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RECENT DECISIONS.

PATENT. COMBINATION. INFRINGEMENT. — A. and T. Burt, Ltd. are the assignees in Dunedin of the patent for a sky-light known as "Wade's Improved Iron Sky-light Frame." This patent, about which there has probably been more litigation than about any other in New Zealand, is for a combination metal sky-light frame, in which the glass is used without putty, and in which by means of a cap for preventing the water getting in and by means of wires as described in the specification for allowing water which might get in to get out again, the sky-light is rendered practically water-tight. There is no provision for carrying off water caused by condensation on the inner side of the glass. Messrs. J. and F. Christie, of Dunedin, manufactured and sold a metal sky-light frame, which was made water-tight by securing the glass with putty, in which the capping was on the top end and the two sides only to protect the putty from the sun, and which had channelling for carrying off water formed by condensation on the inside of the sky-light. Messrs A. and T. Burt, Ltd sued Messrs. J. and F Christie for infringement of Wade's patent. HELD by Cooper, J. that Wade's patent was a combination for improvements to bring about in an improved, simpler, and cheaper manner a result known before, that it fell within the doctrine of Curtis v. Platt viz, that where a combination only is claimed for improvements to bring about a given result well known before, the patentee must be held to the particular combination which he described, the doctrine of mechanical equivalents does not apply and there is, therefore, no infringement unless the particular combination be taken. HELD further that Christie & Co. had not taken Wade's combination, and that they were entitled to succeed on the authority of Curtis v. Platt, but that, even if the case did not fall within the rule established in Curtis v. Platt, there had been no infringement, as they had not by mechanical equivalents or otherwise taken the pith and marrow of Wade's patent. Their sky-light was a different sky-light, constructed on a different principle, and the object aimed at by them, viz., a water-tight sky-light, was obtained by the means (the use of putty) which it was the main object of Wade's invention to avoid. *A. and T. Burt, Ltd., v. J. and F. Christie. IX Gazette L.R.* 61.

SALE. AUTHORITY TO SELL. PRINCIPAL AND AGENT. OFFER AND ACCEPTANCE. Mr. John Taylor, after some correspondence with Ewing, King & Barry, a firm of estate agents, who wanted him to sell the Royal hotel, wrote on 21st October offering to sell the property for £6,100, stating :" I only give you this offer for 8 days." On 23rd October Mr. Baker, the prospective buyer, refused this offer and made a counter offer to buy for £6,000, which Mr. Taylor refused on 25th October. On 26th October Mr. Baker and Ewing, King & Barry, purporting to act as Taylor's agents, entered into an agreement for the sale of the Royal hotel by Taylor to Baker for £6,100. Mr. Taylor, having declined to sell, was sued by Mr. Baker for specific performance of the agreement. HELD that in order that a vendor of real estate may be bound by a contract entered into on his behalf by an agent who has been employed in and about the sale, it must be established that the agent was not merely employed to negotiate a sale, but that he had definite instructions to sell, that Messrs. Ewing, King & Barry had no authority to conclude a contract of sale, and that the sole extent of their agency, if any, was to make a definite offer to a definite person and that, on the rejection of this offer, their authority came to an end. The suit was therefore dismissed *Baker v. Taylor. VI N S W. State Reports* 500.

ACT OF BANKRUPTCY. SECURED CREDITOR TENDERED REPAYMENT —The Union of London and Smith's Bank, Ltd made an advance on certain securities to Ponsford, Baker & Co members of the Stock Exchange, who subsequently were declared defaulters. The official assignee of the Stock Exchange thereupon proceeded to collect the firm's assets tendered the Bank the amount due on the securities and requested it to hand them over The Bank refused to do so on the ground that as the official assignee was assignee of all the firm's property, an act of bankruptcy had been committed within three months, of which the Bank had notice, and that therefore the Bank would not be protected. The official assignee and the firm sued the Bank. HELD by the Court of Appeal that a man who has committed an act of bankruptcy is not entitled to deal with his estate, has no right to gather it in if it is not already in hand, or to make payments to his creditors out of that which he has actually at his command, and can give no good discharge to a debtor who pays him with notice of the act of bankruptcy; that if such a payment by a debtor be made under an order of a Court the debtor obtains thereby a valid discharge, but the Court ought to direct the money to be kept in court until it is seen whether the plaintiff is entitled to it or the representative in bankruptcy of his estate. HELD, therefore, that the proper course was to direct the Bank to deliver up the securities to the official assignee upon payment by him of the amount due he undertaking to hold them until it was ascertained whether bankruptcy would supervene within the three months, otherwise the action would stand over until the period of three months had expired. The Bank was allowed its costs of the action and interest until actual repayment *Ponsford, Baker & Co. v. Union of London and Smith's Bank, Ltd.* 22 *Times L R.* 812.

