner in some instances to be entered in the rate book, so as to give him the right to appeal. The year in London for rating purposes begins on April 6th, and all unoccupied houses capable of being rated are entered in the rate book; the surveyor of taxes is here also entitled to enter objections. The owner or occupier may have to furnish a return giving details as to rent, etc., from which the overseers and committee may deduce their valuation; notice of objection must be given, within twenty-five days of the actual deposit, by an owner or occupier, while the overseers or surveyor of taxes can give notice seven days before the meeting; the assessment committee should

revise the list before October 1st, and as a rule notice of the exact date is given to the individual householder. The valuation list is specially important in London, as the income tax assessment for houses depends thereon for schedules A and B. For insertion in the supplemental lists there must be an alteration in value (not merely temporary) due to any cause (of which a structural alteration may be one) that does not affect a rise in all the houses generally, but the particular house or class of houses, and the alteration must have taken place in the previous twelve months ; if a provisional list shows that an excess of value has been paid in for the previous year, that excess can be reclaimed ; the deductions for repairs in London (from gross to net value) have been already mentioned.

In London and elsewhere after due publication, etc., of the rate, there must be a demand thereof on the part of the overseers, and generally a printed demand note is served by hand ; the demand must not be in excess of the exact amount, but a demand note for too little does not prevent the issue of a further demand note for the due balance. And if, after seven days, payment is not made in accordance with the demand, the overseers may apply to the justices at petty sessions ; the summons may either be personally served or left at the occupier's last known place of abode. If the occupier does not appear to the summons, the justices can proceed in his absence.

It is impossible except in a technical work to set out

in which case it is better to appeal and in which case justices are entitled to consider objections to enforcing the rate; as before mentioned, an appeal cannot be successfully handled without legal assistance, but a householder, although he knows that a justice or magistrate when dealing with a summons for rates acts ministerially, may allege that he is not in occupation of the premises rated in the parish, or that the whole rate is a nullity and made without jurisdiction. It is on this principle (of justices acting ministerially and not judicially) that the justices cannot hear the usual objections made by "passive resisters," but they are not bound to issue their distress warrant for the whole of a rate, if part is tendered to the court, although they may do so; on the other hand, they cannot delay process because of the poverty of the applicant. In fact, so long as the overseers have not acted in excess of their jurisdiction, as distinct from an erroneous exercise thereof, the justices, on demand by the overseers, are bound to issue their warrant; they are, however, entitled to see in the rate book that the formalities connected with the making thereof have been duly observed, and that it is good on the face of it.

An appeal lies against the distress warrant, but not until the levy has been made; while the fact that the householder has an appeal pending against the rate entitles him to have the issue of the warrant postponed until the appeal has been disposed of.

The distress warrant generally goes not only for the

rate, but for the overseers' costs and for the actual cost of the levy.

The actual distress differs from that of the landlord for rent (as to which see p. 104) in that only the defaulting householder's goods can be seized, but the other exemptions of special goods do not apply ; moreover, in default of sufficient distress, the householder may be immediately committed to prison up to three months, or until the amount due for rates, costs, and levy is paid ; even a married woman ratepayer with a separate estate is liable to a committal if the distress be not satisfied, and if there are goods outside but insufficient within the justices' jurisdiction, these further goods can be seized when the warrant has been "backed."

Of course, if the overseers make a rate payable by instalments, as they are entitled to do, each instalment is separately enforceable when due, and only instalments in arrear can be collected by distress.

Although these provisions apply primarily to the actual poor rate, the overseers, in estimating the total amount of rate necessary, have to provide for many purposes besides poor relief, such as the county rate (including now the education rate), police rate, possibly public library rate, if the Act has been adopted in the district, as well as rates under the Public Health Act, which have been already mentioned. Highway rates, for instance, can be recovered just like the poor rate by the body acting as surveyors of highways ; there are no doubt small distinctions in the various statutes,

e.g. that public health rates made by an Urban Authority can be enforced by summons only fourteen days after demand, and distress cannot be levied until after an order for payment has been made.

Again, the sewers rate is rather in the nature of a landlord's than a tenant's liability, and in default of agreement should be borne by the landlord, especially as it is not an annual rate, and a tenant called upon to pay should deduct the amount from the next payment of rent; the so-called water rate is really a civil debt payable by the tenant, unless it forms part of the demand of a public authority under the Public Health Act (but as between landlord and tenant generally, see covenants generally at p. 29). In some few districts a liability may still be on the occupier for "lighting and watching rates," but the watching is generally superseded by the police rate, and the Public Health Act rate generally includes provisions for parochial lighting. In London a "general rate" includes practically every rating liability, but outside these, watching rates are as a rule separately collected.

If a borough fund is insufficient to pay the various borough expenses (especially the legal ones), the overseers may be directed to levy a rate to cover the deficiency, on the same principles as the poor rate; this borough rate is made retrospectively; it may in certain cases cover the police expenses. The county, similarly, now levies a rate by its county council, which may have an assessment of its own, but generally abides by the

poor rate assessment; the county rate may be equally for the whole county or a special sum may be raised from those parishes to which the rate is especially devoted; the district rates may be similarly apportioned in collection and employment, and private improvement rates, when levied, are generally connected with the district rate.

Since the year 1868 by statute there is no longer any power to legally enforce payment of a church rate, although it may legally be made and may be paid voluntarily either by an occupier or owner; it is, however, important to note that the Act expressly allows the legal enforcement of church rates to repay money borrowed before the statute on the security of such rates, as well as rates made upon a contract or "for good or any valuable consideration given"; the learning as to these rates is outside the scope of this book, but a householder may conceivably, unless he has protected himself by inquiry or agreement before occupation, find himself liable to pay a rate, which is primarily for the repair and upkeep of his parish church. To sum up, the legal position as to rating is highly technical, and while the householder should experience no practical difficulty in appearing before an assessment committee (who are, as a rule, business men and not lawyers) and trying to get a reduction of his assessment, other legal steps are highly inadvisable unless the householder happens to be the holder of a long lease, or is supported in proceedings by his ground landlord or by a body of ratepayers acting in conjunction, and sharing the liability for costs.

CHAPTER XI

TAXES

BESIDES paying rates, the householder has to consider his liability, as householder, for three sets of taxes.

(A) House tax (inhabited house duty). This is collected by the Inland Revenue officials at the following rates :—

Houses of the annual value of between £20 and £40, 3d. in the £1.

Houses of the annual value of between £40 and £60, 6d. in the £1.

Houses of the annual value exceeding £60, 9d. in the £1.

Houses of below £20 in annual value are exempt, and a lower scale applies to farmhouses, inns, and houses partly occupied by tenants for dwelling and partly for carrying on the business of shopkeepers ; persons keeping a house mainly for letting lodgings can also have the rate reduced by getting their names registered in the books of the clerk to the General Commissioners, before October 1st, and applying for the lower rate by November. The lower rate is 2d., 4d., 6d. in the £1, in lieu of the 3d., 6d., and 9d. mentioned above. This tax is not payable on a house used for trade only, nor where

a house is merely inhabited by a caretaker ; it is payable by the landlord where the house is let in stories, tenements, lodgings, or landings, and is inhabited by two or more persons or families, although the tax may be collected from the occupier primarily, if a landlord in such a case lives out of the district ; of course, such occupier may deduct an enforced payment from his rent. The landlord is in such case not liable for any tenements which are unoccupied, or used exclusively for business purposes. But except in the case of tenements, etc., the tax is payable by the tenant, unless the landlord has specially agreed to recoup him.

The tax is only payable if the house is inhabited, i.e. if any one sleeps there other than a mere caretaker (and possibly his family), or if the house is kept ready for occupation at any moment. Houses used exclusively for business purposes are exempt, but there must be a structural severance between business premises and a dwelling-house used in connection. When a person comes into occupation, he should give notice if the tax has not already been paid for the year. By giving notice when leaving before the expiration of the current year, the householder will save the expenses of any complete quarter in which there is no occupation.

In London the assessable value of a house is the gross annual value in the poor rate list, but outside London the Commissioners are not bound by this valuation and can make one of their own, but in practice it does not work out very differently, except that the

basis is gross and not net annual value, and that gardens, stables, etc., are generally included in the assessment. There is, however, the usual right of appeal against the assessment, and the usual remedy by distress if the tax is not duly paid.

