..Legal..

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Recent Decisions.

LIBEL. PUBLICATION TO OFFICE CLERKS AND TELEGRAPH CLERKS. PRIVILEGE. PROTECTION OF BUSINESS MEN.—John Birch & Co., Ltd., carried on business in England, and had as its agents in Japan Birch, Kirby & Co. The latter company engaged Mr. Edmondson to act as its mineral manager for three months, and if John Birch & Co. approved, he was to be employed permanently. The latter company, however, disapproved strongly and its managing director wrote to the Company in Japan a letter ending "We are much afraid that he may acquire valuable information at your expense and use it for his own benefit not yours" and later sent a cable in code the translation of which was "Have no dealings with Edmondson. Give notice of dismissal" The letter and cable were dictated to a shorthand clerk, typewritten, and copied into the letter book and cable book in the usual way. Mr. Edmondson sued John Birch and Co. and its managing director for damages for libel. They made no attempt to justify the statements on the ground of their truth, but relied on the occasion as being privileged in the absence of malice. Mr. Edmondson's counsel contended that the publication to the clerks was actionable as it was not necessary to communicate libels to them.

Held by the Court of Appeal that, if a business communication is privileged. such privilege covers all the incidents of the transmission and treatment of that communication in the ordinary and usual way, and that the publication to the Company's clerks, and to the telegraph clerks, being in the reasonable and ordinary way of business was privileged. *Edmondson* v. *John Birch & Co., Ltd.*, 23 *Times L.R.* 234.

LIBEL. REPORT OF JUDICIAL PROCEEDINGS. WHAT IS A FAIR AND ACCURATE REPORT? THE REPORTER'S DUTY.—Mr. Justice Edwards recently called attention to the inaccuracy of newspaper reports of judicial proceedings. Reporters who furnish their journals with inaccurate reports expose such journals to actions for libel, for the only reports that are privileged are those that are both fair and accurate. The standard of accuracy was recently laid down in an action brought by Mrs. Hope against the proprietors of the *Sheffield Daily Telegraph*. She had been sued by Mr. Wilson, her solicitor, for the amount of his account, and after he had been sworn, but apparently when he was not in the witness box, he stated that the facts told him by Mrs. Hope were "a pack of lies from beginning to end." The *Telegraph* report contained this statement, and shortly afterwards a sentence showing that Mr. Wilson had made an unfounded imputation against Mrs. Hope. She sued the paper for libel.

The Court of Appeal held that the report was fair and accurate and therefore protected, and the Master of Rolls, in delivering judgment, pointed out that a report coming from a person, whose function it was to send a report in order that the public might read it the next day, was not to be judged by the same standard of accuracy as a report of a professional law reporter; and that slight flaws should be overlooked if the report were in the main accurate. He further stated that he was not prepared to hold that an observation made by a litigant in a case, when he was not actually in the witness box, could not be reported without risk of liability on the part of the reporter if it was in fact made in Court in the course of legal proceedings — *Hope* v. *Sir W. C. Leng & Co., Ltd.*, 23 *Times L.R.* 243.

LIQUIDATORS BEWARE! LOOK OUT FOR THE INCOME TAX!—Liquidators who wind up Companies, should see that the income tax is paid before distributing the assets. If they omit to do this, they will be personally liable for such tax.

The New Zealand Joint Stock & General Corporation, Ltd., passed resolutions for winding up and reconstruction, and sold its assets to a new company which agreed to pay the old Company's debts and liabilities and to indemnify it and its liquidator against them. The liquidator distributed the Company's assets, without making any provision for the income tax, which amounted to £1,480. When sued for it by the Attorney General, he found that he had no assets of the old company left to pay it with, and that he couldn't extract it from the new Company. Nevertheless, he was held guilty of misfeasance and ordered to pay the amount with interest and costs within six weeks. *In re New Zealand Joint Stock & General Corporation. Ltd.*, 23 *Times L.R.* 238.

CARRIERS. CONDITIONS LIMITING LIABILITY. "JUST AND REASONABLE."—Carriers are in the habit of making stringent conditions, limiting their liability for loss of, or injury to, animals and goods carried by them, and "The Mercantile Law Act 1880" provides that only such conditions shall be binding as the court shall consider "just and reasonable."