LIBEL. LIABILITY OF PRINCIPAL FOR MALICE OF AGENT. TRADE UNION'S REPORT The Australasian Institute of Marine Engineers, a trade union, published in its report of its 7th conference, a resolution passed at the conference, containing allegations against Mr Hay, a former member of the Institute, which were untrue and defamatory. In an action for libel brought by Mr. Hay against the Institute, evidence was given that the secretary of the Institute, who handed the report to the members, knew that the allegations were untrue. The jury awarded Mr Hay £1,500 damages The occasion of the publication of the report was privileged, that is, an action for libel for anything contained in the report would not lie unless malice were proved on the part of the Institute or some person for whose action they were responsible This verdict was set aside on the ground that there was no evidence of express malice on the part of the Institute HELD (on appeal) by the High Court of Australia, that the knowledge of the secretary that the allegations were untrue could not be imputed to the Institute as that knowledge had not been communicated to the secretary for the purpose of being transmitted to his master the Institute, and further, that even if the secretary's knowledge could be imputed to the Institute, yet as it was not shown that the governing body did not believe that it was their duty to publish the report to the members, there was no evidence of malice and the Institute was not deprived of its protection of privilege. *Hay v. The Australasian Institute of Marine Engineers. 3 Commonwealth L.R.* 1002.

INSURANCE. RISK VERBALLY REFUSED BY ANOTHER OFFICE. MISSTATEMENT Mr. Critchley insured his furniture and effects for £200 with The Atlas Insurance co They were destroyed by fire He sued the Company for the amount insured for. To the question in the proposal form "Has the risk been offered to or refused by any other office?" Critchley answered "No" Before effecting the insurance with the Atlas Company, Critchley had asked Mr. Callender, agent for the Yorkshire Fire Insurance Company, to take a line on his furniture for £100. Callender submitted the risk to the Yorkshire Company, it was declined by the manager, and Callender informed Critchley that the Company would not accept the insurance, as they already had enough on the building. HELD by Cooper, J. that the answer to the question in the proposal was a material misstatement, which avoided the insurance, and that the proposal or refusal need not be in writing. *Critchley v. The Atlas Insurance Company. IX Gazette L R 7*

BILL OF SALE. NON-REGISTRATION OF DEBENTURE OF FOREIGN COMPANY.—Section 2 of "The Chattels Transfer Act, 1889" exempts from the operation of the act "debentures and interest coupons issued by any company or other corporate body, and secured upon the capital stock or chattels of such company or other corporate body" HELD that a similar section in the Bills of Sale Act, in which the words "incorporated company" were used, applied only to local companies, and consequently that a debenture of a foreign corporation required registration. *The Transport, Trading and Agency Co. of W A , Ltd v Smith. VIII Western Australian L R* 33