(B) Land tax. Unless this tax has been redeemed in the case of the particular parish or particular property (a point of inquiry for every would-be householder), every householder is liable to be called upon to pay this tax, which may not exceed 1s. in the £1, but can hardly ever be less than 1d. in the £1. The amount payable by each parish has become legally stereotyped, and the only question arises as to its incidence among the different owners of real property therein. The annual value on which this tax is based is that fixed for the purpose of schedule A under the income tax assessment, unless under some special circumstances it may be based on the poor rate assessment ; in any event the difference will not be very material.

A few exemptions exist from this tax in particular places, the most important exemption other than local being where the person ultimately chargeable can show a total exemption from income tax (the income being under £160).

The assessment and collection of the tax is by the Land Commissioners, with appeals to the District Commissioners, whose decision, however, is final. In default of payment the Crown can either sue or proceed as with other taxes to recover what is due by distraint. The

assessment for each year is made on March 25th, and the amount payable is due on or before each New Year's Day. Demand for the tax is made by the collectors on the householder or tenant, but *prima facie* the householder is entitled to deduct any sum so paid from his current rent, and the landlord will thus ultimately have to pay in default of agreement. In many agreements, however, the tenant covenants to pay the land tax or rates and taxes, or other apt words, such as "all outgoings," are used to make the tenant bear the whole or part of the tax, and the law does not interfere with any such agreement.

The address of the General and District Commissioners can always be ascertained from the local surveyor of taxes.

It may be added that the householder, if rack rented in the ordinary way, cannot arrange to redeem the tax, but he may, of course, do so by certain intricate procedure, if he be himself the freeholder or long leaseholder; also that this tax is not applicable to Ireland.

(C) Income tax under schedule B. This is a tax levied on an occupier, but will not be further mentioned here, as all dwelling-houses other than farmhouses are exempt.

(D) Income tax under schedule A. (Landlord's property tax.) The rate of this tax is, of course, fixed in the annual Budget, and it is levied in the metropolis on the gross annual value shown in the valuation list made for rating purposes; outside London this list is not

conclusive, and a separate assessment may be made of the rack rent of the houses, that actually agreed upon within seven years of the valuation being generally adopted, one-sixth also being generally allowed by way of deduction for repairs; the exemptions and abatements, etc., for small incomes are also those set out in the annual finance bill, but the details as to assessment, appeal, etc., hardly fall within the scope of this book. For the householder who is not his own landlord, the important point to remember is that this tax is to fall ultimately on the landlord, and that any agreement to the contrary is *absolutely* void; the tenant is the party from whom the income tax collector demands the money in the first instance, unless the house is one let in tenements or apartments, or is under £10 in annual value, or if the landlord has requested the Commissioners to assess him in lieu of the occupier. But even in this last case the assessment is without prejudice to or interference with the right to distrain on the tenant; distraint may always take place within a reasonable time after demand of payment by way of a formal demand note, and in default of sufficient distress the defaulter may be committed to prison; the collector, if he prefers, may in lieu of distress proceed to sue for amount claimed. The Commissioners should, if necessary, be asked to make an allowance for the time a house has been unoccupied and no rent has then been payable, and to apportion liability between incoming and outgoing householders.

The tenant, being entitled legally to be recouped the sum paid, should deduct it from the next payment of rent due, and the landlord who refuses to allow the deduction is liable to be proceeded against for penalties ; the sums actually paid over by the tenant are considered, in law, payments on account of rent, in spite of any agreement to pay the rent without deduction, although an agreement has been held good to pay rent in full in consideration of the landlord's undertaking to repay all sums thus expended. Of course, no amount may be deducted that has not actually been paid out by the tenant, and it is to be deducted from the rent payable on the next occasion after it has been demanded. The collector receiving the money is bound to give a receipt gratuitously.

This tax is payable on or before January 1st in the year of charge.

Any intermediate landlord who receives rent with this deduction is entitled to make a similar deduction on paying his own rent to his superior landlord.

CHAPTER XII

FIXTURES

ALTHOUGH legally fixtures have several technical meanings, for the householder they denote those articles which, while not the actual fabric of his dwelling, are yet more or less closely secured thereto by some form of artificial attachment, and for practical purposes they should be divided into tenant's fixtures, landlord's fixtures, and such fixtures as, although put in by a tenant, are yet not removable by him, and it is this last class that may cause difficulty.

As regard's landlord's fixtures, which either are, or are arranged to be in the house at the beginning of the term, these are generally specified in some form of list or schedule, and the tenant should assure himself that these are in good order, and if they become troublesome, which party (if either) is to be liable for the necessary expenditure ; such articles as electric wiring and fuses, gas-pipes, water-pipes and fittings (taps, stop-cocks, etc.), flues, stoves, door-keys, window fastenings, etc., should all be tested to see that they work satisfactorily, and the tenant must assure himself how far they are within his or his landlord's repairing covenant. Perhaps, for the householder's comfort, nothing is more important

than a good cooking-range ; while as regards his health, the sanitary fittings are, of course, a prime consideration, especially in a short agreement. With long leases the tenant generally takes the house as it stands, subject to any special covenant, and knows that he will sooner or later have to incur expenditure in connection with fixtures ; but he wishes the subject of this expenditure, if possible, to be transferable to any other house he may take, and many legal contests are reported, from which it is difficult to extract any reliable test as to what may and may not afterwards be removed, but it may be said that nowadays the courts on these points hesitate to deprive a tenant of his out-of-pockets in connection with articles he has put up, especially by way of ornament. Substantial parts of a building such as a conservatory erected on a brick foundation affixed to and communicating with rooms in a dwelling-house, or a verandah, or a communicating door must remain when a tenant leaves, but he can take away a door that can simply be lifted from its hinges, or a pump not very firmly attached to the freehold. Of course, the tenant may remove such things as marble chimney-pieces, pier-glasses, hangings, tapestry, a wainscot fixed only by screws, window-blinds, grates, ranges, stoves, coppers, iron ovens, cornices, shelves, sinks, cisterns, etc., which he has *himself purchased or caused to be erected*, but it must be remembered that even these articles may be so substantially attached as to become irremovable, if the detachment would inflict a serious injury to the

fabric, and one which could not be remedied by some small repairs; as a rule, what is affixed by way of ornament by nails or screws is easily detachable, but when it is necessary to break down or break open a wall, etc., the article must be left for the benefit of the landlord; locks and keys are practically invariably considered to belong to the landlord.

Again, agricultural fixtures are not removable by a tenant unless (by a series of statutes) they are for the purpose of trade; hence the ordinary householder who plants shrubs, trees, flowers, etc., in his garden is not, in the absence of special agreement, entitled to uproot them and carry them away at the expiration of his tenancy; assuming, however, that a garden is worked for purposes of profit and its produce is sold, or if fixtures are put up for trade purposes such as an engineering plant or washhouse apparatus, the householder is fairly safe in regarding his rights in such fixtures as immune from his landlord's seizure, as, in any event, fixtures of all classes, landlord's, tenant's, agricultural or other, are not liable to be distrained upon, although they may be seized and sold by the sheriff under an execution against the goods of the tenant.

The courts also have a second test in deciding whether a fixture is movable by a tenant, namely, whether it is for the permanent and substantial improvement of and enjoyment of the house or for the more complete enjoyment and use thereof as a chattel; tapestry, for instance, would naturally be nailed, or otherwise at-

tached to a wall, if it is to be properly seen, whereas a cupboard can generally be of equal utility if without any form of attachment. But so many articles are just on the border line that a prudent tenant, before any such expenditure, gets a statement from his landlord that the article attached shall be either removable by the tenant or shall be purchased by the landlord at a valuation at the expiration of the tenancy, or by an incoming tenant. In fact, there is a well-known practice for one tenant to take over his predecessor's fixtures at a valuation, and in parts of the country this practice would be incorporated as a customary term into any agreement that contains no stipulation to the contrary. An incoming tenant, however, on such valuation, should assure himself that he is paying for what his predecessor has a right to sell, and not what really in law belongs to the landlord, and especially that he (the predecessor) has not agreed with his landlord to leave the premises "with all fixtures and improvements" in good condition.