Mr. Williams sent a valuable pointer bitch by the Midland Railway Company to Chesterfield, and signed a special contract providing that the company would not be responsible beyond £2 in the case of a dog. unless a higher value were declared at the time of delivery, and a percentage of 1¼ per cent. paid upon the excess of the value so declared. Mr. Williams, like the majority of consignors, "chanced" it, and made no declaration as to the value. The dog arrived safely and was kept in the parcels office at Chesterfield, where, however, owing to the Company's negligence the basket took fire and it was burned to death. Then Mr. Williams sued the Railway Company for £300. The Company paid £2 into Court, and gave evidence to show that 1¼ per cent. was the usual charge made by all the Railway Companies in Great Britain for the carriage of dogs, and that there was extra risk in such carriage as the dogs were always trying to escape. Walton, J., however, held that the burden of proof was on the company to satisfy the judge that the condition was just and reasonable, that there was no evidence to show whether a rate of 1¼ per cent. was reasonable or not but that he considered it a very high premium. He therefore gave judgment for Mr. Williams for £300. *Williams* v. *Midland Railway Company*. 23 *Times L.R.* 878.

MASTER & SERVANT. MASTERS' LIABILITY FOR PLANT BORROWED BY HIM.—Mr. Hart, a master stevedore, unloaded sugar from the steamship Narcissus under contract with the shipowners. In accordance with the usual practice, they provided the derrick attached to the mast with a shackle and pin for the purpose of hoisting out the sugar. The pin was worn and unsafe, and in consequence fell out, and six bags of sugar were dropped on Mr. Biddle, one of the stevedore's men, who sued Mr. Hart for damages on the ground that the injury was caused by defective plant. The County Court judge withdrew the case from the jury, and found for Mr. Hart on the ground that the stevedore was not liable for a defect in the ship's tackle.

The Court of Appeal however, held that. although the stevedore borrowed the tackle, he had a duty towards his employees to take reasonable care to see that the plant was fit for the purposes for which it was required. There must therefore be a new trial in order that a jury might determine whether Mr. Hart had discharged that duty or not. *Biddle* v. *Hart*. 23 *Times L.R.* 262.

AUCTION SALE. RESERVE PRICE. LOT KNOCKED DOWN FOR LESS THAN RESERVE.—Mr. McManus at an auction sale held by Messrs Fortescue & Branson bid £85 for a corrugated iron building, which was knocked down to him by the auctioneer. When, however. the auctioneer opened the sealed envelope containing the reserve price, he found that the reserve was £200 and refused to accept Mr. McManus's deposit or to sign any memorandum of the sale. Mr McManus thereupon sued the firm for damages.

Held by the Court of Appeal that the meaning of the fall of the hammer was the acceptance by the agent of the vendor of the purchaser's offer, conditionally upon the price offered being either equal to, or above the reserve price and therefore the action failed. *McManus* v. *Fortescue & Branson*. 23 *Times L.R.* 292.

BANKRUPTCY. GOODS IN ORDER AND DISPOSITION OF BANKRUPT. Mr. Hairside bought goods of Mr. Button, a dealer in works of art, and left these goods and also goods bought from other art dealers with Mr. Button for safe custody. Subsequently, he directed Mr. Button to sell all these goods which were worth about £758, but unfortunately for him they were still in Mr. Button's possession when the latter became bankrupt. The Court therefore held that, being at the order and disposition of the bankrupt by the consent of the owner, these goods became part of the bankrupt's property divisible among his creditors. Mr. Hairside then lodged a proof claiming the value of the goods as damages for the breach of a contract to sell goods and account for the proceeds or return them if unsold. The trustee rejected the proof, and Bigham, J., held that the trustee was right, as Mr. Hairside had lost his goods not by any act of the bankrupt but by the operation of the statute. *In re Button*. 23 *Times L.R.* 256.

FACTORY. OFFICE ATTACHED TO FACTORY. CLOSING.—The South Canterbury Dairy Company, Limited, has about an acre of land on which are its factory, stables, offices and manager's dwelling house. The Company did not close its office at one p.m. on the half-holiday, and was prosecuted under "The Shops and Offices Act 1904" for failing to close.

Held by Chapman, J., that as the act of 1904 exempted from such closing an office "within a factory," and did not define a factory, the definition in "The Factories Act, 1901" could be referred to, and that a factory includes all the premises within the precincts, including buildings and open spaces so long as they are not excluded from being used in connection with the work of the factory. The office was therefore within the factory and exempt from closing under the "Shops Act." *Keddie* v. *The South Canterbury Dairy Company, Limited. IX. Gaz. L.R.* 375