

VIII SOURCES OF A RIGHT

If the right is put in motion, phenomena of new kind intervene. They are shifting, dynamical, and may be expressed by the general term 'facts'; under which are included, not only the 'acts' of persons, but also the 'events' which occur independently of volition.

It is by 'acts' that rights are enjoyed, and it is through the agency of 'acts' or of 'events' that rights are created, transferred, transmuted, and extinguished.

Facts, including events and acts, are, therefore, the sources of rights. The two terms, events and acts, should consequently be analysed.

1 — Events

Events, or 'facts in law', are "every material act, natural or volitional, which produces legal consequences, such as the creation, transfer, modification, or extinction of a right." The legal consequences are produced irrespective of the existence of the will.

Events may be either movements of external nature, such as a landslip, the increase of a flock of sheep, the death of a relative, or an accidental fire; or, may be acts of a human being other than the human being whose rights or duties are under consideration. Lapse of time and change of place are among the events which are most productive of legal consequences.

2 — Acts

'Acts', in the widest sense of the term, are movements of the will. Mere determination of the will are 'inward acts.' Determinations of the will which produce an effect upon the world of sense are 'outward acts.' Jurisprudence is concerned only with outward acts. An 'act' may, therefore, be defined for the purpose of the science, 'a determination of will, producing an effect in the sen-

sible world.' The effect may be negative, in which case the act is properly described as 'forbearance'.

The essential element of such an act are three :-

- 1 — An exertion of the will.
- 2 — An accompanying state of consciousness.
- 3 — A manifestation of the will.

Acts are divided by jurisprudence into those which are 'lawful' and those which are 'unlawful'. The juristic result of the unlawful acts is never that aimed at by the doer. In the case of some lawful acts, their operation is independent of the intention of the doer; in the case of others, his intention is directed to the juristic result.

In the last mentioned case, the act is technically described as a 'juristic act'. A definition of this is "a manifestation of the will of a private individual directed to the origin, termination, or alteration of rights."

Juristic acts must, of course, exhibit in common with all acts, an exertion of will, accompanied by consciousness, and expressed; and any circumstance which prevents the free and intelligent exertion of the will may either prevent the occurrence of the juristic act, or may modify the consequences which result from it. What might appear to be a juristic act is thus 'null', and 'void', i.e., has, as such, no existence, if due to such actual violence as excludes an exertion of will, if accompanied by states of consciousness, such as lunacy, drunkenness, and certain kinds of mistake, which are incompatible with an intelligent exertion of will. So also a juristic act, which does come into existence, is 'voidable', i.e., is liable to be attacked, and prevented from producing its ordinary results, if attended at its inception by 'duress', by 'fraud', and, in some exceptional cases, by mistaken motives.

Juristic acts are distinguished into 'one-sided', where the will of only one party is active, as in making a will, accepting an inheritance, and 'two-sided', where there is a concurrence of two or more wills to produce the effects of the act, which is then a contract', in the widest sense of that term.