..Legal..

Contributed by H. F. von Haast, M.A., LL.B.

RECENT DECISIONS.

Mercantile Agent. Possession with consent of owner. Pledge. Sale.—Section 4 of "The Mercantile Agents Act 1890" provides that "where a mercantile agent is, with the consent of the owner in possession of goods or of the documents of title to goods, any sale, pledge or disposition of the goods, made by him when acting in the ordinary course of business as a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same, provided that the person taking under the disposition acts in good faith, and has not ot the time of the disposition notice that the person making the disposition has not authority to make the same"

Schwabacher, a diamond broker, went to Mr. Oppenheimer, a diamond merchant, and got several parcels of diamonds from the latter, representing that he wanted to offer them to two firms whom he mentioned He had, however, no dealing with either firm, but pledged some of the diamonds with Attenborough & Son, with whom he had had many previous transactions. Others he gave to a Mr. Broadhurst to sell for him and these were bought by Frazer & Wyatt a firm of diamond merchants, on joint account with Broadhurst. Frazer & Wyatt paid Schwabacher the full price, debited Broadhurst with half thereof, and credited him with half the profits when the diamonds were sold. When Mr. Oppenheimer found that his diamonds had "gone up the spout" and elsewhere, he sued Attenborough & Son for delivery up of the goods pledged with them and Frazer & Wyatt and Broadhurst for conversion of the diamonds sold to them. In the first case his counsel urged that, as it was not usual in the diamond trade for a broker employed to sell diamonds to have any authority to pledge them, the pledge was not protected by the above section. It was, however, held by Channell, J., that the expression "a mercantile agent" meant a mercantile agent quite independently of the goods he dealt in, and that the pledge was protected unless it was so notorious that a diamond broker had no authority to pledge diamonds that Attenborough & Son must have known it. Channell J. found that the diamonds were in Schwabacher's possession as a mercantile agent with the owners consent, that he pledged them in the ordinary course of business, that Attenborough & Son took them in good faith and without any knowledge of Schwabacher's want of authority and that their pledge was therefore protected. In the other case the jury found that Schwabacher had obtained the diamonds by larceny by a trick, that Frazer & Wyatt acted in good faith, but Broadhurst did not. Mr. Oppenheimer's counsel contended that, as Schwabacher had obtained the goods by larceny by a trick, they were not in his possession by the consent of the true owner, and that therefore the sale was not protected. Held by Channell J., however, that where there was the consent of the owner of the goods to the possession of them by a mercantile agent as a mercantile agent, the statute applied even though the goods had been obtained by a felony, that as Frazer & Wyatt acted in good faith, they were protected, but that there had been a conversion by Broardhurst who was liable for the full amount. *Oppenheimer v. Attenborough & Son*, 21 *Times L.R.* 182.

Oppenheimer v. Frazer & Wyatt, 21 *Times L.R.* 183.

Income-Tax. Persons residing in the United Kingdom Company with registered office in New Zealand and central control in London.—According to the English Income-Tax Act taxpayers residing in the United Kingdom are assessed for income-tax in respect of their property wherever situate. The New Zealand Shipping Company, Limited, was registered in New Zealand, and its memorandum of association provided that its registered office should be situate in Christchurch, N.Z. Its vessels are registered in the United Kingdom, but almost all its investments and other property are in New Zealand, and its contracts for carriage of frozen meat are made in New Zealand. There is a New Zealand board of directors, which transacts the New Zealand business, and a London board of directors which has general management and control of the business, issues shares, makes calls, borrows, sets aside reserve fund, declares dividends, prepares balance sheets and decides important questions of policy. The Income-Tax Commissioners for the City of London decided that there was one business of the Company, carried on at the London office, and the Company's operations were subject to the control and direction of the London office, and that therefore the Company resided in the United Kingdom The Company not being anxious to pay income-tax twice over, appealed, but Bray J., held that a Company resides for the purpose of Income-tax where its real business is carried on, and that its real business is carried on where the central management and control actually abides, and that therefore the New Zealand Shipping Co resides in the United Kingdom *The New Zealand Shipping Company v. Stephens.* 23 *Times L.R.* 213

Money Lenders Act, 1901. Unregistered Money Lender Illegal Contract. Relief.—The Money Lenders Act 1901 provides that a money lender within the meaning of the Act shall register himself, and shall not enter into any agreement with respect to the advance or repayment of such money or take any security for money otherwise than in his registered name. It has been held that such a contract entered into by an unregistered money lender is therefore illegal.

Mr Lodge borrowed money from the National Union Investment Company Limited, unregistered money lenders, and gave as security a conveyance of his contingent reversionary interest subject to a first mortgage and an assignment of a policy of life assurance, both in the form of conveyances on sale, but admittedly by way of mortgage only. The Company took from Mr Lodge two bills of exchange, which were subsequently cancelled and two new bills of exchange given, £150 being charged and for renewal. The Company paid off the first mortgage and took a transfer thereof. Mr. Lodge subsequently sued the Company claiming that the above transactions were illegal and void, and delivery up of the bills and securities, including the transfer of the first mortgage.