FIRE INSURANCE AVOIDANCE IF UNTRUE STATEMENT MADE FALSE STATEMENT IN PROPOSAL FILLED IN BY AGENT. Mr Berechree insured buildings with The Phœnix Assurance Company, Ltd , through their local agent who gave a cover for fourteen days only, subject to the managers approval and sent the proposal on to the Company According to the policy an untrue statement in the proposal was to avoid the policy, and fraud or falsehood in the claim for loss under the policy was to work a forfeiture of all benefit thereunder. In the proposal which was filled up by the agent and in the notice of claim after the fire, Berechree's interest in the premises was falsely described to a material extent, such description having been inserted by the agent in the proposal after it had been signed by Berechree. In an action by Berechree against the Company the jury found that the false description in the claim was not wilfully and intentionally untrue, and that the local agent in falsifying the proposal was acting as the Company's agent. HELD by the High Court of Australia that the agent could not be considered as the Company's agent in filling in the answers in the proposal, that if the proposal as transmitted was affirmed by Berechree, the policy was vitiated by the falsity of one of the answers , if it was denied there was never any completed contract between the parties, and the plaintiff could at most recover back the premium in an action not founded on the policy. *The Phœnix Assurance Company v. Berechree. 3 Commonwealth L.R.* 946.

COMPANY. WINDING-UP CONTRIBUTORY COMPROMISE.—An arrangement was made between M'Lean Bros. and Rigg, Ltd , the executors of Silas Harding, a shareholder, and the administrator of his widow, to whom the Company was indebted, that Mrs. Harding's claims against the Company should be released in consideration of the Company handing over certain properties, releasing the estate of Silas Harding from all liability in respect of the uncalled liability on his shares in the Company, and registering a transfer of the shares from Harding's executors to one. Metzler. The transfer of the shares was sent to the Company, but never registered, although the agreement was acted on by both parties. The Company passed a resolution to wind up and appointing a liquidator, at a meeting at which there was not a quorum The liquidator made a call and sued in the name of the Company the executors of Silas Harding for £7,500, the amount of the call on his shares in the Company. HELD that the above arrangement was within the powers of the directors and of the Company, was for valuable consideration, and amounted in equity to a release HELD further that a section of the Companies Act validating the acts of directors, managers and liquidators *de facto*, "notwithstanding any defect that may be afterwards discovered in their appointments or qualifications," did not cover this case, where there had been no appointment at all, and therefore did not validate the call made by the liquidator Judgment was therefore given for defendant *M'Lean Bros and Rigg, Ltd , v. Grice. X Victorian L.R.* 610.

BANKER. FORGERY NEGLIGENCE OF CUSTOMER. ESTOPPEL.—The three directors of The Lewes Sanitary Steam Laundry Company (Limited) appointed the son of the chairman secretary of the Company. The chairman, but neither of the other directors, knew that his son had four years before forged his signature to a document, but since that time the son had lived an honest life. The directors allowed the secretary to have the custody of the Company's cheque book and bank pass-book, and did not require him to produce the cheque book for inspection at the directors' meetings The signatures of one director and the secretary were required to the Company's cheques. The secretary forged the signature of a director to a number of cheques purporting to be drawn on behalf of the Company, and obtained payment thereof from the Company's bankers. He not only escaped detection for long by his subtlety in forging the bank manager's signature and obtaining a duplicate pass-book, which he produced from time to time to the directors and from which he omitted all matters connected with the forged cheques, but actually won from the auditor an encomium on the excellence of his book-keeping When the forgeries were at last discovered the Bank claimed that the Company was estopped from asserting the invalidity of the forged cheques, by the directors' negligence (*a*) in appointing as secretary one whom the chairman knew to have committed forgery in the past, and (*b*) in giving him possession of the cheque book and not requiring its production for inspection and in not discovering the entries of the forged cheques in the bank pass-book The Company sued the Bank to recover the amount of the forged cheques HELD by Kennedy, J. that there is a duty on the part of a customer of a bank to be careful not to facilitate any fraud which when it has been perpetrated is seen to have, in fact, flowed in natural and uninterrupted sequence from the negligent act But in order to relieve the banker from the consequence of paying money on a forged cheque it is not enough for the banker to show that the conduct of his customer enabled him to pay money upon the forged cheque. It is not enough to show that the customer gave occasion for his so forging—that different conduct would have prevented the fraud and the payment by the banker. The carelessness of the customer, unconnected with the act itself, cannot be put forward by the banker as justifying his own default HELD further that the facts did not justify the defence of estoppel by negligence. Judgment for the Company. *Lewes Sanitary Steam Laundry Company (Limited) v. Barclay & Company (Limited)* 22 *Times. L R* 737.