Another important point for the outgoing tenant to remember, is to remove all the fixtures and fittings to which he is entitled before he gives up possession of the premises; even if he remain in possession after his term without the landlord's consent tacit or express, legally his right (to remove fixtures), otherwise justifiable, may be extinguished; similarly if he is ejected after forfeiture or after bankruptcy, or after surrender of his interest. A useful point in drawing an agreement or lease for a householder is to insert a covenant that he

shall be permitted to enter the premises a reasonable period after the expiration of his term for the purpose of removing fixtures ; but, of course, such an agreement will not allow the outgoing party to enter the premises after they have been let to a new tenant, and it is probably safer to move all fixtures before leaving a house, unless the landlord will agree to pay for them at a valuation, if they are not sold to an incoming tenant or handed over within a reasonable time after the quitting possession.

When a house is sold, all fixtures pass by virtue of the sale, unless a contrary stipulation is accepted, and the same rule applies to a mortgage of premises, which, however, will not necessarily apply to the fixtures of a mortgagor's tenant.

The householder, of course, when removing fixtures, must remember that he is liable to make good any damage caused in so doing, and if he has taken down a fixture in the house at the time of entry and substituted his own, the original one must be replaced in substitution for the householder's article ; but on all these points as a rule no difficulty arises in coming to an amicable arrangement, especially if the whole question of fixtures is clearly settled in the tenancy agreement or lease, and as between landlord and tenant there is no difficulty in rebutting on this head any legal presumption that might otherwise arise, whereas difficult points arise as between testator and devisee and legatee and trustee, etc., which will not be touched upon here.

It should be added that it is a criminal offence for a tenant to steal or maliciously to pull down and sever any fixture in a house let to him or in which he is lodging.

CHAPTER XIII

NUISANCE

A NUISANCE in law is almost as difficult to define as a nuisance in the popular sense, comprehending as it does an enormous variety of infractions of legal rights, which are of importance to the householder not only for his own protection, but for the avoidance of causing injuries to others with legal consequences attaching. If a tenant has signed a lease, it probably contains a covenant against nuisance (if not nuisance, injury, or annoyance), and the landlord can take steps to stop it, if it is of a permanent character ; and if the tenant has so covenanted, although he has not agreed to use his house as a private dwelling-house only, the landlord can interfere with the premises being used in a way (such as by turning them into a nursing home) which in a street of the kind will affect the amenities of his neighbouring tenants.

Nuisances are also divided into public and private, a public one being that which interferes with the convenience of the public generally, such as obstructing a highway or erecting an offensive class of factory ; but in these cases a considerable body of persons, or a public authority such as the Attorney-General, generally takes

action, and specifically legal advice cannot be dispensed with.

The householder is chiefly interested in those nuisances where the remedy lies in a police court; examples are where premises are a nuisance in a popular sense, i.e. injurious to health, keeping animals, especially pigs, so as to be injurious to health or a nuisance; having any deposits or accumulations which are similarly injurious; having any fireplace (except an ordinary domestic one) which does not so far as practicable consume its own smoke, or having any chimney, except in a private dwelling-house, which sends out black smoke; overcrowding any dwelling-house; carrying on offensive trades in any urban district without the license of the urban authority (such as tripe-boiling or tallow-melting), and nuisances connected with drainage and water supply (as to which see pp. 87 and 76 respectively).

As to all such nuisances the local authority, such as a borough council, is the householder's best friend; all local authorities are bound to appoint an inspector of nuisances, and his assistance can easily be invoked and is generally gladly given; when a local authority is satisfied that a nuisance exists, it is its duty to take steps to "abate it" (i.e. get rid of it), firstly, by serving a notice to that effect on the owner or occupier, and in default of abatement proceeding before the local police court.

There is no legal reason why an inhabitant should not give information himself to the court and take

proceedings ; but this is not advisable, unless he is proceeding himself against the local authority, which has such duties cast upon it as removing house refuse ; in London this duty is by statute, and in other parts of the country by order of the Local Government Board, cast upon the local authority, or if the Board has not made the order, the authority may have contracted to undertake this work ; in such case, if the dustman or scavenger fails to remove the refuse at reasonable times and intervals, the remedy is by taking out a summons before the magistrate or justices. In London, at any rate, a dustman demanding money for this purpose is liable to a penalty. The same rule applies to the cleaning of the streets and footways, and assuming that snow is not duly swept and removed from before his house, the householder has his remedy ; in such case he is advised, except in a case of urgency, to write to the Local Government Board, who generally hasten to apply pressure on any defaulting borough council.

With respect to infectious diseases also the householder must not fail to notify the district medical officer of health, if any inmate of his house is suffering from any notifiable illness, the chief of which are smallpox, cholera, diphtheria, erysipelas, scarlet fever, scarlatina, typhus, typhoid ; the local authority may for their district add to this list.

The local authority may require the cleansing and disinfecting of any house or articles in the house infected ; bedding infected may even be ordered to be destroyed

(with the possibility of some compensation therefor being recovered). A magistrate is entitled to insist on a person certified to be suffering from a dangerous infectious disorder being removed to a hospital, if he or she cannot be adequately isolated, where lodging; any driver of a public conveyance who is engaged to drive an infected person, must be duly informed so as to enable the vehicle to be disinfected immediately afterwards.

No child suffering from an infectious illness is allowed to attend school; the body of a person deceased from an infectious illness must be sent to a mortuary within forty-eight hours of death, and no infectious rubbish may be thrown into the ordinary ashpit, dust-hole, etc.

Serious penalties are incurred by infringing any of these provisions, or by obstructing a public official who attempts to enforce them, or by giving any incorrect answer as to the existence of an infectious disease within six weeks thereof to any would-be lodger or tenant.

In every town also (and possibly also by order in certain rural districts) the Police Acts prohibit such nuisances as in any street placing projections such as blinds less than eight feet from the ground, placing a pole or line across a street to hang clothes, etc., making a bonfire in a street, beating and shaking carpets there (except doormats before 8 a.m.), placing flower-pots in windows which are liable to fall down, allowing a servant to clean an upper window while standing on the window-sill; moreover, if a chimney catches fire the householder is

liable to a penalty, unless he proves it was not due to his or his servant's neglect or carelessness.

Local authorities also have power to make by-laws to carry out these and similar objects, and such by-laws can be enforced by penalties, unless they are unreasonable or unreasonably wide; all penalties under the general law or otherwise together with costs can be enforced by distress, and in default of sufficient distress by imprisonment.

In connection with his house, the tenant is also liable if he defaces or alters the number of his house, or does not remark it when it is obliterated; local authorities can require by notice projections from a house obstructing the safe passage of passers-by to be removed, gates and outer doors to be made to close inwards, cellar-flaps or shoots to be adequately covered or repaired, as well as hedges and trees to be removed or lopped, if they create an obstruction or nuisance to users of the street. In these cases, however, the householder may be able to recover expenses from his landlord according to the terms of his tenancy.

All these offences, however, although technically considered nuisances, do not exhaust this category, because civil actions are also common, and both the High Court and County Courts can give damages or grant injunctions (an order to restrain the continuance of a nuisance), disobedience to which may entail imprisonment for contempt of court; thus the court can command works to be stopped or even to be destroyed if they constitute

a nuisance, or conditional orders can be made, i.e. if damages would be an unsatisfactory remedy ; but mere danger of a future nuisance, unless very imminent and substantial, does not entitle an injunction to be granted, and while dealing with remedies, it may be mentioned that in some cases a criminal indictment will lie for a public nuisance, such as the serious obstruction of a highway ; it does not, however, follow that a conviction on such a case will result in imprisonment.

Civil remedies are generally sought if access to a house is made difficult (e.g. by carts, etc., standing outside for an unreasonable time), or if the light is interfered with, or if bad smells become serious. Undue noise is also a ground for action, but it has been decided that no injunction will lie to restrain the temporary inconvenience caused by the pulling down or repairing of a neighbouring house, unless this be quite unreasonable. In deciding whether a nuisance exists, the character of the neighbourhood must be taken into consideration ; noisy works or works which create an evil smell might easily be justified in a factory neighbourhood, but not in a quiet residential district ; the fact that no nuisance is intended is no answer to an action, but the intention to annoy, if proved, is very material in justifying an appeal to the courts ; the test generally applied is whether serious material interference is caused to the ordinary enjoyment of one's dwelling ; injury to health is not necessary, as where a nuisance is caused by persistent bells, or an unreason-

able amount of music (especially at night). Still, the expense of legal proceedings to establish a nuisance of this kind is considerable, and a householder ought to hesitate long before taking the risk of civil proceedings on his own shoulders solely. Sometimes, however, he can abate a nuisance personally ; for instance, if trees or shrubs overhang his garden, he is entitled to cut down the overhanging part ; it is safer, however, to give notice, before thus taking the law into one's own hands, as doing anything unnecessary or on a neighbour's property may constitute a trespass. Another form of nuisance is interference with the right of light, but this is rather a matter for a surveyor, who will apply the test whether or not enough light is left for the ordinary domestic purposes of mankind ; in fact, an experienced surveyor may easily be asked to advise a householder on such a point of light or other points, e.g. if a stable near the house is sufficiently offensive to be actionable, or, if the householder is threatened, whether he or his landlord ought to remedy the cause of complaint.

