

necessity, stimulated legislation on the subject. The "Commissioners" of Salmon Fisheries have had many a grievance in the past to contend with, but from the latest evidence it would seem that the future of the salmon is as yet undreamt of. With proper care of the fish itself, by due attention to the salmon rivers, by the removal of barriers to the upward passage of the salmon, and, above all, by the interdicting of the practice of river-poisoning by manufacturing nuisances, we may produce salmon in our markets as cheaply and as plentifully as herrings. Mr. Young, one of the legal guardians of the salmon and its interests, for example, gives us some interesting information respecting the natural and artificial barriers to the ascent of salmon. Many lakes (*e.g.*, Loch Tay, Loch Shiel), which might be stocked with sea-trout and salmon, are tenantless, because the conformation of the river-course prevents the upward passage of these fishes. The erection of "salmon-ladders," by means of which these fishes are enabled to pass even perpendicular rocks of considerable height, has successfully opened up some rivers before inaccessible to the fishes, and has, in the words of the commissioners, "created" a valuable salmon-fishery. A sore point with the salmon-guardians is the presence of mills and manufactories with their innumerable pollutions; and the fact that such sources of impurity are removable without injury to the manufactories, points out a remedy for the evil—for an unnecessary evil it unquestionably is. But legislation and public opinion are together tending in the direction of improvement in this matter, and when the day of the pollution of rivers has passed away, it may be safely said that the salmon-millennium is nigh at hand.

The delights of salmon-fishing, the hooking of the monster, the excited chase, and the capture, after, it may be, many a long mile of "play," are known only to the initiated and the expert. But there are other scenes in the life of the salmon not unmingled with the poetic, and which at present rise to our mental view. The scene is a long stretch of sandy shore on the Frith of Forth: the time is evening, with a setting sun fast disappearing behind a bank of clouds, and throwing a fiery effulgence over land and sea. There, seawards from the very door of the salmon-fisher's hut, runs a long line of nets

supported on huge poles, and throwing itself here and there into huge pockets, in which the finny prey is enticed, bewildered, and finally captured. The tide is receding, and the salmon-fishers, in huge jack-boots, wade to the furthest limits of the shore, and then, as they merge into deeper water, push off for the nets in their flat-bottomed "cobble." Soon they reach the first of their great net-pockets; and one unwinds a man-hole in the nets, and enters the pocket, wading about in his great boots, and armed with a net borne on the end of a stout pole. Cautiously he feels his way about, groping with the net around the latticed den, like a hunter seeking some agile quarry. Splash—there goes a tail-fin! The net has touched the fish, and now begins the chase in earnest. Slowly the fisher careers round and round the pocket, until at last he presses his prey into a corner of the huge purse. The contest of man and fish now begins. Sloping his net, the fisher contrives to edge his fish into it, and cautiously shifts fish and net, still under water, nearer and nearer to the man-hole at which the cobble waits. Now comes the tug of war. The net is lifted suddenly; the great fish is in its toils, but it is as much as the man can do to grasp the net itself, and lift it so that his neighbour may seize the great glittering fish, and with a merciful blow on the back of the neck send it painlessly to the shades. A grilse and other salmon follow; and as the last pocket is emptied of its contents the cobble is pretty sorely laden, and has to be fastened far beyond its former anchorage, whilst its owners carry the rich spoil of the sea homewards.

The sun has meanwhile gone down, and the night drawn on apace. The salmon yonder are being packed in boxes, and the rich green fronds of the bracken serve them for shrouds. To-morrow, when you hie homewards to town, the silvery fishes will accompany you. You shall see them laid in state on the fish-monger's cool iced slab; and if perchance you receive an invite to dine with some magnate of the land, you will mayhap feast right royally on the very "king of fishes" you saw captured whilst the sun was setting on the sea-shore, by the ruined castle and the fisher's hut. But whenever a salmon graces the board, I pray you, say grace right thankfully for the rich feast provided for you by the monarch of the sea.

## POPULAR PAPERS ON ENGLISH LAW.

BY A SOLICITOR.

### THE DEAD PLEDGE.



HE above heading may read somewhat like the title of a romance, but it refers to nothing more romantic than a *mortgage*. The consideration of this legal document may appropriately follow (for the reasons presently to be seen) the simple explanation of a conveyance given under "Signed, Sealed, and Delivered," in the June number of this Magazine. First, let me attempt to show, by an

every-day illustration, what a mortgage is, as a legal definition would here be useless.

Returning for a moment to the case supposed in my last paper, let us take the price at which you agreed to buy your house and land at £1,500. You may, perhaps, have this sum ready on deposit at your banker's, and then you have only to hand it over to the vendor, as already assumed, and enter into the enjoyment of your purchase. Supposing, however, that you have only £500 in ready money, and it is of great importance

that you should secure this property, now that it is in the market: your obvious course is to borrow the necessary £1,000 on the security of the house itself, and you do this by creating a mortgage upon it.