Held by Parker J, that the loan transactions were void for illegality, but that the borrower could only assert his right to relief if he were himself prepared to do what the Courts considered fair play. It seemed both legal and equitable that Mr Lodge who had received £1075 for which he had been charged £150 should not be able to get back his property without at the same time being put on equitable terms. An order was therefore made that upon payment by Mr. Lodge to the Company within a certain time of £1075, less £150, and some items agreed upon, the Company should deliver up the bills, deeds and policies. *Lodge v. National Union Investment Company Limited*, 23 *Times L.R.* 187

Company. Alteration of Memorandum of Association. Enlarging Objects of Company.—The Companies Act 1903 provides that the Court may sanction an alteration of the memorandum of a Company, if the alteration is required to enable the Company to carry on its business more economically or efficiently, or to carry on some business which may be conveniently combined with the Company's business

The Cyclists' Touring Club, which was registered as a Company, was formed to promote and protect the use of bicycles, tricycles and similar vehicles and to protect and promote the comfort of cyclists in general aud its members in particular. Motoring has now to a large extent driven cyclists off the roads in Great Britain, and in consequence the membership of the Club has greatly diminished. The Club therefore applied for the sanction of the Court to a proposed alteration in its memorandum of association whereby the object of the Club was to be to promote and protect the pastime of touring by the use of vehicles or otherwise, and to assist and protect tourists in general instead of cyclists only. The object of the alteration was to admit motorists to the Club.

It was however, held by Warrington J, that the effect of the alteration would be to alter the business of the Club entirely, and to cause the promotion of the benefits of cyclists exclusively to cease to be the main object of the Club to substitute in its place the promotion of the benefits of tourists generally and of cyclists only incidentally. Nor could the new business he considered as one that could conveniently be combined with the old business. In any event, the Club's old object was to protect cyclists against motorists. If the alteration were allowed, the Club could only protect cyclists by proceeding against another class of its members, motorists. The proposed alteration was therefore refused. *In re Cyclists' Touring Club* 23 *Times L R* 220

Bankruptcy Bankruptcy Notice. Final Judgment Arbitration Act. Enforcement of Award.—The Bankruptcy Act 1892 provides that where a creditor has obtained a "final judgment" against a debtor he may issue a bankruptcy notice, and failure by the debtor to comply with such notice is an act of bankruptcy.

The Arbitration Act 1890 provides that an award or a submission may by leave of the Court or a judge, be enforced in the same manner as a judgment or order to the same effect

The creditor and debtor in this case had referred certain difficulties to arbitration and the creditor took out an originating summons to enforce the award, obtained an order that the award be enforced and that judgment be entered in accordance therewith, and then obtained a judgment for £28 10s. 0d. and costs. He applied to the registrar to issue a bankruptcy notice on this judgment, but the Registrar refused on the ground that this was not a judgment within the meaning of the Bankruptcy Act. Held by the Court of Appeal that the Arbitration Act did not give any power to turn an award into a judgment It gave an award the same status as a judgment for the purpose of enforcement, but left it an award, that the order made enforcing the award could not be entered as a judgment and that the award was not a judgment. *In re Judgment Debtor* 23 *Times L.R.* 214.

Bankruptcy Act of Bankruptcy. Writ of Sale—The Bankruptcy Act 1892 provides that a debtor commits an act of bankruptcy if a writ of sale directed against any land of the debtor has been delivered to a sheriff and such land has been advertised for sale and the judgment is not satisfied within 5 days.

The Contractors and Workmens' Lien Act 1892 empowers a Magistrate to enforce a judgment on a claim of lien by directing a sale of the land; and directs the sheriff on receiving a certified copy of the Magistrates' decision to make a sale of land in the same manner as under a writ of sale pursuant to a judgment of the Supreme Court. Held by Stout C. J that such a copy of the Magistrates decision handed to the sheriff is not a "writ of sale" within the meaning of the Bankruptcy Act, and therefore if unsatisfied within 5 days is not an act of bankruptcy. *Re Davies IX Gaz. L.R.* 289.

Banker & Customer. Dishonour of Cheque. Damages.—Mr. Bailey, a customer of the Bank of Australasia, on the 22nd March paid into the Young branch £139 to be transmitted to his credit at the Liverpool street branch, and the manager said "The money will be there to-morrow morning" On 27th March he drew a cheque for £12 10 0 in favour of Inglis & Co This cheque was dishonoured. On 28th the cheque was paid, and on the 28th the manager told Inglis that the cheque was paid and that the dishonour had been due to some misunderstanding. Mr. Young sued the Bank for damages for the dishonour. At the trial he admitted that he could not prove any special damage and there was evidence that he had had subsequent dealings with Inglis. The jury awarded him £100 damages. Held on a motion for a new trial that substantial damages can be awarded against a Bank for the dishonour of a customer's cheque, although no special damage can be proved and that the damages were not at all excessive. *VI State Reports N S.W.* 686.

X-Rays as a Hair Restorer.

In the current issue of the *Archives d'Electricite Medicale*, Prof. A. Imbert and M. Marques confirm the observation recently noted, that exposure to X-rays results in the restoration of its normal hue to white hair. One of the authors, who has been engaged in X-ray work since 1896, and whose hair and beard were almost completely white, found that their colour returned and became even darker than the original tint; similarly when an elderly patient was under treatment for lupus, part of his hair was exposed to the rays, and fell off; it returned, however, almost completely black over the region affected, and has since retained its colour. These and other facts have convinced the authors of both the reality and the durability of the effects obtained, though they are unable to put forward a satisfactory explanation of the phenomenon. Those of us readers, therefore, who rejoice in the possession of silver locks had better steer clear of the X-rays.

Treatment of Consumption.

Dr M'Donald, of Adelaide, who recently received from Japan a supply of tuberculo-toxoidin, which is said to be a cure for consumption, is making experiments with it Several persons, who have been pronounced by medical practitioners to be suffering from consumption, called on Dr. M'Donald, and asked to be given a course of treatment The doctor selected a bad case so as thoroughly to test the remedy, and is treating it. It is stated that the patient's cough, which was a source of trouble at night, has almost ceased. The patient has gained in weight, and has a good appetite. There has not been the slightest reaction, and up to the present the results have been gratifying. The experiment is being watched with keen interest.