CHAPTER XIV

DOMESTIC ANIMALS

THE keeping of domestic animals has, besides its advantages, certain legal aspects which may well be noticed ; in fact, dogs have quite a range of law (statute and other) for themselves.

Ordinary domestic animals are as much a householder's property as his other goods and chattels, and even wild creatures when duly made captive, such as fish in ponds, thrushes in cages, and bees duly hived, may not be taken or interfered with by others unless they again become free ; either at common law or by statute a thief may be prosecuted for felony or for a misdemeanour, and unlawful killing or wounding is also an offence ; of course, it may happen that some straying animal is killed or injured by a trap or poison laid to catch vermin, etc., and if the animal thus caught is trespassing in an enclosed garden, the householder will be under no criminal liability. The test whether a householder is entitled to protect himself by killing or injuring straying animals is, if it is really necessary for the protection of his property, and he acts on such *bona fide* belief and does not use any stronger measures than are reasonably requisite.

As to nuisance by keeping animals, see under chapter "Nuisance" at p. 138.

The more serious question is, however, how far the owner of an animal is liable for injuries caused thereby; in the case of dogs he is clearly liable for injury done to cattle, whether he knew the dog was ferocious or not, and "cattle" in this connection includes horses, sheep, goats, and pigs. In the case of human beings the party injured must show that the dog was ferocious, i.e. liable to bite mankind; this knowledge will be proved not by showing that the dog has already bitten any animal, but that the dog has already bitten some man, woman, or child, or has towards them regularly or at special times exhibited what may be regarded as ferocity; a man is not responsible if a savage dog bites a trespasser, but is liable if he attacks any one lawfully coming to the house on business or pleasure; he can put up a notice "Beware of the dog," but this notice, though helpful, does not exclude liability by itself. Supposing a servant, not for his or her private motives, wrongfully sets a dog on to a visitor or business acquaintance on the premises, the owner is liable; and, curiously enough, if a dog injures cattle, the occupier of a house where the dog was kept or permitted to stay is presumed to be the owner until he or she proves the contrary. Otherwise, of course, the party bringing the action must give some evidence as to the ownership of the animal causing the damage.

Stray dogs are always liable to be seized and detained until claimed, and until the owner has paid all expenses

for their detention ; seven days after the detention without claim the dog may be sold or destroyed, but if the collar (the wearing of which may be enforced by regulation) has a proper name and address inscribed, the police must give notice of the detention in accordance with the inscription. The police, of course, are responsible for the proper care and maintenance of any animal seized.

Moreover, if it is proved to a police court that a dog is dangerous and not kept under proper control, the magistrates may, if they like, at once order such dog to be destroyed, without giving the owner the option to keep it under due control, and in towns it is in itself a punishable offence to allow any ferocious dog to be at large and unmuzzled ; a similar offence applies to mad dogs, and it is the duty of any one who possesses an animal which is or is suspected to be afflicted with rabies to immediately notify the local police, and to carry out proper regulations for exterminating such disease. No dog can be brought into the country from abroad without a license from the Board of Agriculture.

For reasons known to the Legislature, dogs are the only animals for the keeping of which a license is necessary. A license (price now 7s. 6d.) is required for every dog aged over six months (with some immaterial exceptions) ; these are most conveniently obtained at all "money order" post offices ; these animal licenses expire every December 31st, at whatever time of the year they are taken out ; the penalty for no license (one of which is

necessary for each animal) is a maximum of £5, and after the first offence, a substantial fine must in any event be inflicted. A person is liable in whose custody or possession or house a dog is found, until he proves he is not the person keeping the dog ; it is the keeping and not the ownership of the dog which is the test of liability.

It often happens that dogs are stolen, but it is an offence to take any reward under pretence of aiding to discover a stolen dog, and it may be said generally that to advertise for the return of any lost animal, saying that no questions will be asked, or words to that effect, is an offence by the advertiser. In fact, although the temptation may be great, to procure the return of any stolen animal while taking any steps to avoid the prosecution of the thief or his accomplices, may render the householder liable to criminal proceedings for " compounding a felony."

Cruelty to any animal, i.e. to " beat, ill-treat, abuse, or torture " it, is a serious offence involving the possibility of imprisonment, and if the animal happens to belong to another, compensation for the injury may be awarded by the court ; this law applies now not only to ordinary domestic animals, but also to wild animals in captivity, and wantonly to cause any such animal unnecessary suffering or even cruelly to tease or terrify it involves serious risk, especially as societies exist who make it their business to inquire into and prosecute suspicious cases. Of course, there must be some guilty knowledge to render a man liable ; mere carelessness

is not enough, nor is an omission to alleviate suffering, but if a man injures an animal he must not allow it to linger on in torture, but must put it out of pain at once.

Malicious maiming or wounding of animals is equally punishable, but vivisection may be permitted to qualified medical men under the authority of special forms of license from a Secretary of State. If a constable finds any animal in such a condition that it cannot be moved without cruelty, if the owner is not present to consent to destruction, he (the constable) may send for a veterinary surgeon, who will, if necessary, cause its death in the least painful way possible.

A long statute also deals with contagious diseases in animals, and should a householder find a domestic animal so suffering, he should consult the local police at once as to his duties and liabilities. It is always advisable when buying any animal to obtain an express warranty that it is free from disease and has no defect that cannot be seen by the ordinary inspection of a person who is not an expert; in the purchase and sale of animals the maxim that the buyer takes the risk prevails in the absence of express stipulation, unless the buyer clearly shows that he relies on the seller's knowledge and makes known the particular purpose for which he is buying the animal. Of course, if there is a fraudulent statement by the seller, e.g. as to the age of a dog, and as to its pedigree, the buyer can, if he takes steps immediately on discovering the fraud, avoid the sale and recover the

purchase-money ; although nothing in writing is legally needed to prove the fraud or warranty, it is advisable to get written statement as to the soundness, etc., especially if the sale is by an employee, to show that he is acting in the scope of his duties, so as to bind his employer.

Perhaps it may be useful to add that when animals are sent by common carriers, such as railways or other agencies, the carrier is liable for damage, subject to any reasonable special conditions in *writing ;* still, it is safer to insure, as the company would not be liable for damage to the animal for " inherent vice," e.g. by its kicking or plunging (unless due to the carrier's negligence), or to owner's defective apparatus, such as a dog's collar, and there may be also a limitation of liability. The householder should carefully study the conditions of the consignment note given by the carrier, and see how he stands as regards delay and the duty to receive the animal at its destination ; the company's duty is to provide for longer journeys the necessary food and water at a proper charge. A common carrier such as a railway company is bound to afford reasonable facilities for forwarding animals, and their charges must also be what a court may consider reasonable.

CHAPTER XV

JURY SERVICE

EVERY male householder, with the exceptions mentioned later, is liable to jury service, if he is rated or assessed on a value of not less than £30 in Middlesex or £20 in any other county, and provided he is between twenty-one and sixty years of age; (aliens are liable, if they have been domiciled in England for at least ten years). If, however, he is rated at £100 in a town of over twenty thousand inhabitants, or £50 elsewhere, he is liable to be placed on the "special jury" list; a special juryman is summoned only for the more important actions in the High Court, but the special qualification does not exempt from "common jury" service. The householder may also be called upon to serve on a "Grand Jury"—that is, to hold a preliminary inquiry in a criminal case before putting a prisoner actually on his trial (which is before a petty jury); this service is considered particularly honourable, and only householders of recognised position are, as a rule, summoned. The service may be in a variety of courts, both civil and criminal, such as the High Court or Central Criminal Court in London, or at Assize, the County Court, the Sheriff's Court, local courts, such as the Mayor's Court

in the City, Quarter Sessions Courts, and the Coroner's Court ; in this latter court a householder may be liable even though not rated within the above-mentioned limits. A special juror receives by way of remuneration one guinea per case tried, unless an extra payment is granted by consent of the parties for daily attendance in a lengthy case ; a common juryman, both in the High Court in London and County Court generally, is paid one shilling per case, and at Assize eightpence, while each local court has its own scale of fees ; should a juryman be required to take a view of any premises away from the court, he is entitled to extra payment (one guinea for a special, and five shillings for a common juror). In any event, a juryman receives no pay in any criminal case.