The notion of mortgaging and redemption seems to be of Jewish extraction, and from the Jews derived to the Greeks and Romans. But it probably came to us more immediately from the civil law, and to this day we have followed the broad distinctions of that law. Thus, the *pignus*, or pledge, was "when anything was obliged\* for money lent, and the possession passed to the creditor;" while the *hypotheca* was "when the thing was obliged for money lent, and the possession remained with the debtor." The first kind, *pignus*, is what we now call *pawn*, a process with which most people are familiar; but as that concerns itself solely with chattels, and its legal incidents altogether differ from those of the mortgage, we may lay it aside now, and give attention only to the *hypotheca*, or mortgage.

According to Littleton, there were about the time of Henry III. two ways of hypothecating lands introduced, which he distinguished by the names of *vadium vivum*, or living pledge, and *vadium mortuum*, or dead pledge. When one man borrowed a sum of money from another, and conveyed lands to the latter to hold till he had paid himself out of the rents and profits, it was called *vadium vivum*, "because neither the money nor the land dieth, for the lands are constantly paying off the money, and the lands are not left as a dead pledge, in case the money be not paid." By this way of pledging, however, the lender received his money by degrees, which was troublesome, and as investors now usually prefer to be repaid in a gross sum, this "living pledge" naturally fell into disuse. It is otherwise with the "dead pledge," which, under somewhat altered conditions, is existing to a very great extent now-a-days. Many people will be surprised to know what is stated on good authority, that two-thirds of the landed property in the country is now in mortgage.

The *mortuum vadium* (from which the Norman-French word *mortgage* seems derived) is so called by Littleton because it is doubtful whether the borrower will pay the money on the day fixed for that purpose or not; "and if he do not pay, then the land, which is but in pledge upon condition for the payment of the money, is taken from him for ever, and so dead to him; and if he do pay it, then the pledge is dead to the tenant of the land"—i.e., the lender. And until quite lately the "Courts of Law" (as distinct from the Court of Chancery, which is a "Court of Equity") adhered, according to their ancient custom, to the strict literal meaning of the term, and held that if the borrower did not pay or tender the money punctually on the day named, he should lose the land for ever.† Since the days of James I., on the other hand,

the Court of Chancery (now known as the "Chancery Division of Her Majesty's High Court of Justice") has always held that after the day fixed for the payment of the money has passed, the mortgagor (or borrower) has still a right to redeem his estate, on payment to the mortgagee (or lender) of all principal money, interest, and costs due upon the mortgage to the time of actual payment. This right is called the mortgagor's *equity of redemption*, and forms the hinge, so to speak, upon which every mortgage deed turns. Your own deed I will now briefly analyse and explain.

The heading begins with "This Indenture made" on such a day, as in the conveyance, and is generally ingrossed in the same way, on one or more "skins" of parchment. The parties consist of yourself, the mortgagor, of the one part, and myself (let us suppose), the mortgagee, of the other part. I lend you the £1,000 which you require to help you pay for your land, and as a security for the repayment of that sum, with interest upon it until repaid, you are going to pledge to me the land by this deed. The first "witnessing part" consists of a covenant by you, "for yourself, your heirs, executors, and administrators," in consideration of £1,000 being now paid by me to you, to repay to me or my executors, administrators, or assigns, the same sum on a certain day, generally six months after the date of the deed, with interest in the meantime at the rate agreed upon. The deed being dated, for instance, on the 1st of August, you undertake to repay the money on the 1st of February next. You have, however, no intention of so repaying it (even if I wished it, which I certainly should not), as is shown by your covenant later on in the deed, to the effect that if the money shall not be paid on the day mentioned, you will thenceforth, until it is paid, pay me interest (at the rate which we have agreed upon) half-yearly on so much principal money as shall for the time being be owing to me. All this is what is known as a personal security, supplementary to the actual mortgage, and my remedy under this part of the security would be to sue you or your representatives personally for the money in a court of law. Now we come to the real mortgage—the pledge of the land.

The second witnessing part ("And this Indenture also witnesseth," &c.) is an actual conveyance from you to myself, and my heirs and assigns, of the property which you have just bought, but *subject to redemption* on payment by you to me of the principal money and interest on the 1st of February next—i.e., that day six months. Then follow other clauses intended to protect my money, and make the security stronger.

Foremost is the power of sale, which is inserted in almost every mortgage deed. Under this I have absolute authority, without any further consent from yourself, to sell the mortgaged property; and your concurrence will not be necessary even in the deed of conveyance, should I exercise the power. The "legal estate" being vested in myself, by virtue of your (con-

\* Bound, brought under obligation (Latin, *obligatus*).