A long schedule of persons are by statute excused from jury service, such as ministers of all denominations, practising lawyers and their managing clerks, practising doctors, dentists, and chemists, and a variety of public servants, such as policemen, postmen, revenue officials, pilots, etc., as well as all soldiers in the regular forces ; this last exemption has since 1907 been extended to every officer and man in the "Territorial Force." Of course, peers, members of Parliament, judges, and justices of the peace, etc., are likewise immune from service ; but all these exceptions do not disqualify like a conviction for a crime, so that application must be made by an exempted person to be struck off the jury list (or panel, as it is technically called).

These juries lists are made up annually in alphabetical order by the churchwardens and overseers of every parish before September, and they are thereupon during the early part of that month exhibited outside the parish places of worship, in time for any application or objection to be made at a special petty sessions held to revise the list at the end of that month. Every householder should search annually to see that his name is duly inserted or omitted, and if the overseers have not rectified any mistake, he should attend these sessions with the necessary evidence, e.g. a birth certificate, if he is over age ; moreover, he can apply to be excused for a bodily infirmity, such as deafness or blindness. Every person whose name remains on the book after these sessions is liable to receive a summons from any summoning officer, and such summons may be delivered by hand or by post, or by being left with an inhabitant of the address in the jurors book. The summons must give at least six days' notice.

The juryman on the receipt of the summons is liable for non-attendance in due course to a fine, the amount of which and the remitting of which on good cause shown are in the discretion of the court ; a County Court judge and a coroner are, however, limited to £5, which is also the usual sum in other courts ; the fine can be levied (if necessary) by distraint on the juryman's goods, after the fortnight allowed for the application to remit. Should the juryman be too ill to attend the court, a medical certificate to that effect should be

forwarded to the court's clerk or registrar, or evidence may be given that the juror is absent from his home at such a distance as to make his return in time for the service impossible or highly impracticable. A juryman can, of course, always apply personally to the judge for temporary exemption in cases of urgency.

The summons may be for particular sittings of the court, or for a particular period; in the High Court in London every effort is made by notices in the law list in the daily papers to relieve jurors from unnecessary attendance, and search may well be made there during the period of the service.

As a rule no man is liable to be summoned for jury service more than once per year (twice in a County Court), and a juryman who has duly served is entitled to receive from the court official or sheriff a certificate of discharge on payment of one shilling. Except in trials for murder, jurymen are no longer required to be locked up together, but are allowed to separate on any adjournment of the court, and also to procure reasonable refreshment at their own expense.

CHAPTER XVI

VOTING

EVERY householder may have various rights of voting other than as a householder, with which this book does not deal ; he may be a freeholder, an occupier of lands, or a University elector, etc. But in order to be registered as a householder voter, he must on July 15th of each year have been an inhabitant occupier of some dwelling-house (the rateable value of which is immaterial) in any one parish, and such habitancy must not have been broken for more than four months in the year preceding that date ; the house must during the whole of that time have been liable to the payment of rates, and all rates made up to January 5th must have been paid by July 20th. If two or more persons classed as heads of families occupy a dwelling jointly, each must be rated to the value of at least £10 ; the householder need not have occupied the same dwelling-house the whole year, so long as he has not moved out of his particular parish. He need not occupy a whole building, so long as his part, a flat or tenement, is quite separate from the remainder, and he has the exclusive use of his own part ; as a rule, if the landlord resides on

the premises, the inhabitant can only claim as a lodger, but this is not conclusive, if he has his own latch-key and attends to his own wants; he may occupy in virtue of service or employment, so long as his employer does not also reside on the premises. Of course, the householder must be of full age, and he must not for twelve months previously have been in receipt of parish relief, other than medical; aliens and lunatics and those who have been guilty of corrupt practices are also disqualified; and for the parliamentary vote all women are ineligible; married women (during marriage) also cannot vote at County Council elections, where the test for the register is occupation rather than habitancy, i.e. to be rated for property even if not sleeping there; residency must either have been in the parish or borough or within seven miles thereof (or twenty-five miles in the case of the City of London); for parochial elections, even married women may be on the register, but husband and wife may not be qualified in respect of the same property; such are the elections for parish councils, poor law guardians, and district councils, where all electors however qualified may vote. The fact that a householder has a qualification in another constituency does not disentitle him to be placed on the register where he or she lives, but he cannot be registered for two qualifications in the same area.

The register made out for parliamentary purposes comes into operation the following January 1st, while the new municipal register is in force on every

November 1st; both registers are available for one year.

It is not necessary for any householder to make a claim for a vote in the first instance; as it is the duty of every overseer (a term including a variety of officials in towns and counties such as special registration officers) to make up the list of household voters who are qualified up to August 1st; the overseer may, however, make, in cases of doubt, a requisition on an occupier, which he is bound to return duly filled up for the overseer's information. These lists are then published for about a fortnight by being exhibited outside the parish places of worship, or possibly also at some public offices or post office, and can, of course, be inspected there; should the house have escaped rating through inadvertence, the rates should in any event be tendered. Before August 20th the householder, if his name has been omitted, must send in a formal notice of claim to the overseers, and at the same time a written notice of objection to the insertion of a name may be given; these objections and claims are considered at a court held annually in September or early in October by a revising barrister (at which an overseer is also in attendance); the householder can attend this court in person, but it is usual to allow the party agent to act for him if necessary, and the decision of the barrister is final, subject to any point of law raised being considered in the High Court, and no householder may exercise the right of voting unless his (or her) name be on the register.

All voting nowadays is by ballot, and of course absolutely secret. The voting takes place in a town hall or other convenient building in the district, and all votes must be cast between 8 a.m. and 8 p.m. (at all events for parliamentary elections).

CHAPTER XVII

DOMESTIC SERVANTS

THE arrangements between master (or mistress) and servant are subject to the ordinary law of contract, so that some knowledge of that part of our law is essential to understand the legal position, when engaging a domestic ; for instance, no agreement binds a servant under twenty-one years of age, unless such agreement is, speaking generally, of benefit to the child ; *prima facie* any one under twenty-one entering service according to the usual scale of wages is bound thereby, but any special feature, such as unusually long hours or unreasonable notice, might not be upheld in a court of law ; again, it is not usual nor necessary to have a written contract when engaging a domestic, but if by any chance it is intended to make a firm engagement for more than a year, a written document setting out the parties and essential terms is requisite ; again, if a servant, say a gardener, is engaged for less than a year, but his term will not be over until a full year after his engagement has been arranged, writing is necessary to enforce the right to his services. On the other hand, any such written agreement is exempt from stamp duty, and perhaps it may at once be usefully stated that, so far as public revenue goes, the only liability is the excise duty on

male servants, viz. a sum of fifteen shillings to be paid annually by way of license (applications generally made by the local revenue authorities). The term "male servant" not only includes male cooks, butlers, pages, footmen, valets, porters, waiters, etc., but also coachmen, grooms, stable-boys, gardeners, under-gardeners, etc.; on the other hand, if a man not coming under these categories occasionally assists in the garden, etc., and is otherwise perhaps a mere labourer, etc., an exemption applies, as is also the case with those who only serve in these capacities for some portion of each day, and who do not live on the householder's premises; a labourer as such merely is exempt, but the line is rather fine, and difficult technicalities can arise if the odd-job labourer is also employed for menial duties, such as cleaning boots, knives, etc. Even for extra hands, temporarily engaged, as male servants, the license is necessary in an ordinary household, as the words of the statute are very comprehensive.

Of course, the first point to be settled when engaging a servant is the question of wages; no doubt if this point is left open, and the servant comes and works, a reasonable or customary sum will be payable, but certainty as to the amount is desirable, as well as to the periods when payable; there is no reason why a monthly hiring should not contain a term for proportionate weekly payments, nor even for payment in advance, but the certainty of whatever arrangement is made is important. As regards domestic servants wages may

be wholly or partly in kind, and not in money, as the so-called "Truck Acts" which affect ordinary workmen do not apply to them; on the other hand, the wages agreed must for the time of service be paid in full, the master not being entitled to make deductions for breakages or loss, etc., by a servant, unless specially stipulated either when the engagement is made, or from a definite period in the course of the engagement. A similar rule applies to gratuities in cash or kind.

It sometimes also happens that a relative or other person not definitely engaged as a menial performs domestic service, is boarded and lodged, acting as housekeeper or a help, etc.; the question of remuneration should never be left vague in such a case, as intricate legal questions with regard to the exact position may have then to be fought out; in fact, in such a case, although not absolutely necessary, a document (such as a letter) should be written out and preserved; similarly, if a relative act as housekeeper, etc., in the expectation of no payment but of an ultimate legacy or annuity, a definite agreement in writing should be signed.

Domestic servants have these further advantages as regards wages, that if the householder becomes bankrupt, their claims have priority over those of ordinary creditors, and that their wages cannot be attached for debts.

Unless otherwise arranged, the householder, in addition to wages, is bound to provide a domestic servant with reasonable board and lodging; in fact,

if, owing to his neglect or default in this respect, the householder causes serious injury to his servant's health, he is liable to criminal proceedings. The householder is not, however, bound to provide medical attendance for a servant, but if he calls in a doctor he will have to pay the fee without deducting it from the wages; of course, he is not so liable if the doctor is called in by the servant independently—which may, however, be difficult in many cases to establish.

Of course, any arrangement may be made, so long as it is definite, as to the period of service and of notice, but with domestic or menial servants this is not customary, and in default of special stipulation a yearly hiring is presumed, which can be terminated by a month's notice at any time by either party, or by the householder at any time paying the servant one month's wages (without any allowance for board). If the servant breaks his or her employment without notice (or justification), there is no legal reason why the householder should not have an action for damages (these in most cases would be nominal, or nearly so, and might not carry costs), while, of course, any sum payable would be most difficult to enforce, and there is no possibility in law of getting so-called "specific performance" of a contract of service. It is generally thought that there is a custom whereby in the first month the engagement may be terminated by either party giving the other a fortnight's notice, terminable at the end of such month, but this custom, although judicially accepted by a

well-known County Court judge, might still be contested in the High Court. The custom of a monthly notice only applies to domestic or menial servants, and not to those who are in a superior position, such as a steward, housekeeper, governess, or nursery governess; in these cases the period of notice should, *prima facie*, be three months. Again, sometimes menials are hired by the week, with weekly payment and weekly notice, the mere fact of a weekly payment being some (though not conclusive) evidence that a week's notice is enough; but any question of this kind should never be left open when the engagement is made, as often servants stipulate for weekly payments, although they wish to be within the month's notice custom. It may be added that servants who sleep out, such as gardeners, may in many cases be regarded as menial servants, especially if they spend their whole time in or just about the house, but it is always safer to have a clear understanding with such employees, as it is possible that some casual words may lead to a belief on such employee's part that he is engaged for a fixed period of several months, if not of a year. In any event, the general principle of law holds good that, if neither fixed nor customary notice applies to a particular case, a reasonable period of notice is due on either side.

It is clear law that no master or mistress is under a legal obligation to give a servant a character (unless possibly there has been an express agreement for this purpose); the hardship of discharge without a character

may be great, but the householder can absolutely use his or her discretion in giving or abstaining from giving any testimonial or statement as to the servant's conduct. It is, however, a moral duty (as has been said by judges), to give a servant a character, and not only has the master this duty, but the person receiving it has an interest therein, from which the legal consequence flows that such a communication is "privileged," which means that the master, so long as he states what he *bona fide* believes to be true (although the statement may in actual fact be untrue), and so long as any opinion he gives is given without "malice," i.e. in *bona fide* furtherance of his moral duty and without any spite or intention to go out of his way to cause the servant harm, is protected from paying damages in an action of libel or slander. The employer, when he decides to give a character, ought frankly to state all he knows or believes it is material for a subsequent employer to know, and whether he does so in writing or orally, is not liable, unless the jury find that he has by "malice" exceeded the privilege which the occasion warrants. In fact, a judge will not leave the question of malice to the jury if he finds nothing more than the ordinary questions and answers between two employers. Evidence of malice may, of course, be found if a master states a character without having been asked to do so, if he gives the character in the presence of third persons, or if the answers themselves show (by their prejudice, etc.) personal animus; but these facts are not conclusive, and it is for

the jury to say if the master acted *bona fide*, or whether he was actuated by legal malice, i.e. the intention to injure. As a rule, a householder who knows he is acting in good faith in giving a character runs little risk, if it is to a future employer, whether for the same or a different class of employment, but if the character is to be given outside the scope of future employment, care must be taken that the receiver of the character is a party who has a reasonable interest in it, and not that of mere curiosity. If in an action the privileged occasion is established, it will be for the servant to give the evidence of malice, which the master may then be able to rebut. Of course, if a man gives a servant a good character without justification, and the next employer relying on the character suffers damage, the householder may be liable for the damage caused by any false statement he has made, if made fraudulently. But in the absence of malice or fraud, the courts try to uphold those who act in the furtherance of the social duty of giving information *bona fide* believed in, even if the statement is made voluntarily after the new engagement has been entered into, when new facts have come to the late master's notice, so that a letter retracting a former good character is also privileged. Perhaps it may be added that, for the householder's safety, a written character should be an independent document, and not a part of a communication which might be reasonably shown elsewhere, and the master ought not to endorse a new character on an old one.

There is probably also a social duty on a master to give a servant the reason for a summary dismissal, and if he does so in the presence of others interested, such as the discharged servant's relatives, their presence will not rob the occasion of its privilege ; in fact, in one case a master was held justified in warning fellow-servants not to associate with one whom he was compelled to discharge, but this decision was so close to the line as to make any reliance thereon unsafe except under absolutely parallel facts.

From another point of view, a master is protected from receiving false or forged characters by a statute which makes it a crime to personate a former employer or other party giving a character on his or her behalf, or as such to give a false or forged character for a servant personally or in writing. The would-be servant or any party assisting him or her knowingly and fraudulently, or getting or attempting to get a situation by a forged, false, or personated character, is liable to severe penalties, whether the fraud lies in the alteration of a previous *bona fide* character, or in the formation of a bogus new one ; in fact, the statute is wide enough to catch in its net anybody who deliberately sets out personally or by his assistance to cheat a householder into the belief that a *bona fide* character is being put forward.

Not only has a servant no redress for a *bona fide* but defamatory character, but no damage is recoverable for dismissal under circumstances of ignominy, viz. if he is told to leave at a moment's notice, or if otherwise

the facts of dismissal might operate disadvantageously. Of course, a domestic servant if dismissed unjustifiably without notice can claim the month's wages, but no more. In fact, other employees who are entitled to more than a month's notice cannot recover the whole sum, e.g. three months' wages, unless they have been idle during that time, while they have in the meantime tried to get other employment; it is the duty of servants prematurely discharged to try to mitigate the loss by getting other similar work forthwith, and if a situation is obtained at once, they will only recover nominal damages; in fact, the measure of damage is the wages less the value of earnings which actually were or which might with due diligence have been secured by any party after dismissal and no more. But it is for the master to show that the servant could readily have obtained a situation of the same class elsewhere, and unless the householder, when discharging a domestic without notice, is prepared to justify the dismissal, it is better at once to pay a month's wages in lieu of the notice.

The servant has the right to sue the moment he or she is dismissed if the wages are not forthcoming, and need not wait until the month has expired; in fact the law goes further, and says that if a servant is engaged, and before the time the actual service was to begin the master or servant breaks the contract by either taking other employment or definitely stating that he or she will not carry out the agreement, damages for the breach can at once be sued for, although there has never been

any actual service; a servant may have thrown up a situation, or a master may have discharged or arranged to discharge a servant, and can recover damage therefore so soon as it is clear that the new arrangement will not be carried out, the test being some unequivocal act that the agreement has been definitely rendered inoperative. Of course, the person who has suffered by the breach may wait, and is not bound to sue immediately.

It may also be said that a servant is not entitled generally to any sum for going to or returning from his employer's premises, but such a sum is often the subject of a special stipulation, and if a servant is taken a considerable distance from the master's house and then discharged wrongfully, he or she would probably be justified in claiming the return fare to the place of engagement.