† Under the recent Judicature Act, however, the so-called "fusion of law and equity" has been attempted, and the "Common Law Divisions" of the High Court of Justice are enabled to base their decisions on

equitable principles; it being declared that wherever equity and law conflict, equity shall prevail in all the courts.

ditional) conveyance in the mortgage deed, I am able to convey and deal with the land as if I were absolute owner ; but, having sold, I have no further right to the money produced by the sale than I had to the mortgaged premises. I am at liberty to retain, first of all, my principal sum, £1,000, and any interest which may then be due to me ; and also all the expenses incurred in making the sale ; but when this is done the surplus, if any, must be paid over to you. In your own interests, there will also be probably inserted in the mortgage deed a clause restricting me from exercising the power of sale until I have given you six months' notice of my intention to do so, or until the interest shall have become in arrear for a certain period. Sometimes also, when the property is being occupied by the mortgagor himself (as you may be doing in the present case), there is inserted a power of distress, enabling me to enter and distrain for interest in arrear—just as landlords do for their rent. This is, of course, rendered necessary by the absence of any tenant to whom I could, as a last resource, give notice to pay his rent to me.

The usual remaining clauses chiefly relate to the manner in which the power of sale is to be exercised—protecting *bonâ fide* purchasers against improper or unnecessary sales, or from the necessity of seeing to the application of the purchase-money ; providing me with a power of giving receipts ; and furnishing directions as to the disposal of the purchase-money, when received, in the method above mentioned. Lastly come the “covenants for title” by yourself, which are like those entered into by the vendor in your own conveyance, except that (instead of limiting your responsibility to the acts of those who have been in possession since the last sale of the estate\*) you, as a mortgagor, give “absolute” covenants for title, against the acts of the whole world. The sole reason for this is that those who lend money on mortgage are accustomed to require every possible and unqualified security for its repayment.

When the deed is ingrossed and made ready for signature (which will probably be done in my own office at the same time as the deed of conveyance to yourself is prepared), I am ready to hand you my cheque for the £1,000 which you borrow of me. At this time the conveyance from your vendor and the title-deeds will not be in your possession ; in fact, the property is not yours (because till this moment you had not the money to pay for it), and therefore you have no power to mortgage it. Under these circumstances, therefore, the mortgage deed is usually dated the day after the date of the conveyance to the mortgagor ; and in our

supposed transaction the conveyance will bear date the 31st of July, and the mortgage the 1st of August. Having, then, received the £1,000 loan, you (or I on your behalf) have only to add your own £500, and go and “take up the deeds” from the vendor on paying him his purchase-money of £1,500. Your conveyance and other title-deeds being then in your possession, and the property being your own, I obtain your execution of the mortgage deed (or rather the “engrossment” of it) by “signing, sealing, and delivering,” as already explained, and the “legal estate” in the land passes to me ; so that I am the owner, subject to your equity of redemption. I take possession of all your deeds—including the conveyance to yourself—and also the mortgage ; and henceforth you have to pay me, on every 1st of February and 1st of August, interest on the £1,000 at the rate specified in the deed.

Whenever you desire to pay off the money and have your property again, you will have to give me six calendar months' notice, in writing, of your intention ; and at the expiration of that time, if the money is punctually paid to me, you are entitled to a *reconveyance* of the land to yourself, exonerated from the mortgage. This is done by deed (frequently indorsed on, or written on the back of, the indenture of mortgage) executed by myself, and thereupon I deliver up all your deeds again, and the *mortuum vadum* is extinguished.

Mortgages are often *transferred* from one person to another ; and a transfer might have taken place in our case. If I had wished to be paid my £1,000, and you were not prepared with it, you would have had to find some other person willing to advance the money on the same security. In that case, the latter would have paid me £1,000, and the mortgage debt and interest would have been assigned to him by me ; while I should also have conveyed to him the property which formed the security, subject to the equity of redemption which might be subsisting therein—that is, subject to the right in equity of yourself or your representatives to redeem the property, on payment to the new mortgagee (called the “transferee”) of the principal sum secured by the mortgage, with all interest and costs.

The foregoing will, it is hoped, give as simple and clear a notion of the ordinary mortgage as an unprofessional reader can be expected to receive. The legal and equitable incidents of mortgages are very complicated, and no branch of conveyancing gives so much difficulty to lawyers ; while a large proportion of the cases which come before the superior courts arise out of mortgages and their “priorities.” It may therefore be easily imagined that the present paper is essentially a “popular” one, and while avoiding all side issues and technicalities, may yet help to clear away some of the erroneous ideas of a mortgage (such as its being absolutely irredeemable) which have a popular existence.

\* This needs a little further explanation. If the land, for instance, should have been purchased by the vendor's father, and so have descended to the vendor, or have been left to him by his father's will, the covenants for title will extend only to the acts of his father and himself ; but if the vendor should himself have purchased the land, he will covenant only as to his own acts. The foregoing applies, of course, merely to covenants entered into upon a *sale*.