It has been laid down by a well-known judge that a master can discharge a servant "for moral misconduct, either pecuniary or otherwise, wilful disobedience, or habitual neglect," but this general statement must be considerably amplified; so far as disobedience is concerned, it is clear that a servant must obey all his master's lawful orders (reasonable or unreasonable); it would not be a lawful order to compel a servant to regularly perform work for which he or she is not engaged, e.g. a domestic cannot be compelled to work in a garden, nor would it be lawful to compel a servant to undertake an undue risk, e.g. to attend on a case of infectious illness; nor is a domestic bound to go abroad

(although he or she may be taken a reasonable distance in the British Isles); but it is believed that a householder is justified in asking a domestic to run occasional errands or to assist other domestics in their special branches, unless stipulated to the contrary; and even if a master is unreasonable in using lawful authority, disobedience is a ground for dismissal, as where a maid visited a dying parent contrary to instructions; the restrictions may have been unkind and unreasonable, but they were lawful; but a mere trifling act of disobedience will not be enough, especially if at once admitted and regretted, e.g. once staying out somewhat longer than for the period of leave. But a distinct refusal to serve up a meal, when demand made, has been held sufficient ground for immediate dismissal, although there was an apology the following day.

Habitual neglect would in the case of an ordinary domestic, dismissible at a month's notice at any time, be difficult to substantiate as a justification for summary discharge, and so would gross incompetence, but legally both these grounds have been considered justification for dismissal in the case of employees other than domestic; a similar adequate reason for dismissal would be any action contrary to the employer's interests, e.g. disclosing his family secrets, or the unauthorised use of the householder's property, thereby causing damage. But a more common ground is gross rudeness or insolence; a single isolated act would not generally be enough, but continued impertinence or even a single

act which would make the future due relationship of master and servant impossible, justifies immediate dismissal, and of course no householder is bound to continue to employ a servant who is in any way dishonest, habitually drunk, or seriously immoral, or commits acts of violence; in all these matters a much higher standard would be required from any ordinary indoor domestic than for some servant not employed about the house, and an offence about the house would be far more serious than similar conduct away from the householder's actual employ, although probably any act of dishonesty committed anywhere by a domestic with a liability to prosecution thereon would be enough in the master's defence; and of course a female unmarried domestic, found to be enceinte, should be promptly ordered to leave the premises. But the necessary justification for immediate dismissal is a question of fact rather than of law; if fought in the courts it would probably be tried by a jury, who would, if any evidence of any wrong-doing at all could be shown by the master, be left in their discretion entirely to say whether they considered it enough in the particular instance. As regards illness, a master is certainly not justified in discharging a domestic on that account without notice; it is true that, as a general principle, permanent disability such as paralysis would bring a general contract of employment to an end, but a master would run grave risk if he relied on this principle in relation to a household servant, and so soon as a domestic falls ill, if the

master wishes to discharge him or her, the monthly notice should be promptly given.

A master who is entitled to discharge a servant and fails to do so will be held to have waived the misconduct, and cannot rely thereon subsequently, unless it is one of a series of acts which by their cumulative effect give the requisite justification ; on the other hand, a master cannot waive misconduct without full knowledge, and there is no waiver if he merely waits to obtain sufficient evidence to justify discharge ; a similar point is that if a servant is discharged for misconduct, the master has to prove this in a court (if necessary) ; but if acts which are *prima facie* misconduct are once proved, it rests on the servant to show that they are susceptible of an innocent interpretation ; for instance, a master justifies by showing that a servant receives cash presents from tradesmen ; the servant may then prove that these are received with the knowledge of his employer and without any corrupt motive. Moreover, if a master dismisses a servant without knowledge of any valid reason and afterwards discovers such a reason, he can prove in any action what he has subsequently discovered, and justify the dismissal thereby, e.g. if he dismisses a servant for insolence which the jury consider insufficient, and he subsequently finds out that the servant has been receiving secret commissions in purchases for the master, he will still be protected in any action for wages by the dismissed servant.

It should be added that a servant justifiably dis-

charged in the course of a current month cannot legally claim any wages for that part of the month which has been already served, but of course is not debarred from recovering wages for previous current months or other periods already due, but unpaid.

A servant is not only entitled to wages, but also to compensation for injuries in his employer's service; even before the Workmen's Compensation Acts a householder incurred serious responsibilities in this respect, and although the old common law liability with its various legal aspects is not theoretically obsolete, in practice the householder who is fully insured under the statute of 1906 may consider himself safe; as to this see Insurance at pp. 69, 70; but should the householder fail to insure, he may be liable even to pay a life annuity for injuries arising out of and in the course of the employment, or compensation, if a servant is killed, to his or her dependents; the legal cases and points in this respect are quite outside the scope of this book, but it may be useful to repeat the warning to notify the insurance company at once, whenever an accident takes place. Although not unusual, no third party is legally entitled to induce a servant or master to break the contract of service, and it is correct in law to say that an actionable wrong is constituted by maliciously procuring a breach of a contract of employment, i.e. nobody is legally allowed without just cause or excuse to induce a servant to leave his place before the requisite period of notice has expired; it is quite legally justifi-

able to induce a servant to give notice and then to employ such servant when the notice has expired, although the servant without such inducement would not have left the situation; but the householder can proceed legally against any party who induces his servant to leave the place unjustifiably without due notice, even if the inducer does not himself or herself employ the servant enticed away; although what damages the ordinary householder would recover it is difficult to say. In the same way a party employing a servant *bona fide* is liable if, after it is shown that a previous contract for service is still subsisting, he continues the employment in spite of the knowledge of the breach caused thereby. Practically all the recent decisions illustrating this principle deal directly or indirectly with trade unions.

A householder can also proceed technically against any party otherwise wrongfully causing a loss of service, e.g. for bodily damage caused by negligence of such party to the servant; and further by a legal fiction, although a servant cannot personally bring an action for damages against her seducer, her master can do so, alleging loss of service, thus enabling a female domestic indirectly to recover damages for the gross wrong she may have sustained under such circumstances. The householder may also well remember that he is liable for every wrong (technically called a " tort ") committed by a servant in the course of the service and for the master's benefit, though no express command or privity (i.e. full knowledge) of the master be proved;

for instance, if a coachman by his negligence runs over and hurts a third party, the coachman's master may be sued for damages ; if the vehicle is only hired temporarily from a jobmaster, or the coachman is under a jobmaster's direct control, the householder for the purpose of liability may not be considered the " master " ; but whenever a vehicle other than a public conveyance is engaged, the householder, if he has not insured, ought to expressly stipulate at the time of the hiring that not he, but the jobmaster, will remain liable for third party damage and will indemnify the householder, if action on that score is taken against him. Of course, if a servant, wantonly and not for the householder's purposes, strikes the horses of another, the master will not be responsible, nor if the driver returning from work does not go direct to the stable or garage, but takes a journey on his own account.

A master is similarly liable if a servant wrongly arrests a person for stealing his master's property, i.e. assuming the servant is temporarily in charge of the house ; again, if a master allows a servant to regularly buy goods on his behalf and pays for them, thus holding him or her out to tradespeople as authorised to contract debts for the household on his master's behalf, his master is liable for goods thus ordered, even against the master's definite instructions, until notice either by advertisement or directly reaches the tradesman that the servant's authority to buy household goods has been revoked. As regards advertisement, it must, however,

be proved either that it has, or with due diligence should have come to the tradesman's notice. No doubt in these cases the servant is personally liable likewise; but the householder, who is probably in a more substantial position, is sure to be first attacked, but of course if a servant goes to a tradesman with whom he is not authorised to deal, or goes beyond the customary course of dealing, the master is not liable; for instance, if a servant has always paid cash on behalf of his employer, the master will not be liable for credit given. A very difficult legal position arises if a servant incurs a liability for his master without his authority in a case of absolute necessity, e.g. if a servant in charge of the house finds a repair absolutely necessary immediately without being able to first communicate with the master and gives the order accordingly; probably in such a case the master would have to bear the cost, but subject to this point of necessity a servant has no right to pledge the householder's credit, in the absence of expressed or implied authority. If a servant has been in the habit of dealing with tradespeople on the master's account, it is advisable to inform such tradespeople the moment the service of such servant is at an end.

Besides questions of arrest and driving, householders have been held liable for their servants' negligence in various cases, e.g. by not turning off a tap in a lavatory which flooded adjoining premises (probably the householder would not have been responsible if he had forbidden the servants the use of the lavatory), by using

excessive force in removing another from the house, for smoke and chimney nuisances owing to the servant not attending to fires properly, and for negligently dropping articles out of a window on a passer-by. Although possible, it would hardly be practicable to insure against such risks, and the householder cannot be too precise in instructions to obviate such liabilities, and perhaps, though not strictly in this connection, a householder should warn every domestic servant against signing any document on his behalf, such as a receipt for goods delivered, etc. ; and although possibly, if a servant signs that goods are received in good condition, the master can go behind this, it is better to instruct a servant that he or she has no authority to sign anything, except in an emergency. Parcels delivered for which a signature is required should always state after received, "but not in any way examined."

The householder is not, as a rule, responsible for the criminal act of a servant, although he may have a duty towards third parties in his house, as paying guests or otherwise, to be reasonably careful in the choice of servants (or, indeed, other inmates) ; and if, owing to the master's recklessly employing a dishonest domestic, a lodger is robbed and the jury find that the master did not take proper precautions, the master will be liable for the result of the dishonesty, not only if the servant actually steals, but also if by design or otherwise he leaves a door open for the entry of a thief or otherwise conduces towards the theft, the test being if he

(the master) has taken reasonable care of the guest's property. Of course, a householder who actually instructs a servant to commit a crime is himself criminally liable if the servant carries out the express criminal orders, and similarly if he is able to control the servant's criminal acts but fails so to do (as when a man sits by his own coachman or chauffeur and fails to interfere with his reckless driving or use of excessive speed); but those statutory rules which make a master technically liable for a servant's crimes without instructions hardly apply to ordinary domestic service. It may be useful to add that if a householder suspects a servant of dishonesty, he ought not himself to search a servant's boxes or other belongings for evidence of the theft, unless with the servant's express consent; he should consult the police (any statement made to them being protected in the absence of express malice, as to which see p. 163), who will act on their own responsibility if they have reasonable grounds to believe that a felony has been committed (or a magistrate on sworn information may grant a search warrant). The information, whether by householder or constable, is equally privileged. The same rules apply to actual arrest for theft or embezzlement; unless the householder discovers the servant in the act, he should go to the police, and if necessary apply for a warrant or a summons, because if a person is wrongfully arrested by a private individual, such person can sue for damages, however suspicious his conduct may have been and however reasonably

the master may have acted. Wrongful prosecution as distinct from wrongful arrest can be defended by showing "reasonable and probable cause." This point is distinct from that of ejecting a servant who becomes obstreperous and noisy, and declines to leave the house; in such case the householder is entitled to use reasonable force, personally or by proxy, in ejecting him, as a servant ordered to leave the premises and not so doing becomes a trespasser.

Disputes between householder and domestic are generally tried in a County Court, as police court jurisdiction applies only to workmen, but of course actions can be brought in the High Court, although, unless the amount is sufficiently large, costs will only be awarded on the County Court scale.

The following points may also be usefully noted:—

(1) On engagement of a servant, the question of religious views should not be shirked; trouble may easily arise otherwise, especially in connection with Sunday work (which in domestic matters is quite legal).

(2) A servant to whom a livery (or other personal belongings) is supplied, should be clearly informed that such livery, etc., remains the property of the master, and must be returned on demand either during or at the end of the service.

(3) Even if a servant is (as is usually the case) engaged by the wife, the husband, so long as he is cohabiting in the house, is personally liable for the servant's wages; if the wife is to be alone liable, the

domestic should be promptly informed of the fact in clear terms, and even if a husband be away, he is liable unless he has given his wife a sufficient allowance for necessaries; how many servants (if any) are necessary is a question of fact in each individual set of circumstances.

(4) If the householder dies the engagement is technically at an end, the personal representatives being liable for wages up to date; if the servant remains in the house, a new contract with the wife, or person keeping on the establishment, will be assumed.

(5) If a householder wishes to leave any servant or servants a legacy and no legal assistance is given in drawing the will, care should be taken to show whether servants include indoor and outdoor, casual or temporary, or those who may be regarded as servants though not technically so (e.g. a coachman supplied by a jobmaster); it should also be clear if the legacy applies to servants employed at date of will, or at date of death, or at both dates.

(6) Except as regards compensation under the Compensation Act, there is no reason why master and servant should not contract out of the ordinary incidents of domestic employment, as regards themselves, and by consent of both the conditions of service can be varied or terminated at any moment.

The male gender has in many cases been for the purpose of symmetry used throughout this chapter, although possibly the female might have, under the usual circumstances, been more apposite. Readers will, however, understand that the chapter applies equally to male and female domestics.

CHAPTER XVIII

HIS HOUSE HIS CASTLE

In the reign of James I, a well-known case was decided which is often cited as the legal authority for the maxim that "An Englishman's house is his castle"; at the same time the old Latin sentence was mentioned which may be translated to be that a man's house is his safest shelter; and no doubt, generally speaking, the law respects the Englishman's right to privacy in his dwelling-house; but even as regards a house the rights of others must be respected, and the sanctuary of the home is no defence to creating there a nuisance which may affect others, while, as has already been stated, various public or semi-public officials such as inspectors of nuisances, officials from water and gas companies, medical officers of health, etc., may by statute claim admission at reasonable hours for the purpose of their duties, and by contract a landlord may have the right to enter and inspect the premises, and inspection may be a condition of other contracts, such as that of a telephone company; the officials of fire brigades also can claim access in the performance of their duties, but the most important exceptions to the general rule are constituted by the rights of judicial and police officers,

and of course a sheriff may forcibly oust a man from a house of which he is not in legal possession, but only when this official is armed with an order made in an ejectment action. In this case the sheriff may forcibly enter without any notice, but in all other cases the sheriff, police, etc., ought first to state their business and claim admittance before resorting to force in order to enter ; when, however, they once get into the house, they may forcibly open inner doors, if necessary. Whenever a crime has been committed, a constable who holds a warrant is entitled to use force, if admission is refused, whether the warrant is to search for goods stolen, etc., or to apprehend an offender. Even if without a warrant, a policeman may, and, in fact, should enter any house in which he reasonably believes a serious breach of the peace is taking place, but unless under these circumstances, a policeman is not bound to assist a householder in removing persons from the premises ; it is true they should eject or assist in ejecting anybody who has forcibly gained access to the dwelling, or who, having been temporarily admitted, declines to depart ; but if a policeman eject an ordinary trespasser, e.g. a servant who has been ordered to go and declines, he merely acts as a private individual at his own risk, if he uses too much force or finds ultimately that the person ejected was not bound to leave, and consequently the householder wishing to forcibly eject a lodger or servant has generally to procure the assistance of other than uniformed constables.

As regards sheriffs or bailiffs carrying out an execution on goods, the rule is that they are not entitled to force open the outer door for this purpose, although if they do the execution is not invalid. This principle, however, only applies to the householder or other regular resident, and force may ultimately be used if a third party's goods have been sent to the householder's premises to avoid legal process; the sheriff, however, who enters a private dwelling (not an outhouse or place of business) to seize goods and finds that he has made a mistake is liable to an action for damages (and serious damages) at the suit of the householder. The sheriff, of course, may use force, if he has once entered and been ejected, to regain admission, also to retake an escaped prisoner, or to execute a writ of attachment, i.e. to seize a person sentenced to imprisonment for contempt of court; but subject thereto the sheriff or bailiff, who is instructed to seize goods under a judgment, may not forcibly break his way into a house, but must use some open door, window, etc., to effect his purpose if admission is declined. This rule again is confined to executions for private individuals, and if King's taxes, etc., are to be recovered, force may, if necessary, be employed. Sheriff's officers are also entitled to forcibly make their way out if, having once secured an entrance, their exit is barred.

The landlord also is entitled to enter a house if he distrain for rent (see as to this chapter IX), but he or his bailiff may use no force for this purpose; he may

not even open a closed but unfastened window or break through an outer gate or wall, though he is entitled to climb over such an obstacle ; the various legal decisions are not, however, very clear, and the distrainor has often to resort to trickery rather than violence.

Subject to the above the Englishman is legally immune from interference in the house in which he resides, and the author trusts that the perusal of this book may in some measure assist him to reap the full benefit and enjoyment of his legal rights.

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